FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THUNDER STUDIOS, INC.; RODRIC DAVID, *Plaintiffs-Appellees,* v. CHARIF KAZAL; TONY KAZAL; ADAM KAZAL, *Defendants-Appellants.*	No. 19-55413 D.C. No. 2:17-cv-00871-AB-SS OPINION

Appeal from the United States District Court
for the Central District of California
Andre Birotte, Jr., District Judge, Presiding

Argued and Submitted June 3, 2020
Pasadena, California

Filed September 15, 2021

Before: William A. Fletcher and
Kenneth K. Lee, Circuit Judges, and
Carol Bagley Amon,* District Judge.

Opinion by Judge W. Fletcher;
Dissent by Judge Lee

* The Honorable Carol Bagley Amon, United States District Judge for the Eastern District of New York, sitting by designation.

COUNSEL

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OPINION

W. FLETCHER, Circuit Judge:

After a business deal soured, Charif, Tarek ("Tony"), and Adam Kazal embarked on an international campaign to tell their side of the story, informing the public of the alleged "despicable crimes" committed by Rodric David, the erstwhile partner of Charif and Tony. The campaign culminated in Los Angeles, where David resides and runs a production company, Thunder Studios, Inc. The Kazals sent hundreds of emails to David and his employees, hired protestors to picket and distribute flyers near David's residence and business, and hired vans emblazoned with their message to drive around Los Angeles. David embarked on his own

media campaign, accusing the Kazals of being money launderers with ties to Hezbollah.

David and Thunder Studios brought suit against Charif, Tony, and Adam Kazal in federal district court in Los Angeles. A jury found that Tony and Adam committed the tort of stalking under California Civil Code § 1708.7. It awarded David $100,000 in compensatory damages and $1 million in punitive damages against each of them. Because we conclude that Tony and Adam's speech and speech-related conduct were protected under the First Amendment and were therefore excluded from the California stalking statute as "constitutionally protected activity," we reverse.

I. Factual Background

Three brothers, Charif, Tony, and Adam Kazal, are Australian citizens who reside in Australia. Rodric David is an Australian citizen who currently resides in Los Angeles.

The story begins with a business deal that went bad. In 2008, Charif and Tony Kazal, together with David, founded Emergent Capital, a private equity group headquartered in the United Arab Emirates ("UAE") and incorporated in the Cayman Islands. They planned to build a massive housing development in the UAE desert. David moved from Australia to Abu Dhabi to oversee the project. Emergent Capital also purchased a waste recycling business in Australia called Global Renewables. In the wake of the global financial crisis in 2008, the housing development project fell through.

Contending that Charif and Tony had not put the funding into the project that they had promised, David convened a board meeting at which the board converted David's debt to equity and diluted the Kazals' 50% stake in the company to 0.1%. Charif and Tony responded by filing an embezzlement complaint against David and falsely alleging that he had violated his visa, resulting in David's detention in a UAE jail for two days. In litigation in the Cayman Islands, David's restructuring of the company was reversed in part, and the assets were liquidated. The net return to shareholders was about $25 million, of which Charif and Tony received $1.9 million. A few years later, a private equity company purchased a 50% stake in Global Renewables for $85 million.

David and his family moved back to Australia in 2010. According to evidence presented at trial in the district court, the Kazals were investigated by the Independent Commission Against Corruption for the Australian state of New South Wales. Charif Kazal testified that David triggered the investigation by providing misleading information to the *Sydney Morning Herald*. David testified that, on one occasion in 2011, a man in a car followed his wife. When David confronted him, the man grabbed David's phone and sped down the block with David on the hood, holding onto a windshield wiper. David testified that it was his "understanding" that the man was employed by Tony Kazal. David's wife testified that "two of the Kazal brothers" followed David and a business associate and "sw[ung] something in a threatening manner." She testified

further that in 2013, Adam Kazal, the brother who had not been party to the business deal, "accosted" or "assault[ed]" (using the words interchangeably) David's father in downtown Sydney. David testified that his father had been "assaulted repeatedly" by Adam, and that his father had obtained a New South Wales police order against him

In early 2012, David moved with his family to the United States. He settled in Los Angeles, where he founded Thunder Studios. In about 2015, Charif and Tony Kazal began sending emails to David and Thunder Studios employees, demanding that David right his alleged wrongs. A representative excerpt of one of Tony's emails reads:

> We are not going away and look very much forward to the ongoing opportunities to deal with you in Court where your Sydney Morning Herald security blanket can't help you.
>
> . . . I will not rest until you repay what you stole plus damages, apologise publicly for the lies you told and serve time in prison for the despicable crimes you committed against me and my entire family!

Charif established a website to publish these emails online.

Matthew Price, an employee of Thunder Studios, then created several websites accusing the Kazal family of money laundering and other crimes, claiming that the Kazals were affiliated with the terrorist organization Hezbollah. The websites included pictures

of the brothers with the text "Support Hezbollah" added above them Immediately below was a picture of Libyan leader Muammar Qaddafi.

In October 2016, Tony and Adam Kazal hired Mark Woodward, a private investigator in Los Angeles, to "conduct[] covert surveillance" of David's house and his movements to "establish patterns." The Kazals then had Woodward procure a van, adorn it with a large sign about David's alleged misdeeds, and have his business partner drive it around town. The Kazals also hired protestors to distribute flyers denouncing David and to picket near David's house and Thunder Studios, chanting slogans like "Rodric the Robber." David's wife testified that the protesters were 250 meters away and not visible from the house. The flyers and signs included a picture of David and denounced him as a "corporate thief" and "fraudster" who "robbed his business partners of $180 million." They also warned readers "don't be his next victim" and advised them to "read the full story" on the Kazals' website. David's wife testified that she called the Los Angeles Police Department. On arrival at the scene, officers explained to her that people have "a right of protest and a right of free speech." There were additional protests on several days in November, both in David's neighborhood and near Thunder Studios. David testified that, as an employee drove into the main entrance of Thunder Studios, "her car was hit and [protesters] were yelling profanities at her."

On October 27, 2016, Adam Kazal sent an email to David, with copies to several Thunder Studios

employees, stating, "My team in LA are going to expose you wherever you go until you are charged with your crimes." It continued:

> Getting your hyena [David's wife] to scream at the LA Police like she did yesterday exposing how the disgustingly racist elements of your family are not restricted just to your Syrian David blood is not going to stop me and my crew!!
>
> I will show the good people of LA what scum they have allowed into their city that Australia is glad to be rid of. Let's see how you like having the truth of what you get up to reported for the world to see your true colours.
>
> . . .
>
> You start a fight with me, I will show you how Adam Kazal is different to the rest of the family.
>
> See you around grub.

Adam also published a screenshot of this email with a tweet stating, "hey @Rodric_David my team in LA are going to expose you wherever you go!—Day 1 . . . @Thunder_Inc."

At about this time, David's attorney sent Adam Kazal a cease and desist letter. Adam responded by email, stating that unless David paid his "Legal & Marketing, Pain & Disruption" costs of $666,666.66 and issued a public apology by 4:00 pm the next day, "I reserve the right to not only continue using the Van, but to also increase the size of my fleet." He continued,

"If you fail to meet my demands . . . then I reserve the right to do whatever is necessary to expose the Corporate Fraudster[ ] Rodric David . . . who stole $180 million from my family[.]"

So far as the record reveals, other than the conduct just described, the Kazals have few ties with the United States.

