

In the Matter Of:

Kahn, Mahim vs Hologram USA, Inc., et al

REPORTER'S TRANSCRIPT, DAY 11

November 25, 2019

Job Number: 588321

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 74 HON. MICHELLE WILLIAMS COURT, JUDGE
4
5 MAHIM KHAN,)
6 PLAINTIFF,)
7 VS.) CASE NO. BC654017
8 HOLOGRAM USA, INC.; ALKI DAVID)
9 PRODUCTIONS, INC.; FILMON TV, INC.;)
10 ALKIVIADES ("ALKI") DAVID, AN)
INDIVIDUAL; AND DOES 1 THROUGH 25,)
INCLUSIVE,)
11 DEFENDANTS.)
12
13
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 NOVEMBER 25, 2019
16
17 APPEARANCES:
18 FOR THE PLAINTIFF: NATHAN G. GOLDBERG, ESQ.
DOLORES Y. LEAL, ESQ.
19 ALLRED, MAROKO & GOLDBERG
6300 WILSHIRE BOULEVARD, SUITE 1500
20 LOS ANGELES, CALIFORNIA 90048
21 FOR THE DEFENDANTS: ELLYN S. GAROFALO, ESQ.
HOLOGRAM USA, INC., AMIR KALTGRAD, ESQ.
22 ALKI DAVID VENABLE, LLP
PRODUCTIONS, INC., 2049 CENTURY PARK EAST, SUITE 2300
23 AND FILMON TV, INC. LOS ANGELES, CALIFORNIA 90067
24
25 LISA DAY, CSR NO. 12960
26 OFFICIAL REPORTER PRO TEMPORE
27
28 Job No. 588321

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WITNESSES

PLAINTIFF'S
(NONE)

DIRECT CROSS REDIRECT RECROSS

DEFENDANTS '
(NONE)

DIRECT CROSS REDIRECT RECROSS

1	EXHIBITS				
2					
3	PLAINTIFF'S EXHIBITS	FOR ID	RECEIVED	OR	WITHDRAWN REJECTED
4	229 - ALKIVIADES DAVID'S VIDEO DEPOSITION	19	19		
5					
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15	DEFENDANTS' EXHIBITS	FOR ID	RECEIVED	OR	WITHDRAWN REJECTED
16	(NONE)				
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1 CASE NUMBER: BC654017
 2 CASE NAME: KHAN VS. HOLOGRAM USA, INC.
 3 LOS ANGELES, CALIFORNIA MONDAY, NOVEMBER 25, 2019
 4 DEPARTMENT NO. 74 HON. MICHELLE WILLIAMS COURT, JUDGE
 5 REPORTER: LISA DAY, CSR NO. 12960
 6 TIME: 10:14 A.M. (A.M. SESSION)

7 APPEARANCES:

8 PLAINTIFF MAHIM KHAN, PRESENT
 9 WITH COUNSEL, NATHAN GOLDBERG AND
 10 DOLORES LEAL; ELLYN GAROFALO AND
 11 AMIR KALTGRAD, COUNSEL FOR THE
 12 CORPORATE DEFENDANTS.

13
 14 (THE FOLLOWING PROCEEDINGS WERE
 15 HELD IN OPEN COURT OUTSIDE THE
 16 PRESENCE OF THE JURORS:)

17
 18 THE COURT: WE ARE BACK ON THE RECORD IN KAHN
 19 VERSUS HOLOGRAM. CASE NO. BC654017.

20 WILL YOU STATE YOUR APPEARANCES, PLEASE.

21 MR. GOLDBERG: YES. GOOD MORNING, YOUR HONOR.

22 NATHAN GOLDBERG ON BEHALF OF THE PLAINTIFF.

23 MS. LEAL: GOOD MORNING, YOUR HONOR.

24 DOLORES LEAL ON BEHALF OF PLAINTIFF.

25 MS. GAROFALO: GOOD MORNING, YOUR HONOR.

26 ELLYN GAROFALO ON BEHALF OF CORPORATE
 27 DEFENDANTS.

28 MR. KALTGRAD: GOOD MORNING, YOUR HONOR.

1 AMIR KALTGRAD ON BEHALF OF THE CORPORATE
2 DEFENDANTS.

3 THE COURT: GOOD MORNING, EVERYONE. I HOPE YOU
4 HAD A GOOD WEEKEND.

5 SO WE NEED TO FINALIZE OUR JURY
6 INSTRUCTIONS AND VERDICT FORM WHILE WE'RE WAITING FOR
7 OUR JURORS TO ASSEMBLE. I SPENT SOME TIME OVER THE
8 WEEKEND GOING OVER BOTH, AND I PRINTED THEM OUT FOR YOU.
9 I HOPE EVERYONE'S HAVE A CHANCE TO TAKE A LOOK AT THEM.

10 I ALSO TABBED A FEW OF THE JURY
11 INSTRUCTIONS THAT I WANTED TO MAKE SURE THAT WE DID
12 DISCUSS.

13 HAS EVERYONE HAD A CHANCE TO LOOK AT THE
14 JURY INSTRUCTIONS?

15 MS. LEAL: WE DID, AND MR. KALTGRAD AND I WENT
16 THROUGH AND AGREED UPON THE CHANGES.

17 THE COURT: OKAY. SO ALL OF THE CHANGES THAT ARE
18 CONTAINED IN HERE ARE ACCEPTABLE OR NOT?

19 MS. LEAL: NO.

20 THE COURT: SO SHOULD WE JUST FOCUS ON CHANGES
21 THAT I'VE TABBED OR ARE THERE OTHERS IN ADDITION TO
22 THAT?

23 MS. LEAL: THERE ARE OTHERS IN ADDITION TO THAT.

24 THE COURT: SO WHY DON'T WE GO THROUGH THEM
25 CHRONOLOGICALLY, AND YOU JUST TELL ME WHICH ONES YOU
26 NEED TO FOCUS ON AND WE'LL TALK ABOUT IT.

27 OKAY. SO WHAT IS THE FIRST ONE?

28 MS. LEAL: SO YOUR SECOND YELLOW TAB, WHICH IS

1 2500, DISPARATE TREATMENT.

2 THE COURT: OKAY. LET'S START WITH 206. I WANT
3 TO TALK ABOUT ALL THE -- THE ONES I TABBED OR -- LET ME
4 JUST MAKE SURE I'M UNDERSTANDING.

5 ARE THERE ANY JURY INSTRUCTIONS THAT I DID
6 NOT TAB THAT WE NEED TO DISCUSS?

7 MS. LEAL: YES.

8 MS. GAROFALO: YES.

9 THE COURT: OKAY. SO I WANT TO TALK ABOUT ALL OF
10 THEM, STARTING WITH THE FIRST TAB.

11 SO THE FIRST ONE IS 206. SO I'M ASSUMING
12 NOTHING BEFORE 206 NEEDS TO BE DISCUSSED; IS THAT
13 CORRECT?

14 MS. LEAL: THAT'S CORRECT.

15 THE COURT: OKAY. LET'S START WITH 206 AND THEN
16 GO CHRONOLOGICALLY, REGARDLESS OF WHETHER OR NOT I
17 TABBED THEM.

18 SO 206 WE TALKED ABOUT LAST WEEK, WHICH IS
19 EVIDENCE ADMITTED FOR A LIMITED PURPOSE, AND I DID
20 NOT -- WE DIDN'T INCLUDE IT ON FRIDAY, BUT I DID ADD IT
21 BACK BECAUSE THE JURY INSTRUCTION CONCERNING STATEMENTS
22 TO A PHYSICIAN, IT'S JURY INSTRUCTION 218, SPECIFICALLY
23 STATES THAT THE STATEMENTS THAT MS. KHAN MADE TO THE
24 PHYSICIAN COULD ONLY BE MADE -- CAN BE CONSIDERED FOR A
25 LIMITED PURPOSE, WHICH IS MOST OF THE REASON WHY I
26 OVERRULED MOST OF THE HEARSAY OBJECTIONS THAT WERE MADE,
27 AND SO I DO THINK THAT WE NEED TO INCLUDE THIS
28 INSTRUCTION, 206.

1 MS. LEAL: THAT'S FINE WITH PLAINTIFF.

2 MS. GAROFALO: AND THAT'S FINE. AS WE DISCUSSED
3 LAST WEEK, THIS WAS NOT A TREATING PHYSICIAN, BUT THE
4 COURT LEFT IN THAT INSTRUCTION, SO I THINK THE COURT IS
5 RIGHT ON THIS ONE.

6 THE COURT: OKAY. SO CHRONOLOGICALLY, WHAT IS THE
7 NEXT IN ORDER THAT WE NEED TO TALK ABOUT, REGARDLESS OF
8 WHETHER OR NOT I TABBED IT?

9 MR. KALTGRAD: I THINK THAT'S 2500.

10 MS. LEAL: THAT IS CORRECT.

11 THE COURT: 2500. OKAY. SO THAT ONE I ADDED
12 BECAUSE I THINK THAT IT ANSWERS THE QUESTION THAT WE
13 WERE NOODLING ON FRIDAY ABOUT THE APPROPRIATENESS OF
14 2510. THE REASON THAT THAT DIDN'T MAKE SENSE IS BECAUSE
15 2500 WAS NOT IN THERE. THERE IS -- CONSTRUCTIVE
16 DISCHARGE OR TERMINATION CAN BE A STANDALONE CAUSE OF
17 ACTION UNDER THE FEHA, IT'S JUST -- IT'S UNDER 2500, I
18 THINK.

19 SO LET ME HEAR FROM PLAINTIFF AND THEN I'LL
20 HEAR FROM DEFENDANT.

21 MS. LEAL: YOU ARE CORRECT, YOUR HONOR. BUT IN
22 DISCUSSING THIS OVER THE WEEKEND, WE DECIDED THAT THERE
23 REALLY IS NO NEED TO HAVE A SEPARATE STANDALONE
24 CONSTRUCTIVE DISCHARGE CAUSE OF ACTION.

25 THE COURT: OKAY.

26 MS. LEAL: OUR DAMAGES ARE SUBSUMED WITHIN THE
27 SEXUAL HARASSMENT CAUSE OF ACTION ANYWAYS. SO 2500, AS
28 WELL AS 2510, THE FOLLOWING CACI, CAN ALSO BE TAKEN OUT.

1 THE COURT: OKAY. SO WE'RE TAKING 2500 OUT.

2 MR. KALTGRAD, THAT'S YOUR --

3 MR. KALTGRAD: YES, YOUR HONOR. THAT'S FINE.

4 THE COURT: I'M ASSUMING YOU AGREE WITH THAT, BUT
5 LET ME JUST DOUBLE-CHECK AND MAKE SURE.

6 MR. KALTGRAD: YES, YOUR HONOR.

7 THE COURT: OKAY. SO LET ME DELETE 2500 AND 2510.

8 OKAY. WHAT IS THE NEXT ONE?

9 MR. KALTGRAD: I BELIEVE THE NEXT ONE IS 3900.

10 THE COURT: OKAY. I DID TAB 3900, BUT IN TABBING
11 THAT ONE, I MEANT TO -- WE NEED TO HAVE A CONVERSATION
12 ABOUT THAT WHOLE SERIES.

13 MR. KALTGRAD: YES, YOUR HONOR.

14 THE COURT: GO AHEAD.

15 MR. KALTGRAD: SO THE FIRST COMMENT, YOUR HONOR,
16 IS YOUR HONOR HAS INCLUDED PAST AND FUTURE LOST
17 EARNINGS. THAT COMES FROM 3903C, WHICH WE HAD TALKED
18 ABOUT TAKING THAT ONE OUT IN FAVOR OF 3903P, WHICH IS
19 MORE EMPLOYMENT-RELATED LOST WAGES INSTRUCTION. AND I
20 THINK PLAINTIFF HAD AGREED TO THAT, SO I DON'T THINK WE
21 NEED THE LOST EARNINGS PIECE OF IT.

22 NOW, IT LOOKS LIKE WHAT THE COURT DID IS
23 THE COURT TOOK THE 3903 AND 3905 SERIES AND STUCK IT
24 INTO THE 3900 INSTRUCTION.

25 THE COURT: I DID BECAUSE WHEN I WAS LOOKING AT
26 THE VERDICT FORM, THE VERDICT FORM HAD LINES FOR PAST
27 AND FUTURE LOST EARNINGS AND I DID NOT REMEMBER US
28 TALKING ABOUT THAT, TAKING THAT OUT OF THE VERDICT FORM,

1 WHICH IS WHY I WANTED TO TALK ABOUT ALL OF THESE SO
2 WE'RE ON THE SAME PAGE.

3 SO IT SOUNDS LIKE WE SHOULD DELETE THE PAST
4 AND FUTURE LOST EARNINGS LANGUAGE OUT OF 3900; IS THAT
5 CORRECT?

6 MR. KALTGRAD: YEAH. I THINK -- TO ME, IT MAY
7 MAKE MORE SENSE JUST TO LEAVE IT THE WAY IT WAS IN THE
8 SENSE THAT -- BECAUSE YOU STILL HAVE INCLUDED IN HERE
9 THE 3903S AND THE 3905S BESIDES WHAT'S IN HERE, SO NOW
10 IT'S DUPLICATIVE. THE SAME INSTRUCTION IS BEING GIVEN,
11 IN SOME CASES, THREE TIMES.

12 SO I'M NOT SURE WE NEED IT IN THE -- THE
13 3900 INSTRUCTION AT ALL. IT MAY MAKE SENSE JUST TO
14 LEAVE IT IN THE 3903S, WHICH DESCRIBES THE ACTUAL ITEMS
15 OF DAMAGES.

16 THE COURT: SO IF I'M UNDERSTANDING YOU CORRECTLY,
17 YOUR SUGGESTION IS 3900 STOPS AFTER THE THIRD PARAGRAPH.

18 (READING:)

19 MAHIM KHAN DOES NOT HAVE TO
20 PROVE THE EXACT AMOUNT OF DAMAGES
21 THAT WILL PROVIDE REASONABLE
22 COMPENSATION FOR THE HARM;
23 HOWEVER, YOU MUST NOT SPECULATE
24 OR GUESS IN AWARDING DAMAGES.
25 AND EVERYTHING ELSE IS GONE?

26 MR. KALTGRAD: CORRECT, YOUR HONOR.

27 THE COURT: SO FROM PLAINTIFF'S PERSPECTIVE?

28 MS. LEAL: BUT THE NEXT SENTENCE, "THE FOLLOWING

1 ARE THE SPECIFIC ITEMS OF DAMAGES CLAIMED BY MS. KHAN,"
2 AND THEN YOU CONTINUE WITH THE ACTUAL DAMAGES.

3 THE COURT: SO THERE'LL BE A COLON THERE AND THEN
4 THAT'LL BE THE END OF THIS INSTRUCTION.

5 THEN WE MOVE TO 3902?

6 MS. LEAL: CORRECT.

7 THE COURT: MR. KALTGRAD.

8 MR. KALTGRAD: I MEAN, I DON'T KNOW THAT WE NEED
9 THAT BECAUSE 3903 HAS THE SAME LANGUAGE. IT SAYS, "THE
10 FOLLOWING OF THESE SPECIFIC ITEMS OF ECONOMIC DAMAGES."
11 AND THEN 3905 SAYS, "THE FOLLOWING OF THESE SPECIFIC
12 ITEMS OF NONECONOMIC DAMAGES."

13 SO I THINK WE CAN JUST LEAVE THAT IN THOSE
14 INSTRUCTIONS BECAUSE 3902 SORT OF INTRODUCES THE FACT
15 THAT THERE ARE DIFFERENT TYPES OF DAMAGES BEING SOUGHT
16 IN THIS CASE.

17 THE COURT: OKAY.

18 MS. LEAL: THAT'S FINE. THAT SENTENCE CAN GO OUT
19 AS WELL.

20 THE COURT: OKAY. SO 3900 WILL STOP AFTER THE
21 THIRD PARAGRAPH.

22 THEN WE GO TO 3902 AND THEN 3903.

23 MR. KALTGRAD: RIGHT. AND FOR 3903, AGAIN, PAST
24 AND FUTURE LOST EARNINGS SHOULD BE REPLACED WITH THE
25 3903P INSTRUCTION, WHICH IS THE EMPLOYMENT-RELATED WAGE
26 INSTRUCTION.

27 MS. LEAL: AND IT IS WITHIN THE STACK OF DOCUMENTS
28 WE HAVE.

1 THE COURT: IT IS. SO DO WE NEED 3903 AT ALL?

2 MR. KALTGRAD: WELL, I THINK WE DO BECAUSE I THINK
3 THE WAY THE INSTRUCTIONS FOR USE SAY -- YOU HAVE 3903
4 AND THEN YOU HAVE THE SUBPARTS OF WHICH ITEMS YOU ARE
5 CLAIMING UNDERNEATH.

6 THE COURT: RIGHT.

7 MR. KALTGRAD: LIKE THE WAY THE COURT HAS IT,
8 EXCEPT IT'S JUST THE WRONG INSTRUCTION FOR -- PAST AND
9 FUTURE LOST EARNINGS IS THE WRONG INSTRUCTION BECAUSE
10 THAT'S NOT FOR EMPLOYMENT CASES. IT SHOULD BE LOST
11 WAGES INSTRUCTION WITH THE MODIFICATION THAT WE
12 DISCUSSED, THAT MAYBE WE JUST TAKE OUT THE TITLE. THE
13 TITLE, I THINK, SAYS "WRONGFUL DISCHARGE." THAT'S NOT
14 ACTUALLY BEING SOUGHT. WE CAN CALL IT SOMETHING LIKE
15 DAMAGES FROM EMPLOYER, ECONOMIC DAMAGES.

16 THE COURT: ALL RIGHT. SO FOR 3903, THERE WILL
17 JUST BE A SUBSECTION A? IS THAT WHAT YOU'RE SAYING
18 OR --

19 MR. KALTGRAD: NO. WE CAN HAVE SUBSECTION A AND
20 THEN THE COURT CAN EITHER CALL IT EITHER "B" OR "P,"
21 WHATEVER THE COURT PREFERS, BUT YOU WILL HAVE THAT
22 INSTRUCTION THAT'S UNDER "P."

23 IT WOULD BASICALLY CUT FROM "P" INTO THE
24 SECOND PART OF 3903.

25 THE COURT: RIGHT. BUT 3903P, YOU WANT TO CUT AND
26 PASTE THE ENTIRE INSTRUCTION?

27 MR. KALTGRAD: I THINK THAT'S WHAT THE DIRECTIONS
28 FOR USE SAY YOU'RE SUPPOSED DO IT. YOU HAVE THESE

1 SPECIFIC ITEMS BEING CLAIMED. THOSE SUBPARTS OF 3903 GO
2 INTO 3903.

3 MS. LEAL: WHICH?

4 MR. KALTGRAD: "A" AND "P." "A" IS MEDICAL
5 EXPENSES AND --

6 I MEAN, I DON'T HAVE THE DIRECTIONS FOR USE
7 IN FRONT OF ME, BUT I BELIEVE 3903 SAYS, "INSERT HERE
8 THE APPLICABLE SUBPARTS."

9 AND 3903P DOES HAPPEN TO BE A LONGER
10 INSTRUCTION, BUT THAT IS WHAT IT IS. THAT'S THE CLAIM
11 BEING MADE.

12 THE COURT: SO I WANT TO MAKE SURE I'M
13 UNDERSTANDING. 3903, AS IT STANDS AS I'VE DRAFTED IT, A
14 IS FINE, AND THEN WE WILL TAKE OUT WHAT IS IN THERE NOW
15 FOR "B" AND EITHER NAME IT "B" OR "P" BUT CUT AND PASTE
16 3903P'S LANGUAGE THERE, JUST LIKE IT REPEATS. SO 3903
17 SUBSECTION A IN 3903 IS VERBATIM INSTRUCTION 3903A.

18 SO WHAT YOU'RE SUGGESTING IS THAT WE DO THE
19 SAME THING FOR "P"?

20 MR. KALTGRAD: RIGHT.

21 THE COURT: THAT'S ALL RIGHT. I JUST WANT TO MAKE
22 SURE I UNDERSTAND.

23 MS. GAR --

24 MS. LEAL: LEAL.

25 THE COURT: I WAS GOING THROUGH MANY DIFFERENT
26 NAMES IN MY HEAD, GAROFALO, GOLDBERG, LEAL.

27 MR. KALTGRAD: ALPHABETICAL.

28 MS. LEAL: THAT'S FINE.

1 THAT IS CORRECT. SO 3903, YOU HAVE THE
2 "A."

3 AND SO THE NEXT PAGE THAT YOU HAVE IS
4 DUPLICATIVE, AND THEN YOU GO TO 3903P.

5 THE COURT: DO YOU WANT TO LABEL -- ON 3903, DO
6 YOU WANT ME TO LABEL IT "B" OR "P"?

7 MS. GAROFALO: I THINK "B" MAKES MORE SENSE SO AS
8 NOT TO CONFUSE ANYONE.

9 THE COURT: OKAY. SO WE'LL DO THAT.

10 OKAY. AND THEN WHAT ABOUT 3905?

11 MR. KALTGRAD: WELL, THE NEXT PIECE WOULD BE --

12 MS. LEAL: THE --

13 MR. KALTGRAD: I'M SORRY. 3903A, I DON'T THINK
14 YOU NEED THAT INSTRUCTION NOW BECAUSE IT'S PART OF --

15 MS. LEAL: I JUST SAID THAT.

16 MR. KALTGRAD: OH, YOU DID.

17 THE COURT: SO WE'RE GOING TO HAVE -- 3903 WILL
18 HAVE SECTION A, WHICH IS 3903A, AND WE'LL DELETE
19 INSTRUCTION 3903A, AND "B," WHICH IS ACTUALLY THE
20 LANGUAGE FROM 3903P, AND WE'LL DELETE 3903P?

21 MR. KALTGRAD: WITH THE ONE CHANGE IN THE TITLE.
22 WE JUST WON'T SAY "WRONGFUL DISCHARGE," SINCE THAT'S NOT
23 THE ACTUAL CLAIM.

24 THE COURT: SO WHAT DO YOU WANT THE TITLE TO SAY?

25 MR. KALTGRAD: I THINK WE CAN JUST SAY "DAMAGES
26 FROM EMPLOYER, ECONOMIC DAMAGES." AND IT'S KIND OF
27 SELF-EXPLANATORY IN THE INSTRUCTION WHAT IT IS.

28 MS. LEAL: THAT'S FINE.

1 THE COURT: OKAY. THAT BRINGS US NOW TO 3905.

2 ANY PROBLEM WITH THAT ONE?

3 MR. KALTGRAD: THE ONLY PROBLEM NOW THAT I'M
4 NOTICING, 3905, IT DOESN'T APPEAR -- I THINK THE
5 PLAINTIFF IS ASKING FOR FUTURE EMOTIONAL DAMAGES AND
6 THERE'S NO INSTRUCTION FOR IT. I THINK THAT PIECE OF
7 INSTRUCTION GOT LEFT OFF.

8 MS. LEAL: IT DID.

9 THE COURT: SO WHERE?

10 MR. KALTGRAD: THERE'S A SEPARATE PARAGRAPH, I
11 BELIEVE, TO 3903A THAT'S NOT IN HERE.

12 THAT'S JUST FROM MEMORY, SO --

13 THE COURT: YOU HAVE A PRETTY GOOD MEMORY.

14 MS. LEAL: HE'S DONE THIS THREE PRIOR TIMES.

15 THE COURT: OKAY. SO WITH THAT, DO YOU WANT THAT
16 PARAGRAPH -- SO THE -- 3905A DOES HAVE A FINAL PARAGRAPH
17 THAT'S NOT HERE THAT SAYS (READING:)

18 FOR FUTURE [INSERT ITEM FOR
19 PAIN AND SUFFERING].

20 SO IT WOULD SAY (READING:)

21 FOR FUTURE PHYSICAL PAIN,
22 MENTAL SUFFERING, AND EMOTIONAL
23 DISTRESS, DETERMINE THE AMOUNT OF
24 CURRENT DOLLARS PAID AT THE TIME
25 OF JUDGMENT THAT WILL COMPENSATE
26 PLAINTIFF FOR FUTURE, INSERT
27 BRACKET, THE SAME LANGUAGE,
28 PHYSICAL PAIN, MENTAL SUFFERING,

1 AND EMOTIONAL DISTRESS.

2 THEN THERE WAS A FINAL BRACKETED SENTENCE
3 THAT SAYS (READING:)

4 THIS AMOUNT OF NONECONOMIC
5 DAMAGES SHOULD NOT BE FURTHER
6 REDUCED TO PRESENT CASH VALUE
7 BECAUSE THAT REDUCTION SHOULD
8 ONLY BE PERFORMED WITH RESPECT TO
9 ECONOMIC DAMAGES

10 MR. KALTGRAD: I'M NOT SURE WE NEED THAT BECAUSE
11 WE'RE NOT PRESENTING EVIDENCE OF PRESENT VALUE FOR
12 ECONOMIC DAMAGES, SO I THINK IT WOULD JUST BE CONFUSING
13 FOR THE JURY.

14 MS. LEAL: I AGREE.

15 THE COURT: OKAY. SO I'LL MAKE THAT CHANGE.

16 MR. KALTGRAD: SO I'M JUST NOT SURE WHAT THE
17 LANGUAGE -- IF THE FIRST PARAGRAPH MATCHES THE CACI
18 LANGUAGE, THAT'S FINE. I'M JUST NOT LOOKING AT IT NOW.

19 THE COURT: THE CACI -- WHEN I GENERATED THESE, I
20 GENERATED THESE USING THE DOC AND FORM BUILDER FOR
21 WESTLAW AND I DID NOT EDIT IT.

22 SO THE LANGUAGE OF THAT PARAGRAPH IS
23 (READING:)

24 NO FIXED STANDARD EXISTS FOR
25 DECIDING THESE AMOUNTS OF
26 NONECONOMIC DAMAGES. YOU MUST
27 USE YOUR JUDGMENT TO DECIDE A
28 REASONABLE AMOUNT BASED ON THE

1 EVIDENCE AND YOUR COMMON SENSE.

2 MR. KALTGRAD: OKAY. IF THAT'S WHAT IT SAYS, THEN
3 THAT'S FINE.

4 BUT THERE'S NO LANGUAGE ABOUT DETERMINING
5 PAST -- IS THERE ANY LANGUAGE FOR HOW THE JURY
6 CALCULATES PAST ECONOMIC DAMAGES OR IS THAT IT?

7 THE COURT: SO BRACKETED (READING:)

8 PAST AND FUTURE PHYSICAL
9 PAIN, MENTAL SUFFERING, LOSS OF
10 ENJOYMENT OF LIFE, DISFIGUREMENT,
11 PHYSICAL IMPAIRMENT,
12 INCONVENIENCE, ANXIETY,
13 HUMILIATION, EMOTIONAL DISTRESS,
14 AND ANOTHER BRACKET, INSERT OTHER
15 DAMAGES.

16 IT'S JUST A SENTENCE THAT SAYS WHAT THE
17 PLAINTIFF IS CLAIMING, BUT THERE'S NOTHING IN THIS
18 INSTRUCTION THAT TELLS THE JURY HOW TO CALCULATE IT.

19 MR. KALTGRAD: OKAY.

20 MS. LEAL: SO THE BRACKET WITH RESPECT TO HOW --
21 WHAT PLAINTIFF IS CLAIMING AS SPECIFIC DAMAGES, THEN I
22 THINK THAT THAT NEEDS TO BE ADDED.

23 THE COURT: IT'S HERE.

24 MS. LEAL: OH, IT IS?

25 THE COURT: IT SAYS -- THIS IS WHAT I TOOK FROM
26 YOUR -- THE PROPOSED JURY INSTRUCTIONS. IT SAYS
27 (READING:)

28 PAST PHYSICAL PAIN, MENTAL

1 SUFFERING AND EMOTIONAL DISTRESS.

2 MS. LEAL: OKAY.

3 THE COURT: BUT THE THINGS THAT CAN BE ADDED IN
4 THAT BRACKET, ACCORDING TO THE BRACKETS, ARE PHYSICAL
5 PAIN, MENTAL SUFFERING, LOSS OF ENJOYMENT OF LIFE,
6 DISFIGUREMENT, PHYSICAL IMPAIRMENT, INCONVENIENCE,
7 ANXIETY, HUMILIATION, EMOTIONAL DISTRESS, OR INSERT
8 OTHER DAMAGES.

9 MS. LEAL: SO THAT SENTENCE THAT BEGINS WITH LOSS
10 OF ENJOYMENT OF LIFE, I THINK THAT DESCRIPTION NEEDS TO
11 BE ADDED. I THINK IT WAS IN THE ORIGINAL VERSION.

12 THE COURT: IT WASN'T.

13 MS. LEAL: IT WASN'T?

14 THE COURT: FROM THAT, I TOOK WHAT WAS IN THE
15 ORIGINAL.

16 MS. LEAL: OH, IT SHOULD HAVE BEEN IN THE
17 ORIGINAL, AT LEAST THAT'S WHAT WE USED LAST TIME.

18 THE COURT: SO WHAT DO YOU WANT IT TO SAY?

19 MS. LEAL: BEGINNING WITH THE LOSS OF ENJOYMENT OF
20 LIFE, AS IS THAT AS A DESCRIPTION.

21 RIGHT, MR. KALTGRAD?

22 MR. KALTGRAD: PHYSICAL PAIN, MENTAL SUFFERING,
23 LOSS OF ENJOYMENT OF LIFE, IS THAT WHAT YOU'RE SAYING?

24 MS. LEAL: YES.

25 MR. KALTGRAD: AND EMOTIONAL DISTRESS?

26 MS. LEAL: YES.

27 THE COURT: OKAY. SO 3905 --

28 MR. KALTGRAD: PLAINTIFF MUST PROVE THAT SHE IS

1 REASONABLY CERTAIN TO SUFFER THAT HARM FOR FUTURE PAIN
2 AND SUFFERING, THAT LANGUAGE?

3 THE COURT: YES.

4 MR. KALTGRAD: OKAY. SO LONG AS THAT'S ALL ADDED
5 IN THERE, OTHER THAN THE PRESENT CASH VALUE ISSUE WE'RE
6 NOT ADDING.

7 THE COURT: OKAY. SO I'LL MAKE THAT CHANGE.

8 MR. KALTGRAD: AND SIMILARLY, 3903A CAN BE DELETED
9 SINCE THAT SUBSUMES 3905.

10 THE COURT: MS. LEAL, DO YOU AGREE?

11 MS. LEAL: CORRECT. THAT'S DUPLICATIVE.

12 THE COURT: OKAY. NEXT?

13 MR. KALTGRAD: NEXT NUMERICALLY, I THINK WOULD BE
14 A MISSING INSTRUCTION, WHICH MAY HAVE BEEN TAKEN OUT ON
15 FRIDAY, BUT I THINK 3924 IS THE NO PUNITIVE DAMAGES
16 INSTRUCTION, WHICH I THINK IS APPROPRIATE -- NECESSARY
17 FOR THIS STAGE SINCE IT'S A BIFURCATED TRIAL.

18 MS. LEAL: WE DID DISCUSS THAT ON FRIDAY AND WE
19 DID REMOVE IT. AGREE THAT IT SHOULD BE IN THERE.

20 THE COURT: OKAY. SO ADD 3925 --

21 MR. KALTGRAD: 3924.

22 THE COURT: I'M SORRY. 3924. OKAY.

23 MS. LEAL: AND THE NEXT ONE IS 3934, WHICH IS
24 TABBED.

25 THE COURT: SO THIS ONE IS --

26 MS. LEAL: DAMAGES ON MULTIPLE LEGAL THEORIES.

27 THE COURT: RIGHT.

28 MS. LEAL: SO THE ONLY CHANGE ON THIS ONE IS

1 NO. 3, DELETE THE WORD "OR," AND THEN DELETE THE NO. 4.
2 I BELIEVE THAT'S IT.

3 THE COURT: AND THE REASON I TABBED 3948 IS
4 BECAUSE THAT WAS NOT CLEAR FROM MY NOTES WHETHER WE
5 TALKED ABOUT PUTTING IT IN OR TAKING IT OUT WHEN WE WERE
6 TALKING ABOUT BIFURCATED TRIAL VERSUS NON-BIFURCATED
7 TRIAL.

8 BECAUSE IT'S BIFURCATED, 3948 NEEDS TO GO
9 IN, BUT I DIDN'T WANT TO PUT IT IN THERE WITHOUT MAKING
10 SURE EVERYONE IS AWARE THAT I PUT IT IN BECAUSE I WASN'T
11 CLEAR WHETHER THERE WAS A MEETING OF THE MINDS ON FRIDAY
12 ON THAT ONE.

13 MS. LEAL: THERE WAS, YOUR HONOR. THANK YOU.

14 MR. KALTGRAD: YEAH, I THINK THAT'S RIGHT.

15 THE COURT: ALL RIGHT.

16 MS. LEAL: AND GIVEN THE CHANGES IN THE CAUSE OF
17 ACTIONS, I REVISED THE SPECIAL VERDICT FORM AND I
18 E-MAILED IT TO MS. GUERRERO THIS MORNING SO THAT YOU
19 HAVE IT.

20 MR. KALTGRAD AND I AGREED ON THE LANGUAGE.

21 THE COURT: OKAY. SO YOU HAVE AN AGREED-UPON
22 SPECIAL VERDICT FORM NOW?

23 MR. KALTGRAD: YES, YOUR HONOR.

24 THE COURT: AND YOU E-MAILED IT TO ME?

25 THE CLERK: YES, YOUR HONOR.

26 THE COURT: GREAT. LET ME GO -- UNLESS THERE'S
27 ANYTHING ELSE -- MS. CRUZ, ARE OUR JURORS HERE?

28 COURT ASSISTANT: NO. WE'RE STILL MISSING TWO

1 JURORS.

2 THE COURT: OKAY. I'M GOING TO GO IN CHAMBERS AND
3 PRINT OUT THESE CHANGES AND MAKE SURE WE'RE ALL ON THE
4 SAME PAGE.

5 MS. LEAL: THERE ARE A COUPLE OTHER ISSUES.

6 THE COURT: OKAY. PARDON ME?

7 MS. LEAL: THERE ARE A COUPLE OTHER ISSUES.

8 THE COURT: GO AHEAD.

9 MS. LEAL: WE BROUGHT A LAPTOP FOR THE JURORS IN
10 THE EVENT THEY WANT TO WATCH A COUPLE OF EXHIBITS THAT
11 ARE VIDEOS, EXHIBIT 158 AND EXHIBIT 228, AS WELL AS THE
12 DEPOSITION VIDEO SHOWN OF MR. DAVID.

13 SO WE HAVE A LAPTOP. WE'LL MAKE IT
14 AVAILABLE TO MS. GUERRERO.

15 MR. GOLDBERG: DON'T WE NEED THE DEPO OF THE --

16 MS. LEAL: I JUST SAID THAT.

17 MR. GOLDBERG: NUMBER?

18 MS. LEAL: THERE IS NO NUMBER.

19 MR. GOLDBERG: WE DIDN'T HAVE A NUMBER FOR THE
20 DEPOSITION? I THINK THAT WE NEED TO --

21 THE COURT: WE NEED TO MARK THE DEPOSITION AS AN
22 EXHIBIT.

23 MR. GOLDBERG: -- MARK IT AS AN EXHIBIT.

24 WHAT'S OUR LAST --

25 MS. LEAL: NEXT IN ORDER WOULD BE 229.

26 MS. GAROFALO: THE DEPOSITION VIDEO, THE 2 GIRLS 1
27 CUP.

28 WHAT ARE THE TWO VIDEOS?

1 MS. LEAL: THE LORD OF THE FREAKS, THE 2 GIRLS 1
2 CUP, WHICH WE'VE SHOWN AND HAS BEEN ADMITTED.

3 WHAT WE'RE DISCUSSING NOW IS MR. DAVID'S
4 DEPOSITION VIDEO THAT WAS SHOWN TO THE JURY. AND WE'RE
5 SUGGESTING THAT IT BE MARKED NEXT IN ORDER, WHICH WOULD
6 BE NO. 229.

7 MR. KALTGRAD: WE'RE TALKING ABOUT JUST THE
8 PORTION THAT WAS SHOWN TO THE JURY?

9 MS. LEAL: YES.

10 THE COURT: JUST THE PORTION THAT WAS SHOWN?

11 MR. GOLDBERG: YES.

12 MS. LEAL: SO WE HAVE THE FIRST TWO EXHIBITS ON
13 THE COMPUTER, SAVED ON THE COMPUTER ITSELF; AND THE
14 DEPOSITION VIDEO, WE HAVE ON FLASH DRIVES AND WE'LL GIVE
15 OPPOSING COUNSEL A COPY.

16 THE COURT: OKAY. AND IF THE JURY WANTS TO WATCH
17 THOSE VIDEOS, ARE YOU THINKING THEY WOULD WATCH THEM IN
18 THE JURY ROOM OR WE WOULD BRING THEM -- I'M NOT SURE WHY
19 YOU NEED A LAPTOP IF WE'RE GOING TO BRING THEM INTO THE
20 COURTROOM SO EVERYONE CAN OBSERVE THEM WATCHING.

