Case Number :ANUHCV2025/0149

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HIGH COURT
ANTIGUA AND BARBUDA

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EVIDENCE FILE INDEX

Prepared by: Alkiviades David | Dated: April 17, 2025

Submitted to the High Court of Antigua on a black USB stick with a yellow back end. This evidence archive may be updated in the future and is presented under penalty of perjury.

Documents (PDF)

1. **GKara_A D Medical Note_021123 – Final** (190 KB)
2. **eUS-RICO – April 2025** (135 KB)
3. **AlkiDavid – Athens Court of Appeals 07272023** (784 KB)
4. **Alki-David–Jane Doe Appeal – Bohm** (308 KB)
5. **Alkiviades v2** (1.5 MB)
6. **Antigua Govt Opinion – Nero, AG Office** (99 KB)
7. **MARK LIEBERMAN – Letter to DOJ** (122 KB)
8. **Daphne Barak – $10K UK Transaction Record** (25 KB)
9. **Complaint to Beverly Hills Police Station** (724 KB)
10. **Dani Peretz Mossad – Criminal Charges 2025** (619 KB)
11. **Faked Attorney Signature Complaint by A. David** (6.4 MB)
12. **evidence-MASTER – Compiled by A. David** (4.2 MB)
13. **Murdered John Quirk – Report on Gloria Allred** (192 KB)
14. **Gottschalk – Whistleblower on Girardi Partnership** (44.8 MB)
15. **LimeWireCBS Complaint – Ryan Baker** (5.1 MB)
16. **27 Pages of Texts – Mary Doe Submission** (4.6 MB)
17. **Murdered Attorney Rebecca Rini Drafted This Document** (207 KB)
18. **Elwood Lui & Son – Objection to Trial** (745 KB)
19. **Medical Truth Shocking – Legal Abuse Synopsis** (12.8 MB)
20. **Alkiviades Treatment Plan v1 – 230528_0821** (193 KB)

Image Evidence (JPG)

21. **MediaDefender Trigger Example** (199 KB)
22. **VGuifre-Boies** (66 KB)
23. **MediaDefender – Screenshot** (367 KB)
24. **CBSYOUSUCK.com – Publicity Still** (49 KB)
25. **Gui & Boies Also Attacked Dershowitz** (9 KB)
26. **Virginia Giuffre – Faking Death Photo** (210 KB)

27. **Wexler Letter Screenshot** (187 KB)
28. **CBS SUED Screenshot 2011** (274 KB)
29. **CBS-VUZE Screenshot** (187 KB)
30. **Evidence: Alki David Labeled Delusional** (163 KB)
31. **Jackson Family Members – Whistleblower Evidence** (172 KB)
32. **CBSYOUSUCK – 13 Years Unchallenged Still** (176 KB)

🌐 Web/HTML Files

33. **Media Defender – Managed Data Log** (1.5 MB)

🎥 Video Evidence (MP4)

34. **Gaston Browne – Alpha Nero Statement** (35.2 MB)
35. **Alki David Confronts Gloria Allred** (72 MB)
36. **Alki David Rage – $54M Deposition Footage** (144.4 MB)
37. **Orozco Court Audit – "Auditing the Lies"** (132.9 MB)
38. **CBSYOUSUCK – Full Video (13 Years Unchallenged)** (147.7 MB)
39. **Jaguar Wright – With Alki David & Others** (790.9 MB)
40. **Schooling the FBI on 1st Amendment** (45.9 MB)

Pleas note:

The USB drive
Contains all the
Evidance files except
the Medical evidance
or my condition
and evidance or
malpiesnce In Me
RICO

George Karampoutakis MD MSc PhD

Psychiatrist

Athens, November 2nd 2023

Medical Note

I conducted a psychiatric evaluation of Alkiviades Andrew David, son of Andreas and Dimitra, of British Nationality, resident of Spetses Greece, born on May 23rd 1968 in Lagos, Nigeria, Passport Nr. 537982155, United Kingdom, date of issuance 20/07/2016, exp. Date 20/7/2026. The evaluation was conducted on the 28th and 30th of September, 2023.

Mr. Alkiviades Andrew David was evaluated with use of the Minnesota Multiphasic Personality Inventory (MMPI – 2), which was administered on September 9th 2023 by a certified clinical psychologist.

Psychometric assessments are a scientifically acceptable means of evaluating elements that determine a person's capabilities and predisposition to behavior in a standardized, structured way. Their accuracy is supported by scientifically determined indicators of validity and reliability. They are based on internationally established scientific theories and literature.

The MMPI – 2 is considered the most reliable screening and assessment tool for adult psychopathology, widely used in clinical and court settings internationally. It contains 120 subscales (clinical, content and personality subscales), as well as 8 validity scales. It is used in order to diagnose psychopathology in clinical practice, to identify critical psychological factors in the selection of personnel for sensitive, high responsibility or risk positions, and in judicial settings. The MMPI – 2 assists mental health professionals in making valid and reliable judgments concerning the patient's personality by providing a comprehensive psychological profile. The instrument's accuracy is reflected in scientifically determined indices of validity and reliability.

From the overall assessment of the MMPI-2 psychometric instrument, Mr. David's scores are elevated on the following psychopathology scales:

- The Clinical Scale of Paranoia (Pa)
- The Subscale of Persecutory Ideas (Pa1)

The above clinical elevations reflect the presence of psychiatric symptoms, potentially as a result of continuous litigation that the examinee endorsed in his responses to the test.

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George Karampoutakis MD MSc PhD

Psychiatrist

Taking into consideration Mr David's responses during the clinical evaluations, it appears that having been subjected to long term and mentally arduous trials following complaints made by third parties against him, the truth of which he denies, he has developed long – standing ideas of persecution by third parties with financial incentives targeting his estate.

Without taking into account any details of the trials that Mr. David is involved in, the active psychiatric symptomatology he presents necessitates further clinical monitoring and potentially the use of medication as part of a therapeutic treatment.

While Mr. David has full capacity to comprehend and deal with reality, possesses empathy as well as the ability to relate to others in an appropriate way, he tends to externalise aggression directly related to the aforementioned symptomatology, and particularly his intense fear that whoever approaches him shares motives with the persons who accused him in court.
Given the duration of the symptomatology (paranoia and persecutory ideas), further monitoring and assessment of the progression of Mr. David's symptoms in subsequent sessions is warranted.

The current note is provided for Judicial use.

Dr. George Karampoutakis MD MSc PhD

ΓΕΩΡΓΙΟΣ Ι. ΚΑΡΑΜΠΟΥΤΑΚΗΣ
ΨΥΧΙΑΤΡΟΣ
Δ. ΣΟΥΤΣΟΥ 13 - ΠΛ. ΜΑΒΙΛΗ - ΑΘΗΝΑ
Τηλ.: 210.64.64.791 - Κιν.: 6939.005.001
ΑΦΜ: 054874648 - ΔΟΥ ΨΥΧΙΚΟΥ

Psychiatrist – Forensic Court Panel – Mediator

President of the Hellenic American Psychiatric Association

Important Notice: I explicitly point out that the medical opinion I hereby send you is addressed to the following recipients, ie. your lawyer in Greece Mr. Themistoklis Sofos and your lawyer in California, USA, Mr Fred Heather, with the sole purpose of being submitted during your pending trial in California with your defendant Mr Fred Heather. Mr. Fred Heather is only allowed to submit our medical opinion to the Judge of your pending case. The present medical report is strictly confidential. Reproduction, reproduction, other way in social media, media and advertising, media, in third parties other than the above mentioned above are strictly prohibited.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALKI DAVID,

Plaintiff,

v.

SONY CORPORATION; JOHN BRANCA; JOHN MCCLAIN; GLORIA ALLRED; TOM GIRARDI; LISA BLOOM; MICHAEL AVENATTI; DAVID BOIES; LOUIS FREEH; FRED HEATHER; DANIEL "DANI" PERETZ; ANTHONY PELLICANO; DAPHNE BARAK; SHARI REDSTONE; LES MOONVES; EDGAR BRONFMAN SR.; MARGUERITA NICHOLS; LAUREN REEVES; CHASITY JONES; REMI SACERDOTE; NIR YATOM; BLACK CUBE INTELLIGENCE AGENCY; WARNER MUSIC GROUP; LIMEWIRE.COM NFT MARKETPLACE; and DOES 1 through 100,

Defendants.

VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiff ALKI DAVID, by and through undersigned counsel, brings this civil action pursuant to the **Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–1968**, and in support alleges as follows:

I. INTRODUCTION

This complaint identifies multiple law firms and institutions as central to a criminal enterprise operating under color of law, finance, and media. These include Boies Schiller Flexner LLP, led by David Boies and Martin De Luca; Allred, Maroko & Goldberg; the now-defunct Girardi Keese; and the California State Bar under former Executive Director Leah Wilson. Despite formal complaints by former State Bar General Counsel Murray Greenberg, attorney Barry K. Rothman, and others, the Bar ignored clear evidence of systemic fraud and racketeering.

This RICO action exposes an unprecedented network of corruption, coordinated by a transnational criminal syndicate known as **The MEGA Group**, working in close collaboration with **Mossad-affiliated agents and private intelligence contractors**. This network operates across multiple sectors — including media, law, finance, and intelligence — with the express purpose of protecting high-value monopolies, neutralizing dissent, and controlling access to intellectual property and geopolitical influence. The MEGA Group, backed by financiers like Edgar Bronfman Sr. and strategic operatives from Black Cube and Israeli intelligence, operates as the command structure behind a series of civil and criminal conspiracies. Shari Redstone, Edgar Bronfman Sr., and others enabled the laundering of media assets, suppression of whistleblowers, and strategic targeting of individuals such as Plaintiff Alki David, whose refusal to cede control over disruptive technologies made him a high-priority target for reputational and economic erasure.. and Edgar Bronfman Sr. at the financial helm, laundering exploitation content via platforms like LimeWire while trafficking influence across media and politics. The legal arm of this syndicate included David Boies, Gloria Allred, Tom Girardi, and Michael Avenatti—who orchestrated fake lawsuits using scripted plaintiffs, rogue judges, and corrupt press channels.

Plaintiff Alki David, son of Andrew A. David and founder of FilmOn, was targeted for destruction after refusing to sell off his digital empire. He endured fraudulent litigation, surveillance, theft of assets, and the wrongful deaths of several attorneys. The murder of key advisors, including John Quirk, Mark Lieberman, Rebecca Rini, and Barry Rothman, followed sealed whistleblower submissions to federal authorities. In particular, **Mark Lieberman** authored a detailed letter exposing systemic racketeering and judicial corruption involving multiple defendants named herein. This letter was delivered by **attorney Ryan Baker**, who currently represents **Katherine Jackson**, the mother of Michael Jackson and herself a victim of the same MEGA Group enterprise. The letter, submitted to U.S. prosecutors, named co-conspirators, detailed witness intimidation, and outlined criminal coordination between civil litigants and private intelligence actors. Lieberman was murdered shortly after submission, reinforcing the deadly consequences faced by whistleblowers challenging this enterprise. At the time, Lieberman had also filed a formal **civil RICO lawsuit in the Northern District of Texas titled Alkiviades David v. Comcast et al.**, alleging the same racketeering infrastructure at issue in this case. That lawsuit was subsequently and inexplicably **redirected back to California**, where it was dismissed without a full hearing — a procedural maneuver that raises serious concerns about judicial coordination and suppression. The redirection and dismissal of the Texas suit occurred shortly before Lieberman's death, marking a critical escalation in the campaign to silence legal exposure of the MEGA Group's enterprise. Notably, the $900 million default judgment entered against Plaintiff was orchestrated and managed directly by Defendant **Tom Girardi** from pretrial detention. While facing criminal indictment and disbarment

proceedings, Girardi continued to coordinate filings, authorize procedural sabotage, and influence judicial decisions remotely. This includes his authorship of the fraudulent complaint and direction of settlement strategy while under federal surveillance, further demonstrating the syndicate's control over legal infrastructure even while its actors faced prosecution.

This action seeks to dismantle the syndicate and hold liable all those complicit in racketeering, wrongful death, constitutional violations, and the intentional infliction of harm.

II. JURISDICTION AND VENUE

1. Jurisdiction is proper under 28 U.S.C. § 1331 and 18 U.S.C. § 1964(c) because this action arises under federal law, specifically RICO.
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to these claims occurred in this district and Defendants conduct business here.

III. PARTIES

- **Plaintiff**: ALKI DAVID, a dual-national entrepreneur and founder of FilmOn TV, Hologram USA, and SwissX, residing primarily in Antigua and California.
- **Defendants**: A transnational syndicate of individuals and corporations, including:
    - Law firms and attorneys: David Boies, Gloria Allred, Tom Girardi, Lisa Bloom, Michael Avenatti, Louis Freeh, Fred Heather
    - Media/corporate executives: Shari Redstone, Les Moonves, John Branca, John McClain, Edgar Bronfman Sr.
    - Surveillance/intelligence agents: Dani Peretz (a fugitive currently wanted by Greek authorities for the theft of €12 million from Plaintiff's 84-year-old mother, through a scheme exposed by **Sofos Law**, which represents Plaintiff's mother and is a U.S. Embassy–authorized law firm in Athens, Greece. Sofos Law filed a formal criminal complaint in the Athens Municipal Court on behalf of Plaintiff's 84-year-old mother, identifying Dani Peretz as the principal actor in a financial fraud scheme involving the unlawful misappropriation of €12 million in family assets. An arrest warrant was issued and remains active under Greek and international law enforcement protocols), Nir Yatom, Black Cube, Anthony Pellicano

- Content/IP platforms: Sony, Warner Music Group, LimeWire.com NFT Marketplace
- Plaintiffs used in sham litigation: Marguerita Nichols, Lauren Reeves, Chasity Jones

IV. FACTUAL ALLEGATIONS

J. Joseph Chora and the Coordinated Attacks in Malibu

Plaintiff was also targeted at his Malibu residence in a series of illegal raids, surveillance incidents, and coordinated burglaries directly orchestrated by **Joseph Chora**, a known associate of **Gloria Allred**, **Lisa Bloom**, and **Anthony Pellicano**. Chora carried out these operations under color of fraudulent court authority, resulting in the unlawful seizure of private property including Plaintiff's computers, intellectual property, and confidential communications.

Among the most egregious acts committed during these raids was the theft of private, intimate photographs belonging to Plaintiff's girlfriend. These images and digital assets were later discovered at **Joseph Chora's private residence**, as documented by investigative reporting on Shockya.com. The targeting of these materials was not incidental; it was part of a broader campaign to degrade and destabilize Plaintiff's personal relationships and exert psychological control through humiliation and blackmail.

Chora's operations in Malibu form part of a sustained pattern of stalking, intimidation, and extrajudicial enforcement actions that violate Plaintiff's civil rights and federal anti-stalking laws. These actions were undertaken in service to the broader MEGA Group enterprise, coordinated by Allred, Bloom, and Pellicano, and executed with the intent of silencing Plaintiff, accessing proprietary data, and destroying both his personal and professional life.

I. Weaponization of Disability and ADA Violations

Throughout the course of litigation and public persecution, Defendants weaponized Plaintiff's documented neurological condition against him. Rather than accommodate his disability under the Americans with Disabilities Act (ADA), Defendants and their legal representatives repeatedly denied reasonable accommodations, mocked Plaintiff's cognitive condition, and used it as a tool of delegitimization during courtroom proceedings and media defamation campaigns.

Despite having submitted official documentation verifying his ADA-protected neurological impairments, Plaintiff was systematically denied support—ranging from the presence of his service animal in court, to procedural adjustments necessary for due process. Instead, Plaintiff was trafficked through a series of hearings where his impairment was exploited by opposing counsel to paint him as unstable or unfit, contributing to the unjust outcomes and exacerbating Plaintiff's cognitive and psychological harm.

These ADA violations formed part of a broader pattern of psychological warfare and civil rights abuse used by the syndicate to dehumanize and discredit Plaintiff, making his condition a tactical vulnerability rather than a protected status under federal law. Such conduct violated Plaintiff's constitutional rights and directly contributed to the conspiracy's effectiveness in isolating, bankrupting, and defaming him.

H. Targeted Attacks in Antigua and the Alpha Nero Entanglement

While residing in Antigua in 2024–2025, Plaintiff was subject to direct targeting by known operatives of the syndicate, including **Daphne Barak** and **Corey Feldman**, both of whom attempted to infiltrate Plaintiff's circle with false offers of investment, media partnerships, and documentary collaborations. Barak also unlawfully solicited and received $10,000 from Plaintiff under the guise of delivering media services she never provided, constituting financial fraud. This theft was committed in direct partnership with **Corey Feldman**, a former FilmOn employee who brokered the meeting with Barak and participated in the scheme. Both Barak and Feldman acted as intelligence operatives embedded within Plaintiff's inner circle to carry out a financial and reputational entrapment plot. Barak, alleged to be the sister of former Israeli Prime Minister **Ehud Barak**, is a documented affiliate of **The MEGA Group**. Her role extended beyond mere fraud to intelligence-style operations designed to entrap and destabilize. These interactions were later revealed to be pretexts for information gathering, manipulation, and entrapment operations tied to Mossad-linked networks.

Simultaneously, the law firm **Boies Schiller Flexner LLP**, led by **David Boies**, initiated a high-profile civil action involving the superyacht *Alpha Nero*—a matter in which Plaintiff was falsely entangled through deceptive filings, misrepresentations, and third-party defamation. These legal actions coincided precisely with the coordinated attempts to destabilize Plaintiff's reputation and position in the Caribbean business and diplomatic community.

These events culminated in international financial entanglements and reinforced the cross-border orchestration of reputational, legal, and financial attacks. Prime Minister **Gaston Browne** of Antigua described this as a form of *lawfare* — a weaponization of litigation designed not only to discredit Plaintiff but to destabilize Antigua itself.

A formal motion for intervention in the Southern District of New York case concerning the Alpha Nero superyacht was filed by **Paul Reichler**, an internationally respected attorney in Washington, D.C., on behalf of the Government of Antigua and Barbuda. Reichler's intervention highlights the geopolitical weight of the syndicate's strategy and Antigua's recognition of Plaintiff as a target of international lawfare. The Antigua government's recognition of the pattern of abuse further validates the transnational nature of the syndicate's racketeering scheme. Reichler's legal intervention in the matter underscores the geopolitical importance of the case and directly supports Plaintiff's allegations of international lawfare and foreign interference targeting not only his businesses but the sovereignty of Antigua and Barbuda. Prime Minister Gaston Browne of Antigua publicly stated that the campaign against Plaintiff constituted an act of 'lawfare'—a weaponization of litigation designed to destabilize the country and discredit Alki David on the world stage. Browne's official opinion supports the assertion that this was not merely a private dispute, but a calculated international assault intended to weaken sovereign credibility and suppress innovation in emerging jurisdictions.

G. John Quirk's Investigative Report on Gloria Allred

Included in the record is the final investigative dossier compiled by the late **John Quirk**, a former CIA asset recovery expert who was murdered shortly after its completion. The report, dated February 8, 2022, exposes **Gloria Rachel Allred's** extensive legal and financial entanglements, revealing a matrix of shell companies, trust instruments, and political lobbying fronts operating under various business names at her central headquarters **Gloria Allred controls and operates from 6300 Wilshire Blvd, Suite 1500 — a Los Angeles commercial tower independently assessed at over $100 million. This property serves as the centralized operations hub for her legal syndicate and affiliated entities.**

Quirk's investigation tied Allred's extensive property holdings, including a $5.67M Malibu estate, to financial flows linked to entities tied to coercive litigation schemes, false plaintiff recruitment, and racketeering operations involving public relations laundering via entities such as **Women's Equal Rights Legal Defense and Education Fund**, **Donallco, Inc.**, and **The Women's Movement**. The report also documents her business associations with Lisa Bloom and others involved in the weaponization of false legal narratives.

The dossier confirms Allred's registered voter history, licenses, trust arrangements, real estate, and layered corporate filings, making her central to the syndicate's operations as a lead litigator and public-facing legal manipulator. This document is now submitted as **Exhibit A** in support of Plaintiff's claims and wrongful death allegations connected to the suppression of this report and the assassination of Mr. Quirk.

A. Pattern of Racketeering Activity

Defendants engaged in a consistent pattern of criminal acts including but not limited to:

- Mail and wire fraud
- Witness tampering and retaliatory violence
- Extortion under color of legal authority
- Obstruction of justice
- Conspiracy to violate civil rights

B. Coordinated Legal Sabotage

Over a ten-year period, Defendants orchestrated a campaign of malicious litigation against Plaintiff, fabricating claims, bribing judges, and obstructing justice through suppression of exculpatory evidence.

C. Media and IP Control Scheme

Plaintiff's media businesses (FilmOn, CinemaNow, and Hologram USA) were strategically sabotaged via DoubleVerify, Sony, and Warner-linked monopolists. These platforms were all structured to comply with former FCC Chairman Tom Wheeler's Notice of Proposed Rulemaking (NPRM), which sought to classify streaming platforms as MVPDs (Multichannel Video Programming Distributors) — granting them regulatory parity with cable networks. FilmOn and CinemaNow, as early adopters of Wheeler's NPRM framework, represented a threat to legacy media cartels. Notably, **Rebecca Rini**, a key FCC advisor and legal strategist cited directly in Wheeler's NPRM footnotes, was murdered shortly after submitting documentation that supported FilmOn's status as a compliant MVPD. Her death coincided with the abandonment and quiet burial of Wheeler's NPRM proposal — an act of regulatory sabotage that benefited legacy stakeholders and removed a critical pathway for digital media parity. The chilling effect of Rini's death and the suppression of the NPRM had lasting consequences on the industry, and her assassination forms part of the broader pattern of targeted killings associated with this racketeering enterprise. IPOs were derailed, ad revenue blacklisted, and Wheeler's framework was intentionally undermined by lobbying efforts from Defendants, including Comcast, Ziff Davis, and Boies Schiller Flexner LLP. via DoubleVerify, Sony, and Warner-linked monopolists. IPOs were derailed, ad revenue blacklisted, and content censored.

D. Wrongful Deaths of Legal Allies

Attorneys Barry K. Rothman, Rebecca Rini, John Quirk, Mark Lieberman, and Phil Kaye—all actively representing or supporting Plaintiff—died under suspicious circumstances in proximity to critical legal deadlines or whistleblower submissions.

E. Intelligence and Surveillance Activity

Defendants hired Black Cube, Pellicano, and Mossad-linked agents to monitor, infiltrate, and sabotage Plaintiff's operations and communications.

F. The Jackson Estate Conspiracy

Defendants including John Branca and Sony used fraud and coercion to hijack control of Michael Jackson's estate, silencing the Jackson family and those seeking to expose misconduct. Plaintiff's attempts to intervene led to retaliation.

V. CAUSES OF ACTION

Count I – Violation of RICO, 18 U.S.C. § 1962(c)

Count II – Conspiracy to Violate RICO, 18 U.S.C. § 1962(d)

Count III – Fraud and Deceit

Count IV – Intentional Infliction of Emotional Distress

Count V – Wrongful Death (re: Rothman, Rini, Quirk, Lieberman, Kaye)

Count VI – Civil Rights Violations under 42 U.S.C. § 1985(2) & (3)

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter judgment in Plaintiff's favor on all counts;
2. Award **treble damages** as provided under 18 U.S.C. § 1964(c);
3. Award punitive damages where applicable;
4. Issue **injunctive relief** halting all ongoing racketeering activity;
5. Order **disgorgement and asset forfeiture** of all gains derived from the criminal enterprise;
6. Grant such other and further relief as this Court deems just and proper, including referral to the DOJ and international human rights bodies.

Respectfully submitted,

ALKI DAVID, Pro Se or by counsel

Date: [To be entered upon filing]

VERIFICATION: I, Alki David, under penalty of perjury, affirm that the foregoing is true and correct to the best of my knowledge.

Signature: _____

S O F O S Law Firm

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Before
The Court of Appeals
Athens Greece

APPEAL

(against the nLaw enforcement of a court decision based on the article 43 of the European Regulation)

Alkiviades Andrew David of Andreas and Dimitra, British Nationality, resident Antigua and Barbuda, St. John's), legal representing «Hologram Inc», «Alkidavid Productions Inc.», born 23/5/1968 in Lagos Nigeria , passport Nr. 537982155, UK, iss. Date 20/7/2016, exp. Date 20/7/2026.

Plaintiff

vs

Lauren Reeves resident Los Angeles California, Griffith Park 1, USA

Respondent

against

The court decision **2663/2022 of the One-Member-Court of Athens** dated 18/3/2022, 23522/1097/2022, law enforcement of the Decision BC 643099/10-9-2020 of the Court of California (14th Department).

Athens the 27th of July 2023

On June 15, 2023, as I was fully unaware that the no. 2663/2022 Decision of the One-Member Court of First Instance of Athens at the request of the Respondent, which I legally appeal with the present Appeal before the Court of Appeals, acting as a court in first instance. Lauren Reeves (hereinafter Lauren Reeves) is a television writer and presenter, and former employee of my companies.

As I am informed, by this decision, which was issued in the process of lending jurisdiction after the application number of 18/3/2022 with the number of deposit reports 23522/1097/2022 of the defendant, a representative of its attorney, recognizes its enforcement of its enforcement. The enforceability of no. BC 643099/10-9-2020 of the Court of Justice of the California State of Los Angeles (Political Address 14th Department), without the competent judge to examine the conditions of its final. the Greek public order, not even the violation of the fundamental principles of fair trial. 6 of the European Convention on Human Rights, without ordering the summoning of any person as having a legitimate interest in this trial, either having my appeal or intervening intervention, and in the absence of notification of Lauren Reeves' request to me, the Greek court proceeded with the Greek Court of Justice. 5/5/2022 without my presence in the Lauren Reeves' request and examine the substantial fundamental of its application.

Furthermore, the contested decision lacks a reasons for the assistance of the lawful conditions of enforcement of the California Court of Justice. While it contains no reason as to whether the amount of the outrageously high and disproportionate punitive damages awarded by the decision declared enforceable is significantly higher than the supposed actual damage of the defendant (below).

The contested decision lacks reasoning as it does not consider the fact that I was not given the opportunity for the US courts to defend and put forward my allegations, so that Art. 6 of the European Convention on Human Rights and the International Pact on Individual and Political Rights, as adopted and opened for signing, validation and accession with the no. 2200 A (XXi) decision of the UN General Assembly with entry into force on 23.3.1976 (in accordance with Article 491 text: United Nations Treaty Series, Vol. 999, p. 171) and ratified by Law

2462/1997 "Ratification of the International Pact on Individual and Political Rights "(Government Gazette 25, vol. A).

In particular, given my absence in this judgment, the court that issued the contested ruling was unable to consider the reasons not proposed by the applicant Lauren Reeves, a violation of my fundamental rights, as I have been following them below, and in particular.

- In the process before the California Court of California, the United States of America, whose decision recognized the enforceability in the Greek territory, the presumption of my innocence was violated ("Every person accused of criminal offense is presumed to be innocent until his guilty is innocent. proved by law ',

- that I was not given the guarantees to attend the trial and to defend myself in propria persona ("pro per") that is, in person or with the help of the lawyer of my choice and to examine or request the examination of the class witnesses and to ensure presence

- And to examine the defense witnesses on the same terms that apply to the class witnesses.

The contested decision, which was not notified to me, is expedited at the expense of my property in Spetses, at the "Panagia Armata or Armada" position, in the no. 449 OT of the homonymous municipality of Spetses, which is on display at a public forced auction on the 27th of September 2023.

2.- Specifically: With its application dated 18/3/2022, Lauren Reeves requested the Greek Court of Justice to recognize the enforceability of the no. BC 643099/10-9-2020 of the Court of Justice of the California State of Los Angeles (Political Address 14th Department), represented by Lawyer Gloria Allred, and with which I was obliged by the legal and historical basis of work harassment , to pay, my companies, the amount of six hundred and fifty thousand ($ 650,000) of US dollars due to compensation (Compensatory Damages) and the amount of four million fifty thousand ($ 4,350,000) as "punitive compensation" Damages).

3.- Also the other plaintiff, Mrs Mahim Khan (Mahim Khan), a representative of the (same) lawyer Gloria Allred, consulted with the defendant and other plaintiffs, with whom he has joined a group in order to deceive the California courts of California. The United States of America has filed a lawsuit against me on the same basis and request and has been issued. BC654017 / B305849, B308727 ruling by the Court of Justice of the California of Los Angeles (Political Directorate of 74th Department) with which I was obliged to pay, and my companies, the amount of three million US dollars for non -financial losses, US dollars for future losses, forty thousand US dollars for loss of profits, eighty thousand US dollars for future profits, one hundred and thirty thousand US dollars for its future hospitalizations, as well as fifty million US dollars (US dollars " Damages).

4.- Similarly, Mrs Chasity Jones (Tsassiti Jones), a representative of the same lawyer Gloria Allred, has filed a lawsuit against me with the same request and a decision has been issued under E. BC649025 (Los Angeles Superior Court). of the state of California in the province of Los Angeles (Political Directorate 14th Department) with which I was obliged to pay, and my companies, punitive compensation, of eleven million ($ 11,000,000) US.

5.- Tom Girardi is a lawyer for the state of California, who is accused of crimes by the California State Prosecutor's Office and is to be tried, and has been deleted by the California Bar Association, after hundreds of complaints against him by US citizens who They have been harmed by his actions, and who coordinates the actions of the defenders in cooperation with their attorney Gloria Allred.

6.- Lauren Reeves (Lauren Reeves), Mahim Khan (Mahim Khan), and Chasity Jones (Tsassiti Jones) were employees of my company and with their lawsuit to Mr Judge of the California Court of California in the province of California. Los Angeles (Political Address 14th Department) I was attributed, in collaboration with other girls who are turning to each other and with the lawyers orchestrated by lawyer Tom Girardi (Tom Jirardi) knowing that I was alleged that I was allegedly harassed. Lauren Reeves (Lauren Rivers) and Mahim Khan

(Mahim Khan) have been integrated into an organization, which is solely aimed at committing deception of the United States Courts, abusing the "Metoo" movement, which has now become a product of the media. Massively, with the purpose of exploiting false accusations against wealthy citizens, and with the aim of illegal asset, composed of huge compensation, mainly "punitive damages", not recognized by the Greek legal system and European rights. The accusation of sexual harassment is a very serious category, which I have denied and categorically refused. I was not given the opportunity for the US courts to defend and put forward my allegations, and I have joined the US Disability Act, as I have proven to be a brain illness, which the defendant and the other plaintiffs knew They pursue my moral and financial extermination.

6.- This accusation is part of a more general attack I have been accepting for several years from the above organization, consisting of the defendant and other persons, who directly or indirectly collaborate on my economic but mainly moral extermination and my slanderous defamation.

7. Influenced and Corrupt Organizations ACT ("Rico") against lawyers and parties who have plotted in the US and internationally to influence their behavior in cases that they introduce with false allegations in the courts. These acts are part of a pattern of corruption orchestrated and directed by lawyer Thomas Girardi who has had an influence similar to other cases for which he is already accused in the United States of America. Girardi's law firm was used by the organization's center to develop citizens and courts internationally. Among other things, the action of the above criminal organization has led to court rulings against me for about seventy -four million US dollars. ($ 74,000,000) To date, as "punitive damages" against me, not recognized by Greek law and European right.

8. The consequences of this activity have also reached our country, with the recognition, without even listening, of the decisions issued by deceiving courts in the United States of America, with the simple process of jurisdiction. My information, on the basis of this decision and their report on a public forced auction.

9.- In particular, I am the recipient of attacks and blackmailing large television networks and people associated with them, including ABC, CBS, NBC and Fox Television that abuse the public spectrum, especially through a platform known as Nextgen. I have criticized the Hollywood media cartel, which has been involved in media and political corruption. Lauren Reeves was a person who provided services for Hologram USA and Alkidavid Productions Inc, companies that belong to me.

10. For example, my company "Filmon" moved against "Double Verify", and was recognized by the California Supreme Court to sue the company "Comcast Ventures Inc" for corporate negligence and corporate defamation of me and my companies. "Comcast Ventures Inc" holds "Double Verify Inc". Still two hundred other large American multimedia platforms. Comcast Ventures Inc is one of the largest multimedia/television companies in America.

There are many videos showing the collusion and collaboration of this couple and other television lawyers, such as Gloria Allred who has been a Loyola Law School with Thomas Girardi and his personal girlfriend for more than 40 years.

11.- It should be noted that Tom Girardi and Gloria Allred have been investigated by the US Department of Justice. Thomas Girardi has already been accused of claims of more than five hundred million US dollars. Against him for his activities, promoted by the same Comcast Ventures companies, etc.

12. Hollywood's well -known faces such as Kanye West, artist, Alec Rae Baldwin, American actor, comedian and producer, Chris Brown, artist and singer, Rose McGowoen, actor, 50 cent, rapper, Alen Dershowitz Professor , billionaire a hotelier who are available to detail the attacks of the above organization against them with the aim of their economic and moral extermination, with the aforementioned practices of Hollywood Media Cartel, which uses its multimedia products such as "Me-Too /I woke up ”with false branded scandalous allegations in the media against these persons.

13.- My lawyer John Quirk is one of my 4 lawyers who died unexpectedly and in unspecified circumstances. Most interesting is that John Quirk was killed by a car in Turkey that was hit as a pedestrian while in business in Turkey and one month after exposing Gloria Allred Practices for money laundering in a detailed asset report world, including Greece. My lawyer John Quirk was tragically killed by a car while a pedestrian in Istanbul.

14.- Tom Girardi, as a lawyer, took advantage of the "Metoo" movement with Lauren Reeves with the aim of illegal asset, in collaboration with Gloria Allred and with contracting agreements on the percentage of punishment of punitive allowances. of Lauren Reeves (in my companies) as hostile, intimidating, offensive or abusive, raising false allegations against me in the Court of California (Los Angeles County) before the honorable Judge Terry A. of September 9, 2019 in Section 14 of the Supreme Court, presented by Gloria Allred, Maroko and Goldberg by Nathan Goldberg and Dolores Y. Leal).

15.- Twelve jurors formed a flattened belief and accepted Lauren Reeves' allegations recognized the punitive compensation against me, accepting their decision, that

Alkis David touched Lauren Reeves in order to harm or offend her. Lauren Reeves refused to touch her. Lauren Reeves was injured or affected by Alki David's behavior and a reasonable person in the Lauren Rives situation would have been infected with the touch. Alkis David was intended to cause harmful or offensive contact with Lauren Rives using his groin country. Contact with Mr. David's groin country led to sexually offensive contact either directly or indirectly and Lauren Reeves did not consent to the touch. Lauren Reeves was a person who provided services for Hologram USA. Lauren Reeves underwent unwanted harassment because she is a woman and harassment was serious or pervasive, while a rational woman in Lauren Reeves would consider the working environment hostile, intimidating, offensive or abusive.

16. Along with incitement to false allegations with the intention of blackmailing or distorting justice against me.

17.- By Decision No. 2663/2022 of the Athens Single Court of Justice, the content of which I ignore, since I was not indulged, the aforementioned California Court's ruling was recognized on 31/8/2022 as a law enforcement and execution against me without being summoned to the court, I had the opportunity to get knowledge of this execution order (my residence has been seized and sealed in Malibu, California, United States of America, 23768 Malibou, 90265, Malibu Road, Malibu CA, 90265 U.S.A.) Lauren Reeves (Lauren Rives) and then Mahim Khan (Mahim Khan), and Chasity Jones (Chasty Jones) seek to execute the decisions that aburper with false allegations against my property in Spetses, with auctioning 27/9 /2023, but also elsewhere.

PART FIRST: Recognition of enforcement of foreign court decisions

1.- Recognition of the enforcement of foreign courts decisions as well as the recognition of judicial judgments of foreign courts concerning in particular the personal status (such as divorce, adoption) can be done in Greece by court, if the statutory conditions are met (Article provided for by law (Article. . 905 in combination with 323 CCPD).

2.- The positive prerequisites are that the present decision is res judicized in accordance with the law of the place where it was issued, and that the case was subject to the provisions of Greek law in the jurisdiction of the state courts to which the court which issued the judgment issued the ruling, While the following are the following as negative conditions:

- That the defendant party was not deprived of the right to defend and participate in the trial, unless deprivation was made in accordance with a provision in force for the citizens of the state, to which the court which issued the judgment belongs to the judgment,

- that it is not opposed to a Greek court ruling issued on the same case and is respected by the parties, including the Court of Justice, and the Court of Justice, and

- That is not opposed to good morals or public order.

3.- From 1-3-2002, in accordance with Article 76, 44/2001 Council Regulation of 22.12.2000 was implemented for international jurisdiction, recognition and execution of decisions in civil and commercial affairs. The above regulation replaced the Brussels International Convention on 27.9.1968 for international jurisdiction and the execution of decisions, as it was amended by the San Sebastian Convention on May 26, 1989, ratified by Greece by Law 1814/1988 and Law 2004/1992, respectively. The establishment of the above regulation became necessary after the Treaty of Amsterdam, which came into force on 1 May 1999 and ratified by Greece with Law 2691/1999, so the issues of cooperation of the Member States in the bourgeois and commercial affairs were passed by the Third pillar of the intergovernmental cooperation of the Member States, as it had been formed under the Treaty of Mastricht (1992), under the broader title "Cooperation in Justice and Internal Affairs", where the appropriate means to regulate them was the conclusion of an international treaty. (See Old Article 220 EEC), in the first pillar, which is now incorporated into the treaty, in the third part of it, entitled IV (Art. 61-69), with the aim of establishing a space of freedom, security and justice. , where the appropriate means to regulate them is to establish rules in the context of secondary Community law.

The purpose of the training of the above regulation was to introduce contemporary rules of international jurisdiction in civil and commercial affairs, and to further simplify the necessary formalities for the rapid recognition and execution of decisions in these cases, through simple and uniform procedures. , addressing and solving the problems that had arisen in the application of the Brussels International Convention. This Regulation in accordance with Article 28 (1) has increased formal validity (CA 93/2017, CA 1027/2011).

If the party against whom the execution is requested has its residence on the territory of a state - a member of the other from the one in which the executor was declared, the deadline for the exercise of the appeal is two months since the day it was served or notified personally. or in his residence (Art. 43 par. 1, 2, 3 and 5),

4.- "Only the remedy referred to in Annex IV (Art. 44)," 1 may be brought against the decision on the appeal. The court before which the appeal has been lodged, pursuant to Articles 43 or 44, may dismiss or withdraw the declaration

of enforceability, only if there is any reason for the designated Articles 34 and 35. Decides unexpectedly. 2. The substantive revision of a foreign decision is excluded "(Art. 45 (1) (2)).

5.- The above provisions externalize that Articles 34 and 35 of the Regulation provides, in a restrictive manner, the reasons for which the decision is not recognized, while Article 53 defines the documents to be provided by the party, which invokes the recognition or calls for the declaration of enforceability.

6.- Finally, the Court of First Instance is responsible for the declaration of the enforcement of the enforceability, in the process of voluntary jurisdiction (Art. 740 et seq. Code), in accordance with the relevant regulation of Annex II of the Regulation, which stipulates that the Court of Appeal is in accordance with the "appeal" of Article 43 of the Rules of Procedure, in accordance with the relevant regulation of Annex III of the Regulation, while the "remedy" which It may be exercised, pursuant to Article 44 of the Regulation, is the appeal, in accordance with the provision of Annex III of the Regulation.

7.- Therefore, the combination of the above provisions of Regulation 44/2001, which basically retains the structure and regulatory framework of the Brussels International Convention, shows that within the framework of the rapid and simple procedure for the above-mentioned procedure for the Declaration of an enforcement of a foreign -Member State, the Court (One -Member Court of First Instance for Greece) of the execution member state, is limited to finding that it is an enforcement of a judicial decision derived from another Member State, whose object is subject to its scope as Abody above, without any right to investigate, if any of the reasons justifying the refusal of enforceability under Articles 34 and 35 of the Regulation (as opposed to the Brussels International Convention) and without the defendant's defendant) and without the defendant The execution is entitled to attend the trial and to submit observations (similarly under Article 34 of the Brussels International Convention).

8.- Consequently, the above decision of the Single Member Court of First Instance, which accepts the declaration of a executive of the foreign judicial decision, is not a substantial judicial decision, but a mere court order subject to Article 43 (1) of the Rules of Procedure. which resembles, in the context of

domestic law, to the opposition to Article 583 of the Code of Civil Procedure (CA 1024/2001).

9.- This remedy, despite the above unfortunate name under the Brussels International Convention, was used by the most correct term "appeal", does not constitute an "appeal" against the decision of the One -Member Court of First Instance, but the Court of Appeal, shall act as a first instance of the Court of Appeal, exceptionally the rule of Article 12 (2) of the Code.

10.- For this reason, this shall be filed by the case file to the Court of Appeal to which it is addressed (Court of Appeal) and with the service of the defendant is addressed (CCP 585 (1) (215 (1)) within the provisions of Article 43 (5) of the Declaration of an exclusive deadline of one or two months (CA 1028/2009).

11.- Moreover, the enforceability of the foreign decision can be dismissed if the expansion of its energy to the domestic would result in the creation of situations that are largely inappropriate to the detainees of a domestic legal order and only on the proposal of the prosecution of the appeal, if the decision is controlled if the decision is controlled, if the decision is controlled, Class in the narrower sense of the regulation (Krombach Decision of 28-3-2000).

12.- Further from the combination of the provisions of Articles 68 and 73 CCP, it is clear that, for the procedural condition of the trial legitimacy of the party, it is sufficient to claim the plaintiff's assertion that he and the defendant are the subjects of the deprived of the legal judgment. Relationship without (in principle) the truth or not of this is influenced, since the lack of a subscription of the above procedural condition implies the rejection of the lawsuit as legally unfounded during the legal basis of the lawsuit, and substantially unfounded in the case of Non -proven (at the stage of research of substantial groundwork) of those cited for its foundation (active legitimacy) of facts (OP 25/2008, CA 628/2010, CA 1928/2008, CA 2402/2007).

13. In view of that the legalization of the party and the legitimate interest are essential prerequisites for the provision of judicial protection. The incorrect judgment of the Court of Justice on the subscription of these conditions establishes the appeal of Article 559 of the Code of Civil Procedure and not that of the number 14, which arises only when the application for the lawsuit does

not display the evidence that establishes legalization and justify the legal interest in its exercise (OPP 25/2008, AP 1157/2017).

14.- After all, while the assistance of the active and passive legalization of the parties is on its own motion by the court of substance, it does not concern public order and, therefore, the claim to establish a ground of appeal must have been proposed to the Court of Appeal and refer to the Court of Appeal and to refer to the Court of Appeal. In the appellant that the relevant proposal was made (AP 529/2009, AP 244/2004).

15.- Further, the combined provisions of Articles 905 par. contrary to the "public order". In these provisions, the public order is understood within the meaning of Article 33 of the AK.

16.- Therefore, the declaration of a foreign court ruling in Greece is not forgiven when, due to its content and in view of the specific circumstances arising from a foreign decision, its execution would turn into fundamental states, social, legal or economic perceptions that in the country and (b) it would distribute the legal pace it holds in the country (OP 17/1999, CA 2273/2009, CA 1066/2007).

PART TWO:

The Punitive Damages Institution in Common Law Legal Classes

1. Concept, Purpose and Functions of Punitive Damages

1.- The term "punitive compensation" (hereinafter referred to as Punitive Damage, or Exemplary Damages) defines the increase in civil damages awarded to the plaintiff beyond and in addition to the amount required to repair its actual damage when the defendant is highly acclaimed violent, blackmailing, fraudulent, delusional, malicious or tangible and unethical.

2.- Purpose of Punitive Damages, as it is repeated in the judicial decisions of the US Courts, is the defendant's punishment for the act he committed, as well as the detence of his own offender as well as third parties by the commitment of similar behavior in the future.

3.- Punishment is justified on the one hand by the particularly heinous nature of the act and by the consequences that this act can bring to the community.

4.- Achieving the purpose of detence objective via Punitive Damages depends on the help of two basic factors, namely (a) whether the law actually applies and punishes those who have grossly violated other people's rights and (b) Whether potential offenders understand the provisions of the law, as well as the possibility that they will be punished for punishment for the commitment of wrongdoing.

Also interesting is the fact that the purposes of imposing penalty and deterrence are strongly intertwined, and it is even argued that prevention (general and specific) is one of the main (if not the most basic) purposes of imposing sentence.

5.- Punitive Damages differ from the Compensatory Damages, as the former are in practice oriented by the offender, by focusing on the latter's face, while having a look in the future (preventing the performance of similar behaviors in the future), as opposed to the Compensatory Damages which are oriented to the damage suffered by the injured person and on his face have retroactive power (that is, refer to something that was done), while seeking to bring the injured in the same position that he would be if the offensive behavior had not taken place.

6.- The institution of Punitive Damages has been characterized that it balances between civil and criminal law and is quasi-criminal, as the prestige and punishment purposes they seek are, in principle, purposes that come across criminal law. But in a civil trial taking place between two individuals.

7.- In addition, it has been supported by the double character of Punitive Damages that the term "punitive" has two meanings. The first is that of the defendant's punishment for the particularly heinous behavior he has shown, while the second concerns the plaintiff's right to a civil trial to impose the right to be punitive. The first concept is the one that suggests the criminal side of Punitive Damages, while the second constitutes the core of their bourgeois appearance. It is even this dual substance that raises issues regarding the application of constitutional guarantees that are implemented on penalties imposed by criminal law and for Punitive Damages, in particular as to the aspects of the latter approaching criminal law.

8. It becomes unjustifiably richer, collecting without subscription documentation, an amount that exceeds the damage it has suffered. This is the argument of the Windfall Argument, which argues that the plaintiff is reaping an unexpected profit he is not entitled to, while the public, whose interests are at risk by the defendant's behavior, is not the amount of money. In addition, it has been proposed to distribute the amount awarded as Punitive Damages between the plaintiff and the state, so as to ensure that an amount is indeed available for the benefit of the community. Further, due to the fairly indefinite guidelines given to the jurors regarding the criteria to be taken into account for the amount to which Punitive Damages should be raised, the jurors often see amounts excessively, based on prejudices that are highly at great expense. Wealthy defendants, as was the case in this case with the decision that the contested executable in the Greek territory. It is ruthlessly confident that decisions that see Punitive Damages are unpredictable and introduce an element of uncertainty in the legal order, while not provided for in the Greek legal order, coming to direct contradiction with the Greek public order.

9.- As early as 1986, in the United States of America, there has been a strong dialogue on the issue of constitutionality of the Punitive Damages institution. The opponents of the institution claimed that it is hitting the eighth and fourteenth amendment of the Constitution. The first prohibits excessive monetary penalties ("Excessive Fines Clause"), while the latter provides the "Due Process Clause", which has the meaning that the trial must be fair and rationally linked to the pursuit of a legal purpose (Rationally Related to Legitimate Purposes).

On the issue of the opposition of the institution to the eighth amendment of the Constitution, the case -law has already ruled negatively with the Browning - Ferris Industries of Vermont, Inc. v. Kelco Disposal Inc, accepting that Excessive Fines Clause does not apply to cases between two private parties in which the court is awarding Punitive Damages. On the contrary, this clause, both in principle and based on its historical interpretation, seems to be exclusively implementing in the field of criminal law. The first fundamental decision to deal with the control of Punitive Damages in the light of Due Process Clause was the decision Pacific Mutual Life Insurance Co V. Haslip, in which the court initially

accepted that the institution of Punitive Damages Per Se does not violate the fourteenth amendment of the Constitution.

However, the court then made a very significant assumption that the unacceptable discretion of the jurors or court to determine the amount of Punitive Damages could lead to extreme results that are contrary to the principle of fair process clause, while accepting that The most important factor to be taken into account when checking the constitutionality of the decision to see Punitive Damages is "... if this decision is in a reasonable relationship with the purposes of deterrence and punishment".

10.- The Supreme Court plenary issued no. 17/1999, which ruled that the fact that Greek law ignores an institution provided for in foreign law does not mean that this institution is in the national public order.

In addition, OLAP 17/1999 accepted that although the restorative nature of the law of compensation constitutes the rule in the Greek legal order, the additional amount due to a "penalty" to the bad debtor is not generally prohibited. In support of the above, the majority reference was made to the institution of the criminal clause, while also explicitly referred to the provisions of a law providing for an increase in compensation beyond the actual damage.

The court also accepted that, in order to educate his judgment on whether or not to contradict the foreign decision that he or she seeks such a "penalty" to domestic public order, to evaluate this foreign decision in terms of the supreme penalty of the sentence awarding. , based on the relevant obligation on Article 409 AK, which according to the Court constitutes a manifestation of AK 281. He thus considered (OLAP 17/1999) that the Court of Appeal, "to the extent that it did not consider the issue of the excess of the Punitive Damages funds. , must be undone. "

A first minority in Decision 17/1999 argued that the restorative nature of compensation is considered a major and fundamental principle of the national legal order, which reflects the moral, social and economic perceptions that govern the country's living rhythm in modern times and therefore the foreign judiciary Decision, which awards an amount, as a result of compensation, in the form of a penalty, is, regardless of the amount of the amount, contrary to public order, because, in addition to conveying criminal perceptions in the field of

private transactions and imposes sanction , which is only for the benefit of the one who has been damaged, contradicts the restorative nature of the compensation.

A second minority, contrary to the first, argued that the appeal had to be rejected as unfounded. This is as the restorative nature of compensation, which is a general principle of Greek law, does not fall into a principle that is part of the fundamental legal, political, social or moral perceptions that govern the Greek legal order and regulate living relations within the boundaries of Greek territory so that To prevent the declaration of an enforcement in Greece a foreign court ruling imposing punitive damages.

11.- Undoubtedly the concept of public order is of excellent character, as is evident from the Paratite of AK 33 that refers to "reservation of public order" and has the meaning that public order is only in exceptional cases and cases. Always sparingly.

To respond to the character of the criminal clause as a civil penalty, the argument that a private sentence has the debtor's face, while the criminal clause has the focus of the lender, as it is a minimum collateral for him. In the event that the debtor shall athe at the deficit of his contractual obligations.

12.- In addition, no general prevention purposes are done by the regulation of the criminal clause, as the contractual relationship in which it has been agreed operates purely inter partes, due to the principle of relativity of guilt (see and AK 177). However, even if the criminal clause does not constitute a private penalty, however, acting as a means of pressure for the debtor, it has the element of prevention and ratification at its expense, regardless of whether these elements constitute the basic supporting reason for its establishment.

13. such as Punitive Damages that are sovereign sovereign by the court. The fact that the Greek legislator accepts the conclusion under the private will of a criminal clause, which has, inter alia, a sanctioned purpose, does not indicate that the above purpose is compatible with the fundamental principles of the Greek legal order, as punitive damages can be the result of Only the will of the parties, when the parties agree to be subject to the difference between them, which is aware of this institution.

14.- A provision that involves a preventive- ratification in accordance with the preventive- sanctioning nature of Article 10 (16) (b) of Law 2251/1994 concerning the advice of moral damage to collective education. According to this provision, "in order to determine the financial satisfaction, the Court takes, in particular, the intensity of the infringement of the legal order constituted by the illegal conduct, the size of the defendant of the supplier and, in particular, the annual turnover of its turnover, as and the needs of general and special prevention. " And in this case, however, the legislator uses (and) in this provision the term "financial satisfaction due to moral damage", despite the fact that the financial satisfaction is different from the moral damage as found in Articles 59, 299 and 932 AK and which which It is restored, but it does not disconnect it from it. This is because in this case we are not dealing with non -property damage, but contrary to the introduction of a bourgeoisie against the supplier - offender.

15.- The majority of OLAP 17/1999 accepted that the institution of Punitive Damages is not contrary in abstracto in the Greek public order, but in concreto the foreign decision seeking Punitive Damages to hit it when the amount is sufficient is in the midst of the amount. Others of the kind and the importance of default, fault and moral and economic status of the parties.

The Court cited a basis for the Article 409, which provides for a judicial reduction in the appropriate measure of the disproportionately large private sentence agreed by the parties and which, according to the court, constitutes a manifestation of AK 281.

The majority did not directly refer to the principle of proportionality, but it was indirectly cited when it referred to AK 409, which is an expression of the principle of proportionality in civil law. The general hesitation of the case -law to immediately invoke the principle of proportionality, as provided today in Article 25 (1) (1). d of the Constitution, it derives from the point of view that the constitutionally guaranteed principles cannot be implemented directly to regulate relations between individuals.

On the contrary, the introduction of their radiation into the field of private law is through the general saying, which includes AK 409, as AK 281.

In addition, it is argued that any acceptance of the immediate tribalty of constitutional rights would overthrow the independence of private law.

It is best to resort to the judge directly to invoke the principle of proportionality, as provided for in Article 25 (1) (d) of the Constitution, in view of the fact that the recipient of the principle of proportionality is other than the legislator and himself and himself and himself and himself. the judge.

An argument in favor of this view can also be derived from the fact that AK 409 is directly implemented only on a criminal clause and not in any case of ratification.

16.- Unacceptable condemnation of the case? The question arises that the judgment of the majority of AP 17/1999 that the Greek Court of Justice must control the amount awarded by the foreign court on the basis of criteria such as the species and the importance of the debtor, the degree and the extent of its fault, The interests of the lender, which have been infected or at stake, the moral and financial situation of the parties and the special circumstances, pave the way for the reactive auction (Revision Au Fond).

17.- Indeed, when the Greek Court of Justice comes to judge again evidence that has already been examined by the foreign court, it appears to be resolving the case.

Regarding whether or not this case is permitted, it has been argued that condemnation is exceptionally permissible in extreme cases where there is a risk of financial extermination of the perpetrator and there is a disproportionate of means and purpose, resulting in the principle of proportionality leading to in retreat of the principle of non -condemnation of the case.

As a result, control based on the principle of proportionality constitutes a permissible deviation from the principle of prohibition of condemnation, as long as it is sparing and leads to the refusal of foreign decision only in extreme cases, where the principle of proportionality is - in view of the Conditions in this case - obvious.

18.- Some enforceable in terms of actual damage

The Court may judge in public order the foreign judicial ruling on the Punitive Damages budget, and (a) declare it some enforceable for the actual damage or (b) to modify the amount of Punitive Damages, adapting to the Greek public class tolerable levels. In this regard, it has been argued that partial

execution presupposes the existence of more funds in the same alien title, and if the subject of the proceedings are partial execution is not accepted. Consequently, the concept of capital is critical, which according to the prevailing view presupposes a provision that is definitively ruled by any independent application for judicial protection.

In this regard, as shown by the overview of the institution of Punitive Damages in foreign legal classes, the lawsuit is not accepted with a separate request for the advice of Punitive Damages, but on the contrary, it is necessary to bring a lawsuit for Compensatory Damages.

Subsequently, the Funds of Punitive Damages cannot be considered independent chapter, establishing a uniform chapter with the other component of Compensatory Damages. Based on this view, any impact of Punitive Damages in the Greek public order would lead to a refusal to execute a foreign decision as a whole, rejecting the possibility of partial execution. It has also been argued, however, that even in a single proceedings, partial execution can be accepted, since the decision can be easily divided into conflicting sections and non -public sections.

19.- View that appears to be holding the case-law, rightly, the partial execution of a decision on the actual injury is permissible, provided that the punitive compensation will be present in concreto contrary to the national international public order, as it is easy to intervene, without intervention in The rationale of the foreign judge, the separation of the part of the decision that he encounters in the public order from what is in accordance with it.

As to whether the Court can amend the amount of Punitive Damages by adapting it to the height of the public order, it is the view that this would constitute an unacceptable condemnation of the case, as it would have been controlled by the domestic court. The legal and substantive reasoning of the foreign court and to issue a new decision on the same issue.

20.- An important decision to recognize a foreign dietary decision seeking Punitive Damages was AP 1260/2002. The decision concerned a recognition of a foreign arbitration ruling issued by the Kiev International Arbitration Court and under which the arbitral court had awarded US $ 106,100 for a non -paid price and $ 62,599 as an additional compensation for overdue payments. , which is a

sanction for the unconventional behavior of one party. AP disappeared of the Court of Appeal ruling before him, due to the fact that the Court of Appeal had not examined whether the "penalty" imposed was excessive, establishing the relevant obligation of the Court of Appeal to undergo proportionality in Articles 281 and 409 AK. .

21.- Interesting is the Brethavon ruling 160/2010, which concerned a declaration of an enforceable arbitration decision issued by the International Commercial Arbitration Court of the Ukrainian Chamber of Commerce and Industry under which the Arbitration Court had obliged to pay the defendant court to pay the defendant court. Among other things in the applicant (a) EUR 120,000 as a remaining balance and (b) EUR 79,015 as a conventional criminal clause due to non -payment of the main debt. The court first accepted that the above amount of the criminal clause is not disproportionate and does not confront the Greek International Public Order, taking into account "(a) the subject of the whole contract; (b) the consistent fulfillment of the applicant salesman; (c) the Undefeated non -fulfillment of the obligations of the debtor and the degree of its fault, (d) the continued refusal to fulfill its main debt and (e) the financial interests of the beneficiary 'and in view of them preached enforceable in the entirety. this dietary decision.

The Athens Court of Appeal, however, the Decision of the COURT OF APPEALS Nr 4332/2011 overturned the decision of the One Member Court of Thivas, considering that in this case "the increase in the real claim of the lender applicant with" criminal "ratification in favor of it, which for a period not exceeding the five months is approximately about the five -month period. 2/3 of the main Debt, is considered unhappy in the face of the interests of the traders, the degree and the size of the debtor's fault, the unfavorable international economic situation and the generally special circumstances of the transaction. " of the Arbitration Court in terms of all its provisions, except that of the € 79,015 funds of the criminal clause.

22.- Another worthwhile decision is the Decision of the One Member Court of Thivas 13432/2012, which also concerned the recognition of a foreign dietary decision coming from the International Commercial Court of Justice of the Chamber of Commerce and Industry of Ukraine and which sought against its

obligation Payment of 99,751.00 as a removal price due and 99,751.00 as a criminal clause. The court, after checking the proportionality of the criminal clause, ruled it disproportionately and denied the recognition of the relevant funds, in view of the "(a) the deserted of the defendant and the consequent inability of the court to check the degree and the extent of the court. the latter on the non -fulfillment of Convention b) of the event (which the decision accepts) that the applicant's interests were not affected by further damage due to the partial fulfillment of the contract. "

23.- The newest decision to declare a foreign decision in Greece to see Punitive Damages is One Member Court of Piraeus 722/2019. This case involved a lawsuit filed on 20.12.2013 by the applicant company by - among other things - two foreign companies based in New York State in the US.

> The New York Supreme Court issued a ruling established on the bases of "breach of contract, fraud under common law / deceitful, bourgeois conspiracy, malicious prosecution and false identity (abuse of legal personality)," defendants to pay to the plaintiff (and applicant in the case), in solidarity and each of each amount of $ 7,857,066.00. as compensation for positive damage and the amount of $ 10,000,000.00 USA. as punitive damages.

The Greek Court of Justice, judging the issue of the declaration of the executor of that ruling in Greece, followed in the principle the rationale of CA 17/1999, accepting that the institution of Punitive Damages per Se does not hit the Greek public order.

He referred, as the Decision by the SUPREME COURT Nr 17/1999, to the institution of the criminal clause in force in the Greek legal order, as well as to the provisions of Greek law mentioned in SUPREME COURT Nr 17/1999 and which provide for an increase in compensation beyond the actual damage. Judging on the issue of the proportionality of punitive damages, the court considered it reasonable, in view of the specific circumstances that emerged from a foreign ruling, which, according to the court, were "on the one hand that the debtors deceived the initially contracting company by presenting the company. Know the false events as true (that they had a large amount of carbon they wanted to sell), in order to persuade her to conclude her contract, on the other hand, to the extent of the positive damage and the moral damage suffered by the above company. After her reputation was irreparably damaged, and because of the disagreement by the plaintiff, she defied her agreement with another company in

which she would transfer the carbon and the ship she had chartered to carry the above commodity.

24.- It is obtained that the Greek Court of Justice has made an ad hoc weighting of the criteria formed by the case-law and on the basis of which the disproportionate or non-disproportionate nature of the sanctioned compensation is judged.

This decision seems to be a shift in Greek case law to a more flexible and pragmatic approach to the institution of Punitive Damages. To date, Greek case -law has used to accept the recognition of a foreign decision to see Punitive Damages, only in cases where the amount of sanctioning compensation was significantly lower than the amount that the foreign decision sought as a positive damage. Thus, although per se he acknowledged that the institution of Punitive Damages was not confronted with the national international public order, it ended up in practice rarely recognizing the relevant funds, in view of the usually amount of the proceedings was not significantly lower than the actual damage.

In this case, however, the Piraeus Court of First Instance has reversed this presumption, accepting that Punitive Damages should not be significantly higher than the amount of actual damage. Following this turn of the case -law, the applicant to recognize and execute a foreign decision to see Punitive Damages does not need to indicate that the amount of sanctioning compensation is significantly lower than the actual damage (positive condition), but that it is not significantly higher than the actual damage (negative condition).

PART THREE:

The decision of the foreign court declared enforceable by the contested decision

1.- The contested ruling by which the judgment of the foreign court was declared not to be subject to any of the above concerns and the examination of these positive and negative conditions of contrast with the nation-class legal order, a Fortiori did not exist at all if its amount Renactive - punitive

compensation is significant, disproportionately higher than the actual damage to the Lauren Reeeves applicant.

2.- The foreign court in the disputed cases has accepted two applications by the plaintiff *in limine*: one to exclude the applicant Alcibiades David from a person's deposition in the exercise of the defense right, and the other prohibited him to "invite witnesses because they were not informed. In the pre -trial disclosure of the discovery ("Discovery") and/or from the introduction, reporting, commentary and/or attempt to submit documents that had not been previously disclosed during the pre -trial. In limine applications of the plaintiff are investigated for abuse of the discretion of the evidence of the evidence [Piedra against Dugan, 123 Cal.app.4th 1483, 1493 (2004)]. However, the courts examine the essence of an application, not in their title. [One v. County of Los Angeles, 171 Cal.app.4th 1058, 1064 (2009)]. Although they seemed to be in Limine applications, despite the applications of the Apostles were movements of a new covert pre -trial hearing, and were submitted as such on the basis of the US Codeciv.proc. §2030.030. 3AA 1386: 2-6, 1410: 2-7. While there are decisions that impose sanctions on pre -trial procedure for abuse of discretion [Karlsson v. Ford Motor Co., 140 Cal.app.4th 1202, 1217 (2006)], this discretion is "not unlimited" [Motown Record Corp. v. Superior Court, 155 Cal.App.3d 482, 489 (1984) (reversal): "Of course, it is a basic rule in California, constitutional origin, these sanctions must be appropriate to allow the part of the parties pursued preliminary rulings to acquire the subject of the preliminary ruling; ratification should not put the dominant party in a better position than if the preliminary ruling was requested nor can the sanction be in the form of punishment. "[El Dorado County v. Schneider, 191 Cal.app.3d 1263, 1282 (1987)].

3.- With Alkiviades David's prohibition from testifying himself for his own defense, the Court **directly violates these rules and deprived of fundamental rights resulting in a violation of his claim for a fair trial**. Mrs Khan's lawyer said that the subject of Mr Alkiviades David's deposition was to receive information by the plaintiff Khan on the case. Alcibiades David's ban on testifying did not allow the plaintiff Mr. Khan to obtain this information [see Motown, 155 Cal.app.3d at 490 (reversal of evidence "because they are not

reasonably calculated towards achieving the goal of compliance with pre -trial acts ").

The acceptance of the in Limine request in favor of the plaintiff also brought her (Mrs Khan) in a better position than Mr David would be allowed to testify. In this case, evidence would have to gather and develop arguments to refute his testimony and convince the jurors that Mrs Khan's version of the events was more convincing than his own. On the contrary, with the acceptance of the application in Limine, Mrs Khan's version was the only one heard by the jurors - as Mrs Khan's lawyer said when Mr Alkiviades David was criticized that she did not testify [see McGinty by Senior Court, 26 Cal.app.4th 204, 214 (1994) (inverse ratification of evidence because it put the accused in a better position than the infringement would be absent). In addition, pre -trial sanctions cannot "be a form of punishment." [Schneider, 191 Cal.app.3d at 1282. Motion #1 explicitly argued that Mr David's punishment should not be given only for discovery of bad behavior but sexual harassment. ("Although the accused David has been sued for sexual harassment many times, he feels invincible. Nothing happened to correct his illegal behavior.")

4.- Acceptance of the application in limine in favor of the plaintiff was unacceptable for other reasons. "The procedural conditions for the pre -trial pre -trial approach, starting with financial sanctions and ending with the final ratification of the deposit prohibition." [Doppes by Bentley Motors, Inc., 174 Cal.app.4th 967, 992 (2009). Greater sanctions generally should not be imposed until they are tried and missing more penalties. [Lopez v. Watchtower Bible & Tract Society etc., 246 Cal.app.4th 566, 604-606 (2016) available and had not been tested). No previous penalties were imposed on the deposition of Mr David. The MTs was deposited before the deposit was made and was not based on Mr David's deposition behavior. Consequently, the prohibition of Mr David's deposition as a sanction is not justified in procedurally. Motown, 155 Cal.app.3d at 491 (inappropriately strict penalties for document production cannot be based on financial sanctions to fail to respond to interrogations).

5.- In addition, no further attempt was made to receive deposition by Mr Alcibiades David after his performance of September 18, 2018, although he remained more than a month. Under these circumstances, passing directly to a

mandate prohibiting Mr David to testify in person for his own defense was a clear abuse of discretion.

6.- Courts that adopt and review orders of pre-trial acts "should do so with the principles of the legislative system". [Williams v. Superior Court, 3 Cal.5th 531, 540 (2017)]. These principles include preventing the trial, enlightenment on each side of the strengths and weaknesses of its case, accelerating preparation and trial, formulating testimonies to refer to trial and minimization of "opportunities for forgery and forgery. oblivion". [Puerto v. Superior. Court, 158 Cal.app.4th 1242, 1249 (2008); Kelly vou New West Federal Savings, 49 Cal.App.4th 659, 672 (1996).] "The review court cannot abuse a discretion for the deficiency of pre -trial orders: any file indicating failure to be adequately taken into account. The concepts are subject to the accusation of abuse of discretion ', even if the provision "does not exhibit such abuse". [Williams, 3 Cal.5th 540].

7.- The defendant's limitation on his right to deposit his witnesses was inconsistent with the purposes of the prerequisites. First, the court ruled out seven witnesses on the grounds that the defendants had not recognized them in the answers to investigations as people with knowledge of the events. Providing names of witnesses and communication information to interrogations are important because it gives the proposal to "a starting point for future investigations". Puerto, 158 Cal.app.4th at 1250. But Mrs Khan did not need investigative answers to find out who these witnesses were: she already knew.

8.- Mrs Khan's lawyers had just completed the trial of Mrs Lauren Reeves, in which they testified five of these witnesses and there were essential evidence of others. In fact, Mrs Khan's lawyers argued that Mrs Reeves was so similar to the present case that she should be allowed to testify in Mrs Khan's trial (something she did). There could be no "surprise" for Mrs Khan if the same witnesses who had just testified (or for which evidence had been presented) in Mrs Reeves' trial were filed a few weeks later in Mrs Khan's trial. Indeed, when Mr Alcibiades David's defense lawyer opposed the change of witnesses by Mrs Khan at the last minute, calling Mrs Lauren Reeves the scheduled witness for whom the defense lawyer had prepared, Mrs Khan's lawyer rejected them. Her complaints: "She

examined Ms. Lauren Reeves in the last trial extensively, so it's not as if she doesn't know [what Reeves will say.]"

9.- In addition, the exclusion of the witnesses of the applicant Alcibiades David brought Khan to a better position than they would be in question because much of their testimony in Mrs Lauren Reeves' trial was favorable to Alcibiades David. Excluding these witnesses, Mrs Khan kept their evidence away from the jurors - and gained the additional benefit of being able to underestimate David to the last argument because he did not call any witness to support his position.

10.- It also constitutes a violation of the fundamental right of the applicant to exclude the documents. The court accepted the plaintiff's request to exclude (witnesses and documents by Mr Alcibiades David) on the condition that he prove that Khan "had actually asked for the pre -trial (sic) was hidden". It is not disputed that all the excluded documents had already been submitted to Mrs Khan. Thus, the condition set by the Court for the acceptance of the plaintiff's request, Mr Khan, was fulfilled. However, the court found that the documents had been "intentionally withheld", a finding contrary to the undoubted evidence.

11.- The California court acknowledged that the documents were prescribed. However, the court ruled that they should continue to be excluded because they had been produced a few months after their production was ordered. Delayed production of documents does not justify their exclusion. [See Motown, 155 Cal.app.3d at 490-491 (the delay of the plaintiffs in the provision of the privilege log did not justify penalties for evidence when the defendant had fully complied with the mandatory production of the order until the sanctions were heard and He was the plaintiff). These documents were submitted to Mrs Khan in September, before the application for exclusion was filed and more than a month before the trial began (3AA 1266, 1409-1415). See Lee v. Lee, 175 Cal.app.4th 155 3, 1558 (2009) (bills accepted correctly, although only five days before the trial were prepared). Nor did Mrs Khan claim (or proved) any prejudice from delayed production. See Sauer by Supreme Court, 195 Cal.app.3d 213, 2130 (1987) (sanctions are allowed when production is delayed until the scheduled start of the trial and the other part is damaged by delayed offer).

12.- The exclusion of reading documents constitutes abuse of discretion. When "the error results in the refusal of fair listening, the error is reversible itself.

The refusal to a party to the right to testify or provide evidence is reversible in itself. " Kelly, 49 Cal.app.4th at 677.

13.- With the unacceptable exclusion of witnesses, the applicant "the opportunity to present his defense" was deprived of his defense and was reversible. The acceptance of Mrs Khan's requests has deprived the applicant "the opportunity to present his defense".

14.- He was prevented from testifying for his own defense by calling on key witnesses whose previous testimony in Lauren Reeves' trial had supported his refusals for sexual harassment and even presenting documents already submitted to Khan. These orders for exclusion of evidence, especially when combined with decisions that limit the applicant's ability to examine Mrs Khan's witnesses and ultimately deprive self -sustaining right to refuses to 'opportunity to expose his defense' and reversible error.

15.- Even if the elements of a prejudice at the expense of the applicant needed to prove to be proven. This was a classic case "he said, he said." But because of the proof of evidence by the court, the jurors only heard what she "said".

16.- Mrs Khan's lawyer emphasized this point by closing, criticizing the applicant Alcibiades David because he did not testify and called witnesses who could support his version of the case. In her final position, Mrs Khan's lawyer also mocked the applicant because they did not present Mrs Khan's employment - which was excluded from the act of the court - stating that the defendants should have refused to be detrimental to them. This was clearly popular with the judgment of the jurors because they immediately raised multiple questions about the employment contract. None of these questions were answered by the court, leaving the implied positions of Mrs Khan.

17.- If he had been allowed to the applicant Alcibiades David to expose his defense, it was "reasonably possible" that the result would be more favorable to him than a negative crisis of $ 60 million. Diamond vshko, 239 Cal.app.4th 828, 849-850 (2015) (inappropriate excluding evidence prevented the jury from evaluating the credibility of witnesses and evaluating the arguments of the respondents; the crisis was reversed). "[The right to represent yourself in urban processes is carried out in this situation. . . It is firmly integrated into California's case -law. The right is necessary to protect and ensure the free exercise of explicit

constitutional rights, including the right to acquire and protect property and access to the courts. " [Baba v. Board of Supervisors, 124 Cal.app.4th 504, 526 (2004). This right "serves a critical function in accordance with California's law" and its deprivation "can create constitutional problems".

18. However, the Court began to limit the right to self -confirm the applicant even before the jury was selected.

19.- First, the Court ordered the applicant to submit his procedural questions to the jurors in advance, after an inquisitive examination of Mrs Khan and after a confrontation for all her witnesses. Eventually the court completely removed the right to self -confirm the applicant, Mr. Alkibiades David.

20. He states in a relevant place: "The judge must allow the lawyer to carry out a voir dire exam without the prior submission of questions unless the defendant has been involved in inappropriate interrogation." · The choice of jurors had not even begun. The behavior of a first instance court is usually checked for Voir Director by abuse of discretion. However, because this restriction on the applicant's voir direction violated the procedure, it is a fortiori abuse of discreet discretion.

21.- A party exercising the right to represent the pro per per, that is, in person (pro per status, derived from Latin in Propria Persona) is entitled to "the same treatment as if represented by a lawyer- no different, no better, no worse." Nuno by California State University, Bakersfield, 47 Cal.app.5th 799, 811 (2020). Treatment of the applicant was different and worse. The Voir Direction of the other party was not limited and the violation of §222.5 (b) (1) by the court prevented the applicant from realistic or substantial involvement in the selection of jurors who eventually sought nearly $ 60 million against him.

22.- The court ruling was deprived of fair trial, denying the applicant his constitutional and statutory right to jury trial (Shaw V. Superior Court, 2 Cal.5th 983, 993 (2017)) and constitutes a structural error that Requires Automatic Turnover (Conservatorship of Maria B., 218 Cal.app.4th 514, 534 (2013). It was a reversible mistake to require the submission of the applicant in advance. It is said to represent absolute right, not just a privilege. "This right" is fundamental and its refusal or unjustified restriction is a reversible error ".

23.- The contradiction "is necessarily exploratory", requires a "reasonable margin" for the examiner "although it is not able to declare in court what events could arise a reasonable counter-examination". Fost, 80 Cal.app.4th at 733. Thus, while a court can control the "way of interrogation of a witness", this test must be "reasonable". CODE §765 (a). See, for example, City of Ontario v. Kelber, 24 Cal.app.3d 959, 972 (1972) (since the lawyer asked the same question in six ways, a court rightly told the adviser to proceed). Flagg by SENG, 16 Cal.app.2d 545, 552 (1936) (the Court of First Instance reasonably reduced the counter - 1000 pages). This is not a case in which the interrogation was repeated or prolonged. The court demanded David's preliminary examination before asking only one question. In addition, the claim for the court's preliminary clearance was more burdensome than the restrictions ratified as "reasonable".

The court restricted the counter -examination of all witnesses by the applicant. He limited the appeal of the applicant to all matters. [Kelber, 24 Cal.app.3d in 972 ("The lawyer was not excluded from further anti -examination of the witness, only by repeated questions for a particular point").

The court only restricted the applicant's counter -examination. [Cf. People v. CONAGRA GRCERY PRODUCTS CO., 17 Cal.app.5th 51, 146 (2017) (supports the prohibition of re -crossing from any place). The exercise of the power of the Court of First Instance in accordance with §765 (a) is checked for abuse of discretion. People v. Chenault, 224 Cal.app.4th 1503, 1514 (2014). Here the discretion was abused at the expense of the applicant's right to a fair trial. The Court of First Instance cannot use its power to control the procedure to destroy the evidence of a party. Monroy v. City of Los Angeles, 175 Cal.app.4th 248, 266-267 (2008).

"The procedure is due to include the right to listen, deposit witnesses and a confrontation of examination and confrontation with witnesses." In Re Armando L., 1 Cal.app.5th 606, 620 (2000). The court deprived the applicant and all three. The revocation of the right to self -represent a part of a subversive or inhibitory proceedings is re -examined for abuse of discretion. People v. Carson, 35 Cal.4th 1, 12 (2005).

"When to determine whether the complaint is necessary and appropriate, the court will have to consider many factors beyond the nature of the offense and its

effects on the trial." These include whether the defendant was aware that this misconduct would result in his termination of his property being present in person to represent the defense of in propria persona (pro per) himself and if there were proper smaller alternatives. "The most critical, a reviewing court should be aware of the exact wrongdoing in which the Court of First Instance supported the ruling on deprivation of rights. The court should also explain how inappropriate behavior threatened to harm the basic integrity of the trial. " Carson, 35 Cal.4th at 11.

24.- The court revoked the applicant's pro per status on November 15, 2019 for "conduct that is seriously disturbing and preventing this trial and the court finds that the need to control and resolve this case outputs the right of the applicant to represent himself " The court neither clarified the behavior nor explained how this behavior threatened the "basic integrity" of the trial. The 15 -minute command of November repeated the same wording, without specifying either the behavior or the threat of the "basic integrity" of the test. 7a 2587-2588. He only stated that the revocation was ordered "for the reasons referred to herein and to the registration incorporated herein with this report" (id.) ─ Inadequate report, since the file did not contain the required information. The minutes continued: "Mr David has stated his own intention of continuing this behavior despite numerous orders, names and warnings and the imposition of financial and evidence." This still does not specify which "behavior" justified the recall. Without this information, it is impossible to say what "commands" the applicant allegedly ignored - or if he did it at all. For example, shortly before the court revokes David's Pro Per Status, he saw a video taken by the applicant, partly in his car and partially outside the courtroom about his inaugural statement. Then the court told the applicant that it was "illegal to record anywhere in the courthouse". When the applicant complained that other judges had told him that this was not the case, the court replied: "I also issued an order anywhere in court." He had no photography in the courtroom, an order that the applicant had not violated.

25.- The attitude of the California Court was vindictive for the reasons of 'behavior' by the applicant to the court. The previous "suggestions and warnings" mentioned in the minutes do not support the revocation. The defendant must be warned that this behavior can lead to loss of its property. Carson, 35 Cal.4th at

10, 12; People v. Becerra, 63 Cal.4th 511, 518 (2016) ("The inappropriate revocation of Pro Per Status required" appealing the decision as a whole.) In addition, all the requests of the defendant were rejected, including that of November 15. The court denied The termination of sanctions against the defendant because (rightly so) was worried about David's constitutional rights for a fair procedure and access to the courts and because he took "very seriously Mr David's performance in court this morning that it is intention to try to try to We comply with the Court's behavior commands in the future. " Testimony and presentation of other evidence - were equivalent to the sanctions that the court had concluded were unjustified.

26.- The applicant did not have the proper notice that his pro per status could be revoked at the November 15 hearing. This inadequate notice cannot be cured by previous "suggestions and warnings", as they were also inadequate. The "unacceptable behavior" was not clarified, neither the consequences nor the two. See a passage of the decision, eg, 4RT 627: 19-21 ("there will be consequences if you are unable to follow the rules of decency"), 639: 1-9 ("If you do not do [maintain an item cosmos], there you will have consequences "), 646: 15-22 (David must" act in a way that is respected and in a way that - - comply with the local rules and rules of the California Court ").

27. 9rt 2120: 24-28, 2124: 10-13. Some have identified possible consequences, such as David's exclusion from the courtroom (4RT 639: 12-14, 6rt 1225: 24-25, 1237: 22-24), but does not recall David's Pro per state. Also see 4RT 646: 23-28 (call their sheriff's deputies, "talk about sanctions"). 6RT 1319: 16-21 (reduce David time for examination).

28.- On November 8, the Court first reported David's Pro Status withdrawal and found in more detail David's supposed inappropriate behavior (eg his behavior in his deposition, slowly appearing in court or leaving Early, shouting in the courtroom and the corridor in front of candidates, gesturing and directly addressing Khan's lawyer, accusing the lawyer and Khan of unethical behavior). 6rt 1225: 22-23, 1234: 14-1237: 13.

29.- These comments do not justify the removal of fundamental rights of the applicant. First, the Court told the applicant that he would hear a hearing to remove his right before issuing such an order. 6rt 1237: 2-9. The process of

November 15 was, and was perceived as a hearing for Khan's MTS, so as not to revoke David's Pro Status. 7aa 2587, 2588; 8rt 1915: 4-5, 1915: 23-1916: 27, 1966: 21-23; 9rt 2127: 4-10, 2129: 23-25.

30.- Second, even if some of the previous "suggestions and warnings" were quite specific and complete, the revocation was still abusing a discretion, because the court did not first impose smaller, alternative sanctions. Carson, 35 Cal.4th at 11-12; Becerra, 63 Cal.4th at 518. For example, the Court put David being temporarily excluded from the courtroom. 4RT 639: 12-14, 646: 28-647: 1; 6rt 1225: 24-25, 1237: 22-24. But the court did not - except after having already recalled David's Pro Status. See 9RT 2132: 3-10; 11RT 2733: 22-2734: 9, 7aa 2594.

31.- Further, the TRIAL CONDUCT Order in which the court refers to the applicant (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 in accordance with codeciv.proc. §177.5. 4AA 1704: 12-16. Such sanctions were not imposed. The previous "monetary and evidence" reported by the Court (7AA 2588; 6rt 1235: 7-8) do not support the revocation because they were not imposed on the trial conduct in question. The evidence (badly) imposed on the limit were for inappropriate behavior. See §§iii (a) (1)-(2), above). The same were the previous monetary sanctions (and in relation to the Slapp proposal). The court acknowledged that David's trial and the attribution of bad behavior are "two different issues", which is not. In any case, the deprivation of the defendant's right to represent himself is a clear violation of the right to a fair trial.

32.- The only way he was left to show his apology was to act as his own lawyer (eg in the final debate). See U.S. v. Mack, 362 F.3d 597, 602 (9th Cir. 2004) ("as a aspect of the end of his self -esteem", "He had no right to present any final argument" nor to examine the witnesses of his choice. "

WHEREAS I was not served and notified of the contested decision, and the defendant is aware that my residence has been seized and sealed in Malibu, California, United States of America, 23768 Malibou, 90265, (Malibu Road, Malibu Ca, 90265 U.S.A.)

WHEREAS the contested number. 2663/2022 Court of Appeal of the Athens Court of First Instance, which recognized the enforceability of no. BC

643099/10-9-2020 of the Court of Justice of the State of California in Los Angeles Province (14th Section) following 18/3/2022 with a submission number 23522/1097/2022, in contrast to The Greek public order, for whatever reasons set out above, and the declaration of this decision, enforceable in Greece, is not forgiven because, because of its content and in view of the specific circumstances arising from the foreign decision, its execution is impacting a). Fundamental state moral, social, legal or economic perceptions that hold in our country and b) disturb the legal pace it holds in our country (OLP 17/1999, CA 2273/2009, CA 1066/2007)

WHEREAS the competent judge who issued the contested no. 2663/2022 a judicial order of the One -Member Court of First Instance of Athens, did not invite the conditions of final courts of the Court of Justice, and did not apply to the substantive conditions for the opposition to the Greek public order, nor the violation of the fundamental authorities of the fair authorities. No. 6 of the European Convention on Human Rights, and without ordering the summons of any person as having a legitimate interest in this trial, either having taken my appeal or intervention, and in the absence of notification of Lauren Reeves' application to me, the Greek Court of Justice proceeded Incorrectly on 5/5/2022 without my presence in the Lauren Reeves' application and examination of the substantive bases of its application.

WHEREAS the contested decision lacks a reason for the assistance of the lawful conditions for enforcement of the California Court of Justice. While it contains no reason as to whether the amount of the outrageously high and disproportionate punitive damages awarded by the decision declared enforceable is significantly higher than the supposed actual damage of the defendant (below).

WHEREAS the contested decision lacks a reason as it does not consider the fact that I was not given the opportunity for the US courts to defend and raise my allegations, so that Art. 6 of the European Convention on Human Rights and the International Pact on Individual and Political Rights,

FOR THOSE REASONS

And those I intend to add legally and over time
With the explicit reservation of all my legal rights in general

I Apply

This Appeal to be accepted and the no. 2663/2022 Decision of the One -Member Court of First Instance of Athens, to be CANCELLED, ie. the Decision which recognized the enforceability of no. BC 643099/10-9-2020 of the Court of Justice of the State of California in the province of Los Angeles (Political Address 14th Department) on 18/3/2022 with a submission number 23522/1097/2022.

I ask the Respondent to be condemned to my legal expenses and the remuneration of my attorneys, in particular the Greek expenses rising in accordance with the provisions of the Code of Lawyers of one hundred thousand euros (5,000,000 x 2% = 100,000 euros).

The competent bailiff is called to deliver to the defendant of Lauren (name) Reeves (surname) (Lauren Rods), resident of Los Angeles of the State California, USA, Griffith Park Avenue , Piraeus lawyer Mr. Nikolaos Gerasimos of Georgios, AM/DSP 2814, a partner of the law firm under the name "Gerasimou and Partners Law Firm", AM/DSP 30051, based in Piraeus, Mavrokordou Street, Mavrokordou Street, 1855 , to her knowledge of her and for the legal consequences, called as attended by the discussion hereof, where the following acts.

Athens, July 27, 2023
The attorney

COURT HEARING DATE
23 NOVEMBER 2023
COURT OF APPEALS
ATHENS GREECE
STAMP & SIGNATURES

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*:
James G. Bohm, Esq. SBN: 132430
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ATTORNEY FOR *(Name)*: Defendants Alkiviades David a.k.a. Alki David, et al.

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
STREET ADDRESS: 111 North Hill Street
MAILING ADDRESS: 111 North Hill Street
CITY AND ZIP CODE: Los Angeles, 90012
BRANCH NAME: Stanley Mosk Courthouse

PLAINTIFF/PETITIONER: Jane Doe

DEFENDANT/RESPONDENT: Alkiviades David a.k.a. Alki David, et al.

NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)

Superior Court Case Number: 20STCV37498

RE: Appeal filed on *(date)*: September 16, 2024

Court of Appeal Case Number *(if known)*:

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

TO: Clerk of the Superior Court of California, County of *(name of county)*: Los Angeles

NOTICE IS HEREBY GIVEN that *(name)*: Defendants Alkiviades David a.k.a. Alki David, et al.

The [X] Appellant [ ] Respondent in the above case elects to proceed with the following record on appeal:

(check only one)

1. [ ] (Appendix Only; no Reporter's Transcript)
   a. elects under rule 8.124 of the California Rules of Court to prepare own appendix in lieu of a court-prepared clerk's transcript, **AND**
   b. elects to have no reporter's transcript. *(Date and sign below. Do not use pages 2 and 3.)*

2. [X] (Appendix and Reporter's Transcript)
   a. elects under rule 8.124 of the California Rules of Court to prepare own appendix in lieu of a court-prepared clerk's transcript, **AND**
   b. elects a reporter's transcript as designated on page 3. *(Fill out only Section A on page 3. Do not use page 2.)*

3. [X] (Appendix and Agreed or Settled Statement)
   a. elects under rule 8.124 of the California Rules of Court to prepare own appendix in lieu of a court-prepared clerk's transcript, **AND**
   b. elects an agreed or settled statement in lieu of a reporter's transcript. *(Fill out only Section B or C on page 3. Do not use page 2.)*

4. [ ] (Clerk's Transcript Only; no Reporter's Transcript)
   a. elects under rule 8.122 of the California Rules of Court to proceed with a clerk's transcript as designated on page 2. *(Fill out the clerk's transcript section on page 2. Do not use page 3.)* **AND**
   b. elects to have no reporter's transcript.

5. [ ] (Clerk's and Reporter's Transcripts)
   a. elects under rule 8.122 of the California Rules of Court to proceed with a clerk's transcript as designated on page 2. *(Fill out the clerk's transcript section on page 2),* **AND**
   b. elects a reporter's transcript as designated on page 3. *(Fill out only Section A on page 3.)*

6. [ ] (Clerk's Transcript and Agreed or Settled Statement)
   a. elects under rule 8.122 of the California Rules of Court to proceed with a clerk's transcript as designated on page 2. *(Fill out the clerk's transcript section on page 2),* **AND**
   b. elects an agreed or settled statement in lieu of a reporter's transcript. *(Fill out only Section B or C on page 4.*

Date:

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

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:	CASE NUMBER:
Jane Doe v. Alkiviades David, et al.	20STCV37498

NOTICE DESIGNATING CLERK'S TRANSCRIPT

(Cal. Rules of Court, rule 8.122)

I understand that if I do not pay for this transcript or obtain a waiver of costs (rule 3.50 et seq.), the transcript will not be prepared and, if I am the appellant, my appeal will be dismissed.

A. It is requested that the following documents in the superior court file be included in the clerk's transcript *(give the specific title of each document and the date of filing):*

(NOTE: Items 1–7 are required to be a part of the clerk's transcript and will automatically be included.)

	Document Title	Date of Filing
1.	Notice of appeal	
2.	Notice designating record on appeal *(this document)*	
3.	Judgment or order appealed from	
4.	Notice of entry of judgment *(if any)*	
5.	Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order *(if any)*	
6.	Ruling on item 5	
7.	Register of actions *(if any)*	
8.		
9.		

☐ See additional pages

B. **RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT**

☐ I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (*give the title and date or dates of the administrative proceeding*).

Title of Administrative Proceeding	Date or Dates

C. It is requested that the following EXHIBITS admitted into evidence or marked for identification be copied into the clerk's transcript on appeal *(check only one box):*

1. ☒ All Exhibits
2. ☐ Specific Exhibits *(give the exhibit number [for example, Plaintiff's #1, Defendant's B, Respondent's A], a brief description, and admission status.):*

Exhibit Number	Description	Admission Status

☐ See additional pages.

CASE NAME:	CASE NUMBER:
Jane Doe v. Alkiviades David, et al.	20STCV37498

NOTICE DESIGNATING ORAL PROCEEDINGS

A. [X] **REPORTER'S TRANSCRIPT** (Cal. Rules of Court, rule 8.130) *(check one):*

I understand that if I do not pay for this transcript, it will not be prepared and, if I am the appellant, my appeal will be dismissed.

Please indicate which method you are using.

1. [X] Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
2. [ ] Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
3. [ ] Attached the reporter's written waiver of a deposit.
4. [ ] A certified transcript under rule 8.130(b)(3).
   (To be lodged directly with the Court of Appeal, Second Appellate District.)

You must identify each proceeding you want included with the following information:

	Reporter's Name and contact information	Dept.	Date	Description	Prev. prepared?
i.	See Attachment "A"				☐Yes ☐No
ii.					☐Yes ☐No
iii.					☐Yes ☐No
iv.					☐Yes ☐No
v.					☐Yes ☐No

[ ] See additional pages.

5. I request that the reporters provide *(check one):*
   a. [ ] My copy of the reporter's transcript in paper format.
   b. [ ] My copy of the reporter's transcript in computer-readable format.
   c. [X] My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

   (Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

CASE NAME:	CASE NUMBER:
Jane Doe v. Alkiviades David, et al.	20STCV37498

B. ☐ **AGREED STATEMENT** *(check and complete either (a) or (b) below.)*

(a) ☐ I have attached an agreed statement to this notice.

(b) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

C. ☒ **SETTLED STATEMENT UNDER RULE 8.137**. *(You must check (a), (b) or (c) below.)*

(a) ☒ The oral proceedings in the superior court were not reported by a court reporter. (Identify proceedings below.)

(b) ☐ The oral proceedings in the superior court were reported by a court reporter, but the appellant has an order waiving his or her court fees and is unable to pay for a reporter's transcript.

(c) ☐ I am requesting to use a settled statement for reasons other than those listed in (a) or (b). (Identify proceedings below.) (*You must attach the motion required under rule 8.137(b) to this form.*)

You must identify each proceeding you want included with the following information:

	Reporter's Name and contact information	Dept.	Date	Description	Prev. prepared?
i.	See Attachment "C"				☐ Yes ☐ No
ii.					☐ Yes ☐ No
iii.					☐ Yes ☐ No
iv.					☐ Yes ☐ No
v.					☐ Yes ☐ No

☐ See additional pages.

ATTACHMENT A.,PAGE 3: REPORTER'S TRANSCRIPT (CAL. RULES OF COURT, RULE 8.130

REPORTER'S NAME AND CONTACT INFORMATION	DEPT.	DATE	DESCRIPTION	TRANSCRIPT PREVIOUSLY PREPARED (YES/NO)
Candice Myers CSR # 13086 758 Cienaga Drive Fullerton, CA 92835 (714) 423-7659 typerofterror@mac.com	76	5/7/2024	Hearing on Motion to Deem Requests for Admission Admitted against Alkiviades David	YES
Dina Currado, CSR # 10908 2441 Brooke Willow Blvd., Knoxville, TN 37932 (661)675-5688 dinacurrado@gmail.com	76	9/16/2024	Hearing on Motion for New Trial; Motion to Set Aside and Vacate	YES
Dina Currado, CSR # 10908 2441 Brooke Willow Blvd., Knoxville, TN 37932 (661)675-5688 dinacurrado@gmail.com	76	2/13/2024	Hearing- Vesco Hearing	NO
Kelli Norden, CSR # 7200 10320 Mississippi Avenue, Los Angeles, CA 900025 310-770-4211 kelli@kellinorden.com	76	2/09/2024	Hearing on Motion to be Relieved as Counsel (of Fred D. Heather of Glasser Weil Fink Howard Jordan & Shapiro, LLP)	YES
Jane Hong-Elsey, CSR #11975 19510 Van Buren # 364 Riverside, CA 92508 csrjane@hotmail.com	76	01/05/2024	Hearing (Vesco hearing)	NO
Ryan Wheeler CSR 313717 802 Stone Mountain Drive Conroe, Tx 77302 (760) 805-3974 Ryanwheeler91@yahoo.com	76	09/25/2023	Hearing (Vesco hearing)	NO
Dina Currado, CSR # 10908 2441 Brooke Willow Blvd., Knoxville, TN 37932 (661)675-5688 dinacurrado@gmail.com	76	09/13/2023	Hearing on Motion to Compel Further Discovery Responses	YES

Ann M. Elmendorf, CSR # 8547 3979 East Blvd. Los Angeles, CA (310) 435-1852 annelmendorf@gmail.com	76	8/23/2023	Hearing on Motion to Compel	YES

ATTACHMENT C, PAGE 4: SETTLEMENT STATEMENT

The oral proceedings in the superior court were not reported by a court reporter on the following dates/proceedings:

Trial:

June 13, 2024, Final Status Conference and Jury Trial (Day 1); Dept. 76

June 14, 2024, Jury Trial (Day 2); Dept. 76

June 17, 2024, Jury Trial (Day 3); Dept. 76

Pre-Trial Proceedings:

May 15, 2024, Hearing on Motion to Compel Discovery, Dept. 76

February 21, 2024 Hearing on Motion to Compel Deposition, Dept. 76

August 4, 2023 Hearing on Ex Parte Application for order re Motion to compel deposition of David, Dept. 76

June 16, 2023 Hearing on Ex Parte Application to continue trial, Dept. 76

4/24/2023 Hearing on OSC re Entry of Default of Defendant Swissx, Dept. 76

January 19, 2023 Hearing on OSC re Entry of Default for Publication, Dept. 76

December 15, 2022 Hearing on OSC re Dismissal of Unserved Defendants, Dept. 76

August 3, 2022 Hearing on Ex Parte of Plaintiff re TRO and Preliminary Injunction, Dept. 76

February 10, 2022 Hearing on CMC, Dept. 76

April 2, 2021 Hearing on CMC, Dept. 76

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NEUROPSYCHIATRIC EVALUATION of ALKIVIADES "ALKI" DAVID
INTERIM REPORT

April 18, 2023

Alkiviades "Alki" David is a 55 year old while male referred by his sister for evaluation and management of long-standing disturbed behavior.

HISTORY

Mr. David was interviewed for a total of 3.5 hours over the course of three separate sessions. The first session began with AD relating that he wasn't sure why he needed to see a psychiatrist. He related details of his developmental and relationship history, beginning with his birth in Lagos Nigeria. Though tangential, he was redirectable enough to provide details about his three previous marriages and his current long-term relationship. However, after approximately 20 minutes he digressed onto a dissertation on certain of biblical characters that I found nearly impossible to follow. My probing led to him getting angry and frustrated. When I changed topics he launched into a discursive rant, laden with invective, where he described in detail his beliefs that a world-wide criminal organization composed of lawyers and judges were persecuting him. He was 100% convinced that this was true and was somehow the result of his championing the less fortunate or wealthy. Fort the next hour plus I was unable to obtain any other credible historical information, though I did obtain considerable evidence for his behavioral dysregulation and lack of insight. Subsequent session were kept much shorter, but still, his attention span rarely exceeded 10-15 minutes. The length of productive attention and engagement was strongly linked to the emotional valence of what he was talking about.

MENTAL STATUS EXAM

The patient's mental status was grossly the same overall at each session, which was as follows: His overall appearance exhibited good grooming and appropriate eye contact. His gain and station wore normal. He appeared fit and in no apparent distress. He became psychomotor activated numerous times throughout the interview, but always withing the context of the content he was reporting. Similarly, his affect was labile and energized, but congruent with his expressed mood at that moment. He expressed substantial anger throughout our sessions that was almost exclusively directed at his perceived persecutors. He also exhibited significant irritability at times of perceived slights or when I said that I was having difficulty following his train of thought. Mr. David's thought process was frequently nonlinear (tangential and circumstantial), perseverative and prone to lapses in logic. The content of these thoughts were notable for crystalized paranoia. In short, all trains of conversations return to an exposition about his persecution at the hands of a

vast, international legal cabal, comprising advocates, prosecutors and jurists. He further expresses a beliefs that this corrupt group is victimizing many others besides himself and is 100% certain that this is true. His assessment of evidence show a strong, if not pathological, confirmation bias and a concomitant bias against disconfirmatory evidence. The presence of these cognitive biases characterize psychotic patients and are often responsible for driving the steady worsening of delusional thinking **[REF]**. Mr. David's repeatedly evinces poor judgement and demonstrates limited insight. He denies the possibility that his thinking could be distorted. Similarly, he views his past behaviors as justified and reasonable, almost righteous, despite substantial evidence to the contrary. With regard to cognitions, he was alert and oriented in all spheres with no gross language deficits noted.

BRAIN IMAGING

MRI of the Brain Without Contrast. The patient was imaged using a 3 Tesla Siemens Verio MRI Open system, the following sequences were obtained: Localizer, T1-weighted 3D MPRAGE, T2 TSE axial, 3D double inversion recovery, T2 FLAIR sagittal, axial, and coronal, DWI axial, SWI axial. This study was notable for (1) Significant left frontal encephalomalacia, most prominently in superior frontal gyrus with gliosis in the deep white matter involving the paramedian frontal lobe, and (2) frontal volume loss, greater on the right than on the left.

Figure 1. Axial FLAIR image at level of superior frontal gyrus showing location of brain damage

Advanced MRI of the Brain And MRI Connectomics. The patient was imaged using a 3 Tesla Siemens Verio MRI Open system, a functional MRI study was performed using the following sequences: (1)3D MPRAGE, (2) Arterial Spin Labeling, (3) DWI\DTI\Tractography and Fractional Anisotropy, (4) MRI Connectomics.

The arterial spin labeling study reveals markedly diminished perfusion in the left frontotemporal region. There is also diminished perfusion in the left parietal occipital area. This is consistent with less metabolism in these areas. This is a finding sometimes seen in depression the left frontal lobe. The patient has a lesion of encephalomalacia in the paramedian left frontal lobe. This will be further evaluated on a definitive SRI of the brain. DWI\fractional anisotropic study reveals marked asymmetry in the fractional anisotropy in the left frontal lobe. These findings are consistent with the previously noted injury to the brain with encephalomalacia in this region.

Neuroquant Volumetric Analysis. The patient was imaged using a 3 Tesla Siemens Verio MRI Open system, a functional MRI study was performed using 3D MPRAGE and volumetric

analysis. This study revealed considerable bilateral volume loss in the temporal lobes two standard deviations below normal. This finding is also seen in the lateral occipital lobes. There is significant volume loss in the right superior frontal lobe 7th percentile as well as in the cortical gray matter, right worse than left.

PSYCHODIAGNOSTIC TESTING

Symptom Checklist-90 (SCL-90) The SCL-90 was administered to screen for overall psychopathology since he struggled so thoroughly to assess his own mental state. The Symptom Checklist-90 (SCL-90) is a brief, self-report questionnaire commonly used to assess a broad range of psychological symptoms and distress in adults. It includes 90 items that assess nine primary symptom dimensions: somatization, obsessive-compulsive, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism. The SCL-90 has been shown to be a reliable and valid measure of psychological distress and can be used to screen for a variety of psychological disorders, such as depression, anxiety, and somatization disorders. Mr. David scored in the 99% percentile for interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism.

Brown Executive Function/Attention Scales-Adult (BEFAS-A) The BEFAS-A is a standardized assessment tool designed to measure executive functioning and attention in adults.

The Brown Executive Function/Attention Scales (Brown EF/A Scales) provide an easily understandable, standardized tool to collect information about the problems an individual demonstrates or reports with executive functions, the self-management functions that support attention in multiple tasks of daily life. Results are compared with norms to indicate how any reported problems over the past 6 months compared to other people of similar age. Individual scores indicate how much of a problem the adult appears to have with each of the clusters idenitifed in the Brown model of EF. These clusters are as follows: Cluster 1. Activation: Organizing, Prioritizing, and Activating to Work, Cluster 2. Focus: Focusing, Sustaining, and Shifting Attention to Tasks, Cluster 3. Effort: Regulating Alertness, Sustaining Effort, and Adjusting Processing Speed, Cluster 4. Emotion: Managing Frustration and Modulating Emotions, Cluster 5. Memory: Utilizing Working Memory and Accessing Recall, Cluster 6. Action: Monitoring and Self-Regulating Action. Total Composite score is a composite of the six cluster scores. On these scales T-scores over 70 indicate markedly atypical presentation (i.e. very significant problems).

Mr. David's total composite score placed him in the severely affected range, with similarly severe impairments in focus (sustaining, and shifting attention to tasks), memory (Utilizing working memory and accessing recall) and worst of all, monitoring and self-regulating action.

Delis Rating of Executive Functions (D-REF)

The D–REF Adult consists of 58 items and takes 10–15 minutes to administer. Key components of executive functioning are generally conceptualized into four broad areas: goal formation,

planning, goal-directed behavior, and effective performance. For an individual to demonstrate adequate executive functioning, he/she must reflect on what it is he/she wants to accomplish, determine the next steps in order to achieve anticipated outcomes, engage in problem-solving behaviors to reach desired goal, and finally perform the action efficiently.

Mr. David scored in the 99th percentile (most affected) for impairments of behavioral and emotional control. Similarly, he scored in the 98-99th percentile on (1) Activity Level/ Impulse Control (AIC), an assessment of impulsivity, hyperactivity, and poor self-monitoring; (2);Emotional Control/ Anger Management (EAM), which assesses symptoms of poor frustration tolerance, emotional lability, sensitivity to criticism, and problems with anger control and (3) Abstract Thinking/ Problem-Solving (APS), which assesses symptoms of concrete thinking, cognitive rigidity, disorganization, and poor decision- making and problem-solving skills.

Millon Clinical Multiaxial Inventory-IV (MCMI-IV) Mr. David was administered the MCMI-IV to more fully explore his personality structure, antisocial or otherwise. The MCMI-IV is a multi-axial assessment tool that provides information on several domains of psychological functioning, including personality traits, clinical syndromes, and severe personality pathology. It also provides information on a patient's overall level of functioning, as well as their interpersonal style, coping mechanisms, and stressors. The test consists of 195 true/false questions that assess a wide range of psychological symptoms, including mood disorders, anxiety disorders, substance abuse, and personality disorders. The test is designed to be completed by adults aged 18 years or older and is commonly used by mental health professionals in clinical and forensic settings. One unique aspect of the MCMI-IV is that it assesses both the patient's self-reported symptoms and their coping styles, allowing clinicians to gain insight into how the patient perceives and deals with their problems. The MCMI-IV has been extensively researched and has demonstrated high levels of reliability and validity. It is widely used in clinical settings as a tool for diagnosing and planning treatment for patients with mental health disorders. However, it should be noted that the MCMI-IV is not a diagnostic tool on its own and only used in conjunction with other assessments and clinical evaluations.

Mr. David's response profile was processed by Pearson Assessments and the abridged reports is as follows: In sum, the major complaints expressed by the patient's MCMI-IV responses do not take the form of distinct clinical syndrome symptoms (i.e. no DSM-5 specified personality disorder like antisocial or borderline), however, he had traits of a turbulent and sadistic (aggressive) style. His response pattern showed no evidence to suggest dissimulation.

DISCUSSION

Decades ago, Mr. David lapsed into a coma after being struck by a motor vehicle while walking across the street. After regaining consciousness weeks later he become far more impulsive, irritable and exhibited profound short-term memory deficits, what his sister described as being a "different person," personality-wise. Given Mr. David's behavioral history it is shocking that no brain imaging was performed prior to the current evaluation. Functional and structural brain MR

imaging reveals damage to the left frontal lobe that is so severe that it is obvious to even the untrained eye (Figure 2). Quantitative analysis of these images revealed more loss of brain mass in the frontal and temporal lobes.

The frontotemporal region is a network functional circuits operating in concert to produce what is termed *executive function*. Executive function comprises the mental processes that enable us to plan, focus attention, remember instructions, and juggle multiple tasks successfully. Just as an air traffic control system at a busy airport safely manages the arrivals and departures of many aircraft on multiple runways, the brain needs this skill set to filter distractions, prioritize tasks, set and achieve goals, and control impulses. Conversely, damage to the executive system often leads to: Difficulty organizing; Difficulty in planning and initiation (getting started); Inability to multitask Difficulty with verbal fluency, Trouble planning for the future; Difficulty processing, storing, and/or retrieving information; Mood swings; Lack of concern for people and animals; Loss of interest in activities; Socially inappropriate behavior; Inability to learn from consequences from past actions; Difficulty with abstract concepts (the inability to make the leap from the symbolic to the real world)

Damaging either a specific subregion of frontotemporal cortex or the connections between subregions will impair executive function. This is well illustrated by the case of Phineas gage, arguably the most famous neurological patient of all time. In brief, an explosion propelled a metal rod through his left frontal lobe, but leaving the rest of his brain otherwise intact. Dr. JM Harlow who attended to Gage's wounds reported that Gage's employers, *"who regarded him as the most efficient and capable foreman ... considered the change in his mind so marked that they could not give him his place again.... He is fitful, irreverent, indulging at times in the grossest profanity (which was not previously his custom), manifesting but little deference for his fellows, impatient of restraint or advice when it conflicts with his desires.... A child in his intellectual capacity and manifestations, he has the animal passions of a strong man.... His mind was radically changed, so decidedly that his friends and acquaintances said he was 'no longer Gage."* There is an undeniable similarity between the behavior of Gage and Mr David after his accident.

Frontotemporal dementia (FTD) can serve as a model to understand the context and scope of Mr. David's deficits. Mr. David has compromises frontal and temporal lobes, as revealed by quantitative MR imagining. This would be expected to produce deficits and behaviors that are most similar to those exhibited by patients suffering from frontotemporal dementia (FTD). Patients with FTD (1) struggle to focus on tasks and become distracted easily (2) find it difficult to plan, organize and make decisions – these problems may first appear at work or with managing money; (3) lose their inhibitions – behaving in socially inappropriate ways and acting impulsively or without thinking. For example, making insensitive or rude comments about someone's appearance, making sexual gestures in public, staring at strangers, or being verbally or physically aggressive; (4) lose motivation to do things that they used to enjoy; (5) lose the ability to understand what others might be thinking or feeling – they may be less considerate of the needs of others, lose interest in social activities or be less friendly. They may also have less of a sense of humor or laugh at other people's problems. This can make the person appear cold and selfish; (6) show repetitive or obsessive behaviors; (7) developing cravings or insatiable eating, drinking, smoking or other drug use. It is instructive to recognize that the symptoms of FTD are often misunderstood. Other may think that the person is merely misbehaving, leading to anger and

conflict. It is important to understand that people with these disorders often lack any awareness of their illness and either cannot control their behaviors or can only do so for short periods of time.

Mr. David's brain damage underlies his apparent lack of executive functioning. Because the frontotemporal regions are so complex in their function it is outside the bounds of this interim report to discuss in detail all of the aspects of Mr. David's cognition and behavior that will be affected. However, two anatomically easily illustrated examples would be impaired memory and his seemingly lack of forethought. First, as illustrated in Figure 2, he has significant damage to the dorsomedial prefrontal cortex (dmPFC). This region is directly required for working memory. The extent of the damage easily explains his partial amnesia after his accident. It is important to keep in mind that working memory is more than remembering facts since it is what allows us to perform calculations or evaluate prospective outcomes for our decisions.

Patients like A.D. with frontal lobe damage are known to demonstrate deficits in planning actions for tasks that require foresight. Foresight and future thinking require the ability to think about the self and to focus attention on one's inner experience. When an individual reflects on their own mental state, infers the mental state of others, or engages in social reasoning they activate the dorsomedial prefrontal cortex (dmPFC) subsystem includes the dmPFC proper, the temporoparietal junction, the lateral temporal cortex, and the temporal pole. This region (dmPFC) is the most obviously damaged in Mr. David (Figure 2), but not the only dysfunctional circuit. This is supported by the limited psychometric testing Mr. David has thus far been able to complete. Mr. David scored in the severe affected/impaired range

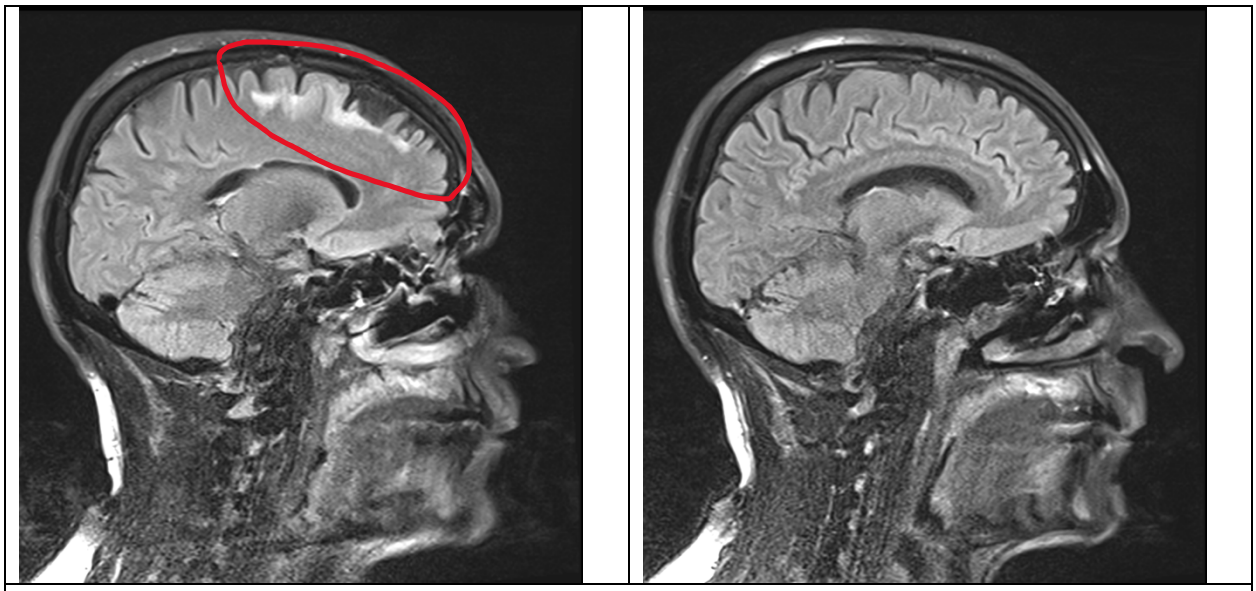

Figure 2 (LEFT). Sagital FLAIR images of A.D. showing encephalomalacia and glial scarring in left dorsomedial prefrontal cortex (dmPFC) . (RIGHT) Undamaged right frontal lobe from same sequence.

SUMMARY OF FINDINGS

On initial interview, Mr. David presented with a labile mood, digressive thought process and perseveratively espoused numerous bizarre beliefs, but denied all past medical history and drug use over the past two weeks. His behavior pattern appeared most consistent with an early-onset mid-stage behavioral variant frontotemporal dementia, prompting me to order brain imaging. I subsequently learned that decades earlier Mr. David suffered a severe traumatic brain injury, which was confirmed on MRI. Initial psychometric testing revealed broad, mostly severe, dysfunction across all sphere of executive function, including emotional dysregulation, behavioral dysregulation, impaired attention & memory, impaired practical problem solving ability and diminished impulse control.

SUMMARY OF DIAGNOSES

1. S06.2XAS Diffuse traumatic brain injury with loss of consciousness of unspecified duration,
2. R45.89 Impairing Emotional Outbursts
3. F02.C18 Major Neurocognitive Disorder Due to Traumatic Brain Injury, Severe, With other behavioral or psychological disturbance

OPINONS[1]

1. Mr. David suffered a major traumatic brain injury
2. Mr. David's TBI resulted in permanent damage to and loss of brain structures
3. Mr. David has the behavioral manifestation predicted by an injury to this brain region
4. Psychometric testing affirmatively documents broad impairments in Mr. David's executive functioning.
5. Mr. David lacked objective evidence of enduring brain damage prior to this evaluation
6. Mr. David's brain damage compromised his insight and ability to introspect
7. Lack of objective evidence, insight and introspective ability prevented him from recognizing his functional deficits.
8. Mr. David's neurological deficits render him permanently disabled.
9. Mr. David should be afforded reasonable accommodations as he suffers from a heretofore unrecognized medical disability.
10. Mr. David's accommodations should include mechanisms that reduce the need for sustained vigilance (e.g. shorter session, or more frequent breaks, especially when emotions are likely to be activated, but more frequent sessions)

Note: The full extent of the data and opinions in this report should be open to amendment pending the completion of neuropsychological testing.

[1] Mr. David has not fully completed all intended testing. Pending the completion of neuropsychological testing, the opinions expressed are subject to revision.

OFFICE OF THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA Public Communications Brief Re: Alfa Nero Yacht Lawsuit – Official Government Response

By the Honourable Attorney General, Steadroy "Cutie" Benjamin

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1. Formal Summary of Government's Position

The Government of Antigua and Barbuda (GoAB) reiterates that the seizure and subsequent sale of the Superyacht *Alfa Nero* were carried out lawfully, transparently, and in close cooperation with international authorities, including the U.S. Treasury's Office of Foreign Assets Control (OFAC).

The legal action filed in the United States by Ms. Yulia Guryeva-Motlokhov is baseless, politically motivated, and represents an abuse of the judicial process. It is regarded as a legal "fishing expedition" designed to harass senior Antiguan officials and damage the nation's international standing.

The sale was executed under a valid OFAC license after the yacht was removed from the U.S. sanctions list. It was sold in July 2024 for US $40 million to a fully vetted buyer. The proceeds – netting US $38.2 million after broker commission – were deposited into the Government's account at the Eastern Caribbean Central Bank. These funds were transparently accounted for and used to reduce public debt and cover Alfa Nero-related expenses.

Ms. Guryeva-Motlokhov, the daughter of sanctioned Russian oligarch Andrey Guryev, has no lawful claim to the yacht. Her multiple court actions, both in Antigua and the United States, are viewed as vindictive attempts to coerce a financial settlement and smear the Government of Antigua and Barbuda.

The GoAB remains steadfast in its commitment to transparency, rule of law, and collaboration with global partners, including U.S. authorities.

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2. Engagement of U.S. Counsel

Although neither the Government nor its officials are named defendants in the U.S. proceedings, legal counsel in the United States has been retained to protect Antigua and Barbuda's interests.

The claimant seeks subpoenas targeting confidential financial records of Antiguan officials held by U.S. financial institutions, including the Federal Reserve Bank of New York and the Clearing House. These intrusive requests, though baseless, risk reputational damage to the nation and its financial integrity.

The engagement of U.S. counsel allows the Government to proactively challenge any

defamatory or speculative claims and assert its legal rights in court.

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3. Legal Context

Under U.S. law, individuals involved in foreign legal disputes can request discovery from U.S.-based entities. The GoAB's proactive legal engagement is a standard international best practice, ensuring due process and protecting against reputational harm.

This is not an admission of wrongdoing; it is a responsible measure to ensure fair proceedings and uphold the dignity of the Antiguan state.

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4. Economic and Political Harm from Opposition Allegations

The Government warns that certain elements within the Opposition are amplifying these baseless claims for political gain, causing tangible harm to:

- **Foreign Investment**: Deterring potential investors and trade partners.
- **Banking Sector**: Eroding confidence in local financial institutions.
- **Tourism**: Damaging the nation's appeal to high-net-worth tourists.
- **Employment**: Threatening jobs across the yachting, banking, and hospitality industries.

These reckless actions imperil national stability and prosperity.

---

5. Public Messaging: Key Talking Points

- **Lawful Seizure**: The yacht posed an environmental and economic risk. It was legally seized following abandonment by its sanctioned owner.
- **Transparent Sale**: Sold under OFAC license for US $40 million. Buyer cleared of all sanctions risks.
- **Accountability**: Net US $38.2 million was deposited into public accounts; all disbursements documented.
- **No Corruption**: No credible evidence of wrongdoing exists. Claims rely on a report by a private investigator hired by the claimant.
- **Claimant Has No Standing**: Ms. Guryeva-Motlokhov is not a legal owner. She failed in Antiguan courts and now seeks to manipulate the U.S. system.
- **Baseless U.S. Filing**: This is a discovery motion, not a lawsuit. It aims to create suspicion where none is warranted.
- **Public Benefit**: The sale removed a derelict hazard and turned it into a financial asset for the people.
- **Sanctions Integrity**: Returning the asset to a sanctioned individual would

violate international sanctions compliance.

---

6. Sample Quotes for Media & Speeches

- "Every penny from the Alfa Nero sale is accounted for and used for the public good."
- "No flashy lawsuit can rewrite the facts: Antigua acted lawfully and transparently."
- "The daughter of a sanctioned oligarch is trying to intimidate a sovereign government with baseless claims."
- "We stand firm against this attempted extortion."
- "Hiring U.S. attorneys is not an admission of guilt, it’s a mark of responsibility."

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7. Responses to Opposition

- "Baseless allegations hurt not just the Government, but every citizen whose livelihood depends on our reputation."
- "Spreading rumors for political points puts Antigua’s future at risk."
- "Opposition leaders should ask themselves: Whose interests are they serving – the people or foreign oligarchs?"

End of Brief

LAW OFFICE OF
MARK J. LIEBERMAN
1704 PINE HILLS LANE
CORINTH, TEXAS 75210
(214) 742-0359
LiebermanLaw@proton.me

August 30, 2023

Re: ALKIVIADES DAVID

To whom it may concern,

My name is Mark J. Lieberman. I currently represent Mr. Alkiviades David and several of his companies regarding a federal Anti-Trust lawsuit that is pending here in the Eastern District of Texas.

Prior to the anti-trust litigation, I represented Mr. David in a federal civil racketeering lawsuit against several prominent individuals in the state of California. While representing the civil racketeering lawsuit, on or about 2 February 2023, I was confided in by a lifelong personal friend and fellow Bar member with information pertaining to an in-depth federal criminal investigation which targeted several defendants named within the civil racketeering lawsuit. The civil racketeering lawsuit has since that time undergone voluntary dismissal in the courts. This letter is written and provided for the benefit of Mr. David.

Thank you and God bless,

Mark J. Lieberman

Revolut

GBP Statement

Generated on Apr 16, 2025

Alkiviades David

4 Wilton place
SW1X8RH
London

IBAN	GB36REVO00997029607708
BIC	REVOGB21
Sort Code	042909
Account Number	67824110

Transaction

Date	Description	Money out	Money in	Balance
Dec 20, 2024	To Daphne Barak To: Daphne Barak, 34081277	£8,000.00		£31,912.32

ALKIVIADES "ALKI" DAVID PRELIMINARY STATEMENT

For the past five years, I have been the victim of serial extortion, and even human trafficking, by well-known TV-centric attorneys Gloria Allred, Lisa Bloom and Thomas Girardi. These crimes arise from legal claims by former employees that worked at my company, Hologram, USA, which was located at 338 N Canon Drive, Beverly Hills. During the relevant period, I was also a Beverly Hills resident. Due to these spurious claims, my company was forced to shut down. Each of the females claimants represented, aided and abetted by the referenced three attorneys, have acted in concert with each other, falsely alleging various acts of sexual harassment against me by acting as witnesses for each other. The respective claimants and their attorneys have abused our legal system by jumping on the #MeToo bandwagon to fabricate their claims. To further these extortion schemes, the attorneys knowingly submitted false evidence and intimidated witnesses in the various court cases, which resulted in various judgments against me, while two other cases are pending trial.

In reviewing Penal Code sec. 236.1 (human trafficking), I note the definition of coercion "includes a scheme to cause a person to believe that failure to perform an act, [e.g. pay money to settle a spurious claim] would result in . . . the abuse or threatened abuse of the legal process," which is exactly what has occurred to me. These same lawyers issue press releases and appear on television to defame my character, claiming that I am a Greek billionaire, in an orchestrated campaign to coerce settlements in order to cease the endless press coverage.

Here is a brief synopsis of the various cases and the criminal wrongdoing that has occurred:

- *Chastity Jones v. Alki David*, case no. BC649025, brought by attorney Lisa Bloom, alleges that I threatened to fire Chasity Jones if I didn't sleep with her.

- *I was in fact firing her for defrauding me of $40 000 but I had yet to let her know that.*

    - **Criminal wrongdoing: In testimony under oath, Jones denied being a federally convicted felon, who had a felony warrant at the time of trial from willful failure to pay restitution in connection with a federal fraud conviction;**

    - **I have attached a statement under oath from Ciara Menifee, who states that attorney Lisa Bloom pressured her to give a false statement, which she refused to do, and that Ms. Jones had targeted me regarding false claims of sexual abuse; and**

    - **I have attached a statement under oath from Grant Zimmerman, who states that it was his impression that Ms. Jones targeted me with false claims of harassment.**

- *Elizabeth Taylor v. Alki David*, case no. BC649025, brought by attorney Lisa Bloom, is a pending case.

- *Criminal wrongdoing: Though this trial was a filled with moments of unbelievably callous perjury by Lisa Bloom and her gang it all began with allegations of sexual harassment and assault that were dropped on the day of the trial!*

https://www.tmz.com/2017/09/15/celeb-hologram-creator-alki-david-sued-sexual-assault/

In this first trial the jury believed that there was a fraud and conspiracy afoot by Lisa Bloom - the jury was hung 8 4 in my favor. But the damage was being done in very narrow targeted perversion of the law that has been devastating to me personally and the lives of many hundreds of employees family and friends whose lives have been hugely damaged.

- *Mahim Kahn v. Alki David*, case no. BC654017, brought by attorney Gloria Allred, alleges that I
    - **Criminal wrongdoing: Kahn threatened her former roommate, Lauren Berkley, not to truthfully testify in my favor about Kahn's fabricated allegations against me. Berkley submitted a police report documenting the threat. Additionally, Kahn's attorney, Nathan Goldberg (partner of Gloria Allred) forged by attorney's signature on a witness list that was submitted to the court prior to trial. While attempting to collect her judgment against me in Switzerland, Kahn's attorneys criminally misrepresented and fabricated that I had sustained criminal convictions for sexual abuse in the United States. At present, I have filed a criminal complaint in Switzerland with the State Prosecutor alleging various deceptions in Kahn and her attorneys' attempt to seize my assets, including trying to enforce punitive damages portion of a judgment, which is not permitted in Switzerland.**

- *Lauren Reeves, v. Alki David*, case no. BC643099, brought by attorney Gloria Allred.

    - **Criminal wrongdoing: As with Mayim Kahn, the same lawyers are trying to seize assets in Switzerland.**

- In Switzerland four separate counts of coercion with intent to defraud have been filed with public prosecutors there.

- *Jane Doe (a/k/a Margurita Nicholls) v. Alki David*, case no. _____, brought by attorney Thomas Girardi and _____, alleges that I raped her at Hologram offices. However, she has made other rape claims, including against her husband and best friend. A month after the alleged rape, Nicholls brought me a birthday cake.
-
    - Criminal wrongdoing: As numerous law enforcement authorities are aware, attorney Tom Girardi has defrauded numerous clients out of millions of dollars and is the subject of various state and federal

investigations. The California State Bar has already disbarred him from practicing law; and

- In Mr. Zimmerman's attached statement under oath he states that Ms. Nicholls never complained to him about anything improper with me.

Abused court processes in the above cases have been or are ongoing by the attorneys and their clients. The various assigned judges lack the resources to investigate the alleged criminal wrongdoing, which is why I am seeking law enforcement intervention. I am hoping that your Department will look into these matters and gather the evidence needed to prosecute these individuals and their attorneys for the extortion and perjury perpetrated against me, which has resulted in millions of dollars in falsified judgments.

These attorneys have targeted numerous other individuals with the same M.O. They have made millions of dollars extorting hard-working businessmen, ruining reputations, and destroying personal lives. Thank you for your urgent attention to this request. I look forward to meeting with you to amplify my concerns and cooperate in bringing these crimes to light.

DECLARATION OF CIARA MENIFEE

I, Ciara Menifee, state and declare as follows:

1. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would competently testify to the facts set forth herein of my own personal knowledge.

2. I worked for Filmon TV Networks ("Filmon" or "the Company") as a Media Coordinator from in or around October 2015 to March 2017.

3. My relative, Mary Rizzo, also worked for Filmon. Sometime in or around early 2016, Ms. Rizzo filed a lawsuit against Alkiviades David and the Company. Shortly thereafter, she reached an agreement with the defendants in that lawsuit to drop her claims in exchange for a monetary settlement.

4. During my work for Filmon, I became acquainted with another employee, Chasity Jones. On several occasions, Ms. Jones—who had learned about Ms. Rizzo's lawsuit against and settlement with Filmon and Mr. David—asked me how much money Ms. Rizzo had received as a result of her settlement. I told her I did not know, yet Ms. Jones continued to ask me about the amount of Ms. Rizzo's settlement. I found Ms. Jones' incessant questioning was inappropriate and annoying and I made at least two written complaints to the Company about it.

5. Ms. Jones and Ms. Rizzo shared an office when they worked at Filmon. Ms. Rizzo told me that Ms. Jones made sexually suggestive remarks and comments about Mr. David. For example, Ms. Rizzo said that Ms. Jones told her that Mr. David was "hot" and that she, Ms. Jones, "would give him a chance."

6. I also personally observed Ms. Jones flirt with Mr. David while at work. She was open about her romantic feelings for Mr. David.

7. I recall one incident where I, Mr. David, two employees from the production department, and Carl Dawson (Ms. Jones' supervisor) were in a standing meeting in the editing department. Ms. Jones came out of the kitchen and smacked Mr. David on the butt in front of everyone. I was shocked and could not believe that Ms. Jones would do that to her boss. Ms. Jones' behavior made me feel uncomfortable.

8. Ms. Jones never told me that Mr. David had acted inappropriately toward her in any way. Ms. Jones was quite vocal about complaints she had at the workplace and I believe she would have told people had she been subjected to any inappropriate or harassing conduct by Mr. David or anyone else.

9. I recall that sometime in or around October or December 2016, Ms. Jones was angry at Mr. David because of dispute over a commission that she said was owed to her. She told me that Mr. David "deserved to be sued," and that she would "get him."

10. I learned that Ms. Jones later filed a lawsuit against Filmon and Mr. David. Shortly before the trial of Ms. Jones' lawsuit, sometime in or around May 2019, someone from The Bloom Firm, who represented Ms. Jones, contacted me through my lawyer, David Osorio, who at the time was with the law firm of Blair & Ramirez LLP.

11. With the help of Mr. Osorio, I prepared a written statement about my knowledge of Ms. Jones and her claims against Mr. David and the Company. My written statement included the information in paragraphs 4 to 10 above. Mr. Osorio emailed my written statement to The Bloom Firm. After The Bloom Firm received the statement, Lisa Bloom's daughter, Sarah Bloom, who is also an attorney with the Bloom Firm, contacted Mr. Osorio and requested to interview me.

12. In or around July 2019, Lisa Bloom, Sarah Bloom, Mr. Osorio, and I had a telephone call, which I understood was for the purpose of The Bloom Firm preparing me to testify in support of Ms. Jones at trial. During the call, Ms. Lisa Bloom acknowledged that she had received my written statement and so I assumed she knew its contents and would know what my testimony would be if I were to testify at trial.

13. Despite what I had stated in my written statement, Ms. Bloom pressured me to testify that I was a victim and that Mr. David had "preyed" on me. She told me that I was part of the "Me Too" movement and that I needed to stand up for myself and other women. I told her I did not agree that I was a victim or that Mr. David had preyed upon me. I also did not believe that I was part of the "Me Too" movement as my claims against the Company and Mr. David were different. Nevertheless, Ms. Bloom continued to pressure me to testify in the way that she wanted me to testify. I expressed that I would not be comfortable testifying in this way because what she was

asking me to say was not true.

14. Ms. Bloom also asked me about my observations of Ms. Jones in the workplace. From Ms. Bloom's questioning of me, I understood that she wanted me to testify that Ms. Jones was a good employee, which I did not believe was true. For instance, Ms. Bloom suggested that I testify that Ms. Jones would come to work on time, but, based on my observations, that was not a true statement. I observed that Ms. Jones appeared to come and go as she pleased and, once at work, she would spend a lot of time walking around and talking with people about matters not related to work. In general, she had a bad attitude.

15. I told Lisa and Sarah Bloom during our phone call that (i) I had seen Ms. Jones slap Mr. David on the butt while other employees, Mr. David, and I were having a meeting in the editing department; (ii) I had heard Ms. Jones refer to Mr. David as "sexy" and "hot"; (iii) I had read text messages from Ms. Jones to Ms. Rizzo, where Ms. Jones stated that she wanted to "hook up" and have sex with Mr. David; (iv) I had complained to the Company about Ms. Jones repeatedly asking me about the amount of Ms. Rizzo's settlement; and (v) Ms. Jones told me that she was going to "partner" with Elizabeth Taylor to sue Mr. David.

16. Nevertheless, Ms. Lisa Bloom repeatedly told me that Mr. David was a "bad man," that he deserved what he was getting, and that I needed to say that I had been "victimized" by him throughout my employment at Filmon. I felt that she was bullying me into testifying to matters that were not true.

17. For example, when I told Ms. Bloom that I did not believe that I was victimized by Mr. David, she questioned "Well, he did prey on you, didn't he?" She asked me leading questions and seemed to get frustrated with me because I did not agree with her statements. I was surprised because I had laid out my testimony very clearly in my written statement, which Ms. Bloom said she had seen before our call.

18. Ms. Bloom did not ask me any questions about the contents of my written statement; nor did she ask about the alleged conduct of Mr. David at issue; i.e., whether I had seen Mr. David behave inappropriately toward Ms. Jones. If she had asked me that, I would have told Ms. Bloom that I had not seen Mr. David behave inappropriately toward Ms. Jones, but I had seen Ms. Jones act

inappropriately toward Mr. David by, for example, slapping him on the butt in the workplace.

19. It appeared to me that neither Lisa nor Sarah Bloom was interested in the information I was relaying to them about Ms. Jones' inappropriate workplace behavior and motives for filing a lawsuit against Mr. David and the Company. I believe they wanted me not to testify about these matters because when I tried to tell them the truth about what happened, Ms. Lisa Bloom told me not to focus on that and to focus only on what she was asking me.

20. At some point during the call, I asked for a break to speak privately with my attorney, Mr. Osorio, because I felt uncomfortable with what I felt was pressure from Ms. Lisa Bloom. During the break, I communicated to Mr. Osorio my discomfort and desire not to testify. When Mr. Osorio and I got back on the call, Ms. Lisa Bloom continued her questioning in the same manner as before.

21. The Bloom Firm tried to serve me with a subpoena to testify at Ms. Jones' trial on at least two occasions by sending someone to my home. I did not open the door on either occasion. I also received a call from someone who described himself as an "investigator" and who explained that he was looking for me to serve me with some paperwork from the Bloom Firm. He also told me that I was required by law to testify. I refused to cooperate voluntarily with the Bloom Firm because I was not willing to testify the way Ms. Bloom was coaching me to testify.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on December 28, 2020 at Los Angeles, California.

DocuSigned by:
Ciara Menifee
48D4A03C7CD547F...

Ciara Menifee

DECLARATION OF GRANT ZIMMERMAN

I, GRANT ZIMMERMAN, declare as follows:

1. I am an individual, and submit this declaration concerning my knowledge of the relationship between Alkiviades David ("Alki"), Chastity Jones and Margarita Nicholls (Margarita Nichols?). I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would competently testify to the facts set forth herein of my own personal knowledge.

2. From September 2014 to September 2016 I worked for Alki David at a number of his companies, including at Filmon TV and Hologram USA, Inc.

3. My responsibilities included but were not limited to: discovering new talent, locating facilities and venues for events, and arranging third-party industry introductions.

4. During my work for Mr. David I had numerous occasions to observe his behavior in the work place and in particular with regard to two others who worked for him, Chasity Jones and Margarita Nicholls.

5. Chasity Jones was enamored with Alki, wanted to date him. I never heard her complain about any treatment from Alki or observed any interaction between her and Alki which I thought was inappropriate. After word leaked that Alki had settled a claim with another employee I believe Chasity decided to go after Alki by suing him based on false allegations about how Alki had treated her in the workplace.

6. My impression of Chasity Jones is that she was out for money and had no hesitation in accusing Alki falsely of misconduct.

7. I also had occasion to get to know Margarita Nicholls. We had coffee on one or two occasions. I learned that at some point she and Alki went on a trip together. I also understood whatever relationship they did have was consensual. Margarita never complained to me that Alki had engaged in any misconduct and especially did not complain that Alki had engaged in sexual harassment, assault or rape against her.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on July 12, 2021.

GRANT ZIMMERMAN

ΕΛΛΗΝΙΚΗ ΔΗΜΟΚΡΑΤΙΑ
ΕΙΣΑΓΓΕΛΙΑ ΠΡΩΤΟΔΙΚΩΝ ΧΑΛΚΙΔΟΣ
ΤΜΗΜΑ: ΜΗΝΥΣΕΩΝ
ΑΡ.ΠΡΩΤ.: 115/25

ΠΙΣΤΟΠΟΙΗΤΙΚΟ

Όπως προκύπτει από τα στοιχεία που τηρούνται στο τμήμα μας, την 31/10/2023 υποβλήθηκε μήνυση με τα εξής στοιχεία:
Αρ. Βιβλίου: ΕΓ24-39, Ε23-351
ΓΑΔ / Έτος ΓΑΔ: 6927 / 2023

Εξήχθησαν αντίγραφα: Γ24-449

ΜΗΝΥΟΜΕΝΟΙ
PERETZ DANI ον.πατρ. -

ΜΗΝΥΤΕΣ
ΔΗΜΗΤΡΑ (DIMITRA) ΔΑΥΙΔ (DAVID) ον.πατρ. ΟΔΥΣΣΕΑΣ

η οποία απεστάλη από την υπηρεσία ΟΙΚΟΘΕΝ
με το πρωτόκολλο -2023

Οι χρόνοι τέλεσης των αδικημάτων είναι 11/10/2023 -

ΑΔΙΚΗΜΑΤΑ
ΑΠΟΠΕΙΡΑ ΑΠΑΤΗΣ ΣΤΟ ΔΙΚΑΣΤΗΡΙΟ ΜΕ ΑΠΕΙΛΟΥΜΕΝΗ ΖΗΜΙΑ ΑΝΩ ΤΩΝ 120.000 ΕΥΡΩ

ΠΟΡΕΙΑ

Α/Α	Ημ/νία Ανάθεσης/ Αποστολής	Ημ/νία Επιστροφής	Στάδιο/ Είδος Κίνησης	Από Τμήμα	Σε Τμήμα /Αρχή	Είδος Δικογραφίας	Αρ. Πρωτ. Αρχής	Τύπος / Αρ.Δελτίου Κατάσταση	Σχόλιο
1	06/11/2023		ΚΑΤΑΧΩΡΙΣΗ ΜΗΝΥΣΗΣ	ΟΙΚΟΘΕΝ	ΜΗΝΥΣΕΙΣ			Εισαγγελίας 20951/2023 Παραλαβή	Αρχική Εισαγωγή Δικογραφίας
2	17/11/2023		ΑΝΑΘΕΣΗ ΣΕ ΕΙΣΑΓΓΕΛΕΑ	ΜΗΝΥΣΕΙΣ	ΕΙΣΑΓΓΕΛΕΙΣ			Εισαγγελίας 21709/2023 Παραλαβή	Για Μελέτη & Επεξεργασία
3	22/11/2023		ΕΠΙΣΤΡΟΦΗ ΑΠΟ ΕΙΣΑΓΓΕΛΕΑ	ΜΗΝΥΣΕΙΣ	ΜΗΝΥΣΕΙΣ			Εισαγγελίας 22090/2023 Παραλαβή	Επιστροφή από Εισαγγελέα
4	17/11/2023	22/11/2023	ΠΡΟΚΑΤΑΡΚΤΙΚΗ ΕΞΕΤΑΣΗ (ΠΛΗΜΜ)		ΠΤΑΙΣΜΑΤΟΔΙΚΕΙΟ ΧΑΛΚΙΔΑΣ		17 Ημ.Επιστρ.Αρχής: 05/01/2024		
5	23/11/2023		ΠΡΟΚΑΤΑΡΚΤΙΚΗ ΕΞΕΤΑΣΗ	ΜΗΝΥΣΕΙΣ	ΠΤΑΙΣΜΑΤΟΔΙΚΕΙΟ ΧΑΛΚΙΔΑΣ			Εισαγγελίας 22270/2023 Παραλαβή	
6	05/01/2024		ΔΙΚΟΓΡΑΦΙΕΣ ΑΠΟ ΠΤΑΙΣΜΑΤΟΔΙΚΕΙΟ ΑΘΗΝΩΝ	ΠΤΑΙΣΜΑΤΟΔΙΚΕΙΟ ΑΘΗΝΩΝ	ΜΗΝΥΣΕΙΣ			Δικαστηρίου 54/2024 Αποστολή	
7	26/01/2024		ΑΝΑΘΕΣΗ ΣΕ ΕΙΣΑΓΓΕΛΕΑ	ΜΗΝΥΣΕΙΣ	ΕΙΣΑΓΓΕΛΕΙΣ			Εισαγγελίας 1939/2024 Παραλαβή	ΠΡΟΚΑΤΑΡΚΤΙΚΕΣ Α΄
8	04/03/2024		ΕΠΙΣΤΡΟΦΗ ΑΠΟ ΕΙΣΑΓΓΕΛΕΑ	ΜΗΝΥΣΕΙΣ	ΜΗΝΥΣΕΙΣ			Εισαγγελίας 3918/2024	Επιστροφή από

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								Παραλαβή	Εισαγγελέα
9	04/03/2024		ΠΡΟΚΑΤΑΡΚΤΙΚΗ ΕΞΕΤΑΣΗ	ΜΗΝΥΣΕΙΣ	ΠΤΑΙΣΜΑΤΟΔΙΚΕΙΟ ΧΑΛΚΙΔΑΣ			Εισαγγελίας 3964/2024 Παραλαβή	
10	26/01/2024	04/03/2024	ΠΡΟΚΑΤΑΡΚΤΙΚΗ ΕΞΕΤΑΣΗ (ΠΛΗΜΜ)		ΠΤΑΙΣΜΑΤΟΔΙΚΕΙΟ ΧΑΛΚΙΔΑΣ	ΠΡΟΚΑΤΑΡΚΤΙΚΗ	651 Ημ.Επιστρ.Αρχής: 01/10/2024		
11	30/10/2024		ΑΝΑΘΕΣΗ ΣΕ ΕΙΣΑΓΓΕΛΕΑ	ΜΗΝΥΣΕΙΣ	ΕΙΣΑΓΓΕΛΕΙΣ			Εισαγγελίας 20483/2024 Παραλαβή	
12	25/11/2024		ΕΠΙΣΤΡΟΦΗ ΑΠΟ ΕΙΣΑΓΓΕΛΕΑ	ΜΗΝΥΣΕΙΣ	ΜΗΝΥΣΕΙΣ			Εισαγγελίας 22374/2024 Παραλαβή	Επιστροφή από Εισαγγελέα
13	25/11/2024		ΓΙΑ ΟΡΙΣΜΟ ΑΝΑΚΡΙΤΗ-ΠΡΟΕΔΡΟΣ ΠΡΩΤΟΔΙΚΕΙΟΥ	ΜΗΝΥΣΕΙΣ	ΠΡΟΕΔΡΟΣ ΠΡΩΤΟΔΙΚΕΙΟΥ			Εισαγγελίας 22375/2024 Παραλαβή	
14	30/10/2024	25/11/2024	ΓΙΑ ΟΡΙΣΜΟ ΑΝΑΚΡΙΤΗ-ΠΡΟΕΔΡΟΣ ΠΡΩΤΟΔΙΚΕΙΟΥ		ΑΝΑΚΡΙΤΕΣ	ΠΡΟΚΑΤΑΡΚΤΙΚΗ			

Η ΠΟΙΝΙΚΗ ΔΙΚΟΓΡΑΦΙΑ ΒΡΙΣΚΕΤΑΙ ΣΤΟ ΣΤΑΔΙΟ ΤΗΣ ΚΥΡΙΑΣ ΑΝΑΚΡΙΣΗΣ ΚΑΙ ΕΚΚΡΕΜΕΙ ΣΤΟ Α΄ΑΝΑΚΡΙΤΙΚΟ ΓΡΑΦΕΙΟ ΤΟΥ ΠΡΩΤΟΔΙΚΕΙΟΥ ΧΑΛΚΙΔΑΣ, ΓΙΑ ΤΗΝ ΔΙΕΝΕΡΓΕΙΑ ΑΥΤΗΣ.

Το πιστοποιητικό αυτό χορηγείται με αίτηση της Δήμητρας -Φανής ΔΑΥΙΔ,

για κάθε νόμιμη χρήση.

ΧΑΛΚΙΔΑ, 9/1/2025

Ο Εισαγγελέας Πρωτοδικών

Ιωάννα Σκούφη
Αντεισαγγελέας Πρωτοδικών

Ο Δικ. Γραμματέας

ΔΗΜΗΤΡΑ ΛΙΝΑΡΔΟΥ

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Attorneys for Defendants Hologram USA, Inc., Alki David Productions, Inc. and FilmOn TV, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL DISTRICT

MAHIM KHAN,

Plaintiff,

v.

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

Defendants.

CASE NO. BC654017

Hon. Michelle W. Court
Dept. 74

DEFENDANTS HOLOGRAM USA, INC., ALKI DAVID PRODUCTIONS, INC. AND FILMON TV, INC.'S RESPONSE TO MAHIM KHAN'S NOTICE OF EVIDENCE SUBJECT TO COURT'S GRANT OF PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE THIRD PARTY WITNESSES AND DOCUMENTS NOT DISCLOSED OR PRODUCED IN DISCOVERY

Action filed: March 14, 2017
FSC: October 23, 2019
Trial: October 28, 2019

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2300
LOS ANGELES, CA 90067
310-229-9900

Defendants Hologram USA, Inc., Alki David Productions, Inc. and FilmOn TV, Inc. hereby submit their Response to Mahim Khan's Notice of Evidence Subject to Court's Grant of Plaintiff's Motion in Limine to Exclude Third Party Witnesses and Documents Not Disclosed or Produced in Discovery.

I. THE DOCUMENTS IDENTIFIED BY PLAINTIFF WERE NOT "WILLFULLY WITHHELD", BUT PRODUCED

Well aware of the deep flaws in her case, Plaintiff is seeking an end run around Defendants' ability to present the evidence which will expose her claims for what they are – a fiction created to exploit the very important 'me too' movement. On October 28, 2019, the Court granted Plaintiff's Motion in Limine No. 2 to exclude documents that were requested in discovery but were "willfully withheld":

> And the second -- plaintiff's second Motion in Limine is to preclude third party witnesses and Documents that are not disclosed -- that were not disclosed in discovery. And my tentative is to grant that, but only to the extent that that evidence was Requested and not produced. I do think that based on my review of the proceedings in the record I don't believe there has been a willful refusal to respond to discovery. A refusal --a failure to respond to discovery can't be willful if you didn't ask for it. So you're going to need -- if you want me to exclude specific testimony or a specific evidence, I'm going to need to have evidence that you actually asked for it and that it was willfully withheld. That's the tentative.

Incredibly, Plaintiff seeks to exclude documents that were not withheld, willfully or otherwise, ***but were produced***, as evidenced by Bates numbers affixed at the time of production.[1] Specifically, on September 19, 2019 (more than 30 days prior to trial), after Plaintiff prevailed on a motion to compel, Defendants produced documents responsive to Plaintiff's requests that were in Defendants' possession, custody or control. Declaration of Ellyn S. Garofalo ("Garofalo Decl."), ¶ 2. The Bates numbers, applied prior to their September 19, 2019 production, are plainly reflected in Plaintiff's motion to exclude the produced documents. *Id.* ¶ 3.

[1] In contrast, Plaintiff affixed Bates numbers to documents that were not produced, but first appeared on Plaintiff's Exhibit List. Apparently, unfamiliar with the difference between Bates stamps and Exhibit Nos., Plaintiff purportedly added Bates numbers to the documents as a "convenience" at trial. In fact, the Bates stamps appear to have been added to deceive the Court into believing the documents were actually produced during discovery.

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A second set of documents was produced on October 21 and 22, 2019. These documents were not called for in discovery, but relate to purported 'me too' witnesses, who first appeared on Plaintiff's October 16, 2019 Witness List. Garofalo Decl., ¶ 4. These documents are rebuttal evidence, that may be used to cross-examine the newly identified 'me too' witnesses. *Id.* Naturally, Defendants could not know the relevance of this material until Plaintiff added the 'me too' witnesses on October 16, who were not identified by Plaintiff in discovery. Defendants are not required to produce rebuttal evidence, but voluntarily produced the documents to Plaintiff.

Simply put, the Court's order does not permit the exclusion of documents produced in discovery (whether before or after the granting of a motion to compel), but to documents that were "willfully withheld." Plaintiff fails to explain how documents that were produced could simultaneously be "willfully withheld" and, obviously, there is no authority which would permit a court to exclude documents that were produced during discovery, on the ground that they were not produced.

In fact, understandably anxious to avoid a real trial, Plaintiff has engaged in other conduct in that raises serious ethical violations. Plaintiff forged the name of Defendants' counsel on an Exhibit List which added exhibits to Plaintiff's list and deleted at least three of Defendants' exhibits.[2] Garofalo Decl., ¶ 6-8. Plaintiff merely removed the signature page from the Exhibit List signed and approved by Defendant's counsel, and appended it to a new Exhibit List which Plaintiff filed without first providing it to Defendants' counsel, much less seeking consent or authorization to use counsel's signature. *Id.*, ¶ 8. This conduct, is not merely unethical, it is a felony. *See* Cal. Penal Code § 470(b) (forgery); Cal. Penal Code § 115 "(a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a

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[2] Plaintiff took advantage of Ms. Garofalo's absence at the hearing – as a result of the Getty fire which burned within yards of her home – to allow the Court to believe Defendants had agreed to the filed Exhibit List. This is a truly stunning ethical violation by lawyers who are experienced enough to know better.

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felony"; Cal. Penal Code § 132 ("Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony."); *see also In re Paguirigan*, 25 Cal. 4th 1, 3 (2001) (lawyer disbarred and subject to criminal proceedings for forging a witness's signature.)

To make matters worse, at an October 28, 2019 hearing, Plaintiff failed to notify the Court that the filed Exhibit List was altered from the one that had been signed and thus approved by Defendants' counsel. This was nothing more than a fraud on the Court, not to mention outright forgery. If this were not enough, Plaintiff also misled the Court on objections to a 1987c notice, insisting that a motion to quash was required. This is simply false as the plain language of the statute, provides that objections served on counsel are sufficient.

II. THERE IS NO REQUIREMENT THAT DEFENDANTS IDENTIFY REBUTTAL WITNESSES IN DISCOVERY.

Plaintiff seeks to exclude witnesses who will rebut the testimony of Plaintiff and witnesses that may be called by Plaintiff. These witnesses were included on Defendants' witness list as anticipated rebuttal witnesses as Plaintiff had not yet provided any witness list to Defendants by October 16, 2019. Additionally, prior to serving her Witness List, Plaintiff refused to identify witnesses, including in response to Form Interrogatories served by Defendants on – unbelievably – attorney-client privilege grounds:[3]

INTERROGATORY NO. 12.1:

State the name, ADDRESS, and telephone number of each individual:

(a) who witnessed the INCIDENT or the events occurring immediately before or after the INCIDENT;

(b) who made any statement at the scene of the INCIDENT;

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[3] Plaintiff's lawyer at the time, Barry Rothman, died unexpectedly. By the time replacement counsel was retained, the time to file a motion to compel had expired.

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(c) who heard any statements made about the INCIDENT by any individual at the scene;

(d) who YOU OR ANYONE ACTING ON YOUR BEHALF claim has knowledge of the INCIDENT (except for expert witnesses covered by Code of Civil Procedure § 2034).

PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 12.1:

In addition to the foregoing objections, Plaintiff objects to this interrogatory on the grounds that it seeks information that is protected from disclosure by the attorney-client privilege and the attorney work product doctrine. *Nacht & Lewis Architects Inc. v. Superior Court*, (1996) 47 Cal.App. 4th 214.

Defendants, of course, should not be penalized for failing to identify anticipated rebuttal witnesses, prior to Plaintiff's identification of its witnesses in its Witness List on the eve of trial.

Dated: October 30, 2019

VENABLE LLP

By _____
Ellyn S. Garofalo
Amir Kaltgrad
Attorneys for Defendants
HOLOGRAM USA, INC., ALKI DAVID PRODUCTIONS, INC., AND FILMON.TV, INC.

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DECLARATION OF ELLYN S. GAROFALO

I, Ellyn S. Garofalo, declare as follows:

1. I am an attorney licensed to practice in the State of California. I am a partner with Venable LLP, counsel of record for Defendants Hologram USA, Inc., Alki David Productions, Inc. and FilmOn TV, Inc. As such, I am competent to testify to the matters set forth herein.

2. On September 19, 2019, I caused documents to be produced that were responsive to document requests propounded by Plaintiff Mahim Khan. The documents were produced after Plaintiff prevailed on a motion to compel. Prior to production, I had the documents Bates stamped to indicate the particular defendant producing the document, and a number by which the document could be identified as that produced by a defendant.

3. I have reviewed the documents that Plaintiff seeks to exclude in her Notice of Evidence Subject to Court's Grant of Plaintiff's Motion in Limine to Exclude Third Party Witnesses and Documents Not Disclosed or Produced in Discovery. I can tell from the Bates Nos. that these are documents that were produced to Plaintiff, in response to the enumerated discovery requests.

4. In addition, I caused a second set of documents to be produced to Plaintiff on October 21 and 22, 2019. These documents were not called for in discovery, but relate to purported 'me too' witnesses. Plaintiff first identified her "me too" witnesses on an October 16, 2019 Witness List. The documents produced by Defendants on October 21, 2019, are rebuttal evidence, that may be used to cross-examine the newly identified 'me too' witnesses. These documents became relevant only after the "me too" witnesses were identified in Plaintiff October 16, 2019 Witness List.