II. Procedural Background

In February 2017, David and Thunder Studios filed suit against Charif, Tony, and Adam Kazal in federal district court. In Count One of the second amended complaint, they alleged that the Kazals intentionally used photographs copyrighted by Thunder Studios. In Count Two, they alleged that the Kazals' conduct constituted stalking under California Civil Code § 1708.7.

The case was tried to a jury in December 2018. During jury deliberations, the Kazals moved for judgment as a matter of law under Federal Rule of Civil Procedure 50(a) on both Counts. The district court denied the motion. On Count One, the jury returned a verdict for Thunder Studios for $2,600 in statutory damages against Charif Kazal for copyright infringement. The jury awarded nothing against Tony and Adam Kazal. On Count Two, the jury awarded Rodric David $100,000 in compensatory damages and $1,000,000 in punitive damages on the stalking claim against Tony, and the same amounts separately against Adam. The jury awarded nothing against Charif.

Tony and Adam Kazal made a renewed motion for judgment as a matter of law. *See* Fed. R. Civ. P. 50(b). The district court denied the motion, concluding that "a reasonable jury could perceive Defendants' actions as threats" and therefore unprotected by the First Amendment. Because their actions were unprotected by the First Amendment, they came within the coverage of California's stalking statute. It also denied their motions for a new trial and for remittitur.

Tony and Adam Kazal timely appealed the judgment on Count Two.

III. Standard of Review

In First Amendment cases, we "'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499 (1984) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 284-86 (1964)). Therefore, we review constitutional facts *de novo*, including whether speech constitutes a "true threat" and is therefore unprotected by the First Amendment. *Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1069-70 (9th Cir. 2002) (en banc). However, we "construe the historical facts, the findings on the statutory elements, and all credibility determinations in favor of the prevailing party." *Id.* at 1070.

IV. Discussion

Under California law, a defendant commits the tort of stalking by "engag[ing] in a pattern of conduct the intent of which was to follow, alarm, place under surveillance, or harass the plaintiff." Cal. Civ. Code § 1708.7(a)(1). The pattern of conduct must lead the plaintiff either to "reasonably fear[ ]" for his own safety or that of an immediate family member, or to "suffer substantial emotional distress" when a reasonable person would also suffer substantial emotional distress. *Id.* § 1708.7(a)(2)(A), (B); *see also id.* § 1708.7(a)(3) (articulating additional elements that must be satisfied). The statute proscribes only conduct occurring in California. *See Diamond Multimedia Sys., Inc. v. Superior Ct.*, 968 P.2d 539, 554 n.20 (Cal. 1999) (the determinative factor in California's presumption against extraterritoriality is the location of the conduct).

The stalking statute excludes "[c]onstitutionally-protected activity" from the definition of "pattern of conduct." Cal. Civ. Code § 1708.7(b)(1); *see also id.* § 1708.7(f) ("This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, and assembly."). The question before us is whether Tony and Adam Kazal's conduct was protected by the First Amendment and thus excluded from coverage under the statute.[1]

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[1] The statute also excludes from liability Woodward's covert surveillance activities, prior to his activity involving the van with the message about David's alleged misdeeds. The statutory definitions of "follow" and "place under surveillance" exclude "any lawful activity of private investigators licensed pursuant to

A. Applicability of the First Amendment

A threshold question is whether the First Amendment applies to the Kazals' conduct. So far as the record shows, Tony and Adam were outside the United States at all relevant times. However, the recipients of their speech and speech-related conduct were in California.

The First Amendment protects speech for the sake of both the speaker and the recipient. The Supreme Court wrote in 1968, "It is now well established that the Constitution protects the right to receive information and ideas. This right to receive information and ideas, regardless of their social worth, is fundamental to our free society." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (citations omitted); *see also Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 756 (1976) ("[W]here a speaker exists . . . the [First Amendment] protection afforded is to the communication, to its source and to its recipients both." (citation omitted)); *Martin v. City of Struthers*, 319 U.S. 141, 143 (1943) (freedom of speech "embraces the right

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Article 3 (commencing with Section 7520) of Chapter 11.3 of Division 3 of the Business and Professions Code." *See* Cal. Civ. Code § 1708.7(b)(4), (b)(6). The Business and Professions Code defines private investigator activities to include "any investigation for the purpose of obtaining[ ] information with reference to . . . the . . . habits, conduct, . . . activity, [and] movement . . . of any person." Cal. Bus. & Prof. Code § 7521(b). Woodward's activities are excluded because he is a licensed private investigator, and he testified that the purpose of his surveillance was to obtain information on David's conduct and movements. This argument was preserved when the Kazals pressed it in their motion for judgment as a matter of law.

to distribute literature and necessarily protects the right to receive it" (citation omitted)).

Absent national security concerns not present in this case, the First Amendment right to receive information includes the right to receive information from outside the United States. In *Lamont v. Postmaster General*, 381 U.S. 301, 302 (1965), the Court struck down a federal statute ordering the Postmaster General to seize "communist political propaganda" that was "printed or otherwise prepared in a foreign country." The Court explained that the government could not constitutionally "control the flow of ideas to the public." *Id.* at 306. In *Kleindienst v. Mandel*, 408 U.S. 753 (1972), the Court recognized the First Amendment right of domestic listeners to receive speech from foreign speakers. However, the Court held that Congress's plenary power over immigration permitted the government to exclude a foreign speaker from the United States on the ground that on a previous visit "he had engaged in activities beyond the stated purposes" of his visit. *Id.* at 758. In one of the most famous obscenity cases in our history, the district court declared James Joyce's *Ulysses* not obscene and allowed its importation into the United States without any inquiry as to Joyce's contacts with the United States. *United States v. One Book Called "Ulysses"*, 5 F. Supp. 182 (S.D.N.Y. 1933), *aff'd*, 72 F.2d 705 (2d Cir. 1934).

We therefore hold that the First Amendment applies to Tony and Adam Kazals' speech and speech-related conduct at issue in this case.

Plaintiffs disagree with this conclusion, but provide scant support for their conclusion. Citing four cases, they contend, "As foreign non-residents, living outside the United States, with no connection or allegiance to the United States, they cannot claim the protections of the First Amendment." None of the four cases support Plaintiffs' contention, as they either do not involve speech at all or involve speech outside the United States.

Plaintiffs primarily rely on *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990), arguing that the Kazals "do not clear the *Verdugo-Urquidez* bar." *Verdugo-Urquidez* was a Fourth Amendment case in which a citizen and resident of Mexico challenged a search and seizure search of his property in Mexico. Speech was not at issue, and the only action at issue occurred outside the United States. Plaintiffs also rely on *DKT Mem'l Fund Ltd. v. Agency for Int'l Dev.*, 887 F.2d 275 (D.C. Cir. 1989) as "[t]he other leading case." *DKT Memorial Fund* involved a challenge to a federal statute that forbade giving federally financed family planning grants to organizations that "actively promote abortions in other nations." *Id.* at 277. Because the speech at issue in *DKT Memorial Fund* was "in other nations," it did not involve a right to receive information in the United States. (For the same reason, Plaintiffs cannot rely on the Supreme Court's recent opinion holding that the government may restrict the speech of "foreign organizations operating abroad." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 140 S. Ct. 2082, 2087 (2020).) Finally, Plaintiffs rely on *Humanitarian*

Law Project v. Reno, 205 F.3d 1130 (9th Cir. 2000), which involved a prohibition against donating funds to terrorist organizations outside the United States, and on *Ibrahim v. Dep't of Homeland Security*, 669 F.3d 983 (9th Cir. 2012), which involved freedom of association rather than speech.