21 MS. GAROFALO: YEAH. TYPICALLY, AT LEAST IN MY
22 EXPERIENCE, IF A VIDEO IS TO BE PLAYED, THE JURORS COME
23 BACK IN.

24 MR. GOLDBERG: WE'RE FINE WITH THAT, YOUR HONOR.
25 WE'LL HAVE OUR VIDEOGRAPHER HERE IN CASE THAT BECOMES
26 NECESSARY.

27 MS. LEAL: WE JUST DID THAT BECAUSE THE LAST
28 TRIAL, JUDGE GREEN WANTED THE LAPTOP.

1 MR. GOLDBERG: WE'LL JUST HAVE THE VIDEOGRAPHER
2 HERE.

3 THE COURT: THAT'S PERFECT.

4 AND MR. DAVID'S DEPO IS MARKED AS
5 EXHIBIT 229. IT WAS ALREADY ADMITTED, WE JUST DIDN'T
6 MARK IT. BECAUSE WE'RE MARKING IT TODAY, I SUPPOSE IT'S
7 ADMITTED TODAY.

8
9 (PLAINTIFF'S EXHIBIT 229 WAS
10 IDENTIFIED FOR THE RECORD AND
11 RECEIVED INTO EVIDENCE.)

12
13 THE COURT: I'M SORRY. MS. LEAL, I DIDN'T HEAR
14 WHAT YOU SAID.

15 MS. LEAL: I APOLOGIZE.

16 ONE MINOR ADMINISTRATIVE MATTER ON THE JURY
17 FEES. MS. GUERRERO HAD ASKED WHO WOULD BE PAYING. I
18 SAID WE WOULD BE SPLITTING THEM. MS. GAROFALO, EARLIER
19 DURING THE TRIAL, SAID THAT THEY NEVER REQUESTED A JURY.
20 WE LOOKED AT THE CMC STATEMENT IN THIS CASE AND THEY DID
21 REQUEST A JURY, SO I WOULD SAY THE JURY FEE SHOULD BE
22 SPLIT 50/50 AS WE DID IN THE LAST CASE.

23 MS. GAROFALO: YOUR HONOR, WE HAVE ALREADY CHECKED
24 THAT AND REPRESENTED TO THE COURT THAT THAT WAS CORRECT.
25 I DON'T KNOW WHY MS. LEAL BELIEVES -- WE NEVER
26 REPRESENTED OTHERWISE. WE DIDN'T --

27 MS. LEAL: I WASN'T INFORMED OF THAT.

28 THE COURT: ALL RIGHT.

1 MR. KALTGRAD: I GUESS ONE LAST THING. I DON'T
2 KNOW IF WE WENT OVER THE EXHIBITS. I DON'T KNOW IF THE
3 COURT DOES THAT, THE COURT GOES OVER EXACTLY WHICH
4 EXHIBITS --

5 THE COURT: I DO. DO YOU WANT TO DO IT NOW OR --

6 THE CLERK: WHAT ARE WE DOING?

7 THE COURT: JUST VERIFYING WHICH EXHIBITS WERE
8 ADMITTED INTO EVIDENCE.

9 THE CLERK: DO YOU WANT TO DO IT NOW?

10 THE COURT: YES, LET'S DO IT NOW BECAUSE I'M
11 AFRAID WE MIGHT FORGET. WE NEED TO DO IT BEFORE JURY
12 INSTRUCTIONS.

13 THE CLERK: OKAY. EXHIBITS 101, 102, 103, 106,
14 109, 115, 116, 117, 120, 121, 124, 127, 130, 133, 158,
15 161, 228, 229, 647, 648, 649, 650, AND 654.

16 THE COURT: THAT'S WHAT I HAVE AS WELL.

17 DOES ANYONE WANT TO BE HEARD ON THE
18 EXHIBITS?

19 MR. KALTGRAD: IF I COULD JUST HAVE A MOMENT, YOUR
20 HONOR?

21 THE COURT: YES.

22 OKAY. WHILE YOU GUYS REVIEW THOSE, I'M
23 GOING TO GO BACK INTO CHAMBERS AND -- BECAUSE ALL OF OUR
24 JURORS ARE HERE NOW.

25 IF THERE ARE ANY OBJECTIONS OR ANYTHING WE
26 NEED TO TALK ABOUT REGARDING THE EXHIBITS, WE CAN TALK
27 ABOUT IT IN A FEW MINUTES.

28 ///

1 (COURT IS IN RECESS.)

2

3 (THE FOLLOWING PROCEEDINGS WERE
4 HELD IN OPEN COURT OUTSIDE THE
5 PRESENCE OF THE JURORS:)

6

7 COURT ASSISTANT: PLEASE COME TO ORDER. COURT IS
8 AGAIN IN SESSION.

9 THE COURT: OKAY. WE'RE BACK ON THE RECORD IN
10 KAHN VERSUS HOLOGRAM.

11 I'VE MADE THE CHANGES THAT WE DISCUSSED TO
12 THE JURY INSTRUCTIONS. I HAVE ASKED THE DEPUTY TO GIVE
13 YOU COPIES OF THE EDITS THAT I MADE TO THREE OF THEM,
14 MAKE SURE THAT I UNDERSTOOD AND GOT WHAT WE ALL AGREED
15 TO.

16 WHILE YOU TAKE A LOOK AT THAT, I'M GOING TO
17 TAKE A LOOK AT YOUR PROPOSED SPECIAL VERDICT FORM AND
18 HOPEFULLY I THINK I GOT EVERYTHING.

19 MR. KALTGRAD: YOUR HONOR, I GOT THREE PAGES, BUT
20 TWO OF THEM LOOK LIKE THEY'RE THE SAME THING.

21 THE COURT: OH, WHICH ONES DID YOU GET?

22 MR. KALTGRAD: I GOT TWO COPIES OF 3905 AND ONE OF
23 3900.

24 MS. LEAL: ME TOO.

25 THE COURT: OKAY. SO YOU BOTH HAVE TWO COPIES OF
26 3905 AND 3900?

27 MR. KALTGRAD: YES.

28 MS. LEAL: WE DO TOO.

1 THE COURT: OKAY. GIVE ME A SECOND.

2

3 (PAUSE IN THE PROCEEDINGS.)

4

5 (THE FOLLOWING PROCEEDINGS WERE
6 HELD IN OPEN COURT OUTSIDE THE
7 PRESENCE OF THE JURORS:)

8

9 COURT ASSISTANT: PLEASE COME TO ORDER. COURT IS
10 AGAIN IN SESSION.

11 THE COURT: OKAY. WE'RE BACK ON THE RECORD.

12 I'M ASKING THE DEPUTY TO GIVE YOU THE NEW
13 3903.

14 MS. LEAL, EVERYTHING'S OKAY?

15 MS. LEAL: EVERYTHING'S FINE FOR US.

16 THE COURT: DO YOU NEED SOME MORE TIME?

17 MS. GAROFALO: WE HAVE ONE ISSUE WE'RE LOOKING AT
18 FOR 3903.

19 WHILE MR. KALTGRAD IS DOING THAT,
20 EXHIBIT 644 AND 645 WERE PUBLISHED TO THE JURY WITHOUT
21 OBJECTION, BUT PLAINTIFF -- APPARENTLY PLAINTIFF
22 DISPUTES THEY WERE ADMITTED. SO IF THERE WAS ANY
23 QUESTION, WE NOW ASK THAT THEY BE ADMITTED. THERE WAS
24 NO OBJECTION TO EITHER.

25 THE COURT: I DON'T HAVE ANY ON MY LIST AS BEING
26 ADMITTED.

27 THE CLERK: THEY WEREN'T.

28 MS. GAROFALO: MAY I ASK THEY BE ADMITTED. THEY

1 WERE PUBLISHED WITHOUT OBJECTION.

2 THE COURT: ANY OBJECTION?

3 MS. LEAL: YES, YOUR HONOR. THEY'RE IRRELEVANT.
4 IT'S 352.

5 MR. GOLDBERG DID NOT OBJECT TO SHOWING THE
6 DOCUMENTS TO MS. KHAN WHEN SHE WAS ON THE STAND, BUT WE
7 DID NOT AGREE THAT THEY WOULD BE ADMITTED.

8 MS. GAROFALO: YOUR HONOR, THERE WAS NO OBJECTION
9 TO PUBLISHING THE DOCUMENTS TO THE JURY.

10 THE COURT: WERE THESE PUBLISHED TO THE JURY OR
11 JUST TO MS. KHAN?

12 MS. GAROFALO: THEY WERE PUBLISHED TO THE JURY.
13 WE HAVE THE PAGE, THE CITE NUMBER FROM THE ROUGH
14 TRANSCRIPT THAT MR. KALTGRAD CAN GIVE TO THE COURT.
15 THEY WERE PUBLISHED TO THE COURT WITH NO OBJECTION. NO
16 OBJECTION WAS STATED ON THE RECORD.

17 THE COURT: MR. KALTGRAD, WOULD YOU READ FROM THE
18 ROUGH TRANSCRIPT, PLEASE?

19 MR. KALTGRAD: SURE. THIS IS FROM NOVEMBER 18TH
20 TRIAL TRANSCRIPT, LINE -- PAGE 88, LINE 22.

21 (READING:)

22 WHAT IS EXHIBIT 644?

23 ANSWER: IT LOOKS LIKE A
24 TEXT MESSAGE CONVERSATION.

25 QUESTION: WHO ARE THE
26 PARTICIPANTS?

27 ANSWER: I'M ASSUMING IT'S
28 LAUREN BERKLEY, WHO'S MY BEST

1 FRIEND, AND MYSELF.

2 QUESTION: MAY WE PUBLISH,
3 YOUR HONOR?

4 THE COURT: ANY OBJECTION?

5 MR. GOLDBERG: NO OBJECTION.

6 THE COURT: OKAY. GO AHEAD.

7 THAT WAS 644.

8 645 GOES FROM PAGE 91 OF THE SAME DAY,
9 LINE 7.

10 (READING:)

11 I WANT YOU NOW TO LOOK AT
12 EXHIBIT 645. IT'LL BE THE NEXT
13 ONE.

14 DO YOU RECOGNIZE
15 EXHIBIT 645?

16 ANSWER: I ASSUME IT'S ME,
17 YEAH. YES.

18 QUESTION: THIS IS A
19 CONTINUATION OF YOUR CONVERSATION
20 TEXTS WITH MS. BERKLEY; CORRECT?

21 ANSWER: YES. I'M ASSUMING
22 SO.

23 QUESTION: MAY WE PUBLISH
24 645?

25 MR. GOLDBERG: NO OBJECTION.

26 THE COURT: YOU MAY PUBLISH

27 THE COURT: OKAY.

28 MR. GOLDBERG: THE PROBLEM I HAVE, YOUR HONOR, IS

1 THAT MS. KHAN THEN SAID IT WAS NOT THE FULL TEXT, THAT
2 SOME OF IT HAD BEEN OMITTED. "THAT IS MY BEST FRIEND,
3 WE TEXTED ALL THE TIME," AND SHE GOT VERY UPSET ON THE
4 STAND BECAUSE SHE CLAIMED SOME OF THE TEXTS WERE
5 OMITTED.

6 I WOULD OBJECT TO THESE -- THEM BEING
7 ADMITTED INTO EVIDENCE. THEY DIDN'T ASK AT THE TIME.
8 THEY RESTED. I THINK IT'S TOO LATE.

9 THE COURT: MS. GAROFALO.

10 MR. GOLDBERG: I WOULD HAVE OBJECTED THERE AND
11 THEN BASED ON THE TESTIMONY HAD IT COME UP.

12 THE COURT: MS. GAROFALO, WOULD YOU LIKE TO BE
13 HEARD?

14 MS. GAROFALO: YES, YOUR HONOR.

15 THERE WAS NO OBJECTION TO PUBLISHING THE
16 EXHIBITS. THE EXHIBITS WERE IN THEIR POSSESSION.

17 THE COURT: BUT THEY WERE NEVER MOVED INTO
18 EVIDENCE.

19 MS. GAROFALO: EXCUSE ME?

20 THE COURT: THEY WERE NEVER MOVED INTO EVIDENCE.

21 MS. GAROFALO: THEY WERE NEVER MOVED INTO
22 EVIDENCE. WE'RE REQUESTING THEY BE MOVED INTO EVIDENCE
23 BECAUSE THEY WERE PUBLISHED WITHOUT OBJECTION.

24 THE COURT: OKAY. THE OBJECTION -- I'M NOT GOING
25 TO MOVE THEM INTO EVIDENCE, BUT THEY WERE SHOWN TO THE
26 JURY, SO THERE IS NO PROHIBITION ON ANYONE ARGUING WITH
27 THE JURY SAW.

28 MS. GAROFALO: OKAY. ARE YOU READY ON 3903?

1 MR. KALTGRAD: NO.

2 MS. GAROFALO: THE ISSUE ON 3903, YOUR HONOR, IS
3 THAT IT READS (READING:)

4 IF YOU FIND THAT HOLOGRAM
5 USA, INC., ALKI DAVID, AND/OR
6 FILMON TV, INC. CONSTRUCTIVELY
7 DISCHARGED MAHIM KHAN IN
8 VIOLATION OF THE FAIR EMPLOYMENT
9 AND HOUSING ACT...

10 AND THAT SEEMS TO BE INCONSISTENT WITH THE
11 ABANDONMENT OF THE CONSTRUCTIVE TERMINATION CLAIM.

12 THE COURT: BUT THEY'RE STILL PURSUING
13 CONSTRUCTIVE DISCHARGE UNDER FEHA, JUST NOT A WRONGFUL
14 TERMINATION VIOLATION OF PUBLIC POLICY FROM WHAT I
15 UNDERSTAND.

16 MS. LEAL: THAT IS CORRECT. I MEAN, THERE IS NO
17 SEPARATE CAUSE OF ACTION, IF YOU WILL, BUT ECONOMIC
18 DAMAGES ARE RECOVERABLE, PAST AND FUTURE ARE RECOVERABLE
19 UNDER FEHA. AND THAT'S EXACTLY WHAT 3903B SAYS.

20 MS. GAROFALO: 3903B PRESENTLY READS (READING:)
21 THEY ARE RECOVERABLE FOR
22 CONSTRUCTIVE DISCHARGE UNDER
23 FEHA.

24 SO I THINK THE LANGUAGE HAS TO BE CHANGED.
25 IF THE COURT DISAGREES, THAT'S FINE. WE CAN MOVE
26 FORWARD WITH 3903 IN ITS CURRENT FORM.

27 THE COURT: OKAY. MR. GOLDBERG? MS. LEAL?

28 MS. LEAL: SAME ARGUMENT, YOUR HONOR.

1 THE COURT: OKAY. I'M NOT GOING TO MAKE ANY
2 FURTHER CHANGES UNLESS THERE ARE ANY OTHER COMMENTS TO
3 ANY OF THE INSTRUCTIONS.

4 MS. GAROFALO: I THINK THAT'S IT, YOUR HONOR.

5 THE COURT: OKAY. AND I TOOK A LOOK AT THE
6 SPECIAL VERDICT FORM. IT LOOKS FINE TO ME.

7 WITH THAT, I THINK WE'RE READY TO BRING THE
8 JURY BACK IN FOR ME TO GIVE THEM THEIR INSTRUCTIONS. IT
9 USUALLY TAKES ME ABOUT 40 MINUTES TO GIVE INSTRUCTIONS,
10 SO WE'LL PROBABLY JUST BREAK FOR LUNCH AFTER THAT, AND
11 START CLOSING ARGUMENTS AT 1:30.

12 MR. GOLDBERG: THANK YOU, YOUR HONOR.

13 THE COURT: ANYTHING ELSE WE NEED TO DO BEFORE WE
14 BRING THEM IN?

15 MR. GOLDBERG: DO WE HAVE A -- WOULD IT BE
16 POSSIBLE, FOR THE ARGUMENT, TO GET A PRINTED SET OF THE
17 FINAL JURY INSTRUCTIONS, YOUR HONOR?

18 THE COURT: YOU HAVE IT.

19 MR. GOLDBERG: I JUST WANT TO MAKE SURE THERE'S
20 NOTHING THAT I'M REFERRING TO THAT'S BEEN CHANGED. I'LL
21 GO OVER IT WITH MS. LEAL.

22 THE COURT: I GAVE YOU -- THERE WERE SOME PAGES
23 THAT WE TALKED ABOUT THAT WE TOOK OUT, AND THEN THERE
24 WERE THREE INSTRUCTIONS 3903, 3905, AND I CAN'T REMEMBER
25 THE NUMBER OF THE OTHER ONE, THAT I MADE SUBSTANTIVE
26 CHANGES TO BASED ON OUR CONVERSATION AND I JUST GAVE
27 THEM --

28 MR. GOLDBERG: THAT'S FINE. I'LL GO OVER IT WITH

1 MS. LEAL.

2 MR. KALTGRAD: YEAH, THERE WERE SOME MINOR CHANGES
3 TO SOME OF THE OTHER ONES THAT WE TALKED ABOUT, LIKE
4 3934 I THINK AND ADDING IN 3924.

5 THE COURT: LET'S JUST MAKE SURE WE'RE ALL ON THE
6 SAME PAGE.

7 MR. KALTGRAD, WHAT WERE THOSE TWO NUMBERS
8 THAT YOU JUST DESCRIBED?

9 MR. KALTGRAD: 3934 HAD A MINOR CHANGE OF TAKING
10 OUT NO. 4.

11 THE COURT: RIGHT.

12 MR. KALTGRAD: EXCEPT WE DIDN'T GET A COPY EXCEPT
13 THAT THE COURT HAS CHANGED THAT.

14 AND 3924, I THINK WE AGREED SHOULD BE ADDED
15 BACK IN TO INSTRUCTIONS.

16 THE COURT: OKAY. WE CAN GO OFF THE RECORD.

17

18 (PAUSE IN THE PROCEEDINGS.)

19

20 (THE FOLLOWING PROCEEDINGS WERE
21 HELD IN OPEN COURT OUTSIDE THE
22 PRESENCE OF THE JURORS:)

23

24 COURT ASSISTANT: COME TO ORDER. COURT IS AGAIN
25 IN SESSION.

26 THE COURT: OKAY. WE'RE BACK ON THE RECORD IN
27 KAHN VERSUS HOLOGRAM.

28 ALL THE ATTORNEYS ARE PRESENT.

1 OKAY. COPIES OF 3924, WHICH WAS MISSING
2 FROM THE INITIAL SET AND WE DECIDED TO PUT IT BACK IN,
3 AND 3934, WHICH WAS AMENDED TO DELETE THE LAST SENTENCE
4 THAT WAS LABELED NO. 4.

5 OKAY. MR. KALTGRAD, DID I GET EVERYTHING?

6 MR. KALTGRAD: THAT LOOKS RIGHT TO ME, YOUR HONOR.

7 THE COURT: MS. LEAL?

8 MS. LEAL: IT IS.

9 THE COURT: OKAY. THIS IS WHY I DO EVERYTHING
10 ELECTRONICALLY. IT'S HARD TO KEEP TRACK OF PIECES OF
11 PAPER. IT'S MUCH EASIER WHEN IT'S ALL IN ONE PLACE.

12 OKAY. SO AT THIS POINT NOW, ARE WE READY
13 TO BRING THE JURY IN FOR INSTRUCTIONS?

14 MS. LEAL: YES, YOUR HONOR.

15 MS. GAROFALO: YES, YOUR HONOR.

16 THE COURT: OKAY. THANK YOU VERY MUCH.

17 MS. CRUZ.

18 I'M NOT GOING TO READ THE PRELIMINARIES.
19 I'M GOING TO START FROM 5000.

20

21 (THE FOLLOWING PROCEEDINGS WERE
22 HELD IN OPEN COURT IN THE PRESENCE
23 OF THE JURORS:)

24

25 THE COURT: OKAY. LET THE RECORD REFLECT ALL OF
26 OUR JURORS ARE BACK AND ARE SEATED IN THEIR SEATS.

27 EVERYONE MAY HAVE A SEAT.

28 THANK YOU ALL FOR YOUR PATIENCE WHILE I WAS

1 WORKING THE LAWYERS TO GET EVERYTHING FINALIZED SO WE
2 CAN GIVE YOU YOUR INSTRUCTIONS AND THEN THE ATTORNEYS
3 WILL HAVE A CHANCE TO GIVE YOU CLOSING ARGUMENTS.

4 AS I STATED AT THE BEGINNING OF THE TRIAL,
5 YOU'RE GOING TO GET A PRINTED-OUT COPY OF ALL OF THE
6 INSTRUCTIONS I'M ABOUT TO READ TO YOU, SO YOU DON'T HAVE
7 TO TAKE DETAILED NOTES. YOU MAY TAKE NOTES IF YOU'D
8 LIKE TO, BUT YOU'RE GOING TO GET A PRINTED COPY OF WHAT
9 I'M GOING TO READ TO YOU.

10 (READING:)

11 MEMBERS OF THE JURY, YOU
12 HAVE NOW HEARD ALL OF THE
13 EVIDENCE. THE ATTORNEYS WILL
14 HAVE ONE LAST CHANCE TO TALK TO
15 YOU IN CLOSING ARGUMENT, BUT
16 BEFORE THEY DO, IT IS MY DUTY TO
17 INSTRUCT YOU ON THE LAW THAT
18 APPLIES TO THIS CASE. YOU MUST
19 FOLLOW THESE INSTRUCTIONS. YOU
20 WILL HAVE A COPY OF THESE
21 INSTRUCTIONS WITH YOU WHEN YOU GO
22 INTO THE JURY ROOM TO DELIBERATE.

23 YOU MUST DECIDE WHAT THE
24 FACTS ARE. YOU MUST CONSIDER ALL
25 OF THE EVIDENCE AND THEN DECIDE
26 WHAT YOU THINK HAPPENED. YOU
27 MUST DECIDE THE FACTS BASED ON
28 THE EVIDENCE ADMITTED IN THIS

1 TRIAL.

2 DO NOT ALLOW ANYTHING THAT
3 HAPPENS OUTSIDE THIS COURTROOM TO
4 AFFECT YOUR DECISION.

5 DO NOT TALK ABOUT THIS CASE
6 OR THE PEOPLE INVOLVED IN IT WITH
7 ANYONE, INCLUDING FAMILY AND
8 PERSONS LIVING IN YOUR HOUSEHOLD,
9 FRIENDS AND CO-WORKERS, SPIRITUAL
10 LEADERS, ADVISORS, OR THERAPISTS.

11 DO NOT DO ANY RESEARCH ON
12 YOUR OWN OR AS A GROUP. DO NOT
13 USE DICTIONARIES OR OTHER
14 REFERENCE MATERIALS. THESE
15 PROHIBITIONS ON RESEARCH EXTEND
16 TO ALL FORMS OF ELECTRONIC
17 COMMUNICATIONS. DO NOT USE ANY
18 ELECTRONIC DEVICES OR MEDIA SUCH
19 AS A CELL PHONE OR SMARTPHONE,
20 PDA, COMPUTER, TABLET DEVICE, THE
21 INTERNET, ANY INTERNET SERVICE,
22 ANY TEXT OR INSTANT MESSAGING
23 SERVICE, ANY INTERNET CHAT ROOM,
24 BLOG, OR WEBSITE, INCLUDING
25 SOCIAL NETWORKING WEBSITES OR
26 ONLINE DIARIES TO SEND OR RECEIVE
27 ANY INFORMATION TO OR FROM ANYONE
28 ABOUT THIS CASE OR YOUR

1 EXPERIENCE AS A JUROR UNTIL AFTER
2 YOU HAVE BEEN DISCHARGED FROM
3 JURY DUTY.

4 DO NOT INVESTIGATE THE CASE
5 OR CONDUCT ANY EXPERIMENTS. DO
6 NOT CONTACT ANYONE TO ASSIST YOU,
7 SUCH AS A FAMILY ACCOUNTANT,
8 DOCTOR, OR LAWYER.

9 DO NOT VISIT OR VIEW THE
10 SCENE OF ANY EVENT INVOLVED IN
11 THIS CASE. IF YOU DO HAPPEN TO
12 PASS BY THE SCENE, DO NOT STOP OR
13 INVESTIGATE.

14 ALL JURORS MUST SEE OR HEAR
15 THE SAME EVIDENCE AT THE SAME
16 TIME

17 YOU MUST NOT LET BIAS,
18 SYMPATHY, PREJUDICE, OR PUBLIC
19 OPINION INFLUENCE YOUR DECISION.

20 IF YOU VIOLATE ANY OF THESE
21 PROHIBITIONS ON COMMUNICATIONS
22 AND RESEARCH, INCLUDING
23 PROHIBITIONS ON ELECTRONIC
24 COMMUNICATIONS AND RESEARCH, YOU
25 MAY BE HELD IN CONTEMPT OF COURT
26 OR FACE OTHER SANCTIONS. THAT
27 MEANS YOU MAY HAVE TO SERVE JAIL
28 TIME, PAY A FINE, OR FACE OTHER

1 PUNISHMENT FOR THAT VIOLATION.

2 I WILL NOW TELL YOU THE LAW
3 YOU MUST FOLLOW TO REACH A
4 VERDICT.

5 YOU MUST FOLLOW THE LAW
6 EXACTLY AS I GIVE IT TO YOU, EVEN
7 IF YOU DISAGREE WITH IT. IF THE
8 ATTORNEYS SAY SOMETHING DIFFERENT
9 ABOUT WHAT THE LAW MEANS, YOU
10 MUST FOLLOW WHAT I SAY.

11 IN REACHING YOUR VERDICT, DO
12 NOT GUESS WHAT I THINK YOUR
13 VERDICT SHOULD BE FROM SOMETHING
14 THAT I MAY HAVE SAID OR DONE.

15 PAY CAREFUL ATTENTION TO ALL
16 OF THE INSTRUCTIONS I GIVE YOU.
17 ALL OF THE INSTRUCTIONS ARE
18 IMPORTANT BECAUSE TOGETHER THEY
19 STATE THE LAW THAT YOU WILL USE
20 IN THIS CASE. YOU MUST CONSIDER
21 ALL OF THE INSTRUCTIONS TOGETHER

22 AFTER YOU HAVE DECIDED WHAT
23 THE FACTS ARE, YOU MAY FIND THAT
24 SOME INSTRUCTIONS DO NOT APPLY.
25 IN THAT CASE, FOLLOW THE
26 INSTRUCTIONS THAT DO APPLY AND
27 USE THEM TOGETHER WITH THE FACTS
28 TO REACH YOUR VERDICT.

1 IF I REPEAT ANY IDEAS OR
2 RULES OF LAW DURING MY
3 INSTRUCTIONS, THAT DOES NOT MEAN
4 THAT THESE IDEAS OR RULES ARE
5 MORE IMPORTANT THAN THE OTHERS.

6 IN ADDITION, THE ORDER IN
7 WHICH THE INSTRUCTIONS ARE GIVEN
8 DOES NOT MAKE ANY DIFFERENCE.

9 MOST OF THE INSTRUCTIONS ARE
10 TYPED; HOWEVER, SOME HANDWRITTEN
11 OR TYPEWRITTEN WORDS MAY HAVE
12 BEEN ADDED AND SOME WORDS MAY
13 HAVE BEEN DELETED. DO NOT
14 DISCUSS OR CONSIDER WHY ANY WORDS
15 MAY HAVE BEEN ADDED OR DELETED.
16 PLEASE TREAT ALL THE WORDS THE
17 SAME NO MATTER WHAT THEIR FORMAT.
18 SIMPLY ACCEPT THE INSTRUCTION IN
19 ITS FINAL FORM.

20 YOU MUST NOT CONSIDER
21 WHETHER OR NOT ANY OF THE
22 PARITIES IN THIS CASE HAS
23 INSURANCE. THE PRESENCE OR
24 ABSENCE OF INSURANCE IS TOTALLY
25 IRRELEVANT. YOU MUST DECIDE THIS
26 CASE BASED ONLY ON THE LAW AND
27 THE EVIDENCE.

28 YOU MUST DECIDE WHAT THE

1 FACTS ARE IN THIS CASE ONLY FROM
2 THE EVIDENCE YOU SEE OR HEAR
3 DURING THE TRIAL.

4 SWORN TESTIMONY, DOCUMENTS,
5 OR ANYTHING ELSE MAY BE ADMITTED
6 INTO EVIDENCE. YOU MAY NOT
7 CONSIDER AS EVIDENCE ANYTHING
8 THAT YOU SEE OR HEAR WHEN COURT
9 IS NOT IN SESSION, EVEN IF DONE
10 OR SAID BY ONE OF THE PARTIES,
11 ATTORNEYS, OR WITNESSES.

12 WHAT THE ATTORNEYS SAY
13 DURING THE TRIAL IS NOT EVIDENCE.
14 IN THEIR OPENING STATEMENTS AND
15 CLOSING ARGUMENTS, THE ATTORNEYS
16 WILL TALK TO YOU ABOUT THE LAW
17 AND THE EVIDENCE.

18 WHAT THE LAWYERS SAY MAY
19 HELP YOU UNDERSTAND THE LAW AND
20 THE EVIDENCE, BUT THEIR
21 STATEMENTS AND ARGUMENTS ARE NOT
22 EVIDENCE. THE ATTORNEYS'
23 QUESTIONS ARE NOT EVIDENCE. ONLY
24 THE WITNESS' ANSWERS ARE EVIDENCE

25 YOU SHOULD NOT THINK THAT
26 SOMETHING IS TRUE JUST BECAUSE AN
27 ATTORNEY'S QUESTION SUGGESTS THAT
28 IT IS TRUE; HOWEVER, THE

1 ATTORNEYS FOR BOTH SIDES HAVE
2 AGREED THAT CERTAIN FACTS ARE
3 TRUE. THIS AGREEMENT IS CALLED A
4 STIPULATION. NO OTHER PROOF IS
5 NEEDED AND YOU MUST ACCEPT THOSE
6 FACTS AS TRUE IN THIS CASE.

7 EACH SIDE HAS THE RIGHT TO
8 OBJECT TO EVIDENCE OFFERED BY THE
9 OTHER SIDE. IF I SUSTAINED AN
10 OBJECTION TO A QUESTION, IGNORE
11 THE QUESTION AND DO NOT GUESS AS
12 TO WHY I SUSTAINED THE OBJECTION.
13 IF THE WITNESS DID NOT ANSWER,
14 YOU MUST NOT GUESS WHAT HE OR SHE
15 MIGHT HAVE SAID. IF THE WITNESS
16 ALREADY ANSWERED, YOU MUST IGNORE
17 THE ANSWER.

18 DURING THE TRIAL, I GRANTED
19 A MOTION TO STRIKE TESTIMONY THAT
20 YOU HEARD. YOU MUST TOTALLY
21 DISREGARD THAT TESTIMONY. YOU
22 MUST TREAT IT AS IF IT DID NOT
23 EXIST.

24 A WITNESS IS A PERSON WHO
25 HAS KNOWLEDGE RELATED TO THIS
26 CASE. YOU WILL HAVE TO DECIDE
27 WHETHER YOU BELIEVE EACH WITNESS
28 AND HOW IMPORTANT EACH WITNESS'

1 TESTIMONY IS TO THE CASE. YOU
2 MAY BELIEVE ALL, PART, OR NONE OF
3 A WITNESS' TESTIMONY.

4 IN DECIDING WHETHER TO
5 BELIEVE A WITNESS' TESTIMONY, YOU
6 MAY CONSIDER, AMONG OTHER
7 FACTORS, THE FOLLOWING: A, HOW
8 WELL DID THE WITNESS SEE, HEAR,
9 OR OTHERWISE SENSE WHAT HE OR SHE
10 DESCRIBED IN COURT; B, HOW WELL
11 DID THE WITNESS REMEMBER AND
12 DESCRIBE AND REMEMBER WHAT
13 HAPPENED; C, HOW DID THE WITNESS
14 LOOK, ACT, AND SPEAK WHILE
15 TESTIFYING; D, DID THE WITNESS
16 HAVE ANY REASON TO SAY SOMETHING
17 THAT WAS NOT TRUE? FOR EXAMPLE,
18 DID THE WITNESS SHOW ANY BIAS OR
19 PREJUDICE OR HAVE A PERSONAL
20 RELATIONSHIP WITH ANY OF THE
21 PARTIES INVOLVED IN THE CASE OR
22 HAVE A PERSONAL STAKE IN HOW THIS
23 CASE IS DECIDED; AND E, WHAT WAS
24 THE WITNESS' ATTITUDE TOWARDS
25 THIS CASE OR ABOUT GIVING
26 TESTIMONY?

27 SOMETIMES A WITNESS MAY SAY
28 SOMETHING THAT IS NOT CONSISTENT

1 WITH SOMETHING ELSE HE OR SHE
2 SAID. SOMETIMES DIFFERENT
3 WITNESSES WILL GIVE DIFFERENT
4 VERSIONS OF WHAT HAPPENED.
5 PEOPLE OFTEN FORGET THINGS OR
6 MAKE MISTAKES IN WHAT THEY
7 REMEMBER. ALSO, TWO PEOPLE MAY
8 SEE THE SAME EVENT BUT REMEMBER
9 IT DIFFERENTLY.

10 YOU MAY CONSIDER THESE
11 DIFFERENCES, BUT DO NOT DECIDE
12 THAT TESTIMONY IS UNTRUE JUST
13 BECAUSE IT DIFFERS FROM OTHER
14 TESTIMONY.

15 HOWEVER, IF YOU DECIDE A
16 WITNESS DID NOT TELL THE TRUTH
17 ABOUT SOMETHING IMPORTANT, YOU
18 MAY CHOOSE NOT TO BELIEVE
19 ANYTHING THAT WITNESS SAID.

20 ON THE OTHER HAND, IF YOU
21 THINK THE WITNESS DID NOT TELL
22 THE TRUTH ABOUT SOME THINGS BUT
23 TOLD THE TRUTH ABOUT OTHERS, YOU
24 MAY ACCEPT THE PART YOU THINK IS
25 TRUE AND IGNORE THE REST.

26 DO NOT MAKE ANY DECISIONS
27 SIMPLY BECAUSE THERE WERE MORE
28 WITNESSES ON ONE SIDE THAN THE

1 OTHER. IF YOU BELIEVE IT IS
2 TRUE, THE TESTIMONY OF A SINGLE
3 WITNESS IS ENOUGH TO PROVE A
4 FACT.

5 YOU MUST NOT BE BIASED IN
6 FAVOR OF OR AGAINST ANY WITNESS
7 BECAUSE OF HIS OR HER DISABILITY,
8 GENDER, RACE, RELIGION,
9 ETHNICITY, SEXUAL ORIENTATION,
10 AGE, NATIONAL ORIGIN, OR
11 SOCIOECONOMIC STATUS.

12 THERE ARE FOUR DEFENDANTS IN
13 THIS CASE. YOU SHOULD DECIDE THE
14 CASE AGAINST EACH DEFENDANT
15 SEPARATELY AS IF IT WERE A
16 SEPARATE LAWSUIT. EACH DEFENDANT
17 IS ENTITLED TO SEPARATE
18 CONSIDERATION FOR HIS, HER, OR
19 ITS OR OWN DEFENSES.

20 DIFFERENT ASPECTS OF THIS
21 CASE INVOLVE DIFFERENT PARITIES,
22 PLAINTIFFS AND DEFENDANTS. EACH
23 INSTRUCTION WILL IDENTIFY THE
24 PARTY TO WHOM IT APPLIES. PAY
25 PARTICULAR ATTENTION TO THE
26 PARITIES NAMED IN EACH
27 INSTRUCTION.

28 CORPORATIONS, HOLOGRAM USA,

1 INC., ALKI DAVID, INC., AND
2 FILMON TV, INC. ARE PARITIES IN
3 THIS LAWSUIT. THEY ARE ENTITLED
4 TO THE SAME FAIR AND IMPARTIAL
5 TREATMENT YOU WOULD GIVE TO AN
6 INDIVIDUAL. YOU MUST DECIDE THIS
7 CASE WITH THE SAME FAIRNESS YOU
8 WOULD USE IF YOU WERE DECIDING
9 THE CASE BETWEEN INDIVIDUALS.

10 WHEN I USE WORDS LIKE
11 "PERSON," "HE," OR "SHE" IN THESE
12 INSTRUCTIONS TO REFER TO A PARTY,
13 THOSE INSTRUCTIONS ALSO APPLY TO
14 HOLOGRAM USA, INC., ALKI DAVID
15 PRODUCTIONS, INC., AND FILMON TV,
16 INC.

17 A PARTY MUST PERSUADE YOU BY
18 THE EVIDENCE PRESENTED IN COURT
19 THAT WHAT HE OR SHE IS REQUIRED
20 TO PROVE IS MORE LIKELY TO BE
21 TRUE THAN NOT TRUE. THIS IS
22 REFERRED TO AS THE BURDEN OF
23 PROOF.