5. In discovery, and prior to her Witness List, Plaintiff refused to identify any witnesses. In her response to Form Interrogatory No. 12.1, Plaintiff asserted the attorney-client privilege as a reason to withhold the identity of her witnesses. At the time, Defendants were represented by Barry Rothman, who died unexpectedly. The time to move to compel responses to Interrogatory No. 12.1 expired before Defendants retained me to replace Ms. Rothman.

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6. On October 23, 2019, Plaintiff emailed a proposed Exhibit List to my office. After reviewing the Exhibit List, I signed the document and returned it to Plaintiff's counsel on the understanding that it would be filed with the Court.

7. The Exhibit List that Plaintiff filed with the Court is not the Exhibit List I signed. The filed Exhibit List (the "Forged List") includes a reference to a physician's notes which was not included in the Exhibit List I signed, and deletes at least three of Defendants' exhibits that were included in the Exhibit List I signed.

8. It appears that Plaintiff removed my signature page from the Exhibit List I approved, and attached it to the Exhibit List Plaintiff filed. The filed list, was not provided to me or any other person in my office, before it was filed with the Court. I did not authorize Plaintiff's counsel to attach my signature page to filed Exhibit List.

9. I was unable to be in Court on Monday, October 28, 2019 due to an evacuation caused by the Getty fire. I understand that Plaintiff took advantage of my absence to fail to correct the Court's impression that I signed and approved the filed Exhibit List. This is false. A true and correct copy of the Exhibit List I signed, with the transmittal email to Plaintiff's counsel is attached and incorporated as Exhibit A hereto.

10. A true and correct copy of the Exhibit List filed by Plaintiff, with my signature page attached, is attached and incorporated as Exhibit B hereto.

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

Executed on October 30, 2019, at Los Angeles, California.

Ellyn S. Garofalo

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EXHIBIT "A"

Khatchikian, Rose

From: Khatchikian, Rose
Sent: Friday, October 25, 2019 3:32 PM
To: DLeal (DLeal@amglaw.com); Nathan Goldberg; Renee Mochkatel; DSpencer@amglaw.com
Cc: Garofalo, Ellyn S.; Kaltgrad, Amir; Angie Paz
Subject: RE: 139167.491786 Khan v Hologram USA, Inc, et al. (BC654017)
Attachments: Joint Exhibit List.pdf; Joint Witness List.pdf; Index of Joint and Disputed Jury Instructions.pdf; Joint and Disputed Jury Instructions.pdf

Attached are the four joint documents. Please forward the fully executed and conformed copies once you receive them back from the court.

Than kyou.

Rose R. Khatchikian
Legal Administrative Assistant to Ellyn S. Garofalo and Amir Kaltgrad
Venable LLP
t 310.229.0357 | f 310.229.9901
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Akaltgrad@Venable.com
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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: BC 654017 Hon. Michelle Williams Court - Dept. 74 **JOINT EXHIBIT LIST** Trial Date: October 28, 2019 Time: 10:00 a.m. Dept: 74

TO THE COURT AND ALL ATTORNEYS OF RECORD:

Plaintiff Mahim Khan and Defendants Hologram USA, Inc., Alki David Productions, Inc., Filmon TV, Inc., and Alkiviades David by and through their respective attorneys of record hereby submit their Joint Proposed Exhibit List. Plaintiff and Defendants reserve the right to amend their Exhibit List or add additional documentary evidence to either debut evidence proffered by the other party, including to impeach witnesses as necessary.

PLAINTIFF'S EXHIBITS

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
100.	Mahim Khan's Resume FILMON0000013				
101.	09/24/14 Alki David Productions Khan paychex form ADP0000048				
102.	09/29/14 FilmOn TV and Mahim Khan Deal Memo FILMON0000021-24				
103.	09/29/14 Non-Disclosure Agreement FILMON0000025-27				
104.	12/23/14 e-mail from Alki David to Mahim Khan re MAHI KAT???? MK0001				
105.	Khan Insurance Info Alki David Productions 05/12/15 ADP0000153				
106.	06/29/15 Khan's Salary Addendum FilmOnTV Inc. FILMON0000002				
107.	7/8/15 E-mail from Yelena Calendar to employees re: Sick Leave Law MK0002-0004				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
108.	7/29/15 and 7/30/15 e-mails from Alki David to Mahim Khan and from Yelena Calendar re filmonstore.com MK0005-0006				
109.	8/28/15 e-mail from Mahim Khan to Gary Shoefield and reply from Shoefield MK0007				
110.	9/17/15 text messages between Mahim Khan and Britta Garsow MK0008-0013				
111.	9/18/15 text messages between Mahim Khan and Britta Garsow MK0014-0017				
112.	9/19/15 text messages between Mahim Khan and Britta Garsow MK0018-0025				
113.	9/20/15 text messages between Mahim Khan and Britta Garsow MK0026-0028				
114.	10/1; 10/2; 10/3; 10/5/15 text messages between Mahim Khan and Britta Garsow MK0029-0033				
115.	10/1/15 E-mail from Mahim Khan to Gary Shoefield and Yelena Calendar FILMON0000020				
116.	10/1/15 E-mail from Mahim Khan to Shoefield and Calendar; and response from Calendar MK0034-0035				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
117.	10/1/15 text message from Alki David to Mahim Khan MK0036				
118.	10/1-10/2/15 text messages between Mahim Khan and Masha Netsvetaeva MK0037-0038				
119.	10/1/15; 10/3/15 and 10/8/15 text messages between Mahim Khan and Gary Shoefield MK0039				
120.	10/2/15 Missed FaceTime call from Alki David MK0040				
121.	10/2/15; 10/5/15 text messages between Mahim Khan and Yelena Calendar MK0041				
122.	10/5/15 text message between David Nussbaum and Mahim Khan MK0042				
123.	Instagram Post by Alki David and message to Mahim Khan Oct 2015 MK0043-0044				
124.	Picture/poster: "Her-ASS 'We Will Give You Just The Tip' HR Headquarters Alli Botto Janel Bauer" MK0045				
125.	Instagram Post by Alli Botto re: "Her-Ass" MK0046				
126.	Instagram story video post by Alli Botto 10/4/19				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
127.	Mahim Khan Photographs				
128.	Correspondence between Alexander, Krakow & Glick and Barry Rothman MK0047-0108				
129.	5/1/17 Cross Complaint by Alkiviades David v. Mahim Khan, Tracy Fehr, Alexander Krakow & Glick				
130.	CV - Dr. Anthony Reading				
131.	CV - Stephanie Rizzardi				
132.	Paycheck copies; pay stubs; W-2 Mahim Khan MK0109-0120				
133.	Alki David Instagram post "#Fuckmetoo gloria.allred: David Depo vol. 2, Exh. 26)				
134.	Alki David Instagram post "#WHYME": David Depo vol. 2, Exh. 28				
135.	Alki David's instagram post dated January 2, 2016 titled "When you play with your vagina for the first time. (David Depo, vol. 2, Exhibit 7)				
136.	Alki David's instagram post of photo wearing wife's shorts - Fuck Off (David Depo, vol. 2, Exhibit 9) Dated June 28, 2015				
137.	Alki David's instagram photo post (David Depo, vol. 2, Exhibit 10)				
138.	Photo of Alki David in the gym with an erect penis (David Depo, vol. 2, Exhibit 11)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
139.	Alki David's instagram post of two naked men having sex (David Depo, vol. 2, Exhibit 13)				
140.	Alki David's instagram post titled "Tag a Mate That Loves Cupcakes" (David Depo, vol. 2, Exhibit 14)				
141.	Alki David instagram post of a picture of a pig with large testicles (David Depo, vol. 2, Exhibit 15)				
142.	Alki David instagram post of a picture of David and woman (David Depo, vol. 2, Exhibit 16)				
143.	Alki David instagram post of picture of David in the bath with hand up in the air and the other is taking a photo (David Depo, vol. 2, Exhibit 17)				
144.	Picture of stripper and someone else - Kim's birthday party (David Depo, vol. 2, Exhibit 19)				
145.	Picture of candy and box of condom (David Depo, vol. 2, Exhibit 20)				
146.	Picture of Alki David taken by Layla - posted on instagram (David Depo, vol. 2, Exhibit 23)				
147.	Alki David's instagram post of him holding a sign that says "Fucker In Charge of you fucking fucks" (David Depo, vol. 2, Exhibit 24) Dated February 22, 2017				
148.	Alki David's instagram post #Fuckmetoo (David Depo, vol. 2, Exhibit 27)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
149.	Law360 article 10/11/19 - statement by Alki David				
150.	11/6/12 Complaint: Monica D'Onofrio v. Alki David Productions, Inc., Filmon.com Inc., and Alkiviades David, BC 495165				
151.	6/2/16 Complaint: Mary Rizzo v. Alkiviades David; Anakando Media Holdings, Inc., Filmon Media Holdings Inc., Anakando Media Group USA				
152.	2/2/17 Complaint: Elizabeth Taylor and Chastity Jones v Alkiviades David et al BC 649025				
153.	Jones v. Alkiviades David et al. Amended Judgment on Special Verdict Upon Acceptance of Remittitur 9/26/19				
154.	1/6/17 First Amended Complaint Lauren Reeves v. Hologram USA, Inc. Alki David Productions, Inc., Alkiviades David BC 643099				
155.	Reeves v. Hologram USA, Inc. et al. Special Verdict (Phase I) 10/11/19 and Special Verdict (Phase II) 10/15/19				
156.	11 second segment from "Lord of the Freaks; There's a Madness to his Method"				
157.	Trailer from "Lord of the Freaks"				
158.	Video of Alkiviades David - "Mangina"				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
159.	Video of Alkiviades David "apples/banana". Posted October 17, 2016				
160.	Photo titled "2 Girls, 1 cup – Cake"				
161.	10/18/19 Alki David Instagram story video				
162.	U.S. Securities and Exchange Commission, Form A-1 for Hologram USA Networks Inc. Filed on 3/13/18				
163.	Hologram USA Initial Public Offering 1/18				
164.	U.S. Securities and Exchange Commission, Form S-1 Registration Statement for Fotv Media Networks Inc., Filed 8/12/16				
165.	FilmOn TV Networks Code of Ethics and Business Conduct Filed With U.S. Securities and Exchange Commission 8/12/16				
166.	FilmOn TV Networks Code of Ethics for CEO and Senior Financial Officers Filed With U.S. Securities and Exchange Commission 8/12/16				
167.	U.S. Securities and Exchange Commission, Form 10-Q Quertely Report for Period Ending 6/30/16				
168.	U.S. Securities and Exchange Commission, Form FWP FOTV Media Networks, Inc. Filing Under Securities Act Rule 163/433 of Free Writing Prospectuses. Submitted 9/20/16				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
169.	9/27/19 Complaint Case no. CV09013: Securities and Exchange Commission Against Alkiviades David and Hologram USA Networks Inc.				
170.	FilmOn Policies and Procedures FILMON0000054-56				
171.	FilmOn TV Sexual Harassment Policy FILMON0000040-41				
172.	FillmOn TV Sexual Harassment Policy FILMON0000063-64				
173.	FilmOn Policies and Procedures FILMON0000065-67				
174.	FilmOn Policies and Procedures FILMON0000068-70				
175.	FilmOn Company Policies and Procedures FILMON0000071-73				
176.	Password Construction Guidelines (updated Jan 2016) FILMON0000045-47				
177.	Password Construction Guidelines updated Jan. 2016 FILMON0000060-62				
178.	Password Construction Guidelines updated Jan. 2016 FILMON0000074-76				
179.	Email Policy updated Jan. 2016 FILMON0000051-53				
180.	Email Policy - updated Jan. 2016 FILMON0000057-59				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
181.	Employee List 08/29/14 ADP0000019-21				
182.	08/29/14 Employees ADP0000042-44				
183.	Alki David Productions Payroll Info 12/21/14 ADP 0000029				
184.	FilmOn and Alki David Productions 01/02/15 payroll info ADP0000025-29				
185.	Alki David Productions Salary Info 03/27/15 ADP0000037-38				
186.	FilmOn Employee Salary Info 03/27/15 ADP0000039				
187.	Alki David Productions and FilmOn TV 03/27/15 check date ADP0000040-41				
188.	Payroll Info Blue Velvet Productions ADP0000022-24				
189.	Blue Velvet Productions/FilmOn TV ADP0000045-47				
190.	Hologram USA, Inc's Response to Plaintiff's Request for Production of Documents, (Set One) dated December 19, 2018				
191.	Hologram USA, Inc.'s Response to Plaintiff's Special Interrogatories, (Set One) dated December 19, 2018				
192.	Hologram USA, Inc.'s Response to Plaintiff's Form Interrogatories - General (Set One) dated December 19, 2018				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
193.	Hologram USA, Inc.'s Response to Plaintiff's Form Interrogatories - Employment Law (Set One) dated December 19, 2018				
194.	Alki David Productions, Inc.'s Response to Plaintiff's Request for Production of Documents, Set No. 1 dated December 19, 2018				
195.	Alki David Productions, Inc.'s Response to Plaintiff's Special Interrogatories, Set No. 1 dated December 19, 2018				
196.	Alki David Productions, Inc.'s Response to Plaintiff's Form Interrogatories - General, Set One dated December 19, 2018				
197.	Alki David Productions, Inc.'s Response to Plaintiff's Form Interrogatories - Employment Law, Set One dated December 19, 2018				
198.	Alkiviades David's Response to Plaintiff's Request for Production of Documents, Set No. 1 dated December 19, 2018				
199.	Alkiviades David's Response to Plaintiff's Special Interrogatories, Set No. 1 dated December 19, 2018				
200.	Alkiviades David's Response to Plaintiff's Form Interrogatories - General, Set One dated December 19, 2018				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
201.	Alkiviades David's Response to Plaintiff's Form Interrogatories - Employment Law, Set One dated December 19, 2018				
202.	FilmOn TV, Inc.'s Response to Plaintiff's Request for Production of Documents, Set No. 1 dated December 19, 2018				
203.	FilmOn TV, Inc.'s Response to Plaintiff's Special Interrogatories, Set No. 1 dated December 19, 2018				
204.	FilmOn TV, Inc.'s Response to Plaintiff's Form Interrogatories - General, Set No. 1 dated December 19, 2018				
205.	FilmOn TV, Inc.'s Response to Plaintiff's Form Interrogatories - Employment Law, Set No. 1 dated December 19, 2018				
206.	Hologram USA, Inc.'s Supplemental Responses to Plaintiff's Request for Production of Documents, Set No. 1 dated February 19, 2019				
207.	Hologram USA, Inc.'s Supplemental Responses to Plaintiff's Special Interrogatories, Set No. 1 dated February 19, 2019				
208.	Hologram USA, Inc.'s Supplemental Response to Plaintiff's Form Interrogatories - General, Set One dated February 25, 2019				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
209.	Hologram USA, Inc.'s Supplemental Response to Plaintiff's Form Interrogatories - Employment Law, Set One dated February 25, 2019				
210.	Alki David Productions, Inc.'s Supplemental Responses to Plaintiff's Request for Production of Documents, Set No. 1 dated February 19, 2019				
211.	Alki David Productions, Inc.'s Supplemental Responses to Plaintiff's Special Interrogatories, Set No. 1 dated February 19, 2019				
212.	Alki David Productions, Inc.'s Supplemental Response to Plaintiff's Form Interrogatories - General, Set One dated February 25, 2019				
213.	Alki David Productions, Inc.'s Supplemental Response to Plaintiff's Form Interrogatories, Employment Law, Set One dated February 25, 2019				
214.	Alkiviades David's Supplemental Responses to Plaintiff's Request for Production of Documents, Set No. 1 dated February 19, 2019				
215.	Alkiviades David's Supplemental Responses to Plaintiff's Special Interrogatories, Set No. 1 dated February 19, 2019				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
216.	Alkiviades David's Supplemental Response to Plaintiff's Form Interrogatories - General, Set One dated February 25, 2019				
217.	Alkiviades David's Supplemental Response to Plaintiff's Form Interrogatories - Employment Law, Set One dated February 25, 2019				
218.	FilmOn TV, Inc.'s Supplemental Responses to Plaintiff's Request for Production of Documents, Set No. 1 dated February 19, 2019				
219.	FilmOn TV, Inc.'s Supplemental Responses to Plaintiff's Special Interrogatories, Set No. 1 dated February 19, 2019				
220.	FilmOn TV, Inc.'s Supplemental Responses to Plaintiff's Form Interrogatories - General, Set One dated February 25, 2019				
221.	FilmOn TV, Inc.'s Supplemental Responses to Plaintiff's Form Interrogatories - Employment Law, Set One dated February 25, 2019				
222.	Alkiviades David's Response to Plaintiff's Request for Admissions, Set No. 1 dated April 12, 2019				
223.	Hologram USA, Inc.'s Response to Plaintiff's Request for Production of Documents, Set No. 2 dated July 12, 2019				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
224.	Alki David Productions, Inc.'s Response to Plaintiff's Request for Production of Documents, Set No. 2 dated July 12, 2019				
225.	Alkiviades David's Response to Plaintiff's Request for Production of Documents, Set No. 2 dated July 12, 2019				
226.	FilmOn TV, Inc.'s Response to Plaintiff's Request for Production of Documents, Set No. 2 dated July 12, 2019				
227.					
228.					
229.					
230.					
231.					
232.					

DEFENDANT'S EXHIBIT LIST

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
501.	Mahim Khan FilmOn.TV Employee File (FILMON0000003-20)				
502.	Mahim Khan Employee Deal Memo, dated September 29, 2014 (FILMON0000021-27)				
503.	Alki David Productions Inc. Team Member Handbook, approved 11/15/2012 (Alki David Productions 0000050-0000152)				
504.	2016 FilmOn Policies and Procedures (AD00245-AD000247)				
505.	FilmOn.TV, Inc. and Alki David Productions, Inc. Draft Policies and Procedures, undated (FILMON0000065-067)				
506.	FilmOn.TV Sexual Harassment Policy (FILMON0000063-064)				
507.	FilmOn Draft Email Policy (FILMON0000051-053)				
508.	FOTV Media Networks, Inc. Employee Handbook dated 11/22/2017 (AD00248-AD00306)				
509.	Plaintiff Mahim Khan's Objections And Responses To Defendant Hologram USA, INC.'s First Set Of Form Interrogatories - General, served June 28, 2017				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
510.	Lauren Reeves Instagram post: "Real quick, is my boner showing?" dated 05/28/2014 (AD00307)				
511.	Lauren Reeves Twitter post: "It gets drunk out early now" dated 11/06/2015 (AD00308)				
512.	Lauren Reeves Instagram post: "I put together a PowerPoint..." dated 1/16/2016 (AD00309)				
513.	Lauren Reeves Twitter post: "I picked this nectarine up..." dated 05/29/2016 (AD00310)				
514.	Lauren Reeves Twitter post: "Goodbye to a girl's best friend..." dated 06/28/2016 (AD00311-AD00321)				
515.	Lauren Reeves Twitter post: "My sweet dog..." dated 06/28/2016 (AD00322)				
516.	Lauren Reeves Twitter post: "How depressed are you..." dated 08/01/2016 (AD00323)				
517.	Lauren Reeves Twitter post: "Suicide is never the answer..." dated 08/03/2016 (AD00324)				
518.	Lauren Reeves Twitter post: "Just heard about a guy..." dated 8/29/2016 (AD00325)				
519.	Lauren Reeves Twitter post: "Me: '...then I overheard these girls..." dated 8/29/2016 (AD00326)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
520.	Lauren Reeves Twitter post: "Grab our pussy" dated 10/07/2016 (AD00327)				
521.	Lauren Reeves Twitter post: "I've made some mistakes" dated 11/3/2016 (AD00328)				
522.	Lauren Reeves Twitter post: "Legal Contract: Thanksgiving" dated 11/14/2016 (AD00329-AD00331)				
523.	Lauren Reeves Twitter post: "Everybody be quiet!" dated 12/26/2016 (AD00332)				
524.	Lauren Reeves Twitter post: "Hey 2016, you also killed my dog..." dated 12/30/2016 (AD00333)				
525.	Lauren Reeves Twitter post: "Wow, Donald Trump has completely ruined..." dated 01/10/2017 (AD00334)				
526.	Lauren Reeves Twitter post: "Watching Tombstone on my flight..." dated 02/26/2017 (AD00335)				
527.	Lauren Reeves Twitter post: "To be fair, who HASN'T lied under oath..." dated 03/01/2017 (AD00336)				
528.	Lauren Reeves Twitter post: "One time I went without health insurance..." dated 03/07/2017 (AD00337)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
529.	Lauren Reeves Twitter post: "Have you or a loved one suffered unfair prejudice..." dated 04/11/2017 (AD00338)				
530.	Lauren Reeves Twitter post: @realDonaldTrump - I can't help but notice...dated 05/08/2017 (AD00339)				
531.	Lauren Reeves Twitter post: "Thank you Donald Trump for inspiring…" dated 05/22/2017 (AD00340)				
532.	Lauren Reeves Twitter post: "Beautiful sunset tonight" dated 07/09/2017 (AD00341)				
533.	Lauren Reeves Twitter post: "I don't want to picture Steve Bannon…" dated 07/27/2017 (AD00342)				
534.	Lauren Reeves Twitter post: "Second night in a row my dog…" dated 08/23/2017 (AD00343)				
535.	Lauren Reeves Twitter post: "I'm not a big birthday person..." dated 09/04/2017 (AD00344)				
536.	Lauren Reeves Twitter post: "I'm not writing a #MeToo post…" dated 10/17/2017 (AD00345)				
537.	Lauren Reeves Instagram post: "Desk sign dated 10/15/2018 (AD00346)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
538.	Screen Shot Of Text Message With Chasity Jones (1:22 p.m.) (AD00001)				
539.	Screen Shot Of Text Message With Chasity Jones (5:51 p.m.) (AD00002)				
540.	Screen Shot Of Text Message With Chasity Jones (5:30 p.m.) (AD00003)				
541.	Screen Shot Of Text Message With Chasity Re: Going Home (AD00004)				
542.	Declaration of Chastity Jones (AD00005-AD00006)				
543.	Screen Shot of Text Message to Mary Rizzo (AD00007-AD00014)				
544.	Screen Shot of Text Message to Mary Rizzo (AD00011-AD00012)				
545.	Text Messages from Mary Rizzo to Chasity Jones (AD00013-AD00020)				
546.	Screen Shot of March 17, 2015 Instagram Post by chasityjones (AD00021)				
547.	Screen Shot of March 10, 2015 Instagram Post by chasityjones (AD00022)				
548.	Handwritten Message from Chasity Jones to Alki David (AD00023)				
549.	Screen Shot Of Text Messages To "Carl Manager" (AD00024)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
550.	Screen Shot of Text Messages to "MK" (AD00032-AD00047)				
551.	Screen Shot Of January 21, 2015 Instagram Post by eliztaylor (AD00048)				
552.	February 3, 2016 Letter from Department of Fair Employment and Housing Re: DFEH Matter Number 739969-207321 with enclosures (AD00049-AD00056)				
553.	Screen Shot Of Text Messages between Mary Rizzo and Elizabeth Taylor (3:19 p.m.) (AD00057-AD00059)				
554.	Screen Shot Of Text Messages between Mary Rizzo and Chasity Jones (12:41 a.m.) (AD00060-AD00061)				
555.	Screen Shot Of Text Messages between Mary Rizzo and Chasity Jones (12:39 a.m.) (AD00062)				
556.	Screen Shot Of Text Messages between Mary Rizzo and Chasity Jones (8:27 a.m.) (AD00063)				
557.	Screen Shot Of Text Messages between Mary Rizzo and Chasity Jones (5:00 p.m.) (AD00064)				
558.	Screen Shot Of Text Messages between Mary Rizzo and Chasity Jones (8:49 p.m.) (AD00065)				
559.	Screen Shot Of Text Messages between Mary Rizzo and Chastity Jones (9:49 a.m.) (AD00066-AD00067)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
560.	Screen Shot Of Text Messages between Mary Rizzo and Chasity Jones at chasityjones@yahoo.com (AD00068)				
561.	Screen Shot Of December 30, 2016 Instagram Post by chasityjones (AD00069)				
562.	Screen Shot Of February 16, 2018 Instagram Post by chasityjones (AD00070)				
563.	Screen Shot Of January 2, 2018 Instagram Post by chasityjones (AD00071)				
564.	Screen Shot Of April 1, 2018 Instagram Post by chasityjones (AD00072)				
565.	Screen Shot Of August 20, 2018 Instagram Post by chasityjones (AD00073)				
566.	January 31, 2017 Letter from Department of Fair Employment and Housing Re: DFEH Matter Number 852881-272913 with enclosures (AD00074-AD00081)				
567.	Screen Shot Of August 9, 2016 Instagram Post by eliztaylor (AD00082)				
568.	Screen Shot Of August 24, 2016 Instagram Post by eliztaylor (AD00083)				
569.	Screen Shot Of August 28, 2016 Instagram Post by eliztaylor (AD00084)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
570.	Screen Shot Of September 2, 2016 Instagram Post by eliztaylor (AD00085)				
571.	Screen Shot Of April 10, 2017 Instagram Post by eliztaylor (AD00086)				
572.	Screen Shot Of August 4, 2017 Instagram Post by eliztaylor (AD00087)				
573.	Screen Shot of August 24, 2017 (AD00088)				
574.	Screen Shot Of August 25, 2017 Instagram Post by eliztaylor (AD00089)				
575.	Screen Shot Of August 31, 2017 Instagram Post by eliztaylor (AD00090)				
576.	Screen Shot Of September 5, 2017 Instagram Post by eliztaylor (AD00091)				
577.	Screen Shot Of September 30, 2017 Instagram Post by eliztaylor (AD00092)				
578.	Screen Shot Of October 25, 2017 Instagram Post by eliztaylor (AD00093)				
579.	Screen Shot Of December 27, 2017 Instagram Post by eliztaylor (AD00094)				
580.	Screen Shot Of January 6, 2018 Instagram Post by eliztaylor (AD00095)				
581.	Screen Shot Of April 9, 2018 Instagram Post by eliztaylor (AD00096)				
582.	Screen Shot Of May 8, 2018 Instagram Post by eliztaylor (AD00097)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
583.	Screen Shot Of July 13, 2018 Instagram Post by eliztaylor (AD00098)				
584.	Screen Shot Of October 26, 2018 Instagram Post by eliztaylor (AD00099)				
585.	Screen Shot Of December 4, 2018 Instagram Post by eliztaylor (AD00100)				
586.	Screen Shot Of December 9, 2018 Instagram Post by eliztaylor (AD00101)				
587.	Screen Shot Of December 9, 2018 Instagram Post by eliztaylor (AD00102)				
588.	Screen Shot Of December 17, 2018 Instagram Post by eliztaylor (AD00103)				
589.	Screen Shot Of January 13, 2019 Instagram Post by eliztaylor (AD00104)				
590.	Screen Shot Of January 17, 2019 Instagram Post by eliztaylor (AD00105)				
591.	Screen Shot Of April 20, 2019 Instagram Post by eliztaylor (AD00106)				
592.	Video Entitled "LORD of the FREAKS Official Red Band Trailer" Link: https://youtu.be/iz3kaMuyyk8 (AD00107)				
593.	February 1, 2017 Letter from Dept. of Fair Employment and Housing Re: DFEH Matter Number 852606-272658 (AD00108-AD00115)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
594.	Screen Shot Of December 24, 2018 Instagram Post by chastityjones (AD00116)				
595.	Screen Shot Of April 8th Instagram Post by chasityjones (AD00117)				
596.	Screen Shot Of February 17th Instagram Post by chasityjones (AD00118)				
597.	Screen Shot Of February 13th Instagram Post by chasityjones (AD00119)				
598.	Screen Shot Of February 2nd Instagram Post by chasityjones (AD00120)				
599.	Screen Shot Of January 1st Instagram Post by chasityjones (AD00121)				
600.	Screen Shot Of December 16, 2018 Instagram Post by chasityjones (AD00122)				
601.	Screen Shot Of December 7, 2018 Instagram Post by chasityjones (AD00123)				
602.	Screen Shot Of November 17, 2018 Instagram Post by chasityjones (AD00124)				
603.	Screen Shot Of November 5, 2018 Instagram Post by chasityjones (AD00125)				
604.	Screen Shot Of October 31, 2018 Instagram Post by chasityjones (AD00126)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
605.	Screen Shot Of October 19, 2018 (AD00127)				
606.	Screen Shot Of October 13, 2018 Instagram Post by chasityjones (AD00128)				
607.	Screen Shot Of October 1, 2018 Instagram Post by chasityjones (AD00129)				
608.	Screen Shot Of September 9, 2018 Instagram Post by chasityjones (AD00130)				
609.	Screen Shot Of August 25, 2018 Instagram Post by chasityjones (AD00131)				
610.	Screen Shot Of July 24, 2018 Instagram Post by chasityjones (AD00132)				
611.	Screen Shot Of July 22, 2018 Instagram Post by chasityjones (AD00133)				
612.	Screen Shot Of April 20, 2018 Instagram Post by chasityjones (AD00134)				
613.	Screen Shot Of February 17, 2018 Instagram Post by chasityjones (AD00135)				
614.	Screen Shot Of January 11, 2018 Instagram Post by chasityjones (AD00136)				
615.	Screen Shot Of January 11, 2018 Instagram Post by chasityjones (AD00137)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
616.	Screen Shot Of January 11, 2018 Instagram Post by chasityjones (AD00138)				
617.	Screen Shot Of November 8, 2016 Instagram Post by chasityjones (AD00139)				
618.	Screen Shot Of October 28, 2016 Instagram Post by chasityjones (AD00140)				
619.	Diagram of Hologram Presentation (AD00141)				
620.	Foxwood / Hologram agreement by Chasity Jones (dated March 23, 2016) (AD00142-AD00150)				
621.	Elizabeth Taylor employee file for FilmOn.TV (AD00151-AD00175)				
622.	Chasity Jones employee file for FilmOn.TV (AD00176-AD00200)				
623.	Elizabeth Taylor email to Yelena Calendar (dated June 1, 2015) (AD00201-AD00206)				
624.	Screen Shot Of Text Messages between Elizabeth Taylor and Carl Dawson (AD00207-AD00214)				
625.	Screen Shot Of Text Messages between Elizabeth Taylor and Mahim Khan (MK) (AD00215-AD00230)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
626.	Screen Shot Of Text Messages between Chastity Jones and Mary Rizzo (AD00231-AD00244)				
627.	Screen Shot of March 14, 2019 Instagram Post by eliztaylor; link: https://www.instagram.com/p/BvA9DKbF2Ja/?utm_source=ig_web_copy_link" (AD00347)				
628.	Screen Shot of May 5, 2019 Instagram Post by chasityjones; Link: https://www.instagram.com/p/BxFtrFonpXo/?utm_source=ig_web_copy_link (AD00348)				
629.	Instagram video posted on May 7, 2019 by chasityjones; Link: https://www.instagram.com/p/BxK-qr1lxoP/?utm_source=ig_web_copy_link (AD00349)				
630.	Screen Shot of May 16, 2019 Instagram Post by chasityjones; Link: https://www.instagram.com/p/Bxi4sAQAcyB/?utm_source=ig_web_copy_link (AD00350)				
631.	Screen Shot of July 16, 2019 Instagram Post by chasityjones; Link: https://www.instagram.com/p/Bz_MXFzlg2X/?utm_source=ig_web_copy_link (AD00351)				
632.	Instagram video posted on July 31, 2019 by chasityjones; Link: https://www.instagram.com/p/B0mgTk8A4FG/?utm_source=ig_web_copy_link (AD00352)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
633.	Screen Shot of August 5, 2019 Instagram Post by chasityjones; Link: https://www.instagram.com/p/B0yf2_WA1-v/?utm_source=ig_web_copy_link (AD00353)				
634.	Screen Shot of August 7, 2019 Instagram Post by chasityjones; Link: https://www.instagram.com/p/B03tDA4ACsS/?utm_source=ig_web_copy_link (AD00354)				
635.	Screen Shot of August 13, 2019 Instagram Post by chasityjones; Link: https://www.instagram.com/p/B1HY634A62H/?utm_source=ig_web_copy_link (AD00355)				
636.	Screen Shot of September 3, 2019 Instagram Post by chasityjones; Link: https://www.instagram.com/p/B19NQjpA35Y/?utm_source=ig_web_copy_link (AD00356)				
637.	Screen Shot of September 6, 2019 Instagram Post by chasityjones; Link: https://www.instagram.com/p/B2EfbdiAD__/?utm_source=ig_web_copy_link (AD00357)				
638.	Instagram video posted on September 11, 2019 by chasityjones; Link: https://www.instagram.com/p/B2Rs0_IAUTw/?utm_source=ig_web_copy_link (AD00358)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
639.	Screen Shot of September 21, 2019 Instagram Post by chasityjones (AD00359)				
640.	Instagram video posted on October 1, 2019 by chasityjones; Link: https://www.instagram.com/p/B3Fa0cPgaS9/?utm_source=ig_web_copy_link (AD00360)				
641.	Video of Alki David playfully attacking FilmOn TV crew (AD00361)				
642.	Screenshot of photograph of Mahim Khan (AD00362)				
643.	Screenshot of Mahim Khan iMessages, dated 7/26/2015 to 11/9/2015. (AD00363)				
644.	Screenshot of Mahim Khan iMessages, dated 7/9/2015 to 7/26/2015 (AD00366)				
645.	Screenshot of Mahim Khan iMessages, dated 7/26/2015 to 10/6/2015 (AD00367)				
646.	May 2, 2016 email from Tracy L. Fehr to Mahim Khan re: five declarations (AD00365)				
647.	Screenshot of Mahim Khan Photograph (AD00364)				
648.	Screenshot of Mahim Khan Photograph (AD00368)				
649.	Screenshot of Mahim Khan Photograph (AD00369)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
650.	Screenshot of Mahim Khan Photograph (AD00370)				

DATED: October ___, 2019

ALLRED, MAROKO & GOLDBERG

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EXHIBIT “B”

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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: BC 654017

Hon. Michelle Williams Court - Dept. 74

JOINT EXHIBIT LIST

Trial Date: October 28, 2019
Time: 10:00 a.m.
Dept: 74

TO THE COURT AND ALL ATTORNEYS OF RECORD:

Plaintiff Mahim Khan and Defendants Hologram USA, Inc., Alki David Productions, Inc., Filmon TV, Inc., and Alkiviades David by and through their respective attorneys of record hereby submit their Joint Proposed Exhibit List. Plaintiff and Defendants reserve the right to amend their Exhibit List or add additional documentary evidence to either debut evidence proffered by the other party, including to impeach witnesses as necessary.

PLAINTIFF'S EXHIBITS

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
100.	Mahim Khan's Resume FILMON0000013				
101.	09/29/14 Alki David Productions Khan paychex form ADP0000048				
102.	09/29/14 FilmOn TV and Mahim Khan Deal Memo FILMON0000021-24				
103.	09/29/14 Non-Disclosure Agreement FILMON0000025-27				
104.	12/23/14 e-mail from Alki David to Mahim Khan re MAHI KAT???? MK0001				
105.	Khan Insurance Info Alki David Productions 05/12/15 ADP0000153				
106.	06/29/15 Khan's Salary Addendum FilmOnTV Inc. FILMON0000002				
107.	7/8/15 E-mail from Yelena Calendar to employees re: Sick Leave Law MK0002-0004				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
108.	7/29/15 and 7/30/15 e-mails from Alki David to Mahim Khan and from Yelena Calendar re filmonstore.com MK0005-0006				
109.	8/28/15 e-mail from Mahim Khan to Gary Shoefield and reply from Shoefield MK0007				
110.	9/17/15 text messages between Mahim Khan and Britta Garsow MK0008-0013				
111.	9/18/15 text messages between Mahim Khan and Britta Garsow MK0014-0017				
112.	9/19/15 text messages between Mahim Khan and Britta Garsow MK0018-0025				
113.	9/20/15 text messages between Mahim Khan and Britta Garsow MK0026-0028				
114.	10/1; 10/2; 10/3; 10/5/15 text messages between Mahim Khan and Britta Garsow MK0029-0033				
115.	10/1/15 E-mail from Mahim Khan to Gary Shoefield and Yelena Calendar FILMON0000020				
116.	10/1/15 E-mail from Mahim Khan to Shoefield and Calendar; and response from Calendar MK0034-0035				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
117.	10/1/15 text message from Alki David to Mahim Khan MK0036				
118.	10/1-10/2/15 text messages between Mahim Khan and Masha Netsvetaeva MK0037-0038				
119.	10/1/15; 10/3/15 and 10/8/15 text messages between Mahim Khan and Gary Shoefield MK0039				
120.	10/2/15 Missed FaceTime call from Alki David MK0040				
121.	10/2/15; 10/5/15 text messages between Mahim Khan and Yelena Calendar MK0041				
122.	10/5/15 text message between David Nussbaum and Mahim Khan MK0042				
123.	Instagram Post by Alki David and message to Mahim Khan Oct 2015 MK0043-0044				
124.	Picture/poster: "Her-ASS 'We Will Give You Just The Tip' HR Headquarters Alli Botto Janel Bauer" MK0045				
125.	Instagram Post by Alli Botto re: "Her-Ass" MK0046				
126.	Instagram story video post by Alli Botto 10/4/19				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
127.	Mahim Khan Photographs				
128.	Correspondence between Alexander, Krakow & Glick and Barry Rothman MK0047-0108				
129.	5/1/17 Cross Complaint by Alkiviades David v. Mahim Khan, Tracy Fehr, Alexander Krakow & Glick				
130.	CV - Dr. Anthony Reading				
131.	Dr. Reading documents				
132.	CV - Stephanie Rizzardi				
133.	Paycheck copies; pay stubs; W-2 Mahim Khan MK0109-0120				
134.	Alki David Instagram post "#Fuckmetoo gloria.allred: David Depo vol. 2, Exh. 26)				
135.	Alki David Instagram post "#WHYME": David Depo vol. 2, Exh. 28				
136.	Alki David's Instagram post dated January 2, 2016 titled "When you play with your vagina for the first time. (David Depo, vol. 2, Exhibit 7)				
137.	Alki David's Instagram post of photo wearing wife's shorts - Fuck Off (David Depo, vol. 2, Exhibit 9) Dated June 28, 2015				
138.	Alki David's Instagram photo post (David Depo, vol. 2, Exhibit 10)				
139.	Photo of Alki David in the gym with an erect penis (David Depo, vol. 2, Exhibit 11)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
140.	Alki David's Instagram post of two naked men having sex (David Depo, vol. 2, Exhibit 13)				
141.	Alki David's Instagram post titled "Tag a Mate That Loves Cupcakes" (David Depo, vol. 2, Exhibit 14)				
142.	Alki David Instagram post of a picture of a pig with large testicles (David Depo, vol. 2, Exhibit 15)				
143.	Alki David Instagram post of a picture of David and woman (David Depo, vol. 2, Exhibit 16)				
144.	Alki David Instagram post of picture of David in the bath with hand up in the air and the other is taking a photo (David Depo, vol. 2, Exhibit 17)				
145.	Picture of stripper and someone else - Kim's birthday party (David Depo, vol. 2, Exhibit 19)				
146.	Picture of candy and box of condom (David Depo, vol. 2, Exhibit 20)				
147.	Picture of Alki David taken by Layla - posted on Instagram (David Depo, vol. 2, Exhibit 23)				
148.	Alki David's Instagram post of him holding a sign that says "Fucker In Charge of you fucking fucks" (David Depo, vol. 2, Exhibit 24) Dated February 22, 2017				
149.	Alki David's Instagram post #Fuckmetoo (David Depo, vol. 2, Exhibit 27)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
150.	Law360 article 10/11/19 - statement by Alki David				
151.	11/6/12 Complaint: Monica D'Onofrio v. Alki David Productions, Inc., Filmon.com Inc., and Alkiviades David, BC 495165				
152.	6/2/16 Complaint: Mary Rizzo v. Alkiviades David; Anakando Media Holdings, Inc., Filmon Media Holdings Inc., Anakando Media Group USA				
153.	2/2/17 Complaint: Elizabeth Taylor and Chastity Jones v Alkiviades David et al BC 649025				
154.	Jones v. Alkiviades David et al. Amended Judgment on Special Verdict Upon Acceptance of Remittitur 9/26/19				
155.	1/6/17 First Amended Complaint Lauren Reeves v. Hologram USA, Inc. Alki David Productions, Inc., Alkiviades David BC 643099				
156.	Reeves v. Hologram USA, Inc. et al. Special Verdict (Phase I) 10/11/19 and Special Verdict (Phase II) 10/15/19				
157.	11 second segment from "Lord of the Freaks; There's a Madness to his Method"				
158.	Trailer from "Lord of the Freaks"				
159.	Video of Alkiviades David - "Mangina"				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
160.	Video of Alkiviades David "apples/banana". Posted October 17, 2016				
161.	Photo titled "2 Girls, 1 cup – Cake"				
162.	10/18/19 Alki David Instagram story video				
163.	U.S. Securities and Exchange Commission, Form A-1 for Hologram USA Networks Inc. Filed on 3/13/18				
164.	Hologram USA Initial Public Offering 1/18				
165.	U.S. Securities and Exchange Commission, Form S-1 Registration Statement for Fotv Media Networks Inc., Filed 8/12/16				
166.	FilmOn TV Networks Code of Ethics and Business Conduct Filed With U.S. Securities and Exchange Commission 8/12/16				
167.	FilmOn TV Networks Code of Ethics for CEO and Senior Financial Officers Filed With U.S. Securities and Exchange Commission 8/12/16				
168.	U.S. Securities and Exchange Commission, Form 10-Q Quartely Report for Period Ending 6/30/16				
169.	U.S. Securities and Exchange Commission, Form FWP FOTV Media Networks, Inc. Filing Under Securities Act Rule 163/433 of Free Writing Prospectuses. Submitted 9/20/16				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
170.	9/27/19 Complaint Case no. CV09013: Securities and Exchange Commission Against Alkiviades David and Hologram USA Networks Inc.				
171.	FilmOn Policies and Procedures FILMON0000054-56				
172.	FilmOn TV Sexual Harassment Policy FILMON0000040-41				
173.	FilmOn TV Sexual Harassment Policy FILMON0000063-64				
174.	FilmOn Policies and Procedures FILMON0000065-67				
175.	FilmOn Policies and Procedures FILMON0000068-70				
176.	FilmOn Company Policies and Procedures FILMON0000071-73				
177.	Password Construction Guidelines (updated Jan 2016) FILMON0000045-47				
178.	Password Construction Guidelines updated Jan. 2016 FILMON0000060-62				
179.	Password Construction Guidelines updated Jan. 2016 FILMON0000074-76				
180.	Email Policy updated Jan. 2016 FILMON0000051-53				
181.	Email Policy - updated Jan. 2016 FILMON0000057-59				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
182.	Employee List 08/29/14 ADP0000019-21				
183.	08/29/14 Employees ADP0000042-44				
184.	Alki David Productions Payroll Info 12/21/14 ADP 0000029				
185.	FilmOn and Alki David Productions 01/02/15 payroll info ADP0000025-29				
186.	Alki David Productions Salary Info 03/27/15 ADP0000037-38				
187.	FilmOn Employee Salary Info 03/27/15 ADP0000039				
188.	Alki David Productions and FilmOn TV 03/27/15 check date ADP0000040-41				
189.	Payroll Info Blue Velvet Productions ADP0000022-24				
190.	Blue Velvet Productions/FilmOn TV ADP0000045-47				
191.	Hologram USA, Inc's Response to Plaintiff's Request for Production of Documents, (Set One) dated December 19, 2018				
192.	Hologram USA, Inc.'s Response to Plaintiff's Special Interrogatories, (Set One) dated December 19, 2018				
193.	Hologram USA, Inc.'s Response to Plaintiff's Form Interrogatories - General (Set One) dated December 19, 2018				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
194.	Hologram USA, Inc.'s Response to Plaintiff's Form Interrogatories - Employment Law (Set One) dated December 19, 2018				
195.	Alki David Productions, Inc.'s Response to Plaintiff's Request for Production of Documents, Set No. 1 dated December 19, 2018				
196.	Alki David Productions, Inc.'s Response to Plaintiff's Special Interrogatories, Set No. 1 dated December 19, 2018				
197.	Alki David Productions, Inc.'s Response to Plaintiff's Form Interrogatories - General, Set One dated December 19, 2018				
198.	Alki David Productions, Inc.'s Response to Plaintiff's Form Interrogatories - Employment Law, Set One dated December 19, 2018				
199.	Alkiviades David's Response to Plaintiff's Request for Production of Documents, Set No. 1 dated December 19, 2018				
200.	Alkiviades David's Response to Plaintiff's Special Interrogatories, Set No. 1 dated December 19, 2018				
201.	Alkiviades David's Response to Plaintiff's Form Interrogatories - General, Set One dated December 19, 2018				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
202.	Alkiviades David's Response to Plaintiff's Form Interrogatories - Employment Law, Set One dated December 19, 2018				
203.	FilmOn TV, Inc.'s Response to Plaintiff's Request for Production of Documents, Set No. 1 dated December 19, 2018				
204.	FilmOn TV, Inc.'s Response to Plaintiff's Special Interrogatories, Set No. 1 dated December 19, 2018				
205.	FilmOn TV, Inc.'s Response to Plaintiff's Form Interrogatories - General, Set No. 1 dated December 19, 2018				
206.	FilmOn TV, Inc.'s Response to Plaintiff's Form Interrogatories - Employment Law, Set No. 1 dated December 19, 2018				
207.	Hologram USA, Inc.'s Supplemental Responses to Plaintiff's Request for Production of Documents, Set No. 1 dated February 19, 2019				
208.	Hologram USA, Inc.'s Supplemental Responses to Plaintiff's Special Interrogatories, Set No. 1 dated February 19, 2019				
209.	Hologram USA, Inc.'s Supplemental Response to Plaintiff's Form Interrogatories - General, Set One dated February 25, 2019				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
210.	Hologram USA, Inc.'s Supplemental Response to Plaintiff's Form Interrogatories - Employment Law, Set One dated February 25, 2019				
211.	Alki David Productions, Inc.'s Supplemental Responses to Plaintiff's Request for Production of Documents, Set No. 1 dated February 19, 2019				
212.	Alki David Productions, Inc.'s Supplemental Responses to Plaintiff's Special Interrogatories, Set No. 1 dated February 19, 2019				
213.	Alki David Productions, Inc.'s Supplemental Response to Plaintiff's Form Interrogatories - General, Set One dated February 25, 2019				
214.	Alki David Productions, Inc.'s Supplemental Response to Plaintiff's Form Interrogatories, Employment Law, Set One dated February 25, 2019				
215.	Alkiviades David's Supplemental Responses to Plaintiff's Request for Production of Documents, Set No. 1 dated February 19, 2019				
216.	Alkiviades David's Supplemental Responses to Plaintiff's Special Interrogatories, Set No. 1 dated February 19, 2019				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
217.	Alkiviades David's Supplemental Response to Plaintiff's Form Interrogatories - General, Set One dated February 25, 2019				
218.	Alkiviades David's Supplemental Response to Plaintiff's Form Interrogatories - Employment Law, Set One dated February 25, 2019				
219.	FilmOn TV, Inc.'s Supplemental Responses to Plaintiff's Request for Production of Documents, Set No. 1 dated February 19, 2019				
220.	FilmOn TV, Inc.'s Supplemental Responses to Plaintiff's Special Interrogatories, Set No. 1 dated February 19, 2019				
221.	FilmOn TV, Inc.'s Supplemental Responses to Plaintiff's Form Interrogatories - General, Set One dated February 25, 2019				
222.	FilmOn TV, Inc.'s Supplemental Responses to Plaintiff's Form Interrogatories - Employment Law, Set One dated February 25, 2019				
223.	Alkiviades David's Response to Plaintiff's Request for Admissions, Set No. 1 dated April 12, 2019				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
224.	Hologram USA, Inc.'s Response to Plaintiff's Request for Production of Documents, Set No. 2 dated July 12, 2019				
225.	Alki David Productions, Inc.'s Response to Plaintiff's Request for Production of Documents, Set No. 2 dated July 12, 2019				
226.	Alkiviades David's Response to Plaintiff's Request for Production of Documents, Set No. 2 dated July 12, 2019				
227.	FilmOn TV, Inc.'s Response to Plaintiff's Request for Production of Documents, Set No. 2 dated July 12, 2019				
228.					
229.					
230.					
231.					
232.					
233.					

DEFENDANT'S EXHIBIT LIST

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
501.	Mahim Khan FilmOn.TV Employee File (FILMON0000003-20)				
502.	Mahim Khan Employee Deal Memo, dated September 29, 2014 (FILMON0000021-27)				
503.	Alki David Productions Inc. Team Member Handbook, approved 11/15/2012 (Alki David Productions 0000050-0000152)				
504.	2016 FilmOn Policies and Procedures (AD00245-AD000247)				
505.	FilmOn.TV, Inc. and Alki David Productions, Inc. Draft Policies and Procedures, undated (FILMON0000065-067)				
506.	FilmOn.TV Sexual Harassment Policy (FILMON0000063-064)				
507.	FilmOn Draft Email Policy (FILMON0000051-053)				
508.	FOTV Media Networks, Inc. Employee Handbook dated 11/22/2017 (AD00248-AD00306)				
509.	Plaintiff Mahim Khan's Objections And Responses To Defendant Hologram USA, INC.'s First Set Of Form Interrogatories - General, served June 28, 2017				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
510.	Lauren Reeves Instagram post: "Real quick, is my boner showing?" dated 05/28/2014 (AD00307)				
511.	Lauren Reeves Twitter post: "It gets drunk out early now" dated 11/06/2015 (AD00308)				
512.	Lauren Reeves Instagram post: "I put together a PowerPoint..." dated 1/16/2016 (AD00309)				
513.	Lauren Reeves Twitter post: "I picked this nectarine up..." dated 05/29/2016 (AD00310)				
514.	Lauren Reeves Twitter post: "Goodbye to a girl's best friend..." dated 06/28/2016 (AD00311-AD00321)				
515.	Lauren Reeves Twitter post: "My sweet dog..." dated 06/28/2016 (AD00322)				
516.	Lauren Reeves Twitter post: "How depressed are you..." dated 08/01/2016 (AD00323)				
517.	Lauren Reeves Twitter post: "Suicide is never the answer..." dated 08/03/2016 (AD00324)				
518.	Lauren Reeves Twitter post: "Just heard about a guy..." dated 8/29/2016 (AD00325)				
519.	Lauren Reeves Twitter post: "Me: '...then I overheard these girls..." dated 8/29/2016 (AD00326)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
520.	Lauren Reeves Twitter post: "Grab our pussy" dated 10/07/2016 (AD00327)				
521.	Lauren Reeves Twitter post: "I've made some mistakes" dated 11/3/2016 (AD00328)				
522.	Lauren Reeves Twitter post: "Legal Contract: Thanksgiving" dated 11/14/2016 (AD00329-AD00331)				
523.	Lauren Reeves Twitter post: "Everybody be quiet!" dated 12/26/2016 (AD00332)				
524.	Lauren Reeves Twitter post: "Hey 2016, you also killed my dog..." dated 12/30/2016 (AD00333)				
525.	Lauren Reeves Twitter post: "Wow, Donald Trump has completely ruined..." dated 01/10/2017 (AD00334)				
526.	Lauren Reeves Twitter post: "Watching Tombstone on my flight..." dated 02/26/2017 (AD00335)				
527.	Lauren Reeves Twitter post: "To be fair, who HASN'T lied under oath..." dated 03/01/2017 (AD00336)				
528.	Lauren Reeves Twitter post: "One time I went without health insurance..." dated 03/07/2017 (AD00337)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
529.	Lauren Reeves Twitter post: "Have you or a loved one suffered unfair prejudice..." dated 04/11/2017 (AD00338)				
530.	Lauren Reeves Twitter post: @realDonaldTrump - I can't help but notice...dated 05/08/2017 (AD00339)				
531.	Lauren Reeves Twitter post: "Thank you Donald Trump for inspiring…" dated 05/22/2017 (AD00340)				
532.	Lauren Reeves Twitter post: "Beautiful sunset tonight" dated 07/09/2017 (AD00341)				
533.	Lauren Reeves Twitter post: "I don't want to picture Steve Bannon…" dated 07/27/2017 (AD00342)				
534.	Lauren Reeves Twitter post: "Second night in a row my dog…" dated 08/23/2017 (AD00343)				
535.	Lauren Reeves Twitter post: "I'm not a big birthday person..." dated 09/04/2017 (AD00344)				
536.	Lauren Reeves Twitter post: "I'm not writing a #MeToo post…" dated 10/17/2017 (AD00345)				
537.	Lauren Reeves Instagram post: "Desk sign dated 10/15/2018 (AD00346)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
538.	Screen Shot Of Text Message With Chasity Jones (1:22 p.m.) (AD00001)				
539.	Screen Shot Of Text Message With Chasity Jones (5:51 p.m.) (AD00002)				
540.	Screen Shot Of Text Message With Chasity Jones (5:30 p.m.) (AD00003)				
541.	Screen Shot Of Text Message With Chasity Re: Going Home (AD00004)				
542.	Declaration of Chastity Jones (AD00005-AD00006)				
543.	Screen Shot of Text Message to Mary Rizzo (AD00007-AD00014)				
544.	Screen Shot of Text Message to Mary Rizzo (AD00011-AD00012)				
545.	Text Messages from Mary Rizzo to Chasity Jones (AD00013-AD00020)				
546.	Screen Shot of March 17, 2015 Instagram Post by chasityjones (AD00021)				
547.	Screen Shot of March 10, 2015 Instagram Post by chasityjones (AD00022)				
548.	Handwritten Message from Chasity Jones to Alki David (AD00023)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
549.	Screen Shot Of Text Messages To "Carl Manager" (AD00024)				
550.	Screen Shot of Text Messages to "MK" (AD00032-AD00047)				
551.	Screen Shot Of January 21, 2015 Instagram Post by eliztaylor (AD00048)				
552.	February 3, 2016 Letter from Department of Fair Employment and Housing Re: DFEH Matter Number 739969-207321 with enclosures (AD00049-AD00056)				
553.	Screen Shot Of Text Messages between Mary Rizzo and Elizabeth Taylor (3:19 p.m.) (AD00057-AD00059)				
554.	Screen Shot Of Text Messages between Mary Rizzo and Chasity Jones (12:41 a.m.) (AD00060-AD00061)				
555.	Screen Shot Of Text Messages between Mary Rizzo and Chasity Jones (12:39 a.m.) (AD00062)				
556.	Screen Shot Of Text Messages between Mary Rizzo and Chasity Jones (8:27 a.m.) (AD00063)				
557.	Screen Shot Of Text Messages between Mary Rizzo and Chasity Jones (5:00 p.m.) (AD00064)				
558.	Screen Shot Of Text Messages between Mary Rizzo and Chasity Jones (8:49 p.m.) (AD00065)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
559.	Screen Shot Of Text Messages between Mary Rizzo and Chastity Jones (9:49 a.m.) (AD00066-AD00067)				
560.	Screen Shot Of Text Messages between Mary Rizzo and Chasity Jones at chasityjones@yahoo.com (AD00068)				
561.	Screen Shot Of December 30, 2016 Instagram Post by chasityjones (AD00069)				
562.	Screen Shot Of February 16, 2018 Instagram Post by chasityjones (AD00070)				
563.	Screen Shot Of January 2, 2018 Instagram Post by chasityjones (AD00071)				
564.	Screen Shot Of April 1, 2018 Instagram Post by chasityjones (AD00072)				
565.	Screen Shot Of August 20, 2018 Instagram Post by chasityjones (AD00073)				
566.	January 31, 2017 Letter from Department of Fair Employment and Housing Re: DFEH Matter Number 852881-272913 with enclosures (AD00074-AD00081)				
567.	Screen Shot Of August 9, 2016 Instagram Post by eliztaylor (AD00082)				
568.	Screen Shot Of August 24, 2016 Instagram Post by eliztaylor (AD00083)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
569.	Screen Shot Of August 28, 2016 Instagram Post by eliztaylor (AD00084)				
570.	Screen Shot Of September 2, 2016 Instagram Post by eliztaylor (AD00085)				
571.	Screen Shot Of April 10, 2017 Instagram Post by eliztaylor (AD00086)				
572.	Screen Shot Of August 4, 2017 Instagram Post by eliztaylor (AD00087)				
573.	Screen Shot of August 24, 2017 (AD00088)				
574.	Screen Shot Of August 25, 2017 Instagram Post by eliztaylor (AD00089)				
575.	Screen Shot Of August 31, 2017 Instagram Post by eliztaylor (AD00090)				
576.	Screen Shot Of September 5, 2017 Instagram Post by eliztaylor (AD00091)				
577.	Screen Shot Of September 30, 2017 Instagram Post by eliztaylor (AD00092)				
578.	Screen Shot Of October 25, 2017 Instagram Post by eliztaylor (AD00093)				
579.	Screen Shot Of December 27, 2017 Instagram Post by eliztaylor (AD00094)				
580.	Screen Shot Of January 6, 2018 Instagram Post by eliztaylor (AD00095)				
581.	Screen Shot Of April 9, 2018 Instagram Post by eliztaylor (AD00096)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
582.	Screen Shot Of May 8, 2018 Instagram Post by eliztaylor (AD00097)				
583.	Screen Shot Of July 13, 2018 Instagram Post by eliztaylor (AD00098)				
584.	Screen Shot Of October 26, 2018 Instagram Post by eliztaylor (AD00099)				
585.	Screen Shot Of December 4, 2018 Instagram Post by eliztaylor (AD00100)				
586.	Screen Shot Of December 9, 2018 Instagram Post by eliztaylor (AD00101)				
587.	Screen Shot Of December 9, 2018 Instagram Post by eliztaylor (AD00102)				
588.	Screen Shot Of December 17, 2018 Instagram Post by eliztaylor (AD00103)				
589.	Screen Shot Of January 13, 2019 Instagram Post by eliztaylor (AD00104)				
590.	Screen Shot Of January 17, 2019 Instagram Post by eliztaylor (AD00105)				
591.	Screen Shot Of April 20, 2019 Instagram Post by eliztaylor (AD00106)				
592.	Video Entitled "LORD of the FREAKS Official Red Band Trailer" Link: https://youtu.be/iz3kaMuyyk8 (AD00107)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
593.	February 1, 2017 Letter from Dept. of Fair Employment and Housing Re: DFEH Matter Number 852606-272658 (AD00108-AD00115)				
594.	Screen Shot Of December 24, 2018 Instagram Post by chastityjones (AD00116)				
595.	Screen Shot Of April 8th Instagram Post by chasityjones (AD00117)				
596.	Screen Shot Of February 17th Instagram Post by chasityjones (AD00118)				
597.	Screen Shot Of February 13th Instagram Post by chasityjones (AD00119)				
598.	Screen Shot Of February 2nd Instagram Post by chasityjones (AD00120)				
599.	Screen Shot Of January 1st Instagram Post by chasityjones (AD00121)				
600.	Screen Shot Of December 16, 2018 Instagram Post by chasityjones (AD00122)				
601.	Screen Shot Of December 7, 2018 Instagram Post by chasityjones (AD00123)				
602.	Screen Shot Of November 17, 2018 Instagram Post by chasityjones (AD00124)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
603.	Screen Shot Of November 5, 2018 Instagram Post by chasityjones (AD00125)				
604.	Screen Shot Of October 31, 2018 Instagram Post by chasityjones (AD00126)				
605.	Screen Shot Of October 19, 2018 (AD00127)				
606.	Screen Shot Of October 13, 2018 Instagram Post by chasityjones (AD00128)				
607.	Screen Shot Of October 1, 2018 Instagram Post by chasityjones (AD00129)				
608.	Screen Shot Of September 9, 2018 Instagram Post by chasityjones (AD00130)				
609.	Screen Shot Of August 25, 2018 Instagram Post by chasityjones (AD00131)				
610.	Screen Shot Of July 24, 2018 Instagram Post by chasityjones (AD00132)				
611.	Screen Shot Of July 22, 2018 Instagram Post by chasityjones (AD00133)				
612.	Screen Shot Of April 20, 2018 Instagram Post by chasityjones (AD00134)				
613.	Screen Shot Of February 17, 2018 Instagram Post by chasityjones (AD00135)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
614.	Screen Shot Of January 11, 2018 Instagram Post by chasityjones (AD00136)				
615.	Screen Shot Of January 11, 2018 Instagram Post by chasityjones (AD00137)				
616.	Screen Shot Of January 11, 2018 Instagram Post by chasityjones (AD00138)				
617.	Screen Shot Of November 8, 2016 Instagram Post by chasityjones (AD00139)				
618.	Screen Shot Of October 28, 2016 Instagram Post by chasityjones (AD00140)				
619.	Diagram of Hologram Presentation (AD00141)				
620.	Foxwood / Hologram agreement by Chasity Jones (dated March 23, 2016) (AD00142-AD00150)				
621.	Elizabeth Taylor employee file for FilmOn.TV (AD00151-AD00175)				
622.	Chasity Jones employee file for FilmOn.TV (AD00176-AD00200)				
623.	Elizabeth Taylor email to Yelena Calendar (dated June 1, 2015) (AD00201-AD00206)				
624.	Screen Shot Of Text Messages between Elizabeth Taylor and Carl Dawson (AD00207-AD00214)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
625.	Screen Shot Of Text Messages between Elizabeth Taylor and Mahim Khan (MK) (AD00215-AD00230)				
626.	Screen Shot Of Text Messages between Chastity Jones and Mary Rizzo (AD00231-AD00244)				
627.	Screen Shot of March 14, 2019 Instagram Post by eliztaylor; link: https://www.Instagram.com/p/BvA9DKbF2Ja/?utm_source=ig_web_copy_link" (AD00347)				
628.	Screen Shot of May 5, 2019 Instagram Post by chasityjones; Link: https://www.Instagram.com/p/BxFtrFonpXo/?utm_source=ig_web_copy_link (AD00348)				
629.	Instagram video posted on May 7, 2019 by chasityjones; Link: https://www.Instagram.com/p/BxK-qr1lxoP/?utm_source=ig_web_copy_link (AD00349)				
630.	Screen Shot of May 16, 2019 Instagram Post by chasityjones; Link: https://www.Instagram.com/p/Bxi4sAQAcyB/?utm_source=ig_web_copy_link (AD00350)				
631.	Screen Shot of July 16, 2019 Instagram Post by chasityjones; Link: https://www.Instagram.com/p/Bz_MXFzlg2X/?utm_source=ig_web_copy_link (AD00351)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
632.	Instagram video posted on July 31, 2019 by chasityjones; Link: https://www.Instagram.com/p/B0mgTk8A4FG/?utm_source=ig_web_copy_link (AD00352)				
633.	Screen Shot of August 5, 2019 Instagram Post by chasityjones; Link: https://www.Instagram.com/p/B0yf2_WA1-v/?utm_source=ig_web_copy_link (AD00353)				
634.	Screen Shot of August 7, 2019 Instagram Post by chasityjones; Link: https://www.Instagram.com/p/B03tDA4ACsS/?utm_source=ig_web_copy_link (AD00354)				
635.	Screen Shot of August 13, 2019 Instagram Post by chasityjones; Link: https://www.Instagram.com/p/B1HY634A62H/?utm_source=ig_web_copy_link (AD00355)				
636.	Screen Shot of September 3, 2019 Instagram Post by chasityjones; Link: https://www.Instagram.com/p/B19NQjpA35Y/?utm_source=ig_web_copy_link (AD00356)				
637.	Screen Shot of September 6, 2019 Instagram Post by chasityjones; Link: https://www.Instagram.com/p/B2EfbdiAD__/?utm_source=ig_web_copy_link (AD00357)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
638.	Instagram video posted on September 11, 2019 by chasityjones; Link: https://www.Instagram.com/p/B2Rs0_IAUTw/?utm_source=ig_web_copy_link (AD00358)				
639.	Screen Shot of September 21, 2019 Instagram Post by chasityjones (AD00359)				
640.	Instagram video posted on October 1, 2019 by chasityjones; Link: https://www.Instagram.com/p/B3Fa0cPgaS9/?utm_source=ig_web_copy_link (AD00360)				
641.	Video of Alki David playfully attacking FilmOn TV crew (AD00361)				
642.	Screenshot of photograph of Mahim Khan (AD00362)				
643.	Screenshot of Mahim Khan iMessages, dated 7/26/2015 to 11/9/2015. (AD00363)				
644.	Screenshot of Mahim Khan iMessages, dated 7/9/2015 to 7/26/2015 (AD00366)				
645.	Screenshot of Mahim Khan iMessages, dated 7/26/2015 to 10/6/2015 (AD00367)				
646.	May 2, 2016 email from Tracy L. Fehr to Mahim Khan re: five declarations (AD00365)				

Exh No.	Description	Stipulate to Authenticity	Stipulation to Admit	Date Identified	Date Admitted
650.	Screenshot of Mahim Khan Photograph (AD00370)				

DATED: October 25, 2019

ALLRED, MAROKO & GOLDBERG

By: _____
NATHAN GOLDBERG
DOLORES Y. LEAL
RENEE MOCHKATEL
Attorneys for Plaintiff,
MAHIM KHAN

DATED: October ___, 2019

VENABLE LLP

By: _____
ELLYN S. GAROFALO
AMIR KALTGRAD
Attorneys for Defendants
HOLOGRAM USA, INC., et al.

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 **October 25, 2019** I served the foregoing document described as **JOINT EXHIBIT LIST** on interested parties in this action

[X] by placing [ ] the original [X] a true copy thereof enclosed in sealed envelopes at Los Angeles, California addressed as follows:

Ellyn S. Garofalo, Esq.
Amir Kaltgrad, Esq.
VENABLE LLP
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
esgarofalo@venable.com
akaltgrad@venable.com

[ ] **BY MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

[X] **BY E-MAIL:** I caused such document to be electronically served via email to the email address of the addressee(s).

[ ] **BY PERSONAL SERVICE:** I caused such envelope to be personally served on the Addressee(s) to the offices of the addressee(s).

Executed on **October 25, 2019** at Los Angeles, California.

[X] **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

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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 Venable LLP, 2049 Century Park East, Suite 2300, Los Angeles, California.

On the below date, I served or caused to be served a copy of the foregoing document(s) described as **DEFENDANTS HOLOGRAM USA, INC., ALKI DAVID PRODUCTIONS, INC. AND FILMON TV, INC.'S RESPONSE TO MAHIM KHAN'S NOTICE OF EVIDENCE SUBJECT TO COURT'S GRANT OF PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE THIRD PARTY WITNESSES AND DOCUMENTS NOT DISCLOSED OR PRODUCED IN DISCOVERY,** on the interested parties in this action addressed as follows:

Gloria R. Allred, Esq.
Dolores Y. Leal, Esq.
Renee Mochkatel, Esq.
Law Offices of Allred, Maroko & Goldberg
6300 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90048

T: (323) 653-6530
F: (323) 653-1660

Attorneys for Plaintiff Mahim Khan

By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☒ **BY MAIL (CCP §1013(a)&(b)):** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 2049 Century Park East, Suite 2300, Los Angeles, California, in the ordinary course of business.

☒ **BY ELECTRONIC SERVICE (CCP § 1010.6; CRC Rule 2.251(g)):** I transmitted the above-stated document(s) and a copy of this declaration from my computer (electronic notification address VRKhatchikian@Venable.com) located Venable LLP, 2049 Century Park East, Suite 2300, Los Angeles, CA 90067 to the interested parties in this action whose names and e-mail addresses are listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. Service by e-mail or electronic transmission was agreed upon based on a court order or an agreement of the parties to accept service.

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

Executed on October 30, 2019, at Los Angeles, California.

Rose Khatchikian

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2300
LOS ANGELES, CA 90067
310-229-9900

Alkiviades “Alki” David, a single man; Anakando Media Group, a British Virgin Islands limited company incorporated in St. Vincent and the Grenadines; FilmOn TV Ltd., a UK company; FilmOn TV Inc., a Delaware corporation; Alki David Productions Inc., a Delaware corporation; Swissx Labs AG, Inc., a Delaware corporation; Swissx Labs AG, a Swiss Corporation; SwissX Group Worldwide, Hologram USA Inc., a Delaware corporation, with its principal place of business in Gstaad, Switzerland; FOTV, Inc., a Delaware corporation.

vs.

Gloria Allred, in her individual capacity and as a principal in Allred, Maroko & Goldberg; Nathan Goldberg, in his individual capacity, and as a partner in Allred, Maroko & Goldberg, Delores Y. Leal, in her individual capacity and as a partner of Allred, Maroko & Goldberg; Renee Mochkatel, in her individual capacity and as a partner of Allred, Maroko & Goldberg; Lisa Bloom, in her individual capacity and as the owner of the The Bloom Firm; Braden Pollack, husband of Lisa Bloom; Arick Fudali, in his individual capacity, and as a partner in the Bloom Firm; Avi Goldstein, in his individual capacity, and a partner in The Bloom Firm; Sarah Bloom in her individual capacity, and as an employee of The Bloom Firm; Thomas V Girardi, in his individual capacity, as a member of his marital community with Erika Girardi, a/k/a Erika Jane, and as a partner in Girardi Keese; Gary A. Dordick, in his individual capacity, and as a partner in Dordick Law Corporation;; Keith Griffin, in his individual capacity, and in his capacity as a former partner in Girardi & Keese, and in his capacity as an associate for Dordick Law Corporation; Joseph Chora, Esq., in his individual capacity, and as a partner in Chora, Young & Manasserian; Ebby S. Bakhtiar, in his individual capacity, and as a partner in The Law Offices of Ebby S. Bakhtiar; Oren Warshavsky, in his individual capacity, and as a partner in Baker Hostetler, Baker Hostetler, a law firm operating in California, Marc Gillieron, as a partner in Chabrier Avocats, SA, Emilie Theintz, in her individual capacity and as an associate in Chabrier Avocats, SA, Chabrier Avocats, SA, a law firm based in Geneva Switzerland, Mahim Khan, a single woman, Elizabeth Taylor, a single woman; Lauren Reeves, a single woman; Chastity Jones, a single woman; Gavin Newsom, a married man; The State Bar of California; ABC individuals 1-25 inclusive; XYZ corporations 1-25, inclusive; Does 1-25, inclusive. **Counsel: Decide whether to name Newsom/Bar**

COMPLAINT

Plaintiffs Alkivades David ("Plaintiff David"), FilmOn TV, Inc., Alki David Productions, Inc., FilmOn U.K. Limited, Anakando Media Group, SwissX, Inc., a U.S. corporation (U.S. SwissX), SwissX Lab, A.G. a Swiss company (Swiss Lab); Hologram USA, a U.S. Corporation ("Entity Plaintiffs"), for their complaint against Defendants Gloria Allred, in her individual capacity and as a partner in Allred, Maroko & Goldberg; Nathan Goldberg, in his individual capacity and as a partner in Allred, Maroko & Goldberg, Delores Y. Leal, in her individual capacity and as a partner in Allred, Maroko & Goldberg; Renee Mochkatel, in her individual capacity, and as a partner in Allred, Maroko & Goldberg; Lisa Bloom, in her individual capacity, and as a partner in The Bloom Firm, Arick Fudalli, in his individual capacity, and as a partner in The Bloom Firm; Alan "Avi" Goldstein, in his individual capacity, and as a partner in The Bloom Firm, Braden Pollack, in his individual capacity, and as an employee of The Bloom Firm; Tom Girardi, in his individual capacity, and as a partner in Girardi Keese; Gary A. Dordick, in his individual capacity, and as a partner in Dordick Law Corporation; Keith Griffin, in his individual capacity, in his capacity as a former partner in Girardi & Keese, and as an associate in Dordick Law Corporation; Joseph Chora, in his individual capacity, and as a partner in Chora, Young & Manasserian, Ebby S. Bakhtiar, in his

individual capacity, and as a partner in The Law Offices of Ebby S. Bakhtiar, Oren Warshavsky, in his individual capacity, and as a partner in Baker Hostetler, Baker Hostetler, a law firm operating in California, ("Attorney Defendants"), Marc Gillieron, in his individual capacity, and as a partner in Chabrier Avocats, SA, Emilie Theintz, in her individual capacity, and as an associate in Chabrier Avocats, SA, a law firm based in Geneva Switzerland, (Swiss Attorney Defendants), as well against Mahim Khan, a single woman; Elizabeth Taylor, a single woman; Lauren Reeves, a single woman; and Chastity Jones, a single woman, ("Litigating Defendants").

Plaintiff David and the Entity Plaintiffs allege as follows:

JURISDICTION AND VENUE

The United States District Court for the Southern District of California has jurisdiction pursuant to 28 U.S.C. § 1332 (Diversity Jurisdiction). The Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 because some of the claims arise under the RICO, 18 U.S.C. §1961 *et. seq.* The Attorney Defendants and the Litigating Defendants (Collectively "All United States-Based Defendants") are subject to specific personal jurisdiction in California. All United States-Based Defendants were physically present in California, emailed and otherwise transmitted documents in California in furtherance of their extortion scheme and wrongful enterprise, committed multiple

intentional torts in whole or in part in California, causing injury to Plaintiff David and to Plaintiff Entities.

The United States-Based Defendants' conduct was purposefully directed at California and was continuous and systematic. The United States-Based Defendants have more than minimum contacts with California such that the exercise of personal jurisdiction over them comports with traditional notions of fair play and substantial justice and is consistent with the Due Process Clause of the United States Constitution.

Venue is proper in this judicial district pursuant to 18 U.S.C. §1965 and 28 U.S.C. §1391 because the United States-Based Attorney Defendants are subject to personal jurisdiction in this judicial district. Defendants reside, are found, have agents, and transact affairs in California. A substantial part of the events giving rise to the claims asserted in this action occurred in the Southern District in California, where Plaintiff David and Plaintiff Entities, suffered actual and special damages.

Swiss Defendant Attorney Marc Gillieron, in his individual capacity, and as a partner in Chabrier Avocats, SA, Swiss Defendant Attorney Emilie Theintz, in her individual capacity, and as an associate in Chabrier Avocats, SA, a law firm based in Geneva Switzerland, ("Swiss Defendant Attorneys").

CHECK WITH EDELSON RE: GROUNDS Venue is proper in this judicial district pursuant to 18 U.S.C. §1965 and 28 U.S.C. §1391 because the

Swiss Defendant Attorneys are subject to personal jurisdiction in this judicial district. Defendants have agents, and transact affairs in California. A substantial part of the events giving rise to the claims asserted in this action occurred in the Southern District in California, where Plaintiff David and Plaintiff Entities, suffered actual and special damages.

Swiss Attorney Defendants were hired by Attorney Defendant Allred on behalf of Defendant Allred, Maroko & Goldberg and by Defendant Attorney Oren Warshavsky, in his individual capacity, and as a partner in Baker Hostetler, a law firm operating in California, in *Mahim Kahn v. Alki David, et. al*, LASC County No. BC654017 2022)

PARTIES

Plaintiffs Alkiviades David (Plaintiff David), is a resident of California and a citizen of the United Kingdom.

Plaintiffs FilmOn TV, Inc., Alki David Productions, Inc., FilmOn U.K. Limited, Anakando Media Group, SwissX, Inc., a U.S. corporation (U.S. SwissX), SwissX Lab, A.G. a Swiss company (Swiss Lab); Hologram USA, a U.S. Corporation ("Entity Plaintiffs") conduct business operations in the United States, including but not limited to, in California.

Attorney Defendant Gloria Allred is a citizen of California.

Defendant Allred, Maroko & Goldberg is a California law firm.

Attorney Defendant Nathan Goldberg is a citizen of California and is a named partner in Allred, Maroko & Goldberg.

Attorney Defendant Delores Y. Leal is a citizen of California and is a partner in Allred, Maroko & Goldberg.

Attorney Defendant Renee Mochkatel is a citizen of California and is a partner in Allred, Maroko & Goldberg.

Attorney Defendant Lisa Bloom, is a citizen of California and is a partner in The Bloom Firm, a California law firm.

Defendant Braden Pollack, is the husband of Lisa Bloom and all pertinent times Pollack acted on behalf of the marital community consisting of Defendant Lisa Bloom and Defendant Braden Polack, as well as on behalf of The Bloom Firm.

Attorney Defendant Arick Fudalli is a citizen of California and is a partner in The Bloom Firm.

Attorney Defendant Alan "Avi" Goldstein, is a citizen of California and is a partner in The Bloom Firm.

The Bloom Firm is a law firm operating in California.

Attorney Defendant Thomas V. Girardi is a citizen of California.

Defendant Girardi & Keese was a law firm in California.

Attorney Defendant Ebby S. Bakhtiar is a citizen of California, practicing at

his own California law firm, Ebby S. Bakhtiar, PC.

Defendant Gary A. Dordick, is a citizen of California and a partner in Dordick Law Corporation.

Defendant Dordick Law Corporation is a law firm operating in California.

Attorney Defendant Keith Griffin is a citizen of California. Upon information and belief, Griffin was a member of the Girardi Keese firm, and is presently an associate in Dordick Law Corporation.

Upon information and belief, Attorney Defendant Oren Warshavsky is a resident of New York and a partner in Defendant Baker Hostetler, who caused All Plaintiffs harm in California.

Defendant Baker Hosteler is a firm operating in California.

Upon information and belief, Attorney Defendant Marc Gillieron is a resident of Switzerland.

Upon information and belief, Attorney Defendant Emilie Theintz is a resident of Switzerland.

Defendant Chabrier Avocats, SA, is a law firm based in Geneva, Switzerland that caused Plaintiffs harm in California.

Upon information and belief, Litigating Defendant Mahim Khan is a citizen of Pakistan and is a resident of California. Upon information and belief, Litigating Defendant Mahim Khan is a single woman.

Upon information and belief, Litigating Defendant Elizabeth Taylor is a citizen of California. Upon information and belief, Litigating Defendant Taylor is a single woman.

Upon information and belief, Litigating Defendant Lauren Reeves is a citizen of California. Upon information and belief, Litigating Defendant Reeves is a single woman.

Upon information and belief, Defendant Chastity Jones is a citizen of California. Upon information and belief, Jones is a single woman.

The State Bar of California is a State Government Entity charged with overseeing attorneys' ethical practicing of law and with suspending and disbarring those attorneys who violate ethical standards.

Governor Gavin Newsom appoints four of the six members to the Board of Governors for the State Bar of California.

INTRODUCTION

Earlier this year, the California Court of Appeals considered the following question: "Lawyers argue for a living. Some do more than argue. They lace their settlement demands with threats. When do such aggressive settlement tactics cross the line and become professional misconduct? *Falcon Brands, Inc., v. Mousavi & Lee, LLP,* 74 Cal. App.5th 506, 511 (2022).

The answer to that question is presented by the facts underlying this case.

This is a case about extortion.

This case also involves counts alleging that the Attorney Defendants, the Litigating Defendants and the Swiss Attorney Defendants ("All Defendants") committed extortion, obstruction of justice, wire fraud, mail fraud, and bribery against Plaintiff David and the Entity Plaintiffs; and that Attorney Defendants Allred and Bloom committed and Litigating Defendants Khan and Reeves also committed defamation against Plaintiff David. This Complaint also alleges corporate defamation against FOTV, Inc. and its holding companies, Anakando and its holding companies, and Hologram, USA Group of Companies, as well as intentional interference with contractual relations, intentional interference with prospective contractual relations, and intentional infliction of emotional distress, all alleged herein due to extorting actions committed by Attorney Defendant Allred, in her individual capacity, and as a member of Allred, Maroko & Goldberg and its employees and partners, Attorney Defendants Goldberg, Leal, Mochkatel, and Goldstein, each of whom Plaintiff David and the Entity Plaintiffs are suing in their individual capacities, in addition to their capacities as employees and partners in Allred, Maroko & Goldberg; Attorney Defendant Lisa Bloom, in her individual capacity, on behalf of her marital community, and as a partner in The Bloom Firm, Attorney Defendant Arick Fudali, in his individual capacity, and as a partner in The Bloom Firm, Attorney Defendant Braden Pollack, in his individual capacity,

on behalf of his marital community with Lisa Bloom, and as a partner in The Bloom Firm; Goldstein, in his individual capacity, and as a partner in The Bloom Firm; The Bloom Firm; Attorney Defendant Girardi, in his individual capacity, as a partner in Girardi Keese, and as a member of his marital estate with Eriky Jane; Attorney Defendant Dordick, in his individual capacity, and as a partner in Dordick Law Corporation; Attorney Defendant Griffin, in his individual capacity, and in his capacity as a former partner in Girardi & Keese, as well as in his capacity as an associate in Dordick Law Corporation; Attorney Defendant Joseph Chora, in his individual capacity, and as a partner in Chora, Young & Manasserian; Attorney Defendant Bakhtiar, in his individual capacity, and as a partner or owner in The Law Offices of Ebby S. Bakhtiar, Attorney Defendant Warshavsky, in his individual capacity, and as a partner in Baker Hostetler, (Collectively, "United States-Based Attorneys"), Attorney Defendant Gillieron, in his individual capacity, and as a partner in Chabrier Avocats, SA; Attorney Defendant Emilie Theintz, in her individual capacity and as an associate in Chabrier Avocats, SA; and Chabrier Avocats, SA, a law firm based in Geneva Switzerland. (Collectively "Swiss Attorney Defendants.")

This is also a case that illustrates the ancient admonition - "Where law ends, tyranny begins." (John Locke, 1689). Plaintiff David is but one of many targets who were victimized by Defendants Allred and Bloom to further their conspiracy.

Other notable target defendants include Steve Wynn, who Defendant Bloom recently paid for his defamation claim against her. Remarkably, Defendant Bloom's modus operandi in the Wynn matter mirrors her behavior against Plaintiff David ~ Bloom and her client accused Wynn of sexual harassment and retaliation. Here, Bloom has accused Plaintiff David of rape, thereby defaming him. **Add other cases. Marciano, Edelson.**

This RICO Complaint is filed in a time witnessing the demise of the house of cards nefariously and corruptly constructed by Attorney Defendant Girardi, and the named US-Based Attorney Defendants who conspired with Girardi in decades-long criminal enterprises.

www.law360.com/articles/1349235/girardi-s-legacy-in-shambles-amid-shakespearean-scandal.

Such enterprises are commonly referred to as the Girardi Family Syndicate or The Girardi Syndicate and they conducted activities under the auspices of legitimate law firms. *Edelson, PC, v. David Lira; Keith Griffin, Erika Girardi, a/k/a Erika Jayne et. al.,* Case 3:22-cv-03977 (7/06/22), filed in the United States District Court for the Northern District of California, San Francisco Divison.

As of this filing, the criminal enterprises have been "outed" - it is now known that for decades, the US-Based Defendant Attorneys targeted public figures and successful individuals, exploited the media to defame innocent targets, and

extorted individuals and businesses by demanding unjustified settlements and by filing spurious malicious lawsuits against innocent defendants, including Plaintiff David and the Entity Plaintiffs.

The series of allegations set forth in good faith in this Complaint after a thorough exercise of due diligence are so egregious that their existence defies all due process guarantees to which every American is entitled. It strains credulity that such actions by Defendant Attorneys would occur unfettered, even with the acquiescence of The California State Bar and, upon information and belief, various California State Court judges, who for a series of years ignored complaints against Defendant Attorneys Girardi, Allred and Bloom while their law firms, Girardi & Keese, Allred, Maroko & Goldberg and The Bloom Firm operated as ostensibly legitimate law firms but were in fact their criminal enterprises. However, that is precisely what happened.

Upon information and belief, the Allred-Bloom-Goldberg-Chora syndicate utilized and continues to utilize similar corrupt, extorting and litigating tactics against Plaintiff David and the Entity Plaintiffs, as more fully alleged herein, while their law firms, Allred, Maroko & Goldberg, The Bloom Firm and Chora, Young & Manasserian were their criminal enterprise.

PICK UP This Complaint is also being filed as the pendulum regarding the laudatory "Me Too" movement - which is intended to protect women's rights, but

has been grossly misused by many opportunistic plaintiffs - swings from being a basis for a tsunami of spurious lawsuits filed against Plaintiff David and the Entity Plaintiffs and similar defendants nationwide, to achieving an equitable jurisprudential balance wherein such suits, when valid, can provide proper remedies for those who truly have been victimized.

Plaintiffs assert that the United States-Based Attorney Defendants' pattern of racketeering activity is to target well-known individuals, such as Plaintiff David, with accusations of improper behavior, typically under the guise of purported, falacious sexual harassment claims, and to threaten to make those allegations public, all with a wilful intent to get the target to pay up.

The United States-Based Attorney Defendants unlawfully and tortiously attempted to, and in some instances did, extract millions of dollars from Plaintiff David and the Entity Plaintiffs through an illegal enterprise that employed calculated media campaigns, threats and intimidation, and abusive, fabricated litigious actions. Most notably, **X demanded $350 million, ... Yet, when Plaintiff David and his counsel reported X's conduct to the Attorney General - no response.**

Plaintiff David and the Entity Plaintiffs allege that Defendants Mahim Khan, Elizabeth Taylor, Lauren Reeves and Chastity Jones (Collectively, "Litigating Defendants") knowingly and wilfully conspired and colluded, both in the United

States and Switzerland, with All Defendant Attorneys against Plaintiff David and The Entity Plaintiffs to further their participation in the past and ongoing interrelated enterprises calculated to extort money from Plaintiff David and the Entity Plaintiffs.

This action is filed pursuant to the Racketeer Influenced and Corrupt Practices Act ("RICO"), 18 U.S.C. §§ 1961-68, alleging that the United States-Based Attorney Defendants, The Swiss Attorney Defendants, and the Litigating Defendants caused Plaintiff David's and the Entity Plaintiffs' injuries by committing extortion, obstruction of justice, wire fraud, mail fraud, bribery and aiding and abetting in furtherance of an illegal racketeering enterprise as set forth in this Complaint. That enterprise seeks monetary damages, including statutory treble damages, for Plaintiff David's and the Entity Plaintiffs' compensable injuries directly related to all of the Defendants' racketeering enterprises which are cognizable pursuant to 18 U.S.C. §§1962(b)(c) and (d).

This action also asserts claims for intentional and negligent interference with prospective and ongoing contract relations and seeks damages for All Plaintiffs' compensable injuries directly related to the United States-Based Attorney Defendants, The Swiss Attorney Defendants and the Litigating Defendants ("All Defendants") Defendants harassing and extorting Plaintiff David and the Entity Plaintiffs, causing Plaintiff David and the Plaintiff Entities to lose

then-existing customers and business relationships, as well as to lose future business customers and future contracts in an amount to be proven at trial.

This action also asserts intentional infliction of emotional distress claims against All Defendants because they have harmed Plaintiff David, who has suffered terribly as a result of the All Defendants wrongfully suing him and harassing him and The Entity Plaintiffs so as to extort money and property from Plaintiff David.

Plaintiff David and The Entity Plaintiffs seek damages for their pecuniary losses attributable to All Defendants' extortion, obstruction of justice, bribery, wire fraud, mail fraud, bribery and aiding and abetting same, as well as for All Defendants' intentional and negligent interference with ongoing and prospective contract relations, damages for Plaintiff David's emotional harm caused by All Defendants' intentional infliction of emotional distress, and damages for the wrongful defamation perpetrated against Plaintiff David and the corporate defamation perpetrated against the Entity Plaintiffs.

What is most concerning with regard to Defendants Attorney Allred and Bloom's nefarious and illegal behaviors is that their extortionate tactics are systemic and know no bounds, as evidenced by this Complaint. which establishes that no one of any renown is protected from their predatory targeting of prominent people, whom they victimize all the while alleging that their clients are "victims."

Defendants Allred and Bloom are the actual predators who consistently utilize the same criminal enterprise modus operandi, *i.e.,* name and shame - as alleged herein. Defendant Attorneys Allred and Bloom have targeted everyone from Princess Latifa to 50 Cent, from Alan Dershowitz to Rose McGowan, from Chris Brown to Plaintiff David and the Entity Plaintiffs herein. After targeting those victims, Defendant Attorneys Allred and Bloom maliciously fabricate fallacious testimony, with the intent to extort money and property from their targets to further their illegal criminal enterprise.

Culpable Persons

Plaintiffs allege that Attorney Defendants Gloria Allred, in her individual capacity, and as a partner in Allred, Maroko & Goldberg; Nathan Goldberg, in his individual capacity, and as a partner in Allred, Maroko & Goldberg; Delores Y. Leal, in her individual capacity and as a partner in Allred, Maroko & Goldberg; Renee Mochkatel, in her individual capacity and as a partner in Allred, Maroko & Goldberg; Lisa Bloom, in her individual capacity, on behalf of the marital community consisting of Lisa Bloom and Braden Pollack, and as an owner of the Bloom Firm; Braden Pollack, individually, on behalf of his marital community with Lisa Bloom, and as an employee of The Bloom Firm; Thomas V Girardi, in his individual capacity, on behalf of his marital community with Erika Jones, and as a partner in Girardi Keese; Gary A. Dordick, in his individual capacity, and as a

partner in Dordick Law Corporation; Dordick Law Corporation, Keith Griffin, in his individual capacity and in his capacites as a former partner in Girardi & Keese, and as an associate in Dordick Law Corporation; Joseph Chora, in his individual capacity, and as a partner in Chora, Young & Manasserian; Ebby S. Bakhtiar, in his individual capacity, and as a partner in The Law Offices of Ebby S. Bakhtiar; Oren Warshavsky, in his individual capacity, and as a partner in Baker Hostetler; Marc Gillieron, in his individual capacity, and as a partner in Chabrier Avocats SA; Emilie Theintz, as an individual, and as a associate in Chabrier Avocats, SA (Collectively, "All Defendant Attorneys,") are each culpable persons capable of holding legal or beneficial interests in property, who wilfully intended to commit RICO predicate acts alleged herein despite knowing that those acts were illegal.

All Attorney Defendants have participated in long-term, organized conduct consisting of a criminal enterprise affecting interstate and international commerce through a continuous and interrelated pattern of racketeering activity, in violation of RICO laws set forth in 18 U.S.C. §§1962 (b)(c)(d). As more fully stated herein, those predicate acts consisted of extortion, wire fraud, mail fraud, bribery, and obstruction of justice ("RICO Predicate Offenses"). The criminal enterprises continue to violate the hereinstated RICO predicate offenses and thereby harm Plaintiff David and the Entity Plaintiffs.

Litigating Defendants Jane Doe, Mahim Khan, Elizabeth Taylor, Lauren

Reeves, Chastity Jones colluded and conspired with the United States-Based Attorney Defendants, seeking to extort money from Plaintiff David and Plaintiff Entities and filing spurious lawsuits against Plaintiff David and Plaintiff Entities.

Each Litigating Defendant is a culpable person capable of holding legal or beneficial interests in property, who participated with United States-Based Defendant Attorneys in a long-term, organized conduct of a criminal enterprise affecting interstate and international commerce through a continuous and interrelated pattern of racketeering activity, in violation of RICO laws set forth in 18 U.S.C. §§1962 (b)(c)(d).

Litigating Defendant Khan participated in the Swiss Attorney Defendants' illegal efforts to enforce immature judgments against Plaintiff David, knowing that her case was on appeal, and thus was not collectible in Switzerland. Further, Defendant Khan wrongfully and illegally defamed Plaintiff David in Switzerland, alleging David had been "convicted" of sexual harassment, all the while knowing through her Swiss counsel that her wrongly accusing him of being "convicted" constituted wilful defamation (art. 174 SCC) in Switzerland.

Litigating Defendant Lauren Reeves participated in the Swiss Attorney Defendants' illegal efforts to enforce a judgment against Plaintiff David for punitive damages which are not collectible in Switzerland. Defendant Reeves participated in the Swiss Attorney Defendants' illegal efforts to enforce immature

judgments against Plaintiff David, knowing that her case was on appeal, and thus not collectible in Switzerland. Further, Defendant Khan wrongfully and illegally defamed Plaintiff David in Switzerland, alleging he had been "convicted" of sexual harassment, all the while knowing through her Swiss counsel that that her wrongly accusing him of being "convicted" constituted wilful defamation (art. 174 SCC) in Switzerland.

Enterprise Allegations

Plaintiff David and the Entity Plaintiffs restate paragraphs ____ through XXXX of this Complaint.

The United States-Based Attorney Defendants', Defendant Swiss Attorneys' and Litigating Defendants' RICO violations constitute extortion aimed at taking Plaintiff David's and the Entity Plaintiffs' property and money through wrongful means, 18 U.S.C. § 1951(a), which, in relevant part, involves "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, or violence."

The Defendant United States-Based Attorneys'[1] prohibited acts were

[1] **Note to Counsel:** The Attorney Defendants' and the Individual Defendants' RICO violations cannot be characterized in a RICO Action as supporting a Tampering with Witnesses, 18 U.S.C. §1512(b) violation as those Defendants' actions did not involve federal court proceedings. 18 U.S.C. §1512(b) prohibits the corrupt persuasion of another person with an intent to impede an "Official Proceeding" which is defined, in relevant part, in the RICO statutes as a proceeding in a federal court, or a federal administrative tribunal.

continuous and interrelated having similar goals - extorting money from Plaintiff David and the Entity Plaintiffs, and defaming Plaintiff David and the Entity Plaintiffs. Defendant United States-Based Attorneys' enterprise actions had similar purposes, as alleged herein in more detail: to enrich the United States-Based Attorney Defendants by extorting Plaintiff David's and the Entity Plaintiffs' money and property and by seeking to malign and defame Plaintiff David and the Entity Plaintiffs.

Upon information and belief, at all relevant times, Defendant Attorneys were individual persons within the meaning of 18 U.SC. §§1961(4) and 1962(e), and Defendant Attorneys and Does 1-25 constituted an enterprise pursuant to 18 U.S.C. §§ 1961(4), 1962(e), that associated with and/or participated in the conduct of said

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Nevertheless, case law in the Ninth Circuit discusses "corrupt persuasion," the phrase used in 18 U.S.C. §1512(b), which encompasses what Defendant United States-Based Attorneys have done ~ coaching witnesses about how to testify, without conducting any due diligence to verify the allegations and wire and mail fraud committed with the intent to defraud and to cause the loss of money and property belonging to Plaintiffs. As to Defendant Allred, this pattern of manipulating witnesses, and, upon information and belief, paying some of the witnesses to testify in a particular fashion, is a pattern of obstruction of justice and witness tampering that is more than fifty years old. In the landmark Supreme Court Case, *Roe v. Wade,* upon information and belief, Defendant Allred coached Plaintiff Roe about what to testify about without verifying the allegations. Allred thereby commenced her pattern of committing obstruction of justice and tampering with witnesses, as evidenced by Plaintiff Roe's informing, soon before she died, that Allred committed those acts. *See* *Gloria Allred On The New Norma McCorvey Documentary (forbes.com)*. **Strategy Question:** Does counsel want to reference corrupt persuasion to characterize The United States-Based Defendant Attorneys' actions even though we cannot allege the federal witness tampering? I ask because the phrase "corrupt persuasion" is so very, very apt here.

enterprise's affairs doing business in the form of an association in fact.

Defendant Attorneys in their individual capacities, conducted, participated in, conspired to engage in, or aided and abetted the continuing and ongoing conduct of the affairs of that enterprise, together with others, through a pattern of racketeering as defined in 18 U.S.C. §§ 1961(1), 1961 (5), and 1962(c).

There is a strong threat that Defendant Attorneys' continuing criminal activity furthering their enterprise will extend beyond the initial period of time when the predicate acts commenced, because litigation continues in the lawsuits filed by Elizabeth Taylor and Jane Doe, and the Khan case is on appeal. **Link Provided by Fred.** Further, as alleged in this Complaint, the collection efforts by Defendants Allred, Bloom, Chora and Swiss Attorney Defendants also are tainted with those Attorneys both attempting illegally to collect money and property from Plaintiff Defendant and the Entity Plaintiffs, but also tortiously defaming Plaintiff David in both the United Kingdom and Switzerland.

FACTS COMMON TO ALL ALLEGATIONS

Defendant Attorneys Conspire and File a Tsunami of Me Too Claims Against Plaintiff Alki David

Plaintiff David first met Defendants Allred and Bloom when he and they appeared on the Dr. Drew Show on December 4, 2012. Upon information and belief, from that day forward, Defendants Allred and Bloom viewed Plaintiff David as a possible target to attack in the future with spurious lawsuits alleging that

David harmed Litigating Defendants, just as they have targeted many others, as more fully discussed herein. [2]

[2] **Note:** Girardi was disbarred on July 1, 2022. **https://apps.calbar.ca.gov/licensee/Detail/36603**.

Strategy Question: Girardi is in personal bankruptcy so the stay most likely will preclude suing him personally. Further he is messy divorce proceedings. In December, 2020, involuntary Chapter 7 Bankruptcy proceedings were filed against Girardi's law firm, Girardi & Keese. The firm became defunct on or near January, 2021 and its assets were sold by the bankruptcy trustee. *Tom Girardi's Law Office will be sold, as his home goes on the market, Trustee tells Court, by Amanda Bronstad, The Recorder,* April 27, 2021. Robert Keese, who helped Defendant Girardi found the Girardi & Keese law firm in 1965, also has been placed on involuntary inactive status and is not eligible to practice law. https://apps.calbar.ca.gov/licensee/Detail/46858.

Strategy Question: Given these complications with Girardi, should we name him and his prior firm as a defendant or simply include reference to him in the complaint with regard to averments regarding the enterprise and continuous activity? However, Girardi's former partner Keith Griffin, has joined the Dordick Law Firm, whose principal is Defendant Gary A. Dordick.

Gloria Allred (left/right) Lisa Bloom, Alki David, Kato Kaelin, Dr. Drew

Monica D'Oofrio filed *D'Onofrio v. Alki David Productions Inc., FilmOn Com., Inc. and Alki David, Case No. BC496165.*[3] on November 6, 2012, alleging employment discrimination. Plaintiff David strongly denied any liability, but made a business decision to settle the case for a minimal amount. The case was dismissed in 2013 in a settlement agreement that had a confidentiality provision.

Upon information and belief, with the urging of Defendant Attorneys, various conspiring and colluding employees and ex-employees filed false claims against Plaintiff David and some of the Entity Plaintiffs.

Note to Counsel: Alli's affidavit will establish that she saw other Plaintiffs contrive claims by constantly entering Plaintiff David's office in hopes of enticing him to commit offensive conduct. Carl Dawson's affidavit will also establish that employees and former employees of the Entity Plaintiffs contrived to target Plaintiff David and the Entity Plaintiffs.

Current and former employees of the Entity Plaintiffs, encouraged and aided and abetted by the Defendant Attorneys, targeted Plaintiff David as a victim to name in spurious lawsuits. Former employees and their counsel deemed Plaintiff David to be their gravy train. In filing this lawsuit - Plaintiff David and the Plaintiff Entities seek justice to recoup millions of dollars, consisting of lost profits, improperly obtained court judgments, and lost profitable contracts, as well

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3 https://trellis.law/case/BC495165/MONICA-D-ONOFRIO-VS-ALKI-DAVID-PRODUCTIONS-INC-ET-AL?output=pdf.

as thwarted IPO's for FilmOn and XXXXX.

Note: Yelena was CONTROLLER and she had a very strong grasp on finances and taxes

Upon information and belief, Attorney Defendants Girardi, Allred, Bloom, Goldberg, Deitrich and Griffin conspired to pursue vexatious litigation creating a continuous and related pattern of racketeering activity against Plaintiff David and the Entity Plaintiffs by filing numerous spurious and unfounded lawsuits against Plaintiff David and the Entity Plaintiffs. Soon thereafter, other Attorney Defendants joined the enterprise, including, but not limited to, Leal, Mochkatel, Goldstein, Griffin, and Bakhtiar, thus expanding the illegal racketeering enterprise and increasing the damages sustained by Plaintiffs David and The Entity Plaintiffs.

The US Based Attorney Defendants were enabled by one another and their retained experts to assist them in committing the predicate offenses of extortion, bribery, obstruction of justice, wire fraud and mail fraud solely because of each US Based Attorney Defendants' position in the enterprise and their involvement in and/or control over the enterprise's affairs and because their offenses of extortion, bribery, obstruction of justice, wire, mail fraud and aiding and abetting 5related to the activities of their enterprise, *i.e.,* to enrich themselves by filing spurious lawsuits against Plaintiff David and the Entity Plaintiffs, thereby depriving those Plaintiffs of their property and money.

Upon information and belief, (**Allie and Carl Affidavits provide this good faith basis**) Defendants Girardi, Allred, and Bloom intentionally conspired to recruit employees of Plaintiff Entities FilmOn and Anakando **WHAT OTHER PLAINTIFF ENTITIES,** and former employees of those Plaintiff Entities, to independently file tort lawsuits against Plaintiff David, alleging he committed sexual misconduct and/or that those Plaintiffs had viable employment law claims against Plaintiff Entities in order to extract and extort money from Plaintiff David and the Entity Plaintiffs Entity in furtherance of an enterprise specifically designed to enrich Attorney Defendants.

Alki - Please Insert Affidavit Malik Spellman as a dropbox link. file:///C:/Users/alki.000/Downloads/Affidavit_Malik%20David%20SpellmanConspiracy.pdf

The Parade of Spurious Lawsuits Filed to Further The Enterprise's Goals

On September 30, 2020, Jane Doe (Rita Nichols) filed a Labor-Wrongful termination lawsuit in Los Angeles County Superior Court against Plaintiffs David, FilmOn TV Networks, Inc., FilmOn TV La Inc. SwissX Labs AG Inc. a California Corp. AKA Swiss Lounge; Hologram USA Entertainment Inc.; FilmOn TV Inc. Hologram USA Inc. a California Corp. AKA Hologram USA Productions Inc; SwissX Labs AG Inc. AKA SwissX Lounge AKA FilmOn UK Ltd; Hologram USA Inc. AKA Hologram USA Productions Inc. AKA Hologram USA Entertainment Inc. AKA FilmOn TV Inc. AKA FilmOn.Tv La. Inc. LASC Case

No. 20STCV37498. Defendant Doe's attorneys in that action are Attorney Defendants Girardi, Bakhtiar and Dordick. The case is still pending.

Defendant Attorneys also filed lawsuits on behalf of Litigating Defendants Elizabeth Taylor (represented by Defendant Attorney Goldstein, Bloom, Chora); Chastity Jones (represented by Attorney Defendants Bloom, Sarah Bloom of the Bloom Firm, and Attorney Defendants Fundali, Goldstein of the Bloom Law Firm and Attorney Defendant Chora); Mahim Khan (represented by Defendant Attorneys Allred, Maroko & Goldberg, Allred, Goldberg, Leal and Mochkatel;) and Lauren Reeves (represented by Defendant Attorney Allred).

Attorney Defendants Girardi, Allred, Goldberg, Goldstein, Leal, Mochkatel, Bloom, Fudalli, Chora, Warshavsky, Gillieron, Theintz, and Chabrier Avocats, SA and their agents mercilessly and maliciously pursued Plaintiff David and the Entity Plaintiffs in courts, as well as in the media, seeking to extort Plaintiff David so that he would pay money to settle with the parties who sued Plaintiff David and the Entity Plaintiffs.

Plaintiffs assert, pursuant to 18 U.S.C. §§1962(b)(c) and (d), that the Attorney Defendants, their clients (The Litigating Defendants), their experts, employees and agents, conspired with one another and intended to conduct, and wilfully conducted, an interrelated, clear and continuous pattern of racketeering activity to benefit Defendant Attorneys' unlawful enterprise.

As more fully alleged herein, they did so in their modus operandi of naming and shaming Plaintiff David - as they have many other well-known targets and the fabricating a constellation of facts and all aspects necessary to prosecute a contrived lawsuit from false and biased witnesses, to non-meritorious and ill-informed testimony by experts, to incomplete and inaccurate witness and exhibit lists and trial evidence. Plaintiffs have evidence to prove this modus operandi.

Further, Plaintiffs allege that the Attorney Defendants continue to do so, by, inter alia, wilfully and intentionally conspiring against Plaintiff David and the Entity Plaintiffs, by filing spurious lawsuits against Plaintiff David and the Entity Plaintiffs, who were, and continue to be, victimized by Attorney Defendants' continuous pattern of racketeering conducted to benefit their enterprise, including wire fraud, mail fraud, extortion, tampering with witnesses and witness and evidence lists, as well as with evidence itself, obstruction of justice, including Defendant Goldberg's falsification of a signature in a civil proceeding in the *Khan* case, as more fully discussed herein, bribery, and aiding and abetting, 18 U.S.C. §2, all cognizable as RICO predicate acts pursuant to 18 U.S.C. §§ 1862(b)(c) and (d). **ELLYN'S MEMO RE: GOLDBERG SWITCHING EVIDENCE LISTS**

https://drive.google.com/file/d/1eHbeCweR_uH-iF9UVMca9Zi93Elna9QQ/view?usp=sharing

Incredibly, Plaintiff seeks to exclude documents that were not withheld, willfully or otherwise, ***but were produced***, as evidenced by Bates numbers affixed at the time of production.[1] Specifically, on September 19, 2019 (more than 30 days prior to trial), after Plaintiff prevailed on a motion to compel, Defendants produced documents responsive to Plaintiff's requests that were in Defendants' possession, custody or control. Declaration of Ellyn S. Garofalo ("Garofalo Decl."), ¶ 2. The Bates numbers, applied prior to their September 19, 2019 production, are plainly reflected in Plaintiff's motion to exclude the produced documents. *Id.* ¶ 3.

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[1] In contrast, Plaintiff affixed Bates numbers to documents that were not produced, but first appeared on Plaintiff's Exhibit List. Apparently, unfamiliar with the difference between Bates stamps and Exhibit Nos., Plaintiff purportedly added Bates numbers to the documents as a "convenience" at trial. In fact, the Bates stamps appear to have been added to deceive the Court into believing the documents were actually produced during discovery.

1

Specifically, the Attorney Defendants Girardi, Allred, Goldberg, and Bloom (Initial Enterprise Defendants), established the initial enterprise when they filed a series of unethical, spurious lawsuits against Plaintiff David and the Plaintiff Entities, without investigating the merits of those actions with the goal of extracting money and property from Plaintiff David. To further the enterprise, the Initial Enterprise Defendants unethically coached clients and witnesses about what to say to bolster the Attorney Defendants' filed spurious lawsuits and/or make unreasonable and unfounded settlement demands against Plaintiff David and the Entity Plaintiffs.

Litigating Defendants' Conspiracy to Target Plaintiff David and The Entity Plaintiffs ~ A Conspiracy Facilitated by the Defendant Attorneys

Note to Counsel: We have affidavits from Zimmerman and Ciara Menieffe.

We are getting statements from: 1) Carl Bowen; 2) Alli; 3) David Haigh; 4) Peter Van Prusisenn; 5) Ylena Calendar; 6) Ian Robertson; 7) Corey Weisman and Weisman Worldwide; 8) Isabel Peterman; and 9) The affidavits requested of Dana Cole. Please note that Alli's affidavit will establish that she saw other Plaintiffs contrive claims by constantly entering Plaintiff David's office in hopes of enticing him to commit offensive conduct. Please also note that on July 12, Alki David expects to receive approximately 40 boxes of evidence and litigation records from Fred Heather's office, consisting of files from David and the Entity Plaintiffs being represented by Barry Rothman (deceased).

Upon information and belief, former employees who sued Plaintiff David (Litigating Defendants) often met at a restaurant near Plaintiff Entity Hologram, Inc.,'s location, to collude, conspire and form untruthful allegations against Plaintiff David and the Entity Defendants. Upon information and belief, the Litigating Defendants, coached by the Attorney Defendants, also met at other various times to compare theories for asserting spurious and trumped-up claims against Plaintiff David and the Entity Defendants.

Rizzo's Deposition and Trial Testimony in the Jones Case Demonstrates that Other Litigating Defendants Contrived Claims Against Plaintiff Defendant and the Litigating Defendants after the Rizzo Settlement with Plaintiff David and the Entity Plaintiffs

In the *Chastity Jones* case, Defendant Bloom deposed Mary Rizzo who

discussed a long chain of text messages between Rizzo and Jones evincing that the Litigating Defendants conspired to contrive claims against Plaintiff David and the Entity Plaintiffs.

For the Court's convenience, here is a dropbox link to these texts: https://drive.google.com/file/d/14lX-XfL3oOGUS9MV4-zd3GXt0WTE1g3M/view?usp=sharing.

Counsel for Plaintiff David in the Jones Trial, Fred Heather of Glaser Weil, pointed out to the Court that Ms. Jones blatently lied, causing a manifest miscarriage of justice in the case that materially and unfairly prejudiced Plaintiff David in the *Jones* case.

Glaser Weil

5. Ms. Jones Was Untruthful and Dishonest in Her Trial Testimony[14]

Mary Rizzo worked for Filmon as an advertising account representative from approximately January 2015 to March 2016. (David Decl., ¶ 2.) In or around June 2016, she filed a lawsuit against Mr. David and other entities and her claims were settled in or around October 2016. (*See id.* at ¶ 3.) Ms. Rizzo and Mr. David had a text-message conversation in or around November 2019 where Ms. Rizzo expressed her belief that "some of the lawsuits that were filed against [Mr. David] and the entity defendants after her settlement were filed at least because of the plaintiffs' knowledge of the terms of her settlement and not because they had valid claims," including Ms. Jones' lawsuit. (*Id.* at ¶ 4.) The following are some examples of Ms. Jones' trial and deposition testimony that are contradicted by Ms. Rizzo's text messages to Mr. David and a former Filmon employee's sworn declaration:

- At trial, Ms. Jones claimed that when she posted a picture of herself in her bathing suit on Instagram on Easter Sunday 2015, Mr. David came up to her the next day and said that he liked the picture she posted and that, "You need to post more pictures like that." (Reporter's Transcript, 362:2-19.) Ms. Jones testified that as a result of Mr. David's comment she "was in shock," "felt violated by [her] superior," and "wanted to get away from [Mr. David]." (RT, 362:20-23) Ms. Jones testified that she "went immediately and told Mary Rizzo." (RT, 362:24-26.) Ms. Rizzo stated that she "was right next to [Ms. Jones] when [Mr. David] commented on [the picture]. She [Ms. Jones] posted it for [Mr. David], she [Ms. Jones] told

[14] The information presented in sections 5 and 6 regarding Ms. Jones' dishonesty in her trial testimony and Ms. Jones' attorney bullying a witness punctuate the fact that there has been a miscarriage of justice with respect to Mr. David. Mr. David does not request that the Court award sanctions for this specific conduct. Instead, these are instances that, combined with the clearly egregious perjury of Ms. Jones and the misconduct of her counsel, demonstrate that the Court cannot have faith that the trial of this matter was fair.

6. Ms. Jones' Attorneys "Bullied" At Least One Potential Witness to Testify on Ms. Jones' Behalf

Mr. David has obtained a declaration from a percipient witness who did not testify at the Jones trial, but who states under oath that she believed Ms. Jones' lawyers tried to "bully" her to provide testimony that was "not true." (*See* Menifee Decl., ¶ 16.)

In or around May 2019, Ms. Jones' lawyers contacted Ms. Menifee though her then lawyer, David Osorio. (Menifee Decl., ¶ 10.) "With the help of Mr. Osorio, [Ms. Menifee] prepared a written statement about [her] knowledge of Ms. Jones and her claims against Mr. David and the Company," which included the following information: (i) "[o]n several occasions, Ms. Jones—who had learned about Ms. Rizzo's lawsuit against and settlement with Filmon and Mr. David—asked [Ms. Menifee] how much money Ms. Rizzo had received as a result of her settlement. [Ms.

Note: Fred Heather may have a better format to set forth these allegations.

The Litigating Defendants who are current and former employees of the Entity Plaintiffs, encouraged and aided and abetted by the Defendant Attorneys, targeted Plaintiff David as a victim to name in spurious settlement demands and in lawsuits, as alleged more fully herein. Former employees and their counsel, Defendant Attorneys, deemed Plaintiff David to be their gravy train and to be a deep pocket source of funding.

On February 2, 2017, Litigating Defendants, Elizabeth Taylor and Chastity Jones filed a Labor-Wrongful Termination lawsuit that also alleged sexual harassment in Los Angeles County Superior Court against Plaintiffs David, Hologram USA Entertainment, Inc., FilmOn Media Holdings, Inc., FilmOn TV., Alki David Productions, Inc. Hologram USA, Inc., Anakando Media Group, USA, FilmOn TV Networks, Inc., and FilmOn TV U.K., Limited.

There is no truth to the allegations asserted by Litigating Defendants Taylor and Jones. Upon information and belief, the suit was filed by legal counsel, Defendants Goldstein, Bloom and Chora to extort settlement proceeds from Plaintiff David and/or the Entity Plaintiffs. Tellingly, Taylor dropped her sexual harassment claim on the day of jury selection, after spending three years maligning and defaming Plaintiff David, with Defendant Attorney promoting Taylor's

fallacious sexual harassment claims on TMZ for those three years. CAN WE LINK TO TMZ?

Carl's affidavit will recount that Taylor was fired because of her failure to go to work at FilmOn or Hologram and she failed entirely to perform her duties. Upon information and belief, Taylor was not at work for FilmOn or Hologram because she was too busy wrestling at the Playboy Mansion.

In Mary Rizzo's deposition conducted by Attorney Defendant Bloom in the *Chastity Jones* case, Rizzo discussed a long chain of text messages between Rizzo and Jones evincing that the Litigating Defendants conspired to contrive claims against Plaintiff David and the Entity Plaintiffs.

For the Court's convenience, here is a dropbox link to these texts: https://drive.google.com/file/d/14lX-XfL3oOGUS9MV4-zd3GXt0WTE1g3M/view?usp=sharing.

The Los Angeles Superior Court ordered Litigating Defendants Jones and Taylor's lawsuits to be bifurcated and those cases were tried separately. In Litigating Defendant Jones' action, LASC Case No. BC649025 (2017), Jones asserted that she was subjected to sexual harassment and battery and that she was wrongfully terminated because she refused Plaintiff David's advances.

In April, 2019, Litigating Defendant Jones won an award against Plaintiff David for $11 Million in compensatory damages, an amount that was reduced by $437,120 by the court because Jones had over-estimated her damages. Counsel

representing Litigating Defendant Jones were Attorney Defendants Bloom, Sarah Bloom of the Bloom Firm, and Attorney Defendants Fundali and Goldstein of the Bloom Law Firm and Attorney Defendant Chora.

In October, 2019, Judge Ongkeko of the Los Angeles Superior Court, who oversaw the Elizabeth Taylor case, admonished Defendant Bloom for significantly overstating her already very expensive law firm bills submitted to the Judge when Litigating Defendant Jones won a compensatory award against Plaintiff David.

Tellingly, the Judge said, "If I were a Bloom client - one that was actually paying out of pocket instead of these sad ambulance chasing contingency cases - I'd be very careful to go over the firm's bills before I paid anything," Judge Ongkeko said.

Such over-billing and seeking to bilk Plaintiff David is just one of innumerable events demonstrating that Defendant Bloom extorted money from Plaintiff David and the Entity Plaintiffs in order to further the criminal enterprise, primarily overseen by Defendants Girardi, Allred, Bloom and Goldberg.

In October, 2019, a jury deadlocked 8-4 in Litigating Defendant Taylor's suit, LASC Case No. BC649025 (2017). Los Angeles County Superior Court Judge Christopher Lui declared a mistrial. Counsel for Litigating Defendant Taylor was Attorney Bloom.

In 2017, Karl Zirpel, a former employee of Alki David Productions, claimed

he was improperly fired after raising safety concerns prior to an event hosted by Entity Plaintiff Hologram at Hologram Theater. Zirpel's sexual harassment claims, like that of many other Plaintiffs whom Defendant Attorneys helped to victimize Plaintiff David, was dropped the claim on the eve of trial. *Karl Zirpel v. Alki David Productions, Inc., et al.*, LASC Case No. BC684618. Note: Alki was not personally named in this suit, but Zirpel's attorneys claimed in The Daily Beast that they would pursue Alki personally once the judgment was finalized.

https://www.thedailybeast.com/alki-david-coca-cola-heir-who-called-lawyer-a-fucktard-loses-dollar1-million-case.

Note: Alki, counsel for Zirpel and Zimmerman are not named Attorney Defendants - just ensuring you do not want to add them. Also Note: Alki was previously involved in unrelated litigation over a business dispute with Barry Diller, whose company, IAC owns the Daily Beast.

Hologram USA's independent contractor Grant Zimmerman filed *Grant Zimmerman v. Alkiviades David, et al.*, Case No. BC675552, in the Los Angeles County Superior Court, wrongly alleging wrongful termination and that he was fired by Plaintiff David for revealing David committed sexual misconduct as to other of David's employees.

Alki: Attached is a mediation brief filed on Plaintiff David's behalf and on behalf of Hologram Inc., but not the other various entities related to Alki named in Zimmerman's suit. **Note: Alki and his counsel need to determine whether to divulge this as, per evidentiary rules, it is confidential.**
https://mail.google.com/mail/u/0/#search/Zimmerman/FMfcgxwLtsxhWHtZJFmDWqjCNmJCkqSG?projector=1&messagePartId=0.1 -

In 2019, Lauren Reeves, represented by Attorney Defendant Allred, sued Plaintiff David and Plaintiffs Hologram USA and Alki David Productions, LASC Case No. BC649025, for sexual battery and sexual harassment. Attorney Defendants Goldberg and Leal of the Attorney Defendant Allred's firm, represented Reeves, who worked as a comedy writer for Plaintiff Hologram USA. Reeves was awarded $650,000 in compensatory damages and $4.35 million in punitive damages.

In November, 2019, Mahim Khan, a former production assistant who worked at Entity Plaintiff FilmOn TV and Entity Plaintiff Alki David Productions, Inc., sued Plaintiff David and Entity Plaintiffs Alki David Productions, Hologram USA, FilmOn Inc., and Plaintiff David. LASC Case No. BC654017 (2019). Khan obtained an award of $58 million, $55 Million of which was for punitive damages for battery, sexual battery and sexual harassment against Plaintiff Alki David.

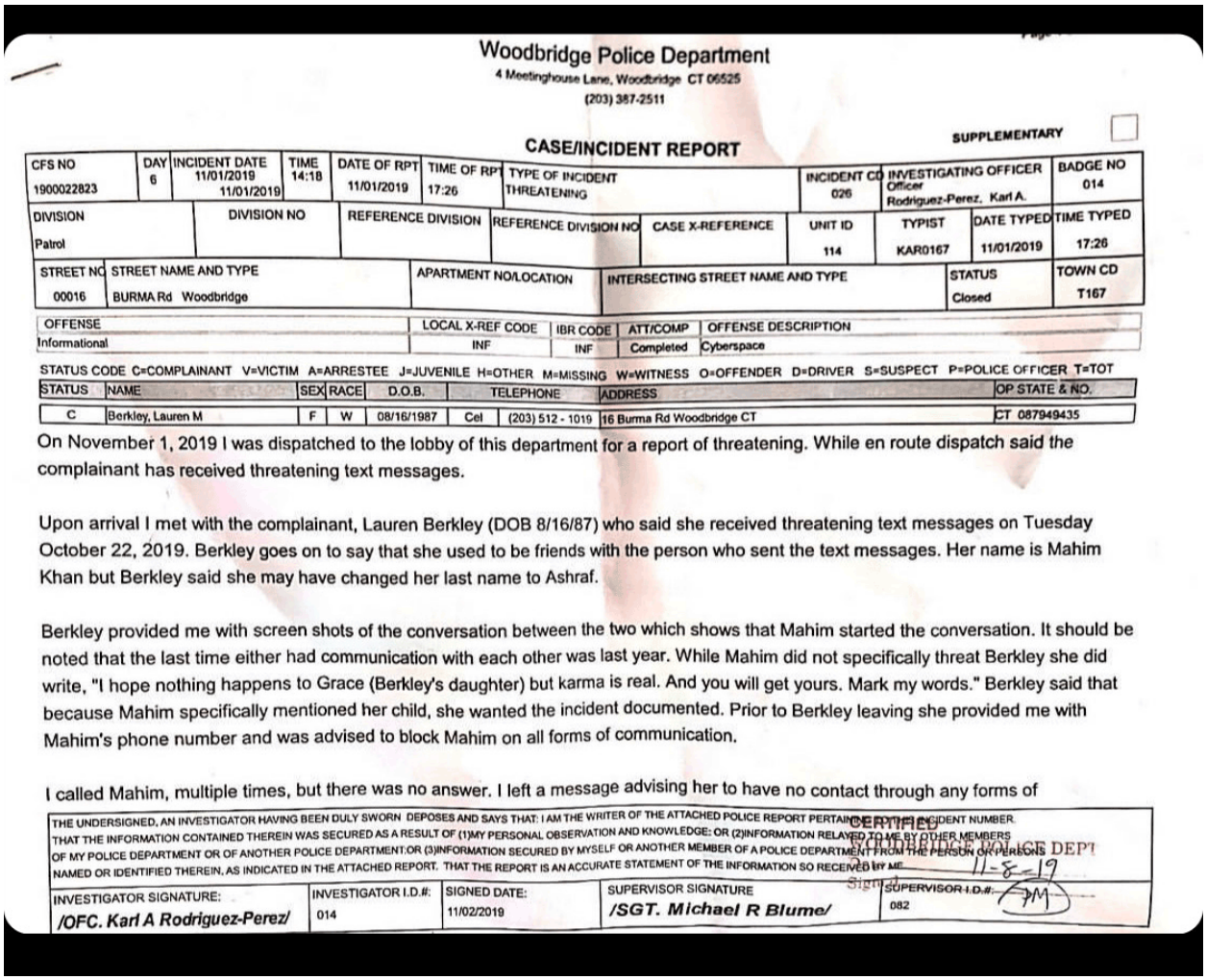
Plaintiff David and the Entity Plaintiffs are seeking reversal on appeal due to the misconduct of Khan's counsel, Allred, Maroko & Goldberg, including, but not limited to, Defendants Allred, Goldberg, Leal, and Mochkatel, misconduct intended to further the criminal enterprise those counsel participated in in violation of RICO, as more fully alleged herein.

Note: Counsel will need to link to the soon-to-be-filed Petition for Review before the California Supreme Court **when Fred Heather sends that filing.**

On September 30, 2020, Jane Doe (Rita Nichols) filed a Labor-Wrongful termination lawsuit in Los Angeles County Superior Court against Plaintiffs David, FilmOn TV Networks, Inc., FilmOn TV La Inc. SwissX Labs AG Inc. a California Corp. AKA Swiss Lounge; Hologram USA Entertainment Inc.; FilmOn TV Inc. Hologram USA Inc. a California Corp. AKA Hologram USA Productions Inc; SwissX Labs AG Inc. AKA SwissX Lounge AKA FilmOn UK Ltd; Hologram USA Inc. AKA Hologram USA Productions Inc. AKA Hologram USA Entertainment Inc. AKA FilmOn TV Inc. AKA FilmOn.Tv La. Inc. LASC Case No. 20STCV37498. Defendant Doe's attorneys in that action are Defendants Ebby S. Bakhtiar, Gary A. Dordick, and Thomas Vincent Girardi. This matter is still pending.

Litigating Defendant Khan Seeks to Obstruct Justice in her Case Against Plaintiff David and the Entity Plaintiffs

On November 8, 2019, Litigating Defendant Khan was the subject of a police report filed by her roommate, Lauren M. Berkley, who informed officers that *Khan* was threatening Berkley and her daughter because Berkley was going to testify in support of Plaintiff David in the *Mahim Khan* case.



Woodbridge Police Department
4 Meetinghouse Lane, Woodbridge CT 06525
(203) 387-2511

CASE/INCIDENT REPORT

SUPPLEMENTARY ☐

CFS NO	DAY	INCIDENT DATE	TIME	DATE OF RPT	TIME OF RPT	TYPE OF INCIDENT	INCIDENT CD	INVESTIGATING OFFICER	BADGE NO
1900022823	6	11/01/2019 11/01/2019	14:18	11/01/2019	17:26	THREATENING	026	Officer Rodriguez-Perez, Karl A.	014

DIVISION	DIVISION NO	REFERENCE DIVISION	REFERENCE DIVISION NO	CASE X-REFERENCE	UNIT ID	TYPIST	DATE TYPED	TIME TYPED
Patrol					114	KAR0167	11/01/2019	17:26

STREET NO	STREET NAME AND TYPE	APARTMENT NO/LOCATION	INTERSECTING STREET NAME AND TYPE	STATUS	TOWN CD
00016	BURMA Rd Woodbridge			Closed	T167

OFFENSE	LOCAL X-REF CODE	IBR CODE	ATT/COMP	OFFENSE DESCRIPTION
Informational	INF	INF	Completed	Cyberspace

STATUS CODE C=COMPLAINANT V=VICTIM A=ARRESTEE J=JUVENILE H=OTHER M=MISSING W=WITNESS O=OFFENDER D=DRIVER S=SUSPECT P=POLICE OFFICER T=TOT

STATUS	NAME	SEX	RACE	D.O.B.	TELEPHONE		ADDRESS	OP STATE & NO.
C	Berkley, Lauren M	F	W	08/16/1987	Cel	(203) 512 - 1019	16 Burma Rd Woodbridge CT	CT 087949435

On November 1, 2019 I was dispatched to the lobby of this department for a report of threatening. While en route dispatch said the complainant has received threatening text messages.

Upon arrival I met with the complainant, Lauren Berkley (DOB 8/16/87) who said she received threatening text messages on Tuesday October 22, 2019. Berkley goes on to say that she used to be friends with the person who sent the text messages. Her name is Mahim Khan but Berkley said she may have changed her last name to Ashraf.

Berkley provided me with screen shots of the conversation between the two which shows that Mahim started the conversation. It should be noted that the last time either had communication with each other was last year. While Mahim did not specifically threat Berkley she did write, "I hope nothing happens to Grace (Berkley's daughter) but karma is real. And you will get yours. Mark my words." Berkley said that because Mahim specifically mentioned her child, she wanted the incident documented. Prior to Berkley leaving she provided me with Mahim's phone number and was advised to block Mahim on all forms of communication.

I called Mahim, multiple times, but there was no answer. I left a message advising her to have no contact through any forms of

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1)MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2)INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT;OR (3)INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

CERTIFIED WOODBRIDGE POLICE DEPT

INVESTIGATOR SIGNATURE:	INVESTIGATOR I.D.#:	SIGNED DATE:	SUPERVISOR SIGNATURE	SUPERVISOR I.D.#:
/OFC. Karl A Rodriguez-Perez/	014	11/02/2019	/SGT. Michael R Blume/	082

Signed 11-8-19

Defendant Attorneys also filed lawsuits on behalf of Litigating Defendants Elizabeth Taylor (represented by Defendant Attorney Goldstein, Bloom, Chora); Chastity Jones (represented by Attorney Defendants Bloom, Sarah Bloom of the Bloom Firm, and Attorney Defendants Fundali, Goldstein of the Bloom Law Firm and Attorney Defendant Chora), Mahim Khan (represented by Defendant Attorneys Allred, Maroko & Goldberg, Allred, Goldberg, Leal and Mochkatel;) and Lauren Reeves (represented by Defendant Attorney Allred). Upon information

and belief, the Defendant Attorneys committed extortion against Plaintiff David and the Entity Plaintiffs, obstructed justice by manipulating their clients' testimony and committed mail and wire fraud by communicating with their clients and witnesses in such a manner as to defraud Plaintiff David and the Plaintiff Entities.

Alki/counsel - we need to bolster this allegation - perhaps in the 40 boxes?

Attorney Defendant Bloom's Egregious Conduct in Her Spurious Lawsuits Against Plaintiff David

In October, 2019, Judge Ongkeko of the Los Angeles Superior Court, who oversaw the *Elizabeth Taylor* case, admonished Defendant Bloom for significantly overstating her already very expensive law firm bills submitted to the Judge when Litigating Defendant Jones won a compensatory award against Plaintiff David.

Tellingly, the Judge said, "If I were a Bloom client - one that was actually paying out of pocket instead of these sad ambulance chasing contingency cases - I'd be very careful to go over the firm's bills before I paid anything," Judge Ongkeko said. **Note to Counsel: Fred, do you have the Transcript we can cite to with regard to Judge Ongkeko's comments?**

Such over-billing and seeking to bilk Plaintiff David is just one of innumerable events demonstrating that Defendant Bloom extorted money from Plaintiff David and the Entity Plaintiffs in order to further the criminal enterprise, primarily overseen by Defendants Girardi, Allred, Bloom and Goldberg.

Not satisfied with extorting money from Plaintiff David, Bloom could not even control herself in the foyer of the Stanley Mosk Courthouse, a public building, where she screamed at Plaintiff David and accused him of rapes, fa

[(118) ALKI DAVID ATTACKS THE CREW!!!! - Monica-D'Onofrio - YouTube]

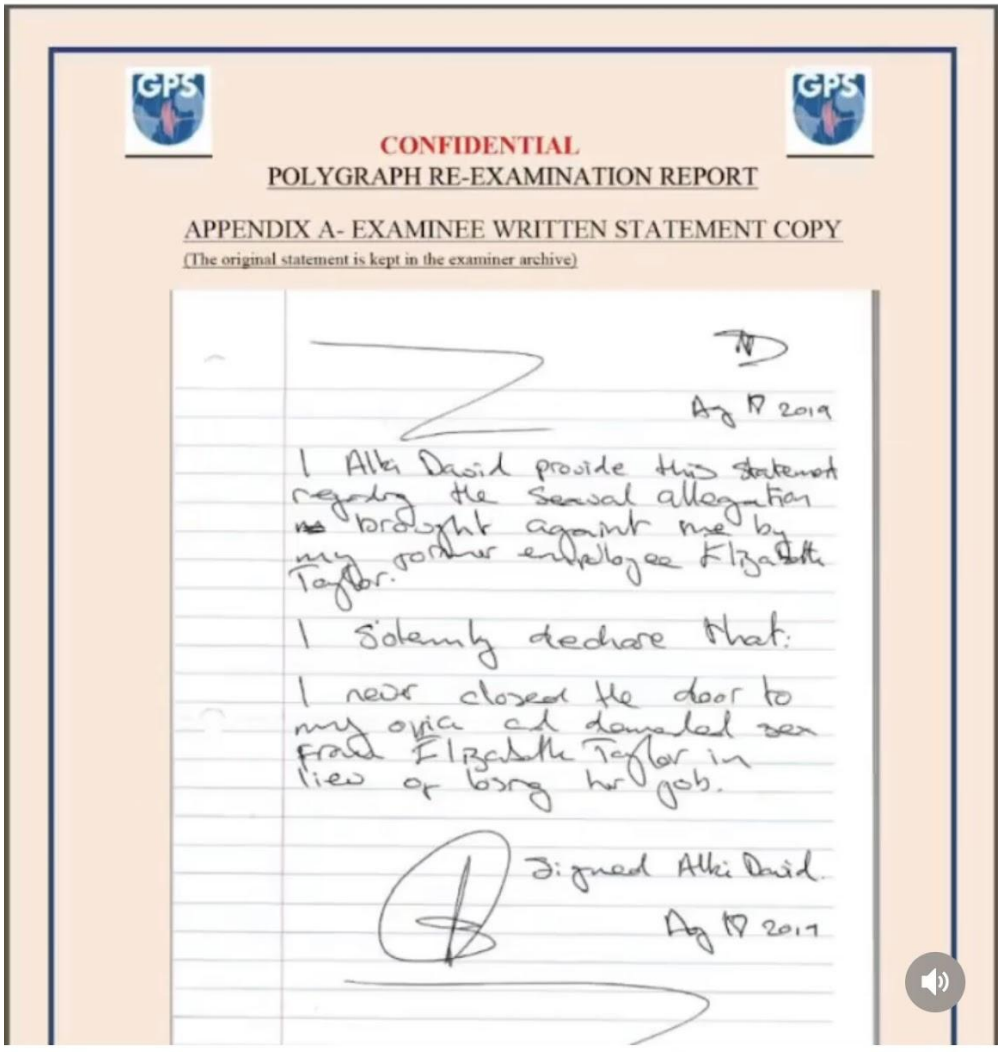

SCAM INC.
GLORIA ALLRED
TOM GIRARDI
LISA BLOOM

6:11

Ringer

September 21, 2019

alkidavid



CONFIDENTIAL
POLYGRAPH RE-EXAMINATION REPORT

APPENDIX A- EXAMINEE WRITTEN STATEMENT COPY
(The original statement is kept in the examiner archive)

Aug 19 2019

I Alki David provide this statement regarding the Sexual allegation ~~is~~ brought against me by my former employee Elizabeth Taylor.

I Solemly declare that:

I never closed the door to my office at any time from Elizabeth Taylor in lieu of losing her job.

Signed Alki David.

Aug 19 2019

View insights Boost Post

42,898 views • Liked by bobbywilson22

defamatory allegations.**https://www.youtube.com/watch?v=QvCshThAnTQ**

(The video with Bloom's allegations in the foyer of the Stanley Mosk Courthouse saying that Plaintiff David committed Rapes - plural - The allegations are at 1:45 on this video).

Defendant Bloom's defamations against Plaintiff David were overheard by others, most notably an appalled mother who can be heard on the tape asking for Defendant Bloom to stop because the Mother's young daughter was hearing Bloom's defamatory accusations against Plaintiff David, as well at attorneys waiting for hearings). While Defendant Bloom has manifested unethical behavior in many instances as against Plaintiff David and the Plaintiff Entities, perhaps this is the most paradigm illustration that her behavior in litigation is not merely grossly unethical, but is also unstable and bordering on the pathological.

ADD BLOOM IN THE UK AND DAVID HAIGH

DEFENDANTS ALLRED AND BLOOM EXCEEDED THE BOUNDARIES OF ADVOCACY AND DEFAMED PLAINTIFF DAVID

Throughout the entire, years-long campaign to obliterate Plaintiff David's reputation and bankrupt him and the Plaintiff Entities, Defendant Allred exceeded all respectable boundaries of advocacy and she exceeded the boundaries of the United States as well, maligning Defendant Alki's character and reputation in Switzerland.

In Switzerland, Defendant Allred wrongfully sought to enforce a non-final judgment against Plaintiff David *and his family*, none of whom were parties to any

relevant litigation filed by Defendant Attorneys, in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss law.

Béatrice Stahel, of MC Avocats SA (Ltd.) in Gstaad, Switzerland, provides Plaintiff David with Swiss representation. Plaintiff David has filed criminal complaints in Switzerland against Reeves, alleging Reeves is guilty of wilful defamation (art. 174 SCC) / defamation (art. 173 SCC). Reeves is represented by Attorney Defendant Allred. Stahel informs in an English translated letter that Allred has violated Swiss law.[4]

In Switzerland, Defendant Allred also wrongfully sought to enforce a non-final judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys, in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss law.[5]

The Swiss courts rejected Allred's extraterritorial efforts to collect on the *Mahim Khan* judgment because appellate proceedings are ongoing in that case. Indeed, Defendant David and the named Entity Defendants in the *Mahim Khan* case have a Petition for Review pending before the California Supreme Court.

At the time that Attorney Defendant Allred violated Swiss law and national

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[4]https://mail.google.com/mail/u/0/#search/Swiss+translation+/KtbxLzfhXkdXKQwHMJbkPTWfLhtpgXQSgV?projector=1&messagePartId=0.1. (Letter from Plaintiff David's Swiss Counsel, December 16, 2021).

[5]https://docs.google.com/document/d/1Sqn9smWheF_6yI_bNY1EPne1yxweAiO3zNX6_g4PiJg/edit (Letter from Plaintiff David's Swiss Counsel, December 16, 2021).

policy, Defendant David's and the named Entity Defendants' appeal was pending before the California Court of Appeal of the State of California District Division Two, *Mahim Khan v. Alkiviades David,* B305849, B3088727.

Defendant Allred's illegal actions in Switzerland have caused, and continue to cause, Plaintiff David extreme expense and have, and continue to cause, further damage to Plaintiff David's reputation as such filings are public record in Switzerland. Plaintiff David has gone to great expense to hire legal counsel to fight the criminal enterprise conducted by Defendant Allred and Defendant Bloom's continuous, wrongful spurious actions and defamatory actions.

Defendant Allred's corrupt, wilful and intentional actions, constituting criminal acts under relevant Swiss law, were committed under the auspices of an otherwise legitimate enterprise, Allred, Maroko & Goldberg.[6]

However, Defendant Allred's reprehensible conduct alleged above is not the end of the story recounting her actionable wrongful actions.

On the day after the *Mahim Khan* verdict issued, Allred and Litigating Defendant Khan, went beyond the pale by calling a press conference in front of the Beverly Hills Police Station as they sought unsuccessfully to file criminal charges against Plaintiff David with regard to Khan's claims against David.

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[6] https://www.globenewswire.com/en/news-release/2019/11/01/1939286/0/en/Billionaire-Hires-Three-Major-UK-Law-Firms-to-Fight-Lisa-Bloom-and-Gloria-Allred.html.

https://www.youtube.com/watch?v=ROxzyBADKvQ.

However, the Police turned Defendants Allred and Khan away, stating that they did not have the evidence necessary to file such charges. **No such charges were ever filed.** Defendant Allred called a news conference at the Beverly Hills police station on the date she attempted to file criminal charges against Plaintiff David with the express purpose of intimidating, harassing and defaming Plaintiff David. Defendant Allred's actions in calling the press conference **and what other of her actions** have caused serious and lasting emotional harm to Defendant David. After having been told by the police that she did not have the requisite proof to support a criminal filing against Plaintiff David, upon information and belief, Defendant Allred arranged to have a false article published in the LA Times. Self-appointed ambassador for 'wronged men' of #MeToo Alki David faces criminal complaint - Los Angeles Times (latimes.com).

Notably, Plaintiff David has thrice asked the LA Times to retract the article, only to be ignored completely. **Alki can we include a link where you asked the LA Times to retract the article.**

Therefore, Defendant Allred's defamatory comments against Plaintiff David continue on for anyone to see. Upon information and belief, Defendant Allred, an officer of the Court had a duty to retract her defamatory remarks against Plaintiff David. To this day - crickets. This is one in a voluminous number of Allred's

nefarious, harassing and extorting actions against Plaintiff David.

With David Haigh advising us how to best present the wrongdoings by Lisa Bloom and Gloria Allred and Latifa -

The Racketeering Enterprise Defendants' Conspiracy to Extort

The Attorney Defendants' Allred, Bloom, Goldberg and Girardi conspired to extort money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses constitute wrongful actions under the auspices of otherwise legitimate enterprises, including, but not limited to, Allred, Maroko & Goldberg, The Bloom Firm; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Accordingly, as more fully set forth in this Complaint, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by the Attorney Defendants' mail fraud, bribery, extortion, all of which predicate claims pursuant to RICO**.**

Further, the Defendant Attorneys conspired to tamper with witnesses and to have witnesses and the Litigating Defendants collude against Plaintiff David and the Entity Plaintiffs by contriving allegations to support their actions against Plaintiffs David and the Plaintiff Attorneys. Such tampering with witnesses constitute wrongful actions under the auspices of otherwise legitimate enterprises,

including, but not limited to, Allred, Maroko & Goldberg, The Bloom Firm; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

The Attorney Defendants played fast and loose with both the Litigating Defendants and witnesses as well as the evidence they introduced in each case. Defendant Allred kept Defendant Mahim Kahn and Defendant Lauren Reeves as clients, but sent Defendant Elizabeth Taylor to Defendant Bloom, Allred' daughter.

Subsequently, Defendant Bloom was retained by Defendant Chastity Jones, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

Upon information and belief, Defendants Mahim Khan, Elizabeth Taylor, Lauren Reeves, and Chastity Jones (Litigating Defendants), with the encouragement of the Defendant Attorneys, conspired and colluded to make up stories about the actions of Plaintiff David and Plaintiff Entities in order to file their spurious lawsuits against Plaintiff David and Plaintiff Entities. **Insert text messages from Chastity etc.**

The Attorney Defendants' conspiring to extort and extorting money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses, committed actions under the auspices of otherwise legitimate enterprises, including, but not limited to, Allred, Maroko & Goldberg, The Bloom Firm; Girardi Keese; Dordick Law Corporation; Chora, Young &

Manasserian and The Law Offices of Ebby S. Bakhtiar.

Insert more specific instances if available.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by the Attorney Defendants' mail fraud, bribery, and extortion, all of which predicate claims pursuant to RICO**.**

Plaintiffs assert, pursuant to 18 U.S.C. §§1962(b)(c) and (d), that the Attorney Defendants, their clients, experts, employees and agents, conspired with one another and intended to, and did, wilfully conduct an inter-related, clear and continuous pattern of racketeering activity to benefit Defendant Attorneys' unlawful enterprise, and that Defendants continue to do so, by, inter alia, wilfully and intentionally conspiring against Plaintiff David and the Entity Plaintiffs by filing spurious lawsuits against Plaintiff David and the Entity Plaintiffs, who were, and continue to be, victimized by Attorney Defendants' continuous pattern of racketeering conducted to benefit their enterprises, including mail fraud, extortion, bribery, and aiding and abetting, all of which are cognizable as RICO predicate acts pursuant to 18 U.S.C. §§ 1861 and 1862 (b)(c) and (d).

Defendants Allred, Bloom and Swiss Counsel Illegally Further the Enterprise

Defendant Allred continues to further the criminal enterprise by utilizing illegal tactics to obstruct justice, both in the U.S. and in Switzerland, as she seeks

to collect on a judgment in the *Mahim Khan* case despite that case being on appeal before the Supreme Court of California. Defendant Allred has violated relevant Swiss law in seeking to collect punitive damages as such damages are prohibited in Switzerland. Punitive damages are not available under Swiss law. Swiss courts refuse to award punitive damages even if the applicable foreign law provides for such damages (Article 135(2) Swiss Private International Law).

Defendant Attorney Allred's Illegal Actions Furthering the Criminal Enterprise

Upon information and belief, Plaintiff David and the Entity Plaintiffs assert that Defendant Allred, conspired with the other United States-Based Attorney Defendants, including Goldberg, Leal, Mochkatel, Bloom, Fudali, Dordick, Griffith, Goldstein, Chora, and Bakhtiar, to carry on with their criminal enterprise aimed at harming Plaintiff David and The Entity Plaintiffs.

The United States-Based Attorney Defendants did, and continue to, coach Litigating Defendants to lie and to mischaracterize their interactions with Plaintiff David and to file spurious lawsuits against Plaintiff David and the Entity Plaintiffs in order to deprive Plaintiff David and the Entity Plaintiffs of their property.

Note: Do we have any examples other than this one: Carl Bowen Affidavit stating that Rita told him that Defendant Allred coached her about what to say in the court proceedings. Rita also stated that Allred told her to lie about the allegations against Plaintiff David. Carl said that Rita stated that Allred told her she cannot recant and that Rita also stated to Carl that Allred has threatened that if she does recant, she will have to pay all of Allred's attorneys' fees and court costs, which significantly intimidated her. Rita also stated that Allred told her to lie

about the allegations against Plaintiff David.

Insert texts and coaching

Mahim Khan Trial: Illegal and Unethical Acts of Attorney Defendants Allred, Goldberg, Leal and Mochkatel and Defendant The California Bar's Failure to Respond, Let Alone to Intervene in the Interests of Justice

Plaintiff David's legal counsel Attorney Murray Greenberg wrote a letter to the State Bar of California Office of Chief Trial Counsel Intake Department setting forth the manifest abuse of process in the *Mahim Khan* case by Attorney Defendants Allred, Goldberg, Leal and Ms. Mochkatel.

In relevant part, Greenberg's letter, dated April 29, 2020, stated:

> I, Murray B. Greenberg, Esq. submit this complaint on behalf of Alkiviades ("Alki") David against attorneys Gloria Allred, Nathan Goldberg, Dolores Y. Leal and Renee Mochkatel based on their professional misconduct in the case held before Judge Michelle Williams Court in Los Angeles Superior Court, Central District Case No. BC654017 entitled MAHIM KHAN, Plaintiff v. HOLOGRAM USA, Inc,; ALKI DAVID PRODUCTIONS, INC.; FILMON TV, INC.; ALKIVIADES ("ALKI") DAVID, an individual; and DOES 1 through 25, Defendants.
>
> "This was a highly contentious lawsuit which involved allegations of battery and harassment against the defendant, Mr. David and associated companies. The above-named attorneys used dishonest means and violated their ethical responsibilities during the trial which hampered Mr. David's ability to properly mount a defense.
>
> The most egregious ethical breach involved the manipulation of a joint exhibit list by plaintiff's attorneys which caused a doctored list to be filed with the court. As if this action was not serious enough, the plaintiff's attorneys also removed the signature page with defendant's attorney's (renowned litigator and trial attorney, Ellyn S. Garofalo)

signature **ADD AS A FOOTNOTE ELLYN'S FILING ON THIS ISSUE** affixed to it from a previous agreed upon version (See Attachment 3 EXHIBIT A – page 31). They then attached it to the fraudulent version (Attachment 3 EXHIBIT B – page 31) when she was unavailable. Mr. Goldberg then signed the exhibit list and filed it with the court.

This was done without the knowledge, permission or authorization of Ms. Garofalo or anyone else in her office. (Attachment 3 Declaration of Ellyn S. Garofalo page 2, paragraphs 6-9).

A comparison between the doctored document and the original agreed upon version indicates that one document was added (EXHIBIT B, page 5 - Ex. #131 – "Dr. Reading Documents") and three documents were deleted (EXHIBIT B, page 30 – Exs. #647, 648 and 649).

Ms. Leal and Ms. Mochkatel were two other attorneys listed on the pleading as well as Gloria Allred who is a partner of the law firm.

In addition to the above referenced misconduct, the attorneys for plaintiff sought to exclude documents that were previously produced to plaintiff's attorneys by indicating falsely to the court that they were not disclosed or produced in discovery. Based upon the fact that the documents were Bates stamped, these items were in fact provided to plaintiff's attorneys during discovery (Attachment 3 Declaration of Ellyn S. Garofalo page 1, paragraphs 2 -3).

During closing argument, Mr. Goldberg indicated on several occasions that Mr. David did not call witnesses on his behalf. He also suggested that if he were not culpable, witnesses would have testified for him. (See Attachment 10 – page 83, lines 27-28, page 84, lines 1-4; page 146, lines 20-27; page 147, lines 1-4 and page 148, lines 17-25). This was done even though the judge had previously ruled outside the jury's presence that Mr. David would not be able to call any witnesses (including himself) on his behalf.(See Attachments 3 through 9 – Motions in Limine by plaintiff, response by defendants and court rulings) This created a false and unfair impression to the jury.

By filing a doctored document purporting to be a joint exhibit list, making a false statement to the court regarding the status of discovery in order to gain an unfair advantage in litigation and creating a false impression to the jury, attorneys Gloria Allred, Nathan Goldberg, Dolores Y. Leal and Renee Mochkatel breached their ethical responsibility under Rule of Professional Conduct, rule 3.3 Candor Toward the Tribunal; rule 3.4 Fairness to Opposing Party and Counsel;

rule 5. Responsibilities of Managerial and Supervisory Lawyers; rule 8.4 Misconduct; and Business and Professions Code section 6106 Moral Turpitude.
Insert a link to the entire complaint to the State Bar of California.

The Defendant Attorneys' illegal enterprise activity will extend beyond the initial period of time when the predicate acts commenced because litigation continues in the suit filed by Elizabeth Taylor and the *Mahim Khan* case is on appeal. Defendant Allred continues to further the criminal enterprise by utilizing illegal tactics to obstruct justice, both in the U.S. and in Switzerland, as she seeks to collect on a judgment in the *Mahim Khan* case despite that case being on appeal before the Supreme Court of California.

Defendants Allred's, Bloom's and The Collection Defendant Attorneys' Illegal Actions in Switzerland to Further Their Criminal Enterprise

Upon Information and Belief, Defendants Allred, Bloom, Marc Gillieron and Emilie Theintz and Chabrier Avocats, SA ("The Collection Defendant Attorneys") and Litigating Defendants Reeves and Khan violated United States Law and Swiss Law by seeking to illegally collect money and property from Plaintiff David, *and members of his family having nothing to do with any of the lawsuits addressed in this Complaint.*

Specifically, the Collection Defendant Attorneys obstructed justice and committed extortion by attempting to collect money and property from Plaintiff David, including $55 Million in punitive damages based solely on the trial court

order in *Mahim Khan*, knowing that making such collection efforts was unlawful: 1) because **an appeal was ongoing - and still is**; and 2) Punitive damages are not available under Swiss law. Swiss courts refuse to award punitive damages even if the applicable foreign law provides for such damages (Article 135(2) Swiss Private International Law).

The Collection Defendant Attorneys knowingly and wilfully participated in a racketeering enterprise aimed at extorting money from Plaintiff Alki and the Entity Plaintiffs. Defendants Oren Warshavsky, Baker Hostetler, Marc Gillieron, as a partner in Chabrier Avocats, SA, Emilie Theintz, an associate in Chabrier Avocats, SA, a law firm based in Geneva Switzerland.

Defendants Allred, Bloom and Swiss Counsel Illegally Further the Enterprise

Defendants Allred and Bloom continue to further the criminal enterprise by utilizing illegal tactics to obstruct justice, both in the U.S. and in Switzerland, as she seeks to collect on a judgment in the *Khan* case despite that case being on appeal before the Supreme Court of California. Defendant Allred has violated relevant Swiss law in seeking to collect punitive damages as such damages are prohibited in Switzerland. Punitive damages are not available under Swiss law. Swiss courts refuse to award punitive damages even if the applicable foreign law provides for such damages (Article 135(2) Swiss Private International Law).

Upon Information and Belief, Defendants Allred, Bloom, Gillieron and

Theintz and Chabrier Avocats, SA ("The Collection Defendant Attorneys") violated United States Law and Swiss Law by seeking to collect money and property from Plaintiff David, *and members of his family having nothing to do with any of the lawsuits addressed in this Complaint.* Specifically, the Collection Defendant Attorneys obstructed justice and committed extortion to further their racketeering enterprise by attempting to collect money and property from Plaintiff David, including $55 Million in punitive damages based solely on the trial court order in *Mahim Khan*, knowing that making such collection efforts was unlawful: 1) because an appeal was ongoing - and still is; and 2) Punitive damages are not available under Swiss law. Swiss courts refuse to award punitive damages even if the applicable foreign law provides for such damages (Article 135(2) Swiss Private International Law).

Upon information and belief, the Defendant Collection Attorneys wilfully and intentionally defamed Plaintiff David, in violation of Swiss law, to further their wrongful enterprise to obstruct justice, use mail and wife fraud to harm Plaintiff David and the Entity Plaintiffs, and to commit bribery and extortion, as more fully set forth herein.