We hold that the Kazals' speech and speech-related activity—directed at and received by California residents—are excluded from the statute as protected under the First Amendment. We need not, and do not, here consider under what other circumstances a noncitizen living abroad has standing to claim the protections of the First Amendment.

B. The Kazals' Speech and Speech-Related Conduct

The district court found that a reasonable jury could conclude that Tony and Adam Kazals' speech and speech-related conduct were a "true threat" and therefore not protected by the First Amendment. On independent review of the constitutional facts, we conclude that their conduct did not constitute a true threat. We therefore conclude that the Kazals' conduct was protected under the First Amendment and was "[c]onstitutionally protected activity" excluded from coverage under California's stalking statute. Cal. Civ. Code § 1708.7(b)(1).

Setting aside its content for a moment, speech and speech-related conduct like that of the Kazals are ordinarily protected. The Kazals hired protestors, organized leafletting, hired a van to drive around Los

Angeles with a message on its side, and published emails online to "openly and vigorously [] mak[e] the public aware" of their views of David's business practices. *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971).

The protections of the First Amendment are "nowhere stronger than in streets and parks," which are traditional public fora. *Berger v. City of Seattle*, 569 F.3d 1029, 1035-36 (9th Cir. 2009) (en banc). While a few isolated parts of the protest were non-speech conduct—such as when a protestor banged on the car of one of David's employees—this does not change the overall analysis. *See NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 902, 933 (1982) (noting that "violent conduct is beyond the pale of constitutional protection" but the "ephemeral consequences of relatively few violent acts" do not render a protest unprotected).

In general, emails and tweets, when published on the "vast democratic forums of the Internet," fall squarely within the protection of the First Amendment. *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (citation omitted); *see also Reno v. Am. Civ. Liberties Union*, 521 U.S. 844, 851 (1997) (noting that an email is protected as "generally akin to a note or letter"). At some point, however, repeated unwanted communications can lose First Amendment protection. *See Rowan v. U.S. Post Off. Dep't*, 397 U.S. 728, 736 (1970) (stating that "the right of every person 'to be let alone' must be placed in the scales with the right of others to communicate"); *see also Consol. Edison Co. of N.Y. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 530, 542 &

n.11 (1980) (noting that privacy interests are weaker where the recipient can easily "escape exposure" by discarding the communication). The record does not show that David ever asked the Kazals to stop sending the emails. Though David eventually configured a firewall to block his employees from receiving the emails, he did not block them from his own email inbox, preferring to preserve them for purposes of litigation. David testified that he did not read most of them. Under these circumstances, the emails come within the general protection of the First Amendment.

Though much of the Kazals' speech was intemperate and rancorous, including a reference to David's wife as "your hyena," the First Amendment right to receive information exists "regardless of [its] social worth." *Stanley*, 394 U.S. at 564; *accord Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 796 n.4 (2011) ("Crudely violent video games, tawdry TV shows, and cheap novels and magazines are no less forms of speech than The Divine Comedy."). However, speech is not protected if its content rises to the level of a "true threat." *See Watts v. United States*, 394 U.S. 705, 708 (1969) (per curiam). True threats are "statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals," though the speaker "need not actually intend to carry out the threat." *Virginia v. Black*, 538 U.S. 343, 359-60 (2003).

In determining whether speech is a true threat, we consider "the surrounding events and reaction of the listeners." *Planned Parenthood*, 290 F.3d at 1075

(quoting *United States v. Orozco-Santillan*, 903 F.2d 1262, 1265 (9th Cir. 1990)). Even a statement that appears to threaten violence may not be a true threat if the context indicates that it only expressed political opposition or was emotionally charged rhetoric. *See Watts*, 394 U.S. at 706-08 (statement "[i]f they ever make me carry a rifle the first man I want to get in my sights is L.B.J." at a rally is protected); *Claiborne Hardware Co.*, 458 U.S. at 902, 928 (statement "[i]f we catch any of you going in any of them racist stores, we're gonna break your damn neck" at a rally is protected as "emotionally charged rhetoric"). Conversely, a statement that does not explicitly threaten violence may be a true threat where a speaker makes a statement against a known background of targeted violence. *See Black*, 538 U.S. at 360 (because of its history as a white-supremacist symbol, burning a cross is "often" a true threat); *Planned Parenthood*, 290 F.3d at 1085-86 ("Wanted" posters targeting doctors who performed abortions were true threats because both the speakers and the audience knew that the doctors in prior "Wanted" posters had been murdered).

Cases in this circuit have long employed an objective test for determining when speech is a "true threat." *See Roy v. United States*, 416 F.2d 874, 878 (9th Cir. 1969). Under this test, we asked only "whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault." *Planned Parenthood*, 290 F.3d at 1074 (quoting *Orozco-Santillan*, 903 F.2d at 1265).

But we interpreted the Supreme Court's above-quoted dictum in *Black*, which concerned criminal prosecutions for cross-burning, to overrule that precedent in criminal cases. *See United States v. Cassel*, 408 F.3d 622, 631 (9th Cir. 2005) (noting that *Black* defined true threats as when a speaker "means to communicate" serious intent). To uphold a conviction under any "threat statute that criminalize[s] pure speech," we require that the defendant subjectively intended to threaten. *United States v. Bagdasarian*, 652 F.3d 1113, 1117 (9th Cir. 2011). With respect to some (but not all) criminal statutes, we also require that the threat meet the objective standard. *Id.*

We have not yet determined whether the subjective test in *Black* applies in civil cases, or whether the objective test remains the sole test. In *Wynar v. Douglas County School District*, 728 F.3d 1062, 1070 & n.7 (9th Cir. 2013), we held that it did not matter for First Amendment purposes whether a student's repeated statements about planning a school shooting were true threats; the district was justified in suspending and expelling him whether they were or not. In *Fogel v. Collins*, 531 F.3d 824 (9th Cir. 2008), we held that, under either the objective or subjective test, police officers violated the First Amendment when they arrested Matthew Fogel and impounded his van because of his speech. We held that Fogel believed—as would any reasonable speaker—that his van with a huge sign stating (among other things) that he was a "SUICIDE BOMBER COMMUNIST TERRORIST" would be interpreted only as an "obviously satiric or hyperbolic

political message." *Id.* at 827, 831. As in *Fogel*, we need not decide here whether a true threat in civil cases requires both an objective threat and a subjective intent to threaten because Tony and Adam Kazal's speech does not satisfy either test.

The protests Tony organized in Los Angeles alerted the public to David's alleged misdeeds and encouraged people to "read the full story" on the Kazals' website. A reasonable speaker could not conclude that David would understand these communications to threaten anything more than a continuation of this campaign to provide their side of the story. Nor is there any evidence that Tony subjectively intended to threaten violence. Tony wrote in an email to his investigator that he intended to "screw with" David. In context, this did not show an "intent to commit an act of unlawful violence." *Black*, 538 U.S. at 359. While Tony's emails to David included rude language, they focused on "highlight[ing] the many crimes committed by [David]," including through "ongoing opportunities to deal with [David] in Court."

While events in the UAE and Australia cannot be part of a "pattern of conduct" under California law, they can provide context to assess whether the conduct in California was a "true threat." The context provided by these events does not elevate Tony Kazal's conduct to the level of a true threat. Tony's prior activity in the UAE and Australia largely consisted of angry emails, spurious embezzlement and immigration charges, and years of litigation. The man who stole David's cell phone and drove away with David on the hood of his

car in Australia was not identified; David testified only that it was his "understanding" that the man was employed by Tony. David's wife's testimony that "two of the Kazal brothers" followed David and a business associate in Sydney and "sw[ung] something in a threatening manner" is vague and unsubstantiated.