24 AFTER WEIGHING ALL OF THE
25 EVIDENCE, IF YOU CANNOT DECIDE
26 SOMETHING IS MORE LIKELY TO BE
27 TRUE THAN NOT TRUE, YOU MUST
28 CONCLUDE THAT THE PARTY DID NOT

1 PROVE IT.

2 YOU SHOULD CONSIDER ALL OF
3 THE EVIDENCE NO MATTER WHICH
4 PARTY PRODUCED THE EVIDENCE.

5 IN CRIMINAL TRIALS, THE
6 PROSECUTION MUST PROVE THE
7 DEFENDANT IS GUILTY BEYOND A
8 REASONABLE DOUBT; BUT IN CIVIL
9 TRIALS SUCH AS THIS ONE, THE
10 PARTY WHO'S REQUIRED TO PROVE
11 SOMETHING NEED ONLY PROVE IT IS
12 MORE LIKELY TO BE TRUE THAN NOT
13 TRUE.

14 CERTAIN FACTS MUST BE PROVED
15 BY CLEAR AND CONVINCING EVIDENCE,
16 WHICH IS A HIGHER BURDEN OF
17 PROOF. THIS MEANS THE PARTY MUST
18 PERSUADE YOU IT IS HIGHLY
19 PROBABLE THAT THE FACT IS TRUE.

20 I WILL TELL YOU SPECIFICALLY
21 WHICH FACTS MUST BE PROVED BY
22 CLEAR AND CONVINCING EVIDENCE.

23 EVIDENCE CAN COME IN MANY
24 FORMS. IT CAN BE TESTIMONY ABOUT
25 WHAT SOMEONE SAW OR HEARD OR
26 SMELLED. IT CAN BE AN EXHIBIT
27 ADMITTED INTO EVIDENCE. IT CAN
28 BE SOMEONE'S OPINION.

1 DIRECT EVIDENCE CAN PROVE A
2 FACT BY ITSELF. FOR EXAMPLE, IF
3 A WITNESS TESTIFIES SHE SAW A JET
4 PLANE FLYING ACROSS THE SKY, THAT
5 TESTIMONY IS DIRECT EVIDENCE THAT
6 A PLANE FLEW ACROSS THE SKY.

7 SOME EVIDENCE PROVES A FACT
8 INDIRECTLY. FOR EXAMPLE A
9 WITNESS TESTIFIES THAT HE ONLY
10 SAW THE WHITE TRAIL THAT JET
11 PLANES OFTEN LEAVE. THIS IS
12 INDIRECT EVIDENCE AND IT'S
13 SOMETIMES REFERRED TO AS
14 CIRCUMSTANTIAL EVIDENCE.

15 IN EITHER INSTANCE, THE
16 WITNESS' TESTIMONY IS EVIDENCE
17 THAT A JET PLANE FLEW ACROSS THE
18 SKY.

19 AS FAR AS THE LAW IS
20 CONCERNED, IT MAKES NO DIFFERENCE
21 WHETHER EVIDENCE IS DIRECT OR
22 INDIRECT. YOU MAY CHOOSE TO
23 BELIEVE OR DISBELIEVE EITHER
24 KIND. WHETHER IT IS DIRECT OR
25 INDIRECT, YOU SHOULD GIVE EVERY
26 PIECE OF EVIDENCE WHATEVER WEIGHT
27 YOU THINK IT DESERVES.

28 YOU MAY CONSIDER THE ABILITY

1 OF EACH PARTY TO PROVIDE
2 EVIDENCE. IF A PARTY PROVIDED
3 WEAKER EVIDENCE WHEN IT COULD
4 HAVE PROVIDED STRONGER EVIDENCE,
5 YOU MAY DISTRUST THE WEAKER
6 EVIDENCE.

7 YOU MAY CONSIDER WHETHER ONE
8 PARTY INTENTIONALLY CONCEALED OR
9 DESTROYED EVIDENCE. IF YOU
10 DECIDE THAT A PARTY DID SO, YOU
11 MAY DECIDE THE EVIDENCE WOULD
12 HAVE BEEN UNFAVORABLE TO THAT
13 PARTY.

14 IF A PARTY FAILED TO EXPLAIN
15 OR DENY EVIDENCE AGAINST IT WHEN
16 THEY REASONABLY COULD BE EXPECTED
17 TO HAVE DONE SO BASED ON WHAT
18 THEY KNEW, YOU MAY CONSIDER THEIR
19 FAILURE TO EXPLAIN OR DENY IN
20 EVALUATING THAT EVIDENCE. IT IS
21 UP TO YOU TO DECIDE THE MEANING
22 AND IMPORTANCE OF THE FAILURE TO
23 EXPLAIN OR DENY EVIDENCE AGAINST
24 THE PARTY.

25 DURING THE TRIAL, CERTAIN
26 EVIDENCE WAS ADMITTED FOR A
27 LIMITED PURPOSE. YOU MAY
28 CONSIDER THAT EVIDENCE ONLY FOR

1 THAT PURPOSE AND FOR NO OTHER.
2 DURING THE TRIAL, YOU
3 RECEIVED DEPOSITION TESTIMONY
4 THAT WAS SHOWN BY VIDEO. A
5 DEPOSITION IS THE TESTIMONY OF A
6 PERSON TAKEN BEFORE TRIAL. AT A
7 DEPOSITION, THE PERSON IS SWORN
8 TO TELL THE TRUTH AND IS
9 QUESTIONED BY THE ATTORNEYS. YOU
10 MUST CONSIDER THE DEPOSITION
11 TESTIMONY THAT WAS PRESENTED TO
12 YOU IN THE SAME WAY AS YOU
13 CONSIDER TESTIMONY GIVEN IN
14 COURT.

15 BEFORE TRIAL, EACH PARTY HAS
16 A RIGHT TO ASK THE OTHER PARTIES
17 TO ANSWER WRITTEN QUESTIONS.
18 THESE QUESTIONS ARE CALLED
19 INTERROGATORIES. THE ANSWERS ARE
20 ALSO IN WRITING AND ARE GIVEN
21 UNDER OATH. YOU MUST CONSIDER
22 THE QUESTIONS AND ANSWERS THAT
23 WERE READ TO YOU THE SAME AS IF
24 THE QUESTIONS AND ANSWERS HAD
25 BEEN GIVEN IN COURT.

26 A PARTY MAY OFFER INTO
27 EVIDENCE ANY ORAL OR WRITTEN
28 STATEMENT MADE BY AN OPPOSING

1 PARTY OUTSIDE THE COURTROOM.
2 WHEN YOU EVALUATE EVIDENCE OF
3 SUCH A STATEMENT, YOU MUST
4 CONSIDER THESE QUESTIONS: ONE,
5 DO YOU BELIEVE THE PARTY ACTUALLY
6 MADE THE STATEMENT? IF YOU DO
7 NOT BELIEVE THAT THE PARTY MADE
8 THE STATEMENT, YOU MAY NOT
9 CONSIDER THE STATEMENT AT ALL;
10 AND, TWO, IF YOU BELIEVE THAT THE
11 STATEMENT WAS MADE, DO YOU
12 BELIEVE IT WAS REPORTED
13 ACCURATELY?

14 YOU SHOULD VIEW TESTIMONY
15 ABOUT AN ORAL STATEMENT MADE BY A
16 PARTY OUTSIDE OF THE COURTROOM
17 WITH CAUTION.

18 DR. ANTHONY READING HAS
19 TESTIFIED THAT MAHIM KHAN MADE
20 STATEMENTS TO HIM ABOUT HER
21 MEDICAL HISTORY. THESE
22 STATEMENTS HELPED DR. ANTHONY
23 READING DIAGNOSE THE PATIENT'S
24 CONDITION. YOU CAN USE THESE
25 STATEMENTS TO HELP YOU EXAMINE
26 THE BASIS OF DR. ANTHONY
27 READING'S OPINION. YOU CANNOT
28 USE THEM FOR ANY OTHER PURPOSE.

1 HOWEVER, A STATEMENT BY
2 MAHIM KHAN TO DR. ANTHONY READING
3 ABOUT HER CURRENT MEDICAL
4 CONDITION MAY BE CONSIDERED AS
5 EVIDENCE OF THAT MEDICAL
6 CONDITION.

7 DURING THE TRIAL, YOU HEARD
8 TESTIMONY FROM EXPERT WITNESSES.
9 THE LAW ALLOWS AN EXPERT TO STATE
10 OPINIONS ABOUT MATTERS OF HIS OR
11 HER FIELD OF EXPERTISE EVEN IF HE
12 OR SHE HAS NOT WITNESSED ANY OF
13 THE EVENTS INVOLVED IN THE TRIAL.

14 YOU DO NOT HAVE TO ACCEPT AN
15 EXPERT'S OPINION. AS WITH ANY
16 OTHER WITNESS, IT IS UP TO YOU TO
17 DECIDE WHETHER YOU BELIEVE THE
18 EXPERT'S TESTIMONY AND CHOOSE TO
19 USE IT AS A BASIS FOR YOUR
20 DECISION.

21 YOU MAY BELIEVE ALL, PART,
22 OR NONE OF AN EXPERT'S TESTIMONY.
23 IN DECIDING WHETHER TO BELIEVE AN
24 EXPERT'S TESTIMONY, YOU SHOULD
25 CONSIDER, A, THE EXPERT'S
26 TRAINING AND EXPERTISE; B, THE
27 FACTS THE EXPERT RELIED ON; AND
28 C, THE REASONS FOR THE EXPERT'S

1 OPINION.

2 THE LAW ALLOWS EXPERT
3 WITNESSES TO BE ASKED QUESTIONS
4 THAT ARE BASED ON ASSUMED FACTS.
5 THESE ARE SOMETIMES CALLED
6 HYPOTHETICAL QUESTIONS.

7 IN DETERMINING THE WEIGHT TO
8 GIVE TO THE EXPERT'S OPINION THAT
9 IS BASED ON THE ASSUMED FACTS,
10 YOU SHOULD CONSIDER WHETHER THE
11 ASSUMED FACTS ARE TRUE.

12 A WITNESS WHO IS NOT
13 TESTIFYING AS AN EXPERT GAVE AN
14 OPINION DURING THE TRIAL. YOU
15 MAY, BUT ARE NOT REQUIRED TO,
16 ACCEPT THAT OPINION. YOU MAY
17 GIVE THE OPINION WHATEVER WEIGHT
18 YOU THINK IS APPROPRIATE.

19 CONSIDER THE EXTENT OF THE
20 WITNESS' OPPORTUNITY TO PROCEED
21 WITH MATTERS ON WHICH THE OPINION
22 IS BASED, THE REASONS THE WITNESS
23 GAVE FOR THE OPINION, AND THE
24 FACTS OR INFORMATION ON WHICH THE
25 WITNESS RELIED IN FORMING THAT
26 OPINION. YOU MUST DECIDE WHETHER
27 INFORMATION ON WHICH THE WITNESS
28 RELIED WAS TRUE AND ACCURATE.

1 YOU MAY DISREGARD ALL OR ANY
2 PART OF AN OPINION THAT YOU FIND
3 UNBELIEVABLE, UNREASONABLE, OR
4 UNSUPPORTED BY THE EVIDENCE.

5 MAHIM KHAN CLAIMS THAT ALKI
6 DAVID COMMITTED A BATTERY. TO
7 ESTABLISH THIS CLAIM, MAHIM KHAN
8 MUST PROVE ALL OF THE FOLLOWING:
9 ONE, THAT ALKI DAVID TOUCHED
10 MAHIM KHAN WITH THE INTENT TO
11 HARM OR OFFEND HER; TWO, THAT
12 MAHIM KHAN DID NOT CONSENT TO THE
13 TOUCHING; THREE, THAT MAHIM KHAN
14 WAS HARMED OR OFFENDED BY ALKI
15 DAVID'S CONDUCT; AND FOUR, THAT A
16 REASONABLE PERSON IN MAHIM KHAN'S
17 SITUATION WOULD HAVE BEEN
18 OFFENDED BY THE TOUCHING.

19 A PLAINTIFF MAY EXPRESS
20 CONSENT BY WORDS OR ACTS THAT ARE
21 REASONABLY UNDERSTOOD BY ANOTHER
22 PERSON AS CONSENT. A PLAINTIFF
23 MAY ALSO EXPRESS CONSENT BY
24 SILENCE OR INACTION IF A
25 REASONABLE PERSON WOULD
26 UNDERSTAND THAT THE SILENCE OR
27 INACTION INTENDED TO INDICATE
28 CONSENT.

1 MAHIM KHAN CLAIMS THAT ALKI
2 DAVID COMMITTED SEXUAL BATTERY.
3 TO ESTABLISH THIS CLAIM, MAHIM
4 KHAN MUST PROVE THE FOLLOWING:
5 ONE, THAT ALKI DAVID INTENDED TO
6 CAUSE A HARMFUL OR OFFENSIVE
7 CONTACT WITH MAHIM KHAN'S BREASTS
8 AND/OR BUTTOCKS AND/OR GROIN AND
9 A SEXUALLY OFFENSIVE CONTACT WITH
10 MAHIM KHAN RESULTED, EITHER
11 DIRECTLY OR INDIRECTLY AND THAT
12 MAHIM KHAN DID NOT CONSENT TO THE
13 TOUCHING; AND THREE, THAT MAHIM
14 KHAN WAS HARMED OR OFFENDED BY
15 ALKI DAVID'S CONDUCT.

16 OFFENSIVE CONTACT MEANS
17 CONTACT THAT OFFENDS A REASONABLE
18 SENSE OF PERSONAL DIGNITY.

19 ALKI DAVID ACTED
20 INTENTIONALLY IF HE INTENDED TO
21 COMMIT A BATTERY OR IF HE WAS
22 SUBSTANTIALLY CERTAIN THAT THE
23 BATTERY WOULD RESULT FROM THE
24 CONDUCT.

25 MAHIM KHAN CLAIMS THAT SHE
26 WAS SUBJECTED TO HARASSMENT BASED
27 ON HER GENDER AT HOLOGRAM USA,
28 INC., ALKI DAVID PRODUCTIONS,

1 INC., AND/OR FILMON TV, INC.
2 CAUSING A HOSTILE OR ABUSIVE WORK
3 ENVIRONMENT.
4 TO ESTABLISH THIS CLAIM,
5 MAHIM KHAN MUST PROVE ALL OF THE
6 FOLLOWING: ONE, THAT MAHIM KHAN
7 WAS AN EMPLOYEE OF HOLOGRAM USA,
8 INC., ALKI DAVID PRODUCTIONS,
9 INC., AND/OR FILMON TV INC.; TWO,
10 THAT MAHIM KHAN WAS SUBJECTED TO
11 HARASSING CONDUCT BECAUSE SHE WAS
12 A WOMAN; THREE, THAT THE
13 HARASSING CONDUCT WAS SEVERE OR
14 PERVASIVE; FOUR, THAT A
15 REASONABLE PERSON -- A REASONABLE
16 WOMAN IN MAHIM KHAN'S
17 CIRCUMSTANCES WOULD HAVE
18 CONSIDERED THE WORK ENVIRONMENT
19 TO BE HOSTILE OR ABUSIVE; FIVE,
20 THAT MAHIM KHAN CONSIDERED THE
21 WORK ENVIRONMENT TO BE HOSTILE OR
22 ABUSIVE; SIX, THAT A SUPERVISOR
23 ENGAGED IN THE CONDUCT; SEVEN,
24 THAT MAHIM KHAN WAS HARMED; AND
25 EIGHT, THAT THE CONDUCT WAS A
26 SUBSTANTIAL FACTOR IN CAUSING
27 MAHIM KHAN'S HARM.

28 MAHIM KHAN CLAIMS ALKI DAVID

1 SUBJECTED HER TO HARASSMENT BASED
2 ON HER GENDER AND THAT THIS
3 HARASSMENT CREATED A WORK
4 ENVIRONMENT THAT WAS HOSTILE OR
5 ABUSIVE.

6 TO ESTABLISH THIS CLAIM,
7 MAHIM KHAN MUST PROVE ALL OF THE
8 FOLLOWING: ONE, THAT MAHIM KHAN
9 WAS AN EMPLOYEE OF HOLOGRAM USA,
10 INC., ALKI DAVID PRODUCTIONS,
11 INC., AND/OR FILMON TV, INC.;
12 TWO, THAT MAHIM KHAN WAS
13 SUBJECTED TO HARASSING CONDUCT
14 BECAUSE SHE WAS A WOMAN; THREE,
15 THAT THE HARASSING CONDUCT WAS
16 SEVERE OR PERVASIVE; FOUR, THAT A
17 REASONABLE FEMALE IN MAHIM KHAN'S
18 CIRCUMSTANCES WOULD HAVE
19 CONSIDERED THE WORK ENVIRONMENT
20 TO BE HOSTILE OR ABUSIVE; FIVE,
21 THAT MAHIM KHAN CONSIDERED THE
22 WORK ENVIRONMENT TO BE HOSTILE OR
23 ABUSIVE; SIX, THAT ALKI DAVID
24 PARTICIPATED IN THE HARASSING
25 CONDUCT; SEVEN, THAT MAHIM KHAN
26 WAS HARMED; AND EIGHT, THAT THE
27 CONDUCT WAS A SUBSTANTIAL FACTOR
28 IN CAUSING MAHIM KHAN'S HARM.

1 A SUBSTANTIAL FACTOR IN
2 CAUSING HARM IS A FACTOR THAT A
3 REASONABLE PERSON WOULD CONSIDER
4 TO HAVE CONTRIBUTED TO THE HARM.
5 IT MUST BE MORE THAN A REMOTE OR
6 TRIVIAL FACTOR. IT DOES NOT HAVE
7 TO BE THE ONLY CAUSE OF HARM.

8 HARASSING CONDUCT MAY
9 INCLUDE BUT IS NOT LIMITED TO ANY
10 OF THE FOLLOWING: A, VERBAL
11 HARASSMENT, SUCH AS OBSCENE
12 LANGUAGE, DEMEANING COMMENTS,
13 SLURS, OR THREATS; B, PHYSICAL
14 HARASSMENT, SUCH AS UNWANTED
15 TOUCHING, ASSAULT, OR PHYSICAL
16 INTERFERENCE WITH NORMAL WORK OR
17 MOVEMENT; C, VISUAL HARASSMENT,
18 SUCH AS OFFENSIVE POSTERS,
19 OBJECTS, CARTOONS, OR DRAWINGS;
20 OR D, UNWANTED SEXUAL ADVANCES.

21 SEVERE OR PERVASIVE MEANS
22 CONDUCT THAT ALTERS THE
23 CONDITIONS OF EMPLOYMENT AND
24 CREATES A WORK ENVIRONMENT THAT
25 IS HOSTILE, INTIMIDATING,
26 OFFENSIVE, OPPRESSIVE, OR
27 ABUSIVE.

28 IN DETERMINING WHETHER THE

1 CONDUCT WAS SEVERE OR PERVASIVE,
2 YOU SHOULD CONSIDER ALL OF THE
3 CIRCUMSTANCES, INCLUDING ANY OR
4 ALL OF THE FOLLOWING CONDUCT: A,
5 THE NATURE OF THE CONDUCT; B, HOW
6 OFTEN AND OVER WHAT PERIOD OF
7 TIME THE CONDUCT OCCURRED; C, THE
8 CIRCUMSTANCES UNDER WHICH THE
9 CONDUCT OCCURRED; AND D, WHETHER
10 THE CONDUCT WAS PHYSICALLY
11 THREATENING OR HUMILIATING.

12 ALKI DAVID WAS A SUPERVISOR
13 OF HOLOGRAM USA, INC., ALKI DAVID
14 PRODUCTIONS, INC., AND/OR FILMON
15 TV, INC., IF HE HAD ANY OF THE
16 FOLLOWING: A, THE AUTHORITY TO
17 HIRE, TRANSFER, PROMOTE, ASSIGN,
18 REWARD, DISCIPLINE, OR DISCHARGE
19 MAHIM KHAN; B, THE RESPONSIBILITY
20 TO ACT ON MAHIM KHAN'S
21 GRIEVANCES; OR C, THE
22 RESPONSIBILITY TO DIRECT MAHIM
23 KHAN'S DAILY WORK ACTIVITIES.

24 ALKI DAVID'S EXERCISE OF
25 THIS AUTHORITY OR RESPONSIBILITY
26 MUST NOT BE MERELY ROUTINE OR
27 CLERICAL, BUT MUST REQUIRE THE
28 USE OF INDEPENDENT JUDGMENT.

1 IF YOU DECIDE THAT MAHIM
2 KHAN HAS PROVED HER CLAIM AGAINST
3 HOLOGRAM USA, INC., ALKI DAVID
4 PRODUCTIONS, INC., FILMON TV,
5 INC., AND/OR ALKI DAVID, YOU MUST
6 ALSO DECIDE HOW MUCH MONEY WILL
7 REASONABLY COMPENSATE HER FOR THE
8 HARM. THIS COMPENSATION IS
9 CALLED DAMAGES.

10 THE AMOUNT OF DAMAGES MUST
11 INCLUDE AN AWARD FOR EACH ITEM OF
12 HARM THAT WAS CAUSED BY HOLOGRAM
13 USA, INC., ALKI DAVID
14 PRODUCTIONS, INC., FILMON TV,
15 INC., AND/OR ALKI DAVID'S
16 WRONGFUL CONDUCT EVEN IF THE
17 PARTICULAR HARM COULD NOT HAVE
18 BEEN ANTICIPATED.

19 MAHIM KHAN DOES NOT HAVE TO
20 PROVE THE EXACT AMOUNT OF DAMAGES
21 THAT WILL PROVIDE REASONABLE
22 COMPENSATION FOR THE HARM.
23 HOWEVER, YOU MUST NOT SPECULATE
24 OR GUESS IN AWARDING DAMAGES.

25 THE DAMAGES CLAIMED BY MAHIM
26 KHAN FOR THE HARM CAUSED BY
27 HOLOGRAM USA, INC., ALKI DAVID
28 PRODUCTIONS, INC., FILMON TV,

1 INC., AND ALKI DAVID FALL INTO
2 TWO CATEGORIES CALLED ECONOMIC
3 DAMAGES AND NONECONOMIC DAMAGES.

4 YOU WILL BE ASKED ON THE
5 VERDICT FORM TO STATE THE TWO
6 CATEGORIES OF DAMAGES SEPARATELY.

7 THE FOLLOWING ARE THE
8 SPECIFIC ITEMS OF ECONOMIC
9 DAMAGES CLAIMED BY MAHIM KHAN:
10 MEDICAL EXPENSES, PAST AND
11 FUTURE.

12 TO RECOVER DAMAGES FOR PAST
13 MEDICAL EXPENSES, MAHIM KHAN MUST
14 PROVE THE REASONABLE COST OF
15 REASONABLY NECESSARY MEDICAL CARE
16 THAT SHE HAS RECEIVED. TO
17 RECOVER DAMAGES FOR FUTURE
18 MEDICAL EXPENSES, MAHIM KHAN MUST
19 PROVE THE REASONABLE COST OF
20 REASONABLY NECESSARY MEDICAL CARE
21 THAT SHE IS REASONABLY CERTAIN TO
22 NEED IN THE FUTURE.

23 B, PAST AND FUTURE LOST
24 EARNINGS. IF YOU FIND THAT
25 HOLOGRAM USA, INC., ALKI DAVID
26 PRODUCTIONS, INC., AND/OR FILMON
27 TV, INC., CONSTRUCTIVELY
28 DISCHARGED MAHIM KHAN IN

1 VIOLATION OF THE FAIR EMPLOYMENT
2 AND HOUSING ACT, THEN YOU MUST
3 DECIDE THE AMOUNT OF PAST AND
4 FUTURE LOST EARNINGS MAHIM KHAN
5 HAS PROVEN SHE IS ENTITLED TO
6 RECOVER, IF ANY.

7 TO MAKE THAT DECISION YOU
8 MUST, ONE, DECIDE THE AMOUNT THAT
9 MAHIM KHAN WOULD HAVE EARNED UP
10 TO TODAY, INCLUDING ANY BENEFITS
11 AND PAY INCREASES; AND TWO, ADD
12 THE PRESENT CASH VALUE OF ANY
13 FUTURE WAGES AND BENEFITS THAT
14 SHE WOULD HAVE EARNED FOR THE
15 LENGTH OF TIME THE EMPLOYMENT
16 WITH HOLOGRAM USA, INC., ALKI
17 DAVID PRODUCTIONS, INC., AND/OR
18 FILMON TV, INC., WERE REASONABLY
19 CERTAIN TO CONTINUE.

20 IN DETERMINING THE PERIOD
21 THAT MAHIM KHAN'S EMPLOYMENT WAS
22 REASONABLY CERTAIN TO HAVE
23 CONTINUED, YOU SHOULD CONSIDER
24 SUCH THINGS AS, A, MAHIM KHAN'S
25 AGE, WORK PERFORMANCE, AND INTENT
26 REGARDING CONTINUED EMPLOYMENT AT
27 HOLOGRAM USA, INC., ALKI DAVID
28 PRODUCTIONS, INC., AND/OR FILMON

1 TV, INC.; AND B, HOLOGRAM USA,
2 INC., ALKI DAVID PRODUCTIONS,
3 INC., AND/OR FILMON TV, INC.'S
4 PROSPECTS FOR CONTINUING THE
5 OPERATIONS INVOLVING MAHIM KHAN;
6 AND C, ANY OTHER FACTOR THAT
7 BEARS ON HOW LONG MAHIM KHAN
8 WOULD HAVE CONTINUED TO WORK.

9 THE FOLLOWING ARE THE
10 SPECIFIC ITEMS OF NONECONOMIC
11 DAMAGES CLAIMED BY MAHIM KHAN:
12 PAST AND FUTURE PHYSICAL PAIN,
13 MENTAL SUFFERING, LOSS OF
14 ENJOYMENT OF LIFE EMOTIONAL
15 DISTRESS.

16 NO FIXED STANDARD EXISTS FOR
17 DECIDING THE AMOUNT OF THESE
18 NONECONOMIC DAMAGES. YOU MUST
19 USE YOUR JUDGMENT TO DECIDE A
20 REASONABLE AMOUNT BASED ON THE
21 EVIDENCE AND YOUR COMMON SENSE.

22 TO RECOVER FOR FUTURE
23 PHYSICAL PAIN, MENTAL SUFFERING,
24 LOSS OF ENJOYMENT OF LIFE, AND
25 EMOTIONAL DISTRESS, MAHIM KHAN
26 MUST PROVE THE SHE IS REASONABLY
27 CERTAIN TO HAVE SUFFERED THAT
28 HARM. FOR FUTURE PHYSICAL PAIN,

1 MENTAL SUFFERING, LOSS OF
2 ENJOYMENT OF LIFE, AND EMOTIONAL
3 DISTRESS, DETERMINE THE AMOUNT IN
4 CURRENT DOLLARS PAID AT THE TIME
5 OF JUDGMENT THAT WILL COMPENSATE
6 MAHIM KHAN FOR FUTURE PHYSICAL
7 PAIN, MENTAL SUFFERING, LOSS OF
8 ENJOYMENT OF LIFE, AND EMOTIONAL
9 DISTRESS.

10 YOU MUST NOT INCLUDE IN YOUR
11 AWARD ANY DAMAGES TO PUNISH OR
12 MAKE AN EXAMPLE OF THE
13 DEFENDANTS. SUCH DAMAGES WOULD
14 BE PUNITIVE DAMAGES AND THEY
15 CANNOT BE PART OF YOUR VERDICT.
16 YOU MUST AWARD ONLY THE DAMAGES
17 THAT FAIRLY COMPENSATE MAHIM KHAN
18 FOR HER LOSS.

19 THE ARGUMENTS OF THE
20 ATTORNEYS ARE NOT EVIDENCE OF
21 DAMAGES. YOUR AWARD MUST BE
22 BASED ON YOUR REASONED JUDGMENT
23 APPLIED TO THE TESTIMONY OF THE
24 WITNESSES AND THE OTHER EVIDENCE
25 THAT HAS BEEN ADMITTED DURING
26 TRIAL.

27 THE AMOUNT OF DAMAGES THAT
28 MAHIM KHAN HAS CLAIMED IN HER

1 WRITTEN PLEADINGS IS NOT EVIDENCE
2 OF MAHIM KHAN'S DAMAGES.

3 MAHIM KHAN IS NOT ENTITLED
4 TO DAMAGES FOR ANY PHYSICAL OR
5 EMOTIONAL CONDITION THAT SHE HAD
6 BEFORE HOLOGRAM USA, INC., ALKI
7 DAVID PRODUCTIONS, INC., FILMON
8 TV, INC., AND ALKI DAVID'S
9 CONDUCT OCCURRED. HOWEVER, IF
10 MAHIM KHAN HAD A PHYSICAL OR
11 EMOTIONAL CONDITION THAT WAS MADE
12 WORSE BY HOLOGRAM USA, INC., ALKI
13 DAVID PRODUCTIONS INC., FILMON TV
14 INC., AND ALKI DAVID'S WRONGFUL
15 CONDUCT, YOU MUST AWARD DAMAGES
16 THAT WILL REASONABLY AND FAIRLY
17 COMPENSATE HER FOR THE EFFECT ON
18 THAT CONDITION.

19 YOU MUST DECIDE THE FULL
20 AMOUNT OF MONEY THAT WILL
21 REASONABLY AND FAIRLY COMPENSATE
22 MAHIM KHAN FOR ALL DAMAGES CAUSED
23 BY THE WRONGFUL CONDUCT OF
24 HOLOGRAM USA, INC., ALKI DAVID
25 PRODUCTIONS, INC., FILMON TV,
26 INC., AND/OR ALKI DAVID EVEN IF
27 MAHIM KHAN WAS MORE SUSCEPTIBLE
28 TO INJURY THAN A NORMALLY HEALTHY

1 PERSON WOULD HAVE BEEN AND EVEN
2 IF A NORMALLY HEALTHY PERSON
3 WOULD NOT HAVE SUFFERED SIMILAR
4 INJURY.

5 IF YOU DECIDE THAT HOLOGRAM
6 USA, INC., ALKI DAVID
7 PRODUCTIONS, INC., FILMON TV,
8 INC., AND/OR ALKI DAVID ARE
9 RESPONSIBLE FOR THE ORIGINAL
10 HARM, MAHIM KHAN IS NOT ENTITLED
11 TO RECOVER DAMAGES FOR HARM THAT
12 HOLOGRAM USA, INC., ALKI DAVID
13 PRODUCTIONS, INC., FILMON TV,
14 INC., AND/OR ALKI DAVID PROVE
15 MAHIM KHAN COULD HAVE AVOIDED
16 WITH REASONABLE EFFORTS OR
17 EXPENDITURES.

18 YOU SHOULD CONSIDER THE
19 REASONABLENESS OF MAHIM KHAN'S
20 EFFORTS IN LIGHT OF THE
21 CIRCUMSTANCES FACING HER AT THE
22 TIME, INCLUDING HER ABILITY TO
23 MAKE THE EFFORTS OR EXPENDITURES
24 WITHOUT UNDUE RISK OR HARDSHIP.
25 IF MAHIM KHAN MADE REASONABLE
26 EFFORTS TO AVOID HARM, THEN YOUR
27 AWARD SHOULD INCLUDE REASONABLE
28 AMOUNTS THAT SHE SPENT FOR THIS

1 PURPOSE.

2 MAHIM KHAN SEEKS DAMAGES
3 FROM HOLOGRAM USA, INC., ALKI
4 DAVID PRODUCTIONS, INC., FILMON
5 TV, INC., AND/OR ALKI DAVID UNDER
6 MORE THAN ONE LEGAL THEORY;
7 HOWEVER, EACH ITEM OF DAMAGES MAY
8 BE AWARDED ONLY ONCE REGARDLESS
9 OF THE NUMBER OF LEGAL THEORIES
10 ALLEGED.

11 YOU'LL BE ASKED TO DECIDE
12 WHETHER HOLOGRAM USA, INC., ALKI
13 DAVID PRODUCTIONS, INC., FILMON
14 TV, INC., AND ALKI DAVID ARE
15 LIABLE TO MAHIM KHAN UNDER THE
16 FOLLOWING LEGAL THEORIES: ONE,
17 BATTERY; TWO, SEXUAL BATTERY; OR
18 THREE, SEXUAL HARASSMENT/HOSTILE
19 WORK ENVIRONMENT.

20 IF YOU DECIDE THAT ALKI
21 DAVID'S CONDUCT CAUSED MAHIM KHAN
22 HARM, YOU MUST DECIDE WHETHER
23 THAT CONDUCT JUSTIFIES AN AWARD
24 OF PUNITIVE DAMAGES AGAINST ALKI
25 DAVID AND, IF SO, AGAINST
26 HOLOGRAM USA, INC., ALKI DAVID
27 PRODUCTIONS, INC., AND FILMON TV,
28 INC. THE AMOUNT, IF ANY, OF

1 PUNITIVE DAMAGES WILL BE AN ISSUE
2 TO BE DECIDED LATER.

3 YOU MAY AWARD PUNITIVE
4 DAMAGES AGAINST ALKI DAVID ONLY
5 IF MAHIM KHAN PROVES BY CLEAR AND
6 CONVINCING EVIDENCE THAT ALKI
7 DAVID ENGAGED IN THAT CONDUCT
8 WITH MALICE, OPPRESSION, OR
9 FRAUD. MALICE MEANS THE
10 DEFENDANT ACTED WITH AN INTENT TO
11 CAUSE INJURY OR THAT A
12 DEFENDANT'S CONDUCT WAS
13 DESPICABLE AND WAS DONE WITH A
14 WILLFUL AND KNOWING DISREGARD OF
15 THE RIGHTS OR SAFETY OF ANOTHER.

16 A DEFENDANT ACTS WITH
17 KNOWING DISREGARD WHEN A
18 DEFENDANT IS AWARE OF THE
19 PROBABLE DANGEROUS CONSEQUENCES
20 OF HIS, HER, OR ITS CONDUCT AND
21 DELIBERATELY FAILS TO AVOID THOSE
22 CONSEQUENCES.

23 OPPRESSION MEANS THAT A
24 DEFENDANT'S CONDUCT WAS
25 DESPICABLE AND SUBJECTED MAHIM
26 KHAN TO CRUEL AND UNJUST HARDSHIP
27 IN KNOWING DISREGARD OF HER
28 RIGHTS.

1 DESPICABLE CONDUCT IS
2 CONDUCT THAT IS SO VILE, BASE, OR
3 CONTEMPTIBLE THAT IT WILL BE
4 LOOKED DOWN ON AND DESPISED BY
5 REASONABLE PEOPLE.

6 FRAUD MEANS A DEFENDANT
7 INTENTIONALLY MISREPRESENTED OR
8 CONCEALED A MATERIAL FACT AND DID
9 SO INTENDING TO HARM MAHIM KHAN.

10 YOU MAY ALSO AWARD PUNITIVE
11 DAMAGES AGAINST HOLOGRAM USA,
12 INC., ALKI DAVID PRODUCTIONS,
13 INC., AND FILMON TV, INC., BASED
14 ON ALKI DAVID'S CONDUCT IF MAHIM
15 KHAN PROVES ONE OF THE FOLLOWING
16 BY CLEAR AND CONVINCING EVIDENCE:
17 ONE, THAT ALKI DAVID WAS AN
18 OFFICER, DIRECTOR, OR MANAGING
19 AGENT OF HOLOGRAM USA, INC., ALKI
20 DAVID PRODUCTIONS, INC., OR
21 FILMON TV, INC., WHO WAS ACTING
22 ON BEHALF OF HOLOGRAM USA, INC.,
23 ALKI DAVID PRODUCTIONS, INC., OR
24 FILMON TV, INC., AT THE TIME OF
25 THE CONDUCT CONSTITUTING MALICE,
26 OPPRESSION, OR FRAUD; THAT AN
27 OFFICER OR A DIRECTOR OR A
28 MANAGING AGENT OF HOLOGRAM USA,

1 INC., ALKI DAVID PRODUCTIONS,
2 INC., OR FILMON TV HAD ADVANCED
3 KNOWLEDGE OF THE UNFITNESS OF
4 ALKI DAVID AND EMPLOYED HIM WITH
5 A KNOWING DISREGARD OF THE RIGHTS
6 AND SAFETY OF OTHERS OR THAT ALKI
7 DAVID'S CONDUCT CONSTITUTING,
8 MALICE, OPPRESSION, OR FRAUD WAS
9 AUTHORIZED BY AN OFFICER,
10 DIRECTOR, OR A MANAGING AGENT OF
11 HOLOGRAM USA, INC., ALKI DAVID
12 PRODUCTIONS, INC., OR FILMON TV,
13 INC.

14 AN EMPLOYEE IS A MANAGING
15 AGENT IF HE OR SHE EXERCISES
16 SUBSTANTIAL AUTHORITY OR JUDGMENT
17 IN HIS OR HER CORPORATE
18 DECISION-MAKING SUCH THAT HIS OR
19 HER DECISIONS ULTIMATELY
20 DETERMINE CORPORATE POLICY

21 YOU MUST NOT CONSIDER OR
22 INCLUDE AS PART OF ANY AWARD
23 ATTORNEYS' FEES OR EXPENSES THAT
24 THE PARTIES INCURRED IN BRINGING
25 OR DEFENDING THIS LAWSUIT.