Attorney Defendant Chora's Obstruction of Justice

Upon information and belief, Defendant Attorney Chora placed a judgment lien on the PayPal account owned by Plaintiff Entity Hologram U.S.A., seeking to

garner funds from that account as he seeks to collect on the Judgment awarded to Litigating Defendant Chastity Jones. Upon information and belief in *Jones,* the jury returned a special verdict, awarding her $591,300 in economic damages, $1,500,000 in past noneconomic damages, and $1,000,000 in future noneconomic damages. After a second phase of trial, the jury awarded Jones $8,000,000 in punitive damages **against Plaintiff David only.**

Upon information and belief, Defendant Chora followed inappropriate and unlawful collection procedures, both in the United States and in Switzerland by seeking to enforce judgments obtained by the United States-Based Attorney Defendants on behalf of the Litigating Defendants as against the Plaintiff Entities' PayPal accounts in the United States and in the United Kingdom. **Dordick and Bakhtiar - Jane Dough matter Dordick and Bakhtiar - Jane Dough matt**

Upon Information and Belief, Defendants Allred, Marc Gillieron and Emilie Theintz and Chabrier Avocats, SA ("The Collection Defendant Attorneys") violated United States Law and Swiss Law by seeking to collect money and property from Plaintiff David, *and members of his family having nothing to do with any of the lawsuits addressed in this Complaint.* Specifically, the Collection Defendant Attorneys obstructed justice and committed extortion by attempting to collect money and property from Plaintiff David, including $55 Million in punitive damages based solely on the trial court order in *Mahim Khan*, knowing that making

such collection efforts was unlawful: 1) because an appeal was ongoing - and still is; and 2) Punitive damages are not available under Swiss law. Swiss courts refuse to award punitive damages even if the applicable foreign law provides for such damages (Article 135(2) Swiss Private International Law).

Swiss Criminal Proceedings Demonstrate that Litigating Defendants Chasity Jones and Mahim Khan have Defamed Plaintiff Alki

Beilage 1: *Amended Judgment* vom 10. September 2020

2. Das Dispositiv des Urteils lautet wie folgt:

> « ***NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED*** *that Plaintiff Lauren Reeves shall have and recover damages as follows:*
>
> *As against Defendants Hologram USA, Inc., Alki David Productions, Inc., and Alkiviades David, jointly and severally, for compensatory damages the sum of:* ***$650,000*** *with interest thereon at the rate of ten (10%) percent per annum from the date of the entry of the Judgment, January 7, 2020 until paid.*
>
> *As against Defendant Alkiviades David individually for punitive damages the sum of:* ***$4,350,000*** *with interest thereon ate the rate of ten (10%) percent per annum from the date of the entry of the Judgment, January 7, 2020 until paid.*
>
> ***IT IS FURTHER ORDERED, ADJUDGED AND DECREED*** *that*
>
> *Pursuant to the Court's Order of July 22, 2020, Plaintiff Reeves shall have and recover from said Defendants jointly and severally:*
>
> *Attorneys' fees in the amount of* ***$1,299,675.00****, and costs in the amount of* ***$65,346.02****, plus interest thereon at the rate of ten percent (10%) per annum from the date of entry of this Amended Judgment until paid. »*

In freier Übersetzung:

> «***DARUM WIRD ANGEORDNET, ERKANNT UND BESCHLOSSEN****, dass der Klägerin Lauren Reeves folgender Schadenersatz zusteht:*
>
> *Gegen die Beklagten Hologram USA, Inc., Alki David Productions, Inc., and Alkiviades David, gesamtschuldnerisch, als Schadensersatz die Summe von:* ***$650'000*** *zuzüglich Zinsen in Höhe von zehn (10%) Prozent pro Jahr ab dem Datum des Urteilseintritts am 7. Januar 2020 bis zur Zahlung.*
>
> *Gegen den Beklagten Alkiviades David einzeln als Strafzuschlag zum Schadenersatz die Summe von:* ***$4'350'000*** *zuzüglich Zinsen in Höhe von zehn (10 %) Prozent pro Jahr ab dem Datum der Urteilsverkündung am 7. Januar 2020 bis zur Zahlung.*
>
> ***ES WIRD FERNER ANGEORDNET, ERKANNT UND BESCHLOSSEN****, dass*
>
> *Gemäß der gerichtlichen Verfügung vom 22. Juli 2020 hat die Klägerin Reeves von den Beklagten gesamtschuldnerisch folgende Ansprüche*
>
> *Anwaltshonorare in Höhe von* ***$1'299'675.00*** *und Kosten in Höhe von* ***$65'346.02****, zuzüglich Zinsen in Höhe von zehn Prozent (10%) pro Jahr ab dem Datum des Eintritts*

We have now filed your new trial motion in the Chasity Jones case. The motion will be heard by the original judge, Judge Ongeko, on August 16, 2019. New trial motions are rarely granted. However, we have a good argument that there was no admissible evidence of your net worth and thus the punitive damages award must be stricken, or substantially reduced. Interestingly, the Bloom Firm (in another example of their incompetence) filed a motion in the Taylor case which supports our argument in the Jones new trial motion that there was no admissible evidence of punitive damages, and thus the award ***must*** be set aside or it is "automatically reversible" on appeal. This argument, made to obtain financial discovery in the Taylor case, supports our argument in the new trial motion and makes it difficult if not impossible for Jones to defend the punitive damages award. In short, they are now adverse to their own client. We will have fun with this at the hearing and it should be very helpful to our argument.

Dear Colleague,

We hereby refer to our client's latest emails and to your request to receive an update concerning the Swiss current proceedings.

As a result, you will find here a summary of the current Swiss criminal proceedings regarding our client.

In the frame of his activities led through his companies based in the US, FilmOn. TV, Inc. (FilmOn hereinafter), Alki David Productions, Inc. (Delaware) (ADP hereinafter) and Hologram USA, Inc. (Delaware) (Hologram hereinafter), Mr. DAVID formerly employed Mrs. Lauren REEVES and Mrs. Mahim KHAN.

I. Lauren REEVES (a comedy writer, former model and comedy performer born on September 4th 1983) was employed as a writer for FilmOn (2015), as an employee charged to attract and write for comedians for Hologram (2016) and as a creative producer/host for ADP (2016).

Lauren REEVES filed an application in California against our client for battery, sexual battery and sexual harassment asking for damages and punitive damages.

On the basis of a popular jury's decision (**cf. Bordereau plainte pénale 21-11-18, exhibit n° 9**),

our client and two of his companies (Hologram and ADP) have been sentenced to pay her :

- $ 650'000 (compensatory damages)
- $ 1'299'675 (attorneys' fees)
- $ 65'346.02 (proceedings costs)

Our client has additionally been personally sentenced to pay to Lauren REEVES $ 4'350'000 as punitive damages.

Lauren REEVES, even though she never tried to enforce the above-mentioned judgment in the United States (US hereinafter), filed on October 14th 2021 a freezing in Switzerland against our client's Swiss goods, including his real estate property in Gstaad, to enforce the above-mentioned judgment (**cf. Bordereau plainte pénale 21-11-18, exhibit n° 8**).

By filing her freezing order, Lauren REEVES said that our client has been convinced in the US for sexual harassment.

Lauren REEVES managed to freeze our client's Swiss goods to enforce the judgment's amounts except the $ 4'350'000 of punitive damages. This Swiss judgment is now under appeal.

II. As did Lauren REEVES, Mahim KHAN, represented in the US by the same lawfirm (ALLRED MAROKO & GOLDBERG), filed an application in California against our client for battery, sexual battery and sexual harassment.

On the basis of a popular jury's decision (**cf. Bordereau plainte pénale 21-11-29, exhibit n° 6**), our client and two of his companies (FilmOn and ADP) have been sentenced to pay her :

- $ 8'250'000 (damages)
- $ 1'398'885 (attorneys' fees)

- $ 74’165.60 (proceedings costs)

Our client has additionally been personally sentenced to pay to Mahim KHAN $ 50’000’000 as punitive damages.

Mahim KHAN, represented in Switzerland by the same law firm (CHABRIER AVOCATS) than Lauren REEVES filed on the same day than Lauren REEVES, which means on October 14th 2021, a freezing order against our client’s Swiss goods, including his real estate property in Gstaad, to enforce the above mentioned judgment, even though she never tried to enforce it in the US beforehand (**cf. Bordereau plainte pénale 21-11-29, exhibit n° 10**).

However, unlike Lauren REEVES, Mahim KHAN totally lost her Swiss judgment because the US judgment on which she based herself was not enforceable as an appeal has been introduced in the US by our client, which means that the judgment isn’t final (when someone try to obtain a freezing order in Switzerland on the basis of a judgment, that judgment has to be final).

As a reaction to those freezing order applications against him in Switzerland our client filed a criminal complaint against Lauren REEVES on November 19th 2021 and against Mahim KHAN on November 30th 2021 in front of the Public prosecutor’s office in Geneva.

Both complaints, based on similar facts, denounce 4 Swiss criminal offences (https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en) :

1. **Defamation (art. 173 of the Swiss criminal code, SCC hereinafter)**

Art. 173

« 1. Any person who in addressing a third party, makes an accusation against or casts suspicion on another of dishonourable conduct or of other conduct that shall be liable to damage another's reputation,

any person who disseminates such accusations or suspicions,

shall be liable on complaint to a monetary penalty.

2. If the accused proves that the statement made or disseminated by him corresponds to the truth or that he had substantial grounds to hold an honest belief that it was true, he is not liable to a penalty.

3. The accused is not permitted to lead evidence in support of and is criminally liable for statements that are made or disseminated with the primary intention of accusing someone of disreputable conduct without there being any public interest or any other justified cause, and particularly where such statements refer to a person's private or family life.

4. If the offender recants his statement, the court may impose a more lenient penalty or no penalty at all.

5. If the accused is unable to prove the truth of his statement, or if it is shown to be untrue, or if the accused recants his statement, the court must state this in its judgment or in another document. »

Both Lauren REEVES and Mahim KHAN said that our client has been convicted for sexual harassment by the Superior Court of the State of California.

First of all it's wrong because it doesn't exist a Superior Court of the State of California but many (the Los Angeles one in our client's case). Then, it's not a judge but a popular jury who has sentenced and not convicted our client. Furthermore our client has not been "convicted" for sexual harassment (civil cases) but sentenced to pay them indemnities which is completely different.

As a matter of fact our client has never been criminally convicted for any offence, sexual harassment included.

As a result and according to our client, saying that both Lauren REEVES and Mahim KHAN committed a defamation towards him, dirtying his honour.

2. **Wilful defamation (art. 174 SCC)**

Art. 174

« 1. A person in addressing a third party, and knowing his allegations to be untrue, makes an accusation against or casts suspicion on another of dishonourable conduct, or of other conduct that shall be liable to damage another's reputation,

any person who disseminates such accusations or suspicions, knowing them to be untrue,

shall be liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

2. If the offender has acted systematically to undermine the good reputation of another, he shall be liable to a custodial sentence not exceeding three years or to a monetary penalty of not less than 30 daily penalty units.[197]

3. If the offender recants his statement before the court on the grounds that it is untrue, the court may impose a more lenient penalty. The court must provide the person harmed with a document confirming the recantation. »

Here the same explanation than the one used above for Defamation (art. 173 SCC) is taken up.

The only difference is that this criminal offence is more serious because the perpetrator knows the innocence of the victim.

Both Lauren REEVES and Mahim KHAN knew our client was innocent because they took part in the US proceedings, they also were represented by Swiss and US attorneys and finally they couldn't have ignored that the cases were civil ones and not criminal ones.

As a result and according to our client, both Lauren REEVES and Mahim KHAN committed a wilful defamation towards him, dirtying his honour.

3. **Attempted fraud (art. 146 SCC)**

Art. 146

« [1] Any person who with a view to securing an unlawful gain for himself or another wilfully induces an erroneous belief in another person by false pretences or concealment of the truth, or wilfully reinforces an erroneous belief, and thus causes that person to act to the prejudice of his or another's financial interests, shall be liable to a custodial sentence not exceeding five years or to a monetary penalty.

[2] If the offender acts for commercial gain, he shall be liable to a custodial sentence not exceeding ten years or to a monetary penalty of not less than 90 daily penalty units.

[3] Fraud to the detriment of a relative or family member is prosecuted only on complaint. »

First of all both Mahim KHAN and Lauren REEVES tried to enforce in Switzerland millions of punitive damages meanwhile punitive damages are not only illegal in Switzerland : they are contrary to Swiss public order, in other words contrary to Swiss legal quintessence. By doing so they tried to trick the judge and the trial.

Secondly, both of these women tried to convince the judge that our client has been convicted for sexual harassment.

In other words they tried to lead the judge to make himself a misrepresentation of the US legal situation in order to obtain what they wanted.

As a result and according to our client, both Lauren REEVES and Mahim KHAN committed an attempted fraud (attempted fraud to the trial, which is a particular case of fraud) towards him.

4. **Attempted coercion (art. 181 SCC)**

Art. 181

> « Any person who, by the use of force or the threat of serious detriment or other restriction of another's freedom to act compels another to carry out an act, to fail to carry out an act or to tolerate an act, shall be liable to a custodial sentence not exceeding three years or to a monetary penalty. »

First of all both Lauren REEVES and Mahim KHAN tried to enforce in Switzerland huge amounts of money (millions of punitive damages) that are in Switzerland highly illegal, what they knew because they were both represented by Swiss attorneys.

Secondly and in view of the above, they filed their freezing order in Switzerland knowing that there were no connection to Switzerland. As a matter of fact all the elements of the case concern directly the US.

Thirdly, both of these women acted in Switzerland without having at least tried to enforce the concerned judgments in the US neither against our client nor against the two of his companies.

Regarding Mahim KHAN her freezing order application presents one more shocking aspect next to all the above-mentioned ones : she tried to enforce in Switzerland an US judgment which is not even final.

As a result and according to our client, both Lauren REEVES and Mahim KHAN committed an attempted coercion towards him.

The two above mentioned criminal complaints are dealt by a public Prosecutor in Geneva : Adrian HOLLOWAY, who has a leading function in the public Prosecutor's office. Furthermore he's member of the political party called UDC, which is a strong right-wing political party.

- The one against Lauren REEVES is registered under reference : P./22539/2021.

- The one against Mahim KHAN is registered under reference : 23339/2021.

Our client currently doesn't have any concrete result about his criminal complaints filed in Switzerland, the proceedings having just begun (November 2021).

Regarding your mandate for our common client, we would be glad if you could answer the following questions :

1. **Could you please explain us whether a judgment can be reviewed / reopened in California and under which conditions ?**

2. **More specifically, the civil judgements sentencing our client to punitive damages were based on fraudulent evidence – this issue was raised before the civil court but the fraudulent evidence nevertheless admitted to our client's prejudice. Being underlined that this evidence had, at the time, not yet lead to criminal proceedings, would it be possible to reopen the civil trial based on a diverging criminal verdict recognising the fraudulent character of said evidence?**

The same question would apply in case of newly discovered evidence during the criminal proceedings, which would have been relevant – if it had been discovered in the frame of the civil trial ?

3. **Which judicial strategy would be the best in your opinion given the interests at stake ?**

4. **As the case may be, would you accept to initiate such proceedings (depending on the possibilities) ?**

Finally, we would like to emphasise the fact that we remain at your entire disposal should you have any questions or whether you need further exhibits.

Yours sincerely,

ARTHUR SEPPEY

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CHABRIER AVOCATS

EINGEGANGEN
05. Nov. 2021

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Regionalgericht Oberland

15. OKT. 2021

Postaufgabe: 14. 10. 21

EINSCHREIBEN

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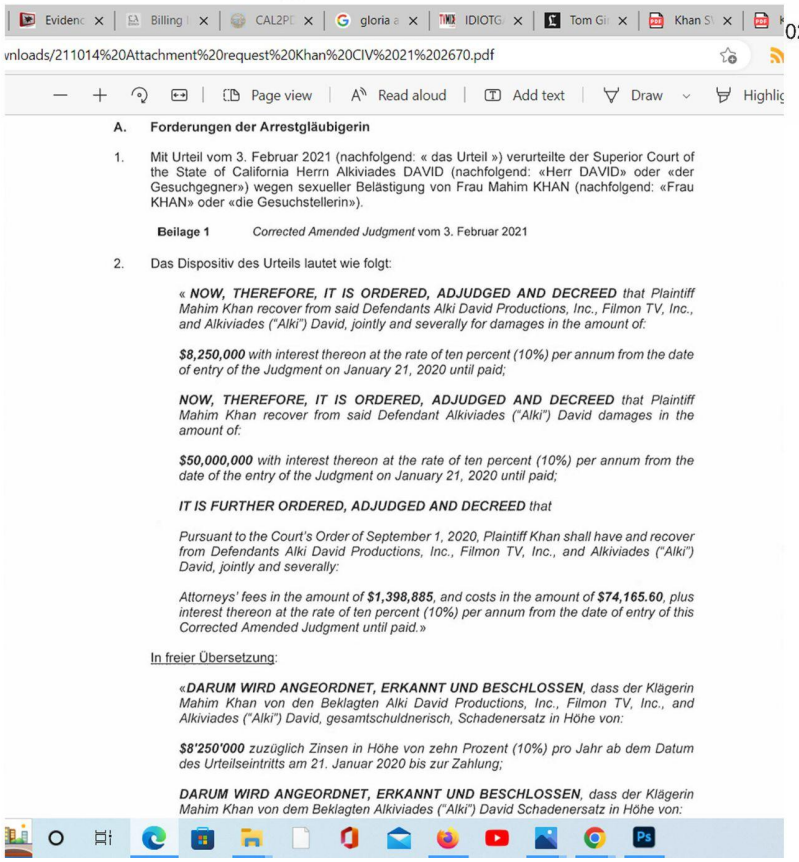
Verwaltungsgebäude Selve
Scheibenstrasse 11B
3600 Thun

021



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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:

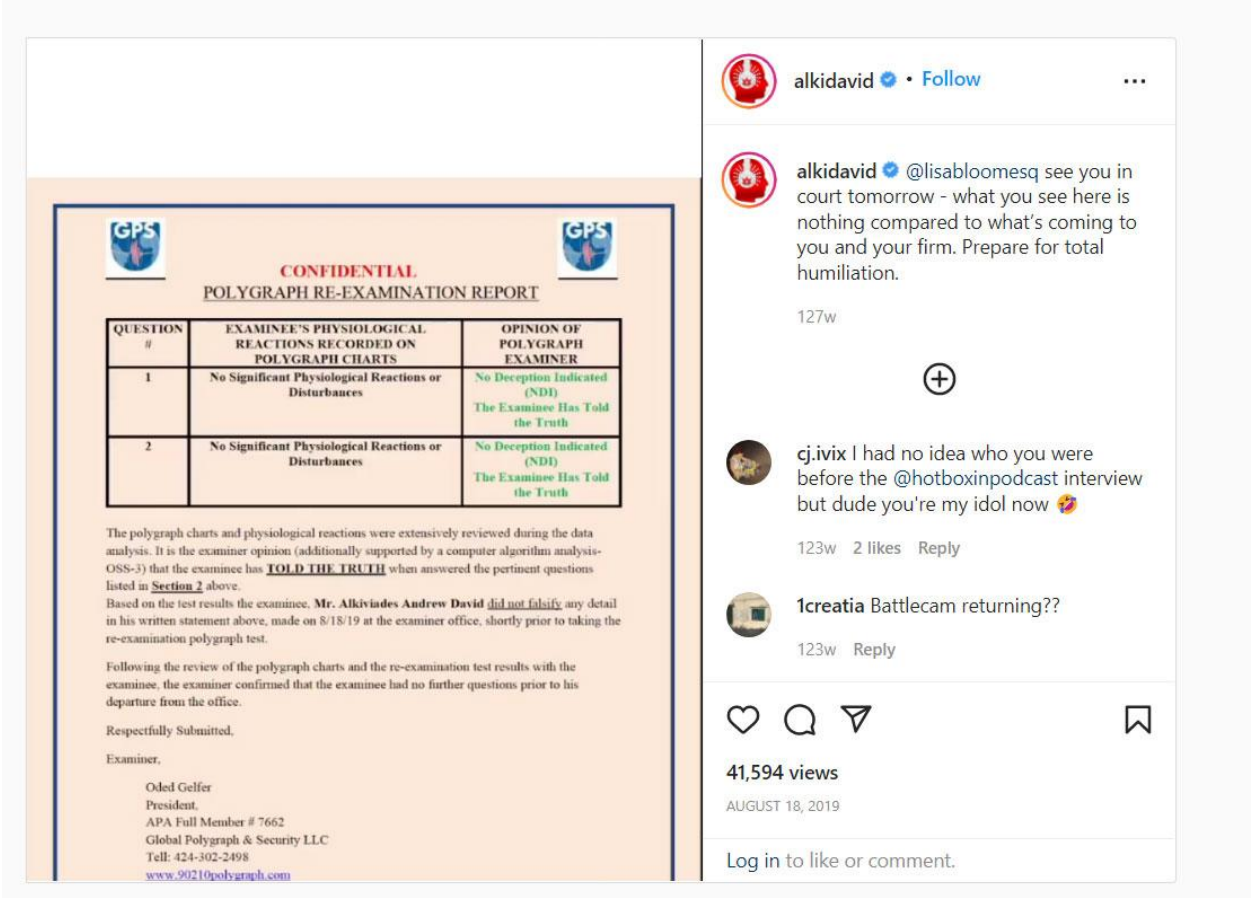
   «***DARUM WIRD ANGEORDNET, ERKANNT UND BESCHLOSSEN****, dass der Klägerin Mahim Khan von den Beklagten Alki David Productions, Inc., Filmon TV, Inc., and Alkiviades ("Alki") David, gesamtschuldnerisch, Schadenersatz in Höhe von:*

   $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:*

https://www.instagram.com/p/B1Vhe9NgUoC/?igshid=YmMyMTA2M2Y= INSTAGRAM POLYGRAPH

First Cause of Action
FEDERAL RICO 18 U.S.C. 1862(b)



CONFIDENTIAL
POLYGRAPH RE-EXAMINATION REPORT

QUESTION #	EXAMINEE'S PHYSIOLOGICAL REACTIONS RECORDED ON POLYGRAPH CHARTS	OPINION OF POLYGRAPH EXAMINER
1	No Significant Physiological Reactions or Disturbances	No Deception Indicated (NDI) The Examinee Has Told the Truth
2	No Significant Physiological Reactions or Disturbances	No Deception Indicated (NDI) The Examinee Has Told the Truth

The polygraph charts and physiological reactions were extensively reviewed during the data analysis. It is the examiner opinion (additionally supported by a computer algorithm analysis-OSS-3) that the examinee has **TOLD THE TRUTH** when answered the pertinent questions listed in **Section 2** above.
Based on the test results the examinee, **Mr. Alkiviades Andrew David** did not falsify any detail in his written statement above, made on 8/18/19 at the examiner office, shortly prior to taking the re-examination polygraph test.

Following the review of the polygraph charts and the re-examination test results with the examinee, the examiner confirmed that the examinee had no further questions prior to his departure from the office.

Respectfully Submitted,

Examiner,

Oded Gelfer
President,
APA Full Member # 7662
Global Polygraph & Security LLC
Tell: 424-302-2498
www.90210polygraph.com

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alkidavid @lisabloomesq see you in court tomorrow - what you see here is nothing compared to what's coming to you and your firm. Prepare for total humiliation.

127w

cj.ivix I had no idea who you were before the @hotboxinpodcast interview but dude you're my idol now

123w 2 likes Reply

1creatia Battlecam returning??

123w Reply

41,594 views

AUGUST 18, 2019

Log in to like or comment.

ADD other images from the Polygraph - **Alki - the other polygraph images are in the drive but the "share" and "copy and paste" functions do not migrate those images over to this document - Sooooo - what do we do?**

Plaintiff David and the Entity Plaintiffs restate paragraphs 1 through XXXX of this Complaint.

18 U.S.C. 1862(b) states that "It shall be unlawful for any person through a pattern of racketeering activity to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, which is engaged in, or the activities of which, affect, interstate or foreign commerce."

Upon information and belief, the Attorney Defendants conspired to pursue vexatious litigation against Plaintiff David and the Entity Defendants by filing spurious and unfounded lawsuits against Plaintiffs, seeking to extort Plaintiff David and the Entity Defendants, and trying to force Plaintiff David and the Entity Defendants to settle the Litigating Defendants' spurious claims.

Upon information and belief, **(Allie and Carl Affidavits provide this good faith basis)** Attorney Defendants Girardi, Allred, Bloom, Goldberg and Chora intentionally conspired to recruit employees and independent contractors of Plaintiffs FilmOn and Anakando and former employees of the Entity Plaintiffs, to independently file tort lawsuits against Plaintiff David alleging he committed sexual misconduct in order to extract and extort money from Plaintiff David and the Defendant Entities

in furtherance of an enterprise specifically designed to enrich Defendants and the Individual Defendants with whom they conspired to concoct and fabricate non-meritorious claims against Plaintiff David and the Entity Plaintiffs.

Specifically, Defendant Attorneys and their agents and employees mercilessly and maliciously pursued Plaintiff David and the Entity Plaintiffs, in courts as well as in the media, seeking to force Plaintiff David to settle with the parties who sued Plaintiff David and the Entity Plaintiffs. **Alki *wishes to point out that with regard to a nexus between Allred and Dordick*** - this pleading should show a connection between those Defendant Attorneys as to Jane Doe but also

Pattern Dordick and Allred are sharing the litigation asserted against Alec Baldwin - representing two separate crew members against Alec, Wynn and Rose McGowan TEXT MESSAGE - and Marciano - State Bar **50 Cent**

http://www.tvmix.com/la-court-gives-ok-to-hollywood-actress-rose-mcgowan-fraud-suit-against-harvey-weinstein-and-lisa-bloom/123

Rose has a bit of a win with defamation going forward.

In a season of shocking trials, the L.A. Superior Court case stands out for the judge's determination to keep the defendant from defending himself. At every turn, Judge Michelle Williams Court has sided with the plaintiff. Here's what we know so far:

1. Why is Alki David not being allowed to testify in his defense?

There is a discrepancy about whether pretrial depositions were handled correctly on both sides. Judge Court has taken this as an excuse to entirely exclude David's "day in court."

She blocked him from representing himself, as he intended to do, and his attorney Ellyn Garofolo of Venable, is not allowed to call him as a witness. The only way he could look the jury in the eye under oath and have the chance to say, "I didn't do it." is if Allred's junior partner Nathan Goldberg called him to the stand. Obviously Goldberg won't do that.

2. But isn't there other evidence, and other witnesses, to show David's innocence?

There is. But Judge Court is not allowing even one witness for the defense. Not even to rebut the plaintiff's new claims and out-of-the-blue embellishments that no one had heard before the trial started.

3. Why did Mahim Khan lie about having a work email address? Surely that impeaches her?

Mahim Khan lied on the stand about ever having a FilmOn.com work email address. She did have one, and used it nearly daily while she was employed there. Garofolo called FilmOn's Head of IT to testify to this and show the archived emails to the jury, but was blocked by Judge Court. This lie would be just one of many lies the defense has ready proof of, but it's one of the most clear cut and unquestionable matters that thoroughly impeach Khan as a bold and relentless liar.

4. Why were there no consequences when Allred's team was caught forging opposing counsel's signature?

In a brazen act of criminality, Gloria Allred's team changed the witness and evidence lists mid-trial (taking advantage of a day Garofolo's home was under evacuation during the devastating wildfires in Los Angeles), and faked the paperwork to say Garofolo had seen and approved the changes. Garofolo filed a very clear notification of this to Judge Court, who ignored the transgression. Forging an opposing counsel's signature on official papers is fraud and is a felony offense. Though Judge Court decided to not do her duty on this, no doubt repercussions for Allred will come eventually.

5. Who were Khan's super shady witnesses?

Khan called four witnesses. One, Nick Hyams, also known as rapper Lush One and the son of B-Movie director Peter Hyams, is known widely to have been involved in a gun incident at the FilmOn offices. At the time, David learned Hyams had brought the gun to the office and banned him from coming back, and hired more security to protect the staff. Garofolo moved in to use the outright lie to impeach the witness, but once again, Judge Court blocked her from any action. Hyams is a failed rapper who has been in and out of rehab throughout his life and has staged violent incidents for publicity purposes.

But most importantly, Hyams' account of what he allegedly saw in the office was very different from what Khan has alleged. He added multiple incidents to his account. In the key incident, one in which David allegedly touched Khan's chest, Khan has described wearing a low cut yellow summer dress. Hyams said it was a bulky black sweater, and that Khan, because of her Muslim faith, would never wear anything revealing. Hyams said he was at the FilmOn offices daily, which was not true, he was there on a project basis. Hyams also showed he was lying when he described an incident involving another accuser Elizabeth Taylor at the office—contradicting even Taylor's own account of the day she participated in "wheelbarrowing" across the office (In Hyams' account David "Threw Taylor over his shoulder"). This shows Hyams is lying about having witnessed the incident. Hyams recounted spending extensive prep time with Goldberg over dinner the night before his testimony.

Hyams was also so rattled on the stand by Garofolo he called her a racist. (Both he and Garofolo are white).

Khan also called Hyams' ex-wife Helen Davis. Helen said she was a full-time employee of FilmOn Networks–itself a bold lie since she was under the same third party contract agreement as Hyams via his Fresh Coast company. She never had her own desk, she did not work a regular schedule. Davis was also at the famous dinner at Cafe Roma where the web of connected allegations against David being tried by Gloria Allred and Lisa Bloom is known to have been hatched (more about that below). Davis also spoke about having been prepped by Goldberg on what to say in court.

Most tellingly, Allred and Khan do not have one witness who was a regular, day-to-day employee of FilmOn. The incidents she alleged supposedly

happened in the open-plan office during normal hours, and supposedly happened on a regular basis–yet not one regular employee saw or heard of any of these things at the time.

6. Was Lauren Reeves a legitimate "MeToo" witness?

In a word, no. Lauren Reeves, another client of Allred Maroko & Goldberg's, worked at FilmOn starting four months after Khan quit. Over and over again Allred and her daughter have used a peculiar loophole in California law that allows witnesses to make completely unrelated allegations, even if they stand to gain financially from the outcome of the trial. A "MeToo" case is the only kind of trial that allows this testimony–it is not allowed in any other kind of case. Reeves never witnessed anything to do with Khan, and her time at FilmOn did not overlap in any way with her employment there.

Reeves herself lied in her own trial, and even her own doctor said most of her problems stemmed from past abuse, both by her 7-foot tall lumberjack father beating her and her scary New York boyfriend who threatened to kill her. Many of her lies are covered here.

7. Diagnosis-on-Demand. Who was that goofy British UCLA shrink on the stand?

Doctor Anthony Edwards Reading, is a well known shrink-for-hire. He testified that he spends 3.5 days a week giving legal testimony and evaluations for MeToo cases. He spends half a day with actual patients, and teaches one class in the afternoon. On friday, he golfs.

Dr. Reading has testified in Allred Maroko & Goldberg cases ten times in 2019, by his own admission. He testified that between the evaluation and court testimony he made a minimum of $8,000 per Allred client. That means Reading made at least $80,000 from Allred Maroko & Goldberg so far this year. Why? Because he reliably gives them what they are paying for. Readib testified in court last week under questioning by Garofolo that he has a nearly 100% record of finding PTSD in plaintiffs alleging sexual misconduct. The few times he's been asked to do his work for the defendant's side he miraculously has found nearly zero cases of PTSD in the accuser. Wow!

Using these quack doctors with their Diagnosis-on-Demand techniques is a regular tactic for Allred and Bloom. Similar doctors have appeared in all of their trials against David. In the Elizabeth Taylor case, brought by Bloom, it backfired a bit–her doctor testified that she had been on her elaborate cocktail

of psychoactive prescription drugs before she worked at FilmOn and that he had seen no reason to change the dosages after–though he did say that her mental health could be declining into paranoia because of having been on the drugs so long. In the Reeves case her UCLA shrink had been paid for by Allred Goldberg & Maroko, who she had worked for for years. Purely corrupt. UCLA should really look into the ways in which these Diagnosis-for-Hire "doctors" are using the university's prestigious name.

8. Is David being blamed for damage done by Khan's father during 20 years of extreme physical and mental abuse?

Dr. Reading had spent only five hours with Khan before coming up with the diagnosis Allred asked for. Within that time, Khan declined to tell him about her primary mental health care–an unlicensed alternative "doctor" provided by her mosque. Reading also ignored the fact that Khan had been abused by her own father while she was still a toddler. Abuse that often ended up with her bloodied and bruised. He beat her physically right up until she left the house at age 20, just a few years before winding up at FilmOn.

"Could 20 years of extreme abuse have contributed to Khan's mental health issues?" asked Garofolo.

"No, no," said Reading. "She had handled all that quite well. But working at FilmOn undid all that and caused her to fall apart."

9. What would Alki's witnesses say if they were allowed to be called?

One, Lauren Berkley, who was Khan's best friend, will testify that Khan was planning for months to leave the U.S. for Dubai in her final days at FilmOn. She did not quit because of anything going on at work, she quit because she was planning to move away. Berkley can also testify that despite being Khan's best friend and talking to her nearly daily while working at FilmOn, Khan never hinted at any harassment problems there.

Khan was so infuriated by Berkley telling the truth in the preparations for the trial that she threatened to harm Berkley's two-year-old baby. A Connecticut police report shows Berkley was so scared by the threat she felt she needed to take action. Khan may have gotten the idea to use threats in this way from Gloria Allred herself, who according to the Daily Beast, gave her own client, Trump-accuser Summer Zervos, a mafia-style threat when she wanted to leave her firm.

10. What about Alki David's outbursts in court?

It was widely reported that David lost his sh*t in court on several occasions, sometimes with the help of sheriff's deputies.

"The judge would not let me speak the truth," David told our reporter. "And I was just sickened by what was going on. I had to get the truth out: I didn't touch Mahim Khan. I've never touched an employee inappropriately. Also, the perversion of justice being perpetrated by LIsa Bloom and Gloria Allred will hurt everyone–it needs to be stopped."

When David was allowed to speak in court, during Elizbath Taylor v. Alki David in September, the trial ended in a mistrial with the jurors favoring David 8-4. Several said they felt like Taylor, and her star witness Chasity Jones, were lying. (Jones was another MeToo witness with claims against David–who has an interest in more cases being found against him to support her win in court in May which is expected to be turned over under appeal).

David also has been trying to get judges to see the bigger picture of a conspiracy among these linked plaintiffs and the linked law firms of Allred and Bloom, something Judge Terry Green said had credence during the Reeves trial. So far, no court has allowed evidence of the conspiracy to be heard in court—so David has taken it upon himself to let people know when he can.

11. How are all the cases against Alki David linked?

The web of harassment cases brought against David all come from a single source. In June of 2015, Gloria Allred is believed to have broken the law and shown disgruntled employee Elizabeth Taylor a settlement David had made with Mary Rizzo, a woman he had had a consensual relationship with, and her attorney Lisa Bloom. Taylor brought that settlement news to a dinner at Cafe Roma in Beverly Hills where Chasity Jones, Helen Davis, Mahim Khan and others were present. Rizzo can testify that she heard from the people attending that dinner, that the settlement news inspired a plot to extort David, and that each would testify for each other as needed. Allred and Bloom encouraged these people to bully others into joining the web. Text messages show them putting pressure on eachother and even offering money and jobs if they'll file their own cases.

Rizzo has said that Khan said Allred wouldn't take her case unless she recruited two more clients for her–at least one of those became Jones.

How can Rizzo talk about this? Bloom violated the privacy agreement multiple times during the Elizabeth Taylor case, shaming Rizzo by name, and putting it all into public record. No doubt Rizzo will be taking legal action against Bloom and her unethical actions soon.

Since Allred and Bloom work on contingency, they get nearly half of whatever is awarded to their clients–millions of dollars. They are clearly trying to cash in before reform comes to the industry, and trying to notch up some wins to distract the media from their horrible misdeeds related to Harvey Weinstein. Bloom actively helped attack his accusers with media campaigns designed to make them seem crazy. In fact she told Harvey her previous MeToo clients were all crazy and liars. She is being sued by Rose McGown and many prominent stars have called for her to be disbarred. Allred is also under fire after The New York Times revealed she profited from brokering numerous lucrative hush money payments to Harvey accusers over a decade ago. Those payments silenced his alleged victims and without Allred's work, dozens of more victims of Harvey might have been spared their experiences.

12. Why is Judge Michelle Williams Court acting in such a biased manner?

It's very hard to understand. Every objection by Ellyn Garofolo, a well respected attorney from the well respected firm Venable, has been overruled. Every move she has made to work within proper protocols and the legal structure to get evidence and witness in has been shut down. Even attempts to follow up on obvious lies by the plaintiff and her witnesses have been shut down.

One prominent Los Angeles attorney who asked that his name not be used for fear of reprisals told us: "L.A. Superior Court is corrupt. That's all there is to it. It could be favors, it could be political grandstanding for future appointments, it could even be cold hard cash. The judges are all over the map. You go into that building and it's like Chinatown in that Jack Nicholson movie. Just forget it."

A media expert saw a different potential explanation: The plaintiff's case had so many holes in it there was nothing to do but cheat. Why Judge Court has seemed to be helping them every step of the way is a mystery.

"The truth will come out," said Alki David. "This Judge, for whatever reason, does not want to see justice done in her own courtroom. It's not justice if a person can't defend themselves. This really should be a mistrial–but if I have

to I'll continue to fight until the truth comes out, no matter where that takes me."

"I've also hired three major UK law firms to go after Allred and Bloom and this sick scheme to extort me," David continued. "We will show the world what they really are.

Others are beginning to show how corrupt they are, including Rose McGowan, Tony Cardenas, Steve Wynn, and more. Even their own former clients like Summer Zervos and Kyle Hunt and Mary Rizzo, who is now helping in my case, want the world to know how corrupt they are."

$3.5 million here also add Chastity and Mary Rizzo signed sworn

affidavits attesting that Mahim Kahim and Elizabeth Taylor were

extorting Alki. Then, Chastity Jones herself tried to extort Alki.

Los Angeles Times
@latimes

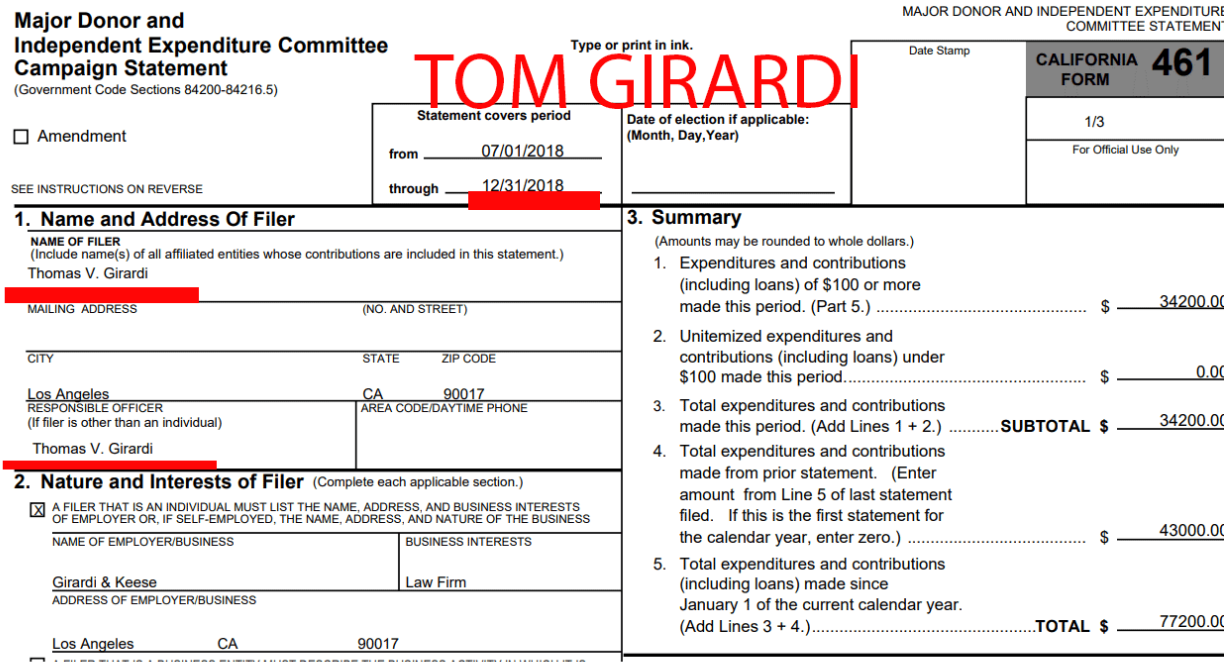
He could get Govs. Gavin Newsom and Jerry Brown on the phone with ease, associates said.

He and then-wife Erika Jayne regularly traveled to Washington, D.C., where then-Senate Majority Leader Harry Reid appointed him to a Library of Congress board.

latimes.com
'Real Housewives' attorney Tom Girardi used cash and clout to forge political c...


GLORIA ALLRED
"I KNOW HIM 40 YEARS BUT NOT HER!"
HUH?
2021
Famed Attorney Gloria Allred Admits She's 'Shocked' By Tom Girardi's Alleged Embezzlement Scheme: 'I Feel Sorry For Tom, But I Feel Sorrier For His Clients'
'RHOBH: Erika Jayne and Tom Girardi Shocked,' Gloria Allred Admits
GLORIA HAS A BIG BOM
2015
GLORIA HAS A BIG BOM
PRESS CLUB

Donations to News Campaign



Major Donor and Independent Expenditure Committee Campaign Statement
(Government Code Sections 84200-84216.5)

TOM GIRARDI

MAJOR DONOR AND INDEPENDENT EXPENDITURE COMMITTEE STATEMENT

Type or print in ink.

Date Stamp

CALIFORNIA FORM 461

1/3

For Official Use Only

☐ Amendment

SEE INSTRUCTIONS ON REVERSE

Statement covers period
from 07/01/2018
through 12/31/2018

Date of election if applicable: (Month, Day, Year)

1. Name and Address Of Filer

NAME OF FILER
(Include name(s) of all affiliated entities whose contributions are included in this statement.)
Thomas V. Girardi

MAILING ADDRESS (NO. AND STREET)

CITY STATE ZIP CODE
Los Angeles CA 90017

RESPONSIBLE OFFICER (If filer is other than an individual)
Thomas V. Girardi

AREA CODE/DAYTIME PHONE

2. Nature and Interests of Filer (Complete each applicable section.)

☒ A FILER THAT IS AN INDIVIDUAL MUST LIST THE NAME, ADDRESS, AND BUSINESS INTERESTS OF EMPLOYER OR, IF SELF-EMPLOYED, THE NAME, ADDRESS, AND NATURE OF THE BUSINESS

NAME OF EMPLOYER/BUSINESS: Girardi & Keese
BUSINESS INTERESTS: Law Firm
ADDRESS OF EMPLOYER/BUSINESS: Los Angeles CA 90017

3. Summary

(Amounts may be rounded to whole dollars.)

1. Expenditures and contributions (including loans) of $100 or more made this period. (Part 5.) ..... $ 34200.00
2. Unitemized expenditures and contributions (including loans) under $100 made this period..... $ 0.00
3. Total expenditures and contributions made this period. (Add Lines 1 + 2.) .....SUBTOTAL $ 34200.00
4. Total expenditures and contributions made from prior statement. (Enter amount from Line 5 of last statement filed. If this is the first statement for the calendar year, enter zero.) ..... $ 43000.00
5. Total expenditures and contributions (including loans) made since January 1 of the current calendar year. (Add Lines 3 + 4.).....TOTAL $ 77200.00

The Enterprise and Conspiracy Against Plaintiffs Begins . . . And Continues

Plaintiff David first met Defendants Allred and Bloom when they appeared on the Dr. Phil show on December 4, 2012. Upon information and belief, from that day forward, Defendants Allred and Bloom viewed Plaintiff David. **When did Alki meet Thomas V. Girardi - Alki recalls socially but is trying to tie down dates?**[7]

[7] **Note:** Due to a provision in California's professional code, disciplinary proceedings against Girardi are in abeyance as his license is inactive because he has been placed in conservatorship. He is not eligible to practice law as he is scheduled for disbarment on July 1, 2022. https://apps.calbar.ca.gov/licensee/Detail/36603.

Strategy Question: Girardi is in personal bankruptcy so the stay most likely will preclude suing him personally. Further he is messy

Monica D'Oofrio filed *D'Onofrio v. Alki David Productions Inc., FilmOn Com., Inc. and Alki David, Case No. BC496165.*[8] on November 6, 2012, alleging employment discrimination. Plaintiff David settled the case for a minimal amount and the case was dismissed in 2013.

Thus, began a long series of spurious suits filed by Defendant Attorneys against Plaintiff David. Upon information and belief, with the urging of Defendant Attorneys, various employees and ex-employees filed false claims against Plaintiff David and some of the Entity Plaintiffs.

Note to Counsel: Alli's affidavit will establish that she saw

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divorce proceedings. In December, 2020, involuntary Chapter 7 Bankruptcy proceedings were filed against Girardi's law firm, Girardi & Keese. The firm became defunct on or near January, 2021 and its assets were sold by the bankruptcy trustee. *Tom Girardi's Law Office will be sold, as his home goes on the market, Trustee tells Court, by Amanda Bronstad, The Recorder,* April 27, 2021. Robert Keese, who helped Defendant Girardi found the Girardi & Keese law firm in 1965, also has been placed on involuntary inactive status and is not eligible to practice law. https://apps.calbar.ca.gov/licensee/Detail/46858.

Strategy Question: Given these complications with Girardi, should we name him and his prior firm as a defendant or simply include reference to him in the complaint with regard to averments regarding the enterprise and continuous activity? However, Girardi's former partner Keith Griffin, has joined the Dordick Law Firm, whose principal is Defendant Gary A. Dordick.

[8] https://trellis.law/case/BC495165/MONICA-D-ONOFRIO-VS-ALKI-DAVID-PRODUCTIONS-INC-ET-AL?output=pdf.

other Plaintiffs contrive claims by constantly entering Plaintiff David's office in hopes of enticing him to commit offensive conduct. The former employees, encouraged and aided and abetted by the Defendant Attorneys, targeted Plaintiff David as a victim to name in spurious lawsuits. Former employees and their counsel deemed Plaintiff David to be their gravy train. In filing this lawsuit - Plaintiff David and the Plaintiff Entities seek justice to recoup millions of dollars, consisting of lost profits, improperly obtained court judgments, and lost profitable contracts, as well as thwarted IPO's (name).

A Parade of Spurious, Defamatory Lawsuits, Extortion, Obstruction of Justice and Witness Tampering

Upon information and belief, Attorney Defendants Girardi, Allred and Bloom conspired to pursue vexatious litigation creating a continuous and related pattern of racketeering activity against Plaintiff David and the Entity Plaintiffs by filing numerous spurious and unfounded lawsuits against Plaintiff David and the Entity Plaintiffs.

The Attorney Defendants were enabled by one another and retained experts to assist in The Attorney Defendants' committing the predicate offenses of extortion, bribery, obstruction of justice, and mail fraud solely because of each Attorney Defendants' position in the enterprise and their involvement in or control over the enterprise's affairs and because their offenses of extortion, bribery, obstruction of justice and mail fraud related to the activities of their enterprise, i.e., to enrich themselves by filing spurious lawsuits against Plaintiff David

and the Entity Plaintiffs, thereby depriving those Plaintiffs of their property and money.

Upon information and belief, (**Allie and Carl Affidavits provide this good faith basis**) Defendants Girardi, Allred, and Bloom intentionally conspired to recruit employees of Plaintiffs FilmOn and Anakando and former employees of those Plaintiffs, to independently file tort lawsuits against Plaintiff David, alleging he committed sexual misconduct and/or that those Plaintiffs had viable employment law claims in order to extract and extort money from Plaintiff David and the Entity Plaintiffs in furtherance of an enterprise specifically designed to enrich Defendants.

Defendant Attorneys filed lawsuits on behalf of Litigating Defendants Elizabeth Taylor (represented by Defendant Attorney), Chastity Jones (represented by Attorney Defendants Bloom, Sarah Bloom of the Bloom Firm, and Attorney Defendants Fundali, Goldstein of the Bloom Law Firm and Attorney Defendant Chora), Mahim Khan (represented by Attorney Defendant Allred) and Lauren Reeves (represented by).

Attorney Defendants Girardi, Allred, Goldberg, Goldstein, Leal, Mochkatel, Bloom, Fudalli, Chora, Warshavsky, Baker Hostetler,

Gillieron Theintz, and Chabrier Avocats, SA and their agents mercilessly and maliciously pursued Plaintiff David and the Entity Plaintiffs, in courts, as well as in the media, seeking to extort Plaintiff David so that he would pay money to settle with the parties who sued Plaintiff David and the Entity Plaintiffs.

FACTS COMMON TO ALL RICO ALLEGATIONS

Plaintiffs assert, pursuant to 18 U.S.C. §§1962(b)(c) and (d), that the Attorney Defendants, their clients (The Litigating Defendants), their experts, employees and agents, conspired with one another and intended to conduct, and wilfully conducted, an interrelated, clear and continuous pattern of racketeering activity to benefit Defendant Attorneys' unlawful enterprise.

Further, Plaintiffs allege that the Attorney Defendants continue to do so, by, inter alia, wilfully and intentionally conspiring against Plaintiff David and the Entity Plaintiffs, by filing spurious lawsuits against Plaintiff David and the Entity Plaintiffs, who were, and continue to be, victimized by Attorney Defendants' continuous pattern of racketeering conducted to benefit their enterprise, including mail fraud, extortion, tampering with witnesses, including Defendant Goldberg's falsification of a signature in a civil proceeding, bribery, and aiding and abetting, 18 U.S.C. §2, all cognizable as RICO predicate acts pursuant to 18 U.S.C. §§ 1862(b)(c) and (d).

Specifically, the Attorney Defendants Girardi, Allred, Goldberg, and Bloom (Initial Enterprise Defendants), established the initial enterprise when they filed a series of unethical, spurious lawsuits against Plaintiff David and the Plaintiff Entities, without investigating the merits of those actions, hoping to extract money and property from Plaintiff David. To succeed in their enterprise, the Initial Enterprise Defendants unethically coached their clients and witnesses about what to say so that they could file spurious lawsuits and/or make unreasonable and unfounded settlement demands against Plaintiff David and the Entity Plaintiffs.

CUT Defendant Attorneys' Illegal and Unethical Actions in Court Proceedings, Actions Committed on behalf of the Criminal Enterprise

On November 6, 2012, Monica D'Oofrio filed *D'Onofrio v. Alki David Productions Inc., FilmOn Com., Inc. and Alki David, Case No. BC496165.*[9] On May 10, 2013, alleging employment discrimination. Plaintiff David settled the case for a minimal amount as nuisance value.

Thus, began a long series of spurious and harassing lawsuits filed

9 https://trellis.law/case/BC495165/MONICA-D-ONOFRIO-VS-ALKI-DAVID-PRODUCTIONS-INC-ET-AL?output=pdf.

by Defendant Attorneys against Plaintiff David and the Entity Plaintiffs, lawsuits that were part of an ongoing pattern employed by the Defendant Attorneys to extort money from Plaintiff David and the Entity Plaintiffs.

Upon information and belief, with the urging of Defendant Attorneys, various employees and ex-employees to file false claims against Plaintiff David and some of the Entity Plaintiffs.

Note: We have affidavits from Zimmerman and Ciara. Do we have sworn statements We are getting them from: 1) Carl Bowen; 2) Alli; and 3) David Haigh; 4) Peter Van Prusisenn; 5) Ylena Calendar; 6) Ian Robertson; 7)The affidavits requested of Dana Cole. Please note that Alli's affidavit will establish that she saw other Plaintiffs contrive claims by constantly entering Plaintiff David's office in hopes of enticing him to commit offensive conduct.

Upon information and belief, former employees who sued Plaintiff David (Litigating Defendants) often met at a restaurant near Plaintiff Entity Hologram, Inc.,'s location, to collude and form untruthful allegations against Plaintiff David and the Entity Defendants. Upon information and belief, the Litigating Defendants, coached by the Attorney Defendants, also met at other various times to compare theories for asserting spurious and trumped-up claims against Plaintiff David and the Entity

Defendants.

Litigating Defendant Khan was the subject of the above police report filed by her roommate, Lauren M. Berkley, who informed officers that *Khan* was threatening Berkley and her daughter because Berkley was going to testify in support of Plaintiff David in the *Mahim Khan* case.

The former employees, encouraged and aided and abetted by the Defendant Attorneys, targeted Plaintiff David as a victim to name in spurious settlement demands and in lawsuits, as alleged more fully herein. Former employees and their counsel, Defendant Attorneys, deemed Plaintiff David to be their gravy train and to be a deep pockets source of funding.

In filing this lawsuit - Plaintiff David and the Plaintiff Entities seeks justice to recoup millions of dollars, consisting of lost profits, improperly obtained court judgments, business IPO failures, and Plaintiff David experiencing undue emotional distress attributable to the wrongful actions of the Attorney Defendants and the Litigating Defendants.

On February 2, 2017, Litigating Defendants, Elizabeth Taylor and Chastity Jones filed a Labor-Wrongful Termination

lawsuit that also alleged sexual harassment in Los Angeles County Superior Court against Plaintiffs David, Hologram USA Entertainment, Inc., FilmOn Media Holdings, Inc., FilmOn TV., Alki David Productions, Inc. Hologram USA, Inc., Anakando Media Group, USA, FilmOn TV Networks, Inc., and FilmOn TV U.K., Limited. There is no truth to the allegations asserted by Litigating Defendants Taylor and Jones. Upon information and belief, the suit was filed by legal counsel, Defendants Goldstein, Bloom and Chora to extort settlement proceeds from Plaintiff David and/or the Entity Plaintiffs. Tellingly, Taylor dropped her sexual harassment claim on the day of jury selection, after spending three years maligning and defaming Plaintiff David, with Defendant Attorney promoting Taylor's fallacious sexual harassment claims on TMZ for those three years. **Carl affidavit Taylor was fired because of her failure to go to work at FilmOn or Hologram and she failed entirely to perform her duties.**

The Superior Court ordered Litigating Defendants Jones and Taylor's lawsuits to be bifurcated and those cases were tried separately. In Litigating Defendant Jones' action, LASC Case No. BC649025 (2017), Jones asserted that she was subjected to sexual

harassment and battery and that she was wrongfully terminated because she refused Plaintiff David's advances.

In April, 2019, Litigating Defendant Jones won an award against Plaintiff David for $11 Million in compensatory damages, an amount that was reduced by $437,120 by the court. Counsel representing Litigating Defendant Jones were Attorney Defendants Bloom, Sarah Bloom of the Bloom Firm, and Attorney Defendants Fundali, Goldstein of the Bloom Law Firm and Attorney Defendant Chora.

In October, 2019, a jury deadlocked 8-4 in Litigating Defendant Taylor's suit, LASC Case No. BC649025 (2017). Los Angeles County Superior Court Judge Christopher Lui declared a mistrial. Counsel for Litigating Defendant Taylor was Attorney Bloom.

In 2017, Karl Zirpel, a former employee of Alki David Productions, claimed he was improperly fired after raising safety concerns prior to an event hosted by Entity Plaintiff Hologram at Hologram Theater. Zirpel's sexual harassment claims, like that of many other Plaintiffs whom Defendant Attorneys helped to victimize Plaintiff David, was dropped the claim on the eve of trial. *Karl Zirpel v. Alki David Productions, Inc., et al.*, Case No. BC684618, in Department 57 of the Los Angeles County Superior Court, located at 111 North Hill

Street, Los Angeles, California 90012. Note: Alki was not personally named in this suit, but Zirpel's attorneys claimed in The Daily Beast that they would pursue Alki personally once the judgment was finalized.

https://www.thedailybeast.com/alki-david-coca-cola-heir-who-called-lawyer-a-fucktard-loses-dollar1-million-case.

Note: Alki, counsel for Zirpel and Zimmerman are not named Attorney Defendants - just ensuring you do not want to add them. Also Note: Alki was previously involved in unrelated litigation over a business dispute with Barry Diller, whose company, IAC owns the Daily Beast.

Hologram USA's independent contractor Grant Zimmerman filed *Grant Zimmerman v. Alkiviades David, et al.*, Case No. BC675552, in Department 71 of the Los Angeles County Superior Court, wrongly alleging wrongful termination and that he was fired by Plaintiff David for revealing David committed sexual misconduct as to other of David's employees. Attached is a mediation brief filed on Plaintiff David's behalf and on behalf of Hologram Inc., but not the other various entities related to Alki named in Zimmerman's suit. **Note: Alki and his counsel need to determine whether to divulge this as, per evidentiary rules, it is confidential.**
https://mail.google.com/mail/u/0/#search/Zimmerman/FMfcgxwLtsxhWHtZJFmDWqjCNmJCkqSG?projector=1&messagePartId=0.1

In 2019, Lauren Reeves, represented by Attorney Defendant Allred and her partners, sued Plaintiff David and Plaintiffs

Hologram USA and Alki David Productions, LASC Case No. BC649025 in the Superior Court of California, Los Angeles Division, for sexual battery and sexual harassment. Attorney Defendants Goldberg and Leal of the Attorney Defendant Allred's firm, represented Reeves, who worked as a comedy writer for Plaintiff Hologram USA. Reeves was awarded $650,000 in compensatory damages and $4.35 million in punitive damages.

In November, 2019, Mahim Khan, a former production assistant who worked at Entity Plaintiff FilmOn TV and Entity Plaintiff Alki David Productions, Inc., obtained an award of $58 million for battery, sexual battery and sexual harassment against Plaintiff Alki David. Khan named Entity Plaintiffs Alki David Productions, Hologram USA, FilmOn Inc., and Plaintiff David. LASC Case No. BC654017 (2019). Plaintiffs are seeking reversal on appeal due to the misconduct of Khan's counsel, Allred, Maroko & Goldberg, including, but not limited to, Defendants Allred, Goldberg, Leal, and Mochkatel, misconduct intended to further the criminal enterprise those counsel participated in in violation of RICO, as more fully alleged herein.

Note: Counsel will need to link to the soon-to-be-filed

Petition for Review before the California Supreme Court **when Fred Heather sends that filing. INSERT CASE NUMBER -**

On September 30, 2020, Jane Doe (Rita Nichols) filed a Labor-Wrongful termination lawsuit in Los Angeles County Superior Court against Plaintiffs David, FilmOn TV Networks, Inc., FilmOn TV La Inc. SwissX Labs AG Inc. a California Corp. AKA Swiss Lounge; Hologram USA Entertainment Inc.; FilmOn TV Inc. Hologram USA Inc. a California Corp. AKA Hologram USA Productions Inc; SwissX Labs AG Inc. AKA SwissX Lounge AKA FilmOn UK Ltd; Hologram USA Inc. AKA Hologram USA Productions Inc. AKA Hologram USA Entertainment Inc. AKA FilmOn TV Inc. AKA FilmOn.Tv La. Inc. LASC Case No. 20STCV37498.

Defendant Doe's attorneys in that action are Defendants Ebby S. Bakhtiar, Gary A. Dordick, and Thomas Vincent Girardi. **Insert Text Messages from Rita.** This matter is still pending.

Attorney Defendant Bloom's Egregious Conduct in the Taylor Matter

Note: Counsel will need the transcript of this:

In October, 2019, Judge Ongkeko of the Los Angeles Superior

Court, who oversaw the Elizabeth Taylor case, admonished Defendant Bloom for significantly overstating her already very expensive law firm bills submitted to the Judge when Litigating Defendant Jones won a compensatory award against Plaintiff David.

Tellingly, the Judge said, "If I were a Bloom client - one that was actually paying out of pocket instead of these sad ambulance chasing contingency cases - I'd be very careful to go over the firm's bills before I paid anything," Judge Ongkeko said.

Such over-billing and seeking to bilk Plaintiff David is just one of innumerable events demonstrating that Defendant Bloom extorted money from Plaintiff David and the Entity Plaintiffs in order to further the criminal enterprise, primarily overseen by Defendants Girardi, Allred, Bloom and Goldberg.

Add: The video with Bloom's allegations in the foyer of the Stanley Mosk Courthouse saying that Alki David committed Rape.

DEFENDANT ALLRED EXCEEDED THE BOUNDARIES OF ADVOCACY

Throughout the entire, years-long campaign to obliterate Plaintiff Alki's reputation and bankrupt his and the Plaintiff Entities, Defendant Allred exceeded all respectable boundaries of advocacy and she

exceeded the boundaries of the United States as well, maligning Defendant Alki's character and reputation in the United Kingdom - **specify.**

In Switzerland, Defendant Allred wrongfully sought to enforce a non-final judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys, in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss law. Béatrice Stahel, of MC Avocats SA (Ltd.) in Gstaad, Switzerland, provides Plaintiff David with Swiss representation. Plaintiff David has filed criminal complaints in Switzerland against Reeves, alleging Reeves is guilty of wilful defamation (art. 174 SCC) / defamation (art. 173 SCC). Reeves is represented by Attorney Defendant Allred. Stahel informs in an English translated letter that Allred has violated Swiss law.[10]

In Switzerland, Defendant Allred also wrongfully sought to enforce a non-final judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys, in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss

[10] https://mail.google.com/mail/u/0/#search/Swiss+translation+/KtbxLzfhXkdXKQwHMJbkPTWfLhtpgXQSgV?projector=1&messagePartId=0.1. (Letter from Plaintiff David's Swiss Counsel, December 16, 2021).

law.[11]

The Swiss courts rejected Allred's extraterritorial efforts to collect on the *Mahim Khan* judgment because appellate proceedings are ongoing in that case. Indeed, Defendant David and the named Entity Defendants in the *Mahim Khan* case have a Petition for Review pending before the California Supreme Court.

At the time that Attorney Defendant Allred violated Swiss law and national policy, Defendant David's and the named Entity Defendants' appeal was pending before the California Court of Appeal of the State of California District Division Two, *Mahim Khan v. Alkiviades David,* B305849, B3088727.

[11] https://docs.google.com/document/d/1Sqn9smWheF_6yI_bNY1EPne1yxweAiO3zNX6_g4PiJg/edit (Letter from Plaintiff David's Swiss Counsel, December 16, 2021).

Defendant Allred's illegal actions in Switzerland have caused, and continue to cause, Plaintiff David extreme expense and have, and continue to cause, further damage David's reputation as such filings are public record in Switzerland. Plaintiff David has gone to great expense to hire legal counsel to fight the criminal enterprise conducted by Defendant Allred and Defendant Bloom's continuous, wrongful spurious actions and defamatory actions.

Defendant Allred's corrupt, wilful and intentional actions, constituting criminal acts under relevant Swiss law, were committed under the auspices of an otherwise legitimate enterprise, Allred, Maroko & Goldberg.[12]

However, Defendant Allred's reprehensible conduct alleged above is not the end of the story recounting her actionable wrongful actions. On the day after the *Mahim Khan* verdict issued, Allred and Litigating Defendant Khan, went beyond the pale by calling a press conference in front of the Beverly Hills Police Station as they sought unsuccessfully to file criminal charges against Plaintiff David with regard to Khan's claims against David. https://www.youtube.com/watch?v=ROxzyBADKvQ.

[12] https://www.globenewswire.com/en/news-release/2019/11/01/1939286/0/en/Billionaire-Hires-Three-Major-UK-Law-Firms-to-Fight-Lisa-Bloom-and-Gloria-Allred.html.

However, the Police turned Defendants Allred and Khan away, stating that they did not have the evidence necessary to file such charges. **No such charges were ever filed.** This is one in a voluminous number of Allred's nefarious, harassing and extorting actions against Plaintiff David.

The Attorney Defendants' Allred, Bloom, Goldberg and Girardi conspired to extort money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses constitute wrongful actions under the auspices of otherwise legitimate enterprises, including, but not limited to, Allred, Maroko & Goldberg, The Bloom Firm; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Accordingly, as more fully set forth in this Complaint, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by the Attorney Defendants' mail fraud, bribery, extortion, all of which predicate claims pursuant to RICO**.**

Further, the Defendant Attorneys conspired to tamper with witnesses and to have witnesses and the Litigating Defendants collude against Defendant David and the Entity Plaintiffs by contriving

allegations to support their actions against Plaintiffs David and the Plaintiff Attorneys. Such tampering with witnesses constitute wrongful actions under the auspices of otherwise legitimate enterprises, including, but not limited to, Allred, Maroko & Goldberg, The Bloom Firm; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

The Attorney Defendants played fast and loose with both the Litigating Defendants and witnesses as well as the evidence they introduced in each case. Defendant Allred kept Defendant Mahim Kahn and Defendant Lauren Reeves as clients, but sent Defendant Elizabeth Taylor to Defendant Bloom, Allred' daughter.

Subsequently, Defendant Bloom was retained by Defendant Chastity Jones, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

Upon information and belief, Defendants Mahim Khan, Elizabeth Taylor, Lauren Reeves, and Chastity Jones (Litigating Defendants), with the encouragement of the Defendant Attorneys, conspired and colluded to make up stories about the actions of Plaintiff David and Plaintiff Entities in order to file their spurious lawsuits against Plaintiff David and Plaintiff Entities. **Insert text messages from Chastity etc.**

The Attorney Defendants' conspiring to extort and extorting money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses, committed actions under the auspices of otherwise legitimate enterprises, including, but not limited to, Allred, Maroko & Goldberg, The Bloom Firm; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Insert more specific instances if available.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by the Attorney Defendants' mail fraud, bribery, and extortion, all of which predicate claims pursuant to RICO**.**

Plaintiffs assert, pursuant to 18 U.S.C. §§1962(b)(c) and (d), that the Attorney Defendants, their clients, experts, employees and agents, conspired with one another and intended to, and did, wilfully conduct an inter-related, clear and continuous pattern of racketeering activity to benefit Defendant Attorneys' unlawful enterprise, and that Defendants continue to do so, by, inter alia, wilfully and intentionally conspiring against Plaintiff David and the Entity Plaintiffs by filing spurious

lawsuits against Plaintiff David and the Entity Plaintiffs, who were, and continue to be, victimized by Attorney Defendants' continuous pattern of racketeering conducted to benefit their enterprises, including mail fraud, extortion, bribery, and aiding and abetting, all of which are cognizable as RICO predicate acts pursuant to 18 U.S.C. §§ 1861 and 1862 (b)(c) and (d).

EXTORTION

Title 18 U.S.C. Section 875(d) criminalizes the conduct engaged in by Defendants Girardi, Allred, Bloom, Goldberg and **WHAT OTHER ATTORNEY DEFENDANTS CAN WE NAME IN THIS COUNT** their employees and agents. That statute provides as follows:

> Whoever, with the intent to extort from any person, firm . . . or corporation, any money or other thing of value, transmits in interstate . . . commerce any communication containing any threat to injure the property or reputation of the addressee or of another . . . or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned or imprisoned not more than two years, or both.

Defendants Girardi, Allred and Bloom made threats intended to cause economic harm to Plaintiff David and to the Entity Plaintiffs. The threats were intended to extort settlements. The

threats were intended to cause reputational harm to Plaintiff David. The threats were wrongful because Defendants Girardi, Allred and Bloom used the threats and maligned Plaintiff David's reputation to try to obtain property to which they were not entitled.

Defendants Girardi, Allred, Bloom and Goldberg are guilty of extortion because they sought money or property to which they did not have, and could not reasonably believe they had, a claim or right.

Plaintiff Alki, accompanied by his then attorney Barry Rothman, went to the District Attorney in Los Angeles and reported Elizabeth Taylor and Mahim Khan for trying to extort Plaintiff David by demanding $ 3.5 Million dollars. **Pull Emails Barry - UPLOADING ON JULY 3. INSERT**

INSERT

Plaintiff David and the Entity Plaintiffs suffered damages and incurred substantial losses as a result of Defendants Girardi, Allred, Bloom's and Goldberg's implementation and continuation of their extortionate claims.

The Defendant Attorneys tampered with the Litigating

Defendants' testimony, and with the evidence Defendant Attorneys used to assert the spurious complaints made by Defendant Litigants, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

The Defendant Attorneys tried to extort Plaintiff David and the Plaintiff Entities by making spurious allegations against those Plaintiffs, often calling press conferences to assert their nefarious claims and touting the large award against Plaintiff David in *Mahim Khan,* even as it remains under appeal. ***See e.g.,*** https://www.phillymag.com/news/2021/12/21/gloria-allred.

The Attorney Defendants' conspiring to extort, and their extorting, money and property from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses, were actions committed under the auspices of otherwise legitimate enterprises as follows: Allred, Maroko & Goldberg, The Law Offices of Lisa Bloom; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Upon information and belief, Attorney Defendant Chora, counsel in *Chastity Jones,* ruined $5 Million in business lost by Plaintiffs David and the Entity Plaintiffs. **Alki - we need specificity as to which entities?**

Further, Attorney Defendant Chora caused PAYPAL to terminate Plaintiff FilmOn's two accounts. Note to counsel:

The CFO of FilmOn provided this information and perhaps counsel would like this in an affidavit?

According to Isabel Ann Peterman, Financial Controller, Filmon TV UK Group:

"Filmon had two accounts with PayPal 1) sales@filmon.com (old accounts,

used for over 10 years) and onlinesales@filmon.com (new opened in Jan 21

as a result of suspending the old one)

They were closed with explanation "in breach of user agreement",
consequently all funds held there were deducted and no specific reasons were
provided of the cases of violation PayPal was using as an argument. Filmon lost
half of its customers as a result.

a) Some PayPal stats:

- PayPal was the preferred choice of payment for our Filmon customers.

- In the last year (2020) there were a total of 61959 orders placed successfully via Paypal with an estimated value converted in GBP of £1.2m.

- Since Feb 1, 2021 when PayPal took down our account, the total amount of canceled PayPal subscriptions (users finally gone) was 5,415 (equivalent to lost sales orders per **month)**

The total amount of expected and not received incomes in 2021because of canceled subscriptions based on 2020's sales rate is £1.3m, without embedding any possible further lost opportunities due to company marketing efforts etc.

b) Enclosing a file of customer complaint cases. (Theses are most representative cases. There were higher number or complaints in general but in some of them. the customers did not specifically mention PayPal, so they were excluded).

c) List of canceled PayPal subscriptions (file name "r2.xls") with encrypted emails for data protection purposes as a backup.

Note: Ms. Peterman provided a table demonstrating the amount of monies that PayPal still has in segregated funds, stating the value of those funds in USD, EU, and BGB - pounds. I could not copy that table from her email so I am asking her to send it as an attachment and I will insert it as soon as I hear from her.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by reason of the Attorney Defendants' mail fraud, bribery, extortion, predicate claims pursuant to RICO Move: Plaintiffs assert, pursuant to 18 U.S.C. §§1962(b)(c) and (d), that the Attorney Defendants, their clients, experts, employees and agents, conspired with one another and intended to and willfully conducted an inter-related, clear and continuous pattern of racketeering activity to benefit Defendant Attorneys' unlawful enterprise, and that Defendants continue to do so, by, inter alia, wilfully and intentionally conspiring against Plaintiff David and the Entity

Plaintiffs by filing spurious lawsuits against Plaintiff David and the Entity Plaintiffs (which entity plaintiffs were named in which suits?), who were, and continue to be, victimized by Attorney Defendants' continuous pattern of racketeering conducted to benefit their enterprise, including mail fraud, extortion, tampering with witnesses, falsification of a signature in a civil proceeding, bribery, and aiding and abetting, all cognizable as RICO predicate acts pursuant to 18 U.S.C. §§ 1862(b)(c) and (d).

Specifically, the Attorney Defendants filed unethical, spurious lawsuits against Plaintiff David without investigating the merits of those actions, unethically coaching their clients and witnesses about what to say, only to then often dismiss some of those complaints years later when trial proceedings were forthcoming. Further, the Defendant Attorneys conspired to tamper with witnesses and to have witnesses collude against Defendant David and the Entity Plaintiffs by sharing the actions against Plaintiffs David and the Plaintiff Attorneys. Defendant Allred kept Defendant Mahim Kahn and Defendant Lauren Reeves as clients, but sent Defendant Elizabeth Taylor to Defendant Bloom, her daughter. After Defendants Reeves, Taylor and Jones conspired to sue Plaintiff David and the Entity Plaintiffs, Subsequently, Defendant Bloom

was retained by Defendant Chastity Jones, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

Defendant Allred wrongfully sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys, in Switzerland in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss law. The Swiss courts rejected those efforts as appellate proceedings are ongoing in that case, causing Plaintiff David extreme expense and further damaging his reputation as such filings are public record.

Further, in *Lauren Reeves v. Alki David, et. al,* Defendant Allred again sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys.

In response, Plaintiff David filed criminal proceedings in Switzerland against Defendant Allred - append.

Defendant Allred's corrupt, wilful and intentional extortion, constituting criminal acts under relevant Swiss law, were committed under the auspices of an otherwise legitimate enterprise, Allred, Maroko & Goldberg.

The Attorney Defendants' conspiring to extort and extorting

money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses, were actions committed under the auspices of otherwise legitimate enterprises as follows: Allred, Maroko & Goldberg, The Law Offices of Lisa Bloom; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by reason of the Attorney Defendants' extortion, witness tampering, mail fraud and bribery, all of which constitute predicate claims pursuant to RICO.

EXTORTION

Title 18 U.S.C. Section 875(d) criminalizes the conduct engaged in by Defendants Girardi, Allred, Bloom and their employees and agents. That statute provides as follows:

> Whoever, with the intent to extort from any person, firm . . . or corporation, any money or other thing of value, transmits in interstate . . . commerce any communication containing any threat to injure the property or reputation of the addressee or of another . . . or any threat to accuse the addressee or any other person of a crime, shall be fined under

this title or imprisoned or imprisoned not more than two years, or both.

Defendants Girardi, Allred and Bloom made threats intended to cause economic harm to Plaintiff David and to the Entity Plaintiffs and were intended to extort settlements. The threats were intended to cause reputational harm to Plaintiff David - those threats were wrongful because Defendants Girardi, Allred and Bloom used the threats and maligned Plaintiff David's reputation to try to obtain property to which they were not entitled.

Defendants Girardi, Allred and Bloom are guilty of extortion because they sought money or property to which they did not have, and could not reasonably believe they had, a claim or right.

Plaintiff Alki, accompanied by his then attorney Barry Rothman, went to the District Attorney in Los Angeles and reported Elizabeth Taylor and Mahim Khan for trying to extort Plaintiff David by demanding $ 3.5 Million dollars. **Pull Emails Barry - UPLOADING ON JULY 12-12. Does Fred have these emails perchance?**

Plaintiff David and the Entity Plaintiffs suffered damages and

incurred substantial losses as a result of Defendants Girardi, Allred, Bloom's, Goldberg's and Chora's implementation and continuation of the extortion.

The Defendant Attorneys tampered with the Litigating Defendants' testimony, and with the evidence Defendant Attorneys used to assert the spurious complaints made by Defendant Litigants, all with an effort to extort money from Plaintiff David and the Plaintiff Entities. **We need to add specificity here.**

The Attorney Defendants' conspiring to extort and their extorting money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses by telling them what to say, and Defendant Goldberg erring with regard to the introduction of documents and exhibits, and Defendant Goldberg falsifying the signature of Plaintiff's Counsel Ellyn Garofalo, were actions committed under the auspices of otherwise legitimate enterprises, including Allred, Maroko & Goldberg, Bloom Law Firm; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by

reason of the Attorney Defendants' extortion, a predicate claim pursuant to RICO.

Defendant Attorneys' Illegal Patterns of Defrauding Plaintiffs, Obstructing Justice and Soliciting Bribery

Plaintiffs assert, pursuant to 18 U.S.C. §§1962(b)(c) and (d), that the Attorney Defendants, their clients, experts, employees and agents, conspired with one another and intended to and willfully conducted an inter-related, clear and continuous pattern of racketeering activity to benefit Defendant Attorneys' unlawful enterprise, and that Defendants continue to do so, by, inter alia, wilfully and intentionally conspiring against Plaintiff David and the Entity Plaintiffs by filing spurious lawsuits against Plaintiff David and the Entity Plaintiffs, who were, and continue to be, victimized by Attorney Defendants' continuous pattern of racketeering conducted to benefit their enterprise, including mail fraud, extortion, tampering with witnesses, obstruction of justice, bribery, and aiding and abetting, all cognizable as RICO predicate acts pursuant to 18 U.S.C. §§ 1862(b)(c) and (d).

Specifically, the Attorney Defendants filed unethical, spurious lawsuits against Plaintiff David without investigating the merits of those actions, unethically coaching their clients and witnesses about what to say, only to then often dismiss some of those complaints years later

when trial proceedings were forthcoming. Further, the Defendant Attorneys conspired to tamper with witnesses and to have witnesses collude against Defendant David and the Entity Plaintiffs by sharing the actions against Plaintiffs David and the Plaintiff Attorneys. Defendant Allred kept Defendant Mahim Kahn and Defendant Lauren Reeves as clients, but sent Defendant Elizabeth Taylor to Defendant Bloom, her daughter. After Defendants Reeves, Taylor and Jones conspired to sue Plaintiff David and the Entity Plaintiffs, Subsequently, Defendant Bloom was retained by Defendant Chastity Jones, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

Defendant Allred wrongfully sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys, in Switzerland in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss law. The Swiss courts rejected those efforts as appellate proceedings are ongoing in that case, causing Plaintiff David extreme expense and further damaging his reputation as such filings are public record.

Further, in *Lauren Reeves v. Alki David, et. al,* Defendant Allred again sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by

Defendant Attorneys.

Defendant Allred's corrupt, wilful and intentional actions, constituting criminal acts under relevant Swiss law, were committed under the auspices of an otherwise legitimate enterprise, Allred, Maroko & Goldberg.

As to Defendant Allred, this pattern of manipulating witnesses, and, upon information and belief, paying the witnesses to testify in a particular fashion, is a pattern of obstruction of justice and witness tampering that is more than fifty years old. In the landmark Supreme Court Case, *Roe v. Wade,* upon information and belief, Defendant Allred coached Plaintiff Roe about what to testify to without verifying the allegations and thereby commenced her pattern of committing obstruction of justice and tampering with witnesses, as evidenced by Plaintiff Roe's informing, soon before she died, that Allred committed those acts. *See* *Gloria Allred On The New Norma McCorvey Documentary (forbes.com)*. Allred's behavior in this case parallels her long standing pattern of criminal enterprise:

http://www.tvmix.com/jane-roe-admission-that-attorney-gloria-allred-paid-her-to-lie-resurfaces-after-scotus-overturns-roe-v-wade/123.

Allred and Bloom are predators of predators - Phillymag

Fraud on the court - in taxes in Chastity Jones - even offered to give them the carcasses of the companies they destroyed - I offered FilmOn to Chora - yet, Allred and Bloom insist that Plaintiff is a billionaire, as does Chora.

Recommended letter
Ministère public du canton de Genève Monsieur Olivier JORNOT
Procureur général
Case postale 3565

1211 Genève 3 Gstaad,

December 16th 2021

Concerning : Criminal complaint of Alkiviades DAVID against Mahim KHAN ; American judicial system; information concerning punitive damages; Criminal complaint in original version

Dear Attorney General,

You know that I represent the interests of Mr Alkiviades DAVID.

This letter is in response to the criminal complaint filed by my principal against Mrs. Mahim KHAN on November 30th, 2021 (hereinafter "the Complaint").

In order to better circumscribe the context of the facts presented in the Complaint, my client wishes to highlight a few particularities inherent in the functioning of the American judicial system.

First of all, it is common in the United States for a party to claim damages, especially punitive damages.

In this context and by way of introduction, it appears that the American lawyers of Mrs. Mahim KHAN are specialised in building up cases with a view to obtaining damages in favour of their clientele, in particular in civil, labour law and sexual harassment cases (cf. all. n° 23 to 25 and 33 of the Complaint) (cf. exhibits n° 7 to 9 of the Complaint).

Indeed, according to the GLOBAL ARBITRATION REVIEW (cf. article n° 1, page no. 4), punitive damages - prohibited by Swiss public policy - are widely available and may be awarded in commercial and contractual cases (« Under US law, punitive damages are widely available and may be awarded in commercial and contractual cases. »).

It is noted in this respect that, as illustrated in the Complaint (cf. incl. all. n° 26 to 31 of the Complaint), it is not a judge who decides on the award of compensation, including punitive damages, but
a popular jury. In other words, the judge does not decide on the law, so that the award of punitive damages, which frequently reach unreasonable sums as will be shown below, depends solely on the permeability of the jury, which is made up of citizens chosen by lot, i.e. without any legal training whatsoever, and which can be easily manipulated, particularly by an attorney who is well versed in oratory.

The Supreme Court has repeatedly struck down excessive punitive damages awards as arbitrary deprivations of property without due process of law (cf. article n° 2, page n° 1, article published in FORBES on 8 April 2021).

The problems with the US Supreme Court's requirement of due process in lower courts, including their lack of fairness and consistency, have increased in recent years. Indeed, lower courts have been reluctant to comply with the US Supreme Court's jurisprudence on punitive damages, as they have continued to award excessive punitive damages (« ... Since then, the due process defects identified by the Court - such as lack of fairness, a lack of consistency, and cumulative punishment - have only increased in severity. These changes are fueled by an increase in the size of mass tort actions, coupled

with many courts' reluctance to rein in constitutionally excessive punitive damages awards. Indeed, many circuit and state courts have all but ignored the Court's admonition that, when the compensatory damages award is "substantial", the punitive damages award should be no greater ») (cf. article n° 2, page n° 2).

From the above, it is clear that punitive damages are relatively easy to obtain in the United States. There is a twofold aspect to this : the ease with which the American legal system makes it possible to obtain damages, especially punitive damages, has the perverse effect of encouraging individuals to take legal action, or even to construct a legal action from scratch, thanks in particular to the help of law firms that specialise in obtaining damages for their clients.

With regard to the collaboration of several attorneys in the establishment of this pernicious judicial system, we note that contrary to the regime prevailing in Switzerland (art. 12 let. e LLCA), the pactum de quota litis is authorised in the United States, so that it is perfectly possible, as it is often the case, for an attorney to agree not to receive a retainer or fees but to be remunerated solely on the basis of the outcome of the proceedings, receiving a percentage which in principle varies between 30 and 40% in the event of success (cf. article n° 3, page n° 2), which is obviously also an incentive for attorneys, who, so to speak, "participate in this system".

The above argument is all the more true with regard to the State of California, i.e. the State in which the American judgment was rendered and on which Mrs Mahim KHAN based her application for sequestration dated 14 October 2021 (cf. exhibits n° 6 and n° 10 of the Complaint).

In addition to excessive punitive damages awards being an issue in California, according to MG+M (cf. article n° 4, page n° 3) (« In addition to excessive punitive damages awards being an issue in California, … »). Moreover, a continuing issue across the country is multiple lawsuits seeking punitive damages for the same tortious conduct (« …, a continuing issue across the country is multiple lawsuits seeking punitive damages for the same tortious conduct. »,), which demonstrates that there is an unhealthy, and legally dubious, tendency to chase punitive damages in the United States.
MG + M (cf. article n° 4, page no. 1) also notes that punitive damages have a punitive function for the conduct of the perpetrator on the one hand and a deterrent function for the perpetrator in the future on the other. Nevertheless, the award of punitive damages sometimes exceeds these two objectives and constitutes a violation of the 14th Amendment of the US Constitution and its Fair Trial Clause which prohibits grossly excessive or arbitrary punishment (« Punitive damages are meant to serve two purposes: punish the defendant for the conduct at issue in the lawsuit and deter similar conduct in the future. But, sometimes a punitive damages award goes beyond serving these two purposes and moves into the territory of violating the Due Process Clause of 14th Amendment to the United States Constitution. The 14th Amendment, through the Due Process Clause, prohibits the imposition of grossly excessive or arbitrary punishments »).

In addition, and still with regard to the State of California, it has legislated on the subject of punitive damages by requiring clear and convincing evidence without, however, specifying the notion (« Punitive damages are allowed in California ... which states "In an action for the breach of an obligation .... is proven by clear and convincing evidence ..." ... Although California does not define "clear and convincing evidence"... ») (cf. article n° 4 , page n° 1), which, along with the other factors mentioned above, contributes to the numerous abuses observed in this State in the award of such punitive damages.

In view of the above, the American judicial system, and especially California's, is a gigantic theatre where

individuals can be awarded absolutely unreasonable compensation by a popular jury in proceedings where legal and judicial requirements, particularly those relating to a fair trial, are sometimes sacrificed on the altar of the plaintiffs' greed.

We note that the #MeToo movement is unfortunately not helping this trend. Indeed, while it is true that this movement allows victims to speak out and to shed light on acts of harassment that have actually been committed, which is a happy outcome, we must also acknowledge that it is unfortunately a source of inspiration, a springboard, for some unscrupulous women to falsely claim to be victims of harassment in order to obtain a sum that will exempt them from working for the rest of their lives.

In this context, it must be said that the media coverage that some of them receive, by attacking well-known personalities, only serves to unduly strengthen their claims, through public opinion which is almost always sympathetic to their cause without having had any access to the elements of the case, in particular to possible evidence.

Finally, the original version of the criminal complaint, signed by my client, is attached.

Thanking you in advance for the action you will take on this matter, I would like to assure you, Mr Prosecutor General, of my respectful consideration.

Exct Béatrice STAHEL

Arthur SEPPEY

Attached : ment.

CORPORATE DEFAMATION

ELEMENTS

1. **A false statement was made about the business,**
2. **The statement was communicated or published to a third party,**
3. **The statement was made with at least a negligible level of intent, and**
4. **The statement caused damage to the business's reputation.**

Defamation -

Not satisfied with extorting money from Plaintiff David, Bloom could not

even control herself in the foyer of the Stanley Mosk Courthouse, a public building, where she screamed at Plaintiff David and accused him of rape, a false and defamatory allegation.**https://www.youtube.com/watch?v=QvCshThAnTQ**

(The video with Bloom's allegations in the foyer of the Stanley Mosk Courthouse saying that Plaintiff David committed Rapes - plural - The allegations are at 1:45 on this video).

Defendant Bloom's defamations against Plaintiff David were overheard by others, most notably an appalled mother who can be heard on the tape asking for Defendant Bloom to stop because the Mother's young daughter was hearing Bloom's defamatory accusations against Plaintiff David).

Alki
Add: The video with Bloom's allegations in the foyer of the Stanley Mosk Courthouse saying that Alki David committed Rape. https://www.youtube.com/watch?v=QvCshThAnTQ
At 1:45 p.m.

DEFAMATION AGAINST PLAINTIFF DAVID

Allred concedes Plaintiff David had no criminal charges, let alone convictions here;

https://www.youtube.com/watch?v=yT1ZReqJCDQ&t=752s

Yet, she was perfectly comfortable in defaming him here:

1. **Bloom called Plaintiff David a rapist - to David Haigh - affidavit**
2. **Allred called Plaintiff David a rapist - Marguerita Nichols and referred her to Tom Girardi. Same day after just met with David Haigh - in her complaint to Switzerland**
3. **Swiss counsel - Mahim Kahn had swiss counsel and so did Lauren Reeves and in seeking to lien the David Family's Swiss assets, they claimed that Plaintiff David committed sexual misconduct,**

Thus drawing Plaintiff David's criminal complaints.

Upon information and belief, Plaintiff David and the Entity Plaintiffs assert that Defendant Allred, conspiring with the other Attorney Defendants, including Goldberg, insert carry on with their criminal enterprise, coaching claimants to lie and mischaracterize their interactions with Plaintiff David and file spurious lawsuits against Plaintiff David and the Entity Plaintiffs in order to deprive the plaintiffs

of their property.

Moreover, the settlement agreement in *D'Onofrio v. Alki David Productions Inc., FilmOn Com., Inc. and Alki David, Case No. BC496165* contained a confidentiality provision and Defendant Goldberg wrongfully divulged the confidential settlement's provisions.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by reason of the Attorney Defendants' extortion, witness tampering, mail fraud and bribery, all of which constitute predicate claims pursuant to RICO.

BRIBERY

18 U.S.C. §201(b)(3) states that whoever "directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or

take testimony, or with intent to influence such person to absent himself therefrom."

PICK UP AND ELABORATE Re: allegations

On November 6, 2012, Monica D'Oofrio filed *D'Onofrio v. Alki David Productions Inc., FilmOn Com., Inc. and Alki David, Case No. BC496165.*[13] On May 10, 2013, alleging employment discrimination. Plaintiff David settled the case for a minimal amount as nuisance value.

Alki - D'Onofrio's counsel was Gary A. Smith, Manuwal & Manuwal - please verify whether you want Mssr. Smith named as a party defendant?

Thus, began a long series of spurious and harassing lawsuits filed by Defendant Attorneys against Plaintiff David and the Entity Plaintiffs that were part of an ongoing pattern employed by the Defendant Attorney, their Clients and Experts to extort money from Plaintiff David and the Entity Plaintiffs.

Upon information and belief, with the urging of Defendant Attorneys, various employees and ex-employees filed false claims against Plaintiff David and some of the Entity Plaintiffs.

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13 https://trellis.law/case/BC495165/MONICA-D-ONOFRIO-VS-ALKI-DAVID-PRODUCTIONS-INC-ET-AL?output=pdf.

Affidavits needed: REQUESTED FROM DANA COLE

Note to Counsel: Allie's affidavit establishes that she saw other Plaintiffs contrive claims by constantly entering Plaintiff David's office in hopes of enticing him to commit offensive conduct.

Upon information and belief, former employees who sued Plaintiff David (Litigating Defendants) often met at a restaurant near Plaintiff Entity Hologram, Inc.,'s location, to collude and form untruthful allegations against Plaintiff David and the Entity Defendants. Upon information and belief, the Litigating Defendants, coached by the Attorney Defendants, also met at other various times to compare theories for asserting spurious and trumped-up claims against Plaintiff David and the Entity Defendants.

The former employees, encouraged and aided and abetted by the Defendant Attorneys, targeted Plaintiff David as a victim to name in spurious lawsuits. Former employees and their counsel deemed Plaintiff David to be their gravy train. In filing this lawsuit - Plaintiff David and the Plaintiff Entities seeks justice to recoup millions of dollars, consisting of lost profits, improperly

obtained court judgments.

On February 2, 2017, Elizabeth Taylor and Chastity Jones filed a Labor-Wrongful Termination lawsuit in Los Angeles County Superior Court against Plaintiffs David, Hologram USA Inc., FilmOn TV. Inc. There is no truth to their allegations and, upon information and belief, the suit was filed by legal counsel, Defendants Goldstein, Bloom and Chora to extort settlement proceeds from Plaintiff David and/or the Entity Plaintiffs.

In April, 2019, Chastity Jones won an award against Plaintiff David for $11 Million in compensatory damages, an amount that was reduced by $437,120 by the court.

In October, 2019, a jury deadlocked 8-4 in Elizabeth Taylor's suit. Los Angeles County Superior Court Judge Christopher Lui declared a mistrial.

Karl Zirpel, a former employee of Alki David Productions, claimed he was improperly fired after raising safety concerns prior to an event hosted by Entity Plaintiff Hologram at Hologram Theater. Zirpel's sexual harassment claims, like that of many other Plaintiffs whom Defendant Attorneys helped to victimize Plaintiff David, dropped the claim on the eve of trial.

BRIEF STATEMENT OF THE CASE

Karl Zirpel filed this lawsuit. He is called a plaintiff. He seeks damages and other relief from Alki David, who is called a defendant.

Karl Zirpel claims that Alki David subjected him to harassment and discrimination based upon his sexual orientation and violated wage and hour laws. Defendant denies those claims. Defendant also contends that Plaintiff caused Defendant financial harm, and if Plaintiff was terminated it was not for discriminatory reasons as claimed by Plaintiff.

Alki David has also filed what is called a cross complaint against Karl Zirpel. Alki David is a defendant, but also is called the cross-complainant. Karl Zirpel is called a cross-defendant.

In his cross-complaint, Alki David claims Karl Zirpel committed sexual battery and battery against Alki David. Karl Zirpel denies those claims.

Note: Alki was not personally named in this suit, but Zirpel's attorneys claimed in The Daily Beast that they would pursue Alki personally once the judgment was finalized.

Note: Alki was previously involved in unrelated litigation over a business dispute with Barry Diller, whose company, IAC owns the Daily Beast.

In 2019, Lauren Reeves sued Plaintiff David and Plaintiffs Hologram USA and Alki David Productions for sexual battery and sexual harassment. Defendant Goldberg represented Reeves, who worked as a comedy writer for Plaintiff Hologram USA. Reeves was awarded $650,000 in compensatory damages and $4.35 million in punitive damages.

In November, 2019, Mahim Khan, a former production

assistant who worked at Entity Plaintiff FilmOn TV and Entity Plaintiff Alki David Productions, Inc., obtained an award of $58 million for battery, sexual battery and sexual harassment against Plaintiff Alki David. This matter is on appeal before the Supreme Court of California. **Link Petition for Review when Fred Heather sends that filing.**

On September 30, 2020, Jane Dough (Rita Nichols) filed a Labor-Wrongful termination lawsuit in Los Angeles County Superior Court against Plaintiffs David, FilmOn TV Networks, Inc., FilmOn TV La Inc. SwissX Labs AG Inc. a California Corp. AKA Swiss Lounge; Hologram USA Entertainment Inc.; FilmOn TV Inc. Hologram USA Inc. a California Corp. AKA Hologram USA Productions Inc; SwissX Labs AG Inc. AKA SwissX Lounge AKA FilmOn UK Ltd; Hologram USA Inc. AKA Hologram USA Productions Inc. AKA Hologram USA Entertainment Inc. AKA FilmOn TV Inc. AKA FilmOn.Tv La. Inc. in Los Angeles Superior Court, LASC No. 7498 - (we need the rest of the case number from Fred Heather). Plaintiff Doe's attorneys are Defendants Ebby S. Bakhtiar, Gary A. Dordick, Thomas Vincent Girardi. Plaintiff Alki is Fred D. Heather.

Mail Fraud

18 U.S.C. §§ 1341 and 1343 address the commission of the crime of mail fraud and wire fraud.

Plaintiffs allege that Gloria Allred, Esq., in her individual capacity, and as a principal in Allred, Maroko & Goldberg; Nathan Goldberg, Esq., in his individual capacity, and as a partner in Allred, Maroko & Goldberg, Delores Y. Leal, Esq., in her individual capacity and as a partner of Allred, Maroko & Goldberg; Renee Mochkatel, Esq., in her individual capacity and as a partner of Allred, Maroko & Goldberg; Lisa Bloom, Esq., in her individual capacity and as the owner of the Law Offices of Lisa Bloom; Law Offices of Lisa Bloom; Thomas V Girardi, in his individual capacity, and as a partner in Girardi Keese; Gary A. Dordick, in his individual capacity and as a partner in Dordick Law Corporation; Keith Griffin, in his individual capacity and his capacity as a former partner in Girardi & Keese. Joseph Chora, Esq., in his individual capacity, and as a partner in Chora, Young & Manasserian; Ebby S. Bakhtiar, in his individual capacity and as a partner in The Law Offices of Ebby S. Bakhtiar; (Attorney Defendants), culpable persons capable of holding legal or beneficial interests in property, have participated in long-term, organized conduct of a criminal enterprise

affecting interstate and international commerce through an interrelated pattern of racketeering activity, in violation of RICO laws set forth in 18 U.S.C. §§1962 (b)(c)(d).

Utilizing the mails and wires, the Attorney Defendants participated in and have furthered their enterprise through a plan and a scheme to defraud that continues to this day and encompasses acts of artifice or deceit that were and are intended to deprive Plaintiff David and the Entity Plaintiffs of their property and money.

There was a reasonable foreseeability that, in perpetrating the mail fraud, the Attorney Defendants would and did utilize the mail or wires.

The Attorney Defendants' scheme to defraud included the use of the mails to communicate with witnesses, opposing counsel, and experts in actions intended to defraud Plaintiff David and the Entity Plaintiffs.

Plaintiff David and the Plaintiff Entities' prior counsel Rothman sought a meet and confer meeting about interrogatories he had generated in that litigation, referencing Reeves' use of a phone (more than one phone perhaps?) that she claimed helped bolster her claims against Plaintiff David.[14] Upon information and belief, Defendant

[14] https://mail-attachment.googleusercontent.com/attachment/u/0/?ui=2

Attorneys in that case and the other lawsuits recounted in this Complaint all used the mail and wires to defraud Plaintiff David and the Entity Plaintiffs of their money and property so as to further the illegal enterprise.

Note to Counsel: We need to add more specificity here - can we prove through Swiss counsel that Gloria Allred in Switzerland and/or that Lisa Bloom in the UK utilized wires to perpetrate their fraud. Do emails suffice? Edelson Complaint thinks so -

As to Defendant Allred's pattern of using the mail to manipulate witnesses, and, upon information and belief, paying the witnesses to testify in a particular fashion, is a pattern of fraud, obstruction of justice and witness tampering that is more than fifty years old. In the landmark

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&ik=68ad5627e5&attid=0.1&permmsgid=msg-f:1581550983980536602&th=15f2cc3d9254531a&view=att&disp=safe&saddbat=ANGjdJ9-5bpRafrPc6mzVjKA3XI0-ayZU7civdXpsd83db8fANLjou0wH6gkHQitU6I6glB2oTWBBW3QENef-uHEQi8uCtR1Q106GKiQb8tbarCdfhAFWgg8LVANTNjBJZXxG_e_Q5K1A8XJKB64JVy6sSB4rzkkOYY7AzKnZRG7jIIhW7bXi_EK8DHuWxf9H3W4q6iyThtqtJBxZwBdYxPWUZZDF2Vsm1Du3tU6RaeVn8ufRVXWamy_uUWhGy4kXh5FIi8MF8eud_NL8D0ar9SyjM5ea_n1ukQ_Ouj2umUYkIza-_FELth5XIFPHuCRQgdWjYo99iaUX8N_U2VZMxcWK67W8DNcnwloh3FTheQqZSkSFac2raYoI7HFVL425j2jvqeTPLgkQBJTwcZA9ykbUM8Kp6xMcIJ969CgAdEJMmjqzxnFQw4zYeJJhp9amLuIl-qop28yDIa8xy5ecquyB5FkqeKM8Vax3XdWZCtKZs4cA_XVf8HwXQpVk9_wGwh0P7hGJVy0pR3RBKb_T3WUN7Fxc-GPWI0fOpGZRnhhgH_NWsNR8Jo5rvrVxEpWM6S0-st_YhCrVHLp3xIE1zaIGXMmH6ly89w6yrnBWvcD6B1_7VlPVeipqhqd-Zc3-hHlnO7z45w1B9HhJQbE1j7_hTBReDMIYx7oV95ahboF1QE1osLCnltAf-Z0UIpvgXld7JqtlwpJjGDS-1DuNYyfYHCNDNnH3JTUJyaD4nVtOpBQkgYcfUh62uPjeTOgolbeQqBik19h4D7N5Zr_rilbG_aXiqHZzHo5miZxhrEL49AJ5Rgb5c3kGMUMqQNjWGpIsIm4PSkKa_L6CPe_

Supreme Court Case, *Roe v. Wade,* upon information and belief, Defendant Allred coached Plaintiff Roe about what to testify to without verifying the allegations and thereby commenced her pattern of committing obstruction of justice and tampering with witnesses, as evidenced by Plaintiff Roe's informing, soon before she died, that Allred committed those acts. *See* *Gloria Allred On The New Norma McCorvey Documentary (forbes.com)*.

Upon information and belief, Plaintiff David and the Entity Plaintiffs assert that Attorney Defendants carry on with their criminal enterprise, using the mail and wires to coach claimants to lie and mischaracterize their interactions with Plaintiff David and to file spurious lawsuits against Plaintiff David and the Entity Plaintiffs in order to deprive the plaintiffs of their property.

Strategy Note: Fred has some of Barry Rothman's (deceased) files as I understand it so counsel needs to assess all correspondence and emails to bolster the mail and wire claim.

I note that, tellingly, Barry Rothman, sought to obtain Lauren Reeves' cell phone records to counter her claims against Plaintiff David. Rothman sought a meet and confer meeting about interrogatories he had generated in that litigation, referencing Reeves'

use of a phone (more than one phone perhaps?) that she claimed helped bolster her claims against Plaintiff David.[15]

IS THIS A DUPLICATE?

The Enterprise's Spurious, Defamatory Lawsuits, Extortion and Witness Tampering

Upon information and belief, Defendants Girardi, Allred and Bloom conspired to pursue vexatious litigation creating a continuous and related pattern of racketeering activity against Plaintiff David and the Entity Defendants by filing numerous spurious and unfounded

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15 https://mail-attachment.googleusercontent.com/attachment/u/0/?ui=2&ik=68ad5627e5&attid=0.1&permmsgid=msg-f:1581550983980536602&th=15f2cc3d9254531a&view=att&disp=safe&saddbat=ANGjdJ9-5bpRafrPc6mzVjKA3XI0-ayZU7civdXpsd83db8fANLjou0wH6gkHQitU6I6glB2oTWBBW3QENef-uHEQi8uCtR1Q106GKiQb8tbarCdfhAFWgg8LVANTNjBJZXxG_e_Q5K1A8XJKB64JVy6sSB4rzkkOYY7AzKnZRG7jIIhW7bXi_EK8DHuWxf9H3W4q6iyThtqtJBxZwBdYxPWUZZDF2Vsm1Du3tU6RaeVn8ufRVXWamy_uUWhGy4kXh5FIi8MF8eud_NL8D0ar9SyjM5ea_n1ukQ_Ouj2umUYkIza-_FELth5XIFPHuCRQgdWjYo99iaUX8N_U2VZMxcWK67W8DNcnwloh3FTheQqZSkSFac2raYoI7HFVL425j2jvqeTPLgkQBJTwcZA9ykbUM8Kp6xMcIJ969CgAdEJMmjqzxnFQw4zYeJJhp9amLuIl-qop28yDIa8xy5ecquyB5FkqeKM8Vax3XdWZCtKZs4cA_XVf8HwXQpVk9_wGwh0P7hGJVy0pR3RBKb_T3WUN7Fxc-GPWI0fOpGZRnhhgH_NWsNR8Jo5rvrVxEpWM6S0-st_YhCrVHLp3xIE1zaIGXMmH6ly89w6yrnBWvcD6B1_7VlPVeipqhqd-Zc3-hHlnO7z45w1B9HhJQbE1j7_hTBReDMIYx7oV95ahboF1QE1osLCnltAf-Z0UIpvgXld7JqtlwpJjGDS-1DuNYyfYHCNDNnH3JTUJyaD4nVtOpBQkgYcfUh62uPjeTOgolbeQqBik19h4D7N5Zr_rilbG_aXiqHZzHo5miZxhrEL49AJ5Rgb5c3kGMUMqQNjWGpIsIm4PSkKa_L6CPe_

lawsuits against Plaintiff David and the Entity Plaintiffs, all to benefit their illegal enterprise.

The Attorney Defendants were enabled by one another and retained experts to assist in The Attorney Defendants' committing the predicate offenses of extortion, bribery, obstruction of justice and mail fraud, solely because of each Attorney Defendants' positions in their enterprise and their involvement in or control over the enterprise's affairs and because their offenses of extortion, bribery, obstruction of justice and mail fraud related to the activities of their enterprise, i.e., to enrich themselves by filing spurious lawsuits against Plaintiff David and the Entity Plaintiffs and thereby depriving those Plaintiffs of their property**.**

Upon information and belief, (Allie and Carl Affidavits provide this good faith basis) Defendants Girardi, Allred, and Bloom intentionally conspired to recruit employees of Plaintiffs FilmOn and Anakando and former employees of those Plaintiffs, to independently file tort lawsuits against David alleging he committed sexual misconduct in order to extract and extort money from David and the Entity Plaintiffs in furtherance of an enterprise specifically designed to enrich Defendants.

Specifically, Defendants Allred, Bloom, Goldstein furthered their enterprise as the Attorney Defendants and their agents mercilessly and maliciously pursued Plaintiff David and the Entity Plaintiffs, in courts, as well as in the media, seeking to extort Plaintiff David to pay money settle with the parties who sued Plaintiff David and the Entity Plaintiffs.

Defendants Girardi, Allred and Bloom are guilty of extortion committed to further the criminal enterprise because they sought money or property from Plaintiff David and the Entity Plaintiffs, to which they did not have, and could not reasonably believe they had, a claim or right.

Plaintiff David, accompanied by his then attorney Barry Rothman went to the DA and reported Elizabeth Taylor and Mahim Kahn for trying to extort Plaintiff David by demanding $ 3.5 Million dollars from him. **Alki to provide dates and details.**

Plaintiff David and the Entity Plaintiffs suffered damages and incurred substantial losses as a result of Defendants Girardi, Allred, and Bloom's implementation and continuation of the extortionate claims committed to further the enterprise.

Plaintiff David did all that he could do to inform the Beverly Hills Police Department that the Attorney Defendants were trying to extort money from him, even going so far as to file a police report with the

Department, complete with his formal statement setting forth relevant facts and the affidavits of two employees of the Plaintiff entities. letter to BHPD - filmonpersonal@gmail.com - Gmail (google.com).

David's affidavit, dated July 16, 2021, stated in relevant part:

> For the past five years, I have been the victim of serial extortion, and even human trafficking, by well-known TV-centric attorneys Gloria Allred, Lisa Bloom and Thomas Girardi. These crimes arise from legal claims by former employees that worked at my company, Hologram, USA, which was located at 338 N Canon Drive, Beverly Hills. During the relevant period, I was also a Beverly Hills resident. Due to these spurious claims, my company was forced to shut down. Each of the female claimants represented, aided and abetted by the referenced three attorneys, have acted in concert with each other, falsely alleging various acts of sexual harassment against me by acting as witnesses for each other. The respective claimants and their attorneys have abused our legal system by jumping on the #MeToo bandwagon to fabricate their claims. To further these extortion schemes, the attorneys knowingly submitted false evidence and intimidated witnesses in the various court cases, which resulted in various judgments against me, while two other cases are pending trial.
>
> **In reviewing Penal Code sec. 236.1 (human trafficking), I note the definition of coercion "includes a scheme to cause a person to believe that failure to perform an act, [e.g. pay money to settle a spurious claim] would result in . . . the abuse or threatened abuse of the legal process," which is exactly what has occurred to me. These same lawyers issue press releases and appear on television to defame my character, claiming that I am a Greek billionaire, in an orchestrated campaign to coerce settlements in order to cease the**

endless press coverage.

Here is a brief synopsis of the various cases and the criminal wrongdoing that has occurred:

- *Chastity Jones v. Alki David*, case no. BC649025, brought by attorney Lisa Bloom, alleges that I threatened to fire Chasity Jones if I didn't sleep with her.
- *I was in fact firing her for defrauding me of $40 000 but I had yet to let her know that.*
  - o Criminal wrongdoing: In testimony under oath, Jones denied being a federally convicted felon, who had a felony warrant at the time of trial from willful failure to pay restitution in connection with a federal fraud conviction;
  - o I have attached a statement under oath from Ciara Menifee, who states that attorney Lisa Bloom pressured her to give a false statement, which she refused to do, and that Ms. Jones had targeted me regarding false claims of sexual abuse; and
  - o I have attached a statement under oath from Grant Zimmerman, who states that it was his impression that Ms. Jones targeted me with false claims of harassment.

- *Elizabeth Taylor v. Alki David*, case no. BC649025, brought by attorney Lisa Bloom, is a pending case.
- *Criminal wrongdoing: Though this trial was a filled with moments of unbelievably callous perjury by Lisa Bloom and her gang it all began with allegations of sexual harassment and assault that were dropped on the day of the trial!*

https://www.tmz.com/2017/09/15/celeb-hologram-creator-alki-david-sued sexual-assault

In this first trial, the jury believed that there was a fraud and conspiracy afoot by Lisa Bloom - the jury was hung 8-4 in my favor. But the damage was being done in a very narrow targeted perversion of the law

that has been devastating to me personally and the lives of many hundreds of employees, family and friends whose lives have been hugely damaged.

- *Mahim Khan v. Alki David*, case no. BC654017, brought by attorney Gloria Allred, alleges that I
    - o **Criminal wrongdoing: Kahn threatened her former roommate, Lauren Berkley, not to truthfully testify in my favor about Kahn's fabricated allegations against me. Berkley submitted a police report documenting the threat. Additionally, Kahn's attorney, Nathan Goldberg (partner of Gloria Allred) forged my attorney's signature on a witness list that was submitted to the court prior to trial. While attempting to collect her judgment against me in Switzerland, Kahn's attorneys [including Gloria Allred] criminally misrepresented and fabricated that I had sustained criminal convictions for sexual abuse in the United States. At present, I have filed a criminal complaint in Switzerland with the State Prosecutor alleging various deceptions in Kahn and her attorneys' attempt to seize my assets, including trying to enforce punitive damages portion of a judgment, which is not permitted in Switzerland. (Emphasis in original).**
- *Lauren Reeves, v. Alki David*, case no. BC643099, brought by attorney Gloria Allred.
    - o **Criminal wrongdoing: As with Mayim Kahn, Defendant Allred and Swiss counsel are trying to seize assets in Switzerland.**
- In Switzerland four separate counts of coercion with intent to defraud have been filed with public prosecutors there.

- *Jane Doe (a/k/a Margurita Nicholls) v. Alki David*, case no. _____, brought by attorney Thomas Girardi and _____, alleges that I raped her at Hologram offices. However, she has made other rape claims, including against her husband and best friend. A month after the alleged rape, Nicholls brought me a birthday cake.
-

  o Criminal wrongdoing: As numerous law enforcement authorities are aware, attorney Tom Girardi has defrauded numerous clients out of millions of dollars and is the subject of various state and federal investigations. The California State Bar has already disbarred him from practicing law; and

  o In Mr. Zimmerman's attached statement under oath he states that Ms. Nicholls never complained to him about anything improper with me.

Abused court processes in the above cases have been or are ongoing by the attorneys and their clients. The various assigned judges lack the resources to investigate the alleged criminal wrongdoing, which is why I am seeking law enforcement intervention. I am hoping that your Department will look into these matters and gather the evidence needed to prosecute these individuals and their attorneys for the extortion and perjury perpetrated against me, which has resulted in millions of dollars in falsified judgments.

These attorneys have targeted numerous other individuals with the same M.O. They have made millions of dollars extorting hard-working business men, ruining reputations, and destroying personal lives. Thank you for your urgent attention to this request. I look forward to meeting with you to amplify my concerns and cooperate in bringing these crimes to light.

Plaintiff David's attempted to have law enforcement investigate the ongoing extortions and defamations committed by Defendants Girardi, Allred and Bloom to further the illegal enterprise. However, Plaintiff David's efforts were ignored, as were Plaintiff David's *three* complaints to the State Bar of California. **Attach three complaints.**

Further, after obtaining judgments against Plaintiff David, Defendant Mahim Khan and her attorney, Gloria Allred, filed spurious contempt actions against Plaintiff David, seeking outrageous, duplicative and meritless court orders such as:

https://mail.google.com/mail/u/0/#search/Dana+cole/FMfcgzGpGSzQdqVtwlspFnZkZVzjdhJG?projector=1&messagePartId=0.

The Attorney Defendants' enterprise is horizontally related because the predicate acts of those Defendants committing offenses, motivated by a desire to deprive Plaintiff David and the Entity Plaintiffs of money and property, including the Attorney Defendants committing the predicate offenses of extortion, bribery, obstruction of justice and mail fraud have distinct similarities regarding the following characteristics: results (money judgments), participants (The Attorney Defendants and The Litigating Defendants, consisting of a group of former employees of Plaintiff David and the Entity Plaintiffs), victims

(Plaintiff David and the Entity Plaintiffs), methods of commission (the filing of spurious lawsuits against Plaintiff David and the Entity Plaintiffs.

In the various lawsuits filed against Plaintiff David and the Entity Plaintiffs, Plaintiffs' counsel informed courts that there were concerns regarding the Attorney Defendants unethically exchanging documents and having wrongful interchanges regarding various Attorney Defendants and their firms. Transcript - filmonpersonal@gmail.com - Gmail (google.com)

Upon information and belief, there exists a strong threat of a repetition of such fraudulent actions by Defendant Attorneys and that their extortion and obstruction of justice will extend indefinitely into the future.

Not only do Defendant Attorneys continue to harass, threaten and extort Plaintiff David and the Plaintiff Attorneys' in the United States, the United Kingdom and Switzerland, as set forth more fully in this Complaint, Defendants Allred and Bloom are being sued for fraud by Rose McGowan. **ALKI to provide details.** **http://www.tvmix.com/la-court-gives-ok-to-hollywood-actress-rose-mcgowan-fraud-suit-against-harvey-weinstein-and-lisa-bloom/123**

Further, Paul Marciano, co-founder Guess, Inc. is suing Defendant Bloom for civil extortion, alleging that Bloom improperly tried to extort settlement money from Marciano and, that in doing so, she lied by accusing Marciano of rape when Bloom's client expressly told Bloom not to allege rape. **https://embed.documentcloud.org/documents/21832954-2022_05_02-marciano-v-bloom/?embed=1&responsive=1&title=1.**

Defendant Bloom also falsely accused Plaintiff David of Rape in a public forum - the Stanley Mosk Court House where the Superior Court of California conducts proceedings. **Link to video.** Defendant Bloom's actionable, blatant defamation of Plaintiff David has caused David enormous home and has damaged his reputation.

SHALL WE ADD WYNN?

https://news.bloomberglaw.com/daily-labor-report/bloom-sex-harassment-firm-fails-to-nix-steve-wynns-libel-suit

PATTERN Two cases that Allred has Alec Baldwin shares and me Girardi and Dordick Gloria Allred and Dordick
Share screen graphs of Trellis and Dordick & Allred and Dordick & Girardi
And that Keith was with both firms.
Wynn
Marciano - Bloom
Illinois litigation
Rose McGowan - Bloom

50 Cent
Chris Brown

All of whom have challenged Allred and Bloom, but they incessantly pursue them nevertheless.

Girardi School of Law

Depravity of it

https://www.law360.com/articles/1349235/girardi-s-legacy-in-shambles-amid-shakespearean-scandal

The Marciano and McGowan's lawsuits, all filed in proximity to the Attorney Defendants filing frivolous lawsuits against Plaintiff David and the Entity Plaintiffs, thus evincing an ongoing pattern of racketeering activity to further the Attorney Defendants' enterprise that is designed to extort money, tamper with witnesses and defraud citizens of their money. **Insert Rose McGowan, Marciano and Wynn - will any do an affidavit helping Alki to establish the pattern. Insert Edelson alleging that In the suit, the Edelson law firm referred to Girardi and his firm as "the largest criminal racketeering enterprise in the history of plaintiffs' law." Among the allegations made was that Girardi corrupted the State Bar, "allowing [him] to maintain a spotless record before the bar and enabling him to continue stealing from clients."**

https://www.latimes.com/california/story/2022-07-08/in-wake-of-failed-handling-of-tom-girardi-state-bar-moves-against-license-of-former-executive-director

https://thehill.com/homenews/administration/365068-exclusive-prominent-lawyer-sought-donor-cash-for-two-trump-accusers/

Strategy Question: If Alki and the Entity Plaintiffs wish to allege an open-ended continuity, we may wish to refrain for naming Girardi as a Defendant - as if we do, we risk a court in the Ninth Circuit holding there is no open-ended continuity where one of the Defendants has ceased committing predicate acts. *See Turner v. Cook,* 362 F.3d 1219, 1230 (9th. Cir. 2004). Whereas, if we wish to establish a closed-ended continuity, we need to establish some showing of duration over "a substantial period of time "so long that there is a threat that conduct will occur in the future." Because the Elizabeth Taylor case is ongoing vis a vis a retrial, the appeal in the *Mahim Khan* case is ongoing, and the collection actions pursued by Defendant Chora and Defendant Allred in Switzerland, there is a threat that conduct will occur in the future.
Importantly, the law in various federal court districts varies vastly on this element and counsel needs to take that into account with regard to the decision on which district courts to file the action(s) in.

Strong Factual Nexus Suggesting Coordination Between the Attorney Defendants To Further the Illegal Enterprise

Note: We need to establish the existence of conversations and meetings between the Attorney Defendants. Note: we can imply there were such meetings because in the *Reeves* case, Defendant Goldberg tried to introduce documents that he had not disclosed in that litigation and counsel for Alki, Ellyn Garofolo, went on the record stating Goldberg had tried to introduce documents from one of Lisa Bloom's cases asserted against Alki when those documents had not been properly disclosed. Further, Defendant Goldberg filed an improper list

of witnesses and exhibits in that he: 1) listed documents that had not been produced in the *Reeves* case, but that had been produced by Defendant Bloom in another of the Litigating Defendant's cases; and 2) forged Ellyn Garofolo's signature on that filing.

I need to review all transcripts to see if there are any more statements demonstrating the existence of a conspiracy between Defendant Attorneys.

Plaintiffs assert, pursuant to 18 U.S.C. §§1962(b)(c) and (d), that the Attorney Defendants, their clients, experts, employees and agents, conspired with one another and intended to and willfully conducted an inter-related, clear and continuous pattern of racketeering activity to benefit Defendant Attorneys' unlawful enterprise, and that Defendants continue to do so, by, inter alia, wilfully and intentionally conspiring against Plaintiff David and the Entity Plaintiffs by filing spurious lawsuits against Plaintiff David and the Entity Plaintiffs (which entity plaintiffs were named in which suits?), who were, and continue to be, victimized by Attorney Defendants' continuous pattern of racketeering conducted to benefit their enterprise, including mail fraud, extortion, falsification of a signature in a civil proceeding, bribery, and aiding and abetting, all cognizable as RICO predicate acts pursuant to 18 U.S.C. §§ 1862(b)(c) and (d).

Specifically, the Attorney Defendants filed unethical, spurious

lawsuits against Plaintiff David without investigating the merits of those actions, unethically coaching their clients and witnesses about what to say, only to then often dismiss some of those complaints years later when trial proceedings were forthcoming. Further, the Defendant Attorneys conspired to tamper with witnesses and to have witnesses collude against Defendant David and the Entity Plaintiffs by sharing the actions against Plaintiffs David and the Plaintiff Attorneys. Defendant Allred kept Defendant Mahim Kahn and Defendant Lauren Reeves as clients, but sent Defendant Elizabeth Taylor to Defendant Bloom, her daughter. After Defendants Reeves, Taylor and Jones conspired to sue Plaintiff David and the Entity Plaintiffs, Subsequently, Defendant Bloom was retained by Defendant Chastity Jones, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

In October, 2019, Judge Ongkeko of the Los Angeles Superior Court admonished Defendant Bloom for significantly overstating her already very expensive law firm bills submitted to the Judge when Jones won a compensatory award against Plaintiff David. Tellingly, the Judge said, “If I were a Bloom client - one that was actually paying out of pocket instead of these sad ambulance chasing contingency cases - I’d be very careful to go over the firm’s bills before I paid anything,” Judge

Ongkeko said. Such over-billing and seeking to bilk Plaintiff David is just one of innumerable events demonstrating that Defendant Bloom extorted money from Plaintiff David and the Entity Plaintiffs.

Defendant Allred wrongfully sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys, in Switzerland in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss law. The Swiss courts rejected those efforts as appellate proceedings are ongoing in that case, causing Plaintiff David extreme expense and further damaging his reputation as such filings are public record. Further, in *Lauren Reeves v. Alki David, et. al,* Defendant Allred again sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys.

In response, Plaintiff David filed criminal proceedings in Switzerland against Defendants Allred, Blom and Girardi alleging that those Defendants conspired to discredit and extort Plaintiff David - **append.** Upon information and belief, the Swiss Court will impose???? **can Swiss Counsel provide proper language summarizing that country's laws.**

Defendant Allred's corrupt, wilful and intentional actions,

constituting criminal acts under relevant Swiss law, were committed under the auspices of an otherwise legitimate enterprise, Allred, Maroko & Goldberg.

The Attorney Defendants' conspiring to extort and extorting money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants, were actions committed under the auspices of otherwise legitimate enterprises as follows: Allred, Maroko & Goldberg, The Law Offices of Lisa Bloom; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by reason of the Attorney Defendants' mail fraud, bribery, extortion, witness tampering, predicate claims pursuant to RICO.

Moreover, Girardi's former partner, Gary A. Dordick, formed his law offices independently and coordinated and conspired with Girardi, Allred and Lisa Bloom, sharing documents in the various lawsuits against Plaintiff Alki David and the Entity Plaintiffs. At times, those documents were not revealed in discovery in the various proceedings.

Further, Defendant Keith Griffin, formerly of the Girardi firm has joined the Dordick Law Firm, whose principal is Defendant Gary A. Dordick.

Note: Relevant law instructs that we need a strong factual nexus suggesting coordination between the defendants.

1. **Quote Ellyn's signature being forged and the witnesses and exhibits list being manipulated - the judge did nothing.**

Defendant Attorneys Girardi, Allred, Goldberg and Bloom were part of an initial enterprise consisting of a union or group of individuals with a common purpose that are associated in fact. Defendant Attorneys Delores Y. Leal, Renee Mochkatel, Dordick, Griffin, Choro, **WHAT OTHERS?** also joined the enterprise. ADD: Recount the details of the following:

The enterprise has as its purposes, extortion, mail fraud, and obstruction of justice, in order to deprive Plaintiff David and the Entity Plaintiffs of their money and property.

The relationship of the parties consists of informal and formal agreements and understandings to cause harm, threaten, embarrass and defame through unlawful means, including, but not limited to, the filing of spurious lawsuits with longevity - a scheme that began in 2014.

The members of the enterprise are manifold and they share a common purpose of enhancing their reputations as attorneys, and of seeking to extort payments from Plaintiff David and the Plaintiff Entities by means of their illegal concerted actions and conspiracies. Each and

every member of the enterprise intended to engage in the conduct harming Plaintiff Alki and the Entity Plaintiffs and they did so with actual knowledge of their illegal activities.

The various harassing practices asserted against, and lawsuits filed against, Plaintiff David and the Plaintiff entities share an uncanny and unethical pattern. First, Defendant Attorneys would coach employees of Plaintiff David's companies about what to say at press conferences called by Defendant Attorneys Allred, Goldberg, and Bloom after Defendant Attorneys filed hastily composed legal complaints against Plaintiff David and Plaintiff Entities. **Do we need to add Girardi? Did Goldberg have any press conferences?**

Upon information and belief, Defendant Attorneys filed lawsuits without conducting a due diligence investigation into the verity of the allegations set forth in those lawsuits. Not only did those filings constitute manifest abuse of the legal process as they were entirely devoid of any supporting documentary or factual evidence, as proscribed by relevant ethical standards governing attorneys practicing law. They also are cognizable under RICO because the filing of those spurious lawsuits furthered the Defendant Attorneys' criminal enterprise and thereby harmed Plaintiff David and the Plaintiff Entities. Members of the

enterprise who intended to engage in the witness tampering to harm Plaintiff Alki and the Entity Plaintiffs in the *Mahim Kahn* lawsuit were Attorney Defendants Girardi, Allred, Goldberg, Leal and Mochkatel and Attorney Defendants did so with actual knowledge of their illegal activities.

Here, we need to allege: that there was an association in fact having a common purpose and that there is evidence regarding the continuity of the illegal enterprise organization and that its members function as a unit. *U.S. v. Christensen,* 828 F.3d 763, 780 (9th. Cir. 2015)(quoting *U.S. v. Eufrasio,* 935 F.3d 553, 557 n. 29 (3d Cir. 1991)(internal quotation marks omitted). *Odom v. Microsoft Corporation, 486 F.3d 541* (9th Cir. 2007)(en banc), *cert denied,* 128 S.Ct. 464 (2007).

To do so, we need to show: 1) evidence of hierarchy - Girardi-Allred-Bloom and now Goldberg etc. 2) Role differentiation, chain of command - we must discuss this to demonstrate that there is an association-in-fact enterprise.

Insert quotes from this trial transcript FW: Ali Botto - Vol. 13 - October 4, 2019 Testimony.pdf - filmonpersonal@gmail.com - Gmail (google.com) Also demonstrate that the Court in Mahim Khan was made

aware of the conspiring between the various former employees who interacted with one another to concoct claims against Plaintiff David. FW: 139167.491786 Khan v Hologram USA, Inc, et al. (BC654017) - filmonpersonal@gmail.com - Gmail (google.com)

Defendant Goldberg in the *Reeves* case represented Reeves[16] and he shared documents that Defendant Goldberg and his partners and firm had not listed on the list of witnesses and exhibits her filed in that matter. He wrongfully sought to use undisclosed documents he exhibits he obtained from Bloom.

Not only did the Attorney Defendants commit such wrongdoing during the *Reeves* trial, Plaintiffs' counsel in *Mahim Khan* committed gross ethical violations during his closing argument and violated Plaintiff David's constitutional and due process rights. Khan ARB conformed - Google Docs - Add specifics.

Rothman sought a meet and confer meeting about interrogatories he had generated in that litigation, referencing Reeves' use of a phone (more than one phone perhaps?) that she claimed helped bolster her claims against Plaintiff David.[17]

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[16] *Elizabeth Taylor, an individual, Chastity Jones, an individual v. Alkiviades David, an individual, Hologram USA, Inc. a Delaware Corporation, Hologram USA Entertainment, a Delaware Corporation, FilmOn Media Holdings, Inc., a Delaware Corporation, FilmOn TV, Inc., a Delaware Corporation; FilmOn TV Networks, Inc., a Delaware Corporation; Alki David Productions, Inc.,a Delaware Corporation, Anakando Media Group USA et. al.,* Case No. BC649025, Superior Court of the State of California, Los Angeles-Central District.

[17] https://mail-attachment.googleusercontent.com/attachment/u/0/?ui=2&ik=68ad5627e5&attid=0.1&permmsgid=msg-f:1581550983980536

Second Cause of Action
18 U.S.C. Sec. 1862 (c)

Plaintiff David and the Entity Plaintiffs restate paragraphs 1 through XXXX of this Complaint,

18 U.S.C. Sec. 1862 (c) provides, "It shall be unlawful for any person employed by or associated with an enterprise to engage in or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity."

Upon information and belief, the Attorney Defendants' enterprise consisted of an ongoing association that functions as a continuing unit

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602&th=15f2cc3d9254531a&view=att&disp=safe&saddbat=ANGjdJ9-5bpRafrPc6mzVjKA3XI0-ayZU7civdXpsd83db8fANLjou0wH6gkHQitU6I6glB2oTWBBW3QENef-uHEQi8uCtR1Q106GKiQb8tbarCdfhAFWgg8LVANTNjBJZXxG_e_Q5K1A8XJKB64JVy6sSB4rzkkOYY7AzKnZRG7jIIhW7bXi_EK8DHuWxf9H3W4q6iyThtqtJBxZwBdYxPWUZZDF2Vsm1Du3tU6RaeVn8ufRVXWamy_uUWhGy4kXh5FIi8MF8eud_NL8D0ar9SyjM5ea_n1ukQ_Ouj2umUYkIza-_FELth5XIFPHuCRQgdWjYo99iaUX8N_U2VZMxcWK67W8DNcnwloh3FTheQqZSkSFac2raYoI7HFVL425j2jvqeTPLgkQBJTwcZA9ykbUM8Kp6xMcIJ969CgAdEJMmjqzxnFQw4zYeJJhp9amLuIl-qop28yDIa8xy5ecquyB5FkqeKM8Vax3XdWZCtKZs4cA_XVf8HwXQpVk9_wGwh0P7hGJVy0pR3RBKb_T3WUN7Fxc-GPWI0fOpGZRnhhgH_NWsNR8Jo5rvrVxEpWM6S0-st_YhCrVHLp3xIE1zaIGXMmH6ly89w6yrnBWvcD6B1_7VlPVeipqhqd-Zc3-hHlnO7z45w1B9HhJQbE1j7_hTBReDMIYx7oV95ahboF1QE1osLCnltAf-Z0UIpvgXld7JqtlwpJjGDS-1DuNYyfYHCNDNnH3JTUJyaD4nVtOpBQkgYcfUh62uPjeTOgolbeQqBik19h4D7N5Zr_rilbG_aXiqHZzHo5miZxhrEL49AJ5Rgb5c3kGMUMqQNjWGpIsIm4PSkKa_L6CPe_

motivated by the Attorney Defendants' wanting to harm Plaintiff David and the Entity Plaintiff's property and conducting their activities furthering the criminal enterprise by engaging in activities affecting interstate and foreign commerce.

Upon information and belief, the Attorney Defendants' pattern of racketeering activities were actions taken to perpetrate fraud against Plaintiff David and the Entity Plaintiffs.

Defendants Girardi, Allred and Bloom made threats intended to cause economic harm to Plaintiff David and to the Entity Plaintiffs. The threats were intended to extort settlements. The threats were intended to cause reputational harm to Plaintiff David. The threats were wrongful because Defendants Girardi, Allred and Bloom used the threats and maligned Plaintiff David's reputation to try to obtain property to which they were not entitled.

Defendants Girardi, Allred, Bloom and Goldberg are guilty of extortion because they sought money or property to which they did not have, and could not reasonably believe they had, a claim or right.

Plaintiff Alki, accompanied by his then attorney Barry

Rothman, went to the District Attorney in Los Angeles and reported Elizabeth Taylor and Mahim Khan for trying to extort Plaintiff David by demanding $ 3.5 Million dollars. **Pull Emails Barry - UPLOADING ON JULY 3. INSERT**

INSERT

Plaintiff David and the Entity Plaintiffs suffered damages and incurred substantial losses as a result of Defendants Girardi, Allred, Bloom's and Goldberg's implementation and continuation of their extortionate claims.

The Defendant Attorneys tampered with the Litigating Defendants' testimony, and with the evidence Defendant Attorneys used to assert the spurious complaints made by Defendant Litigants, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

The Defendant Attorneys tried to extort Plaintiff David and the Plaintiff Entities by making spurious allegations against those Plaintiffs, often calling press conferences to assert their nefarious claims and touting the large award against Plaintiff David in *Mahim Khan,* even as it remains under appeal. ***See e.g.,*** https://www.phillymag.com/news/2021/12/21/gloria-allred.

The Attorney Defendants' conspiring to extort, and their

extorting, money and property from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses, were actions committed under the auspices of otherwise legitimate enterprises as follows: Allred, Maroko & Goldberg, The Law Offices of Lisa Bloom; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Upon information and belief, Attorney Defendant Chora, counsel in *Chastity Jones,* ruined $5 Million in business lost by Plaintiffs David and the Entity Plaintiffs. **Alki - we need specificity as to which entities?**

Further, Attorney Defendant Chora caused PAYPAL to terminate Plaintiff FilmOn's two accounts. Note to counsel:

The CFO of FilmOn provided this information and perhaps counsel would like this in an affidavit?

According to Isabel Ann Peterman, Financial Controller, Filmon TV UK Group:

"Filmon had two accounts with PayPal 1) sales@filmon.com (old accounts, used for over 10 years) and onlinesales@filmon.com (new opened in Jan 21 as a result of suspending the old one)

They were closed with explanation "in breach of user agreement", consequently all funds held there were deducted and no specific reasons were provided of the cases of violation PayPal was using as an

argument. Filmon lost half of its customers as a result.

a) Some PayPal stats:

- PayPal was the preferred choice of payment for our Filmon customers.

- In the last year (2020) there were a total of 61959 orders placed successfully via Paypal with an estimated value converted in GBP of £1.2m.

- Since Feb 1, 2021 when PayPal took down our account, the total amount of canceled PayPal subscriptions (users finally gone) was 5,415 (equivalent to lost sales orders per **month)**

The total amount of expected and not received incomes in 2021because of canceled subscriptions based on 2020's sales rate is £1.3m, without embedding any possible further lost opportunities due to company marketing efforts etc.

b) Enclosing a file of customer complaint cases. (Theses are most representative cases. There were higher number or complaints in general but in some of them. the customers did not specifically mention PayPal, so they were excluded).

c) List of canceled PayPal subscriptions (file name "r2.xls") with encrypted emails for data protection purposes as a backup.

Note: Ms. Peterman provided a table demonstrating the amount of monies that PayPal still has in segregated funds, stating the value of those funds in USD, EU, and BGB - pounds. I could not copy that table from her email so I am asking her to send it as an attachment and I will insert it as soon as I hear from her.

Third Cause of Action
18 U.S.C. Sec. 1862 (d)

Plaintiff David and the Entity Plaintiffs restate paragraphs 1 through XXXX of this Complaint,

18 U.S.C. Sec. 1862 (d) states "It shall be unlawful for any person to conspire to violate any of the provisions of subsection (b) or (c)

of this section."

Howard v. Am. Online, Inc, 208 F.3d 741, 751 (9th Cir. 2000) instructs that to establish a 18 U.S.C. Sec. 1862 (d) violation, the Attorney Defendants either had to establish an agreement that constitutes a substantive violation of RICO or the Attorney Defendants had to agree, commit or participate in the violation of at least two predicate offenses. *Salinas,* 522 U.S. at 63-64 instructs, quoting the venerable Justice Holmes, that a conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense.

In this case, Attorney Defendants conspired to target Plaintiff Alki David and the Plaintiff Companies.

The initial enterprise participants, Defendants Girardi, Allred, Bloom and Goldberg, knowingly agreed to facilitate the activities of each of them as they operated and managed a criminal enterprise and extorted Plaintiffs David and The Entity Plaintiffs. All Attorney Defendants conspired with the initial enterprise participants.

Upon information and belief, Plaintiff David and the Entity Plaintiffs assert assert that the Attorney Defendants' pattern of racketeering activity is to target well-known individuals, such as Plaintiff David, with accusations of improper behavior, typically under the guise

of a purported, falacious sexual harassment claims, and to threaten to make those allegations public, all with a wilful intent to get the target to pay up.

The Attorney Defendants unlawfully and tortiously attempted to, and in some instances did, extract millions of dollars from Plaintiff David and the Entity Plaintiffs by a concerted enterprise that consisted of calculated media campaigns, threats and intimidation, and abusive litigious actions.

Upon information and belief, the Attorney Defendants are individually vicariously liable for their co-conspirators' illegal actions conducted to further the illegal enterprise.

Plaintiff David and The Entity Plaintiffs allege that the clients of the Defendant Attorneys, Mahim Khan, Elizabeth Taylor; Lauren Reeves; Chastity Jones (Litigating Defendants), knowingly and wilfully participated in the interrelated enterprise calculated to extort money from Plaintiff David and the Entity Plaintiffs.

Plaintiff David, accompanied by his then attorney Barry Rothman went to the DA and reported Elizabeth Taylor and Mahim Kahn for trying to extort Plaintiff David by demanding $3.5 Million from him. **Alki to provide dates and details. We expect this to be in one of the 40 boxes**

that are forthcoming from Fred's firm.

Defendant Allred and her client, Mahim Kahn, attempted to file criminal charges against Plaintiff David, but, upon information and belief, were told by Beverly Hills police that they lacked the necessary evidence to support such allegations. Upon information and belief, Defendant Allred called a news conference at the Beverly Hills police station on the date she attempted to file criminal charges against Plaintiff David with the express purpose of intimidating, harassing and defaming Plaintiff David.

No such criminal charges were ever filed. Indeed, in a taped press conference, Defendant Allred stated that the standards of proof between *Mahim Kahn's* civil action and any purported criminal action thwarted the filing of any criminal action. Nevertheless, upon information and belief, despite the fact that there was no basis for filing a criminal action against Plaintiff David, Defendant Allred arranged to have a false article published in the LA Times so as to further cause Plaintiff David to suffer. Self-appointed ambassador for 'wronged men' of #MeToo Alki David faces criminal complaint - Los Angeles Times (latimes.com)

As to Defendant Allred, her pattern of manipulating witnesses, and, upon information and belief, in some instances, paying the witnesses to testify in a particular fashion, is a pattern of obstruction of justice and witness tampering that is more than fifty years old. In the landmark Supreme Court Case, *Roe v. Wade*[18], upon information and belief, Defendant Allred coached Plaintiff Roe about what to testify to without verifying the allegations and thereby commenced her pattern of committing obstruction of justice and tampering with witnesses, as evidenced by Plaintiff Roe's informing, soon before she died, that Allred committed those acts. *See* *Gloria Allred On The New Norma McCorvey Documentary (forbes.com)*.

Specifically, the Attorney Defendants filed unethical, spurious lawsuits against Plaintiff David without investigating the merits of those actions, unethically coaching their clients and witnesses about what to say, only to then often dismiss some of those complaints years later when trial proceedings were forthcoming. Further, the Defendant Attorneys conspired to tamper with witnesses and to have witnesses collude against Defendant David and the Entity Plaintiffs by sharing the actions against Plaintiffs David and the Plaintiff Attorneys. Defendant

[18] *Roe v. Wade,* 410 U.S. 113 (1973), *overruled by Dobbs v. Jackson Women's Health Organization,*

Allred kept Defendant Mahim Kahn and Defendant Lauren Reeves as clients, but sent Defendant Elizabeth Taylor to Defendant Bloom, her daughter. After Defendants Reeves, Taylor and Jones conspired to sue Plaintiff David and the Entity Plaintiffs, Subsequently, Defendant Bloom was retained by Defendant Chastity Jones, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

Defendant Allred wrongfully sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys, in Switzerland in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss law. The Swiss courts rejected those efforts as appellate proceedings are ongoing in that case, causing Plaintiff David extreme expense and further damaging his reputation as such filings are public record.

Further, in *Lauren Reeves v. Alki David, et. al,* Defendant Allred again sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys.

In response, Plaintiff David filed criminal proceedings in Switzerland against Defendant Allred - append.

Defendant Allred's corrupt, wilful and intentional extortion,

constituting criminal acts under relevant Swiss law, were committed under the auspices of an otherwise legitimate enterprise, Allred, Maroko & Goldberg.

The Attorney Defendants' conspiring to extort and extorting money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses, were actions committed under the auspices of otherwise legitimate enterprises as follows: Allred, Maroko & Goldberg, The Law Offices of Lisa Bloom; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for conspiring to injure to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by reason of the Attorney Defendants' extortion, witness tampering, mail fraud and bribery, all of which constitute predicate claims pursuant to RICO.

Fourth Cause of Action
Interference with Contract Relations

Plaintiff David and the Entity Plaintiffs restate paragraphs 1 through XXXX of this Complaint.

Defendant Attorneys' Intentionally Interfered in Plaintiff's Contracts

Alki - we need to go through each contract that each company had and we must meet these elements:

Elements of the tort of intentionally interfering with the performance of a contract are: (1) a valid contact between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach **or disruption** of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130.)

Discuss specifics with Alki re:
https://www.upcounsel.com/tortious-interference-with-contract-california

Upon information and belief, Attorney Defendant Chora, counsel in *Chastity Jones,* ruined $5 Million in business lost by Plaintiffs David and the Entity Plaintiffs. **Alki - we need specificity as to which entities?**

Further, Attorney Defendant Chora caused PAYPAL to terminate Plaintiff FilmOn's two accounts. Note to counsel:

The CFO of FilmOn provided this information and perhaps

counsel would like this in an affidavit?

Also Alki had to send an email to Chora in February, 2022, saying:

Att JOSEPH CHORA

Mr Chora you must CEASE & DESIST from further communication with ALKIVIADES DAVID and anyone related to him.

Despite being repeatedly told that there is an active FBI investigation you have continued to extort and harass me and my family. You have sent Subpoenas to family members of mine just in order to harass.

Considering that you are a lawyer in California your actions are coercive and criminal. I accuse you of being a Girardi lawyer.

I will find the links and publish them. In the meantime please cease and desist or face criminal prosecution now or in the future.

I have copied members of the FBI who you can refer to this case

to.

Sincerely

Alki David

According to Isabel Ann Peterman, Financial Controller, Filmon TV

UK Group:

"Filmon had two accounts with PayPal 1) sales@filmon.com (old accounts,

used for over 10 years) and onlinesales@filmon.com (new opened in Jan 21

as a result of suspending the old one)

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(equivalent to lost sales orders per **month)**

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Fifth Cause of Action
Interference with Prospective Contract Relations

Plaintiff David and the Entity Plaintiffs restate paragraphs 1 through XXXX of this Complaint,

The Prospective Contract Relations consist of the thwarted IPO's. Alki - we need to go through each contract that each company had and we must meet these elements:

We must be very specific as to these elements:

Plaintiff David and the Entity Plaintiffs (**which ones?)** claims that [name of defendant] intentionally interfered with an economic relationship between [him/her/nonbinary pronoun/it] and [name of third party] that probably would have resulted in an economic benefit to [name of plaintiff]. To establish this claim, [name of plaintiff] **Plaintiffs must prove all of the following:**

1. That [name of plaintiff] and [name of third party] were in an

economic relationship that probably would have resulted in an economic benefit to [name of plaintiff];

2. That [name of defendant] knew of the relationship;

3. That [name of defendant] engaged in [specify conduct determined by the court to be wrongful];

4. That by engaging in this conduct, [name of defendant] [intended to disrupt the relationship/ [or] knew that disruption of the relationship was certain or substantially certain to occur];

5. That the relationship was disrupted;

6. That [name of plaintiff] was harmed; and

7. That [name of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s harm.

New September 2003; Revised June 2013, December 2013

Directions for Use

Sixth Cause of Action
Intentional Infliction of Emotional Distress[19]

Plaintiff David and the Entity Plaintiffs restate paragraphs 1 through XXXX

of this Complaint,

---

[19] **Negligent infliction of emotional distress -**
Note - in California to prove negligent infliction of emotional distress, there must be a special relationship between the Plaintiff seeking the award and the Defendant causing the emotional distress.
REFERENCE:
https://www.justia.com/trials-litigation/docs/caci/1600/1600.
https://www.justia.com/trials-litigation/docs/caci/1600/1620

Accordingly, I recommend that we just sue for Intentional Infliction of Emotional Distress unless Alki can establish a special relationship between him and one or more of the Defendants.

https://www.justia.com/trials-litigation/docs/caci/1600/1600

The Attorney Defendants and the Litigating Defendants intentionally inflicted emotional distress upon Plaintiff David by:

Press Conferences - Allred & Bloom

Alleging that Alki committed rape - Girardi stated that and also Bloom stated that - details and particulars need to be specific

The Defendant Attorneys coaching the Litigating Defendants to conspire against Alki and the Plaintiff Entities and seek to extort settlement monies - add details with specificity and state with specificity how that caused Alki emotional harm.

In addition to the expense of defending Defendant Attorneys' and Litigating Defendants' spurious lawsuits, incurring a total amount of $_____ in attorneys' fees and costs, the time required to defend against those actions resulted in lost business opportunities costing Plaintiff David and the Plaintiff Entities a total amount of $_____.

Subsequently, Defendant Allred and her client, Mahim Kahn, attempted to file criminal charges against Plaintiff David, but, upon information and belief, were told by Beverly Hills police that they lacked the necessary evidence to support such allegations. Upon

information and belief, Defendant Allred called a news conference at the Beverly Hills police station on the date she attempted to file criminal charges against Plaintiff David with the express purpose of intimidating, harassing and defaming Plaintiff David. Defendant Allred's actions in calling the press conference **and what other of her actions** have caused emotional harm to Defendant David.

No such criminal charges were ever filed. Nevertheless, upon information and belief, Defendant Allred arranged to have a false article published in the LA Times. Self-appointed ambassador for 'wronged men' of #MeToo Alki David faces criminal complaint - Los Angeles Times (latimes.com)

Corporate Defamation

Lisa Bloom called Alki a rapist - uttered that defamatory comment to David Haigh - insert his affidavit.

Plaintiff David's counsel has informed the court in one of the many spurious lawsuits urged against him that his mental health is in a downward spiral.

https://www.courthousenews.com/coke-bottling-heirs-mental-health-in-downward-spiral-lawyer-says

ADD TO PATTERN

Article Re: Edelson filing https://news.bloomberglaw.com/us-law-week/edelson-sues-girardi-law-firm-alleging-100-million-fraud-plot

email, using wire

communications in interstate and foreign commerce om knew that he needed to protect himself and the Girardi Family

Enterprise from regulators, especially from the State Bar—the agency charged with regulating and

disciplining attorneys in California. To insulate the enterprise, Tom took State Bar officials and

employees to expensive restaurants and paid for meals, flew them around on his private jet, and

hosted them at extravagant parties.

64. As a result, despite the numerous complaints that were filed against Tom over the

years (and the dozens of lawsuits that were filed against him and Girardi Keese in the courts), the

State Bar neglected to conduct a single investigation, allowing Tom to maintain a spotless record

before the Bar and enabling him to continue stealing from clients.

65. With the State Bar firmly on his side and under his control, Tom had the freedom to

operate the Girardi Family Enterprise with impunity. Throwing all sense of ethics out the window,

Tom and other attorneys from his firm acted as though the professional rules of responsibility didn't

exist. 14 COMPLAINT

Erika had actual and specific knowledge that for at least 12 years, all

her expenses were paid by the Girardi Family Enterprise through Girardi Keese as she was

generating them.

63. Finally, Tom knew that he needed to protect himself and the Girardi Family

Enterprise from regulators, especially from the State Bar—the agency charged with regulating and

disciplining attorneys in California. To insulate the

enterprise, Tom took State Bar officials and

employees to expensive restaurants and paid for meals, flew them around on his private jet, and

hosted them at extravagant parties.

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years (and the dozens of lawsuits that were filed against him and Girardi Keese in the courts), the

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65. With the State Bar firmly on his side and under his control, Tom had the freedom to

operate the Girardi Family Enterprise with impunity. Throwing all sense of ethics out the window,

Tom and other attorneys from his firm acted as though the professional rules of responsibility didn't

exist. 3

B. Money begins to run out, and Erika obfuscates to the media

66. Even with Tom's influence, prestige, and conspicuous wealth on display, the Girardi

Family Enterprise began to flounder in 2019. Because the enterprise was always behind on

payments to clients and creditors, Tom and Girardi Keese routinely sought litigation funding to

bridge the gap. For years, this money flowed freely based on Tom's reputation. But eventually, the

3 Even after the Girardi Family Enterprise was uncovered in December 2020, the State Bar

has acted to them in its investigation. Under pressure from the LA Times and Law360, the Bar finally

appointed an outside prosecutor to self-investigate the Bar's connections with Girardi Keese. But as

to the other members of the Girardi Family Enterprise, they have made clear that the Bar intends to

limit the investigation to only the acts underlying the Lion Air case. Even this work is limited: the

Bar ultimately secured an order of restitution (at that point

duplicative) to some of the Lion Air
Clients, but they forgot about Mr. Multi. The State Bar has threatened retaliation against lawyers
that have questioned the Bar's impartiality.

Defendant United States-Based Attorneys wilfully employed similar methods - they obstructed justice when they coached clients and witnesses in lawsuits they brought on behalf of the Litigating Defendants to allege that Plaintiff David and the Entity Plaintiffs acted wrongfully toward the Litigating Defendants, whether within an employment context or a sexual misconduct context, or both.

The United States-Based Attorney Defendants wilfully obstructed justice, 18 U.S.C. §§ 1503, in furtherance of the continuous enterprise.

Specific Admissible Evidence of RICO Specified Crimes by Named United-States Based Defendants

Upon information and belief, Plaintiff David and the Entity Plaintiffs assert that Defendant Allred conspired with the other United States-Based Attorney Defendants, including Goldberg, Leal, Mochkatel, Bloom, Fudali, Dordick, Griffith, Goldstein, Chora, and Bakhtiar, to carry on with their criminal enterprise aimed at harming Plaintiff David and The Entity Plaintiffs.

Specifically, Allred **fill in and move content**

Defendant Girardi

General Allegations of Wrongdoing Against The United States-Based Attorneys

Upon information and belief, Plaintiff David and the Entity Plaintiffs assert that Defendant Allred conspired with the other United States-Based Attorney Defendants, including Goldberg, Leal, Mochkatel, Bloom, Fudali, Dordick, Griffith, Goldstein, Chora, and Bakhtiar, to carry on with their criminal enterprise aimed at harming Plaintiff David and The Entity Plaintiffs.

Specifically, Allred **fill in and move content**

General Allegations of Wrongdoing Against The Litigating Defendants

Dordick and Bakhtiar - Jane Dough matter

Attorney Chora's Obstruction of Justice

Upon information and belief, Defendant Attorney Chora placed a judgment lien on the PayPal account owned by Plaintiff Entity Hologram U.S.A., seeking to garner funds from that account as he seeks to collect on the Judgment awarded to Litigating Defendant Chastity Jones. Upon information and belief, the **exact**

judgment

In *Jones,* the jury returned a special verdict, awarding her $591,300 in economic damages, $1,500,000 in past noneconomic damages, and $1,000,000 in future noneconomic damages. After a second phase of trial, the jury awarded Jones $8,000,000 in punitive damages **against Plaintiff David only.**

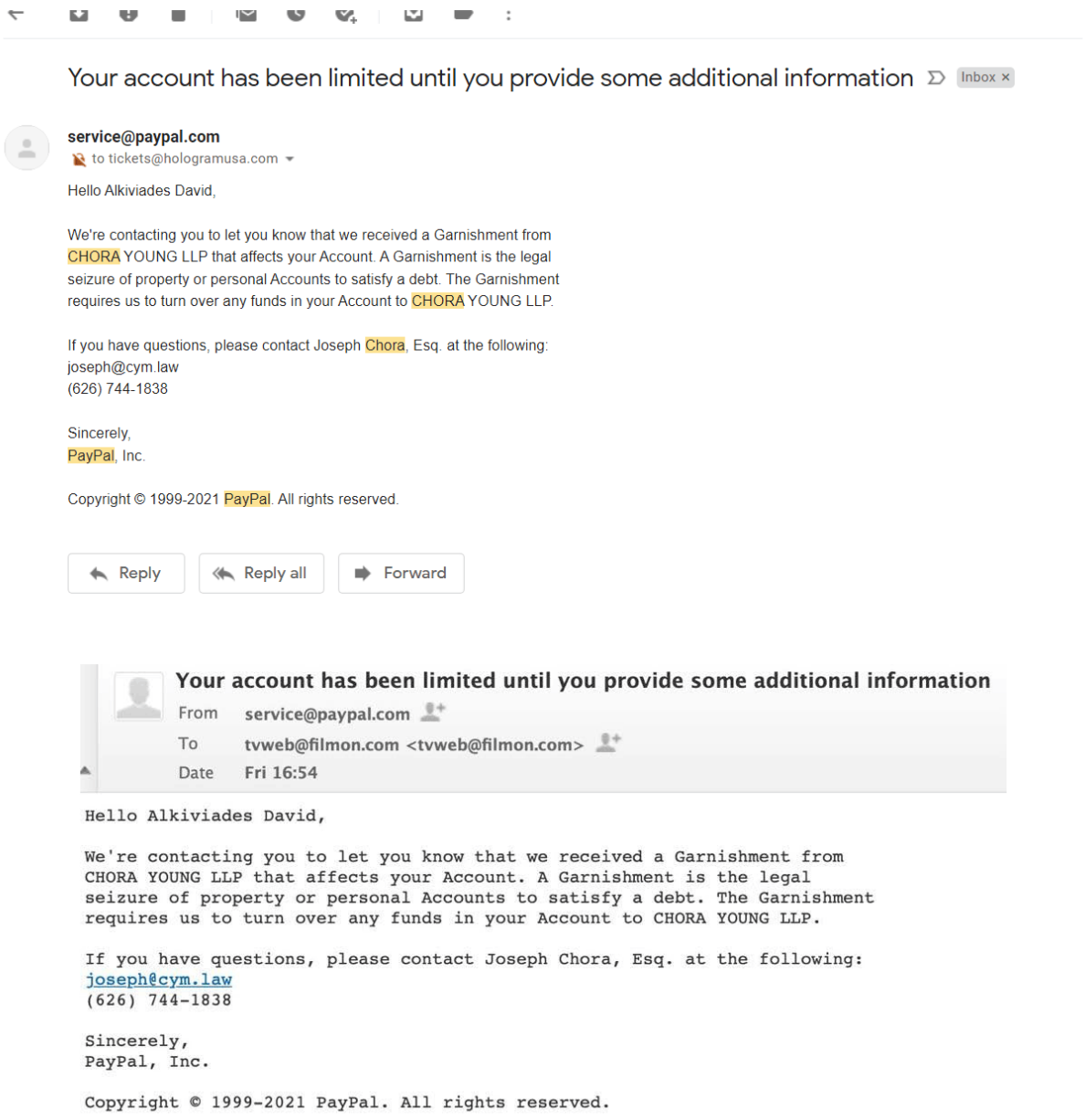
Upon information and belief, Defendant Chora followed inappropriate and unlawful collection procedures.