Both the objective and subjective tests yield the same conclusion: Tony's conduct did not constitute a "serious expression of intent to harm or assault." *See Planned Parenthood*, 290 F.3d at 1074 (quotations omitted).

Adam Kazal's conduct, while more confrontational than Tony's, also did not amount to a true threat under either test. David argues that statements in Adam's first email—"You start a fight with me, I will show you how Adam Kazal is different to the rest of the family" and "See you around grub"—were true threats. But the email nowhere threatened a physical attack, and Adam stated repeatedly in the email that his goal was "to expose [David] wherever [he goes]" and to "show the good people of LA what scum they have allowed into their city." Similarly, the tweet and attached screenshot threatened only to "expose you wherever you go!" In context, these communications suggested that Adam was "different to [sic] the rest of the family" in that he would pursue the information campaign more aggressively than did his brothers, but they did not threaten violence.

In an attempt to provide context in which to interpret the first email, David testified that Adam Kazal

had "assaulted" his father in Australia in 2013, and he therefore believed that "[t]he next action was not going to be in words." But there is little information in the record about the nature of the "assault" in Australia. David testified that Adam "assaulted" his father repeatedly, suggesting that Adam's actions were something other than a physical attack. David's wife testified that Adam "accosted" and "assaulted" David's father, using the words interchangeably, again implying something other than a physical attack. This ambiguous history did not provide sufficient basis for finding an implicit true threat in Adam's first email. It was not "reasonably foreseeable" to Adam that David would "seriously take his communication as an intent to inflict bodily harm." *Fogel*, 531 F.3d at 831. Nor is there evidence that Adam subjectively intended to threaten violence.

David also argues on appeal that Adam's second email, in response to the cease-and-desist letter, was extortionate and therefore not protected. In that email, quoted above, Adam demanded $666,666.66 for "Legal & Marketing, Pain and Disruption" costs to cease activities, or he "reserve[d] the right to . . . increase the size of [his] fleet" and do "whatever is necessary to expose the Corporate Fraudster[] Rodric David." But David did not make his extortion argument in the district court, and the jury was not instructed to determine whether Adam had an intent to extort. The dollar figure chosen—$666.666.66, invoking "the number of the beast"—strongly suggests that the demand was merely rhetorical.

We therefore conclude, on independent review under *Bose*, that Tony and Adam Kazal's speech and speech-related conduct did not fall into the exception for "true threats." Their conduct was protected under the First Amendment, and is therefore excluded from the "pattern of conduct" that constitutes stalking under California law. Cal. Civ. Code § 1708.7(b)(1), (a)(1).

Conclusion

We hold that the First Amendment applies to Tony and Adam Kazal's speech and speech-related conduct in California, and none of their conduct constituted a "true threat" outside the protection of the Amendment. Because Tony and Adam's conduct in California was "[c]onstitutionally protected activity" under California Civil Code § 1708.7(b)(1), there is no "pattern of conduct" that can support a judgment based on a violation of the California statute. We reverse and remand with instructions to set aside the judgment on Count Two.

REVERSED and REMANDED.

LEE, Circuit Judge, dissenting:

The First Amendment protects the good, the bad, and the ugly. As the defendants admit, their conduct bordered on the bad and unleashed the ugly. I largely agree with the majority's excellent opinion that the First Amendment protects even such reprehensible conduct. But I do not believe that the First Amendment—

under its original public meaning—extends to foreigners who lack substantial voluntary connection to this country. The Kazal brothers apparently have no connection to the United States, and they should be unable to exploit the First Amendment as a shield and a sword against those who live here. I respectfully dissent.

I. The Kazals Cannot Invoke the First Amendment's Protection.

As the majority ably points out, the Kazal brothers' conduct falls within the ambit of the First Amendment. But I do not believe that they can seek refuge in it because the First Amendment does not extend to foreign aliens without substantial voluntary connections to the United States.

A. The First Amendment does not extend to foreigners who lack "substantial connections" to the United States.

While the Constitution by its plain language does not appear to contemplate extraterritorial application,[1] the Supreme Court has recognized that American citizens are entitled to constitutional protections while abroad. *See Johnson v. Eisentrager*, 339 U.S. 763,

[1] Sometimes, the Constitution's silence on an issue means only the survival of prior common law principles. *See* Stephen E. Sachs, Constitutional Backdrops, 80 *George Washington Law Review* 1813-1888 (2012) (describing extra-textual legal rules predating, and insulated by, the Constitution).

779 (1950). Conversely, foreign "aliens . . . within the United States may challenge the constitutionality of federal and state actions." *Ibrahim v. Department of Homeland Sec.*, 669 F.3d 983, 995 (9th Cir. 2012) (internal citations omitted). And foreign aliens who are in even de facto U.S. territory may be able to claim some constitutional protection in some cases. *See Boumediene v. Bush*, 553 U.S. 723, 128 S.Ct. 2229, 171 L.Ed.2d 41 (2008) (enemy aliens detained in an area over which the United States exercised de facto sovereignty may file habeas petitions).

But what about foreign citizens who do not reside in the United States and have only *de minimis* connection to the United States? The Supreme Court has held that a foreign national—at least in the Fourth Amendment context—must have some "voluntary attachment to the United States" to assert that constitutional right. *See United States v. Verdugo-Urquidez*, 494 U.S 259, 265-75,110 S.Ct. 1056, 108 L.Ed.2d 222 (1990). In that case, DEA agents searched a Mexican national's homes in Mexico without a warrant and found incriminating evidence of his drug trafficking operation. The Supreme Court rejected the Mexican national's claim of a Fourth Amendment violation, focusing on the meaning of the phrase "the people" in the Fourth Amendment and other provisions of the Constitution. The Court held that the Constitution uses "the people" as a special "term of art," as reflected in the Preamble, the First Amendment, the Second Amendment, the Ninth Amendment, and the Tenth Amendment. *Id.* It concluded that "the people" refers "to a class of persons

who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *Id.* The defendant there could not invoke the Fourth Amendment because he was not "part of a national community" and did not have "sufficient connection" to the United States to be considered a part of "the people." *See id.*

Consistent with *Verdugo-Urquidez*, a historical survey of the original public meaning of the term "the people" confirms that the First Amendment should not extend to foreigners who have no significant voluntary connection to the United States and thus are not "part of [the] national community." *See id.*

At the Founding, "the people" was not interchangeable with "persons." The Framers drew heavily on Enlightenment-era social compact theory and English common law: "the people" consent to be governed. As Alexander Hamilton put it, "the origin of all civil government, justly established, must be a voluntary compact," and "no laws have any validity, or binding force, without the consent and approbation of the *people*." Alexander Hamilton, *The Farmer Refuted* (1775) (emphasis in original). Our Constitution thus uses the term "the people" in the First, Second, and Fourth Amendments to describe rights for individuals who have "sufficient connection" to the United States but uses the words "person" or "accused" for criminal procedural rights under the Fifth and Sixth Amendments. *Verdugo-Urquidez*, 494 U.S. at 265-66. So, too, with the

Virginia Declaration of Rights, the predecessor to the Bill of Rights.[2]