26 WHEN YOU GO INTO THE JURY
27 ROOM, THE FIRST THING YOU SHOULD
28 DO IS CHOOSE A PRESIDING JUROR.

1 THE PRESIDING JUROR SHOULD SEE TO
2 IT THAT YOUR DISCUSSIONS ARE
3 ORDERLY AND THAT EVERYONE HAS A
4 FAIR CHANCE TO BE HEARD.

5 IT IS YOUR DUTY TO TALK WITH
6 ONE ANOTHER IN THE JURY ROOM AND
7 TO CONSIDER THE VIEWS OF ALL OF
8 THE JURORS. EACH OF YOU MUST
9 DECIDE THE CASE FOR YOURSELF, BUT
10 ONLY AFTER YOU HAVE CONSIDERED
11 THE EVIDENCE WITH THE OTHER
12 MEMBERS OF THE JURY.

13 FEEL FREE TO CHANGE YOUR
14 MIND IF YOU ARE CONVINCED THAT
15 YOUR POSITION SHOULD BE
16 DIFFERENT. YOU SHOULD ALL TRY TO
17 AGREE, BUT DO NOT GIVE UP YOUR
18 HONEST BELIEFS JUST BECAUSE
19 OTHERS THINK DIFFERENTLY.

20 PLEASE DO NOT STATE YOUR
21 OPINIONS TOO STRONGLY AT THE
22 BEGINNING OF YOUR DELIBERATIONS
23 OR IMMEDIATELY ANNOUNCE HOW YOU
24 PLAN TO VOTE AS IT MAY INTERFERE
25 WITH AN OPEN DISCUSSION. KEEP AN
26 OPEN MIND SO THAT YOU AND YOUR
27 FELLOW JURORS CAN SHARE IDEAS
28 ABOUT THE CASE.

1 YOU SHOULD USE YOUR COMMON
2 SENSE AND EXPERIENCE IN DECIDING
3 WHETHER TESTIMONY IS TRUE AND
4 ACCURATE. HOWEVER, DURING YOUR
5 DELIBERATIONS, DO NOT MAKE ANY
6 STATEMENTS OR PROVIDE ANY
7 INFORMATION TO OTHER JURORS BASED
8 ON ANY SPECIAL TRAINING OR UNIQUE
9 PERSONAL EXPERIENCES THAT YOU MAY
10 HAVE HAD RELATED TO THE MATTERS
11 INVOLVED IN THIS CASE.

12 WHAT YOU MAY KNOW OR HAVE
13 LEARNED THROUGH YOUR TRAINING OR
14 EXPERIENCE IS NOT PART OF THE
15 EVIDENCE THAT WAS RECEIVED IN
16 THIS CASE.

17 SOMETIMES JURORS DISAGREE OR
18 HAVE QUESTIONS ABOUT THE EVIDENCE
19 OR ABOUT WHAT THE WITNESSES SAID
20 IN THEIR TESTIMONY. IF THAT
21 HAPPENS, YOU MAY ASK TO HAVE
22 TESTIMONY READ BACK TO YOU.
23 ALSO, JURORS MAY NEED FURTHER
24 EXPLANATION ABOUT THE LAWS THAT
25 APPLY TO THIS CASE. IF THIS
26 HAPPENS DURING YOUR DISCUSSIONS,
27 WRITE DOWN YOUR QUESTIONS AND
28 GIVE THEM TO THE COURT ATTENDANT.

1 I WILL TALK WITH THE
2 ATTORNEYS BEFORE I ANSWER, SO IT
3 MAY TAKE SOME TIME. YOU SHOULD
4 CONTINUE YOUR DELIBERATIONS WHILE
5 YOU WAIT FOR MY ANSWER. I WILL
6 DO MY BEST TO ANSWER THEM.

7 WHEN YOU WRITE ME A NOTE, DO
8 NOT TELL ME HOW YOU VOTED ON AN
9 ISSUE UNTIL I ASK FOR THIS
10 INFORMATION IN OPEN COURT. YOUR
11 DECISION MUST BE BASED ON YOUR
12 PERSONAL EVALUATION ON THE
13 EVIDENCE PRESENTED IN THE CASE.
14 EACH OF YOU MAY BE ASKED IN OPEN
15 COURT HOW YOU VOTED ON EACH
16 QUESTION.

17 WHILE I KNOW YOU WOULD NOT
18 DO THIS, I AM REQUIRED TO ADVISE
19 YOU, YOU MUST NOT BASE YOUR
20 DECISION ON CHANCE SUCH AS A FLIP
21 OF A COIN.

22 IF YOU DECIDE TO AWARD
23 DAMAGES, YOU MAY NOT AGREE IN
24 ADVANCE TO SIMPLY ADD UP THE
25 AMOUNTS EACH JUROR THINKS IS
26 RIGHT AND THEN MAKE THE AVERAGE
27 YOUR VERDICT

28 YOU MAY TAKE BREAKS, BUT DO

1 NOT DISCUSS THE CASE WITH ANYONE,
2 INCLUDING EACH OTHER, UNTIL ALL
3 OF YOU ARE BACK IN THE JURY ROOM.

4 IF YOU HAVE TAKEN NOTES
5 DURING THE TRIAL, YOU MAY TAKE
6 YOUR NOTES WITH YOU IN THE JURY
7 ROOM. YOU MAY USE YOUR NOTES
8 ONLY TO REMEMBER WHAT HAPPENED
9 DURING THE TRIAL. YOUR
10 INDEPENDENT RECOLLECTION OF THE
11 EVIDENCE SHOULD GOVERN YOUR
12 VERDICT. YOU SHOULD NOT ALLOW
13 YOURSELF TO BE INFLUENCED BY THE
14 NOTES OF OTHER JURORS IF THOSE
15 NOTES DIFFER FROM WHAT YOU
16 REMEMBER.

17 AT THE END OF THE TRIAL,
18 YOUR NOTES WILL BE COLLECTED AND
19 DESTROYED.

20 YOU MAY REQUEST IN WRITING
21 THAT TRIAL TESTIMONY BE READ TO
22 YOU. I WILL HAVE THE COURT
23 REPORTER READ THE TESTIMONY TO
24 YOU. YOU MAY REQUEST THAT ALL OR
25 A PART OF A WITNESS' TESTIMONY BE
26 READ. YOUR REQUEST SHOULD BE AS
27 SPECIFIC AS POSSIBLE. IT WOULD
28 BE HELPFUL IF YOU COULD STATE THE

1 NAME OF THE WITNESS, THE SUBJECT
2 OF THE TESTIMONY YOU WOULD LIKE
3 TO HAVE READ, AND THE NAME OF THE
4 ATTORNEY OR ATTORNEYS ASKING THE
5 QUESTIONS WHEN THE TESTIMONY WAS
6 GIVEN.

7 THE COURT REPORTER IS NOT
8 PERMITTED TO TALK WITH YOU WHEN
9 SHE IS READING THE TESTIMONY YOU
10 HAVE REQUESTED. WHILE THE COURT
11 REPORTER IS READING THE
12 TESTIMONY, YOU MAY NOT DELIBERATE
13 OR DISCUSS THE CASE. YOU MAY NOT
14 ASK THE COURT REPORTER TO READ
15 TESTIMONY THAT WAS NOT
16 SPECIFICALLY MENTIONED IN A
17 WRITTEN REQUEST. IF YOUR NOTES
18 DIFFER FROM THE TESTIMONY, YOU
19 MUST ACCEPT THE COURT REPORTER'S
20 RECORD AS ACCURATE.

21 I WILL GIVE YOU A VERDICT
22 FORM WITH QUESTIONS YOU MUST
23 ANSWER. I'VE ALREADY INSTRUCTED
24 YOU ON THE LAW YOU ARE TO USE IN
25 ANSWERING THESE QUESTIONS. YOU
26 MUST FOLLOW MY INSTRUCTIONS AND
27 THE FORMS CAREFULLY. YOU MUST
28 CONSIDER EACH QUESTION

1 SEPARATELY.

2 ALTHOUGH YOU MAY DISCUSS THE
3 EVIDENCE AND THE ISSUES TO BE
4 DECIDED IN ANY ORDER, YOU MUST
5 ANSWER THE QUESTIONS ON THE
6 VERDICT FORM IN THE ORDER THEY
7 APPEAR. AFTER YOU ANSWER A
8 QUESTION, THE FORM TELLS YOU WHAT
9 TO DO NEXT.

10 AT LEAST NINE OF YOU MUST
11 AGREE ON AN ANSWER BEFORE YOU CAN
12 MOVE ON TO THE NEXT QUESTION;
13 HOWEVER, THE SAME NINE OR MORE
14 PEOPLE DO NOT HAVE TO AGREE ON
15 EACH ANSWER.

16 ALL 12 OF YOU MUST
17 DELIBERATE ON AND ANSWER EACH
18 QUESTION REGARDLESS OF HOW YOU
19 VOTED ON ANY EARLIER QUESTION.
20 UNLESS THE VERDICT FORM TELLS ALL
21 12 JURORS TO STOP AND ANSWER NO
22 FURTHER QUESTIONS, EVERY JUROR
23 MUST DELIBERATE AND VOTE ON ALL
24 THE REMAINING QUESTIONS.

25 WHEN YOU HAVE FINISHED
26 FILLING OUT THE FORMS, THE
27 PRESIDING JUROR MUST WRITE THE
28 DATE AND SIGN IT AT THE BOTTOM OF

1 THE LAST PAGE AND THEN NOTIFY THE
2 COURT ATTENDANT THAT YOU'RE READY
3 TO PRESENT YOUR VERDICT IN THE
4 COURTROOM.

5 THIS IS AN INSTRUCTION FOR OUR THREE
6 ALTERNATE JURORS.

7 (READING:)

8 THE JURY WILL SOON BEGIN
9 DELIBERATING. YOU ARE STILL
10 ALTERNATE JURORS AND ARE BOUND BY
11 MY EARLIER INSTRUCTIONS ABOUT
12 YOUR CONDUCT.

13 UNTIL THE JURY IS
14 DISCHARGED, DO NOT TALK ABOUT
15 THIS CASE OR ABOUT ANY OF THE
16 PEOPLE OR SUBJECTS INVOLVED IN IT
17 WITH ANYONE, NOT EVEN YOUR FAMILY
18 OR FRIENDS AND NOT EVEN WITH EACH
19 OTHER.

20 DO NOT HAVE ANY CONTACT WITH
21 THE DELIBERATING JURORS.

22 DO NOT DECIDE HOW YOU WOULD
23 VOTE IF YOU WERE DELIBERATING.

24 DO NOT FORM OR EXPRESS AN
25 OPINION ABOUT THE ISSUES IN THIS
26 CASE UNLESS YOU ARE SUBSTITUTED
27 IN FOR ONE OF THE DELIBERATING
28 JURORS.

1 IN THIS CASE, I HAVE
2 EXERCISED MY RIGHT TO COMMENT ON
3 THE EVIDENCE. HOWEVER, YOU, THE
4 JURY, ARE THE EXCLUSIVE JUDGES OF
5 ALL QUESTIONS OF FACT AND OF THE
6 CREDIBILITY OF THE WITNESSES.

7 YOU ARE FREE TO COMPLETELY
8 IGNORE MY COMMENTS ON THE
9 EVIDENCE AND TO REACH WHATEVER
10 VERDICT YOU BELIEVE TO BE
11 CORRECT, EVEN IF IT IS CONTRARY
12 TO ANY OR ALL OF THOSE COMMENTS.

13 AFTER YOUR VERDICT IS READ
14 IN OPEN COURT, YOU MAY BE ASKED
15 INDIVIDUALLY TO INDICATE WHETHER
16 THE VERDICT EXPRESSES YOUR
17 PERSONAL VOTE. THIS IS REFERRED
18 TO AS POLLING THE JURY AND IS
19 DONE TO ENSURE THAT AT LEAST NINE
20 JURORS HAVE AGREED TO EACH
21 DECISION.

22 THE VERDICT FORM THAT YOU'LL
23 RECEIVE WILL ASK YOU TO ANSWER
24 SEVERAL QUESTIONS. YOU MUST VOTE
25 SEPARATELY ON EACH QUESTION.
26 ALTHOUGH NINE OR MORE JURORS MUST
27 AGREE ON EACH ANSWER, IT DOES NOT
28 HAVE TO BE THE SAME NINE FOR EACH

1 ANSWER. THEREFORE, IT'S
2 IMPORTANT FOR EACH OF YOU TO
3 REMEMBER HOW YOU VOTED ON EACH
4 QUESTION SO THAT IF THE JURY IS
5 POLLED, EACH OF YOU WILL BE ABLE
6 TO ANSWER ACCURATELY ABOUT HOW
7 YOU VOTED.

8 EACH OF YOU WILL BE PROVIDED
9 A DRAFT COPY OF THE VERDICT FORM
10 FOR YOUR USE IN KEEPING TRACK OF
11 YOUR VOTES.

12 SOUND OR VIDEO RECORDING HAS
13 BEEN ADMITTED INTO EVIDENCE.
14 PORTIONS OF THE RECORDING HAVE
15 BEEN DELETED. YOU MUST DISREGARD
16 ANY DELETED PORTIONS OF THE
17 RECORDING OR TRANSCRIPTION AND
18 MUST NOT SPECULATE AS TO WHY
19 THERE ARE DELETIONS OR GUESS
20 ABOUT WHAT MIGHT HAVE BEEN SAID
21 OR DONE.

22 COUNSEL, I'M NOT GOING TO READ 5019 BECAUSE
23 THERE WERE NO JUROR QUESTIONS.

24 MS. LEAL: OKAY.

25 THE COURT: (READING:)

26 DURING THE TRIAL, MATERIALS
27 HAVE BEEN SHOWN TO YOU TO HELP
28 EXPLAIN TESTIMONY OR OTHER

1 EVIDENCE IN THE CASE. SOME OF
2 THESE MATERIALS HAVE BEEN
3 ADMITTED INTO EVIDENCE AND YOU'LL
4 BE ABLE TO REVIEW THEM DURING
5 YOUR DELIBERATIONS.

6 OTHER MATERIALS HAVE ALSO
7 BEEN SHOWN TO YOU DURING THE
8 TRIAL, BUT THEY HAVE NOT BEEN
9 ADMITTED INTO EVIDENCE. YOU WILL
10 NOT BE ABLE TO REVIEW THEM DURING
11 YOUR DELIBERATIONS BECAUSE THEY
12 ARE NOT THEMSELVES EVIDENCE OR
13 PROOF OF ANY FACTS. YOU MAY,
14 HOWEVER, CONSIDER THE TESTIMONY
15 GIVEN IN CONNECTION WITH THOSE
16 MATERIALS.

17 SOME EXHIBITS THAT HAVE BEEN
18 ADMITTED INTO EVIDENCE WILL BE
19 PROVIDED TO YOU ELECTRONICALLY.
20 THE EQUIPMENT NECESSARY TO VIEW
21 THESE EXHIBITS WILL BE AVAILABLE
22 TO YOU IN THE JURY ROOM.

23 DO NOT USE THE EQUIPMENT FOR
24 ANY PURPOSE OTHER THAN TO VIEW
25 THE ELECTRONIC EXHIBITS.

26 DO NOT USE IT TO ACCESS THE
27 INTERNET OR ANY OTHER SOURCE OF
28 INFORMATION.

1 DO NOT USE IT FOR ANY
2 PERSONAL REASON WHATSOEVER,
3 INCLUDING BUT NOT LIMITED TO
4 REVIEWING E-MAIL, ENTERTAINMENT,
5 OR ENGAGING IN SOCIAL MEDIA.

6 IF YOU NEED TECHNICAL
7 ASSISTANCE OR ADDITIONAL
8 EQUIPMENT OR SUPPLIES, YOU MAY
9 MAKE A REQUEST BY SENDING ME A
10 NOTE THROUGH THE ATTENDANT.

11 SHOULD IT BECOME NECESSARY
12 FOR A TECHNICIAN TO ENTER THE
13 JURY ROOM, STOP YOUR
14 DELIBERATIONS UNTIL THE
15 TECHNICIAN HAS LEFT. DO NOT
16 DISCUSS WITH HIM OR HER OR WITH
17 EACH OTHER ANY EXHIBIT OR ANY
18 ASPECT OF THE CASE WHILE THE
19 TECHNICIAN IS PRESENT.

20 DO NOT SAY ANYTHING TO THE
21 TECHNICIAN OTHER THAN TO, ONE,
22 DESCRIBE THE TECHNICAL PROBLEMS;
23 AND/OR, TWO, REQUEST INSTRUCTION
24 ON HOW TO OPERATE THE EQUIPMENT.

25 YOU MAY REQUEST A PAPER COPY
26 OF AN EXHIBIT RECEIVED INTO
27 EVIDENCE. ONE WILL BE SUPPLIED
28 IF POSSIBLE.

1 AND THAT CONCLUDES THE INSTRUCTIONS ON THE
2 LAW THAT I HAVE FOR YOU. WE'RE GOING TO LET YOU GO TO
3 LUNCH.

4 THANKS FOR BEARING WITH ME. WE'VE GONE
5 OVER ABOUT 11 MINUTES. I JUST KNEW I WAS GETTING CLOSE
6 TO THE END, SO I WANTED TO FINISH OFF THE INSTRUCTIONS.

7 SO WHEN WE COME BACK, WE CAN START WITH THE
8 ATTORNEY'S CLOSING ARGUMENTS AND THEN YOU'LL BE ABLE TO
9 DELIBERATE. SO YOU'RE EXCUSED UNTIL 1:30.

10 PLEASE DON'T DISCUSS THIS CASE AMONGST
11 YOURSELVES OR WITH ANYONE ELSE AND DON'T DO ANY RESEARCH
12 ABOUT ANY ASPECT OF THIS CASE.

13

14 (THE FOLLOWING PROCEEDINGS WERE
15 HELD IN OPEN COURT OUTSIDE THE
16 PRESENCE OF THE JURORS:)

17

18 THE COURT: OKAY. THANK YOU FOR YOUR PATIENCE.
19 I'LL LET YOU GO TOO.

20 ANYTHING ELSE WE NEED TO TALK ABOUT?

21 MS. GAROFALO: I THINK ONE OF THE JURORS TOOK HIS
22 NOTEBOOK WITH HIM TO LUNCH.

23 THE COURT: SOMETHING TELLS ME THAT MS. CRUZ --
24 SHE'LL TAKE CARE OF IT.

25 MR. KALTGRAD: ONE REQUEST, YOUR HONOR.

26 THE COURT: YEAH, SHE GOT IT.

27 JUST FOR THE RECORD, MR. GREEN DID TAKE HIS
28 NOTEBOOK OUT, BUT MS. CRUZ RETRIEVED IT BEFORE HE LEFT.

1 MR. GOLDBERG: SO YOU DON'T SEND THE EXHIBITS INTO
2 THE JURY ROOM UNLESS SOMEBODY REQUESTS --

3 THE COURT: NO, THEY'LL GET THEM.

4 MR. GOLDBERG: OKAY. THANK YOU.

5 THE COURT: MR. KALTGRAD.

6 MR. KALTGRAD: WHEN THE COURT PRINTS OUT THE
7 VERDICT FORMS, CAN WE GET A COPY OF THOSE SINCE WE DON'T
8 HAVE A COPY?

9 THE COURT: OF COURSE.

10 MR. KALTGRAD: THANK YOU, YOUR HONOR.

11 THE COURT: ANYTHING ELSE?

12 MR. GOLDBERG: NO, YOUR HONOR -- OH, IS IT ALL
13 RIGHT IF I PUT THE PODIUM IN THE WELL?

14 THE COURT: THAT'S FINE.

15 ALL RIGHT. ENJOY YOUR LUNCH.

16

17 (THE NOON RECESS WAS TAKEN UNTIL
18 1:30 P.M. OF THE SAME DAY.)

19

20

21

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28

1 CASE NUMBER: BC654017
 2 CASE NAME: KHAN VS. HOLOGRAM USA, INC.
 3 LOS ANGELES, CALIFORNIA MONDAY, NOVEMBER 25, 2019
 4 DEPARTMENT NO. 74 HON. MICHELLE WILLIAMS COURT, JUDGE
 5 REPORTER: LISA DAY, CSR NO. 12960
 6 TIME: 1:40 P.M. (P.M. SESSION)
 7 APPEARANCES: (AS HERETOFORE NOTED.)
 8

9 (THE FOLLOWING PROCEEDINGS WERE
 10 HELD IN OPEN COURT IN THE
 11 PRESENCE OF THE JURORS:)
 12

13 THE COURT: WELCOME BACK, AND THANK YOU FOR BEING
 14 HERE.

15 NOW IT'S TIME FOR YOU TO HEAR THE
 16 ATTORNEYS' CLOSING STATEMENTS BEFORE YOU BEGIN
 17 DELIBERATIONS.

18 MR. GOLDBERG.

19 MR. GOLDBERG: THANK YOU, YOUR HONOR.

20 THANK YOU, LADIES AND GENTLEMEN.

21 THANK YOU TO THE COURT AND STAFF FOR THE
 22 COURTESIES EXTENDED TO COUNSEL FOR ALLOWING US TO
 23 PRESENT THIS CASE IN SUCH AN ORDERLY MANNER, AND MY
 24 CO-COUNSEL, WITHOUT WHOM I WOULD NOT BE ABLE TO DO
 25 ANYTHING.

26 THE COURT: MR. GOLDBERG?

27 MR. GOLDBERG: YEAH.

28 THE COURT: I'M SORRY. COULD YOU SPEAK UP JUST A

1 LITTLE BIT?

2 MR. GOLDBERG: YEAH, I HAVE JUST A LITTLE BIT OF A
3 COLD. I'LL DO IT.

4 THE COURT: I THINK WE ALL HAVE A COLD AT THIS
5 POINT.

6 MR. GOLDBERG: I'LL SPEAK UP.

7 WE'RE HERE FOR JUSTICE. WE'RE HERE TO
8 REMEDY WHAT HAPPENED TO MAHIM KHAN. WE'RE HERE BECAUSE
9 MR. DAVID, WHO CAN CERTAINLY DISH IT OUT, BUT APPARENTLY
10 CAN'T TAKE IT, DECIDED HE WAS GOING TO TARGET SOMEBODY
11 AT WORK, GRABBING HER BREAST, GRABBING HER VAGINA,
12 GRABBING HER BACKSIDE, WALKING AROUND NAKED. ALL THINGS
13 THAT NO NORMAL EMPLOYER WOULD EVER CONSIDER DOING.

14 WE'RE HERE TODAY TO LET HIM KNOW THAT HE
15 CAN'T DO THIS AND GET AWAY WITH IT AND THAT THERE'S A
16 CONSEQUENCE.

17 WE ALL HAVE CONSEQUENCES FOR OUR CONDUCT.
18 TODAY IS THE DAY YOU, THE JURY, THE PEOPLE OF THE
19 CONSCIENCE OF OUR COMMUNITY GET TO DECIDE ABOUT THE
20 CONSEQUENCES THAT WILL BE IMPOSED ON MR. DAVID, SOMEONE
21 WHO WALKS AROUND NAKED IN A COMPANY. WHO DOES THAT?
22 EVEN THE MOST UNSOPHISTICATED EMPLOYER, WHO WALKS AROUND
23 NAKED IN FRONT OF THEIR EMPLOYEES AND THINKS THAT THAT'S
24 OKAY? THAT THINKS THAT THAT DOESN'T VIOLATE THE LAWS
25 REGARDING SEXUAL HARASSMENT? BUT MR. DAVID DOESN'T CARE
26 ABOUT ANY OF THAT. HE MARCHES TO HIS OWN DRUMMER AND
27 THINKS, PERHAPS, BECAUSE HE HAS MONEY, HE CAN DO
28 WHATEVER HE WANTS, TO ANYONE HE WANTS, WHENEVER HE

1 WANTS, TO WHOEVER HE WANTS.

2 YOU KNOW WHAT WAS MOST INTERESTING IN THE
3 VIDEO DEPOSITION THAT WAS TAKEN, WHICH WE SHOWED YOU?
4 LEAVING ASIDE THE FACT THAT HE INSULTED ME, INSULTED MY
5 CLIENT, WHAT'S MOST INTERESTING WAS THAT HE KNEW THAT
6 THIS DEPOSITION WAS BEING VIDEOGRAPHED [SIC]; RIGHT? I
7 MEAN, HE KNEW THERE WAS A VIDEOGRAPHER THERE. HE KNEW
8 THAT THERE WAS A COURT REPORTER THERE TAKING DOWN
9 EVERYTHING THAT HE SAID. AND WHAT HE DID WAS HE SHOWED
10 COMPLETE DISRESPECT FOR THE COURT, FOR THE LEGAL
11 PROCESS.

12 REMEMBER AT SOME POINT DURING THE
13 DEPOSITION, I SAID, YOU KNOW, MR. DAVID, WHAT YOU'RE
14 DOING RIGHT NOW IS GOING TO BE SHOWN TO THE COURT. HE
15 GOES, "WOOHOO, WOOHOO, THE COURT." HE HAS NO RESPECT.
16 HE HAS NO RESPECT TO HUMAN BEINGS. HE HAS NO RESPECT
17 FOR THE COURT. HE HAS NO RESPECT FOR THE LEGAL PROCESS.

18 IMAGINE, IF YOU WOULD, HOW HE MUST HAVE
19 BEHAVED WHEN HE IS IN HIS CASTLE, IN HIS LAIR, WHEN
20 NOBODY'S AROUND, NOBODY'S VIDEOTAPING, NOBODY'S TAKING
21 DOWN EVERY WORD HE SAID. NOBODY IS CONTROLLING HIS
22 BEHAVIOR.

23 WE'RE HERE FOR JUSTICE.

24 IN THE OPENING STATEMENT, MS. GAROFALO TOLD
25 YOU THAT THIS IS A CLASSIC HE-SAID/SHE-SAID CASE. WELL,
26 THAT'S REALLY NOT EXACTLY ACCURATE, IS IT?

27 FIRST OF ALL, WE DIDN'T HEAR HIM SAY
28 ANYTHING. WE DIDN'T HEAR ONE BIT OF EVIDENCE FROM

1 ANYBODY ON BEHALF OF THE DEFENSE, LET ALONE FROM
2 MR. DAVID TO DENY THAT HE ENGAGED IN ANY OF THE CONDUCT
3 AT ISSUE. THERE WAS NO DEFENSE. THERE WAS NO
4 WITNESSES. THERE WAS NO "HE SAID."

5 INSTEAD OF IT BEING HE SAID/SHE SAID, WE
6 HAD -- IN ADDITION TO MS. KHAN, WE HAD THE TESTIMONY OF
7 NICK HYAMS, HELEN DAVIS, AND LAUREN REEVES, ALL OF WHOM
8 OFFERED TESTIMONY ON BEHALF OF MS. KHAN.

9 IN THE DEFENSE OPENING STATEMENT, THEY --
10 MS. GAROFALO CLAIMED THAT THERE WAS NO WRITTEN COMPLAINT
11 OF MS. KHAN OF ANY KIND. WHEN YOU'RE BACK IN THE JURY
12 ROOM, TAKE A LOOK AT EXHIBIT 109 AND EXHIBIT 115 AND
13 YOU'LL DECIDE WHETHER OR NOT THAT CONSTITUTES A WRITTEN
14 COMPLAINT. I SUGGEST TO YOU THAT YOU'LL SEE MS. KHAN,
15 ON AUGUST 28, 2015 TELLING HER SUPERVISOR,
16 MR. SHOEFIELD, THAT SHE CAN'T TAKE IT ANYMORE, SHE CAN'T
17 STAND BEING TOUCHED. HE CAN'T HELP HER.

18 WHAT IS THAT IF IT'S NOT A WRITTEN
19 COMPLAINT?

20 AND EXHIBIT 115, WHICH IS DATED
21 OCTOBER 1ST, 2015, SHE RESIGNS. AND WHEN SHE DOES IT,
22 SHE SAYS IT'S BECAUSE IT HASN'T STOPPED. AND SHE
23 MENTIONS HE RECENTLY TOUCHED ANOTHER WOMAN'S BUTT AND NO
24 MATTER HOW MANY WOMEN HE TOUCHES, IT DOESN'T SEEM TO
25 MATTER.

26 MS. GAROFALO ALSO SAID THERE WERE NO ORAL
27 COMPLAINTS OF ANY KIND. OF COURSE, THAT'S NOT TRUE
28 EITHER.

1 WHEN YOU LOOK AT EXHIBIT 115, YOU'LL SEE
2 THAT IT MAKES REFERENCE TO THE CONVERSATION THAT
3 MS. KHAN HAD WITH MR. SHOEFIELD WHERE SHE EXPLICITLY
4 TOLD HIM WHAT WAS HAPPENING WITH MR. DAVID AND WHAT HE
5 WAS ENGAGING IN.

6 AND SHE ALSO TESTIFIED THAT SHE MET AND
7 SPOKE WITH YELENA CALENDAR.

8 SO THERE WERE WRITTEN COMPLAINTS. THERE
9 WERE ORAL COMPLAINTS. MR. DAVID DOESN'T CARE.

10 WHO WAS THE EMPLOYER? THAT'S ONE OF THE
11 ISSUES IN THIS CASE; RIGHT? WHO WAS MS. KHAN'S
12 EMPLOYER? IF YOU LOOK AT EXHIBIT 103, WHICH IS A
13 NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT -- CAN WE
14 PULL THAT UP, PLEASE?

15 ON PAGE 1, IT SAYS THAT --

16 GO DOWN A LITTLE BIT. MAYBE IT'S ON TOP.
17 JUST GO UP A LITTLE BIT.

18 FILMON TV AND ALKI DAVID PRODUCTIONS SAYS
19 THAT SHE WORKS FOR FILMON TV AND ALKI DAVID PRODUCTIONS,
20 INC. AND WE INTRODUCED INTO EVIDENCE VARIOUS CHECKS
21 THAT SUPPORT THE FACT THAT SHE WAS PAID BY BOTH
22 ENTITIES.

23 THE ONLY QUESTION IS, WAS SHE ALSO EMPLOYED
24 BY HOLOGRAM USA. NOW, WE DIDN'T -- THERE WAS NO
25 INDICATION THAT HOLOGRAM USA PAID HER, BUT THERE WAS
26 CLEAR EVIDENCE THAT MS. KHAN WORKED FOR HOLOGRAM USA IN
27 SEVERAL RESPECTS.

28 FIRST OF ALL, SHE REPORTED TO GARY

1 SHOEFIELD, WHO WAS A SENIOR VICE PRESIDENT FOR HOLOGRAM
2 USA; THAT WAS HER DIRECT SUPERVISOR.

3 SHE ALSO WORKED ON VARIOUS HOLOGRAM
4 PROJECTS. WE HAD TESTIMONY FROM NICK HYAMS THAT SHE WAS
5 WORKING ON A HOLOGRAM PROJECT WHEN MR. DAVID WAS IN THE
6 CONFERENCE ROOM SHOWING 2 GIRLS 1 CUP.

7 MS. KHAN TESTIFIED THAT WHEN SHE WAS IN THE
8 EDITING BAY, SHE WAS WORKING ON A HOLOGRAM PROJECT, AND
9 SHE WAS WORKING ON A HOLOGRAM WEBSITE.

10 SHE CLEARLY WAS EMPLOYED BY HOLOGRAM USA;
11 SHE JUST WASN'T PAID BY THAT ENTITY.

12 WHAT WAS MAHIM KHAN LIKE PRIOR TO MOVING TO
13 LOS ANGELES AND STARTING TO WORK FOR ALKI DAVID?

14 HER COUSIN, ANUM SYED, A DOCTOR, SAID SHE
15 WAS VERY EXCITED ABOUT HER CAREER. SHE SAID THAT IT WAS
16 VERY UNUSUAL THAT SOMEONE WITH HER CULTURAL BACKGROUND
17 WOULD BE ENGAGED IN THE ENTERTAINMENT BUSINESS BECAUSE
18 THEY USUALLY PICK SAFE PROFESSIONS.

19 SHE ALSO SAID SHE WAS THE GIRL EVERYONE
20 WANTED TO BE FRIENDS WITH, WOULD ORGANIZE ALL GROUP
21 ACTIVITIES, WAS VERY SOCIAL, BUBBLY, LIFE OF THE PARTY,
22 EVERYONE GRAVITATED TOWARD HER.

23 BUT THEN SHE GOES TO WORK FOR ALKI DAVID.
24 AND WHAT HAPPENS? SIMULATED ORAL SEX STARTING IN
25 DECEMBER 2014. HE WOULD WALK IN FROM BEHIND HER, SWIVEL
26 HER CHAIR AGGRESSIVELY -- SHE WOULD USUALLY BE FACING
27 HER COMPUTER -- UNTIL SHE FACED HIM. WOULD GRAB HER
28 BEHIND HER NECK AND THRUST IT TOWARD HIS PELVIS.

1 LET'S LOOK AT SLIDE NO. 2.

2 THIS WAS THE SWORN TESTIMONY OF MS. KHAN.
3 REMEMBER SHE ALSO TESTIFIED SOMETIMES HIS PANTS WOULD BE
4 DOWN, SOMETIMES HIS PANTS WOULD BE UP, THERE WAS SOME
5 VARIATION, BUT THIS WAS A GENERAL ACTIVITY THAT OCCURRED
6 AND SHE SAID IT HAPPENED ALL THE TIME, 20 TIMES A MONTH,
7 EVERY OTHER DAY.

8 BUT WE DON'T JUST HAVE TO RELY ON THE
9 TESTIMONY OF MS. KHAN BECAUSE HER TESTIMONY ABOUT THIS
10 WAS CORROBORATED BY NICK HYAMS.

11 SLIDE NO. 3.

12 MR. HYAMS TESTIFIED THAT HE WAS A WITNESS.
13 HE WALKED UP TO HER, GRABBED HER BY THE HEAD, MOVED HER
14 BACK AND FORTH A COUPLE OF TIMES TO SIMULATE ORAL SEX,
15 "THANK YOU, MK," AND HE WALKED AWAY.

16 NOW, INTERESTINGLY ENOUGH, MR. HYAMS SAID
17 HE SAW THAT ON ONE OCCASION. IF HE WAS COMING HERE TO
18 LIE, WOULDN'T HE HAVE SAID HE SAW IT MULTIPLE TIMES?
19 BUT HE SAID HE SAW THAT ONE TIME.

20 MS. KHAN TESTIFIED THAT HE TOUCHED HER
21 INNER THIGH. THEN SHE TALKED ABOUT GRABBING HER BREAST,
22 SQUEEZING HER BREAST WITH A LOT OF PRESSURE, AND
23 EXPOSING HER BREAST.

24 SLIDE NO. 4.

25 THAT WAS ONE OF THE SPECIFIC OCCASIONS
26 WHERE SHE REMEMBERED HIM SQUEEZING HER BREAST AND HER
27 BREAST BEING EXPOSED. AND SHE SAID THERE WERE OTHER
28 OCCASIONS THAT IT OCCURRED AS WELL. NICK HYAMS

1 CORROBORATED THAT TESTIMONY.

2 SLIDE NO. 5.

3 HE SAW MR. DAVID FONDLE HER BREAST ON
4 MULTIPLE OCCASIONS. CASUALLY FONDLE HER BREAST.

5 SLIDE NO. 6.

6 WHEN HE WOULD DO THIS, HE WOULD BE BEHIND
7 HER. SHE WOULD BE WORKING OR ENGAGED IN A CONVERSATION,
8 HE WOULD JUST COME UP BEHIND HER AND GRAB HER BREAST.

9 SLIDE NO. 7.

10 MR. HYAMS SAID SHE WASN'T WEARING ANYTHING
11 SUGGESTIVE, BAGGY SWEATERS, AND HE WOULD JUST WALK UP,
12 FONDLE HER BREAST, AND WALK AWAY.

13 SLIDE NO. 8.

14 HE WOULD DO IT IN A WAY THAT SURPRISED HER,
15 SHE WAS STARTLED AND HE WOULD SEE HER LOOK OF FEAR AND
16 NERVOUS LAUGHTER TRYING TO PLACATE THE MOMENT, DOWNPLAY
17 IT, NORMALIZE IT FOR HERSELF AND ALL OF US AROUND HER.

18 GRABBING HER VAGINA. SHE TESTIFIED THAT
19 ONE OF THE INCIDENTS THAT SPECIFICALLY STANDS OUT IN HER
20 MIND HAD TO DO WITH COACHELLA. HE HAD DONE THAT SEVERAL
21 TIMES, BUT THIS ONE STANDS OUT BECAUSE HIS HAND WENT ALL
22 THE WAY UP AND, "HE STARTED GRABBING MY VAGINA."

23 SHE TESTIFIED THAT EVERY TIME HE DID IT, HE
24 WOULD MOAN OR MAKE SOME SORT OF PLEASURE SOUND, "OH,
25 THIS IS NICE," "I LIKE THAT." AND SHE SAID SHE
26 REMEMBERED ONE OTHER OCCASION SPECIFICALLY WHEN THEY
27 WERE EDITING SOME FOOTAGE FOR THE RAY CHARLES HOLOGRAM
28 AND THEY WERE IN THE EDITING BAY AND HE APPROACHED HER

1 FROM THE FRONT, GRABBED HER PELVIS AREA, AND DREW HER
2 CLOSER TO HIM AND RUBBED HIS HAND FROM HER PELVIS TO HER
3 VAGINA SAYING, "OH, I LIKE THIS AREA."