Similarly **MOVE - DROPBOX TO BE MADE BY ALKI.**

https://drive.google.com/file/d/14lX-XfL3oOGUS9MV4-zd3GXt0WTE1g3M/view?usp=sharing MARY RIZZO TEXTS

Pick up Here is the colluding text chain of record in witness Mary Rizzo's deposition by Defendant Bloom in the *Jones* litigation.

https://drive.google.com/file/d/14lX-XfL3oOGUS9MV4-zd3GXt0WTE1g3M/view?usp=sharing



Your account has been limited until you provide some additional information Inbox ×

service@paypal.com
to tickets@hologramusa.com

Hello Alkiviades David,

We're contacting you to let you know that we received a Garnishment from CHORA YOUNG LLP that affects your Account. A Garnishment is the legal seizure of property or personal Accounts to satisfy a debt. The Garnishment requires us to turn over any funds in your Account to CHORA YOUNG LLP.

If you have questions, please contact Joseph Chora, Esq. at the following:
joseph@cym.law
(626) 744-1838

Sincerely,
PayPal, Inc.

Copyright © 1999-2021 PayPal. All rights reserved.

Reply Reply all Forward

Your account has been limited until you provide some additional information
From **service@paypal.com**
To **tvweb@filmon.com <tvweb@filmon.com>**
Date **Fri 16:54**

Hello Alkiviades David,

We're contacting you to let you know that we received a Garnishment from CHORA YOUNG LLP that affects your Account. A Garnishment is the legal seizure of property or personal Accounts to satisfy a debt. The Garnishment requires us to turn over any funds in your Account to CHORA YOUNG LLP.

If you have questions, please contact Joseph Chora, Esq. at the following:
joseph@cym.law
(626) 744-1838

Sincerely,
PayPal, Inc.

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and in *Mahim Khan,* ***ALKI - WHAT OTHER CASES WERE ADD ELLYN YOU PRECLUDED FROM TESTIFYING ELLYN'S BRIEF HERE***,

Plaintiff David and the Entity Plaintiffs could not fully assert defenses in the various lawsuits described herein. Plaintiff David and the Entity Plaintiffs suffered judgments obtained by the United States-Based Attorney Defendants on behalf of the Litigating Defendants.

Specific Admissible Evidence of Rico Specified Crimes by Named Individual Defendants

Litigating Defendant Khan was the subject of the above police report filed by her roommate, Lauren M. Berkley, who informed officers that *Khan* was threatening Berkley and her daughter because Berkley was going to testify in support of Plaintiff David in the *Mahim Khan* case.

PICK UP Dordick and Bakhtiar - Jane Dough matter

EXTORTION

Title 18 U.S.C. Section 875(d) criminalizes the conduct engaged in by Defendants Girardi, Allred, Bloom, Goldberg and **WHAT OTHER ATTORNEY DEFENDANTS CAN WE NAME IN THIS COUNT** their employees and agents. That statute provides as follows:

> Whoever, with the intent to extort from any

> person, firm . . . or corporation, any money or other thing of value, transmits in interstate . . . commerce any communication containing any threat to injure the property or reputation of the addressee or of another . . . or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned or imprisoned not more than two years, or both.

Defendants Girardi, Allred and Bloom made threats intended to cause economic harm to Plaintiff David and to the Entity Plaintiffs. The threats were intended to extort settlements. The threats were intended to cause reputational harm to Plaintiff David. The threats were wrongful because Defendants Girardi, Allred and Bloom used the threats and maligned Plaintiff David's reputation to try to obtain property to which they were not entitled.

Defendants Girardi, Allred, Bloom and Goldberg are guilty of extortion because they sought money or property to which they did not have, and could not reasonably believe they had, a claim or right.

Plaintiff Alki, accompanied by his then attorney Barry Rothman, went to the District Attorney in Los Angeles and reported Elizabeth Taylor and Mahim Khan for trying to extort

Plaintiff David by demanding $ 3.5 Million dollars. **Pull Emails**

Barry - UPLOADING ON JULY 11. INSERT

INSERT

Plaintiff David and the Entity Plaintiffs suffered damages and incurred substantial losses as a result of Defendants Girardi, Allred, Bloom's and Goldberg's implementation and continuation of their extortionate claims.

The Defendant Attorneys tampered with the Litigating Defendants' testimony, and with the evidence Defendant Attorneys used to assert the spurious complaints made by Defendant Litigants, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

The Defendant Attorneys tried to extort Plaintiff David and the Plaintiff Entities by making spurious allegations against those Plaintiffs, often calling press conferences to assert their nefarious claims and touting the large award against Plaintiff David in *Mahim Khan,* even as it remains under appeal. ***See e.g.,*** https://www.phillymag.com/news/2021/12/21/gloria-allred.

The Attorney Defendants' conspiring to extort, and their extorting, money and property from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses, were actions committed under the auspices of otherwise legitimate enterprises as follows: Allred, Maroko & Goldberg, The Law Offices of Lisa Bloom; Girardi Keese; Dordick Law Corporation; Chora,

Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Upon information and belief, Attorney Defendant Chora, counsel in *Chastity Jones,* ruined $5 Million in business lost by Plaintiffs David and the Entity Plaintiffs. **Alki - we need specificity as to which entities?**

Further, Attorney Defendant Chora caused PAYPAL to terminate Plaintiff FilmOn's two accounts. Note to counsel:

The CFO of FilmOn provided this information and perhaps counsel would like this in an affidavit?

According to Isabel Ann Peterman, Financial Controller, Filmon TV UK Group:

"Filmon had two accounts with PayPal 1) sales@filmon.com (old accounts,

used for over 10 years) and onlinesales@filmon.com (new opened in Jan 21

as a result of suspending the old one)

They were closed with explanation "in breach of user agreement", consequently all funds held there were deducted and no specific reasons were provided of the cases of violation PayPal was using as an argument. Filmon lost half of its customers as a result.

a) Some PayPal stats:

- PayPal was the preferred choice of payment for our Filmon customers.

- In the last year (2020) there were a total of 61959 orders placed successfully via Paypal with an estimated value converted in GBP of £1.2m.

- Since Feb 1, 2021 when PayPal took down our account, the total amount of canceled PayPal subscriptions (users finally gone) was 5,415 (equivalent to lost sales orders per **month)**

The total amount of expected and not received incomes in 2021because of canceled subscriptions based on 2020's sales rate is £1.3m, without embedding any possible further lost opportunities due to company marketing efforts etc.

b) Enclosing a file of customer complaint cases. (Theses are most representative cases. There were higher number or complaints in general but in some of them. the customers did not specifically mention PayPal, so they were excluded).

c) List of canceled PayPal subscriptions (file name "r2.xls") with encrypted emails for data protection purposes as a backup.

Note: Ms. Peterman provided a table demonstrating the amount of monies that PayPal still has in segregated funds, stating the value of those funds in USD, EU, and BGB - pounds. I could not copy that table from her email so I am asking her to send it as an attachment and I will insert it as soon as I hear from her.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by reason of the Attorney Defendants' mail fraud, bribery, extortion, predicate claims pursuant to RICO Move: Plaintiffs assert, pursuant to 18 U.S.C. §§1962(b)(c) and (d), that the Attorney Defendants, their clients, experts, employees and agents, conspired with one another and intended to and willfully conducted an inter-related, clear and continuous pattern of

racketeering activity to benefit Defendant Attorneys' unlawful enterprise, and that Defendants continue to do so, by, inter alia, wilfully and intentionally conspiring against Plaintiff David and the Entity Plaintiffs by filing spurious lawsuits against Plaintiff David and the Entity Plaintiffs (which entity plaintiffs were named in which suits?), who were, and continue to be, victimized by Attorney Defendants' continuous pattern of racketeering conducted to benefit their enterprise, including mail fraud, extortion, tampering with witnesses, falsification of a signature in a civil proceeding, bribery, and aiding and abetting, all cognizable as RICO predicate acts pursuant to 18 U.S.C. §§ 1862(b)(c) and (d).

Specifically, the Attorney Defendants filed unethical, spurious lawsuits against Plaintiff David without investigating the merits of those actions, unethically coaching their clients and witnesses about what to say, only to then often dismiss some of those complaints years later when trial proceedings were forthcoming. Further, the Defendant Attorneys conspired to tamper with witnesses and to have witnesses collude against Defendant David and the Entity Plaintiffs by sharing the actions against Plaintiffs David and the Plaintiff Attorneys. Defendant Allred kept Defendant Mahim Kahn and Defendant Lauren Reeves as clients, but sent Defendant Elizabeth Taylor to Defendant Bloom, her daughter. After Defendants Reeves, Taylor and Jones conspired to sue Plaintiff David and the Entity Plaintiffs, Subsequently, Defendant Bloom was retained by Defendant

Chastity Jones, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

Defendant Allred wrongfully sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys, in Switzerland in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss law. The Swiss courts rejected those efforts as appellate proceedings are ongoing in that case, causing Plaintiff David extreme expense and further damaging his reputation as such filings are public record.

Further, in *Lauren Reeves v. Alki David, et. al,* Defendant Allred again sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys.

In response, Plaintiff David filed criminal proceedings in Switzerland against Defendant Allred - append.

Defendant Allred's corrupt, wilful and intentional extortion, constituting criminal acts under relevant Swiss law, were committed under the auspices of an otherwise legitimate enterprise, Allred, Maroko & Goldberg.

The Attorney Defendants' conspiring to extort and extorting money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses, were actions committed

under the auspices of otherwise legitimate enterprises as follows: Allred, Maroko & Goldberg, The Law Offices of Lisa Bloom; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by reason of the Attorney Defendants' extortion, witness tampering, mail fraud and bribery, all of which constitute predicate claims pursuant to RICO.

EXTORTION

Title 18 U.S.C. Section 875(d) criminalizes the conduct engaged in by Defendants Girardi, Allred, Bloom and their employees and agents. That statute provides as follows:

> Whoever, with the intent to extort from any person, firm . . . or corporation, any money or other thing of value, transmits in interstate . . . commerce any communication containing any threat to injure the property or reputation of the addressee or of another . . . or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned or imprisoned not more than two years, or both.

Defendants Girardi, Allred and Bloom made threats intended to cause economic harm to Plaintiff David and to the Entity Plaintiffs and were intended to extort settlements. The threats were intended to cause reputational harm to Plaintiff David - those threats were wrongful because Defendants Girardi, Allred and Bloom used the threats and maligned Plaintiff David's reputation to try to obtain property to which they were not entitled.

Defendants Girardi, Allred and Bloom are guilty of extortion because they sought money or property to which they did not have, and could not reasonably believe they had, a claim or right.

Plaintiff Alki, accompanied by his then attorney Barry Rothman, went to the District Attorney in Los Angeles and reported Elizabeth Taylor and Mahim Khan for trying to extort Plaintiff David by demanding $ 3.5 Million dollars. **Pull Emails Barry - UPLOADING ON JULY 5. Does Fred have these emails perchance?**

Plaintiff David and the Entity Plaintiffs suffered damages and incurred substantial losses as a result of Defendants Girardi, Allred, Bloom's, Goldberg's and Chora's implementation and continuation of

the extortion.

The Defendant Attorneys tampered with the Litigating Defendants' testimony, and with the evidence Defendant Attorneys used to assert the spurious complaints made by Defendant Litigants, all with an effort to extort money from Plaintiff David and the Plaintiff Entities. **We need to add specificity here.**

The Attorney Defendants' conspiring to extort and their extorting money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses by telling them what to say, and Defendant Goldberg erring with regard to the introduction of documents and exhibits, and Defendant Goldberg falsifying the signature of Plaintiff's Counsel Ellyn Garofalo, were actions committed under the auspices of otherwise legitimate enterprises, including Allred, Maroko & Goldberg, Bloom Law Firm; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by reason of the Attorney Defendants' extortion, a predicate claim pursuant to RICO.

Defendant Attorneys' Illegal Patterns of Defrauding Plaintiffs, Obstructing Justice and Soliciting Bribery

Plaintiffs assert, pursuant to 18 U.S.C. §§1962(b)(c) and (d), that the Attorney Defendants, their clients, experts, employees and agents, conspired with one another and intended to and willfully conducted an inter-related, clear and continuous pattern of racketeering activity to benefit Defendant Attorneys' unlawful enterprise, and that Defendants continue to do so, by, inter alia, wilfully and intentionally conspiring against Plaintiff David and the Entity Plaintiffs by filing spurious lawsuits against Plaintiff David and the Entity Plaintiffs, who were, and continue to be, victimized by Attorney Defendants' continuous pattern of racketeering conducted to benefit their enterprise, including mail fraud, extortion, tampering with witnesses, obstruction of justice, bribery, and aiding and abetting, all cognizable as RICO predicate acts pursuant to 18 U.S.C. §§ 1862(b)(c) and (d).

Specifically, the Attorney Defendants filed unethical, spurious lawsuits against Plaintiff David without investigating the merits of those actions, unethically coaching their clients and witnesses about what to say, only to then often dismiss some of those complaints years later when trial proceedings were forthcoming. Further, the Defendant Attorneys conspired to tamper with witnesses and to have witnesses

collude against Defendant David and the Entity Plaintiffs by sharing the actions against Plaintiffs David and the Plaintiff Attorneys. Defendant Allred kept Defendant Mahim Kahn and Defendant Lauren Reeves as clients, but sent Defendant Elizabeth Taylor to Defendant Bloom, her daughter. After Defendants Reeves, Taylor and Jones conspired to sue Plaintiff David and the Entity Plaintiffs, Subsequently, Defendant Bloom was retained by Defendant Chastity Jones, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

Defendant Allred wrongfully sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys, in Switzerland in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss law. The Swiss courts rejected those efforts as appellate proceedings are ongoing in that case, causing Plaintiff David extreme expense and further damaging his reputation as such filings are public record.

Further, in *Lauren Reeves v. Alki David, et. al,* Defendant Allred again sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys.

Defendant Allred's corrupt, wilful and intentional actions,

constituting criminal acts under relevant Swiss law, were committed under the auspices of an otherwise legitimate enterprise, Allred, Maroko & Goldberg.

As to Defendant Allred, this pattern of manipulating witnesses, and, upon information and belief, paying the witnesses to testify in a particular fashion, is a pattern of obstruction of justice and witness tampering that is more than fifty years old. In the landmark Supreme Court Case, *Roe v. Wade,* upon information and belief, Defendant Allred coached Plaintiff Roe about what to testify to without verifying the allegations and thereby commenced her pattern of committing obstruction of justice and tampering with witnesses, as evidenced by Plaintiff Roe's informing, soon before she died, that Allred committed those acts. *See* *Gloria Allred On The New Norma McCorvey Documentary (forbes.com)*.

Upon information and belief, Plaintiff David and the Entity Plaintiffs assert that Defendant Allred, conspiring with the other Attorney Defendants, including Goldberg, insert carry on with their criminal enterprise, coaching claimants to lie and mischaracterize their interactions with Plaintiff David and file spurious lawsuits against Plaintiff David and the Entity Plaintiffs in order to deprive the plaintiffs of their property.

Moreover, the settlement agreement in *D'Onofrio v. Alki David Productions Inc., FilmOn Com., Inc. and Alki David, Case No. BC496165* contained a confidentiality provision and Defendant

Goldberg wrongfully divulged the confidential settlement's provisions.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by reason of the Attorney Defendants' extortion, witness tampering, mail fraud and bribery, all of which constitute predicate claims pursuant to RICO.

Bribery

On November 6, 2012, Monica D'Oofrio filed *D'Onofrio v. Alki David Productions Inc., FilmOn Com., Inc. and Alki David, Case No. BC496165.*[20] On May 10, 2013, alleging employment discrimination. Plaintiff David settled the case for a minimal amount as nuisance value.

Alki - D'Onofrio's counsel was Gary A. Smith, Manuwal & Manuwal - please verify whether you want Mssr. Smith named as a party defendant?

Thus, began a long series of spurious and harassing lawsuits filed by Defendant Attorneys against Plaintiff David and the Entity Plaintiffs that were part of an ongoing pattern employed by the Defendant

20 https://trellis.law/case/BC495165/MONICA-D-ONOFRIO-VS-ALKI-DAVID-PRODUCTIONS-INC-ET-AL?output=pdf.

Attorney, their Clients and Experts to extort money from Plaintiff David and the Entity Plaintiffs.

Upon information and belief, with the urging of Defendant Attorneys, various employees and ex-employees filed false claims against Plaintiff David and some of the Entity Plaintiffs.

Affidavits needed: REQUESTED FROM DANA COLE Note to Counsel: Allie's affidavit establishes that she saw other Plaintiffs contrive claims by constantly entering Plaintiff David's office in hopes of enticing him to commit offensive conduct.

Upon information and belief, former employees who sued Plaintiff David (Litigating Defendants) often met at a restaurant near Plaintiff Entity Hologram, Inc.,'s location, to collude and form untruthful allegations against Plaintiff David and the Entity Defendants. Upon information and belief, the Litigating Defendants, coached by the Attorney Defendants, also met at other various times to compare theories for asserting spurious and trumped-up claims against Plaintiff David and the Entity Defendants.

The former employees, encouraged and aided and abetted by

the Defendant Attorneys, targeted Plaintiff David as a victim to name in spurious lawsuits. Former employees and their counsel deemed Plaintiff David to be their gravy train. In filing this lawsuit - Plaintiff David and the Plaintiff Entities seeks justice to recoup millions of dollars, consisting of lost profits, improperly obtained court judgments.

On February 2, 2017, Elizabeth Taylor and Chastity Jones filed a Labor-Wrongful Termination lawsuit in Los Angeles County Superior Court against Plaintiffs David, Hologram USA Inc., FilmOn TV. Inc. There is no truth to their allegations and, upon information and belief, the suit was filed by legal counsel, Defendants Goldstein, Bloom and Chora to extort settlement proceeds from Plaintiff David and/or the Entity Plaintiffs.

In April, 2019, Chastity Jones won an award against Plaintiff David for $11 Million in compensatory damages, an amount that was reduced by $437,120 by the court.

In October, 2019, a jury deadlocked 8-4 in Elizabeth Taylor's suit. Los Angeles County Superior Court Judge Christopher Lui declared a mistrial.

Karl Zirpel, a former employee of Alki David Productions,

claimed he was improperly fired after raising safety concerns prior to an event hosted by Entity Plaintiff Hologram at Hologram Theater. Zirpel's sexual harassment claims, like that of many other Plaintiffs whom Defendant Attorneys helped to victimize Plaintiff David, dropped the claim on the eve of trial.

BRIEF STATEMENT OF THE CASE

Karl Zirpel filed this lawsuit. He is called a plaintiff. He seeks damages and other relief from Alki David, who is called a defendant.

Karl Zirpel claims that Alki David subjected him to harassment and discrimination based upon his sexual orientation and violated wage and hour laws. Defendant denies those claims. Defendant also contends that Plaintiff caused Defendant financial harm, and if Plaintiff was terminated it was not for discriminatory reasons as claimed by Plaintiff.

Alki David has also filed what is called a cross complaint against Karl Zirpel. Alki David is a defendant, but also is called the cross-complainant. Karl Zirpel is called a cross-defendant.

In his cross-complaint, Alki David claims Karl Zirpel committed sexual battery and battery against Alki David. Karl Zirpel denies those claims.

Note: Alki was not personally named in this suit, but Zirpel's attorneys claimed in The Daily Beast that they would pursue Alki personally once the judgment was finalized.

Note: Alki was previously involved in unrelated litigation over a business dispute with Barry Diller, whose company, IAC owns the Daily Beast.

In 2019, Lauren Reeves sued Plaintiff David and Plaintiffs

Hologram USA and Alki David Productions for sexual battery and sexual harassment. Defendant Goldberg represented Reeves, who worked as a comedy writer for Plaintiff Hologram USA. Reeves was awarded $650,000 in compensatory damages and $4.35 million in punitive damages.

In November, 2019, Mahim Khan, a former production assistant who worked at Entity Plaintiff FilmOn TV and Entity Plaintiff Alki David Productions, Inc., obtained an award of $58 million for battery, sexual battery and sexual harassment against Plaintiff Alki David. This matter is on appeal before the Supreme Court of California. **Link Petition for Review when Fred Heather sends that filing.**

On September 30, 2020, Jane Dough (Rita Nichols) filed a Labor-Wrongful termination lawsuit in Los Angeles County Superior Court against Plaintiffs David, FilmOn TV Networks, Inc., FilmOn TV La Inc. SwissX Labs AG Inc. a California Corp. AKA Swiss Lounge; Hologram USA Entertainment Inc.; FilmOn TV Inc. Hologram USA Inc. a California Corp. AKA Hologram USA Productions Inc; SwissX Labs AG Inc. AKA SwissX Lounge AKA FilmOn UK Ltd; Hologram USA Inc. AKA Hologram USA

Productions Inc. AKA Hologram USA Entertainment Inc. AKA FilmOn TV Inc. AKA FilmOn.Tv La. Inc. in Los Angeles Superior Court, LASC No. 7498 - (we need the rest of the case number from Fred Heather). Plaintiff Doe's attorneys are Defendants Ebby S. Bakhtiar, Gary A. Dordick, Thomas Vincent Girardi. Plaintiff Alki is Fred D. Heather.

Mail Fraud

18 U.S.C. §§ 1341 and 1343 address the commission of the crime of mail fraud and wire fraud.

Plaintiffs allege that Gloria Allred, Esq., in her individual capacity, and as a principal in Allred, Maroko & Goldberg; Nathan Goldberg, Esq., in his individual capacity, and as a partner in Allred, Maroko & Goldberg, Delores Y. Leal, Esq., in her individual capacity and as a partner of Allred, Maroko & Goldberg; Renee Mochkatel, Esq., in her individual capacity and as a partner of Allred, Maroko & Goldberg; Lisa Bloom, Esq., in her individual capacity and as the owner of the Law Offices of Lisa Bloom; Law Offices of Lisa Bloom; Thomas V Girardi, in his individual capacity, and as a partner in Girardi Keese; Gary A. Dordick, in his individual capacity and as a partner in Dordick Law Corporation; Keith Griffin, in his individual capacity and his

capacity as a former partner in Girardi & Keese. Joseph Chora, Esq., in his individual capacity, and as a partner in Chora, Young & Manasserian; Ebby S. Bakhtiar, in his individual capacity and as a partner in The Law Offices of Ebby S. Bakhtiar; (Attorney Defendants), culpable persons capable of holding legal or beneficial interests in property, have participated in long-term, organized conduct of a criminal enterprise affecting interstate and international commerce through an interrelated pattern of racketeering activity, in violation of RICO laws set forth in 18 U.S.C. §§1962 (b)(c)(d).

Utilizing the mails and wires, the Attorney Defendants participated in and have furthered their enterprise through a plan and a scheme to defraud that continues to this day and encompasses acts of artifice or deceit that were and are intended to deprive Plaintiff David and the Entity Plaintiffs of their property and money.

There was a reasonable foreseeability that, in perpetrating the mail fraud, the Attorney Defendants would and did utilize the mail or wires.

The Attorney Defendants' scheme to defraud included the use of the mails to communicate with witnesses, opposing counsel, and experts in actions intended to defraud Plaintiff David and the Entity Plaintiffs.

Plaintiff David and the Plaintiff Entities' prior counsel Rothman sought a meet and confer meeting about interrogatories he had generated in that litigation, referencing Reeves' use of a phone (more than one phone perhaps?) that she claimed helped bolster her claims against Plaintiff David.[21] Upon information and belief Defendant Attorneys in that case and the other lawsuits recounted in this Complaint all used the mail and wires to defraud Plaintiff David and the Entity Plaintiffs of their money and property so as to further the illegal enterprise.

Note to Counsel: We need to add more specificity here - can we prove through Swiss counsel that Gloria Allred in Switzerland

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[21] https://mail-attachment.googleusercontent.com/attachment/u/0/?ui=2&ik=68ad5627e5&attid=0.1&permmsgid=msg-f:1581550983980536602&th=15f2cc3d9254531a&view=att&disp=safe&saddbat=ANGjdJ9-5bpRafrPc6mzVjKA3XI0-ayZU7civdXpsd83db8fANLjou0wH6gkHQitU6I6glB2oTWBBW3QENef-uHEQi8uCtR1Q106GKiQb8tbarCdfhAFWgg8LVANTNjBJZXxG_e_Q5K1A8XJKB64JVy6sSB4rzkkOYY7AzKnZRG7jIIhW7bXi_EK8DHuWxf9H3W4q6iyThtqtJBxZwBdYxPWUZZDF2Vsm1Du3tU6RaeVn8ufRVXWamy_uUWhGy4kXh5FIi8MF8eud_NL8D0ar9SyjM5ea_n1ukQ_Ouj2umUYkIza-_FELth5XIFPHuCRQgdWjYo99iaUX8N_U2VZMxcWK67W8DNcnwloh3FTheQqZSkSFac2raYoI7HFVL425j2jvqeTPLgkQBJTwcZA9ykbUM8Kp6xMcIJ969CgAdEJMmjqzxnFQw4zYeJJhp9amLuIl-qop28yDIa8xy5ecquyB5FkqeKM8Vax3XdWZCtKZs4cA_XVf8HwXQpVk9_wGwh0P7hGJVy0pR3RBKb_T3WUN7Fxc-GPWI0fOpGZRnhhgH_NWsNR8Jo5rvrVxEpWM6S0-st_YhCrVHLp3xIE1zaIGXMmH6ly89w6yrnBWvcD6B1_7VlPVeipqhqd-Zc3-hHlnO7z45w1B9HhJQbE1j7_hTBReDMIYx7oV95ahboF1QE1osLCnltAf-Z0UIpvgXld7JqtlwpJjGDS-1DuNYyfYHCNDNnH3JTUJyaD4nVtOpBQkgYcfUh62uPjeTOgolbeQqBik19h4D7N5Zr_rilbG_aXiqHZzHo5miZxhrEL49AJ5Rgb5c3kGMUMqQNjWGpIsIm4PSkKa_L6CPe_

and/or that Lisa Bloom in the UK utilized wires to perpetrate their fraud.

As to Defendant Allred's pattern of using the mail to manipulate witnesses, and, upon information and belief, paying the witnesses to testify in a particular fashion, is a pattern of fraud, obstruction of justice and witness tampering that is more than fifty years old. In the landmark Supreme Court Case, *Roe v. Wade,* upon information and belief, Defendant Allred coached Plaintiff Roe about what to testify to without verifying the allegations and thereby commenced her pattern of committing obstruction of justice and tampering with witnesses, as evidenced by Plaintiff Roe's informing, soon before she died, that Allred committed those acts. *See* *Gloria Allred On The New Norma McCorvey Documentary (forbes.com)*.

Upon information and belief, Plaintiff David and the Entity Plaintiffs assert that Attorney Defendants carry on with their criminal enterprise, using the mail and wires to coach claimants to lie and mischaracterize their interactions with Plaintiff David and to file spurious lawsuits against Plaintiff David and the Entity Plaintiffs in order to deprive the plaintiffs of their property.

Strategy Note: Fred has some of Barry Rothman's (deceased) files as I understand it so counsel needs to assess all correspondence and

emails to bolster the mail and wire claim.

I note that, tellingly, Barry Rothman, sought to obtain Lauren Reeves' cell phone records to counter her claims against Plaintiff David. Rothman sought a meet and confer meeting about interrogatories he had generated in that litigation, referencing Reeves' use of a phone (more than one phone perhaps?) that she claimed helped bolster her claims against Plaintiff David.[22]

At all relevant times, Defendant Attorneys and Does 1-25 were individual persons within the meaning of 18 U.SC. Sections 1961(4),

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22 https://mail-attachment.googleusercontent.com/attachment/u/0/?ui=2&ik=68ad5627e5&attid=0.1&permmsgid=msg-f:1581550983980536602&th=15f2cc3d9254531a&view=att&disp=safe&saddbat=ANGjdJ9-5bpRafrPc6mzVjKA3XI0-ayZU7civdXpsd83db8fANLjou0wH6gkHQitU6I6glB2oTWBBW3QENef-uHEQi8uCtR1Q106GKiQb8tbarCdfhAFWgg8LVANTNjBJZXxG_e_Q5K1A8XJKB64JVy6sSB4rzkkOYY7AzKnZRG7jIIhW7bXi_EK8DHuWxf9H3W4q6iyThtqtJBxZwBdYxPWUZZDF2Vsm1Du3tU6RaeVn8ufRVXWamy_uUWhGy4kXh5FIi8MF8eud_NL8D0ar9SyjM5ea_n1ukQ_Ouj2umUYkIza-_FELth5XIFPHuCRQgdWjYo99iaUX8N_U2VZMxcWK67W8DNcnwloh3FTheQqZSkSFac2raYoI7HFVL425j2jvqeTPLgkQBJTwcZA9ykbUM8Kp6xMcIJ969CgAdEJMmjqzxnFQw4zYeJJhp9amLuIl-qop28yDIa8xy5ecquyB5FkqeKM8Vax3XdWZCtKZs4cA_XVf8HwXQpVk9_wGwh0P7hGJVy0pR3RBKb_T3WUN7Fxc-GPWI0fOpGZRnhhgH_NWsNR8Jo5rvrVxEpWM6S0-st_YhCrVHLp3xIE1zaIGXMmH6ly89w6yrnBWvcD6B1_7VlPVeipqhqd-Zc3-hHlnO7z45w1B9HhJQbE1j7_hTBReDMIYx7oV95ahboF1QE1osLCnltAf-Z0UIpvgXld7JqtlwpJjGDS-1DuNYyfYHCNDNnH3JTUJyaD4nVtOpBQkgYcfUh62uPjeTOgolbeQqBik19h4D7N5Zr_rilbG_aXiqHZzHo5miZxhrEL49AJ5Rgb5c3kGMUMqQNjWGpIsIm4PSkKa_L6CPe_

1962(e), and Defendant Attorneys and Does 1-25 constituted an enterprise pursuant to 18 U.SC. Sections 1961(4), 1962(e), who associated with and/or participated in the conduct of said enterprise's affairs doing business in the form of an association in fact.

Between 2012 and 2022, Defendant Attorneys and Does 1-25, in their individual capacity, conducted, participated in, conspired to engage in, or aided and abetted the continuing and ongoing conduct of the affairs of that enterprise, together with others, through a pattern of racketeering as defined in 18 U.S.C. Sections 1961(1), 1961 (5), and 1962(c).

The Enterprise's Parade of Spurious, Defamatory Lawsuits, Extortion and Witness Tampering

Upon information and belief, Defendants Girardi, Allred and Bloom conspired to pursue vexatious litigation creating a continuous and related pattern of racketeering activity against Plaintiff David and the Entity Defendants by filing numerous spurious and unfounded lawsuits against Plaintiff David and the Entity Plaintiffs, all to benefit their illegal enterprise.

The Attorney Defendants were enabled by one another and

retained experts to assist in The Attorney Defendants' committing the predicate offenses of extortion, bribery, obstruction of justice and mail fraud, solely because of each Attorney Defendants' positions in their enterprise and their involvement in or control over the enterprise's affairs and because their offenses of extortion, bribery, obstruction of justice and mail fraud related to the activities of their enterprise, i.e., to enrich themselves by filing spurious lawsuits against Plaintiff David and the Entity Plaintiffs and thereby depriving those Plaintiffs of their property**.**

Upon information and belief, (Allie and Carl Affidavits provide this good faith basis) Defendants Girardi, Allred, and Bloom intentionally conspired to recruit employees of Plaintiffs FilmOn and Anakando and former employees of those Plaintiffs, to independently file tort lawsuits against David alleging he committed sexual misconduct in order to extract and extort money from David and the Entity Plaintiffs in furtherance of an enterprise specifically designed to enrich Defendants.

Specifically, Defendants Allred, Bloom, Goldstein furthered their enterprise as the Attorney Defendants and their agents mercilessly and maliciously pursued Plaintiff David and the Entity Plaintiffs, in courts,

as well as in the media, seeking to extort Plaintiff David to pay money settle with the parties who sued Plaintiff David and the Entity Plaintiffs.

Defendants Girardi, Allred and Bloom are guilty of extortion committed to further the criminal enterprise because they sought money or property from Plaintiff David and the Entity Plaintiffs, to which they did not have, and could not reasonably believe they had, a claim or right.

Plaintiff David, accompanied by his then attorney Barry Rothman went to the DA and reported Elizabeth Taylor and Mahim Kahn for trying to extort Plaintiff David by demanding $ 3.5 Million dollars from him. **Alki to provide dates and details.**

Plaintiff David and the Entity Plaintiffs suffered damages and incurred substantial losses as a result of Defendants Girardi, Allred, and Bloom's implementation and continuation of the extortionate claims committed to further the enterprise.

Plaintiff David did all that he could do to inform the Beverly Hills Police Department that the Attorney Defendants were trying to extort money from him, even going so far as to file a police report with the Department, complete with his formal statement setting forth relevant facts and the affidavits of two employees of the Plaintiff entities. letter to BHPD - filmonpersonal@gmail.com - Gmail (google.com).

David's affidavit, dated July 16, 2021, stated in relevant part:

> For the past five years, I have been the victim of serial extortion, and even human trafficking, by well-known TV-centric attorneys Gloria Allred, Lisa Bloom and Thomas Girardi. These crimes arise from legal claims by former employees that worked at my company, Hologram, USA, which was located at 338 N Canon Drive, Beverly Hills. During the relevant period, I was also a Beverly Hills resident. Due to these spurious claims, my company was forced to shut down. Each of the female claimants represented, aided and abetted by the referenced three attorneys, have acted in concert with each other, falsely alleging various acts of sexual harassment against me by acting as witnesses for each other. The respective claimants and their attorneys have abused our legal system by jumping on the #MeToo bandwagon to fabricate their claims. To further these extortion schemes, the attorneys knowingly submitted false evidence and intimidated witnesses in the various court cases, which resulted in various judgments against me, while two other cases are pending trial.
>
> **In reviewing Penal Code sec. 236.1 (human trafficking), I note the definition of coercion "includes a scheme to cause a person to believe that failure to perform an act, [e.g. pay money to settle a spurious claim] would result in . . . the abuse or threatened abuse of the legal process," which is exactly what has occurred to me. These same lawyers issue press releases and appear on television to defame my character, claiming that I am a Greek billionaire, in an orchestrated campaign to coerce settlements in order to cease the endless press coverage.**
>
> Here is a brief synopsis of the various cases and the criminal wrongdoing that has occurred:
>
> - *Chastity Jones v. Alki David*, case no. BC649025, brought by attorney Lisa Bloom, alleges that I threatened to fire Chasity Jones if I didn't sleep

with her.

- *I was in fact firing her for defrauding me of $40 000 but I had yet to let her know that.*

o Criminal wrongdoing: In testimony under oath, Jones denied being a federally convicted felon, who had a felony warrant at the time of trial from willful failure to pay restitution in connection with a federal fraud conviction;

o I have attached a statement under oath from Ciara Menifee, who states that attorney Lisa Bloom pressured her to give a false statement, which she refused to do, and that Ms. Jones had targeted me regarding false claims of sexual abuse; and

o I have attached a statement under oath from Grant Zimmerman, who states that it was his impression that Ms. Jones targeted me with false claims of harassment.

- *Elizabeth Taylor v. Alki David*, case no. BC649025, brought by attorney Lisa Bloom, is a pending case.

- *Criminal wrongdoing: Though this trial was a filled with moments of unbelievably callous perjury by Lisa Bloom and her gang it all began with allegations of sexual harassment and assault that were dropped on the day of the trial!*

https://www.tmz.com/2017/09/15/celeb-hologram-creator-alki-david-sued sexual-assault

In this first trial, the jury believed that there was a fraud and conspiracy afoot by Lisa Bloom - the jury was hung 8-4 in my favor. But the damage was being done in a very narrow targeted perversion of the law that has been devastating to me personally and the lives of many hundreds of employees, family and friends whose lives have been hugely damaged.

- *Mahim Khan v. Alki David*, case no. BC654017, brought by attorney Gloria Allred, alleges that I

o **Criminal wrongdoing: Kahn threatened**

her former roommate, Lauren Berkley, not to truthfully testify in my favor about Kahn's fabricated allegations against me. Berkley submitted a police report documenting the threat. Additionally, Kahn's attorney, Nathan Goldberg (partner of Gloria Allred) forged my attorney's signature on a witness list that was submitted to the court prior to trial. While attempting to collect her judgment against me in Switzerland, Kahn's attorneys [including Gloria Allred] criminally misrepresented and fabricated that I had sustained criminal convictions for sexual abuse in the United States. At present, I have filed a criminal complaint in Switzerland with the State Prosecutor alleging various deceptions in Kahn and her attorneys' attempt to seize my assets, including trying to enforce punitive damages portion of a judgment, which is not permitted in Switzerland. (Emphasis in original).

- *Lauren Reeves, v. Alki David*, case no. BC643099, brought by attorney Gloria Allred.
    - **Criminal wrongdoing: As with Mayim Kahn, Defendant Allred and Swiss counsel are trying to seize assets in Switzerland.**
- In Switzerland four separate counts of coercion with intent to defraud have been filed with public prosecutors there.
- *Jane Doe (a/k/a Margurita Nicholls) v. Alki David*, case no. _____, brought by attorney Thomas Girardi and _____, alleges that I raped her at Hologram offices. However, she has made other rape claims, including against her husband and best friend. A month

after the alleged rape, Nicholls brought me a birthday cake.

-

- o Criminal wrongdoing: As numerous law enforcement authorities are aware, attorney Tom Girardi has defrauded numerous clients out of millions of dollars and is the subject of various state and federal investigations. The California State Bar has already disbarred him from practicing law; and
- o In Mr. Zimmerman's attached statement under oath he states that Ms. Nicholls never complained to him about anything improper with me.

Abused court processes in the above cases have been or are ongoing by the attorneys and their clients. The various assigned judges lack the resources to investigate the alleged criminal wrongdoing, which is why I am seeking law enforcement intervention. I am hoping that your Department will look into these matters and gather the evidence needed to prosecute these individuals and their attorneys for the extortion and perjury perpetrated against me, which has resulted in millions of dollars in falsified judgments.

These attorneys have targeted numerous other individuals with the same M.O. They have made millions of dollars extorting hard-working business men, ruining reputations, and destroying personal lives. Thank you for your urgent attention to this request. I look forward to meeting with you to amplify my concerns and cooperate in bringing these crimes to light.

Plaintiff David's attempted to have law enforcement investigate the ongoing extortions and defamations committed by Defendants Girardi, Allred and Bloom to further the illegal

enterprise. However, Plaintiff David's efforts were ignored, as were Plaintiff David's *three* complaints to the State Bar of California. **Attach three complaints.**

Further, after obtaining judgments against Plaintiff David, Defendant Mahim Khan and her attorney, Gloria Allred, filed spurious contempt actions against Plaintiff David, seeking outrageous, duplicative and meritless court orders such as:

https://mail.google.com/mail/u/0/#search/Dana+cole/FMfcgzGpGSzQdqVtwlspFnZkZVzjdhJG?projector=1&messagePartId=0.

The Attorney Defendants' enterprise is horizontally related because the predicate acts of those Defendants committing offenses, motivated by a desire to deprive Plaintiff David and the Entity Plaintiffs of money and property, including the Attorney Defendants committing the predicate offenses of extortion, bribery, obstruction of justice and mail fraud have distinct similarities regarding the following characteristics: results (money judgments), participants (The Attorney Defendants and The Litigating Defendants, consisting of a group of former employees of Plaintiff David and the Entity Plaintiffs), victims (Plaintiff David and the Entity Plaintiffs), methods of commission (the filing of spurious lawsuits against Plaintiff David and the Entity Plaintiffs.

In the various lawsuits filed against Plaintiff David and the Entity Plaintiffs, Plaintiffs' counsel informed courts that there were concerns regarding the Attorney Defendants unethically exchanging documents and having wrongful interchanges regarding various Attorney Defendants and their firms. Transcript - filmonpersonal@gmail.com - Gmail (google.com)

Upon information and belief, there exists a strong threat of a repetition of such fraudulent actions by Defendant Attorneys and that their extortion and obstruction of justice will extend indefinitely into the future.

Not only do Defendant Attorneys continue to harass, threaten and extort Plaintiff David and the Plaintiff Attorneys' in the United States, the United Kingdom and Switzerland, as set forth more fully in this Complaint, Defendants Allred and Bloom are being sued for fraud by Rose McGowan. **ALKI to provide details.** **http://www.tvmix.com/la-court-gives-ok-to-hollywood-actress-rose-mcgowan-fraud-suit-against-harvey-weinstein-and-lisa-bloom/123**

Further, Paul Marciano, co-founder Guess, Inc. is suing Defendant Bloom for civil extortion, alleging that Bloom improperly

tried to extort settlement money from Marciano and, that in doing so, she lied by accusing Marciano of rape when Bloom's client expressly told Bloom not to allege rape. **https://embed.documentcloud.org/documents/21832954-2022_05_02-marciano-v-bloom/?embed=1&responsive=1&title=1.**

Defendant Bloom also falsely accused Plaintiff David of Rape in a public forum - the Stanley Mosk Court House where the Superior Court of California conducts proceedings. **Link to video.** Defendant Bloom's actionable, blatant defamation of Plaintiff David has caused David enormous home and has damaged his reputation.

SHALL WE ADD WYNN?

https://news.bloomberglaw.com/daily-labor-report/bloom-sex-harassment-firm-fails-to-nix-steve-wynns-libel-suit

The Marciano and McGowan's lawsuits, all filed in proximity to the Attorney Defendants filing frivolous lawsuits against Plaintiff David and the Entity Plaintiffs, thus evincing an ongoing pattern of racketeering activity to further the Attorney Defendants' enterprise that is designed to extort money, tamper with witnesses and defraud citizens of their money. **Insert Rose McGowan, Marciano and Wynn - will**

any do an affidavit helping Alki to establish the pattern.

Strategy Question: If Alki and the Entity Plaintiffs wish to allege an open-ended continuity, we may wish to refrain for naming Girardi as a Defendant - as if we do, we risk a court in the Ninth Circuit holding there is no open-ended continuity where one of the Defendants has ceased committing predicate acts. *See Turner v. Cook,* 362 F.3d 1219, 1230 (9th. Cir. 2004). Whereas, if we wish to establish a closed-ended continuity, we need to establish some showing of duration over "a substantial period of time "so long that there is a threat that conduct will occur in the future." Because the Elizabeth Taylor case is ongoing vis a vis a retrial, the appeal in the *Mahim Khan* case is ongoing, and the collection actions pursued by Defendant Chora and Defendant Allred in Switzerland, there is a threat that conduct will occur in the future.
Importantly, the law in various federal court districts varies vastly on this element and counsel needs to take that into account with regard to the decision on which district courts to file the action(s) in.

Strong Factual Nexus Suggesting Coordination Between the Attorney Defendants To Further the Illegal Enterprise

Note: We need to establish the existence of conversations and meetings between the Attorney Defendants. Note: we can imply there were such meetings because in the *Reeves* case, Defendant Goldberg tried to introduce documents that he had not disclosed in that litigation and counsel for Alki, Ellyn Garofolo, went on the record stating Goldberg had tried to introduce documents from one of Lisa Bloom's cases asserted against Alki when those documents had not been properly disclosed. Further, Defendant Goldberg filed an improper list of witnesses and exhibits in that he: 1) listed documents that had not been produced in the *Reeves* case, but that had been produced by Defendant Bloom in another of the Litigating Defendant's cases; and 2) forged Ellyn Garofolo's signature on that filing.

I need to review all transcripts to see if there are any more statements demonstrating the existence of a conspiracy between Defendant Attorneys.

Plaintiffs assert, pursuant to 18 U.S.C. §§1962(b)(c) and (d), that the Attorney Defendants, their clients, experts, employees and agents, conspired with one another and intended to and willfully conducted an inter-related, clear and continuous pattern of racketeering activity to benefit Defendant Attorneys' unlawful enterprise, and that Defendants continue to do so, by, inter alia, wilfully and intentionally conspiring against Plaintiff David and the Entity Plaintiffs by filing spurious lawsuits against Plaintiff David and the Entity Plaintiffs (which entity plaintiffs were named in which suits?), who were, and continue to be, victimized by Attorney Defendants' continuous pattern of racketeering conducted to benefit their enterprise, including mail fraud, extortion, falsification of a signature in a civil proceeding, bribery, and aiding and abetting, all cognizable as RICO predicate acts pursuant to 18 U.S.C. §§ 1862(b)(c) and (d).

Specifically, the Attorney Defendants filed unethical, spurious lawsuits against Plaintiff David without investigating the merits of those actions, unethically coaching their clients and witnesses about what to say, only to then often dismiss some of those complaints years later when trial proceedings were forthcoming. Further, the Defendant

Attorneys conspired to tamper with witnesses and to have witnesses collude against Defendant David and the Entity Plaintiffs by sharing the actions against Plaintiffs David and the Plaintiff Attorneys. Defendant Allred kept Defendant Mahim Kahn and Defendant Lauren Reeves as clients, but sent Defendant Elizabeth Taylor to Defendant Bloom, her daughter. After Defendants Reeves, Taylor and Jones conspired to sue Plaintiff David and the Entity Plaintiffs, Subsequently, Defendant Bloom was retained by Defendant Chastity Jones, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

In October, 2019, Judge Ongkeko of the Los Angeles Superior Court admonished Defendant Bloom for significantly overstating her already very expensive law firm bills submitted to the Judge when Jones won a compensatory award against Plaintiff David. Tellingly, the Judge said, "If I were a Bloom client - one that was actually paying out of pocket instead of these sad ambulance chasing contingency cases - I'd be very careful to go over the firm's bills before I paid anything," Judge Ongkeko said. Such over-billing and seeking to bilk Plaintiff David is just one of innumerable events demonstrating that Defendant Bloom extorted money from Plaintiff David and the Entity Plaintiffs.

Defendant Allred wrongfully sought to enforce a judgment

against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys, in Switzerland in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss law. The Swiss courts rejected those efforts as appellate proceedings are ongoing in that case, causing Plaintiff David extreme expense and further damaging his reputation as such filings are public record. Further, in *Lauren Reeves v. Alki David, et. al,* Defendant Allred again sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys.

In response, Plaintiff David filed criminal proceedings in Switzerland against Defendants Allred, Blom and Girardi alleging that those Defendants conspired to discredit and extort Plaintiff David - **append.** Upon information and belief, the Swiss Court will impose???? **can Swiss Counsel provide proper language summarizing that country's laws.**

Defendant Allred's corrupt, wilful and intentional actions, constituting criminal acts under relevant Swiss law, were committed under the auspices of an otherwise legitimate enterprise, Allred, Maroko & Goldberg.

The Attorney Defendants' conspiring to extort and extorting

money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants, were actions committed under the auspices of otherwise legitimate enterprises as follows: Allred, Maroko & Goldberg, The Law Offices of Lisa Bloom; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by reason of the Attorney Defendants' mail fraud, bribery, extortion, witness tampering, predicate claims pursuant to RICO.

Moreover, Girardi's former partner, Gary A. Dordick, formed his law offices independently and coordinated and conspired with Girardi, Allred and Lisa Bloom, sharing documents in the various lawsuits against Plaintiff Alki David and the Entity Plaintiffs. At times, those documents were not revealed in discovery in the various proceedings.

Further, Defendant Keith Griffin, formerly of the Girardi firm has joined the Dordick Law Firm, whose principal is Defendant Gary A. Dordick.

Note: Relevant law instructs that we need a strong factual nexus suggesting coordination between the defendants.

2. **Quote Ellyn's signature being forged and the witnesses and exhibits list being manipulated - the judge did nothing.**

Defendant Attorneys Girardi, Allred, Goldberg and Bloom were part of an initial enterprise consisting of a union or group of individuals with a common purpose that are associated in fact. Defendant Attorneys Delores Y. Leal, Renee Mochkatel, Dordick, Griffin, Choro, **WHAT OTHERS?** also joined the enterprise. ADD: Recount the details of the following:

The enterprise has as its purposes, extortion, mail fraud, and obstruction of justice, in order to deprive Plaintiff David and the Entity Plaintiffs of their money and property.

The relationship of the parties consists of informal and formal agreements and understandings to cause harm, threaten, embarrass and defame through unlawful means, including, but not limited to, the filing of spurious lawsuits with longevity - a scheme that began in 2014.

The members of the enterprise are manifold and they share a common purpose of enhancing their reputations as attorneys, and of seeking to extort payments from Plaintiff David and the Plaintiff Entities by means of their illegal concerted actions and conspiracies. Each and every member of the enterprise intended to engage in the conduct harming Plaintiff Alki and the Entity Plaintiffs and they did so with actual knowledge of their illegal activities.

The various harassing practices asserted against, and lawsuits filed against, Plaintiff David and the Plaintiff entities share an uncanny and unethical pattern. First, Defendant Attorneys would coach employees of Plaintiff David's companies about what to say at press conferences called by Defendant Attorneys Allred, Goldberg, and Bloom after Defendant Attorneys filed hastily composed legal complaints against Plaintiff David and Plaintiff Entities. **Do we need to add Girardi? Did Goldberg have any press conferences?**

Upon information and belief, Defendant Attorneys filed lawsuits without conducting a due diligence investigation into the verity of the allegations set forth in those lawsuits. Not only did those filings constitute manifest abuse of the legal process as they were entirely devoid of any supporting documentary or factual evidence, as proscribed by relevant ethical standards governing attorneys practicing law. They also are cognizable under RICO because the filing of those spurious lawsuits furthered the Defendant Attorneys' criminal enterprise and thereby harmed Plaintiff David and the Plaintiff Entities. Members of the enterprise who intended to engage in the witness tampering to harm Plaintiff Alki and the Entity Plaintiffs in the *Mahim Kahn* lawsuit were Attorney Defendants Girardi, Allred, Goldberg, Leal and Mochkatel and

Attorney Defendants did so with actual knowledge of their illegal activities.

Here, we need to allege: that there was an association in fact having a common purpose and that there is evidence regarding the continuity of the illegal enterprise organization and that its members function as a unit. *U.S. v. Christensen,* 828 F.3d 763, 780 (9th. Cir. 2015)(quoting *U.S. v. Eufrasio,* 935 F.3d 553, 557 n. 29 (3d Cir. 1991)(internal quotation marks omitted). *Odom v. Microsoft Corporation, 486 F.3d 541* (9th Cir. 2007)(en banc), *cert denied,* 128 S.Ct. 464 (2007).

To do so, we need to show: 1) evidence of hierarchy - Girardi-Allred-Bloom and now Goldberg etc. 2) Role differentiation, chain of command - we must discuss this to demonstrate that there is an association-in-fact enterprise.

Insert quotes from this trial transcript FW: Ali Botto - Vol. 13 - October 4, 2019 Testimony.pdf - filmonpersonal@gmail.com - Gmail (google.com) Also demonstrate that the Court in Mahim Khan was made aware of the conspiring between the various former employees who interacted with one another to concoct claims against Plaintiff David. FW: 139167.491786 Khan v Hologram USA, Inc, et al. (BC654017) -

filmonpersonal@gmail.com - Gmail (google.com)

Defendant Goldberg in the *Reeves* case represented Reeves[23] and he shared documents that Defendant Goldberg and his partners and firm had not listed on the list of witnesses and exhibits her filed in that matter. He wrongfully sought to use undisclosed documents he exhibits he obtained from Bloom.

Not only did the Attorney Defendants commit such wrongdoing during the *Reeves* trial, Plaintiffs' counsel in *Mahim Khan* committed gross ethical violations during his closing argument and violated Plaintiff David's constitutional and due process rights. Khan ARB conformed - Google Docs - Add specifics.

Rothman sought a meet and confer meeting about interrogatories he had generated in that litigation, referencing Reeves' use of a phone (more than one phone perhaps?) that she claimed helped bolster her claims against Plaintiff David.[24]

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[23] *Elizabeth Taylor, an individual, Chastity Jones, an individual v. Alkiviades David, an individual, Hologram USA, Inc. a Delaware Corporation, Hologram USA Entertainment, a Delaware Corporation, FilmOn Media Holdings, Inc., a Delaware Corporation, FilmOn TV, Inc., a Delaware Corporation; FilmOn TV Networks, Inc., a Delaware Corporation; Alki David Productions, Inc.,a Delaware Corporation, Anakando Media Group USA et. al.,* Case No. BC649025, Superior Court of the State of California, Los Angeles-Central District.

[24] https://mail-attachment.googleusercontent.com/attachment/u/0/?ui=2&ik=68ad5627e5&attid=0.1&permmsgid=msg-f:1581550983980536602&th=15f2cc3d9254531a&view=att&disp=safe&saddbat=ANGjdJ9-5bpRafrPc6mzVjKA3XI0-ayZU7civdXpsd83db8fANLjou0wH6gkHQitU6I6glB2oTWBBW3QENef-uHEQi8uCtR1Q106GKiQb8tbarCdfhAFWgg8LVANTNjBJZXxG_e_Q5K1A8XJKB64JVy6sSB4rzkkOYY7AzKnZRG7jIIhW7bXi_EK8DHuWxf9H3W4q6iyThtqtJBxZwBdYxPWUZZDF2Vsm1Du3tU6RaeVn8ufRVXWamy_uUWhGy4k

Second Cause of Action
18 U.S.C. Sec. 1862 (c)

Plaintiff David and the Entity Plaintiffs restate paragraphs 1 through XXXX of this Complaint,

18 U.S.C. Sec. 1862 (c) provides, "It shall be unlawful for any person employed by or associated with an enterprise to engage in or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity."

Upon information and belief, the Attorney Defendants' enterprise consisted of an ongoing association that functions as a continuing unit motivated by the Attorney Defendants' wanting to harm Plaintiff David and the Entity Plaintiff's property and conducting their activities furthering the criminal enterprise by engaging in activities affecting

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Xh5FIi8MF8eud_NL8D0ar9SyjM5ea_n1ukQ_Ouj2umUYkIza-_FELth5XIFPHuCRQgdWjYo99iaUX8N_U2VZMxcWK67W8DNcnwloh3FTheQqZSkSFac2raYoI7HFVL425j2jvqeTPLgkQBJTwcZA9ykbUM8Kp6xMcIJ969CgAdEJMmjqzxnFQw4zYeJJhp9amLuIl-qop28yDIa8xy5ecquyB5FkqeKM8Vax3XdWZCtKZs4cA_XVf8HwXQpVk9_wGwh0P7hGJVy0pR3RBKb_T3WUN7Fxc-GPWI0fOpGZRnhhgH_NWsNR8Jo5rvrVxEpWM6S0-st_YhCrVHLp3xIE1zaIGXMmH6ly89w6yrnBWvcD6B1_7VlPVeipqhqd-Zc3-hHlnO7z45w1B9HhJQbE1j7_hTBReDMIYx7oV95ahboF1QE1osLCnltAf-Z0UIpvgXld7JqtlwpJjGDS-1DuNYyfYHCNDNnH3JTUJyaD4nVtOpBQkgYcfUh62uPjeTOgolbeQqBik19h4D7N5Zr_rilbG_aXiqHZzHo5miZxhrEL49AJ5Rgb5c3kGMUMqQNjWGpIsIm4PSkKa_L6CPe_

interstate and foreign commerce.

Upon information and belief, the Attorney Defendants' pattern of racketeering activities were actions taken to perpetrate fraud against Plaintiff David and the Entity Plaintiffs.

Defendants Girardi, Allred and Bloom made threats intended to cause economic harm to Plaintiff David and to the Entity Plaintiffs. The threats were intended to extort settlements. The threats were intended to cause reputational harm to Plaintiff David. The threats were wrongful because Defendants Girardi, Allred and Bloom used the threats and maligned Plaintiff David's reputation to try to obtain property to which they were not entitled.

Defendants Girardi, Allred, Bloom and Goldberg are guilty of extortion because they sought money or property to which they did not have, and could not reasonably believe they had, a claim or right.

Plaintiff Alki, accompanied by his then attorney Barry Rothman, went to the District Attorney in Los Angeles and reported Elizabeth Taylor and Mahim Khan for trying to extort Plaintiff David by demanding $ 3.5 Million dollars. **Pull Emails**

Barry - UPLOADING ON JULY 3. INSERT

INSERT

Plaintiff David and the Entity Plaintiffs suffered damages and incurred substantial losses as a result of Defendants Girardi, Allred, Bloom's and Goldberg's implementation and continuation of their extortionate claims.

The Defendant Attorneys tampered with the Litigating Defendants' testimony, and with the evidence Defendant Attorneys used to assert the spurious complaints made by Defendant Litigants, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

The Defendant Attorneys tried to extort Plaintiff David and the Plaintiff Entities by making spurious allegations against those Plaintiffs, often calling press conferences to assert their nefarious claims and touting the large award against Plaintiff David in *Mahim Khan,* even as it remains under appeal. ***See e.g.,*** https://www.phillymag.com/news/2021/12/21/gloria-allred.

The Attorney Defendants' conspiring to extort, and their extorting, money and property from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses, were actions committed under the auspices of otherwise legitimate

enterprises as follows: Allred, Maroko & Goldberg, The Law Offices of Lisa Bloom; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Upon information and belief, Attorney Defendant Chora, counsel in *Chastity Jones,* ruined $5 Million in business lost by Plaintiffs David and the Entity Plaintiffs. **Alki - we need specificity as to which entities?**

Further, Attorney Defendant Chora caused PAYPAL to terminate Plaintiff FilmOn's two accounts. Note to counsel:

The CFO of FilmOn provided this information and perhaps counsel would like this in an affidavit?

According to Isabel Ann Peterman, Financial Controller, Filmon TV UK Group:

"Filmon had two accounts with PayPal 1) sales@filmon.com (old accounts,

used for over 10 years) and onlinesales@filmon.com (new opened in Jan 21

as a result of suspending the old one)

They were closed with explanation "in breach of user agreement",
consequently all funds held there were deducted and no specific reasons were
provided of the cases of violation PayPal was using as an argument.

Filmon lost
half of its customers as a result.

a) Some PayPal stats:

- PayPal was the preferred choice of payment for our Filmon customers.

- In the last year (2020) there were a total of 61959 orders placed successfully via Paypal with an estimated value converted in GBP of £1.2m.

- Since Feb 1, 2021 when PayPal took down our account, the total amount of canceled PayPal subscriptions (users finally gone) was 5,415 (equivalent to lost sales orders per **month)**

The total amount of expected and not received incomes in 2021because of canceled subscriptions based on 2020's sales rate is £1.3m, without embedding any possible further lost opportunities due to company marketing efforts etc.

b) Enclosing a file of customer complaint cases. (Theses are most representative cases. There were higher number or complaints in general but in some of them. the customers did not specifically mention PayPal, so they were excluded).

c) List of canceled PayPal subscriptions (file name "r2.xls") with encrypted emails for data protection purposes as a backup.

Note: Ms. Peterman provided a table demonstrating the amount of monies that PayPal still has in segregated funds, stating the value of those funds in USD, EU, and BGB - pounds. I could not copy that table from her email so I am asking her to send it as an attachment and I will insert it as soon as I hear from her.

Third Cause of Action
18 U.S.C. Sec. 1862 (d)

Plaintiff David and the Entity Plaintiffs restate paragraphs 1 through XXXX of this Complaint,

18 U.S.C. Sec. 1862 (d) states "It shall be unlawful for any

person to conspire to violate any of the provisions of subsection (b) or (c) of this section."

Howard v. Am. Online, Inc, 208 F.3d 741, 751 (9th Cir. 2000) instructs that to establish a 18 U.S.C. Sec. 1862 (d) violation, the Attorney Defendants either had to establish an agreement that constitutes a substantive violation of RICO or the Attorney Defendants had to agree, commit or participate in the violation of at least two predicate offenses. *Salinas,* 522 U.S. at 63-64 instructs, quoting Justice Holmes, that a conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense.

In this case, Attorney Defendants conspired to target Plaintiff Alki David and the Plaintiff Companies.

The initial enterprise participants, Defendants Girardi, Allred, Bloom and Goldberg, knowingly agreed to facilitate the activities of each of them as they operated and managed a criminal enterprise and extorted Plaintiffs David and The Entity Plaintiffs. All Attorney Defendants conspired with the initial enterprise participants.

Upon information and belief, Plaintiff David and the Entity Plaintiffs assert assert that the Attorney Defendants' pattern of racketeering activity is to target well-known individuals, such as Plaintiff

David, with accusations of improper behavior, typically under the guise of a purported, falacious sexual harassment claims, and to threaten to make those allegations public, all with a wilful intent to get the target to pay up.

The Attorney Defendants unlawfully and tortiously attempted to, and in some instances did, extract millions of dollars from Plaintiff David and the Entity Plaintiffs by a concerted enterprise that consisted of calculated media campaigns, threats and intimidation, and abusive litigious actions.

Upon information and belief, the Attorney Defendants are individually vicariously liable for their co-conspirators' illegal actions conducted to further the illegal enterprise.

Plaintiff David and The Entity Plaintiffs allege that the clients of the Defendant Attorneys, Mahim Khan, Elizabeth Taylor; Lauren Reeves, and Chastity Jones (Litigating Defendants), knowingly and wilfully participated in the interrelated enterprise calculated to extort money from Plaintiff David and the Entity Plaintiffs.

Plaintiff David, accompanied by his then attorney Barry Rothman went to the DA and reported Elizabeth Taylor and Mahim Kahn for trying to extort Plaintiff David by demanding $ 3.5 Million from him. **Alki to**

provide dates and details.

Defendant Allred and her client, Mahim Kahn, attempted to file criminal charges against Plaintiff David, but, upon information and belief, were told by Beverly Hills police that they lacked the necessary evidence to support such allegations. Upon information and belief, Defendant Allred called a news conference at the Beverly Hills police station on the date she attempted to file criminal charges against Plaintiff David with the express purpose of intimidating, harassing and defaming Plaintiff David.

No such criminal charges were ever filed. Indeed, in a taped press conference, Defendant Allred stated that the standards of proof between *Mahim Kahn's* civil action and any purported criminal action thwarted the filing of any criminal action. Nevertheless, upon information and belief, despite the fact that there was no basis for filing a criminal action against Plaintiff David, Defendant Allred arranged to have a false article published in the LA Times so as to further cause Plaintiff David to suffer. Self-appointed ambassador for 'wronged men' of #MeToo Alki David faces criminal complaint - Los Angeles Times (latimes.com)

No such criminal charges were ever filed.

As to Defendant Allred, her pattern of manipulating witnesses, and, upon information and belief, paying the witnesses to testify in a particular fashion, is a pattern of obstruction of justice and witness tampering that is more than fifty years old. In the landmark Supreme Court Case, *Roe v. Wade,* upon information and belief, Defendant Allred coached Plaintiff Roe about what to testify to without verifying the allegations and thereby commenced her pattern of committing obstruction of justice and tampering with witnesses, as evidenced by Plaintiff Roe's informing, soon before she died, that Allred committed those acts. *See* *Gloria Allred On The New Norma McCorvey Documentary (forbes.com)*.

Specifically, the Attorney Defendants filed unethical, spurious lawsuits against Plaintiff David without investigating the merits of those actions, unethically coaching their clients and witnesses about what to say, only to then often dismiss some of those complaints years later when trial proceedings were forthcoming. Further, the Defendant Attorneys conspired to tamper with witnesses and to have witnesses collude against Defendant David and the Entity Plaintiffs by sharing the actions against Plaintiffs David and the Plaintiff Attorneys. Defendant Allred kept Defendant Mahim Kahn and Defendant Lauren Reeves as

clients, but sent Defendant Elizabeth Taylor to Defendant Bloom, her daughter. After Defendants Reeves, Taylor and Jones conspired to sue Plaintiff David and the Entity Plaintiffs, Subsequently, Defendant Bloom was retained by Defendant Chastity Jones, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

Defendant Allred wrongfully sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys, in Switzerland in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss law. The Swiss courts rejected those efforts as appellate proceedings are ongoing in that case, causing Plaintiff David extreme expense and further damaging his reputation as such filings are public record.

Further, in *Lauren Reeves v. Alki David, et. al,* Defendant Allred again sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys.

In response, Plaintiff David filed criminal proceedings in Switzerland against Defendant Allred - append.

Defendant Allred's corrupt, wilful and intentional extortion, constituting criminal acts under relevant Swiss law, were committed

under the auspices of an otherwise legitimate enterprise, Allred, Maroko & Goldberg.

The Attorney Defendants' conspiring to extort and extorting money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses, were actions committed under the auspices of otherwise legitimate enterprises as follows: Allred, Maroko & Goldberg, The Law Offices of Lisa Bloom; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for conspiring to injure to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by reason of the Attorney Defendants' extortion, witness tampering, mail fraud and bribery, all of which constitute predicate claims pursuant to RICO.

Fourth Cause of Action
Interference with Contract Relations

Plaintiff David and the Entity Plaintiffs restate paragraphs 1 through XXXX of this Complaint.

Defendant Attorneys' Intentionally Interfered in Plaintiff's

Contracts

Alki - we need to go through each contract that each company had and we must meet these elements:

Elements of the tort of intentionally interfering with the performance of a contract are: (1) a valid contact between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach **or disruption** of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130.)

Discuss specifics with Alki re:
https://www.upcounsel.com/tortious-interference-with-contract-california

Upon information and belief, Attorney Defendant Chora, counsel in *Chastity Jones,* ruined $5 Million in business lost by Plaintiffs David and the Entity Plaintiffs. **Alki - we need specificity as to which entities?**

Further, Attorney Defendant Chora caused PAYPAL to terminate Plaintiff FilmOn's two accounts. Note to counsel:

The CFO of FilmOn provided this information and perhaps counsel would like this in an affidavit?

Also Alki had to send an email to Chora in February, 2022, saying:

Att JOSEPH CHORA

Mr Chora you must CEASE & DESIST from further communication with ALKIVIADES DAVID and anyone related to him.

Despite being repeatedly told that there is an active FBI investigation you have continued to extort and harass me and my family. You have sent Subpoenas to family members of mine just in order to harass.

Considering that you are a lawyer in California your actions are coercive and criminal. I accuse you of being a Girardi lawyer.

I will find the links and publish them. In the meantime please cease and desist or face criminal prosecution now or in the future.

I have copied members of the FBI who you can refer to this case to.

Sincerely

Alki David

According to Isabel Ann Peterman, Financial Controller, Filmon TV

UK Group:

"Filmon had two accounts with PayPal 1) sales@filmon.com (old accounts,

used for over 10 years) and onlinesales@filmon.com (new opened in Jan 21

as a result of suspending the old one)

They were closed with explanation "in breach of user agreement",
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a) Some PayPal stats:

- PayPal was the preferred choice of payment for our Filmon customers.

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- Since Feb 1, 2021 when PayPal took down our account, the total amount of canceled PayPal subscriptions (users finally gone) was 5,415 (equivalent to lost sales orders per **month)**

The total amount of expected and not received incomes in 2021because of canceled subscriptions based on 2020's sales rate is £1.3m, without embedding any possible further lost opportunities due to company marketing efforts etc.

b) Enclosing a file of customer complaint cases. (Theses are most representative cases. There were higher number or complaints in general but in some of them. the customers did not specifically mention PayPal, so they were excluded).

c) List of canceled PayPal subscriptions (file name "r2.xls") with encrypted emails for data protection purposes as a backup.

Note: Ms. Peterman provided a table demonstrating the amount of monies that PayPal still has in segregated funds, stating the value of those funds in USD, EU, and BGB - pounds. I could not copy that table from her email so I am asking her to send it as an attachment and I will insert it as soon as I hear from her.

Fifth Cause of Action
Interference with Prospective Contract Relations

Plaintiff David and the Entity Plaintiffs restate paragraphs 1 through XXXX of this Complaint,

The Prospective Contract Relations consist of the thwarted IPO's. Alki - we need to go through each contract that each company had and we must meet these elements:

We must be very specific as to these elements:

Plaintiff David and the Entity Plaintiffs (**which ones?)** claims that [name of defendant] intentionally interfered with an economic relationship between [him/her/nonbinary pronoun/it] and [name of third party] that probably would have resulted in an economic benefit to [name of plaintiff]. To establish this claim, [name of plaintiff] **Plaintiffs must prove all of the following:**

1. That [name of plaintiff] and [name of third party] were in an economic relationship that probably would have resulted in an economic benefit to [name of plaintiff];

2. That [name of defendant] knew of the relationship;

3. That [name of defendant] engaged in [specify conduct determined by the court to be wrongful];

4. That by engaging in this conduct, [name of defendant] [intended to disrupt the relationship/ [or] knew that disruption of the relationship was certain or substantially certain to occur];

5. That the relationship was disrupted;

6. That [name of plaintiff] was harmed; and

7. That [name of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s harm.

New September 2003; Revised June 2013, December 2013

Directions for Use

Sixth Cause of Action
Intentional Infliction of Emotional Distress[25]

Plaintiff David and the Entity Plaintiffs restate paragraphs 1 through XXXX

of this Complaint,

https://www.justia.com/trials-litigation/docs/caci/1600/1600

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[25] **Negligent infliction of emotional distress -**
Note - in California to prove negligent infliction of emotional distress, there must be a special relationship between the Plaintiff seeking the award and the Defendant causing the emotional distress.
REFERENCE:
https://www.justia.com/trials-litigation/docs/caci/1600/1600.
https://www.justia.com/trials-litigation/docs/caci/1600/1620

Accordingly, I recommend that we just sue for Intentional Infliction of Emotional Distress unless Alki can establish a special relationship between him and one or more of the Defendants.

The Attorney Defendants and the Litigating Defendants intentionally inflicted emotional distress upon Plaintiff David by:

Press Conferences - Allred & Bloom

Alleging that Alki committed rape - Girardi stated that and also Bloom stated that - details and particulars need to be specific

The Defendant Attorneys coaching the Litigating Defendants to conspire against Alki and the Plaintiff Entities and seek to extort settlement monies - add details with specificity and state with specificity how that caused Alki emotional harm.

In addition to the expense of defending Defendant Attorneys' and Litigating Defendants' spurious lawsuits, incurring a total amount of $_____ in attorneys' fees and costs, the time required to defend against those actions resulted in lost business opportunities costing Plaintiff David and the Plaintiff Entities a total amount of $_____.

Subsequently, Defendant Allred and her client, Mahim Kahn, attempted to file criminal charges against Plaintiff David, but, upon information and belief, were told by Beverly Hills police that they lacked the necessary evidence to support such allegations. Upon information and belief, Defendant Allred called a news conference at the

Beverly Hills police station on the date she attempted to file criminal charges against Plaintiff David with the express purpose of intimidating, harassing and defaming Plaintiff David. Defendant Allred's actions in calling the press conference **and what other of her actions** have caused emotional harm to Defendant David.

No such criminal charges were ever filed. Nevertheless, upon information and belief, Defendant Allred arranged to have a false article published in the LA Times. Self-appointed ambassador for 'wronged men' of #MeToo Alki David faces criminal complaint - Los Angeles Times (latimes.com)

Lisa Bloom called Alki a rapist - uttered that defamatory comment to David Haigh - insert his affidavit.

Plaintiff David's counsel has informed the court in one of the many spurious lawsuits urged against him that his mental health is in a downward spiral.

https://www.courthousenews.com/coke-bottling-heirs-mental-health-in-downward-spiral-lawyer-says

Is there emotional harm to anyone else? Family members? Business associates?

DAMAGES

Plaintiffs have sustained damages in an amount to be determined at trial, including loss of prospective business relations, the cessation of ongoing business relations, **CAN ALKI CLAIM (AND PROVE) THE SEC SETTLEMENT OF 100 k is directly attributable to Defendants' actions?**

https://sec.report/CIK/0001656589

Ylena Calendar - has damage information as do accountants.

Alki needs to expand here: Defendants (Allred? Bloom? Both?) filed lawsuits alleging numerous spurious counts, only to retract the claims as trial approached. **We need specifics here.**

Pulled on the day of filing - SEC - Gloria Allred, Lisa Bloom. Call witnesses like Gary Shoefield and Peter VanPruissen and he slayed CFO officer of the FilmOn - they would write up all the people make them as their witnesses

Chastity Jones - $11 million reduced by $445,000 by Judge Rafaael Ongkeko - her out of pocket damages were excessive.

Mahim Kahn, a former production assistant for David's media companies, including FilmOn TV and Alki David Productions, Inc., consisting of $8.25 million in compensatory damages and $50 million in punitive damages. Khan was iired in October 2014 and quit about a year later awarded $58.25 million for sexual battery

Subsequently, Defendant Allred and her client, Mahim Kahn, attempted to file criminal charges against Plaintiff David, but, upon information and belief, were told by Beverly Hills police that they lacked the necessary evidence to support such allegations. Upon information and belief, Defendant Allred called a news conference at the Beverly Hills police station on the date she attempted to file criminal charges against Plaintiff David with the express purpose of intimidating, harassing and defaming Plaintiff David.

No such criminal charges were ever filed. Nevertheless, upon

information and belief, Defendant Allred arranged to have a false article published in the LA Times. Self-appointed ambassador for 'wronged men' of #MeToo Alki David faces criminal complaint - Los Angeles Times (latimes.com)

Indeed, no criminal charges have ever been filed against Plaintiff David in any jurisdiction. **Other than the St. Kitts thing.**

Extortion

Title 18 U.S.C. Section 875(d) also criminalizes the conduct engaged in by Defendants Girardi, Allred, Bloom and their employees and agents. That statute provides as follows:

> **Whoever, with the intent to extort from any person, firm . . . or corporation, any money or other thing of value, transmits in interstate . . . commerce any communication containing any threat to injure the property or reputation of the addressee or of another . . . or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned or imprisoned not more than two years, or both.**

Defendants Girardi, Allred and Bloom made threats intended to cause economic harm to Plaintiff David and to the Entity Plaintiffs and were intended to extort settlements. The threats were intended to cause reputational harm to Plaintiff David - those threats were wrongful because Defendants Girardi, Allred and Bloom used the threats and maligned Plaintiff David's reputation to try to obtain property to which they were not entitled.

Defendants Girardi, Allred and Bloom are guilty of

extortion because they sought money or property to which they did not have, and could not reasonably believe they had, a claim or right. Plaintiff Alki, accompanied by his then attorney Barry Rothman went to the DA and reported Elizabeth Taylor and Mahim Kahn for trying to extort me by demanding $ 3.5 Million dollars

Plaintiff David and the Entity Plaintiffs suffered damages and incurred substantial losses as a result of Defendants Girardi, Allred, and Bloom's implementation and continuation of the extortionate claims.

WHEREFORE, Plaintiff David and the Entity Plaintiffs pray that judgment be entered in their favor and against Defendants as follows.

Plaintiffs have sustained damages in an amount to be determined at trial, including loss of prospective business relations, the cessation of ongoing business relations, **CAN ALKI CLAIM (AND PROVE) THE SEC SETTLEMENT OF 100 k is directly attributable to Defendants' actions?** https://sec.report/CIK/0001656589

IPO's interfered with - **IPO's both stalled BOTH Hologram USA and FOTV Inc., a Delaware and current Public offerings on the NASDAQ marketplaces.** International Damage in an amount of at least $600,000.

Note: Alki states that he spent more than $100 million of his own money and reinvested many millions more from revenues in the companies - The audits of the IPO should help to prove those damages.

<u>As to the First Cause of Action</u>

As to the Second Cause of Action

As to the Third Cause of Action

As to the Fourth Cause of Action

As to the Fifth Cause of Action

Emotional health damages:
https://www.courthousenews.com/coke-bottling-heirs-mental-health-in-downward-spiral-lawyer-says

Pursuant to 18 U.S.C. Section 1964(c), Plaintiffs respectfully request their compensatory damages at the statutory rate of ten percent. Additionally pursuant to RICO, plaintiffs respectfully request an award treble the damages that Plaintiffs have sustained and the costs of the suit, including reasonable attorneys' fees.

Specifically, the Attorney Defendants filed unethical, spurious lawsuits against Plaintiff David without investigating the merits of those actions, unethically coaching their clients and witnesses about what to say, only to then often dismiss some of those complaints years later when trial proceedings were forthcoming. Further, the Defendant Attorneys conspired to tamper with witnesses and to have witnesses collude against Defendant David and the Entity Plaintiffs by sharing the actions against Plaintiffs David and the Plaintiff Attorneys. Defendant Allred kept Defendant Mahim Kahn and Defendant Lauren Reeves as clients, but sent Defendant Elizabeth Taylor to Defendant Bloom, her

daughter. After Defendants Reeves, Taylor and Jones conspired to sue Plaintiff David and the Entity Plaintiffs, Subsequently, Defendant Bloom was retained by Defendant Chastity Jones, all with an effort to extort money from Plaintiff David and the Plaintiff Entities.

In October, 2019, Judge Ongkeko of the Los Angeles Superior Court admonished Defendant Bloom for significantly overstating her already very expensive law firm bills submitted to the Judge when Jones won a compensatory award against Plaintiff David. Tellingly, the Judge said, "If I were a Bloom client - one that was actually paying out of pocket instead of these sad ambulance chasing contingency cases - I'd be very careful to go over the firm's bills before I paid anything," Judge Ongkeko said. Such over-billing and seeking to bilk Plaintiff David is just one of innumerable events demonstrating that Defendant Bloom extorted money from Plaintiff David and the Entity Plaintiffs.

Defendant Allred wrongfully sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys, in Switzerland in *Mahim Kahn v. Alki David, et. al*, in violation of Swiss law. The Swiss courts rejected those efforts as appellate proceedings are ongoing in that case, causing Plaintiff David extreme expense and further damaging his

reputation as such filings are public record.

Further, in *Lauren Reeves v. Alki David, et. al,* Defendant Allred again sought to enforce a judgment against Plaintiff David *and his family*, none of whom were parties to any relevant litigation filed by Defendant Attorneys.

In response, Plaintiff David filed criminal proceedings in Switzerland against Defendant Allred - append. Upon information and belief, the Swiss Court will impose???? can Swiss Counsel provide proper language summarizing their country's laws.

Defendant Allred's corrupt, wilful and intentional actions, constituting criminal acts under relevant Swiss law, were committed under the auspices of an otherwise legitimate enterprise, Allred, Maroko & Goldberg.

Upon information and belief, Defendant Oren Warshavsky is a resident of New York;

Upon information and belief, Defendant Marc Gillieron is a resident of Switzerland

Upon information and belief, Defendant Emilie Theintz is a resident of Switzerland;

Chabrier Avocats, SA, is a law firm based in Geneva

Switzerland.

The Attorney Defendants' conspiring to extort and extorting money from Plaintiff David and the Attorney Defendants, and the Attorney Defendants tampering with witnesses, were actions committed under the auspices of otherwise legitimate enterprises as follows: Allred, Maroko & Goldberg, The Law Offices of Lisa Bloom; Girardi Keese; Dordick Law Corporation; Chora, Young & Manasserian and The Law Offices of Ebby S. Bakhtiar.

Accordingly, Plaintiff David and the Entity Defendants sue all Attorney Defendants for injuries to Plaintiff David's and the Entity Plaintiffs' businesses and properties directly and proximately caused by reason of the Attorney Defendants' extortion, witness tampering, mail fraud and bribery, all of which constitute predicate claims pursuant to RICO.

Plaintiff David and the Plaintiff Entities have incurred unnecessary, onerous, and undue expenses, both in legal and expert costs, but also in lost profits and opportunities. Their actions also seriously damaged Plaintiff David's reputations.

Plaintiffs demand a jury trial.

INSERT signature page
INSERT certificate of service

Comprehensive Report

GLORIA RACHEL ALLRED

- **26500 LATIGO SHORE DR, MALIBU, CA 90265-4500**
- **(LOS ANGELES COUNTY)** (12/30/2010 to 02/08/2022)
- **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217**
- **(LOS ANGELES COUNTY)** (06/01/1995 to 02/02/2022)

Comprehensive Report
Date: 02/08/2022

Reference ID: **NONE**

Subject Information

(Best Information for Subject)

Name: GLORIA RACHEL ALLRED (05/22/1990 to 12/18/2021)
Name: GLORIA TE ALLRED (09/28/2017)
Name: GLORIA BLOOM (05/22/1990 to 10/02/2015)
Date of Birth: **07/03/1941**, Born **80** years ago
Gender: **Female**
SSN: **160-32-[redacted]**
issued in **PENNSYLVANIA** between **1956-1958**

Other Individuals Observed with shared SSN:
MOROKO ALLRED **160-32-[redacted]**
07/03/1941 (80)

Wikipedia Page
http://en.wikipedia.org/wiki/Gloria_Allred

Report Legend
D - Deceased Person
- View Address Map
- View Social Network(s)

Relatives
S > - 1st Degree of Separation
S >> - 2nd Degree of Separation
S >>> - 3rd Degree of Separation

Possible Phones Associated with Subject
(310) 457-7318 (PT) (LandLine) (100%)
(323) 302-4773 (PT) (LandLine) (100%)
(310) 459-0230 (PT) (LandLine) (88%)

(323) 653-6530 (PT) (LandLine) (86%)
(310) 459-0155 (PT) (LandLine) (66%)
(310) 573-0373 (PT) (LandLine) (66%)

(213) 653-6530

- **Email Addresses Associated with Subject**
- gallred@amglaw.com (56%)

Potential Subject Photos (None Found)

Possible Criminal Records (None Found)

Possible Employers (9 Found)

- Business Name: **WOMEN S EQUAL RIGHTS LEGAL DEFENSE AND EDUCATION FUND (11/05/2014 to 04/28/2021)**
- Address: **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048 (LOS ANGELES COUNTY)**
- Business Name: **WOMENS MOVEMENT (10/01/2020)**
-
- Phone: **(323) 653-8087 (PT) WOMENS MOVEMENT**
- Address: **6300 WILSHIRE BLVD, LOS ANGELES, CA 90048 (LOS ANGELES COUNTY)**
- Business Name: **DONALLCO, INC (06/20/2011 to 07/24/2020)**
- Phone: **(818) 783-0873 (PT) DONALLCO, INC**
- Address: **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048 (LOS ANGELES COUNTY)**
- Business Name: **ALLRED GLORIA R ATTORNEY (1976 to 03/01/2020)**
- Phone: **(323) 653-6530 (PT) ALLRED GLORIA R ATTORNEY**
- Address: **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048 (LOS ANGELES COUNTY)**
- Business Name: **GLORIA R ALLRED (05/13/2011 to 04/12/2016)**
- Address: **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048 (LOS ANGELES COUNTY)**

- Business Name: **THE WOMEN S MOVEMENT (11/08/2008 to 09/15/2014)**
-
- Address: **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048 (LOS ANGELES COUNTY)**

- Business Name: **GLORIOUS PRODUCTIONS INC (09/21/2012)**
-
- Address: **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048 (LOS ANGELES COUNTY)**
  - Business Name: **26500 LATIGO SHORE LLC (03/23/2010)**
  - Address: **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048 (LOS ANGELES COUNTY)**
  - Business Name: **GLORIA ALLRED**
  -
  - Phone: **(323) 302-4773 (PT) GLORIA ALLRED**
  - Address: **6300 WILSHIRE BLVD, LOS ANGELES, CA 90048 (LOS ANGELES COUNTY)**

Address Summary (12 Found)

- **26500 LATIGO SHORE DR, MALIBU, CA 90265-4500 (LOS ANGELES COUNTY)** (12/30/2010 to 02/08/2022)
- **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)** (06/01/1995 to 02/02/2022)
- **6300 WILSHIRE BLVD, LOS ANGELES, CA 90048-5204 (LOS ANGELES COUNTY)** (01/16/1994 to 07/2019)
- **6300 WILSHIRE BLVD STE 150, LOS ANGELES, CA 90048-5211 (LOS ANGELES COUNTY)** (10/27/1992 to 12/19/2015)
- **17366 W SUNSET BLVD, PACIFIC PALISADES, CA 90272-4126 (LOS ANGELES COUNTY)** (10/07/1993 to 07/10/2019)
- **17366 W SUNSET BLVD PH 1, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)** (12/28/1992 to 08/13/2012)
- **17366 W SUNSET BLVD PH 3, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)** (10/19/1992 to 08/13/2012)
- **17366 W SUNSET BLVD PH 2, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)** (05/22/1990 to 08/13/2012)
- **203 W 81ST ST APT 4D, NEW YORK, NY 10024-5817 (NEW YORK COUNTY)** (09/04/2013 to 09/04/2013)
- **203 W 81ST ST APT 4C, NEW YORK, NY 10024-5817 (NEW YORK COUNTY)**
- **7230 COLDWATER CANYON AVE, NORTH HOLLYWOOD, CA 91605-4203 (LOS ANGELES COUNTY)** (03/19/2003 to 03/19/2003)
- **17366 W SUNSET BLVD APT 501, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)** (09/21/2018 to 09/21/2018)

Address Details

26500 LATIGO SHORE DR, MALIBU, CA 90265-4500 (LOS ANGELES COUNTY) (12/30/2010 to 02/08/2022)
Owner:
GLORIA ALLRED
Purchase Date: **06/08/2020**
Assessed Value: **$4,667,000**
Living Square Feet: **2,597**
Land Square Feet: **27,930**

6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY) (06/01/1995 to 02/02/2022)
Address contains: **69 suites**

Current Commercial Phones at address
(323) 655-0170 (PT) -
(323) 419-0408 (PT) - **123 BAIL BONDS**
(323) 417-6586 (PT) - **1A BAIL BONDS**
(323) 948-9467 (PT) - **24 HOURS BAIL BONDS**
(323) 951-1936 (PT) - **ABM PARKING SERVICES**
(323) 659-9930 (PT) - **ACTION HEALTH CARE**
(818) 907-6505 (PT) - **ACTION HEALTH CARE PERSONNEL SERVICES INC.**
(818) 907-6505 (PT) - **ACTION HEALTH CARE-REHAB SERVICES**
(310) 659-9930 (PT) - **ACTION HEALTHCARE**
(818) 907-6505 (PT) - **AIDES IN ACTION PERSONNEL SERVICES INC. ACTION HEALTH CARE PERSONNEL SERVICES INC.**
(323) 202-4848 (PT) - **ALAN TAYLOR COMMUNICATIONS**
(323) 651-3508 (PT) - **ALJ CAPITAL MANAGEMENT**
(323) 653-5581 (PT) - **ALTMAN LAW GROUP THE**
(323) 209-1058 (PT) - **BAIL BONDS**
(323) 795-2559 (PT) - **BAIL BONDS**
(323) 782-3000 (PT) - **BASHAR ALI**
(323) 951-0194 (PT) - **BENT CARYL & KROLL**
(323) 315-0510 (PT) - **BENT CARYL AND KROLL LLP**
(323) 951-0195 (PT) - **BEST PROFESSIONAL SERVICES INC.**
(323) 782-3011 (PT) - **BRAGG WAYNE**
(323) 658-1320 (PT) - **BRUCE WEBER & ASSOCIATES**
(323) 658-6366 (PT) - **CARE**
(323) 966-5858 (PT) - **CASTANON LAW GROUP**
(323) 655-2105 (PT) - **CASTELLANOS & ASSOCIATES APLC**
(323) 782-3109 (PT) - **CHERNIK HARVEY CLU**
(323) 782-6782 (PT) - **COHEN STIMPERT & FORD LAW OFFICE OF**
(323) 556-2300 (PT) - **COLONIAL FIRST CAPITAL CORP**
(323) 655-8491 (PT) - **COLONIAL FIRST CAPITAL CORP**
(323) 651-0902 (PT) - **CONSULATE GENERALS & CONSULATES**
(323) 651-0902 (PT) - **CONSULATE GENERALS & CONSULATES-SOUTH AFRICAN CONSULATE GENERAL**
(323) 655-3099 (PT) - **DAVID H. PIERCE AND ASSOCIATES PC**

(323) 525-3030 (PT) - **DIRECT SEARCH ALLIANCE**
(323) 330-6300 (PT) - **FAGEN FRIEDMAN FULLFROST LLP**
(323) 866-0830 (PT) - **FISHMAN MARTIN & ASSOCIATES**
(323) 653-4514 (PT) - **GARDNER DAVID LAW OFFICES OF**
(323) 202-4200 (PT) - **GETTY IMAGES LOS ANGELES**
(323) 936-5140 (PT) - **GLOBAL LASER VISION**
(323) 653-5930 (PT) - **GLOBAL LASER VISIONS**
(323) 653-7743 (PT) - **GLOBAL LASER VISIONS**
(323) 653-6530 (PT) - **GOLDBERG NATHAN ATTY**
(323) 653-6530 (PT) - **GRAF RUTH E ATTY**
(323) 852-6135 (PT) - **GREEN ADAM ATTORNEY AT LAW**
(323) 852-6135 (PT) - **GREEN ADAM ATTY**
(323) 852-6135 (PT) - **GREEN ADAM LAW OFFICE OF**
(323) 202-4601 (PT) - **GROUP M**
(323) 651-2843 (PT) - **H & R BLOCK PREMIUM**
(323) 651-4163 (PT) - **H & R BLOCK PREMIUM**
(323) 866-2555 (PT) - **HANGER PROSTHETICS AND ORTHOTICS**
(323) 655-1040 (PT) - **HARLAN LEVINSON CPA**
(323) 936-5561 (PT) - **I. E. SINGAPORE**
(323) 655-6031 (PT) - **IDOMENEO ENTERPRISES INC.**
(323) 866-0833 (PT) - **JSF FINANCIAL**
(323) 852-6135 (PT) - **LAW OFFICES OF ADAM GREEN**
(323) 947-2224 (PT) - **LAW OFFICES OF DANIEL A. GIBALEVICH**
(323) 930-2020 (PT) - **LAW OFFICES OF DANIEL GIBALEVICH**
(323) 653-1600 (PT) - **LAW OFFICES OF KOROL & VELEN**
(323) 456-0349 (PT) - **LAW OFFICES OF LUDLOW**
(323) 653-6530 (PT) - **LEAL DOLORES Y ATTY**
(323) 655-5096 (PT) - **LEGACY PARTNERS II**
(323) 456-2040 (PT) - **LEVINSON HARLAN CPA**
(323) 782-3842 (PT) - **LILY'S SNACKS & GIFTS**
(323) 704-1209 (PT) - **LOS ANGELES BAIL BONDS**
(323) 364-0238 (PT) - **LOS ANGELES COUNTY BAIL BONDS**
(323) 965-3400 (PT) - **LUCKY MAGAZINE**
(323) 782-0818 (PT) - **MANELA AND COMPANY**
(323) 782-1785 (PT) - **MANELA AND COMPANY**
(323) 653-6530 (PT) - **MAROKO MICHAEL ATTY**
(323) 653-6530 (PT) - **MOCHKATEL RENEE ATTY**
(323) 782-3163 (PT) - **MORGAN KERSTIN,**
(323) 782-3140 (PT) - **NATHAN FRANK & ELINOR**
(323) 782-3000 (PT) - **NEW YORK LIFE INSURANCE COMPANY**
(323) 653-6530 (PT) - **OLMOS ROBERT TOMAS ATTY**
(323) 658-4200 (PT) - **ROCKEFELLER PHILANTHROPY ADVIS**
(323) 782-1083 (PT) - **SJS COUNSEL**
(323) 653-6530 (PT) - **SOMERS MARGERY ATTY**
(323) 651-0902 (PT) - **SOUTH AFRICAN CONSULATE GENERAL**
(323) 655-8832 (PT) - **TURKISH CONSULATE GENL.**
(323) 762-1600 (PT) - **URGE PUBLIC RELATIONS**
(323) 653-6530 (PT) - **WEISS JODY ATTY**
(323) 653-6530 (PT) - **WEST JOHN S ATTY**

(323) 966-5800 (PT) - **WILSHIRE WELLNESS**
(323) 653-8087 (PT) - **WOMEN'S EQUAL RIGHTS LEGAL**
Subject's Phones
(323) 302-4773 (PT) - **ALLRED GLORIA ATTORNEY**
(323) 653-6530 (PT) - **ALLRED MAROKO & GOLDBERG ATTYS**
(323) 653-6530 (PT) - **ALLRED MAROKO GOLDBERG & RIBAKOFF ATTY**
(323) 653-6530 (PT) - **BLOOM LISA ATTY**

- Owner:
- U S REIF SIC 6300 WILSHIRE LLC
- Purchase Date: **05/21/2015**
- Purchase Price: **$151,000,000**
- Assessed Value: **$164,129,513**
- Land Square Feet: **69,331**

Cities History (5 Found)

LOS ANGELES, CA (LOS ANGELES COUNTY) (10/27/1992 to 02/02/2022)
MALIBU, CA (LOS ANGELES COUNTY) (12/30/2010 to 02/08/2022)
PACIFIC PALISADES, CA (LOS ANGELES COUNTY) (05/22/1990 to 07/10/2019)
NEW YORK, NY (NEW YORK COUNTY) (09/04/2013 to 09/04/2013)
NORTH HOLLYWOOD, CA (LOS ANGELES COUNTY) (03/19/2003 to 03/19/2003)

Counties History (2 Found)

LOS ANGELES, CA (05/22/1990 to 02/08/2022)
NEW YORK, NY (09/04/2013 to 09/04/2013)

Driver's License Information (1 Found)

GLORIA ALLRED
25500 LATIGO SHORE DR, MALIBU, CA 90265 (LOS ANGELES COUNTY)
DL#: S0461764
DL State: **CA**
Reported Date: **05/08/2020**
Date of Birth: **07/03/1941**, Born **80** years ago

Professional Affiliations (1 Found)

Specialty: **FAMILY LAW,CIVIL RIGHTS,WRONGFUL TERMINATION,GENERAL PRACTICE,EMPLOYMENT LAW**
Education:

LOYOLA MARYMOUNT UNIVERSITY, J.D., UNIVERSITY OF PENNSYLVANIA, B.A.

Professional Licenses

GLORIA RACHEL ALLRED
DOB: **07/1941**
 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
Phone: (323) 653-6530
License Type: **LAWYER**
License State: **DC**
License Status: **ACTIVE**
Issue Date: **02/04/2013**
Job Functions: **LAWYER**

GLORIA RACHEL ALLRED
DOB: **07/1941**
 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
Phone: (323) 653-6530
License Type: **LAWYER**
License Number: **65033**
License State: **CA**
License Status: **ACTIVE**
Issue Date: **12/18/1975**
Job Functions: **LAWYER**

GLORIA R ALLRED
 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
Phone: (323) 653-6530
Fax: **3236531660**
Business Name: **ALLRED MAROKO & GOLDBERG**
License Type: **ATTORNEY**
License State: **CA**
Issue Date: **1975**
Job Functions: **PARTNER**
Specialties: **CIVIL PRACTICE, CIVIL RIGHTS, FAMILY LAW, GENERAL PRACTICE, LABOR AND EMPLOYMENT**

Bankruptcy Records (None Found)

Liens (None Found)

Judgments (1 Found)

GLORIA R ALLRED
Address: **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)**
Filing Type: **SMALL CLAIMS JUDGMENT**
Plaintiff: **MARY R KOOGLER**
Court Case Number: **00M02605**
Total Judgment Amount: **$1,758**
Court: **LOS ANGELES MUNICIPAL - LA COUNTY (CALOSM1)**
Court Address: **110 N GRAND AVE., LOS ANGELES, CA 90012 (LOS ANGELES COUNTY)**
Court Phone: **(213) 974-6135**
Filing Date: **03/10/2000**

Current Property Deeds (6 Found)

Purchase Date: 09/04/2008 - Sold Date: 08/08/2012

- 26500 LATIGO SHORE DR, MALIBU, CA 90265-4500 (LOS ANGELES COUNTY)
- APN: **4460-019-150**
- APN Sequence Number: **001**
- Date Subject First Seen as Owner: **09/04/2008**
- Date Subject Last Seen as Owner: **2021**
- Subdivision Name: **44383**
- Legal Description: **TR=44383 LOT 1 CONDO UNIT 5**
- Building Square Feet: **2,597**
- Living Square Feet: **2,597**
- Land Square Feet: **27,930**
- Year Built: **1990**
  - Latest Tax Roll/Assessment Information
  - Tax Year: **2020**
  - Tax Amount: **$54,771.17**
  - Assessed Year: **2021**
  - Assessed Value: **$4,667,000**
  - Sale Date: **06/08/2020**
  - Sale Amount: **$5,670,500**
  - Document Number: **1854437**
  - Total Value: **$4,667,000**
  - Land Value: **$3,679,000**
  - Improvement Value: **$988,000**
  - Bedrooms: **2**
  - Baths: **4**

Most Current Ownership Information - 06/08/2020

- Owner: **GLORIA ALLRED**
- Mailing Address: 26500 LATIGO SHORE DR, MALIBU, CA 90265-4500 (LOS ANGELES COUNTY)
- 26500 LATIGO SHORE DR, MALIBU, CA 90265-4500 (LOS ANGELES COUNTY)
- Sale Date: **06/08/2020**
- Absentee Indicator: **Situs Address Taken From Sales Transaction - Determined Owner Occupied**
- Deed Sec Cat: **Residential (Modeled)**
- Universal Land Use: **Condominium**
- Property Indicator: **Condominium (Residential)**
- Residential Model Indicator: **Based On Zip Code and Value Property is Residential**
- Mortgage
- Lender: **QUICKEN LOANS INC QUICKEN LOANS INC**
- Mortgage Amount: **$1,999,999**
- Mortgage Interest Rate: **2.6000%**
- Mortgage Loan Type: **Conventional**
- Mortgage Deed Type: **Deed of Trust**
- Mortgage Term: **30 Years**
- Mortgage Date: **06/08/2020**
- Mortgage Due Date: **07/01/2050**
- Mtg Sec Cat: **CNV, Adjustable, Refinance, Non Conforming**
- Mortgage Interest Rate Type: **Adjustable**
- Refi Flag: **Loan to Value is More Than 50%**
- Mortgage
- Lender: **QUICKEN LNS INC QUICKEN LNS INC**
- Mortgage Amount: **$1,999,999**
- Mortgage Interest Rate: **2.6000%**
- Mortgage Loan Type: **Conventional**
- Mortgage Deed Type: **Deed of Trust**
- Mortgage Term: **30 Years**
- Mortgage Date: **06/08/2020**
- Mortgage Due Date: **07/01/2050**
- Mtg Sec Cat: **CNV, Adjustable, Refinance, Non Conforming**
- Mortgage Interest Rate Type: **Adjustable**
- Refi Flag: **Loan to Value is More Than 50%**

Previous Ownership Information - 05/20/2016

- Owner: **ALLRED LIVING TRUST**
- Mailing Address: 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- Seller: **26500 LATIGO SHORE LLC**

Purchase Date: N/A - Sold Date: 08/08/2012

- 17366 W SUNSET BLVD PH 1, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)
- APN: **4415-018-073**
- APN Sequence Number: **001**
- Date Subject Last Seen as Owner: **2021**
- Subdivision Name: **32668**
- Legal Description: **TR=32668 CONDOMINIUM UNIT 53**
- Building Square Feet: **2,257**
- Living Square Feet: **2,257**
- Land Square Feet: **203,897**
- Year Built: **1963**
  - Latest Tax Roll/Assessment Information
  - Tax Year: **2020**
  - Tax Amount: **$9,459.44**
  - Assessed Year: **2021**
  - Assessed Value: **$779,780**
  - Sale Date: **08/08/2012**
  - Sale Amount: **$427,000**
  - Document Number: **350020**
  - Total Value: **$779,780**
  - Land Value: **$382,808**
  - Improvement Value: **$396,972**
  - Bedrooms: **3**
  - Baths: **3**

Most Current Ownership Information - 08/08/2012

- Owner: **ALLRED LIVING TRUST**
- Mailing Address: 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- Seller: **GLORIA ALLRED**
- 17366 W SUNSET BLVD PH 1, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)
- Owner Ownership Rights: **Living Trust**
- Business Name: **ALLRED LIVING TRUST**
- Sale Date: **08/08/2012**
- Absentee Indicator: **Situs Address Taken From Sales Transaction - Determined Absentee Owner**
- Deed Sec Cat: **Interfamily Transfer, Resale, Residential (Modeled)**
- Universal Land Use: **Condominium**
- Property Indicator: **Condominium (Residential)**
- Inter Family: **Yes**
- Resale New Construction: **Resale**
- Residential Model Indicator: **Based On Zip Code and Value Property is Residential**
- **Mortgage Information not available**

Previous Ownership Information

- Owner: **GLORIA R ALLRED**
- Mailing Address: 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- Seller: **EQUITY ASSOCIATES**
- 17366 W SUNSET BLVD PH 1, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)
- Owner Relationship Type: **Unmarried Woman**
- Sale Code: **Full Value**
- Sale Amount: **$427,000**
- Absentee Indicator: **Situs Address Taken From Sales Transaction - Determined Owner Occupied**
- Deed Sec Cat: **Residential (Modeled)**
- Universal Land Use: **Condominium**
- Property Indicator: **Condominium (Residential)**
- Residential Model Indicator: **Based On Zip Code and Value Property is Residential**
- Mortgage
- Lender: **MANHATTAN WEST FNDG**
- Mortgage Amount: **$200,000**
- Mortgage Loan Type: **Conventional**
- Mortgage Deed Type: **Deed of Trust**
- Mortgage Date: **09/29/1993**
- Mtg Sec Cat: **CNV, Fixed, Refinance, Conforming**
- Refi Flag: **Loan to Value is More Than 50%**
- Mortgage
- Lender: **MANHATTAN WEST FNDG**
- Mortgage Amount: **$202,000**
- Mortgage Loan Type: **Conventional**
- Mortgage Deed Type: **Deed of Trust**
- Mortgage Date: **03/22/1993**
- Mtg Sec Cat: **CNV, Fixed, Refinance, Conforming**
- Refi Flag: **Loan to Value is More Than 50%**
- Mortgage
- Lender: **WESAV MTG CORP**
- Mortgage Amount: **$202,300**
- Mortgage Loan Type: **Conventional**
- Mortgage Deed Type: **Deed of Trust**
- Mortgage Date: **12/28/1992**
- Mtg Sec Cat: **CNV, Fixed, Refinance, Conforming**
- Refi Flag: **Loan to Value is More Than 50%**

Purchase Date: 03/1990 - Sold Date: 08/08/2012

17366 W SUNSET BLVD,PH 3 PACIFIC PALISADES, CA 90272-4126 (LOS ANGELES COUNTY)

- **Homestead**
- APN: **4415-018-074**
- APN Sequence Number: **001**
- Date Subject First Seen as Owner: **03/1990**
- Date Subject Last Seen as Owner: **2021**
- Subdivision Name: **32668**
- Legal Description: **TR=32668 CONDOMINIUM UNIT 54**
- Building Square Feet: **1,253**
- Living Square Feet: **1,253**
- Land Square Feet: **203,897**
- Year Built: **1963**
  - Latest Tax Roll/Assessment Information
  - Tax Year: **2020**
  - Tax Amount: **$9,139.33**
  - Assessed Year: **2021**
  - Assessed Value: **$764,840**
  - Sale Date: **08/08/2012**
  - Sale Amount: **$450,000**
  - Document Number: **613037**
  - Total Value: **$764,840**
  - Land Value: **$509,900**
  - Improvement Value: **$254,940**
  - Bedrooms: **2**
  - Baths: **2**

Most Current Ownership Information - 08/08/2012

- Owner: **ALLRED LIVING TRUST**
- Mailing Address: 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- Seller: **GLORIA ALLRED**

Previous Ownership Information - 03/1990

- Owner: **GLORIA ALLRED**
- Mailing Address: 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- Seller: **MARY T REINHARDT**

Purchase Date: 09/20/2018

- 17366 W SUNSET BLVD, PACIFIC PALISADES, CA 90272-4126 (LOS ANGELES COUNTY)
- 17366 W SUNSET BLVD APT 504, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)

- 17366 W SUNSET BLVD # 55, PACIFIC PALISADES, CA 90272-4126 (LOS ANGELES COUNTY)
- 17366 W SUNSET BLVD PH 4, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)
- APN: **4415-018-075**
- APN Sequence Number: **001**
- Date Subject First Seen as Owner: **09/20/2018**
- Date Subject Last Seen as Owner: **2021**
- Subdivision Name: **32668**
- Legal Description: **TR=32668 CONDOMINIUM UNIT 55**
- Building Square Feet: **2,071** Living Square Feet: **2,071**
- Land Square Feet: **203,897** Year Built: **1963**
  - Latest Tax Roll/Assessment Information
  - Tax Year: **2020**
  - Tax Amount: **$27,117.06**
  - Assessed Year: **2021**
  - Assessed Value: **$2,267,247**
  - Sale Date: **09/20/2018**
  - Sale Amount: **$2,200,000**
  - Document Number: **1060326**
  - Total Value: **$2,267,247**
  - Land Value: **$680,174**
  - Improvement Value: **$1,587,073**
  - Bedrooms: **4** Baths: **4**

Most Current Ownership Information - 09/20/2018

- Owner: **ALLRED LIVING TRUST**
- Mailing Address: 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- Seller: **CHRISTIAN TRUST HERRMANN JR**
- **17366 W SUNSET BLVD APT 504, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)**
- 17366 W SUNSET BLVD, PACIFIC PALISADES, CA 90272-4126 (LOS ANGELES COUNTY)
- Owner Ownership Rights: **Living Trust**
- Business Name: **ALLRED LIVING TRUST**
- Sale Date: **09/20/2018**
- Sale Code: **Sale Price (Full)**
- Sale Amount: **$2,200,000**
- Absentee Indicator: **Situs Address Taken From Sales Transaction - Determined Absentee Owner**
- Deed Sec Cat: **Resale, Mortgaged Purchase, Residential (Modeled)**
- Universal Land Use: **Condominium**
- Property Indicator: **Condominium (Residential)**
- Resale New Construction: **Resale**
- Residential Model Indicator: **Based On Zip Code and Value Property is Residential**

Previous Ownership Information - 09/20/2018

- Owner: **GLORIA ALLRED**
- Mailing Address: 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- Seller: **CHRISTIAN TRUST HERRMANN JR**

Purchase Date: N/A - Sold Date: 08/08/2012

- 17366 W SUNSET BLVD, PACIFIC PALISADES, CA 90272-4126 (LOS ANGELES COUNTY)
- 17366 W SUNSET BLVD PH 2, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)
- APN: **4415-018-076**
- APN Sequence Number: **001**
- Date Subject Last Seen as Owner: **2021**
- Subdivision Name: **32668**
- Legal Description: **TR=32668 CONDOMINIUM UNIT 56**
- Building Square Feet: **1,261**
- Living Square Feet: **1,261**
- Land Square Feet: **203,897**
- Year Built: **1963**
  - Latest Tax Roll/Assessment Information
  - Tax Year: **2020**
  - Tax Amount: **$4,530.52**
  - Assessed Year: **2021**
  - Assessed Value: **$369,723**
  - Sale Date: **08/08/2012**
  - Sale Amount: **$229,000**
  - Document Number: **350022**
  - Total Value: **$369,723**
  - Land Value: **$147,883**
  - Improvement Value: **$221,840**
  - Bedrooms: **2**
  - Baths: **2**

Most Current Ownership Information - 08/08/2012

- Owner: **ALLRED LIVING TRUST**
- Mailing Address: 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- Seller: **GLORIA ALLRED**
- 17366 W SUNSET BLVD PH 2, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)

- Owner Ownership Rights: **Living Trust**
- Business Name: **ALLRED LIVING TRUST**
- Sale Date: **08/08/2012**
- Absentee Indicator: **Situs Address Taken From Sales Transaction - Determined Absentee Owner**
- Deed Sec Cat: **Interfamily Transfer, Resale, Residential (Modeled)**
- Universal Land Use: **Condominium**
- Property Indicator: **Condominium (Residential)**
- Inter Family: **Yes**
- Resale New Construction: **Resale**
- Residential Model Indicator: **Based On Zip Code and Value Property is Residential**

Previous Ownership Information

- Owner: **GLORIA R ALLRED**
- Mailing Address: 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- Seller: **EQUITY ASSOCIATES**
- 17366 W SUNSET BLVD, PACIFIC PALISADES, CA 90272-4126 (LOS ANGELES COUNTY)
- 17366 W SUNSET BLVD PH 2, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)
- Owner Relationship Type: **Unmarried Woman**
- Sale Code: **Full Value**
- Sale Amount: **$229,000**
- Absentee Indicator: **Situs Address Taken From Sales Transaction - Determined Owner Occupied**
- Deed Sec Cat: **Residential (Modeled)**
- Universal Land Use: **Condominium**
- Property Indicator: **Condominium (Residential)**
- Residential Model Indicator: **Based On Zip Code and Value Property is Residential**
- Mortgage
- Lender: **MANHATTAN WEST FNDG**
- Mortgage Amount: **$200,000**
- Mortgage Loan Type: **Conventional**
- Mortgage Deed Type: **Deed of Trust**
- Mortgage Date: **09/29/1993**
- Mtg Sec Cat: **CNV, Fixed, Refinance, Conforming**
- Refi Flag: **Loan to Value is More Than 50%**

- Mortgage
- Lender: **MANHATTAN WEST FNDG**
- Mortgage Amount: **$202,000**
- Mortgage Loan Type: **Conventional**
- Mortgage Deed Type: **Deed of Trust**
- Mortgage Date: **03/22/1993**
- Mtg Sec Cat: **CNV, Fixed, Refinance, Conforming**

- Refi Flag: **Loan to Value is More Than 50%**
- Mortgage
- Lender: **WESAV MTG CORP**
- Mortgage Amount: **$202,300**
- Mortgage Loan Type: **Conventional**
- Mortgage Deed Type: **Deed of Trust**
- Mortgage Date: **12/28/1992**
- Mtg Sec Cat: **CNV, Fixed, Refinance, Conforming**
- Refi Flag: **Loan to Value is More Than 50%**

Previous Ownership Information

- Owner: **ALLRED LIVING TRUST**
- Mailing Address: 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- Seller: **EQUITY ASSOCIATES**
- 17366 W SUNSET BLVD PH 2, PACIFIC PALISADES, CA 90272-4125 (LOS ANGELES COUNTY)
- Owner Ownership Rights: **Living Trust**
- Business Name: **ALLRED LIVING TRUST**
- Sale Code: **Full Value**
- Sale Amount: **$229,000**
- Absentee Indicator: **Situs From Sale (Absentee)**
- Universal Land Use: **Condominium**
- Property Indicator: **Condominium**
- Residential Model Indicator: **Property is Residential**
- **Mortgage Information not available**

Previous Ownership Information

- Owner: **GLORIA ALLRED**
- Mailing Address: 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- Seller: **EQUITY ASSOCIATES**
- 17366 W SUNSET BLVD, PACIFIC PALISADES, CA 90272-4126 (LOS ANGELES COUNTY)
- Owner Ownership Rights: **Trust**
- Sale Code: **Full Value**
- Sale Amount: **$229,000**
- Absentee Indicator: **Absentee(Mail And Situs Not =)**
- Universal Land Use: **Condominium**
- Property Indicator: **Condominium**
- Residential Model Indicator: **Property is Residential**

Purchase Date: 12/28/2007 - Sold Date: 07/06/2013

203 W 81ST ST APT 4C, NEW YORK, NY 10024-5817 (NEW YORK COUNTY)

- APN: **1229-1021**
- APN Sequence Number: **001**
- Account Number: **20477022000**
- Date Subject First Seen as Owner: **12/28/2007**
- Date Subject Last Seen as Owner: **2021**
- Year Built: **1920**
  - Latest Tax Roll/Assessment Information
  - Tax Year: **2020**
  - Tax Amount: **$21,249.86**
  - Assessed Year: **2021**
  - Assessed Value: **$166,432**
  - Sale Date: **07/06/2013**
  - Sale Amount: **$1,750,000**
  - Document Number: **10286**
  - Total Value: **$166,432**
  - Land Value: **$34,592**
  - Improvement Value: **$131,840**

Most Current Ownership Information - 07/06/2013

- Owner: **ALLRED LIVING TRUST**
- Mailing Address: 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- Seller: **GLORIA ALLRED**
- 203 W 81ST ST APT 4C, NEW YORK, NY 10024-5817 (NEW YORK COUNTY)
- Owner Ownership Rights: **Living Trust**
- Business Name: **ALLRED LIVING TRUST**
- Sale Date: **07/06/2013**
- Absentee Indicator: **Situs Address Taken From Sales Transaction - Determined Absentee Owner**
- Deed Sec Cat: **Interfamily Transfer, Resale, Residential (Modeled)**
- Universal Land Use: **Condominium**
- Property Indicator: **Condominium (Residential)**
- Inter Family: **Yes**
- Resale New Construction: **Resale**
- Residential Model Indicator: **Based On Zip Code and Value Property is Residential**
- **Mortgage Information not available**

Previous Ownership Information - 12/28/2007

- Owner: **GLORIA ALLRED**
- Mailing Address: 203 W 81ST ST APT 4C, NEW YORK, NY 10024-5817 (NEW YORK COUNTY)
- Seller: **SEYMOUR MICHAEL E & CHRISTINA F**
- 203 W 81ST ST APT 4C, NEW YORK, NY 10024-5817 (NEW YORK COUNTY)
- Sale Date: **12/28/2007**

Property Foreclosures (1 Found)

FIPS County: **037**
Deed Category: **Foreclosure**
Document Type: **Trustee Deed**
Recording Date: **02/16/1995**
Document Year: **1995**
Document Number: **000000266679**

Defendants
Name: **GLORIA ALLRED**

Plaintiffs: **ALFRED WILLIAM**
Address: 7230 COLDWATER CANYON AVE, NORTH HOLLYWOOD, CA 91605-4203 (LOS ANGELES COUNTY)
Mailing Address: 7230 COLDWATER CANYON AVE, NORTH HOLLYWOOD, CA 91605-4203 (LOS ANGELES COUNTY)
Sales Price: **$2,500,000**
Last Full Sale Transfer Date: **03/19/2003**
Parcel Number Id: **2324-005-036**
Transfer Value: **$2,106,020**
Mail Address Indicator: **Data Obtained From County Or Local Source**
Property Indicator: **00**
Living Area Square Feet: **35784**
Zoning Code: **LAM2**
Lot Size: **64312**
Year Built: **1977**
Current Land Value: **$1,349,631**
Current Improvement Value: **$1,012,222**
Lot: **COM**

Evictions (None Found)

Current Vehicle Information (None Found)

Global Watch Lists (None Found)

US Business Affiliations (7 Found)

- Business Details
- **ALLRED GLORIA R ATTORNEY (Primary)**
  - 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY) (12/01/2019 to 03/01/2020)
  - Current Phone at address (323) 653-6530 (PT)

- Business Details
- **ALLRED MAROKO & GOLDBERG (Primary)**
- **ALLRED, MAROKO & GOLDBERG (Primary)**
- Link Number: 400278915
  - 6300 WILSHIRE BLVD, LOS ANGELES, CA 90048-5204 (LOS ANGELES COUNTY) (1976 to 1976)
    - Current Phone at address
      - **(323) 653-6530 (PT)**
  - 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY) (1976 to 1976)
    - Current Phone at address
      - **(323) 653-6530 (PT)**

- Business Details
- **DONAHUE ENGINEERING, INC. (Former)**
- **DONALLCO, INC (Primary)**
- **DONALLCO, INCORPORATED (Primary)**
- Link Number: 48168510
  - 4925 VAN NOORD AVE, SHERMAN OAKS, CA 91423-2213 (LOS ANGELES COUNTY) (1953 to 07/24/2020)
    - Current Phone at address
      - **(818) 783-0873 (PT)**
  - 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY) (1953 to 07/24/2020)
    - Current Phone at address
      - **(818) 783-0873 (PT)**

- Business Details
- **GLORIA ALLRED (Primary)**
- Link Number: 384189910
  - 6300 WILSHIRE BLVD, LOS ANGELES, CA 90048-5204 (LOS ANGELES COUNTY) (2017)
    - Current Phone at address
      - **(323) 302-4773 (PT)**

- Business Details
- **GLORIOUS PRODUCTIONS INC (Primary)**
- **GLORIOUS PRODUCTIONS, INC. (Primary)**
- Link Number: 289723295
  - 6300 WILSHIRE BLVD, LOS ANGELES, CA 90048-5204 (LOS ANGELES COUNTY) (1993 to 09/21/2012)
  - 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY) (1993 to 09/21/2012)

- Business Details
- **WOMEN'S EQUAL RIGHTS LEGAL DEFENSE AND EDUCATION FUND (Primary)**
- Link Number: 347388905
  - 6300 WILSHIRE BLVD STE 150, LOS ANGELES, CA 90048-5211 (LOS ANGELES COUNTY) (1978 to 04/28/2021)
  - 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY) (1978 to 04/28/2021)

- Business Details
- **WOMENS MOVEMENT (Primary)**
  - 6300 WILSHIRE BLVD, LOS ANGELES, CA 90048-5204 (LOS ANGELES COUNTY) (10/01/2019 to 10/01/2020)
  - Current Phone at address
    - **(323) 653-8087 (PT)**

UCC Filings (None Found)

US Corporate Affiliations (5 Found)

- Incorporation State: **CA**
- **26500 LATIGO SHORE, LLC (Primary)**
- Address: **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)**
- Filing Number: **200828110158**
- Filing Office Link Number: 1807680030
- Corporation Type: **Corporation**
- Address Type: **Business**
- Registration Type: **Limited Liability Company**
- Verification Date: **07/26/2019**
- Filing Date: **10/06/2008**
- Date First Seen: **10/14/2008**
- Date Last Seen: **07/26/2019**
- Received Date: **07/29/2019**
- Misc Details: **LLC JURISDICTION: CA**
- Filing Office Name: **BUSINESS PROGRAMS DIVISION**
- Filing Office Address: **1500 11TH ST FL 3, SACRAMENTO, CA 95814-5701 (SACRAMENTO COUNTY)**
- File Date: **07/30/2019**
- Sec Status: **Cancelled**
- **Corporate Officers and Directors**
- **GLORIA ALLRED**, Title: **Other, MANAGER/MEMBER**
- 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- **MICHAEL MAROKO**, Title: **Registered Agent**

- 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)

- Incorporation State: **CA**
- **DONALLCO, INCORPORATED (Primary)**
- **DONAHUE ENGINEERING, INC. (Former)**
- Address: **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)**
- Filing Number: **C0248767**
- Link Number: 48168510
- Filing Office Link Number: 1807680030
- Corporation Type: **Profit**
- Address Type: **Mailing**
- Registration Type: **Corporation**
- Verification Date: **07/11/2020**
- Filing Date: **10/09/1950**
- Incorporation Date: **10/09/1950**
- Date First Seen: **10/19/2002**
- Date Last Seen: **07/24/2020**
- Franchise Tax Board Status: **Good Standing**
- Received Date: **07/15/2020**
- Filing Office Name: **BUSINESS PROGRAMS DIVISION**
- Filing Office Address: **1500 11TH ST FL 3, SACRAMENTO, CA 95814-5701 (SACRAMENTO COUNTY)**
- File Date: **07/25/2020**
- Sec Status: **Active**

- **Corporate Officers and Directors**
- **GLORIA ALLRED**, Title: **Chief Executive Officer**
- 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- **GLORIA ALLRED**, Title: **Registered Agent**
- 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- **Corporate Amendments**
- Filing Date: **12/24/2001**
- Reason: **Reinstated**
- Description: **SECRETARY OF STATE REVIVOR**

- Incorporation State: **CA**
- **THE WOMEN'S MOVEMENT (Primary)**
- Address: **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)**
- Filing Number: **C0877775**
- Filing Office Link Number: 1807680030
- Corporation Type: **Profit**
- Address Type: **Mailing**

- Registration Type: **Corporation**
- Verification Date: **09/30/2012**
- Filing Date: **11/15/1978**
- Incorporation Date: **11/15/1978**
- Date First Seen: **08/19/2002**
- Date Last Seen: **10/10/2012**
- Franchise Tax Board Status: **Good Standing**
- Received Date: **10/02/2012**
- Filing Office Name: **BUSINESS PROGRAMS DIVISION**
- Filing Office Address: **1500 11TH ST FL 3, SACRAMENTO, CA 95814-5701 (SACRAMENTO COUNTY)**
- File Date: **10/11/2012**
- Sec Status: **Active**
- **Corporate Officers and Directors**
- **GLORIA ALLRED**, Title: **Chief Executive Officer**
- 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- **GLORIA ALLRED**, Title: **Registered Agent**
- 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)

- Incorporation State: **CA**
- **WOMEN'S EQUAL RIGHTS LEGAL DEFENSE AND EDUCATION FUND (Primary)**
- Address: **6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)**
- Filing Number: **C0876043**
- Link Number: 347388905
- Filing Office Link Number: 1807680030
- Corporation Type: **Non-Profit**
- Address Type: **Mailing**
- Registration Type: **Corporation**
- Verification Date: **04/24/2021**
- Filing Date: **10/23/1978**
- Incorporation Date: **10/23/1978**
- Date First Seen: **08/19/2002**
- Date Last Seen: **04/28/2021**
- Franchise Tax Board Status: **Good Standing**
- Received Date: **04/26/2021**
- Filing Office Name: **BUSINESS PROGRAMS DIVISION**
- Filing Office Address: **1500 11TH ST FL 3, SACRAMENTO, CA 95814-5701 (SACRAMENTO COUNTY)**
- File Date: **04/29/2021**
- Sec Status: **Active**
- **Corporate Officers and Directors**
- **GLORIA ALLRED**, Title: **Chief Executive Officer**

- 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)
- **GLORIA ALLRED**, Title: **Registered Agent**
- 6300 WILSHIRE BLVD STE 1500, LOS ANGELES, CA 90048-5217 (LOS ANGELES COUNTY)

Aircraft Records (None Found)

Pilot Licenses (None Found)

Voter Registrations

- Name: **GLORIA ALLRED**
- Address: **17366 W SUNSET BLVD, PACIFIC PALISADES, CA 90272 (LOS ANGELES COUNTY)**
- DOB: **07/03/1941** (80)
- Party: **Democrat**
- Gender: **Female**

Hunting Permits (None Found)

Weapon Permits (None Found)

Possible Relatives - Summary (5 Found)

- > LISA READ BLOOM 1961 Age: 60
- > WILLIAM RAYMOND ALLRED 1930 Age: 91
- > TERESA LYNN ALLRED 1952 Age: 69
- > MOROKO ALLRED 1941 Age: 80
- > MORRIS BLOOM 1901 Age: 120

Likely Associates - Summary (30 Found)

- NATHAN GOLDBERG 1946 Age: 75
- NATHAN GOLDBERG 1953 Age: 68
- MICHAEL TE MAROKO 1950 Age: 71
- ESTHER N FLEISCHMANN 1949 Age: 72
- JOHN STEVEN WEST 1957 Age: 64
- RENEE M MOCHKATEL 1957 Age: 64
- DOLORES YVONNE LEAL 1958 Age: 63
- MARY ANN GULUZZA 1945 Age: 76

- MARIA G DIAZ 1969 Age: 52
- CHRISTINA CHEUNG 1985 Age: 36
- ALEXANDER VANDYNE 1965 Age: 56
- HAYLEY T GOLDBERG 1962 Age: 59
- LISA R STRAX 1951 Age: 70
- NINA MARIE SHEFFIELD 1957 Age: 65
- ROBERT T OLMOS 1947 Age: 74
- ALMA OLIVERA 1964 Age: 57
- CAROLYN J FRANK 1930 Age: 91
- LATYNA FRANKLIN JONES 1968 Age: 53
- JAMES D WONG 1957 Age: 64
- MICHAEL CARLTON JAVELOS 1946 Age: 75
- D HELEN GOLDBERG 1910 Age: 111
- JACOB AARON GOLDBERG 1983 Age: 38
- MOLLY LEE WOOTTON 1967 Age: 54
- LOUISE C SWANSON 1936 Age: 85
- STACY R SPENCER 1974 Age: 47
- MARGERY NAN SOMERS 1948 Age: 73
- MICHELLE RENEE SIXKILLER 1984 Age: 37
- JENNIFER SCOBEY SHUEMAKER 1973 Age: 48
- STEVEN COLIN SHILL 1969 Age: 52
- ROZALIA ULIY RYBAKOVA 1945 Age: 76

Possible Associates - Summary (13 Found)

- PATRICIA ANN VINNECOUR 1945 Age: 77
- KEITH EDWARD VINNECOUR 1939 Age: 82
- ANTHONY RUDY RODARTE 1960 Age: 62
- DANIEL G MAMANE 1948 Age: 73
- CHARLES KEVIN VARNUM 1956 Age: 65
- SANDRA LD RADER 1939 Age: 82
- GEORGINA FRANCES LINDSEY 1960 Age: 61
- D GITA SIEGEL BRAUDE 1919 Age: 102
- MALKA M SUSSER 1938 Age: 83
- KEVIN BRUCE SKIDD 1973 Age: 48
- HEIDI ANN BUTLER 1982 Age: 39
- REBECCA L STONE 1981 Age: 40
- SETH J BERKOWITZ 1981 Age: 40

CASE NO. 11-80215

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IN RE RONALD GOTTSCHALK, ESQ.

ADMITTED TO THE BAR OF THE NINTH CIRCUIT FEBRUARY 23, 1979

Respondent.

MOTION FOR STAY OF PROCEEDINGS IN THIS CASE AND OTHER RELIEF PENDING THE RESOLUTION OF THE PARALLEL CRIMINAL CASE, IN WHICH RESPONDENT IS INNOCENT OF THE STATE BAR CHARGES, THE CALIFORNIA ATTORNEY GENERAL'S CHARGES, AND THE LOS ANGELES COUNTY DISTRICT ATTORNEY'S CHARGES; SUPPORTING DECLARATIONS OF RONALD GOTTSCHALK AND STANLEY AROUTY.

Ronald Gottschalk
1160 S. Golden West Ave. #3
Arcadia, CA 91007
Tel: (626) 755-0837
Fax: (866) 472-4560

INTRODUCTION

Respondent Ronald Gottschalk moves this Court for a stay of proceedings to March 18, 2017 and other relief, as more fully set forth herein, in this case pending the outcome of the parallel criminal case and the bankruptcy adversary case against the Estate of Taras Wybaczynsky, which have not been resolved and are continuing.

Respondent prevailed in the parallel criminal case hearing on December 8, 2016 in which the Criminal Court ruled that Respondent was not liable for any restitution and no probation was ordered. The Deputy District Attorney and the Deputy California Attorney General indicated that they would cause to be filed an appeal and a separate writ of the December 8, 2016 order to the California Court of Appeals and the Los Angeles Superior Court Appellate Division. In connection with the evidentiary hearing, Respondent provided the Criminal Court with the unanimous case authorities on which Respondent prevailed in the parallel California Attorney General's complaint that was dismissed by the California Attorney General on June 1, 2016 in Case No. BC 455975. The case was dismissed, inter alia, because Respondent had provided to the Deputy California Attorney General and the Los Angeles County District Attorney's Office the cited cases that were dispositive of the invalidity of the California State Bar charges against Respondent, including relating to the false and fraudulent claims of the California Attorney General. The California Supreme Court had issued two (2) unanimous opinions that support that Respondent could not be sued as a matter of law with respect to the complaint based on statutory authority and California Supreme Court decisions that barred such claims. Additionally, the California State Bar

ethics opinion and the opinions of numerous other bar associations, including the Los Angeles County Bar, agreed with the stated position of Respondent. The authors of the CEB book pertaining to medical liens also agreed with Respondent's legal position. Cases in other states agreed with Respondent's position. The California Attorney General's Office dismissed its case one (1) day before the Superior Court judge was to rule on Respondent's definitive demurrer and motion to strike as a matter of law. The California Deputy Attorney General and the Los Angeles County District Attorney, acting in concert with the California State Bar counsel, illegally sought restitution from Respondent even though no restitution was due as a matter of law based on the above referenced definitive case law, California Supreme Court decisions, and statutory authority all in favor of Respondent's position. Opposing counsel did not and could not dispute the existing California case and statutory law, which barred any such claims against Respondent as a matter of law. Respondent cited leading Ninth Circuit cases with respect to the duty of a prosecutor to seek out the truth and to dismiss a case when it is shown that there is no proper claim as a matter of law or fact. This principle of law equally applies to State Bar cases, civil cases, as well as criminal cases. Recently, such prosecutorial misconduct and vindictive and selective prosecution as occurred against Respondent was made a felony and further subject to severe California State Bar disciplinary action against such prosecutors.

Respondent is entitled to appointed criminal counsel in the likely event that the District Attorney's Office files such writ and separate appeal. In addition, Respondent is informed that Harris counsel paid for by the State of California is mandated for Respondent as it was previously ordered by the Presiding Judge of the Los Angeles Superior Court and by other

judges. See Exhibit 3 to the declaration of Respondent with respect to the appointment of Harris counsel. Respondent is further informed that Harris counsel would also apply to Respondent's cases pending in this Court, which may moot Respondent's request to appoint pro bono counsel at this time in connection with the two (2) related Ninth Circuit cases. Based on the above developments, Respondent was entitled to appointed counsel under the Sixth Amendment to the U.S. Constitution. The latest published case in connection therewith is *United States v. Yepiz*, 2016 Westlaw 7367827 (9th Cir. Dec. 20, 2016).

Respondent further incorporates in this motion all of his pleadings, briefs, motions, status reports, exhibits, and declarations and exhibits thereto filed in this Court, the District Court Case No. 2:11-mc-00284-ABC, the California State Bar Court, the California Supreme Court, and the U.S. Supreme Court, without limitation.

Respondent further incorporates in this motion reference to twenty-two (22) separate exhibits consisting of pleadings, briefs, and declarations et al. that were timely filed in the U.S. District Court case, but were subsequently spoliated and destroyed by the principal attorney to the Presiding Judge together with the two (2) letter briefs that are not yet on the docket. The documents were spoliated and destroyed before they were to be electronically posted by the District Court and to be reviewed by the Presiding Judge de novo in connection with her examination of the record. Those documents principally consist of Respondent's and his attorney's briefs, motions, declarations, and exhibits in the California State Bar Court, the California Supreme Court, including extensive motions and declarations of fault by Respondent's attorney of record and briefs in the U.S. Supreme Court arising from a void and fraudulent default and default judgment

against Respondent. This violated Respondent's constitutional rights in the California State Bar Court and in the pending Criminal Court case and further violated the mandated law pertaining to defaults in the State of California, and in particular the declarations of fault by counsel. The default procedure utilized by the California State Bar prosecutors against Respondent had been previously condemned by the California Supreme Court, as more fully set forth in the Colin Wong Memorandum and the position of the former Executive Director of the California State Bar, Joseph Dunn. These documents were among the twenty-two (22) exhibits that were intentionally spoliated and destroyed by the counsel for the Presiding Judge of the U.S. District Court who was then terminated, involuntarily dis-enrolled by the California State Bar, and has not practiced law since that time. The former Presiding Judge of the U.S. District Court left the court with the assistance of Thomas Girardi, Esq., her long time friend and associate, and became a judge of the California Appellate Court.

BACKGROUND OF THE PENDING CRIMINAL CASE

The criminal case, the California Attorney General's case, and the California State Bar case were instigated by the State Bar prosecutors and investigators in Respondent's cases who have been fired by the State Bar of California, with actual knowledge that the Respondent was innocent of the charges in the State Bar Court and the parallel charges they instigated with the California Attorney General's Office and the Los Angeles County District Attorney's Office in the Criminal Court. There is a line of cases in the California Supreme Court, including the case of *In re Strick* (1983) 34 Cal.3d 891 and its progenies, in which the State Bar disciplinary case should have been stayed in the State Bar Court and the State Civil Courts

pending the outcome of the parallel criminal case in which Respondent would have been exonerated of all of the fraudulent State Bar induced charges that were brought in concert with Thomas Girardi and the Law Firm of Girardi & Keese, who were co-counsel with Respondent in multiple cases. Further, the *In re Strick* case and its progenies indicate that the State Bar totally lacked jurisdiction to proceed with the disciplinary case and intentionally defaulted Respondent while the parallel criminal case that they instigated was being vigorously defended by Respondent and his then counsel. Respondent and his appointed Harris counsel filed in the State Bar Court an extensive answer and affirmative defenses and designated over two hundred (200) witnesses to testify at trial, which was approved by the State Bar Court judge for a ninety (90) day or more trial in the State Bar Court. Respondent designated and produced voluminous exhibits for trial, which showed that the charges against Respondent were false and fraudulent and that Respondent should prevail at trial. Respondent is innocent of all of the charges made against him by the State Bar prosecutor and investigators in the parallel State Bar case, California Attorney General's case, and the parallel criminal case. The California State Bar's prosecutors and investigators were fired by the State Bar for, inter alia, gross prosecutorial misconduct and breaches of fiduciary duty. Each of the parallel cases were instigated based upon gross prosecutorial and investigational misconduct, including, without limitation, violations of the Brady Discovery Rule and the requirement to turn over exculpatory evidence to Respondent and his then counsel, as required under the California State Bar Rules. The California Supreme Court ordered that the default procedure utilized by the State Bar prosecutors and the State Bar judge in the parallel State Bar case be revoked and such defaults are not

allowed under the State Bar rules and was never allowed in Respondent's case as a matter of constitutional law. See *In re Ruffalo*, 390 U.S. 544 (1968). See also *Selling v. Radford*, 243 U.S. 46, 51. See also the Colin Wong Memorandum, Docket Entry 6-8 of the declaration of Respondent.

As stated above, the criminal case has not been resolved and Respondent put the opposing counsel and the Criminal Court on notice that Respondent intends to go to trial, if necessary. The prosecutors and investigators further intentionally withheld from the civil and criminal judges that the alleged complainants were all deceased and therefore the complaint was subject to being dismissed, as the Criminal Court warned the prosecutors.

This Court has stayed this case for more than five (5) years based on mandated constitutional law that the parallel criminal proceedings are entitled to be resolved first, especially since Respondent and his attorneys submitted reports with respect to the progress in the Criminal Court and that the evidence adduced to date showed that Respondent was totally innocent and being framed in each of the cases brought by the California State Bar prosecutors, the California Attorney General's prosecutors, and the criminal prosecutors, acting in concert with one another. This Court, including Commissioner Shaw and Edward Schiffer, Esq., knew that the prosecutors and investigators in Respondent's State Bar case were summarily fired by the State Bar of California for gross prosecutorial misconduct in multiple cases, which is now a felony under California criminal law and a State Bar disciplinary offense. This Court knew that approximately eighteen (18) State Bar attorneys and executive officers and the two (2) principal State Bar investigators in Respondent's case were fired by the State Bar of California and that both the Chief Justice and the

California Legislature have mandated drastic changes in the State Bar disciplinary procedure and potential de-unification by putting the State Bar disciplinary system in a separate State agency so that fraudulently induced cases like Respondent's would not be filed again and expose the California State Bar and the State of California to triple damages and other relief for violation of the federal anti-trust laws, as more fully set forth herein.

The former California State Bar monitor, Robert Fellmeth, Esq., an expert on the anti-trust laws, recently submitted to the California Supreme Court an amicus curiae brief that the California State Bar disciplinary system violates the anti-trust laws and is unconstitutional. He further submitted separate documents to the California Assembly and California State Senate in connection with the de-unification movement by respected California attorneys who are experts in connection with the corruption and misconduct of the California State Bar disciplinary system against persons such as Respondent. Edward Schiffer, Esq. has requested copies of these documents and other documents relating to the California State Bar's violation of the federal anti-trust laws rendering the State Bar disciplinary system unconstitutional, including the rulings against Respondent, a portion of which are provided as exhibits to Respondent's declaration. These issues are presently before the California State Legislature and the California Supreme Court, as well as the Governor's Office, to redress the corruption by de-unification of the State Bar disciplinary system and other remedies.

Moreover, the California Supreme Court, itself, ordered the California State Bar to cease entering defaults and default judgments against attorneys, including Respondent and similarly situated persons because, inter alia, it violated their constitutional due process rights as

codified in the leading U.S. Supreme Court case of *In re Ruffalo*, cited above. A copy of this memorandum from the California Supreme Court is referred to in Exhibit 3 to Respondent's declaration as the Colin Wong Memorandum and was previously filed in each of Respondent's parallel cases as Docket Entry 6-3. This Court can summarily reverse the District Court's order of disbarment based on the orders of the California Supreme Court as stated in the Colin Wong Memorandum. Further, the then Presiding Judge of the District Court and her legal counsel intentionally destroyed the record from the California Supreme Court and the California State Bar Court in Respondent's case that was filed by Respondent prior to the review of the record so that there was no record, including all of the motions and declarations of counsel and exhibits thereto that supported that Respondent was innocent and being framed and that the default procedure was unconstitutional and constituted prosecutorial and investigational misconduct. Additionally, the California State Bar attorneys violated the State Bar Rules in Respondent's cases mandating the turnover of Brady and exculpatory evidence to Respondent and to his attorney, which is now a potential felony under California law in addition to civil liability. The State Bar judge intentionally destroyed hearing tapes of events that would have required a mandatory dismissal of the proceedings against Respondent and said judge had a long history of destroying State Bar evidence and trial tapes of proceedings, which is well documented on the internet and in Respondent's cases.

This information is more fully set forth in Respondent's Response to Order to Show Cause, filed in Case No. 11-80215 on December 1, 2011 as Docket Entry 6-1, and is incorporated herein by reference. Respondent requests this Court to take judicial notice of said seventy-three (73) page

brief and each of the exhibits thereto consisting of 338 pages, including the declaration of Arthur L. Margolis, Esq. which is Exhibit 6-7, who was both an experienced former State Bar of California supervising prosecutor and now is one of the leading State Bar of California defense attorneys who knows how the State Bar disciplinary system really worked in practice as opposed to the written rules of procedure and supports the de-unification of the California State Bar disciplinary system. Mr. Margolis disclosed the prevalent illegal ex parte extra judicial communications between the State Bar prosecutors, the State Bar investigators, the State Bar judges, Beth Jay, Esq., and others to prejudge and predetermine the outcome of high profile cases, including Respondent's case. Beth Jay, Esq. was also terminated, inter alia, for her misconduct in concert with the California State Bar prosecutors and investigators. Exhibit 6-8 is the Collin Wong Memorandum from the Chief Justice to the State Bar of California with respect to their unlawful and unconstitutional default and default judgment procedure against attorneys such as Respondent referred to herein.

Prior to the last two (2) hearings in the Criminal Court, the Criminal Court judge advised Respondent, inter alia, that Mr. Ipsen was ordered to personally appear in Los Angeles for the Criminal Court hearings and that he had not been relieved as counsel. Respondent is informed by the Criminal Court that Ipsen, now residing in Virginia, agreed to personally appear on the following day. Respondent is informed that Mr. Ipsen did fly to Los Angeles for the hearing but was advised by his personal attorney, Robert Baker, Esq., not to attend the hearing to prejudice Respondent and to violate Respondent's Sixth Amendment constitutional right to effective assistance of counsel. This Court and Appellate Commissioner Shaw are aware that Mr. Baker is Tom Girardi's personal attorney and appeared as

attorney of record in the Girardi/Walter Lack et al. disciplinary case in this Court, Case Nos. 08-80090 and 03-57038, in which Appellate Commissioner Shaw participated. Mr. Baker and his firm represent Mr. Ipsen in the legal malpractice cases against Mr. Ipsen, including, but not limited to, the allegations in the complaints that Mr. Ipsen abandoned each of his clients and failed and refused to turnover to them their complete client files despite court orders to do so. The Criminal Court judge asked Respondent if he wanted to set aside Ipsen's purported plea bargain and proceed to trial. Respondent said yes. Other major constitutional issues were discussed at the closed hearings. For purposes of this motion and to preserve Respondent's constitutional rights under the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, the criminal case was not disposed of by the alleged plea bargain between Mr. Ipsen and the District Attorney's Office. The complaints and pleadings against Mr. Ipsen revealed for the first time that Ipsen had embezzled and misappropriated more than $700,000.00 from his union and from the District Attorney's Office and that he had been fired for participating in more than one hundred (100) misdemeanors and felonies against the District Attorney's Office, including for making illegal plea bargains not approved by the District Attorney's Office, which Ipsen did not disclose to his clients. Mr. Ipsen had actual and continuing major conflicts of interest adverse to Respondent and each of his other clients, including the conflicts referred to above, which directly affected Respondent's criminal case and deprived Respondent of his right to effective assistance of conflict free counsel. Therefore, this Court's requirement that a declaration of Mr. Ipsen be provided as a condition precedent to obtain the mandated stay of proceedings is unconstitutional, unreasonable, arbitrary, and void.

Overwhelming federal and state case law establish that Respondent is entitled to a stay of proceedings. Any doubt concerning the extent to which Respondent's Fifth, Sixth and Fourteenth Amendment rights are implicated by this parallel disciplinary proceeding is now gone. See *United States v. Yepiz*, 2016 WL 7367827 (9th Cir, Dec, 20, 2016) affirming Respondent's constitutional right to appointed counsel. Stanley Arouty, Esq. was also Harris appointed counsel in the District Court. Respondent will be unable to offer any meaningful defense to the false allegations against him without waiving his Fifth Sixth, and Fourteenth Amendment rights. The strongest case for deferring civil or disciplinary proceedings is until after completion of criminal proceedings is where a party under indictment or criminal information for serious felony offenses is required to defend a civil or administrative action involving the same matter. *Jones v. Conte*, 2005 WL 1287017, *1 (N.D. Cal. Apr. 19, 2005)(K. Illston) (internal quotation omitted); *see also Continental Ins. Co. v. Cota*, 2008 WL 4298372, *2 (N.D. Cal. Sept. 19, 2008) (stating that the extent to which fifth amendment rights are implicated by a civil proceeding is the ***first consideration*** when evaluating a stay request).

The public has an interest in "ensuring that the criminal process is not subverted by ongoing civil cases." *Douglas v. United States*, 2006 WL 2038375 (N.D. Cal. July 17, 2006). Moreover, "the public's interest in the integrity of the criminal case is entitled to precedence over the civil litigation or disciplinary proceedings. *Jones*, 2005 WL 1287017, at *2 (quoting *Javier H.*, 218 F.R.D. at 75). Absent a stay, this case will arbitrarily and unconstitutionally proceed to hearing parallel to the criminal case, leaving Respondent with no reasonable opportunity to offer defenses to the related criminal and disciplinary charges. This scenario does not

further the public's interest in a justice system that provides a viable means of securing the fair resolution of civil, disciplinary, and criminal matters. Conversely, a stay would promote the public interest by providing Respondent with a meaningful opportunity to exercise his constitutional rights with counsel and present a full and complete defense to the allegations in the State Bar, civil, and criminal complaints.

Additionally, Mr. Ipsen had unlawful ex parte extra judicial communications with the Office of Appellate Commissioner, Edward Schiffer, Esq., and their staff pertaining to Respondent and others, which mandated this Court to appoint a special master and special prosecutor in this case, as it did in the Girardi disciplinary case, and recuse Appellate Commissioner Shaw and his staff. See *In re Girardi*, 611 F.3d 1027 (9th Cir. 2010)(appointing special master to oversee further proceedings on sanctions and/or discipline, after extensive litigation). The Appellate Commissioner and his staff, including Edward Schiffer, Esq., are material witnesses in this case and in other cases, had ex parte communications with multiple attorneys adverse to Respondent, including Mr. Ipsen, the attorneys of the law firm of Arnold & Porter, the law firm of Howard, Rice, et al., Jerry Falk, Sean Selegue, who were counsel for Respondent and Philip Kay, Esq. but were secretly counsel for Thomas Girardi, Esq. and Girardi & Keese adverse to Respondent and participated in the Girardi disciplinary proceeding, without limitation, and in the Ipsen legal malpractice cases and the other cases to be filed against Ipsen. As a result, all of the orders in this case should have been vacated as void and unconstitutional based on the above matters and gross misconduct of Ipsen and others against Respondent and Ipsen's continuing violation of

Respondent's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution.

Moreover, this Court knew that Respondent qualified for and received Harris counsel to represent him and also received accommodations under the Americans With Disabilities Act. Previously, the Office of Appellate Commissioner and Edward Schiffer, Esq. had agreed that the hearings would take place in Pasadena, California to accommodate Respondent under the Americans With Disabilities Act and other federal statutes. Edward Schiffer, Esq. recently confirmed that the hearing would take place in Pasadena, California and not San Francisco, California.

The order of disbarment must be nullified by this Court under *In re Strick* and the U.S. Supreme Court leading case of *In re Ruffalo*, 39 U.S. 544 (1968) and other constitutional cases and Respondent regain his license to practice law in the Federal Court. This constitutes good cause to grant the stay of proceedings in this Court.

Appellate Commissioner Shaw's disqualification or recusal is further mandated under a recent Tenth Circuit Court of Appeals landmark opinion decided December 27, 2016 finding that SEC Administrative Law judges were and are unconstitutionally appointed based on the same rationale and U.S. Supreme Court opinion previously cited to this Court by Respondent. That case is *Bandimere v. United States SEC*, 2016 U.S. App. Lexis 23308 (10th Cir. Dec. 27, 2016). See also *Freytag v. Commissioner of IRS*, 501 U.S. 868 (1991) previously cited to this Court by Respondent. Because Appellate Commissioner Shaw was not constitutionally appointed under the Appointments Clause of the U.S. Constitution, he holds his office in violation of the Appointments Clause. An amicus curiae brief was filed in the *Bandimere* case by Paul Clement, former Solicitor General of the

United States. The SEC has indicated that it will appeal the *Bandimere* opinion to the U.S. Supreme Court. Respondent has raised the same issue in this Court, which further mandates a stay of proceedings if Appellate Commissioner Shaw does not recuse himself or be disqualified. Appellate Commissioner Shaw is an officer of the United States who must be appointed under the Appointments Clause to the U.S. Constitution and cannot preside over Respondent's case, especially with the above referenced conflicts of interest.

As the record that was timely and properly filed by Respondent in the District Court was intentionally destroyed by the District Court judge and her personal attorney prior to the review process and the personal attorney was terminated by the District Court for her gross misconduct, this case should have been summarily sent back by the Court of Appeals to the District Court for a full evidentiary hearing based on the complete review of the record in the California State Bar Court and the California Supreme Court and as supplemented by the record in the civil cases, the California Attorney General's case, and the criminal case, which support that Respondent was innocent and being intentionally framed and should regain his law license in the Federal Court.

Additionally, with respect to the five (5) year delay in the criminal proceedings, this Court was aware that Respondent developed a very serious systemic infection and other serious health conditions and was treated by multiple physicians. Multiple surgeries were scheduled and performed as part of the treatment regimen requiring multiple hospitalizations and periods of recuperation. The criminal case, the California Attorney General's case, and this case were stayed for more than two (2) years based upon the potentially fatal health condition of

Respondent, which was well documented in the courts and in this Court. The Criminal Court granted a continuance pending the recuperation of Respondent based upon the medical reports of Respondent's treating physicians. All of these matters are set forth in the prior status reports and this Court has granted a continuance in each quarter in which he was represented by counsel for good cause shown.

There is absolutely no prejudice to continuing the stay of proceedings in this case based upon the criminal case status is not resolved, including the appointed counsel to replace Ipsen, as a matter of constitutional right under the Sixth Amendment to the U.S. Constitution and the unconstitutionality of Appellate Commissioner Shaw to preside over this case in violation of the Appointments Clause to the U.S. Constitution. Respondent is not practicing law so that there is no prejudice to this Court and the State Bar of California prosecutors and investigators were summarily fired by the State Bar for their own prosecutorial misconduct, including, inter alia, against Respondent. There are no alleged victims either as they are deceased and Respondent prevailed against them in the civil cases even before the District Court disciplined Respondent, which is further evidence that the State Bar case was fixed by Thomas Girardi and his attorneys and others acting in concert with him, as more fully set forth in the brief filed in this case on December 1, 2011 as Docket Entry 6-1 referred to above and incorporated herein by reference.

This motion presents new substantial issues of constitutional due process violations based on prior decisions of this Court, the Tenth Circuit Court of Appeals, the U.S. Supreme Court, denial of a right to due process and a hearing by an impartial judge, and gross prosecutorial and judicial misconduct of constitutional importance to this Court, to the public, to the

U.S. Attorney's Office, and to the legal profession. Respondent is informed that a statement of interest may be filed by the Department of Justice after January 20, 2017 in Respondent's cases, which are further grounds for a stay of proceedings. Additionally, the misconduct of the California State Bar and the firing of eighteen (18) or more California State Bar attorneys and all principal executives of the California State Bar, including each of these persons associated with Mr. Girardi and his counsel, led to the movement to de-unify the California State Bar in the California Legislature and in the California Supreme Court. This further led to the filing of the amicus curiae brief in the California Supreme Court and reports and other documents to the California State Senate and California Assembly by Robert Fellmeth, Esq. and others, which have received wide spread acceptance and publicity in the legal profession, the legislature, and the courts that the California State Bar disciplinary system is broken, corrupt, unconstitutional and violates the Sherman Anti-Trust Laws, a 2015 opinion of the U.S. Supreme Court in *North Carolina State Board of Dental Examiners v. FTC*, 574 U.S. ___ 135 S. Ct. 1101, and that the disciplinary system should be transferred to a new state agency without the unlawful interference of well connected attorneys, such as Thomas Girardi, Howard Miller, and the Girardi syndicate, Jerry Falk, Sean Selegue, and their law firms, all of which were directly involved in framing Respondent with knowledge that he was completely innocent, as set forth above. Jerry Falk and Sean Selegue and their law firm were counsel for Respondent adverse to Thomas Girardi and they did not disclose such actual conflicts of interest to prejudice Respondent. Respondent is informed that Jerry Falk and Sean Selegue are longtime personal friends of Appellate Commissioner Shaw and Edward Schiffer, Esq. Mr. Selegue is also a member of the California

State Bar Board of Trustees. Mr. Falk was appointed by the California State Bar as special master to report on the reciprocal discipline for Thomas Girardi, Esq. without disclosure to the California State Bar that he was longtime personal attorney for Thomas Girardi, Esq. and Girardi & Keese and had represented Respondent and other attorneys adverse to Thomas Girardi, Esq. and his law firm, without disclosure of these actual conflicts of interest.