At the Founding, two forms of social compact theory predominated and diverged along political lines. Federalists typically favored a strict contractual approach to the social compact and a more cramped reading of "the people": Only persons who, by birth or naturalization, acquired citizenship received the benefits of the compact and thus could assert constitutional rights.[3] During the debate over the Alien and Sedition

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[2] The Virginia Declaration of Rights reflects the distinction between "the people" and "person[/s]" as used in the Constitution. It refers to "the people, community, and nation" as separate bodies, and "the people" is most often used to refer to the voting class. For instance, the Virginia Declaration uses "the people" to discuss electoral rights, powers, and representation, but, when discussing broader issues of sovereignty, the right to revolution, and the governed populace, it switches to the broader term, the "the community." *See* Section 3 ("when any government shall be found inadequate or contrary to these purposes, a majority of the community has an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal"); Section 4 ("[t]hat no man, or set of men is entitled to exclusive or separate emoluments or privileges from the community"). *But see* Preamble ("A Declaration . . . made by the representatives of the good people of Virginia, assembled in full and free convention which rights do pertain to them and their posterity"). *See also Verdugo-Urquidez*, 494 U.S. at 265-266 (discussing the use of "the people" rather than "persons" or "the accused" in the Bill of Rights); *Parker v. Lovejoy*, 3 Mass. 565, 568, 2 Tyng 565, 568 (1795) (describing the Massachusetts Constitution as "an original compact, expressly, solemnly, and mutually made between the people and each citizen").

[3] The Federalist Papers often mention "the people" in the context of citizenship. *See, e.g.*, *Federalist No. 2 ("No* all general purposes we have uniformly been one people each individual

Acts of 1798, the Federalists adopted the view that the "people" included only citizens. *See Verdugo-Urquidez*, 494 U.S. at 267-69 (discussing the passage of laws and contemporary views in response to the Crisis of 1798). *See also* 8 ANNALS OF CONG. 1984-85 (1798) ((remarks of Rep. William Gordon, a Federalist) (aliens not among those for whose use and benefit the Constitution was formed)).

James Madison and the contemporary Republicans, on the other hand, had a more expansive view of the social compact—and thus a broader meaning of "the people." They advanced a territorial-based approach in which the primary inquiry was whether a person owed allegiance to the laws of the United States not only because of citizenship but also by location and activity.[4] In response to the passage of the Alien and Sedition Acts, Madison drafted the Virginia Resolution

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citizen everywhere enjoying the same national rights, privileges, and protections"); *Federalist No. 57* ("[t]he electors are to be the great body of the people of the United States").

[4] In the 1798 debates, Madison and other Republicans argued that those passing through the United States owed temporarily allegiance, and thus had some constitutional protections. *See* Gerald L. Neuman, *Whose Constitution?*, 100 YALE L.J. 909, 934 (1991) (Madison wrote that it "is an acknowledged principle of the common law, the authority of which is established here, that alien friends . . . residing among us, are entitled to the protection of our laws, and that during their residence they owe a temporary allegiance to our Government.") (internal citations omitted). *See also id.* at 935 (noting that Madison argued that the due process clause "literally reached aliens, by using in all places the term 'persons,' not 'natives' ") (internal citations omitted).

arguing against their constitutionality. He stated that it:

> does not follow, because aliens are not parties to the Constitution, as citizens are parties to it, that whilst they actually conform to it, they have no right to its protection. Aliens are not more parties to the laws than they are parties to the Constitution; yet it will not be disputed that, as they owe, on one hand, a temporary obedience, they are entitled, in return, to their protection and advantage. Madison's Report on the Virginia Resolutions, *reprinted in* 4 ELLIOT'S DEBATES at 556.

One thing is clear from the Founding era debates: An individual, at the very least, had to have some connection to the United States—whether it be presence on our soil or some form of implicit allegiance to this nation—to benefit from our constitutional rights. The Supreme Court over the decades has repeatedly reaffirmed this extra-territorial limitation to constitutional rights.[5] Just last year, the Supreme Court again

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[5] *See, e.g.*, *United States ex rel. Turner v. Williams*, 194 U.S. 279, 292, 24 S.Ct. 719, 48 L.Ed. 979 (1904) (holding that an excludable alien is not entitled to First Amendment rights, because ' [h]e does not become one of the people to whom these thing are secured by our Constitution by an attempt to enter forbidden by law"); *Johnson v. Eisentrager*, 339 U.S. 763, 770 70 S.Ct. 936, 94 L.Ed. 1255 (1950) (recognizing that an alien "[is] accorded a generous and ascending scale of rights as he increases his identity with our society," but refusing to extend the Fifth Amendment to enemy aliens, captured in China and imprisoned in Germany); *Verdugo-Urquidez*, 494 U.S. at 265-75 (reiterating that "aliens receive constitutional protections when they have come within the

declared that "it is long settled as a matter of American constitutional law that foreign citizens outside U.S. territory do not possess rights under the U.S. Constitution." *Agency For Int'l Development. v. Alliance for Open Society International, Inc., — U.S. —*, 140 S.Ct. 2082, 2086, 207 L.Ed.2d 654 (2020) ("*AOSI II*").

Our court has extended *Verdugo-Urquidez*'s "voluntary connection" standard to the First Amendment's right of free association. In *Ibrahim v. Dep't of Homeland Sec.*, a Malaysian national studied for several years at Stanford on a student visa. 669 F.3d 983 (9th Cir. 2012). She eventually travelled to Malaysia to attend an academic conference and was prevented from returning to the United States because of her placement on the "No-Fly List." *Id.* at 987. She sued seeking injunctive relief under the First and Fifth Amendments to remove her name from the government's watchlists so that she might return to the United States. *See id.* We held that Ibrahim could assert constitutional claims because she had a "significant voluntary connection" to the United States. *Id.* at 996-97. This was so because, despite her departure to Malaysia, she spent four years studying at Stanford. *See id.* And her departure, the court found, "was to further, not to sever, her connection to the United States." *Id.* at 997.[6]

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territory of the United States and developed substantial connections with this country").

[6] Our court in *Underwager v. Channel 9 Australia*, 69 F.3d 361, 365 (9th Cir. 1995) suggested that "the people" in the First Amendment refers to the freedom of assembly and right to

In sum, the original public meaning of "the people"—as used in the First Amendment and other provisions in the Constitution—underscores that an individual must have sufficient voluntary connection to the United States to assert those constitutional rights.

B. The Kazals lack an adequate voluntary connection to the United States to invoke the First Amendment.

Nothing in the record suggests that the Kazals ever had *any* connection to the United States before waging their campaign against David. By their own admission, the brothers Kazal are residents of Australia and the United Arab Emirates, not the United States. They conduct no business in America, nor were they present here when they concocted their campaign and paid for the protests. In fact, it is not clear from

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petition the government only, and thus "there is no expressed limitation as to whom the right of free speech applies." But that language in *Underwager* appears to be dicta because the issue there was whether non-citizens residing *in the U.S.* are entitled to the First Amendment protection. *Id.* at 365 ("We conclude that the speech protections of the First Amendment at a minimum apply to all persons legally within our borders."). Further, such a cramped interpretation limiting the application of "the people" to only the rights of assembly and to petition the government would be odd; for example, it would mean that the Establishment Clause applies even to foreigners who do not reside here and have no connections to the United States. Finally, I believe the Supreme Court's recent decision in *AOSI II* has undermined such a reading. 140 S.Ct. at 2086 ("foreign citizens outside U.S. territory do not possess rights under the U.S. Constitution.").

the record if the Kazals have even ever set foot on American soil. For example, Adam Kazal testified that he has never visited California.