4 SLIDE NO. 9.

5 THIS IS MS. KHAN TESTIFYING THAT WHEN THIS
6 HAPPENED, SHE WOULD SHOVE HIS HAND AWAY LIKE, "ALKI,
7 STOP," AND HE WOULD JOKINGLY SAY, "SORRY. SORRY," AND
8 HE WOULD LAUGH IT OFF.

9 NICK HYAMS IS A WITNESS TO THE FACT THAT
10 HER VAGINA WAS GRABBED.

11 SLIDE NO. 10.

12 HE SAW MR. DAVID FONDLE HER IN HER CROTCH
13 AREA AND HE WALKED UP TO HER FROM BEHIND, BETWEEN HER
14 LEGS. HE SAW THAT ONE TIME.

15 AND HE ALSO TESTIFIED THAT HER REACTION WAS
16 BEING STARTLED AND LOOKING UPSET.

17 THEN HE SAID, "YOU KNOW, I SHOULD HAVE DONE
18 SOMETHING. I SHOULD HAVE DONE SOMETHING. I FELT LIKE I
19 SHOULD HAVE DONE SOMETHING TO STOP HIM, BUT I WAS AFRAID
20 I WOULD LOSE MY JOB."

21 HE SAID "I REGRET BEING A COWARD."

22 THEN HE SAID, "I FEEL GUILTY THAT I LET
23 MYSELF DOWN, MY MORAL COMPASS AS A MAN; THAT I LET MY
24 CO-WORKER DOWN AS WELL, BUT I LET MY MOTHER DOWN BECAUSE
25 MY MOTHER RAISED ME NOT TO ALLOW WOMEN TO BE HURT OR
26 ABUSED IN MY PRESENCE."

27 NOT ONLY DID MR. HYAMS WITNESS MR. DAVID
28 GRABBING MS. KHAN'S VAGINA, SO DID HELEN DAVIS.

1 SLIDE NO. 11.

2 MS. DAVIS TESTIFIED THAT, YOU KNOW, SHE WAS
3 WORKING, THEY WERE WORKING AT HER COMPUTER DESK, IT WAS
4 HIS FIRST DAY BACK FROM BEING ABROAD, AND SHE SAW
5 MR. DAVID GRAB HER VAGINA FROM BEHIND. "HE KIND OF JUST
6 REACHED UNDERNEATH, GRABBED HER VAGINA, MADE THAT SOUND,
7 AND GRABBED HER VAGINA. SHE JUMPED. SHE WAS LIKE
8 'AHHHHH' AND JUMPED BACK IN HER SEAT."

9 SO WE HAD TWO WITNESSES.

10 HE ALSO WOULD SLAP HER BUTT ON NUMEROUS
11 OCCASIONS. MS. KHAN TESTIFIED THAT HE WOULD WALK BY, IN
12 PASSING, HE WOULD SLAP HER BUTT. SHE COULD HAVE BEEN AT
13 THE COFFEE MACHINE OR HE WAS HEADING FOR LUNCH. HE WAS
14 ALWAYS PROBING, PRODDING, OR TOUCHING.

15 MR. HYAMS WITNESSED THAT.

16 SLIDE NO. 12.

17 "DID YOU EVER SEE MR. DAVID TOUCH
18 MS. KHAN'S BEHIND?"

19 "YEAH, HE DEFINITELY WOULD. ANY
20 OPPORTUNITY HE HAD. IF SHE WAS WALKING BY, HE WOULD
21 SMACK HER ON THE REAR END. IT WAS VERY COMMON."

22 MS. KHAN TESTIFIED THAT HE WOULD TOUCH HER
23 BODY, RUB THE PELVIC AREA, SQUEEZING HER HIPS, TAPPING
24 SOMETHING, LOWER HALF OF HER BODY.

25 THEN WE HAD TESTIMONY ABOUT A LAP DANCE.

26 MS. KHAN TESTIFIED THAT SHE WAS IN A MEETING ABOUT THE
27 RAY CHARLES PROJECT -- NO, IT WAS BEFORE THE RAY CHARLES
28 PROJECT. AND WHEN MR. DAVID ARRIVED, IT WAS TIME FOR

1 HER TO LEAVE, SHE WASN'T GOING TO BE PART OF THE
2 MEETING, AND HE PUSHED HER DOWN INTO THE CHAIR AND THEN
3 HE GOT TO STRADDLE THE CHAIR AND PERFORM A LAP DANCE AND
4 DID THE SAME TYPE OF SIMULATED ORAL SEX. HE PUT HIS
5 HAND BEHIND HER HEAD, SHOVED IT, PRESSED HIS PELVIC AREA
6 TOWARDS HER HEAD, AND HER HEAD TOWARD HIS PELVIS.

7 2 GIRLS 1 CUP VIDEO. HONESTLY THE MOST
8 DISGUSTING THING THAT I'VE EVER SEEN, WITHOUT QUESTION.

9 SLIDE 13.

10 ALKI SHOWED UP LATE TO THE MEETING.
11 REMEMBER, THE MEETING WAS SHE WAS BRINGING IN SOME
12 PROSPECTIVE CLIENTS TO WORK ON A HOLOGRAM. HE SHOWED UP
13 LATE AND SAID, "GOOD TIMING. MY COCAINE JUST GOT HERE."
14 SETS THE BOX HERE. THEN HE SHAKES THEIR HAND. "FELLAS,
15 FELLAS, YOU GOTTA SEE THIS, YOU GOTTA SEE THIS. TELL
16 ME, HAVE YOU SEEN THIS?" AND HE GRABS THE LAPTOP AND
17 PULLS OUT THE VIDEO, 2 GIRLS 1 CUP.

18 MS. KHAN TESTIFIED THE OPENING SCENE WAS
19 PORNOGRAPHIC, TWO WOMEN COLLECTING POOP AND THEN RUBBING
20 IT, EATING IT. SAID IT WAS DISGUSTING.

21 SLIDE 14.

22 BUT THAT WAS NOT THE ONLY OCCASION WHERE HE
23 SHOWED IT TO WOMEN AT THE WORKPLACE.

24 SLIDE 14.

25 THERE WAS ANOTHER TIME WHERE HE TRIED TO
26 SHOW IT TO MARY RIZZO AND CHASITY JONES, TWO WOMEN THAT
27 WORKED THERE, AND HE CALLED MS. KHAN INTO THE OFFICE,
28 PULLED UP THE VIDEO, AND STARTED PLAYING IT AND SHE

1 WALKED OUT.

2 NICK HYAMS CONFIRMED THAT INCIDENT.

3 SLIDE 15.

4 "WERE YOU PRESENT WHEN MR. DAVID SHOWED THE
5 2 GIRLS 1 CUP VIDEO?"

6 "YEAH, I WAS IN THE CONFERENCE ROOM."

7 HE SAID THAT ON ONE SUCH MEETING, TWO
8 PEOPLE MS. KHAN HAD BROUGHT IN, PROSPECTIVE CLIENTS THAT
9 WERE GOING TO BE WORKING WITH MR. DAVID. MR. DAVID CAME
10 IN IN THE MIDDLE OF THE MEETING, HE SHOWED THE 2 GIRLS 1
11 CUP VIDEO, AND WHAT HE WOULD OFTEN DO WHEN DOING THIS IS
12 FILM THE REACTION OF THE PEOPLE WATCHING IT.

13 MR. HYAMS FURTHER TESTIFIED, WHEN I ASKED
14 HIM HOW DID MS. KHAN REACT TO THE VIDEO, HE SAID, "THE
15 WAY MOST PEOPLE DID. IT WAS PRETTY DISGUSTING AND SHE
16 WAS PRETTY DISGUSTED BY IT."

17 THEN WE HAD MS. GAROFALO ASKING SOME
18 QUESTIONS.

19 WHEN SHE QUESTIONED MS. KHAN -- LET'S LOOK
20 AT SOME OF THE QUESTIONS MS. GAROFALO ASKED.

21 "DID YOU KNOW GEORGE CLOONEY ON THE TONIGHT
22 SHOW WATCHED IT AND THEY DID A WHOLE BIT ON IT ON THE
23 TONIGHT SHOW?"

24 "NO.

25 "DIDN'T YOU KNOW IT'S BEEN ON NUMEROUS
26 TELEVISION MAINSTREAM TELEVISION SHOWS?"

27 "NO.

28 "DIDN'T YOU KNOW IT WAS JUST ABOUT THE MOST

1 POPULAR THING ON YOUTUBE EVER?

2 "ARE YOU JOKING?

3 "I'M NOT.

4 "NO, I DIDN'T KNOW THAT."

5 NOW, WHEN A LAWYER ASKED A QUESTION --

6 FIRST OF ALL, THE QUESTIONS ARE NOT EVIDENCE. BUT WHEN
7 A LAWYER ASKS A QUESTION, ONE WOULD THINK THAT SHE WOULD
8 HAVE SOME EVIDENCE TO PRESENT TO SUPPORT THE QUESTION.
9 WHERE'S THE EVIDENCE? WAS THERE ANY EVIDENCE THAT ANY
10 OF THIS WAS SHOWN ON TV, ON MAINSTREAM TELEVISION SHOWS?
11 IS THERE ANY POSSIBILITY THAT THAT COULD BE TRUE?

12 YOU SAW THE VIDEO, AT LEAST THE FIRST
13 15 SECONDS. I DON'T THINK ANYBODY WANTED TO BE
14 SUBJECTED TO ANY MORE THAN THAT. I CERTAINLY DIDN'T
15 WANT TO SUBJECT ANY OF YOU TO ANY OF IT, BUT I FELT IN
16 LIGHT OF THESE QUESTIONS, I DIDN'T HAVE ANY CHOICE BUT
17 TO SHOW YOU A LITTLE BIT OF WHAT THIS WAS ABOUT BECAUSE
18 OF THE IMPLICATION THAT THIS WAS A MAINSTREAM TELEVISION
19 SHOW, THE MOST POPULAR THING ON YOUTUBE. REALLY?
20 REALLY?

21 THE MANGINA. MS. KHAN TESTIFIED -- YOU CAN
22 TAKE THAT DOWN, PLEASE.

23 MS. KHAN TESTIFIED HE DID THE MANGINA IN
24 FRONT OF HER WHERE HE TOOK OFF HIS CLOTHES, PUT HIS
25 PENIS BETWEEN HIS THIGHS, MOCKING OR CREATING A VAGINA.

26 "WHAT WERE YOU ABLE TO OBSERVE?"

27 SHE CLAIMED -- SHE SAID "EVERYTHING. THE
28 FRONT PART OF HIS NAKED BODY.

1 "DID HE SAY ANYTHING?

2 "OH, HE WAS LAUGHING."

3 NICK HYAMS CONFIRMED SEEING THE MANGINA.

4 SLIDE 17.

5 "SEVERAL TIMES TUCKING HIS GENITALS BETWEEN
6 HIS LEGS AND FULLY IN THE NUDE PRESENT HIMSELF. THIS
7 HAPPENED ON MULTIPLE OCCASIONS. ONE TIME IN THE
8 CONFERENCE ROOM, HE CAME INTO A MEETING."

9 "I KNOW YOU WEREN'T KEEPING COUNT, BUT HOW
10 MANY TIMES DO YOU THINK, DURING THAT YEAR PERIOD, THAT
11 YOU SAW MR. DAVID DOING THE MANGINA?"

12 HE SAYS, "QUITE A FEW."

13 WHAT NORMAL EMPLOYER -- WHAT POSSIBLE
14 JUSTIFICATION COULD THERE BE FOR AN EMPLOYER TO WALK
15 AROUND NAKED AND SUBJECT HIS FEMALE EMPLOYEE TO HAVING
16 TO SEE HIM IN THAT STATE?

17 LAUREN REEVES. REMEMBER LAUREN REEVES?
18 SHE WAS WORKING THERE AFTER MS. KHAN HAD RESIGNED. SHE
19 TESTIFIED SHE LEFT IN SEPTEMBER 2016. MS. REEVES
20 TESTIFIED ALSO "ON ONE OCCASION HE DISAPPEARED IN THE
21 OFFICE AT THE END OF THE HALLWAY, CAME BACK COMPLETELY
22 NAKED WITH HIS GENITALS TUCKED BETWEEN HIS LEGS AND HIS
23 PANTS DOWN AROUND HIS ANKLES, AND HE WALKED AROUND WITH
24 HIS KNEES TOGETHER LIKE A DUCK WADDLING. HE DID A
25 LITTLE DANCE AND WALKED BACK IN THE OFFICE AND PUT HIS
26 PANTS BACK UP."

27 MS. KHAN SPOKE ABOUT HOW HE WAS DemeanING
28 TO WOMEN. SHE TESTIFIED, "HE WAS MORE DemeanING TO

1 WOMEN BECAUSE HE USED THE C WORD AND B WORD TOWARDS
2 WOMEN. THOSE WORDS WERE USED SPECIFICALLY TOWARDS
3 WOMEN."

4 AND NICK HYAMS CONFIRMED THE USE OF
5 DEROGATORY WORDS.

6 SLIDE 18.

7 HE WOULD OFTEN REFER TO THE ANATOMY OF
8 WOMEN AS THEY WOULD BE IN THE PRESENCE AFTER THEY WALKED
9 AWAY AND YOU CAN AFTER READ WHAT HE WOULD SAY.

10 THE COMPANY'S ATTITUDE TOWARDS SEXUAL
11 HARASSMENT IS REFLECTED IN EXHIBIT 14. THIS POSTER THAT
12 MS. KHAN TESTIFIED WAS UP FOR THE ENTIRE YEAR SHE WAS
13 THERE REFLECTS AN ATTITUDE. THIS IS WHAT THIS COMPANY
14 THOUGHT OF SEXUAL HARASSMENT. THIS IS WHAT THEY THOUGHT
15 WAS APPROPRIATE TO PUT IN A WORKPLACE. THIS IS THE
16 POSTER THAT TELLS YOU EVERYTHING YOU NEED TO KNOW ABOUT
17 THE WAY THE COMPANY SAW THE SEXUAL HARASSMENT.

18 CAN YOU MAKE THAT A LITTLE BIGGER?

19 YOU'LL HAVE THE EXHIBIT IN THE JURY ROOM,
20 SO YOU CAN SEE IT.

21 BUT THIS TELLS YOU WHAT THEY THOUGHT ABOUT
22 SEXUAL HARASSMENT. THIS IS HOW THEY TOOK IT. THE
23 ATTITUDE THAT THEY HAD TOWARDS SEXUAL HARASSMENT WAS
24 ALSO REFLECTED BY WHAT HAPPENED IN THE SEXUAL HARASSMENT
25 MEETING. MS. KHAN TESTIFIED AT SOME POINT WHILE SHE
26 WAS -- YOU CAN TAKE THAT DOWN, PLEASE -- AT SOME POINT
27 WHILE SHE WAS EMPLOYED THERE, THERE WAS A MEETING AT
28 WHICH A ONE-PAGE PAPER WAS HANDED OUT ABOUT SEXUAL

1 HARASSMENT.

2 SO I ASKED HER, "WHAT DID MR. DAVID DO WHEN
3 HE CAME INTO THE MEETING?

4 "WELL, HE CRUMPLED UP HIS COPY, TOSSED IT
5 ON THE CONFERENCE ROOM, AND WALKED OUT."

6 THIS IS THE CEO OF THE COMPANY. THIS IS
7 THE GUY THAT OWNS ALL THESE COMPANIES. HE WALKS OUT
8 AFTER CRUMPLING IT UP.

9 WHAT'S THE MESSAGE TO EVERYBODY? THIS
10 ISN'T SERIOUS, DON'T BE BOTHERED BY ANY OF THIS.

11 THE COMPLAINT SHE MADE ON AUGUST 28TH IS
12 EXHIBIT 109. LET'S TAKE A LOOK AT IT.

13 THIS IS A MONTH OR SO BEFORE SHE RESIGNED.
14 SHE SAID TO GARY, WHO WAS HER BOSS AT HOLOGRAM, IF
15 YOU'LL SEE HIS E-MAIL ADDRESS IS HOLOGRAM USA.

16 SHE SAYS, "I'M SPECIFICALLY WORRIED ABOUT
17 ALKI CONTINUALLY BEING SEXUAL TOWARDS ME. MAKES IT
18 DIFFICULT TO WORK HERE AND I'M WORRIED FOR WHEN HE GETS
19 BACK. I CAN'T STAND HIM TOUCHING ME ANYMORE."

20 NOW, HE WAS GONE AT THAT POINT. AS YOU'LL
21 RECALL, IN THE SUMMER HE WOULD GO OFF TO WHEREVER HE
22 WOULD GO, GREECE, MANGINA LAND, WHEREVER HE GOES. BUT
23 SHE WAS WORRIED HE WAS GOING TO BE COMING BACK, SO SHE
24 REACHED OUT TO GARY TO TELL HIM THAT SHE WAS CONCERNED.

25 AND THEN SHE TESTIFIED SHE HAD A MEETING
26 WITH MR. SHOEFIELD AFTER SHE SENT THIS E-MAIL, AND SHE
27 SHARED WITH HIM HER CONCERNS ABOUT THE SEXUAL
28 HARASSMENT. AND MR. SHOEFIELD SAID, "ALKI IS ALKI.

1 HE'S NEVER GOING TO CHANGE."

2 NOW, IF WE LOOK AT EXHIBIT 115 FOR A
3 MOMENT, WHICH IS THE RESIGNATION LETTER -- CAN YOU BLOW
4 THAT UP A BIT?

5 OKAY. YOU SEE WHERE SHE SAYS IN THE END OF
6 THE FIRST PARAGRAPH, "I JUST TALKED TO YOU ABOUT HIM
7 HARASSING ME AND BECAUSE I DON'T LIKE BEING ALONE WITH
8 HIM SINCE HE'S ALWAYS TOUCHING ME."

9 SO THIS IS SOME CONFIRMATION THAT SHE HAD A
10 MEETING WITH MR. SHOEFIELD SHORTLY AFTER SHE WROTE HER
11 E-MAIL OF AUGUST 28TH.

12 ALSO, SHE TESTIFIED -- YOU CAN TAKE THAT
13 DOWN. ALSO, SHE TESTIFIED THAT MR. SHOEFIELD KNEW THAT
14 ALKI HAD PREVIOUSLY SQUEEZED HER BREAST. SHE SAID THAT
15 SHE HAD SPOKEN TO HIM, HE KNEW ABOUT HER BREAST BEING
16 SQUEEZED, HE WAS AWARE OF IT, AND HE HAD CHECKED UP ON
17 HER IN THE EARLY SUMMER.

18 SHE ALSO TESTIFIED, MS. KHAN DID, THAT SHE
19 SPOKE TO YELENA CALENDAR, WHO SAID, "ALKI IS ALKI.
20 NOTHING WILL CHANGE. NO ONE CAN CONTROL HIM." AND YOU
21 MIGHT -- YOU MIGHT TAKE A LOOK AT THE FACT THAT SHE
22 WRITES HER RESIGNATION LETTER AND COPIES MS. CALENDAR ON
23 OCTOBER 1ST. THAT'S EXHIBIT 115.

24 LOOK AT EXHIBIT 116. THIS IS MS.
25 CALENDAR'S RESPONSE, SHE SAYS, "WE'LL MISS YOU. I'LL
26 PREPARE YOUR FINAL CHECK TODAY."

27 NOTHING ABOUT THE FACT SHE WAS TALKING
28 ABOUT NO ONE DOES ANYTHING ABOUT THE HARASSMENT, NO

1 MATTER HOW MANY WOMEN HE TOUCHES. NOTHING. JUST OKAY,
2 WE'LL MISS YOU. GOODBYE, GOOD LUCK. DON'T LET THE DOOR
3 HIT YOU ON THE WAY OUT. THAT'S CONSISTENT WITH HER
4 TESTIMONY THAT WHAT MS. CALENDAR SAID WAS, HE'S THE CEO,
5 HE HANDLES EVERYTHING, ALKI'S ALKI.

6 BY JULY OF 2015, SEVERAL MONTHS BEFORE --
7 WE CAN TAKE THAT DOWN, PLEASE -- BY JULY OF 2015,
8 SEVERAL MONTHS BEFORE SHE RESIGNED, MS. KHAN TESTIFIED
9 THAT SHE WAS FEELING EMOTIONALLY DRAINED. I DEFINITELY
10 WASN'T MYSELF. I WAS PRETTY DEPRESSED BY THAT TIME. I
11 DID HAVE SUICIDAL THOUGHTS. I WAS LOSING MY HAIR,
12 SLEEPING A LOT, EATING JUNK FOOD, NOT HAPPY, NOT SOCIAL.

13 SLIDE 21.

14 BY THE MIDDLE OF JULY, SHE WAS PLANNING TO
15 LEAVE. SHE WANTED TO LEAVE FOR MONTHS. "I WAS GETTING
16 MORE DEPRESSED, MORE EMOTIONAL, SUICIDAL. THAT'S WHEN I
17 THINK I WAS REALLY TRYING TO GET OUT OF THERE."

18 SUICIDE WAS MENTIONED A NUMBER OF TIMES
19 DURING THIS TRIAL. SHE TALKED ABOUT FEELING SUICIDAL
20 WHEN SHE RETURNED FROM DUBAI. HER COUSIN TALKED ABOUT
21 THE FACT THAT IN 2016 SHE WROTE -- MS. KHAN WROTE A
22 SUICIDE NOTE TO HER MOTHER AND HER BROTHER.

23 AND OF COURSE DR. READING SAID THE SCALE
24 FOR SUICIDE IDEATION WAS VERY VERY HIGH. IN THIS
25 CONTEXT, IMPLIED THAT AS RECENTLY AS JULY OF THIS YEAR,
26 SHE WAS RESEARCHING ON THE INTERNET A WEBSITE THAT TELLS
27 YOU HOW TO COMMIT SUICIDE. I THINK IT WAS CALLED "CATCH
28 THE BUS" OR SOMETHING LIKE THAT.

1 SHE WAS FEELING SPOILED.

2 LOOK AT SLIDE 23.

3 "I FELT, LIKE, NOT PURE, NOT CLEAN, SOILED.

4 I DIDN'T FEEL GOOD ABOUT MY BODY OR MYSELF. I DIDN'T
5 FEEL WORTHY. I FELT LIKE I WAS ALREADY SPOILED."

6 ACCORDING TO HER COUSIN, SOMETIME DURING
7 2015 SHE BEGAN TO WITHDRAW SOCIALLY. SHE STOPPED COMING
8 TO THINGS. SHE WOULD ORGANIZE EVENTS, BUT SHE WOULDN'T
9 COME. SHE STARTED FLAKING AT THE LAST MINUTE ON PLANS
10 SHE HAD MADE. DIDN'T WANT TO SOCIALIZE, WANTED TO BE IN
11 HER OWN APARTMENT IN HER PAJAMAS, DIDN'T WANT TO GO OUT.
12 DIDN'T WANT TO SEE PEOPLE.

13 SHE PROBABLY WOULD HAVE LEFT AT THAT POINT
14 BUT FOR THE FACT SHE HAD A LEASE AND SHE DIDN'T WANT TO
15 BE IRRESPONSIBLE, SO SHE DECIDED TO TIME HER DEPARTURE
16 AT THE END OF HER LEASE, WHICH WAS AT THE BEGINNING OF
17 OCTOBER.

18 EVEN THOUGH SHE COMPLAINED IN LATE AUGUST,
19 IN EXHIBIT 109, WHEN ALKI DAVID RETURNED, HE RESUMED THE
20 SAME SEXUAL HARASSMENT THAT HE HAD ENGAGED IN PRIOR TO
21 GOING OUT -- PRIOR TO LEAVING.

22 MS. KHAN TESTIFIED THAT, AGAIN, "THE ORAL
23 SEX ACTS, THE RUBBING OF MY PELVIC AREA, THE RUBBING OF
24 MY INNER THIGH, EVERYTHING RESUMED THE WAY IT HAD
25 BEFORE."

26 THE FINAL EVENT BEFORE HER RESIGNATION,
27 WHICH WOULD HAVE OCCURRED ANYWAY, SHE WAS GOING TO LEAVE
28 REGARDLESS, BUT THE FINAL EVENT -- SLIDE 22 -- ALKI WAS

1 UPSET BECAUSE HE THOUGHT SHE WAS HELPING SOME OTHER
2 WOMEN AND KEPT YELLING AT HER, "ARE YOU A FILMON GIRL OR
3 AREN'T YOU A FILMON GIRL?" SHE DIDN'T EVEN KNOW WHAT
4 THAT MEANT, BUT HE WAS LOUD. AS LOUD AS HE CAN BE, THE
5 LOUDEST VOICE I'VE EVER HEARD. AND YOU'VE SEEN ON THE
6 VIDEO DEPOSITION HOW LOUD MR. DAVID CAN GET.

7 WHAT'S ALSO INTERESTING IS, YOU KNOW, WHEN
8 SHE RESIGNED, EVERYBODY WANTED HER TO COME BACK. IF YOU
9 LOOK AT EXHIBITS 117, 121, YOU'LL SEE THERE ARE TEXT
10 MESSAGE -- YOU CAN TAKE THAT DOWN -- THERE WERE TEXT
11 MESSAGES SENT -- NO, NO. I DON'T WANT THAT UP AT THIS
12 POINT.

13 EXHIBITS 117, 121, YOU CAN SEE IT IN THE
14 JURY ROOM, ARE TEXT MESSAGES FROM ALKI TO MAHIM KHAN AND
15 FROM YELENA CALENDAR TO MAHIM KHAN TALKING ABOUT WHAT A
16 VALUABLE MEMBER OF THE TEAM SHE IS, HE COULD HAVE BEEN
17 GENTLER IN HIS MANNER. AND SHE SAID SHE'D NEVER GO BACK
18 BECAUSE IT WAS UNSAFE.

19 YELENA SAID, "RECONSIDER. YOU'LL BE
20 TREATED VERY WELL," BUT SHE WOULDN'T.

21 THEN SHE GOES TO DUBAI. AND HER TESTIMONY
22 WAS VERY INTERESTING AS TO WHY DID SHE GO TO DUBAI. SHE
23 SAID, "I THOUGHT I COULD STILL WORK IN ENTERTAINMENT BUT
24 SAFELY IN A MUSLIM COUNTRY." SHE'S AMERICAN. SHE'S
25 LEAVING THE UNITED STATES BECAUSE SHE FEELS SHE'S NOT
26 SAFE HERE.

27 AND HER COUSIN TESTIFIED SHE THOUGHT IT WAS
28 VERY ODD. IT WAS A VERY ABRUPT DECISION. I WAS

1 SHOCKED. MAHIM HAD SPOKEN ABOUT -- MS. KHAN HAD TALKED
2 ABOUT HOW EXCITED SHE WAS TO MOVE TO L.A., ABOUT HER
3 CAREER ASPIRATIONS. SHE WANTED TO PUT HER ROOTS IN L.A.
4 AND SETTLE IN L.A. IT WAS JUST A HUGE SURPRISE TO HER,
5 LIKE WHAT'S ALL THAT ABOUT.

6 SHE GOES TO DUBAI AND NOTHING REALLY
7 HAPPENED THERE THAT WAS BENEFICIAL TO HER. SO SHE COMES
8 BACK. SHE TESTIFIED SHE WAS ENGAGING IN BINGE EATING AT
9 HER AUNT'S HOUSE, GAINED ABOUT 30 POUNDS.

10 SHE SAID, "I WAS JUST SO DEPRESSED AND
11 SUICIDAL AND FOOD WAS KIND OF A HIGH, TOOK AWAY THE
12 EMOTIONS OR HELPED ME NOT TO DEAL WITH THEM."

13 SHE STAYED AT HER AUNT'S HOUSE AND HER
14 TESTIMONY WAS SHE ATE HER MEALS IN HER ROOM IN HER BED
15 IN HER PAJAMAS. SHE DIDN'T SHOWER. "I WAS SO LOST."

16 I ASKED HER, "WHAT DO YOU MEAN YOU DIDN'T
17 SHOWER?"

18 "I DIDN'T LEAVE MY BED TO SHOWER. MY AUNT
19 WOULD BRING ME LUNCH JUST TO CHECK IN ON ME. I DIDN'T
20 WANT TO LEAVE MY BED. NO WASHING MY HAIR, NO BATHING.

21 "SO WHAT DID YOU DO ALL DAY?"

22 "JUST SLEEP. WATCH TV ON MY LAPTOP.

23 "IN YOUR ROOM?"

24 "IN MY ROOM. I HAD MY CAT THERE.

25 "WAS THE ROOM DARK OR LIGHT?"

26 "DARK. I WANTED TO BE IN THE DARK, JUST
27 KIND OF ALONE."

28 I ASKED MS. KHAN, "HOW MANY HOURS A DAY OR

1 NIGHT WOULD YOU ENGAGE IN SLEEPING?

2 "18, 20.

3 "WHAT WERE YOU THINKING ABOUT WHILE THIS
4 WAS GOING ON?

5 "VERY BAD THOUGHTS, SUICIDAL THOUGHTS, NOT
6 WANTING TO LIVE."

7 SHE CUT HERSELF OFF AFTER DUBAI. "I
8 RETURNED MY MOM'S CALLS AT A MINIMUM, BUT OTHER THAN
9 THAT, DIDN'T REALLY INTERACT WITH PEOPLE."

10 MS. SYED SAID THAT EVEN THOUGH SHE WAS HER
11 CLOSEST FRIEND, IT WAS HARD TO REACH HER. "THERE WOULD
12 BE TIMES THAT I WOULDN'T HEAR FROM HER FOR WEEKS. IT
13 HARD TO REACH HER." AND THEN SHE WOULD HAVE TO DRAG HER
14 OUT. "OH, THESE ARE FRIENDS. WE'RE ONLY GOING TO STAY
15 A SHORT TIME."

16 AND SHE SAID, "I KNEW SHE WAS STRUGGLING
17 WITH SOMETHING. SHE WAS VERY WITHDRAWN, VERY UNHAPPY.
18 SHE WOULDN'T WEAR MAKEUP. DIDN'T TAKE CARE OF HERSELF.
19 SHE WASN'T MAKING ANY EFFORT TO MEET PEOPLE AND SHE WAS
20 VERY WITHDRAWN AND VERY GUARDED AND THAT'S THE WAY SHE
21 WAS."

22 SHE HAD A SERIES OF JOBS AFTER SHE RETURNED
23 FROM DUBAI. SHE TESTIFIED THAT SHE WORKED FOR VARIOUS
24 COMPANIES, BUT SHE WAS JUST GOING THROUGH THE MOTIONS.
25 NONE OF THOSE REALLY SATISFIED HER. SHE TESTIFIED SHE
26 SUFFERED FROM FLASHBACKS.

27 WHEN I ASKED HER ABOUT THAT, SHE SAID THE
28 FLASHBACKS HAD TO DO WITH HER BREASTS BEING EXPOSED AND

1 HIM RUBBING HER VAGINA.

2 AND I ASKED, "HOW OFTEN DO THOSE IMAGES OF
3 FLASHBACKS COME TO YOU?"

4 AND SHE SAID, "ALL THE TIME." CRYING.

5 I ASKED HER, "THERE WERE OCCASIONS YOU
6 WOULD BE CRYING?"

7 "YEAH, I WOULD SAY A LOT OF TIMES I
8 COULDN'T JUSTIFY MY CRYING. I DIDN'T KNOW WHY."

9 HER COUSIN SAID THAT SHE'D BREAK DOWN, CRY,
10 WE WOULD PRAY TOGETHER. "I'D SEE HER IN THE CORNER
11 CRYING SEVERAL NIGHTS." THIS WAS REPEATED DURING 2015,
12 '16, '17. "EVERY YEAR I SAW HER IN THAT STATE."

13 DAMAGES. WORRYING ABOUT SHAMING HER
14 FAMILY. WHY WOULD YOU FEEL -- MY QUESTION TO MS. KHAN:
15 "WHY WOULD YOU FEEL THAT BEING SEXUALLY HARASSED, WHY
16 WOULD YOU FEEL THAT WOULD BRING SHAME TO YOUR FAMILY?"

17 SHE SAID, "IT WOULD HAVE BEEN MY FAULT. IT
18 WOULD HAVE BEEN SOMETHING THAT I DID. I'D BE AN
19 EMBARRASSMENT TO MY PARENTS.

20 "DO YOU FEEL THAT YOU DID SOMETHING THAT
21 CAUSED MR. ALKI TO BEHAVE TOWARDS YOU IN THE WAY HE DID?"

22 "I KNOW THERE WAS NOTHING I DID WRONG. I
23 FEEL GUILTY. I FEEL SHAME."

24 SLIDE 25.

25 I ASKED HER TO EXPLAIN IT TO THE JURY. SHE
26 SAID, "I FEEL GUILTY BECAUSE YOU'RE SUPPOSED TO BE A
27 PURE GIRL, NOT TOUCHED. SUPPOSED TO BE CONSERVATIVE.
28 IT WOULD BE MY FAULT. THAT'S ALL I CAN SAY."

1 I ASKED MS. KHAN WHETHER SHE HAD RESOLVED
2 THOSE FEELINGS OF BEING IMPURE.

3 SHE SAID SHE HAD NOT.

4 I SAID, "DO YOU STILL HAVE THOSE FEELINGS
5 NOW?"

6 SHE SAID, "YES."

7 SHE ALSO FEELS THAT IN THE EVENT THAT SHE
8 FOUND SOMEONE THAT SHE WANTED TO MARRY, SHE WOULD HAVE
9 TO DISCLOSE WHAT HAPPENED TO HER TO ANY PROSPECTIVE
10 PARTNER.

11 I ASKED HER WHY.

12 SHE SAID, "BECAUSE I FEEL IT'S PART OF MY
13 REPUTATION. IT'S PART OF, LIKE, WHO I AM. LIKE A
14 SCARLET LETTER OR SOMETHING."

15 SHE TESTIFIED THAT SHE HAS FEAR OF MEN,
16 LACK OF TRUST. THAT'S NOT A BIG SURPRISE IN LIGHT OF
17 MR. DAVID'S BEHAVIOR.

18 SHE TALKED ABOUT TRIGGERS, WHAT TRIGGERS
19 SOME ANXIETY ON HER PART, AND ONE OF THE THINGS SHE
20 TALKED ABOUT IS SHE'S TRIGGERED IF SOMEBODY YELLS
21 LOUDLY. "MALE VOICES IN A LOUD MANNER REALLY SHAKE ME
22 UP."

23 ALSO, SOMEONE COMING FROM HER BACK TOWARDS
24 HER. SHE SAYS, "I LIKE TO SIT BEING ABLE TO SEE
25 EVERYTHING."

26 "WHEN SOMEBODY RAISES A VOICE, IT MAKES ME
27 FEEL WEAK, LOSS OF CONTROL, BELITTLED. IT TAKES ME BACK
28 TO ALKI YELLING."

1 SHE TALKED ABOUT BEING HYPERVIGILANT. SHE
2 SAYS, "I'M UNCOMFORTABLE WHEN I CAN'T SEE EVERYTHING. I
3 FEEL UNGUARDED. I FEEL UNSAFE."

4 AND SHE TALKED ABOUT THESE ONGOING THOUGHTS
5 OF SUICIDE. "CATCH THE BUS" WAS THE WEBSITE THAT I
6 COULDN'T REMEMBER A FEW MINUTES AGO.

7 I ASKED, "WHEN'S THE LAST TIME YOU LOOKED
8 AT THAT WEBSITE?"

9 SHE SAID, "JULY OF THIS YEAR."

10 I ASKED, "WAS IT SOMETHING SPECIFIC THAT
11 WAS CAUSING THAT?"

12 SHE SAID, "I DON'T KNOW MY PURPOSE IN LIFE
13 ANYMORE. I DON'T KNOW WHAT TO DO WITH MYSELF. I
14 DEFINED MYSELF BY MY WORK."

15 AND HER COUSIN TESTIFIED THAT IN 2016
16 SHE -- MS. KHAN TOLD HER SHE'D WRITTEN A SUICIDE NOTE.
17 QUOTE, SHE WAS VERY DEPRESSED THAT DAY, CRYING. SHE
18 TOLD ME IT WAS VERY, VERY DIFFICULT TO SHARE THIS
19 INFORMATION, BUT SHE HAD WRITTEN A SUICIDE LETTER TO HER
20 MOM AND HER BROTHER AND I HAD TO REALLY CONVINCE HER TO
21 START SEEKING THERAPY.

22 IN MARCH OF THIS YEAR, BECAUSE THESE JOBS
23 WEREN'T WORKING OUT FOR HER, SHE DIDN'T GET ANYTHING OUT
24 OF THEM, SHE WAS JUST GOING THROUGH THE MOTIONS, SHE
25 WENT TO LIVE WITH HER MOTHER IN AUSTIN, TEXAS, WHERE SHE
26 STILL LIVES TODAY.