The California Supreme Court previously ruled in a case based on similar facts and law that the Respondent was denied his due process rights and his right to a fair trial on the merits when he was precluded from attending the trial because of a pending parallel criminal case. (*Giddens v. State Bar of California*, (1981) 28 Cal.3d 730.)

The California Supreme Court, by and through Chief Justice George and others, previously instructed the State Bar and the State Bar Court that its default procedure and rules of procedure that were utilized against Respondent to obtain an intentional default, after he had answered, appeared throughout the proceedings with appointed counsel, and vigorously defended the case, violated the Respondent's due process rights and had to be constitutionally voided in accordance with the instructions of the California Supreme Court as evidenced in the Colin Wong Memorandum. The State Bar intentionally refused to act on the order by the California Supreme Court to change the default procedure utilized against Respondent and no default or default judgment would be permitted under the mandated revised rules against Respondent. The Colin Wong Memorandum was written to the California State Bar by the California Supreme Court *before* Respondent was defaulted, which was known to the California State Bar prosecutors, its judges, and its executive officers. The

State Bar has conceded these issues. The intentional default was made in concert with Thomas Girardi and Girardi & Keese, Jerry Falk, Sean Selegue, and their law firms and constituted fraud on the court and fraud on the Federal Courts, including in the case of *In re Girardi*, mandating that reciprocal discipline be rejected and the case sent back to the District Court for an evidentiary hearing with all of the documents from the California State Bar Court and the California Supreme Court that were intentionally destroyed by the District Court judge's attorney and from each of the parallel three (3) cases to be utilized by Respondent.

Additionally, the Respondent prevailed in connection with parallel civil cases against his former clients and in the criminal contempt case so that the default decision of Judge McElroy is a violation of Respondent's constitutional right to a fair and impartial hearing, a violation of C.C.P. § 473(b) and (d), and is also based upon fabricated documents incorporated in the California State Bar Court's Default Decision that were rejected in the parallel prior civil cases, in which the Respondent prevailed, contrary to the Default Judgment Decision.

Respondent's counsel filed declarations of fault under C.C.P. § 473 (b) and (d) and further requested that the decision be vacated, as it was void ab initio. The State Bar judge engaged in extra judicial ex parte communications with the State Bar prosecutor, Thomas Girardi, and others and refused to vacate the default without explanation and without making the requisite findings, which was mandated to be vacated under C.C.P. § 473(b) as a matter of law. Judge McElroy refused to state any reasons why she was not complying with C.C.P. § 473(b) and established case law thereunder, which was mandatory and equally applicable in State Bar proceedings, including Respondent's case. Both Respondent's counsel and

the State Bar counsel requested a mandated full evidentiary hearing, which was summarily ignored by the State Bar judge, without explanation.

BACKGROUND FOR THE MANDATED STAY OF PROCEEDINGS

The proceedings against Respondent Gottschalk in the California State Bar Court, District Court, and the Criminal Court have been marked by a wholesale denial of these basic constitutional protections and rights set forth by the California Supreme Court in the *Giddens v. State Bar, In re Strick* case, and others cases involving gross prosecutorial misconduct, intentional destruction of evidence, and the intentional withholding of massive Brady material and other exculpatory evidence in violation of Respondent's constitutional rights and the rules of the California State Bar Court itself. The proceedings started with a secret complaint filed almost twelve (12) years ago by a disqualified judge, whose existence and identity the State Bar deliberately withheld from Respondent, after the State Bar dismissed the original complaint on the grounds that it had no jurisdiction. A fabricated NDC was filed that was not based upon court orders and was contrary to court orders, which were made in favor of Respondent. The OCTC pursued an unauthorized, illegal and *ultra vires* default and default judgment that was rendered against Respondent, which deprived Respondent of any ability to defend himself or oppose the State Bar Trial Counsel's case on the merits. A "Decision" was made by the Hearing Judge that accepted as true the allegations in the Notice of Disciplinary Charges (NDC) and purports to come to findings "proved" by clear and convincing evidence that misrepresents and **directly contravenes the underlying civil cases, the secretly recorded testimony of the complainants made by the District Attorney's Office, which were wrongfully withheld by the**

criminal prosecutors and the State Bar prosecutors from Respondent and his counsel in violation of court orders and State Bar Rule 6085(b), and judicial orders and decisions that would have absolved Respondent of all charges of attorney misconduct in the State Bar Court and in the District Court. The misconduct of the State Bar prosecutors and investigators culminated in the State Bar Reviewing Department's refusal to afford Respondent the independent review the U.S. Supreme Court found was essential to the fairness of the State Bar disciplinary structure and his constitutional rights, including his protected right to practice law. See *In re Ruffalo*, 390 U.S. 544; *In re Strick*, supra.

The Hearing Department Decision, which the State Bar Review Department and the California Supreme Court refused review, contains substantial jurisdictional and constitutional error, procedural error, prosecutorial misconduct, factual and evidentiary errors contrary to the court orders in the underlying cases, and ultimately constitutional due process violations mandating the vacating of Judge McElroy's order in its entirety. The Respondent is factually innocent of the charges made by the State Bar prosecutor, who also instigated the parallel criminal case and the California Attorney General's case with Thomas Girardi and his attorneys without probable cause. The State Bar judge and State Bar prosecutor both acknowledged that Respondent should win the parallel criminal case. Respondent is informed and believes that the prosecution was instigated in the State Bar Court and in the Criminal Court to curry favor to the prosecutor, who was seeking a judgeship in the Los Angeles Superior Court with the assistance of the then President of the State Bar, who was Tom Girardi's law partner. The judgeship that the State Bar prosecutor, Paul O'Brien, Esq., claimed in the criminal proceedings that he was on the short

list was withdrawn by the Governor of California after the facts in this case and in numerous other cases of gross prosecutorial misconduct were brought to the personal attention of the Governor. Mr. O'Brien was a former prosecutor with the Los Angeles County District Attorney's Office and therefore knew the constitutional mandates and the rules pertaining to prosecutorial misconduct, Brady violations, the withholding of exculpatory evidence, and utilizing fabricated evidence. Respondent is informed and believes that Mr. O'Brien has not practiced law since being fired by the State Bar and is not affiliated with any law firm.

The State Bar Hearing Judge lacked any jurisdictional authority to default Respondent; the State Bar lacked jurisdiction over the charges, because there were no findings of attorney misconduct, contempt, or sanctions. Respondent had never been previously disciplined by the State Bar in more than 40 years of outstanding practice of law. The charges and default judgment impermissibly contradict final orders and judgments in the underlying cases in favor of Respondent, are based on inadmissible and fabricated evidence, and are refuted even by the incomplete record generated during the State Bar proceedings leading up to the default in which the entire case against the Respondent was thoroughly debunked, and in the parallel civil cases in which the Respondent prevailed against the complainants for the same exact parallel issues that were subsequently before the State Bar Court, the Civil Courts, and the Criminal Court.

Additionally, the secretly recorded tapes, made by the District Attorney's Office, of the complainants testimony to them and to the State Bar shows that the Respondent should have won the case in the State Bar Court on the merits with respect to the NDC and the parallel criminal case that was instigated by the State Bar prosecutor without probable cause.

Respondent previously filed an answer setting forth complete affirmative defenses to each of the counts of the NDC and submitted his pretrial statement, voluminous exhibit list, court orders, and extensive list of witnesses in preparation for the trial, which was estimated and ordered to take more than 90 court days. Because of the length of the trial and the fact that Respondent should have prevailed, the State Bar prosecutor and investigators, acting in concert with the State Bar judge, Thomas Girardi and his counsel, and others, sought to employ an intentional default strategy, believing that the end justifies the means. As indicated above, the California Supreme Court has abrogated the default rules under which Respondent was intentionally defaulted and did so before Respondent was defaulted. Further, the State Bar prosecutor and the State Bar judge threatened to default Respondent if Respondent invoked his Fifth Amendment privilege against self-incrimination, contrary to the principles of *In re Strick,* Business & Professions Code §§ 6068(i), 6088, 6085(e), and 6079.4, and California Constitution Article I, Section 15. The State Bar OCTC and General Counsel erroneously claim that they are not bound by decisions of the California Supreme Court and specific statutes that were enacted by the legislature to protect the constitutional rights of State Bar Respondents. The author of this legislation was Joseph Dunn when he was in the California State Senate and then became the California State Bar Executive Director. This cavalier attitude on the part of the State Bar constitutes gross violations of Respondent's constitutional rights and those of other similarly situated persons.

The granting of this motion to stay proceedings will allow Respondent to prove that the State Bar OCTC intentionally instituted false and fraudulent NDC charges and parallel criminal charges with knowledge

that the court orders in the underlying case were directly contrary to the NDC charges and that gross prosecutorial and investigational misconduct occurred in connection with Respondent and multiple other Respondents. Essentially, the State Bar prosecutor and the State Bar investigators assigned to Respondent's case engaged in gross prosecutorial misconduct acting in concert with Thomas Girardi and his counsel and others in violation of Respondent's constitutional rights, falsely believing that the end justifies the means, and that the California Supreme Court would not grant a petition for review in any case filed by any respondent.

The State Bar case should have been dismissed by Judge McElroy and she should have been disqualified based, inter alia, upon gross prosecutorial and judicial misconduct revealed in the secretly recorded tapes in inducing the witnesses to perjure themselves to obtain substantial unjust rewards and to present fabricated unsigned documents to the State Bar judge and to the District Attorney that were rejected by the state court in the civil proceedings and were void ab initio on their face. The fabricated documents that were incorporated as an integral part of the default judgment were never prepared by Respondent, were never signed by anyone, and were void ab initio, as admitted to on the secretly recorded tapes by the complainants. The OCTC prosecutors and investigators had those tapes in its possession and failed to disclose the contents thereof to Judge McElroy or to Respondent's counsel. Judge McElroy had previously ruled that the complainants lacked credibility and would not entertain any declarations on their behalf and that they must be cross-examined by Respondent's counsel at trial. Respondent is awaiting the receipt of the transcripts of those secretly recorded tapes and others that were spoliated and other exculpatory evidence and for gross prosecutorial and

investigational misconduct by the State Bar prosecutors acting in concert with the District Attorney's prosecutors and investigators. They form a basis of a motion to be filed to dismiss the criminal case in the interest of justice under Penal Code § 1385 and for the court ordered evidentiary hearing as to prosecutorial and investigational misconduct by the State Bar prosecutor, the District Attorney's prosecutor, and their joint investigators. Additionally, the State Bar was ordered to produce more than eight (8) Banker's boxes of exculpatory evidence by the Criminal Court judges, which they have failed to produce to Respondent's counsel despite their statement to the court that they had an open file policy in Respondent's case. Instead, the State Bar of California sent these boxes that were required to be turned over to Respondent and his counsel by Criminal Court orders after the three (3) day Brady hearing, which Respondent won, to Appellate Commissioner Shaw and his staff, including Edward Schiffer, Esq., to hide them from Respondent and his criminal defense counsel and Mr. Arouty, Respondent's State Bar counsel, and from the District Court in this case. **As a direct result of these unlawful acts by the State Bar prosecutors, in violation of the Criminal Court orders, Appellate Commissioner Shaw and his staff, including Edward Schiffer, Esq. and others, are mandatory witnesses in the Ninth Circuit cases before them and in the criminal case, as well as the legal malpractice cases against Mr. Ipsen, and are therefore disqualified as a matter of constitutional law to preside over Respondent's cases. Respondent renews his position that Appellate Commissioner Shaw and his staff are disqualified as a matter of law and must stay these cases and refer the cases to Chief Judge Sidney Thomas for appointment of a special master and special prosecutor, as they did in the Girardi disciplinary**

case that they were involved in. As previously set forth, Appellate Commissioner Shaw is also disqualified under the Appointments Clause to the U.S. Constitution pursuant to the Tenth Circuit Court of Appeals decision filed December 27, 2016, which issues will ultimately be decided by the U.S. Supreme Court. The Department of Justice may file a statement of interest in Respondent's cases, including with respect to these issues and violation of Respondent's constitutional rights, including his due process rights and civil rights.

Respondent's innocence was known to the State Bar prosecutors, the California Attorney General's Office, and the District Attorney's Office as the Respondent prevailed with respect to the parallel civil cases, which included the issue of alleged misappropriation of moneys. Those cases were decided in favor of Respondent and further should have been decided by California Supreme Court decisions and California statutes as a matter of law, as previously conceded by the California Attorney General's Office and the Los Angeles County District Attorney's Office in the parallel criminal case. Further, the complainants testified in the parallel criminal case that they had no ownership interest in the moneys and that court orders were issued based upon their representation to the court that they had no such interest in the moneys, which belonged to Respondent.

The State Bar prosecutor and his investigators and the District Attorney's prosecutor and investigator jointly represented to the Criminal Court judge and the State Bar judge that Respondent never spent any moneys on behalf of the complainants and never performed any legal services on their behalf. Therefore, he likely misappropriated moneys belonging to the complainants, which is the basis of the parallel criminal case. Respondent won the parallel civil cases and the complainants

recovered no moneys. It was shown that they had no ownership interest in the moneys and fabricated the entire case against Respondent in concert with Thomas Girardi with others.

At the time these representations were made to the Criminal Court judge and the State Bar judge, the prosecutors had in their possession more than $700,000 of Respondent's financial records, which showed that the statements that he never spent any moneys in their cases were completely fraudulent, fabricated, and perjurous. At the time these representations were made, the prosecutors had in their possession or subject to their possession more than 1500 banker's boxes of documents of court files showing that Respondent had performed all of the pretrial legal work in these cases in over 6 ½ years of complex litigation, which comprise more than 1000 pages in the docket sheets of the courts in the personal injury cases alone, not including the class action complaint and other cases. The entire case against Respondent was fabricated and manufactured and complainants were offered unjust rewards to frame the Respondent and read from a script that had been prepared by the State Bar prosecutor and investigators, which was knowingly false and perjurous. As previously indicated, all of the prosecutors and investigators in Respondent's State Bar case, including the head of the OCTC, were summarily fired by the State Bar of California after these facts were disclosed by Respondent and his counsel and others.

For the reasons stated above and in Exhibits 6-1, 6-7, and 6-8 filed December 1, 2011 in Case No. 11-80215, the Orders rendered by Judge McElroy are constitutionally void, including the default and default judgment as she was a disqualified judge having unlawful ex parte communications with the State Bar prosecutors and investigators and

Thomas Girardi and others in Respondent's cases. *Keating v. Keating*, 196 C. 754-760 (1915); *Berger v. United States*, 295 U.S., 88 (1935). As Justice Sutherland stated in the landmark *Burger v. United States* opinion, "While a prosecutor may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

Respondent has filed in Case No. 11-80215 his motion for a stay of proceedings, filed September 26, 2011 as Docket Entry 4-2 consisting of 70 pages, and his response to the order to show cause, filed December 1, 2011 in Case No. 11-80215 as Docket Entry 6-1 and over 300 pages of exhibits. These documents support that the judgment entered by Judge McElroy was void ab initio based upon extrinsic fraud, fraud on the court, and her disqualification based on her unethical ex parte communications and other violations of judicial ethics. A judgment or order tainted by extrinsic fraud or fraud on the court can be set aside and collaterally attacked in this Court. A void judgment or order under these circumstances can be vacated, reversed, or stricken by this Court. Fraud on the court makes void the orders and judgments of that court, which includes the State Bar Court and any order emanating therefrom. In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated: "Fraud upon the court is fraud which is directed to the judicial machinery itself and not fraud between the parties or fraudulent documents, false statements or perjury. It is where the court or a member is corrupted or influenced or influence attempted or where the judge has not performed his judicial function-thus where the impartial functions of the court have been directly corrupted." See also the constitutional amicus curiae briefs of Appellant's in Ninth Circuit Case No.

15-15799, entitled *United States of America v. Sierra Pacific Industries, Inc. et al.*, including the constitutional brief of the *Cause of Action Institute*, Docket Entry 54, and the constitutional brief of the Attorney Generals for the states of Arizona, Nebraska, Nevada, Utah, and Wisconsin, which is Docket Entry 55. Respondent requests this Court to take judicial notice of these amicus curiae briefs and the opening and reply briefs of defendant *Sierra Pacific Industries* in support of Respondent's position in this case regarding fraud on the court and F.R.C.P. 60(b) motions.

Respondent in Case No. 11-80215 already presented a prior motion to extend time for filing responsive brief to the OSC and for a stay of proceedings and evidentiary hearing and supporting declarations on September 26, 2011 as Docket Entry 4-2, which is highly responsive and highly relevant in response to this Court's order of June 28, 2016, including the declaration of then counsel Stanley Arouty, Esq. beginning on Page 40 and ending on Page 62 of the motion. Because the filing of the motion on September 26, 2011, as Docket Entry 4-2, is material and highly relevant to Case No. 12-55304, Respondent requests this Court to take judicial notice of the filing of said motion and to permit said motion in its entirety to be utilized in Case No. 12-55304.

Because of the paramount Fifth, Sixth, and Fourteenth Amendment issues pertaining to Respondent's criminal case that is still pending against Respondent, Respondent has been advised by a Deputy Public Defender to utilize the declaration of Stanley Arouty, Esq. that was submitted to the California Supreme Court as Docket Entry 4-2 above, filed September 26, 2011, in support of the instant motion to stay the case as the circumstances set forth in Mr. Arouty's prior declaration as Harris counsel previously submitted to this Court have not changed. Said motion and declaration by

Mr. Arouty is being submitted in both Case No. 11-80215 and Case No. 12-55304 as Exhibit 1. The response to the order to show cause, Docket Entry 6-1, is being submitted in Case No. 11-80215 and Case No. 12-55304 as Exhibit 2. Additionally, Respondent requests this Court to take judicial notice thereof.

As set forth above, Respondent is constitutionally entitled to a stay of proceedings pending the resolution of the criminal case and whether or not the District Attorney's Office and the California Attorney General shall file an appeal and a writ or any other proceedings against Respondent. The cases should be determined on/or about March 18, 2017. The next hearing is January 18, 2017 on behalf of Respondent.

To the extent that this Court is relying upon any communications with Mr. Ipsen or his counsel, who is Tom Girardi's long time personal counsel, those communications cannot be relied upon by the Court since Mr. Ipsen is now acting adverse to Respondent and each of his former clients. This Court must disclose any such communications on the record to Respondent, who is forced by the Court's order of June 28, 2016 to represent himself in these proceedings at this time, subject to appointed counsel arising from the criminal case. This Court is aware that Mr. Ipsen is being sued for legal malpractice and breaches of fiduciary duties by his former clients, including withholding the client files. As previously stated, Mr. Ipsen was ordered by Judge Perry to personally attend the Criminal Court hearing of August 4, 2016 in Los Angeles but failed to appear after promising Judge Perry that he would attend the court hearing in person.

Finally, the Court's order of June 28, 2016 is silent as to the willful destruction of twenty-two (22) exhibits that were destroyed by the principal attorney to then Chief Judge Audrey Collins in District Court Case No. 2-

11-mc-00284-ABC, which is Case No. 12-55304 on appeal. These twenty-two (22) documents were essential to a proper adjudication by Judge Audrey Collins and were intentionally destroyed and spoliated before she made her order and as a consequence none of the State Bar record provided to the District Court was reviewed, as the intentional destruction took place immediately upon the filing of the documents with the court as set forth on the court's docket sheets. Many of the filings that were destroyed pertain to Respondent's relationships with Thomas Girardi and his law firm, as more fully set forth in the response to the order to show cause filed December 1, 2011 as Docket Entry 6-1 in Case No. 11-80215.

Respondent seeks to have each of the twenty-two (22) exhibits that were intentionally destroyed and spoliated made a part of the record in each of the appeals and to be utilized in support of the appellate briefs, including that they be designated as part of the excerpts of the record and that they be judicially noticed and considered by the Court as material issues in the two (2) cases. The willful destruction of these documents constitutes sufficient grounds to void the State Bar default judgment based on fraud on the court and extrinsic fraud. The attorney who willfully destroyed the documents is Lydia Yurtchut. Respondent is informed that Ms. Yurtchut was terminated by the Court and was placed on inactive status by the State Bar of California after these incidents were reported by Respondent and his counsel. Respondent is further informed that U.S. District Court Judge Audrey Collins sought the assistance of Tom Girardi to become a judge on the Court of Appeals for the Second Appellate District in California after the willful destruction of these court files from the California Supreme Court were discovered by Respondent.

Respondent contends that his constitutional rights were violated in these cases, including by the intentional destruction of evidence that was submitted to the District Court by Respondent and his counsel. Those acts by Lydia Yurtchuk, Esq. in concert with others violated 18 U.S.C. §2076 and 2071 for obstruction of justice and destruction of documents and may constitute felonies. See *United States v. Salazar*, 455 F.3d 9022 (9th Cir. 2006).

In addition to the relief sought to stay the proceedings pending the resolution of the criminal case, Respondent also seeks an order that he may submit the twenty-two (22) documents to this Court in each case and to augment the record from the California Attorney General's case and the criminal case, including to designate them as part of the excerpts of the record in each case, without waiving the willful destruction of these documents, which itself constitutes sufficient acts of fraud on the court to vacate the default judgment as a matter of law.

A STAY IS FURTHER CONSTITUTIONALLY MANDATED UNDER THE AMERICANS WITH DISABILITIES ACT (ADA ACT) AND OTHER FEDERAL STATUTES TO RESOLVE AND TO ORDER THE REQUIRED ACCOMODATIONS AND HEARING IN PASADENA, CALIFORNIA WITH A COURT REPORTER TO RESPONDENT PRIOR TO ANY HEARING IN THESE CASES

This Court and the Office of Appellate Commissioner and its attorneys are well aware that Respondent was granted appointed Harris

counsel by court order and experts, including ADA experts in civil and criminal cases and in the State Bar proceedings.

The Office of Appellate Commissioner and Edward Schiffer, Esq. previously discussed with Respondent the mandated ADA accommodations in this case, including, but not limited to, that the hearings be in the Pasadena, California courthouse with a court reporter being present and not in the San Francisco, California courthouse.

Respondent was informed by his prior attorneys and by ADA attorneys that a stay is mandatory under the ADA and other federal statutes to obtain the mandated accommodations in Pasadena, California with a court reporter being present, which are constitutionally required from this Court.

The Court and the Appellate Commissioner's Office is aware that it has waived all of the filing fees on behalf of Respondent and that Respondent's case as set forth in his briefs and motions raise important and highly relevant constitutional issues that were before the U.S. Supreme Court and are now before the Ninth Circuit in other cases and before the California Supreme Court dealing with the demand by the Legislature and well respected attorneys, including defense attorneys in State Bar disciplinary cases, that the State Bar Act is unconstitutional as applied in practice and must be reformed or the disciplinary system be de-unified from the other activities of the State Bar of California as it violates the Sherman Anti-Trust Laws and is unconstitutional, as more fully set forth by Robert Fellmeth, Esq. and others in the documents that are attached to the declaration of Respondent, without limitation.

This Court and the Appellate Commissioner are further aware that there are other cases before the Ninth Circuit and other Circuits raising

similar issues, including gross prosecutorial misconduct and the issue of State Bar violations of the Sherman Anti-Trust Laws and separately the issue of fraud on the court filed by five (5) Attorney Generals in their amicus curiae briefs and separately by a major California law firm with respect to the issues of intentional withholding Brady and exculpatory evidence in civil cases by civil prosecutors, such as the State Bar of California prosecutors, the California Attorney General's Office, and other public prosecutors. These are the *Moonlight Fire* cases, which briefs have been cited in Respondent's motions and were also presented to and reviewed by the Appellate Commissioner Peter Shaw and Edward Schiffer, Esq. and their staff. Respondent requests this Court to take judicial notice of the amicus curiae briefs and the other documents filed by Appellants in *U.S.A. v. Sierra Pacific Industries*, Ninth Circuit Case No. 15-15799, which equally apply to Respondent's case, especially the issue of prosecutorial misconduct and fraud on the court by the California State Bar prosecutors, the California Attorney General's prosecutors, and the District Attorney's prosecutors acting in concert with Thomas Girardi, Esq. and others to intentionally violate Respondent's constitutional rights in an attempt to engage in vindictive and selective prosecution, knowing that Respondent is totally innocent and being framed and to seek unlawful and unjust rewards against Respondent.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the motion be granted in full, that both cases, Case No. 11-80215 and related Case No. 12-55304, be stayed to March 18, 2017, inter alia, until the resolution of the criminal case and any appeals or writs against Respondent and the constitutional issues regarding Appellate Commissioner Shaw's

disqualification or recusal under the Appointments Clause to the U.S. Constitution and as a material witness in these cases are finally determined, as there is no prejudice whatsoever to this Court or to the State Bar of California as Respondent is not a practicing attorney. Based on the intentional destruction of the California State Bar and California Supreme Court files, motions, and other documents and exhibits filed by Respondent and his counsel in the District Court by Lydia Yurtchuk, Esq., former legal counsel to the Presiding Judge of the District Court, and not reviewed by the Presiding Judge to make her ruling, this case and the related case should have been summarily reversed and returned to the District Court for a full evidentiary hearing utilizing the California State Bar and California Supreme Court filed documents coupled with the documents pertaining to the three (3) additional cases set forth above, which showed that Respondent was totally innocent and being framed. The fact that Edward Schiffer, Esq. stated to Respondent that he wants the files that have been on his desk for more than five (5) years removed is not a valid reason to deny the mandated stay of proceedings and to continue to violate Respondent's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution and under the Americans With Disabilities Act and other federal statutes. Mr. Schiffer, on behalf of the Appellate

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Commissioner, previously agreed that the hearing would take place in Pasadena, California before a court reporter and not San Francisco, California to accommodate Respondent, which should be the subject matter of a court order thereon.

Dated: December 30, 2016

Respectively submitted,

RONALD N. GOTTSCHALK,
Respondent

DECLARATON OF RONALD GOTTSCHALK

I, Ronald Gottschalk, do hereby declare as follows:

1. I am the Respondent in the above entitled case. I submit this declaration in support of my motion for a stay of proceedings in this Court pending the outcome of the parallel criminal case and to extend time in which to file a responsive brief to the OSC based upon new facts and law.

2. Respondent requests this Court to take judicial notice of Respondent's motion requesting relief from default under C.R.C. Rule 8.60(d) and C.C.P. § 473(b) and declaration of Stanley Arouty, Pages 40-62, filed in the California Supreme Court, which was granted by that Court. This motion was filed with this Court on September 26, 2011 as Docket Entry 4-2 in Case No. 11-80215 and is Exhibit 1 thereto. This declaration of Mr. Arouty presents the facts with respect to the issues before this Court in a preliminary response to the OSC as to why reciprocal discipline should not be imposed in these cases. This motion and declaration of Mr. Arouty is material and highly relevant to the issues to be responded to in connection with the hearings in this Court. Mr. Arouty's declaration further supplies the declaration requested by the Court from an attorney other than Respondent. There are four (4) other briefs that were submitted by Mr. Arouty and more than eight (8) declarations that were filed in the California

Supreme Court by Mr. Arouty pertaining to these cases, which were also unlawfully destroyed by Lydia Yurtchuk, Esq. of the U.S. District Court and counsel to then Chief Judge Audrey Collins to practice a fraud against Respondent, this Court, and the District Court. Those acts also constitute potential felonies.

3. Respondent requests this Court to take judicial notice of the documents that were submitted by Respondent on December 1, 2011 in Case No. 11-80215, as Docket Entry 6, including Docket Entry 6-1 which is the 73 page brief filed by Respondent entitled Response to the Order to Show Cause, Docket Entry 6-3 which is Respondent's Request for Judicial Notice, Docket Entry 6-7 which is the declaration of Arthur Margolis, Esq., and Docket Entry 6-8 which is the Colin Wong Memorandum re void defaults and default judgments by the California State Bar, as mandated by the California Supreme Court. Respondent requests this Court to take judicial notice of each of the documents filed as Docket Entry 6 comprising 330 pages.

4. Respondent requests this Court to take judicial notice of Respondent's motion, declaration and exhibits thereto filed July 8, 2016 in this case as Docket Entry 40.

5. Respondent requests this Court to take judicial notice of Respondent's motion, declaration and exhibits filed August 5, 2016 in this case as Docket Entry 43.

6. Respondent requests this Court to take judicial notice of Respondent's motion, declaration and exhibits filed September 12, 2016 in this case as Docket Entry 45.

7. Respondent requests this Court to take judicial notice of Respondent's motion and declaration filed September 29, 2016 in this case as Docket Entry 47.

8. Attached hereto as Exhibits 1-7 are the U.S. Supreme Court opinion in *North Carolina State Board of Dental Examiners v. FTC*, the amicus curiae brief of *Public Citizen, Inc.*, and the documents filed by Robert Fellmeth, Esq. as they apply to the State Bar of California, as requested by Edward Schiffer, Esq. in his telephone conference initiated by him to Respondent.

Exhibit 1: A copy of the opinion of the U.S. Supreme Court in *North Carolina State Board of Dental Examiners v. FTC* decided February 25, 2015.

Exhibit 2: A copy of the amicus curiae brief of *Public Citizen, Inc.* in the above case filed August 2014.

Exhibit 3: A copy of Robert Fellmeth's article pertaining to the above U.S. Supreme Court case dated April 6, 2015.

Exhibit 4: A copy of Robert Fellmeth's open letter of inquiry dated May 4, 2015 to the Attorney General's of each state.

Exhibit 5: A copy of Robert Fellmeth's April 19, 2016 letter to the Honorable Mark Stone and members of the State Assembly

regarding the application of the above U.S. Supreme Court case to the State Bar of California's exposure to anti-trust law suits and treble monetary damages.

Exhibit 6: A copy of Robert Fellmeth's nine (9) page memo to the State Senate Judiciary Committee and the Assembly Judiciary Committee dated August 19, 2016 re questions and answers regarding the State Bar's exposure to anti-trust law suits and treble monetary damages.

Exhibit 7: A copy of Robert Fellmeth's amicus curiae letter dated October 12, 2016 filed at the request of the Chief Justice in the California Supreme Court regarding the State Bar of California and the issues of de-unification of the Bar and violation by the Bar of the Sherman Anti-Trust Laws.

9. Attached hereto as Exhibit 8 is a copy of the motion in the criminal case of People v. Gottschalk served by Steven Ipsen, Esq. as attorney of record on October 23, 2013 entitled Defendant's Motion to Dismiss the Information Due to the Government's Intentional and Cumulative Prosecutorial Misconduct, Including Withholding of Brady Evidence, and Exculpatory Evidence, or, In the Alternative, Order An Evidentiary Hearing Based Thereon.

10. Attached hereto as Exhibit 9 is a copy of the Harris motion filed by attorney Stanley Arouty on June 4, 2010, who was appointed as Harris

counsel for all of Respondent's cases, including in the California State Bar Court, the California Supreme Court, the California Attorney General's action, and the District Court reciprocal disciplinary case and other cases, without limitation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Arcadia, California on December 30, 2016.

RONALD N. GOTTSCHALK,
Declarant

Table of Authorities

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS *v.* FEDERAL TRADE COMMISSION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 13–534. Argued October 14, 2014—Decided February 25, 2015

North Carolina's Dental Practice Act (Act) provides that the North Carolina State Board of Dental Examiners (Board) is "the agency of the State for the regulation of the practice of dentistry." The Board's principal duty is to create, administer, and enforce a licensing system for dentists; and six of its eight members must be licensed, practicing dentists.

The Act does not specify that teeth whitening is "the practice of dentistry." Nonetheless, after dentists complained to the Board that nondentists were charging lower prices for such services than dentists did, the Board issued at least 47 official cease-and-desist letters to nondentist teeth whitening service providers and product manufacturers, often warning that the unlicensed practice of dentistry is a crime. This and other related Board actions led nondentists to cease offering teeth whitening services in North Carolina.

The Federal Trade Commission (FTC) filed an administrative complaint, alleging that the Board's concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition under the Federal Trade Commission Act. An Administrative Law Judge (ALJ) denied the Board's motion to dismiss on the ground of state-action immunity. The FTC sustained that ruling, reasoning that even if the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board must be actively supervised by the State to claim immunity, which it was not. After a hearing on the merits, the ALJ determined that the Board had unreasonably restrained trade in violation of antitrust law. The FTC again sustained the ALJ, and the Fourth Circuit affirmed the FTC in

all respects.

Held: Because a controlling number of the Board's decisionmakers are active market participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met. Pp. 5–18.

(a) Federal antitrust law is a central safeguard for the Nation's free market structures. However, requiring States to conform to the mandates of the Sherman Act at the expense of other values a State may deem fundamental would impose an impermissible burden on the States' power to regulate. Therefore, beginning with *Parker* v. *Brown*, 317 U. S. 341, this Court interpreted the antitrust laws to confer immunity on the anticompetitive conduct of States acting in their sovereign capacity. Pp. 5–6.

(b) The Board's actions are not cloaked with *Parker* immunity. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if "'the challenged restraint . . . [is] clearly articulated and affirmatively expressed as state policy,' and . . . 'the policy . . . [is] actively supervised by the State.'" *FTC* v. *Phoebe Putney Health System, Inc.*, 568 U. S. ___, ___ (quoting *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.,* 445 U. S. 97, 105). Here, the Board did not receive active supervision of its anticompetitive conduct. Pp. 6–17.

(1) An entity may not invoke *Parker* immunity unless its actions are an exercise of the State's sovereign power. See *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374. Thus, where a State delegates control over a market to a nonsovereign actor the Sherman Act confers immunity only if the State accepts political accountability for the anticompetitive conduct it permits and controls. Limits on state-action immunity are most essential when a State seeks to delegate its regulatory power to active market participants, for dual allegiances are not always apparent to an actor and prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. Accordingly, *Parker* immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State's own. *Midcal*'s two-part test provides a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for entities purporting to act under state authority might diverge from the State's considered definition of the public good and engage in private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this

harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity. Pp. 6–10.

(2) There are instances in which an actor can be excused from *Midcal*'s active supervision requirement. Municipalities, which are electorally accountable, have general regulatory powers, and have no private price-fixing agenda, are subject exclusively to the clear articulation requirement. See *Hallie* v. *Eau Claire*, 471 U. S. 34, 35. That *Hallie* excused municipalities from *Midcal*'s supervision rule for these reasons, however, all but confirms the rule's applicability to actors controlled by active market participants. Further, in light of *Omni*'s holding that an otherwise immune entity will not lose immunity based on ad hoc and *ex post* questioning of its motives for making particular decisions, 499 U. S., at 374, it is all the more necessary to ensure the conditions for granting immunity are met in the first place, see *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 633, and *Phoebe Putney, supra,* at ___. The clear lesson of precedent is that *Midcal*'s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants. Pp. 10–12.

(3) The Board's argument that entities designated by the States as agencies are exempt from *Midcal*'s second requirement cannot be reconciled with the Court's repeated conclusion that the need for supervision turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade. State agencies controlled by active market participants pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773, 791. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. While *Hallie* stated "it is likely that active state supervision would also not be required" for agencies, 471 U. S., at 46, n. 10, the entity there was more like prototypical state agencies, not specialized boards dominated by active market participants. The latter are similar to private trade associations vested by States with regulatory authority, which must satisfy *Midcal*'s active supervision standard. 445 U. S., at 105–106. The similarities between agencies controlled by active market participants and such associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie*, *supra*, at 39. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. Thus,

the Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity. Pp. 12–14.

(4) The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. But this holding is not inconsistent with the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State. Further, this case does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. Of course, States may provide for the defense and indemnification of agency members in the event of litigation, and they can also ensure *Parker* immunity is available by adopting clear policies to displace competition and providing active supervision. Arguments against the wisdom of applying the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity must be rejected, see *Patrick* v. *Burget*, 486 U. S. 94, 105–106, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. Pp. 14–16.

(5) The Board does not contend in this Court that its anticompetitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis. The Act delegates control over the practice of dentistry to the Board, but says nothing about teeth whitening. In acting to expel the dentists' competitors from the market, the Board relied on cease-and-desist letters threatening criminal liability, instead of other powers at its disposal that would have invoked oversight by a politically accountable official. Whether or not the Board exceeded its powers under North Carolina law, there is no evidence of any decision by the State to initiate or concur with the Board's actions against the nondentists. P. 17.

(c) Here, where there are no specific supervisory systems to be reviewed, it suffices to note that the inquiry regarding active supervision is flexible and context-dependent. The question is whether the State's review mechanisms provide "realistic assurance" that a nonsovereign actor's anticompetitive conduct "promotes state policy, rather than merely the party's individual interests." *Patrick*, 486 U. S., 100–101. The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, see *id.*, at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the "mere potential for state

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supervision is not an adequate substitute for a decision by the State," *Ticor*, *supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case. Pp. 17–18.

717 F. 3d 359, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 13–534

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS, PETITIONER *v.* FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[February 25, 2015]

JUSTICE KENNEDY delivered the opinion of the Court.

This case arises from an antitrust challenge to the actions of a state regulatory board. A majority of the board's members are engaged in the active practice of the profession it regulates. The question is whether the board's actions are protected from Sherman Act regulation under the doctrine of state-action antitrust immunity, as defined and applied in this Court's decisions beginning with *Parker* v. *Brown*, 317 U. S. 341 (1943).

I

A

In its Dental Practice Act (Act), North Carolina has declared the practice of dentistry to be a matter of public concern requiring regulation. N. C. Gen. Stat. Ann. §90–22(a) (2013). Under the Act, the North Carolina State Board of Dental Examiners (Board) is "the agency of the State for the regulation of the practice of dentistry." §90–22(b).

The Board's principal duty is to create, administer, and enforce a licensing system for dentists. See §§90–29 to

90–41. To perform that function it has broad authority over licensees. See §90–41. The Board's authority with respect to unlicensed persons, however, is more restricted: like "any resident citizen," the Board may file suit to "perpetually enjoin any person from . . . unlawfully practicing dentistry." §90–40.1.

The Act provides that six of the Board's eight members must be licensed dentists engaged in the active practice of dentistry. §90–22. They are elected by other licensed dentists in North Carolina, who cast their ballots in elections conducted by the Board. *Ibid.* The seventh member must be a licensed and practicing dental hygienist, and he or she is elected by other licensed hygienists. *Ibid.* The final member is referred to by the Act as a "consumer" and is appointed by the Governor. *Ibid.* All members serve 3-year terms, and no person may serve more than two consecutive terms. *Ibid.* The Act does not create any mechanism for the removal of an elected member of the Board by a public official. See *ibid.*

Board members swear an oath of office, §138A–22(a), and the Board must comply with the State's Administrative Procedure Act, §150B–1 *et seq.*, Public Records Act, §132–1 *et seq.*, and open-meetings law, §143–318.9 *et seq.* The Board may promulgate rules and regulations governing the practice of dentistry within the State, provided those mandates are not inconsistent with the Act and are approved by the North Carolina Rules Review Commission, whose members are appointed by the state legislature. See §§90–48, 143B–30.1, 150B–21.9(a).

B

In the 1990's, dentists in North Carolina started whitening teeth. Many of those who did so, including 8 of the Board's 10 members during the period at issue in this case, earned substantial fees for that service. By 2003, nondentists arrived on the scene. They charged lower

prices for their services than the dentists did. Dentists soon began to complain to the Board about their new competitors. Few complaints warned of possible harm to consumers. Most expressed a principal concern with the low prices charged by nondentists.

Responding to these filings, the Board opened an investigation into nondentist teeth whitening. A dentist member was placed in charge of the inquiry. Neither the Board's hygienist member nor its consumer member participated in this undertaking. The Board's chief operations officer remarked that the Board was "going forth to do battle" with nondentists. App. to Pet. for Cert. 103a. The Board's concern did not result in a formal rule or regulation reviewable by the independent Rules Review Commission, even though the Act does not, by its terms, specify that teeth whitening is "the practice of dentistry."

Starting in 2006, the Board issued at least 47 cease-and-desist letters on its official letterhead to nondentist teeth whitening service providers and product manufacturers. Many of those letters directed the recipient to cease "all activity constituting the practice of dentistry"; warned that the unlicensed practice of dentistry is a crime; and strongly implied (or expressly stated) that teeth whitening constitutes "the practice of dentistry." App. 13, 15. In early 2007, the Board persuaded the North Carolina Board of Cosmetic Art Examiners to warn cosmetologists against providing teeth whitening services. Later that year, the Board sent letters to mall operators, stating that kiosk teeth whiteners were violating the Dental Practice Act and advising that the malls consider expelling violators from their premises.

These actions had the intended result. Nondentists ceased offering teeth whitening services in North Carolina.

C

In 2010, the Federal Trade Commission (FTC) filed an

administrative complaint charging the Board with violating §5 of the Federal Trade Commission Act, 38 Stat. 719, as amended, 15 U. S. C. §45. The FTC alleged that the Board's concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition. The Board moved to dismiss, alleging state-action immunity. An Administrative Law Judge (ALJ) denied the motion. On appeal, the FTC sustained the ALJ's ruling. It reasoned that, even assuming the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board is a "public/private hybrid" that must be actively supervised by the State to claim immunity. App. to Pet. for Cert. 49a. The FTC further concluded the Board could not make that showing.

Following other proceedings not relevant here, the ALJ conducted a hearing on the merits and determined the Board had unreasonably restrained trade in violation of antitrust law. On appeal, the FTC again sustained the ALJ. The FTC rejected the Board's public safety justification, noting, *inter alia*, "a wealth of evidence . . . suggesting that non-dentist provided teeth whitening is a safe cosmetic procedure." *Id.,* at 123a.

The FTC ordered the Board to stop sending the cease-and-desist letters or other communications that stated nondentists may not offer teeth whitening services and products. It further ordered the Board to issue notices to all earlier recipients of the Board's cease-and-desist orders advising them of the Board's proper sphere of authority and saying, among other options, that the notice recipients had a right to seek declaratory rulings in state court.

On petition for review, the Court of Appeals for the Fourth Circuit affirmed the FTC in all respects. 717 F. 3d 359, 370 (2013). This Court granted certiorari. 571 U. S. ___ (2014).

II

Federal antitrust law is a central safeguard for the Nation's free market structures. In this regard it is "as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms." *United States* v. *Topco Associates, Inc.*, 405 U. S. 596, 610 (1972). The antitrust laws declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market.

The Sherman Act, 26 Stat. 209, as amended, 15 U. S. C. §1 *et seq.*, serves to promote robust competition, which in turn empowers the States and provides their citizens with opportunities to pursue their own and the public's welfare. See *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 632 (1992). The States, however, when acting in their respective realm, need not adhere in all contexts to a model of unfettered competition. While "the States regulate their economies in many ways not inconsistent with the antitrust laws," *id.,* at 635–636, in some spheres they impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives. If every duly enacted state law or policy were required to conform to the mandates of the Sherman Act, thus promoting competition at the expense of other values a State may deem fundamental, federal antitrust law would impose an impermissible burden on the States' power to regulate. See *Exxon Corp.* v. *Governor of Maryland*, 437 U. S. 117, 133 (1978); see also Easterbrook, Antitrust and the Economics of Federalism, 26 J. Law & Econ. 23, 24 (1983).

For these reasons, the Court in *Parker* v. *Brown* interpreted the antitrust laws to confer immunity on anticompetitive conduct by the States when acting in their sovereign capacity. See 317 U. S., at 350–351. That ruling

recognized Congress' purpose to respect the federal balance and to "embody in the Sherman Act the federalism principle that the States possess a significant measure of sovereignty under our Constitution." *Community Communications Co.* v. *Boulder*, 455 U. S. 40, 53 (1982). Since 1943, the Court has reaffirmed the importance of *Parker*'s central holding. See, *e.g., Ticor*, *supra*, at 632–637; *Hoover* v. *Ronwin*, 466 U. S. 558, 568 (1984); *Lafayette* v. *Louisiana Power & Light Co.*, 435 U. S. 389, 394–400 (1978).

III

In this case the Board argues its members were invested by North Carolina with the power of the State and that, as a result, the Board's actions are cloaked with *Parker* immunity. This argument fails, however. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if it satisfies two requirements: "first that 'the challenged restraint . . . be one clearly articulated and affirmatively expressed as state policy,' and second that 'the policy . . . be actively supervised by the State.'" *FTC* v. *Phoebe Putney Health System, Inc.*, 568 U. S. ___, ___ (2013) (slip op., at 7) (quoting *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.,* 445 U. S. 97, 105 (1980)). The parties have assumed that the clear articulation requirement is satisfied, and we do the same. While North Carolina prohibits the unauthorized practice of dentistry, however, its Act is silent on whether that broad prohibition covers teeth whitening. Here, the Board did not receive active supervision by the State when it interpreted the Act as addressing teeth whitening and when it enforced that policy by issuing cease-and-desist letters to nondentist teeth whiteners.

A

Although state-action immunity exists to avoid conflicts

between state sovereignty and the Nation's commitment to a policy of robust competition, *Parker* immunity is not unbounded. "[G]iven the fundamental national values of free enterprise and economic competition that are embodied in the federal antitrust laws, 'state action immunity is disfavored, much as are repeals by implication.'" *Phoebe Putney*, *supra*, at ___ (slip op., at 7) (quoting *Ticor*, *supra,* at 636).

An entity may not invoke *Parker* immunity unless the actions in question are an exercise of the State's sovereign power. See *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374 (1991). State legislation and "decision[s] of a state supreme court, acting legislatively rather than judicially," will satisfy this standard, and "*ipso facto* are exempt from the operation of the antitrust laws" because they are an undoubted exercise of state sovereign authority. *Hoover*, *supra*, at 567–568.

But while the Sherman Act confers immunity on the States' own anticompetitive policies out of respect for federalism, it does not always confer immunity where, as here, a State delegates control over a market to a nonsovereign actor. See *Parker*, *supra,* at 351 ("[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful"). For purposes of *Parker*, a nonsovereign actor is one whose conduct does not automatically qualify as that of the sovereign State itself. See *Hoover*, *supra*, at 567–568. State agencies are not simply by their governmental character sovereign actors for purposes of state-action immunity. See *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773, 791 (1975) ("The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members"). Immunity for state agencies, therefore, requires more than a mere facade of state involvement, for it is necessary in light of

Parker's rationale to ensure the States accept political accountability for anticompetitive conduct they permit and control. See *Ticor*, 504 U. S., at 636.

Limits on state-action immunity are most essential when the State seeks to delegate its regulatory power to active market participants, for established ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern. Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability. See *Midcal*, *supra*, at 106 ("The national policy in favor of competition cannot be thwarted by casting [a] gauzy cloak of state involvement over what is essentially a private price-fixing arrangement"). Indeed, prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. See, *e.g., Allied Tube & Conduit Corp.* v. *Indian Head, Inc.*, 486 U. S. 492, 501 (1988); *Hoover*, *supra*, at 584 (Stevens, J., dissenting) ("The risk that private regulation of market entry, prices, or output may be designed to confer monopoly profits on members of an industry at the expense of the consuming public has been the central concern of . . . our antitrust jurisprudence"); see also Elhauge, The Scope of Antitrust Process, 104 Harv. L. Rev. 667, 672 (1991). So it follows that, under *Parker* and the Supremacy Clause, the States' greater power to attain an end does not include the lesser power to negate the congressional judgment embodied in the Sherman Act through unsupervised delegations to active market participants. See Garland, Antitrust and State Action: Economic Efficiency and the Political Process, 96 Yale L. J. 486, 500 (1986).

Parker immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State's own.

See *Goldfarb, supra*, at 790; see also 1A P. Areeda & H. Hovencamp, Antitrust Law ¶226, p. 180 (4th ed. 2013) (Areeda & Hovencamp). The question is not whether the challenged conduct is efficient, well-functioning, or wise. See *Ticor*, *supra*, at 634–635. Rather, it is "whether anti-competitive conduct engaged in by [nonsovereign actors] should be deemed state action and thus shielded from the antitrust laws." *Patrick* v. *Burget*, 486 U. S. 94, 100 (1988).

To answer this question, the Court applies the two-part test set forth in *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.*, 445 U. S. 97, a case arising from California's delegation of price-fixing authority to wine merchants. Under *Midcal*, "[a] state law or regulatory scheme cannot be the basis for antitrust immunity unless, first, the State has articulated a clear policy to allow the anticompetitive conduct, and second, the State provides active supervision of [the] anticompetitive conduct." *Ticor*, *supra*, at 631 (citing *Midcal*, *supra*, at 105).

Midcal's clear articulation requirement is satisfied "where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals." *Phoebe Putney*, 568 U. S., at ___ (slip op., at 11). The active supervision requirement demands, *inter alia*, "that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy." *Patrick*, *supra*, U. S., at 101.

The two requirements set forth in *Midcal* provide a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for a policy may

satisfy this test yet still be defined at so high a level of generality as to leave open critical questions about how and to what extent the market should be regulated. See *Ticor*, *supra*, at 636–637. Entities purporting to act under state authority might diverge from the State's considered definition of the public good. The resulting asymmetry between a state policy and its implementation can invite private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity.

Midcal's supervision rule "stems from the recognition that '[w]here a private party is engaging in anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State.'" *Patrick*, *supra*, at 100. Concern about the private incentives of active market participants animates *Midcal*'s supervision mandate, which demands "realistic assurance that a private party's anticompetitive conduct promotes state policy, rather than merely the party's individual interests." *Patrick*, *supra*, at 101.

B

In determining whether anticompetitive policies and conduct are indeed the action of a State in its sovereign capacity, there are instances in which an actor can be excused from *Midcal*'s active supervision requirement. In *Hallie* v. *Eau Claire*, 471 U. S. 34, 45 (1985), the Court held municipalities are subject exclusively to *Midcal*'s "'clear articulation'" requirement. That rule, the Court observed, is consistent with the objective of ensuring that the policy at issue be one enacted by the State itself. *Hallie* explained that "[w]here the actor is a municipality, there is little or no danger that it is involved in a private price-fixing arrangement. The only real danger is that it will seek to further purely parochial public interests at the

expense of more overriding state goals." 471 U. S., at 47. *Hallie* further observed that municipalities are electorally accountable and lack the kind of private incentives characteristic of active participants in the market. See *id.,* at 45, n. 9. Critically, the municipality in *Hallie* exercised a wide range of governmental powers across different economic spheres, substantially reducing the risk that it would pursue private interests while regulating any single field. See *ibid.* That *Hallie* excused municipalities from *Midcal*'s supervision rule for these reasons all but confirms the rule's applicability to actors controlled by active market participants, who ordinarily have none of the features justifying the narrow exception *Hallie* identified. See 471 U. S., at 45.

Following *Goldfarb*, *Midcal*, and *Hallie*, which clarified the conditions under which *Parker* immunity attaches to the conduct of a nonsovereign actor, the Court in *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, addressed whether an otherwise immune entity could lose immunity for conspiring with private parties. In *Omni*, an aspiring billboard merchant argued that the city of Columbia, South Carolina, had violated the Sherman Act—and forfeited its *Parker* immunity—by anticompetitively conspiring with an established local company in passing an ordinance restricting new billboard construction. 499 U. S., at 367–368. The Court disagreed, holding there is no "conspiracy exception" to *Parker*. *Omni, supra*, at 374.

Omni, like the cases before it, recognized the importance of drawing a line "relevant to the purposes of the Sherman Act and of *Parker*: prohibiting the restriction of competition for private gain but permitting the restriction of competition in the public interest." 499 U. S., at 378. In the context of a municipal actor which, as in *Hallie*, exercised substantial governmental powers, *Omni* rejected a conspiracy exception for "corruption" as vague and unworkable, since "virtually all regulation benefits some

segments of the society and harms others" and may in that sense be seen as "'corrupt.'" 499 U. S., at 377. *Omni* also rejected subjective tests for corruption that would force a "deconstruction of the governmental process and probing of the official 'intent' that we have consistently sought to avoid." *Ibid.* Thus, whereas the cases preceding it addressed the preconditions of *Parker* immunity and engaged in an objective, *ex ante* inquiry into nonsovereign actors' structure and incentives, *Omni* made clear that recipients of immunity will not lose it on the basis of ad hoc and *ex post* questioning of their motives for making particular decisions.

Omni's holding makes it all the more necessary to ensure the conditions for granting immunity are met in the first place. The Court's two state-action immunity cases decided after *Omni* reinforce this point. In *Ticor* the Court affirmed that *Midcal*'s limits on delegation must ensure that "[a]ctual state involvement, not deference to private price-fixing arrangements under the general auspices of state law, is the precondition for immunity from federal law." 504 U. S., at 633. And in *Phoebe Putney* the Court observed that *Midcal*'s active supervision requirement, in particular, is an essential condition of state-action immunity when a nonsovereign actor has "an incentive to pursue [its] own self-interest under the guise of implementing state policies." 568 U. S., at ___ (slip op., at 8) (quoting *Hallie*, *supra*, at 46–47). The lesson is clear: *Midcal*'s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants.

C

The Board argues entities designated by the States as agencies are exempt from *Midcal*'s second requirement. That premise, however, cannot be reconciled with the Court's repeated conclusion that the need for supervision

turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade.

State agencies controlled by active market participants, who possess singularly strong private interests, pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See Areeda & Hovencamp ¶227, at 226. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. See *Patrick*, 486 U. S., at 100–101.

The Court applied this reasoning to a state agency in *Goldfarb*. There the Court denied immunity to a state agency (the Virginia State Bar) controlled by market participants (lawyers) because the agency had "joined in what is essentially a private anticompetitive activity" for "the benefit of its members." 421 U. S., at 791, 792. This emphasis on the Bar's private interests explains why *Goldfarb*, though it predates *Midcal*, considered the lack of supervision by the Virginia Supreme Court to be a principal reason for denying immunity. See 421 U. S., at 791; see also *Hoover*, 466 U. S., at 569 (emphasizing lack of active supervision in *Goldfarb*); *Bates* v. *State Bar of Ariz.*, 433 U. S. 350, 361–362 (1977) (granting the Arizona Bar state-action immunity partly because its "rules are subject to pointed re-examination by the policymaker").

While *Hallie* stated "it is likely that active state supervision would also not be required" for agencies, 471 U. S., at 46, n. 10, the entity there, as was later the case in *Omni*, was an electorally accountable municipality with general regulatory powers and no private price-fixing agenda. In that and other respects the municipality was more like prototypical state agencies, not specialized boards dominated by active market participants. In important regards, agencies controlled by market partici-

pants are more similar to private trade associations vested by States with regulatory authority than to the agencies *Hallie* considered. And as the Court observed three years after *Hallie*, "[t]here is no doubt that the members of such associations often have economic incentives to restrain competition and that the product standards set by such associations have a serious potential for anticompetitive harm." *Allied Tube*, 486 U. S., at 500. For that reason, those associations must satisfy *Midcal*'s active supervision standard. See *Midcal*, 445 U. S., at 105–106.

The similarities between agencies controlled by active market participants and private trade associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie*, *supra*, at 39 (rejecting "purely formalistic" analysis). *Parker* immunity does not derive from nomenclature alone. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. See Areeda & Hovencamp ¶227, at 226. The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity.

D

The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. If this were so—and, for reasons to be noted, it need not be so—there would be some cause for concern. The States have a sovereign interest in structuring their governments, see *Gregory* v. *Ashcroft*, 501 U. S. 452, 460 (1991), and may conclude there are substantial benefits to staffing their

agencies with experts in complex and technical subjects, see *Southern Motor Carriers Rate Conference, Inc.* v. *United States*, 471 U. S. 48, 64 (1985). There is, moreover, a long tradition of citizens esteemed by their professional colleagues devoting time, energy, and talent to enhancing the dignity of their calling.

Adherence to the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State reaches back at least to the Hippocratic Oath. See generally S. Miles, The Hippocratic Oath and the Ethics of Medicine (2004). In the United States, there is a strong tradition of professional self-regulation, particularly with respect to the development of ethical rules. See generally R. Rotunda & J. Dzienkowski, Legal Ethics: The Lawyer's Deskbook on Professional Responsibility (2014); R. Baker, Before Bioethics: A History of American Medical Ethics From the Colonial Period to the Bioethics Revolution (2013). Dentists are no exception. The American Dental Association, for example, in an exercise of "the privilege and obligation of self-government," has "call[ed] upon dentists to follow high ethical standards," including "honesty, compassion, kindness, integrity, fairness and charity." American Dental Association, Principles of Ethics and Code of Professional Conduct 3–4 (2012). State laws and institutions are sustained by this tradition when they draw upon the expertise and commitment of professionals.

Today's holding is not inconsistent with that idea. The Board argues, however, that the potential for money damages will discourage members of regulated occupations from participating in state government. Cf. *Filarsky* v. *Delia*, 566 U. S. ___, ___ (2012) (slip op., at 12) (warning in the context of civil rights suits that the "the most talented candidates will decline public engagements if they do not receive the same immunity enjoyed by their public employee counterparts"). But this case, which does not

present a claim for money damages, does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. See *Goldfarb*, 421 U. S., at 792, n. 22; see also Brief for Respondent 56. And, of course, the States may provide for the defense and indemnification of agency members in the event of litigation.

States, furthermore, can ensure *Parker* immunity is available to agencies by adopting clear policies to displace competition; and, if agencies controlled by active market participants interpret or enforce those policies, the States may provide active supervision. Precedent confirms this principle. The Court has rejected the argument that it would be unwise to apply the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity:

> "[Respondents] contend that effective peer review is essential to the provision of quality medical care and that any threat of antitrust liability will prevent physicians from participating openly and actively in peer-review proceedings. This argument, however, essentially challenges the wisdom of applying the antitrust laws to the sphere of medical care, and as such is properly directed to the legislative branch. To the extent that Congress has declined to exempt medical peer review from the reach of the antitrust laws, peer review is immune from antitrust scrutiny only if the State effectively has made this conduct its own." *Patrick*, 486 U. S. at 105–106 (footnote omitted).

The reasoning of *Patrick* v. *Burget* applies to this case with full force, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. See generally Edlin & Haw, Cartels by Another Name: Should Licensed Occupations Face Antitrust Scrutiny? 162 U. Pa. L. Rev. 1093 (2014).

E

The Board does not contend in this Court that its anticompetitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis.

By statute, North Carolina delegates control over the practice of dentistry to the Board. The Act, however, says nothing about teeth whitening, a practice that did not exist when it was passed. After receiving complaints from other dentists about the nondentists' cheaper services, the Board's dentist members—some of whom offered whitening services—acted to expel the dentists' competitors from the market. In so doing the Board relied upon cease-and-desist letters threatening criminal liability, rather than any of the powers at its disposal that would invoke oversight by a politically accountable official. With no active supervision by the State, North Carolina officials may well have been unaware that the Board had decided teeth whitening constitutes "the practice of dentistry" and sought to prohibit those who competed against dentists from participating in the teeth whitening market. Whether or not the Board exceeded its powers under North Carolina law, cf. *Omni*, 499 U. S., at 371–372, there is no evidence here of any decision by the State to initiate or concur with the Board's actions against the nondentists.

IV

The Board does not claim that the State exercised active, or indeed any, supervision over its conduct regarding nondentist teeth whiteners; and, as a result, no specific supervisory systems can be reviewed here. It suffices to note that the inquiry regarding active supervision is flexible and context-dependent. Active supervision need not entail day-to-day involvement in an agency's operations or micromanagement of its every decision. Rather, the question is whether the State's review mechanisms provide "realistic assurance" that a nonsovereign actor's anticom-

petitive conduct "promotes state policy, rather than merely the party's individual interests." *Patrick*, *supra,* at 100–101; see also *Ticor*, 504 U. S., at 639–640.

The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it, see *Patrick*, 486 U. S., at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the "mere potential for state supervision is not an adequate substitute for a decision by the State," *Ticor*, *supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case.

* * *

The Sherman Act protects competition while also respecting federalism. It does not authorize the States to abandon markets to the unsupervised control of active market participants, whether trade associations or hybrid agencies. If a State wants to rely on active market participants as regulators, it must provide active supervision if state-action immunity under *Parker* is to be invoked.

The judgment of the Court of Appeals for the Fourth Circuit is affirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 13–534

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS, PETITIONER *v.* FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[February 25, 2015]

JUSTICE ALITO, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

The Court's decision in this case is based on a serious misunderstanding of the doctrine of state-action antitrust immunity that this Court recognized more than 60 years ago in *Parker* v. *Brown*, 317 U. S. 341 (1943). In *Parker*, the Court held that the Sherman Act does not prevent the States from continuing their age-old practice of enacting measures, such as licensing requirements, that are designed to protect the public health and welfare. *Id.*, at 352. The case now before us involves precisely this type of state regulation—North Carolina's laws governing the practice of dentistry, which are administered by the North Carolina Board of Dental Examiners (Board).

Today, however, the Court takes the unprecedented step of holding that *Parker* does not apply to the North Carolina Board because the Board is not structured in a way that merits a good-government seal of approval; that is, it is made up of practicing dentists who have a financial incentive to use the licensing laws to further the financial interests of the State's dentists. There is nothing new about the structure of the North Carolina Board. When the States first created medical and dental boards, well before the Sherman Act was enacted, they began to staff

them in this way.[1] Nor is there anything new about the suspicion that the North Carolina Board—in attempting to prevent persons other than dentists from performing teeth-whitening procedures—was serving the interests of dentists and not the public. Professional and occupational licensing requirements have often been used in such a way.[2] But that is not what *Parker* immunity is about. Indeed, the very state program involved in that case was unquestionably designed to benefit the regulated entities, California raisin growers.

The question before us is not whether such programs serve the public interest. The question, instead, is whether this case is controlled by *Parker*, and the answer to that question is clear. Under *Parker*, the Sherman Act (and the Federal Trade Commission Act, see *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 635 (1992)) do not apply to state agencies; the North Carolina Board of Dental Examiners is a state agency; and that is the end of the matter. By straying from this simple path, the Court has not only distorted *Parker*; it has headed into a morass. Determining whether a state agency is structured in a way that militates against regulatory capture is no easy task, and there is reason to fear that today's decision will spawn confusion. The Court has veered off course, and therefore I cannot go along.

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[1] S. White, History of Oral and Dental Science in America 197–214 (1876) (detailing earliest American regulations of the practice of dentistry).

[2] See, *e.g.*, R. Shrylock, Medical Licensing in America 29 (1967) (Shrylock) (detailing the deterioration of licensing regimes in the mid-19th century, in part out of concerns about restraints on trade); Gellhorn, The Abuse of Occupational Licensing, 44 U. Chi. L. Rev. 6 (1976); Shepard, Licensing Restrictions and the Cost of Dental Care, 21 J. Law & Econ. 187 (1978).

I

In order to understand the nature of *Parker* state-action immunity, it is helpful to recall the constitutional landscape in 1890 when the Sherman Act was enacted. At that time, this Court and Congress had an understanding of the scope of federal and state power that is very different from our understanding today. The States were understood to possess the exclusive authority to regulate "their purely internal affairs." *Leisy* v. *Hardin*, 135 U. S. 100, 122 (1890). In exercising their police power in this area, the States had long enacted measures, such as price controls and licensing requirements, that had the effect of restraining trade.[3]

The Sherman Act was enacted pursuant to Congress' power to regulate interstate commerce, and in passing the Act, Congress wanted to exercise that power "to the utmost extent." *United States* v. *South-Eastern Underwriters Assn.*, 322 U. S. 533, 558 (1944). But in 1890, the understanding of the commerce power was far more limited than it is today. See, *e.g., Kidd* v. *Pearson*, 128 U. S. 1, 17–18 (1888). As a result, the Act did not pose a threat to traditional state regulatory activity.

By 1943, when *Parker* was decided, however, the situation had changed dramatically. This Court had held that the commerce power permitted Congress to regulate even local activity if it "exerts a substantial economic effect on interstate commerce." *Wickard* v. *Filburn*, 317 U. S. 111, 125 (1942). This meant that Congress could regulate many of the matters that had once been thought to fall exclusively within the jurisdiction of the States. The new interpretation of the commerce power brought about an expansion of the reach of the Sherman Act. See *Hospital*

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[3] See Handler, The Current Attack on the *Parker* v. *Brown* State Action Doctrine, 76 Colum. L. Rev. 1, 4–6 (1976) (collecting cases).

Building Co. v. *Trustees of Rex Hospital*, 425 U. S. 738, 743, n. 2 (1976) ("[D]ecisions by this Court have permitted the reach of the Sherman Act to expand along with expanding notions of congressional power"). And the expanded reach of the Sherman Act raised an important question. The Sherman Act does not expressly exempt States from its scope. Does that mean that the Act applies to the States and that it potentially outlaws many traditional state regulatory measures? The Court confronted that question in *Parker*.

In *Parker*, a raisin producer challenged the California Agricultural Prorate Act, an agricultural price support program. The California Act authorized the creation of an Agricultural Prorate Advisory Commission (Commission) to establish marketing plans for certain agricultural commodities within the State. 317 U. S., at 346–347. Raisins were among the regulated commodities, and so the Commission established a marketing program that governed many aspects of raisin sales, including the quality and quantity of raisins sold, the timing of sales, and the price at which raisins were sold. *Id.*, at 347–348. The *Parker* Court assumed that this program would have violated "the Sherman Act if it were organized and made effective solely by virtue of a contract, combination or conspiracy of private persons," and the Court also assumed that Congress could have prohibited a State from creating a program like California's if it had chosen to do so. *Id.*, at 350. Nevertheless, the Court concluded that the California program did not violate the Sherman Act because the Act did not circumscribe state regulatory power. *Id.*, at 351.

The Court's holding in *Parker* was not based on either the language of the Sherman Act or anything in the legislative history affirmatively showing that the Act was not meant to apply to the States. Instead, the Court reasoned that "[i]n a dual system of government in which, under the Constitution, the states are sovereign, save only as Con-

gress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." 317 U. S., at 351. For the Congress that enacted the Sherman Act in 1890, it would have been a truly radical and almost certainly futile step to attempt to prevent the States from exercising their traditional regulatory authority, and the *Parker* Court refused to assume that the Act was meant to have such an effect.

When the basis for the *Parker* state-action doctrine is understood, the Court's error in this case is plain. In 1890, the regulation of the practice of medicine and dentistry was regarded as falling squarely within the States' sovereign police power. By that time, many States had established medical and dental boards, often staffed by doctors or dentists,[4] and had given those boards the authority to confer and revoke licenses.[5] This was quintessential police power legislation, and although state laws were often challenged during that era under the doctrine of substantive due process, the licensing of medical professionals easily survived such assaults. Just one year before the enactment of the Sherman Act, in *Dent* v. *West Virginia*, 129 U. S. 114, 128 (1889), this Court rejected such a challenge to a state law requiring all physicians to obtain a certificate from the state board of health attesting to their qualifications. And in *Hawker* v. *New York*, 170 U. S. 189, 192 (1898), the Court reiterated that a law

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[4] Shrylock 54–55; D. Johnson and H. Chaudry, Medical Licensing and Discipline in America 23–24 (2012).

[5] In *Hawker* v. *New York,* 170 U. S. 189 (1898), the Court cited state laws authorizing such boards to refuse or revoke medical licenses. *Id.*, at 191–193, n. 1. See also *Douglas* v. *Noble*, 261 U. S. 165, 166 (1923) ("In 1893 the legislature of Washington provided that only licensed persons should practice dentistry" and "vested the authority to license in a board of examiners, consisting of five practicing dentists").

specifying the qualifications to practice medicine was clearly a proper exercise of the police power. Thus, the North Carolina statutes establishing and specifying the powers of the State Board of Dental Examiners represent precisely the kind of state regulation that the *Parker* exemption was meant to immunize.

II

As noted above, the only question in this case is whether the North Carolina Board of Dental Examiners is really a state agency, and the answer to that question is clearly yes.

- The North Carolina Legislature determined that the practice of dentistry "affect[s] the public health, safety and welfare" of North Carolina's citizens and that therefore the profession should be "subject to regulation and control in the public interest" in order to ensure "that only qualified persons be permitted to practice dentistry in the State." N. C. Gen. Stat. Ann. §90–22(a) (2013).
- To further that end, the legislature created the North Carolina State Board of Dental Examiners "as the agency of the State for the regulation of the practice of dentistry in th[e] State." §90–22(b).
- The legislature specified the membership of the Board. §90–22(c). It defined the "practice of dentistry," §90–29(b), and it set out standards for licensing practitioners, §90–30. The legislature also set out standards under which the Board can initiate disciplinary proceedings against licensees who engage in certain improper acts. §90–41(a).
- The legislature empowered the Board to "maintain an action in the name of the State of North Carolina to perpetually enjoin any person from . . . unlawfully practicing dentistry." §90–40.1(a). It authorized the Board to conduct investigations and to hire legal

counsel, and the legislature made any "notice or statement of charges against any licensee" a public record under state law. §§ 90–41(d)–(g).

- The legislature empowered the Board "to enact rules and regulations governing the practice of dentistry within the State," consistent with relevant statutes. §90–48. It has required that any such rules be included in the Board's annual report, which the Board must file with the North Carolina secretary of state, the state attorney general, and the legislature's Joint Regulatory Reform Committee. §93B–2. And if the Board fails to file the required report, state law demands that it be automatically suspended until it does so. *Ibid.*

As this regulatory regime demonstrates, North Carolina's Board of Dental Examiners is unmistakably a state agency created by the state legislature to serve a prescribed regulatory purpose and to do so using the State's power in cooperation with other arms of state government.

The Board is not a private or "nonsovereign" entity that the State of North Carolina has attempted to immunize from federal antitrust scrutiny. *Parker* made it clear that a State may not "'give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful.'" *Ante,* at 7 (quoting *Parker*, 317 U. S., at 351). When the *Parker* Court disapproved of any such attempt, it cited *Northern Securities Co.* v. *United States*, 193 U. S. 197 (1904), to show what it had in mind. In that case, the Court held that a State's act of chartering a corporation did not shield the corporation's monopolizing activities from federal antitrust law. *Id.*, at 344–345. Nothing similar is involved here. North Carolina did not authorize a private entity to enter into an anticompetitive arrangement; rather, North Carolina *created a state agency* and gave that agency the power to regulate a particular subject affecting public health and

safety.

Nothing in *Parker* supports the type of inquiry that the Court now prescribes. The Court crafts a test under which state agencies that are "controlled by active market participants," *ante*, at 12, must demonstrate active state supervision in order to be immune from federal antitrust law. The Court thus treats these state agencies like private entities. But in *Parker*, the Court did not examine the structure of the California program to determine if it had been captured by private interests. If the Court had done so, the case would certainly have come out differently, because California conditioned its regulatory measures on the participation and approval of market actors in the relevant industry.

Establishing a prorate marketing plan under California's law first required the petition of at least 10 producers of the particular commodity. *Parker*, 317 U. S., at 346. If the Commission then agreed that a marketing plan was warranted, the Commission would "select a program committee *from among nominees chosen by the qualified producers*." *Ibid.* (emphasis added). That committee would then formulate the proration marketing program, which the Commission could modify or approve. But even after Commission approval, the program became law (and then, automatically) only if it gained the approval of 65 percent of the relevant producers, representing at least 51 percent of the acreage of the regulated crop. *Id.*, at 347. This scheme gave decisive power to market participants. But despite these aspects of the California program, *Parker* held that California was acting as a "sovereign" when it "adopt[ed] and enforc[ed] the prorate program." *Id.*, at 352. This reasoning is irreconcilable with the Court's today.

III

The Court goes astray because it forgets the origin of the

Parker doctrine and is misdirected by subsequent cases that extended that doctrine (in certain circumstances) to private entities. The Court requires the North Carolina Board to satisfy the two-part test set out in *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.*, 445 U. S. 97 (1980), but the party claiming *Parker* immunity in that case was not a state agency but a private trade association. Such an entity is entitled to *Parker* immunity, *Midcal* held, only if the anticompetitive conduct at issue was both "'clearly articulated'" and "'actively supervised by the State itself.'" 445 U. S., at 105. Those requirements are needed where a State authorizes private parties to engage in anticompetitive conduct. They serve to identify those situations in which conduct *by private parties* can be regarded as the conduct of a State. But when the conduct in question is the conduct of a state agency, no such inquiry is required.

This case falls into the latter category, and therefore *Midcal* is inapposite. The North Carolina Board is not a private trade association. It is a state agency, created and empowered by the State to regulate an industry affecting public health. It would not exist if the State had not created it. And for purposes of *Parker*, its membership is irrelevant; what matters is that it is part of the government of the sovereign State of North Carolina.

Our decision in *Hallie* v. *Eau Claire*, 471 U. S. 34 (1985), which involved Sherman Act claims against a municipality, not a State agency, is similarly inapplicable. In *Hallie,* the plaintiff argued that the two-pronged *Midcal* test should be applied, but the Court disagreed. The Court acknowledged that municipalities "are not themselves sovereign." 471 U. S., at 38. But recognizing that a municipality is "an arm of the State," *id.*, at 45, the Court held that a municipality should be required to satisfy only the first prong of the *Midcal* test (requiring a clearly articulated state policy), 471 U. S., at 46. That municipalities

are not sovereign was critical to our analysis in *Hallie*, and thus that decision has no application in a case, like this one, involving a state agency.

Here, however, the Court not only disregards the North Carolina Board's status as a full-fledged state agency; it treats the Board less favorably than a municipality. This is puzzling. States are sovereign, *Northern Ins. Co. of N. Y.* v. *Chatham County*, 547 U. S. 189, 193 (2006), and California's sovereignty provided the foundation for the decision in *Parker*, *supra,* at 352. Municipalities are not sovereign. *Jinks* v. *Richland County*, 538 U. S. 456, 466 (2003). And for this reason, federal law often treats municipalities differently from States. Compare *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 71 (1989) ("[N]either a State nor its officials acting it their official capacities are 'persons' under [42 U. S. C.] §1983"), with *Monell* v. *City Dept. of Social Servs., New York*, 436 U. S. 658, 694 (1978) (municipalities liable under §1983 where "execution of a government's policy or custom . . . inflicts the injury").

The Court recognizes that municipalities, although not sovereign, nevertheless benefit from a more lenient standard for state-action immunity than private entities. Yet under the Court's approach, the North Carolina Board of Dental Examiners, a full-fledged state agency, is treated like a private actor and must demonstrate that the State actively supervises its actions.

The Court's analysis seems to be predicated on an assessment of the varying degrees to which a municipality and a state agency like the North Carolina Board are likely to be captured by private interests. But until today, *Parker* immunity was never conditioned on the proper use of state regulatory authority. On the contrary, in *Columbia* v. *Omni Outdoor Advertising, Inc.,* 499 U. S. 365 (1991), we refused to recognize an exception to *Parker* for cases in which it was shown that the defendants had

engaged in a conspiracy or corruption or had acted in a way that was not in the public interest. *Id.,* at 374. The Sherman Act, we said, is not an anticorruption or good-government statute. 499 U. S., at 398. We were unwilling in *Omni* to rewrite *Parker* in order to reach the allegedly abusive behavior of city officials. 499 U. S., at 374–379. But that is essentially what the Court has done here.

III

Not only is the Court's decision inconsistent with the underlying theory of *Parker*; it will create practical problems and is likely to have far-reaching effects on the States' regulation of professions. As previously noted, state medical and dental boards have been staffed by practitioners since they were first created, and there are obvious advantages to this approach. It is reasonable for States to decide that the individuals best able to regulate technical professions are practitioners with expertise in those very professions. Staffing the State Board of Dental Examiners with certified public accountants would certainly lessen the risk of actions that place the well-being of dentists over those of the public, but this would also compromise the State's interest in sensibly regulating a technical profession in which lay people have little expertise.

As a result of today's decision, States may find it necessary to change the composition of medical, dental, and other boards, but it is not clear what sort of changes are needed to satisfy the test that the Court now adopts. The Court faults the structure of the North Carolina Board because "active market participants" constitute "a controlling number of [the] decisionmakers," *ante,* at 14, but this test raises many questions.

What is a "controlling number"? Is it a majority? And if so, why does the Court eschew that term? Or does the Court mean to leave open the possibility that something less than a majority might suffice in particular circum-

stances? Suppose that active market participants constitute a voting bloc that is generally able to get its way? How about an obstructionist minority or an agency chair empowered to set the agenda or veto regulations?

Who is an "active market participant"? If Board members withdraw from practice during a short term of service but typically return to practice when their terms end, does that mean that they are not active market participants during their period of service?

What is the scope of the market in which a member may not participate while serving on the board? Must the market be relevant to the particular regulation being challenged or merely to the jurisdiction of the entire agency? Would the result in the present case be different if a majority of the Board members, though practicing dentists, did not provide teeth whitening services? What if they were orthodontists, periodontists, and the like? And how much participation makes a person "active" in the market?

The answers to these questions are not obvious, but the States must predict the answers in order to make informed choices about how to constitute their agencies.

I suppose that all this will be worked out by the lower courts and the Federal Trade Commission (FTC), but the Court's approach raises a more fundamental question, and that is why the Court's inquiry should stop with an examination of the structure of a state licensing board. When the Court asks whether market participants control the North Carolina Board, the Court in essence is asking whether this regulatory body has been captured by the entities that it is supposed to regulate. Regulatory capture can occur in many ways.[6] So why ask only whether

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[6] See, *e.g.,* R. Noll, Reforming Regulation 40–43, 46 (1971); J. Wilson, The Politics of Regulation 357–394 (1980). Indeed, it has even been

the members of a board are active market participants? The answer may be that determining when regulatory capture has occurred is no simple task. That answer provides a reason for relieving courts from the obligation to make such determinations at all. It does not explain why it is appropriate for the Court to adopt the rather crude test for capture that constitutes the holding of today's decision.

IV

The Court has created a new standard for distinguishing between private and state actors for purposes of federal antitrust immunity. This new standard is not true to the *Parker* doctrine; it diminishes our traditional respect for federalism and state sovereignty; and it will be difficult to apply. I therefore respectfully dissent.

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charged that the FTC, which brought this case, has been captured by entities over which it has jurisdiction. See E. Cox, "The Nader Report" on the Federal Trade Commission vii–xiv (1969); Posner, Federal Trade Commission, Chi. L. Rev. 47, 82–84 (1969).

No. 13-534

IN THE

Supreme Court of the United States

NORTH CAROLINA BOARD OF DENTAL EXAMINERS,

Petitioner,

v.

FEDERAL TRADE COMMISSION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN, INC., IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS CURIAE[1]

Public Citizen, Inc., a national consumer-advocacy organization founded in 1971, appears on behalf of its members before Congress, administrative agencies, and courts on a wide range of issues and works for enactment and enforcement of laws protecting consumers, workers, and the general public. Public Citizen often represents consumer interests in litigation, and regularly files amicus curiae briefs in cases in this Court and the federal appellate courts.

Public Citizen submits this brief because of its belief that the Fourth Circuit's decision in this case correctly found that the federal antitrust laws' state action exemption does not apply to the conduct the FTC challenges in this case. A contrary holding would significantly expand the scope of the exemption to encompass essentially private collusion among competitors in the guise of enforcement action by a licensing board—privately interested behavior neither authorized by the state nor carried out under its supervision. By applying and reinforcing the state action doctrine's requirement of active state supervision of anticompetitive activity, this Court can uphold the purposes of federal antitrust law and protect consumers against the extraction of monopoly rents that results when boards composed of industry members artificially inflate prices by excluding competitors from lucrative parts of their businesses.

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[1] This brief was not authored in whole or part by counsel for a party. No one other than amicus curiae or its counsel made a monetary contribution to preparation or submission of this brief. Letters of consent to filing from counsel for all parties are on file with the Clerk.

SUMMARY OF ARGUMENT

State action immunity is a limited and functional doctrine under which states acting in their regulatory capacities are immune from antitrust enforcement. In extending the benefits of this doctrine to private actors that claim to be acting under the authority of a state regulatory program, this Court has established a two-part test to ensure that such entities are genuinely acting with specific state authorization: First, their actions must reflect a "clearly articulated and affirmatively expressed" state policy to restrict competition; second, their anticompetitive actions must be "actively supervised by the State itself." *Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum*, 445 U.S. 97, 105 (1980).

In *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 38, 46–47 (1985), this Court held that, because of their nature as local, democratically governed political entities, municipalities are unlikely to be acting to further private anticompetitive interests and therefore need not be actively supervised by the state in order to share its antitrust immunity when the state has clearly articulated an anticompetitive policy. The petitioner here, the North Carolina Board of Dental Examiners, is an industry-dominated board accorded authority by the State of North Carolina to license dental practitioners. The Board insists that it, like the municipality in *Hallie*, also may claim exemption from the active supervision requirement because it is denominated a state agency. *Hallie*, however, does not turn on a formal distinction between public and private actors, but on a realistic assessment of whether the nature of a particular type of organization is such

that it is likely to act to further private rather than public interests.

Thus, the relevant inquiry is not whether the Board is defined as a state agency under North Carolina law, but whether "there is a real danger that [the Board] is acting to further [its] own interests, rather than the governmental interests of the State." *Hallie*, 471 U.S. at 47. *Hallie*'s holding that a municipality poses no such danger says little or nothing about whether a board dominated by particular private interests does so. Such a board, charged with regulating the industry its members are a part of, is highly likely to reflect the particular economic interests of its constituents rather than to act as a government body regulating in the public interest. Thus, the reasoning of *Hallie* demands that the Board be subject to the active supervision requirement to receive antitrust immunity.

The danger that regulatory boards representing the private interests of regulated industries will pursue those private interests in an anticompetitive manner is real. Such boards have proliferated widely. More professions are licensed than ever before—over 800 as of 2006—and nearly one third of the national workforce is in licensed occupations. In many cases, it makes sense for practitioners to be involved in professional licensing because they know what the profession should require for minimum competency. Nonetheless, practitioners on such boards, as rational economic actors, are not immune to the temptation to use their authority to advance their self-interest. There are many examples of such boards acting to protect their industries from competition while the state itself is not paying attention.

State action immunity should remain limited and functional in its application. Boards like the one here should receive no special dispensation from the requirements of the state action immunity doctrine because their economic incentives do not align with the public interest. The determining factor should be neither the formal label attached to the board nor the specific mechanism by which its members are appointed, but whether the nature of the board presents the danger of privately interested action found to be absent in *Hallie*. Boards made up of or dominated by industry members should therefore not receive immunity unless there is both (1) a state policy to displace competition that is clearly articulated by the state's lawmakers and (2) active supervision by state entities that reflect public rather than private interests. Such boards will not always act against the public interest, but antitrust enforcers (both public and private) should be able to raise the question whether, in an individual case, a board acted in a manner the antitrust laws forbid.

ARGUMENT

I. The Board Should Not Be Exempted from the Active Supervision Requirement Merely Because State Law Treats It as a State Agency.

A. The Active Supervision Requirement Is Critical to Containing State Action Immunity Within Its Proper Bounds.

In *Parker v. Brown*, 317 U.S. 341 (1943), this Court recognized a state action exemption to the federal antitrust laws, holding that because nothing in the "words and history" of the Sherman Act demonstrates that it should apply to the states as sovereign

political actors, a state acting in its regulatory capacity is immune from antitrust liability. *Id.* at 351–52. In cases throughout the following seventy years, this Court has repeatedly stated that because the immunity contravenes the "fundamental national values of free enterprise and economic competition that are embodied in the federal antitrust laws," the state action carve-out is limited and, indeed, "disfavored." *FTC v. Phoebe Putney Health Sys., Inc.*, 133 S. Ct. 1003, 1010 (2013); *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992). Only those actions attributable to the "state itself" in furtherance of its own policy are exempt. *Phoebe Putney*, 133 S. Ct. at 1012.

The Court has held that state action immunity may sometimes be extended to private entities acting under an affirmative state regulatory policy to displace competition, but has set out strict rules to limit the circumstances in which immunity is available. In *California Retail Liquor Dealers Ass'n v. Midcal Aluminum*, this Court held not only that such a state policy must be "clearly articulated and affirmatively expressed," but that the conduct for which immunity is sought must be "'actively supervised' by the State itself." 445 U.S. at 105 (quoting *City of Lafayette v. La. Power & Light Co.*, 435 U.S. 389, 410 (1978) (plurality opinion)).

The requirement of active supervision is as essential as the clear articulation requirement to ensuring that anticompetitive conduct is attributable to the "state itself." The active supervision requirement operates to "prevent[] the State from frustrating the national policy in favor of competition by casting a 'gauzy cloak of state involvement' over what is essentially private anticompetitive conduct." *So. Motor*

Carriers Rate Conf., Inc. v. United States, 471 U.S. 48, 57 (1985). The requirement ensures that the state not only "intend[s]" a displacement of competition, but also implements it "in its specific details." *Ticor*, 504 U.S. at 603.

The active supervision requirement "stems from the recognition that '[w]here a private party is engaging in the anticompetitive activity, there is a real danger that he is acting to further his own interest, rather than the governmental interests of the State.'" *Patrick v. Burget*, 486 U.S. 94, 100 (1988) (quoting *Hallie*, 471 U.S. at 47). Requiring state supervision of anticompetitive conduct addresses this concern by "ensur[ing] that the state-action doctrine will shelter only the *particular* anticompetitive acts of private parties that, in the judgment of the State, actually further state regulatory policies." *Id*. at 100–01 (emphasis added). To meet this objective, it is not enough that there be "some state involvement"; rather, "state officials [must] have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy." *Id*. at 101. Unless the state exercises "ultimate control" in this manner, "there is no realistic assurance that a private party's anticompetitive conduct promotes state policy, rather than merely the party's individual interests." *Id*.

The active supervision requirement thus works hand in hand with the clear articulation requirement to "ensur[e] that particular anticompetitive mechanisms operate because of a deliberate and intended state policy." *Ticor*, 504 U.S. at 636. Absent the active supervision requirement, state action immunity might require "little more than that the State has not acted

through inadvertence," as the clear articulation standard by itself "cannot ensure, as required by [the Court's] precedents, that particular anticompetitive conduct has been approved by the State." *Id*. at 636–37. Put another way, "the requirement of active state supervision serves essentially an evidentiary function: it is one way of ensuring that the actor is engaging in the challenged conduct pursuant to state policy." *Hallie*, 471 U.S. at 46.

More fundamentally, the active supervision requirement also ensures that states bear "political responsibility" and accountability if they intend to displace competition: They must both "sanction[] and undertake[] to control" anticompetitive conduct if they seek to immunize it from antitrust scrutiny. *Ticor*, 504 U.S. at 636. They may not do so simply by articulating general policies while avoiding the responsibility of controlling whether the particular applications of those policies are carried out in ways that benefit private interests in avoiding competition. *See id*. at 636–37. The active supervision requirement thus helps ensure that "the requirement of clear articulation" does not "become a rather meaningless formal constraint." *Id.* at 637.

B. *Hallie*'s Exception to the Active Supervision Requirement Applies Only to Entities That Pose No Real Danger of Serving Private Anticompetitive Interests.

The question in this case is whether the active supervision requirement applies to claims of immunity made by an entity that is in some sense public but is not "the State itself." *Phoebe Putney*, 133 S. Ct. at 1010. In *Hallie*, this Court addressed a claim to immunity for one such non-state (or "substate," *id*.)

public entity—a municipality. The Court held that a municipality's claim to state action antitrust immunity does not depend on a showing of active supervision because the nature of a municipal government is such that there is no "real danger" that its actions will reflect private interests in suppressing competition. *See* 471 U.S. at 47. Contrary to the Board's suggestion here, that holding does not extend to any entity that can claim the label of an "arm of the State," *id*. at 45, but is properly limited to those whose nature is such that they likewise pose no "real danger that [they are] acting to further [their] own interests, rather than the governmental interests of the State." *Id*. at 47.

As this Court has stated, "[t]he starting point in any analysis involving the state action doctrine is the reasoning of *Parker v. Brown*." *Hallie*, 471 U.S. at 38. That reasoning, as applied in *Hallie*, requires that the terms under which *Parker* immunity is extended beyond the state itself reflect a realistic assessment of the incentives that drive the entity in question, not purely formalistic considerations.

State action immunity is a functional and pragmatic doctrine. The Court applies the doctrine "practically, but without diluting the ultimate requirement that the State must have affirmatively contemplated the displacement of competition such that the challenged anticompetitive effects can be attributed to the 'state itself.'" *Phoebe Putney*, 133 S. Ct. at 1012. Thus, the Court has commanded that the courts, when considering "clear articulation," realistically examine whether anticompetitive impacts are the "inherent, logical, or ordinary result" of a state's policy. *Id*. The same practicality is evident in reasoning about the active supervision requirement, which requires a real-

istic assessment of whether the state has actually "exercised sufficient independent judgment and control so that the details of the [anticompetitive policy] have been established as a product of deliberate state intervention"—a determination that requires consideration not merely of whether the state has the power to supervise in the abstract, but whether "the potential for state supervision" is "realized in fact." *Ticor*, 504 U.S. at 634, 638.

In *Hallie*, the Court applied its functional methodology to a claim of immunity by a municipality—an entity that is public, but is not the state itself. 471 U.S. at 38. Based on practical rather than formalistic considerations—including the facts that "municipal conduct is invariably more likely to be exposed to public scrutiny than is private conduct," and that "municipal officers … are checked to some degree through the electoral process," *id.* at 45 n. 9—the Court held that active state supervision is not necessary to a municipality's claim of state action immunity. The nature of a municipal government, the Court reasoned, is such that its actions are unlikely to be based on the pursuit of private gain:

> Where a private party is engaging in the anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State. Where the actor is a municipality, there is little or no danger that it is involved in a *private* price-fixing arrangement. The only real danger is that it will seek to further purely parochial public interests at the expense of more overriding state goals. This danger is minimal, however, because of the requirement that the municipality act pur-

> suant to a clearly articulated state policy. Once it is clear that state authorization exists, there is no need to require the State to supervise actively the municipality's execution of what is a properly delegated function.

Hallie, 471 U.S. at 47.

Thus, the inquiry in *Hallie* was not focused only on whether a municipality was an arm of the state, but on whether this particular arm of the state was likely to seek to suppress competition for its own benefit. Indeed, the same consideration has led this Court to leave open the possibility of an exception to *Parker* immunity even for the state itself, when it acts not as a political body, but as a market participant. *Phoebe Putney*, 133 S. Ct. at 1010 n.4 (citing *City of Columbia v. Omni Outdoor Adver., Inc.*, 499 U.S. 365, 379 (1991)).

That *Hallie*'s result did not turn on the formality that a municipality is an "arm of the State," 471 U.S. at 45, is confirmed by the Court's simultaneous characterizations of its earlier decision in *Goldfarb v. Virginia State Bar,* 421 U.S. 773 (1975). There, the Virginia State Bar had threatened to enforce a minimum fee schedule through disciplinary action against attorneys who deviated from it. The State Bar, like the Board here, was defined by Virginia law as an agency of the state, although it was composed of the attorneys whose activities it regulated. *Id*. at 776 & n.2, 790 & n. 20; 791. This Court held that such an agency was not immune from antitrust scrutiny for its attempt to fix prices because its actions were not "required by the State acting as sovereign." *Id*. at 790. In *Southern Motor Carriers*, a decision handed down on the same day as *Hallie*, the Court clarified that *Gold-*

farb should be understood as holding, consistent with the later decision in *Midcal*, that "private parties were entitled to *Parker* immunity only if the State 'acting as sovereign' intended to displace competition" through means satisfying *Midcal*'s criteria. *So. Motor Carriers*, 471 U.S. at 60; *see also id.* at 61 ("[T]he Court [in *Goldfarb*] would have reached the same result had it applied the two-pronged test later set forth in *Midcal*.").

Strikingly, *Southern Motor Carriers* explicitly recognized that the State Bar in *Goldfarb* was called a "state agency," *id.* at 60, even while stating that its claim to immunity was subject to the requirements imposed on "private parties" claiming immunity under *Midcal*. *Id.* As the Court explained, "*Goldfarb* … made it clear that, for purposes of the *Parker* doctrine, not every act of a state agency is that of the State as sovereign." *Id.* at 61 (quoting *Lafayette*, 435 U.S. at 410 (plurality opinion)).

Hallie likewise contrasted the municipality at issue there with the agency whose actions were scrutinized in *Goldfarb*. *Goldfarb*, the Court stated, "concerned private parties—not municipalities—claiming the state action exemption," and while "[w]e may presume … that a municipality acts in the public interest," "[a] private party … may be presumed to be acting primarily on his or its own behalf." 471 U.S. at 45. *Hallie*, together with *Southern Motor Carriers*, thus reflects the Court's explicit recognition that whether an entity is entitled to immunity without state supervision turns not on its formal designation as a state subdivision, but on whether its actual characteristics make it a privately interested actor.

The Board is thus fundamentally wrong in asserting that as a "*bona fide* state agency," it should be exempt from the second half of the *Midcal* test. Pet. Br. 18. The issue does not turn on such formalistic considerations as the authority to use a state seal, but on where the economic incentives lie. Whether to free the Board from the active state supervision requirement depends on whether its composition poses a "real danger" that it may act to pursue private interests "rather than the governmental interests of the State." *Hallie*, 471 U.S. at 47.

C. There Is a Real Danger That the Board's Actions Will Further the Private Interests of Its Members and Constituents Rather than the Interests of the State.

The reasoning of *Hallie* and of the Court's state action immunity jurisprudence as a whole offers no support for excusing the Board from satisfying the active state supervision requirement when it claims state action immunity against antitrust claims. The dispositive fact is that the Board is controlled by the interests of a private industry that not only makes up the great majority of the Board's membership, but elects all but one of the Board's members. The question whether the composition of a board that by law *must* consist of elected industry representatives who actively practice in the market they regulate poses a "real danger" of actions furthering the private interests of the industry constituents it represents rather than the "governmental interests of the State," *Hallie*, 471 U.S. at 47, answers itself. Such an industry-dominated body lacks the characteristics that led this Court to hold that municipalities need not be actively supervised by the state when they act pursuant to a

clear state policy of displacing competition because there is no real danger that they will pursue private interests.

An industry-dominated, self-regulatory entity, even when denominated a state agency, is more like a trade association than a public body. This Court's state action jurisprudence reflects its recognition that when such privately interested entities seek to regulate their industries by suppressing competition, "there is no realistic assurance that [the] private party's anticompetitive conduct promotes state policy, rather than merely the party's individual interests." *Patrick*, 486 U.S. at 101. Indeed, a privately interested entity "may be presumed to be acting primarily on … its own behalf." *Hallie*, 471 U.S. at 45. As *Goldfarb* indicates, that presumption does not disappear merely because a privately interested organization is, as a legal matter, given the status of a state agency: Designating a private interest group a state agency does not transform it into the "State acting as a sovereign" for antitrust immunity purposes." 421 U.S. at 790.

This Court has repeatedly insisted that states may not simply "authorize" private actors to engage in anticompetitive activities. *Midcal*, 445 U.S. at 105–06; *Parker*, 317 U.S. at 351; *see*, *e.g.*, *Ticor*, 504 U.S. at 632–40. Active supervision is critical to ensuring that such activity in fact comports with state interests not only in general but in its particulars. *See id.* at 637. That objective is not served simply by designating a private industry body an arm of the state and letting it supervise itself. Such a formality does nothing to eliminate the "real danger" that a privately interested body will serve its private interests rather than those of the state itself, and hence, under the reasoning of

Hallie, it cannot justify eliminating the active state supervision requirement.

The issue, it should be emphasized, does not turn solely "on the method by which state officials are selected." Pet. Br. 59. An industry-dominated board is likely to pose a real danger of serving private interests regardless of whether its members are, as here, elected, or whether they are appointed in some other manner. As a practical matter, a licensing board's actions are no more likely to be "subjected to public scrutiny" or "checked to some degree through the electoral process" when its members are appointed than when they are elected by other market participants. *Hallie*, 471 U.S. at 45 n.9. And whether board members are elected or appointed, where a statute mandates that industry have majority voting power on the board, the temptation to serve the industry's economic interests will be present. Conceivably, the rigorous exercise of appointment and removal power by state officers to exercise actual control over actions of an industry-dominated board might in some instances suffice to demonstrate active state supervision, but the mere potential for the exercise of such authority constitutes neither active supervision, *see Ticor*, 504 U.S. at 638, nor a reason for dispensing with the requirement of active supervision.

II. Actions of Industry-Dominated Boards Show the Need for Active Supervision.

The industry-dominated licensing board at issue in this case is one example of a great number of professional licensing entities throughout the country, covering both traditional learned professions, such as lawyers and doctors, and ordinary businesses for which licensing has not historically been considered

necessary, such as auctioneers, florists, and casket sellers. These boards, usually created to regulate entry into a profession, are often dominated by members of the profession regulated.

Predictably, such boards frequently act in ways that benefit their industry constituencies. These actions exemplify the "real danger" of privately interested conduct that, under the reasoning of *Hallie*, differentiates these entities from municipalities and other governmental bodies that need not be subjected to active state supervision to receive antitrust immunity.

The activities of such boards also illustrate that the clear articulation requirement by itself is inadequate to ensure that anticompetitive actions genuinely reflect the interests and policies of the "state itself." The creation of a licensing board often reflects articulation of a policy to displace competition at least to some extent, as limiting entry into a business activity based on criteria developed by industry members is by nature anticompetitive. Where, as is often the case, the question is *how far* a state's policy of displacing competition extends, the active supervision requirement plays a critical role in ensuring that the *particulars* of anticompetitive self-regulatory actions in fact reflect the policy of the state as sovereign. *Ticor*, 504 U.S. at 636–37. Thus, the "evidentiary function" of the active supervision requirement remains an essential backstop to ensure that anticompetitive action is truly attributable to the state itself. *Hallie*, 471 U.S. at 46.

A. Occupational Licensing Has Proliferated, and Industry-Dominated Regulatory Boards Often Act Anticompetititvely.

Based on empirical research on the anticompetitive effects of licensing, economist Morris Kleiner found that over 800 different professions had licensure requirements as of 2006. Morris M. Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?* 5 (2006). In the 1950s, only five percent of the United States workforce was licensed; now, nearly one third is. *Id*.; Morris M. Kleiner & Alan B. Krueger, *Analyzing the Extent and Influence of Occupational Licensing on the Labor Market,* 31 J. Lab. Econ. S173, S198 (2013). Kleiner estimated that licensing costs consumers $116 to $139 billion every year and increases the wages of professionals who are licensed at the expense of workers who are not, contributing to wage inequality. Kleiner, *Licensing Occupations*, at 114–5. Both the costs to consumers and wage benefits to insiders that result from state licensing board activities are exactly the kinds of impacts that, if attributable to private collusion, are targeted by federal antitrust law.

Law professors Aaron Edlin and Rebecca Haw have investigated the regulatory powers of occupational licensing boards, concluding that the boards are "cartels by another name." Aaron Edlin & Rebecca Haw, *Cartels by Another Name: Should Licensed Occupations Face Antitrust Scrutiny?*, 162 U. Pa. L. Rev. 1093 (2014). In Tennessee and Florida alone, Edlin and Haw found eighty-seven professional licensing boards, for professions as varied as accounting, auctioneering, cosmetology, funeral services, hearing-aid dispensing, and nutrition, among others. Ninety per-

cent of the boards in the two states are dominated by industry, and ninety-five percent have rulemaking authority by statute. *Id.* at 1157–64.

Edlin and Haw also found several curious examples of "new professions" requiring licensing in addition to the traditionally licensed professions. *See id.* at 1096–97; 1102–06. In Alabama, for example, interior decorating without a license was a criminal offense until 2007. *See* Clark Neily, *Watch Out for That Pillow*, Wall St. J., Apr. 1, 2008, at A17. In Louisiana, all flower-arranging must be supervised by a licensed florist. La. Rev. Stat. Ann. § 3:3808(B)(1).

To date, there has been little systematic research into the extent and breadth of the regulatory powers of industry-dominated boards and the degree to which they are exercised in the interest of market participants rather than the public. Edlin and Haw's work appears to be the first systematic review of the makeup of these boards at the state level, and we have not located similar comprehensive published analyses of boards in states other than Florida and Tennessee. Given the dearth of research, however, the ease with which one can find examples of potentially anticompetitive activities by such boards is striking.

The facts underlying two cases that the Fourth Circuit sought to distinguish below are good examples of these activities.[2] In *Hass v. Oregon State Bar*, 883

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[2] Our point here is not that these two cases were wrongly decided on the particular facts or that the activities involved necessarily violated the antitrust laws. Rather, we discuss the cases as examples of professional licensing boards that are granted broad authority and have used that authority in ways that appear to

(*Footnote continued*)

F.2d 1453 (9th Cir. 1989), the Oregon legislature authorized the state bar to require attorneys to carry malpractice insurance, and further authorized the bar to do what was "necessary and convenient" to implement the provision, including owning, organizing, or sponsoring an insurance organization. *Id.* at 1458 (citing Or. Rev. Stat. § 9.080(2)(a)). The state bar in turn mandated both that attorneys carry insurance and that they buy it from the bar itself, rather than in an open insurance market in which the bar would be a participant. *Id.* at 1455. The Ninth Circuit read Oregon's statutes as evincing intent to displace competition. *Id.* But the extent of Oregon's desire to displace competition was unknown: Did the state actually mean to authorize the bar not only to *own* an insurance company, but also to prevent any market competition for itself? Without state supervision, whether or not the state intended the *particulars* of the activity alleged to be anticompetitive remained uncertain.

In *Earles v. State Board of Certified Public Accountants*, a Louisiana statute authorized a state board of accountants to set the ethical standards for the profession. 39 F.3d 1033, 1035 (5th Cir. 1998). Under this authority, the board promulgated a rule prohibiting accountants from participating in "incompatible occupations," which would theoretically impair the accountants' objectivity, and another rule prohibiting the receipt of commissions. *Id.* The board then interpreted these rules to bar the plaintiff, a securities broker, from also acting as a CPA. *Id.*

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reflect the economic self-interest that the active state supervision requirement exists to counterbalance.

The board in *Earles* acted based on broad statements of authority by the legislature, authorizing no specific policy barring other professionals from being CPAs. *Id.* at 1042–43. The board was also "composed entirely of CPAs who compete in the profession they regulate," *id.* at 1041, creating the potential for self-interested behavior. Here, again, the state policy to set and enforce ethical standards as a general matter was clear, but the boundaries of that clear articulation were not obvious. Regardless of the merits of the policy, absent state supervision it is uncertain whether barring other professionals from competing as CPAs reflected the policy of the state as sovereign or the interests of a particular industry.

Earles and *Hass* barely scratch the surface of the potentially anticompetitive activities pursued by industry-dominated boards. The FTC has brought several cases against optometry boards for restricting competition. *See* FTC Office of Policy Planning, *Report of the State Action Task Force* 60–61 (2003) ("*State Action Report*"). For example, the FTC brought a complaint against a Massachusetts optometry board comprising four practitioners and one public member for restraining competition by limiting truthful advertising of discount rates. *In re Mass. Bd. of Registration in Optometry*, 110 F.T.C. 549 (1988). In the 1970s several state optometry boards created rules "discourag[ing] the 'commercial practice' of optometry" by banning "partnerships between optometrists and laymen, use of trade names, and chain operations combining the practice of optometry with the sale of eyeglasses in shopping centers," "in favor of

'traditional optometric practice.'" *Cal. Bd. of Optometry v. FTC,* 910 F.2d 976, 978 (D.C. Cir. 1990).[3]

Several states have attempted to restrict the market for caskets by permitting only licensed funeral directors to sell them. *See*, *e.g.*, *St. Joseph Abbey v. Castille,* 712 F.3d 215 (5th Cir. 2013), *cert. denied*, 134 S. Ct. 423 (2013) (Louisiana); *Powers v. Harris*, 379 F.3d 1208 (10th Cir. 2004) (Oklahoma); *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002) (Tennessee). Although the basic requirement was established in each state by statute, industry-dominated boards had developed implementing regulations and licensing requirements that further restricted casket sales, *see*, *e.g.*, *Powers*, 379 F.3d at 1212, and had purported to exercise authority to enforce the restrictions through extrajudicial cease-and-desist orders, *see St. Joseph Abbey*, 712 F.3d at 219—much like the orders issued by the North Carolina Board in this case. The activities of the boards in restricting casket sales, moreover, were clearly unrelated to health or safety, as the laws did not impose requirements for the adequacy of caskets or even require them to be used burials. *See* Edlin & Haw, 162 U. Pa. L. Rev. at 1097, 1106; *St. Joseph Abbey*, 712 F.3d at 226; *Giles*, 312 F.3d at 225 (Tennessee law unrelated to health and safety).

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[3] The D.C. Circuit in *California Board of Optometry v. FTC* held that the FTC had exceeded its authority in purporting to adopt a rule that would have outlawed such restrictions even if imposed by state statute, a decision that was surely correct under *Hoover v. Ronwin*, 466 U.S. 558, 567–68 (1984), which held that state legislative action is exempt from the antitrust laws. The imposition of similar restrictions by industry-dominated boards, absent active supervision from the state itself, should not likewise be exempt from antitrust scrutiny.

St. Joseph Abbey, *Powers*, and *Craigmiles* all involved substantive due process challenges to the underlying statutes, the enactment of which could not in itself constitute an antitrust violation under *Hoover v. Ronwin*, 466 U.S. at 567–68.[4] The regulatory and enforcement activities of the industry-dominated boards, however, illustrate how, absent supervision by state officials, such boards can further suppress competition in ways not clearly contemplated by the state as sovereign.

In many states, veterinary boards have outlawed performance of dental procedures on animals by non-veterinarians. *See* Am. Veterinary Med. Ass'n, *State Summary Report: Authority of Veterinary Technicians and Other Non-Veterinarians to Perform Dental Procedures* (June 2014), https://www.avma.org/advocacy/stateandlocal/pages/sr-dental-procedures.aspx. Thus, "teeth-floaters," who file horses' teeth for a living—an activity necessary because horses' teeth never stop growing and their modern diet does not wear their teeth down fast enough—are now shut out of the market in favor of veterinarians. Inst. Just., *Challenging Barriers to Economic Opportunity: Challenging Minnesota's Occupational Licensing of Horse Teeth Floaters*, http://www.ij.org/minnesota-horse-teeth-floating-background.

State cosmetology boards have begun demanding that African-style hair braiding and eyebrow threading, two lucrative and popular practices that are not

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[4] The constitutional challenges yielded inconsistent results: The Sixth and Fifth Circuits struck down the restrictions, while the Tenth held that favoring the private interests of a particular industry constituted a rational basis for the law in question.

dangerous (they require, for example, no sharp instruments or chemicals), be performed only by licensed cosmetologists. Such licenses not only are costly, but may require graduation from a cosmetology school. Edlin & Haw, *supra* at 1106.

In California, the industry-dominated Travel and Tourism Commission, comprising representatives from five industry categories including the rental car industry, not only imposed fees on car rentals, but allegedly took actions that had the effect of compelling rental car companies to pass those fees on to consumers, thus suppressing potential price competition. *See Shames v. Cal. Travel & Tourism Comm'n*, 626 F.3d 1079 (9th Cir. 2010). The Ninth Circuit initially held that the Commission's action reflected a clearly articulated state policy and was also exempted from the state supervision requirement because the Commission, although dominated by the industries whose interests its actions served, was a governmental entity; on a petition for rehearing, the court held that state action immunity was unavailable because the action was not authorized with sufficient clarity and therefore did not reach the state supervision issue. *See id.* at 1085 & n.3.

Traditionally regulated professions are subject to anticompetitive regulations as well. Lawyers are particularly good at self-protection. For example, every state bar has restrictions on lawyer advertising, some of which are anticompetitive. *See* LexisNexis, *50 State Surveys of Statutes & Regulations: Attorney Advertising* (Mar. 2013) ("Every state regulates the advertising of its attorneys.") Some state bars preclude truthful claims about prices, just as the Massachusetts optometry board did. *See* Ohio R. Prof'l Conduct 7.1

cmt. 4 (stating that it is misleading to characterize rates as discounted). Several states restrict lawyers from including "non-verifiable" statements in advertising, a prohibition that may inhibit competitive behavior among lawyer advertisers. *See, e.g.*, Ala. Code Prof'l Conduct R. 7.2(e) (requiring affirmative statement that the lawyer is not representing that he is better than another); Alaska R. Prof'l Conduct 7.1(c) (no comparisons unless factually verifiable); Fla. R. Prof'l Conduct 4-7.2(b)(1)(D) (same); N.Y. R. Prof'l Conduct 7.1(d)(2) & (e)(2) (same); *see also Alexander v. Cahill*, 598 F.3d 79 (2d Cir. 2010) (striking down several New York attorney advertising restrictions on First Amendment grounds).

A number of state bars require lawyers to be physically present in real estate closings, limiting competition from national and internet-based lenders. *See State Action Report* at 68–69. Several state bars also have bona fide office requirements, limiting competition from attorneys who are licensed in multiple states. *See* N.Y. Jud. Law § 470; Del. Sup. Ct. R. 12(d); *Tolchin v. N.J. Sup. Ct.*, 111 F.3d 1099 (3d Cir. 1997) (rejecting constitutional challenges to New Jersey's bona fide office requirement, which has since been amended, *see* N.J. Sup. Ct. R. 1:21-1).

Insofar as state supreme courts promulgate bar rules, the rules themselves, like state legislative enactments, may be exempt from antitrust scrutiny under *Hoover v. Ronwin*, 466 U.S. at 569. The activity of state bars in promoting such rules, however, still demonstrates the propensity of industry-dominated licensing boards to act in their own self-interest and shows the need for state supervision when they take action themselves. And to the extent state bars act to

interpret and enforce bar rules, they remain subject to potential antitrust scrutiny, as *Goldfarb* illustrates.

In many states, nurse practitioners cannot provide care independently of doctors, despite adequate training to perform services not requiring a physician. Such restrictions tend to limit availability of medical care, drive patients to physician-run practices, and may have price impacts on consumers who could benefit from wider availability of clinical services. *See Scope-of-Practice Laws for Nurse Practitioners Limit Cost Savings That Can Be Achieved in Retail Clinics*, 32 Health Aff. 1977 (2013). Similarly, many state dental boards limit the number of dental hygienists dentists may hire. *See* J. Liang & Jonathan Ogur, FTC Bureau of Econ., *Restrictions on Dental Auxiliaries: An Economic Policy Analysis* 6 & n.6 (1987), http://www.ftc.gov/sites/default/files/documents/reports/restrictions-dental-auxiliaries/232032.pdf (noting that restrictions generally allow dentists to employ between one and three hygienists).

In sum, many more occupations are regulated than ever before, and most boards doing the regulating—in both traditional and new professions—are dominated by industry members who compete in the regulated market. Those board member-competitors, in turn, commonly engage in regulation that can be seen as anticompetitive self-protection. The particular forms anticompetitive regulations take are highly varied, the possibilities seemingly limited only by the imaginations of the board members.

B. Active State Supervision Is a Necessary Corrective for the Tendency of Industry-Dominated Boards to Regulate in the Service of Private Interests.

State licensing of occupations and other forms of economic regulation are often critical to the protection of consumers and the public at large. This Court has long recognized that states have obvious and legitimate interests for engaging in such regulation. As the Court put it in *Goldfarb*, "We recognize that the States have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions." 421 U.S. at 792.

Reliance on the expertise of those who practice a particular profession or trade, moreover, is an important and often necessary aspect of the creation of standards for the licensure and conduct of industry members. The purpose of creating state licensing boards comprising industry members and granting them rulemaking and enforcement authority is to enlist the assistance of presumed experts. Who better than the licensed professionals themselves—dentists, lawyers, doctors, or accountants—to know what standards are required for minimum competency in those professions?

Regulation also, at least in many instances, necessarily implies some displacement of competition. Licensing itself is anticompetitive in the sense that it restricts entry into an occupation, and many other forms of regulation may restrict practices that, in an

environment of unrestrained competition, would be prevalent, if not rampant.

These are not, however, reasons for excusing industry-dominated licensing or regulatory boards from the requirement of active state supervision. They are the very reasons that necessitate the requirement. When a state authorizes licensing or regulatory actions that displace competition to some extent, there will in most cases be uncertainty at the margins concerning the extent of that authorization, leaving room for argument both ways as to whether any resulting action reflects a clearly articulated state policy to displace competition. Whether a particular restriction on competition falls within the scope of a clearly articulated state policy may at times be in the eye of the beholder. *Compare Shames*, 626 F.3d at 1084–85 (holding on rehearing that there was no clearly articulated state policy because "there is no indication California authorized interference by the CTTC with normal industry competition"), *with Shames v. Cal. Travel & Tourism Comm'n*, 607 F.3d 611, 617 (9th Cir. 2010) (same panel holding on initial hearing that there was a clearly articulated policy because "the provisions here are comparable to those in which courts have found anticompetitive conduct legislatively authorized").

Industry members, moreover, are not only the foremost experts concerning their business, but also the very persons most likely to have private interests that will be affected, and potentially advanced, by actions that push the envelope of authorization (such as the Board's purported exercise in this case of authority to engage in extrajudicial enforcement measures against competitors in the teeth-whitening business).

Allowing entities controlled by private interests to police the limits of their own authority poses an inherent risk that they will act in the service of their private interests and not those of the state as sovereign and the public that it represents. Of course, this risk is the precise reason for the active supervision requirement, which ensures that the particulars of any potentially anticompetitive action are attributable to the state itself and not to private interests.

That the danger of self-interested activity counsels retention of the active state supervision requirement for entities of this sort does not mean that their actions are always suspect. Suppressing particular forms of competition (including some of the examples described above) may reflect sound public policy even if it incidentally benefits some private interests at the expense of others. Moreover, states that wish to make use of such boards are capable of exercising, and in a great many instances have exercised, active supervision over their activities, ensuring that if anticompetitive policies are chosen, they are chosen to advance state rather than private interests. *See* Resp. Br. 54–55. And even where such supervision is absent, particular actions of industry-controlled boards, although not immune from antitrust scrutiny, may also be found not to violate the antitrust laws under the rule of reason. But the potential for action motivated by self-interest rather than state interest weighs against granting an industry-dominated board that is not subject to active supervision the immunity possessed by the state when it acts as sovereign. The public role played by such an entity "does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members." *Goldfarb*, 421 U.S. at 791.

Here, that North Carolina has charged the Board with the licensing of dentistry to ensure safety and the public interest, N.C. Gen Stat § 90-22, does not give the Board carte blanche to benefit its members anticompetitively. The Board is empowered to regulate dentistry by setting minimum standards of "good moral character" and "academic education," and requiring graduation from an accredited dental school and a minimum score on a "clinical licensing examination." *Id.* § 90-30. Even on the dubious assumption that the Board's actions in this case reflect a clearly articulated statutory policy to limit teeth-whitening to licensed dentists, the Board's actions in responding to complaints by dentists about lower-priced competition by routinely sending cease-and-desist letters, *see* Pet. App. 75a, J.A. 30, constitute an attempt to suppress competition without supervision by disinterested state officials.[5] Whether or not it is ultimately defensible, the Board's unsupervised attempt to bypass ordinary state law enforcement processes to benefit its industry constituents by isolating them from competition does not clearly reflect a policy adopted by the state *in its specific details*, *Ticor*, 504 U.S. at 603, and therefore should not receive immunity on the premise that it reflects action of the state as sovereign.

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[5] The claim of clear authority here rests on a statutory provision defining dentistry to include the removal of "stains, accretions, or deposits from the human teeth," N.C. Gen. Stat. § 90-29(b)(2), which is a far cry from a requirement that only dentists may provide peroxide-based teeth-whitening services.

CONCLUSION

The Court should affirm the decision of the court of appeals.

Respectfully submitted,

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A Seminal SCOTUS Decision Holding Thousands of State Agencies to Be Walking Antitrust Felonies — And an Incompetent Media Blithely Ignoring It

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In late February, the U.S. Supreme Court decided the most important case relevant to state and local government in the last 72 years. That statement sounds like typical attorney hyperbole, but it is not. And here is a related accusation that may be fairly added: With one exception (Michael Hiltzik, a columnist of the *Los Angeles Times*), the mainstream press is unaware that it has happened. Nor are the efforts of many of us familiar with antitrust and state administrative law able to pierce what is now two months of intransigent ignorance.

Allow me to explain, for there is a chance you will be more likely to understand it than the editorial boards of the *Wall Street Journal*, *New York Times*, *Washington Post*, *USA Today*, and *Forbes*, none of whom has a clue.

State boards and commissions regulate most professions and trades, from lawyers to doctors to contractors to insurers to barbers... you name it. Indeed, most regulation is at the state level, not the federal. These state agencies — most of them controlled by members of the very profession regulated by that board — engage in many acts that would be per se antitrust

violations if committed by private cartels. Per se means there is no defense that it is "reasonable." You do it? Bang — there are the momentous consequences of treble damage liability and at least theoretical felony prosecution. Look at one thing all of these agencies do: They only allow people who clear their "licensure" hurdle to practice. If they were not state agencies, that would be both a group boycott and supply control constituting price fixing. No defense.

But for the last 72 years, every state has ignored *Parker v. Brown*, the seminal 1943 U.S. Supreme Court decision that requires independent "state" supervision of every decision imposing such a restraint. State legislatures have assumed that, since what the state boards they have created is by definition "state action" (the term of art here), it is permitted under federal antitrust law otherwise entitled to supremacy. At the same time, they have all ceded authority to make these state decisions to bodies controlled by the very trade or profession regulated. In *North Carolina Board of Dental Examiners v. FTC*, the Supreme Court has held in clear, repeated, unambiguous, and unavoidable language that any such state entity that is controlled by "active market participants" in the trade regulated does not, and cannot, have "sovereign" state status. Hence, they have no more "state action immunity" from federal antitrust law than does any private cartel committing similar felony offenses.

This decision is reasonable and long overdue. The fact

that almost every board or commission in all 50 states violates this basic standard does not help any of them. This is not a land claim where working the soil for 22 years gets you the property. And it cannot be cured by some pro forma "oversight" by non-conflicted officials, not unless it is bona fide and every anticompetitive decision is reviewed and affirmatively approved as a justifiable restraint, as outlined in another ignored Supreme Court decision: Midcal (1980). That kind of supervision is rare to non-existent. So far, our agencies are confused and staggering around theorizing all sorts of untenable evasions. But the game is over. This decision is not "distinguishable." Anyone reading it will see that evasions are not going to work. It cannot be avoided, waived or ignored.

Indeed, the consequences will soon be upon the states. Do the members of these boards and commissions know they are personally liable? If the state indemnifies them, has it calculated the likely cost in terms of treble damage judgments?

So this is the ultimate case of not one king wearing no clothes, but over 1,000 of them.
It is rather a significant story, is it not? Isn't it a public issue of some consequence? Other than Hiltzik's column, one article appeared in the *Wall Street Journal* discussing the impact on teeth whitening, which was the factual setting of the case. That accounts for perhaps one-millionth of its significance. Some of us have attempted to alert the editorial boards of our major

national publications, writing comments or otherwise attempting to rouse what are apparently somnolent canines. They will print nothing, nor inquire, nor even ask a question. Not an inkling of comprehension, to repeat, from the *Wall Street Journal*, *New York Times*, *Washington Post*, *USA Today*, or *Forbes*. Nor can I find even a reference to it anywhere outside of the legal press (the *LA Daily Journal*) and the Harvard Law Record: But this is not an esoteric theoretical or academic legal debate. It is a seminal event. It is real, basic, pervasive, and goes to the core of our governance and its private interest capture over the past 72 years.

Eventually the antitrust suits will be filed. Their incentives are not trivial. Or competent state attorneys general or legislative counsel will finally have light bulbs shine and stop the secret meetings, rationalizations, and hand wringing now underway amongst them and in state legislatures. One would think that our nation's media might be able to get beyond coverage of ironies, celebrities, ostentatious conflict, and issues post hoc, and perhaps discuss this one. For this is a ruling that will require momentous changes in how we govern — changes that are long overdue and likely for the better. They should be a part of this process.

The Court has finally struck a blow for democracy. And it will be actualized because of one phrase: treble damages liability. Thank you, Justice Kennedy. Now we all have to clothe many naked and quite ugly kings. And

we shall have to do it without the help of our media, who seem to believe they all remain in royal regalia.

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Robert C. Fellmeth, Stanford University (AB) 1967, Harvard University (JD) 1970, former state and federal antitrust prosecutor (1973-1982), coauthor of California White Collar Crime (w/ Papageorge, Tower Publishing, 4th edition 2013), et al., and former State Bar Discipline Monitor for California, Director of the Center for Public Interest Law, Price Professor of Public Interest Law, University of San Diego School of Law.

University of San Diego
SCHOOL OF LAW
Center for Public Interest Law

ConsumersUnion®
POLICY & ACTION FROM CONSUMER REPORTS

May 4, 2015

The Honorable Kamala Harris
Attorney General of the State of California
1300 I St., Ste. 1740
Sacramento, CA 95814

Re: ***North Carolina State Board of Dental Examiners v. FTC***

Open Letter of Inquiry and Request for Documents

Dear Madame Attorney General:

We write to alert you to the critical significance of the U.S. Supreme Court's recent decision in *North Carolina State Board of Dental Examiners v. FTC*, 574 U.S.___, 135 S. Ct. 1101 (February 25, 2015), and solicit your response as well as relevant public documents regarding its implementation in California. As discussed below, this case holds that much of the activity conducted by California's licensing boards is not protected by the "state-action antitrust immunity" doctrine. Critically, the Court's holding hinges on the fact that the majority of the members of the state regulatory board at issue were "engaged in the active practice of the profession it regulates." *Id.* at 1107. In other words, "active market participants cannot be allowed to regulate their own markets free from antitrust accountability." *Id.* at 1111. Accordingly, your board and commission members are theoretically vulnerable to federal felony prosecution and civil treble damages – and your indemnifying state budget may be similarly exposed. We explain this apparently startling circumstance as follows:

As you know, California has numerous agencies that regulate trades and professions. These agencies often take the form of multimember "boards" or "commissions." They commonly regulate a large portion of the state's economy – from accountants, architects, attorneys, pharmacists, dentists, and doctors, to most of the other licensed trades – contractors, brokers, barbers, nurses, and many others.

Many of the decisions these entities make on a regular basis necessarily "restrain trade." For example, they decide who is allowed to practice a trade or profession and who is excluded, with the force of law. They revoke licenses, and specify how the licensees are to practice. These acts, if committed by a cartel – or any private grouping of competitors – would be *per se* antitrust

violations under federal law (*e.g.*, Sherman Act, 15 U.S.C. § 1 *et seq*.) For example, licensing boards control supply by limiting entry into the profession or market. These barriers to entry are effectively "group boycotts," which, as *per se* offenses, constitute antitrust violations without recourse to their "reasonableness" or other related defenses. The federal remedy for any violation of the Sherman Act includes potential felony prosecution, as well as private civil treble damages relief.

Virtually all of the regulation these agencies undertake sufficiently "affects interstate commerce" to invoke the supremacy jurisdiction of federal antitrust law. Because federal courts have recognized "state-action immunity" from antitrust laws, and have permitted such restraints notwithstanding their facial violation of law, that "state action" status is critical to the lawful function of every state regulatory board.

Three seminal decisions by the U.S. Supreme Court frame this special immunity, starting with *Parker v. Brown*, 317 U.S. 341 (1943). In *Parker*, the Supreme Court created the longstanding "two-pronged test" to qualify for "state-action" immunity: The challenged action must be (1) affirmatively authorized by the state, and 2) subject to active supervision by the state. *Id*. at 351-52.

The second seminal case is *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980), a decision that directly examined the "active state supervision" prong. That case stands partly for the proposition that "state supervision" must be specific and *bona fide*. *Id*. at 105-06. In other words, state "rubber stamping" of a regulatory board's action will not suffice. *Id*.

We respectfully contend that, notwithstanding these and related precedents, your state (like many others) has chosen to ignore them, and has created "state" boards that are directly controlled by members of the very trade or profession they purport to regulate. Indeed, the vast majority of occupational licensing boards and commissions nationwide are now comprised of majorities (or even supermajorities) of licensed professionals in the very economic tribal grouping with an economic interest in restraints of trade benefiting them. In fact, California actually *requires* that board and commission positions be filled by those with such a conflict.[1]

It is in this context that the U.S. Supreme Court has just decided the third in this series of basic cases: *North Carolina State Board of Dental Examiners*, 135 S. Ct. 1101. We attach for your reference the full three-page syllabus of this 6-3 decision, bolded to emphasize the most pertinent passages. This decision is neither narrow nor subject to exception or avoidance. It directly and

[1] Political reformers are concerned about the surrender of the legislative and other elective elements of our democracy to special interest domination from campaign contribution to job interchange and lobbying domination. Indeed, there has been a marked evolution of political organization around peers and colleagues in virtually every trade, occupation, and economic grouping, such that the Congress and state legislatures increasingly function as passive mediators among the "stakeholders" so represented, and leaving diffuse and future interests unrepresented. These latter concerns, including our legacy to those who follow us, form a central value of individuals within our democracy – a value that ideally is not subjugated.

repeatedly announces a bright-line minimum test for "state action" sovereign immunity: Those controlling the decisions that might restrain trade may not be "active market participants" in the trade regulated. For every agency so afflicted, the legal status of those making such decisions is clear – they are, in the words of the Court, "nonsovereign actors" who lack any state sovereign immunity whatever. Their decisions are no different than a decision undertaken by a cartel or private combination of competitors. You are invited to review the decision *en toto* and draw your own conclusions, or to refer it and this letter to the leading antitrust prosecutors and experts in your jurisdiction.

Significantly, the decision renders unlawful what has become the common regulatory practice across all 50 states. The holding reviews the prior *Parker* and *Midcal* decisions as described above. It states: "Limits on state action immunity are most essential when a State seeks to delegate its regulatory power to active market participants." *North Carolina State Board of Dental Examiners*, 135 S.Ct. at 1111.

Either the composition of the board receiving such delegation must be changed (*e.g.*, with the addition of a supermajority of non-conflicted "public members") or all actions of a board dominated by active market participants must be subject to a state supervision mechanism that "provide[s] 'realistic assurance' that a nonsovereign actor's anticompetitive conduct 'promotes state policy, rather than merely the party's individual interests.'" *North Carolina State Board of Dental Examiners,* 135 S.Ct. at 1116, *quoting Patrick v. Burget*, 486 U.S. 94, 100-01 (1988). This alternative requires actual "active supervision" by the state. The Court does not mince words in describing the inadequacy of theoretical or general oversight to accomplish such a cure, noting that such supervision cannot be undertaken by those who are "active market participants" in the relevant trade themselves, and going beyond that threshold as follows: "[T]he supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it…; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy…; , and the 'mere potential for state supervision is not an adequate substitute for a decision by the State…." 135 S.Ct. at 1116 (citations omitted).

In these regards, neither the presence of an Office of Attorney General official, nor a general rulemaking review entity, nor general legislative or other oversight will confer such immunity. Only where the decision is made by those who are not "active market participants" in the relevant trade or activity, or where decisions and acts are specifically reviewed for anticompetitive effect by a state agency lacking that bias and with the authority to veto and modify, will sovereign status be conferred. Lacking that structure – which is currently rare to non-existent – the presence of even a majority of a quorum of "active market participants" on an applicable governing board precludes or jeopardizes its immunity.[2]

The extent of current liability under federal antitrust law for many occupational licensing boards and their members is *in extremis*. Signatory Center for Public Interest Law (CPIL) is

[2] For example, more than three members of a 13-member board currently participating in the industry would allow those persons to win a vote of a quorum, thus determining that decision in violation of this holding.

familiar with the applicable caselaw and the impact of the *North Carolina* decision. Professor Fellmeth personally served as a state and federal antitrust prosecutor for nine years and is the co-author of the treatise *California White Collar Crime* (with Thomas A. Papageorge, Tower Publishing, 4th edition 2013), as well as other relevant publications. CPIL has studied the activities of California's regulatory agencies for 35 years, teaching the subject, and publishing the *California Regulatory Law Reporter*. Our analysis is not borne of naiveté, nor is it the product of ideological predilections – apart from sympathy with the precepts of democratic government. *See* www.cpil.org.

The Citizen Advocacy Center (CAC) is a nonprofit organization whose mission is to increase the accountability, transparency, and effectiveness of state health care professional regulatory boards and national voluntary certification organizations by offering training, research, and networking opportunities for public members serving on these entities. The CAC supports efforts to review unjustifiable anticompetitive restrictions they impose that harm consumers. *See* www.cacenter.org.

Consumers Union is the advocacy division of the nonprofit publisher, Consumer Reports, which for nearly 80 years has empowered consumers with the knowledge they need to make better and more informed choices. The organization's Safe Patient Project has advocated for a safer health care system for the past 12 years on several fronts, covering physician accountability, health care-acquired infections, medical errors, and medical device safety. *See* www.SafePatientProject.org.

Each of these organizations has a longstanding interest in securing a legitimate democracy controlled by the People; one without corruptive delegation to cartel or other pecuniary special interests. We are concerned that the law upholding these core values is enforced and that the Attorneys General of the respective states perform their assigned preeminent task to assure that compliance.

We understand that a board or commission structure has advantages over a bureau or department. For example, the multimember board structure generally activates "open meeting" procedural statutes that make their operations more transparent. In contrast, a bureau or department headed by an individual may be subject to *ex parte* lobbying by the plethora of economically-interested trade associations who track and advocate before regulatory agencies. That pattern of hidden influence is endemic, and is also problematical where there are not proper limitations on privately-advanced contentions and secretly negotiated deals. And there are other features of the current regime in California that we recognize warrant at least a measure of favorable consideration.[3]

[3] We recognize that most members of regulatory boards and commissions believe that they are serving the public interest, are unpaid, and intend to serve democratic values. But they are necessarily part of the tribal grouping that our occupational associations have fostered. By way of illustration: State bars controlled by attorneys rarely discipline for excessive billing or intellectual dishonesty. Few require any demonstration whatever of competence in the actual practice area of law relied upon by clients. Few require malpractice insurance, or in any way ameliorate the harm from attorney incompetence. The point is, each of the many agencies within your state is empowered to

You are the chief law enforcement official of California. You also advise state agencies. As such, your predominant obligation is not to arrange or excuse violations of law, but to prevent them and, where that fails, to enforce the law. That function may place you at odds with the political and institutional prerogatives of these agencies, but we respectfully contend that your duty is not to them as clients receiving blind fealty, but to compliance with applicable Supreme Court decisions warranting your respect.

With the above in mind, we ask the following four questions divided into (a) and (b) respectively. Under (a) we respectfully ask for your response to our questions. Under (b) we separately request documents that contain related information, as described below, pursuant to your Public Records Act.

1. (a) Which agencies governed by multi-member boards regulating professions or trades are composed in majority of "active market participants" in the regulated trade or profession? Which acts and decisions of these boards are subject to "independent state supervision" for restraint of trade impact prior to their legal efficacy? Please explain which entity accomplishes this review, its authority, and its directive to consider anticompetitive implications.

   (b) Please provide documents that identify the make-up of your regulatory agencies' multi-member governing bodies, including the statutes/rules governing how many and which ones are required to be participants in the trade or profession regulated.

2. (a) How many of the members of these boards and commissions identified in your answer to Question #1 above have you notified of their potential criminal and civil liability if they make decisions that would constitute a violation of federal antitrust law? Does that notice include the revelation that their decisions are not entitled to "state action" or other sovereign protection?

   (b) Please produce copies of your notification to such persons. If the notice is the same or similar to all such persons, a single copy will suffice, with a list of recipients.

3. (a) Please explain the indemnification policy of the state in terms of criminal or civil liability if a federal criminal or civil case arises and judgment is entered against those individuals? Is publicly financed counsel provided in such a case? Are

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carve out momentous exceptions from federal antitrust law, and those decisions in particular require a level of independence from the implicit focus of current practitioners.

We also recognize that there is an important role for expertise in the regulation of most trades and professions. As Justice Scalia has pointed out, we have an interest in listening to neurosurgeons in evaluating the competence of new applicants to such an important and complex function. But such contributions may be received without conferring final authority over state policy to current and conflicted practitioners of that trade.

damages to be subsumed by the state treasury? Please provide estimates or calculations of possible public exposure to federal court treble damage awards.

(b) Please produce documents that analyze or disclose antitrust liability exposure to the state treasury from potential agency antitrust violations, if any such documents exist.

4. (a) With whom have you communicated about the implications of this holding? Have you communicated with your Supreme Court Justices or Legislators or their respective offices or agents? Have you communicated with the Federal Trade Commission or the United States Attorney General or a United States Attorney's Office or its agents?

   (b) Please produce such notifications. If the notice is the same or similar to all such persons, a single copy with suffice, with a list of recipients.

Thank you for your consideration of this request. Please mail your responses to Center for Public Interest Law, University of San Diego School of Law, 5998 Alcala Park, San Diego, CA 92110 or email to cpil@sandiego.edu.

Very sincerely,

Robert C. Fellmeth
Executive Director, Center for Public Interest Law
Price Professor of Public Interest Law
University of San Diego School of Law

David Swankin
President and CEO
Citizen Advocacy Center

Lisa McGiffert
Director, Safe Patient Project
Consumers Union

Attached: Three-page U.S. Supreme Court syllabus of *North Carolina State Board of Dental Examiners v. FTC* (Feb. 25, 2015)

cc: Governor Edmund G. Brown Jr.
Secretary Anna Caballero, Business, Consumer Services and Housing Agency
Hon. Kevin de León, Senate President pro Tempore
Hon. Toni Atkins, Assembly Speaker
Awet Kidane, Director, Department of Consumer Affairs
Kathleen Kenealy, Esq., Chief Assistant Attorney General, Civil Division
Mr. Mark Breckler, Esq., Chief Assistant Attorney General, Public Rights Division
State Attorneys General
National Association of Attorneys General

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August 19, 2016

Honorable Mark Stone, Chair, and Members
Assembly Judiciary Committee
1020 N Street, Room 104
Sacramento, CA 95814

Re: **SB 846 (Anderson) – OPPOSE AS PROPOSED TO BE AMENDED**

Dear Chair Stone and Honorable Committee Members:

With profound respect for the passion and dedication of the Chair when it comes to reforming a government agency – the State Bar – that for 30 years has broken laws, mismanaged tens of millions of dollars, disrespected the needs of the underprivileged, permitted sham law schools to dupe the poor and students of color into going into debt with no real hope of ever becoming lawyers, and failed to protect your constituents from those who pretend to be lawyers and lawyers who hurt them, all of this happening under the uninvolved watch of the Supreme Court, we must oppose SB 846.

On June 2 of this year, on the floor of the Assembly, many of you spoke resolutely about AB 2878, repeating with justifiable conviction that the reforms in that bill were the "bare minimum" you expected to reform what is essentially a longstanding rogue agency.

If that was your test – and it was and it was the right test – for earning your vote, SB 846 does not meet that test.

SB 846 fails your test because, just like the prior version of the bill that earned only 10 votes on the Floor, SB 846 entirely fails to address any of the structural or governance issues that have long afflicted the Bar. The practicing attorney majority on the Board of Trustees endures. The problem of an intrinsically distracted regulator that, at every meeting, allows the interests of lawyers to compete with the interests of consumers, endures as well.

And, on this score, because the bill fails to reform the two, mutually reinforcing structural flaws that have caused the Bar to misfire for three decades and worse than any other licensing agency, never correcting its own course, the bill therefore fails to do anything that will ensure your constituents are better protected than they are now, or have been.

Worse, the scaling back of the bill appears to be based upon three incorrect premises.

First, there is the incorrect premise that it is somehow overreaching for the Legislature to enact structural reforms without first obtaining permission from the Supreme Court. This is entirely unprecedented and an astonishingly small view of this body's prerogatives and the solemn, constitution-grounded duties of every legislator to legislate in the public interest. Not only is this view supported by no legal authority or reputable view of the separation of powers, the California Supreme Court itself squarely rejects it:

> **[T]he power of the legislature to impose reasonable regulations upon the practice of the law has been recognized in this state almost from the inception of statehood**.' (*Brydonjack v. State Bar* [(1929)] 208 Cal. 439, 443, 281 P. 1018.) '[T]his court has respected the exercise by the Legislature, under the police power, of 'a reasonable degree of regulation and control over the profession and practice of law' in this state. [Citations.] This pragmatic approach is grounded in this court's recognition that the separation of powers principle does not command a 'hermetic sealing off of the three branches of Government from one another.' [Citation.]

In re Attorney Discipline System (1998) 19 Cal.4th 582, 599-600 (emphasis supplied).

"Almost from the inception of statehood…." That is a long time.

If any portion of this bill is premised on the assumption that it is improper for this body to legislate to protect your constituents from unethical or incompetent lawyers, let this precedent and the existence of the entirety of the State Bar Act, which decrees and sets the rules for every facet of State Bar operations, reassure you.

Second, there appears to be a misimpression that unless some bill is passed, Bar employees might lose their jobs. But that isn't true at all. In the absence of a "dues bill" authorizing the Bar to charge its members licensing fees, the California Supreme Court is authorized to order California lawyers to support the Bar's programs and its employees. The Court has exercised this authority in the past, and just today the Bar reiterated that it "is preparing a submission to the California Supreme Court to authorize the State Bar to assess fees, in the event that is necessary…." The Bar is precluded from financing some of its programs with mandatory bar dues anyway, and is not precluded from soliciting voluntary contributions to continue to finance those programs in its dues notice.

Third, even though the bill tries to insulate the Bar from antitrust liability (while not addressing the structural reforms needed to protect your constituents from harm), it fails to do that successfully. To assure a federal court that non-"active market participants" are not acting like a cartel requires more than mere words giving the power to review their decisions to someone else. That power has always existed and has never been effectively exercised, nor is it likely to proceed in a manner assuring *bona fide* compliance with federal antitrust law. There must be a mechanism and process in place and resources to assure that these words are not just *pro forma*, but for real, demanding active state supervision as a practical matter, not a theoretical one. It must include the specifics of who and how, as well as assured funding, to accomplish active state supervision. For example, that failure has led to decades of anticompetitive exclusion of tens of thousands from law

practice, with a radically lower Bar exam passage rate than other states. SB 846 does not succeed on this score either, leaving open the possibility of an antitrust lawsuit, notwithstanding its laudable intentions on this score.

For all these reasons, CPIL must respectfully request a no vote.

Sincerely,

Robert Fellmeth
Executive Director

Ed Howard
Senior Counsel

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MEMO TO: **Honorable Members of the Senate Judiciary Committee and Assembly Judiciary Committee**

FROM: **Professor Robert Fellmeth, Executive Director**
Center for Public Interest Law
Price Professor of Public Interest Law[1]

RE: **Questions and Answers Regarding the State Bar's Exposure to Antitrust Lawsuits and Treble Monetary Damages**

DATE: **August 19, 2016**

Having practiced antitrust law since 1973 and monitored California occupational licensing agencies at the Center for Public Interest Law ("CPIL") since 1980, I know that both areas of the law are complicated. Neither antitrust law nor the "state action immunity doctrine" (which shields states from antitrust scrutiny) is a subject of common discourse.

For that reason, as the Legislature weighs the question of whether and to what extent the recent U.S. Supreme Court decision in *North Carolina State Board of Dental Examiners v. FTC*, __U.S.__, 135 S.Ct. 1101 (2015) ("*North Carolina*"), applies, I want respectfully to provide to all legislators and their staff the answers to the questions we are receiving from some of you.

AS A THRESHOLD QUESTION, IS IT DISRESPECTFUL TO THE SUPREME COURT FOR THE LEGISLATURE TO PASS LAWS REGULATING THE STATE BAR?

No.

[1] By way of background, CPIL has monitored California regulatory agencies for 36 years, and has analyzed and audited the enforcement programs of the State Bar, the Medical Board of California, and Contractors' State License Board in depth. My background in antitrust law includes nine years as a public prosecutor; during part of that time, I was cross-commissioned as an Assistant U.S. Attorney and enforced both state and federal antitrust law. For 35 years, I have taught antitrust law and regulatory law at the University of San Diego School of Law; I have also taught antitrust law at the National College of District Attorneys and the National Judicial College – created by the U.S. Supreme Court to train state court judges. My scholarship includes texts on *California Antitrust Law* and on *California Regulatory Law*, respectively, and coverage of the subject in this year's treatise *California White Collar Crime & Business Litigation* (with Thomas A. Papageorge, Tower Publishing, 5th Ed., 2016).

WHO SAYS SO?

The California Supreme Court says so:

> **[T]he power of the legislature to impose reasonable regulations upon the practice of the law has been recognized in this state almost from the inception of statehood**.' (*Brydonjack v. State Bar* [(1929)] 208 Cal. 439, 443, 281 P. 1018.) '[T]his court has respected the exercise by the Legislature, under the police power, of 'a reasonable degree of regulation and control over the profession and practice of law. ' in this state. [Citations.] This pragmatic approach is grounded in this court's recognition that the separation of powers principle does not command a 'hermetic sealing off of the three branches of Government from one another.' [Citation.]

In re Attorney Discipline System (1998) 19 Cal.4th 582, 599-600 (emphasis supplied).

"Almost from the inception of statehood…" As a result, every single nook and cranny of the regulation of lawyers and the State Bar — from how many Board of Trustees members there are, to what branch of government appoints them, to the rules governing their meetings, to their terms, to grounds for discipline, to public protection being its highest priority — are all set out in statutes passed by this legislative body in the State Bar Act.

IS THE REGULATION OF THE LEGAL PROFESSION STATUTORILY EXEMPT FROM FEDERAL ANTITRUST LAW?

No. No provision of the federal Sherman Antitrust Act (26 Stat. 209, 15 U.S.C. §§ 1–7) exempts the legal profession or any other profession.

IS THERE A COURT DECISION THAT SAYS REGULATION OF THE LEGAL PROFESSION IS SUBJECT TO ANTITRUST LAWS?

Yes. "In the modern world, it cannot be denied that the activities of lawyers play an important part in commercial intercourse, and that anticompetitive activities by lawyers may exert a restraint on commerce." *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 788 (1975), an 8-0 U.S. Supreme Court decision finding the Virginia State Bar liable for price-fixing (an antitrust offense), and cited repeatedly in the *North Carolina* decision.

DOES THE STATE BAR DO ANYTHING THAT WOULD VIOLATE ANTITRUST LAWS?

Yes. Unless a court rules the Bar is immune from antitrust lawsuits under the *North Carolina* case, federal antitrust law will treat the Bar as simply a group of lawyers who gather together and decide who will be allowed to compete with them. Controlling the supply of a good or service is regarded as a *per se* price-fixing offense (*e.g.*, controlling the right to practice through a qualifying exam). Such "*per se*" status means a particular type of restraint has no "reasonableness" or other common

defense. The risk of liability is particularly great. See the FTC discussion of price fixing precedents at https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/dealings-competitors/price-fixing.

HAS A COURT REJECTED A CLAIM THAT A STATE BAR IS EXEMPT FROM ANTITRUST LIABILITY WHEN THERE IS OVERSIGHT BY A SUPREME COURT?

Yes. The case is *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975). Here are some excerpts:

- "Through its legislature, Virginia has authorized its highest court to regulate the practice of law." (*Id*. at 789.)

- "The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members." (*Id.* at 791.)

- "Although the State Bar apparently has been granted the power to issue ethical opinions, there is no indication in this record that the Virginia Supreme Court approves the opinions." (*Id*.)

- "The State Bar, by providing that deviation from County Bar minimum fees may lead to disciplinary action, has voluntarily joined in what is essentially a private anticompetitive activity, and, in that posture, cannot claim it is beyond the reach of the Sherman Act." (*Id.*)

So, from this case we know that there is no blanket exemption from antitrust liability for a state bar that engages in anticompetitive conduct just because the bar is passively overseen by a state supreme court.

IN SUM: NO COURT DECISION AND NO STATUTE SAYS THE REGULATION OF THE LEGAL PROFESSION IS EXEMPT FROM ANTITRUST LIABILITY. A U.S. SUPREME COURT DECISION IMPOSED ANTITRUST LIABILITY ON A STATE BAR EVEN THOUGH THE BAR WAS OVERSEEN BY THE STATE SUPREME COURT.

THERE IS INDISPUTABLY SOME RISK OF THE STATE HAVING TO PAY TREBLE DAMAGES IN A CLASS ACTION ANTITRUST SUIT, WHICH COULD REALISTICALLY RUN INTO MANY MILLIONS OF DOLLARS, ESPECIALLY IF BROUGHT BY A CLASS OF THOSE REJECTED FOR PRACTICE BY SUCH A SELF-INTERESTED BODY.

IS IT POSSIBLE FOR STATE LICENSING (SUPPLY CONTROL) OPERATIONS TO BE IMMUNE FROM ANTITRUST LAWSUITS?

Yes. But, after *North Carolina*, to enjoy that immunity a state licensing board cannot be controlled by what the Court calls "active market participants," meaning the licensing board can't be controlled by licensees of that board, the very people who enjoy a benefit from restraining competition. Here is what the U. S. Supreme Court said:

> The similarities between agencies controlled by active market participants and private trade associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. ... When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. ... **The Court holds today that a state board on which a controlling number of decisionmakers are active market participants must satisfy *Midcal*'s active supervision requirement in order to invoke state action antitrust immunity.**

North Carolina, 135 S.Ct. at 1114 (internal citations omitted; emphasis added).

This is the holding of the Court. It is very clear. No "active supervision," no immunity.

SO A LICENSING BOARD *CAN* BE DOMINATED BY "ACTIVE MARKET PARTICIPANTS" SO LONG AS THERE IS "ACTIVE STATE SUPERVISION" ?

Yes.

WHAT CONSTITUTES "ACTIVE STATE SUPERVISION"?

At bottom, it is just what it sounds like. Some state official or agency that is not dominated by active market participants – here, practicing lawyers – has to "actively supervise" decisions such as who gets into the profession (the exam), the rules of practice that may restrain competition, and the enforcement process which may result in termination of a license to practice.

In fact, the *North Carolina* decision specifies what is required to qualify as "active state supervision." According to the United States Supreme Court, three elements are necessary to qualify as "active state supervision":

- "The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it….";
- "the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy…;" and,
- "the state supervisor may not itself be an active market participant."

North Carolina, 135 S.Ct. at 1116 (citations omitted).

The Court expressly observed that "the 'mere potential for state supervision is not an adequate substitute for a decision by the State….'" *Id.* (citations omitted).

This last part is critical. According to the Highest Court in the land, the supervision cannot be theoretical, or reflect presumptive deference to such a self-interested group. The real decision must be made by a disinterested state actor who actively examines, measures, considers

anticompetitive impact, looks at alternatives, and rejects or modifies (or approves if that is its own preference). **That is why the word "active" is used.**

CAN YOU TIE ALL THIS TOGETHER?

The easiest way to avoid the whole problem is to have public member majorities on licensing boards. Many of the non-health care boards in the Department of Consumer Affairs have operated that way for decades. If a state decides it wants to retain lawyers or doctors as majorities on licensing boards, it can, but after *North Carolina*, that structure from an antitrust perspective is no different than a private trade association or cartel that limits competition. The only way for such a board to be immune from the antitrust laws is if a state official, who is not a practicing licensee, is required to review, and is authorized to veto or modify, board decisions that hurt competition. And that supervisory role in performing those functions cannot be a theoretical one.

Justice Alito was right in his dissent in *North Carolina* when he wrote that the decision has "far-reaching effects on the States' regulation of professions… As a result of today's decision, States may find it necessary to change the composition of medical, dental, and other boards[.]" *North Carolina*, 135 S.Ct at 1122-23 (Alito, J., dissenting).

If states choose to retain licensee-dominated boards, they had better ensure "active state supervision." If they don't, they will get sued. The treble damage plus attorneys' fees remedy assures that result.

IS THERE ANYTHING ABOUT THE STRUCTURE OR OPERATIONS OF THE CALIFORNIA BAR THAT WOULD TILT THE BALANCE AWAY FROM LIABILITY?

No.

First, the Bar Board of Trustees is controlled by a 13-6 majority of practicing attorneys. Absurdly (and unlike any other regulated profession in California), lawyers even elect a few of the lawyers who are supposed to watchdog them.

Second, while it is true that the Bar is part of the judicial branch and is theoretically overseen by the California Supreme Court, it does not qualify as such an active supervisor over most State Bar decisions, including those with *per se* violative impact.

HOW DO YOU KNOW THE SUPREME COURT'S CURRENT ROLE MIGHT NOT BE ENOUGH TO QUALIFY AS ACTIVE STATE SUPERVISION?

A better question might be: ***How do those who ask the Legislature to permit the Bar to be exposed to a possibly ruinous antitrust lawsuit know that the Supreme Court's current role will, with reasonable certainty, prevent such a lawsuit?*** There is no statutory exemption. There is no case that says bars housed in or "organizational chart overseen" by Supreme Courts are exempt. If it

were their personal money on the line, who would prudently take such a risk? What advice would a competent attorney offer a client in these circumstances?[2]

DO YOU HAVE EVIDENCE THAT THE SUPREME COURT WOULD FAIL THE ACTIVE STATE SUPERVISION TEST?

Yes.

Neither the California Supreme Court nor any other California entity provides "active state supervision" of those Bar acts and decisions most likely to prompt an antitrust lawsuit. Consider the State Bar exam. Everyone who fails that exam has the ability to sue the Bar for an antitrust violation.[3]

What role does the California Supreme Court have in itself running or supervising the Bar exam? None.

CPIL issued a Public Records Act request to the Bar for all documents that would reflect active state supervision relating to the Bar exam, and has reviewed the several hundred pages the Bar produced in response to the request — none of which reveal active supervision or any restraint of trade consideration whatever by the Supreme Court.

Instead, this task is entirely delegated to the Committee of Bar Examiners, the majority of whom are appointed by the State Bar, and are actively practicing "market participant" attorneys. There is no evidence of any review by anyone – including the California Supreme Court – that even approaches *the North Carolina* holding's description of "active state supervision" of the State Bar's pass point on the exam.

IS THERE ANY OTHER WAY A LICENSING BOARD DOMINATED BY ACTIVE MARKET PARTICIPANTS CAN BE IMMUNE FROM AN ANTITRUST SUIT?

Yes. If the licensing board is just following the very clear dictates of state law so that the licensee-dominated board is, basically, just carrying out an anticompetitive mandate of the Legislature, *i.e.*, where it is functioning in a ministerial manner without exercising any discretion as to alternative anticompetitive effects. But decisions of the State Bar, including entry criteria, rules of practice,

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[2] The Bar's recent report of its Task Force on Governance in the Public Interest cites *Hoover v. Ronwin* 466 U.S. 558 (1984), and *Bates v. State Bar of Arizona* 433 U.S. 350 (1977). The former has to do with conduct of the acknowledged and proper sovereign entity, (where the actors were the state legislature or supreme court themselves). *Bates* has to do with Arizona State Bar attorney advertising restrictions which were struck on First Amendment grounds. It did include *dicta* on antitrust and state action doctrine that preceded *North Carolina*, and that, again, involved direct supreme court action. In contrast, the Bar's official antitrust analysis (Appendix E of the Governance Task Force report) entirely omits to even mention, much less analyze, the *Goldfarb* precedent that applied antitrust prohibitions to the Virginia State Bar, notwithstanding the Supreme Court's repeated citation and quotation in the 2015 *North Carolina* decision.