In their reply brief, the Kazals contend that their domestic speech to an American audience constitutes their "significant voluntary connection." But unlike the plaintiff in *Ibrahim*—who lived here and attended graduate school at Stanford—the Kazals had no connection to this country before paying for protests and roving vans. While it is true that an alien "[is] accorded a generous and ascending scale of rights as he increases his identity with our society," no court appears to have held that merely making payments abroad for speech in the United States entitles a foreign national to constitutional protections. *Eisentrager*, 339 U.S. at 770. Simply put, the allegedly protected activity by itself cannot constitute a "significant voluntary connection" to the United States.

Further, unlike the defendant in *Ibrahim*, the Kazals' actions suggest they wanted to "sever," not "further" their "connection to the United States. *Ibrahim*, 669 F.3d at 997. Ibrahim remained enrolled in an American university during her brief trip abroad to attend an academic conference. *See id.* at 986. As the Supreme Court in *Eisentrager* noted, an alien is "accorded a generous and ascending scale of rights as he increases his identity with our society." 339 U.S. at 770. As an academic at Stanford University, Ibrahim would have advanced her academic career in the United States by attending the conference overseas. Our court thus emphasized that Ibrahim's trip "was to further,

not to sever, her connection to the United States." 669 F.3d at 986.

In contrast, the Kazals admit that their only connection to the United States was funding protests against David. They admit that their behavior was less then exemplary and did so perhaps because they had little to lose even if they were found to have violated our laws. Because they have no real connection to the United States, no American court could hold proceedings against them without their or their native land's cooperation, and they may even be effectively judgment-proof. In short, unlike domestic speakers, the Kazals may evade obligations imposed by American law, while obtaining benefits provided under the First Amendment. *See U.S. ex rel. Turner v. Williams*, 194 U.S. at 292 (explaining that an alien "does not become one of the people to whom [First Amendment rights] are secured by our Constitution by [engaging in conduct] forbidden by law"). Even viewed most charitably, the Kazals' speech does not "further" even the most basic connection to the United States. Instead, it was a connection designed "to sever" itself 669 F.3d at 986. Our precedent recognizes that there are some "aliens who may bring constitutional challenges," and some "who may not." *Ibrahim*, 669 F.3d at 995. The Kazal brothers cannot.[7]

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[7] A foreigner who lives abroad might still invoke the First Amendment in some cases. For example, a foreign journalist who has visited the United States or has written for publications with an American audience might have a sufficient voluntary connection.

The majority correctly points out that the government may run afoul of the First Amendment in restricting Americans' access to information, even when it flows from abroad. *See Lamont v. Postmaster Gen.*, 381 U.S. 301, 302, 305 (1965). *But see Kleindienst v. Mandel* 408 U.S. 753 (1972) (rejecting a First Amendment right-to-receive-information challenge to the facially valid exclusion of an immigrant under executive and legislative authority). *Lamont*, however, provides no comfort for the Kazals because they lack standing to assert an audience's right to receive information from abroad. A litigant "may only bring a claim on his own behalf, and may not raise claims based on the rights of another party." *Pony v. County of Los Angeles*, 433 F.3d 1138, 1146 (9th Cir. 2006); *Levine v. U.S. Dist. Court for Cent. Dist. Of Cal.*, 764 F.2d 590, 594 (9th Cir. 1985).

Finally, I appreciate and agree with the majority's point that the First Amendment does not extend to foreigners with no connections to the United States if it implicates national security concerns. Indeed, "[i]f the rule were otherwise, actions by American military, intelligence, and law enforcement personnel against foreign organizations or foreign citizens in foreign countries would be constrained by . . . purported rights under the U.S. Constitution. That has never been the law." *See AOSI II*, 140 S.Ct. at 2086-87. For example, a foreign operative living in Russia—or in Ukraine, North Korea, or a rogue state—could pay for or transmit propaganda aimed at stoking the fires of racial tension in America. Under the Kazals' extraterritorial

view of our Constitution, that foreign operative could invoke the First Amendment and sue our government in our courts if our country acted to stop those malicious acts.

While this case does not involve national security issues, I still believe that—under the original public meaning of "the people"—foreign nationals cannot use the First Amendment's shield as a sword against us. "The distinction between citizens and aliens follows from the undoubted proposition that the Constitution does not create, nor do general principles of law create, any juridical relation between our country and some undefined, limitless class of noncitizens who are beyond our territory." *Verdugo-Urquidez*, 494 U.S. at 276 (Kennedy, J. concurring).

Although our Constitution serves as the inspiration for many freedoms enjoyed by people around the world, it does not guarantee these rights to foreigners outside our borders who have no voluntary connection to the United States. Far from a defect, the overwhelming historical evidence suggests that this is by design. The Kazal brothers, who are in no way moored to the United States, cannot shield themselves under the cover of the First Amendment.

I respectfully dissent.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THUNDER STUDIOS, INC, et al., Plaintiffs, v. CHARIF KAZAL et al., Defendants.	Case No. 2:17-cv-00871-AB (SSx) **ORDER DENYING DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW, NEW TRIAL, AND REMITTITUR** (Filed Mar. 14, 2019)

On January 30, 2019, Defendants Charif Kazal, Tony Kazal, and Adam Kazal ("Defendants") filed a Motion for Judgment as a Matter of Law, New Trial, or Remittitur following a jury verdict in favor of Plaintiffs Thunder Studios and Rodric David ("Plaintiffs"). Dkt. No. 202. Plaintiffs opposed the Motion and Defendants filed a reply. Dkt. Nos. 204, 210. The Court finds this matter appropriate for decision without oral argument and vacates the hearing set for March 15, 2019. *See* Fed. R. Civ. P. 78; C.D. Cal. L.R. 7–15. For the following reasons, the Court **DENIES** Defendants' Motion.

I. BACKGROUND

A business relationship turned sour serves as the backdrop for this litigation. Plaintiff Rodric David is an Australian citizen who entered into a joint venture with the Kazal family in the Middle East. The working relationship dissolved over time. Plaintiffs allege that, in an act of retaliation after the conclusion of the

partnership, the Kazal family used Thunder Studios' copyrighted works to deliver sensational messages to and about Rodric David on the Internet. On January 26, 2018, Plaintiffs filed a Second Amended Complaint ("SAC", Dkt. No. 94) against Defendants alleging copyright infringement. *See* SAC. Thunder Studios is the owner of various copyrights to photographs registered with the Copyright Office at VA 2-023-116 to VA 2-024-205. SAC ¶ 11. Plaintiffs alleged that Defendants copied Thunder Studios' photographs and posted them on the website, www.kazalfamilystory.com/category/rodric-david/ (the "Website"). SAC ¶ 15. Plaintiff David also brought claims for the tort of stalking against Defendants. SAC ¶ 42-43.

The case progressed to a jury trial that commenced on December 4, 2018. During jury deliberations, Defendants moved for judgment as a matter of law under Federal Rule of Civil Procedure 50(a), thereby preserving its right to renew the motion pursuant to Rule 50(b). Defendants based the motion on the ground that Plaintiffs failed to provide sufficient evidence to support its claims. Defendants did argue that the Court erred in failing to admit evidence regarding an unrelated state court jury verdict against Plaintiff David in its Rule 50(a) motion. The Court denied the motion, concluding that there was sufficient disputed evidence for a jury to decide whether Plaintiffs copyrighted photographs were infringed and whether Defendants stalked Plaintiff Rodric David.