27 I ASKED HER, "ASIDE FROM THE TIME YOU SPENT
28 IN L.A. DURING THIS TRIAL, WHAT DO YOU DO IN AUSTIN,

1 TEXAS?"

2 "SAME THING AS SAN DIEGO. I'M BACK IN THE
3 SAME PLACE, IN BED. FULL-TIME PAJAMAS, NETFLIX, HANGING
4 OUT WITH MY CAT. THAT'S ALL I DO."

5 WE PRESENTED THE TESTIMONY OF DR. READING,
6 AN EXPERT, WHO TESTIFIED THAT MS. KHAN'S SYMPTOMS ARE
7 CONSISTENT WITH WHAT SHE'S CLAIMING. AND HE TALKED
8 ABOUT VARIOUS SCALES THAT WERE FROM THE TESTING THAT WAS
9 CONDUCTED. HE SAID THERE WAS A SIGNIFICANT ELEVATION OF
10 WHAT'S CALLED THE DEMORALIZATION SCALE, WHICH IS ONE OF
11 TWO DEPRESSION SCALES, ALSO THE CYNICISM SCALE, WHICH IS
12 DYSFUNCTIONAL NEGATIVE EMOTIONS, REFLECTS EXPOSURE TO
13 TRAUMA, ANXIETY, LOSS OF SAFETY, LOSS OF TRUST.

14 SHE ALSO SHOWED ELEVATIONS ON ANXIETY, VERY
15 SIGNIFICANT ELEVATION, AND NOT FEELING EFFECTIVE.

16 AND THEN HE SAID, QUOTE, AND A VERY, VERY
17 SIGNIFICANT ELEVATION ON SUICIDAL IDEATION AND THOUGHTS
18 OF DEATH.

19 THIS IS FOUR YEARS LATER, AFTER SHE LEFT
20 MR. DAVID.

21 SHE ALSO HAD A SIGNIFICANT ELEVATION ON THE
22 MMPI-2-RF SCALE ON FEELING DISCONNECTED FROM OTHERS,
23 FEELING CUT OFF.

24 LOSS OF TRUST, LOSS OF SAFETY, LOSS OF
25 PLEASURE, LOSS OF MOTIVATION.

26 DR. READING TESTIFIED THAT THE TESTING WAS
27 CONSISTENT WITH HIS CLINICAL IMPRESSIONS. HE TESTIFIED
28 THERE WERE NO PRIOR PSYCHIATRIC ISSUES IN THE RECENT

1 PAST.

2 I ASKED HIM, "WHAT WAS THE SIGNIFICANCE IN
3 YOUR OPINION, DR. READING, OF THE FACT THAT SHE WAS A
4 MUSLIM?"

5 AND -- AND I THINK WE SHOULD LOOK AT SLIDE
6 26.

7 HE SAID, "THE FACT THAT SHE WAS A MUSLIM
8 WAS AN AGGRAVATING FACTOR IN ENHANCING THE SEVERITY AND
9 AN IMPEDIMENT TO RECOVERY BECAUSE OF THE SHAME AND THE
10 SILENCE WHICH PRECLUDES SHARING AND RECRUITING SUPPORT
11 OF OTHERS TO ASSIST."

12 TAKE THAT DOWN, PLEASE.

13 DR. READING FURTHER TESTIFIED THAT SHE FELT
14 HELPLESSNESS, WHICH DRIVES DEPRESSION AND OFTEN LEADS TO
15 SELF-BLAME.

16 HE TESTIFIED THAT SHE CHANGED AS A RESULT
17 OF WHAT HAPPENED AT WORK WITH MR. DAVID.

18 "IT CHANGED OVER THE COURSE OF TIME,
19 PROGRESSIVE EMERGENCE OF SYMPTOMS OF DEPRESSION, THREAT,
20 OR ANXIETY THAT COINCIDED WITH HER EXPOSURE TO
21 MR. DAVID.

22 "BY THE TIME SHE LEFT, THERE WAS A
23 SIGNIFICANT CHANGE FROM WHERE SHE HAD BEEN. HER STRESS
24 SYMPTOMS BEGAN TO BREAK THROUGH.

25 "THE SIMULATION OF ORAL SEX ON A REPEATED
26 BASIS, THE TOUCHING, WHICH IS TABOO FOR ANYONE, BUT
27 CERTAINLY FOR A MUSLIM WOMAN, AND THE SHAME ASSOCIATED
28 WITH THAT TOUCHING LED TO THE STRESS SYMPTOMS THAT WERE

1 BREAKING THROUGH.

2 "HER COPING MECHANISMS NO LONGER WORKED.
3 THERE WAS A PROGRESSIVE ESCALATION OF SYMPTOMS AND A
4 PROGRESSIVE DECLINE IN HER ABILITY TO COPE."

5 THEN HE TALKED ABOUT A FRACTURING EVENT
6 THAT OCCURRED JUST BEFORE SHE LEFT WHERE MR. DAVID
7 LOCKED THE DOOR AND YELLED AT HER IN A WAY THAT WAS VERY
8 UPSETTING.

9 HE TALKED ABOUT THE IMPACT THAT LOSING HER
10 CAREER HAD ON HER. SHE DOESN'T FEEL THE SAME WAY ABOUT
11 HERSELF. AND SHE -- HE ALSO POINTED OUT THAT A
12 SUBSEQUENT EXPERIENCE WITH A BOSS ECHOED, FOR HER, THE
13 EXPERIENCE OF BEING WITH MR. DAVID.

14 HE TALKED ABOUT A LOSS OF SELF-WORTH. HE
15 TALKED ABOUT HER EXPERIENCING PANIC ATTACKS, RAPID
16 HEARTBEAT, HYPERVENTILATION, SWEATS, SHAKES, CLASSIC
17 SYMPTOMS. AND HE SAID, "THESE OCCUR WITHOUT WARNING."

18 FEELING UNCLEAN, THE STIGMA. HE SAID,
19 "THERE'S A SENSE OF STIGMA ATTACHED. SHE FEELS A LOSS
20 OF SELF-WORTH, A SENSE OF SHAME AND HUMILIATION."

21 HE SAID, "SHE HAS DIFFICULTY EXPERIENCING
22 PLEASURE. SHE'S HYPERVIGILANT," WHICH SHE EVEN SAID THE
23 SAME THING. SHE CAN'T EVER TURN IT OFF.

24 "YOU'RE ALWAYS, LIKE, LOOKING AROUND, LIKE
25 WHO'S GOING TO GO AFTER ME."

26 SHE'S ALSO HYPERSENSITIVE, WHICH MEANS
27 SHE'S EMOTIONALLY REACTIVE.

28 DR. READING TALKED ABOUT THE IMPACT THAT

1 HER FATHER'S BEHAVIOR, AS A CHILD, HAD ON HER. HE SAID
2 THAT SHE HAD SHOWN INTACT FUNCTIONING BEFORE SHE WENT TO
3 WORK FOR MR. DAVID. HE SAID, "YOU CAN'T IGNORE THE FACT
4 THAT SHE WAS A VERY BAD SITUATION AT HOME, BUT SHE
5 WASN'T ENCUMBERED WITH ACTIVE PSYCHIATRIC SYMPTOMS. SO
6 THOSE SYMPTOMS ERUPTED AND OCCURRED AS A RESULT OF WHAT
7 HAPPENED AT WORK WITH MR. DAVID. AND THE ISSUES WITH
8 HER FATHER MADE HER MORE VULNERABLE AS A RESULT OF THE
9 SEVERITY AND TRAJECTORY OF HER SYMPTOMS.

10 THERE'S A JURY INSTRUCTION THAT YOU'RE
11 GOING TO SEE WHICH TALKS ABOUT A PLAINTIFF THAT'S
12 UNUSUALLY SUSCEPTIBLE. ESSENTIALLY IN LAW SCHOOL WE
13 TALK ABOUT IT AS THE EGG SHELL PLAINTIFF. SOMEBODY
14 WALKS AROUND AND THEN SOMETHING THAT MAKES THEM
15 PARTICULARLY VULNERABLE, IF YOU HIT THEM WITH A HAMMER
16 ON THE HEAD, THEIR SKULL'S GOING TO BE BREAK. YOU DON'T
17 KNOW THAT, BUT YOU HAVE NO BUSINESS HITTING THEM ON THE
18 HEAD WITH A HAMMER. SO IF SOMEBODY HAS A VULNERABILITY
19 AND AS A RESULT OF THAT, THEY'RE MORE SUSCEPTIBLE TO
20 INJURY, IT'S ON THE PERSON THAT ACTS INAPPROPRIATELY.

21 DR. READING SAID "ABSENT WHAT HAPPENED TO
22 HER AT WORK, SHE WOULDN'T HAVE DEVELOPED THE SYMPTOMS OR
23 THESE DISORDERS." AND HE SAID THAT SHE WAS VERY HIGH
24 FUNCTIONING. "BEFORE SHE WENT TO WORK, SHE WAS
25 ASYMPTOMATIC."

26 HE TALKED ABOUT THE FACT THAT SHE SUFFERS
27 FROM INTRUSIVE THOUGHTS WHICH ARE INVOLUNTARY, WHICH
28 MATCHES UP WITH ALWAYS THINKING ABOUT ALWAYS HAVING HER

1 BREASTS EXPOSED, HIM TOUCHING HER VAGINA, GROPING HER.

2 HE ALSO SAID THAT SHE HAD PHYSICAL
3 COMPLAINTS, WHICH ON THE SCALES SHOWED MALAISE, FEELING
4 TIRED, FEELING WEAK, LOSS OF ENERGY.

5 HE ALSO SAID, "DEPRESSION AND TRAUMA AFFECT
6 MEMORY." THERE'S A LOT OF THINGS MS. KHAN DIDN'T
7 REMEMBER. AND DR. READING SAID THAT THAT COULD BE
8 AFFECTED BY THIS THING.

9 NOW, HIS DIAGNOSIS, MAJOR DEPRESSION --
10 SLIDE 27 -- THIS IS DR. READING'S DIAGNOSIS. SYMPTOMS
11 OF DEPRESSION THAT WOULD QUALIFY FOR MAJOR DEPRESSIVE
12 DISORDER. REQUIRE A CONSTELLATION OF SYMPTOMS TO BE
13 ONGOING TO GIVE RISE TO THE STRESS AND DIFFICULTY OF
14 FUNCTIONING AND POST TRAUMATIC STRESS DISORDER.

15 THANK YOU. YOU CAN TAKE THAT DOWN.

16 HE TESTIFIED THAT THIS WAS CAUSED BY WHAT
17 HAPPENED TO HER AT WORK. NO QUESTION ABOUT IT.

18 AND THAT HER PROGNOSIS WAS VERY GUARDED.
19 HE SAID THAT EVEN WITH MAJOR DEPRESSION, THE LONGER THE
20 DURATION OF EXPOSURE, THE MORE DIFFICULT IT IS TO GET A
21 RECOVERY. AND AFTER FOUR YEARS, HE TESTIFIED THAT SHE
22 WAS NOT EXPECTED TO MAKE A FULL RECOVERY.

23 HE SAID THERE'S THINGS THAT CAN BE DONE TO
24 HELP, BUT IN TERMS OF BRINGING MS. KHAN BACK TO WHERE
25 SHE WAS, HE WOULD SAY NO. SHE'LL ALWAYS HAVE RESIDUAL
26 EFFECTS FROM THESE EVENTS.

27 HER COUSIN TESTIFIED THAT IN THE LAST FEW
28 YEARS MS. KHAN HAS GOTTEN WORSE. SHE'S BEEN REGRESSING

1 EMOTIONALLY. SHE'S GOTTEN WORSE. SHE'S NOT THE SAME
2 PERSON. HER LIFE HAS NOT BEEN MOVING.

3 DR. READING TALKED ABOUT WHAT THE TREATMENT
4 WOULD BE FOR OPTIMAL RECOVERY. ABOUT A TWO-YEAR PROCESS
5 TO TREAT TRAUMA, VERY CONTROLLED PROGRAM PROVIDING
6 OPPORTUNITIES FOR GREATER EXPOSURE. AND IT WOULD BE
7 CONSIDERED COGNITIVE BEHAVIOR PSYCHOTHERAPY AND
8 MEDICATION.

9 AND HE TESTIFIED THIS TREATMENT, EVEN
10 THOUGH IT WOULDN'T FULLY RESOLVE THE PROBLEMS, WOULD
11 HELP IN HIS OPINION OR MIGHT HELP, AND IT WOULD COST
12 \$130,000.

13 NOW, MS. KHAN, WHEN SHE LEFT, SHE SENT AN
14 E-MAIL, EXHIBIT 115, TALKING ABOUT ALL THE BAD THINGS
15 MR. DAVID HAD DONE AND SAYING, AS A RESULT OF THAT,
16 SHE'S LEAVING.

17 THEN WE GO A YEAR LATER ALMOST, SEPTEMBER
18 OF 2016, AND WHAT DOES MR. DAVID DO IN SEPTEMBER 2016?
19 HE DOES THE SAME ORAL SEX THAT HE DID TO MS. KHAN TO
20 LAUREN REEVES, ANOTHER WOMAN.

21 LOOK AT SLIDE 28.

22 THIS IS LAUREN REEVES' TESTIMONY. "HE
23 SHOVED MY HEAD TO HIS CROTCH AND HELD MY HEAD THERE.

24 "DID YOUR HEAD MAKE CONTACT WITH HIS
25 CROTCH?

26 "IT DID, YES.

27 "THEN HE GOT OFF YOU, WALKED BACK AROUND
28 HIS DESK, AND SAID, 'YOU'RE COMING WITH ME AFTER WORK TO

1 MY APARTMENT AT THE MONTAGE HOTEL.' "

2 HOW CAN THIS BE STOPPED? HOW CAN THIS BE
3 ALLOWED IN THIS SOCIETY? IN THIS YEAR? WHEN EVERYBODY
4 KNOWS ABOUT SEXUAL HARASSMENT, WHEN EVERYBODY KNOWS THAT
5 YOU CAN'T WALK AROUND NAKED, GRAB WOMEN IN THE CROTCH,
6 GRAB WOMEN'S BREASTS.

7 BECAUSE MR. DAVID IS A LAW UNTO HIMSELF.
8 HE DOESN'T CARE WHAT THE COURT SAYS, WHAT THE COURT
9 DOES, WHAT LAWYERS DO. NONE OF THAT MATTERS TO HIM.
10 HE'S GOING TO DO WHAT HE WANTS TO DO.

11 AND THE REASON WE HAVE A JURY TRIAL IS
12 BECAUSE THIS IS WHERE YOU, THE CONSCIENCE OF THIS
13 COMMUNITY, GET TO TELL MR. DAVID THAT THIS IS NOT OKAY,
14 THAT HE CAN'T DO THAT, AND IF HE DOES, THERE ARE SEVERE
15 CONSEQUENCES.

16 NOW, YOU'RE GOING TO GET IN THE JURY ROOM,
17 YOU'RE GETTING, ESSENTIALLY, TWO GROUPS OF DOCUMENTS.
18 ONE IS A VERDICT FORM AND ONE IS JURY INSTRUCTIONS,
19 WHICH THE JUDGE -- THE JUDGE READ TO YOU. AND THEY KIND
20 OF -- THEY KIND OF INTERACT TOGETHER.

21 LET'S TAKE A LOOK AT THE VERDICT FORM.
22 THIS IS A SPECIAL VERDICT FORM THAT YOU'RE GOING TO HAVE
23 TO FILL OUT.

24 THE FIRST CAUSE OF ACTION, THE FIRST LEGAL
25 CLAIM WE HAVE IS A BATTERY.

26 "DID ALKI DAVID TOUCH MAHIM KHAN WITH THE
27 INTENT TO HARM OR OFFEND HER?"

28 OKAY. NOW, THE TOUCHING, SIMULATED ORAL

1 SEX. TOUCHING HER INNER THIGH, GRABBING HER VAGINA,
2 GRABBING HER BREAST, GRABBING HER BUTTOCKS. ALL OF THAT
3 WOULD CONSTITUTE TOUCHING WITH THE INTENT TO HARM OR
4 OFFEND HER.

5 AND YOU'LL SEE A JURY INSTRUCTION, JURY
6 INSTRUCTIONS NO. 1320, WHICH TALKS ABOUT WHAT IS INTENT.

7 I CAN'T READ THAT. IT'S TOO SMALL.

8 IF HE WAS SUBSTANTIALLY CERTAIN THAT A
9 BATTERY WOULD RESULT FROM HIS CONDUCT, WHICH IS OBVIOUS.

10 LET'S GO BACK TO THE BATTERY CAUSE OF
11 ACTION, PLEASE.

12 SO QUESTION NO. 1, I SUGGEST IS "YES."

13 QUESTION NO. 2, "DID MAHIM KHAN CONSENT TO
14 BE TOUCHED?"

15 THE ANSWER'S "NO."

16 "WAS SHE HARMED OR OFFENDED BY HIS
17 CONDUCT," QUESTION 3?

18 "YES."

19 "WOULD A REASONABLE PERSON IN HER SITUATION
20 HAVE BEEN OFFENDED?"

21 "YES."

22 THESE ARE THE ELEMENTS OF THE CAUSE OF
23 ACTION OF BATTERY. SO YOU'LL SEE IN THE JURY
24 INSTRUCTIONS, TO FIND A BATTERY, YOU'VE GOT TO FIND
25 THESE FOUR THINGS. AND ESSENTIALLY THE VERDICT FORM IS
26 TESTING TO SEE IF YOU FOUND THE THINGS THAT ARE
27 NECESSARY TO FIND BATTERY.

28 QUESTION NO. 5 IS A SEPARATE CAUSE OF

1 ACTION CALLED SEXUAL BATTERY, WHICH IS DIFFERENT.

2 WITH A SEXUAL BATTERY, THERE HAS TO BE A
3 HARMFUL OR OFFENSIVE CONTACT WITH HER BREASTS, BUTTOCKS,
4 OR GROIN, WHICH COULD BE HIS CROTCH, HER VAGINA.
5 CLEARLY THERE WERE A NUMBER OF HARMFUL OR OFFENSIVE
6 CONTACTS WITH HER BREASTS, BUTTOCKS, AND GROIN.

7 SO THE ANSWER IS "YES."

8 "DID HIS CONDUCT RESULT IN A SEXUALLY
9 OFFENSIVE CONDUCT?"

10 I SUGGEST "YES."

11 "DID SHE CONSENT TO THE TOUCHING?"

12 "NO."

13 "WAS SHE HARMED OR OFFENDED BY HIS
14 CONDUCT," QUESTION NO. 8?

15 "YES."

16 QUESTION NO. 9 IS -- STARTS THE QUESTIONS
17 REGARDING SEXUAL HARASSMENT.

18 THIS IS -- THIS IS REPEATED FOR EACH OF THE
19 ENTITIES THAT WE CLAIM SHE WAS EMPLOYED BY. SO THERE'S
20 A SERIES OF QUESTIONS FOR HOLOGRAM USA.

21 NEXT THERE'S A SERIES OF QUESTIONS FOR
22 FILMON TV.

23 THEN THERE'S A SERIES OF QUESTIONS FOR ALKI
24 DAVID PRODUCTIONS.

25 SAME QUESTIONS, THREE DIFFERENT ENTITIES,
26 BECAUSE WE CLAIM THAT SHE WAS EMPLOYED BY EACH OF THEM.

27 SO THE FIRST QUESTION IS -- AND THEY'RE ALL
28 THE SAME -- "WAS SHE AN EMPLOYEE OF HOLOGRAM USA?"

1 I SUGGEST "YES," BASED ON THE EVIDENCE THAT
2 SHE REPORTED TO MR. SHOEFIELD, WHO WAS A SENIOR VP, AND
3 THE OTHER EVIDENCE I MENTIONED.

4 "WAS SHE SUBJECTED TO UNWANTED HARASSING
5 CONDUCT BECAUSE SHE'S A WOMAN?"

6 LOOK AT JURY INSTRUCTION 2523, WHICH
7 DEFINES WHAT IS THE WORD "HARASSING" MEANS. SO THAT'S
8 WHAT YOU HAVE TO FIND. VERBAL HARASSMENT, PHYSICAL
9 HARASSMENT, UNWANTED SEXUAL ADVANCES ARE ALL TYPES OF
10 HARASSING CONDUCT. AND THAT'S -- THAT'S WHAT YOU NEED
11 TO FIND FOR QUESTION NO. 10.

12 QUESTION NO. 11 IS: "WAS THE HARASSMENT
13 SEVERE OR PERSUASIVE?"

14 AND "SEVERE OR PERVASIVE" IS DEFINED IN
15 JURY INSTRUCTION 2524, SO YOU'LL SEE WHAT THAT MEANS.

16 CAN YOU MAKE IT A LITTLE BIT BIGGER?

17 YEAH.

18 IT ALTERS THE CONDITIONS OF EMPLOYMENT AND
19 CREATES A HOSTILE OR ABUSIVE WORK ENVIRONMENT. HOW
20 OFTEN OR WHAT PERIOD OF TIME? ALL OF THOSE THINGS YOU
21 TAKE INTO CONSIDERATION IN DECIDING WHETHER OR NOT THE
22 CONDUCT IS SEVERE OR PERVASIVE.

23 WE THINK WE'VE PROVEN THAT TO A FAULT.

24 QUESTION NO. 12 IS: "WOULD A REASONABLE
25 WOMAN IN MAHIM KHAN'S CIRCUMSTANCES HAVE CONSIDERED THE
26 WORK ENVIRONMENT TO BE HOSTILE, INTIMIDATING, OFFENSIVE,
27 OR ABUSIVE?"

28 I THINK IT'S OBVIOUS ANY WOMAN WOULD,

1 HAVING THEIR BREAST GRABBED, THEIR VAGINA GRABBED, AND
2 ALL THE REST OF IT.

3 QUESTION NO. 13: "DID SHE CONSIDER THE
4 WORK ENVIRONMENT TO BE HOSTILE, OFFENSIVE, OPPRESSIVE,
5 OR ABUSIVE?"

6 "DID A SUPERVISOR ENGAGE IN HARASSING
7 CONDUCT?"

8 MR. DAVID CERTAINLY IS A SUPERVISOR.

9 AND "WAS THE HARASSING CONDUCT A
10 SUBSTANTIAL FACTOR IN CAUSING HER HARM?"

11 AND "SUBSTANTIAL FACTOR" IS DEFINED IN JURY
12 INSTRUCTION 430, WHICH SAYS IT CAN'T BE A TRIVIAL
13 FACTOR. IT HAS TO BE A FACTOR THAT WOULD -- CONSIDERED
14 TO CONTRIBUTED TO THE HARM. MUST BE MORE THAN A REMOTE
15 OR TRIVIAL FACTOR. DOESN'T HAVE TO BE THE ONLY CAUSE OF
16 THE HARM.

17 THEN AFTER THOSE SERIES OF QUESTIONS, WE
18 HAVE THE SAME QUESTIONS FOR ALKI DAVID PRODUCTIONS AND
19 THE SAME QUESTIONS FOR FILMON TV.

20 AND THEN QUESTION NO. 30 ASKS WHETHER ALKI
21 DAVID ENGAGED IN THE HARASSING CONDUCT AND WHETHER
22 THE --

23 AND 31 IS: "WAS THE HARASSING CONDUCT A
24 SUBSTANTIAL FACTOR IN CAUSING HARM TO MAHIM KHAN?"

25 ALL OF WHICH I SUGGEST THE ANSWERS ARE
26 "YES."

27 NOW WE GET TO DAMAGES. THE THING ABOUT
28 DAMAGES IS THIS: THERE'S NO GUIDEPOST, THERE'S NO

1 GUIDELINES AS TO HOW MUCH IS THE RIGHT NUMBER OR THE
2 WRONG NUMBER. THE REASON WE HAVE JURIES IS BECAUSE YOU
3 BRING YOUR COLLECTIVE LIFE EXPERIENCES AND YOUR
4 COLLECTIVE WISDOM AND YOU GET TO DECIDE WHAT YOU THINK
5 IS APPROPRIATE. THE LAW SIMPLY TELLS YOU THE ELEMENTS
6 OF DAMAGES; OKAY?

7 SO, FOR EXAMPLE, QUESTION NO. 32, PAST
8 NONECONOMIC LOSS. "NONECONOMIC" MEANS MENTAL SUFFERING,
9 PHYSICAL PAIN -- AND YOU'LL SEE IN THE JURY
10 INSTRUCTIONS, IT TELLS YOU ALL THE ELEMENTS,
11 HUMILIATION, GRIEF, ALL OF THOSE A PART OF PAST MENTAL
12 SUFFERING.

13 I SUGGEST THAT FOR PAST ECONOMIC [SIC]
14 LOSS, THERE'S FOUR YEARS SHE HAS SUFFERED AS A RESULT OF
15 WHAT MR. DAVID HAS DONE -- FOUR YEARS. I SUGGEST
16 \$1 MILLION PER YEAR, FOR \$4 MILLION, FOR HER PAST
17 NONECONOMIC LOSS, THAT WOULD BE AN APPROPRIATE AMOUNT.

18 YOU ALSO HAVE TO COME UP WITH A NUMBER FOR
19 HER FUTURE NONECONOMIC LOSS.

20 DR. READING SAYS SHE'LL ALWAYS HAVE
21 RESIDUAL EFFECTS, SHE'LL ALWAYS HAVE TO DEAL WITH THIS.
22 WHAT SHE SUFFERED, WHAT SHE'S GONE THROUGH, WHAT SHE'S
23 HAD TO DEAL WITH IN HER LIFE BECAUSE OF ONE MAN
24 DERAILING SOMEBODY'S CAREER, THEIR LIFE, THEIR
25 ASPIRATIONS, EVERYTHING THAT THEY STAND FOR, YOU DON'T
26 GET TO JUST DO THAT AND WALK AWAY AND SAY "HAVE A NICE
27 DAY."

28 FOR THE FUTURE NONECONOMIC LOSS, WE SUGGEST

1 \$6 MILLION, FOR A TOTAL OF \$10 MILLION FOR HER
2 NONECONOMIC LOSS.

3 THEN WE GET INTO THE PAST ECONOMIC -- THEN
4 WE GET TO THE ECONOMIC DAMAGES.

5 THE LOST EARNINGS, IT'S A LITTLE HARD TO
6 CALCULATE BECAUSE WE DIDN'T PUT ON EVIDENCE OF EVERY
7 PENNY SHE MADE, BUT WHEN SHE FIRST LOST HER -- WE PUT IN
8 EVIDENCE THAT WHEN SHE FIRST LOST HER JOB, THERE WAS
9 ABOUT A SIX-MONTH PERIOD SHE WAS UNEMPLOYED AND SHE WAS
10 EARNING ABOUT 40,000 A YEAR AT ALKI DAVID COMPANIES, SO
11 WE SUGGESTED 20,000 -- 20,000 FOR THAT PERIOD. AND THEN
12 SHE WENT TO LIVE WITH HER MOM IN MARCH UNTIL NOW, SHE
13 HASN'T BEEN WORKING, SO WE SUGGESTED ANOTHER 20,000.

14 SO LOST EARNINGS TO DATE, WE SAID \$40,000.

15 WE REALLY DIDN'T PRESENT ANY EVIDENCE OF
16 MEDICAL EXPENSES TO DATE, SO WE'RE NOT ASKING FOR THOSE,
17 MINOR ANYWAY, \$600 OR \$1,000. SOMETHING LIKE THAT.

18 ON FUTURE ECONOMIC LOSSES, WE HAVE PROBABLY
19 THE NEXT TWO-YEARS. IF DR. READING'S REGIMEN IS
20 FOLLOWED, AT LEAST TWO YEARS SHE'S NOT GOING TO BE
21 WORKING AT ALL, SO WE SAID 80,000 PLUS WHATEVER AMOUNT
22 YOU THINK IS REASONABLE FOR THE FUTURE. SHE'LL HAVE TO
23 CHANGE CAREERS AND THINGS LIKE THAT.

24 AND ON MEDICAL EXPENSES, DR. READING
25 TESTIFIED IT'S \$130,000.

26 PUNITIVE DAMAGES, NOW WE UNDERSTAND YOU'VE
27 BEEN TOLD BY THE COURT THAT IN THIS PHASE OF THE TRIAL,
28 YOU'RE NOT ALLOWED TO IMPOSE PUNITIVE DAMAGES. IT'S NOT

1 PART OF THIS. THIS IS WHAT'S CALLED THE COMPENSATION
2 PART, WHERE YOUR JOB IS TO COMPENSATE MS. KHAN FOR HER
3 PAST AND FUTURE LOSSES: MEDICAL, EMOTIONAL.

4 BUT IF NO. 33 ASKS WHETHER OR NOT WE HAVE
5 PROVEN TO YOU BY CLEAR AND CONVINCING EVIDENCE THAT
6 MR. DAVID ENGAGED IN HARASSING CONDUCT WITH MALICE,
7 OPPRESSION, OR FRAUD -- I DON'T THINK THE FRAUD
8 APPLIES -- BUT YOU CAN LOOK AT THE JURY INSTRUCTIONS
9 WHICH DEFINES MALICE OR OPPRESSION, AND I THINK YOU'LL
10 AGREE WITH ME THAT WHAT HE DID WAS MALICIOUS, IT WAS
11 OPPRESSIVE, IT WAS VILE, IT WAS DESPICABLE. AND ONCE
12 YOU CHECK "YES" IN THAT BOX, THEN YOU GET TO DECIDE --
13 YOU WILL GET TO DECIDE WHAT PUNITIVE DAMAGES THERE WILL
14 BE AS AGAINST ALKI DAVID.

15 WE'RE NOT GOING TO SEEK PUNITIVE DAMAGES
16 AGAINST HIS COMPANIES. WE'RE ONLY GOING TO SEEK
17 PUNITIVE DAMAGES AGAINST MR. DAVID BECAUSE HE'S THE --
18 HE'S THE ONE. HE'S THE ONE THAT DID THIS. HE'S THE ONE
19 THAT SHOULD PAY TO PUNISH HIM. BUT YOU FIRST HAVE TO
20 DECIDE WHETHER OR NOT WE HAVE PROVEN MALICE, OPPRESSION,
21 OR FRAUD.

22 YOU KNOW, THEY SAY THERE'S A TIME FOR EVERY
23 PURPOSE UNDER HEAVEN. THIS IS THE TIME FOR JUSTICE.
24 THIS IS THE TIME WHEN MS. KHAN GETS TO COME IN FRONT OF
25 YOU, HAVING GONE THROUGH THIS ENTIRE LEGAL PROCESS TO
26 GET TO THIS POINT WHERE YOU, THE JURY, GET TO DECIDE
27 WHAT IS APPROPRIATE. YOU GET TO DECIDE HOW MUCH CAN A
28 GUY LIKE MR. DAVID DO TO A PERSON AND WHAT ARE THE

1 CONSEQUENCES WHEN HE DOES THAT AND WE HAVE TO COME IN
2 FRONT OF A JURY IN THIS STATE AND PRESENTED IT TO YOU.

3 I THANK YOU FOR YOUR ATTENTION. I WILL
4 HAVE ONE MORE OPPORTUNITY TO ADDRESS YOU BRIEFLY AFTER
5 MS. GAROFALO MAKES HER OPENING -- MAKES HER CLOSING
6 ARGUMENT.

7 THANK YOU.

8 THE COURT: OKAY. THANK YOU, MR. GOLDBERG.

9 WE'RE GOING TO TAKE OUR AFTERNOON BREAK.
10 RECONVENE AT 3:00.

11 PLEASE DON'T DISCUSS THIS CASE AMONGST
12 YOURSELVES OR ANYONE ELSE, AND DON'T DO ANY RESEARCH ON
13 ANY ASPECT OF THIS CASE.

14 WE'LL SEE EVERYONE IN 15 MINUTES.

15

16 (THE FOLLOWING PROCEEDINGS WERE
17 HELD IN OPEN COURT OUTSIDE THE
18 PRESENCE OF THE JURORS:)

19

20 THE COURT: OKAY. ANYONE NEED TO BE HEARD OR
21 ANYTHING BEFORE WE TAKE OUR BREAK?

22 MS. GAROFALO: NO, YOUR HONOR.

23 MR. GOLDBERG: NO, YOUR HONOR.

24 THE COURT: OKAY. SEE YOU IN 15 MINUTES.

25

26 (COURT IS IN RECESS.)

27 ///

28 ///

1 (THE FOLLOWING PROCEEDINGS WERE
2 HELD IN OPEN COURT OUTSIDE THE
3 PRESENCE OF THE JURORS:)
4

5 COURT ASSISTANT: PLEASE COME TO ORDER. COURT IS
6 AGAIN IN SESSION.

7 THE COURT: THANK YOU: WE'RE BACK ON THE RECORD
8 IN KAHN VERSUS HOLOGRAM.

9 LET THE RECORD REFLECT THAT COUNSEL AND
10 MS. KHAN ARE ALL COUNSEL TABLE.

11 OKAY. EVERYONE WHO IS AT COUNSEL TABLE,
12 HAVE ALL THE CELL PHONES BEEN TURNED OFF?

13 MS. GAROFALO: YES.

14 MR. GOLDBERG: YES.

15 THE COURT: MR. KALTGRAD, I'M SPECIFICALLY LOOKING
16 AT YOU BECAUSE I'VE NOTICED YOU ARE HIDING YOUR CELL
17 PHONE AND SENDING MESSAGES DURING THE PROCEEDINGS AND
18 THAT IS NOT ACCEPTABLE.

19 MR. KALTGRAD: YES, YOUR HONOR. JUST FOR THE
20 RECORD, I WAS TRYING TO -- MY CONNECTION ON MY COMPUTER
21 IS NOT MAINTAINING ITSELF AND I WAS TRYING TO E-MAIL THE
22 IMPORTANT DOCUMENTS WITH A SYSTEM THAT I COULD NOT
23 E-MAIL BECAUSE I GOT KICKED OFF THE SYSTEM. SO IT WILL
24 NOT HAPPEN AGAIN, YOUR HONOR, BUT THAT'S WHAT I WAS
25 TRYING TO DO.

26 THE COURT: OKAY. AND YOUR PHONE IS OFF AT THIS
27 POINT?

28 MR. KALTGRAD: PHONE IS OFF AT THIS POINT.

1 THE COURT: OKAY. AND IN THE FUTURE, I DON'T KNOW
2 WHY YOU'RE HIDING IT, BUT IT'S A PROBLEM.

3 MR. KALTGRAD: YOUR HONOR, I DIDN'T WANT THE JURY
4 TO BE DISTRACTED. I WASN'T TRYING TO HIDE IT FROM THE
5 COURT. I JUST DIDN'T WANT IT TO BECOME AN ISSUE FOR THE
6 JURY TO BE DISTRACTED.

7 THE COURT: NEXT TIME THAT HAPPENS, YOU CAN STEP
8 OUT IN THE HALLWAY, BUT DO NOT DO THINGS LIKE THAT IN
9 FRONT OF THE JURY IN CONTRADICTION WITH THE COURT'S
10 INSTRUCTIONS AGAIN.

11 MR. KALTGRAD: UNDERSTOOD, YOUR HONOR.

12 THE COURT: OKAY. ARE ALL OF OUR JURORS HERE?

13 COURT ASSISTANT: YES.

14 MR. GOLDBERG: YOUR HONOR, THERE'S A TIMELINE THAT
15 COUNSEL IS GOING TO SEEK TO USE IN HER CLOSING AND THERE
16 IS SOMETHING IN IT THAT IS WRONG; AND I DON'T WANT TO
17 OBJECT IN FRONT OF THE JURORS, BUT THERE'S NO EVIDENCE.

18 MS. GAROFALO: I ASKED HIM WHAT IT WAS, BUT I HAVE
19 NOT BEEN ADVISED. IF MR. GOLDBERG IS RIGHT IN THE
20 COURSE OF CHANGING --

21

22 (WHEREUPON THE JURY BEGAN
23 ENTERING THE COURTROOM.)

24

25 THE COURT: FOR ALL OF OUR JURORS, IF YOU COULD
26 HOLD ON FOR JUST ONE SECOND. I NEED TO SPEAK WITH THE
27 LAWYERS BEFORE YOU COME IN.

28 MS. CRUZ.

1 MR. GOLDBERG: MAY I, YOUR HONOR?

2 THE COURT: JUST ONE MOMENT.

3 JUST SO YOU KNOW, COUNSEL RAISED AN ISSUE
4 WITH ME AS THE JURY WAS COMING INTO THE COURTROOM. SO
5 IT WASN'T ANYTHING THAT YOU DID. YOU DID HEAR ME
6 CORRECTLY.

7 THIS SHOULD JUST TAKE A COUPLE OF MINUTES.

8 MR. GOLDBERG.

9 MR. GOLDBERG: SORRY. ON THE TIMELINE THAT
10 COUNSEL WAS PRESENTING, SHE STATES, "SEPTEMBER 15TH ALKI
11 DAVID DISCOURAGED, SHE," REFERRING TO MS. KHAN, "WAS
12 WORKING WITH ELIZABETH TAYLOR ON A LAWSUIT AND DAVID
13 CONFRONTS MS. KHAN FOR SECRETLY PLOTTING WITH
14 MS. TAYLOR."