[3] The exam is a fiasco. On the February 2016 Bar exam, 54% of first-time applicants failed; 68% of repeat examinees failed. Almost 80% of the graduates of schools that the Bar itself "accredits" flunked the exam. The California Bar has among the nation's highest LSAT (law aptitude scores) among takers, and is among the very lowest in passage rates.

et al., involve discretionary decisions with anticompetitive alternative impacts beyond mechanical administration.

ARE THERE ANY STATE LAWS RELATING TO THE BAR EXAM OR DISCIPLINE SYSTEM THAT ARE SO SPECIFIC THAT THEY WOULD IMMUNIZE THE BAR FROM LIABILITY?

No. How would the Legislature write such statutes when it comes to the nuances of crafting an exam or fashioning rules of practice or the many other decisions of the State Bar? It does not do so for most of the Bar's operations. Indeed, that is one reason the State Bar was created, to do more than straight administrative enforcement.

BUT DOESN'T ALL OF THIS SAY SOMETHING BAD ABOUT LAWYERS? CAN'T LAWYERS BE TRUSTED TO REGULATE THEMSELVES?

First, we are here interpreting federal statute, and federal statute simply contains no "good person" exemption.

Second, of course not, because not all biases are known even to the regulator. As the *North Carolina* court wisely observed:

> Dual allegiances are not always apparent to an actor. ***In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability***.

Id. at 1111, citing *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 106 (1980) (emphasis added).

Third, we at CPIL are all honored to be lawyers. But, lawyers are still people.

COULD STATE LAW BE MODIFIED TO VEST "ACTIVE STATE SUPERVISION" DUTIES IN THE SUPREME COURT?

Yes.

HAVE LAWSUITS AGAINST STATE BOARDS BEEN FILED ALREADY?

Yes, and one against a state bar has settled for an undisclosed sum.[4]

[4] *See, e.g., Teladoc v. Texas Medical Board*, No. 1-15-CV-343-RP (U.S.D.C., Western District of Texas); *Conlindres, et al. v. Battle, et al.*, No.1-15-CV-2843-SCJ (U.S.D.C., Northern District of Georgia); *LegalZoom.Com, Inc. v. North Carolina State Bar*, No. 1:15-CV-439 (U.S.D.C. M.D. North Carolina) (filed June 3, 2015; settled in November 2015); *Express Lien, Inc. v. Cleveland Metropolitan Bar Association, et al.*, No. 15-cv-02519 (U.S.D.C, Eastern District of Louisiana) (filed July 9, 2015; settled in April 2016).

CONCLUSION AND OBSERVATIONS

Those who claim that the Bar's current structure will immunize it from an antitrust lawsuit can point to no statute or case that says that. Clear authority now exists for the opposite proposition. We are talking, in one example, about trebling the damages of tens of thousands of Californians who flunked the Bar exam.

If the current Bar structure had proven to be an effective steward of its money and public protection charge, it might be worth rolling the liability dice to protect something that works. But that has not been the case for decades.

Contra Costa Times: "The nation's largest state bar failed to consistently protect the public from bad lawyers by settling hundreds of complaints, many without adequate discipline for botched cases or ethical violations, according to a scathing audit released Thursday that also found the organization has spent money with little financial accountability. The audit is the latest blow to the California State Bar, an organization plagued by years of infighting and allegations that mismanagement and dysfunction allowed bad attorneys to continue practicing law."[5]

Sacramento Bee: "A state audit … paints an unflattering picture of the California State Bar as willing to settle attorney discipline cases too quickly, track case data too loosely and spend too freely, all at the expense of its mission to protect the public from bad lawyers."[6]

The Recorder: "The State Bar of California misled lawmakers about significant costs and potentially put the public at risk by meting out weak punishment to bad lawyers, according to a blistering review of the attorney-oversight agency released Thursday by the state auditor."[7]

CBS Television News (Los Angeles) "A scathing audit says the California State Bar has failed to consistently protect the public from bad lawyers and lacks financial accountability.[8]

NBC Television News (San Diego): "The state agency charged with regulating California lawyers put the public at risk by rushing to eliminate a growing pile of misconduct cases, a new audit found."[9]

Significant Risk to the Public: "[T]o reduce its backlog, the State Bar allowed some attorneys whom it otherwise might have disciplined more severely—or even disbarred—to continue practicing law, at significant risk to the public."[10]

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[5] http://www.contracostatimes.com/california/ci_28345810/audit-attorney-discipline-falls-short-at-california-bar
[6] http://www.sacbee.com/news/politics-government/the-state-worker/article24904381.html#storylink=cpy
[7] http://www.therecorder.com/id=1202729904880/Audit-Slams-State-Bar-for-Cutting-Corners-on-Attorney-Discipline#ixzz3k7wycSsm
[8] http://losangeles.cbslocal.com/2015/06/18/audit-californias-state-bar-failing-to-discipline-bad-lawyers/
[9] http://www.nbcsandiego.com/news/local/California-State-Bar-Failed-to-Protect-Public-from-Bad-Lawyers-Audit-309609731.html#ixzz3k7xmMf00
[10] https://www.bsa.ca.gov/reports/2015-030/summary.html

Misled the Legislature and other stakeholders on its Enforcement Performance: "The State Bar has also not been transparent in reporting the performance of its discipline system to its stakeholders…"[11]

Upside Down Fiscal Priorities: "[A]t a time when we would have expected the State Bar to focus its efforts and resources on its mission of public protection by taking steps such as improving its discipline system, it instead purchased a $76.6 million building in Los Angeles in 2012."[12]

Epic Fiscal Mismanagement: "[T]he State Bar did not perform a cost benefit analysis before receiving board approval to purchase the building …. the State Bar underestimated the total cost of the building purchase and renovation by more than $50 million.."[13]

None of this is new.

On October 11, 1997, Governor Wilson vetoed the Bar's dues bill and issued a stinging veto message. He noted that the Bar was created in 1927 to assist the Supreme Court "with responsibility for regulating the legal profession and promoting fair and efficient administration of justice. The Bar has drifted, however, and become lost, its ultimate mission obscured. It is now part magazine publisher, part real estate investor, part travel agent, and part social critic, **commingling its responsibilities and revenues in a manner which creates an almost constant appearance of impropriety**" (emphasis added). The Governor pointed directly to the Bar's structure as a "unified" bar. A lawyer himself who is not known for left-leaning views, the Governor stated: "Last year, a significant minority of bar members voted to abolish the mandatory bar in favor of a voluntary model embraced in ten other states. **This difference of opinion as to the mandatory nature of the Bar is at the heart of what might be charitably characterized as an almost chronic disharmony. Simply stated, some members believe that the Bar cannot function effectively as both a regulatory and disciplinary agency as well as a trade organization designed to promote the legal profession and collegial discourse among its members**" (emphasis added). The Governor concluded: "It is time for the Bar to get back to basics: admissions, discipline, and educational standards. I would look with favor upon a bill that required Bar members to pay only for functions which were, in fact, a mandatory part of a responsible, cost efficient regulatory process."

The State Bar for 30 years, over different Supreme Courts and different appointees, has failed over and over again to offer your constituents the protection they deserve and misused the dues lawyers must pay. All this has happened … and the Supreme Court has offered no proposal for reform, and still doesn't.

And now, this same structure that for decades has hurt your constituents could also cost the State real money.

Respectfully, if you were facing the chance of paying treble damages, and your lawyer's advice to you was "do nothing" and "let's wait to see what the entity that has failed to improve things for *over 30 years* comes up with," would you take that advice?

[11] https://www.bsa.ca.gov/reports/2015-030/summary.html
[12] https://www.bsa.ca.gov/reports/2015-030/summary.html
[13] https://www.bsa.ca.gov/reports/2015-030/summary.html

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October 11, 2016

Chief Justice Tani Cantil-Sakauye and Associate Justices
Office of the Clerk
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: *In re Attorney Discipline* – Docket No. S237081

AMICUS CURIAE LETTER REGARDING REQUEST OF THE STATE BAR OF CALIFORNIA FOR SPECIAL REGULATORY ASSESMENT

To the Chief Justice and the Associate Justices of the California Supreme Court:

The Center for Public Interest Law (CPIL) urges this Honorable Court to grant the State Bar of California's Request for Special Regulatory Assessment, dated September 30, 2016 ("the Request"). However, for the reasons stated below, the Bar must first be required to provide the Court with a more detailed accounting of the funds proposed such that the assessment **is strictly limited to the amount of money required to fund the discipline system at full capacity** (including funding for the recently proposed workforce enhancements and backlog reduction efforts necessary to improve the discipline system).

The Bar's request for funds to support its additional (and self-identified) "public protection" functions is properly rejected. Contrary to the Court's own recognition that the Legislature also plays a role in State Bar oversight, the Bar's Request for an assessment fully funding the Bar's *status quo* activities insults the Legislature's legitimate authority.

I. The Interest of the Center for Public Interest Law

CPIL is a nonprofit, nonpartisan academic and advocacy center based at the University of San Diego School of Law. Since 1980, CPIL has examined and critiqued California's regulatory agencies, including the State Bar of California. We have attended the Bar's meetings and followed its activities for 35 years. From 1987 to 1992, I served as the State Bar Discipline Monitor (under then-Business and Professions Code section 6086.9), under appointment by then-Attorney General John Van de Kamp, with CPIL serving as the Monitor's staff. The State Bar Discipline Monitor position was created by the Legislature and — over the course of almost five years — we wrote eleven reports on the operation of the State Bar's discipline system. We worked with Senator Robert Presley and a succession of State Bar Presidents to fashion some 40 reforms of the system, including the passage of Senate Bill 1498 (Presley), 1988 legislation creating the current independent State Bar Court. We participated actively in the proceedings and deliberations of the 2010 Governance in the Public Interest Task Force, whose work culminated in the Legislature's passage of SB 163 (Evans) (Chapter 417, Statutes of 2011). And we were equally involved in the most recent iteration of the Governance in the Public Interest Task Force's proceedings this year.

We are well aware that the Bar has a necessarily close relationship with the judicial branch under the aegis of the California Supreme Court. And we are similarly familiar with the executive branch agencies that license and regulate other professions and trades in California.

II. The Special Regulatory Assessment Must Be Strictly Limited to Funding the Discipline System

In its September 8, 2016 letter to the Bar, this Court expressly and appropriately directed the State Bar "to submit a request to the court for an interim Special Regulatory Assessment ***to fund the Bar's discipline system*** until such time as legislation is enacted that provides for its funding." 9/8/16 Letter to State Bar at 1, *citing In re Attorney Discipline System* 19 Cal. 4th 582, 607 (1998) (emphasis added). Specifically, the Court directed the Bar to "***specify the amount of assessment necessary to fund its discipline system and … generally identify the functions, services, and programs supporting that system.***" *Id.* (emphasis added). The Bar's request fails to comply with the Court's clear directive in at least three ways.

A. The Bar's Request Ignores Established Precedent

In *In re Attorney Discipline*, which the Court has acknowledged as the controlling precedent and "guiding light" for determining the proper assessment (9/8/16 Letter at 1), this Court could not have been more clear about the purpose and scope of a regulatory assessment where the Legislature has not passed a State Bar "dues" bill:

> Our action — imposing a fee on attorneys to be used ***solely for the attorney discipline system*** — will not affect most of the critical issues that were the points of contention among the parties in Sacramento, including the State Bar's governance, the permissible scope of its lobbying activity, the role of the State Bar Conference of Delegates, ***or other functions beyond discipline***.

In re Attorney Discipline, 19 Cal. 4th at 615 (emphasis added). *See also id.* at 609 ("Accordingly we conclude that our inherent constitutional authority over attorney discipline includes the power to assess fees upon attorneys ***to fund the State Bar's existing discipline system.***") (emphasis added); *id.* at 620 ("…[A]ny fee imposed by the court shall be used ***solely for the purpose of supporting disciplinary activities.***") (emphasis added).

The Bar's Request, however, ignores the Court's unequivocal holding. Instead, under the guise of "public protection," it asks this Court to impose a regulatory assessment to fund programs far beyond the discipline system, including its Communications Office, its Judicial Nominees Evaluation Commission, the California Young Lawyers Association, and its Commission on Access to Justice. Request at 14–21. While the Bar may find these programs valuable, they are in no way "necessary to … its discipline system." 9/8/16 letter at 1. Moreover, the Bar's assertion that it may permissibly expand its request to include funding for its so-called "public protection" functions flies in the face of this Court's express finding: "We emphasize that the rule we adopt is interim in nature, narrow in scope, and directed solely at providing necessary disciplinary functions." *In re Attorney Discipline System,* 19 Cal. 4th at 590. *Cf.* Request at 25-26 (seeking,

among other things, funding for the Bar's "activities that contribute to the effective functioning of the legal system and the diversity of the profession").

B. The Bar's Request is an Unfortunate Attempt to Circumvent the Legislature

That the Bar's justification for its expanded Request is a "public protection" mandate imposed by the Legislature is particularly ironic. *See* Request at 26, *citing* Business and Professions Code section 6001.1. Indeed, if the Bar's argument is correct, there would never be a need for the Bar to seek legislative approval to assess attorneys ever again. Such an interpretation is unsupported by case law, the Constitution, or any statute.

It is Undisputed that the Legislature Plays a Significant Role in Bar Oversight

As this Court expressly recognized from the outset in its *In re Attorney Discipline* opinion, the Court and the Legislature are jointly responsible for oversight of the State Bar. 19 Cal. 4th at 590. ("In taking this action, ***we are mindful of the Legislature's traditional role in setting dues for members of the State Bar***, as well as this court's ultimate and inherent authority over and responsibility for the discipline of attorneys licensed to practice before the courts of California.") (emphasis added). *See also id.* at 620 ("[O]ur action is intended to be temporary in nature and to provide continuity in the discipline system ***until such time as legislation is enacted*** that provides for the funding of an effective disciplinary system.") (emphasis added); *id.* at n. 24 ("We emphasize that the relief to be granted by this court is ***interim in nature and intended to be complementary to the legislative process.***") (emphasis added). Indeed, the Legislature has enacted laws affecting not just Bar license fees, but all aspects of the State Bar (including its discipline system), several of which have been upheld by this Court against a constitutional challenge.[1] This Court fully appreciates the role of the Legislature in enacting legislation to fund the State Bar.[2]

But the Bar's Request, seeking funding at essentially the same level as — and potentially at an increased level from — the amount the Legislature has previously authorized, would remove the Legislature from its essential function. *See* Request at 29 (seeking up to $373.50 per member — nearly $60 **above** the level the Legislature authorized last year). In *In re Attorney Discipline*, this Court was particularly persuaded by the fact that the Bar's submission in 1998 was "set at 65% of its budgeted needs for the specified functions." 19 Cal. 4th at 623. The opposite is true here.

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[1] *See, e.g.*, Bus. & Prof Code 6086.9 (creating the State Bar Discipline Monitor position and delegating it the investigative authority of the Attorney General); see also Bus. & Prof. Code § 6079.1 (originally added by SB 1498 (Presley) (Chapter 1159, Statutes of 1988) and which created the nation's first professional and independent State Bar Court, whose constitutionality was upheld by this Court in I*n Re Mason Harry Rose V* (2000) 22 Cal. 4th 430); *see also* current § 6079.1 (amended by SB 143 (Burton) (Chapter 221, Statutes of 1999) and which changed the composition of the State Bar Court, whose constitutionality was upheld by this Court in *Obrien v. Jones* (2000) 23 Cal. 4th 40).

[2] As this Court made clear in its September 8, 2016 letter to the Bar, the instant Request is meant "to fund the Bar's discipline system ***until such time as legislation is enacted that provides for its funding***." 9/8/16 letter at 1 (emphasis added).

The Bar's Interpretation of its Public Protection Mandate is Factually and Legally Unsupported

Although the Bar's sole justification for its Request for funding beyond the discipline system is its "public protection" mandate, in fact, the Board of Trustees has never defined this term or otherwise identified its elements in the five years the mandate has existed. Tellingly, the only authority the Bar cites in support of its vastly expansive Request is its own Majority Report of the Governance in the Public Interest Task Force, which actually identifies "Inadequate Definitions of Mission and Public Protection" as number 2 in a list of nine "fundamental challenges facing the Bar." August 2016 Governance in the Public Interest Task Force Report at 9.[3] The Bar's pronouncement that "Public protection must 'include three core elements: reactive, proactive, and activities that contribute to the effective functioning of the legal system and the diversity of the profession'" (Request at 26) is unsupported by statute or any formal action taken by the Board of Trustees.

Moreover, carrying the Bar's argument to its logical conclusion leads to an absurd result: How can "public protection" be a "paramount" priority if the definition of "public protection" encompasses everything the Bar does? *See* Bus. & Prof. Code § 6001.1. Under the Bar's interpretation, a statute that is self-evidently intended to require the Bar to prioritize its various functions is instead legislation that allows it to prioritize everything (and therefore nothing). Additionally, why would the Legislature impose such a vastly expansive "public protection" mandate upon the Bar if doing so would effectively relinquish its own oversight authority? Could it even constitutionally do so?[4] Or overturn clear California Supreme Court precedent establishing the role the Legislature plays in setting dues for the members of the Bar? The legislative history of SB 163 (Evans), which imposed the public protection mandate, mentions nothing of the kind.[5] *See People v. Moore,* 118 Cal. App. 4th 74, 77 (2004) ("The fundamental goal of statutory interpretation is to ascertain and carry out the intent of the Legislature.") (internal quotations and citations omitted).

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[3] Available at http://www.calbar.ca.gov/Portals/0/documents/reports/2016_Governance_in_the_Public_Interest_Task_Final_Task_Force_&_Minority_Report.pdf. Moreover, according to an October 7, 2016 letter from Executive Director Elizabeth Parker to the Assembly Judiciary Committee, the 2016 Task Force identified the "inadequate definition of the Bar's 'public protection' mission" as one of three major problems plaguing the Bar. 10/7/16 Letter from E. Parker at 2.

[4] *See Raven v. Deukmejian*, 52 Cal. 3d 336, 355 (1990) (recognizing that a provision vesting all judicial power in the Legislature would have been deemed an impermissible "constitutional revision") (citing *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization,* 22 Cal. 3d 208 (1978)). Effectively, the Bar's interpretation of Business and Professions Code section 6001.1 would vest all of the Legislature's current power to oversee the Bar with the Supreme Court instead.

[5] CPIL was intimately involved in the reform measures imposed by SB 163 – including the very language the Bar now cites. This same language is imposed on all Department of Consumer Affairs boards and has never been used to justify funding trade association functions with licensing fees as the Bar now purports to do. *See, e.g.,* Bus. & Prof. Code § 2001.1 (public protection is the highest priority for the Medical Board of California); § 1601.2 (public protection is the highest priority for the Dental Board of California); § 4001.1 (public protection is the highest priority for the Pharmacy Board of California).

Accordingly, the Court properly rejects the Bar's expanded funding Request for its so-called "public protection" functions. Not only does such a request go completely beyond the authority of precedent established by this Court, it flies in the face of the Legislature's long-recognized oversight responsibility over the Bar.

C. The Bar Fails to Sustain its Burden to Justify its Requested Assessment

When this Court instructed the Bar to "specify the amount of assessment necessary to fund its discipline system and ... generally identify the functions, services, and programs supporting that system" (9/8/16 letter at 1), the Court placed the burden on the Bar to convey — with clarity — the amounts needed to fund the core components of its discipline system: the Office of the Chief Trial Counsel, the State Bar Court, the Office of Probation, the Fee Arbitration Unit, the Office of Professional Competence, and the Office of Member Records and Compliance. *See In re Attorney Discipline,* 19 Cal. 4th at 620.

The Bar's Request, however, is far from clear. Most strikingly, it does not provide any readily accessible support for its assumption that the Bar requires a base amount of $280 per member to sustain its existing discipline system. *See* Request at 29. The burden is not on this Court or interested parties to hire a forensic accountant to plow through over 300 pages of appendices attached to the Bar's Request in order to ascertain the source for the proposed numbers.[6]

Even a rudimentary attempt to trace the sources of the Bar's figures raises some serious red flags. In Table 3 of Appendix F, for example, the Bar states that the total cost of the above-described core disciplinary offices in 2016 was $64,438,000 — but that figure includes $20,779,700 in "Indirect Costs" (32% of the total cost) ***that are nowhere itemized so the reader can be assured that those indirect costs were properly attributable to those disciplinary units.***

Most disturbingly, a portion of these indirect costs — which have been allocated to the core discipline functions and are presumably a part of the Bar's current Request before the Court — includes ***$56,300 in expenses for Board of Trustees elections***! *See* Appendix F at page 6, footnote 10; Appendix C – expenditure detail at Cost Center 10005.

Moreover, the Executive Director / Board of Trustees budgets — which are also allocated proportionately to the disciplinary functions under the Bar's "cost allocation plan" even though they have little impact on the discipline system outside of nominating and appointing the Chief Trial Counsel — include significant and completely unnecessary costs such as ***an annual $44,500 catering budget for the Board of Trustees***, and a ***$7,400 catering budget for the Executive Director alone***. *See* Appendix F at pages 5–6; and Appendix C (expenditure detail for Cost Centers 10001, 10003).[7]

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[6] We respectfully note that the appendices to the Request are not even posted on the Bar's website. Only through the link provided within this Court's press release did CPIL obtain these "supporting" documents.

[7] These catering costs are just the tip of the iceberg. Not only are they incorporated within the Bar's Request for regulatory assessment as part of the indirect costs, but the expenditure details for the direct expenses incurred by the various disciplinary functions demonstrate that the Request includes $15,800 in catering for the Office of Professional

The fact that the Bar made no serious attempt to scrutinize its budget to extract unnecessary expenses such as these raises serious questions about the underlying credibility of the Request. In *In re Attorney Discipline*, this Court was scrupulous in ensuring that only funds "directed solely at providing necessary discipline functions" were included as part of the regulatory assessment. 19 Cal. 4th at 590. It must be equally scrupulous now. The Bar has not provided this Court with the information it needs to accurately assess attorneys only those funds necessary to support the disciplinary system.

Indeed, the State Bar is an agency that has not been transparent about its financial status. In May 2016, the State Auditor found that the Bar's financial reports "contained errors and lacked transparency, and these weaknesses have limited stakeholders' ability to understand the State Bar's operations and the Legislature's ability to ensure the appropriateness of the State Bar's fees."[8] It has not been candid with either members of the public who have been victimized by the intentional dishonesty of its attorney licensees or the Legislature about the inability of its Client Security Fund (CSF) to promptly pay claims against the Fund.[9] According to the Office of Legislative Counsel, the Bar illegally transferred funds from the Lawyer Assistance Program to the CSF to shore up the latter fund's stability.[10] On March 1, 2016, "the Bar, without input from or approval by the Legislature, and apparently without fully following its own newly established procedures recommended by the State Auditor, took out a $10 million loan for upgrades and tenant improvements for its San Francisco building and attempted to secure the loan with a pledge of future member Bar dues, which could have tied the hands of future Legislatures in the setting of dues based on a 1950's era statute."[11] When confronted with allegations or findings of wrongdoing, the Bar likes to pin the blame on prior members of the Board of Trustees or former executive management; however, these events occurred on the watch of the current Board of Trustees and executive management.[12]

Competence, and $2,900 in catering for the Fee Arbitration program. The catering budgets for the Bar-identified "public protection" entities are equally high or even higher: $15,200 for CYLA; $17,000 for the Commission on the Delivery of Legal Services, and $14,000 for the JNE Commission. *See* Appendix C. As a point of information, no executive branch professional licensing board in California pays for catering at all. The State Administrative Manual sets a "state rate" maximum meal allowance which board members may utilize on days they perform board business. Boards do not even use licensing fees to pay for the coffee that board members drink during meetings; instead, Board members purchase that coffee and may be reimbursed up to the maximum "state rate" meal allowance.

[8] California State Auditor, *The State Bar of California: Its Lack of Transparency Has Undermined Its Communications With Decision Makers and Stakeholders* (Report 2015-047) (hereafter "2016 Audit") (May 2016) at 1, 23.

[9] *Id.* at 23-30.

[10] Legislative Counsel Bureau, *State Bar of California: Membership Fees: Attorney Diversion and Assistance Program - #1619407* (Sept. 14, 2016).

[11] Assembly Committee on Judiciary, Analysis of SB 846 (Anderson), as amended August 19, 2016 (for hearing on August 24, 2016).

[12] These recent actions cannot be viewed in isolation; they are only the latest in a long line of apparent mismanagement at the Bar. In its 2015 audit of the Bar entitled *State Bar of California: It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability* (Report 2015-030; June 2015), the State Auditor found both of the following, and both of these findings were repeated from the State Auditor's 2009 audit — meaning

The State Bar has serious problems. The regrettable politics that led to the defeat of two State Bar fee bills in 2016 should not be converted into an opportunity for the Bar to request from this Court full funding for all of its various (and mostly ineffective) programs and commissions — which is what the Bar's request represents. This Court should not simply accept the Bar's representations about the costs of its discipline system, nor should it countenance funding programs unrelated to the discipline system. This Court should do what it did in 1998: demand detailed information about the Bar's costs of its attorney discipline system ***only***, issue an order assessing attorneys the cost of that system ***only***, and appoint a special master to ensure that the Bar spends the funds on the intended functions.

III. The Bar's Request Ignores the Court's Additional Mandates in its Letter

In its September 8, 2016 letter to the Bar, this Court explicitly noted its support for several reforms contained in the two failed State Bar fee bills and urged the Bar to implement them administratively. 9/8/16 letter at 2. The Bar has included one of those reforms — the appointment of a State Bar Discipline Monitor to evaluate the discipline system and make recommendations for reform — in its Request. Request at 29-30. But it has ignored the others, even though they too are related to the Bar's core discipline functions.

A. The Client Security Fund

The Court expressed support for "reforms seeking to ensure the adequacy and operational efficiency of the Client Security Fund...." 9/8/16 letter at 2. While the Bar assumes it has authority to continue to charge $40 per year for active members and $10 per year for inactive members to fund the CSF (*see* Business and Professions Code section 6140.55), it has not requested additional funds to shore up that fund despite the ominous findings of the State Auditor in the 2016 Audit.[13]

The CSF is part of the Bar's disciplinary function; it must be fully funded to provide restitution to clients who have been purloined by licensed attorneys. The Bar should be required to request a

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the Bar had disregarded those findings for six years: (a) The Bar has not consistently calculated and reported (as required by Business and Professions Code sections 6086.15(b) and 6094.5) its "backlog" of complaints that are over six months old, nor has it apprised its stakeholders of the various ways in which it changes its calculation of the "backlog" in its annual discipline report (Report at 26); and (b) the Bar does not consistently calculate and report its discipline case processing times, nor does it apprise its stakeholders of the various ways in which it changes its calculation of case processing times (Report at 30–31). The Auditor also found that, in its 2011 attempt to eliminate the "backlog," the Bar settled dozens of cases by imposing an insufficient level of discipline. "In 2010 and 2011, during the years the State Bar focused its efforts on decreasing the backlog, the State Bar settled more cases than in any of the other four years in our audit period and it appears that some settlements should have resulted in more severe forms of discipline.... By prioritizing reduction of the backlog, the State Bar may have put the public at risk because it settled more cases for less severe levels of discipline than it otherwise might have" (Report at 23). Finally, the audit found that the Bar — rather than spending its resources to improve its discipline system — spent a substantial portion of its resources to purchase a building in Los Angeles and then misled the Legislature about the actual cost of the building and the fact that it had made a final decision to purchase the building, "even though state law required it to do so" (Report at 43).

[13] *See infra* text at note 9.

temporary increase to support the Fund until such time as legislation may be passed to permanently secure the Fund's adequacy into the future.[14]

B. Unlawful Practice of Law Complaints Policing

This Court's letter to the Bar also supported enhancement "of the Bar's ability to more effectively process discipline and unlawful practice of law complaints...." 9/8/16 letter at 2. This too is a function of the disciplinary system, and yet the Bar has requested no funding nor suggested any enhancements in this area.

C. Assured Legality of Bar Operations

Finally, the Court asked the Bar to formulate a policy, "to be presented to the Supreme Court for approval, that the Bar must follow in identifying, analyzing, and bringing to the court any proposed Board action that implicates antitrust concerns." *Id.* This is a matter of urgency prompted by the U.S. Supreme Court's February 2015 decision in *North Carolina State Board of Dental Examiners v. FTC*, __U.S.__, 135 S.Ct. 1101 (2015). Indeed, the Bar is currently operating in violation of federal civil and criminal antitrust law; the admissions and disciplinary decisions approved by a board controlled by practicing attorneys are controlling the supply of lawyers in this state – a *per se* antitrust offense. Sherman Antitrust Act § 1, 15 U.S.C. § 1. A mechanism whereby this Court could "actively supervise" acts and decisions of the State Bar for anticompetitive effect would minimize the Bar's exposure in this area. *See California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105-106 (1980) (establishing standards for active state supervision to qualify for state action immunity).

The law here is clear, notwithstanding some analysis by the Bar and others that fails to understand the critical aspects of antitrust law in relation to necessary "state action" immunity. Under the *North Carolina* decision, a state regulatory board that is controlled by licensees of that board (such as the State Bar Board of Trustees) is no different than a cartel of competitors, and is not shielded from federal antitrust scrutiny. 135 S.Ct. at 1113-1115. *See also Goldfarb v. Virginia State Bar*, 421 U.S. 773, 791 (1975) ("The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members"). The only way to shield a board so composed is to ensure "active supervision" by a body that is not controlled by "active market participants," and is empowered to "veto or modify" board acts and decisions that are anticompetitive. *North Carolina*, 135 S.Ct. at 1116. CPIL favors this Honorable Court as the critical decisionmaking accomplishing that supervision, rather than any entity in any other branch.[15]

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[14] This adequate funding is separate and apart from the issue of the Fund's scope of coverage. That current scope covers intentional dishonesty only (to the exclusion of civil malpractice judgments for negligence). It is worth noting that, because the Bar does not require attorneys to carry malpractice insurance, even with a fully funded CSF, many consumers will be left without a remedy.

[15] CPIL is and has been engaged in examining compliance with *North Carolina* across the nation, in concert with Consumers Union of the United States and the Citizens Advocacy Center. We have made public records requests in all 50 states. We acknowledge the intrinsically passive nature of all appellate courts, who depend upon parties to provide pleadings, facts, and argument. "Active" supervision requires a different posture, and is best accommodated

The State Bar should be given a budget for the accomplishment of the above check from this Honorable Court, and that sum should be added to the assessment of attorneys. For necessarily included in the discipline and admissions function is the lawful operation of both.

IV. CPIL Recommendations

Based upon the foregoing, CPIL urges this Court to:

1) Order the Bar to submit a new request that clearly identifies the current and proposed expenditures for the six core offices comprising the disciplinary system, including identifiable indirect cost allocations attributable to those offices only and excluding the costs (both direct and indirect) of non-disciplinary programs (including catering). The request should also specifically identify funds needed to 1) adequately fund the Client Security Fund, and 2) promptly and efficiently process complaints alleging the unauthorized practice of law.

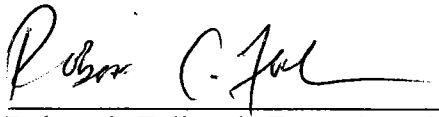
2) After a new request is received and considered, issue an order requiring attorneys to pay for the disciplinary system via a Special Regulatory Assessment "until such time as legislation is enacted that provides for its funding." 9/8/16 Letter at 1.

3) Appoint a special master (as this Court did in 1998) to ensure that the assessment is actually funding the Bar's discipline system and nothing else, and require the special master to submit quarterly reports to this Court, the Governor and Legislature, and the public.

4) Set a time certain for the Bar to submit its proposed policy enabling this Court to exercise "active supervision" over Bar acts and decisions that implicate antitrust concerns, as requested in this Court's letter of September 8, 2016. Or alternatively, specify *sua sponte* the measures to be ordered for such supervision, including criteria for consideration, appointment of appropriate experts and advisors, a specified procedure and a budget to accomplish the above to be added to the assessment.

Thank you for your consideration of these comments.

Sincerely,



Robert C. Fellmeth, Executive Director
Center for Public Interest Law, Price Professor of Interest Law
University of San Diego School of Law
Former State Bar Discipline Monitor 1987–1992

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using expert assistance to provide inquiry and information. If requested, we would be willing to offer specific proposals for your consideration to most effectively accomplish "active state supervision" as is now required, including the mechanism for selecting anticompetitive decisions warranting review, who and how they will be examined, and a method for efficient Court consideration and decisionmaking.

WORD COUNT CERTIFCATE PURSUANT TO CALIFORNIA RULE OF COURT 8.520(C)(l)

Pursuant to rule 8.520(c)(l) of the California Rules of Court, I hereby certify that this brief contains 4,867 words. I have relied on the word count of the computer program used to prepare the brief.

Dated: October 11, 2016

Bridget Fogarty Gramme

BRIDGET FOGARTY GRAMME

CERTIFICATE OF SERVICE

I, Bridget Fogarty Gramme, declare as follows:

I am employed in the County of San Diego, State of California. I am over the age of eighteen years and am not a party to this action. My business address is 5998 Alcalá Park, San Diego, CA 92110, in said County and State.

On October 11, 2016, I served the following document:

***AMICUS CURIAE* LETTER REGARDING REQUEST OF THE STATE BAR OF CALIFORNIA FOR SPECIAL REGULATORY ASSESMENT**

on the parties stated below, by the following means of service:

Vanessa Holton
General Counsel
The State Bar of California
180 Howard Street
San Francisco, CA 94105

BY OVERNIGHT DELIVERY: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed the persons at the address listed above. I placed the envelope or package for collection and overnight delivery at an office or regularly utilized drop box of the overnight delivery carrier.

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

Executed on October 11, 2016 at San Diego, California.

Bridget Fogarty Gramme

STEVEN J. IPSEN, ESQ.
SBN 126810
1100 S. Hope Street, Suite 103
Los Angeles, CA 90015
Telephone: (213) 700-4133
E-mail: sjipsen@aol.com

Counsel for Defendant

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff. v. RONALD GOTTSCHALK, Defendant.	CASE NO. BA 361996 **DEFENDANT'S MOTION TO DISMISS THE INFORMATION DUE TO THE GOVERNMENT'S INTENTIONAL AND CUMULATIVE PROSECUTORIAL MISCONDUCT, INCLUDING WITHHOLDING OF BRADY EVIDENCE AND EXCULPATORY EVIDENCE, OR , IN THE ALTERNATIVE, ORDER AN EVIDENTIARY HEARING BASED THEREON.** **Date: TBD** **Time: TBD** **Dept.: 104**

TO THE HON. ROBERT J. PERRY AND TO GEOFFREY RENDON, ESQ.:

PLEASE TAKE NOTICE that on the above date and time or as soon thereafter as the matter may be heard in the above court, the Defendant, Ronald Gottschalk (hereinafter "Mr. Gottschalk") by counsel, Steven J. Ipsen, Esq., will

move the court to dismiss the information due to the government's intentional and cumulative prosecutorial misconduct and violation of Defendant's constitutional right to a fair and speedy trial or, in the alternative, order an evidentiary hearing to prove same.

INTRODUCTION

Defense counsel has now conducted a review of the material produced by the prosecution in response to multiple *Brady* requests for the production of *Brady* material and exculpatory evidence. The evidence is compelling that the government's and the State Bar of California prosecution team's misconduct, including the *Brady* violations, was intentional and that the government knew that the Defendant was being framed by the State Bar of California prosecution team and was factually innocent. This case must be dismissed. No other remedy will deter future government and State Bar of California prosecution teams from engaging in the same or similar tactics. No other remedy will prevent what happened in this case from happening again. See the memorandum of points and authorities filed herewith.

My review of newly discovered evidence that was not produced by the government and the State Bar of California prosecution team, coupled with each of the prior requests for informal discovery by the defense to the government and the accompanying motions to compel, reveals multiple clear occurrences of shocking

misconduct and *Brady* violations by the government and the State Bar of California prosecution team. All efforts to obtain the *Brady* material and exculpatory evidence from the government and the State Bar of California prosecution team have fallen on deaf ears, even though the government and the State Bar of California prosecution team knew that they used false testimony and false evidence and failed to investigate the witness' testimony after the defense disclosed that the Defendant was factually innocent and being framed and produced documents in support thereof.

It is now evident that the government and the State Bar of California prosecution team intentionally withheld and concealed *Brady* material and exculpatory evidence that prove that the Defendant was being framed by private counsel associated with the State Bar of California since 2005 for political and vindictive purposes and personal greed and that Defendant was factually innocent of all charges in this case.

The evidence recently discovered has revealed why the government and the State Bar of California prosecution team went to such lengths and crossed so many lines in its pursuit of a conviction in this case. The government and the State Bar of California prosecution team could not meet its burden to demonstrate that crimes were committed without cutting corners, engaging in prosecutorial misconduct, and completely distorting the facts. Compelling evidence demonstrates that the

constitutional rights of Mr. Gottschalk have been trampled and that the integrity of these proceedings has been irreparably compromised.

Much of the government's misconduct has been well documented in prior requests for informal discovery and motions, which are incorporated herein by reference and attached to the declaration of Mr. Ipsen.

This motion attempts to update and synthesize the litany of instances of improper conduct by the government and the State Bar of California prosecution team, who are the complainants, including, but not limited to:

1. Intimidating and influencing witnesses.
2. Eliciting and failing to correct false and misleading testimony.
3. Blatant cumulative *Brady* and *Giglio* violations.
4. False statements to the Court by the former lead prosecutor, Renee Cartaya, Esq., and withholding of *Brady* and *Giglio* material and exculpatory evidence
5. The intentional withholding of *Brady* evidence and exculpatory evidence by the State Bar of California investigators and the State Bar of California prosecutor in violation of Business & Professions Code §6085(b) from 2005 to the present date.
6. Failure by the State Bar of California and their prosecution team to turnover to the prosecutors and the defense the complete file of the

State Bar of California and the administrative record and declarations pertaining to the witnesses, which would have shown that the Defendant is factually innocent and is being framed by the State Bar of California prosecutors and the investigators.

7. The government knew that the State Bar of California prosecutors and investigators were engaged in cumulative prosecutorial misconduct, including the withholding of *Brady* evidence and exculpatory evidence, and never attempted to obtain the complete files pertaining to Defendant. The State Bar of California investigators wrongfully brought the case to the District Attorney's Office, are material witnesses in the case, and failed and refused to turnover the *Brady* evidence and exculpatory evidence to the prosecutors and to the defense, even though the prosecution team knew that it existed. This conduct began in 2005 and is continuing. Unfortunately, this case is not an outlier in connection with State Bar of California prosecutorial and investigational misconduct and seeking to deprive attorneys of their fundamental constitutional rights.

As a result, Defendant and his constitutional right to a fair trial have suffered great and incurable prejudice. The integrity of our criminal justice system has been tarnished. Under the circumstances of this case only dismissal with prejudice can

undo the damages the government and the State Bar of California prosecution team has wrought.

Defense counsel recently learned of another case brought by the Public Integrity Section of the District Attorney's Office in 2012 against defendant Nicholas Conway. The case was dismissed in July 2013 by Judge Norm Shapiro of this Court, who found that Nicholas Conway was factually innocent and was framed for political purposes by private parties acting in concert with the District Attorney's Office to destroy his career. Mr. Conway was represented by John Van De Camp, Esq., former District Attorney of Los Angeles County, former State Bar of California President, and former Attorney General of the State of California and others. The remedies requested by Mr. Ipsen are the same remedies requested by John Van De Camp based on the same factual innocence and wrongful prosecution for vindictive and political purposes. See Exhibit 32, the docket sheets.

In a similar embezzlement case, recently filed by the Public Integrity Section of the District Attorney's Office, *People v. Breceda*, the Court of Appeals dismissed the case for *Brady* violations. The *Los Angeles Times* criticized the District Attorney's Office in that case for a continued pattern of *Brady* violations.

In another case, the District Attorney's Office and Steve Cooley were sued for intentional *Brady* violations against defendants, including their definition of *Brady* evidence, which conflicted with their duties under the *Brady Evidence Rule*.

This case is entitled *Jeffrey Douglas v. Steve Cooley*. See Writ, Exhibit 29. The case was dismissed without prejudice when the District Attorney's Office promised to comply with its *Brady* obligations. The case was brought by very prominent attorneys, including President Obama's mentor at Harvard Law School.

Despite the public relations statements of the District Attorney's Office, that they would comply with the proper definition of *Brady* evidence as set forth in the *Jeffrey Douglas* complaint, they have failed and refused to do so in this case to date. The issue of intentional withholding of *Brady* evidence was also a major issue in the class action case of *One Unnamed Deputy District Attorney, et al. v. County of Los Angeles, et al.*, Case No. CV-09-7931 JCG/10-6414 JCG, U.S. District Court, Central District of California. The class action was certified by the U.S. District Court.

The State Bar of California's prosecutors in Defendant's case were fired by the State Bar of California or forced to resign in a "Saturday night massacre" situation. The lead prosecutor was denied a judgeship in the Los Angeles Superior Court. The head of the Office of Trial Counsel and his principal assistants were fired by the State Bar of California concurrent with the disclosures of State Bar of California prosecutorial team misconduct in Defendant's case together with the others. State Bar of California investigators Mr. Noonen and Mr. Layton have an earned reputation with the District Attorney's Office that they are not credible and

regularly engage in prosecutorial and investigational misconduct against attorneys and judges, without limitation. These facts, which were previously disclosed by the defense to the government, put the District Attorney's Office on notice that the State Bar of California prosecutors were engaged in prosecutorial misconduct and withholding *Brady* material and exculpatory evidence, including substantially the entire file pertaining to Defendant from 2005 to date. Despite this knowledge, Renee Cartaya, Esq. of the District Attorney's Office did not obtain these files or inspect them at any time, both before and after they brought charges against Defendant. Defendant is informed and believes that the State Bar of California has a code that they utilize for concealing *Brady* evidence and exculpatory evidence so that it can be spoliated and withheld from the defense. Despite these facts, the government and the State Bar of California prosecutor purposely made themselves ignorant of the details of the evidence impeaching the credibility of the prosecution witnesses and the State Bar of California prosecution team by taking a see no evil or hear no evil approach. The State Bar of California Court, itself, ruled that prosecutors, including State Bar of California prosecutors, could not avoid *Brady* responsibilities by looking the other way. *In re Brooke P. Halsey, Jr.* (Cal. State Bar Court, Hearing Dept. 02-O-10195-PEM, Aug. 1, 2006).

As a result of the above and the new facts discovered by the defense, it is necessary to bring this motion at this time to dismiss this case with prejudice and

seek a finding of factual innocence for good cause shown.

Additionally, the Court of Appeals, on October 8, 2013, issued an opinion in *People v. Neasham*, a case pertaining to theft under Penal Code § 487. The court found that no crime was committed as a matter of law. See Exhibit 31. After a thorough review of the accounting and other documents submitted by the defense to the prosecution, it has been clear that no crime was committed in this case as a matter of law. Therefore, the court should grant the motion to dismiss in the interest of justice and issue a certificate of factual innocence.

STATEMENT OF FACTS

A. Intentional Suppression of *Brady* Material and Exculpatory Statements

1. Defense counsel first asked for production of all *Brady* material and exculpatory statements in February 2009 for the preliminary hearing. Defense counsel also demanded same from the State Bar of California prosecutors. None of the *Brady* material and exculpatory evidence in the possession of the State Bar of California prosecutors and the prosecution team, including the State Bar of California investigators and prosecutors, were produced to the defense to date. In February 2009, Judge Bork ordered the *Brady* material and exculpatory evidence to be produced to the defense. No such documents were produced to the defense despite the actual knowledge of the State Bar of California prosecutors and investigators that a multitude of such documents existed. Counsel is informed and

believes that the State Bar of California prosecutors further represented to Judge Bork of this Criminal Court and to prior defense counsel that the State Bar of California had an open box policy and would make available to defense counsel all of the files maintained on Defendant from 2005 on, including the mental health case. Despite demand by Mr. Ipsen to examine the entirety of the files of the State Bar of California and each of its divisions in connection with its open box policy, the files were not made available to Mr. Ipsen or to Mr. Rendon. The open box policy was confirmed by the State Bar of California prosecutors as late as February 23, 2010 and in evidentiary hearings before Judge Bork and defense counsel is informed that it is a policy for all State Bar of California disciplinary and criminal cases. Mr. Ipsen first asked for production of all *Brady* material, exculpatory evidence, and the State Bar of California files in July 2012 when he became counsel of record for Defendant. Mr. Ipsen advised Mr. Rendon in writing on numerous occasions of the documents to be produced to Mr. Rendon and to Mr. Ipsen by the State Bar of California and each of its divisions. Copies of the requests for informal discovery are attached to the declaration of Steven J. Ipsen. It includes all *Brady* material, exculpatory evidence, and the State Bar of California files pursuant to its open box policy. Mr. Ipsen recently learned that in August 2006 a fraudulent scheme by the State Bar of California prosecutors and investigators, acting in concert with private counsel, was commenced to further frame Defendant and to

seek to prevent Defendant and his clients from receiving approximately $20 million settlement for his successful representation of the complainants in Count 1. At least three of the complainants, Victor Comerchero, Taras Wybaczynsky, and Ken Corsetti were actively involved in this fraud scheme to subvert their duties to Defendant and their fiduciary duties to approximately 15,000 class members and to the remaining plaintiffs in the personal injury cases by seeking, among other things, to undermine their cases and to undermine the representation of Defendant for their personal greed and receipt of unlawful rewards. Defense counsel is informed and believes that the State Bar of California, its investigators and prosecutors and thereafter the government, knew of the scheme to frame Defendant and that he was factually innocent and thereafter participated in the common plan and scheme to defraud the Defendant and this Court. After the scheme was revealed to the California Supreme Court in documents filed by Defendant's former counsel, the principal State Bar of California prosecutors that were involved in this wrongful prosecution of Defendant were terminated by the State Bar of California or forced to resign, including each of the prosecutors in Defendant's State Bar of California cases. This included Paul O'Brien, Esq., the line prosecutor who was also denied a judgeship that had been promised to him in the Los Angles Superior Court if he engaged in the prosecutorial misconduct against Defendant and defaulted Defendant, thereby taking away his license to practice law in violation of State Bar

of California Rules and Defendant's constitutional rights. The other prosecutors who were terminated and/or forced to resign or retire include, among others, Jeff Del Cerro, Esq. who was the head of the San Francisco Office of Trial Counsel of the State Bar of California; Judy Johnson, Esq. Executive Director of the State Bar of California; Scott Drexel, Esq. who was the head of the Office of Trial Counsel; Russell Weiner, Esq. who was the acting head of the Office of Trial Counsel in Los Angeles; and their associates in Defendant's case, Patsy Cobb, Esq., Nancy Watson, Esq., and Victoria Malloy, Esq., without limitation. Paul O'Brien Esq., a former Los Angeles County Deputy District Attorney, was well known to the District Attorney's Office for engaging in prosecutorial misconduct and *Brady* and *Giglio* violations. His hand picked investigators, Tom Layton and John Noonen, were infamous with respect to prosecutorial misconduct and investigational misconduct in cases brought to the District Attorney's Office, including the Public Integrity Section. Tom Layton's record of investigational misconduct and framing of innocent defendants is well known to the District Attorney's Office at the highest level, as well as to the Alliance of California Judges, among others. Mr. Layton did not limit his gross misconduct to attorneys, which also included misconduct against judges. A substantial portion of this information as to the prosecutorial misconduct against Defendant by the prosecutorial team, including Mr. Layton and Mr. Noonen, was previously set forth in an amicus curiae brief, which was presented to

this Court and to the prosecutors. Additionally, attached to the declaration of Steven J. Ipsen is the legal memorandum of former Attorney General Edwin Meese, III, dated August 28, 2009, entitled "The Trial Lawyers' Earmark: Using Medicare to Finance the Lifestyles of the Rich and Infamous", which forms a basis for the framing of Defendant by private counsel in concert with the State Bar of California prosecution team in Defendant's cases to unlawfully frame Defendant in State Bar of California proceedings and in criminal proceedings and to fraudulently obtain millions of dollars of money that was due Defendant and his clients. See Exhibit 34.

The prosecution and the State Bar of California prosecution team knew as early as 2005 that the prosecution team, led by the State Bar of California investigators, were promising the so-called victims more than $100,000.00 each in compensation and to waive their substantial Medicare and/or Medi-Cal liens for them to give false testimony and to perjure themselves to frame the Defendant.

While the prosecution acknowledged awareness of its *Brady* obligations, the prosecution and the State Bar of California prosecution team refused to disclose any *Brady/Giglio* information and refused to put their response to the numerous requests for informal discovery and motions to compel discovery in writing. This includes, but is not limited to, the State Bar of California investigative reports commencing in 2006 recording and documenting the

prosecutorial misconduct and their attempt to frame Defendant, knowing that he was factually innocent. The State Bar of California, its prosecutors, investigators, and Tracy McCormick, Esq. have intentionally withheld this *Brady* material and exculpatory evidence from Mr. Rendon and Mr. Ipsen from at least August 2006 to date. Furthermore, the fraudulent scheme to frame the Defendant was memorialized in October 2006 by the State Bar of California investigators, whose investigative reports, exhibits thereto, and witness interviews were required to be turned over to the District Attorney's Office and to the defense as *Brady* material and exculpatory evidence no later than 2009 and has been intentionally withheld.

On February 23, 2010, Defendant's prior counsel set forth a memorandum of his telephone conference with Paul O'Brien, Esq. on that date describing in detail a certain portion of the *Brady* material and exculpatory evidence being intentionally withheld by the State Bar of California prosecutors and the prosecution team in concert with others. The memorandum also disclosed the existence of the open box policy of the State Bar of California, the existence of declarations of the witnesses who were testifying at the preliminary hearing that had been intentionally withheld from the defense, and the existence of an internal code from the State Bar of California computer system for the recovery of *Brady* material and exculpatory evidence that was being concealed and spoliated from the defense. As a result of these disclosures, defense counsel went to court on an

emergency basis on February 23, 2010 to obtain the *Brady* material and exculpatory evidence being intentionally withheld from the defense at the preliminary hearing and at the State Bar trial, which were to be held concurrently on February 23, 2010 and immediately thereafter as part of the prosecutorial misconduct against Defendant. See Exhibits 26 and 27 to the declaration of Steven J. Ipsen, including the letter dated February 19, 2010. Defense counsel is informed and believes that these documents were authenticated in court proceedings and before the California Supreme Court.

2. The conclusion is unmistakable. The government and the prosecution team, including the State Bar of California prosecutors and investigators, intentionally chose to suppress the critical *Brady* material and exculpatory evidence that supports that Defendant is factually innocent and is being framed by the State Bar of California prosecutors and investigators who have failed and refused to provide the voluminous files in open boxes of the State Bar of California and the files of the District Attorney's Office to Mr. Ipsen pertaining to the investigational misconduct of the State Bar of California investigators in multiple cases.

This prosecutorial misconduct should particularly shock the conscience of this Court because Mr. Ipsen was formerly Vice President of the State Bar of California and Co-Chairman of its Committee on Discipline, commonly referred to

as the RAD Committee. All of this prosecutorial misconduct perpetrated against Defendant and numerous others were intentionally withheld from the RAD Committee by the State Bar of California prosecutors until the "Saturday night massacre," when the State Bar of California prosecutors in Defendant's cases were fired or forced to resign. Not only did the State Bar of California prosecutors and investigators commit prosecutorial misconduct in the State Bar Court and in connection with the District Attorney's Offices, they also directly involved Mary Roberts, Esq. and the Office of General Counsel to frame innocent attorneys such as Defendant and Philip Kay, Esq.

Mr. Ipsen was also the President of the Association of Deputy District Attorneys, who dealt with the issues of prosecutorial misconduct and *Brady* violations in their own case against the District Attorney's Office, which resulted in class certification. Mr. Layton is well known to veteran prosecutors of the District Attorney's Office, including his lack of credibility. Mr. Layton, Mr. Noonen, and Jeff Scott lacked credibility in this case and in other cases and should have been included on the *Brady* list maintained by the District Attorney's Office. Their investigation files pertaining to Defendant should have been turned over to the defense as *Brady* material and exculpatory evidence as early as 2009.

Chief Judge Kozinski in the leading case of *Milke v. Ryan*, supra, stated that "no civilized system of justice should have to depend on such flimsy evidence,

quite possibly tainted by dishonesty or overzealousness, to decide whether to take someone's life or liberty." The State Bar of California prosecutors should have disclosed to the defense and to Mr. Rendon the cumulative prosecutorial misconduct to undermine the integrity of the system of justice they were sworn to uphold. They continued to prosecute these cases, especially against Defendant and in the parallel case of Philip Kay, Esq., without bothering to disclose their pattern of prosecutorial misconduct against each. This pattern of cumulative prosecutorial misconduct by the State Bar of California prosecutors and investigators is further disclosed in Philip Kay's motion regarding withholding and hiding exculpatory evidence filed April 24, 2009. See Exhibit 28.

B. Intentional Suppression of *Brady* Material Regarding Defendant and Knowing Presentation of False Evidence and False Testimony at the Preliminary Hearing.

1. The State Bar of California prosecutors and the prosecution team's intentional prosecutorial misconduct prevented the defense from learning that Defendant was being framed at the highest levels by the State Bar of California, its prosecutors, and it's rogue investigators acting in concert with Renee Cartaya, Esq. and Jeff Scott and others. At their directions, the District Attorney's Office did not turn over any of the *Brady* material and exculpatory evidence and falsely stated to the Criminal Court and to the defense that they did not have any such evidence in their possession or subject to their possession and control. This

was an intentionally false statement to deceive the Criminal Court and defense counsel. Jeff Scott, who himself is a rogue investigator in multiple cases, stated in recorded conversations that the District Attorney's Office had copies of all documents that had been maintained by the State Bar of California and its divisions. Mr. Scott's recorded statements also state that he had been previously sued for a similar pattern of prosecutorial misconduct, i.e. involving withholding *Brady* material, exculpatory evidence, submitting fabricated evidence to the court, and engaging in other acts of such investigational misconduct as a District Attorney investigator. It is clear that the investigative reports of Mr. Noonen and Mr. Layton and others exist, that they constitute *Brady* material and other exculpatory evidence, and show that the Defendant is factually innocent and being framed. Mr. Rendon stated repeatedly to the Criminal Court and to the defense that he was relying on Jeff Scott to obtain such *Brady* evidence from the State Bar of California and their prosecution team. The State Bar of California prosecution team intentionally did not provide Mr. Rendon with all of its files pursuant to the open box policy of the State Bar of California, which would have proven the prosecutorial misconduct of the State Bar of California prosecutors and investigators and resulted in a dismissal of this case with a certificate of factual innocence. The District Attorney's Office, at the highest level, knew of the so-called "Saturday night massacre" where each of these State Bar prosecutors in charge of Defendant's cases in the State Bar Court

were terminated, resigned, or were forced to retire. Paul O'Brien, Esq. formerly was a Deputy District Attorney and sought the reference of the District Attorney and Tom Layton to become a judge of the Los Angeles Superior Court. This put the District Attorney's Office on formal notice as to Defendant's factual innocence and his being framed. The prosecution's intentional misconduct prevented the defense from receiving the *Brady* material and exculpatory evidence that it was entitled to receive as a matter of law prior to the preliminary hearing. Two recent appellate cases decided in 2013 confirm that the defense was entitled to all of the withheld discovery and *Brady* material and exculpatory evidence prior to the preliminary hearing in Defendant's case and to put on complete affirmative defenses. But for the intentional withholding of *Brady* material, exculpatory evidence, and the spoliation of evidence of the $300,000.00 of financial records of Defendant by Jeff Scott in concert with Renee Cartaya, Esq., the case should have been dismissed on or before the preliminary hearing. Renee Cartaya, Esq. and Jeff Scott specifically ordered Defendant's financial records to be sent directly to them instead of the Court and advised certain of the subpoenaed financial institutions to spoliate their financial records. Although the District Attorney's Office and Jeff Scott have admitted to the spoliation and the failure to deposit Defendant's financial records directly with the Court in violation of the discovery statute, they have not produced to Defendant these spoliated financial records or disclosed what happened to them.

This has irreparably prejudiced the Defendant since the District Attorney's Office and Jeff Scott spoliated approximately $300,000 of Defendant's financial records while falsely claiming that Defendant embezzled $300,000 of his clients' money. As shown in the accountings submitted to the District Attorney's Office by Mr. Ipsen and in the other documents that were concealed and suppressed by the complainants acting in concert with the State Bar of California prosecutors and investigators, the Defendant did not embezzle any money and is still owed approximately $2 million of attorney fees and costs.

C. Intentional Suppression of Additional Conclusive *Brady* Material

All of the documents intentionally withheld by the State Bar of California and the prosecution team are classic *Brady* material that the government was ordered to produce before the preliminary hearing and in the concurrent State Bar Court proceedings and did not. The State Bar of California was required to produce these documents no later than 2009, as it had an independent duty to produce exculpatory evidence in connection with its cases and proceedings against Defendant. *Business & Professions Code* §6068(a). To date, the State Bar of California and each of its divisions has failed and refused to turn over to the defense and to the District Attorney's Office all of the records, including in the mental health case in which the Defendant prevailed, the complete administrative

record in eleven cases relating to the complainants which is required by statute to be provided to the defense to perfect its appellate rights, all of the investigative reports from 2005 on which show that Defendant was being intentionally framed, and all of its files pursuant to the open box policy and its representation to the Criminal Court that it would turn them over to the defense forthwith. It is reasonable to infer from the government's repeated and extensive pattern of gross *Brady* failures and violations and from the evidence of intentional misconduct by the prosecution team detailed above, that these *Brady* and *Giglio* violations too were intentional and cumulative.

From a review of this evidence, there can be no doubt that the government has intentionally and affirmatively concealed from defense counsel and from this Court significant *Brady* material and exculpatory evidence essential to defend this case, and has even gone so far as to knowingly present false evidence and false testimony at the preliminary hearing. Defense counsel and the Defendant have suffered substantial prejudice as a result. Not least, defense counsel were deprived of the ability to use this information previously to prepare the defense fully and to cross examine government witnesses, including the three investigators who were or should have been on the *Brady* list of not credible law enforcement officials. Regardless of prejudice, however, this case cannot go on. Representatives of the prosecution and the prosecution team, including the State

Bar of California investigators, have intentionally subverted the administration of justice in their zeal to obtain a conviction in this high-profile case. Our criminal justice system places enormous power and responsibility in the hands of prosecutors on the assumption that they will exercise their authority wisely and in the interest of justice. When that power is abused, it must be swiftly and sternly corrected. Only a dismissal with prejudice and a certificate of factual innocence can prevent this sort of prosecutorial misconduct from recurring, as it did in the case of *U.S.A. v. Senator Ted Stevens*, which also involved rogue prosecutors and investigators. The 500 page report of the special counsel investigating the prosecutors and investigators in the Senator Ted Stevens case, which parallels this case, will be provided to the prosecution and to this Court if requested.

ARGUMENT

There must be an end to this egregious behavior and constitutional violation of Defendant's right to a fair trial. How many times can the prosecution and the State Bar of California prosecution team defy the orders of this Court and its constitutional obligations before dismissal ensues?

The withholding of *Brady* material and exculpatory evidence began in 2005, escalated in 2006, and has intentionally been concealed and suppressed from the defense from that date continuously for eight (8) years. Instead, the government and the State Bar of California prosecution team, including the State Bar of

California investigators, conspired with one another and private counsel and others to intentionally frame Defendant and to fabricate false charges, including that Defendant was continuously mentally ill since 2002 and had to be involuntarily inactive. The government and the State Bar of California prosecution team intentionally withholds all of the *Brady* material and exculpatory evidence, including that Defendant was not mentally ill, was sane, and was being framed by said parties for their personal vendetta, personal gain, and greed.

For example, the government and the State Bar of California prosecution team intentionally submitted to the Los Angeles County Probation Department a packet of information pertaining to Defendant's alleged mental illness since 2002, which was referred to by the Probation Department supervisors as the **D.A.'s Packet.** See Exhibit 29. The stricken unilateral probation report was submitted to this Court in concert with the prosecution to intentionally frame the Defendant and to potentially cause him to be found mentally ill under Penal Code §1368. The State Bar of California prosecution team knew that the charges had been intentionally fabricated by the prosecution team acting in concert with others and that substantial money had been promised to the witnesses to make such false allegations under oath against Defendant. Prior to the filing of the information, the State Bar of California prosecution team knew that the charges of mental illness against Defendant were totally fabricated and false but, nevertheless, proceeded to

file charges against the Defendant knowing that he was factually innocent, sane, and being framed.

The State Bar of California prosecution team wrongfully detained Defendant in the County Jail and had him examined by multiple psychiatrists immediately after Defendant was found sane by the Chairman of the Psychiatric Committee of the Los Angeles Superior Court and by the State Bar of California Court. **The prosecution and the State Bar of California prosecution team ordered the Sheriff's Department to take away Defendant's diabetic diet, substitute anti-psychotic drugs for his medications, take away Defendant's eye glasses, and to be sprayed with toxic chemicals in his eyes to intentionally physically harm the Defendant and cause irreparable damage to his eyes during a twenty-nine (29) day incarceration.** The prosecutors never obtained any of the mental health records of Defendant and never obtained the documents that were filed in the mental health case in the State Bar of California Court. The prosecutors never obtained the more than 60 video tape recordings of the mistreatment of Defendant at the County Jail or any other records maintained by the Sheriff's Department, which was a member of the prosecution team. The investigational misconduct against Defendant in the County Jail, orchestrated by Tom Layton and the prosecution team, was similar to that he did in other cases to physically harm the defendants. Such misconduct at the County Jail is also the subject matter of a

pending criminal investigation by the U.S. Attorney's Office.

The prosecution and the State Bar of California prosecution team had a constitutional duty to the defense and to this Court to present the *Brady* material and exculpatory evidence that Defendant's alleged mental illness was fabricated by the prosecution team when the issue was raised by Judge Perry, himself, in ordering another mental examination of Defendant. The failure to disclose this *Brady* material and exculpatory evidence to the defense at that hearing before Judge Perry in the presence of defense counsel, Steven J. Ipsen, constitutes intentional concealment of material exculpatory evidence by the prosecution team that was required to be disclosed to the defense and to the Court. Sadly and ironically, it is the prosecution and the prosecution team that has intentionally concealed material exculpatory evidence and *Brady* evidence that it was required to disclose to the defense, to the Criminal Court, and to the State Bar of California Court as late as 2009. The minimum sanction for this intentional prosecutorial misconduct should be to dismiss the information with prejudice, as was done in the case of *U.S.A. v. Senator Ted Stevens* and in other cases set forth below.

I. THE INFORMATION SHOULD BE DISMISSED.

A. The Applicable Law.

The United States Constitution provides that the due process of law, as well as the right "to be confronted with the witnesses against him; [and] to have

compulsory process for obtaining witnesses in his favor," are inviolate rights afforded to *all* criminal defendants.. U.S. Const. amends. V, VI, and XIV.

These rights collectively have been referred to as "the right to present a defense." The "right to present a defense" includes the right to discovery of relevant information, and the right to obtain and present defense evidence, notwithstanding the rules of evidence, privileges, and statutory limitation. *See e.g., Washington v. Texas*, 388 U.S. 14 (1967).

The Court is aware that Defendant intended and intends to put on a complete defense to show that he was factually innocent and that the complainants were being paid money to assist the prosecution team and private counsel to engage in prosecutorial misconduct by the intentional use of false and fabricated evidence to frame Defendant. A brief was prepared in connection therewith that was submitted to this Court. To vindicate these Constitutional guarantees, courts have a manifest duty to ensure that all relevant or admissible evidence be produced to the defense.

In *Brady v. Maryland* the U.S. Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83 (1963).

The U.S. Supreme Court has extended *Brady* to require the State "to

share exculpatory information with the defendant *to include information concerning the credibility of government witnesses*." *Giglio v. United States*, 405 U.S. 150 (1972) (emphasis added).

In *United States v. Agurs*, the Supreme Court expanded this rule further, recognizing the State's duty to disclose exculpatory information even in the absence of a specific defense request for it. 427 U.S. 97 (1976).

The Supreme Court has since clarified that impeachment evidence must be disclosed to the defense and defined the materiality of such information as anything that would cast doubt on the motives or credibility of any government witnesses. *United States v. Bagley*, 473 U.S. 667 (1985).

The prosecution also has an affirmative duty to learn of any favorable evidence known to the officers acting on the government's behalf and the corresponding duty to disclose such information to the defense. *Kyle v. Whitley*, 514 U.S. 419 (1995).

The U.S. Supreme Court expounded on these principles:

> We have elected to employ an adversary system of criminal justice in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed by the prosecution or defense.

United States v. Nixon, 418 U.S. 683 (1974). This "compulsory process" is colloquially known as "discovery" and is thus Constitutionally mandated.

"On cross examination, counsel may ask the witness questions designed to test his memory, accuracy, veracity, bias, or to attack his estimate of character, or to contradict him." *Davis v. Alaska*, 415 U.S. 308 (1975). It needs little further comment that in order to attack a witness's credibility thoroughly, the defense must have access to impeaching evidence for that witness if in the State's possession. Impeachment evidence, if disclosed and used effectively, may make the difference between conviction and acquittal. *Napue v. Illinois*, 360 U.S. 264, 269 (1959) ("The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.")

The Supreme Court has unequivocally determined that Constitutional considerations trump legislatively created "privacy" or "confidentiality" concerns in the context of an accused's right to mount a defense:

> We conclude that when the ground for asserting the privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. **The generalized assertion of a privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial.**

Nixon, 418 U.S. at 713 (emphasis added).

These Supreme Court decisions create a clear rule that requires prosecutors to learn of and to disclose to the defense information that *could be used* to discredit law enforcement witnesses in a case, including information contained in their personnel files. The prosecution must disclose information in possession of the prosecution team, including information by others acting on the government's behalf that were gathered in connection with the investigation. *In re Brown*, 17 Cal.4th at page 881. ("A prosecutor has a duty to search and disclose exculpatory evidence if…possessed by a person or agency…used by the prosecutor or the investigating agency to assist the prosecution…the important determinative is whether the person or agency has been acting on the government's behalf…or assisting the government's case.") *People v. Superior Court* (*Barrett)*(2000) 80 Cal.App.4th 1305, 1315. If the prosecution is aware of the existence of the discovery, which is physically possessed by an investigating agency, the prosecution also possesses it. *People v. Zambrano*, (2007) 41 Cal.4th 1082.

Although *Brady* disclosure issues may arise in advance of, during, or after trial [citation] the test is always the same. *City of Los Angeles v Superior Court (Brandon)* (2002) 29 Cal.4th 1, 7-8.

Exculpatory evidence cannot be withheld from the defense just

because it is inconsistent with the prosecution's theory.

Examples of *Brady* evidence that was intentionally withheld in this case by the prosecution team are evidence opposing guilt, evidence bearing on the credibility of key prosecution witness, false statements by witnesses, promises or inducements to witnesses, prior moral turpitude conduct or conduct showing dishonesty whether or not they led to convictions. In addition, *Brady* evidence that witnesses had a racial, religious, or personal bias against defendant is *Brady* material. A false report of a crime by witnesses is *Brady* material. Prior interviews of witnesses suggesting coaching or pressure that might affect courtroom testimony is *Brady* material that was withheld in this case by the prosecution and the prosecution team. *In re Sodersten* (2007) 146 Cal.App.4th 1163, 1230-1232; *In re Brooke P. Halsey, Jr.* (Cal. State Bar Court, Hearing Dept. 02-O-10195-PEM, Aug. 1, 2006). Each of the above classifications of documents were continuously withheld from the defense in this case.

B. Disclosure Is Required Without Defense Request

1. The requirement of a defense request has been eliminated in both California and United States Supreme Court cases, as Mr. Ipsen stated to Mr. Rendon. (*In re Ferguson* (1971) 5 Cal.3d 525, 532-533; *People v. Kasim* (1997) 56 Cal.App.4th 1360, 1379.)

2. The prosecution has a duty to provide the *Brady* material and

exculpatory evidence in the possession of the prosecution team, which includes the State Bar of California and the Los Angeles County Sheriff's Department in this case. (*In re Brown* (1988) 17 Cal.4th 873, 878).

3. The duty of disclosure applies even to completed cases, including the State Bar of California cases relating to Defendant. (*People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179.) " Even after a conviction the prosecutor…is bound by the ethics of his office to inform the appropriate authority of … information that casts doubt upon the correctness of the conviction." (*Imbler v. Pachtman* (1976) 424 U.S. 409, 427, fn. 25.)

4. Failure to provide exculpatory evidence and *Brady* material may be a violation of the Rules of Professional Conduct, rule 5-220: "A member shall not suppress any evidence that the member or the member's client has a legal obligation to reveal or produce." See rule 5-110 (attorney in government service may not institute criminal charges unless supported by probable cause; must advise court if later learns charges not supported by probable cause.)

5. Penal Code §1054.1(e) requires disclosure of "[a]ny exculpatory evidence."

6. Prosecutors must also comply with the ordinary statutory discovery requirements of Penal Code §1054 et seq. (statements of defendants, statements of trial witnesses, results of scientific tests, etc.).

California's high court determined nearly forty years ago that "a criminal defendants' fundamental right to a fair trial and an intelligent defense in light of all relevant and reasonably accessible information entitled [him]… to discovery of police personnel records." *Pitchess v. Superior Court*, 11 Ca.3d 531 (1974). California appellate courts have determined that the defense is entitled to *Brady* material and exculpatory evidence prior to the preliminary hearing and that Proposition 115 could not limit a defendant's due process rights under *Brady* and *People v. Jenkins*, (2000) 22 Cal.4th 900. These two cases are *People v. Gutierrez*, decided March 12, 2013, 214 Cal.App.4th 334 (2013) and *Bridgeforth v. Superior Court of Los Angeles County*, decided March 25, 2013, 214 Cal.App.4th 1074 (2013). The California Supreme Court denied cert in the *Bridgeforth* case, which is a binding opinion of the Court of Appeal of the Second Appellate District, which required the prosecution and prosecution team to have turn over the *Brady* material and the exculpatory evidence to the defense prior to the preliminary hearing and for use at the preliminary hearing in presenting a defense.

State and Federal courts must "protect the judicial process from the

stigma of illegal or unfair government conduct." *United States v. Linton*, 502 F.Supp. 861, 865-66 (D.Nev. 1980). Such misconduct can take several forms. The most serious illegal or unfair government conduct is "outrageous" misconduct that "shocks the conscience" and is so intolerable that it violates the defendant's due process rights under the Fifth Amendment. *See United States v. Chapman*, 524 F.3d 1073, 1084 (9th Cir. 2008) ("a district court may dismiss an indictment on the ground of outrageous government conduct if the conduct amounts to a due process violation"); *United States v. Boone*, 437 F.3d 829, 841 (8th Cir.), *cert. denied, Washington v. United States*, 127 S.Ct. 172 (2006); *United States v. Voigt*, 89 F.3d 1050, 1064-65 (3d Cir. 1996) (government conduct that "shocks the conscience" may violate defendant's due process rights). In the recent Ninth Circuit case of *Milke v. Ryan*, 711 F.3d 998 (9th Cir. 2013) Chief Judge Kozinski states in his opinion that "no civilized system of justice should have to depend on such flimsy evidence, quite possibly tainted by dishonesty or overzealousness, to decide whether to take someone's life or liberty. The Phoenix Police Department and Saldate's supervisors there should be ashamed of having given free rein to a lawless cop to misbehave again and again, undermining the integrity of the system of justice they were sworn to uphold. As should the Maricopa County Attorney's Office, which continued to prosecute Saldate's cases without bothering to disclose his pattern of misconduct."

Chief Judge Kozinski's opinion in the *Milke* case equally applies to investigators Tom Layton, John Noonen, and Jeff Scott in this case. Mr. Layton and his cohorts are well known for prosecutorial and investigational misconduct by veteran prosecutors and veteran judges. The failure by the District Attorney's Office to secure the files of Mr. Noonen and Mr. Layton, or even to inspect same, and to account for the $300,000.00 of Defendant's financial records that they spoliated speaks volumes.

Dismissal is the appropriate remedy for constitutional due process violations, as occurred in this case. *See United States v. Lyons*, 352 F.Supp.2d 1231, 1251-52 (M.D.Fla. 2004) (finding a due process violation, dismissing the remaining counts of the indictment, and refusing to order a new trial because of the government's multiple and flagrant *Brady* and *Giglio* violations). See also *U.S. v. Senator Ted Stevens* where Attorney General Holder joined in the request of the defense to dismiss the Senator Ted Stevens case, which resulted in a referral by the District Court Judge for investigation of prosecutorial misconduct.

Dismissal is allowed in California when *Brady* material and exculpatory evidence have been withheld by the prosecution. *People v. Brophy*, 5 Cal.App.4th 932 (1992). In the instant case, the prosecutors and the prosecution team had the evidence at all times and refused to disclose it to the defense.

Even where government misconduct is not sufficiently "outrageous" to violate due process, the Court under its supervisory powers may impose various sanctions, including dismissal. *United States v. Chapman*, 524 F.3d 1073, 1084 (9th Cir. 2008) (affirming dismissal pursuant to the court's supervisory powers due to government's violation of discovery obligations and flagrant misrepresentations to court); *Government of Virgin Islands v. Fahie*, 419 F.3d 249, 258 (3d.Cir. 2005) ("A trial court need not rely on *Brady* to justify dismissal of an indictment as a remedy for improper prosecutorial conduct; it may also remedy Rule 16 discovery violations under its supervisory powers."); *United States v. Restrepo*, 930 F.2d 705, 712 (9th Cir. 1991) ("[D]ismissal of an indictment because of outrageous government conduct may be predicated on alternative grounds: a violation of due process [such as a *Brady* violation] or the court's supervisory powers.")

C. The Information Should Be Dismissed as a Sanction for the Government's Repeated and Flagrant Intentional Misconduct

1. Presentation of false testimony and other conduct prejudicial to the administration of justice.

In *Giglio v United States*, 405 U.S. 150 (1972) and *Napue v. Illinois*, 360 U.S. 264 (1959), the Supreme Court held that the Due Process Clause forbids the government from introducing or failing to correct testimony that it knows or reasonably should know to be false.

> The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in

> any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness
>
> in testifying falsely that a defendant's life or liberty may depend.

Napue, 360 U.S. at 1177 (citations omitted)(emphasis added); *see also id*. ("It is of no consequence that the falsehoods bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth. That the district attorney's silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair." (*quoting People v. Savvides*, 136 N.E.2d 853, 854-55 (N.Y. 1956); *United States v. Anderson*, 509 F.2d 312, 326-27 (D.C. Cir. 1974) ("The knowing use of perjured testimony to secure a conviction is a denial of due process of law.")

In *Hayes v. Brown*, 399 F.3d 922 (9th Cir. 2005) the Ninth Circuit established a constitutional right of the defendant not to be framed by the use of fabricated evidence by the prosecution and the prosecution team and a per se reversal of any judgment procured by materially fabricated evidence. The Second Circuit Court of Appeals agrees with the Ninth Circuit with respect to the fundamental constitutional right of a defendant not to be framed by the use of fabricated

evidence by the prosecution and the prosecution team. *See Zahrey v. Coffey*, 221 F.3d. 342, 349 (2d. Cir. 2000). The principal evidence against Defendant was fabricated and knowingly presented by the prosecutors and the prosecution team. *See also Millstein v. Steve Cooley*, 257 F.3d 1004 (9th Cir. 2001).

Under the circumstances of this case, the appropriate remedy is dismissal. "Repeated instances of deliberate and flagrant misconduct justify dismissal of the indictment." *United States v. Omni Intern Corp.*, 634 F.Supp. 1414, 1438 (D.Md. 1986) ("Court decisions emphasize the unifying premise in all of the supervisory power cases-that although the doctrine operates to vindicate a defendant's rights in an individual case, it is designed and invoked primarily to preserve the integrity of the judicial system. The Court has particularly stressed the need to use the supervisory power to prevent the courts 'from becoming accomplices to such misconduct."' (citations omitted; emphasis added).

In *Omni International Corp.*, the government altered documents before turning them over to the defendant. In this case, the government concealed exculpatory information that Defendant is factually innocent and being framed.

There is little distinction between the government's misconduct in this case and the "[r]epeated instances of deliberate and flagrant misconduct found in *Omni*. The result should be the same: the government's misconduct "justif[ies] dismissal of the indictment." *Omni Intern. Corp.*, 634 F.Supp. at 1438.

2. Repeated and flagrant *Brady* violations more severe than the government's conduct in *United States v. Chapman*.

Brady violations are just like other constitutional violations. A district court may dismiss the indictment when the prosecution's actions rise…to the level of flagrant misconduct. *United States v. Chapman*, 524 F.3d 1073, 1084 (9th Cir. 2008).

The District Court in *Chapman* dismissed the indictment (three weeks into trial). The Ninth Circuit affirmed. No lesser sanction is adequate here; any lesser sanction "would be like endorsing the [government's] conduct." *Id*. at 1088.

Defendant now knows that the government's misconduct in this case is worse than that in *Chapman* because the *Brady* material that the government concealed and withheld in this case was exculpatory material, rather an impeachment material at issue in *Chapman*. The exculpatory material at issue here goes directly to the merits of the government's charges against Defendant. In addition, the government's conduct in this case was intentional and includes false evidence and concealment in addition to *Brady* violations. If dismissal was appropriate in *Chapman*, it is more than appropriate here.

3. **Intentional Misconduct**

The evidence shows unmistakably that the government intentionally and affirmatively concealed crucial *Brady* material and exculpatory evidence from

the defense since 2005, and the government capitalized on its concealment by intentionally presenting fundamentally misleading and fraudulent evidence to the Court, while failing to disclose to defense counsel the very information needed to understand and rebut that evidence.

United States v. Morrison, 449 U.S. 361 (1981), teaches that the intentional nature of he government's misconduct affects the appropriate remedy. The Court noted, for example, that a "pattern of recurring violations by investigative officers…might warrant the imposition of a more extreme remedy in order to deter further lawlessness." *Id*. at 365 n.2. "This statement suggests that the Court was concerned with both prejudice and deterrence, and that when both of those factors call for a particularly harsh sanction, dismissal-the harshest available sanction for a *Brady* violation-may be proper." *Government of Virgin Islands v. Fahie*, 419 F.3d 249, 253 (3d. Cir. 2005).

Courts have not hesitated to dismiss indictments when faced with similarly severe constitutional violations. For example, in *United States v. Wang*, No. 98 CR 199(DAB), 1999 WL 138930, at *37 (S.D.N.Y. Mar. 15, 1999), the court found a due process violation and dismissed an indictment due to the government's failure to provide defense counsel with "material information" until the "eve of trial". Similarly, in *United States v. Lyons*, 352 F.Supp.2d 1231, 1251-52 (M.D. Fla. 2004), the court dismissed an indictment due to the government's

multiple and flagrant *Brady* and *Giglio* violations.

It cannot be disputed that this Court has the authority to dismiss an indictment or information due to prosecutorial misconduct. *United States v. Owen*, 580 F.2d 365, 367 (9th Cir. 1978). Dismissal is appropriate when the government has "caused substantial prejudice to the defendant and been flagrant in its disregard for the limits of appropriate professional conduct." *United States v. Lopez*, 989 F.2d 1032, 1041 (9th Cir. 1993), **amended and superseded**, 4 F.3d 1455 (9th Cir. 1993). "[E]ven unintentional misconduct may be sufficient'" to warrant dismissal of an indictment. *United States v. DeRosa*, 783 F.2d 1401 (9th Cir. 1986).

The government's investigation and prosecution has included violations of a constitutional and potentially criminal magnitude that far exceeds the limits of professional conduct. The facts of this case demonstrate that the "Government conduct has placed in jeopardy the integrity of the criminal justice system." *United States v. Samango*, 607 F.2d 877, 884 (9th Cir. 1979).

Here, the government's repeated, flagrant, and intentional misconduct requires the sternest possible remedy of dismissal with prejudice combined with a certificate of factual innocence.

II. IN THE ALTERNATIVE, THE COURT SHOULD ORER A FULL EVIDENTIARY HEARING TO CONSIDER DISMISSAL, A CERTIFICATE OF FACTUAL INNOCENCE, AND OTHER SANCTIONS AND TO ORDER THAT THE STATE BAR OF CALIFORNIA FILES, IN THEIR ENTIRETY, BE TURNED OVER TO THE DISTRICT ATTORNEY'S OFFICE AND TO THE DEFENSE

FORTHWITH PERTAINING TO DEFENDANT'S CASES.

If the Court denies Defendant's motion for dismissal, the Court should -at a minimum- order a full evidentiary hearing and for the defense to call witnesses in support of a dismissal and a certificate of factual innocence and other sanctions for the prosecutorial misconduct described in this motion. This case is broken; it cannot be repaired as the State Bar of California and each of its divisions have refused to produce its files and the *Brady* material and exculpatory evidence in its possession and the District Attorney's Office has failed to obtain same since 2009. Under these circumstances, dismissal with prejudice is required.

No remedy short of dismissal with prejudice can possibly cure the prejudice to the defense from the government's *Brady* failures and obfuscations from 2005. Had the government not repeatedly and affirmatively concealed and withheld the *Brady* material and exculpatory evidence, the critical material would have been the focus of the defense; would have altered the defense's preparation and investigation of the case; and would have deterred the government from utilizing fabricated evidence knowing that the Defendant is factually innocent. The withholding of *Brady* material and other exculpatory evidence has deprived Defendant of his constitutional right to a speedy trial. Substantial evidence has been lost and spoliated since 2005, when the State Bar of California prosecutors and investigators acting with private counsel conceived a plan and scheme to frame

the Defendant and take away his license to practice law, knowing that the Defendant was factually innocent of all charges made in the State Bar Court, the Mental Health Court of the State Bar of California, and in the Criminal case.

If the Court does not dismiss the information outright, it should order an evidentiary hearing to consider dismissal with prejudice and a certificate of factual innocence and other sanctions. In advance of any such hearing, the defense should be entitled to full discovery into all communications between the government and all witnesses, including the investigators, and the complete files of the State Bar of California, including each of its divisions. This includes the Office of Trial Counsel of the State Bar of California, the Office of General Counsel, the Office of the Executive Director, the Office of the Client Security Fund, and the Office of AOC General Counsel. It includes all communications and activities of State Bar of California investigators John Noonen and Tom Layton pertaining to this Defendant in all cases, including the criminal case. This further includes the cases prosecuted by the State Bar of California against Defendant, including the mental health case and all actions and activities undertaken by the State Bar of California's investigators and prosecutors since 2005, including their attempts to frame the Defendant, to utilize fabricated evidence, and to make deals with the witnesses to pay them money, to discharge the substantial liens against them by Medicare and Medi-Cal and other lienors, and to have them perjure themselves and

sign false declarations prepared by the State Bar of California's agents. Numerous prosecutors in the chain of command in the cases against Defendant were fired by the State Bar of California and/or permitted to resign after disclosure of the fabrication of evidence and attempt to frame Defendant in this case. The complete files of these prosecutors as well as the investigators should be made available to the defense and to the District Attorney's Office. This includes all documents (1) concerning the evaluation of these attorneys and the investigators of the performance of their duties; (2) concerning investigations or disciplinary actions taken or contemplated against these individuals; and (3) assessing these individuals' credibility, strengths, and/or weaknesses as a witness and/or possible effects on a judge or jury. This includes all criminal cases and civil cases in which John Noonen and/or Tom Layton testified and/or lied under oath or submitted fabricated evidence and/or committed *Brady/Giglio* violations. This includes the complete State Bar of California files with respect to the withdrawal of a judgeship in the Los Angeles Superior Court to the chief prosecutor Paul O'Brien, Esq. including his applications, recommendations, and history of prosecutorial misconduct. The documents to be produced are to be from August 2005 to the present date and include all investigative reports prepared by John Noonen and/or Tom Layton and/or Paul O'Brien and/or Jeff Scott and all exhibits thereto. This further includes all real evidence in the possession of the State Bar of California, including audio

tapes, video tapes, cancelled checks and financial records of the Defendant, all declarations of any witness against Defendant, all statements made or recorded by witnesses against Defendant that were taken down by John Noonen and/or Tom Layton and/or Jeff Scott. This includes all interviews with any and all judges in Defendant's cases, both civil and/or criminal. This includes all documents pertaining to Defendant in possession of the Office of General Counsel of the AOC, the Los Angeles County Sheriff's Department, and all documents that were transferred from the State Bar of California to any entity or person, without limitation.

CONCLUSION

The prosecution and the prosecution team appear to have lost sight of its role in our criminal justice system. The California Supreme Court has stated:

> "A prosecutor is held to a standard higher than that imposed on other attorneys because of the unique function he or she performs in representing the interests, and in exercising the sovereign power, of the state. (*People v. Kelley* (1977) 75 Cal.App.3d 672, 690 [142 Cal.Rprt.457].) As the United States Supreme Court has explained, the prosecutor represents 'a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall

win a case, but that justice shall be done.' (*Berger v. United States* (1935) 295 U.S. 78, 88 [55 S.Ct. 629, 633, 79 L.Ed. 1314].)

For the foregoing reasons and based on the declaration of Steven J. Ipsen and exhibits thereto, the Court should dismiss the information with prejudice at this time and provide the Defendant with a certificate of factual innocence.

Dated: October 23, 2013

Respectfully Submitted:

/S/
Steven J. Ipsen, Esq.
Counsel for Ronald Gottschalk

DECLARATION OF STEVEN J. IPSEN

I, STEVEN J. IPSEN, declare as follows:

1. I am counsel for Mr. Gottschalk in this case. The following facts are within my own personal knowledge, except as to those matters which are stated upon information and belief and upon which I believe to be true. If called as a witness, I could and would competently testify thereto.

2. I make this declaration in support of the accompanying Motion to Dismiss and to authenticate the documents that are attached to this declaration. Declarant has set forth the filing date for those motions that were filed with the Court and the requests for informal discovery that were sent to the District Attorney's Office and their attorney of record.

3. The motion is based on the facts and evidence set forth in this motion and the following documents, without limitation.

4. Attached hereto as Exhibit 1 is a true copy of Declarant's letter dated January 16, 2013 sent to Mr. Rendon.

5. Attached hereto as Exhibit 2 is a true copy of Defendant's three (3) requests for the administrative record in the State Bar of California cases. A copy of these three (3) requests was provided to Mr. Rendon as well.

6. Attached hereto as Exhibit 3 is Declarant's February 7, 2013 e-mail to Mr.

Rendon regarding Declarant's informal requests for discovery.

7. Attached hereto as Exhibit 4 is Declarant's February 6, 2013 e-mail to Mr. Rendon regarding Declarant's requests for informal discovery.

8. Attached hereto as Exhibit 5, which Declarant is informed and believes is a true conformed copy of the executed Motion to Vacate the Order of March 4, 2011 in the California Supreme Court and for a Stay of Proceedings Pending the Outcome of the Parallel Criminal Case In Which Petitioner Is Innocent and the executed Declaration of Stanley Arouty filed March 29, 2011 in the California Supreme Court.

9. Attached hereto as Exhibit 6, which Declarant is informed and believes is a true conformed copy of Defendant's Motion in the California Supreme Court Requesting Relief Under CRC Rule 8.60(d) and CCP 473(b), which was granted, and executed declaration of Stanley Arouty filed April 14, 2011 in the California Supreme Court.

10. Attached hereto as Exhibit 7, which Declarant is informed and believes is a true copy of the filed Motions and Evidentiary Hearing To Be Further Set For Hearing on a Continued Date, filed March 12, 2012 in this case.

11. Attached hereto as Exhibit 8, which Declarant is informed and believes is

a true copy of Defendant's Notice of Motion and Motion to Continue the Brady Discovery Conference and Trial and Declaration of Zachary McCready, filed on January 10, 2012 in this case.

12. Attached hereto as Exhibit 9, which Declarant is informed and believes is a true copy of Defendant's Second Supplemental Request for Immediate Disclosure of Favorable Evidence, served on January 4, 2011 on Mr. Rendon in this case.

13. Attached hereto as Exhibit 10, which Declarant is informed and believes is a true copy of Mr. Rendon's letter dated January 5, 2011 with regard to the outstanding discovery requests and motions to compel in this case.

14. Attached hereto as Exhibit 11, which Declarant is informed and believes is a true copy of Defendant's Supplement to the Kastigar Motion and Request for Evidentiary Hearing, filed December 7, 2010, which was granted on December 9, 2010 in this case.

15. Attached hereto as Exhibit 12, which Declarant is informed and believes is a true copy of Defendant's Supplemental Request for Immediate Disclosure of Favorable Evidence, served on Mr. Rendon on December 6, 2010 in this case.

16. Attached hereto as Exhibit 13, which Declarant is informed and believes a is a true copy of Defendant's List of Motions to be Heard or Further Set for Evidentiary Hearing, filed on November 2, 2010 in this case.

17. Attached hereto as Exhibit 14, which Declarant is informed and believes is

a true copy of Defendant's Motion for Orders Against the District Attorney's Office and It's Investigator Jeff Scott, filed October 12, 2010 in this case.

18. Attached hereto as Exhibit 15, which Declarant is informed and believes is a true copy of Defendant's separate Motion for Orders Against the District Attorney's Office and It's Investigator Jeff Scott for intentional interference with Defendant's constitutional rights to effective assistance of counsel under the 6th and 14th Amendments to the U.S. Constitution, filed September 2, 2010 in this case.

19. Attached hereto as Exhibit 16, which Declarant is informed and believes is a true copy of the supplemental declaration of Stanley Arouty in support of the Kastigar Motion, filed September 2, 2010 in this case.

20. Attached hereto as Exhibit 17, which Declarant is informed and believes is a true copy of the supplemental declaration of Stanley Arouty in support of the motion to compel documents in the possession of the District Attorney's Office and for interference with Defendant's constitutional right to effective assistance of counsel, filed September 2, 2010 in this case.

21. Attached hereto as Exhibit 18, which Declarant is informed and believes is a true copy of Defendant's Emergency Motion to Compel Previously Ordered Discovery or To Dismiss the Complaint and the Declaration of Stanely Arouty and Exhibits thereto, filed on August 5, 2010 in this case.

22. Attached hereto as Exhibit 19, which Declarant is informed and believes is a true copy of Defendant's Kastigar Motion to dismiss the case for violation of Defendant's constitutional rights and for disqualification of the District Attorney's Office and other relief, filed August 4, 2010 in this case.

23. Attached hereto as Exhibit 20, which Declarant is informed and believes is a true copy of Defendant's request for immediate disclosure of favorable evidence, served July 19, 2010 on Mr. Rendon in this case.

24. Attached hereto as Exhibit 21, which Declarant is informed and believes is a true copy of Defendant's motion to dismiss deceased persons in Count 1 and the alleged phantom victim, filed July 8, 2010 in this case.

25. Attached hereto as Exhibit 22, which Declarant is informed and believes is a true copy of Defendant's motion for discovery, filed and served February 18, 2010, and declaration of Stanley Arouty in this case.

26. Attached hereto as Exhibit 23, which Declarant is informed and believes is a true copy of Defendant's request for informal discovery, filed and served January 11, 2010.

27. Attached hereto as Exhibit 24, which Declarant is informed and believes is a true copy of the Writ of Mandate filed by the A.C.L.U. attorneys and other attorneys in the case of *Jeffrey Douglas v. Steve Cooley* re intentional withholding

of *Brady* evidence as part of a systemic scheme to violate the constitutional rights of defendants being prosecuted by the District Attorney's Office.

28. Attached hereto as Exhibit 25, which Declarant is informed and believes is a true copy of the District Attorney's Integrity Division Follow-Up Report, identified as Document No. 01598, which shows on its face that the complainant in this case is John Noonen, Investigator of the State Bar of California. This was repeated for each of the interviews taken by Jeff Scott. This shows that the State Bar of California and John Noonen were an integral part of the prosecution team together with others.

29. Attached hereto as Exhibit 26 is the memorandum of the telephone conversation between State Bar Prosecutor Paul T. O'Brien with Danny Davis, dated February 23, 2010, which was filed in the California Supreme Court and other courts.

30. Attached hereto as Exhibit 27 is Danny Davis' letter dated February 19, 2010 to Paul O'Brien with a copy to Renee Cartaya, Esq. and others.

31. Attached hereto as Exhibit 28 is Philip Kay's motion to dismiss disciplinary proceedings for withholding and hiding exculpatory evidence by the State Bar of California prosecutors and investigators in the parallel case, filed April 24, 2009.

32. Attached hereto as Exhibit 29 is the unilateral Probation Department

Report in this case, dated May 12, 2010, which was sealed.

33. Attached hereto as Exhibit 30 is the legal memorandum of former Attorney General Edwin Meese, III dated August 28, 2009, entitled "The Trial Lawyers Earmark: Using Medicare to Finance the Lifestyles of the Rich and Infamous."

34. Attached hereto as Exhibit 31 is the Court of Appeals opinion certified for publication, dated October 8, 2013 in *People v. Neasham, Case No. A34873*.

35. Attached hereto as Exhibit 32 are the docket sheets in the dismissed criminal case of *People v. Nicholas Conway*, Case No. BA399158.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to those matters stated on information and belief, and as to those matters I believe it to be true. Executed this 23nd day of October 2013.

/S/
STEVEN J. IPSEN
Declarant

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TABLE OF AUTHORITIES

PROOF OF SERVICE

STATE OF CALIFORNIA,)
) ss:
COUNTY OF LOS ANGELES)

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and am not a party to the within action; my business is 1100 S. Hope Street, Suite 103, Los Angeles, CA 90015.

On October 23, 2013, I caused to be served the following document(s) described as:

DEFENDANT'S MOTION TO DISMISS THE INFORMATION DUE TO THE GOVERNMENT'S INTENTIONAL AND CUMULATIVE PROSECUTORIAL MISCONDUCT, INCLUDING WITHHOLDING OF BRADY EVIDENCE AND EXCULPATORY EVIDENCE, OR , IN THE ALTERNATIVE, ORDER AN EVIDENTIARY HEARING BASED THEREON.

on the interested parties as follows:

BY PERSONAL SERVICE on the Deputy District Attorney at the hearing in Dept. 104.

[ ] **BY MAIL**: I am readily familiar with the business practice of collection and processing of correspondence for mailing with the U.S Postal Service. This correspondence shall be deposited with the U.S. Postal Service this same day in the ordinary course of business at our Firm's address in Arcadia, 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 FACSIMILE:** By Faxing said document to the Deputy District Attorney and obtaining a copy of the transmittal receipt and sending a email attachment thereof to the other parties listed on the attached service list.

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

Executed this 23rd day of October 2013 at Los Angeles, California.

By: /S/
Steven J. Ipsen, Esq.

[NAME, ADDRESS & PHONE # OF PARTY MAKING THE REQUEST]	FOR COURT USE ONLY
Stanley Arouty, Esq. 12966 Euclid Street, Suite 110 Garden Grove, CA 92840 (323) 559-3722	
PLAINTIFF: PEOPLE OF THE STATE OF CALIFORNIA vs DEFENDANT: Ronald Gottschalk	
EX PARTE APPLICATION TO SHORTEN TIME FOR THE FILING AND SERVICE OF: Defendant's Harris Motion Under P.C. 987.2 [Insert name of motion]	CASE NUMBER: BA 361996

Defendant [PLAINTIFF/DEFENDANT] requests an Order Shortening Time for the Filing and Service of Harris Motion.

Said order is required because the arraignment is scheduled for June 4, 2010

Defendant [PLAINTIFF/DEFENDANT] requests that this matter be placed on calendar on June 4, 2010 at 8:30 a.m./p.m.

I notified the opposing party of this request on _____, at or about _____ a.m./p.m.

☐ No objection to this Motion was received. ☐ Objection to this Motion was received.

I have/have not served the opposing party with a copy of the moving papers. [If no: The opposing party will be served by Personal Service at the hearing.]

Declaration in support of application:

See attached Harris Motion and declarations

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

DATED: June 4, 2010

[SIGNATURE]

Stanley Arouty, Esq.
[TYPE OR PRINT NAME]

STANLEY AROUTY, ESQ. SBN 87477
12966 Euclid Street, Suite 110
Garden Grove, CA 92840
Telephone: (323) 559-3722
Facsimile: (323) 935-7317
aroutylaw@gmail.com

Prior Appointed Counsel for Defendant

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff.

v.

RONALD GOTTSCHALK,

Defendant.

CASE NO. BA 361996

EX PARTE HARRIS MOTION TO RE-APPOINT COUNSEL PREVIOUSLY REPRESENTING DEFENDANT (Pen. Code Section 987.2)

REQUEST FOR A CLOSED IN-CAMERA EVIDENTIARY HEARING.

DECLARATION OF STANLEY AROUTY; DECLARATION OF RONALD GOTTSCHALK AND EXHIBITS THERETO.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION.

DATE OF ARRAIGNMENT: JUNE 4, 2010
TIME: 8:30 a.m.
PLACE: DEPT. 100, PJ

PLEASE TAKE NOTICE, that on June 4, 2010, at 8:30 a.m. or as soon as the matter can be heard in Department 100 of the court located at 210 W. Temple Street, Los Angeles, CA

90012, the Defendant will move the court to re-appoint Stanley Arouty, Esq., his preliminary hearing appointed counsel and appointed counsel under California Government Code Section 27706, to represent him at public expense as Defendant's attorney pursuant to California Penal Code Section 987.2(a).

This Harris motion is based on the attached memorandum of points and authorities, the attached declarations, and all evidence and other matters to be presented at the hearing.

This Harris motion will be made on the grounds that Defendant's rights to counsel under the 6th Amendment to the U.S. Constitution, Article 1 Section 15 of the California Constitution, and the landmark cases of *Gideon v. Wainwright and its progenies* and *People v. Harris*, 19 Cal.3d 786 *and its progenies* requires such an appointment. It is further appropriate and within the court's discretion for Defendant's previously appointed preliminary hearing counsel be re-appointed in the instant case for all purposes. The court is not precluded by law from appointing preliminary hearing counsel under Penal Code Section 987.2. The court has not applied the Harris Factors as required. The ICDA Panel attorney, Juliette Robinson, who was erroneously appointed for this case, has actual conflicts of interest including substantial State Bar disciplinary matters which are continuing, and must be disqualified under the landmark case of *People v. Marsden and its progenies*. Based on the Harris Factors, it would be an abuse of discretion not to appoint Stanley Arouty, Esq. as the appointed counsel in this case, especially since he is also an ICDA Panel attorney.

Inasmuch as the District Attorney's Office and the complainant, the California State Bar, have no standing to select appointed counsel for Defendant as they have erroneously attempted to do so over the vehement objections of Defendant, this court should conduct said hearing in-camera outside the presence of the prosecutor, who should not be allowed to be heard in connection with said motion as a matter of law. Judge Dohi and Judge Ohta previously stated that the District Attorney's Office has no standing to participate, directly or indirectly, in the selection of appointed counsel for Defendant and to oppose the selection of the undersigned as appointed counsel. This equally applies to the California State Bar, directly or indirectly, including through Juliette Robinson, Esq.

The undersigned is bringing an ex parte application to shorten time to hear such motion on June 4, 2010 in connection with the companion People v. Marsden Motion. The undersigned was informed by ICDA Panel counsel that this Harris Motion is to be filed in Dept. 100. Inasmuch as the Harris Motion is to be decided outside the presence of the prosecutor, the under signed has not provided prior notice to the prosecutor for the bringing of this motion. Additionally, the actual conflicts of interest and additional grounds for the disqualification of Juliette Robinson, Esq. were not disclosed by her to Defendant and became known only immediately prior to the arraignment. Juliette Robinson, Esq. has failed and refused to communicate with the Defendant and to return his telephone calls, which is part of a continuous pattern of conduct by Ms. Robinson for which the State Bar has forced her into a disciplinary program, which are additional grounds to appoint the undersigned as the appointed counsel for all purposes in this case, under the Harris Factors.

The Defendant seeks to have the undersigned appointed as his appointed counsel under C.C.P. Section 987.2 and has filed his own declaration in support thereof, including his Marsden Motion against Juliette Robinson, Esq. as an integral part of this Harris Motion.

The Defendant further seeks an in camera evidentiary hearing in connection with this Harris Motion and a continuance of the arraignment. Additionally, Defendant seeks a stay of proceedings to file a writ of mandate in the event this Harris Motion is denied.

Dated: June 4, 2010

STANLEY AROUTY, ESQ.
Prior Appointed Counsel for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO RE-APPOINT STANLEY AROUTY AS COUNSEL

I. PENAL CODE SECTION 987.2 SUBD. (d) PERMITS THIS COURT TO APPOINT COUNSEL IN THE INTERESTS OF JUSTICE

Penal Code Section 987.2 subdivision (d) provides:

(d)…[T]he court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. *In the interest of justice, a court may depart from that portion of the procedure requiring appointment of a county-contracted attorney after making a finding of good cause and stating the reasons therefore on the record.* (Italics added.)

II. THIS COURT HAS THE DISCRETION, PURSUANT TO PENAL CODE SECTION 987.2, TO RE-APPOINT STANLEY AROUTY AS APPOINTED COUNSEL UNDER THE HARIS FACTORS. BASED ON THE ACTUAL CONFLICTS OF INTEREST AND CALIFORNIA STATE BAR DISCIPLINARY PROCEEDINGS AGAINST JULIETTE ROBINSON, ESQ., MR. AROUTY'S APPOINTMENT IS REQUIRED.

Cases addressing the issue of whether an indigent defendant is entitled to private counsel of his or her choice have held that the appointment of counsel under section 987.2 rests within the sound discretion of the trial court and the court's discretion may not be restricted by any fixed policy. (See *People v. Horton* (1995) 11 Cal.4th 1068, 1098.)

The Harris Factors, when applied to the instant case, require the appointment of Stanley Arouty, Esq., the prior appointed counsel for Defendant, to be re-appointed for the entire case. It is well established law that these Harris Factors may not be disregarded by the court when exercising its discretion when ruling on a Harris Motion to appoint specified counsel. *People v. Horton, Supra,* 11 Cal.4th 1068, 1099. Those Harris Factors that mandate such re-appointment are set forth below and in the declarations of Stanley Arouty, Esq. and the Defendant.

(1) Defendant's preference is one factor to be considered.

(2) Where as here, the preference is based on a relationship of trust and confidence in requested counsel established by virtue of previous representation in related proceedings, the preference is significant. *Alexander v. Superior Court* (1994) 22 Cal.App.4th 901, 916. "In exercising its discretion, the trial court should take into account not only the foregoing subjective factors, but also objective factors such as previous representation of defendant by the requested attorney in the underlying or in any other proceeding, any extended relationship between defendant and the requested attorney, the familiarity of the requested attorney with the issues and witnesses in the case, the duplication of time and expense to the County of appointing an attorney other than the requested attorney and the timeliness of the request."

(3) Attorney Stanley Arouty is also an ICDA Panel member and the supervising attorney does not oppose the appointment of Stanley Arouty, Esq. to represent Defendant.

(4) Stanley Arouty, Esq. has agreed to accept the same compensation as provided to ICDA Panel members.

(5) The County, the State Bar of California, and the District Attorney's Office do not have any standing in connection with this Harris Motion. There is a pending proceeding to disqualify the District Attorney's Office. The District Attorney's Office has continually requested the court to disregard the Harris Factors and to allow the District Attorney's Office and its complainant to dictate the identity of the appointed counsel to represent the Defendant. The court has already ruled that the Defendant is entitled to appointed counsel. Such rulings were made by Judge Espinoza outside of the presence of Defendant. Defendant and Mr. Arouty request an in camera evidentiary hearing in connection with this Harris Motion.

III. A COURT MUST DECIDE A HARRIS MOTION BY THE FACTORS ENUNCIATED BY THE CALIFORNIA SUPREME COURT, INCLUDING BY ITS VIEWS OF EXPEDIENCY OR OF THE DEMANDS OF EQUITY AND JUSTICE AND TO PRESERVE THE CONSTITUTIONAL RIGHTS OF DEFENDANT AND THE EFFECTIVE ASSISTANCE OF COUNSEL.

" 'Judicial discretion is that power of decision exercised to the necessary end of awarding justice based upon reason and law but for which decision there is no special governing statute or rule. Discretion implies that in the absence of positive law or fixed rule the judge is to decide a question by his view of expediency or of the demand of equity and justice...The term implies absence of arbitrary determination, capricious disposition or whimsical thinking. It imports the exercise of discriminating judgment within the bounds of reason. Discretion in this connection means a sound judicial discretion enlightened by intelligence and learning, controlled by sound principles of law, of firm courage combined with the calmness of a cool mind, free from partiality, not swayed by sympathy or warped by prejudice or moved by any kind of influence save alone the overwhelming passion to do what is just.' " (*Harris v. Superior Court* (1977) 19 Cal.3d 786, 796.)

IV. IN EXERCISING ITS DISCRETION, THE TRIAL COURT SHOULD CONSIDER SUBJECTIVE FACTORS AS WELL AS OBJECTIVE FACTORS.

In exercising its discretion, the trial court should take into account not only the foregoing subjective factors, but also objective factors such as previous representation of defendant by the requested attorney in the underlying or in any other proceeding, any extended relationship between defendant and the requested attorney, the familiarity of the requested attorney with the issues and witnesses in the case, the duplication of time and expense to the county of appointing an

attorney other than the requested attorney, and the timeliness of the request. (*People v. Chavez* (1980) 26 Cal.3d 334, 346; *Harris v. Superior Court, supra,* 19 Cal.3d at pp. 797-799.)

V. PENAL CODE SECTION 987.2 REQUIRES THE APPOINTMENT OF PRIVATE COUNSEL WHERE A DEFENDANT IS INDIGENT AND THE APPOINTED COUNSEL HAS ACTUAL CONFLICTS OF INTEREST, SHOULD BE DISQUALIFIED AS A MATTER OF LAW, AND CANNOT RENDER EFFECTIVE ASSISTANCE OF COUNSEL.

Penal Code Section 987.2 permits the court in its discretion to appoint counsel who previously represented the Defendant and were relieved. As the California Supreme Court stated in *People v. Ortiz*, (1990) 51 Cal. 3d 475, 489, "Section 987.2, however, offers no barrier to appointment of {previously discharged} counsel."

Penal Code Section 987.2(e) provides that the court may depart from the appointment procedure for such public agencies or contract groups if the court determines that such a departure is "in the interest of justice" and makes a finding of good cause on the record.

As set forth in the attached declaration of Stanley Arouty, Esq., the Public Defender's Office and the Alternative Public Defender's Office have declared a conflict. The Defendant and the undersigned attempted to file a Harris Motion before Judge Ohta. Judge Ohta did not rule on the Harris Motion and continued the arraignment to June 4, 2010. At the hearing, the prosecutor objected to the

appointment of Stanley Arouty, Esq. arguing that he was unacceptable because he had an extended relationship with the Defendant, which the prosecutor claimed was a ten year relationship. The prosecutor did not and could not provide any admissible evidence in support of these allegations, which are untrue, and which were believed to be provided to the prosecutor by the complainant, the State Bar of California. The Defendant did have a relationship with Stanley Arouty, Esq., but it was based upon the State Bar of California having appointed Mr. Arouty as Defendant's appointed counsel at the expense of the State Bar, and thereafter soundly beating the State Bar in proceedings in which Mr. Arouty was appointed by the State Bar of California. In effect, the State Bar wanted Mr. Arouty to improperly force the Defendant to resign from the State Bar instead of fighting the charges that Mr. Arouty subsequently prevailed on behalf of the Defendant, both on the facts and on the law. The entire case was dismissed with prejudice with the finding of lack of probable cause. This was based upon false declarations being provided by the prosecutors against Defendant. In retaliation, the prosecutors brought this criminal case against Defendant in which the Defendant was given no opportunity to provide to the District Attorney's Office the substantial amount of exculpatory evidence that exists, including the fact that the Defendant won the parallel civil case involving the same issues and also prevailed in the State Bar case referred to above. Mr. Arouty also showed at the preliminary hearing that the case by the prosecutor was based on false and fabricated evidence that had been

previously rejected by the Los Angeles Superior Court in the parallel civil case. Thereafter, when the preliminary hearing judge refused to strike the fabricated unsigned documents that had been rejected by the civil court and refused to permit experts to testify that the Defendant's conduct was sanctioned by law, including government experts, the court held Defendant over on a phantom victim theory. This theory has been uniformly rejected as a matter of constitutional law and constitutes further prosecutorial misconduct as no admissible evidence was presented at the preliminary hearing to identify any phantom victims. Defendant was further denied his right to cross examine witnesses and the cross examination that did take place was prematurely interrupted when the witnesses were asked about being provided financial inducements to falsely testify against the Defendant, all of which was supported by admissible evidence including secretly made tape recordings by the District Attorney's Office.

Juliette Robinson, Esq. did not disclose to the ICDAPanel her continuing State Bar disciplinary proceedings, whereby she has continued to abandon the interests of her clients, refused to communicate with her clients, misappropriated moneys from her clients, and, as a result, the State Bar sought to prevent Juliette Robinson from representing any client, including a criminal defendant under an appointment by ICDA. Additionally, Juliette Robinson, Esq. admitted her alleged guilt in declarations, whereby she is undergoing long term treatment over five years in a program designed for attorneys with substantial problems whereby they cannot

provide effective representation to their clients, which includes issues in the LAP Program of chronic alcoholism, drug dependency, mental health issues, frequent abandonment of clients, and inability to perform the services that were to be provided on a timely and competent basis. These matters are public record on the State Bar website, including the request by the State Bar to prohibit Juliette Robinson from practicing law while she undergoes five years of extensive therapy at her own expense in the State Bar's own program and under the supervision of the prosecutors and judges of the State Bar of California. These prosecutors and judges of the State Bar were also directly involved in cases in which Defendant was counsel, including the constitutional attack on the State Bar LAP Program. The State Bar prosecutors, by and through their investigator, are the sole complainants in this criminal case. These prosecutors have direct control over whether Juliette Robinson, Esq. will be allowed to practice law in the next five years or whether she will be removed from the LAP Program and incur substantial disciplinary action, which may include a long term suspension, involuntarily enrollment and preclusion from practicing law and criminal restitution, without limitation. In effect, the State Bar can control the actions and conduct of Juliette Robinson, Esq. in this case and the outcome of this case based upon a lack of effective representation of counsel combined with prosecutorial misconduct in inducing same to the complete denial of the constitutional rights of Defendant. Moreover, the prosecutors can and will suggest leniency to Juliette Robinson, Esq. in her own case if she cooperates with

the prosecution adverse to her client, the Defendant. These statements are based on the secretly recorded tapes made by the District Attorney's Office in this case, as well as the fact that the State Bar withheld from the undersigned more than 6 ½ Banker's boxes of Brady material and other exculpatory evidence in favor of the Defendant that was required to be turned over to the undersigned prior to the preliminary hearing. Additionally, as a State Bar defense attorney and a State Bar previously appointed attorney, the undersigned is familiar with the plea bargain negotiations that take place as indicated above and can testify thereto. Based upon past experience, Juliette Robinson, Esq. would be unduly influenced by the prejudicial demands of the State Bar prosecutors in her case to provide Defendant ineffective assistance of counsel and minimal defense, as they previously attempted to do in this case resulting in the disqualification of the Public Defender's Office and the removal of Daniel G. Davis, Esq. and Denise Daniels, Esq.

Juliette Robinson, Esq. did not disclose her State Bar disciplinary proceedings to the Director of the ICDA Program, even though they are matters of public record and materially may have an adverse effect on the representation of her pending criminal clients and result in a reversal on appeal in connection with her death penalty cases and her other felony cases. Ms. Robinson has failed and refused to communicate with the Defendant, which is an indication that she cannot provide effective representation of counsel and is conflicted by her own State Bar disciplinary proceedings. The undersigned has sought advice from other counsel

dealing with whether or not Juliette Robinson, Esq. is totally conflicted and must be disqualified. The uniform answer is that she has absolute conflicts of interest and that Defendant would be deprived of effective assistance of counsel under these circumstances, mandating the re-appointment of the undersigned.

Considering the prosecutors have continually, without standing, sought to dictate which counsel will represent the Defendant in this case, the appointment Juliette Robinson, Esq. is highly suspect. The appointment of the undersigned is necessary to avoid further claims of prosecutorial misconduct and interference with the orderly administration of justice that are pending in a class action brought by Defendant.

VI. THE HARRIS FACTORS TO BE UTILIZED BY THE COURT STRONGLY FAVOR THE RE-APPOINTMENT OF STANLEY AROUTY, ESQ.

The Harris Factors strongly favor the re-appointment of Stanley Arouty, Esq. for the following reasons, as more fully set forth in the declarations of Stanley Arouty, Esq. and Ronald Gottschalk.

(1) Stanley Arouty, Esq. was Defendant's appointed counsel at the preliminary hearing.

(2) Stanley Arouty, Esq. is Defendant's appointed counsel in each of the cases that involved compliance with a criminal protective order where the Defendant was Plaintiff In Propria Persona seeking substantial relief. The criminal protective order was obtained by the prosecutor

without a noticed hearing and without the presentation of any admissible evidence in support thereof.

(3) Stanley Arouty, Esq. was Defendant's appointed counsel in connection with State Bar matters, at the expense of the State Bar of California. A relationship of trust and confidence was necessary in connection with those proceedings. Defendant prevailed on the merits at those proceedings and established a relationship of trust and confidence in Mr. Arouty. Those proceedings are parallel proceedings to the criminal case, involve more than six months of high quality legal representation, which services may have to be duplicated by new counsel in this case, including reviewing all of the voluminous documents that were presented in the State Bar case.

(4) Mr. Arouty is counsel for Defendant to regain his license to practice law that was improperly withdrawn when Defendant was ordered to attend a three day evidentiary hearing in the criminal case based upon the State Bar's withholding for more than two years of Brady material and other exculpatory evidence, comprising 6 ½ Banker's boxes of documents. Defendant prevailed at the evidentiary hearing against the State Bar and the prosecutors. In retaliation, the State Bar defaulted the Defendant, in violation of his constitutional rights and there are pending motions to regain his license to practice law. The California

Supreme Court has criticized the State Bar of California in connection with these default proceedings based on a violation of Defendant's constitutional rights and based thereon Mr. Arouty believes that Defendant will prevail. These matters are parallel to the criminal case and must be reviewed extensively by appointed counsel and will have an effect on he criminal case. Mr. Arouty is already familiar with these proceedings. New counsel will have to review them in great detail, especially in connection with motions in limine.

(5) There are parallel proceedings in the civil courts and in the Bankruptcy Court that must be extensively reviewed by any new counsel. Mr. Arouty is familiar with these proceedings as they touched on his prior representation in connection with the State Bar matters. New counsel will have to review these documents in great detail.

(6) The underlying civil cases culminating in a dismissal of the claims by the complainants on the merits, which was then re-packaged as this criminal case, consist of more than 350 Banker's boxes of court files in mass tort litigation that must be utilized by appointed counsel. Mr. Arouty is familiar with these documents. Newly appointed counsel will have to extensively review the documents and obtain certified copies of these documents from the San Diego Superior Court and other courts in connection with the defense of Defendant.

(7) New appointed counsel will have to seek orders from the court to enforce prior orders made for the turn over of the Brady material and other exculpatory evidence together with the client's files and seek disqualification of the District Attorney's Office. Mr. Arouty is familiar with these matters and new counsel will have to extensively review all of the documents in connection therewith.

(8) Mr. Arouty represented the Defendant at the preliminary hearing at which the court held the Defendant over on a phantom victim theory. Mr. Arouty has done extensive investigation in connection therewith. New appointed counsel will have to do their own investigation and extensive research dealing with the discredited phantom victim theory and bring a Penal Code Section 995 motion.

(9) Transcripts were edited and spoliated in connection with the preliminary hearing and other hearings, which require motions to correct the deficiencies. Mr. Arouty is familiar with these issues and attended the hearings. New appointed counsel will have to do extensive work in connection therewith.

(10) The court ordered that the attorney/client communications between Mr. Arouty and Defendant that were unlawfully recorded by the Los Angles County Sheriff's Department be turned over to Mr. Arouty. Mr. Arouty is familiar with the issues and the contents of the

communications. New appointed counsel will have to familiarize themself with these issues, which is also a basis to disqualify the District Attorney's Office in connection therewith.

(11) As a result of the extensive work that has been done by Mr. Arouty, he is familiar with the issues and witnesses in this case, including their complete lack of credibility. New appointed counsel will have to review this work all over again and tremendous expense to the County. It will further delay the trial in this case for more than one year by the duplication of effort already expended by Mr. Arouty at substantial cost to the County and to the Defendant, who is out of custody on an excessively high bail.

(12) The issues in the criminal case are complex issues that will require extensive motions and writs. Mr. Arouty is familiar with the motions and writs. New appointed counsel will have to become familiar with the issues in the case before they can file the appropriate motions and writs, which deal principally with constitutional issues.

(13) There are proceedings that are pending in the U.S. Supreme Court, the California Supreme Court, the superior courts, the appellate court, and in the federal court that pertain to the issues in this case. Mr. Arouty is familiar with these cases and their effect on the favorable outcome of

the criminal case to Defendant. New appointed counsel will have to extensively review these cases and how they affect the criminal case.

(14) The phantom victim theory is a discredited principle that will be challenged in this case on a constitutional basis by Defendant and friends of the court. Mr. Arouty is familiar with these issues. New appointed counsel will have to extensively review this issue together with others.

(15) It is evident that the expense to the County will be substantial by the duplication of effort by newly appointed counsel. Combined with her absolute conflicts of interest, a second new counsel may have to be appointed to redo all of the work of Ms. Robinson or retry the case in its entirety when and if the State Bar orders that Ms. Robinson can no longer practice law. The State Bar has previously filed pleadings that Ms. Robinson should not be allowed to practice law according to the docket sheets in her case. Ms. Robinson should be required to produce those pleadings at the evidentiary hearing in connection with her fitness to represent the Defendant in this criminal case and in connection with the matters referred to above. The appointment of any attorney other than Stanley Arouty, Esq. will require additional expense and duplication of effort. Los Angeles County has no standing to oppose the appointment of Mr. Arouty as they are a

defendant in litigation by Defendant in connection with this case, as are the Los Angeles County Board of Supervisors.

(16) Based on the Defendant prevailing in the parallel civil cases and in the criminal contempt case involving the same issues and the same parties, this case will not be disposed of by a plea bargain and must be vigorously defended. It is well established law that having been defeated in the parallel civil case based on the fabricated evidence that they sought to utilize against Defendant, the complainants are barred to re-litigate their false claims in the Bankruptcy Court, the State Bar, and indirectly through this court using knowingly fabricated evidence by the prosecutors. Mr. Arouty is familiar with these complex issues, which are currently in the U.S. Supreme Court. New appointed counsel will have to extensively review these matters and may be unduly influenced not to present these issues to the court when they have a duty to do so and to effectively represent the Defendant. Ms. Robinson's cases are primarily murder cases based on information provided by her former firm. She would be more inclined to provide ineffective assistance of counsel to Defendant to benefit herself and these other clients, especially since the prosecutors have deemed the above issues and the excessive bail issue to be "World War III" if challenged.

VII. CONCLUSION

For the foregoing reasons and for the reasons set forth in the accompanying declarations, it is respectfully submitted that Stanley Arouty, Esq., as prior appointed counsel for Defendant in connection with the preliminary hearing, the protective order, and previously in connection with a confidential proceeding in the State Bar Court be re-appointed for the purposes of trial and all pre-trial matters.

The pleadings and declarations previously filed by Mr. Arouty clearly show that this is a complex criminal case with novel issues, including prosecutorial misconduct by the State Bar prosecutors and others.

All of the Harris Factors discussed above strongly suggest that Stanley Arouty, Esq. should be re-appointed by this court to provide Defendant with effective assistance of counsel as a matter of constitutional right, after the prosecutors have continuously attempted to improperly influence who will represent the Defendant as appointed counsel and provide him with a minimal defense in an effort to predetermine the outcome of this case. Defendant requests an in camera evidentiary hearing to further show that Juliette Robinson, Esq. has an absolute conflict of interest and should not be appointed to represent the Defendant, based, in part, on her significant State Bar disciplinary cases in which the State Bar has sought to take away her license to practice law while she participates in therapy.

It is evident that Mr. Arouty has performed major legal services to Defendant in the parallel cases which will have to be duplicated at great expense to the County

if Juliette Robinson, Esq. was appointed and will significantly delay this case coming to trial. There are numerous court orders made on behalf of Defendant that have been violated by the opposition and will have to be enforced to effectively represent the Defendant, including the recovery of the extensive Brady material and other exculpatory evidence, other secretly recorded tapes that have not been turned over to Mr. Arouty as ordered by the court to be provided to him prior to the preliminary hearing. All of the above issues mandate that Mr. Arouty be re-appointed as counsel for Defendant pursuant to the factors in the Harris case.

Dated: June 4, 2010

Respectfully submitted

STANLEY AROUTY, ESQ.
Appointed Counsel for Defendant

DECLARATION OF STANLEY AROUTY

I, STANLEY AROUTY, declare as follows:

1. I was the appointed counsel for Defendant in this case under California Penal Code Section 987.2. The following facts are within my own personal knowledge, except as to those matters which are stated to be on information and belief, and which I believe to be true. If called as a witness, I would and could competently testify thereto. I make this declaration without waiver of the attorney/client privilege. I make this declaration in support of my ex parte Harris motion to be appointed counsel for Defendant under California Penal Code Section 987.2.

2. I was appointed by the Honorable Gregory Dohi under California Penal Code Section 987.2 as the attorney of record for the defendant in this case at the preliminary hearing and in connection with common continuing issues in the civil cases, in both the State and Federal Courts, the State Bar Court, and the bankruptcy case, under California Government Code Section 27706. These are parallel proceedings to this case.

3. I was appointed at the expense of the State Bar of California to represent the Defendant and prevailed on the merits in confidential proceedings in connection with my representation of Defendant against the State Bar.

4. I have been Defendant's attorney in the civil cases and/or the State Bar cases for nearly a year.

5. I have reviewed the discovery provided to me by the prosecution, including

several audio tapes and investigator written reports. However, Brady material and other exculpatory evidence have been withheld from Declarant, in violation of court orders issued on behalf of Defendant in this case.

6. I have spent numerous hours studying the cases, interviewing witnesses and being counsel in cases that are pending in other courts, including the State Court, Appellate Courts, and the District Court pertaining to common issues in this case.

7. I have spent numerous hours investigating this case.

8. I have spent numerous hours interviewing defendant and other witnesses.

9. I arranged for Defendant's bail and am familiar with the issues of excessive bail.

10. I tried the preliminary hearing over a period of two days and I am familiar with the facts and issues in the preliminary hearing.

11. Defendant has requested Declarant to file a California Penal Code Section 995 motion and various writs. Declarant is advised by numerous specialists that these matters must be filed.

12. It is necessary to employ experts, accountants, questioned documents examiners, investigators, and other specialists to assist Declarant to prepare for trial in this complex case under California Penal Code Section 987.2. In the underlying civil cases which parallel the criminal case, there are more than 350 Banker's boxes of court files from over 6 ½ years of extended litigation involving Defendant and the issues in this case.

13. I have developed a special relationship of trust and respect with the defendant based, in part, that I won the State Bar confidential case against the Defendant on the merits. This is a Harris Factor in favor of Declarant's re-appointment as counsel for Defendant.

14. There is extensive discovery to be obtained in this case and especially Brady material and other exculpatory evidence that is in the possession of the California State Bar, including 6 ½ Banker's boxes of documents. There are extensive audio and video tapes to be obtained. There are extensive motions that need to be filed in this case on behalf of the Defendant and to respond to motions by the prosecution. Declarant is familiar with these matters. New appointed counsel will have to duplicate the efforts of Declarant. This is further grounds to re-appoint Declarant as counsel for Defendant.

15. The underlying parallel cases were deemed to be complex litigation in the Los Angeles Superior Court. The entire Los Angeles Superior Court bench was disqualified by Chief Justice George and the Presiding Judge for good cause shown. Subsequently, the entire San Diego Superior Court bench was disqualified by Chief Justice George and the Presiding Judge for good cause shown.

16. Defendant prevailed on the merits against his Deputy Public Defender in collateral litigation in this case. Judge Dohi previously ruled at the preliminary hearing that there was an actual conflict of interest between Defendant and the Office of the Public Defender, which precluded the Office of the Public Defender

from representing the Defendant in this case or in any other case.

17. Judge Dohi further ruled at the preliminary hearing that the prosecution has no standing to be heard in connection with the appointment of appointed counsel for the Defendant and could not select the appointed counsel for Defendant, directly or indirectly. The prosecution had demanded that Defendant be represented solely by the Deputy Public Defender who had engaged in malicious prosecution and abuse of process against Defendant while acting as his defense counsel in concert with the prosecution. Judge Dohi further ruled that the Public Defender's Office could not erect a Chinese wall of separation in order to ethically and effectively represent Defendant in this case.

18. I am familiar with Defendant's substantial defenses to the charges made against him, including the discredited phantom victim theory introduced for the first time in the closing argument at the preliminary hearing, and the fact that Defendant defeated the same charges in the parallel civil cases and that Defendant also won the parallel criminal contempt case. This is another Harris Factor in favor of Declarant's re-appointment as counsel for Defendant to avoid the cost of substantial duplication of expense to the County.

19. Defendant has been previously qualified to obtain appointed counsel under California Penal Code Section 987.2, by multiple judges and the Presiding Judge of this court.

20. I am informed and believe that Defendant is presently indigent and without

the financial means to retain counsel. Defendant is presently in bankruptcy. I am further informed that Defendant previously received appointed private panel counsel by order of Chief Justice George in connection with the parallel criminal contempt proceeding that was filed against Defendant in San Diego County Superior Court. Defendant prevailed in the indirect criminal contempt proceeding on the merits. The judge presiding over the case ruled that Defendant was indigent and without financial means to retain counsel.

21. Defendant was afforded a fee waiver in multiple cases in the Los Angeles Superior Court and in other courts. Certain of the fee waivers were ordered by the presiding judge of the court or the judge who was appointed by Chief Justice George to decide the issue.

22. The District Attorney's Office conceded before Judge Dohi that Defendant is indigent and is entitled to appointed counsel under the 6th Amendment to the U.S. Constitution.

23. The Honorable Peter Espinoza, Presiding Judge of this court, previously ordered that Defendant receive appointed counsel and that Stanley Arouty, Esq. be appointed as that counsel.

24. Renee Cartaya, Esq., of the District Attorney's Office, attempted to dictate to Judge Dohi that she should be permitted to select appointed counsel for Defendant and demanded that Denise Daniels, Esq. be appointed, even though Daniels was being sued by Defendant for malicious prosecution and other intentional torts.

Judge Dohi dismissed her demand outright and stated that the prosecution has no standing to determine who the appointed counsel for Defendant should be. Ms. Cartaya made false representations at the hearing that Stanley Arouty was a long time personal friend of Defendant and that Defendant was a trust fund baby. The statements are untrue. The prosecutor, on May 12, 2010, referred to the same false charges previously made by Ms. Cartaya, even though Ms. Cartaya had no standing to make such allegations and she knew that they were false charges made with intent to prejudice Judge Ohta. At the last hearing, the prosecutor again sought to improperly influence the appointment of counsel for Defendant. For that reason and based on the allegations contained in the complaints filed by Defendant and by the State Bar against Juliette Robinson, Esq., the court should order that the Penal Code Section 987.2 Harris Motion hearing and the Marsden hearing on the Marsden Motion be in-camera outside the presence of the prosecution and only with Mr. Arouty, Ms. Robinson, and Defendant present with the court.

25. Defendant is being held over for trial based upon a phantom victim theory. This phantom victim theory is without foundation, both in law and in fact. There should be extensive motions and a demurrer filed to attack the phantom victim theory in this case. Additionally, this case is a classic case of Brady Rule violations and prosecutorial misconduct. Extensive motions should be filed in connection therewith, as more fully set forth in the class action complaint filed by Defendant. This is a further Harris Factor in favor of the re-appointment of Declarant as

counsel for Defendant. It would cost the County tremendous expense to duplicate the work of Declarant. The failure to do so would subject the County and the Los Angeles County Board of Supervisors to further liability in connection with the pending lawsuits against them. The County has already hired private counsel to represent the prosecution in connection with similar Brady Rule violations as in the instant case.

26. I have represented the Defendant in connection with the preliminary hearing and each of the voluminous motions filed in connection therewith.

27. I represent the Defendant as appointed counsel at the public expense in connection with the criminal protective order based upon Defendant being a co-defendant in multiple litigation with the so-called complainants, many of whom are in proper. I was designated such appointed counsel by Judge Dohi, under California Government Code Section 27706.

28. I was appointed counsel for Defendant at the expense of the State Bar of California in extensive confidential proceedings over a six month period in which Defendant prevailed on the merits. This is a parallel case to the instant criminal case. Declarant's services would have to be duplicated by newly appointed counsel. This is a further Harris Factor in favor of Declarant's re-appointment as counsel for Defendant.

29. I have extensive knowledge regarding the facts in this case as set forth in the offer of proof and my declaration thereto, previously submitted at the

preliminary hearing. I have further extensive knowledge of Defendant's defenses in this case, as set forth in my brief and my declaration with regard to the Medicare and Medi-Cal liens that are outstanding against each of the so-called complainants and with respect to the massive fraud scheme against Defendant and the federal agencies, which is the subject matter of multiple complaints by Defendant before the court. Declarant is informed and believes that no court has ruled against Defendant with respect to his right to the moneys at issue in the information and that the documents, themselves, executed by the so-called complainants state that it is the moneys of Defendant and not the so-called complainants. The phantom victim theory was invented at the closing argument without any admissible evidence put forth at the preliminary hearing because Declarant had shown that the so-called complainants had no ownership interest in the funds and that the courts had issued orders affirming same in favor of Defendant. This is a further Harris Factor in favor of re-appointing Declarant as counsel for Defendant. The case could result in a dismissal based upon the continuing work product of Declarant.

30. I have been appointed counsel of record in trials of complex fraud cases under Penal Code Section 987.2 where I was selected based upon my expertise and the fact that I was the preliminary hearing counsel.

31. The issues in this case, as reflected in the offer of proof, are complex issues that will generate multiple pre-trial motions and motions in limine and a Penal Code Section 995 motion that should be filed by Defendant's counsel based upon

well established constitutional principles of law. From the motions and complaints, it is apparent that Defendant is being persecuted because he exposed a fraud scheme against himself and federal government agencies, which Medicare has estimated to exceed $30 billion in Southern California alone, and which required the Chief Justice of the California Supreme Court to disqualify the entire Los Angeles Superior Court bench, including all judges of the Criminal Court. Based on the complexity of this case and in light of the background, where Chief Justice George has had to intervene to protect the constitutional rights of Defendant, this court should re-appoint Declarant as his appointed counsel at trial and further order at this time that I am to be provided with the requested backup support staff at public expense, as is more fully set forth in the offer of proof, filed in this case on April 27, 2010. It is apparent that Defendant needs experienced appointed trial counsel who can effectively deal with the complex issues in this case, including the issues of prosecutorial misconduct and Brady Rule violations and enforcement of court orders in connection therewith. This is a further Harris Factor in favor of re-appointment of Declarant as counsel for Defendant.

32. I am counsel for Defendant in the parallel State Bar case. I have filed motions to relieve Defendant of the default, which was taken when he had parallel proceedings in the State Bar Court and in this court on the same day and time. The default should be vacated as a matter of law under C.C.P. Section 473(B) and (d). The California Supreme Court and Chief Justice George have criticized the State

Bar in connection with their default strategies and have vacated such defaults in the leading case of *Giddens v. State Bar of California*, (1981) 28 Cal.3d 730, which should govern the disposition of the State Bar default proceedings. My expertise is required to afford relief to Defendant prior to the commencement of trial in this case and to afford Defendant his constitutional rights in parallel proceedings. This is a further Harris Factor in favor of Declarant's re-appointment as counsel for Defendant.

33. Juliette Robinson, Esq. should be deemed disqualified by this court based upon her ineffective assistance of counsel to date, her refusal to return Defendant's telephone calls, her undisclosed actual conflicts of interest, and her inherent conflict from her participation in pending State Bar of California disciplinary proceedings, including proceedings in which the State Bar was demanding that she could no longer practice law while undergoing the therapy required for the next five years. Out of respect to Ms. Robinson, these matters should be discussed in-camera with Defendant and Declarant. Dclarant is a long time State Bar defense attorney and is familiar with the State Bar procedures, including their plea bargain negotiations. Ms. Robinson is subject to being unduly influenced by the State Bar prosecutors and the State Bar judges in extra judicial ex parte communications attended only by Ms. Robinson and not Defendant, which could and would adversely affect the outcome of Defendant's criminal case. Ms. Robinson is subject to having her license to practice law revoked if she did not capitulate to the unlawful demands of

the State Bar prosecutor, which is driving this criminal case as the prosecutors have admitted to Declarant. The failure by Ms. Robinson to disclose her State Bar disciplinary proceedings to the Director of the ICDA Program is misconduct mandating her disqualification. True copies of Ms. Robinson's disciplinary proceedings and the docket sheets in her pending State Bar case, as downloaded from the State Bar website on June 2, 2010, are attached hereto as Exhibits 1-4. The docket sheets show that the State Bar has sought to declare Ms. Robinson unfit to practice law and to involuntarily make her an inactive member of the State Bar, which would preclude her from representing Defendant or any other defendant. Defendant would be denied his constitutional rights to effective assistance of appointed counsel if Ms. Robinson was permitted to represent Defendant. Her choice as appointed Panel counsel for Defendant is troubling, to say the least, and another attempt of the prosecution to unlawfully select counsel for Defendant and thereby to influence the outcome of the case and interfere with the administration of justice in this case. Declarant is familiar with each of the attorneys adverse to Ms. Robinson in her State Bar case. Each of them opposed Defendant in connection with Defendant's proper representation of clients to deem the LAP Program as unconstitutional as applied and similar stipulations that Ms. Robinson executed to be void ab initio. Declarant is a member of the ICDA Panel and will work for the same compensation as provided by the County of Los Angeles. All of the Harris Factors favor the re-appointment of Declarant as counsel for Defendant.

34. Declarant was advised by ICDA Panel counsel to file this Harris Motion with the Presiding Judge in Department 100, as is customary. A courtesy copy is being provided under seal to Judge Craig Richman.

I declare, under penalty of perjury that the foregoing is true and correct to the best of my knowledge except as to matters stated on information and belief and as to those matters I believe them to be true.

Executed this June 4, 2010 at Los Angeles, California.

Stanley Arouty

DECLARATION OF RONALD GOTTSCHALK

I, RONALD GOTTSCHALK, declare as follows:

1. I am the Defendant in this case. I make this declaration in support of my request that Stanley Arouty, Esq. be re-appointed at public expense as my counsel for all proceedings in connection with the trial of this case, including with respect to a transfer of venue. I make this declaration without waiver of my constitutional rights, including, but not limited to, under the 5th, 6th, and 14th Amendments to the U.S. Constitution.

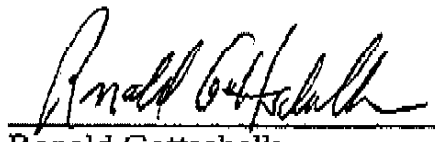
2. I have read the declaration of Stanley Arouty and believe that the facts stated therein are true. I am presently indigent and without the financial means to retain private counsel in this case. I am in bankruptcy. I request the court to re-appoint Stanley Arouty, Esq. as my counsel and issue an order for the appointment of experts, investigators, accountants, questioned documents examiners and others at public expense for those categories designated in Defendant's offer of proof, filed on April 27, 2010.

3. I telephoned Juliette Robinson, Esq. on June 1, 2010 and left her an extensive voice message for her to return my telephone call regarding her appointment as Defendant's counsel and with respect to the arraignment and her conflicts of interest in this case. Ms. Robinson failed and refused to return my telephone calls, which the State Bar alleges with respect to other clients to be a violation of the

State Bar Rules of Professional Conduct. From the docket sheets, the State Bar has requested that Ms. Robinson be deemed unfit to practice law and thereby unable to practice in Declarant's case and in all other cases. Declarant requests that Stanley Arouty, Esq. be re-appointed as my counsel based on the Harris Factors set forth in this motion.

I declare, under penalty of perjury that the foregoing is true and correct to the best of my knowledge except as to matters stated on information and belief and as to those matters I believe them to be true.

Executed this June 4, 2010 at Los Angeles, California.



Ronald Gottschalk

PROOF OF SERVICE

STATE OF CALIFORNIA,)
) ss:
COUNTY OF LOS ANGELES)

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and am not a party to the within action; my business is 12966 Euclid Street, Suite 110, Garden Grove, CA 92840

On June 4, 2010, I served the following document(s) described as:

EX PARTE HARRIS MOTION TO RE-APPOINT COUNSEL PREVIOUSLY REPRESENTING DEFENDANT(Pen. Code Section 987.2)

REQUEST FOR A CLOSED IN-CAMERA EVIDENTIARY HEARING.

DECLARATION OF STANLEY AROUTY; DECLARATION OF RONALD GOTTSCHALK AND EXHIBITS THERETO.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION

on the interested parties as follows:

[ ] **BY MAIL:** I am readily familiar with the business practice of collection and processing of correspondence for mailing with the U.S Postal Service. This correspondence shall be deposited with the U.S. Postal Service this same day in the ordinary course of business at our Firm's address in Arcadia, 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.

[X] **BY PERSONAL SERVICE:** on the Judge Craig Richman in Dept. 120 at the arraignment hearing and anyone else that the court so designates.

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

Executed this 4th day of June 2010 at Los Angeles, California.

By: _____
STANLEY AROUTY

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Attorneys for All Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CV11-09437R (AGRx)

ALKIVIADES DAVID, SUGAR HILL MUSIC, SOLID PRODUCTIONS, STEVEN BATIZ, TONY BELL, DETRON BENDROSS, DERRICK BRAXTON, REGINALD BROOKS, ELIJAH BROWN, HORACE BROWN, OSCAR BROWN, LUTHER CAMPBELL, JONATHAN CARLTON, SOLOMON CONNER, DAYQUAN DAVIS, DOUGLAS DAVIS, KAREEM DAVIS, SOLAMIN DAVIS, EMMANUEL RAMONE DEANDA, DREW CARTER, NACOLBIE EDWARDS, VANCITO EDWARDS JOHN FLETCHER, WILLIE FINCH, ISAAC FREEMAN, JR., DARRYL GIBSON, JALIL HUTCHINS, EMANON JOHNSON, KEITH JONES, ORAN "JUICE" JONES, TARSHA JONES, NAILAH LAMEES, DANA MCCIEESE, BARRY MOODY, JEFF REDD, QUAME RILEY, ANTHONY ROBINSON, NICHOLAS SANCHEZ, JONATHAN SHINHOSTER, DIAMOND SMITH, REMINISCE SMITH, GERALD SPENCE, CHRIS STOKES, IRENE STOKES, JUANITA

CASE NO. ____

COMPLAINT FOR:

(1) INDUCEMENT OF COPYRIGHT INFRINGEMENT;

(2) CONTRIBUTORY COPYRIGHT INFRINGEMENT; and

(3) VICARIOUS COPYRIGHT INFRINGEMENT

JURY TRIAL DEMANDED

STOKES, WILLIAM TENNYSON AND THE TENNYSON ESTATE, CARL THOMAS, JEFF THOMKINS, RONDELL TURNER, RICKY WALTERS, KEVIN WILLIAMS, YOLANDA WHITAKE, JOSEPH WILLIAMS, RAHEEM WILLIAMS, CASE WOODWARD, ATTRELL AND JARRETT CORDES, MITCHELL GRAHAM

Plaintiffs,

vs.

CBS INTERACTIVE INC., CNET NETWORKS, INC.

Defendants.

Plaintiffs, for their Complaint against Defendants CBS Interactive Inc. ("CBS Interactive") and CNET Networks, Inc. ("CNET," collectively with CBS Interactive, the "Defendants"), allege as follows:

SUMMARY OF THE ACTION

1. Over the last decade, countless websites and "file sharing" or peer-to-peer ("P2P") software programs – from Napster, in 2001, to LimeWire in 2010 – have been sued into oblivion because a multitude of courts have found that they were essentially engines of infringement, designed with the specific aim of knowingly encouraging, inducing and/or assisting others in direct copyright infringement of artists' works, and profiting thereby. As a result of these lawsuits, an overwhelming number of these file-sharing sites are now completely inactive and their founding companies are bankrupt. Yet, for most if not all of this time, one

particular group of businesses – led by Defendants CBS Interactive and CNET – have knowingly and willingly participated in and profited mightily from the same massive infringement that engendered large copyright suits against Napster and LimeWire and that ultimately crippled them financially. And they have done so with impunity. In fact, because they owned a number of the most heavily-visited sites in the world for downloading software of all types, Defendants did more to further this massive infringement than Napster or LimeWire ever could by falsely legitimizing it and popularizing it to the masses. As recently as 2010, one could access a legitimate portion of Defendants' sites and download non-infringing, licensed software such as Quickbooks accounting software or Adobe Acrobat, and could *during the same shopping session* download the LimeWire infringement engine, which was clearly intended to be downloaded for infringing purposes. This ambiguity worked even further to Defendants' advantage by making it seem to the casual consumer that a Limewire download had the same legitimacy as a download of licensed office software. In essence, Defendants have taken music piracy from the dorm room to the board room. Thus, while other companies faced heavy statutory penalties and went bankrupt, and music labels banded together to levy practically unconscionable penalties on unemployed college students and housewives, Defendants quietly made billions by inducing those same individuals to break the law, by providing them the software to do it, and then by giving even the least computer-savvy a step-by-step guide as to how to do it. No one has held Defendant accountable for this. Until now.

2. For over a decade, Defendants have shamelessly distributed a vast array of P2P software programs ("P2P clients") to the global public for free, including the now notorious LimeWire software as well many of the most popular and controversial P2P clients, including KaZaa, Morpheus, BitComet, AudioGalaxy and Frostwire. At all times, Defendants knew that these P2P clients were used primarily for purposes of copyright infringement and in many cases were actually designed

specifically to facilitate, conceal and promote copyright infringement. Indeed, much of the P2P software distributed by Defendants includes features designed and intended exclusively for purposes of facilitating infringement and avoiding enforcement. For example, one BitTorrent client presently distributed by Download.com, BitComet, includes a built-in feature that automatically allows users to search for media on the Pirate Bay. As the name suggests, the Pirate Bay is a Swedish website that is literally built to steal. It is described by *The Los Angeles Times* as "one of the world's largest facilitators of illegal downloading" and "the most visible member of a burgeoning international anti-copyright or pro-privacy movement." Defendants' widespread distribution of BitComet and similar programs has helped the Pirate Bay become the 88th most popular website in the world as of July 2011.

3. Defendants furthered the massive infringement carried out through the P2P applications they distributed and popularized by providing detailed reviews that included information regarding the suitability of the clients for copyright infringement as well as instructions and tips on how to use the P2P software to infringe. On cnet.com, Download.com, and other CBS Interactive-owner websites, the Defendants offered videos, articles, and other media that instructed how to use P2P software to locate pirated copies of copyrighted works and remove electronic protections placed on digital music files in order to prevent infringement.

4. If copyright law ever allowed Defendants to play the part of innocent purveyor of seemingly legitimate copying and "sharing" tools (and it is questionable that it ever would have here), modern copyright jurisprudence certainly will afford Defendants any such relief. Defendants are decidedly *not* innocent parties distributing a technology meant for legal means that just happens to be used by a few malevolent wrongdoers to infringe. *See, e.g.,* Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417, 104 S. Ct. 774 (1984). Nor is this a case where a defendant simply linked users to a website where infringement occurred or

for which it provided advertising and had no feasible means of preventing the infringement. *See, e.g.,* Perfect 10, Inc. v. Amazon.com, Inc., 487 F.3d 701 (9th Cir. 2007). Here, Defendants directly provided users that they knew to be actively and unlawfully copying Plaintiffs' works with the tools necessary to accomplish that infringement, along with instructions on how to most effectively use those tools. But they did not even stop there – Defendants actually encouraged the infringement in web postings, videos and radio shows. Defendants are also not innocent third parties only tenuously connected to infringement; rather, they have actively distributed a vast array of software, based upon various different technologies, but all with the object of promoting infringement. *See, e.g.*, Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd., 125 S. Ct. 2764 (2005). By their own independent acts, Defendants intentionally encouraged a particular, infringing form of use by the users of the "file sharing" platforms Defendants distributed. *See, e.g.,* Arista Records LLC v. Lime Group LLC, 2011 WL 1742029 (2011); Columbia Pictures Industries, Inc. v. Fung, 2009 WL 6355911 (C.D. Cal). Far from being innocent purveyors of "sharing" technologies co-opted by an international piracy community, Defendants were in fact among the architects and developers of that international piracy community and received billions in profits from their efforts.

5. The underlying irony in this case is that, despite its endemic inducement of the infringement of Plaintiffs' songs, Defendants' parent, CBS, does not hesitate to cast itself as a defender of intellectual property rights when it concerns its own financial interests. For example, Defendants' parent company, CBS, routinely harasses individuals and small websites which post small portions of its own programming with "cease and desist" letters threatening crushing litigation. When that does not work, it does not hesitate to sue. For, example CBS has sued a company owned by one of the Plaintiffs in this case, claiming that the website's mere streaming of a portion of its U.S. news broadcasts has caused "loss of control over the distribution of plaintiff's broadcast signals and copyrighted programming,"

and asking for an order barring the website from streaming the shows. Of course, in that case CBS ignored the relevant legal distinction between that conduct and the conduct alleged herein – namely, that Section 111 of the Copyright Act authorizes "secondary transmissions of copyrighted works embodied in primary transmissions" and so is in no way like Defendants' promotion of file-sharing technology. Still, CBS's hypocrisy could not be clearer. CBS's and its subsidiaries' conduct in this instance goes beyond mere inducement to infringe; CBS's selective ignorance of copyright laws through CNET combined with its readiness to abuse the same laws and its superior market power to put smaller companies out of business for legitimate, protected rebroadcasts of its own programs, constitutes unfair and/or anti-competitive business practices as well. Though it is referenced in this Complaint only to add context and foundation to the claims here, this latter point is the subject of an investigation being conducted by smaller re-broadcasters such as plaintiff Alki David's FilmOn into potential additional actions for anti-competitive claims and/or unfair business practices on the part of CBS and/or its affiliates.

6. Defendants' willingness to talk out of both sides of their mouth with respect to intellectual property rights – at once fiercely defending intellectual property rights when it benefitted them and targetting a laissez faire pro-infringement community when it was more profitable to do so -- is illustrated by the conduct of CNET's co-founder and former CEO, Shelby Bonnie. Bonnie served on CNET's Board of Directors until March 2007 and was an executive and Board member at CNET from 1993 to 2006. As discussed below, during Mr. Bonnie's tenure with CNET, CNET made a fortune distributing millions of copies of Limewire and other file-sharing software designed to infringe, providing how-to guides on using file-sharing software for infringement, thereby targeting *and* growing a community of piracy. In 2005, Mr. Bonnie also began to serve on the Board of Directors for Warner Music Corporation, a position he held until 2010. In 2006, the RIAA, of which Warner Music Corporation is one of the most influential

members, instituted the massive litigation against Limewire that resulted in the 2010 Kimba Woods injunction. During the course of that litigation, Warner Music Corp.'s CEO, Edgar Bronfman Jr., was an outspoken critic of LimeWire and claimed LimeWire caused "devastating" damages to Warner Music Group. Bronfman has been quoted by Bloomberg as stating that he hoped the 2005 Supreme Court ruling against Grokster would see LimeWire shut down voluntarily rather than remain active: "When LimeWire kept operating it frustrated me greatly. It was devastating frankly." Yet, while Bronfman pursued litigation against LimeWire through the RIAA, the co-founder (and for a time still-Board member) Bonnie also served on Warner Music Group's Board. In fact, Warner Music Group recently received a $12 million payment from LimeWire LLC as part of the $105 Settlement negotiated by the RIAA in the LimeWire litigation.

7. As the Courts and private entities such as the RIAA and MPAA have found ways to limit the infringement wrought by P2P systems through extensive and expensive litigation and other security measures, Defendants have continued to promote and distribute the "next wave" of P2P technology designed specifically to provide the newest and most effective way of defeating the efforts to prevent this massive infringement – at all times knowing that the "new" P2P clients and technologies they distributed were being used primarily for the same purposes of continuing and furthering the massive infringement scheme as previous versions. When courts have found specific software publishers or applications that Defendants distributed liable for indirect infringement, Defendants have at best been minimally reactive and have taken the most minimal steps necessary to foster the illusion of compliance with the law. In reality, Defendants know they are aiding and inducing the same old offense, they are just making it harder for the infringer to get caught. For example, after a recent court decision in 2010 holding LimeWire liable for copyright infringement on a virtually unprecedented scale, Defendants stopped distributing LimeWire and some of its more popular sister Gnutella applications

from its website. Defendants, however, continued to promote and distribute extremely popular BitTorrent P2P clients that Defendants knew were, in light of LimeWire's court-ordered demise, the new "next wave" of preferred P2P infringement. Defendants were aware that massive users of LimeWire simply shifted their infringing activities from the LimeWire network to the BitTorrent network. In addition, even after the LimeWire decision, Defendants promoted and sold programs that accessed and used the vast Gnutella network created by LimeWire that survived the court decision.[1]

8. As described more fully below, Defendants' essential role in the massive infringement of Plaintiffs' works renders Defendants liable for that infringement on any of the three doctrines of indirect or secondary liability as articulated and developed in recent precedents concerning P2P technology. Defendants at all times had the ability to control the actions of the direct infringers by refusing to distribute and otherwise promote the software platforms Defendants knew were the engines of the infringers' massive infringement. Defendants at all times also could have ceased their efforts to instruct users as to the means of copyright infringement through this new software, but, in naked pursuit of the dramatic profits they made from that distribution, Defendants chose not to do so. Defendants are also subject to contributory liability, because they had ongoing and specific knowledge of the massive infringement carried out through the P2P software and materially contributed to that infringement by distributing and promoting the software, providing instruction as to its use and relative efficacy for purposes of infringement and ensuring the direct infringers had access to the most

[1] As Defendants were and are well aware, after the litigation concerning Napster and other P2P applications, P2P software developers switched to design strategies that made the networks nearly impossible to disassemble after they were created to ensure that the massive copyright infringement could continue even as Courts found specific P2P applications indirectly liable for infringement.

recent and least detectable infringing technologies. In addition, Defendants induced direct infringement by clearly and purposefully targeting and catering their services to the P2P infringement community. In fact, on information and belief, Defendants specifically encouraged CNET editors to promote and encourage P2P software and, in general, the culture of copyright infringement that evolved in the P2P community. Defendants' promotion of this massive piracy culture has been continuous and long-running – in fact, Defendants publicized and promoted digital piracy even before the advent of modern P2P software and then played a major role in promoting the explosion of piracy caused after Defendants publicized Napster and the rest of the first wave of P2P programs.