On December 11, 2018 the jury returned a verdict for Plaintiffs on both claims. On Thunder Studios'

copyright infringement claim, the jury assessed statutory damages of $2,600 against Charif Kazal. Judgment (Dkt. No. 192). The jury did not find Adam or Tony Kazal liable for copyright infringement. Regarding David's stalking claim, the jury returned a verdict against both Adam Kazal and Tony Kazal. Specifically, the jury assessed compensatory damages of $100,000 and punitive damages of $1,000,000 against Defendant Tony Kazal and Adam Kazal each. *Id.*

Defendants now renew their motion under Rule 50(b) claiming that: (1) the jury's verdict was not supported by the weight of the evidence, and (2) the Court erred in declining to admit evidence regarding an unrelated jury verdict against Rodric David that is not yet subject to a final judgment. Alternatively, Defendant argues either for a new trial or remittitur of the jury verdict.

II. RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW

Defendants first seek an order entering judgment as a matter of law in its favor pursuant to Rule 50(b). For the reasons discussed below, Defendants' Motion is denied.

A. Legal Standard

Rule 50 governs motions for judgment as a matter of law. A motion under Rule 50(b) challenges the sufficiency of the evidence presented at trial in support of

the prevailing party's case. Judgment as a matter of law after a jury verdict is proper "if the evidence, construed in the light most favorable to the nonmoving party, permits only one reasonable conclusion, and that conclusion is contrary to the jury's." *Vollrath Co. v. Sammi Corp.*, 9 F.3d 1455, 1460 (9th Cir. 1993). In contrast, judgment as a matter of law is improper if there is substantial evidence to support the jury's verdict. *See Transgo, Inc. v. Ajac Transmission Parts, Corp.*, 768 F.2d 1001, 1014 (9th Cir. 1985). " 'Substantial evidence' is admissible evidence that reasonable minds might accept as adequate to support a conclusion." *Davis v. Mason Cty.*, 927 F.2d 1473, 1486 (9th Cir. 1991).

In considering a motion under Rule 50, the Court does not assess the credibility of witnesses and does not "weigh the evidence, but [instead] draws all factual inferences in favor of the nonmoving party." *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554 (1990). A party seeking judgment as a matter of law must meet a "very high" standard. *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 859 (9th Cir. 2002). "We can overturn the jury's verdict and grant such a motion only if there is no legally sufficient basis for a reasonable jury to find for that party on that issue." *Id.* (internal quotation marks omitted). Finally, the Court may not substitute its judgment of the facts for the judgment of the jury. *Tennant v. Peoria & Pekin Union Ry. Co.*, 321 U.S. 29, 33 (1944).

B. Discussion

At trial, Defendant premised its Rule 50(a) motion on the ground that Plaintiffs had not presented enough evidence to support their copyright infringement or stalking claims. As discussed above, the scope of a party's Rule 50(b) motion is limited to the arguments it made in its pre-verdict Rule 50(a) motion. *Freund*, 347 F.3d at 761. Nonetheless, the Court will briefly address Defendants' argument regarding the Federal Rules of Evidence before turning to whether sufficient evidence supported the jury's verdict.

1. Evidence Regarding a 2017 State Court Verdict Was Properly Excluded

Defendants sought to introduce evidence and ask questions regarding a separate case involving Plaintiff Rodric David in which a former employee brought state court claims sounding in fraud. The Court did not allow such cross-examination, holding that because the state court's jury verdict was completely unrelated to this matter and not yet subject to a final judgment, it was not admissible evidence.

Federal Rule of Evidence 608(b) provides in relevant part: "evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may on cross-examination allow the witness to be inquired into if they are probative of the character for truthfulness or untruthfulness of . . . the

witness". Fed. R. Evid. 608(b). The court has discretion to the extent of impeachment. *Id.* Under Federal Rule of Evidence 403, the Court must determine whether the probative value of the evidence is outweighed by the danger of confusion, prejudice, or waste of time. Fed. R. Evid. 403.

Here, Defendants' proposed evidence was limited in its usefulness. First, the state court jury verdict sounding in fraud does not relate to any matter at issue here. Defendants contend that such evidence may have impacted Plaintiff David's credibility. During the course of trial, the jury was provided with numerous other witnesses who served to corroborate David's testimony regarding Defendants' stalking activities, and highlighted the emotional impact these acts may have had on David and his family. Moreover, Defendants had ample opportunity to cross examine David about the stalking incident and attempt to impeach his truthfulness on the matter during the course of trial. The Court's decision to exclude potentially prejudicial and confusing[1] evidence related to a wholly unrelated state lawsuit was proper.

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[1] Any such evidence in a completely unrelated case would needlessly confuse the jury as to the issues at hand here; namely (1) whether Defendants infringed upon Thunder Studios' copyright; and (2) whether Defendants stalked Rodric David.

2. Evidence Presented at Trial Supports the Jury Verdict Finding a "Pattern of Conduct"

California Civil Code § 1708.7 requires a plaintiff to prove, among other things, that a defendant engaged in a pattern of conduct. Such conduct is "comprised of a series of acts over a period of time, however short, evidencing a continuity of purpose". Defendants assert that the evidence presented at trial could not support the jury's finding of a pattern of conduct. Specifically, Defendants argue that all of the conduct in question is protected under the First Amendment. In the alternative, Defendants argue that the evidence did not support a finding that Defendants committed the tort of stalking.

While the Court agrees that Defendants' actions would be protected were they under the veil of the First Amendment, a reasonable jury could perceive Defendants' actions as threats. "Threats generally are not entitled to First Amendment protection." *U.S. v. Keyser*, 704 F.3d 631 (9th Cir. 2012). "Whether a particular statement may properly be considered to be a threat is governed by an objective standard—whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault." *Id.* (internal citation omitted).

Drawing all inferences in a light most favorable to Plaintiff, the Court finds there was substantial evidence presented at trial to support the jury's

conclusion that Defendants Adam and Tony Kazal stalked Plaintiff David.

First, Plaintiffs presented evidence that Defendants entered into an email campaign against Plaintiffs. Threatening emails were sent by Defendants on a near daily basis over the course of multiple months. Plaintiffs presented evidence at trial suggesting that both Adam and Tony Kazal were responsible for sending the numerous emails threatening Plaintiff David. The emails claimed that David had committed "despicable crimes" and made "desperate lies and malicious threats".

Further, on October 27, 2016, Adam Kazal sent an email which included the following language: (1) "[y]ou made it personal and I will show you that I am not going to put up with the crap you tried to dish out to my brothers"; (2) "[m]y team in LA are going to expose you wherever you go until you are charged with your crimes and my team in Sydney will expose all of the spineless thieves who thought they could help themselves to steal from my family; and (3) [g]etting your hyena to scream at the LA Police like she did yesterday exposing how the disgustingly racist elements of your family are not restricted just to your Syrian David blood is not going to stop me and my crew!!" Joint Trial Ex. No. 12.

Plaintiff David and his wife testified during the trial that they perceived these statements as threats of violence. Specifically, Plaintiff David testified that he was fearful that Adam Kazal had hired a hitman to

personally harm David or his family. *See* Transcript Trial Day 1 (Dkt. No. 207) at 86:12-16. A reasonable jury could have viewed this evidence as establishing a "pattern of conduct" replete with threats that supported Plaintiff David's claim for stalking. In addition, the jury heard testimony regarding the security measures the David family took as a result of these perceived threats.