15 THERE'S NO EVIDENCE THAT MS. TAYLOR WAS
16 WORKING ON A LAWSUIT WITH -- THERE'S NO EVIDENCE THAT
17 MS. KHAN WAS WORKING WITH ELIZABETH TAYLOR ON A LAWSUIT
18 OR THAT ALKI DAVID DISCOVERED IT SINCE ALKI DAVID DIDN'T
19 TESTIFY AND MS. KHAN DIDN'T TESTIFY THAT SHE WAS WORKING
20 WITH ELIZABETH TAYLOR AND THERE'S NO EVIDENCE THAT
21 MR. DAVID CONFRONTED HER FOR, QUOTE, SECRETLY PLOTTING
22 WITH MS. TAYLOR.

23 THE COURT: RIGHT.

24 MR. GOLDBERG: THAT WASN'T THE TESTIMONY AT ALL.

25 THE COURT: MS. GAROFALO.

26 MS. GAROFALO: YOUR HONOR, TESTIMONY THAT WAS
27 ACTUALLY READ BY MR. GOLDBERG DURING HIS CLOSING TALKED
28 ABOUT MR. DAVID CONFRONTING HER ABOUT WORKING WITH THIS

1 OTHER WOMAN, ELIZABETH TAYLOR, ON THE LAWSUIT; THAT HE
2 SCREAMED AT HER, BASICALLY, THAT YOU'RE NOT BEING LOYAL,
3 AND AFTER THAT SESSION, SHE QUIT.

4 THAT'S EXACTLY WHAT THE TESTIMONY SAID THAT
5 MR. GOLDBERG JUST READ TO THE JURY. IF HE WANTS US TO
6 TWEAK THE WORDING A LITTLE BIT ABOUT THE CONFRONTATION
7 IN SEPTEMBER OF 2015 IN MR. DAVID'S OFFICE, AS IN THE
8 EXCERPT JUST READ BY MR. GOLDBERG, WAS OVER MS. KHAN
9 WORKING WITH MS. TAYLOR AND --

10 THE COURT: OKAY. YOUR CLOSING ARGUMENT IS NOT
11 FOR PRESENTATION OF NEW EVIDENCE. IF YOU WANT TO ARGUE
12 WHAT THE EVIDENCE ACTUALLY WAS, YOU CAN ARGUE WHAT THE
13 EVIDENCE WAS. BUT I'M NOT GOING TO ALLOW YOU TO ARGUE
14 OUTSIDE OF THE EVIDENCE.

15 MS. GAROFALO: BUT THE EVIDENCE WAS THAT MR. DAVID
16 DISCOVERED SHE WAS WORKING WITH MS. TAYLOR.

17 THE COURT: YOU CAN ARGUE WHAT THE EVIDENCE WAS
18 THAT WAS PRESENTED AT TRIAL, BUT WHAT YOU'RE TRYING TO
19 DO IS ARGUE EVIDENCE THAT WAS NOT PRESENTED AT TRIAL AND
20 I'M NOT GOING TO ALLOW IT.

21 MS. GAROFALO: OKAY.

22 THE COURT: IF YOU WANT TO ARGUE BASED ON WHAT
23 MS. KHAN TESTIFIED TO, MR. HYAMS TESTIFIED TO, ANY OF
24 THE OTHER WITNESSES THAT ACTUALLY TESTIFIED IN THIS
25 TRIAL, YOU CAN DO THAT. BUT WHAT YOU'RE ATTEMPTING TO
26 DO THROUGH YOUR CLOSING ARGUMENT IS TO PUT NEW FACTS
27 INTO EVIDENCE THAT -- FOR WHICH THERE IS NO EVIDENTIARY
28 SUPPORT IN THE RECORD.

1 MS. GAROFALO: MS. KHAN TESTIFIED, AND THE
2 TESTIMONY WAS JUST READ BY MR. GOLDBERG, THAT MR. DAVID
3 YELLED AT HER IN A VERY LOUD VOICE FOR WORKING WITH
4 ANOTHER PERSON. AND SHE --

5 THE COURT: BUT YOU CAN ARGUE WHAT THAT TESTIMONY
6 WAS, BUT WHAT YOU'RE TRYING TO DO -- I FEEL LIKE WE'RE
7 HAVING THE SAME CONVERSATION WE HAD THE OTHER DAY ABOUT
8 IMPEACHMENT EVIDENCE. YOU'RE TRYING TO INTRODUCE INTO
9 EVIDENCE, THROUGH YOUR ARGUMENT, EVIDENCE THAT WASN'T
10 PRESENTED TO THE JURY.

11 MS. GAROFALO: OKAY. YOUR HONOR, IS THE REST OF
12 THE TIMELINE OBJECTIONABLE?

13 MR. GOLDBERG: THE REST IS OKAY. I MEAN, WE CAN
14 QUIBBLE ABOUT IT, BUT I'M NOT GOING TO. IT'S FINE.

15 THE COURT: OKAY.

16 MR. KALTGRAD: SO I CAN REDACT THAT PORTION.

17 MS. GAROFALO: WELL, WHY DON'T YOU REDACT IT NOW.

18 THE COURT: OKAY. ALL RIGHT. MS. CRUZ.

19

20 (THE FOLLOWING PROCEEDINGS WERE
21 HELD IN OPEN COURT IN THE PRESENCE
22 OF THE JURORS:)

23

24 THE COURT: OKAY. WELCOME BACK, EVERYONE. THANK
25 YOU FOR YOUR PATIENCE ONCE AGAIN. WE'LL BE CONTINUING
26 CLOSING ARGUMENTS.

27 AND, MS. GAROFALO, YOU CAN BEGIN WHENEVER
28 YOU'RE READY.

1 MS. GAROFALO: THANK YOU, YOUR HONOR.

2 GOOD AFTERNOON. YOU'RE FINALLY ALMOST AT
3 THE END. MR. GOLDBERG AND I DISAGREE ABOUT MANY THINGS,
4 BUT ONE THING I DO AGREE WITH HIM IS HOW MUCH WE
5 APPRECIATE YOUR SERVICE. WE, AS LAWYERS, COULD NOT DO
6 OUR JOBS WITHOUT YOU, AND CERTAINLY OUR CLIENTS COULD
7 NOT COME INTO COURT AND TELL THEIR STORIES AND SEEK, AS
8 MR. GOLDBERG SAID, JUSTICE WITHOUT PEOPLE LIKE YOU WHO
9 ARE WILLING TO SIT THROUGH TRIALS, LONG TRIALS AND
10 DIFFICULT TRIALS LIKE THIS ONE.

11 SO ON BEHALF OF MYSELF AND MR. KALTGRAD, I
12 DO SINCERELY THANK ALL OF YOU. YOU'VE BEEN TERRIFIC.

13 IN OPENING STATEMENT, I TOLD YOU TO LISTEN
14 TO THE EVIDENCE. AND I ALSO TOLD YOU THAT ONE OF THE
15 THINGS, IN ADDITION TO THE EVIDENCE ITSELF, THAT YOU
16 MUST CONSIDER AS JURORS IS CREDIBILITY.

17 CREDIBILITY MEANS THAT WHEN A WITNESS, ANY
18 WITNESS FOR ANY SIDE TESTIFIES, YOU HAVE TO LOOK AT
19 THEM -- AND WE'RE GOING TO LOOK AT A JURY INSTRUCTION IN
20 A MOMENT. YOU HAVE TO LOOK AT THEIR DEMEANOR, YOU HAVE
21 TO LISTEN TO THE CONSISTENCY OF THEIR TESTIMONY, AND YOU
22 HAVE TO DETERMINE WHETHER WHAT THEY ARE TELLING YOU IS
23 CREDIBLE.

24 ON FRIDAY, JUDGE COURT INSTRUCTED YOU THAT
25 THE EVIDENCE PRESENTED IN A TRIAL IS DETERMINED -- WHAT
26 IS PRESENTED TO YOU IS DETERMINED BY THE COURT. AND I
27 WANT TO TALK TO YOU ABOUT THE EVIDENCE THAT WAS ADMITTED
28 IN THIS CASE, AND IN PARTICULAR THE CREDIBILITY OF THE

1 WITNESSES PRESENTED BY THE PLAINTIFF.

2 I ALSO AM GOING TO SHOW YOU A JURY
3 INSTRUCTION THAT SAYS THAT ONE OF THE THINGS YOU LOOK AT
4 IS WHETHER A PARTY COULD HAVE PRESENTED BETTER EVIDENCE.

5 MR. KALTGRAD, IF WE CAN JUST BRING UP 5003.
6 NOT A PRAYER I CAN SEE THAT.

7 YOU'LL SEE THIS BACK IN THE WITNESS ROOM
8 [SIC], BUT THIS IS THE JURY INSTRUCTION THAT TELLS YOU
9 THE KINDS OF THINGS YOU LOOK AT TO DETERMINE WHETHER YOU
10 BELIEVE A WITNESS' TESTIMONY IS CREDIBLE. DEMEANOR IS
11 ONE OF THEM. HOW DOES THE WITNESS LOOK AND ACT WHILE
12 SPEAKING AND TESTIFYING? AND YOU CAN GO THROUGH THE
13 LIST IN THE JURY ROOM.

14 BUT CREDIBILITY IS IMPORTANT BECAUSE
15 WITNESSES ON BOTH SIDES SOMETIMES HAVE SELF-INTEREST,
16 TAKE THE STAND, AND THEY HAVE BIASES OR PREJUDICES AND
17 MAY NOT BE CREDIBLE.

18 IF WE CAN JUST LOOK BRIEFLY AT 203. AND
19 HERE'S A SHORT JURY INSTRUCTION WHICH TELLS YOU THAT
20 "YOU MAY CONSIDER THE ABILITY OF EACH PARTY TO PROVIDE
21 EVIDENCE. IF A PARTY PROVIDED WEAKER EVIDENCE WHEN IT
22 COULD HAVE PROVIDED STRONGER EVIDENCE, YOU MAY DISTRUST
23 THE WEAKER EVIDENCE." AND THAT'S SOMETHING THAT WE ARE
24 GOING TO TALK ABOUT.

25 THERE ARE TWO BASIC CATEGORIES FOR YOU TO
26 DECIDE IN THIS CASE. THE FIRST ONE IS WHAT LAWYERS CALL
27 "LIABILITY," AND THAT MEANS WHAT HAPPENED. YOU'VE HEARD
28 THE WITNESSES, YOU DETERMINE CREDIBILITY, AND IT IS UP

1 TO YOU TO DECIDE WHAT HAPPENED.

2 THE SECOND PART IS EQUALLY IMPORTANT AND
3 THAT'S DAMAGES. ONE OF THE ISSUES IN DAMAGES IS WHAT WE
4 LAWYERS CALL "CAUSATION."

5 THE FIRST THING YOU LOOK AT IS WHETHER OR
6 NOT THE PLAINTIFF IN THIS CASE ACTUALLY SUFFERED DAMAGES
7 SUBSTANTIALLY CAUSED BY MR. DAVID'S CONDUCT.

8 AND WE'LL GET BACK TO THIS IN A MINUTE, BUT
9 YOU HAVE HEARD EXTENSIVE TESTIMONY ABOUT MS. KHAN'S
10 BACKGROUND AND THE 19 YEARS OF PERVASIVE AND SEVERE
11 ABUSE THAT SHE SUFFERED, BOTH PHYSICAL AND MENTAL, AT
12 THE HANDS OF HER FATHER; AND WE ARE GOING TO TALK A
13 LITTLE BIT ABOUT HOW THAT MIGHT PLAY INTO DR. READING'S
14 OPINIONS AND SOME OF THE OTHER THINGS YOU'VE HEARD IN
15 THIS CASE, PARTICULARLY CAUSATION AND DAMAGES.

16 SO I'M GOING TO JUMP AROUND A LITTLE BIT
17 BECAUSE, AS WE TALKED ABOUT BEFORE, THE DEFENDANT GETS
18 TO ANSWER SOME OF THE THINGS PLAINTIFF SAID, WHICH OF
19 COURSE WE DON'T KNOW UNTIL WE HEAR IT WHEN YOU DO.

20 SO I JUST WANT TO TALK ABOUT A FEW ISSUES
21 AND TIE THEM IN TO WHAT WE JUST TALKED ABOUT,
22 CREDIBILITY IN PARTICULAR, AND BETTER EVIDENCE.

23 I'M JUST GOING TO START WITH AN EASY ONE,
24 THE HARASS POSTER THAT YOU'VE SEEN AND MR. GOLDBERG JUST
25 SHOWED YOU AGAIN IN HIS CLOSING.

26 THE POSTER, AT THE BOTTOM, HAD THE NAMES OF
27 THE TWO WOMEN -- WELL, IT HAD THE NAMES OF TWO WOMEN,
28 ALLI BOTTO AND JANEL BAUER. PLAINTIFF DID NOT CALL

1 EITHER MS. BAUER, NOR MS. BOTTO TO CORROBORATE
2 PLAINTIFF'S TESTIMONY THAT THAT POSTER WAS UP FOR A YEAR
3 OR THAT MR. DAVID HAD ANY INVOLVEMENT WITH HANGING THAT
4 POSTER.

5 AND WHILE WE'RE STARTING HERE ON AN EASY
6 ONE, I WANT TO TELL YOU THAT THE TESTIMONY YOU'VE HEARD
7 HAS BEEN MAINLY FROM MS. KHAN'S POINT OF VIEW.
8 TESTIMONY ABOUT HER BACKGROUND, WHAT SHE WAS BEFORE,
9 WHAT SHE IS NOW, WHAT SHE TOLD DR. READING. EVERYTHING
10 SAID IN THIS COURTROOM, WITH THE EXCEPTION OF TWO
11 WITNESSES, WHO WE'LL TALK ABOUT SEPARATELY, WAS TOLD TO
12 YOU FROM MS. KHAN'S EYES.

13 WHEN WE DETERMINE CREDIBILITY, ONE OF THE
14 THINGS YOU CAN CONSIDER IS WHO HAS SOMETHING TO GAIN BY
15 CERTAIN TESTIMONY.

16 SO, AGAIN, AS WE GO THROUGH THE TESTIMONY,
17 YOU WILL SEE THAT THE WITNESSES EITHER TOLD YOU THEY
18 HEARD IT FROM MS. KHAN OR MS. KHAN CONVEYED THE EVIDENCE
19 OR THE TESTIMONY, THE FACTS, TO YOU. IT IS ALL STRAINED
20 THROUGH MS. KHAN'S EYES WITH VERY LITTLE, IF ANY,
21 CORROBORATION FROM NEUTRAL, UNBIASED WITNESSES WITH
22 ACTUAL KNOWLEDGE OF THE FACTS.

23 ONE OF THE THINGS MS. KHAN TOLD YOU ABOUT,
24 AS I JUST MENTIONED, WAS THE SEVERITY AND THE CRUELTY OF
25 HER UPBRINGING, NOT ONLY THE BEATINGS MS. KHAN DESCRIBED
26 FROM THE TIME SHE WAS EIGHT MONTHS OLD ON A REGULAR AND
27 ROUTINE BASIS FROM HER FATHER, BUT EMOTIONAL TERROR FROM
28 HER FATHER AND A MOTHER WHO WAS NOT SUPPORTIVE, WHO DID

1 NOT INTERVENE, WHO ALLOWED THE CONDUCT AND THE ABUSE TO
2 CONTINUE FOR 19 YEARS.

3 MS. KHAN HAS INDICATED TO YOU THAT HER
4 EMOTIONAL STATE IS UNCONNECTED. IT'S UP FOR YOU -- IT'S
5 UP TO YOU TO DECIDE WHETHER THAT'S CREDIBLE, AND WE'RE
6 GOING TO GET INTO THAT MORE WHEN WE DISCUSS
7 DR. READING'S TESTIMONY.

8 MS. KHAN WORKED AT FILMON BETWEEN EARLY
9 OCTOBER 2014 AND SEPTEMBER 2015. APPROXIMATELY A YEAR.
10 ACCORDING TO MS. KHAN, MR. DAVID WAS GONE FOR PART OF
11 THAT TIME, MAYBE TWO MONTHS AT THE BEGINNING UNTIL ABOUT
12 DECEMBER 2014 AND FOR THE SUMMER OF 2015.

13 SO MS. KHAN AND MR. DAVID WORKED TOGETHER
14 FOR APPROXIMATELY EIGHT MONTHS. COMPARE EIGHT MONTHS,
15 EVEN ASSUMING THAT WHAT MS. KHAN TOLD YOU IS TRUE, EIGHT
16 MONTHS TO 19 YEARS OF ABUSE IN MS. KHAN'S FORMATIVE
17 YEARS, AND YOU DECIDE WHETHER IT IS CREDIBLE THAT HER
18 CHILDHOOD HAD NO EFFECT ON HER EMOTIONAL STATE AND THAT
19 IT IS ALL ATTRIBUTABLE TO MR. DAVID.

20 INTERESTINGLY, MS. KHAN HAS NOT SHOWN YOU
21 ANY EVIDENCE OF A COMPLAINT OF ANY SORT UNTIL AUGUST 28,
22 2015, ALMOST A YEAR INTO HER EMPLOYMENT. SHE TOLD YOU
23 THAT MR. DAVID'S CONDUCT BEGAN IN DECEMBER OF 2014.

24 SHE TOLD YOU ABOUT INCIDENTS IN FEBRUARY
25 AND MARCH, AN INCIDENT IN JANUARY, AND AN INCIDENT LATER
26 ON IN THE SPRING AND SUMMER OF 2015. NO COMPLAINT OF
27 ANY KIND WAS MADE UNTIL AUGUST 28, 2015. ASK YOURSELVES
28 WHY.

1 MS. KHAN TOLD YOU FIRST THAT IN SEPTEMBER
2 OF 2015, SHE WAS DENIED A PROMOTION AND SHE WAS DENIED
3 THAT PROMOTION BECAUSE SHE'S A WOMAN. SHE TOLD YOU THAT
4 THE GENTLEMAN THAT GOT THE JOB WAS LESS QUALIFIED. THAT
5 TESTIMONY WAS ACTUALLY ON A FRIDAY AND MS. KHAN TOLD US
6 THAT IN SEPTEMBER 2015 IAN, I-AN, ROBERTSON WAS THE
7 GENTLEMAN WHO GOT THE JOB THAT SHE THOUGHT SHE WAS MORE
8 QUALIFIED FOR. HOWEVER, MS. KHAN SHOWED YOU AN E-MAIL
9 EARLIER ON WHICH DISCLOSED THAT BY THAT TIME,
10 MR. ROBERTSON NO LONGER WORKED AT THE COMPANY. IF
11 YOU'LL RECALL, HE LEFT ALLEGEDLY BECAUSE OF SOME KIND OF
12 HARASSMENT ACCORDING TO MS. KHAN.

13 SO ON MONDAY, MS. KHAN CHANGED HER
14 TESTIMONY. AND NOW SHE SAID, WELL, SHE MUST HAVE MADE A
15 MISTAKE. SHE WAS DENIED THE JOB IN MAY OR JUNE OF 2015.

16 ONE QUESTION YOU MIGHT ASK IS, WHY, IN THIS
17 ALLEGEDLY TERRIBLE WORKPLACE WHERE MS. KHAN WAS BEING
18 HARASSED ON A REGULAR BASIS, ACCORDING TO HER OWN
19 TESTIMONY, WAS SHE SEEKING NOT ONLY TO STAY, BUT SEEKING
20 A PROMOTION? WELL, THE ANSWER MAY BE IN THE
21 INTERROGATORY RESPONSE THAT YOU SAW. AND IF YOU'LL
22 RECALL, INTERROGATORIES ARE QUESTIONS ASKED OF PARTIES
23 TO A LITIGATION. AND MS. KHAN WAS ASKED SPECIFICALLY,
24 "WERE YOU DENIED A PROMOTION BECAUSE YOU WERE A WOMAN?"
25 AND SHE RESPONDED, "I WAS NOT DENIED A PROMOTION."

26 INCONSISTENT TESTIMONY LIKE THAT MAY
27 INDICATE THAT A WITNESS IS NOT CREDIBLE.

28 SO MS. KHAN ALSO TOLD US THAT IN AUGUST OF

1 2015, AND MR. GOLDBERG JUST SHOWED YOU THE E-MAIL, SHE
2 COMPLAINED TO HER BOSS, GARY SHOEFIELD. AND SHE TOLD
3 GARY SHOEFIELD ABOUT SOME OF THE THINGS THAT WERE GOING
4 ON. YOU MAY HAVE NOTICED THAT MS. KHAN DID NOT CALL
5 MR. SHOEFIELD AS A WITNESS.

6 MS. KHAN ALSO TOLD US THAT MR. SHOEFIELD
7 ADVISED HER TO GO TO MS. CALENDAR EVEN THOUGH, ACCORDING
8 TO MS. KHAN, MS. CALENDAR WAS NOT THE HR PERSON. AND
9 MS. KHAN TOLD US THAT SHE DID GO TO MS. CALENDAR AT
10 MR. SHOEFIELD'S RECOMMENDATION AND THEY DISCUSSED SEXUAL
11 HARASSMENT AND HAD -- AND THIS IS A QUOTE -- A
12 LIGHTEARTED CONVERSATION.

13 WELL, ASSUMING THAT WHAT MS. KHAN TOLD US
14 IS TRUE OF HER MONTHS AT FILMON OR ONE OF THE OTHER
15 ENTITIES, IT IS -- IS IT CREDIBLE THAT SHE AND
16 MS. CALENDAR HAD A LIGHTEARTED CONVERSATION IF MS. KHAN
17 WAS AS DISTRESSED AS SHE CLAIMS AND EVEN HAVING SUICIDAL
18 THOUGHTS BY AUGUST 2015? ASK YOURSELVES WHETHER THAT
19 TESTIMONY IS CONSISTENT AND WHETHER THE TESTIMONY IS
20 CREDIBLE.

21 IN ANY EVENT, NOT ONLY DID MR. SHOEFIELD
22 NOT TESTIFY, MS. CALENDAR WAS NOT CALLED BY PLAINTIFF TO
23 TESTIFY.

24 SO THE ONLY VERSION OF THE FACTS OF THE
25 ALLEGED ULTIMATE COMPLAINT ALMOST A YEAR INTO MS. KHAN'S
26 EMPLOYMENT WAS MS. KHAN'S TESTIMONY. THE OTHERS WHO
27 MIGHT CORROBORATE THOSE FACTS WERE NOT CALLED AS
28 WITNESSES.

1 AND REMEMBER THE JURY INSTRUCTIONS, BETTER
2 EVIDENCE. BETTER EVIDENCE MAY VERY WELL BE EVIDENCE
3 FROM UNBIASED, NEUTRAL WITNESSES. MR. SHOEFIELD AND
4 MS. CALENDAR WERE NOT HERE TO TESTIFY, WERE NOT CALLED
5 BY MS. KHAN OR HER COUNSEL TO CORROBORATE WHAT MS. KHAN
6 TOLD YOU. ASK YOURSELVES WHY.

7 LET'S TALK A LITTLE BIT ABOUT THE ENTITIES.
8 WE'RE GOING TO WANT EXHIBIT 106.

9 MS. KHAN DID NOT PRESENT YOU WITH AN
10 EMPLOYMENT AGREEMENT. AND MS. KHAN TOLD YOU THAT SHE
11 COULDN'T RECALL WHETHER SHE SIGNED AN EMPLOYMENT
12 AGREEMENT. BUT MS. KHAN DID SHOW YOU THIS EXHIBIT.
13 THIS IS THE SALARY ADDENDUM TO EMPLOYEE CONTRACT.

14 CAN WE GO DOWN JUST A LITTLE BIT?

15 AND THIS IS AN ATTACHMENT OR AN ADDENDUM,
16 SOMETHING ADDED, TO THE EMPLOYMENT CONTRACT WHICH RAISED
17 MS. KHAN'S HOURLY RATE FROM \$15 AN HOUR TO \$20 AN HOUR.

18 ASK YOURSELVES WHY MS. KHAN DIDN'T SHOW YOU
19 HER EMPLOYMENT AGREEMENT. WHAT WAS IN THE EMPLOYMENT
20 AGREEMENT THAT MS. KHAN DID NOT WANT YOU TO SEE? AND
21 WHEN I READ THE WAIVER PROVISION IN THE EMPLOYMENT
22 AGREEMENT, WHICH ACKNOWLEDGED THE KIND OF WORKPLACE
23 FILMON WAS AND ACKNOWLEDGED MS. KHAN'S UNDERSTANDING AND
24 WAIVER -- WAIVER OF ANY CLAIMS ARISING FROM BAD
25 LANGUAGE, ALL THE THINGS THAT WERE PART OF THE CONTENT
26 THAT WAS PRODUCED BY FILMON, MS. KHAN SAID SHE DID NOT
27 REMEMBER.

28 SO WE SAW JUST THE ADDENDUM.

1 LET'S LOOK UP AT THE TOP OF THE ADDENDUM.
2 IT SAYS, "THIS ADDENDUM IS FOR THE CONTRACT BETWEEN ALKI
3 DAVID PRODUCTIONS INC., A SUBSIDIARY COMPANY OF FILMON
4 TV, INC., AND EMPLOYEE MAHIM KHAN."

5 YOU DO NOT SEE HOLOGRAM MENTIONED AS A
6 PARTY TO MS. KHAN'S EMPLOYMENT AGREEMENT.

7 YOU ALSO SAW A SERIES OF CHECKS -- A
8 BORING, LONG SERIES OF CHECKS -- SHOWN TO YOU INITIALLY
9 BY MS. KHAN'S COUNSEL. NOT A SINGLE CHECK, WHETHER A
10 REIMBURSEMENT CHECK OR A SALARY CHECK, CAME FROM
11 HOLOGRAM. THE CHECKS ALL CAME FROM ALKI DAVID
12 PRODUCTIONS OR FILMON TV, THE TWO ENTITIES IDENTIFIED IN
13 THE ADDENDUM TO EMPLOYEE CONTRACT.

14 THE EVIDENCE PRESENTED TO YOU RELATING TO
15 MS. KHAN'S ALLEGED EMPLOYMENT BY HOLOGRAM WAS A SINGLE
16 GARY SHOEFIELD E-MAIL, WHICH HAD A HOLOGRAM E-MAIL
17 ADDRESS. MR. SHOEFIELD AND HOLOGRAM.

18 THERE IS NO EVIDENCE IN THIS EVIDENCE TO
19 CORROBORATE WHAT MR. GOLDBERG JUST TOLD YOU, THAT
20 MR. SHOEFIELD WAS A SENIOR VICE PRESIDENT OF HOLOGRAM.
21 NO EVIDENCE EXCEPT MS. KHAN'S TESTIMONY. AND
22 MR. SHOEFIELD WASN'T HERE TO TELL YOU HE WAS EMPLOYED
23 SOLELY BY HOLOGRAM, NOR WAS MR. SHOEFIELD HERE TO TELL
24 YOU THAT MS. KHAN WAS EMPLOYED BY HOLOGRAM.

25 THERE IS NO EVIDENCE IN THIS RECORD, EXCEPT
26 MS. KHAN'S TESTIMONY, THAT SHE WAS EMPLOYED IN ANY WAY
27 BY HOLOGRAM AND NOT BY THE ENTITIES ACTUALLY IDENTIFIED
28 IN THE ADDENDUM TO HER EMPLOYEE CONTRACT.

1 MS. KHAN TOLD YOU FIRST THAT THERE WERE NO
2 FEMALE EXECUTIVES AT FILMON. MS. KHAN TOLD YOU SHE DID
3 NOT KNOW KIM IN HER TESTIMONY. MS. KHAN THEN CONCEDED
4 SHE DID KNOW KIM HURWITZ, A FEMALE EXECUTIVE AT FILMON.

5 LET'S TALK A LITTLE BIT NOW ABOUT
6 WITNESSES.

7 MS. KHAN TESTIFIED THAT SHE WAS BASICALLY
8 IN A CUBICLE IN AN OPEN OFFICE; NOT IN A CLOSED OFFICE,
9 DIDN'T HAVE HER OWN OFFICE WITH A DOOR, BUT IN A
10 CUBICLE. AND MS. KHAN TOLD US THAT THE ALLEGED ACTS OF
11 HARASSMENT HAPPENED AT HER CUBICLE, IN ONE OF THE
12 PRODUCTION OR EDITING BAYS WHERE THERE WERE PEOPLE,
13 THESE WERE NOT PRIVATE SPACES.

14 MS. KHAN HOWEVER BROUGHT YOU TWO WITNESSES,
15 AND HERE'S WHERE WE'RE GOING TO TALK ABOUT CREDIBILITY.

16 MS. KHAN, AND ALL THE PEOPLE WHO COULD HAVE
17 WITNESSED WHAT WAS HAPPENING AT FILMON, MS. KHAN BROUGHT
18 YOU MR. HYAMS, LUSH ONE. YOU REMEMBER MR. HYAMS. HE'S
19 THE ONE THAT, WHEN HE DIDN'T LIKE MY QUESTIONS, CALLED
20 ME A RACIST AND I THINK THE OTHER ONE WAS DUMB. LOOK AT
21 DEMEANOR. MR. HYAMS WAS HOSTILE. HE WAS ANGRY. HE DID
22 NOT WANT TO ANSWER MY QUESTIONS. INSTEAD, HE INSULTED
23 ME. HE EVADED. HE ATTEMPTED TO MAKE SPEECHES.

24 MR. HYAMS DID TELL US ONE INTERESTING
25 THING. HE TOLD US HE HAD BEEN SEXUALLY HARASSED BY
26 MR. DAVID, LEADING US TO BELIEVE, IF MR. HYAMS IS TO BE
27 BELIEVED, THAT MR. DAVID WAS NOT TARGETING HIS CONDUCT
28 AT WOMEN, BUT WAS KIND OF AN EQUAL HARASSER, SO TO

1 SPEAK.

2 SO MR. HYAMS' TESTIMONY UNDERMINES THE
3 NOTION THAT MR. DAVID'S CONDUCT WAS ADDRESSED OR
4 TARGETED TO WOMEN.

5 LET'S GO BACK TO WHAT ELSE MR. HYAMS SAID.
6 MR. HYAMS DESCRIBED MORE ACTS OF SEXUAL HARASSMENT THAN
7 EVEN MS. KHAN. HE TOLD US THAT HE SAW MR. DAVID TOUCH
8 HER BREASTS FIVE TIMES.

9 MR. HYAMS, HOWEVER, HAD A GRUDGE -- HAS A
10 GRUDGE AGAINST MR. DAVID. AND WHEN QUESTIONED BY
11 DEFENSE COUNSEL, HE ADMITTED FIRST THAT HE WAS OWED A
12 LITTLE MONEY, THEN THAT HE WAS OWED ABOUT \$100,000, AND
13 FINALLY THAT HE WAS OWED SOMEWHERE UP -- SOMEWHERE
14 BETWEEN \$200 AND \$225,000, AND THAT IS AN ISSUE IN
15 DISPUTE THAT HAS NOT BEEN RESOLVED.

16 IS THAT A REASON FOR MR. HYAMS TO COME IN
17 HERE AND GIVE BIASED TESTIMONY THAT MAY NOT BE CREDIBLE?
18 THINK ABOUT THAT WHEN YOU'RE MAKING YOUR DECISION AND
19 WEIGHING THE CREDIBILITY OF MR. HYAMS' TESTIMONY.

20 IF THAT WERE NOT ENOUGH, MR. HYAMS FINALLY
21 ADMITTED TO THE FISTFIGHT IN THE OFFICE WITH MR. DAVID.
22 SO MR. HYAMS IS ANGRY, HE BELIEVES HE'S OWED SIGNIFICANT
23 SUMS OF MONEY, AND THIS IS THE ONLY WITNESS OF ALL THE
24 PEOPLE WHO WORKED AT THE THREE ENTITIES THAT MS. KHAN
25 CLAIMS TO HAVE BEEN EMPLOYED BY TO COME IN HERE AND
26 CORROBORATE SEEING ANY ACT OF SEXUAL HARASSMENT
27 WHATSOEVER BY MR. DAVID DIRECTED TO MS. KHAN.

28 MR. HYAMS ALSO TRIED TO AVOID SAYING THAT

1 THE SHOWS THAT MS. KHAN WORKED ON INCLUDED VIOLENT
2 CONTENT, SEXUAL LANGUAGE, AND PROFANITY. AND THOSE
3 SHOWS, IF YOU RECALL, WERE CALLED ETHER WEEKLY AND A
4 SHOW CALLED BATTLE RAP WHICH WAS A COMPETITION BETWEEN
5 RAPPERS.

6 MS. KHAN TOLD US THAT SHE WORKED AT FILMON
7 WITHOUT KNOWING THAT THE COMPANY WAS PRODUCING THE KIND
8 OF SHOCKING, OUTRAGEOUS MATERIAL THAT YOU SAW. YOU SAW
9 IT IN THE LORD OF THE FREAKS VIDEO.

10 NOW, I CERTAINLY AM NOT HOME WATCHING
11 RERUNS OF LORD OF THE FREAKS, BUT LORD OF THE FREAKS WAS
12 SOMETHING THAT WAS PRODUCED FOR PUBLIC RELEASE. IT IS
13 SHOCKING. IT MAY BE TRULY DISTASTEFUL TO MOST PEOPLE,
14 MOST OF YOU, MOST OF US, BUT THE FACT IS THAT MS. KHAN
15 KNEW VERY WELL WHAT THE BUSINESSES OF FILMON WERE AND
16 WHAT MR. DAVID DID FOR A LIVING, WHICH IS TO PRODUCE
17 THIS KIND OF CONTENT, COMPETITIONS BETWEEN RAPPERS. AND
18 MR. HYAMS FINALLY ADMITTED THAT, IN FACT, PROFANITY,
19 SEXUAL LANGUAGE, AND SO FORTH WERE PART OF THOSE SHOWS.

20 HE ALSO TOLD US THAT MS. KHAN WAS AT EVERY
21 TAPING. BATTLE RAP, ETHER WEEKLY. AND MS. KHAN TOLD US
22 SHE WORKED ON LORD OF THE FREAKS.

23 MS. KHAN KNEW WHAT THE COMPANIES'
24 BUSINESSES WERE AND STAYED.

25 MS. KHAN DID NOT OBJECT, MS. KHAN DID NOT
26 COMPLAIN UNTIL AUGUST OF 2015, JUST BEFORE HER
27 DEPARTURE.

28 AND MS. KHAN TOLD US THAT SHE TIMED HER

1 DEPARTURE TO COINCIDE WITH THE END OF HER LEASE.

2 AGAIN, I ASK YOU, IF ONE WERE SUFFERING THE
3 KIND OF HARASSMENT THAT MS. KHAN CLAIMS, DO YOU SEEK A
4 PROMOTION? DO YOU STAY HOPING YOU'LL GET A PROMOTION?
5 AND DO YOU WAIT TO TIME YOUR DEPARTURE TO COINCIDE WITH
6 THE END OF YOUR LEASE? ASK YOURSELVES WHETHER OR NOT
7 THAT'S CREDIBLE.

8 AND ON TOP OF IT, MS. KHAN, YOU SAW, IN THE
9 TEXTS WITH MS. BERKLEY WAS ALREADY PLANNING TO GO TO
10 DUBAI AS EARLY AS JULY 27TH. SO BY THE END OF AUGUST,
11 WHEN MS. KHAN IS WRITING HER FIRST COMPLAINT TO
12 MR. SHOEFIELD -- BY THE WAY, THERE'S NO EVIDENCE THAT
13 MR. SHOEFIELD RECEIVED THESE E-MAILS BECAUSE
14 MR. SHOEFIELD WASN'T HERE TO TELL YOU THAT HE DID.

15 BUT WHEN SHE IS SENDING HER FIRST
16 COMPLAINING E-MAIL, SHE HAS ALREADY DECIDED TO GO TO
17 DUBAI. SHE IS WAITING FOR HER LEASE TO END AT THE END
18 OF OCTOBER. AND SHE KNOWS SHE'S LEAVING.

19 THINK ABOUT CREDIBILITY.

20 WHEN YOU THINK ABOUT WHY MS. KHAN STAYED
21 WITHOUT MAKING ANY COMPLAINT, SOUGHT A PROMOTION, AND
22 WAITED UNTIL IT WAS CONVENIENT FOR HER PLANS TO LEAVE,
23 IF THE ABUSE SHE WAS ALLEGEDLY SUFFERING AT MR. DAVID'S
24 HANDS WAS SO INTOLERABLE THAT SHE WAS SUICIDAL.

25 LET'S TALK A MOMENT -- OH, LET ME GO BACK
26 TO MR. HYAMS BECAUSE MR. HYAMS TOLD US A COUPLE OF OTHER
27 INTERESTING THINGS.