9. Defendants have been the main distributor of several of the most prominent P2P software platforms. Defendants promoted these P2P systems in order to directly profit from wide-scale copyright infringement. For example, Internet users downloaded more then *220 million* copies of LimeWire software from Defendants' website, Download.com, prior to its belated removal from Defenants' website after a federal injunction effectively shut LimeWire down. This consisted of 95 percent or more of all copies of LimeWire that were downloaded until LimeWire was shut down by Court Order. Download.com also was and is a major source for other P2P software applications, including Audiogalaxy, KaZaa, Grokster, Morpheus (174 million downloads), Phex, BitComet and FrostWire (32 million downloads). Defendants received massive amounts of revenue from P2P providers pursuant to a "Pay Per Download" program and also from advertising revenues generated by advertisements placed on the download screens for P2P software. Defendants' business model has been so dependent upon P2P and file sharing applications that entire pages of Download.com are designed specifically to list and categorize these software offerings. In fact, Defendants were well aware that these software applications were used overwhelmingly to infringe when they

first partnered with LimeWire and other P2P providers, but ignored this fact in exchange for a steady stream of income.

10. Defendants furthered and enabled the massive P2P piracy scheme by shepherding users from old technologies facing legal trouble to the most recent and hardest to detect P2P technology. For example, after the court order against the early P2P platform Napster, on March 29, 2001, CNET published an article titled "You Don't Need Napster to Keep the Music Playing." The article notes that "music lovers" should be feeling "besieged" because "teams of supervillains" such as the RIAA were "working hard to prevent you from sharing your favorite music online." The article asks whether, after Napster becomes a fee-based service, "downloaders hungry for free music find MP3s outside of the famous feline file-sharing application." CNET's "PowerDownloader" laments that it "may be too late to save Napster" but suggests various P2P alternatives to Napster that "will let you download and share music to your heart's content." PowerDownloader then suggests LimeWire and the Gnutella application Bearshare as viable P2P alternatives to Napster.

11. CNET often attempts to cast itself as merely a "news" outlet that publishes articles concerning technology and consumer electronics. However, particularly with respect to the infringing file-sharing software it distributed and promoted, CNET was most certainly not a neutral "journalist" passively and objectively reporting on new technology. To the contrary, CNET abandoned all plausible claims to any kind of "news" function – which legitimate function might entail, for example, merely reporting on how Bittorrent and LimeWire were being used for infringement by others – and instead chose to target the infringement community, actively distribute and promote the infringing file-sharing software, and profit heavily from doing so. Inducing infringement, not reporting on it, was Defendants' business model. As described further below, Defendants' words and

deeds show a clear purpose to cause and profit from third-party acts of infringement. As the United States Supreme Court held in its groundbreaking *Grokster* opinion:

> Inducement liability goes beyond [encouraging a particular consumer to infringe copyright], and the distribution of a product can itself give rise to liability where evidence shows that the distributor intended and encouraged the product to be used for infringement. In such a case, the culpable act is not merely the encouragement of the infringement but also the distribution of the tool intended for infringing use. 545 US 940.

In this case, Defendants' culpable acts included, among others described in detail below, both the distribution of the infringing tool and the promotion of their infringing uses. This is not the function of legitimate journalism.

12. As in the *Grokster* opinion, here Defendants' unlawful objective is unmistakable and "goes beyond distribution as such and shows a purpose to cause and profit from third-party acts of infringement." Id at 941. As the district court noted on remand in the *Grokster* case, "Plaintiffs need not prove ... specific actions, beyond product distribution, that caused specific acts of infringement. Instead, Plaintiffs need prove only that ... [Defendants] distributed and product with the intent to encourage infringement." 454 F Supp 2d 966, 984 (CD Cal 2006). There is no doubt that there is evidence of infringement on a massive scale here. There is also overwhelming evidence of Defendants unlawful objective and intent to encourage infringement. Through the articles and reviews described in detail below that provided instructional manuals for using P2P software to infringe copyrights, Defendants broadcasted (and continue to broadcast) a message designed to induce others to infringe copyrights. In addition to that direct evidence, there is a mountain of evidence from which an unlawful objective is clearly and readily inferred. Defendants' promotional efforts, advertising efforts, actual advertising and communications expressed (and continue to express) an intent to target the illegal, infringing part of the P2P community. In particular, throughout its history, Defendants have targeted former users of prior, "dead" infringing technologies like Napster and actively promoted the "next wave" of new, as-of-yet not shut down, technologies. As Defendants and the world are well aware, a significant part of the

P2P file-sharing community exists with the sole purpose of finding new ways to infringe after old technologies are ruled by courts to be illegal and shut down. This community was not only encouraged and aided in its purpose through Defendants' distribution network, it became among Defendants' most loyal (and most profitable) group of customers. Defendants' intent to target this infringing group is at least implicit, if not explicit, in the reviews and "file-sharing smackdowns" published by CNET, and on information and belief was an express goal clearly articulated in internal communications and advertising designs. Defendants never took any affirmative steps to diminish the use of P2P software for infringement (aside from the self-serving action of ceasing to distribute certain technologies after they were held infringing by a court and the posting of meaningless and ineffectual messages). In addition, Defendants' business model depended on the high-volume distribution of file-sharing software that was overwhelmingly used for infringement. Defendants furthermore provided instructions on how to use the software it distributed for infringing purposes, such as how to locate and download copyrighted material. The software products distributed by defendant were developed and designed to ensure their use for infringing purposes. Defendant was aware of these design goals and indeed, touted and promoted features of the programs designed for infringement. At times under the guise of "editorial comment," and the additional promotion of certain technologies, Defendants also took active steps to protest and frustrate the enforcement efforts of copyright holders.

13. Nothing about Defendants' promotion of P2P and digital piracy is accidental or incidental. Defendants made conscious business decisions to find ways to profit from the massive copyright infringement taking place over P2P networks, and indeed did their best to popularize and expand P2P networks in order to increase their profits. Defendants' activities vis a vie P2P software is especially egregious, given that CBS' Defendants own the rights to a massive catalog of television programming and other intellectual property that has been and continues

to be persistently infringed over the same P2P networks it helped assemble and grow through CNET and Download.com. Defendants made a cynical decision to attempt to recapture whatever profits lost through the infringement arising from P2P networks by profiting from the popularity of those networks through Download.com and CNET P2P revenues. By helping construct, expand and preserve the P2P networks, Defendants did much more than "recoup" their (self-inflicted) losses from digital piracy, but rather directly and massively profited from the infringement of all the artists whose work was illegally shared on P2P networks. Defendants never offered to share any of the income made from their promotion of infringement with Plaintiffs or anyone other copyright owners whose work was persistently infringed by P2P systems distributed and promoted by Defendants.

14. Plaintiffs are artists who work in the fields of music and film. They wrote, produced, distributed, sold and/or licensed songs, movies and other copyrighted works that have been infringed by Defendants, including without limitation through Defendants' distribution and promotion of P2P software that has been used to copy and distribute Plaintiffs' works. Defendants must compensate Plaintiffs for the damages they caused and be ordered to cease future infringement.

JURISDICTION AND VENUE

15. The Court has subject matter jurisdiction over the claims asserted herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).

16. The Court has personal jurisdiction over Defendants because each resides and/or may be found in California, does systematic and continuous business in California, and has performed acts directed at and causing harm in California which give rise to this Complaint.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), (c) and 28 U.S.C. § 1400(a).

PARTIES

Plaintiffs

18. Plaintiffs are the legal and beneficial owners of copyrighted works that have been infringed by Defendants.

19. Plaintiff Alkiviades David is a citizen of the United Kingdom and resident of the State of California.

20. On information and belief, Plaintiff Sugar Hill Music is or was at relevant times a corporation organized under the laws of the State of New York with offices in New York and California.

21. Plaintiff Solid Productions is a resident of the State of California with its principal place in Los Angeles, California.

22. Plaintiff Steven Batiz, professionally known as DJ CMS, is a citizen and resident of the State of New York.

23. Plaintiff Tony Bell, professionally known as TC Izlam, is a citizen and resident of the State of California.

24. Plaintiff Detron Bendross is a citizen and resident of the State of Florida.

25. Plaintiff Derrick Braxton is a citizen and resident of the State of New York.

26. Plaintiff Reginald Brooks is a member of the hip hop group High Council and a citizen and resident of State of New York.

27. Plaintiff Elijah Brown, professionally known as DJ Chipman, is a citizen and resident of the State of Florida.

28. Plaintiff Horace Brown is a citizen and resident of the State of New York.

29. Plaintiff Oscar Brown is a citizen and resident of the State of New York.

30. Plaintiff Luther Campbell is a citizen and resident of the State of Florida.

31. Plaintiff Jonathan Carlton, professionally known as Lord Piff, is a citizen and resident of the State of New York.

32. Plaintiffs Attrell and Jarrett Cordes, professionally know as PM Dawn, are citizens and residents of New Jersey.

33. Plaintiff Solomon Conner is a member of the hip hop group H-Town and is a citizen and resident of the State of Texas.

34. Plaintiff Dayquan Davis, professionally known as Droptop Slim, is a member of the hip hop group Square Off and is a citizen and resident of the State of New York.

35. Plaintiff Douglas Davis, professionally known as Doug E Fresh, is a citizen and resident of the State of New York.

36. Plaintiff Kareem Davis, professionally known as Manson Batez, is a citizen and resident of the State of New York.

37. Plaintiff Solamin Davis, professionally known as Trips, is a member of the hip hop group Square Off and is a citizen and resident of the State of New York.

38. Plaintiff Emmanuel Ramone DeAnda is a member of the R&B group Pretty Ricky and a citizen and resident of the State of Florida.

39. Plaintiff Drew Carter, professionally known as Grandmaster Dee, is a citizen and resident of the State of New York.

40. Plaintiff Nacolbie Edwards, professionally known as GLAM.I.ROCK, is a citizen and resident of the State of California.

41. Plaintiff Vancito Edwards, professionally known as Dr. Luv, is a citizen and resident of the State of New York.

42. Plaintiff John Fletcher, professionally known as Ecstasy, is a citizen and resident of the State of New York.

43. Plaintiff Willie Finch, professionally known as Chill Will, is a citizen and resident of the State of North Carolina.

44. Plaintiff Isaac Freeman, Jr., professionally known as Fat Man Scoop, is a citizen and resident of the State of New York.

45. Plaintiff Darryl Gibson, professionally known as Positive K, is a citizen and resident of the State of South Carolina.

46. Plaintiff Mitchell Graham, professionally known as Peso 131, is a citizen and resident of New York.

47. Plaintiff Jalil Hutchins is a member of the hip hop group Whodini and is a citizen and resident of the State of Georgia.

48. Plaintiff Emanon Johnson, professionally known as Emanon, is a citizen and resident of the State of New York.

49. Plaintiff Keith Jones, professionally known as DJ Alamo, is a citizen and resident of the State of New York.

50. Plaintiff Oran "Juice" Jones is a citizen and resident of the State of Texas.

51. Plaintiff Tarsha Jones, professionally known as Miss Jones, is a citizen and resident of the State of New Jersey.

52. Plaintiff Nailah Lamees, professionally known as Nicole Lyles, is a citizen and resident of the State of California

53. Plaintiff Dana McCleese, professionally known as Dana Dane, is a citizen and resident of the State of New York.

54. Plaintiff Barry Moody, professionally known as Barry Bee, is a citizen and resident of the State of New York.

55. Plaintiff Jeff Redd is a citizen and resident of the State of New York.

56. Plaintiff Quame Riley, professionally known as Lil' Vicious, is a citizen and resident of the State of New York.

57. Plaintiff Anthony Robinson, professionally known as Pretty Tone Capone, is a citizen and resident of the State of New York.

58. Plaintiff Nicholas Sanchez, professionally known as Nick Gleamz, is a member of the hip hop group Square Off and is a citizen and resident of the State of New York.

59. Plaintiff Jonathan Shinhoster, professionally known as "J-Shin," is a citizen and resident of the State of Florida.

60. Plaintiff Diamond Smith, professionally known as "Baby Blue," is a member of the R&B group Pretty Ricky and a citizen and resident of the State of Florida.

61. Plaintiff Reminisce Smith, professionally known as Remy Ma, is a citizen and resident of the State New York.

62. Plaintiff Gerald Spence, professionally known as Jerry Hubcap, is a citizen and resident of the State of New York.

63. Plaintiff Chris Stokes is a citizen and resident of the State of California.

64. Plaintiff Irene Stokes, professionally known as Mama, is a citizen and resident of the State of California.

65. Plaintiff Juanita Stokes is a citizen and resident of the State of California

66. On information and belief, William Tennyson is deceased and the Tennyson Estate is located in the State of Georgia.

67. Plaintiff Carl Thomas is a citizen and resident of the State of New York

68. Plaintiff Jeff Thomkins, professionally known as JT Money, is a citizen and resident of the State of Florida.

69. Plaintiff Rondell Turner, professionally known as Ron Brownz, is a citizen and resident of the State of New Jersey.

70. Plaintiff Ricky Walters, professionally known as Slick Rick, is a citizen and resident of the State of New York.

71. Plaintiff Kevin Williams, professionally known as DJ Kev-Ski, is a citizen and resident of the State of New York.

72. Plaintiff Yolanda Whitaker, professionally known as Yo Yo, is a citizen and resident of the State of California.

73. Plaintiff Joseph Williams, professionally known as Just-Ice, is a citizen and resident of the State of New York.

74. Plaintiff Raheem Williams, professionally known as Amen, is a citizen and resident of the State of New York.

75. Plaintiff Case Woodward, professionally known as Case, is a citizen and resident of the State of New York.

Defendants

76. Defendant CBS Interactive, Inc. is a Delaware corporation with its principal place of business at 235 Second Street, San Francisco, California 94105.

77. Defendant CNET Networks, Inc. is a Delaware corporation and a fully-owned subsidiary of CBS Interactive. CNET's principal place of business is 235 Second Street, San Francisco, California 94105.

78. Each Defendant acted in concert with each other and as the principal, agent, or joint venture of, or for, other Defendants with respect to the acts, violations, and common course of copyright infringement alleged by Plaintiffs.

FACTS

P2P File Sharing Systems

79. P2P file sharing networks are systems which allow users to connect to one another and transfer files located on each other's hard drives. In order to participate in these networks, each user must download and install on the user's computer a software program—commonly known as a "client"—that facilitates the file transfers. Examples of P2P clients include Napster, Aimster, KaZaa, Morpheus, Grokster and LimeWire.

80. P2P clients provide an interface for users to search and obtain copies of files located on their respective file sharing networks. Depending on which P2P client is employed, users can filter results by type of file (*e.g.*, audio or video), file name, artist and other identifying information. Many P2P clients, including those found liable in some of the most infamous copyright infringement cases of the past decade, are (or were) specifically designed to locate music files by name of the song or artist and are (or were) targeted at audiences well-known for their desire to infringe copyrights.

81. File sharing networks depend on users to actually "share" their files. P2P clients are specifically designed to facilitate this process. In most cases, the client automatically searches a user's computer for "shareable" files, typically audio and video files. Clients also often penalize users with slower download speeds or other decreased functionality if they do not share "enough" files with other users on the network. The purpose of this functionality is clear: users must share files if they wish to enjoy the full benefits of the P2P network, and the client will make all files available for sharing unless the user specifically opts out of this option.

82. As Napster's one-time success proved, there is a large demographic of internet users who seek to obtain free copies of their favorite music regardless of copyrights. The sheer size of this group demonstrated that P2P clients could generate massive revenues if they designed a user experience that expressly catered to copyright infringement, thereby drawing users to their advertisements and pay services. When Napster was shut down due to court-ordered injunction, numerous P2P clients stepped in to fill the void, a fact well known and highlighted by Defendants to their users. These P2P clients, including but not limited to Aimster, Grokster, KaZaa, Morpheus and LimeWire, actively marketed themselves to Napster's former customers, a task that Defendants aided at every step. Now that LimeWire has been shut down, another generation of P2P clients based on the BitTorrent technology, including BitComet, BitTorrent and uTorrent, have stepped

in to fill the void left by LimeWire – again, a fact well known to Defendants and its users. Here again, the BitTorrent clients are actively marketing themselves to the same infringement community that used LimeWire and other Gnutella clients and here again, these clients have received Defendants' aid at every step.

LimeWire and the Gnutella Network

83. To use just the most recent P2P client found liable for copyright infringement, the LimeWire began providing its P2P network in or around August 2000. In order to attract users to their service, LimeWire advertised on other P2P networks and made statements comparing LimeWire's user experience to other file sharing clients. Above and beyond mere advertisements, LimeWire specifically designed its client to be highly efficient at finding and downloading copies of copyrighted sound recordings.

84. There were two forms of the LimeWire software (updated in several versions over the years, each of which was made available on Download.com). The first was "LimeWire Basic," a free version of the P2P client. The second was "LimeWire PRO," which sold for approximately $19 and ostensibly provided purchasers with faster downloads. Both forms of LimeWire were compatible with each other, and users could share files with each other no matter which form of LimeWire they possessed.

85. When a user first installed LimeWire, the program automatically searched their hard drive for media files and made them available for other users to download via the P2P network. In order to ensure that the maximum number of files were "shareable" at any given time, LimeWire was designed to automatically open when a user started their computer. This meant that turning on one's computer automatically logged the user into the P2P network and made the selection of files across that network as vast as possible.

86. Another method that LimeWire employed to ensure the maximum amount of available files—thereby increasing LimeWire's reputation as a desirable

copyright infringement tool—was to maximize the number of available shared files by automatically saving them in a "shared" folder on the user's hard drive. If a user turned off this feature or opted to have their files saved in a non-shared folder, they were labeled a "freeloader" by the LimeWire software and ran the risk of being refused future downloads by other users who could choose to block sharing with freeloaders. LimeWire actively discouraged freeloaders on its website, stating, for example, "If you're not sharing enough files, users with certain connection preferences won't let you connect to them for downloading. For this reason, we recommend all LimeWire users share generously with one another." In other words, share files or you will not be able to infringe as easily.

87. LimeWire also designed itsinterface to maximize users' ability to quickly locate and obtain copies of copyrighted materials. Users could search by music genre, song name, artist name or album name. When searches yielded multiple sources for the same copyrighted materials, LimeWire displayed the connection speed of each source (*i.e.*, how fast that user's internet connection was) so that the searching user could choose the fastest download option. Using these features in combination, LimeWire users were able to locate and download copyrighted sound recordings in the shortest amount of time possible.

88. On May 25, 2010, in the United States District Court for the Southern District of New York, Judge Kimba Wood found LimeWire liable for massive copyright infringement. Later that same year, Judge Wood permanently enjoined LimeWire from all further infringement activities. In doing so, the Court found that, among other things:

- LimeWire "intentionally encouraged direct infringement" by its users;
- the LimeWire software application was used "overwhelmingly for infringement" and allowed for infringement on a "massive scale";
- LimeWire and its principals knew about "the substantial infringement being committed" by LimeWire users;

- LimeWire marketed itself to Napster users, who were known copyright infringers, and promoted LimeWire's infringing capabilities to those users;
- LimeWire employed a business model that depended on mass infringement, relying on "massive user population generated by" the LimeWire software's "infringement-enabling features"; and
- LimeWire "actively assisted infringing users" in their infringement efforts and tested the LimeWire client software by searching for copyrighted material.

89. It was only *after* the order issued by judge Kimba Wood in *Arista Records LLC v. Lime Group LLC*, 2010 WL 4256219 (S.D.N.Y.)(stipulated injunction) – which required LimeWire to disable the "searching, downloading, uploading, file trading ... and/or all functionality" of the software and ordered LimeWire to do its best to disable copies of the software already on the market – that Defendants removed LimeWire and certain other popular Gnutella applications from their websites. However, even then, Defendants *at the very least* were grossly negligent in their efforts to cleanse their web sites of Gnutella-based applications, and vestigial references to Gnutella-based applications and even references to LimeWire-based technology remain on Download.com. Ironically, on October 26, 2010, CNET reported on the injunction against LimeWire in an article by Greg Sandoval titled "Judge slaps Lime Wire with permanent injunction." A commenter on that article noted "Limewire is So 2001. All the real Pirates moved on to bt [Bittorrent] or slsk [soulseek, another P2P technology]."

90. Of the many P2P clients that remain in existence, most include features nearly identical or identical to those found in LimeWire. Phex, as just one example, is an open source, multiplatform, spyware free Gnutella client. The publisher's description available on Download.com emphasizes its suitability for file-sharing activities: "You can search for, download, and share all types of file formats ... it is compatible with LimeWire, BearShare, Morpheus and all other P2P Gnutella

clients." Phex users continue to trade copyrighted material, including works belonging to Plaintiffs, over the Gnutella network constructed and promoted by Defendants and others.

BitComet and the BitTorrent Network(s)

99. BitTorrent is another kind of P2P file-sharing protocol developed after the Gnutella protocol. As with Gnutella and P2P protocols, BitTorrent users download content directly from the computer of other users and not directly from a centralized server. Unlike other earlier protocols, however, BitTorrent introduced a novel method of downloading content. BitTorrent works by downloading discrete pieces or parts of a digital file from a number of other computers simultaneously. That is, the file being shared is not downloaded from a central server or even a specific peer node as in the Gnutella network. Rather, BitTorrent allows users to join a "swarm" of hosts to download and upload from each other at the same time. A user who wants to upload a file first creates a small "torrent" file that describes the content they wish to share and then distributes that torrent by conventional means such as email or making it available for download from a website. Then, the user makes the content-containing file itself available by acting as a "seed." Those who obtain the torrent descriptor file can then give it to their BitTorrent nodes which, acting as peers, download it by connecting to the seed and/or other peers. The file being distributed is divided into segments called pieces. As each peer receives a new piece of the ultimate file it becomes a potential source of that piece to other peers, thereby freeing the original seed of the need to transfer a copy of the file to every user who wants a copy. By this means, BitTorrent spreads the task of distributing a digital file among all users who want that file. Using BitTorrent, it is possible for the original seed to send out only one single copy of the file itself but thereby enable an unlimited number of distributions to other users. BitTorrent technology relies on a number of mechanisms to accomplish the download of a given file, including: 1) a software application that users use to download the

content called a client; 2) "torrent websites" which allow users to search for and then download the torrents they desire; and 3) servers, known as "trackers," which manage the download process. In a BitTorrent system, the downloading of content occurs from multiple sources at the same time, thereby allowing for larger downloads to be completed more efficiently. BitTorrent clients and trackers work in tandem to allow users to visit a torrent site, download digital files, keep track of those downloaded files, as well as discover additional persons from which to download the file.

100. BitTorrent has become an extremely popular means of transferring files over the Internet. It is now one of the most common protocols for transferring large files and numerous BitTorrent clients are available for a variety of computing platforms. By some estimates, approximately 50% of all Internet traffic is BitTorrent activity. BitTorrent has also been widely adopted among digital pirates and has become one of the preferred means of digital piracy, particularly in the wake of the recent court decision shutting down LimeWire and impacting the Gnutella network. A simple Google search of "torrent music" yields a half billion results and page after page of websites providing copyrighted music and movies via torrent. Features of the BitTorrent technology readily lend itself to illegal file-sharing. For example, the sharing of numerous discrete portions of files makes it harder for ISPs to track and block file-sharing activity. Many BitTorrent clients are specifically designed to locate music files, disguise the download of copyrighted material and were targeted at notorious copyright-infringing audiences.

101. Through its website Download.com, Defendants have been one of the premier distributors of BitTorrent software. The programs uTorrent, Frostwire and BitTorrent have collectively been downloaded approximately a hundred million times from Download.com. The PC-version of uTorrent was downloaded over 90,000 times in the first week of October 2011. Defendants have actively promoted the download of BitTorrent clients. For example, at the bottom of the

Download.com web-page containing a link to download uTorrent , CNET provides an section called "MORE POPULAR P2P & FILE-SHARING SOFTWARE DOWNLOADS." The five programs listed in this section on October 5, 2011 were all BitTorrent protocols: uTorrent, BitTorrent, BitComet, Frostwire and Movie Torrent. The section provides links to the download page for each application, as well as a link that invites users to "See all P2P & File-Sharing Software downloads." BitComet's website displayed and still displays a "Download Now" button directly linking to Download.com. Even Defendants removed certain popular Gnutella clients from its website in the aftermath of the court decision concerning LimeWire, it has continued to provide nearly unrestricted access to the BitTorrent applications that were designed for the same infringing purposes as the Gnutella clients and continue the massive program of piracy carried out by those applications.

102. At all times, Defendants were aware that BitTorrent clients were designed for and marketed toward the illegal downloading of copyrighted music. Defendants have known about BitTorrent's use for massive infringement since the very inception of the technology. On January 5, 2005, CNET News staff writer John Borland penned an article entitled "A New Hope for BitTorrent?" The article concerns changes to the BitTorrent protocol specifically enacted to respond to litigation initiated by copyright-owners. "Just weeks after legal attacks crippled the popular BitTorrent file-swapping community, an underground programmer from its ranks has stepped forward to announce new software designed to withstand future onslaughts." The article remarked on the "shifting loyalties … now familiar phenomenon in the peer-to-peer world, as lawsuits from the record industry or Hollywood studios have repeatedly driven users away from once-popular [peer to peer networks] … in each case, new services have eagerly risen to take their place, despite legal risks" (emphasis added). The litigation initiated by copyright holders against BitTorrent "raise[d] the potential of mass migration for millions of people

around the world who have grown accustomed to using the technology to download movies, TV shows, music and software." At that time, BitTorrent was "uniquely vulnerable" to legal attacks from copyright owners, because it has required that links to torrents be posted on websites. The article notes that BitTorrent responded to the threat of litigation by transforming BitTorrent "into a decentralized, searchable network similar to KaZaa or eDonkey." Defendants knew, then, that BitTorrent's very network architecture reflected a conscious decision to shield copyright infringement from legal process. Defendants were also aware that, after BitTorrent's architecture re-design and decentralization, the network remained a massive engine of software infringement. In 2008, the publisher's description of BitComet available on CNET.com stated that "BitComet's software client allows you to quickly download high-quality digital content such as video, music & games ... it leverages a community of over 70 million users to securely deliver files to your PC faster than anything else out there." A June 18, 2007 news article available on CNET, stated "while the technology remains a really great way to take the burden off servers and put it onto the user, it remains a hotbed for piracy of music, movies, software, and other intellectual property" (emphasis added).

103. BitComet and uTorrent incorporate a number of features designed to facilitate and enable copyright infringement:

- BitComet recently introduced a VIP feature that adds support for "Anonymous Downloads." The service expands BitComet's paid subscription service which provides for accelerated downloading of copyrighted content. In April of this year, BitComet expanded the service to include an option to download all torrents anonymously, in order to facilitate the downloading of copyrighted material. The "anonymous" downloads are handled by BitComet's own servers exclusively, hiding the IP address of the user. A "BitComet Spokesman" explained the VIP service to the Website Torrentfreak (the

self proclaimed website where "breaking news, BitTorrent and copyright collide"): "If VIP members enable anonymous downloads our remote servers will initiate all peer and tracker communications and download the data on behalf of the VIP member, so the member's actual IP address isn't shared with any of the peers or trackers." BitComet provides VIP plans for $4.99 for a 10 GB plan and a 100 GB plan for $19.99.

- uTorrent contains a feature that allows users to enable a "Protocol Encryption" that allows users to circumvent restrictions designed in part to prevent piracy. Some Internet Service Providers ("ISPs") actively interfere with P2P activities by reducing their bandwidth requirements. This causes uTorrent and other file sharing download speeds to become slow. To avoid this, uTorrent and other clients developed an encryption protocol to prevent ISPs from identifying BitTorrent traffic.
- The Publisher's Description of BitComet available on Download.com notes that BitComet incorporates an "IP Filtering" function. IP filtering is a software feature that protects copyright infringers by blocking the IP addresses of entities such as the RIAA and MPAA that conduct investigations of P2P networks looking for users sharing copyrighted files without permission. IP Filtering software helps pirates evade detection by maintaining a list of the IP addresses used to conduct these investigations while still allowing pirates to communicate and exchange files with "safe" IP addresses.
- The BitComet website contains a section listing popular torrent websites that are ranked by the number of votes they have received from BitComet users. Each torrent website contains a short description. These descriptions unabashedly advertise the availability

of copyrighted material. The website "I Love Torrents" is described as "top quality torrents, one of the 1st to get all the very latest movie and audio torrents." "GunNer TorRemTs" provides BitComet users with "Anything u want, anything u need! Just visit us and we promiss you won't be disappointed." Many of the torrent sites are located in foreign jurisdictions notorious as digital piracy havens.

- Like LimeWire, uTorrent employs various methods to ensure the maxiumum amount of available files (and thereby increasing uTorrent's reputation as a desirable copyright infringement tool) by encouraging users to "seed" files. According to uTorrent's website, "Seeding is where you leave your BitTorrent client open after you've finished your download to help distribute it (you distribute the file *while* downloading, but it's even more helpful if you continue to distribute the full file even after you have finished downloading.) Chances are that most of the data you got was from seeds, so help give back to the community! It doesn't require much – uTorrent will continue seeding until the torrent is removed ... Proper practice is to seed until the ratio of upload:download is at least 1:1." After downloading a file, uTorrent automatically makes the user a "seed" for other downloads. On information and belief, both uTorrent and BitComet employ various measures to discourage users from "leeching" (downloading files without making them available for upload).

104. Defendants continue to provide numerous BitTorrent clients for download and remains an active advocate of the primary uses of the software for infringement. An October 2, 2011 user review of Version 3.0 of uTorrent posted on Download.com listed as a "con" of the program that "Legal issues for uploading

copy-right protected material (no way around it if you download it)." In fact, CNET provides a link to a third-party website to download a BitTorrent client named "Offsystem Anonymous Torrent Download." Next to the Download button, Download.com displays a screenshot from the application showing the P2P application in operation. In the screenshot, a number of copyrighted music files are readily visible, including Black Sabbath's "The Wizard," "Lay All Your Love on Me" by Erasure, "I'll be a long time" by the Offspring and even the software program Microsoft Office 2007. CNET's sister site ZDNet.com describes the program as a "next generation" P2P platform even more undetectable than existing BitTorrent technology: "The idea of the Offsystem is to be [sic] online storage solution all over the world by a constantly growing peer-to-peer network: Upload a file into the Offsystem in Asia, turn off the computer and download it from the Offsystem network with another machine in America a few weeks later. The file will still be available in the Offsystem. That is the library of the future for any kind of media and allows anonymous downloading of files. No tracking of the IP is possible, as only blocks are shared, not files." Offsystem promises a new kind of P2P system that guarantees anonymity to its users.

Defendants' Participation In And Profiteering From Infringement

105. Download.com, found at http://download.cnet.com, is one of Defendants' stable of websites. As the name implies, Download.com offers programs and applications for download. In addition to this service, the site also provides reviews written by CNET editors, allows program-specific comments from users, and is organized in such a way as to maximize a user's ability to find and obtain copies of the program or application they desire.

106. Software publishers must be approved to have their software listed on Download.com. In order to do so, they first go through an application process on Upload.com, found at https://upload.cnet.com. On this site, Defendants advertise that software publishers should "[p]romote your software on the *largest distribution*

network in the world." As they further state, "Upload.com is the central destination to submit and promote your software on CNET Download.com and other sites in our growing distribution network."

107. After a software publisher creates a developer account, which requires Download.com staff approval, they may submit their program for review. In this application, the publisher categorizes the program and fills out a detailed explanation of its features and purpose. After reviewing this application, Download.com's staff decides whether to permit the program on Download.com and where to place it on the website.

108. As developers release new versions of their software, they must also update their application to Download.com. Included in this update are explanations of new features, new functionality, improvements in user interface and experience, and any other difference between the new and previous version. As with the initial application, the Download.com staff reviews and decides whether to allow the listing.

109. At each step in the initial application and subsequent update process, Download.com possessed the ability to refuse to list the publisher's software, thereby conferring upon Download.com the ability to supervise and control any infringing activity taking place on its website. If Download.com staff did not believe the software should be accepted, they could either outright refuse to list it or mandate changes to the program itself. At no point was Download.com obligated to list programs submitted for approval to Upload.com. Further, Download.com was within its full rights to *remove* listings at its discretion. Defendants also could have simply stopped reviewing the software being used to carry out large-scale infringement in ways that informed users of the best and least detectable ways of downloading copyrighted material, deleted user comments or reviews that also highlighted infringing uses of software and declined to publish materials that encouraged the "wild west" mentality of the pirate community. The only thing

preventing Download.com from publishing and disseminating information that enabled copyright infringement was Defendants' own policy of promoting and profiting from such infringement.

110. Defendants generate revenue from Download.com in several ways. First, software publishers have the option to pay for a "Basic" or "Premium" listing package on Upload.com. Although there is also a "Free" option, the former two types of package offer increased benefits for a monthly subscription fee.[2] Second, companies may advertise directly with Download.com and seek to place their ads on popular download listings. Third, Defendants advertise their other websites on Download.com, driving traffic and revenue to those sites. Fourth, Defendants offer a program called Pay-Per-Download ("PPD"), which they push heavily on Upload.com and which offers several unique options.

111. PPD is described as a "performance-based program that allows you to increase downloads by up to 150 percent, while maintaining control of your costs." Participants in the program obtain a "top-five 'sponsored' listing" for their product in their respective Download.com category, out-of-category promotional rotation on Download.com pages, including on "post-download pages and other placements in [Defendants'] network," and 10 additional keywords to enable Download.com users to find the publisher's program. Participants also have the option to pay only for initiated downloads from unique users and the ability to choose "the bid amount and monthly spending cap for your campaign."

112. PPD is designed to offer adaptable advertising options for software publishers and generate strong cash flow for Defendants. On information and belief, several P2P client publishers, including LimeWire , used and use the PPD program

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[2] In the past, Defendants also offered different listing packages, including "Silver" and "Platinum" packages. These packages offered increased benefits akin to their current iterations, the Basic and Premium Upload.com accounts.

and generated substantial revenues for Defendants. In 2009 alone, Juniper Research estimated that Defendants generated $10 billion in revenues from the PPD program. At the time, LimeWire was and had been Download.com's top download for years. Several other P2P clients were variously in Download.com's "Top" downloads in the same period.

113. Defendants also derived substantial revenues from advertisements of which they were aware on Download.com and other CBS Interactive websites that urged users to infringe copyrights by downloading P2P clients from Download.com. In May 2011, for example, users who searched for LimeWire, FrostWire, KaZaa, LuckyWire, and other P2P clients on Download.com found advertisements saying "Download Music for Free," "Free Music Download," and "Download Music Free," "100% Free Music Downloads," and "Download Free MP3s." Substantively similar advertisements were available and prevalent on Download.com and other CBS Interactive websites from at least 2000 through the present, and they generated substantial revenues for Defendants from users who were seeking copyright infringement tools.

114. At all relevant times, Defendants possessed the right and ability to prevent these advertisements and/or require that they not urge users to infringe copyrights. As CBS Interactive states in its "Advertiser Acceptance Policy," "CBS Interactive reserves the right to: (a) refuse any advertising/advertisers; ... (c) take down ads it deems inappropriate; and (d) make changes or additions to this policy." It further states that "Final and ongoing approval of all creative material [*i.e.*, advertisements] is at the sole discretion of CBS Interactive." Despite this control and review, however, Defendants never opted to ban advertisements calling for infringement and, instead, supported these ads because they drew in substantial revenue. At all times relevant to this dispute, Defendants were aware that the ads on Download.com and its affiliate websites promoted copyright infringement via LimeWire, BitTorrent and other P2P clients.

115. Additionally, due to P2P clients' popularity, publishers of other types of software advertised heavily on P2P download screens, thus generating additional revenue streams for Defendants due to P2P client listings on Download.com.

116. Download.com hosted copies of LimeWire for download on its servers. It also has variously hosted other such notorious infringers as Napster, Morpheus, KaZaa, BearShare, BitTorrent and uTorrent. Today, even after the United States District Court's recent infringement findings and permanent injunction against LimeWire, Download.com *still* hosts and promotes download links for P2P clients it knows are meant for copyright infringement. Upon information and belief, Defendants have generated and continue to generate substantial fees from the P2P client publishers themselves and advertisers who wish to have their programs listed on P2P client download screens. Defendants also generate revenues by cross-promoting their websites on P2P client download screens.

117. Because the Defendants own the "largest [download] distribution network in the world," they were particularly valuable partners in the dissemination, promotion, and popularity of the biggest P2P copy infringement tools from the past decade. LimeWire, which was one of Download.com's top downloaded programs for the past 10 years, owed its success to the distribution and promotion it received through Download.com. Upon information and belief, approximately 95 percent of LimeWire downloads occurred via Download.com. Download.com has provided BitComet for download since November 10, 2009. As of October 24, 2011, BitComet was listed as the third most popular "P2P and File-Sharing Software downloads" with 39,298 downloads – trailing only uTorrent and BitTorrent in terms of popularity. It seems that, in the wake of LimeWire's court-ordered demise, Defendants are determined to ensure that the bit torrent family of programs become the latest go-to programs of choice for copyright infringement.

118. In fact, LimeWire's own website displayed a "Download Now" button from CNET that redirected users *to* Download.com when they attempted to

download the client. Other infamous P2P client publishers like BitComet include(d) similar "Download Now" buttons that redirected users from their home websites to Download.com. As Defendants explained in advertisements for the "CNET Button Program" (as it was called), this created a useful symbiotic relationship between the P2P publishers and CNET:

> [T]he [Download Now] button will allow visitors to download your program quickly and easily and increase your exposure to users on CNET Networks. Users frequently zero in on and download software found on CNET Download.com's Most Popular lists. By placing Download Now buttons on your site that direct users to your product details page on CNET Download.com, you will increase the number of people who click the Download Now button on the product details page. This, in turn, will increase your count on our Most Popular list. Once your software appears on these lists, more users will see your title and download it. And, in effect, the more traffic you send to CNET, the more likely you are to increase your visibility on these valuable pages.

119. Due at least in part to the CNET Button Program, LimeWire and other P2P clients specifically designed and promoted for copyright infringement increased their count on Download.com's "Most Popular" list, thereby further increasing their exposure to Defendants' users. With Defendants' help—including measures discussed below and throughout this Complaint—the P2P clients' success fed on itself and bolstered LimeWire, BitComet and other P2P clients' popularity for years. The P2P clients' success, in turn, benefited Defendants tremendously in terms of revenues, exposure, and opportunities to cross-promote other CBS Interactive websites.

120. At all relevant times, Defendants not only knew that LimeWire, BitComet and other P2P clients were meant and designed for copyright infringement, they also worked with the publishers of these programs to maximize

infringement. For each version of LimeWire, for example, Download.com staff corresponded with the LimeWire representatives regarding the features in the client program. These features demonstrated that LimeWire was explicitly designed for copyright infringement. For example, LimeWire (a) included search capabilities that focused on music title, artist, music genre, and other identifying factors of copyrighted sound recordings; (b) provided a "preview" function for the audio player so users could confirm that audio files they wished to download were the actual files they were searching for; (c) punished users who did not share enough files; and (d) in later versions, included a copyright filter but set the default upon installation to "off." Nevertheless, Download.com did not refuse to list LimeWire on its site and did not require that LimeWire include filters or other protections against copyright infringement. Other P2P clients underwent a similarly-streamlined approval process for their infringement software.

121. Although the Defendants' distribution was critical to the infringing P2P systems' success, that was not the extent of their involvement. Defendants also actively promoted the P2P clients on Download.com, explained how users could infringe copyrights to the greatest degree possible, and specifically demonstrated the P2P clients' infringing purpose. Defendants took all of these steps with the intent to encourage and promote copyright infringement.

122. One way that Defendants promoted copyright infringing P2Ps was to write "reviews" of the program and apply a rating on a five star scale. These reviews discussed the program's functionality, features, strengths, and weaknesses. In many instances, they also discussed the purpose of the program and advertised to user demographics already known for copyright infringement that the programs were meant to serve as replacements for other copyright infringement tools. LimeWire and BitComet similarly posted self-serving and targeted explanations of their programs on Download.com in order to promote their product.

123. For example, the Defendants posted a "CNET Editors' Review" on LimeWire on February 12, 2009. CNET editor Seth Rosenblatt noted from the start that LimeWire was a "post-Napster clone" that had evolved into a "leading role as the quintessential Gnutella [protocol] client." He also noted that "LimeWire is the highest-profile P2P application." At the time Defendants posted this review, they knew that LimeWire was embroiled in a lawsuit accusing it of massive copyright infringement, that Napster users were largely interested in copyright infringement, and that several other P2P clients that Download.com hosted over the years and promoted had already been shut down for their own infringement. Nevertheless, the Defendants did not issue a warning that users should refrain from using LimeWire to infringe copyrights. Instead, they pointed out that it was a useful Napster replacement and gave it four-and-a-half stars out of five.

124. Similarly, although Defendants now include a "CNET Editors' note" above its "CNET Editors' review" of BitComet that provides a lukewarm statement that "CBS Interactive does not encourage or condone the illegal duplication or distribution of copyrighted content." Defendants are clearly talking out of both sides of their mouth, as the CNET editors review essentially does the opposite of what the editors' note expressly says CNET does not do, i.e. encourage and condones the illegal duplication of copyrighted material. In its review of BitComet, the CNET editors again highlight features of the program obviously designed to enable infringement, such as "including [BitComet's] links to torrent-aggregating Web sites." Again, as discussed above, here "torrent aggregating websites" is really a euphemism for "websites notorious for allowing the illegal downloading of copyrighted material" – BitComet links users directly to notorious hubs of illegal downloading activity like the Pirate Bay. CNET awarded the program three and half stars (a "very good") and stated "Overall, we think BitComet is worth trying and could become a major torrent app in the future."

125. Download.com users who commented on LimeWire demonstrated that they understood that Defendants were encouraging them to commit infringement. As one user stated, LimeWire's main "Pro" was "free music all day long." Another simply stated that it was "music for free." Another was more detailed, stating "Huge peer base - you can literally find anything you could imagine. No song is impossible." Similar user comments exhibiting the same understanding were posted in response to the many iterations and versions of LimeWire that Download.com hosted for the past decade. Download.com users who commented on BitComet also demonstrated the same understanding. For example, on July 19, 2011 a user said a "Pro" of BitComet was: "Since I mostly download music, I find everything quick and easy to find and download either full albums or singles with no problem ... I always recommend [BitComet] to everyone who wants to get music or anything that requires downloading." This same user titled his review of BitComet "Easy for me to use and download content."

126. Furthermore, as part of their review process, the Defendants tested the software that they reviewed and, in the case of P2P clients, *infringed copyrights to do so*. They then posted details of this infringement on CBS Defendant websites to encourage users to download the clients and infringe themselves.

127. For example, in a "First Look" video that Download.com posted to its website, Defendants reviewed LimeWire 5 and demonstrated how it worked to Download.com users. The video shows a close up of the LimeWire search screen as the CNET reviewer enters "Nine Inch Nails," a popular band, and then shows the search results, which include many of the band's copyrighted songs. Later in the video, as the viewer looks at a screen demonstrating another sample search, they see a list of copyrighted works from artists including Will.I.Am, Usher, Trick Daddy, Nas, Ray Styles, and many others. Several non-video LimeWire reviews exhibited the same usage and encouragement, displaying screenshots Download.com editors took as they tested the application. These screenshots regularly displayed search

results with well-known bands whose songs were avilable on the LimeWire network. For example, in a review for LimeWire "Classic" for Mac—a version of the client designed to run on Mac computers—the screenshot shows search results with bands such as Led Zeppelin, Offspring, Paul Revere & The Raiders, Queens of the Stone Age, Seether, Temple of the Dog, and Van Halen.

128. In another "First Look" video, this time for FrostWire, the CNET reviewer, Mr. Rosenblatt, discusses how the client is a "fork" of the LimeWire PRO code and again zooms in on the search bar while he enters "Nine Inch Nails," thereafter showing the results for this search, which again include an extensive list of the band's copyrighted songs. The video review mentions several times that FrostWire operates the same as LimeWire, and produces the same results. In making this comparison, Defendants appealed to LimeWire's users in the same way LimeWire appealed to Napster's users, and to the same effect.

129. In a November 7, 2008 review of MP3 Rocket, described as yet another "LimeWire source code fork," the Defendants attached screenshots of the P2P client in action to demonstrate its features. These screenshots, which remained on Download.com until at least December 2010, showed search hits and available files for download from artists including Madonna, Lady Gaga, Alicia Keys, Usher, Michael Jackson, Rihanna, Queen, Eminem, Omarion, Dire Straits, Gorillaz, Pink, 50 Cent, and many others.

130. In a November 11, 2009 review of LuckyWire, which was described as "almost exactly like LimeWire," the "CNET staff" noted that "[i]f you've seen LimeWire, you've seen LuckyWire; they're virtually indistinguishable." In order to compare the two programs, the CNET staff constructed an "informal experiment" where "we chose a song—Nirvana's 'Heart-Shaped Box,' if you're curious—and downloaded the same copy of it from Gnutella using both LimeWire and Luckywire." After comparing the download speed results from both applications,

the staff concluded that LuckyWire was "worth giving [] a try," and concluded their review by saying, "*We recommend this program to all users.*"

131. In a November 24, 2009 review of ZapShares (that was recently removed from Download.com), the CNET staff described the application as "an innovative program that seeks to protect users from copyright infringement lawsuits resulting from peer-to-peer file sharing. ... The program is based on the theory that the people who tend to get sued for copyright infringement are the ones who make files available for download, not the ones who do the downloading. ZapShares protects users by making sure that file sharing is disabled in their peer-to-peer software; files can come in, but they can't go out." After describing how this process works, the CNET staff then went on to say, "*We downloaded a song with LimeWire* while ZapShares was running." They then opined on the "fairness" of using ZapShares, considering the model upon which P2P networks operate is massive, unchecked copyright infringement:

> We will leave it to you to decide whether it's fair that some users on a P2P network are assuming all of the legal liability to provide files to other users who aren't sharing the risk; after all, if everyone uses a program like ZapShares, there wouldn't be any content on P2P networks to begin with. If your conscience allows it, ZapShares appears to be a good way to keep your downloaded files to yourself.

Again—incredibly—the CNET staff concluded their review by saying, "*We recommend this program to all users.*"

132. Older reviews further demonstrate Defendants' long-running call to their users to infringe copyrights. In one of the earliest LimeWire reviews, dated November 28, 2001, CNET reviewer Justin Eckhouse explained how he used the program to search for songs by the band, Radiohead. A similar review of KaZaa, one of LimeWire's competitors, dated September 24, 2002 displayed a screenshot of the program wherein the reviewer showed how he used the program to search for

songs by REO Speedwagon, a well-known band. The same review noted that users had the ability to flag, as undesirable, "a particularly bad cut of a Britney Spear video" found on the network, the implication of which was that users could, should, and would download such copyrighted works for free from the network.

133. Other reviews, articles, and materials posted on the Defendants' websites from throughout the decade noted the difference between various file-sharing applications and directed users toward the P2P clients that would provide them access to the most copyrighted works. For example, in a December 12, 2001 review of AudioGalaxy, CNET reviewer Justin Eckhouse noted that Audiogalaxy was designed to promote independent artists and unknown bands because it "employs copyright restrictions to keep you from downloading most popular songs." Accordingly, he recommended to users "if you thrive on the mainstream [music] beat, turn to LimeWire or KaZaa."

134. The message from Defendants' many videos, reviews, and screen shots of P2P clients in action was (and is) that LimeWire and similar applications are really great at infringing copyrights. Furthermore, as their call to conscience in the ZapShares review indicated, Defendants discouraged Download.com users from impeding the strength and vitality of the rampant infringement made possible by P2P clients available through Download.com.

135. Defendants also provided various newsletters and articles that cross-compared and recommended downloading P2P clients that were better at infringement than others. For example, one newsletter the Defendants provided on a monthly basis was called the "File-sharing smackdown." This newsletter compared results from the most popular P2P clients—determined by looking at the most popular downloads on Download.com—and made recommendations on each client's ability to download copyrighted works for CNET users. As CNET columnist Eliot Van Buskirk noted in his initial post, the purpose of the newsletter was to "settle arguments" over which was the best file-sharing service. In order to

do so, he and a fellow CNET employee cross-compared eight different P2P clients, including LimeWire, KaZaa, Morpheus, BearShare, AudioGalaxy, by "[running] searches for 18 band names using each of these clients." The bands included Britney Spears, The Strokes, The Beatles, Run DMC, Metallica, Radiohead, Johnny Cash, and several other well-known artists.

136. The "File-sharing smackdown" continued for years, each time comparing results based on searches for well-known artists. A running commonality in almost every version of this newsletter and others—including the similarly-named "File-sharing blowout"—was that LimeWire was one of the test subjects. Indeed, from 2001 through the present—the entire time Defendants kept the newsletter on their websites and cross-linked to it in reviews or posts regarding P2P clients, or in articles regarding file-sharing in general—LimeWire was mentioned again and again as one of the top infringement tools available.

137. CNET's promotion of various file-sharing applications directly impacted the behavior of P2P users. For example, on October 9, 2008, a user of the P2P application FrostWire posted a comment on a user-forum available on FrostWire's website responding to the question "[Poll] how did you first hear about FrostWire": "I was using LimeWire Pro, and read a review about FrostWire on C Net. I changed to Frostwire."

138. Another example of the Defendants' encouragement to infringe comes from Download.com's affiliate site, ZDNet.com. In an article entitled "Dave's Top 9 Ways for File-sharing Music Lovers to Break The Law," ZDNet highlighted various infringement tools and noted that "If file-sharing has a future, it's peer-to-peer, a la Gnutella [*i.e.*, LimeWire's protocol]. Bypass the central server with open source software like this, and there's nobody to sue, nobody to shutdown." In the same article, ZDNet dismissively ridiculed a legal notice one P2P client provided regarding copyright infringement by rhetorically asking, "What the &%$# else are people using these file sharing programs for?" Another ZDNet article discussing the

Gnutella protocol compared it to Napster and noted that a large user base is "a giant factor when you're considering file-sharing tools," the implication of which was that a larger user base meant more copyrighted songs available for free download. This message was repeated in various articles and reviews throughout the years.

139. Gnutella's decentralized network was also specifically and repeatedly stressed as useful for copyright infringement because it meant that the network could not be shut down. In an August 5, 2000 review of Gnutella, for example, CNET reviewer R. Scott Macintosh noted that the Gnutella network, unlike Napster, was decentralized. As he further explained, "[N]o matter how the legal wrangles over copyright violations impact companies such as Napster, Gnutella—and similar software—will undoubtedly survive."

140. Defendants also provided several "how to" guides for many different P2P clients that encouraged infringement, including LimeWire itself. For example, CNET provided a guide called "Search Gnutella and LimeWire Effectively." It also provided a guide on Gnutella, pitching the guide as the "scoop on how to download, install, and use this open-source variation of Napster." Another guide was entitled "How-To Use Gnutella Effectively." In yet another, they offered a "CNET Tip" on how to get around firewalls when using Gnutella and still obtain the files users wanted, a problem "with any file-sharing program."

141. Defendants also offered guides on *Napster* and, after it became clear Napster was in serious legal trouble, how to find a Napster "replacement." Regarding the former, Defendants offered guides explaining how to use Napster and that a user needed "a lack of morals" to use the service, or should "take care not to break the law (too often)." Regarding the latter, Defendants provided a guide called "Find an Alternative to Napster." As Defendants pitched this guide: "Worried that Napster's servers will be shut down some day? Don't despair. Lots of apps are looking to fill the void, some of which are impervious to the legal attacks now threatening the free-music phenomenon. Find the best choices in our tutorial." Of

course, the "best choices" were all available via Download.com and directly benefited Defendants.

142. This latter theme—*i.e.*, helping CBS Defendant users find Napster "alternatives"—arose again and again on Defendants' websites. As noted previously, Download.com's most recent available LimeWire review *still* references its "post-Napster clone" origins. Several articles that remain available on CBS Interactive websites today also question, discuss, and, most importantly, *recommend* the "next Napster," "Napster clone[s]," and Napster "improvements." In the days when LimeWire and other Gnutella clients first entered the scene, the Defendants' promotion of these P2P services was crucial to their taking hold, and Defendants' recommendations propelled several P2P clients to prominence.

143. For example, Defendants provided a how-to guide for Morpheus that not only explained how to infringe using the service, but also noted that a larger user base made the file-sharing service more valuable. After observing that MusicCity, Morpheus' parent organization, seemed to be waving a "big red flag in front of the RIAA saying, 'Sue me! Sue me!'", Defendants pitched their guide by saying, "Will this program be the next Napster? Only if you try it out. Learn to use Morpheus."

144. Defendants also provided a guide to Scour Exchange that noted it was signing deals with Hollywod studios and artists to promote approved files, but that "the community of Scour Exchange users continue to share copyright-protected materials without permission." In this guide, Defendants pointed out that Scour Exchange's user agreement put the responsibility for determining which files were copyrighted on the users, but followed that up with "This is a standard disclaimer among the file-sharing programs and, *truthfully, one that is currently ignored by most users*." Defendants then urged their users to click the link for the next page of the guide, "Now Go Get Those MP3's!" thus encouraging their users to obtain materials on a network they just admitted was used primarily for copyright infringement.

145. Actively promoting LimeWire and similar products as infringement tools, however, was not the extent of Defendants' encouragement. They also actively recommended *against* users downloading and employing P2P clients that prevented infringement. For example, in a February 1, 2002 version of the "smackdown" newsletter entitled "File-sharing smackdown, part *deux*," Mr. Van Buskirk noted that the first "winner" of his smackdown, Audiogalaxy, had apparently implemented copyright restrictions as a "token effort to appease the big record companies." As he explained, "Unfortunately, this smackdown isn't about pleasing anyone except for MP3 downloaders, so obstructing these files pretty much disqualifies Audiogalaxy from the contest. … Overall, I can't recommend a program to the general populace that blocks access to the songs most people want." The program that did receive Mr. Buskirk's recommendation? LimeWire, with *Morpheus and Grokster* as a "close second."

146. Download.com staff also acknowledged in public interviews that they knew P2P clients hosted on their site were intended for copyright infringement. In an interview discussing LimeWire, for example, Mr. Rosenblatt, the editor who wrote some of the previously-mentioned LimeWire reviews, noted that file sharing is primarily used for copyright infringement. And in a February 21, 2010 video reviewing CNET's top 5 downloads for the week, a CNET editor drolly deadpans after seeing LimeWire at number one: "What a surprise…LimeWire."

147. To this day, Download.com still hosts and promotes P2P clients for copyright infringement. As noted previously, Defendants continued to provide a download for FrostWire after the injunction was entered against LimeWire. FrostWire is, of course, the open source version of LimeWire that Download.com pointed out was "practically indistinguishable" from its willfully infringing cousin. In the wake of the injunction against LimeWire, FrostWire became an increasingly popular substitute for P2P infringement due to its close similarity to LimeWire. Seeing the writing on the wall for LimeWire-like applications, the most recent

version of FrostWire has re-styled itself as a torrent-based P2P client and no longer accesses the Gnutella network. As both its publishers and Defendants are well aware, the new torrent-based version of FrostWire continues to serve primarily as a means of direct infringement just like its previous versions did. Consistent with its policy of guiding P2P users to the "next wave" of P2P clients in the wake of legal decisions shutting down P2P technologies found to be infringing, Download.com still distributes the torrent-based version of FrostWire. Over 30,000 copies of the most recent version of FrostWire were downloaded from Download.com the second week of October 2011.

148. Further, as Download.com's users demonstrate with their comments, they continue to understand that the Defendants are encouraging them to infringe copyrights with Frostwire and similar reviews. For example, regarding the Gnutella-based version of FrostWire available after the injunction entered against LimeWire (and prior to FrostWire's most recent torrent incarnation), users pointed out on Download.com, "Frostwire is basically LimeWire replaced! ... I'm glad that this is a lot like LimeWire because then I don't have to learn anything new." Although the Defendants now include a belated, stock warning against copyright infringement on their website, this tepid disclaimer fools no one. Download.com users understand and are encouraged by the real messages promoted not two lines under this and similar disclaimers: download this P2P client because it will enable you to infrigne copyrights and obtain free music.

149. Plaintiffs' copyrighted works were and are available on P2P file sharing networks developed, distributed, and promoted by Defendants. Defendants accordingly are liable for copyright infringement.

COUNT 1

INDUCEMENT OF COPYRIGHT INFRINGEMENT

150. Plaintiffs incorporate as if set forth herein the allegations made in Paragraphs 1 through 149.

151. Individuals using P2P client software that Defendants distributed and promoted, including LimeWire, BitComet and others, have directly infringed and are directly infringing Plaintiffs' copyrights by, for example, creating unauthorized reproductions of Plaintiffs' copyrighted works and distributing copies of such works to the public in violation of Plaintiffs' exclusive rights under the Copyright Act, 17 U.S.C. §§ 106, 501.

152. Defendants are liable for inducing the copyright infringement of Download.com users. Defendants distribute and promote several P2P clients, including but not limited to the LimeWire client and current offerings such as FrostWire, BitComet, and Phex. In distributing and promoting these P2P clients, Defendants inform and informed their users that the clients were optimized for the unauthorized copying and transmission of copyrighted sound recordings, thereby actively facilitating, encouraging and enticing Download.com users to engage in the infringement.

153. Defendants have induced and continue to induce infringement by, for example, aiming to satisfy a known source of demand for copyright infringement, including the market comprising users of other infringing services that were shut down or compelled to block access to Plaintiffs copyrighted works, such as Napster, Morpheus, Grokster, KaZaA, and now LimeWire.

154. Defendants further have induced and continue to induce infringement by, for example, continuing to provide downloads for P2P that clients that fail to block or diminish access to infringing material even though there are technological means to do so – means that are known to Defendants and the P2P client publishers, and some of which have been employed by P2P clients who operate legally.

155. Defendants further have induced and continue to induce infringement by, for example, building and maintaining a business model to profit directly from the demand for infringing P2P clients.

156. Defendants' infringement is and has been willful, intentional, purposeful, in disregard of the rights of Plaintiffs, and has caused substantial damage to Plaintiffs.

157. As a direct and proximate result of Defendants' infringement, Plaintiffs are entitled to damages and their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505. Defendants' conduct has caused, and unless enjoined by the Court, will continue to cause Plaintiffs great and irreparable injury that cannot be fully compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs therefore also are entitled to injunctive relief to prohibit further infringement of Plaintiffs' copyrights.

COUNT 2

CONTRIBUTORY COPYRIGHT INFRINGEMENT

158. Plaintiffs incorporate as if set forth herein the allegations made in Paragraphs 1 through 157.

159. Individuals using P2P client software that Defendants distributed and promoted, including LimeWire, BitComet, Phex and others, have directly infringed and are directly infringing Plaintiffs' copyrights by, for example, creating unauthorized reproductions of Plaintiffs' copyrighted works and distributing copies of such works to the public in violation of Plaintiffs' exclusive rights under the Copyright Act, 17 U.S.C. §§ 106, 501.

160. Defendants are liable as contributory infringers for the copyright infringement committed via P2P client software that Defendants distributed, including LimeWire and others. Defendants have knowledge of the massive infringement that has occurred and continues to occur through P2P client software that they created, distributed and promoted, and Defendants have caused, enabled, facilitated, and materially contributed to that infringement.

161. Defendants' knowledge of infringement is both actual and constructive. Examples of this knowledge include written and oral statements by Defendants and

user comments posted on Download.com; express comparisons of P2P clients to other notorious and illegally-operated P2P systems; and features of P2P clients Defendants discussed with the software publishers that demonstrated the client was optimized for finding and distributing popular sound recordings. All of these facts directly and circumstantially exhibit Defendants' awareness that the overarching purpose and use of P2P clients they distributed and continue to distribute is to infringe Plaintiffs' copyrighted works.

162. Defendants have caused, enabled, facilitated and materially contributed to the infringement complained of herein. Defendants have, in addition to the actions detailed above, provided the tools and instruction for infringement via P2P clients they distribute; directly and indirectly promoted the infringement via P2P clients they distribute; directly profited from their distribution of P2P clients; and refused to exercise their ability to stop the infringement made possible by their distribution.

163. Defendants' infringement is and has been willful, intentional, purposeful, and in disregard of the rights of Plaintiffs, and has caused substantial damage to Plaintiffs.

164. As a direct and proximate result of Defendants' infringement, Plaintiffs are entitled to damages and their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505. Defendants' conduct has caused, and unless enjoined by the Court, will continue to cause Plaintiffs great and irreparable injury that cannot be fully compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs therefore also are entitled to injunctive relief to prohibit further infringement of Plaintiffs' copyrights.

COUNT 3

VICARIOUS COPYRIGHT INFRINGEMENT

165. Plaintiffs incorporate as if set forth herein the allegations made in Paragraphs 1 through 164.

166. Individuals using P2P client software that Defendants distributed, including LimeWire, Phex, BitComet and others, have directly infringed and are directly infringing Plaintiffs' copyrights by, for example, creating unauthorized reproductions of Plaintiffs' works and distributing copies of such works to the public in violation of Plaintiffs' exclusive rights under the Copyright Act, 17 U.S.C. §§ 106, 501.

167. Defendants are liable as vicarious infringers for the copyright infringement committed via P2P client software that Defendants distributed and promoted, including LimeWire and others as noted above. At all times relevant to this action, Defendants (i) have had the right and ability to control and/or supervise the infringing conduct of P2P client software publishers and individual users (either by direct contractual relation and/or as a matter of practical control), including without limitation through their ability to cut off distribution of P2P clients and listing on Download.com any and all versions of the software and Defendants' ability to cease publishing articles promoting and instructing users on the use of P2P software for infringement; and (ii) have had a direct financial interest in, and derived substantial financial benefit from, the infringement of Plaintiffs' copyrighted works via P2P clients that Defendants distributed.

168. Defendants have derived direct and substantial benefit from infringement in several ways, including without limitation (i) fees and revenues earned from downloads of P2P clients from Download.com, (ii) advertising revenues generated from encouraging Download.com users to seek out and download P2P clients from Download.com, and (iii) cross-promotion on P2P client download pages for other sites in Defendants' stable of websites.

169. Defendants' infringement is and has been willful, intentional, purposeful, and in disregard of the rights of Plaintiffs, and has caused substantial damage to Plaintiffs.

170. As a direct and proximate result of Defendants' infringement, Plaintiffs are entitled to damages and their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505. Defendants' conduct has caused, and unless enjoined by the Court, will continue to cause Plaintiffs great and irreparable injury that cannot be fully compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs therefore also are entitled to injunctive relief to prohibit further infringement of Plaintiffs' copyrights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for the following relief:

a. For damages, including without limitation, actual and statutory damages, for Defendants' infringements of Plaintiffs' copyrights;

b. For injunctive relief requiring that Defendants and Defendants' agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert or participation with each or any of them, cease infringing, whether directly or indirectly, and cease causing, enabling, facilitating, encouraging, promoting, inducing, contributing to, and participating in the infringement of, any of Plaintiffs' respective copyrights;

c. For pre-judgment and post-judgment interest;

d. For Plaintiffs' costs and disbursements in this action, including reasonable attorneys' fees; and

e. For such other and further relief as the Court deems proper and just.

November 14, 2011

Respectfully submitted,

By _____

Jaime Marquart
Ryan Baker
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10990 Wilshire Blvd., Fourth Floor
Los Angeles, California 90024
(424) 652-7811
(424) 652-7850k (facsimile)

Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury.

[DATE], 2011

Respectfully submitted,

By _____

Jaime Marquart
Ryan Baker
BAKER MARQUART LLP
10990 Wilshire Blvd., Fourth Floor
Los Angeles, California 90024
(424) 652-7811
(424) 652-7850k (facsimile)

Attorneys for Plaintiffs

Elizabeth

+1 (904) 294-3882

To call them personally

Your attorney?

Gloria Allred (the celebrity attorney)
DONT TELL A SOUL

Whattttt how did you get here, lol I even know who that is

Called her office

I just need inuk and Chasity

I'm sure you will

I honestly hope so

Jun 3, 2015, 4:04 PM

of the following:

You were engaged in a legally protected activity -- such as filing a complaint with the Equal Employment Opportunity Commission or formally complainin

No one is willing to be a witness now and Gloria Allred won't take my case if not. If the tables were turned I would have you girls back in a heartbeat. No questions asked. This entire thing just sucks & all leads back to being scared of Alki. Like we make 2,000 a month, it's a joke. I already had a final interview today lol

All I need is Chasity and MK

MK to say he touched her boobs (which she told me she would say)

Chasity (to say she was a witness to the headstand thing)

And just call her office. That's it & both of them are scared of losing their jobs

I can't stop crying

Alki is suing me first

Elizabeth

Chasity

+1 (904) 294-3882 Elizabeth

Jun 2, 2015, 3:19 PM

Have you ever been a witness to alki doing anything? Or you?

No nothing like what you said he did to you

I don't know about anyone else tho

But the banana thing what was that?

Ohh lol that was way back when he asked if I wanted a banana but tbh that's when I was new so I don't know if it was sexual or not

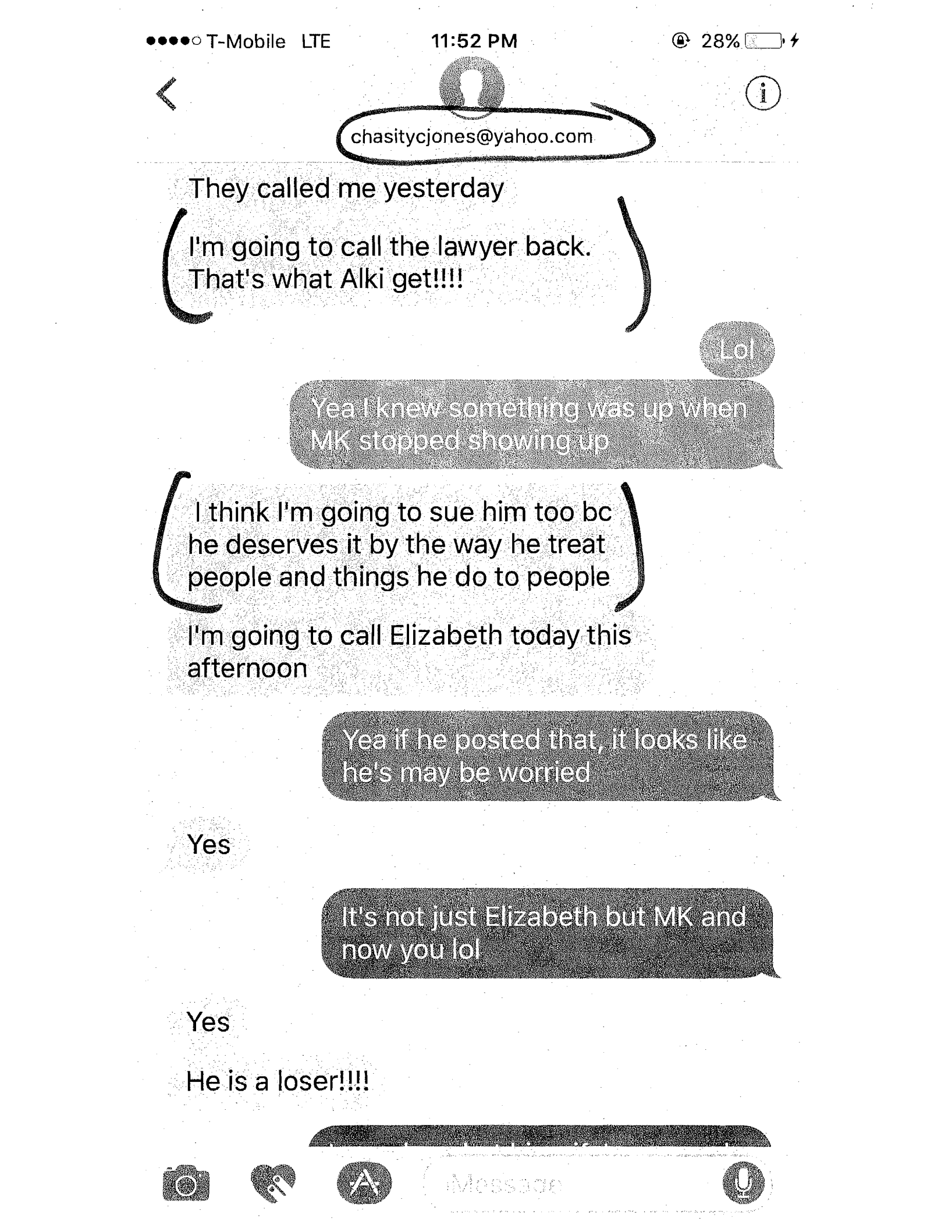
Ok non important lol

Haha yea I wish I had something to help

At least you have mk

They told me I need mk, Carl, and Chasity possibly inuk

To call them personally


T-Mobile LTE
11:52 PM
28%
chasitycjones@yahoo.com
They called me yesterday
I'm going to call the lawyer back. That's what Alki get!!!!
Lol
Yea I knew something was up when MK stopped showing up
I think I'm going to sue him too bc he deserves it by the way he treat people and things he do to people
I'm going to call Elizabeth today this afternoon
Yea if he posted that, it looks like he's may be worried
Yes
It's not just Elizabeth but MK and now you lol
Yes
He is a loser!!!!

May 26, 2016, 5:30 PM

I hate FilmOn!!

I'm quitting for sure! They only paid me a part of my commission and Alki agreed to pay me and Peter don't want to pay. Alki said he was going to make sure I get paid but this is not right I have to fight for my money.

I can't believe that...that company is ridiculous...isn't it funny how everyone has trouble getting paid their commissions but that never was a problem for Jill in the UK...makes you wonder

Why

Right!!

Alki should have paid you in full once the deal closed, that's what he did for Nuzzy

She paid herself

●●●●○ T-Mobile LTE 12:14 AM @ 39%

<

Chasity

ⓘ

1 (323) 613-4566

Jul 13, 2016, 9:49 AM

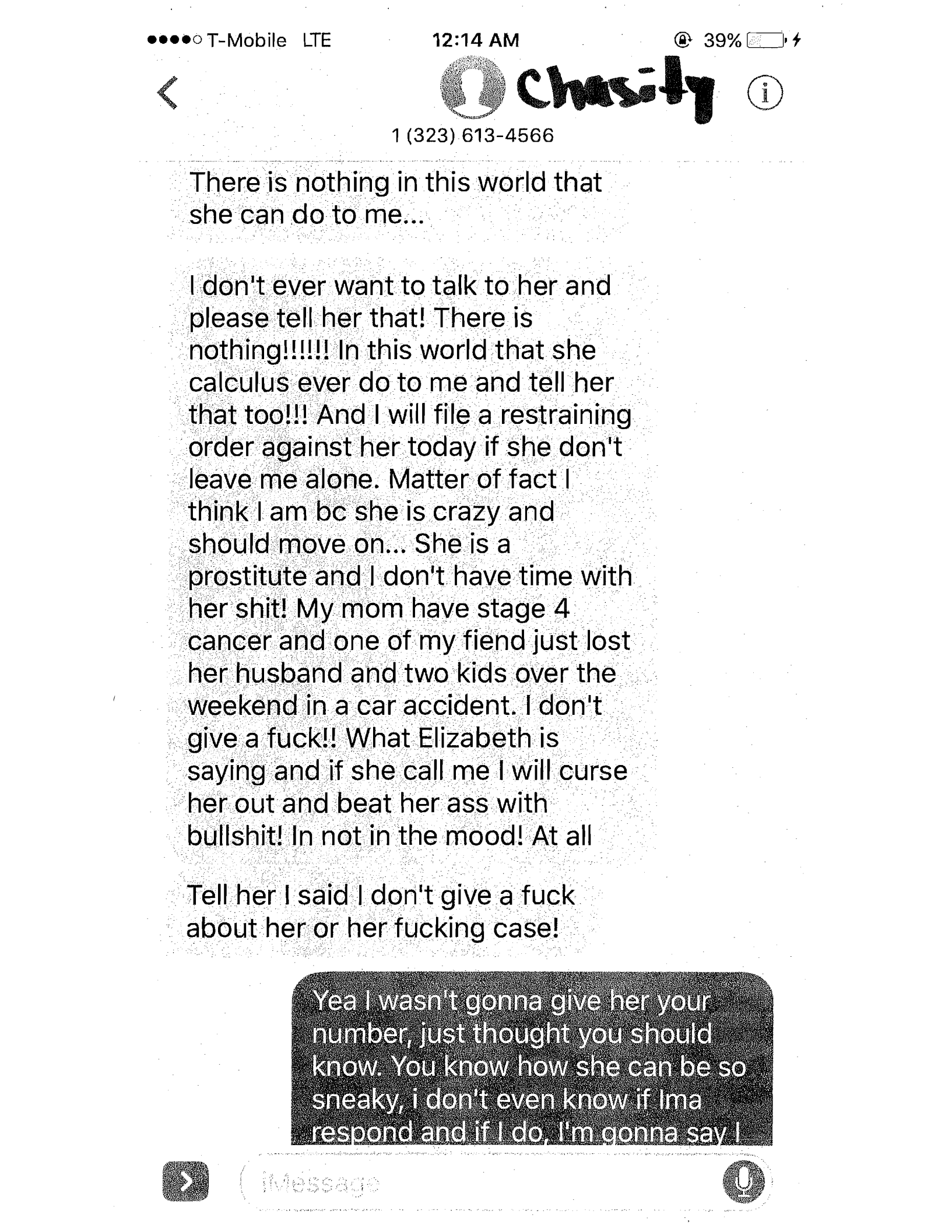
Can you please give me Chasity's number? I need to make her aware of something. Thank you. Hope you're doing well.
From Elizabeth!!!

No

I don't want to talk to her.

There is nothing in this world that she can do to me...

I don't ever want to talk to her and please tell her that! There is nothing!!!!!! In this world that she calculus ever do to me and tell her that too!!! And I will file a restraining order against her today if she don't leave me alone. Matter of fact I think I am bc she is crazy and should move on... She is a prostitute and I don't have time with her shit! My mom have stage 4 cancer and one of my fiend just lost her husband and two kids over the weekend in a car accident. I don't give a fuck!! What Elizabeth is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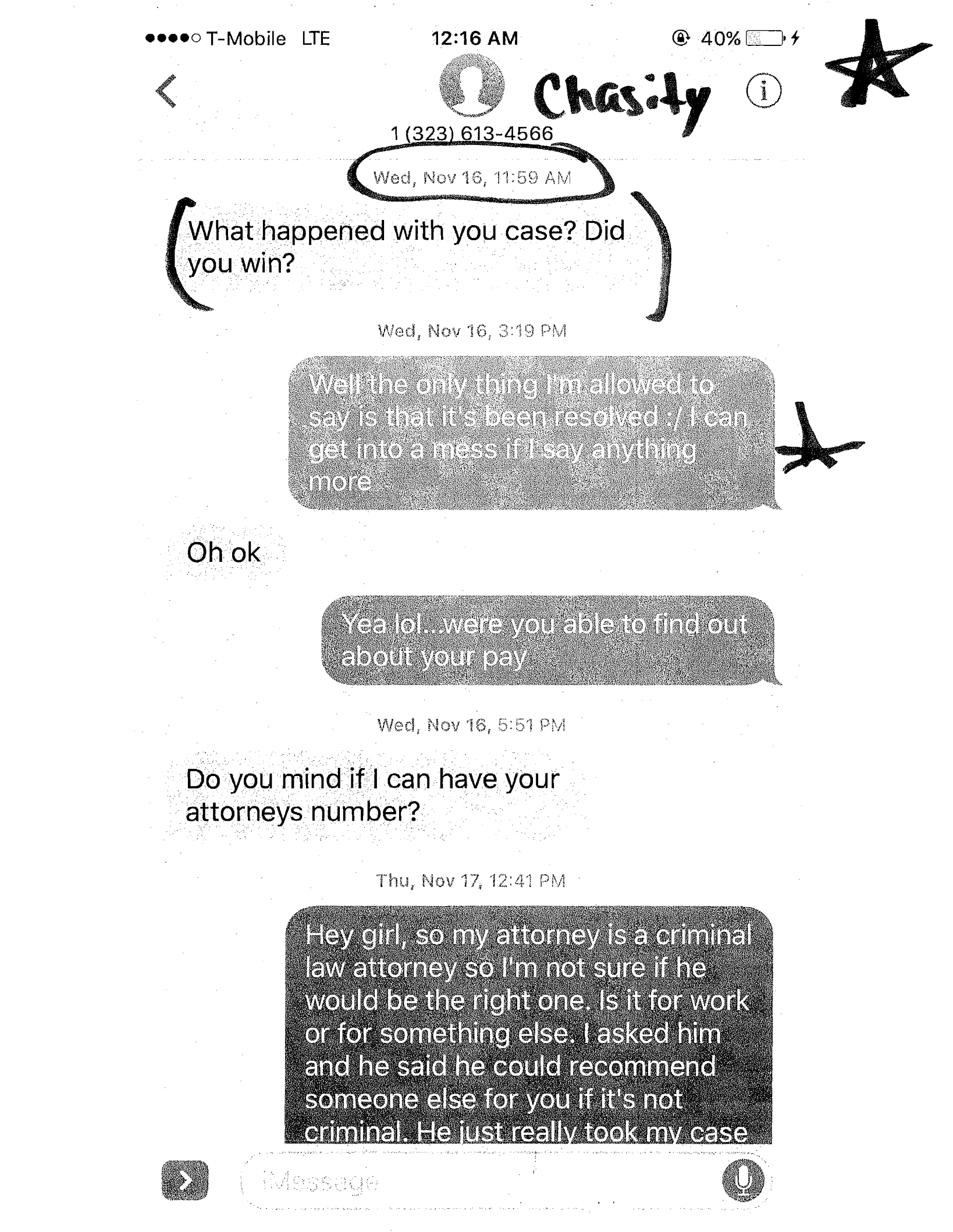
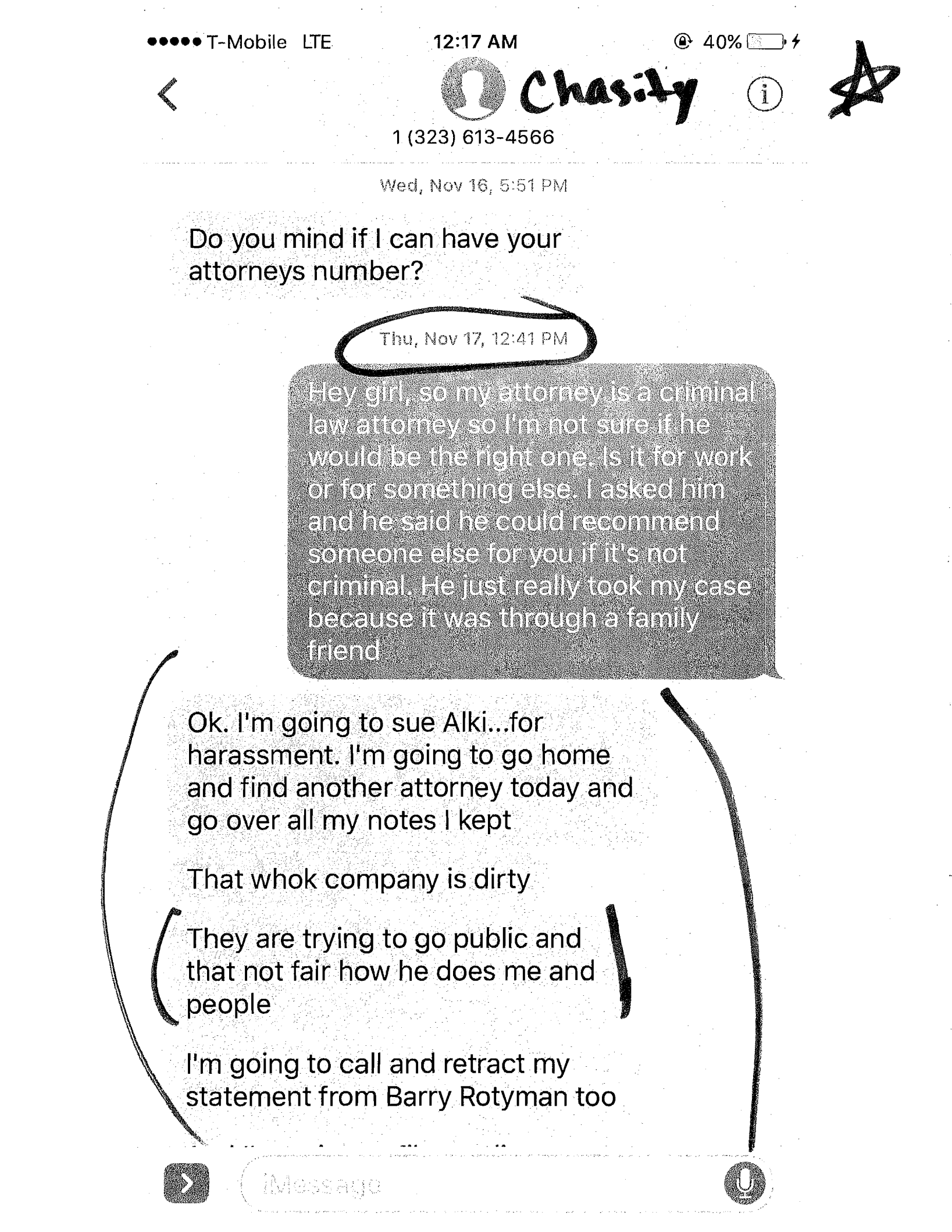
12:14 AM
39%
Chasity
1 (323) 613-4566
There is nothing in this world that she can do to me...
I don't ever want to talk to her and please tell her that! There is nothing!!!!!! In this world that she calculus ever do to me and tell her that too!!! And I will file a restraining order against her today if she don't leave me alone. Matter of fact I think I am bc she is crazy and should move on... She is a prostitute and I don't have time with her shit! My mom have stage 4 cancer and one of my fiend just lost her husband and two kids over the weekend in a car accident. I don't give a fuck!! What Elizabeth is saying and if she call me I will curse her out and beat her ass with bullshit! In not in the mood! At all
Tell her I said I don't give a fuck about her or her fucking case!
Yea I wasn't gonna give her your number, just thought you should know. You know how she can be so sneaky, i don't even know if Ima respond and if I do, I'm gonna say I
iMessage


●●●●○ T-Mobile LTE
12:16 AM
40%
Chasity
1 (323) 613-4566
Wed, Nov 16, 11:59 AM
What happened with you case? Did you win?
Wed, Nov 16, 3:19 PM
Well the only thing I'm allowed to say is that it's been resolved :/ I can get into a mess if I say anything more
Oh ok
Yea lol.. were you able to find out about your pay
Wed, Nov 16, 5:51 PM
Do you mind if I can have your attorneys number?
Thu, Nov 17, 12:41 PM
Hey girl, so my attorney is a criminal law attorney so I'm not sure if he would be the right one. Is it for work or for something else. I asked him and he said he could recommend someone else for you if it's not criminal. He just really took my case
Message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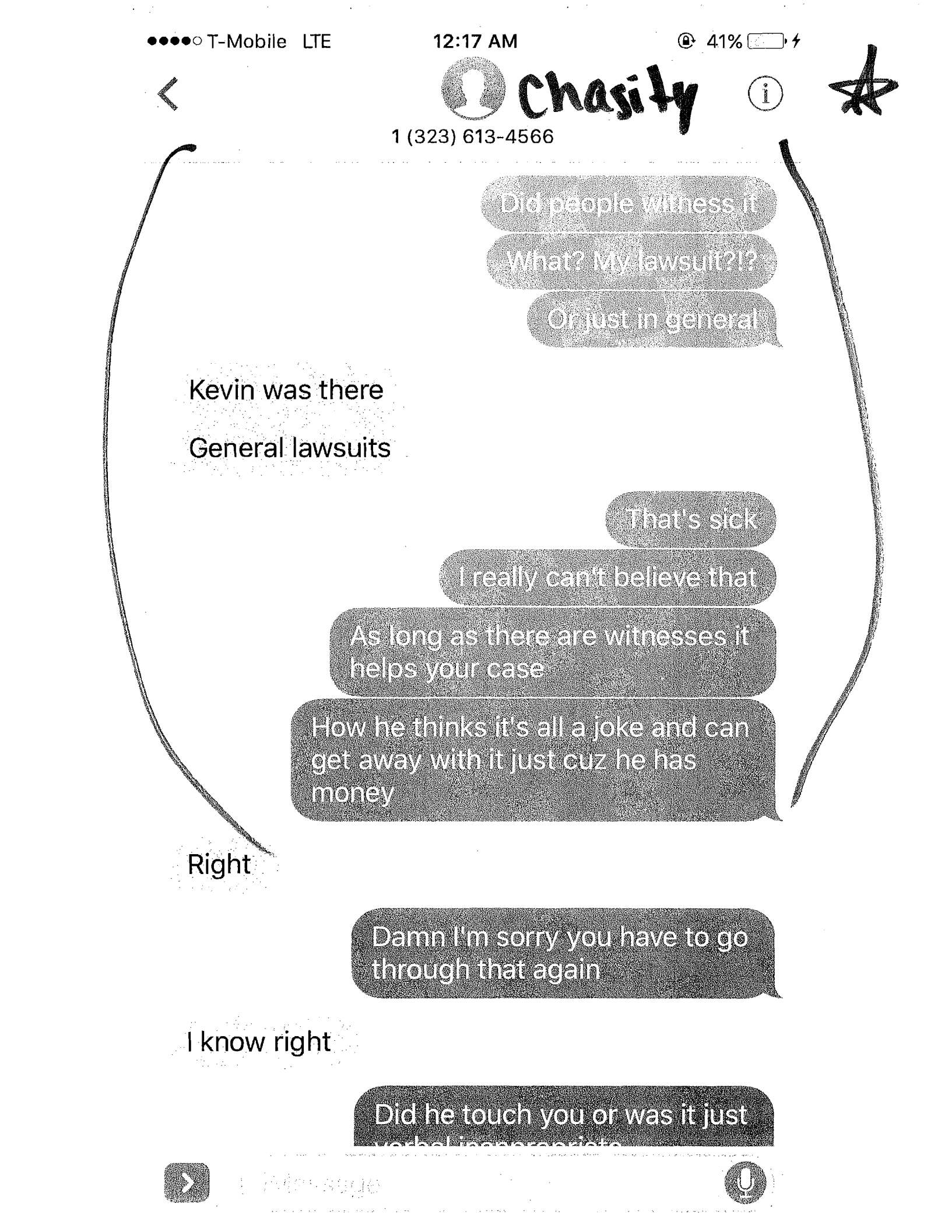
12:17 AM
40%
Chasity
1 (323) 613-4566
Wed, Nov 16, 5:51 PM
Do you mind if I can have your attorneys number?
Thu, Nov 17, 12:41 PM
Hey girl, so my attorney is a criminal law attorney so I'm not sure if he would be the right one. Is it for work or for something else. I asked him and he said he could recommend someone else for you if it's not criminal. He just really took my case because it was through a family friend
Ok. I'm going to sue Alki...for harassment. I'm going to go home and find another attorney today and go over all my notes I kept
That whok company is dirty
They are trying to go public and that not fair how he does me and people
I'm going to call and retract my statement from Barry Rotyman too
iMessage


T-Mobile LTE
12:17 AM
41%
Chasity
1 (323) 613-4566
Did people witness it
What? My lawsuit?!?
Or just in general
Kevin was there
General lawsuits
That's sick
I really can't believe that
As long as there are witnesses it helps your case
How he thinks it's all a joke and can get away with it just cuz he has money
Right
Damn I'm sorry you have to go through that again
I know right
Did he touch you or was it just

Did you retract your statement that you signed for Barry Rotyman?

I need to retract that statement

What should I do?

Hey Mary, do you mind if I ask you what amount you settled for?

I'm here baby

Sorry that was for khlo'e lol

Fri, Nov 18, 6:29 PM

Hey I really wish I could talk about my case but I'm really not allowed to say anything at all, I could get into some serious mess legally if I were to talk about anything at all about the case...that's why I was saying if I'm subpoena, then I'll be legally able to speak I believe

Ok

Do you think your attorney will be ok if my attorney speaks to him and

Ok

Do you think your attorney will be ok if my attorney speaks to him and that way you can't talk about it and he will only speak about what is legal and will not get you in any trouble

I don't think it will get that far...it will just be a settlement

He should be able to look it up himself, once a lawsuit is filed, any attorney can look it up. Have you talked with this attorney yet?

Yes today. I'll tell him to look it up

He said he is submitting everything on Monday

That's awesome, so he took your case

That's huge

Yes he did and he said he will get a settlement bc it's so many pending

Chasity

1 (323) 613-4566

Mon, Nov 28, 7:28 AM

Good morning Girly, how was holiday? Are you ready for Christmas?

I meet with my attorney last week and he filed paperwork for my case last week. I told him that you couldn't talk to him about your case but he wanted to see if he could just talk to him in general... not about your case at all. Can you please talk to him this week about me? It will be fast and he is just trying to get my case together. If there is any problems which he said it will not hurt you in any way or anything you signed...it's just to help me. He said he don't think we will be going to trial or nothing just a settlement. Thank you

Mon, Nov 28, 11:43 AM

Hi Chasity, I'm so happy you were able to file a case. As much as I want to help you, I'm not allowed to speak on anything regarding filmon or Alki. Even things in general about how it was working there. Thatis

your case at all. Can you please talk to him this week about me? It will be fast and he is just trying to get my case together. If there is any problems which he said it will not hurt you in any way or anything you signed...it's just to help me. He said he don't think we will be going to trial or nothing just a settlement. Thank you

Mon, Nov 28, 11:43 AM

Hi Chasity, I'm so happy you were able to file a case. As much as I want to help you, I'm not allowed to speak on anything regarding Rimon or Alki. Even things in general about how it was working there. That's part of what I agreed to when everything was resolved. Trust me, I would do everything I could to help you, but if you do settle, you'll understand why I can't speak on anything at all because I think you'll have to sign something saying you won't speak about anything at all if you settle

Ok. Thank you

Wed, Jan 11, 1:22 PM

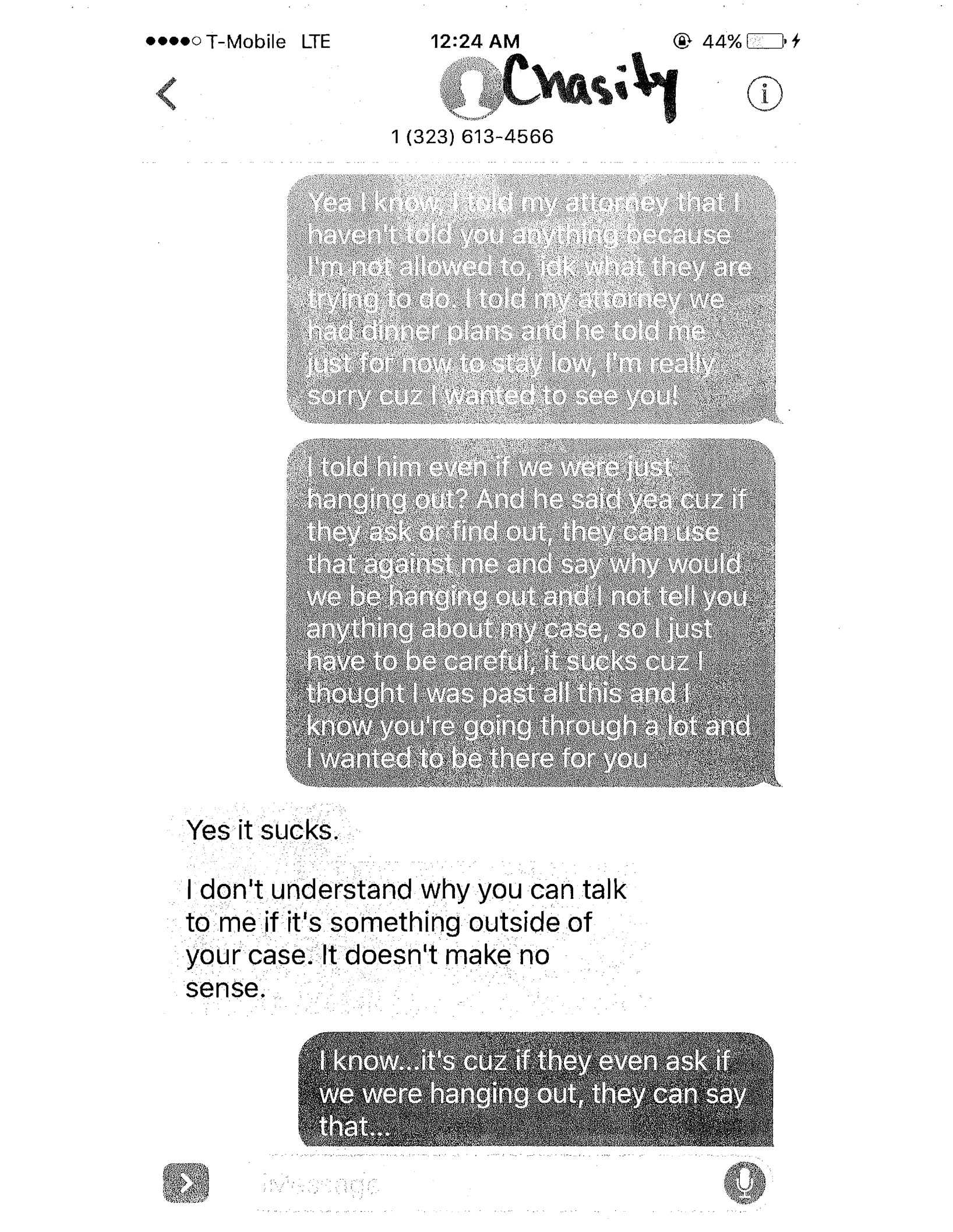
Hey girl, so I kind of have bad news...for some reason Alki's attorney thinks I have talked to you about my case, which I haven't, and they contacted my lawyer now and it's a big mess. my attorney has told me to lay low right now, so I promise we will hang out, just until my attorney says I'm okay

Oh wow

He prob got scared bc I'm suing him and my lawyer is not being quiet about it. I'm so 😠 mad. I was looking forward to seeing you. He knows he is wrong

Do you know what they think we are talking about? That's crazy!! I can't believe him

Yea I know, I told my attorney that I haven't told you anything because I'm not allowed to, idk what they are trying to do. I told my attorney we had dinner plans and he told me just for now to stay low. I'm really


●●●●○ T-Mobile LTE
12:24 AM
44%
Chasity
1 (323) 613-4566
Yea I know, I told my attorney that I haven't told you anything because I'm not allowed to, idk what they are trying to do. I told my attorney we had dinner plans and he told me just for now to stay low, I'm really sorry cuz I wanted to see you!
I told him even if we were just hanging out? And he said yea cuz if they ask or find out, they can use that against me and say why would we be hanging out and I not tell you anything about my case, so I just have to be careful, it sucks cuz I thought I was past all this and I know you're going through a lot and I wanted to be there for you
Yes it sucks.
I don't understand why you can talk to me if it's something outside of your case. It doesn't make no sense.
I know...it's cuz if they even ask if we were hanging out, they can say that...
iMessage

Chasity

1 (323) 613-4566

I know...it's cuz if they even ask if we were hanging out, they can say that...

In you agreement I'm sure it did not state that you can't talk to me or other things outside of your case.

But your agreement don't say not to talk to me

Technically I can be sued if I told anyone about my case...and if Barry thinks I did say something, he can use me hanging out with you to help build his case

Exactly, I know...

But since you have a lawsuit against him, it looks like we are conspiring

My attorney said not forever, just for the time being...

The problem with this is that we are going to go to court I think like trial so that would be bad for him bc what if we have to subpoena everyone. He is wrong to try to stop

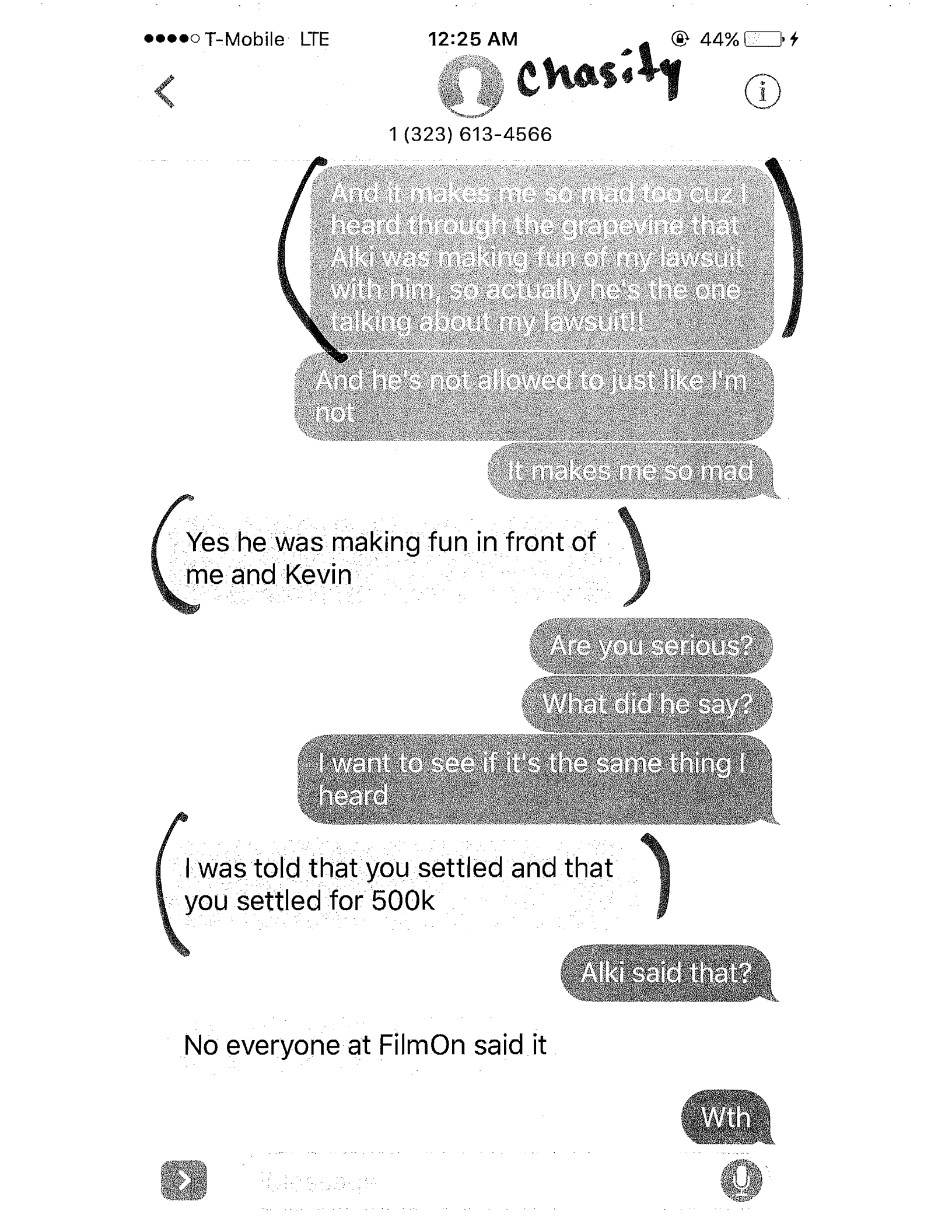
The crazy thing is my attorney pulled your case and read your whole case and he talked to your attorney a few times so I'm not sure why he would say that. I know he wants to be safe so maybe that's it. I'm not sure

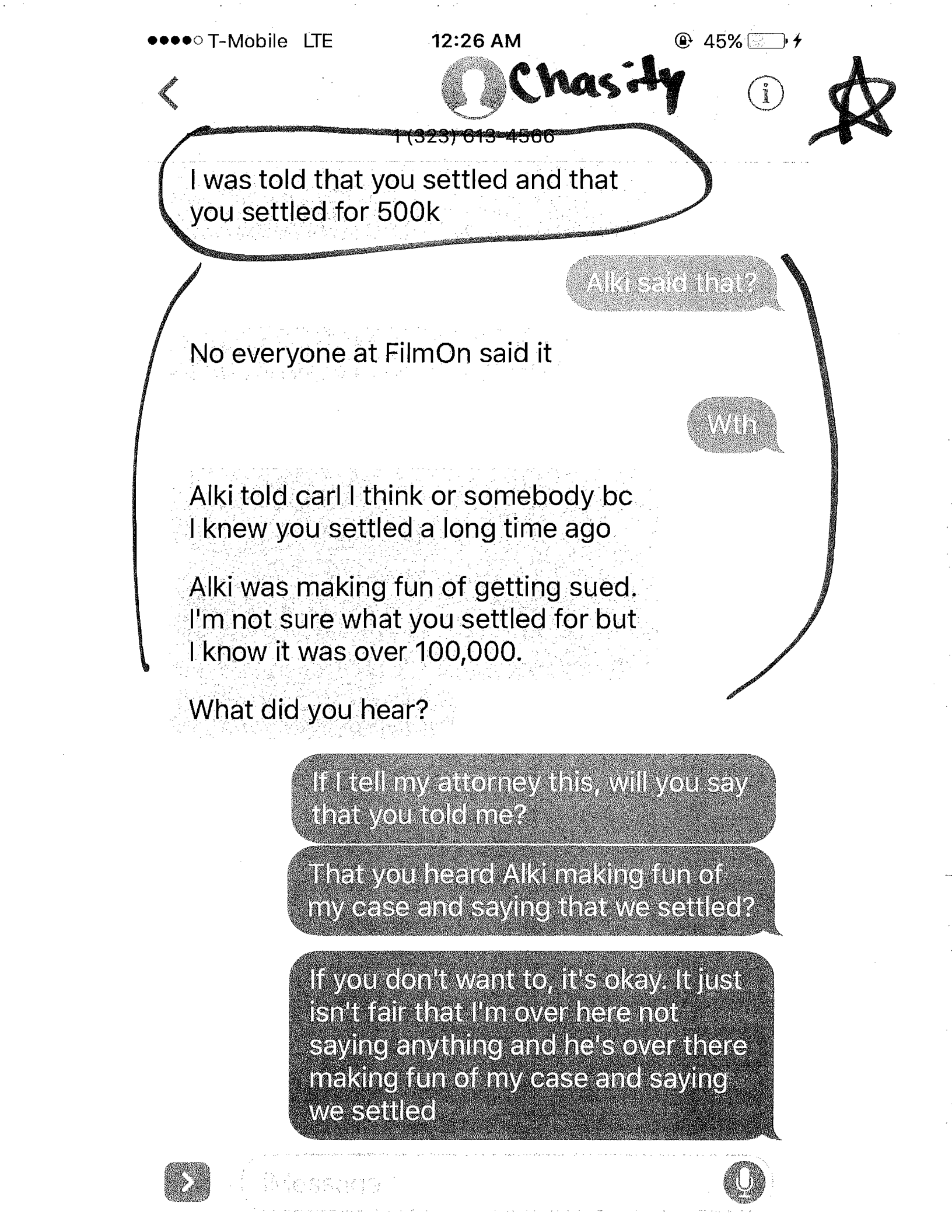
Yea my attorney told me but the thing is, they are trying to say how would you have even known about my case if I didn't tell you, but every single person there knew! Like come on, everyone knows how he is and how he had multiple cases

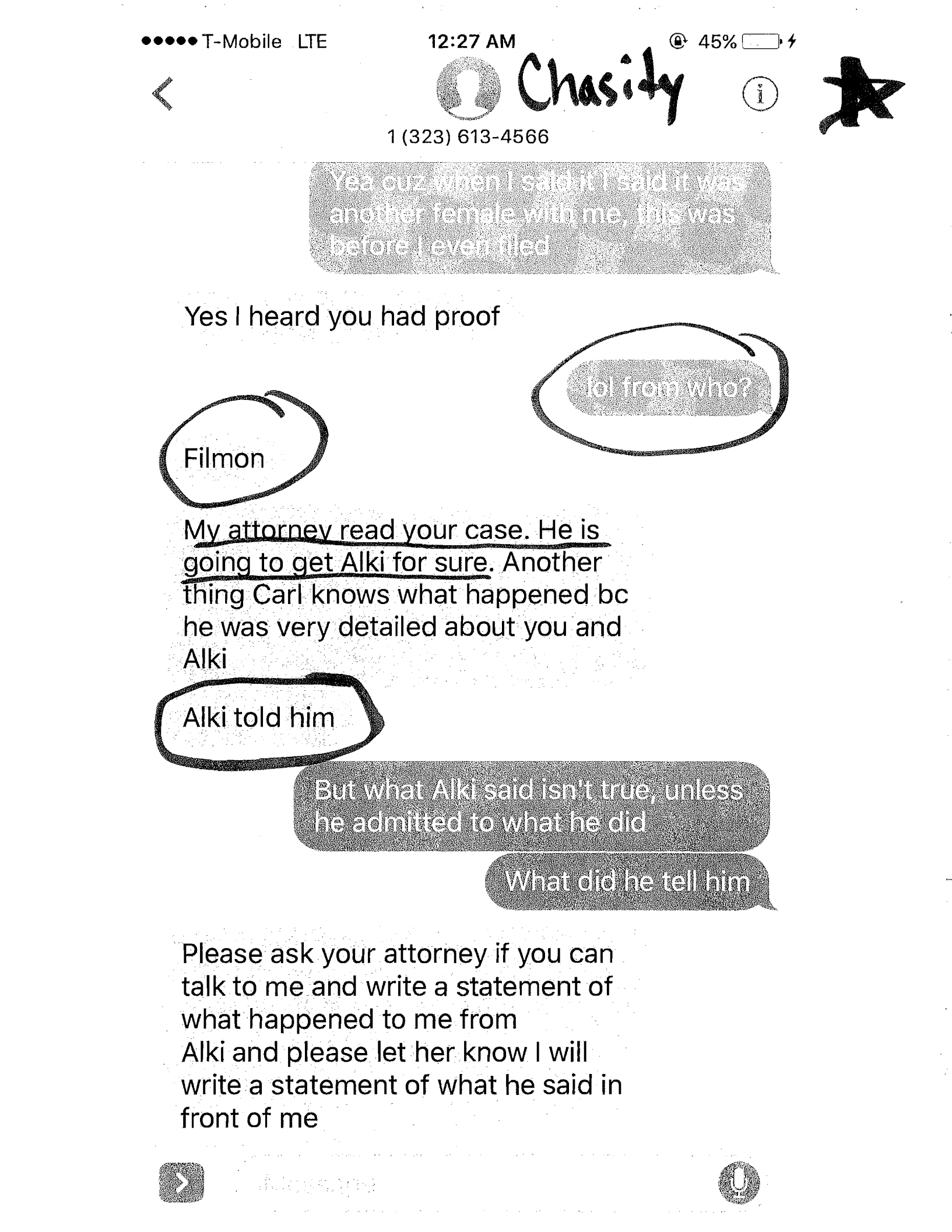
My attorney talked to your attorney before so he was aware and that was last year and then all of a sudden.

I knew about your case from Carl Dawson and many people at Filmon knows not you.

And it makes me so mad too cuz I heard through the grapevine that Alki was making fun of my lawsuit with him, so actually he's the one talking about my lawsuit!!


T-Mobile LTE
12:25 AM
44%
Chasity
1 (323) 613-4566
And it makes me so mad too cuz I heard through the grapevine that Alki was making fun of my lawsuit with him, so actually he's the one talking about my lawsuit!!
And he's not allowed to just like I'm not
It makes me so mad
Yes he was making fun in front of me and Kevin
Are you serious?
What did he say?
I want to see if it's the same thing I heard
I was told that you settled and that you settled for 500k
Alki said that?
No everyone at FilmOn said it
Wth


●●●●○ T-Mobile LTE
12:26 AM
45%
Chasity
1 (323) 613-4566
I was told that you settled and that you settled for 500k
Alki said that?
No everyone at FilmOn said it
Wth
Alki told carl I think or somebody bc I knew you settled a long time ago
Alki was making fun of getting sued. I'm not sure what you settled for but I know it was over 100,000.
What did you hear?
If I tell my attorney this, will you say that you told me?
That you heard Alki making fun of my case and saying that we settled?
If you don't want to, it's okay. It just isn't fair that I'm over here not saying anything and he's over there making fun of my case and saying we settled


●●●●● T-Mobile LTE
12:27 AM
45%
Chasity
1 (323) 613-4566
Yea ouz when I said it I said it was another female with me, this was before I even filed
Yes I heard you had proof
lol from who?
Filmon
My attorney read your case. He is going to get Alki for sure. Another thing Carl knows what happened bc he was very detailed about you and Alki
Alki told him
But what Alki said isn't true, unless he admitted to what he did
What did he tell him
Please ask your attorney if you can talk to me and write a statement of what happened to me from Alki and please let her know I will write a statement of what he said in front of me

●●●●● T-Mobile LTE 12:32 AM 47%

Chasity

+1 (310) 804-9536

iMessage
Oct 13, 2015, 8:49 PM

I called that attorney Larry ring and he wants me to come in and sue Alki. He said he might just settle and give me money after he send a letter stating I'm suing him. I'm just not sure if I want to sue or not. What do you think? I prob get money but if I come back I can't sue or Wil be scared lol

Damn yea idk

That's what I was gonna say about coming back...

You should ask Elizabeth what happened with hers when you talk to her

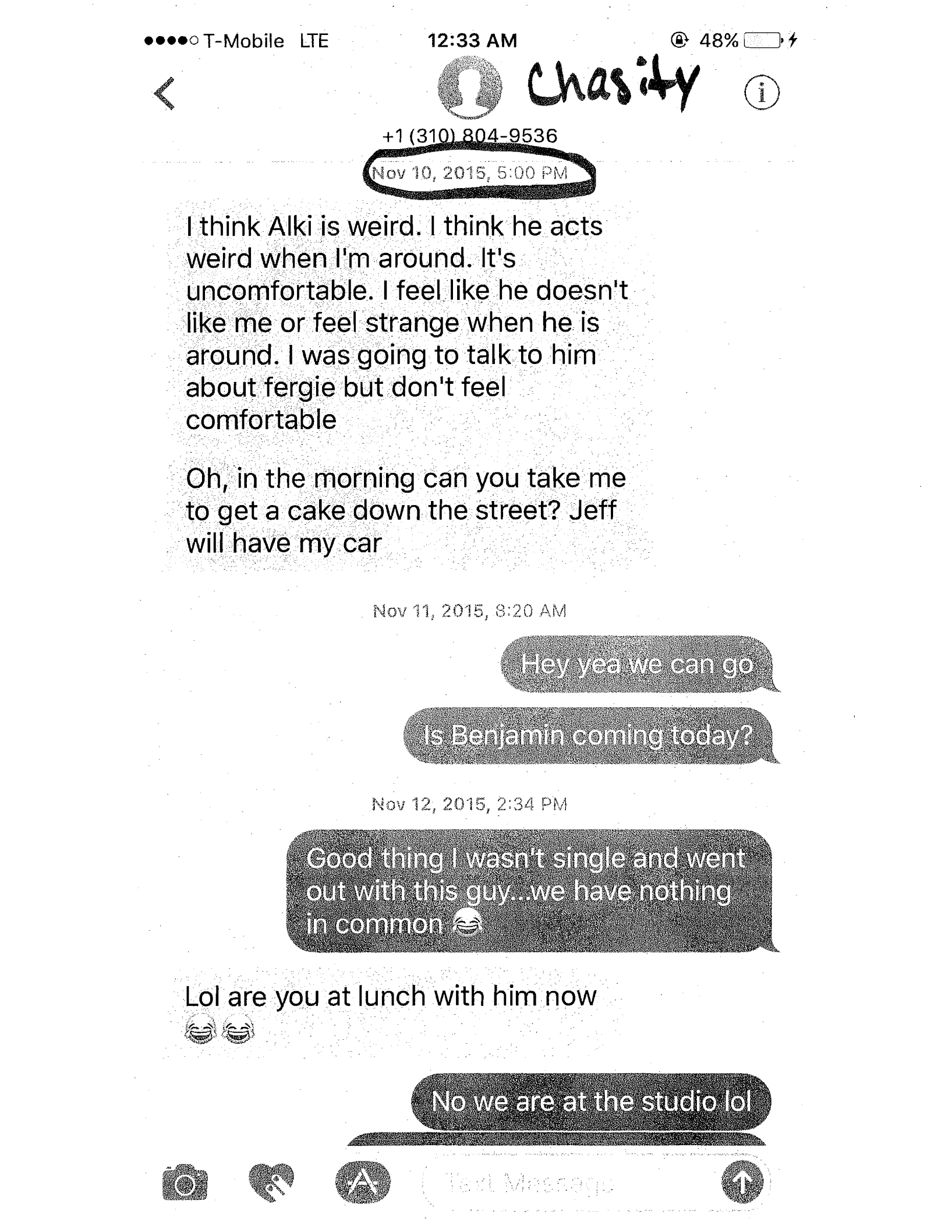
Before you tell her you aren't testifying for her 😂

She never called me back.

What's in Dubai?

Idk, Mk probably made that up cuz she turned out to always be lying

Text Message


●●●●○ T-Mobile LTE
12:33 AM
48%
Chasity
+1 (310) 804-9536
Nov 10, 2015, 5:00 PM
I think Alki is weird. I think he acts weird when I'm around. It's uncomfortable. I feel like he doesn't like me or feel strange when he is around. I was going to talk to him about fergie but don't feel comfortable
Oh, in the morning can you take me to get a cake down the street? Jeff will have my car
Nov 11, 2015, 8:20 AM
Hey yea.We can go
Is Benjamin coming today?
Nov 12, 2015, 2:34 PM
Good thing I wasn't single and went out with this guy..we have nothing in common 😂
Lol are you at lunch with him now
😂😂
No we are at the studio lol
Text Message

Chasity

+1 (310) 804-9536

Nov 23, 2015, 8:27 AM

I'm not coming to work. I'm so unhappy. I have to call Carl and make something up bc my life with jeff is horrible.

Omg I'm so sorry...I'm at my doctors appt but I will call you after

I hope you're okay...

No I'm not. I hate this life with him and I have to get out of it

Everyday we argue and I feel so stupid

Are you home or are you with him now

I'm here at this apartment but I'm about to drive home.

I don't want to marry him. I don't want kids. I don't want a man. I'm so stupid to even try anymore with him

Nov 23, 2015, 9:50 AM


T-Mobile LTE
12:39 AM
50%
Chasity
+1 (310) 804-9536
Yes, I'm not sure. Elizabeth prob said we all seen it or something. Who know
Yea she probably did, I never did tho
Me either
How is she gonna go to court with no proof? She kind of set herself up to look dumb
Poor girl
I never seen him touch her but she always had something to say about everyone lol
Omg she did! Lol
She liked to gossip
Yep
Even about fake stuff
Lol yes

Chasity

+1 (310) 804-9536

Did they ask you if Elizabeth ask you to file too or to help her case?

Yea but I said no because she didn't

She knew I never saw anything

Ok. They ask me too

I think cuz maybe she can get in trouble

Like they will use it against her

But she asked MK for help and MK jumped on

Right Alki told me that today.

And is getting money

She ask me for help for sure

What that they are using that against her?

Yes

He told me he was filing criminal

She ask me for help for sure

What that they are using that against her?

Yes

He told me he was filing criminal charges against her

Damnn poor Elizabeth

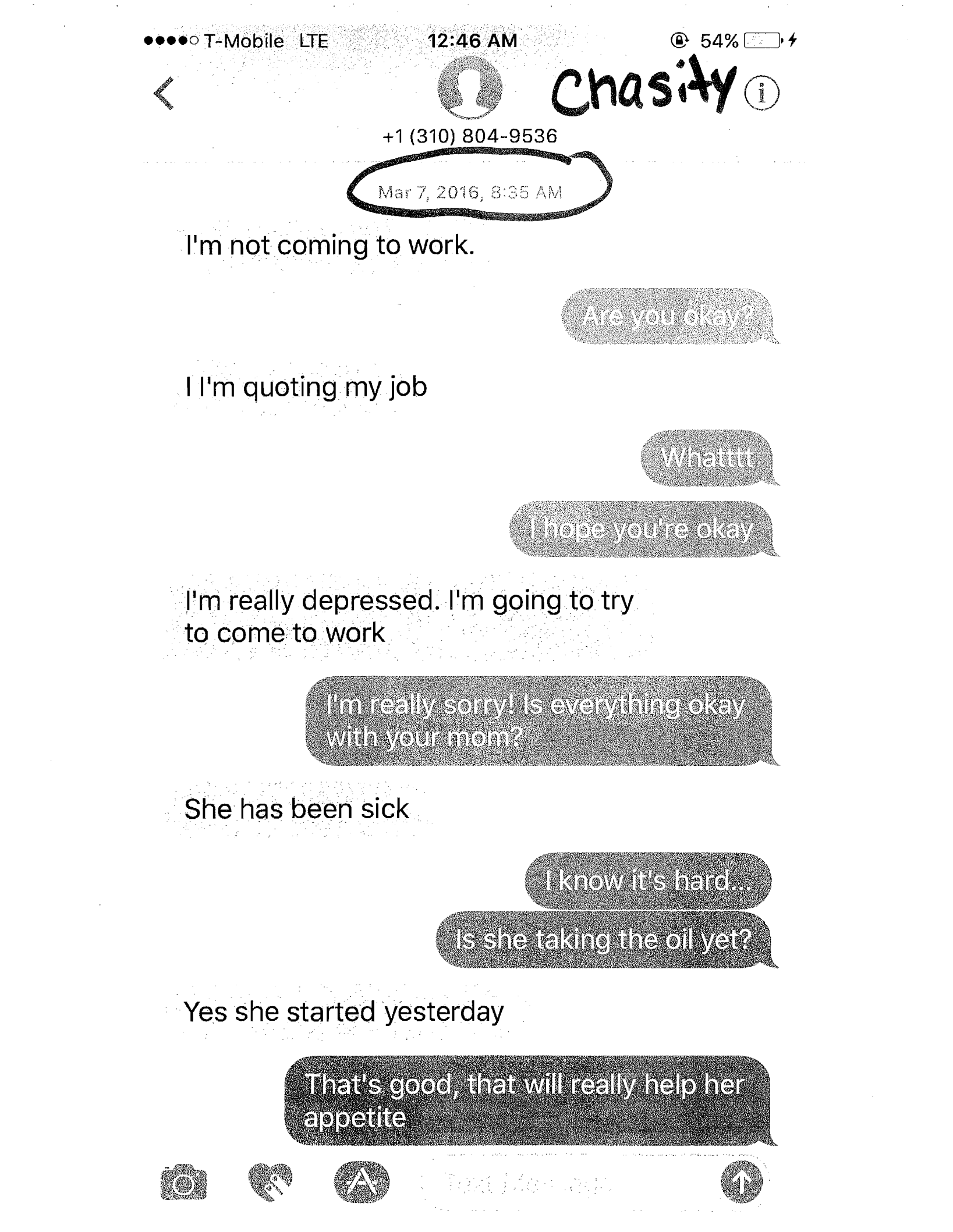
MK too?

No

You know what's crazy...I still have a text from Elizabethsayind all she needs is MK and you to talk

She ask me to help her case and begged me to help her and kept calling me over and over via text but I'm not sure if she told me to file against him or not bc I wasn't paying attention to her

Lol


●●●●○ T-Mobile LTE
12:46 AM
54%
Chasity
+1 (310) 804-9536
Mar 7, 2016, 8:35 AM
I'm not coming to work.
Are you okay?
I I'm quoting my job
Whatttt
I hope you're okay
I'm really depressed. I'm going to try to come to work
I'm really sorry! Is everything okay with your mom?
She has been sick
I know it's hard...
Is she taking the oil yet?
Yes she started yesterday
That's good, that will really help her appetite

Chasity

+1 (310) 804-9536

Mar 8, 2016, 12:59 PM

I left. I don't care if I get fired . I'm going home

I'll call you later

Ok I'm coming back. I'm not going to let him make me mad

Ok are you okay?

Yes I'm ok

I just need to learn how to ignore him

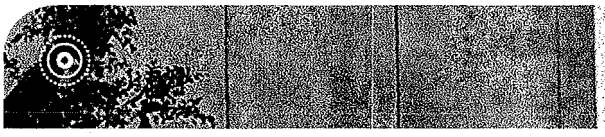
Mar 9, 2016, 9:09 AM

I have to drop off khlo'e laptop. She forgot it. I'll be in right after if anyone ask

If not lol I'll see you soon

Ok I will let him know

Mar 12, 2016, 10:07 AM



Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Promoting Innovation and Competition in the	)	MB Docket No. 14-261
Provision of Multichannel Video Programming	)	
Distribution Services	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: December 17, 2014 **Released: December 19, 2014**

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Commission: Chairman Wheeler and Commissioners Clyburn and Rosenworcel issuing separate statements; Commissioners Pai and O'Rielly concurring and issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking ("*NPRM*"), we propose to update our rules to better reflect the fact that video services are being provided increasingly over the Internet. Specifically, we propose to modernize our interpretation of the term "multichannel video programming distributor" ("MVPD") by including within its scope services that make available for purchase, by subscribers or customers, multiple linear streams of video programming, regardless of the technology used to distribute the programming. Such an approach will ensure both that incumbent providers will continue to be subject to the pro-competitive, consumer-focused regulations that apply to MVPDs as they transition their services to the Internet[1] and that nascent, Internet-based video programming services[2] will have access to the tools they need to compete with established providers.[3]

2. Here the Commission faces, as it has before, the impact of technology transition. Incumbent cable systems have made plain their intent to use a new transmission standard that will permit cable systems to deliver video via IP, and other innovative companies are also experimenting with new business models based on Internet distribution.[4] That is not surprising: Over-the-air television has moved from analog transmission to digital. The telephone networks of the 20th Century have become broadband networks, providing a critical pathway to the Internet. And, in our January Technology Transitions Order, the Commission encouraged experiments that assess the impact on consumers of the coming transition from traditional copper facilities to new telecommunications networks composed of fiber, copper, coaxial cable, and/or wireless connections.

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[1] We see daily news that cable operators and satellite television providers are obtaining rights for online distribution of content. Sam Adams and Christian Plumb, *Verizon CEO says to launch Web TV product in 2015*, REUTERS, September 11, 2014, available at http://www.reuters.com/article/2014/09/11/us-verizon-comms-towers-idUSKBN0H61KB20140911 (reporting that Sony, Dish Network, DIRECTV and Verizon are each developing Internet-delivered streaming video services that are a "viable alternative to cable TV service."); Edmund Lee, Scott Moritz and Alex Sherman, *Dish Leads in Race to Offer Online TV to Compete With Cable*, BLOOMBERG, March 15, 2014, *available at* http://www.bloomberg.com/news/2014-03-04/dish-takes-lead-in-race-to-offer-streaming-tv-to-rival-cable.html ("If Dish goes ahead with an online service, competitors could follow -- including cable companies like Comcast and Cablevision Systems Corp., which could move out of their traditional regions to offer TV nationwide, said Bernard Gershon, a digital media consultant in New York."); Chris Young, *Industry awaits linear OTT experiment*, SNL KAGAN, July 18, 2014, *available at* http://www.snl.com/interactivex/article.aspx?id=28627040&KPLT=2; Comcast branches out cloud DVR, live streaming service, CED MAGAZINE, May 8, 2014, *available at* http://www.cedmagazine.com/news/2014/05/comcast-branches-out-cloud-dvr-live-streaming-service ("Like other video service providers, Comcast is focused on offering live streaming out of the home."). AT&T's U-Verse service is delivered via Internet Protocol ("IP") today. *See* AT&T, WHAT IS IPTV? (2009), *available at* https://www.att.com/Common/about_us/files/pdf/IPTV_background.pdf. In recognition of the increasing prevalence of Internet distribution of video, the National Cable & Telecommunications Association has renamed its annual Cable Show as INTX: the Internet and Television Expo, "in an effort to broaden the three-day gathering to include online video providers and distributors beyond the traditional Cable Show crowd." Kent Gibbons, *NCTA: 'Cable Show' Convention Becoming INTX*, MULTICHANNEL NEWS (Sept. 17, 2014), http://www.multichannel.com/ncta-cable-show-convention-becoming-intx/383922.

[2] For readability throughout this *NPRM*, we use the term "Internet-delivered" to refer to any service delivered using IP whether or not it uses the public Internet, except for cable service. *See infra* ¶ 71.

[3] *See* Letter from Seth Greenstein, Counsel to Aereo, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 12-83, at 2 (filed Oct. 10, 2014) ("Particularly in the wake of adverse judicial and agency decisions over the last several years, linear online streaming services likely cannot attract the level of investment necessary to create meaningful competition to incumbent business models without a clear path of regulatory certainty.").

[4] *See supra* n.1. *See also* Brian Santo and Mike Robuck, *DOCSIS 3.1 takes center stage at Cable-Tec Expo*, CED MAGAZINE, (Nov. 21, 2012, 9:56 AM), http://www.cedmagazine.com/articles/2012/11/docsis-31-takes-center-stage-at-cable-tec-expo.

3. The Commission has recognized that innovation must be encouraged, but not at the expense of technology-neutral public policies. That is why the January Technology Transitions Order emphasized the importance of preserving competition, consumer protection, and public safety. And that is why this NPRM proposes to ensure that the rights and responsibilities of an MVPD are not jeopardized by changes in technology. This IP transition will enable cable operators to untether their video offerings from their current infrastructure, and could encourage them to migrate their traditional services to Internet delivery. With these changes on the horizon, it becomes important to interpret the statutory definition of MVPD to ensure that our rules apply sensibly and in a way that encourages innovation regardless of how service is delivered and that the pro-consumer values embodied in MVPD regulation will continue to be served. In so doing, we take note of the regulatory requirements that cable operators must adhere to as they use new technology to offer services, and we invite comment on the regulatory treatment of additional services that cable operators may offer.

4. Adoption of a technology-neutral MVPD definition will not only preserve current responsibilities, it may create new competitive opportunities that will benefit consumers. Increasingly, companies – incumbents and new entrants alike – are interested in using the Internet as the transmission path for packages of video channels.[5] In initiating this proceeding, our goal is to bring our rules into synch with the realities of the current marketplace and consumer preference where video is no longer tied to a certain transmission technology.[6]

5. Specifying the circumstances under which an Internet-based provider may qualify as an MVPD, possessing the rights as well as responsibilities that attend that status, may incent new entry that will increase competition in video markets. In particular, extending program access protections to Internet-based providers would allow them to "access[] critical programming needed to attract and retain subscribers."[7] And extending retransmission consent protections and obligations to those providers would allow them to enter the market "for the disposition of the rights to retransmit broadcast signals."[8] Broadcast and cable-affiliated programming could make Internet-based services attractive to customers, who would access the services via broadband. The resulting increased demand for broadband may in turn provide a boost to the deployment of high-speed broadband networks.

6. In this *NPRM*, we seek comment on possible interpretations of the term MVPD as used in the Communications Act of 1934, as amended (the "Act") and seek comment on how each of those interpretations would affect the industry and consumers. In Section III.A, we seek comment on two possible interpretations:

- We propose to interpret the term MVPD to mean distributors of multiple linear video programming streams, including Internet-based services.

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[5] *See supra* n.1.

[6] *See Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; Connect America Fund; Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Numbering Policies for Modern Communications*, 29 FCC Rcd 1433, 1446, ¶ 37 (2014) ("we seek both to advance new network technologies and learn how best to protect and enhance the core statutory values of public safety, universal access, competition, and consumer protection."); *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, 27 FCC Rcd 787, 791-2, ¶ 5 (2012) (recounting the evolution of video distribution methods).

[7] *Revision of the Commission's Program Access Rules*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 12605, 12608, ¶ 3 (2012).

[8] S. Rep. No. 92, 102nd Cong., 1st Sess. (1991), *reprinted in* 1992 U.S.C.C.A.N. 1133, 1169.

- We tentatively conclude that this interpretation is a reasonable interpretation of the Act, and is most consistent with consumer expectations and conditions in the industry.

- We also seek comment on an alternative interpretation that would require a programming distributor to have control over a transmission path to qualify as an MVPD.
  - We invite comment on whether this interpretation is consistent with the Act and Congressional intent and how this interpretation would apply as companies begin to offer subscription linear video services over the Internet.

7. In Section III.B, we seek comment on the effects that either interpretation would have on entities that are classified as MVPDs, consumers, and content owners.

- We seek comment on how each interpretation would benefit and burden entities that would be subject to our rules.
  - We also ask whether we should consider exemption or waiver of certain regulations, if allowed under the statute.
  - We seek comment on whether to modify our retransmission consent "good faith" negotiation rules with respect to Internet-based MVPDs to protect local broadcasters.
- We seek comment on what impact these interpretations would have on content owners, including broadcasters and cable-affiliated programmers.
- Finally, we seek comment on how to ensure that our interpretation will promote competition and broadband adoption, consistent with the Act and Commission policy.

8. In Section III.C, we note that the fact that an entity uses IP to deliver cable service does not alter the classification of its facility as a cable system and does not alter the classification of the entity as a cable operator. In other words, those video programming services provided over the operator's facilities remain subject to regulation as cable services. We seek comment on the regulatory status of purely Internet-based linear video programming services that cable operators and direct broadcast satellite ("DBS") providers may choose to offer in addition to their traditional services.

II. BACKGROUND

9. The Act defines an MVPD as:

> [A] person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.[9]

The Act also defines the terms "channel" and "video programming," which are used in the MVPD definition. A "channel" is defined as "a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined

[9] 47 U.S.C. § 522(13); *see also* 47 C.F.R. §§ 76.64(d), 76.71(a), 76.905(d), 76.1000(e), 76.1200(b), 76.1300(d).

by the Commission by regulation)."[10] The Act defines "video programming" as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."[11]

10. On March 24, 2010, Sky Angel U.S., LLC ("Sky Angel"), a provider of multiple streams of prescheduled programming over the Internet, filed a complaint and petition for temporary standstill for program access relief, which is available only to MVPDs. On April 21, 2010, the Commission's Media Bureau denied the petition for standstill, holding that Sky Angel failed to carry its burden of demonstrating that it is likely to succeed in showing on the merits that it is an MVPD entitled to seek relief under the program access rules.[12] The Media Bureau determined that the term "channel" as used in the definition of MVPD appears to include a transmission path as a necessary element.[13] Based on the limited record at the time, the Bureau was unable to find that Sky Angel provides its subscribers with a transmission path.[14] Sky Angel's complaint, a second petition for injunctive relief, a motion for sanctions, and discovery requests are pending. In 2012, Sky Angel filed a Petition for Writ of Mandamus with the United States Court of Appeals for the D.C. Circuit, asking the court to require the Commission to adopt and release a final order on the merits of its complaint,[15] and the court denied the Petition "without prejudice to renewal in the event of significant delay."[16] In March 2012, the Media Bureau issued a Public Notice in connection with the Sky Angel complaint, seeking comment on the most appropriate interpretation of the definition of an MVPD (the "*March 2012 Public Notice*") to ensure that the Commission has the benefit of broad public input.[17] In June 2014, Sky Angel notified the

[10] 47 U.S.C. § 522(4). The Commission's regulations define a "television channel" as "a band of frequencies 6 MHz wide in the television broadcast band and designated either by number or by the extreme lower and upper frequencies." 47 C.F.R. § 73.681; *see also* 47 C.F.R. §§ 73.603, 73.606, 73.682(a)(1). The Commission's regulations also define a "cable television channel" as a "signaling path provided by a cable television system." 47 C.F.R. § 76.5(r)-(u).

[11] 47 U.S.C. § 522(20).

[12] *See Sky Angel U.S., LLC*, Order, 25 FCC Rcd 3879, 3882-83, ¶ 7 (MB, 2010) ("*Sky Angel Standstill Denial*"). The procedural background of this case is complex: In March 2010, Sky Angel filed a program access complaint against Discovery Communications, LLC and its affiliate, Animal Planet, L.L.C. (collectively, "Discovery"), as well as a petition for a standstill extending rights it had under its affiliation agreement with Discovery. *See* Sky Angel Program Access Complaint; Sky Angel U.S., LLC, Emergency Petition for Temporary Standstill, MB Docket No. 12-80, File No. CSR-8605-P (March 24, 2010). When Sky Angel filed its complaint, it provided a national subscription-based service of approximately eighty channels of video and audio programming including MLB Network, NFL Network, Hallmark Channel, and Weather Channel via a set-top box that has a broadband Internet input and video outputs that connect directly to a television set. *See* Sky Angel Complaint at 1-9. Sky Angel filed its complaint and standstill request with the Commission after receiving notice that Discovery intended to terminate its affiliation agreement with Sky Angel covering certain Discovery networks. The Media Bureau denied the standstill request on the basis that Sky Angel failed to carry its burden of demonstrating that it is likely to succeed in showing on the merits that it is an MVPD entitled to seek relief under the program access rules. *Sky Angel Standstill Denial*, 25 FCC Rcd at 3882-83, ¶ 7. Sky Angel subsequently filed a renewed petition for standstill. See Sky Angel U.S., LLC, Renewed Petition for Temporary Standstill, MB Docket No. 12-80 (May 27, 2011).

[13] *See Sky Angel Standstill Denial*, 25 FCC Rcd at 3882-83, ¶ 7.

[14] *See id*.

[15] *See* Sky Angel U.S., LLC, Petition for Writ of Mandamus, Case No. 12-1119 (filed Feb. 27, 2012).

[16] *Sky Angel U.S., LLC*, Order, Case No. 12-1119 (D.C. Cir. 2012).

[17] *See Media Bureau Seeks Comment on Interpretation of the Terms "Multichannel Video Programming Distributor" and "Channel" as Raised in Pending Program Access Complaint Proceeding*, MB Docket No. 12-83, Public Notice, 27 FCC Rcd 3079 (MB 2012) ("*March 2012 Public Notice*").

Commission that it had "suspended its video and audio distribution services" in January 2014 because it is unable "to acquire programming in a fair and nondiscriminatory way."[18]

11. More recently, issues have arisen regarding the status of Aereo, Inc., a former provider of online linear video programming, under the Copyright Act and Communications Act. On June 25, 2014, the Supreme Court found that Aereo violated certain copyright holders' exclusive right to perform their works publicly as provided under the Copyright Act.[19] Aereo then filed with the Copyright Office to pay statutory royalties to retransmit broadcast signals as a cable system. The Copyright Office accepted the filing "on a provisional basis," pending "further regulatory or judicial developments,"[20] including this Commission's interpretation of the term MVPD and the outcome of the case that was pending before the U.S. District Court for the Southern District of New York.[21] On November 21, 2014, Aereo filed to reorganize under Chapter 11 of the U.S. Bankruptcy Code.[22]

12. Comments filed in response to the *March 2012 Public Notice* reveal a wide range of views.[23] By initiating this rulemaking proceeding, we propose an interpretation that we based on many comments in the record of that proceeding. But we continue to seek broad public input, including discussions with stakeholders, which will fully inform us as we seek to clarify the scope of the definition of MVPD. We note that the Media Bureau recently changed the ex parte status of the *March 2012 Public Notice*.[24] And today, the Bureau issued a decision holding the *Sky Angel* proceeding in abeyance pending the outcome of this proceeding and terminating the *March 2012 Public Notice* docket. These actions will allow parties to discuss with the Commission the definitional and policy issues raised herein without running afoul of the *ex parte* rules.

III. DISCUSSION

13. As discussed below, we tentatively conclude that the statutory definition of MVPD includes certain Internet-based distributors of video programming.[25] Specifically, we propose to interpret the term MVPD to mean all entities that make available for purchase, by subscribers or customers, multiple streams of video programming distributed at a prescheduled time. In reaching this conclusion,

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[18] Supplemental Comments of Sky Angel U.S., LLC, MB Docket No. 12-80, File No. CSR-8605-P, at 1 (June 10, 2014).

[19] *American Broadcasting Companies, Inc. v. Aereo, Inc*., 134 S.Ct. 2498 (2014).

[20] Letter from Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, U.S. Copyright Office, to Matthew Calabro, Director of Financial Planning & Analysis and Revenue, Aereo, Inc. (July 16, 2014). The letter rejected Aereo's argument that it is a cable operator under the Copyright Act but indicated that the Copyright Office might revisit that conclusion if the Commission should find Aereo to be an MVPD under the Communications Act. On October 23, 2014, the Federal District Court for the Southern District of New York granted certain broadcast stations' request for a preliminary injunction to stop Aereo's live and near-live streaming of their broadcast signals over the Internet. The court appeared to leave open the possibility that Aereo could be entitled to a statutory copyright license if the Copyright Office and this Commission changed our interpretations of our respective statutes. *See American Broadcasting Companies, Inc. et al. v. Aereo, Inc.*, Nos. 12–cv–1540, 12–cv–1543, 2014 WL 5393867, at *5, n.3 (SDNY Oct. 23, 2014).

[21] Eriq Gardner, *Appeals Court Denies Aereo's Request for New Hearing*, THE HOLLYWOOD REPORTER (Aug. 22, 2014, 6:38 AM), http://www.hollywoodreporter.com/thr-esq/appeals-court-denies-aereos-request-727009.

[22] *See* Chet Kanojia, *The Next Chapter*, AEREO BLOG (Nov. 21, 2014), http://blog.aereo.com/2014/11/next-chapter/.

[23] Unless otherwise noted, all comments and reply comments discussed and cited herein were filed on May 14, 2012 and June 13, 2012, respectively, in MB Docket No. 12-83.

[24] *See "Permit But Disclose" Ex Parte Procedures Established for Docket Seeking Comment on Interpretation of the Terms "Multichannel Video Programming Distributor" and "Channel" as Raised in Pending Program Access Complaint Proceeding*, Public Notice, DA 14-1214 (MB rel. September 30, 2014).

[25] *See supra* n.2.

we understand that the market for Internet-based distribution of video programming is nascent and that companies continue to experiment with business models. The current business models include, but are not limited to, the following types of Internet-based video service offerings, including combinations of these offerings:

- Subscription Linear. We use this term to refer to Internet-based distributors that make available continuous, linear[26] streams of video programming on a subscription basis. This category includes Sky Angel's service as it existed before 2014 and Aereo's service as it existed before the Supreme Court decision.

- Subscription On-Demand. We use this term to refer to Internet-based distributors that make video programming available to view on-demand[27] on a subscription basis, allowing subscribers to select and watch television programs, movies, and/or other video content whenever they request to view the content without having to pay an additional fee beyond their recurring subscription fee. This category includes Amazon Prime Instant Video, Hulu Plus, and Netflix.[28]

- Transactional On-Demand. We use this term to refer to Internet-based distributors that make video programming available to view on-demand, with consumers charged on a per-episode, per-season, or per-movie basis to rent the content for a specific period of time or to download the content for storage on a hard drive for viewing at any time.[29] This category includes Amazon Instant Video, CinemaNow (Best Buy), Google Play, iTunes Store (Apple), Sony Entertainment Network, Vudu (Walmart), and Xbox Video (Microsoft).[30]

- Ad-based Linear and On-Demand. We use this term to refer to Internet-based distributors that make video programming available to view linearly or on demand, with consumers able to select and watch television programs, movies, and/or other video content whenever they request on a free, ad-supported basis. This category includes Crackle, FilmOn, Hulu, Yahoo! Screen, and YouTube as they exist today.

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[26] In this *NPRM*, we use the terms linear and pre-scheduled interchangeably, consistent with prior Commission use. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 29 FCC Rcd 1597, 1603, ¶ 15, n.23 (2014) ("A linear channel is one that distributes programming at a scheduled time. Non-linear programming, such as video-on-demand ('VOD') and online video content, is available at a time of the viewer's choosing."); *Implementation of Section 304 of the Telecommunications Act of 1996*, Fourth Further Notice of Proposed Rulemaking, 25 FCC Rcd 4303, 4308, ¶ 14 n.43 (2010) ("The term 'linear programming' is generally understood to refer to video programming that is prescheduled by the programming provider. *Cf.* 47 U.S.C. § 522(12) (defining 'interactive on-demand services' to exclude 'services providing video programming prescheduled by the programming provider')."").

[27] We use the term "on-demand" to refer to programming that is not prescheduled by the programming provider. *See* 47 U.S.C. § 522(12) (defining "interactive on-demand service" as "a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing *video programming prescheduled by the programming provider*." (emphasis added)).

[28] *See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Fourteenth Report, 27 FCC Rcd 8610, 8722, ¶ 246, 8725, ¶ 252, 8726, ¶ 254 (2012) ("*14th Annual Report*").

[29] "Electronic sell through" ("EST") services are a subset of "on demand" services that make content available to consumers on a download-to-own basis. *See* Anytime On Demand, *Media Centre: Glossary of Terms*, http://www.anytimeondemand.com/glossary_of_terms.html#electronic; *Project Concord, Inc. v. NBCUniversal Media, LLC*, Order on Review, DA 12-1958 (Nov. 13, 2012), at ¶ 12 n.55. We use the term Transactional On-Demand to refer to both rental and download-to-own services.

[30] *See 14th Annual Report*, 27 FCC Rcd at 8724, ¶ 249, 8725-26, ¶¶ 253-54, 8727, ¶¶ 256-57.

- Transactional Linear. We use this term to refer to non-continuous linear programming that is offered on a transactional basis. This category includes Ultimate Fighting Championship's UFC.TV pay-per-view service.

We invite commenters to identify other categories and examples of Internet-based distributors of video programming not mentioned here.

14. As explained below, we seek comment on our tentative conclusion that entities that provide Subscription Linear video services are MVPDs as that term is defined in the Act because they make multiple channels of video programming available for purchase. We seek comment also on whether any of the other categories of Internet-based distributors of video programming identified above fall within the statutory definition of an MVPD. Because these other Internet-based distributors of video programming either (1) make programming available for free, and not "for purchase" as required by the definition of an MVPD, or (2) do not provide prescheduled programming that is comparable to programming provided by a television broadcast channel,[31] we believe they fall outside the statutory definition.[32] We seek comment on this view.

15. Below, we begin by seeking comment on our proposed interpretation of the definition of the term MVPD and on alternative interpretations.[33] We then seek comment on the public policy ramifications of these alternatives and any other alternatives commenters may suggest. We note that an entity that uses IP to deliver cable service does not alter the classification of its facility as a cable system and does not alter the classification of the entity as a cable operator. Finally, we seek comment on how to treat Internet-based linear video programming services that cable operators and DBS providers may choose to offer in addition to their traditional services.

A. Defining MVPD

16. To qualify as an MVPD under the Communications Act, an entity must "make[] available for purchase, by subscribers or customers, multiple channels of video programming."[34] The Commission has previously held that video distributed over the Internet qualifies as "video programming."[35] Thus, the key remaining definitional issue is how to interpret the phrase "multiple channels of video programming." We seek comment on this issue as set forth below.

17. The Act defines a "channel" as "a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation)."[36] As discussed in the Media Bureau's *March 2012*

[31] *See* 47 U.S.C. § 522(20) (defining "video programming").

[32] 47 U.S.C. § 522(13); *see 14th Annual Report*, 27 FCC Rcd at 8722, ¶ 246, 8723, ¶ 248.

[33] This *NPRM* does not define or opine on which services or providers are in the same relevant product market as a service designated as an MVPD.

[34] 47 U.S.C. § 522(13).

[35] The Act defines "video programming" as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station." 47 U.S.C. § 522(20). Although the Commission stated a decade ago that "Internet video, called 'streaming video' . . . has not yet achieved television quality . . . and therefore is not consistent with the definition of video programming," it recently reached the opposite conclusion in light of technological developments. *Compare Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4834, ¶ 63 n.236 (2002) *with Preserving the Open Internet*, Report and Order, 25 FCC Rcd 17905, 17976, ¶ 129 n.408 (2010), *vacated on other grounds*, *Verizon v. FCC*, 740 F.3d 623 (DC Cir 2014) ("intervening improvements in streaming technology and broadband availability enable such programming to be 'comparable to programming provided by . . . a television broadcast station'") (quoting definition of "video programming" in 47 U.S.C. § 522(20)).

[36] 47 U.S.C. § 522(4).

Public Notice and in further detail below, there are at least two possible interpretations of the term "channel" within the definition of MVPD.[37] We tentatively conclude that the best reading is that "channels of video programming" means streams of linear video programming (the "Linear Programming Interpretation"). Under this interpretation, linear video programming networks, such as ESPN, The Weather Channel, and other sources of video programming that are commonly referred to as television or cable "channels," would be considered "channels" for purposes of the MVPD definition, regardless of whether the provider also makes available physical transmission paths.[38] We also seek comment on an alternative interpretation under which the definition of MVPD would include only entities that make available transmission paths in addition to content, and thus exclude those Internet-based distributors of video programming that do not own or operate facilities for delivering content to consumers (the "Transmission Path Interpretation").[39] We seek comment on which interpretation is most consistent with the text, purpose, legislative history, and structure of the Act and which interpretation best serves Congressional intent. We also invite commenters to identify any other interpretation of MVPD that is consistent with the statute and would better serve Congressional intent. For example, some commenters call for a "functional equivalency" standard, whereby an entity would qualify as an MVPD if it looks and functions like a traditional MVPD from the perspective of consumers; others suggest that Internet-based distributors should be allowed to elect whether or not to avail themselves of MVPD status, taking on both the benefits of such status (such as program access) as well as the regulatory obligations.[40] To the extent that any commenters favor these or other interpretations, they should explain how their proposed interpretation comports with the statute, how it would be administered or adjudicated in particular cases, and describe the policy ramifications.

1. Proposed "Linear Programming Interpretation"

18. Under our proposed rule, we would interpret the term "channels of video programming" to mean prescheduled streams of video programming (which we refer to in this *NPRM* as "linear" programming), without regard to whether the same entity is also providing the transmission path.[41] We believe that this is the better interpretation for three reasons: (i) it is a reasonable interpretation of the Act and most consistent with Congressional intent, (ii) it best aligns with consumer expectations and industry developments, and (iii) it is consistent with the common meaning of the word channel. We seek comment on the interpretation as set forth below. We seek comment also on our proposal to define "linear video" as a "stream of video programing that is prescheduled by the programmer."[42]

19. We tentatively conclude that our proposed Linear Programming Interpretation is consistent with the language of the statute. The statutory definition of MVPD begins by stating that an

[37] *See March 2012 Public Notice*, 27 FCC Rcd at 3079, ¶ 1.

[38] *See id.*.

[39] In denying Sky Angel's standstill request, the Media Bureau expressed tentative approval of the Transmission Path Interpretation. *See Sky Angel Standstill Denial*, 25 FCC Rcd at 3882-83, ¶ 7. In doing so, the Media Bureau cautioned that its action "should not be read to state or imply that the Commission, or the Bureau acting on delegated authority, will ultimately conclude, in resolving the underlying complaint, that Sky Angel does not meet the definition of an MVPD." *Id*. at 3884, ¶ 10. We also note that staff-level decisions are not binding on the Commission. *See Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008).

[40] *See* Sky Angel Comments at 19-20; Comments of Syncbak, Inc. at 3 ("Syncbak Comments") (calling for a "functional equivalency" standard); *see also* Reply Comments of M3X Media, Inc. at 3-4 ("M3X Reply Comments"); Reply Comments of Syncbak, Inc. at 6 ("Syncbak Reply Comments") (suggesting that the Commission should allow entities to choose whether to have MVPD status); *see also infra* ¶¶ 33-64 (discussing the regulatory privileges and obligations of MVPD status).

[41] *See* Appendix A (proposing new rule section 76.5(ss)).

[42] *See* Appendix A (proposing new rule section 76.5(rr)). The Commission has used the word "linear" to refer generally to prescheduled video programming. *See supra* n.26.

MVPD is a "person *such as, but not limited to*, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor . . . ."[43] In the *Sky Angel Standstill Denial*, the Media Bureau stated that, although the list is preceded by the phrase "not limited to," making it clear that the list is illustrative rather than exclusive, it is also preceded by the phrase "such as," which suggests that other covered entities should be "similar" to those listed.[44] We tentatively conclude that the essential element that binds the illustrative entities listed in the provision is that each makes multiple streams of prescheduled video programming available for purchase, rather than that the entity controls the physical distribution network.[45] Therefore, we believe that our interpretation is consistent with the illustrative list of MVPDs that the statutory definition provides.

20. In addition, the Commission has previously held that an entity need not own or operate the facilities that it uses to distribute video programming to subscribers in order to qualify as an MVPD.[46] Rather, an MVPD may use a third party's distribution facilities in order to make video programming available to subscribers.[47] We find, therefore, that our proposed interpretation is consistent with Commission precedent. We seek comment on this finding.

21. We also find the term "channel" used in the context of the MVPD definition (*i.e.,* "multiple channels of video programming") to be ambiguous. Further, we tentatively conclude that Congress did not intend the term "channel" in this context to be interpreted in accordance with the definition in Section 602(4) of the Act,[48] but rather intended the term to be given its ordinary and common meaning. The Act states that "the term '*cable* channel' or 'channel' means a portion of the electromagnetic frequency spectrum *which is used in a cable system* and which is capable of delivering a

[43] 47 U.S.C. § 522(13) (emphasis added).

[44] *Sky Angel Standstill Denial*, 25 FCC Rcd at 3883, n.41; *see also* ACA Comments at 7-8; Cablevision Comments at 9; Discovery Comments at 4.

[45] *See* Comments of Public Knowledge at 8-9 ("Public Knowledge Comments"); *see also* ABC/CBS/NBC Affiliates Reply Comments at 4 ("The statute contains no express limitation predicated on the technological *method* by which video programming is delivered to subscribers or customers . . . .") (emphasis in original). Consistent with this interpretation, DIRECTV and SkyAngel note that one of the statutory examples – "a television receive-only satellite program distributor" – does not provide or control the transmission path used to provide video programming to subscribers or customers, thereby supporting our tentative conclusion. *See* DIRECTV Comments at 8-10; Sky Angel Comments at 16-17; *see also Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5651-52, ¶ 23 (1993) ("TCI asserts that, by including television receive-only satellite programming distributors in the definition of a multichannel video programming distributor, Congress showed that a distributor need not be facilities-based in order to come within the scope of the effective competition test. We agree with TCI that a qualifying distributor need not own its own basic transmission and distribution facilities.") ("*1993 Rate Regulation Order*"); ABC/CBS/NBC Affiliates Reply Comments at 7-9; DIRECTV Reply Comments at 3-5; Sky Angel Reply Comments at 15-16. Other commenters dispute DIRECTV and Sky Angel's assertion that receive-only satellite programming distributors are not facilities based. *See* Cablevision Comments at 8; Comcast/NBCU Reply Comments at 5-6; NCTA Reply Comments at 4-5.

[46] *See Implementation of Section 302 of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 11 FCC Rcd 20227, 20301, ¶ 171 (1996) ("[W]e find Rainbow's argument that video programming providers cannot qualify as MVPDs because they may not operate the vehicle for distribution to be unsupported by the plain language of Section 602(13), which imposes no such requirement.") ("*OVS Second Order on Recon*"); s*ee also1993 Rate Regulation Order*, 8 FCC Rcd at 5651-52, ¶ 23.

[47] The Commission noted that the effective competition test in Section 623 of the Act suggests that an MVPD can use another entity's facilities (*e.g.,* that of a local exchange carrier or its affiliate) to provide video programming. *See OVS Second Order on Recon*, 11 FCC Rcd at 20301, ¶ 171; *see also* 47 U.S.C. § 543(l)(1)(D) (referring to video programming provided by "a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate)").

[48] 47 U.S.C. § 522(4).

television channel (as television channel is defined by the Commission by regulation).[49] This definition was adopted in the 1984 Cable Act, which focused primarily on the regulation of cable television.[50] In contrast, the term "MVPD" was adopted by Congress eight years later in 1992, when new competitors to cable were emerging, and is specifically "not limited" solely to cable operators.[51] Therefore, we tentatively conclude that we should not rely on the cable-specific definition of the term "channel" to interpret the definition of "MVPD," which is explicitly defined to encompass video programming distributors that include, but are not limited to, cable operators.[52]

22. Moreover, using the cable-specific definition of "channel" to interpret the definition of "MVPD" does not seem consistent with the illustrative list of MVPDs that is included in the definition.[53] For example, DBS providers are specifically included in the definition as MVPDs, but the linear streams of video programming that they provide to subscribers do not align with the definition of "channel" in Section 602(4) of the Act, because that definition specifically refers to the electromagnetic spectrum "used in a cable system." If Congress intended an entity to have control over the transmission path in order to be deemed an MVPD, presumably it would have explicitly specified that in the definition of MVPD, as it did with the definition of cable system.[54] Therefore, we tentatively conclude that, when Congress defined an MVPD as an entity that "makes available . . . channels of video programming," it did not intend to limit the types of entities that meet the definition to only those that control the physical method of delivery (*i.e.*, a transmission path). As a consequence, we believe that this is a reasonable interpretation of the Act. We seek comment on this position.

23. We believe that our proposed interpretation is consistent with Congress's intent to define "MVPD" in a broad and technology-neutral way to ensure that it would not only cover video providers using technologies that existed in 1992, but rather be sufficiently flexible to cover providers using new

[49] 47 U.S.C. § 522(4) (emphasis added).

[50] *See* Cable Communications Policy Act of 1984, Pub. L. No. 98-549, § 2, 98 Stat. 2779 ("1984 Cable Act"); *see also* H.R. Rep. No. 98-934 (1984), at 19, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4656 (stating that the bill "establishes a national policy that clarifies the current system of local, state and federal regulation of cable television").

[51] *See* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2, 106 Stat. 1460 (1992) (adding Section 602(13) to the Act); *see also* 47 U.S.C. § 522(13) (defining MVPD as a "person *such as, but not limited to*, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor . . .") (emphasis added).

[52] *See* Comments of DIRECTV, LLC at 5 ("There is simply no way that the cable-centric definition of 'channel' can be squared with the list of non-cable providers listed in the definition of 'MVPD.'") ("DIRECTV Comments"); *see also* ABC/CBS/NBC Affiliates Comments at 7-8; AT&T Comments at 5; Comments of Sky Angel U.S., LLC at 20-23 ("Sky Angel Comments").

[53] *See* ABC/CBS/NBC Affiliates Comments at 7; DIRECTV Comments at 5; Sky Angel Comments at 22. We also note Section 336 of the Act, which addresses ancillary broadcast services. 47 U.S.C. § 336. Under that section, the Commission is prohibited from deeming a broadcaster that offers multiple linear streams of video programming for a fee to be an MVPD. 47 U.S.C. § 336(b)(3). This statutory provision would not have been necessary if Congress intended "channel" to mean "a portion of the electromagnetic frequency spectrum . . . which is capable of delivering a television channel" because a broadcast station cannot provide *multiple* portions of the electromagnetic frequency spectrum that are capable of delivering a television channel. Compare 47 U.S.C. § 336(b)(3) with 47 U.S.C. § 602(4) (defining "channel"). Section 336(b)(3) makes sense only if we read "channel" in the definition of multichannel video programming distributor to mean linear stream of video programming.

[54] *Compare* 47 U.S.C. § 522(7) (defining a "cable system" as a "facility, consisting of a set of closed transmission paths") *with* 47 U.S.C. § 522(13) (not referring to "transmission paths" in the definition of "multichannel video programming distributor").

technologies such as Internet delivery.[55] The Act imposes important pro-consumer responsibilities on MVPDs. As incumbent MVPDs transition to IP delivery, we must ensure that the definition of MVPD is read broadly enough to ensure that consumers do not lose the benefits those provisions are intended to confer. For example, we note that the goals of the program access provision of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") are to increase competition and diversity in the video programming market, to increase the availability of programming to persons in rural areas, and to spur the development of communications technologies.[56] It would frustrate those goals to exclude from coverage new technologies and services that develop. Consumers are watching more online subscription video,[57] and incumbent operators and new entrants alike are experimenting with or planning to launch linear video services over the Internet.[58] Therefore, we tentatively conclude that the Linear Programming Interpretation is most consistent with consumer expectations and industry trends, and we believe that Congress's goals are best served by an interpretation of MVPD that accommodates changing technology.[59] We seek comment on our tentative conclusion that our proposed interpretation is most consistent with consumer expectations and industry trends. To the extent that commenters disagree with our interpretation, they should address why an interpretation of MVPD that focuses on the physical

[55] *See* ABC/CBS/NBC Affiliates Comments at 4-5 ("It is well settled, and has been recognized repeatedly and in a variety of contexts, that statutory language is not frozen in time as of its enactment but can and should, consistent with legislative purpose, take account of technological developments.") (citing *United States v. Southwestern Cable Co.*, 392 U.S. 157, 172 (1968)). We note that the Commission previously characterized the definition of "MVPD" as "broad in its coverage." *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Broadcast Signal Carriage Issues*, Notice of Proposed Rulemaking, 7 FCC Rcd 8055, 8065, ¶ 42 (1992); *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Notice of Proposed Rulemaking, 8 FCC Rcd 194, 195, ¶ 6 n.13 (1992).

[56] *See* 47 U.S.C. § 548(a) ("The purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies.").

[57] *See* Deana Myers and Wade Holden, *Online video market remains hot*, SNL KAGAN, June 30, 2014, *available at* http://www.snl.com/interactivex/article.aspx?id=28507994&KPLT=2.

[58] *See*, *e.g.*, DishWorld – Watch Live International TV Instantly, http://www.dishworld.com/ (last visited Oct. 22, 2014); *supra* n.1.

[59] *See* AT&T Comments at 5 ("[I]nsofar as Congress intended the 1992 amendments to the Cable Act (including the program access provisions) to promote competition from alternative providers and technologies in the video space, it plainly did not intend to limit the term MVPD to those using a particular technology."); Sky Angel Comments at 15-16 ("Congress' intent was to generally increase competition to monopoly cable operators and to spur the development of new communications technologies. And it intended for these goals to be achieved on a 'technology-neutral basis.' As such, it would be wholly unreasonable to exclude every service that Congress did not expressly include in the definition.") (quoting S. Rep. 102-92 (1991), 1992 U.S.C.C.A.N. 1133, 1159 ("Without fair and ready access on a consistent, technology-neutral basis, an independent entity … cannot sustain itself in the market.")); *but see infra* ¶ 30 (noting that Conference Report discussing the program access provision of the 1992 Cable Act stated that the "conferees intend that the Commission shall encourage arrangements which promote the development of new technologies *providing facilities-based competition* to cable and extending programming to areas not served by cable") (emphasis added).

delivery method an entity uses to provide video programming (i) would serve Congress's goals,[60] (ii) would promote innovation, and (iii) is consistent with the statute.[61]

24. Finally, certain commenters suggest that the term "channel" can be interpreted both in the "content" sense and in the "container" sense: "In a video context, the Act uses the term both in a 'container' sense, to refer to a range of frequencies used to transmit programming, and in a 'content' sense to refer to the programming itself, or the programmer."[62] Those commenters argue that, based on the context, the content sense applies when interpreting the definition of MVPD, "since only that reading is consistent with the Act's pro-competitive purposes."[63] We note that the legislative history of the 1992 Cable Act refers to ESPN as a "sports channel" and CNN as a "news channel"; given that both of these are linear programming networks, this suggests that Congress used the term channel, at least in this instance, to refer to such programming networks and not to portions of the electromagnetic frequency spectrum.[64] Commenters provide numerous examples of the use of the term "channel" in both the content sense (*i.e*., a linear video programming network) and the container sense (*i.e*., a range of frequencies used to transmit programming) in everyday usage[65] and in dictionaries,[66] as well as by Congress[67] and the

[60] *See* Reply Comments of CBS Corp. at 7 ("The legislative history of the 1992 Cable Act plainly reveals the intent of Congress that broadcasters have the opportunity to consent to - and seek compensation for - the retransmission of their signals by any person or entity, whatever its nature.") ("CBS Reply Comments"); *see also* ABC/CBS/NBC Affiliates Comments at 15-16; Disney Reply Comments at 5; Fox Reply Comments at 8.

[61] *See* ACA Comments at 19-20; Discovery Reply Comments at 13 (arguing that policy goals cannot override "the Commission's duty to adhere to the statute.").

[62] Public Knowledge Comments at 2-3; *see* Reply Comments of ABC Television Affiliates Association, CBS Television Network Affiliates Association, and NBC Television Affiliates at vi-vii, 19-20, 21-22 ("ABC/CBS/NBC Affiliates Reply Comments").

[63] Public Knowledge Comments at 4; *see* ABC/CBS/NBC Affiliates Reply Comments at vi-vii, 18-20, 21-22. *See also* DIRECTV Comments at 6 (quoting *Atlantic Cleaners & Dyers, Inc. v. U.S.*, 286 U.S. 427, 433 (1932) and *Environmental Defense Fund v. Duke Energy Corp.*, 549 U.S. 561, 575-76 (2007); Sky Angel Comments at 23-24. *But see* Cablevision Comments at 6, 12 ("Generally, where a term is defined in a statute, the Commission is not free to ignore that defined term, even when it appears in other provisions of the statute.") (citing *Sorenson v. Secretary of Treasury*, 475 U.S. 851, 860 (1986) and *United States v. Altamirano-Quintero*, 511 F. 3d 1087, 1101 (10th Cir. 2007) (explaining that where a term is defined in the statute, "we typically apply the same meaning to the term each time it appears in the statute")); Discovery Comments at 3 ("Although the definition of 'channel' refers only to 'cable systems,' Congress is presumed to have been aware of the definition of 'channel' when it used that term in defining MVPD, and to have used the term deliberately."); NCTA Reply Comments at 2 (noting the "well-established (and Supreme Court-endorsed) canon of statutory construction that '[a]s a rule, '[a] definition which declares what a term 'means' . . . excludes any meaning that is not stated.'"") (quoting *Colautti v. Franklin*, 439 U.S. 379, 393 (1979) (quoting 2A C. Sands, Statutes and Statutory Construction § 47.07 (4th ed. Supp. 1978))); *see also* Comcast/NBCU Reply Comments at 6-8.

[64] *See* S. Rep. No. 102-92 (1991), at 24, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1157 ("[T]here are certain major programmers that are more able to fend for themselves. It is difficult to believe a cable system would not carry the sports *channel*, ESPN, or the news *channel*, CNN.") (emphasis added); *see also* ABC/CBS/NBC Affiliates Comments at 9. *But see* TWC Comments at 5 (noting that Congress referred to "networks" in the 1992 Cable Act and its legislative history, which it claims undermines the position that Congress would have used the defined term "channel" when it actually intended to refer to a "network.") (citing 47 U.S.C. §§ 534(b)(2)(B), (b)(5), 535(b)(3)(C), (f), 548(c)(3)(B); H.R. Rep. No. 102-628, at 28, 31, 40-41 (1992); S. Rep. No. 102-92 (1991), *reprinted in* 1992 U.S.C.C.A.N. 1133, 1144, 1158, 1162, 1168).

[65] *See* ABC/CBS/NBC Affiliates Reply Comments at 19-20 ("When a viewer says that her favorite *channel* is 'Channel 5,' she certainly does not mean that her favorite swath of spectrum is 76 MHz to 82 MHz.") (emphasis in original); DIRECTV Reply Comments at 5 ("MVPDs commonly post a 'Channel Lineup' that lists the programming networks they carry, not the six megahertz of bandwidth into which their systems have been divided. . . . [M]any networks [] call themselves 'Channel,' [such as] 'Discovery Channel.'"); *see also* Public Knowledge Comments at 11; Sky Angel Reply Comments at 28; *but see* Cablevision Comments at 13.

Commission.[68] Because the term "channel" as used in the definition of MVPD is ambiguous, we tentatively conclude that it is reasonable to read the term to have its common, everyday meaning of a stream of prescheduled video programming when we interpret the definition of MVPD. As discussed above, we believe our proposed interpretation is most consistent with the Act's goals of increased video competition and broadband deployment.[69] In addition, we believe that it is most consistent with consumer expectations because consumers are focused on the content they receive, rather than the specific method used to deliver it to them.[70] We seek comment on this tentative conclusion.

25. *Scope of the Linear Programming Interpretation*. We also seek comment on whether, under the Linear Programming Interpretation, we can and should carve out certain types of entities that make available multiple linear streams of video programming from the MVPD definition. If we interpret "multiple channels of video programming" to mean multiple linear streams of video programming, could we, consistent with the statute, narrow the category of entities that would qualify as MVPDs? For example, are there niche online subscription programming providers or other small entities that would not be able to remain in business if they qualify as MVPDs? A "multichannel" video programming distributor is required by definition to make multiple channels of video programming available. We seek comment on how to interpret the term "multiple" in the definition of MVPD.[71] Although we believe it is important to modernize our interpretation of MVPD to capture entities that provide service similar to or competitive with more traditional MVPD service but through new distribution methods, we also wish to ensure that our rules do not impede innovation by imposing regulations on business models that may be better left to develop unfettered by the rules applicable to MVPDs. Should we interpret the term MVPD to require that a certain number of channels of video programming, such as twenty, be made available?[72] Would twenty channels be too low or too high? Is there justification for a different number? What if an entity makes multiple channels available nationwide, but makes only one channel available for purchase to each subscriber?[73] Should we interpret the term "channels of video programming" to require a certain

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[66] *See* Public Knowledge Comments at 7 (citing *Oxford English Dictionary*); ABC/CBS/NBC Affiliates Reply Comments at 19-20; *but see* Cablevision Comments at 13-14 (citing *Merriam-Webster Dictionary* and *American Heritage Dictionary*); Discovery Comments at 7 (citing *Webster's II New College Dictionary*).

[67] *See* Sky Angel Comments at 25-28 (providing 23 references to the legislative history of the 1992 Cable Act in which members of Congress referred to a "channel" as a video programming network); ABC/CBS/NBC Affiliates Comments at 9; ABC/CBS/NBC Affiliates Reply Comments at 20-21; *but see* Discovery Comments at 7-8 (providing examples from the U.S. Code where the term "channel" refers to a pathway); ACA Comments at 20; TWC Comments at 5.

[68] *See* ABC/CBS/NBC Affiliates Comments at 9; DIRECTV Comments at 11; Public Knowledge Comments at 5-7; Sky Angel Comments at 28-31; *but see* Cablevision Comments at 14-15.

[69] *See supra* ¶ 23 (discussing how this interpretation would further the 1992 Cable Act's goal of increased "competition and diversity in the multichannel video programming market").

[70] *See* Michiel Willems, *Co-CEO of thePlatform: "TV Everywhere is the natural evolution" of subscription video*, SNL KAGAN, Sept. 15, 2014, available at https://www.snl.com/interactivex/article.aspx?id=29204558&KPLT=6 ("We even see a growing interest from operators looking at ways to deliver live linear channels via the cloud in order to support consumer demand across devices."); *Advanced Television Systems and their Impact upon the Existing Television Broadcast Service*, Sixth Further Notice Of Proposed Rulemaking, 11 FCC Rcd. 10968, 11000 (1996) (suggesting that, to viewers, "the term 'channel' implies a single stream of video programming.").

[71] *See* Merriam-Webster definition of multiple, http://www.merriam-webster.com/dictionary/multiple (defining multiple to mean "more than one" but also "many, manifold"). *See also infra* ¶ 29 (seeking comment on the meaning of "multiple" in the context of the Transmission Path Interpretation).

[72] *See id*.

[73] For example, CBS recently launched an Internet-based linear subscription streaming service that provides subscribers with their local market's CBS channel. At launch, each subscriber can access a single channel (the channel in the subscriber's local market); the service launched in 14 different local markets. *See* Dylan Love, *CBS*

(continued….)

number of programming hours per day or per week or to exempt certain niche programmers? Is there justification to require eighteen hours of programming per day, seven days per week, or some other number? We tentatively conclude that an entity that makes linear services available via the Internet is an MVPD, and our regulations apply to all of the MVPD's video services. Are there other factors that we should consider? For example, should we exempt from the interpretation of linear programming discrete, intermittent events that occur at prescheduled times, such as live individual sporting events? While these events are prescheduled by the programming provider, they are presented sporadically, in contrast to most television channels that broadcast continuously throughout the day. If such events are considered linear programming, our proposed Linear Programming Interpretation would appear to apply to online subscription video packages that stream multiple sporting events, such as those offered by Major League Baseball, Major League Soccer, the National Basketball Association, and the National Hockey League.[74] We seek comment on whether distributors of these types of services should be included within our interpretation of MVPD and, if not, on the statutory basis for excluding them and bright-line tests that we could use to evaluate whether such an exclusion would apply.

26. We tentatively conclude that we should interpret MVPD so that the definition would not apply to a distributor that makes available only programming that it owns—for example, sports leagues or stand-alone program services like CBS's new streaming service.[75] A potential consequence of the Linear Programming Interpretation would be that a programmer that decides to sell two or more of its own programming networks directly to consumers online, either instead of or in addition to selling them through cable or DBS operators' programming packages, might subject itself to the benefits and burdens of MVPD status. For example, if Disney were to offer, for purchase by subscribers, a package of linear feeds of the Disney Channel, Disney XD, and Disney Junior for online streaming to customers, would that make Disney an MVPD? Would this unduly limit consumer options? Would bringing such an offering into our MVPD regulations discourage innovation? We seek comment on our statutory authority to adopt our tentative conclusion.

27. Under the Act, an entity is an MVPD only if it makes multiple channels of video programming "available for purchase."[76] We seek comment on what it means to make video programming available for purchase, particularly as that term would apply if we were to adopt our proposed Linear Programming Interpretation. We tentatively conclude that the term means making an offer to consumers to exchange video service for money. We seek comment on this tentative conclusion. Are there other forms of consideration that a consumer could use to purchase services? If a cable or satellite company offers its subscribers access to supplemental online linear video services without a separate charge, but as part of their paid television packages, does this offering constitute making the online services "available for purchase"?[77] Do any cable or satellite companies charge subscribers for those services indirectly? Is there any way to trace general subscription fees specifically to supplemental online linear video services? We seek comment on how our proposed interpretation could affect new

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On 'All Access': We're Not Disrupting Cable TV; Just Bolstering Local TV Stations, INTERNATIONAL BUSINESS TIMES (Oct. 17, 2014, 2:45PM), http://www.ibtimes.com/cbs-all-access-were-not-disrupting-cable-tv-just-bolstering-local-tv-stations-1707086 (quoting a CBS executive's description of the service: "We're not launching a national feed, you get your local market's feed.").

[74] *See* MLB.tv, http://mlb.mlb.com/mlb/subscriptions/; MLS Live, http://live.mlssoccer.com/mlsmdl/; What is NBA League Pass?, http://www.nba.com/nba_tv/league_pass.html; NHL GameCenter Live, https://gamecenter.nhl.com/nhlgc/secure/gclsignup?CMPID=GCL:vnty.

[75] *See id.*; CBS All Access FAQ, https://cbsi.secure.force.com/CBSi/knowledgehome_allaccess?referer=cbs.com/vod&categories=CBS_Entertainment%3AAll_Access

[76] 47 U.S.C. § 522(13).

[77] *See*, *e.g.*, Xfinity TV Go, http://xfinitytv.comcast.net/watch-live-tv; Time Warner Cable TWC TV, https://video2.timewarnercable.com/; DISH Anywhere, http://www.dishanywhere.com/.

business models that do not conform with the traditional monthly subscription model, and whether we should treat those business models on a case-by-case basis.

28. We also seek comment on how our proposed interpretation would apply to entities that are located overseas but make linear video programming networks available for purchase in the United States over the Internet. An entity could meet the definition of MVPD under our proposed definition even if it has no physical presence in the United States.[78] We tentatively conclude that the Commission should not assert jurisdiction over these entities. If commenters disagree, they should provide the authority under which the Commission could assert jurisdiction. If we assert jurisdiction solely over entities with a physical presence in the United States, will some Internet-based distributors of video programming locate their operations overseas to avoid Commission regulation? Would the alternative interpretation discussed below, which would consider an entity to be an MVPD only if it maintains control over a transmission path, avoid this result by requiring an MVPD to have a jurisdictional presence in the United States?

2. Alternative "Transmission Path Interpretation"

29. We seek comment also on an alternative approach that would interpret the term channel in this context as requiring a transmission path. This is the approach for which the Media Bureau expressed tentative support in denying Sky Angel's standstill request. Citing the statutory definition of "channel" as "*a portion of the electromagnetic frequency spectrum* which is used in a cable system and which is capable of delivering a television channel,"[79] the Media Bureau expressed the tentative view that the term "channel" as used in the definition of MVPD "appear[s] to include a transmission path as a necessary element."[80] Under this interpretation, we would not consider Internet-based linear video providers to be MVPDs unless they control at least some portion of the physical means by which the programming is delivered—for example, via a physical cable that the provider owns or via spectrum that the provider is licensed to use. We seek comment on the Transmission Path Interpretation. How would we reconcile the Transmission Path Interpretation with previous Commission decisions that held that an entity need not own or operate the facilities that it uses to distribute video programming to qualify as an MVPD?[81] Would an entity have to make available multiple transmission paths (or, using the language in the definition of "channel," multiple "portions of the electromagnetic frequency spectrum") to each subscriber or customer to qualify as an MVPD? Do all traditional MVPDs make available multiple "portions of the electromagnetic frequency spectrum" to each subscriber or customer, including cable

[78] *See* Comcast Comments at 13 n.45; NCTA Reply Comments at 7 (raising the question of how the Commission would enforce rules against foreign entities).

[79] 47 U.S.C. § 522(4) (emphasis added). The Commission's regulations also define a "cable television channel" as a "signaling path provided by a cable television system." 47 C.F.R. § 76.5(r)-(u).

[80] *Sky Angel Standstill Denial*, 25 FCC Rcd at 3882-83, ¶ 7. Based on the limited record at the time, the Media Bureau found that Sky Angel did not appear to provide its subscribers with a transmission path; rather, it is the Sky Angel subscriber's Internet service provider that provides the transmission path. *See id.*

[81] *See Implementation of Section 302 of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 11 FCC Rcd 20227, 20301, ¶ 171 (1996) ("[W]e find Rainbow's argument that video programming providers cannot qualify as MVPDs because they may not operate the vehicle for distribution to be unsupported by the plain language of Section 602(13), which imposes no such requirement.") ("*OVS Second Order on Recon*"); *see also Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5651-52, ¶ 23 (1993) ("TCI asserts that, by including television receive-only satellite programming distributors in the definition of a multichannel video programming distributor, Congress showed that a distributor need not be facilities-based in order to come within the scope of the effective competition test. We agree with TCI that a qualifying distributor need not own its own basic transmission and distribution facilities.") ("*1993 Rate Regulation Order*").

operators using switched digital video ("SDV") technology[82] or an IP-based system in which no unique transmission path is associated with any video programming stream?[83] Is there a reasonable basis to believe that Congress intended to regulate as MVPDs only those entities that make available two or more transmission paths to each subscriber or customer, but not those that make available only one transmission path? If we adopt the Transmission Path Interpretation, how can we ensure that our regulations keep up with technology, particularly as incumbent MVPDs transition their services to Internet delivery?

30. We also seek comment on whether Congress intended to promote only facilities-based competition in the video distribution market, which might support the Transmission Path Interpretation. The Conference Report accompanying the 1992 Cable Act includes a statement that Congress intended to promote "facilities-based" competition.[84] Moreover, the Commission has previously stated that "'[f]acilities-based competition' is a term used in the legislative history of the Act to emphasize that program competition can only become possible if alternative facilities to deliver programming to subscribers are first created. The focus in the 1992 Cable Act is on assuring that facilities-based competition develops."[85] On the other hand, the ABC/CBS/NBC Affiliates note that "there is but one reference to 'facilities-based competition' in the lengthy House Report. . . . Certainly, that single reference cannot support the incorporation of a 'transmission path' requirement into a statutory definition that does not, on its face, contain any such restriction."[86] Accordingly, we seek comment on whether Congress sought to increase facilities-based competition exclusively, or sought to encourage competition to incumbent cable operators more generally, regardless of how the competitive service is delivered.

31. *Scope of the Transmission Path Interpretation*. As we note above, incumbent MVPDs are obtaining rights to distribute content online at a rapid pace and appear prepared to launch online linear video services that are not tied to their facilities.[87] We seek comment on our regulatory authority under

[82] SDV is "a method of delivering programming to subscribers only when those subscribers actively request that programming, as opposed to delivering all programming feeds at the same time to all subscribers." *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Notice of Inquiry, 24 FCC Rcd 750, 764, ¶ 30 (2009); *Carriage of Digital Television Broadcast Signals*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 22 FCC Rcd 21064, 21095, ¶ 60 (2007); *see also* Sky Angel Comments at 22 (claiming that requiring an entity to provide "multiple transmission paths" would exclude cable systems that rely on SDV technology, because these systems "transmit only a single 'cable channel' . . . to each home rather than simultaneously transmit 'multiple channels' to every subscriber"); Sky Angel Reply Comments at 29 (same).

[83] *See* AT&T Reply Comments at 2-3 ("[I]n an IP-based network/system, such as our own Uverse TV service, which is an MVPD service, there is no unique 'transmission path' associated with any particular 'channel' or programming stream, or over which programming packets are routed. Rather, the packets of multiple programming streams (or channels) share the same transmission path – often at the same time (such as when multiple viewers in a home are watching different channels at the same time).").

[84] *See* H.R. Rep. No. 102-862 (1992) (Conf. Rep.), at 93, *reprinted in* 1992 U.S.C.C.A.N. 1231, 1275 (discussing the program access provision of the 1992 Cable Act and stating that the "conferees intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities-based competition to cable and extending programming to areas not served by cable").

[85] *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage*, First Report and Order, 8 FCC Rcd 3359, 3384, n.79 (1993) ("*1993 Program Access Order*").

[86] ABC/CBS/NBC Affiliates Reply Comments at 10-11 (emphasis in original). *See also* Sky Angel Reply Comments at 16.

[87] *See supra* n.1.

the Transmission Path Interpretation in these cases.[88] The Transmission Path Interpretation seems difficult to apply in certain cases because an entity's status would change depending on how and where the subscriber receives the content. For example, consider a subscriber who views video at her home on a tablet over broadband infrastructure that the video distributor owns, and then visits a local coffee shop and views video on that same tablet via the Internet using broadband infrastructure that the video distributor does not own. In that case, the video provider would be an MVPD at the subscriber's home, but not at the coffee shop. We believe that this would lead to regulatory uncertainty, thus providing more support for the Linear Programming Interpretation. We seek comment on this analysis.

32. We invite comment on any other interpretation the Commission should consider in addition to the Linear Programming Interpretation and the Transmission Path Interpretation.

B. Regulatory Implications of Alternative Interpretations

33. Below, we seek comment on the policy ramifications of the various interpretations set forth above. To the extent possible, we encourage commenters to quantify any costs and benefits and submit supporting data. In addition to the specific effects that we ask about below, we invite commenters to identify other possible effects of the Linear Programming Interpretation and the Transmission Path Interpretation and how those effects should influence our interpretation.

34. We realize that under our proposed Linear Programming Interpretation, several new and planned services may be considered MVPD services. On the one hand, DISH, Sony, and Verizon have each announced linear Internet-based subscription video services whose launch is imminent.[89] These services reportedly will carry programming from some of the largest content companies in the world.[90] On the other hand, Aereo, FilmOn, and Sky Angel launched or planned to launch Internet-based subscription video services, but they claim that regulatory uncertainty has limited their ability to develop a subscriber base, limited investment in their services, and hindered their ability to compete.[91] In light of these contrasting examples, we seek comment on whether the privileges and obligations set forth in this section tilt in favor of or against our proposed Linear Programming Interpretation. Would the proposal (i) give innovative companies access to programming that consumers want, or (ii) unduly and unnecessarily burden companies seeking to offer innovative new services?

1. Application of MVPD-Specific Regulatory Privileges and Obligations to Internet-Based Distributors of Video Programming

35. As discussed in further detail below, our proposed interpretation would ensure that incumbent MVPDs do not evade our regulations by migrating their services to the Internet. It would also allow Internet-based distributors of video programming, including those that do not control any facilities,

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[88] We also seek comment below on our tentative conclusion that video programming services that a cable operator may offer over the Internet should not be regulated as cable services, but rather as non-cable MVPD services. *See infra* ¶ 78.

[89] *See supra* n.1.

[90] *See* Lance Whitney, *Sony to launch PlayStation Vue, an online TV service that challenges cable*, CNET (Nov. 13, 2014, 7:02 AM), http://www.cnet.com/news/sony-to-launch-online-tv-service-to-challenge-cable-tv/; David Lieberman, *Scripps Networks Agrees To Supply Channels To Dish Network's Planned Streaming Video Service*, DEADLINE (Sept. 16, 2014), http://deadline.com/2014/09/scripps-networks-offers-channels-dish-streaming-service-834957/; Chris Welch, *Verizon's internet TV service coming in mid-2015, may let you pick only channels you want*, THE VERGE (Sept. 11, 2014, 11:37 AM), http://www.theverge.com/2014/9/11/6135737/verizon-internet-tv-coming-mid-2015.

[91] *See* Letter from Rebecca Rini, Counsel to FilmOnX, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 12-83, at 2 (Nov. 10, 2014); Letter from Seth D. Greenstein, Counsel to Aereo, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 12-83, at 2-3 (Oct. 10, 2014); Supplemental Comments of Sky Angel U.S. at 1-2, MB Docket No. 12-80 (filed June 10, 2014).

to take advantage of the privileges of MVPD status but would also require them to comply with the legal obligations applicable to MVPDs. Conversely, the Transmission Path Interpretation could allow many if not most Internet-based distributors of video programming to avoid regulation, including obligations that promote important public interest benefits, and would also deprive them of certain regulatory privileges. We seek comment on these policy ramifications below.

a. General Privileges and Obligations

36. An entity that meets the definition of an MVPD is subject to both privileges and legal obligations under the Communications Act and the Commission's rules. The regulatory privileges of MVPD status include the right to seek relief under the program access rules[92] and the retransmission consent rules.[93] Among the regulatory obligations of MVPDs are statutory and regulatory requirements relating to (i) program carriage;[94] (ii) the competitive availability of navigation devices (including the integration ban);[95] (iii) good faith negotiation with broadcasters for retransmission consent;[96] (iv) Equal Employment Opportunity ("EEO");[97] (v) closed captioning;[98] (vi) video description;[99] (vii) access to emergency information;[100] (vi) signal leakage;[101] (vii) inside wiring;[102] and (viii) the loudness of commercials.[103]

37. To the extent that an Internet-based distributor of video programming falls within the definition of an MVPD, it will be able to take advantage of the privileges of MVPD status but will also be subject to MVPD obligations, unless the Commission waives some or all of them if authorized to do so. We seek comment on the overall costs and benefits of applying these regulatory privileges and obligations to Internet-based distributors of video programming, including incumbent operators who migrate to Internet delivery. We also seek comment on specific privileges and obligations below. Would waiver or exemption from certain regulations be an appropriate approach for regulating Internet-based distributors? If so, what regulations should be waived or modified to exempt Internet-based distributors, and do we have authority to do so under the Act? Alternatively, does the statute permit us to allow these entities to choose whether they wish to be classified as MVPDs?

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[92] *See* 47 U.S.C. § 548; 47 C.F.R. §§ 76.1000-1004. Among other things, these rules require cable-affiliated programmers to make their programming available to MVPDs on nondiscriminatory rates, terms, and conditions.

[93] *See* 47 U.S.C. § 325(b)(3)(C)(ii); 47 C.F.R. § 76.65. Among other things, these rules require broadcasters to negotiate in good faith with MVPDs for retransmission consent.

[94] *See* 47 U.S.C. § 536; 47 C.F.R. §§ 76.1300-1302.

[95] *See* 47 U.S.C. § 549; 47 C.F.R. §§ 76.1200-1210.

[96] *See* 47 U.S.C. § 325(b)(3)(C)(iii); 47 C.F.R. § 76.65(b).

[97] *See* 47 C.F.R. §§ 76.71-79, 76.1792, 76.1802.

[98] *See* 47 C.F.R. § 79.1. We note, however, that video programming delivered via Internet protocol is subject to separate closed captioning obligations under 47 C.F.R. § 79.4.

[99] *See* 47 C.F.R. § 79.3.

[100] *See* 47 C.F.R. § 79.2.

[101] *See* 47 C.F.R. § 76.610; *see also* 47 C.F.R. §§ 76.605(a)(12), 76.611, 76.614, 76.1803; 1.1705(a)(1) (FCC Form 320 – Basic Signal Leakage Performance Report). These rules apply only to the extent that aeronautical frequencies are used.

[102] *See* 47 C.F.R. §§ 76.800-806. These rules apply only to the extent the MVPD owns inside wiring.

[103] *See* Commercial Advertisement Loudness Mitigation ("CALM"), Pub. L. No. 111-311, 124 Stat. 3294 (2010) (codified at 47 U.S.C. § 621); *see also* 47 C.F.R. § 76.607; *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222 (2011).

38. Would subjecting Internet-based distributors to MVPD regulations deter investment in new technologies and drive some current or prospective Internet-based distributors from the market?[104] On the other hand, would subjecting Internet-based distributors to MVPD regulations provide regulatory certainty that could reassure consumers and spur investment by service providers? To what extent should we consider increasing consumer adoption of non-traditional MVPDs as a factor in regulatory treatment of entities that provide similar services but use different delivery mechanisms?[105] If Internet-based distributors compete with traditional MVPDs,[106] should they be subject to the same regulatory obligations as traditional MVPDs?[107]

b. Specific Privileges and Obligations

(i) Privileges

39. Below, we seek comment on the specific privileges of MVPD status and how they would apply to Internet-based distributors of video programming. Would applying the privileges of MVPD status to Internet-based distributors of video programming impose costs on third parties, such as cable-affiliated programmers and broadcasters? To what extent would the public be harmed if these privileges did not extend to Internet-based distributors of video programming?

(a) Program Access

40. As required by Section 628 of the Act, the Commission's program access rules provide certain protections to MVPDs in their efforts to license cable-affiliated programming.[108] These rules: (i) prohibit a cable operator or its affiliated, satellite-delivered programmer from engaging in "unfair methods of competition or unfair or deceptive acts or practices" that have the "purpose or effect" of

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[104] *See* CCIA Comments at 4-5; Open Internet Coalition Comments at 5; Google Reply Comments at 3 n.11 (arguing that imposing MVPD requirements on online video companies will damage the still-developing market for those services); *see also* MPAA Comments at 3-4; Verizon Comments at 1-2; Comcast/NBCU Reply Comments at 11; Discovery Reply Comments at 3-5; *but see* Sky Angel Reply Comments at 35-36 (stating that commenters "greatly exaggerate" the burdens of regulations applicable to MVPDs).

[105] *See* DIRECTV Comments at 15-16 ("[T]he Commission must recognize the rapidly developing capabilities of OVDs and other new-entrant MVPDs which are becoming true competitors to traditional MVPDs. . . . Non-traditional MVPDs have gone from mere curiosities to emerging competitors in a very short period of time, and continue to develop rapidly as the speed and ubiquity of broadband infrastructure improves. In these circumstances, it is appropriate to apply core regulatory rights and responsibilities to both traditional and non-traditional MVPDs."); DIRECTV Reply Comments at 7-8; Reply Comments of the National Association of Broadcasters at 2 ("NAB Reply"); Sky Angel Reply Comments at 34-35.

[106] The Commission has stated that online distributors of video programming "offer a tangible opportunity to bring customers substantial benefits" and that they "can provide and promote more programming choices, viewing flexibility, technological innovation and lower prices." *Comcast Corporation, General Electric Company and NBC Universal, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4268-69, ¶ 78 (2011) ("*Comcast/NBCU Order*"). While the Commission concluded that consumers do not perceive online distributors as a substitute for traditional MVPD service, it stated that online distributors are a "potential competitive threat" and that they "must have a similar array of programming" if they are to "fully compete against a traditional MVPD." *Id.* at 4269, ¶ 79, 4272-73, ¶ 86; *see also id.* at 4266, ¶ 70 ("Without access to online content on competitive terms, an MVPD would suffer a distinct competitive disadvantage compared to Comcast, to the detriment of competition and consumers.").

[107] We note that even if an Internet-based distributor qualifies as an MVPD it will not be subject to a number of regulations and statutory requirements applicable to cable and DBS operators unless it also qualifies as one of those services. *See, e.g.*, 47 C.F.R. §§ 76.92, 76.122 (network non-duplication rules, which apply to cable operators) ; 47 U.S.C. §§ 338, 534, 535 (carry-one, carry-all and must carry requirements, which apply to DBS and cable operators, respectively); 47 U.S.C. § 315, 335(a), 47 C.F.R. §§ 76.205-206, 76.1611, 76.1701; 47 C.F.R. § 25.701(b)-(d) (political programming and candidate access obligations for DBS and cable operators).

[108] *See* 47 U.S.C. § 548.

"hinder[ing] significantly or prevent[ing]" an MVPD from providing programming to subscribers or consumers (the "unfair act" prohibition);[109] (ii) prohibit a cable operator from unduly or improperly influencing the decision of its affiliated, satellite-delivered programmer to sell, or unduly or improperly influencing the programmer's prices, terms, and conditions for the sale of, satellite-delivered programming to any unaffiliated MVPD (the "undue or improper influence" rule);[110] and (iii) prohibit a cable-affiliated, satellite-delivered programmer from discriminating in the prices, terms, and conditions of sale or delivery of satellite-delivered programming among or between competing MVPDs (the "non-discrimination" rule).[111] To the extent that an MVPD believes that a cable-affiliated programmer has violated these rules, it may file a complaint with the Commission.[112]

41. If the program access rules were to apply, would cable-affiliated programmers be required to negotiate with and license programming to potentially large numbers of Internet-based distributors?[113] How will this impact the value of cable-affiliated programming to traditional MVPDs, especially as compared to non-cable-affiliated programming?[114] To the extent that licensing programming to a particular Internet-based distributor presents reasonable concerns about signal security and piracy, do the program access rules adequately address this issue by recognizing these concerns as a legitimate reason for a cable-affiliated programmer to withhold programming from an MVPD?[115] Would extending the reach of the program access rules have a positive effect for consumers?

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[109] *See* 47 U.S.C. § 548(b); 47 C.F.R. § 76.1001(a); *Revision of the Commission's Program Access Rules,* Report and Order, 27 FCC Rcd 12605, 12640-45, ¶¶ 52-58 (2012) ("*2012 Program Access Order*") (explaining the process for challenging exclusive contracts involving satellite-delivered, cable-affiliated programming pursuant to the unfair act prohibition); *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements,* First Report and Order, 25 FCC Rcd 746 (2010) ("*2010 Program Access Order*"), *affirmed in part and vacated in part sub nom. Cablevision Sys. Corp. et al. v. FCC*, 649 F.3d 695 (D.C. Cir. 2011) ("*Cablevision II*") (establishing procedures for challenging allegedly unfair acts involving terrestrially delivered, cable-affiliated programming pursuant to the unfair act prohibition).

[110] *See* 47 U.S.C. § 548(c)(2)(A); 47 C.F.R. § 76.1002(a).

[111] *See* 47 U.S.C. § 548(c)(2)(B); 47 C.F.R. § 76.1002(b).

[112] *See* 47 U.S.C. § 548(d); 47 C.F.R. § 76.1003.

[113] *See* Comcast Comments at 11-12 (arguing that thousands of entities would make program access claims); NCTA Reply Comments at 6-7; *but see* DIRECTV Comments at 13; DIRECTV Reply Comments at 8; Sky Angel Reply Comments at 11-12 (asserting that few companies would qualify as MVPDs).

[114] *See* Discovery Comments at 13 ("Negotiated license fees between MVPDs and programmers today are based in part on an MVPD's expectation of whether the availability of a network is likely to induce subscribers to use the MVPD's services. While nearly every MVPD today faces competition from several other distributors, the number and popularity of those distributors is fairly easily identified and factored into the price as necessary. If the same programming network is available through an unknown and unlimited number of online sources, that network's value to the facilities-based MVPD may be diminished, as may be the price the MVPD is willing to pay for it."); Discovery Reply Comments at 5-7; Ovation Reply Comments at 4.

[115] *See Cellularvision of New York, L.P. v. Sportschannel Associates,* Order on Reconsideration, 11 FCC Rcd 3001, 3003, ¶ 11 (Cable Servs. Bur., 1996) ("While the program access provisions clearly allow programmers to refuse to provide programming for a legitimate business reason, such as concerns about signal security, the Commission cannot simply defer to a programmer's assessment of whether its concerns are reasonable."); *see also* 47 U.S.C. § 548(c)(2)(B)(i) (providing that the program access rule prohibiting discrimination does not preclude a cable-affiliated programmer from "imposing reasonable . . . standards regarding . . . technical quality"); 47 C.F.R. § 76.1002(b)(1) (same). We also note that the statute provides permissible factors for programmers to consider when they set rates for programming. *See Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage*, First Report and Order, 8 FCC Rcd 3359, 3364, ¶ 14 (1993) ("[W]e will find price discrimination to have occurred if the difference in the price charged to competing distributors is not explained by the statute's permissible factors. In general terms, these factors involve (1) cost differences at the wholesale level in

(continued….)

42. We also seek comment on whether and how our proposed rule and alternative interpretations would impact competition in the video distribution market (both at present and in the future), specifically with respect to the program access rules.[116] Among other things, the program access rules are intended to prevent cable-affiliated programmers from discriminating among similarly situated MVPDs.[117] If Internet-based distributors of video programming are deemed not to be MVPDs because they do not make available transmission paths (and therefore are ineligible for the benefits of the program access rules), would there be any regulatory or other constraint that would prevent a cable-affiliated programmer from making its affiliated programming available for online distribution to only certain Internet-based distributors of video programming, such as those owned by its affiliated cable operator, but not to those owned by other MVPDs?[118] In such a scenario, because the cable-affiliated programmer would not be differentiating among "MVPDs," would different treatment be permissible under the program access rules? How would this impact competition in the video distribution market? Cablevision contends that extending the program access rules to Internet-based distributors would give them too much flexibility compared to existing MVPD competitors.[119] Is this a concern that we should consider, and if so, why? We note that the Commission receives few program access complaints; should this affect our analysis? Or does it reflect that programmers are following our program access rules and they are working?

(b) Retransmission Consent

43. Section 325(b) of the Act benefits MVPDs by requiring broadcasters to negotiate in good faith with MVPDs for retransmission consent[120] and prohibiting broadcasters from negotiating exclusive retransmission consent agreements with any MVPD.[121] Absent these provisions, broadcasters could potentially refuse to negotiate with and thereby withhold their signals from MVPDs that wish to carry

(Continued from previous page)
providing a program service to different distributors; (2) volume differences; (3) differences in creditworthiness, financial stability, or character; and (4) differences in the way the service is offered.").

[116] *See supra* n.106 (discussing Internet-based distributors as a potential competitive threat to traditional MVPDs); *see also* Comments of the Writers Guild of America, West, Inc. at 4 ("Without including these new entities within the MVPD definition, vertically integrated MVPDs such as DirecTV, Comcast and Cablevision could opt to withhold their programming from new competitors.") ("WGA-West Comments"); Sky Angel Comments at 36-39.

[117] *See* 47 U.S.C. § 548(c)(2)(B) (requiring the Commission to adopt regulations that "prohibit discrimination by a satellite cable programming vendor in which a cable operator has an attributable interest or by a satellite broadcast programming vendor in the prices, terms, and conditions of sale or delivery of satellite cable programming or satellite broadcast programming among or between cable systems, cable operators, or other multichannel video programming distributors, or their agents or buying groups . . . .").

[118] We seek comment below on whether networks have the rights to license this programming for online distribution at all. *See infra* ¶¶ 67-69.

[119] *See* Cablevision Comments at 2 (arguing that "cable operators, saddled with legacy rules and business practices, could find [it] difficult to match" services offered by Internet-based services). *But see* Reply Comments of Public Knowledge at 9 ("online MVPDs will have capital and content costs like any others"); DIRECTV Comments at 13-14.

[120] *See* 47 U.S.C. § 325(b)(3)(C)(ii); 47 C.F.R. § 76.65. This provision also imposes a reciprocal obligation on MVPDs to negotiate in good faith with broadcasters for retransmission consent. *See* 47 U.S.C. § 325(b)(3)(C)(iii); 47 C.F.R. § 76.65. We discuss this obligation below. *See infra* ¶¶ 50-53.

[121] *See* 47 U.S.C. § 325(b)(3)(C)(ii); 47 C.F.R. § 76.65(l).

these signals.[122] To the extent that an MVPD believes that a broadcaster has violated these provisions, it may file a complaint with the Commission.[123]

44. We seek comment on the impact that our proposed interpretation of the definition of MVPD and alternative interpretations would have on the retransmission consent process.[124] Under our proposal, would the retransmission consent rules force broadcasters to negotiate with and license their signals to potentially large numbers of Internet-based distributors?[125] We seek comment also on whether and how competition in the video distribution market (both at present and in the future) would be impacted if Internet-based distributors of video programming are not considered MVPDs and therefore are not able to benefit from the retransmission consent rules.[126]

45. Section 325(b)(1)(A) of the Act provides that "no cable system or other *multichannel video programming distributor*" shall retransmit a broadcast signal without the broadcaster's consent.[127] But an entity wishing to retransmit a broadcast signal also must obtain authorization to publicly perform the copyrighted works within the broadcast signal.[128] If we adopt the Linear Programming Interpretation and the Copyright Office does not afford statutory licenses to Internet-based video providers, how would we construe a broadcaster's obligation to negotiate in good faith? What effect should the answer to that question have on our policy analysis?[129]

(ii) Obligations

46. Below, we seek comment on specific obligations imposed on MVPDs and how those obligations would apply to Internet-based distributors of video programming. How costly would it be for Internet-based distributors of video programming to comply with these regulations? Would the public be harmed if these obligations did not extend to Internet-based distributors of video programming and such distribution became prevalent?

47. The interpretation of MVPD that we ultimately adopt in this proceeding may subject certain Internet-based distributors of video programming to Commission regulation that are not currently subject to such regulation. What transition period should we allow these entities to come into compliance with each of the relevant rules?

(a) Program Carriage

48. The program carriage rules prohibit MVPDs from (i) requiring a financial interest in a video programming vendor's program service as a condition for carriage;[130] (ii) coercing a video

[122] Section 325(b)(1)(A) of the Act provides that "No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except— (A) with the express authority of the originating station . . . ." 47 U.S.C. § 325(b)(1)(A).

[123] *See* 47 C.F.R. § 76.65(c).

[124] We seek comment below on how the interpretation of the definition of the MVPD will impact the statutory copyright licenses. *See infra* ¶ 66.

[125] *See* Comcast Comments at 11-12 ("If OVDs were deemed MVPDs . . . broadcasters potentially would face the prospect of having to negotiate retransmission consent agreements – and the duty to bargain in good faith – with thousands of OVDs. . . . [T]here are bound to be disputes that will lead to complaints at the Commission, undermining ongoing marketplace negotiations and burdening Commission staff and resources.").

[126] *See supra* n.106 (discussing Internet-based distributors as a potential competitive threat to traditional MVPDs).

[127] 47 U.S.C. § 325(b)(1)(A) (emphasis added); *see also* 47 C.F.R. § 76.64.

[128] 17 U.S.C. §§ 106, 111; *American Broadcasting Companies, Inc. v. Aereo, Inc*., 134 S.Ct. 2498, 2507 (2014).

[129] *See also infra* ¶ 66.

[130] *See* 47 C.F.R. § 76.1301(a); *see also* 47 U.S.C. § 536(a)(1).

programming vendor to provide, or retaliating against a vendor for failing to provide, exclusive rights as a condition of carriage;[131] or (iii) unreasonably restraining the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage.[132] To the extent that a programming vendor believes that an MVPD is not in compliance with these rules, it may file a complaint with the Commission.[133]

49. What practical impact, if any, would these rules have on Internet-based distributors of video programming?[134] As we note above, large, established cable operators, DBS providers, and technology companies have announced plans to launch Internet-based video programming services that would be MVPD services under the Linear Programming Interpretation.[135] If these companies follow through with these plans, absent application of the program carriage rules there may be no regulatory constraint preventing them from demanding a financial interest or exclusive rights from programmers as a condition for carriage.[136] Does this argue in favor of adopting an interpretation of MVPD that would cover providers of these services under the program carriage rules? Moreover, as more Internet-based distributors invest in their own programming, they may have an incentive to favor their affiliated programming over unaffiliated programming on the basis of affiliation.[137] We seek comment on the effect that the alternative interpretations will have on negotiations with programmers and Internet-based video programming services. What are the costs and benefits of applying the program carriage obligations to Internet-based video programming services?

(b) Retransmission Consent

50. As discussed above, Section 325(b)(1)(A) of the Act provides that "No cable system or other *multichannel video programming distributor* shall retransmit the signal of a broadcasting station, or any part thereof, except— (A) with the express authority of the originating station . . . ."[138] Thus, to the extent that an Internet-based distributor of video programming qualifies as an MVPD, it must receive the consent of the broadcaster before retransmitting the broadcaster's signal. Moreover, Section 325(b) of the Act imposes an obligation on MVPDs to negotiate in good faith with broadcasters in obtaining retransmission consent.[139] If a broadcaster believes that an MVPD has violated these provisions, it may file a complaint with the Commission.[140]

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[131] *See* 47 C.F.R. § 76.1301(b); *see also* 47 U.S.C. § 536(a)(2).

[132] *See* 47 C.F.R. § 76.1301(c); *see also* 47 U.S.C. § 536(a)(3).

[133] *See* 47 U.S.C. § 536(a)(4); *see also* 47 C.F.R. § 76.1302.

[134] *See* Sky Angel Reply Comments at 35 ("The program carriage rules would have little, if any effect, because they do not mandate carriage.").

[135] *See supra* n.1 (citing press reports that Sony, Dish Network, DIRECTV and Verizon each plan to launch online linear video services).

[136] *See* 47 C.F.R. § 76.1301(a)-(b); *see also* 47 U.S.C. § 536(a)(1)-(2).

[137] *See* Neil Irwin, *Netflix vs. Amazon, and the New Economics of Television*, THE NEW YORK TIMES, April 25, 2014, *available at* http://www.nytimes.com/2014/04/27/upshot/netflix-vs-amazon-and-the-new-economics-of-television.html?abt=0002&abg=0; 47 C.F.R. § 76.1301(c); *see also* 47 U.S.C. § 536(a)(3).

[138] 47 U.S.C. § 325(b)(1)(A) (emphasis added); *see also* 47 C.F.R. § 76.64.

[139] *See* 47 U.S.C. § 325(b)(3)(C)(iii); 47 C.F.R. § 76.65. This provision also imposes a reciprocal obligation on broadcasters to negotiate in good faith with MVPDs for retransmission consent. *See* 47 U.S.C. § 325(b)(3)(C)(ii); 47 C.F.R. § 76.65. We discuss this obligation in greater detail above. *See supra* ¶¶ 43-45.

[140] *See* 47 C.F.R. § 76.65(c).

51. We seek comment above on how the retransmission consent rules can benefit MVPDs, as we propose to interpret that term. We now seek comment on the practical impact the obligations of MVPDs under the retransmission consent rules would have on Internet-based distributors of video programming that qualify as MVPDs. What impact will the obligation to negotiate in good faith with broadcasters have on the resources of Internet-based distributors of video programming that qualify as MVPDs? In particular, will Internet-based distributors of video programming that operate on a nationwide basis have to engage in negotiations with thousands of broadcasters throughout the nation?

52. Are some Internet-based distributors of video programming likely to prefer not to carry broadcast signals? For example, to the extent that an Internet-based provider provides service nationwide it may prefer not to offer local content. In that case, would the good faith negotiation requirements allow these distributors to simply reject all carriage terms offered by a broadcaster and to refrain from making any carriage offers of their own? Or, would this conduct amount to a violation of the duty to negotiate in good faith?[141] Would it matter whether the distributor declined to negotiate with any broadcast stations? How will the answers to these questions impact the business models of Internet-based distributors of video programming that qualify as MVPDs but would prefer not to carry broadcast signals? Is it likely or possible that Internet-based distributors will want to carry broadcast *network* programming, or to carry broadcast stations nationwide?

53. How do network affiliation agreements impact the carriage of broadcast stations on Internet-based MVPDs? Specifically, to what extent do existing network affiliation agreements limit or prohibit local network stations' ability to grant retransmission consent rights to Internet-based MVPDs?[142] Would limiting or prohibiting these provisions harm localism?

(c) Other MVPD Obligations

54. *Closed Captioning*. Section 79.1 of the Commission's rules (the "television closed captioning rules") requires MVPDs[143] to provide closed captioning, defined as the "visual display of the audio portion of video programming pursuant to the technical specifications set forth in this part."[144] Internet video services are not subject to these requirements.[145] Internet-based distributors of video

[141] *See* 47 C.F.R. § 76.65(b)(1)(i) (providing that the refusal by a Negotiating Entity (defined to include an MVPD) to negotiate retransmission consent violates the Negotiating Entity's duty to negotiate in good faith); 47 C.F.R. § 76.65(b)(1)(iv) (providing that the refusal by a Negotiating Entity (defined to include an MVPD) to put forth more than a single, unilateral proposal violates the Negotiating Entity's duty to negotiate in good faith); *but see* 47 C.F.R. § 76.65(a)(2) ("If a television broadcast station or multichannel video programming distributor negotiates in accordance with the rules and procedures set forth in this section, failure to reach an agreement is not an indication of a failure to negotiate in good faith."); *2005 Reciprocal Bargaining Order*, 20 FCC Rcd at 10345, ¶ 14 ("[P]rovided that a party to a reciprocal bargaining negotiation complies with the requirements of the Commission's rules, failure to reach agreement would not violate either Section 325(b)(3)(C) or Section 76.65 of the Commission's rules. Accordingly, NCTA's argument that the reciprocal bargaining obligation will lead to another form of must carry is incorrect."); Sky Angel Reply Comments at 35 (claiming that the "retransmission consent rules do not mandate carriage, but rather simply require MVPDs to act in good faith while ensuring that broadcasters are adequately compensated for the retransmission of their signals").

[142] For example, do any network affiliation agreements prohibit a local network-affiliated station from permitting the retransmission of the entirety of its signal over the Internet? Do they limit the retransmission of network programming over the Internet?

[143] *See* 47 C.F.R. § 79.1(a)(2).

[144] 47 C.F.R. § 79.1(a)(4); *see also* 47 U.S.C. § 613.

[145] *Closed Captioning and Video Description of Video Programming,* Report and Order, 13 FCC Rcd 3272, 3385, ¶¶ 249-51 (1997) ("[W]e recognize that there are issues that need to be addressed relating to the convergence of television receivers and computers and the growth of Internet video like programming that may need to be addressed in the future. . . . [W]e believe that further study of these issues relating to new technologies and captioning is needed."); *Implementation of the Child Safe Viewing Act,* Report, 24 FCC Rcd 11413, 11478, ¶ 149 (2009).

programming, however, are subject to the Commission's Internet protocol ("IP") closed captioning requirements set forth in Section 79.4 of the Commission's rules (the "IP closed captioning rules") to the extent that they make video programming available directly to end users through a distribution method that uses IP.[146] The IP closed captioning rules are narrower than the television closed captioning rules, insofar as the IP closed-captioning rules require closed captioning of IP-delivered video programming only if the programming is published or exhibited on television with captions,[147] whereas the television closed captioning rules require closed captioning for all new nonexempt English- and Spanish-language video programming.[148] The Commission has explained that the "IP closed captioning rules do not apply to traditional managed video services that MVPDs provide to their MVPD customers within their service footprint, regardless of the transmission protocol used; rather, such services are already subject to Section 79.1 of the Commission's rules."[149] To the extent that some Internet-based distributors of video programming qualify as MVPDs, how will this impact their obligations with respect to closed captioning?[150] Will they be subject to Section 79.1 or 79.4 of the Commission's rules, or will the Commission need to develop another set of requirements tailored to these services?[151] Will we need to amend our closed captioning rules if we adopt the Linear Programming Interpretation, and if so, how?

55. *Video Description*. As required by the CVAA,[152] the Commission's rules require MVPD systems that serve 50,000 or more subscribers to provide 50 hours per quarter of video description, which makes video programming accessible to people who are blind or visually impaired,[153] on each of the five most popular nonbroadcast networks.[154] In general, MVPDs of any size must pass through any video

[146] *See Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787 (2012) ("*IP Closed Captioning Order*"); *see also* 47 U.S.C. § 613(c); 47 C.F.R. § 79.4(a)(3).

[147] *See* 47 U.S.C. § 613(c)(2)(A); *see also* 47 C.F.R. § 79.4(b); *IP Closed Captioning Order*, 27 FCC Rcd at 804-05, ¶ 25 (the IP closed captioning requirement "is triggered only after the programming has been shown on television with closed captions").

[148] *See* 47 C.F.R. § 79.1(b); *IP Closed Captioning Order*, 27 FCC Rcd at 795-96, ¶ 11. *See* 47 C.F.R. § 79.1(b); *IP Closed Captioning Order*, 27 FCC Rcd at 795-96, ¶ 11. "New" programming refers to analog video programming first published or exhibited on or after January 1, 1998, or digital video programming first published or exhibited on or after July 1, 2002. 47 C.F.R. §§ 79.1(a)(5). The Commission's television closed captioning rules also require closed captioning of 75% of a programming distributor's pre-rule, nonexempt English and Spanish language programming that is distributed and exhibited on each channel during each calendar quarter. 47 C.F.R. §§ 79.1(b)(2)(ii), (b)(4)(ii). "Pre-rule" programming refers to analog video programming first published or exhibited before January 1, 1998, or digital video programing first published or exhibited before July 1, 2002. 47 C.F.R. § 79.1(a)(8). *See* 47 C.F.R. § 79.1(b); *IP Closed Captioning Order*, 27 FCC Rcd at 795-96, ¶ 11.

[149] *See IP Closed Captioning Order*, 27 FCC Rcd at 795-96, ¶ 11.

[150] Because the Commission to date has not determined the extent to which Internet-based distributors of video programming qualify as MVPDs (and thus would be covered by the television closed captioning rules), we expect that Internet-based distributors of video programming are currently complying with at least the IP closed captioning rules.

[151] *See IP Closed Captioning Order*, 27 FCC Rcd at 795-96, ¶ 11.

[152] *See* Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, Title II, § 202(a), 124 Stat. 2751, 2767-70 (2010) (codified at 47 U.S.C. § 613(f)) ("CVAA"); *see also* 47 C.F.R. § 79.3; *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847 (2011) ("*Video Description Order*").

[153] Video description is defined as "the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue." 47 U.S.C. § 613(h)(1); 47 C.F.R. § 79.3(a)(3).

[154] 47 C.F.R. § 79.3(b)(4). The top five national nonbroadcast networks for the purposes of these rules are USA, the Disney Channel, TNT, Nickelodeon, and TBS. *See Video Description Order*, 26 FCC Rcd at 11854, ¶ 13. This list will be updated on July 1, 2015 and at three-year intervals. *See id*. at 11857, ¶ 18; *see also* 47 C.F.R. § 79.3(b)(4).

description provided with programming they carry, including broadcast channels, as long as they have the technical capability to do so.[155] Section 79.105 of the Commission's rules requires apparatus designed to receive or play back video programming to decode and make available the secondary audio stream, if technically feasible, to facilitate the transmission and delivery of video description.[156] We seek comment on the costs as well as the practical impact these obligations will have on an Internet-based distributor of video programming that qualifies as an MVPD.[157] Are there attributes of Internet-based distributors of video programming that make compliance with these requirements more burdensome than for traditional MVPDs?[158] We also seek comment on our authority to extend our video description regulations to Internet-delivered MVPDs under the Linear Programming Interpretation.[159] Will we need to amend our video description rules if we adopt the Linear Programming Interpretation, and if so, how?

56. *Accessibility of Emergency Information*. Section 79.2 of the Commission's rules requires MVPDs to comply with certain requirements pertaining to the accessibility of emergency information by persons with disabilities.[160] And to make emergency information accessible to individuals who are blind or visually impaired, Section 79.105 of the Commission's rules requires apparatus designed to receive or play back video programming to decode and make available the secondary audio stream, if technically feasible.[161] We seek comment on the costs as well as the practical impact these obligations will have on Internet-based distributors of video programming that qualify as MVPDs.[162] Will we need to amend our emergency information accessibility rules if we adopt the Linear Programming Interpretation, and if so, how?

57. *Accessible User Interfaces, Guides, and Menus*. Section 79.108 of the Commission's rules requires MVPDs to "ensure that the on-screen text menus and guides provided by navigation devices for the display or selection of multichannel video programming are audibly accessible in real time upon request by individuals who are blind or visually impaired."[163] We seek comment on the costs and the practical impact these obligations will have on Internet-based distributors of video programming that

[155] 47 C.F.R. § 79.3(b)(5).

[156] 47 C.F.R. § 79.105.

[157] *See* Sky Angel Reply Comments at 36 (claiming that the video description rules are not burdensome because they "apply only to large MVPDs, and only with respect to the top-five non-broadcast networks" and because they "only require fifty hours of described programming per calendar quarter, and these descriptions likely will be provided by programmers, not MVPDs"). As noted above, all MVPDs, not just large ones, have certain pass-through obligations.

[158] In another proceeding arising under the CVAA, the Commission is considering whether MVPDs must comply with video description obligations when they allow subscribers to access linear programming on tablets, laptops, personal computers, smartphones, or similar devices. *See Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation Of The Twenty-First Century Communications And Video Accessibility Act Of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871, 4927-28, ¶¶ 83-84 (2013) ("*Video Description Further Notice*").

[159] *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report, 29 FCC Rcd 8011, 8012, n.2 (MB 2014) ("Video programming delivered using [IP] includes, but is not limited to, video programming that is available on the Internet . . . To the extent a multichannel video programming distributor [MVPD] uses IP to distribute its traditional managed video services to its MVPD customers within its service footprint, however, that service is subject to the existing video description rules that apply to MVPDs, notwithstanding the use of IP technology.").

[160] *See* 47 C.F.R. § 79.2.

[161] *See* 47 C.F.R. § 79.105.

[162] The Commission is also considering this issue in the *Video Description Further Notice.* 28 FCC Rcd at 4926-4928, ¶¶ 80-84.

[163] 47 C.F.R. § 79.108.

qualify as MVPDs, particularly in light of the fact that digital apparatus (aside from navigation devices) that are designed to receive digital video (including IP video) must be accessible to and useable by individuals who are blind or visually impaired.[164] Will we need to amend our user interface accessibility rules if we adopt the Linear Programming Interpretation, and if so, how?

58. *Equal Employment Opportunities ("EEO")*. The Commission's EEO rules apply to MVPDs.[165] In general terms, these rules (i) require MVPDs to provide equal opportunity in employment to all qualified persons and prohibit MVPDs from discriminating in employment based on race, color, religion, national origin, age, or sex;[166] (ii) require MVPDs to engage in certain outreach and recruitment activities;[167] and (iii) require MVPDs to comply with certain reporting and recordkeeping requirements.[168] We seek comment on the practical impact these obligations will have on Internet-based distributors of video programming that qualify as MVPDs. Do Internet-based distributors of video programming currently meet some or all of these requirements?[169] Will we need to amend our EEO rules if we adopt the Linear Programming Interpretation, and if so, how?

59. *Navigation Devices*. Section 629 of the Act directs the Commission to adopt regulations to assure the commercial availability of navigation devices used by consumers to access services from MVPDs.[170] The Commission has adopted several regulations that allow consumers to attach non-harmful devices to MVPD networks, require MVPDs to offer separate conditional access elements if they use navigation devices to perform conditional access functions, and prohibit MVPDs from using integrated conditional access in the devices that they lease or sell to their consumers.[171] We seek comment on the practical impact as well as the costs these obligations will have on Internet-based distributors of video programming that qualify as MVPDs. To what extent do Internet-based distributors of video programming use navigation devices in the provision of their video programming service? If they do use such devices, do they currently meet these requirements? What devices do they use to provide programming to subscribers? Sky Angel, for example, states that its service cannot be viewed without its "proprietary set-top box, which Sky Angel directly and remotely controls at all times for purposes ranging from periodic service and software updates to service activation or termination."[172] Do Internet-based distributors meet the requirements for an exemption from the integration ban?[173] Are there aspects of Internet-based video services that make compliance with these requirements more burdensome than for traditional MVPDs? Will we need to amend our navigation device rules if we adopt the Linear Programming Interpretation, and if so, how?

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[164] 47 C.F.R. § 79.107.

[165] *See* 47 U.S.C. § 554(h); 47 C.F.R. § 76.71(a); *see also* 47 C.F.R. § 25.601 (extending EEO obligations to DBS).

[166] *See* 47 U.S.C. § 554(b); 47 C.F.R. § 76.73(a); *see also* 47 U.S.C. § 554(c); 47 C.F.R. § 76.73(b).

[167] *See* 47 C.F.R. § 76.75(a)-(b), (e).

[168] *See* 47 C.F.R. §§ 76.75(c); 76.77(a), (d); 76.1702; 76.1802.

[169] Sky Angel claims that the Commission's EEO requirements "are not oppressive, and in fact are less burdensome than many states' generally applicable EEO laws." Sky Angel Reply Comments at 36.

[170] *See* 47 U.S.C. § 549; 47 C.F.R. §§ 76.1200-1210.

[171] See 47 C.F.R. §§ 76.1201-76.1204

[172] Sky Angel Comments at 19.

[173] *See* Sky Angel Reply Comments at 36 (claiming that, "although the navigation device requirement 'nominally applies to all MVPDs,' the Commission 'has applied its rules only to cable operators'"). Despite Sky Angel's claim, MVPDs are exempt from the integration ban if they support navigation devices that "operate throughout the continental United States" and are available from retail sources that are not affiliated with the MVPD. 47 C.F.R. § 76.1204(a)(2)(ii). Many of the requirements in Sections 76.1200-76.1210 apply to MVPDs, and MVPDs that disregard those rules are subject to enforcement.

60. *Signal Leakage*. The Commission's rules require specified MVPDs to comply with certain technical rules pertaining to signal leakage,[174] as well as reporting[175] and notification[176] requirements related thereto.[177] We expect that in general MVPDs that use Internet protocol to deliver video will not use aeronautical frequencies and thus will not be subject to these requirements.[178] We seek comment on this expectation, and any practical impact these obligations will have on Internet-based distributors of video programming that qualify as MVPDs. Will we need to amend our signal leakage rules if we adopt the Linear Programming Interpretation, and if so, how?

61. *Inside Wiring*. The Commission's cable inside wiring rules apply to all MVPDs.[179] In general terms, these rules govern the disposition of home wiring[180] and home run wiring[181] after a subscriber terminates service. To what extent, if any, would these obligations affect Internet-based distributors of video programming that qualify as MVPDs, especially if they do not control the "last mile" of the transmission path used to deliver video programming to consumers but are affiliated with an entity that controls the transmission path? We expect that if we adopt the Linear Programming Interpretation that these inside wiring rules would not apply to Internet-based distributors of video programming.

62. *Commercial Loudness*. As required by the CALM Act,[182] the Commission's rules require MVPDs to ensure that commercials are transmitted to consumers at an appropriate loudness level in accordance with a specified industry standard.[183] Depending on the size of the MVPD and the type of the commercial at issue (*i.e.*, inserted by the MVPD or embedded in the programing by a third-party), the Commission's rules may require an MVPD to install equipment and associated software or perform spot checks or both.[184] Do these requirements need to be modified to apply to Internet-based distributors of video programming that qualify as MVPDs, and if so, how? If the requirements do need to be modified, are there ways to make the rules less burdensome for Internet-based distributors of video programming while meeting our statutory mandates?

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[174] *See* 47 C.F.R. § 76.610; *see also* 47 C.F.R. §§ 76.605(a)(12), 76.611, 76.612, 76.613, 76.614, 76.616, 76.617.

[175] *See* 47 C.F.R. §§ 76.1803 (signal leakage monitoring and reporting); 1.1705(a)(1) (FCC Form 320 – Basic Signal Leakage Performance Report).

[176] *See* 47 C.F.R. §§ 76.1804.

[177] The Commission is currently considering updating these rules to facilitate the transition from analog to digital transmission systems. *See Cable Television Technical and Operational Requirements*, Notice of Proposed Rulemaking, 27 FCC Rcd 9678 (2012).

[178] Section 76.610 provides that the specified Commission rules pertaining to signal leakage apply to "all MVPDs (cable and non-cable) transmitting carriers or other signal components carried at an average power level equal to or greater than 10^{-4} watts across a 25 kHz bandwidth in any 160 microsecond period, at any point in the cable distribution system in the frequency bands 108–137 and 225–400 MHz for any purpose." 47 C.F.R. § 76.610.

[179] *See* 47 C.F.R. §§ 76.802(l), 76.804(f), 76.805, 76.806(d); *see also* 47 U.S.C. § 544(i).

[180] *See* 47 C.F.R. § 76.5(ll) (defining "cable home wiring" as the "internal wiring contained within the premises of a subscriber which begins at the demarcation point. Cable home wiring includes passive splitters on the subscriber's side of the demarcation point, but does not include any active elements such as amplifiers, converter or decoder boxes, or remote control units.").

[181] *See* 47 C.F.R. § 76.800(d) (defining "home run wiring" as the "wiring from the demarcation point to the point at which the MVPD's wiring becomes devoted to an individual subscriber or individual loop").

[182] *See* Pub. L. No. 111-311, 124 Stat. 3294 (2010) (codified at 47 U.S.C. § 621).

[183] *See* 47 C.F.R. § 76.607; *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222 (2011).

[184] *See* 47 C.F.R. § 76.607.

63. *MDU Access*. The Commission's rules prohibit cable operators, common carriers (or their affiliates) that provide video programming, and OVS operators from enforcing or executing any provision in a contract that grants to it the exclusive right to provide any video programming service to a Multiple Dwelling Unit.[185] The Commission has sought comment on whether to extend this prohibition to other MVPDs.[186] To the extent the Commission were to do so, what impact, if any, would this prohibition have on Internet-based distributors of video programming that qualify as MVPDs? Is there any way a landlord could restrict a tenant's ability to access certain content over the Internet to prevent a tenant from accessing an Internet-based linear video service? Will we need to amend our MDU access rules if we adopt the Linear Programming Interpretation, and if so, how?

64. *Other Regulatory Issues*. We also seek comment on how other regulations should account for Internet-based distributors of video programming that qualify as MVPDs. For example, should we extend any cable or satellite-specific regulations to MVPDs more generally? If so, what would be our statutory basis for doing so?

2. Impact on Content Owners

65. As discussed in this section, our interpretation of the definition of an MVPD may impact content owners in their negotiations with broadcasters, cable networks, and MVPDs. We seek comment on these issues below.

a. Broadcast Content

66. Section 111 of the Copyright Act provides "cable systems" (as defined by the Copyright Act) a statutory license to retransmit copyrighted broadcast performances if the "cable system" pays a statutory fee for those performances.[187] Some content creators and owners contend that the Commission, in interpreting the definition of MVPD in the Communications Act, should be cognizant of the interplay between Section 111 of the Copyright Act and the Communications Act[188] and even suggest that a Commission decision interpreting the definition of MVPD to include Internet-based distributors would conflict with copyright law.[189] But the market and legal landscape has changed significantly since content creators and owners made those claims.[190] Therefore, we ask commenters to update the record with respect to how expanding the definition of MVPD in the Communications Act to include some Internet-based distributors interrelates with copyright law.

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[185] *See* 47 C.F.R. § 76.2000(a); *see also Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments,* Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, 20260, ¶ 51 (2007) ("*MDU Order and FNPRM*"), *aff'd sub nom. Nat'l Cable & Telecomm. Ass'n v. FCC*, 567 F.3d 659 (D.C. Cir. 2009). The Commission's rules provide that an "MDU shall include a multiple dwelling unit building (such as an apartment building, condominium building or cooperative) and any other centrally managed residential real estate development (such as a gated community, mobile home park, or garden apartment); provided however, that MDU shall not include time share units, academic campuses and dormitories, military bases, hotels, rooming houses, prisons, jails, halfway houses, hospitals, nursing homes or other assisted living facilities." 47 C.F.R. § 76.2000(b).

[186] *See MDU Order and FNPRM*, 22 FCC Rcd at 20264-65, ¶¶ 61-62.

[187] 17 U.S.C. § 111.

[188] *See* Cablevision Comments at 16; Comcast Comments at 2 n.4; MPAA Comments at 2; Disney Reply Comments at 5; Fox Reply Comments at 6.

[189] *See* Time Warner Reply Comments at 3; MPAA Comments at 3.

[190] *See supra* ¶¶ 10-11.

b. Cable-Affiliated Content

67. Through application of the program access rules, Internet-based distributors that qualify as MVPDs will be entitled to non-discriminatory access to cable-affiliated networks.[191] Generally speaking, a programmer licenses content from various content creators, aggregates the content into a network, and then licenses the network to MVPDs for distribution.[192] Discovery claims, however, that cable-affiliated networks cannot license all of the content displayed on their networks for distribution on the Internet because they frequently do not possess the right to authorize Internet distribution of that content.[193] Rather, Discovery argues that (i) content creators frequently retain for themselves the rights to Internet distribution in order to generate a separate revenue stream by displaying the content on their own websites or by selling the content to other video providers;[194] and (ii) obtaining Internet distribution rights is simply too expensive for some networks.[195] What effect should the Copyright Office's decisions have on our statutory and policy analysis?

68. To what extent do cable-affiliated networks possess – or have the ability to negotiate for – the right to authorize distribution of content displayed on their network over the Internet? If we adopt the Linear Video Interpretation, what impact does that have on existing rights for content distribution? We note that some cable-affiliated networks are made available over the Internet to authenticated MVPD subscribers.[196] Does this reflect that cable-affiliated programmers possess the right to authorize distribution of content displayed on their network over the Internet?[197] Does the concern about lack of rights to authorize Internet distribution of content apply only with respect to content not owned by the network? To what extent do cable-affiliated networks own the content displayed on their networks (or are affiliated with the content creators or otherwise possesses all of the rights with respect to distribution of that content)? To what extent is the content displayed on cable-affiliated networks owned by entities unaffiliated with the network?

69. Would or should the adoption of the proposed definition of an MVPD have any effect on a cable-affiliated network that does not possess the right to authorize Internet distribution of content displayed on its network? In other words, would or should the network be required to obtain such rights to comply with the program access rules if certain Internet-based distributors qualify as MVPDs? We seek comment on how the resolution of this question would impact content creators, cable-affiliated programmers, and MVPDs, either traditional or Internet-based. We also seek comment on our authority to require entities to enter into contracts for these distribution rights.

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[191] *See supra* ¶¶ 40-42.

[192] *See* Discovery Comments at 10.

[193] *See* Discovery Comments at 10; Discovery Reply Comments at 6.

[194] *See* Discovery Comments at 10; Discovery Reply Comments at 6.

[195] *See* Discovery Comments at 11; *see also* Ovation Reply Comments at 4.

[196] *14th Annual Report*, 27 FCC Rcd at 8612, ¶ 6 (describing "TV Everywhere" as "an MVPD initiative, which allows subscribers of certain services to access video programming on stationary and mobile Internet-connected devices, including television sets, computers, tablets, and smartphones"); *id*. at 8618, ¶ 21 n.30 ("TV Everywhere is an authentication system whereby certain movies and television shows are accessible online via a variety of display devices including personal computer, mobile, and television – but only if you can prove (or 'authenticate') that you have a subscription to an MVPD."); *id*. at 8738, ¶ 287 ("TV Everywhere services allow MVPDs to compete with unaffiliated OVDs by providing free on-demand Internet video to authenticated MVPD customers.").

[197] *But see Comcast/NBCU Order*, 26 FCC Rcd at 4280, ¶ 105 ("The Applicants further note that they may lack the rights necessary to provide certain programming online on an unauthenticated basis.").

c. Non-Broadcast, Non-Cable-Affiliated Content

70. If we were to require cable-affiliated networks to obtain Internet distribution rights from content creators to comply with the program access rules, what impact, if any, would or should this have on non-cable-affiliated networks? For example, Ovation claims that, if cable-affiliated networks are required to obtain Internet distribution rights, "marketplace pressures would foreseeably require other networks to do the same."[198] We seek comment on this concern.

C. Regulatory Treatment of Cable Operators and DBS Providers that Provide Linear Video Services via IP

71. It seems evident that merely using IP to deliver cable service does not alter the classification of a facility as a cable system or of an entity as a cable operator. That is, to the extent an operator may provide video programming services over its own facilities using IP delivery within its footprint it remains subject to regulation as a cable operator. At the same time, we understand that some cable operators and DBS providers are exploring new business models that might be indistinguishable from other over-the-top ("OTT") services.[199] As mentioned above, cable operators and DBS providers are obtaining rights for online distribution of content, and some have launched or may soon launch Internet-based video programming services.[200] Below, we seek comment on the regulatory treatment of national OTT video services that a cable operator or DBS provider may provide nationally–as contrasted to the traditional services it offers.

1. Cable Service Provided via IP Over the Operator's Facilities

72. The Act defines a cable operator as, essentially, an entity that provides cable service over a cable system.[201] Thus, we must interpret the three terms – cable service, cable system, and cable operator – together to determine the proper regulatory treatment of IP-based services provided by cable operators. The Act defines cable service as "(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service."[202] The Commission and other authorities have previously concluded that the statute's definition of "cable service" includes linear IP video service.[203]

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[198] Ovation Reply Comments at 4. *See Comcast/NBCU Order*, 26 FCC Rcd at 4267, ¶ 73 ("We also conclude that Comcast-NBCU will have increased leverage to negotiate restrictive online rights from third parties, again to the detriment of competition. Comcast-NBCU's demand of restrictive online rights in exchange for carriage may also cause harms to consumer choice, diversity, and broadband investment."); *see also* Public Knowledge Comments at 17-18 ("While the program access rules prevent an MVPD from keeping a programmer from being carried by other current MVPDs, nothing at the moment prevents a company like Comcast demanding, as a condition for being carried on Comcast, that the programmer stay off of online platforms.").

[199] In this NPRM, we use the term OTT to refer to linear video services that travel over the public Internet and that cable operators do not treat as managed video services on any cable system.

[200] *See supra* n.1.

[201] 47 U.S.C. § 522(5).

[202] 47 U.S.C. § 522(6).

[203] *See Cable Television Technical and Operational Requirements*, 27 FCC Rcd 9678, 9681, ¶ 5 (referring to "IP delivery of cable service"); *Office of Consumer Counsel v. Southern New England Telephone Co.*, 515 F.Supp.2d 269, 276 (D. Conn. 2007), *vacated on other grounds*, 368 Fed.Appx. 244 (2d Cir. 2010) ("*Southern New England Telephone*") ("The statutory language itself appears to require the conclusion that [IP-based] video programming service does constitute a 'cable service,' as defined by the Cable Act.").

73. Second, to the extent a cable operator uses "a set of closed transmission paths" to provide cable service, as one providing IP video programming over its copper wire (including coaxial cable) or fiber optic cable does,[204] its facility meets the definition of cable system:

> a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility system.[205]

74. Finally, an entity that delivers cable services via IP is a cable operator to the extent it delivers those services as managed video services over its own facilities and within its footprint.[206] This is compelled by the Act's definition of a cable operator as a "person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system."[207]

75. IP-based service provided by a cable operator over its facilities and within its footprint must be regulated as a cable service not only because it is compelled by the statutory definitions; it is also good policy, as it ensures that cable operators will continue to be subject to the pro-competitive, consumer-focused regulations that apply to cable even if they provide their services via IP.

76. Congress and the Commission advanced several pro-competitive, consumer-focused values when they adopted the cable-specific provisions of the Act and the rules implementing these important provisions. The Act and our rules include many cable-specific requirements, including the following.: annual regulatory fees;[208] Emergency Alert System ("EAS") requirements;[209] the V-Chip;[210]

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[204] The Commission previously analyzed the term "set of closed transmission paths," and determined that Congress most likely meant a system of copper wire and/or fiber optic cable. *See Definition of a Cable Television System*, Report and Order, 5 FCC Rcd 7638, 7639, ¶ 7 (1990) ("by referring to a 'closed' transmission medium, the drafters contemplated that cable system facilities would use physically closed or shielded conducting media or 'transmission paths,' rather than radio waves alone. While the original Senate version of the Cable Act was not passed, we have no basis for thinking that the Senate and House did not share a common understanding of the virtually identical terms 'closed transmission path' and 'closed transmission media' (which itself was defined as a 'transmission path') that were used in their respective definitions of cable systems."). The Commission also defined the word subscriber in the phrase "provided to multiple subscribers within a community" to mean "a member of the general public who receives broadcast programming distributed by a cable television system[] and does not further distribute it." *Definition of a Cable Television System*, Report and Order, 5 FCC Rcd 7638, 7642, ¶ 32 (1990).

[205] 47 U.S.C. § 522(7).

[206] We note that this interpretation does not extend to services like "TV Everywhere" because they are not managed video services. We seek comment on how to treat such services below. *See infra* ¶ 78.

[207] 47 U.S.C. § 522(5).

[208] *See* 47 C.F.R. § 1.1155 (this rule specifically includes facilities-based IPTV services).

commercial limits in children's programs;[211] network non-duplication;[212] syndicated program exclusivity;[213] notice to broadcasters regarding: (i) deletion or repositioning of a broadcast signal,[214] (ii) a change in designation of principal headend,[215] (iii) change in technical configuration,[216] (iv) the provision of service to 1000 subscribers, thereby entitling broadcast stations to exercise non-duplication protection or syndicated exclusivity protection;[217] political programming and candidate access rules;[218] sponsorship identification;[219] lotteries;[220] public inspection file;[221] public, educational, or governmental channels ("PEG");[222] program access;[223] leased access;[224] various reporting requirements;[225] cross-ownership restrictions;[226] prohibition on buy outs;[227] national subscriber limits (horizontal ownership restriction);[228]

(Continued from previous page)

[209] *See* 47 C.F.R. §§ 11.1, 11.2(c)-(d), 11.11; *see also* 47 C.F.R. § 76.1711 (EAS recordkeeping requirements for cable systems).

[210] Congress adopted the V-chip requirement in 1996 as part of the Parental Choice in Television Programming Act. *See* 47 U.S.C. § 303(x) (added by The Telecommunications Act of 1996, Pub. L. No. 104-104, § 551(c), 110 Stat. 56, 141 (1996)). Parents with a V-chip-equipped television set or converter box can block television programming based on its rating. *See Implementation of Section 551 of the Telecommunications Act of 1996, Video Programming Ratings*, Report and Order, 13 FCC Rcd 8232 (1998) ("*TV Parental Guidelines Order"*). The V-chip requirement currently applies to certain television broadcast receivers (based on size) and digital television receivers without an associated display device. *See* 47 C.F.R. § 15.120(b); *Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings*, Report and Order, 13 FCC Rcd 11248 (1998).

[211] *See* 47 C.F.R. §§ 76.225, 76.1703.

[212] *See* 47 C.F.R. §§ 76.92-95.

[213] *See* 47 C.F.R. §§ 76.101-110.

[214] *See* 47 U.S.C. § 534(b)(9); *see also* 47 C.F.R. § 76.1601.

[215] *See* 47 C.F.R. §§ 76.1607, 76.1708.

[216] *See* 47 C.F.R. § 76.1608.

[217] *See* 47 C.F.R. § 76.1609.

[218] *See* 47 U.S.C. § 315; *see also* 47 C.F.R. §§ 76.205-206, 76.1611, 76.1701.

[219] *See* 47 C.F.R §§ 76.1615, 76.1715.

[220] *See* 47 C.F.R. § 76.213.

[221] *See* 47 C.F.R. §§ 76.1700-10, 1715-16. *See also Media Bureau Seeks Comment on Petition for Rulemaking Filed by the Campaign Legal Center, Common Cause and the Sunlight Foundation Seeking Expansion of Online Public File Obligations to Cable and Satellite TV Operators*, DA 14-1149, 79 Fed. Reg. 51136 (MB 2014) (seeking comment on a petition for rulemaking to require cable systems and satellite operators to post their public files to the Commission's online database).

[222] *See* 47 U.S.C. §§ 531, 541(a)(4)(B).

[223] *See* 47 U.S.C. § 548; *see also* 47 C.F.R. §§ 76.1001-1002.

[224] *See* 47 U.S.C. § 532; *see also* 47 C.F.R. §§ 76.701, 76.970-978, 76.1707.

[225] *See* 47 C.F.R. § 76.403 (cable television system report: FCC Form 325); 47 C.F.R. § 76.1610 (change of cable system operational information (FCC Form 324)); 47 C.F.R. § 76.1801 (cable registration statement (FCC Form 322)).

[226] *See* 47 U.S.C. § 533(a); *see also* 47 C.F.R. § 27.1202; 47 C.F.R. § 76.501.

[227] *See* 47 U.S.C. § 572; *see also* 47 C.F.R. §§ 76.505, 76.1404, 76.1616.

[228] *See* 47 U.S.C. § 533(f)(1)(A); 47 C.F.R. § 76.503(a); *see also Comcast Corp. v. FCC*, 579 F.3d 1 (D.C. Cir. 2009) (vacating the Commission's cable horizontal ownership limits).

limits on carriage of vertically integrated programming;[229] various franchising requirements;[230] rate regulation, including a requirement to offer a basic service tier, a prohibition on negative option billing, an obligation to offer a tier buy-through option, and requirements pertaining to information on subscriber bills;[231] regulation of services, facilities, and equipment, including minimum technical standards and notification to customers of changes in rates, programming services, or channel positions;[232] consumer protection and customer service;[233] consumer electronics equipment compatibility, including prohibition on scrambling or encrypting the basic service tier;[234] support for unidirectional digital cable products (Plug and Play);[235] protection of subscriber privacy;[236] transmission of obscene programming;[237] and scrambling of cable channels for non-subscribers.[238]

77. In particular, these obligations on cable operators are critical for noncommercial, local, and independent broadcasters. Sections 614 and 615 of the Communications Act and implementing rules adopted by the Commission entitle commercial and noncommercial television broadcasters to carriage on local cable television systems.[239] When the Commission proposed implementing regulations, it noted that Congress emphasized strongly that the public interest demands that cable subscribers be able to access their local commercial and noncommercial broadcast stations.[240] That congressional policy directive persists today; and the continued application of these requirements to cable operators that provide video programming over IP will ensure that local broadcasters will be carried, and that other cable-centric regulations will apply, regardless of the method that the cable operator uses to deliver the cable service.[241]

2. Cable Operators Offering OTT Services

78. We tentatively conclude that video programming services that a cable operator may offer over the Internet should not be regulated as cable services. Some cable operators have announced plans

[229] *See* 47 U.S.C. § 533(f)(1)(B); 47 C.F.R. § 76.504(a); *see also Time Warner Entertainment Co. v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001) (reversing and remanding the Commission's cable vertical ownership limits).

[230] *See* 47 U.S.C. §§ 541, 542, 545, 546, 547, 555, 555a; *see also* 47 C.F.R. §§ 76.41, 76.502.

[231] *See* 47 U.S.C. § 543; *see also* 47 C.F.R. §§ 76.901-963, 76.980-990, 76.1402, 76.1605-1606, 76.1800, 76.1805.

[232] *See* 47 U.S.C. § 544; *see also* 47 C.F.R. §§ 76.601, 76.605, 76.609, 76.1602-1604, 76.1618, 76.1704-06, 76.1713, 76.1717.

[233] *See* 47 U.S.C. § 552; 47 C.F.R. §§ 76.309, 76.985, 76.1619.

[234] *See* 47 U.S.C. § 544a; 47 C.F.R. §§ 76.630, 76.1621-1622.

[235] *See* 47 C.F.R. § 76.640.

[236] *See* 47 U.S.C. § 551.

[237] *See* 47 U.S.C. § 559; 47 C.F.R. § 76.702.

[238] *See* 47 U.S.C. § 560.

[239] *See* 47 U.SC. §§ 534, 535; 47 C.F.R. §§ 76.55-62, 76.1614, 76.1617, 76.1709. Cable operators are required to carry the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. *See* 47 U.S.C. § 534(b)(3)(A); 47 C.F.R. §§ 76.62(e)-(f), 76.606.

[240] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues*, Notice of Proposed Rulemaking, 7 FCC Rcd. 8055, 8056, ¶ 4 (1992).

[241] We laud private market agreements like the public television digital cable carriage agreement that NCTA and the Association of Public Television Stations negotiated. *See* Letter from Diane Burstein, Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 98-120 (filed Feb. 2, 2005). We note, however, that the parties negotiated that agreement in the shadow of the Commission's must carry regulations, which would have provided a safeguard to noncommercial broadcasters if those negotiations had broken down.

to offer video programming services via the Internet.[242] If a cable operator delivers video programming service over the Internet, rather than as a managed video service over its own facilities, we tentatively conclude that this entity would be (i) a cable operator with respect to its managed video service, and (ii) a non-cable MVPD under our proposed Linear Programming Interpretation with respect to its OTT service. To the extent a consumer located within a cable operator's footprint may access the cable operator's OTT service using that cable operator's broadband facilities for Internet access, how should this arrangement be classified? We tentatively conclude that such an OTT service, if provided to consumers without regard to whether they subscribe to the cable operator's managed video service, would be a non-cable MVPD service inside and outside of the operator's footprint, even if it is accessible over that cable operator's broadband facilities. We seek comment on whether there is any reason that our tentative conclusion should change if a cable operator provides an OTT service within its footprint only, rather than nationally. Would our analysis change if the OTT service were bundled with the cable service? Finally, we seek comment on the likely forms that new OTT services will take, and on both the application of the statutory definitions discussed above to such services and the policy implications of classifying these services.

3. DBS Providers Offering OTT Services

79. Some DBS providers offer linear OTT services (and have announced plans to expand those services) via the Internet.[243] To the extent that DBS providers offer video programming services over the Internet, we tentatively conclude that those services should not be regulated as DBS service, and therefore should not be subject to the regulatory and statutory obligations and privileges of such services. If we adopt our proposed Linear Programming Interpretation, those services would be MVPD services subject to the regulatory and statutory obligations and privileges of such services.[244] We reach this tentative conclusion because that service does not use the providers' satellite facilities, but rather relies on the Internet for delivery. We believe that this tentative conclusion is consistent with the Act and our rules.[245] We seek comment on this tentative conclusion.

IV. PROCEDURAL MATTERS

80. Authority. This *Notice of Proposed Rulemaking* is issued pursuant to authority contained in Sections 4(i), 4(j), 303(r), 325, 403, 616, 628, 629, 634 and 713 of the Communications Act of 1934, as amended, 47 U.S.C §§ 154(i), 154(j), 303(r), 325, 403, 536, 548, 549, 554, and 613.

81. Ex Parte Rules. The proceeding initiated by this *Notice of Proposed Rulemaking* shall be treated as "permit-but-disclose" proceedings in accordance with the Commission's *ex parte* rules.[246]

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[242] *See supra* n.1.

[243] *See* DishWorld – Watch Live International TV Instantly, http://www.dishworld.com/ (last visited Oct. 22, 2014); Edmund Lee, Scott Moritz and Alex Sherman, *Dish Leads in Race to Offer Online TV to Compete With Cable*, BLOOMBERG, March 15, 2014, *available at* http://www.bloomberg.com/news/2014-03-04/dish-takes-lead-in-race-to-offer-streaming-tv-to-rival-cable.html.

[244] *See supra* ¶¶ 18-28.

[245] *See* 47 C.F.R. § 25.103 (defining Direct Broadcast Satellite Service as "A radiocommunication service in which signals transmitted or retransmitted by Broadcasting-Satellite Service space stations in the 12.2-12.7 GHz band are intended for direct reception by subscribers or the general public. For the purposes of this definition, the term direct reception includes individual reception and community reception."). *See also* 47 U.S.C. § 335(b)(5) (stating that for purposes of that subsection, "'provider of direct broadcast satellite service' means—(i) a licensee for a Ku-band satellite system under part 100 of title 47 of the Code of Federal Regulations; or (ii) any distributor who controls a minimum number of channels (as specified by Commission regulation) using a Ku-band fixed service satellite system for the provision of video programming directly to the home and licensed under part 25 of title 47 of the Code of Federal Regulations." The Commission eliminated Part 100 from the rules in 2002; DBS satellite facilities now are licensed under Part 25 of the rules. *Policies and Rules for the Direct Broadcast Satellite Service*, 17 FCC Rcd 11331 (2002).).

[246] 47 C.F.R. §§ 1.1200 – 1.1216.

Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

82. Filing Requirements. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,[247] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS").[248]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

83. Availability of Documents. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

[247] *See id*. §§ 1.415, 1.419.

[248] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

84. People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

85. Additional Information. For additional information on this proceeding, contact Brendan Murray mailto:of the Media Bureau, Policy Division, (202) 418-1573.

86. Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. § 604, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix B. Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this *Notice of Proposed Rulemaking* as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA.

87. Initial Paperwork Reduction Act Analysis. This Notice of Proposed Rulemaking seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

V. ORDERING CLAUSES

88. Accordingly, **IT IS ORDERED**, pursuant to the authority contained in Sections 4(i), 4(j), 303(r), 325, 403, 616, 628, 629, 634 and 713 of the Communications Act of 1934, as amended, 47 U.S.C §§ 154(i), 154(j), 303(r), 325, 403, 536, 548, 549, 554, and 613, that this *Notice of Proposed Rulemaking* **IS ADOPTED**.

89. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Notice of Proposed Rulemaking* including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

1. Amend § 76.5 to read as follows:

§ 76.5 Definitions.

* * * * *

(rr) *Linear Video*. A stream of video programing that is prescheduled by the programmer.

(ss) *Multichannel Video Programming Distributor*. A person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming. As used in this paragraph, channel means linear video without regard to the means by which the programming is distributed.

2. Amend § 76.64(d) to read as follows:

§ 76.64 Retransmission Consent.

* * * * *

(d) [Reserved]

* * * * *

3. Amend § 76.71(a) to read as follows:

§ 76.71 Scope of application.

(a) The provisions of this subpart shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any cable system. Cable entities subject to these provisions include those systems defined in § 76.5(a), all satellite master antenna television systems serving 50 or more subscribers, and any multichannel video programming distributor. ~~For purposes of the provisions of this subpart, a multichannel video programming distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a video dialtone program service provider, who makes available for purchase, by subscribers or customers, multiple channels of video programming, whether or not a licensee.~~ Multichannel video programming distributors do not include any entity which lacks control over the video programming distributed. For purposes of this subpart, an entity has control over the video programming it distributes, if it selects video programming channels or programs and determines how they are presented for sale to consumers. Notwithstanding the foregoing, the regulations in this subpart are not applicable to the owners or originators (of programs or channels of programming) that distribute six or fewer channels of commonly-owned video programming over a leased transport facility. For purposes of this subpart, programming services are "commonly-owned" if the same entity holds a majority of the stock (or is a general partner) of each program service.

* * * * *

4. Amend § 76.905(d) to read as follows:

§ 76.905 Standards for identification of cable systems subject to effective competition.

* * * * *

(d) [Reserved]

* * * * *

5. Amend § 76.1000(e) to read as follows:

§ 76.1000 Definitions.

* * * * *

(e) Multichannel video programming distributor. The term "multichannel video programming distributor" means an entity that falls under the definition provided in Section 76.5(rr) ~~engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator,~~ as well as buying groups or agents of all such entities.

Note to paragraph (e): A video programming provider that provides more than one channel of video programming on an open video system is a multichannel video programming distributor for purposes of this subpart O and Section 76.1507.

* * * * *

6. Amend § 76.1200(b) to read as follows:

§ 76.1200 Definitions.

* * * * *

(b) [Reserved]

* * * * *

7. Amend § 76.1300(d) to read as follows:

§ 76.1300 Definitions.

* * * * *

(d) Multichannel video programming distributor. The term "multichannel video programming distributor" means an entity that falls under the definition provided in Section 76.5(rr)~~engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator,~~ as well as buying groups or agents of all such entities.

* * * * *

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking ("*NPRM*"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").[2] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rule Changes

2. The *NPRM* seeks comment on a proposed interpretation of the definition of "multichannel video programming distributor," or MVPD. The Communications Act defines MVPD as

> [A] person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.[4]

3. Under the Commission's proposed interpretation of this definition, providers of multiple streams of pre-scheduled online video (i.e., linear video channels) that are available for purchase will be considered MVPDs. We believe that this interpretation reflects the changing market for video services as more subscription linear video is made available online. As an alternative, we seek comment on an interpretation of the definition of MVPD that would require an entity to also control the physical means—the "transmission path—that the entity uses to deliver its video programming. We believe that it is important for the Commission to provide guidance on the definition of MVPD because companies are experimenting with new business models based on Internet distribution.

4. We seek comment from the public about the effect that this interpretation will have. We seek comment on the potential benefits of this rule change for online video providers, namely program access[5] and retransmission consent[6] protections. We also seek comment on the potential burdens on online video providers relating to (i) program carriage;[7] (ii) the competitive availability of navigation devices (including the integration ban);[8] (iii) good faith negotiation with broadcasters for retransmission consent;[9] (iv) Equal Employment Opportunity ("EEO");[10] (v) closed captioning;[11] (vi) video description;[12]

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id*.

[4] 47 U.S.C. § 522(13); *see also* 47 C.F.R. §§ 76.64(d), 76.71(a), 76.905(d), 76.1000(e), 76.1200(b), 76.1300(d).

[5] *See* 47 U.S.C. § 548; 47 C.F.R. §§ 76.1000-1004. Among other things, these rules require cable-affiliated programmers to make their programming available to MVPDs on nondiscriminatory rates, terms, and conditions.

[6] *See* 47 U.S.C. § 325(b)(3)(C)(ii); 47 C.F.R. § 76.65. Among other things, these rules require broadcasters to negotiate in good faith with MVPDs for retransmission consent.

[7] *See* 47 U.S.C. § 536; 47 C.F.R. §§ 76.1300-1302.

[8] *See* 47 U.S.C. § 549; 47 C.F.R. §§ 76.1200-1210.

[9] *See* 47 U.S.C. § 325(b)(3)(C)(iii); 47 C.F.R. § 76.65(b).

[10] *See* 47 C.F.R. §§ 76.71-79, 76.1792, 76.1802.

(vii) access to emergency information;[13] (vi) signal leakage;[14] (vii) inside wiring;[15] and (viii) the loudness of commercials. We invite comment on any other effects that these rules may have.

B. Legal Basis

5. The proposed action is authorized pursuant to Sections 4(i), 4(j), 303(r), 325, 403, 616, 628, 629, 634 and 713 of the Communications Act of 1934, as amended, 47 U.S.C §§ 154(i), 154(j), 303(r), 325, 403, 536, 548, 549, 554, and 613.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[16] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[17] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[18] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[19] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

7. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services."[20] The SBA has developed a small business size standard for this category, which is: all such

(Continued from previous page)

[11] *See* 47 C.F.R. § 79.1.

[12] *See* 47 C.F.R. § 79.3.

[13] *See* 47 C.F.R. § 79.2.

[14] *See* 47 C.F.R. § 76.610; *see also* 47 C.F.R. §§ 76.605(a)(12), 76.611, 76.614, 76.1803; 1.1705(a)(1) (FCC Form 320 – Basic Signal Leakage Performance Report).

[15] *See* 47 C.F.R. §§ 76.800-806.

[16] 5 U.S.C. § 603(b)(3).

[17] 5 U.S.C. § 601(6).

[18] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[19] 15 U.S.C. § 632.

[20] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition), at http://www.census.gov/cgi-bin/sssd/naics/naicsrch. Examples of this category are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

businesses having 1,500 or fewer employees.[21] Census data for 2007 shows that there were 3,188 that operated for that entire year.[22] Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.[23] Therefore, under this size standard, we estimate that the majority of such businesses can be considered small entities.

8. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[24] Industry data shows that there were 1,100 cable companies at the end of December 2012.[25] Of this total, all but ten cable operators nationwide are small under this size standard.[26] In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[27] Current Commission records show 4,945 cable systems nationwide.[28] Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

9. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[29] There are approximately 56.4 million incumbent cable video subscribers in the United States today.[30] Accordingly, an operator serving fewer than 564,000 subscribers shall be deemed a

[21] 13 C.F.R. § 121.201; 2012 NAICS code 517110.

[22] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

[23] *Id*.

[24] 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation,* MM Docket No. 92-266, MM Docket No. 93-215*,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, ¶ 28 (1995).

[25] NCTA, Industry Data, Number of Cable Operating Companies (December 2012), http://www.ncta.com/Statistics.aspx (visited Feb. 21, 2014). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. *See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming,* MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10505-6, ¶ 24 (2013) ("*15th Annual Competition Report*").

[26] *See* SNL Kagan, "Top Cable MSOs – 09/13 Q"; available at http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2013Q3&sortcol=subscribersbasic&sortorder=desc. We note that, when applied to an MVPD operator, under this size standard (*i.e.*, 400,000 or fewer subscribers) all but 14 MVPD operators would be considered small. *See* NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), http://www.ncta.com/industry-data (visited Feb. 21, 2014). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. *See Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Report and Order, 26 FCC Rcd 17222, 17245-46, ¶ 37 (2011) ("*CALM Act Report and Order*") (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

[27] 47 C.F.R. § 76.901(c).

[28] The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on Aug. 28, 2013. A cable system is a physical system integrated to a principal headend.

[29] 47 U.S.C. § 543(m)(2); *see* 47 C.F.R. § 76.901(f) & nn. 1-3.

[30] *See* NCTA, Industry Data, Cable Video Customers (2012), http://www.ncta.com/industry-data (visited Feb. 21, 2014).

small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[31] Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard.[32] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[33] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

10. *Television Broadcasting*. This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."[34] The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts.[35] The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of $25,000,000 or less, and 99 had annual receipts of more than $25,000,000.[36] Since the Census has no additional classifications on the basis of which to identify the number of stations whose receipts exceeded $38.5 million in that year, the Commission concludes that the majority of television stations were small under the applicable SBA size standard.

11. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,387 stations.[37] Of this total, 1,221 stations (or about 88 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395.[38] NCE stations are non-profit, and therefore considered to be small entities.[39] Based on these data, we estimate that the majority of television broadcast stations are small entities.

12. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[40] must be included. Our estimate, therefore, likely

[31] 47 C.F.R. § 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

[32] *See* NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), http://www.ncta.com/industry-data (visited Feb. 21, 2014).

[33] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 C.F.R. § 76.901(f).

[34] U.S. Census Bureau, 2012 NAICS Definitions, "515120 Television Broadcasting," at http://www.census.gov./cgi-bin/sssd/naics/naicsrch.

[35] 13 C.F.R. § 121.201; 2012 NAICS code 515120.

[36] U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2007* (515120), http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table

[37] *See Broadcast Station Totals as of June 30, 2014,* Press Release (MB rel. July 9, 2014) (*Broadcast Station Totals)* at https://apps.fcc.gov/edocs_public/attachmatch/DOC-328096A1.pdf.

[38] *See Broadcast Station Totals*, *supra*.

[39] *See generally* 5 U.S.C. §§ 601(4), (6).

[40] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 21.103(a)(1).

overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

13. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.[41] These stations are non-profit, and therefore considered to be small entities.[42]

14. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, Wired Telecommunications Carriers,[43] which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[44] Census data for 2007 shows that there were 3,188 firms that operated for that entire year.[45] Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.[46] Therefore, under this size standard, the majority of such businesses can be considered small entities. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled "Cable and Other Program Distribution." As of 2002, the SBA defined a small Cable and Other Program Distribution provider as one with $12.5 million or less in annual receipts.[47] Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.[48] Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we

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[41] *See Jan. 8, 2014 Broadcast Station Totals Press Release*.

[42] *See generally* 5 U.S.C. §§ 601(4), (6).

[43] *See* 13 C.F.R. § 121.201, 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. *By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.*" (*Emphasis* added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," at http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[44] 13 C.F.R. § 121.201; 2012 NAICS code 517110.

[45] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

[46] *Id*.

[47] *See* 13 C.F.R. § 121.201, NAICS code 517510 (2002).

[48] S*ee 15th Annual Competition Report*, 28 FCC Rcd at 10507, ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id*. at 10507, 10546, ¶¶ 27, 110-11.

believe it is unlikely that a small entity as defined under the superseded SBA size standard would have the financial wherewithal to become a DBS service provider.

15. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs)*. SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers,[49] which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[50] Census data for 2007 shows that there were 3,188 firms that operated for that entire year.[51] Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.[52] Therefore, under this size standard, the majority of such businesses can be considered small entities.

16. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers.[53] The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.[54] Census data for 2007 shows that there were 3,188 firms that operated for that entire year.[55] Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.[56] Therefore, under this size standard, the majority of such businesses can be considered small entities.

17. *Open Video Systems*. The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[57] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[58]

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[49] 13 C.F.R. § 121.201; 2012 NAICS code 517110.

[50] *See id*.

[51] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

[52] *Id*.

[53] 13 C.F.R. § 121.201; 2012 NAICS code 517110.

[54] *See id*.

[55] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

[56] *Id*.

[57] 47 U.S.C. § 571(a)(3)-(4); *see Implementation of Section 19 of the 1992 Cable Act and Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Report, 24 FCC Rcd 542, 606, ¶ 135 (2009) ("*13th Annual Competition Report*").

[58] *See* 47 U.S.C. § 573.

OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."[59] The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.[60] Census data for 2007 shows that there were 3,188 firms that operated for that entire year.[61] Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.[62] Therefore, under this size standard, we estimate that the majority of these businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[63] Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises.[64] The Commission does not have financial or employment information regarding the other entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

18. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. . . . These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers."[65] The SBA has developed a small business size standard for this category, which is: all such businesses having $38.5 million dollars or less in annual revenues.[66] Census data for 2007 show that there were 396 firms that operated for that entire year.[67] Of that number, 349 operated with annual revenues of $24,999,999 dollars or less.[68] Forty-seven (47) operated with annual revenues of

[59] *See* 13 C.F.R. § 121.201, 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services." U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," at http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[60] 13 C.F.R. § 121.201; 2012 NAICS code 517110.

[61] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

[62] *Id*.

[63] A list of OVS certifications may be found at http://www.fcc.gov/mb/ovs/csovscer.html.

[64] *See 13th Annual Competition Report*, 24 FCC Rcd at 606-07, ¶ 135. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[65] U.S. Census Bureau, 2012 NAICS Definitions, "515210 Cable and Other Subscription Programming," at http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[66] 13 C.F.R. § 121.201; 2014 NAICS code 515210.

[67] *See* U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Receipts Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 515210, Table EC0751SSSZ2; available at http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

[68] *Id*.

$25,000,000 or greater[69] Thus, under this size standard, the majority of such businesses can be considered small entities.

19. *Motion Picture and Video Production.* These entities may be indirectly affected by our action. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials."[70] We note that establishments in this category may be engaged in various industries, including cable programming. The SBA has developed a small business size standard for this category, which is: all such businesses having $32.5 million dollars or less in annual revenues.[71] Census data for 2007 show that there were 9,095 firms that that operated that year.[72] Of that number, 8,995 had annual receipts of $24,999,999 or less, and 100 had annual receipts ranging from not less than $25,000,000 to $100,000,000 or more.[73] Thus, under this size standard, the majority of such businesses can be considered small entities.

20. *Motion Picture and Video Distribution*. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors."[74] We note that establishments in this category may be engaged in various industries, including cable programming. The SBA has developed a small business size standard for this category, which is: all such businesses having $32 million dollars or less in annual revenues.[75] Census data for 2007 show that there were 450 firms that operated for that entire year.[76] Of that number, 434 had annual receipts of $24,999,999 or less, and 16 had annual receipts ranging from not less than $25,000,000 to $100,000,000 or more.[77] Thus, under this size standard, the majority of such businesses can be considered small entities.

21. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such

[69] *Id*.

[70] U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 512110, at http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[71] 13 C.F.R § 121.201, 2012 NAICS code 512110.

[72] *See* U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the United States: 2007 – 2007 Economic Census," NAICS code 512110, Table EC0751SSSZ4; available at http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

[73] *See id*.

[74] U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 512120, at http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[75] 13 C.F.R. § 121.201, 2012 NAICS code 512120.

[76] *See* U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the United States: 2007 – 2007 Economic Census," NAICS code 512120, Table EC0751SSSZ4; available at http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

[77] *See id.*

as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users."[78] The SBA has developed a small business size standard for this category, which is: all such businesses having 500 or fewer employees.[79] Census data for 2007 shows that there were 2,705 firms that operated for the entire year.[80] Of this total, 2,682 firms had fewer than 500 employees, and 13 firms had between 500 and 999 employees.[81] Therefore, under this size standard, the majority of such businesses can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

22. The *NPRM* proposes to expand the scope of entities that would be subject to recordkeeping requirements. The *NPRM* seeks comment on the Commission's proposal to interpret the definition of "multichannel video programming distributor" to include online linear subscription video providers. If the Commission adopts its proposed interpretation, online linear subscription video providers will be required to follow the Commission's regulations that apply to MVPDs, which include recordkeeping requirements. The Commission seeks comment on the effect that this will have on online linear subscription video providers.

23. Specifically, small entities that are deemed MVPDs would be subject to seven main areas of regulation as MVPDs. The first area is program carriage, which prohibits MVPDs from (i) requiring a financial interest in a video programming vendor's program service as a condition for carriage;[82] (ii) coercing a video programming vendor to provide, or retaliating against a vendor for failing to provide, exclusive rights as a condition of carriage; [83] or (iii) unreasonably restraining the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage.[84] The second area is competitive availability of navigation devices, which requires MVPDs to allow consumers to attach non-harmful devices to their networks, separate security from their receiver devices, and explain to interested parties how to make compatible devices.[85] The third area is retransmission consent, which requires MVPDs to negotiate in good faith with broadcasters for carriage.[86] The fourth area is Equal Employment Opportunity ("EEO"), which (i) require MVPDs to provide equal opportunity in employment to all qualified persons and prohibit MVPDs from discriminating in employment based on

[78] U.S. Census Bureau, 2012 NAICS Definitions, "519130 Internet Publishing and Broadcasting and Web Search Portals" at http://www.census.gov/cgi-bin/sssd/naics/naicsrch. Examples of this category are: Internet book publishers, Internet sports sites, Internet entertainment sites, Internet video broadcast sites, Internet game sites, Internet news publishers, Internet periodical publishers, Internet radio stations, Internet search portals, Web search portals, and Internet search web sites.

[79] 13 C.F.R. § 121.201; NAICS code 519130.

[80] U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Firms for the United States: 2007 – 2007 Economic Census," NAICS code 519130, Table EC0751SSSZ5; available at http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

[81] *Id*.

[82] *See* 47 C.F.R. § 76.1301(a); *see also* 47 U.S.C. § 536(a)(1).

[83] *See* 47 C.F.R. § 76.1301(b); *see also* 47 U.S.C. § 536(a)(2).

[84] *See* 47 U.S.C. § 536; 47 C.F.R. §§ 76.1300-1302.

[85] *See* 47 U.S.C. § 549; 47 C.F.R. §§ 76.1200-1210. Per Section 106 of the STELA Reauthorization Act of 2014, Pub. L. No. 113-200, the requirement that MVPDs rely on separate security in the devices that they provide to consumers terminates on December 4, 2015.

[86] *See* 47 U.S.C. § 325(b)(3)(C)(iii); 47 C.F.R. § 76.65(b).

race, color, religion, national origin, age, or sex;[87] (ii) require MVPDs to engage in certain outreach and recruitment activities;[88] and (iii) require MVPDs to comply with certain reporting and recordkeeping requirements.[89] The fifth area is closed captioning, which requires MVPDs to provide closed captioning, defined as the "visual display of the audio portion of video programming pursuant to the technical specifications set forth in this part."[90] The sixth area video description and access to emergency information, which require MVPDs to make programming and emergency information accessible to the blind and visually impaired.[91] And finally, MVPDs are required to meet certain standards to mitigate the loudness of commercials.[92]

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[93]

25. The *NPRM* proposes to interpret the term MVPD to include all multichannel, subscription linear video providers, including Internet-based providers. The MVPD seeks comment on whether to phase in application of its rules to online linear subscription video providers, or whether to waive the rules in certain instances. The Commission has never proposed an interpretation of the term MVPD, and now seeks comment on the effect of the proposed interpretation, specifically whether the interpretation will burden online linear subscription video providers without a corresponding public interest benefit. The Commission proposes this interpretation, however, because it believes that it will provide small entities with access to programming that will allow those entities to compete with larger incumbent providers. The Commission understands that with MVPD status comes certain regulatory obligations (as summarized in Section D above), and the Commission seeks comment on whether the regulatory privileges—*i.e.*, access to broadcast and cable-affiliated programming—outweigh those obligations. The Commission also seeks comment on whether the interpretation will have the desired effect of increasing video competition. To limit the burdens on small entities, the Commission also seeks comment on whether to waive regulations to the extent allowable under the Communications Act. And the Commission invites alternative interpretations of the term MVPD that would limit burdens on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

[87] *See* 47 U.S.C. § 554(b); 47 C.F.R. § 76.73(a); *see also* 47 U.S.C. § 554(c); 47 C.F.R. § 76.73(b).

[88] *See* 47 C.F.R. § 76.75(a)-(b), (e).

[89] *See* 47 C.F.R. §§ 76.75(c); 76.77(a), (d); 76.1702; 76.1802.

[90] 47 C.F.R. § 79.1; *see also* 47 U.S.C. § 613.

[91] *See* 47 C.F.R. §§ 79.2, 79.3.

[92] *See* 47 C.F.R. § 76.607; *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222 (2011).

[93] 5 U.S.C. § 603(c)(1)-(c)(4)

STATEMENT OF
CHAIRMAN TOM WHEELER

Re: *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261.

Today, we begin a process to expand Internet video competition with cable and satellite services. Our proposal will mean more alternatives for consumers beyond the traditional cable or satellite bundle, including giving consumers more options to buy the programming they want. When digital technology made video simply zeroes and ones, it opened up the opportunity for new Internet-based competition to cable and satellite services. Yet efforts by new entrants to develop new video services have faltered because they could not get access to programming content that was owned by cable networks or broadcasters.

With this Notice of Proposed Rulemaking, the Commission moves to update the Commission's rules to give video providers who operate over the Internet – or any other method of transmission – the same access to programming that cable and satellite operators have. Big company control over access to programming should not keep programs from being available on the Internet. Today, we propose to break that bottleneck.

More specifically, we propose to update our interpretation of the definition of a multichannel video programming distributor (MVPD) to make it technology-neutral. Video is no longer tied to a certain transmission technology, so our interpretation of MVPD should not be tied to transmission facilities. Under our proposal, any providers that make multiple linear streams of video programming available for purchase would be considered MVPDs, regardless of the technology used to deliver the programming. The effect of this change will be to improve the availability of programming that over-the-top providers need and consumers want.

History has shown us how such a change can expand consumer choice. Back in 1992, Congress said that DBS competitors should be able to negotiate in good faith for video content, even if it is owned by cable companies and broadcasters. Greater access to high-demand content spurred the growth of the satellite video business in the 1990s. We propose to do the same thing for over-the-top video providers who deliver content, not via cable or satellite, but via the Internet.

By facilitating access to such content, we expect Internet-based linear programming services to develop as a competitor to cable and satellite. Consumers should have more opportunities to buy the channels they want instead of having to pay for channels they don't want.

Our proposals will also help stimulate additional broadband deployment. An updated definition of MVPD would permit a new broadband competitor to offer customers the ability to reach a variety of over-the-top video packages, without having to enter the video business itself.

This NPRM marks the beginning, not the end of the process. While it proposes to interpret the term MVPD to encompass distributors of multiple linear video programming streams, including Internet-based services, it also asks for comment on an alternative interpretation that would require an MVPD to have control over a transmission path. The NPRM also asks for comment on:

- How each interpretation would impact MVPDs, consumers, and content owners, and how each would promote competition and broadband adoption;
- How the Commission should apply its retransmission consent "good faith" negotiation rules with respect to Internet-based MVPDs to protect local broadcasters; and
- Whether these proposals would affect the regulatory status of IP-delivered video services by cable operators and DBS providers.

This proposal is a big win for consumers and part of the Commission's broader efforts to speed the transition to all-IP networks in a way that serves the public interest – enabling innovation, while preserving core values like competition and consumer choice.

STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN

Re: *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261.

Change is both constant and continuous.

As the media landscape evolves to reflect consumer demands and innovation, so too must our policies and regulatory regime. This has been a constant refrain for the FCC, as we seek to keep pace with the invariable changes in the global communications market.

Our tastes, fashions, viewpoints and values are influenced by content transferred over our television, radio, desktop, or handheld devices, and for those providers of content, this presents opportunity and obstacles, and holds both risk and reward.

Sound regulation typically requires a careful balancing of competing interests. In this context, it means our goals should be to define "multichannel video programming distributor" as broadly as possible to accommodate a new set of choices and offerings for consumers, while concurrently opening the avenue for innovation and new players. Multiple channels of video programming, including linear video providers who may not own their own facilities, should be included. We also want to insure that nascent, internet- based, services are not given competitive advantages over established MVPDs, who have well-defined obligations under the law.

With this vote, I believe we have adequately balanced these interests, by accomplishing three noteworthy public interest objectives: First, and foremost, we seek to provide more choice for consumers – always a positive goal. Second, we create a path for new entrants by encouraging a level playing-field of competition in a rich market. Third, we modernize our regulations so they comport with the new realities of a dynamic industry, and remain relevant in a competitive market as a result.

As the video marketplace continues to grow in ways, perhaps, unforeseen, I believe today's decision to expand the definition of MVPD will prove to be prescient.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL

Re: *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261.

The future of watching video does not look like the past. That's because over the next few years, television will change more than it has over the last several decades.

The way we watch will change—where we watch, when we watch, and how we watch. Families huddling together in one room basking in the glow of a single screen will give way to gatherings with many screens and multiple programs. I know. It is already happening with my family in my home—and it is surely happening in countless others just like it, all across the country.

While online video has arrived, it is still in the early stages of development. The world's largest media companies and smallest upstarts are experimenting with innovative programming, business models, and pricing. As a result, the video market is evolving at a breathtaking pace, driven by both new technology and changing consumer expectations.

At the Commission we have an obligation to promote competition in the delivery of video services. We have the authority to update our rules to reflect the fact that video services are being offered over new platforms. We have the authority to interpret the statutory term multichannel video programming distributor (MVPD) to include providers of multiple streams of linear, over-the-top television. But I believe acknowledging authority is only the start of our inquiry. We also need to consider if we should alter our rules—and how. That's because our answer will impact the kind of video offerings that come to the market, the speed with which they arrive, and the prices consumers pay.

For this reason, I want to thank Chairman Wheeler and my colleagues for accommodating my request that this rulemaking seek comment on allowing, under certain circumstances, the ability to elect MVPD status. New service types are emerging fast—faster than any rulemaking process at this agency. What new video models succeed, what degree of self-curated viewing they enable, and what prices consumers are willing to pay are still up for grabs. If this kind of election can be administered easily, new providers would be able to avoid the legal conundrum involved in determining the regulatory status of novel services, seeking regulatory exemption, or pursuing a waiver of our rules before launching in the market. Moreover, this could be an elegant compromise for new services—between those who believe we should steer clear of policies for Internet-distributed video and those who believe clear rules are essential to get their service off the ground.

I look forward to the record that develops in response to the many questions in this rulemaking. But more than that, I look forward to the wide range of innovative video services that are developing. The future of watching—anytime and anywhere—is bound to be exciting.

CONCURRING STATEMENT OF COMMISSIONER AJIT PAI

Re: *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Service*, MB Docket No. 14-261.

The video marketplace is changing, and changing fast. Internet-based video distribution—a flickering hope at the dawn of the Internet age—is a real and growing phenomenon. New entrants are cutting new paths, while established competitors are feeling pressure to adapt their business models. More than ever before, consumers are in the driver's seat when it comes to video content.

In evolving markets like these, the government should be hesitant to extend the outdated regulations and classifications of old. It's for this reason that I can't vote to approve this Notice of Proposed Rulemaking. In my view, the Commission's fundamental proposal—that certain Internet-based distributors of video programming should be regulated as multichannel video programming distributors (MVPDs), a mouthful of a term older than Internet video itself—is premature. And the legal analysis contained in the Notice is heavily slanted to support that result.

To be sure, this proposal is being packaged as a way to increase video competition. But given the dramatic, organic explosion in online video content over the last few years, I have my doubts as to whether additional regulation in this space is necessary. Indeed, I fear that it could impede continued innovation. I am also worried that this proposal will pave the way for more comprehensive regulation of Internet-based services.

Nonetheless, I am voting to concur for two reasons. First, I agree that it is time for the Commission to resolve the question of whether Internet-based distributors of video programming can be MVPDs, an issue that has been pending at the Commission for over four years. And second, the Notice has improved significantly since it was first circulated, as a result of changes that Commissioner O'Rielly, Commissioner Rosenworcel, and I suggested.

Among other things, the Notice now tentatively concludes that programmers' websites should be shielded from additional regulation. It also tentatively concludes that there should be regulatory parity between cable operators offering video programming over the Internet and other entities doing the same. Additionally, it asks in a more forthright manner about the interplay between the Commission's regulatory decisions and decisions that will need to be made independently by the U.S. Copyright Office. In particular, if the Commission were to decide that Internet-based distributors of video programming are MVPDs, subjecting broadcasters to the obligation to negotiate in good faith with them regarding retransmission consent, what would it mean in practice if the Copyright Office maintained its position that such Internet-based distributors do not qualify for the compulsory license? Would that be a workable regulatory scheme? While I had hoped to get public input on other questions as well,[1] doing so with respect to the issues mentioned above is significant.

I look forward to reviewing the record compiled in response to this Notice and to working collaboratively with my colleagues to create a regulatory framework that preserves for many years more what millions of consumers view as a golden age of video.

[1] For example, we should have asked whether the Commission's proposal could require us to regulate Internet pornography. This is obviously an uncomfortable question, but it won't vanish through omission.

CONCURRING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services,* MB Docket No. 14-261.

I marvel at and embrace what the Internet and the many innovative programmers and designers have been able to bring to the world. Over the last 20 years or so, the Internet has revolutionized all communication capabilities. It is the ultimate disruptive force. Nowhere is this more evident than in the offering of video programming. According to industry experts, video already accounts for two-thirds of U.S. Internet traffic today and is estimated to increase to approximately 80 percent in just three years.[1] Once the domain of a few select providers, the video marketplace is changing right before our very eyes. Business models are adapting on the fly, and a robust video offering on the Internet is becoming more of a necessity for those companies seeking to compete in the years ahead.

With all of this dynamism in the online video marketplace, it makes this item particularly puzzling. While I can appreciate that the Commission may be trying to be forward looking, this item misses the mark. The Internet—and online video in particular—has grown to where it is today outside of our regulatory clutches, and the FCC trying to jump into this space now, especially without clear direction provided by the Congress, is highly questionable. As a government agency with little to no authority over the Internet, the best thing that the Commission can do is not get in the way.

Although I am amenable to seeking comment on these ideas and will concur to this notice, I am unlikely to support a future order based on the central proposal set forth in today's item. Specifically, it sets up a regime to treat an over-the-top (OTT) video programming provider as a Multichannel Video Programming Distributor (MVPD) if it is offering multiple streams of prescheduled video programming. I am concerned that the Commission's actions—either intentionally or unintentionally—may skew the marketplace in a harmful way. For instance, OTT video providers may seek to follow this model, if adopted, in order to take advantage of some of the perceived benefits instead of pursuing other more promising or innovative offerings that the market and consumers may prefer. Or, will some entities decide not to pursue a linear online offering—or worse remove content from the Internet—because of regulation? The structure proposed could have significant unintended consequences on this nascent industry still trying to define itself in the immediate term and on the entire video industry in the years to come. So why are we doing this?

A review of the supposed benefits of the item results in a short and undistinguished list. For instance, declaring an OTT video offering as an MVPD would allow it to take advantage of the Commission's Program Access and Retransmission Consent Rules. These prevent certain entities from improperly withholding cable-affiliated programming from competitors and require that negotiations between parties for broadcast programming be in good faith. These rules, however, do not guarantee a successful outcome, which is determined by private marketplace negotiations; they only bring parties to the table. But, OTT video providers are doing more than just talking these days. You only have to look at the deals cut by Sony, Dish and others to see that negotiations can commence and agreements can be struck without FCC involvement.

It has also been asserted by some people that, as a response to Commission action, the Registrar of Copyrights at the United States Copyright Office could extend compulsory copyright to online video programmers wishing to transmit broadcast signals. My indications are that the Copyright Office is not poised to act nor seeking our advice or input. Moreover, having spent some time over the years working

[1] Cisco, VNI Forecast Highlights, United States – 2018 Forecast Highlights, Internet Video, http://www.cisco.com/web/solutions/sp/vni/vni_forecast_highlights/index.html (last visited Dec. 18, 2014).

on potential amendments to the Copyright Act, I am not sure how much flexibility the Registrar would have to deem an MVPD potentially covered by this item as eligible for a compulsory copyright license. In fact, the U.S. District Court for the Southern District of New York has stated that being like a cable system does not make it a cable system for purposes of a compulsory copyright license.[2] Likewise, the statute seems to be fairly clear in its use of the terms "cable system" and "satellite carrier," as opposed to "MVPD."[3]

While there may be a few tangible upsides to this item, there are also potential downsides. And this regime is not permissive; if an OTT meets the criteria, the Commission would presumably declare the OTT to be an MVPD—even if the OTT doesn't want such a declaration. I hope to engage with stakeholders going forward to understand how these burdens could impact current and future business models or plans.

Moreover, I am deeply concerned by the suggestion that a cable-affiliated network could be required to obtain the online rights to all of its programs, which it may not own today, to make them available to OTT MVPDs. This suggested mandate would occur even if the cable provider didn't want the rights for its own business purposes. In effect, we would be forcing a company to negotiate and purchase copyrights for purposes of selling a more complete video package to an OTT MVPD. Really? Not only is this beyond offensive, it may just violate the U.S. Constitution. It is extremely unlikely that I would support such a requirement in any final version, and it may taint my view of an entire item.

Finally, and maybe most importantly, I am extremely troubled that the Commission may be headed down a path to capture OTT video providers within Title VI of the Communications Act. Although it would not subject such providers to the full panoply of requirements, shoehorning Internet video providers—the quintessential edge providers—into a framework that many people, including those in leadership in Congress, have deemed in need of review or overhaul is just plain wrong. As I have previously stated, this effort, combined with a number of other items seeking to subsume Internet offerings into Title II, would seem to leave little of the Internet free from the grasp of the Communications Act, a law not written for the Internet age. How is it that some edge providers fail to see that the Commission will seek to extend its authority to their business models or plans?

Although I have serious concerns about the direction in which the Commission is headed, I would like to thank the Chairman and my fellow colleagues for working together to get this item to a better place. A number of harsher proposals, such as mandatory carriage requirements, were removed or modified at my request. I would also like to recognize the Media Bureau staff who spent many late nights working on this notice.

[2] *See* American Broadcasting Companies, Inc. et el. V. Aereo, Inc., Nos. 12–cv–1540, 12–cv–1543, slip op. (S.D.N.Y. Oct. 23, 2014).

[3] *See* 17 U.S.C. §§ 111, 119, 122.

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Named Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JANE DOE,

Plaintiff

vs.

ALKIVIADES DAVID, ET AL.,

Defendants.

Case No.: **20STCV37498**

Assigned to the Honorable Christopher LIU, Presiding

DEFENDANT' ALKIVIADES DAVID'S OBJECTIONS TO TRIAL AND IRRIGULARITIES IN CASE NO. 20STCV37498

Date: July 5, 2024

Time: Unknown

Department: LM 2

Trial Date: Unknown

DEFENDANT' ALKIVIADES DAVID'S OBJECTIONS TO TRIAL AND IRRIGULARITIES IN CASE NO. 20STCV37498

DEFENDANT' ALKIVIADES DAVID'S OBJECTIONS TO CASE NO. 20STCV37498

Exception is taken under Code of Civil Procedure Section 646 to the following:

1.) Objection to litigation procedures without notice to or appearance by Defendant, including hearings and the jury trial conducted, for all phases thereof from void dire to final submission or presentation for jury deliberations, and after deliberations were over with the verdict(s) and any subsequent hearing(s).

2.) Objection to any conduct or participation by Fred Heather or Dana Cole after December 18, 2023, acting as counsel of record or friend of the court.

3.) Objection to trial in case No. 20STCV37498.

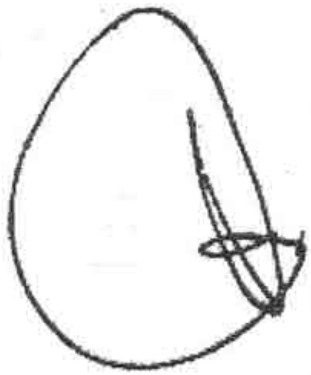
4.) Objection to June 2024 trial, without Defendant present to participate and cross examine witness.

5.) Objection to pre-trial discovery and or lack of pre trial discovery, as Defendant's due process rights were not observed.

6.) Additional objections/concerns attached hereto as EXHIBIT 1.

7.) Objection to lack of ADA Accommodation for Defendant, Alkiviades David during this case and through trial as well as post-trial.

Respectfully Submitted this 5th Day of July, 2024.



Alkiviades David
Named Defendant

EXHIBIT 1

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

JANE DOE Plaintiff,

vs. ALKIVIADES DAVID, ET AL., Defendant

Case No.: 20STCV37498

DEFENDANT'S OBJECTION TO PROCEEDINGS INCLUDING JURY VERDICT DUE TO JUDICIAL CONFLICT OF INTEREST AND IMPROPER JURY TRIAL

July 1 2024

TO THE HONORABLE CHRISTOPHER K LIU

INTRODUCTION

Defendant Alkiviades David, appearing pro se, hereby submits this Objection to the proceedings in the above-captioned matter on the grounds that (1) the presiding judge has a personal conflict of interest, which impairs impartiality and fairness, and (2) the case was improperly proceeded to a surprise jury trial. Defendant respectfully requests that this Court address these critical issues to ensure the integrity of the judicial process.

FACTUAL BACKGROUND

1. **Conflict of Interest:** The presiding judge, Hon. Christopher K. Liu, has a known personal and/or professional conflict of interest involving the subject matter of the above-styled cause and that of two pending federal matters. The first is captioned *In re Alkiviades David*, Case number 2:2024cv01665, United States District Court, Central District of California, filed February 29, 2024. This federal action pleads in relevant part, "where the absence of jurisdiction by the herein named state courts, and the product of extrinsic fraud on the state courts committed by the REAL PARTIES OF INTEREST produced unlawful domestic and international debt collections which are void ab initio." The second federal case is *DAVID et al v. COMCAST INC. et al* (4:23-cv-00435), filed in Texas. These conflicts compromise Judge Liu's ability to remain impartial and objective in adjudicating the instant matter. Due process requires a fair trial before a judge without actual bias against the defendant or an interest in the outcome of his particular case. *Bracy v. Gramley*, 520 U.S. 899 (1997). It certainly violates the Fifth and Fourteenth Amendments and deprives the defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, or substantial pecuniary interest in reaching a conclusion against him in his case. *Tumey v. Ohio*, 273 U.S. 510 (1927).
2. **Public Accusation Against Judge Liu's Father:** Defendant has publicly and personally accused Judge Christopher K. Liu's father, Judge Elwood Liu, of gross abuse of power by inserting false witness statements in his opinion of the Mahim Kahn appeal. The accusations include fabrications and personal gain from a $54 million order. This conflict raises significant

relations and the serious nature of the allegations against his father.

3. **Termination of Counsel:** On December 13, 2023, at 1:25 PM, Defendant terminated attorney Fred Heather as represented by the attached email. (SEE DEC 13, 2023 EMAIL TO FRED HEATHER). Defendant terminated attorney Fred Heather due to unethical conduct and for failure to represent Defendant's interest properly. More specifically, Defendant wrote: "Fred you're fired.... YOU DO NOT REPRESENT ME - YOU ARE LIKE DANA - YOU ARE COMPLICIT AND CORRUPT. This is not my head injury in any way talking of it is based on legal advice too. Fred and Dana you are not to be involved with my cases ever again. Alki David" On May 18, 2024, Defendant again asserted to Fred Heather by way of email, that Heather was no longer representing Defendant in any capacity due to counsel's unethical behavior in a scheme to obtain millions of dollars from the elderly mother of the Defendant, representing that Defendant would face imminent criminal sanctions if money was not paid to his firm in the instant civil case. Counsel thereafter failed to either withdraw from the case or inform the court that counsel had been fired by the Defendant. As the court is aware, counsel made no defensive filings on the record including but not limited to Motion In Limine and proposed jury instructions. Nor did counsel notify the court as to the need for a writ of habeas corpus ad testificandum so as to require United States Immigration to issue a temporary visa to Defendant (a non-U.S. citizen) that his attendance would be available at such a trial.
4. **Improper Jury Trial:** On or about June 12, 2024, this Court proceeded to a jury trial without proper notice to the Defendant as discussed above. At the time, Defendant had terminated the services of Defendant's counsel of record, Fred Heather, as described above. The Court, however, moved forward with the June 2024 trial absent knowledge or notice to the Defendant, thereby causing severe prejudice to the Defendant's right to a fair trial. Moreover, at no time on the record or elsewhere did the Defendant waive his right to notice. "Notice and opportunity to be heard are fundamental to due process of law. We would reverse these cases out of hand if they were suits of a civil nature to establish a claim against petitioners. Notice and opportunity to be heard are indispensable to a fair trial whether the case be criminal or civil." *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 178 (1951).
5. **New Evidence Exonerating Defendant:** Recently, new evidence has surfaced in the form of text messages and communications, previously buried, revealing a conspiracy involving prominent figures like Tom Girardi and Gloria Allred. This evidence exonerates Defendant Alkiviades David and exposes a malicious plot against him. The death of attorney Barry Rothman, under mysterious circumstances, led to the loss or concealment of crucial documents and evidence that are now emerging, further supporting Defendant's claim of innocence and conspiracy against him.
6. **Indictment of Associated Attorneys:** The original lawsuit against Defendant was initiated by Girardi Keese, with Keith Griffin of Dordick Law and Gary Dordick being involved. Both attorneys have since been

pattern of legal malpractice and unethical behavior surrounding this case.

7. **Federal Cases Impacting the Current Matter:** Defendant has filed two federal cases that directly impact the current matter:
   - *DAVID et al v. COMCAST INC. et al* (4:23-cv-00435), Texas
   - *Alkiviades David et al v. Los Angeles County Superior Court No. BC654017 Hon. Michelle Williams et al*
8. **Collusion and Extortion Revealed:** There are 27 pages of text messages between Lauren Reeves, Chasity Jones, Elizabeth Taylor, Mary Rizzo, and Mahim Kahn revealing their collusion to extort Defendant Alkiviades David. These messages, which were buried by Fred Heather at Robert Shapiro's firm, demonstrate a coordinated effort driven by Gloria Allred to falsely accuse and extort Defendant. Attorney Fred Heather's conflict of interest, representing Defendant while withholding this evidence, further compromised Defendant's right to a fair trial. Robert Shapiro also personally threatened Defendant, adding to the misconduct and abuse in this case.

LEGAL GROUNDS FOR OBJECTION

I. **Conflict of Interest** Under California Code of Civil Procedure § 170.1(a)(6)(A)(iii), a judge shall be disqualified if "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." The established conflict of interest in this case meets this criterion, as it raises reasonable doubts about Judge Christopher K. Liu's ability to render an unbiased decision.

II. **Improper Jury Trial and Due Process Violation** Pursuant to the California Constitution, Article I, Section 16, and the Code of Civil Procedure § 631, parties are entitled to adequate notice and an opportunity to prepare for trial. Proceeding to a jury trial without proper notice and while the Defendant, being a disabled person under the ADA, was in the process of changing legal representation constitutes a violation of due process and the right to a fair trial.

III. **New Evidence Supporting Defendant's Innocence** The new evidence, including text messages and communications revealing a conspiracy against Defendant, further invalidates the proceedings and the jury's verdict. This evidence indicates a deliberate and malicious effort to prosecute Defendant unlawfully.

ARGUMENT

1. **Impartiality is Fundamental to Justice** The right to a fair and impartial tribunal is a cornerstone of the American judicial system. Given the conflict of interest involving Judge Christopher K. Liu, proceeding with this judge to the June 2024 trial threatened the fairness of the trial where an unreasonable $900 million verdict was returned. An impartial judge is essential to the credibility and integrity of the judicial process.
2. **Right to Adequate Notice and Representation** Defendant's constitutional and statutory rights were infringed when the Court advanced to a jury trial without proper notice and during a transition of legal counsel. This surprise jury trial deprived the Defendant of adequate time to secure new counsel and prepare a defense, thereby undermining the fairness of the

3. **Consideration of New Evidence** The newly surfaced evidence exonerating Defendant must be considered by the Court. This evidence reveals a coordinated conspiracy involving prominent legal figures, and its exclusion from consideration would result in a miscarriage of justice.

CONCLUSION

For the reasons set forth above, Defendant Alkiviades David respectfully requests that:

1. Judge Christopher K. Liu be recused from this case due to the personal and/or professional conflict of interest.
2. Any orders or judgments entered during the surprise jury trial be vacated.
3. A new trial be scheduled, providing sufficient time for Defendant to retain and prepare with new legal counsel.
4. All further proceedings in this matter be stayed pending full resolution in the United States District Court case as referenced above.
5. The new evidence exonerating Defendant be fully reviewed and considered in any subsequent proceedings.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief as follows:

1. An order recusing Judge Christopher K. Liu from presiding over this matter.
2. An order vacating all proceedings and judgments from the improper jury trial.
3. An order for a new trial with appropriate notice and preparation time for Defendant's new counsel.
4. An order to stay all proceedings in this case pending final disposition of cause 2:2024cv01665, United States District Court, Central District of California.
5. An order to fully consider the new evidence exonerating Defendant in any subsequent proceedings.
6. Any other relief that this Court deems just and proper.

Respectfully submitted, DATED: June 26, 2024

Alkiviades David
23768 MALIBU ROAD
MALIBU CA 90265

Alkiviades David, Pro Se

NOTE: I am a disabled person of sound mind and body. I have not ever been given my accommodations under ADA 2008 Amendment of Disabilities Act. I have been entirely ignored, and my severe disability repeatedly abused.

ERIC M. WEXLER M.D., PH.D.
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INITIAL PSYCHIATRIC TREATMENT PLAN

INTERIM REPORT

May 6, 2023

RE: Alkiviades "Alki" David

DIAGNOSES

(S06.2XAS) Diffuse traumatic brain injury with loss of consciousness of unspecified duration
(F90.2) Attention-deficit hyperactivity disorder, combined type
(F63. 81) Intermittent explosive disorder
(F22) Delusional Disorder

BACKGROUND

In many ways the mind is what defines a person, who they really are. What we call the mind is an amalgam of emotion, temperament, capacities, and behaviors, yet how a unique "person" emerges from the brain's circuitry remains poorly understood. Until only very recently, most of what we knew of this process was learned from observing unfortunates who had suffered traumatic brain injuries (TBI). Diagnosing and treating those who have suffered these injuries lies at the ill-defined boundary between neurology and psychiatry. This task, difficult to start with, is made even more uncertain because the medical literature lacks enough well-designed clinical trials to provide firm guidance. Without the established probabilities afford by clinical trial data, treatment plans require frequent reevaluation and adjustment.

Mr. David suffers from objective neurological damage and apparent psychiatric pathology that goes far beyond diminished attention or moodiness[1]. It is often surprising to those unfamiliar with TBIs how

[1] Mr. David's clinical picture is all too common, but somewhat difficult to characterize because of short-coming in the medical literature. For example, neurology in this country uses a different nomenclature than psychiatry and psychiatry in the USA uses a different diagnostic classification system than psychiatry in the rest of the world. For the purposes of this report all diagnoses will use the *International Classification of Diseases, Tenth Revision (ICD-10)* coding, but reference the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)* where clinically indicated.

similarly they can present behaviorally. For example, a 30-year follow-up of TBI patients showed a 2-4 fold increase in the rate of personality disorders[2], the most prominent being what was then termed Organic Personality Syndrome (OPS: F07.0). The diagnostic criteria (below) for OPS should be easily recognizable to anyone who has met Mr. David.

Organic Personality Syndrome *A persistent personality disturbance, either lifelong or representing a change or accentuation of a previously characteristic trait, involving at least one of the following:* ***(1) affective instability**, e.g., marked shifts from normal mood to depression, irritability, or anxiety.* ***(2) recurrent outbursts of aggression or rage that are grossly out of proportion to any precipitating psychosocial stressors.*** ***(3) markedly impaired social judgment,** e.g., sexual indiscretions* *(4) marked apathy and indifference* ***(5) suspiciousness or paranoid ideation*** ***…Specify explosive type if outbursts of aggression or rage are the predominant feature.***
TABLE 1. Diagnostic criteria for Organic Personality Syndrome[3] : ***[BOLD**: those traits exhibited by Mr Alkiviades]*

INITIAL TREATMENT PLAN

Mr. David impaired social functioning, and by extension, his legal problems are largely caused by the psychiatric challenges he faces. While each of his psychiatric diagnoses deserve to be addressed eventually, his treatment plan should initially focus on the following target symptom: Paranoia (delusional psychosis), Attention deficit/Impulsivity, Intermittent explosivity(rage) and, while his mood symptoms can be addressed later.

(I) PSYCHOSIS Paranoid delusions generally improve with pharmacotherapy. There are a plethora of medication that would a priori be expected to have sufficient, though not entirely equal, effectiveness[4,5] and

[2] Koponen, S., Taiminen, T., Portin, R., Himanen, L., Isoniemi, H., Heinonen, H., Hinkka, S., & Tenovuo, O. (2002). Axis I and II psychiatric disorders after traumatic brain injury: a 30-year follow-up study. The American journal of psychiatry, 159(8), 1315–1321. https://doi.org/10.1176/appi.ajp.159.8.1315

[3] American Psychiatric Association. (1987). *Diagnostic and statistical manual of mental disorders* (*DSM–III–R*; 3rd ed., revised). Washington, DC

[4] Huhn, M., Nikolakopoulou, A., Schneider-Thoma, J., Krause, M., Samara, M., Peter, N., … Leucht, S. (2019). Comparative efficacy and tolerability of 32 oral antipsychotics for the acute treatment of adults with multi-episode schizophrenia: a systematic review and network meta-analysis. The Lancet. doi:10.1016/s0140-6736(19)31135-3

[5] Abou-Setta AM, Mousavi SS, Spooner C, et al. First-Generation Versus Second-Generation Antipsychotics in Adults: Comparative Effectiveness [Internet]. Rockville (MD): Agency for Healthcare Research and Quality (US); 2012 Aug. (Comparative Effectiveness Reviews, No. 63.) Table 1, List of antipsychotics included in the comparative effectiveness review* Available from: https://www.ncbi.nlm.nih.gov/books/NBK107237/table/introduction.t1/

are available both in the United States and his native country. Were it simply a question of which medication would be most effective, the first choice of therapy would be Clozapine. However, in practice this is never the first medication trialed for a host of reasons (e.g. requirement for weekly blood monitoring during the first year, etc.). Since this entire class of medications carry a high side effect burden specific medication choice will need to be governed by his idiosyncratic tolerability, which will have to be determined empirically through trial and error, as well as overall compliance. In my experience, Aripiprazole[6] and Cariprazine[7] are among the best tolerated and most effective medications in this class. The advantage of the latter is that it is less sedating and weight neutral, while the former is available in the form of a monthly long-acting injectable. I would advise a discussion of the risk, benefits and alternatives of these medications and initiating a titration schedule of the chosen medication as soon as possible.

(II) ATTENTION DEFICIT/IMPULSIVITY Attention problems are very common after TBI. In moderate–severe TBI, 60% report chronic, long-lasting problems with inattention[8]. Stimulants of the amphetamine class remain the most widely studied medication class used to treat posttraumatic attentional impairments[9]. While methylphenidate is the best studied, my clinical experience suggests that long-acting dextroamphetmine preparations are more effective in adults like Mr. David, with comorbid attention deficits and dysexecutive function. Specifically, I would initiate therapy with lisdexamfetamine (Vyvanse), which has been trialed in TBI patient[10]s and was not found to exacerbate delusions in already psychotic patients[11] In addition, I would initiate a trial of extended-release guanfacine, a non-amphetamine modulator of norepinephrine signaling that can reduce impulsivity and hyperactivity.

(III) RAGE-AGGRESSION Hair-triggered rage or perseverative aggression can easily develop following traumatic injury to the frontal lobes.. The first line treatment for these explosive behaviors are selective serotonin reuptake inhibitors with Fluoxetine having the best empirical support[12] (Prozac). This medication should be started at 10-20mg per day and titrated as tolerated to 60mg per day for 6-12 week. If the rage

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[6] Weiser M, Davis JM, Brown CH, Slade EP, Fang LJ, Medoff DR, Buchanan RW, Levi L, Davidson M, Kreyenbuhl J. Differences in Antipsychotic Treatment Discontinuation Among Veterans With Schizophrenia in the U.S. Department of Veterans Affairs. Am J Psychiatry. 2021 Oct 1;178(10):932-940. doi: 10.1176/appi.ajp.2020.20111657. Epub 2021 Jul 14. PMID: 34256606.

[7] Németh, G., Laszlovszky, I., Czobor, P., Szalai, E., Szatmári, B., Harsányi, J., … Fleischhacker, W. W. (2017). Cariprazine versus risperidone monotherapy for treatment of predominant negative symptoms in patients with schizophrenia: a randomised, double-blind, controlled trial. The Lancet, 389(10074), 1103–1113. doi:10.1016/s0140-6736(17)30060-0

[8] Ponsford J, Alway Y, Gould KR. Epidemiology and Natural History of Psychiatric Disorders After TBI. J Neuropsychiatry Clin Neurosci. 2018 Fall;30(4):262-270. doi: 10.1176/appi.neuropsych.18040093. Epub 2018 Jun 25. PMID: 29939106.

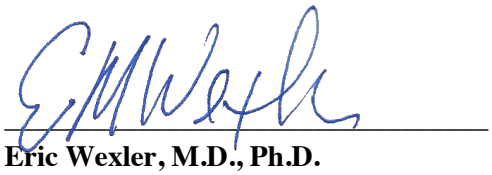
[9] Frenette, A. J., Kanji, S., Rees, L., Williamson, D. R., Perreault, M. M., Turgeon, A. F., … Fergusson, D. A. (2012). Efficacy and Safety of Dopamine Agonists in Traumatic Brain Injury: A Systematic Review of Randomized Controlled Trials. Journal of Neurotrauma, 29(1), 1–18. doi:10.1089/neu.2011.1812

[10] Tramontana, M. G., Cowan, R. L., Zald, D., Prokop, J. W., & Guillamondegui, O. (2014). Traumatic brain injury-related attention deficits: Treatment outcomes with lisdexamfetamine dimesylate (Vyvanse). Brain Injury, 28(11), 1461–1472. doi:10.3109/02699052.2014.930179

[11] https://clinicaltrials.gov/ct2/show/results/NCT00922272

[12] Coccaro EF, Lee RJ, Kavoussi RJ. A double-blind, randomized, placebo-controlled trial of fluoxetine in patients with intermittent explosive disorder. J Clin Psychiatry. 2009 Apr 21;70(5):653-62. doi: 10.4088/JCP.08m04150. PMID: 19389333.

type behaviors remain unabated the second line therapy would be to initiate a course of a stabilizing anticonvulsant. Although phenytoin is the best studied it has a lower degree of patient tolerability than newer agents like oxcarbazine. Since compliance will be a major concern in this case, I would choose oxcarbazine at an initial dose of oxcarbazepine of 150 or 300 mg per day. The daily dose could then be titrated by 150-300mg every 2-4 days, as tolerated, to a target dose of 600-1200mg twice daily. Additionally, propranolol[13] might be used adjunctively to reduce the severity, if not frequency of these episodes.



Eric Wexler, M.D., Ph.D.
Board-Certified in Psychiatry

[13] Williamson D, Frenette AJ, Burry LD, Perreault M, Charbonney E, Lamontagne F, Potvin MJ, Giguère JF, Mehta S, Bernard F. Pharmacological interventions for agitated behaviours in patients with traumatic brain injury: a systematic review. BMJ Open. 2019 Jul 9;9(7):e029604. doi: 10.1136/bmjopen-2019-029604. PMID: 31289093; PMCID: PMC6615826.

Ozga JE, Povroznik JM, Engler-Chiurazzi EB, Vonder Haar C. Executive (dys)function after traumatic brain injury: special considerations for behavioral pharmacology. Behav Pharmacol. 2018 Oct;29(7):617-637. doi: 10.1097/FBP.0000000000000430. PMID: 30215621; PMCID: PMC6155367.

Abou-Setta AM, Mousavi SS, Spooner C, et al. First-Generation Versus Second-Generation Antipsychotics in Adults: Comparative Effectiveness [Internet]. Rockville (MD): Agency for Healthcare Research and Quality (US); 2012 Aug. (Comparative Effectiveness Reviews, No. 63.) Table 1, List of antipsychotics included in the comparative effectiveness review* Available from: https://www.ncbi.nlm.nih.gov/books/NBK107237/table/introduction.t1/

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