28 FIRSTLY, HE TOLD US ABOUT WITNESSING

1 MR. DAVID PICK UP A WOMAN IN THE OFFICE BY HER ANKLES
2 AND SLING HER OVER HER SHOULDER. THOSE WERE -- HIS
3 EXACT WORDS WERE "MR. DAVID SLUNG HER OVER HIS
4 SHOULDER." I HAVE KIND OF TRIED TO PRACTICE THIS WITH
5 MY HUSBAND. I DIDN'T PICK HIM UP. IT IS NOT PHYSICALLY
6 POSSIBLE TO PICK A WOMAN UP BY HER FEET, SLING HER OVER
7 YOUR SHOULDER WITHOUT BANGING HER HEAD.

8 MR. GOLDBERG: OBJECTION, YOUR HONOR. THAT'S
9 TESTIMONY.

10 THE COURT: THE OBJECTION IS SUSTAINED.

11 THE JURY IS INSTRUCTED TO DISREGARD
12 MS. GAROFALO'S LAST COMMENT.

13 MS. GAROFALO: IN ANY EVENT, WHAT MR. HYAMS TOLD
14 US IS THAT THAT INCIDENT WAS FILMED, THAT MR. DAVID
15 FILMED IT AND STREAMED IT.

16 MR. HYAMS ALSO TOLD US THAT WITH RESPECT TO
17 2 GIRLS 1 CUP, MR. DAVID WOULD FILM THE REACTIONS OF
18 PEOPLE TO WHOM HE SHOWED IT AND STREAM THOSE AS WELL.
19 MR. HYAMS WAS CORROBORATING THAT IN THE OFFICE ITSELF,
20 NOT JUST IN THE STUDIO. INCIDENTS WERE FILMED, THEY
21 WERE PART OF WHAT FILMON STREAMED. AND THAT'S WHAT WENT
22 ON ON A REGULAR BASIS.

23 BY THE WAY, JUST TO CORRECT SOMETHING
24 MR. GOLDBERG SAID, AS YOU HEARD, 2 GIRLS 1 CUP WAS A
25 SWEDISH FILM. IT WAS NOT A TELEVISION SHOW. IT WAS NOT
26 PRODUCED BY MR. DAVID. IT WAS SOMETHING THAT WAS
27 RELEASED IN SWEDEN. IT'S BEEN ON THE INTERNET SINCE
28 2000 --

1 MR. GOLDBERG: OBJECTION. THIS IS TESTIMONY.

2 THE COURT: THE OBJECTION IS SUSTAINED AND THE
3 JURY IS INSTRUCTED TO DISREGARD ALL OF MS. GAROFALO'S
4 COMMENTS ABOUT PRODUCTION OF 2 GIRLS 1 CUP. NONE OF
5 THAT WAS IN EVIDENCE.

6 MS. GAROFALO: THE OTHER WITNESS WAS MR. HYAMS'
7 WIFE, HELEN DAVIS. AND HELEN DAVIS TOLD US THAT SHE SAW
8 ONE INCIDENT IN WHICH MR. DAVID TOUCHED MS. KHAN.
9 MS. HYAMS -- SORRY, MS. DAVIS ALSO -- YOU MIGHT ALSO
10 CONSIDER WHETHER MS. DAVIS WAS BIASED BECAUSE, AS SHE
11 TOLD YOU, SHE WAS FIRED, SHE WAS TERMINATED BY
12 MR. DAVID.

13 I WANT TO GO NOW TO TALK TO YOU A LITTLE
14 BIT ABOUT DR. READING.

15 DR. READING TOLD US THAT HE WAS PAID \$800
16 AN HOUR TO COME HERE AND TESTIFY. HE ALSO TOLD YOU HE
17 WAS PAID \$400 AN HOUR FOR HIS WORK IN DIAGNOSING AND
18 EVALUATING MS. KHAN.

19 THE EVALUATION TOOK PLACE IN AUGUST AND
20 OCTOBER OF 2019, FOUR YEARS AFTER MS. KHAN LEFT FILMON.
21 DR. READING WAS NOT A TREATING PHYSICIAN. DR. READING
22 SAW MS. KHAN ON TWO OCCASIONS TO PURPORTEDLY ADMINISTER
23 CERTAIN DIAGNOSTIC TESTS.

24 AGAIN, LOOKING AT BETTER EVIDENCE, WE DID
25 NOT SEE ANY OF THOSE TESTS. WE DID NOT SEE ANY OF THE
26 RESULTS OF THOSE TESTS.

27 MOST INTERESTINGLY ABOUT DR. READING'S
28 TESTIMONY IS THAT EVERYTHING HE TESTIFIED TO ABOUT

1 MS. KHAN'S BACKGROUND AND HER LOVE OF SPORTS AS A CHILD,
2 ALL OF THAT, WHAT SHE WAS, WHAT SHE CLAIMED TO HAVE
3 BEEN, ALL OF IT HAD ONE SOURCE AND ONE SOURCE ONLY,
4 MS. KHAN.

5 THOSE TWO VISITS OCCURRED AFTER MS. KHAN
6 FILED THIS LAWSUIT AND PRIOR -- VERY CLOSE TO THE TIME
7 OF TRIAL. THE EVALUATIONS WERE DONE FOR TRIAL. AGAIN,
8 DR. READING DID NOT TREAT MS. KHAN. MS. KHAN WAS NOT A
9 PATIENT OF DR. READING.

10 ALL OF THE INFORMATION THAT DR. READING
11 TOLD YOU HE USED IN HIS ANALYSIS OF THE TEST RESULTS
12 CAME FROM MS. KHAN.

13 WHEN I ASKED DR. READING IF HE HAD DONE
14 ANYTHING TO CORROBORATE ANY OF THE INFORMATION PROVIDED
15 BY MS. KHAN, HE SAID NO. SO DR. READING WAS DEPENDENT
16 ENTIRELY ON WHAT MS. KHAN CONVEYED TO HIM.

17 DR. READING TESTIFIED THAT THE 19 YEARS OF
18 SAVAGE ABUSE THAT MS. KHAN DESCRIBED TO US FROM HER
19 FATHER, THE UNPREDICTABILITY, THE UNSUPPORTIVE MOTHER,
20 FROM THE TIME SHE WAS EIGHT MONTHS OLD TO 20 YEARS OLD
21 REALLY DIDN'T HAVE THAT MUCH OF AN EFFECT. SHE HANDLED
22 IT, SHE RECOVERED FROM IT, IT WAS FINE.

23 UNDER CROSS-EXAMINATION, HE ADMITTED THAT,
24 WELL, YOU KNOW, MAYBE THERE WAS SOME EFFECT, BUT SHE WAS
25 FUNCTIONING, SHE WAS FINE UNTIL MR. DAVID FRACTURED HER
26 PEACE OF MIND, FRACTURED HER SAFETY.

27 AGAIN, DR. READING'S CONCLUSIONS AND
28 ANALYSIS AND DIAGNOSIS WERE BASED ON INFORMATION

1 OBTAINED FROM ONE SOURCE, MS. KHAN, WHO HAD AN INTEREST
2 IN DR. READING CONCLUDING THAT SHE WAS EMOTIONALLY
3 DAMAGED BY MR. DAVID AND MR. DAVID ALONE.

4 ASK YOURSELVES WHETHER IT'S CREDIBLE THAT
5 ANYBODY CAN SURVIVE THAT KIND OF UPBRINGING WITHOUT
6 EMOTIONAL EFFECTS AND EMOTIONAL SCARS.

7 AND LET'S MOVE ON -- WELL, DR. READING DID
8 NOT FACTOR IN TO HIS CONCLUSIONS OF THE EFFECT OF
9 MR. DAVID'S CONDUCT, WHAT HAD HAPPENED, THE TRAUMA
10 SUFFERED BY MS. KHAN AS A CHILD.

11 DR. READING ALSO TOLD US THAT HE DID NOT
12 OBTAIN THE RECORDS FROM THE TREATING PHYSICIAN,
13 DR. STRAHA. SHOULDN'T CALL HIM A PHYSICIAN, I BELIEVE
14 HE WAS JUST A PSYCHOLOGIST, BUT THE TREATING PHYSICIAN,
15 DR. CURRY. NEVER SAW THOSE RECORDS. NO IDEA WHAT THEY
16 SAID WHEN HE PURPORTED TO DIAGNOSE MS. KHAN.

17 NOW, MS. KHAN WAS NOT SPECIFIC ON HOW LONG
18 SHE SAW DR. STRAHA, BUT SHE DID TELL US THAT DR. STRAHA
19 HAD RECOMMENDED SHE SEE DR. CURRY WHO PRESCRIBED ZOLOFT.
20 NOT A PHYSICIAN. IT'S EITHER AN ANTI-ANXIETY OR
21 ANTI-DEPRESSION DRUG. AND MS. KHAN TOLD US, SITTING
22 HERE, THAT IT HELPED. SHE TOLD US IT HELPED. AND SHE
23 TOLD US SHE HAD TO STOP TAKING IT BECAUSE SHE DIDN'T
24 HAVE INSURANCE.

25 DR. READING TOLD US THAT MS. KHAN TOLD HIM
26 THAT THE ZOLOFT DID NOT HELP AND THAT SHE HAD TO STOP
27 TAKING IT BECAUSE OF SIDE EFFECTS. ASK YOURSELF WHY
28 MS. KHAN WOULD TELL A DIFFERENT STORY TO DR. READING,

1 WHO WAS DIAGNOSING HER, AND US HERE IN THIS COURTROOM.

2 AND THAT WAS NOT THE ONLY THING THAT
3 MS. KHAN TOLD DR. READING THAT WAS INCONSISTENT WITH HER
4 TESTIMONY.

5 MS. KHAN TESTIFIED THAT SHE TOOK VYVANSE
6 FOR HER EATING DISORDER. AND THAT WAS AN EATING
7 DISORDER THAT EXISTED BEFORE MS. KHAN EVER MET MR. DAVID
8 OR EVER WORKED AT FILMON.

9 DR. READING TOLD US THAT MS. KHAN TOLD HIM
10 THAT SHE HAD TAKEN VYVANSE LONG BEFORE SHE EVER WORKED
11 AT FILMON FOR -- I'M GOING TO GET THIS WRONG -- ACHD
12 [SIC], WHICH IS A DISORDER THAT YOU HAVE AN INABILITY TO
13 FOCUS, YOU CANNOT -- WELL, ACHD WAS THE DISORDER SHE
14 HAD, AN EMOTIONAL DISORDER THAT DR. READING TOLD US
15 EXISTED PRIOR TO HER WORKING AT FILMON AND THAT SHE TOLD
16 HIM WAS THE REASON SHE WAS TAKING VYVANSE.

17 AGAIN, WHY DID MS. KHAN TELL A DIFFERENT
18 STORY TO US THAN SHE TOLD TO DR. READING, WHO IS
19 DIAGNOSING HER IN PREPARATION FOR PROVIDING TESTIMONY IN
20 THIS CASE?

21 LET'S TALK A LITTLE BIT ABOUT MS. SYED,
22 DR. SYED, THE COUSIN. DR. SYED TOLD US THAT SHE MET
23 MS. KHAN -- KNEW OF HER, BUT MET HER AT A MEDICAL
24 CONFERENCE IN 2013, BUT DIDN'T REALLY GET TO KNOW
25 MS. KHAN UNTIL 2014. I BELIEVE IT WAS SPRING OR SUMMER
26 OF 2014 WHEN THEY BOTH FOUND THEMSELVES LIVING IN LOS
27 ANGELES.

28 THEY BECAME GOOD FRIENDS, CONFIDANTS, BUT

1 MS. SYED -- DR. SYED TOLD US THAT MS. KHAN NEVER TOLD
2 HER ANYTHING THAT HAPPENED AT FILMON, NEVER DISCLOSED IT
3 UNTIL 2019, COUPLE OF MONTHS AGO BEFORE TRIAL.

4 AND WE'VE BEEN TOLD IT'S BECAUSE OF THE
5 SHAME AND THE MUSLIM RELIGION AND THAT MS. KHAN IS --
6 FEELS THAT SHE MAY HAVE BROUGHT THIS ON HERSELF, IT'S
7 SHAMEFUL. SHE TOLD US SHE DIDN'T EVEN DISCLOSE THIS TO
8 HER MOTHER. MOTHER DOESN'T KNOW WHY SHE'S HERE IN LOS
9 ANGELES. SHE'S NEVER TOLD HER MOTHER.

10 IN MARCH OF 2017, MS. KHAN FILED THIS
11 LAWSUIT AND THAT LAWSUIT WAS A PUBLIC RECORD. ANYBODY
12 CAN GO GET THE LAWSUIT AND READ IT. SO MS. KHAN WAS SO
13 RETICENT TO DISCLOSE WHAT HAPPENED TO DR. SYED, WE ARE
14 TOLD, AND TO OTHERS, BUT NOT SO RETICENT THAT THE
15 ALLEGATIONS WERE NOT [SIC] AIRED IN A PUBLIC LAWSUIT
16 FILED IN THE PUBLIC RECORD AND OPEN TO ANYONE WHO WANTED
17 TO SEE IT.

18 DR. SYED, NICK HYAMS, HELEN DAVIS TOLD YOU
19 ABOUT MEETING WITH COUNSEL TO PREPARE FOR THEIR
20 TESTIMONY.

21 GOING BACK TO MR. HYAMS AND MS. DAVIS, THE
22 PREPARATION TIME THEY SPENT WITH COUNSEL FAR EXCEEDED
23 THE TESTIMONY, THE TIME THEY SPENT TESTIFYING IN COURT.
24 THAT'S A FACTOR YOU CAN WEIGH IN WHEN YOU'RE DETERMINING
25 CREDIBILITY.

26 DR. SYED ALSO TOLD US THAT SHE NOTICED --
27 SHE FIRST NOTICED THE CHANGE IN MS. KHAN WHEN MS. KHAN
28 RETURNED FROM DUBAI. THERE'S BEEN CONFLICTING TESTIMONY

1 ON WHEN MS. KHAN STARTED TO EXHIBIT THE CHANGES SHE NOW
2 BLAMES ON MR. DAVID. DR. SYED TOLD US -- DR. SYED'S A
3 PHYSICIAN. SHE TOLD US THAT SHE NOTICED THE CHANGE
4 AFTER -- IN EITHER LATE 2015 OR EARLY 2016. NOT AFTER
5 MS. KHAN LEFT FILMON, BUT AFTER MS. KHAN RETURNED FROM
6 DUBAI.

7 MS. SYED, LIKE DR. READING, DID NOT KNOW
8 MS. KHAN AS A CHILD, DID NOT KNOW MS. KHAN AS AN ADULT,
9 BUT ONLY KNEW MS. KHAN -- IN THE CASE OF DR. SYED, FROM
10 APPROXIMATELY THE SUMMER OF 2015; AND IN THE CASE OF
11 DR. READING, HE FIRST MET HER IN AUGUST OF 2019.

12 SO EVERYTHING DR. SYED TOLD YOU ABOUT WHO
13 MS. KHAN WAS BEFORE ALL CAME FROM MS. KHAN.

14 AS I MENTIONED, EVERYTHING DR. READING TOLD
15 YOU ALL CAME FROM MS. KHAN.

16 THE OTHER TWO WITNESSES, MR. HYAMS AND
17 MS. DAVIS, THE ONLY TWO WHO CLAIMED TO HAVE SEEN
18 ANYTHING HAPPEN TO MS. KHAN AT FILMON, BOTH HAVE REASONS
19 TO TESTIFY AGAINST MR. DAVID. BOTH WERE TERMINATED.
20 MR. HYAMS CLAIMS TO BE OWED A GREAT DEAL OF MONEY BY
21 MR. DAVID.

22 AGAIN, MR. SHOEFIELD WASN'T HERE, THE ONLY
23 ONE WHO REALLY COULD HAVE TOLD US EXACTLY WHAT MS. KHAN
24 SAID WHILE SHE WAS EMPLOYED AND BEFORE SHE DECIDED TO
25 BRING THIS LAWSUIT ABOUT WHAT HAPPENED AT FILMON.
26 MS. CALENDAR, THE ONLY OTHER PERSON TO WHOM MS. KHAN
27 ALLEGEDLY SPOKE ABOUT THOSE INCIDENTS TO, WAS NOT CALLED
28 BY PLAINTIFF TO TESTIFY AS TO WHAT MS. KHAN TOLD HER.

1 WEIGH THAT IN, CONSIDER THAT WHEN YOU'RE
2 CONSIDERING CREDIBILITY.

3 MR. DAVID, AS YOU MAY HAVE NOTICED IN HIS
4 SHORT STINTS IN THE COURTROOM, IS NOT YOUR AVERAGE
5 EMPLOYER. HE IS LOUD AND HE IS AGGRESSIVE AND HE CAN BE
6 OBNOXIOUS AND HE MAY NOT BE TO EVERYBODY'S TASTE. THAT
7 DOES NOT MAKE HIM A SEXUAL HARASSER.

8 AND WHAT YOU NEED TO LOOK AT IS THE
9 EVIDENCE OF WHAT HAPPENED TO MS. KHAN, OR IN THIS CASE
10 THE LACK OF EVIDENCE, OTHER THAN BIASED WITNESSES AND
11 MS. KHAN HERSELF.

12 AND WITH THAT, I THANK YOU. I TRULY DO
13 THANK YOU. IT'S A HARD TRIAL TO SIT THROUGH, ESPECIALLY
14 2 GIRLS 1 CUP.

15 THANK YOU, ALL. AND HAVE A GREAT
16 THANKSGIVING, IF I DON'T SEE YOU AGAIN.

17 THE COURT: THANK YOU, MS. GAROFALO.

18 OKAY. MR. GOLDBERG.

19 MR. GOLDBERG: THANK YOU, YOUR HONOR.

20 WOW. WOW. I THOUGHT I WAS IN ALICE IN
21 WONDERLAND. LIKE, WE DIDN'T CALL THESE WITNESSES? WHAT
22 ABOUT THE DEFENSE? WHERE ARE THEY? ARE THEY SLEEPING?
23 WHAT ABOUT THEM CALLING MR. SHOEFIELD, THEM CALLING
24 MS. CALENDAR, THEM CALLING IN WITNESSES TO SAY THIS
25 DIDN'T HAPPEN? WE DIDN'T CALL THEM AND THEREFORE WHAT?

26 THEY DON'T LIKE DR. READING. WHERE IS
27 THEIR EXPERT?

28 WHAT HAPPENED? ARE WE THE ONLY PEOPLE THAT

1 CAN GET AN EXPERT? THEY CAN'T FIND ANYBODY TO COME IN
2 AND CRY THE VICTIM? NO. IT'S ALL WE DIDN'T CALL THIS
3 PERSON, WE DIDN'T CALL THIS PERSON. THIS IS THE MOST
4 FALSE PRESENTATION YOU CAN IMAGINE.

5 MS. GAROFALO: YOUR HONOR, OBJECTION.

6 THE COURT: THE OBJECTION TO THE LAST STATEMENT IS
7 SUSTAINED AND THE JURY IS INSTRUCTED TO DISREGARD
8 MR. GOLDBERG'S COMMENT ABOUT THE MOST FALSE
9 PRESENTATION.

10 MR. GOLDBERG: THANK YOU, YOUR HONOR.

11 HER RENDITION OF WHAT HAPPENED OF HELEN
12 DAVIS, SHE SAYS -- HIS EX-WIFE SAYS HE TOUCHED MS. KHAN.
13 DO YOU REMEMBER WHAT MS. DAVIS SAID? HE WALKED UP
14 BEHIND HER AND GRABBED HER FROM BEHIND AND GRABBED HER
15 VAGINA. I DON'T CONSIDER THAT TOUCHING. I CONSIDER
16 THAT SOMETHING MUCH MORE. AND THAT'S THE TESTIMONY YOU
17 HEARD.

18 YOU'VE SEEN MR. HYAMS. HE SAID HE WASN'T
19 INTERESTED IN GETTING MONEY FROM MR. DAVID. YOU HEARD
20 HIS TESTIMONY ABOUT HOW HE WAS ASHAMED OF HIMSELF FOR
21 HAVING NOT STOOD UP FOR A WOMAN AT THE TIME.

22 YOU JUDGE YOUR OWN -- YOU JUDGE HIS
23 CREDIBILITY. THERE'S NO INDICATION THAT HE WAS HERE
24 BECAUSE HE HAD SOME GRUDGE. IN FACT, HE SAID HE LIKED
25 MR. DAVID. JUST DIDN'T LIKE WHAT HE DID TO OUR CLIENT.

26 AS FAR AS HIM BEING AN EQUAL OPPORTUNITY
27 HARASSER, THERE'S NO EVIDENCE THAT HE GROPED WOMEN -- HE
28 GROPED MEN OR THAT HE GRABBED THEIR GENITALS OR THAT HE

1 GRABBED THEM IN ANY SEXUAL MANNER. THAT WAS ONLY WITH
2 WOMEN. AND HE DID IT WITH PLEASURE AND MOANING AND ALL
3 THIS NONSENSE.

4 I WAS WAITING FOR MS. GAROFALO TO EXPLAIN
5 HOW SHE COULD HAVE ASKED THOSE QUESTIONS ABOUT 2 GIRLS 1
6 CUP, THAT IT'S MAINSTREAM TELEVISION. I DIDN'T HEAR
7 THAT. I NEVER HEARD HER TALK ABOUT THE MANGINA.

8 IS SHE REALLY SUGGESTING THAT HE DIDN'T DO
9 IT?

10 AND WHAT ABOUT LAUREN REEVES? SHE FORGOT
11 ABOUT LAUREN REEVES ENTIRELY. LAUREN REEVES WHO CAME IN
12 HERE AND TOLD YOU THAT NOT ONLY DID SHE SEE THE MANGINA,
13 BUT SHE ALSO WAS GROPED BY HIM AND HAD MR. DAVID GO INTO
14 THE OFFICE, TAKE DOWN HIS PANTS, GRAB HER NECK, AND
15 BRING IT TO HIS CROTCH.

16 NO MENTION OF LAUREN REEVES.

17 WHERE IS THEIR EVIDENCE? SHE'S TALKING
18 ABOUT OUR CREDIBILITY. WHERE'S THEIR CREDIBILITY? NOT
19 ONE WITNESS. NOT ONE PERSON TO COME IN HERE AND TELL US
20 THERE WAS SOMETHING DIFFERENT GOING ON AT THAT COMPANY.

21 IT'S REMARKABLE, REMARKABLE, THAT, YOU
22 KNOW, THIS HARASS POSTER -- WE DIDN'T BRING IN THOSE TWO
23 WOMEN, ALLI BOTTO AND THE OTHER WOMAN. WHAT ABOUT
24 DEFENSE? THEY COULD HAVE BROUGHT THEM IN TO SAY IT WAS
25 SOME KIND OF A JOKE.

26 MS. GAROFALO: OBJECTION, YOUR HONOR. OBJECTION,
27 YOUR HONOR.

28 THE COURT: THE OBJECTION IS SUSTAINED.

1 MR. GOLDBERG: SHE ALSO DIDN'T BRING IN THE
2 EVIDENCE REGARDING -- SHE DIDN'T CONTRADICT THE EVIDENCE
3 OF MR. DAVID WALKING INTO A MEETING, CRUMBLING A PIECE
4 OF PAPER THAT HAD A SEXUAL HARASSMENT THING, JUST
5 THROWING IT ON THE TABLE.

6 CREDIBILITY. YOU KNOW, THERE'S A JURY
7 INSTRUCTION, IF SOMEBODY HAS THE ABILITY TO PRODUCE
8 BETTER EVIDENCE, YOU CAN DISTRUST THE WEAKER EVIDENCE.
9 THEY'RE THE EMPLOYER. THEY'RE THE EMPLOYER. SHE'S
10 TALKING ABOUT AN EMPLOYMENT AGREEMENT. DOESN'T THE
11 EMPLOYER HAVE THE RECORDS OF THE EMPLOYMENT AGREEMENT?
12 DON'T THEY HAVE THE RECORDS PERTAINING TO MY CLIENT'S
13 EMPLOYMENT? DON'T THEY HAVE THE ABILITY TO BRING IN
14 DOCUMENTS? NO.

15 MS. GAROFALO: OBJECTION. OBJECTION. OBJECTION,
16 YOUR HONOR. IT WAS --

17 THE COURT: THE OBJECTION IS OVERRULED.

18 MR. GOLDBERG: THEY'RE THE ONES THAT HAVE THE
19 POWER TO PRODUCE BETTER EVIDENCE.

20 THEY'RE THE ONES THAT DIDN'T PRODUCE ONE
21 PIECE OF EVIDENCE FOR THIS JURY'S CONSIDERATION.

22 AND THEN THEY COME UP HERE AND THEY SAY,
23 YOU KNOW, WE DIDN'T -- WE COULD HAVE PRODUCED THIS, WE
24 COULD HAVE PRODUCED THAT.

25 DR. READING'S OPINIONS ON THE FATHER.
26 COMPLETE MISCHARACTERIZATION. HE DIDN'T SAY YOU SHOULD
27 IGNORE IT. HE SAID THAT WHAT OCCURRED AS A RESULT OF
28 THE FATHER'S BEHAVIOR INCREASED MS. KHAN'S VULNERABILITY

1 AND THE TRAJECTORY OF THE ILLNESS SHE SUSTAINED. THAT'S
2 WHAT HE SAID.

3 INTERESTINGLY ENOUGH, YOU KNOW, COUNSEL IS
4 MAKING A BIG DEAL ABOUT THE FACT THAT DR. READING'S
5 OPINIONS WERE BASED UPON WHAT MS. KHAN SAID, BUT
6 MS. KHAN ALSO TALKED ABOUT WHAT HAPPENED WITH HER
7 FATHER. SO SHE RELIES ON THAT, SHE SAYS, YEAH, RELY ON
8 WHAT SHE TOLD YOU ABOUT HER FATHER, BUT DON'T RELY ON
9 OTHER THINGS, LIKE THE FACT SHE DID WELL IN SCHOOL, SHE
10 GRADUATED FROM COLLEGE, SHE HAD A JOB IN NEW YORK, SHE
11 HAD A JOB AS A RADIO HOST.

12 IS THERE ANY EVIDENCE THAT ANY OF THAT WAS
13 NOT TRUE?

14 DR. READING SAID SHE WAS HIGHLY FUNCTIONAL
15 AND SHE WAS DOING FINE. SHE DIDN'T HAVE ANY SYMPTOMS.
16 SHE WAS ASYMPTOMATIC. IN FACT, I ASKED HIM, WHAT DOES
17 THAT MEAN? MEANS SHE DOESN'T HAVE SYMPTOMS, MEANS SHE
18 WAS DOING FINE UNTIL SHE RAN INTO MR. DAVID AND HIS
19 MANGINA AND HIS GROPING AND HIS GRABBING VAGINAS AND HIS
20 DISGUSTING, UNBELIEVABLY TERRIBLE BEHAVIOR. IT'S JUST
21 SHOCKING. IT'S JUST SHOCKING.

22 SHE TESTIFIED FROM HER POINT OF VIEW.
23 YEAH, IN FACT, SHE ALSO MISCHARACTERIZED WHAT THE COUSIN
24 SAID BECAUSE SHE -- I THINK SHE GOT A LITTLE CONFUSED ON
25 THE DATES, BUT SHE SAID DURING THE YEAR 2015, BEFORE SHE
26 WENT TO DUBAI, SHE WAS ALREADY ISOLATING HERSELF. SHE
27 WOULDN'T GO TO FUNCTIONS, SHE WOULDN'T DO THINGS. SO
28 THE SUGGESTION THAT ALL THAT HAPPENED LATER IS JUST NOT

1 TRUE.

2 AND SHE DID TESTIFY THAT SHE WENT TO DUBAI
3 INITIALLY FOR A VACATION AND THEN SHE DECIDED THAT SHE
4 WANTED TO GO AND SEE IF SHE COULD MOVE THERE.

5 THIS PROMOTION ISSUE, COMPLETE RED HERRING.
6 COMPLETE RED HERRING. FIRST OF ALL, IT'S NOT BROUGHT UP
7 IN THE LAWSUIT. THERE IS NOTHING IN THE LAWSUIT ABOUT
8 LACK OF PROMOTION. BUT TO THE EXTENT THAT THERE WAS
9 TESTIMONY ABOUT IT, THE TESTIMONY WAS -- SHE WAS ASKED,
10 BY ME, "WHY WOULD YOU WANT TO GET A PROMOTION IF YOU
11 WERE GOING TO LEAVE?"

12 AND THE ANSWER WAS, "IF I COULD GET THE
13 TITLE HEAD OF PRODUCTION, IT WOULD HAVE MADE GETTING
14 ANOTHER JOB EASIER, A BETTER JOB."

15 THAT MAKES SENSE, SHE WANTED TO GET THE
16 TITLE SO WHEN SHE LOOKED FOR OTHER EMPLOYMENT, SHE COULD
17 SAY, I WAS HEAD OF PRODUCTION AT THIS COMPANY. NO.

18 WHAT IT BOILS DOWN TO IS THIS: YOU WERE
19 HERE FOR THE LAST WEEK, WEEK AND A HALF ACTUALLY. YOU
20 SAW THE TESTIMONY. YOU SAW MS. KHAN'S TESTIMONY. YOU
21 SAW MR. HYAMS TESTIFY. YOU SAW MS. DAVIS TESTIFY. YOU
22 SAW LAUREN REEVES TESTIFY. AND YOU SAW DR. READING AND
23 HER COUSIN TESTIFY. YOU'VE SEEN THE EVIDENCE. YOU CAN
24 DECIDE.

25 INTERESTINGLY ENOUGH, COUNSEL DIDN'T SAY
26 ONE WORD ON THE DAMAGES. NOT ONE WORD TO SUGGEST THAT
27 THE AMOUNT THAT I SUGGESTED WAS NOT THE RIGHT AMOUNT.
28 SHE DIDN'T SAY ONE WORD ABOUT IT. IT WASN'T LIKE, YOU

1 KNOW -- SHE DIDN'T, WELL, SAY I'M TOO BIG. I GUESS
2 SHE'S BANKING ON THE JURY THINKING THAT THIS IS -- THAT
3 WE DIDN'T PROVE THE CASE.

4 I THINK THAT'S AN ADMISSION OF --

5 MS. GAROFALO: OBJECTION, YOUR HONOR.

6 MR. GOLDBERG: -- THAT THE DAMAGES WE'RE ASKING
7 FOR IS THE AMOUNT THAT MAKES SENSE.

8 THE COURT: THE OBJECTION IS OVERRULED.

9 MR. GOLDBERG: THAT THERE'S LIABILITY IN THIS
10 CASE.

11 I LEAVE IT TO YOU, JURY, THE CONSCIENCE OF
12 THIS COMMUNITY, THE PEOPLE THAT GET TO DECIDE WHAT YOU
13 WANT TO TELL MR. DAVID. YOU WANT TO TELL HIM IT'S OKAY
14 FOR HIM TO BEHAVE THIS WAY, THAT HE CAN GO AROUND
15 GROPING WOMEN IN THE WORKPLACE, GOING AROUND NAKED? I
16 DON'T THINK SO. I DON'T THINK SO. I DON'T THINK THAT'S
17 WHAT YOU WANT. I DON'T THINK THAT WOULD MAKE SENSE.

18 I THINK THAT, IN THIS CASE, I WOULD HOPE
19 WHAT WILL HAPPEN IS YOU WILL SEE IT AS I DO, THAT THIS
20 IS A CASE WHERE MR. DAVID CREATED AN ABUSIVE
21 ENVIRONMENT, HARMED A WOMAN WHO DIDN'T DESERVE IT, TOOK
22 AWAY SOME OF HER LIFE FORCE, TOOK AWAY SOMETHING THAT
23 WAS HER ESSENCE, AND NOW HE HAS TO PAY FOR IT. SIMPLE
24 AS THAT. HE HAS TO BE RESPONSIBLE AND ACCOUNTABLE FOR
25 WHAT HE DID. YOU DON'T GET TO TAKE AWAY SOMEBODY'S LIFE
26 AND THEN JUST THINK YOU CAN COME IN HERE, GET SOME
27 LAWYERS, AND TELL YOUR STORY. YOU GOTTA PAY. AND THE
28 MORE YOU COMPENSATE -- HOPEFULLY THAT'S A MESSAGE TO

1 MR. DAVID.

2 I THINK YOU'VE HEARD ENOUGH. I DON'T THINK
3 YOU NEED ANY MORE ARGUMENT TO DECIDE THIS CASE.

4 THANK YOU VERY MUCH.

5 THE COURT: OKAY. THANK YOU VERY MUCH,
6 MR. GOLDBERG.

7 OKAY. MS. GUERRERO, WILL YOU PLEASE SWEAR
8 MS. CRUZ.

9 THE CLERK: DO YOU SOLEMNLY STATE THAT YOU WILL
10 TAKE CHARGE OF THE JURY AND KEEP THEM TOGETHER; THAT YOU
11 WILL NOT SPEAK TO THEM YOURSELF, NOR ALLOW ANYONE ELSE
12 TO SPEAK TO THEM ABOUT MATTERS CONNECTED WITH THE CASE
13 EXCEPT ON ORDER OF THE COURT; AND WHEN THEY HAVE AGREED
14 UPON A VERDICT, YOU WILL RETURN THEM INTO THE COURT;
15 FURTHERMORE, DO YOU SOLEMNLY STATE THAT YOU WILL TAKE
16 CHARGE OF THE ALTERNATE JURORS AND KEEP THEM APART FROM
17 THE JURY WHILE THEY ARE DELIBERATING ON THE CAUSE UNTIL
18 OTHERWISE INSTRUCTED BY THE COURT?

19 COURT ASSISTANT: I DO.

20 THE COURT: THANK YOU VERY MUCH.

21 OKAY. LADIES AND GENTLEMEN OF THE JURY,
22 YOU'RE NOW COMMITTED TO THE COURTROOM ASSISTANT TO
23 RETIRE AND DELIBERATE ON YOUR VERDICT.

24 YOU CAN JUST FOLLOW MS. CRUZ'S
25 INSTRUCTIONS.

26 THANK YOU VERY MUCH.

27 ///

28 ///

1 (THE JURY COMMENCED THEIR
2 DELIBERATIONS AT 4:07 P.M.)

3
4 (THE FOLLOWING PROCEEDINGS WERE
5 HELD IN OPEN COURT OUTSIDE THE
6 PRESENCE OF THE JURORS:)

7
8 THE COURT: OKAY. SO IT'S ABOUT SEVEN MINUTES
9 AFTER 4:00. I'M GOING TO ASK THE JURORS TO COME BACK
10 TOMORROW MORNING AT 9:30 SO THAT THEY CAN RESUME THEIR
11 DELIBERATIONS IN THE MORNING.

12 SO I'LL NEED ALL OF YOU, OR AT LEAST
13 REPRESENTATIVES FROM YOUR OFFICE, TO BE HERE AS WELL.
14 SO YOU NEED TO MAKE SURE YOU GIVE MS. GUERRERO YOUR
15 CONTACT INFORMATION SO IF THERE ARE JUROR QUESTIONS, WE
16 CAN GET IN TOUCH WITH YOU.

17 MS. GUERRERO, DO YOU WANT TO GO THROUGH THE
18 EXHIBITS WITH THEM?

19 THE CLERK: I HAVE THEM RIGHT HERE.

20 THE COURT: SO GO AHEAD AND TAKE A LOOK AT THE
21 EXHIBITS BEFORE SHE TAKES THEM INTO THE JURY ROOM.

22 ALL RIGHT. THANK YOU VERY MUCH. WE'RE
23 GOING TO LET THEM GO RIGHT AT 4:30 AND THEY'LL BE
24 ORDERED TO COME BACK AT 9:30 TOMORROW.

25 MS. GAROFALO: THANK YOU, YOUR HONOR.

26 MR. GOLDBERG: THANK YOU, YOUR HONOR.

27

28 (COURT IS IN RECESS.)

1 (THE MATTER WAS CONTINUED TO
2 TUESDAY, NOVEMBER 26, 2019 AT
3 9:30 A.M. FOR FURTHER
4 PROCEEDINGS.)

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 74 HON. MICHELLE WILLIAMS COURT, JUDGE
4
5 MAHIM KHAN,)
6 PLAINTIFF,)
7 VS.) CASE NO. BC654017
8 HOLOGRAM USA, INC.; ALKI DAVID)
9 PRODUCTIONS, INC.; FILMON TV, INC.;)
10 ALKIVIADES ("ALKI") DAVID, AN)
11 INDIVIDUAL; AND DOES 1 THROUGH 25,)
12 INCLUSIVE,)
13 DEFENDANTS.)

14 I, LISA N. DAY, CSR 12960, REPORTER PRO
15 TEMPORE IN AND FOR THE SUPERIOR COURT OF THE STATE OF
16 CALIFORNIA, COUNTY OF LOS ANGELES, DO HEREBY CERTIFY
17 THAT THE FOREGOING PAGES 1 THROUGH 155, INCLUSIVE, IS A
18 FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS
19 AND TESTIMONY TAKEN IN THE MATTER ON THE ABOVE-ENTITLED
20 CAUSE ON NOVEMBER 25, 2019.

21
22
23 DATED THIS 2ND DAY OF JANUARY, 2020

24 

25
26 LISA N. DAY, CSR 12960
27 OFFICIAL REPORTER PRO TEMPORE
28

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