Similarly, evidence was introduced at trial that supported Plaintiff's claim that Tony Kazal contributed to the consistent email harassment suffered by the David family. Persistent harassing emails may constitute a pattern of conduct. *See Madsen v. Buffum*, 2013 WL 12139139 at *1 (C.D. Cal. Jul. 17, 2013) (determining that allegations of stalking through the creation of "several websites created for the purpose of following alarming, and harassing Plaintiffs" were sufficient under California Civil Code § 1708.7).

Defendants argue that if Tony Kazal committed stalking, it was unreasonable for the jury to have found Charif Kazal not liable for stalking. It is not the province of the Court to determine how the jury reached its verdict; however, Charif Kazal was called as a witness at trial and was subject to cross-examination. It is entirely reasonable that the jury determined Charif Kazal's testimony was credible and did not view him as personally involved in the email campaign unlike his brothers, who were not present during the course of the trial and were not called as witnesses. Moreover, Tony Kazal was listed as the "Client" who contracted for persons to drive a van displaying derogatory signs

regarding Plaintiff David during the period from November 10, 2016 to November 18, 2016. Joint Trial Ex. 20. Coupled with the numerous emails on which Tony Kazal was included, the jury could have reasonably determined that Tony was a key participant in the stalking campaign.

Considering the foregoing evidence presented at trial, and drawing all inferences in the light most favorable to Plaintiffs, the Court upholds the jury's conclusion that Adam and Tony Kazal stalked Plaintiff David, as it is supported by substantial evidence.

III. NEW TRIAL

A. Legal Standard

Under Rule 59(a)(1), "[t]he court may, on motion, grant a new trial on all or some of the issues . . . , for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59(a)(1)(A). Although Rule 59 does not enumerate specific grounds for a new trial, the Ninth Circuit has held that "the trial court may grant a new trial only if the verdict is contrary to the clear weight of the evidence, is based upon false or perjurious evidence, or to prevent a miscarriage of justice." *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 729 (9th Cir. 2007) (quoting *Passantino v. Johnson & Johnson Consumer Prods.*, 212 F.3d 493, 510 n.15 (9th Cir. 2000)) (brackets omitted). A district court "enjoys considerable discretion in granting or denying the motion." *Jorgensen v. Cassiday*, 320 F.3d 906, 918 (9th Cir. 2003).

When the movant claims that a verdict was against the clear weight of the evidence at trial, a new trial should be granted only "[i]f, having given full respect to the jury's findings, the judge . . . is left with the definite and firm conviction that a mistake has been committed." *Landes Const. Co., Inc. v. Royal Bank of Canada*, 833 F.2d 1365, 1371–72 (9th Cir. 1987). A "jury's verdict must be upheld if it is supported by substantial evidence, which is evidence adequate to support the jury's conclusion, even if it is also possible to draw a contrary conclusion." *Pavao v. Pagay*, 307 F.3d 915, 918 (9th Cir. 2002).

B. Discussion

1. The Jury's Damages Award is Not Excessive

A court "may reverse a jury's finding of the amount of damages if the amount is grossly excessive or monstrous." *Lambert v. Ackerley*, 180 F.3d 997, 1011 (9th Cir. 1999) (*en banc*), *cert denied*, 528 U.S. 1116, 145 L. Ed. 2d 814, 120 S. Ct. 936 (2000). Defendant argues that the damages awarded were excessive, and the Court should accordingly order a new trial. Here, the jury awarded $100,000 in compensatory damages against Adam and Tony Kazal each, and $1,000,000 in punitive damages against Adam and Tony Kazal each. The Court will address compensatory and punitive damages in turn.

a. Compensatory Damages

Defendants assert that "the evidence does not show any factual basis on which the jury could have appropriately estimated compensatory damages." Mot. at 17. However, Plaintiffs provided ample evidence at trial regarding both emotional damages and the measures taken as a result of Defendants' conduct. Plaintiff David testified as to the emotional distress he experienced as a result of the stalking. The Ninth Circuit does not require objective evidence for a plaintiff to establish emotional distress damages. *See Zhang v. Am Gem Seafoods, Inc.*, 339 F.3d 1020, 1040 (9th Cir. 2003) (determining that a requirement of substantial evidence for emotional distress damages "is not imposed by case law in . . . the Ninth Circuit, or the Supreme Court"). Plaintiff David's testimony of fear for himself and his family is enough to substantiate the jury's award of emotional distress damages is not unreasonable. In addition, Plaintiff took concrete measures as a result of Defendants' conduct. David provided testimony regarding the measures he took to improve the security of his house and at Thunder Studios. *See* Transcript Trial Day 1 at 99: 1-11.

b. Punitive Damages

When examining the reasonableness of a punitive damages award, "the district court is to determine whether the jury's verdict is within the confines set by state law, and to determine, by reference to federal standards developed under Rule 59, whether a new

trial . . . should be ordered." *Pavon v. Swift Transp. Co.*, 192 F.3d 902. 909 (9th Cir. 1999). The court evaluates three factors to determine whether punitive damages are excessive: "(1) the reprehensibility of defendant's conduct; (2) the ratio between any compensatory award and the punitive award; and (3) a comparison of the damage award and any potential statutory penalty for the same act." 192 F.3d at 909 (citing *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574–75 (1996)).

Here, Defendants argue the jury's award of punitive damages is not consistent with their acts of wrongdoing. The Court analyzes the jury's punitive damages award using the *Gore* factors.

i. Reprehensibility

To determine the reprehensibility of a defendant's conduct, a court considers (1) whether the harm was physical rather than "pure economic in nature"; (2) whether defendant's conduct shows "indifference to or reckless disregard for the health and safety of others"; (3) whether defendant "repeatedly engaged in prohibited conduct while knowing or suspecting that it was unlawful"; and (4) whether defendant's conduct involves "deliberate false statements, acts of affirmative misconduct, or concealment of evidence of improper motive". *Gore*, 517 U.S. at 576, 579.

Defendants engaged in a months-long internet harassing campaign against Rodric David and his family. Defendants subjected Plaintiff David to fear, concern for his family, and frustration. Further, Plaintiff

David received countless emails calling him, among other things, a "corporate thief", threatening to follow him tirelessly and was greeted by protestors delivering the same message by his home and work. Defendants provided no evidence that their harassment was provoked or justified in any reason; Defendants' conduct was reprehensible and punitive damages may deter further conduct.

ii. No Civil Comparison

Defendants do not identify any civil comparison for the tort of stalking; this factor is neutral with respect to the reasonableness of punitive damage.

iii. The Ratio is Reasonable

The *Gore* Court requires courts to examine the relationship between compensatory damages and punitive damages and determine the ratio to the actual harm inflicted is reasonable. *Id.* at 581. In determining reasonableness, courts must inquire "whether there is a reasonable relationship between the punitive damages award and the *harm likely to result* from defendant's conduct as well as the harm that actually has occurred." *Id.* (citation omitted). The punitive damages award here, at a ratio of 10:1 does not "jar one's constitutional sensibilities". *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 462, 113 S. Ct. 2711, 2722 (1993). Accordingly, the Court does not find it necessary to reduce the jury's award of punitive damages.

Further, the jury properly considered Defendants' wealth when determining its punitive damages award. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513 (2003) ("[Wealth] provides an open-ended basis for inflating awards when the defendant is wealthy. . . . That does not make its use unlawful or inappropriate; it simply means that this factor cannot make up for the failure of other factors, such as 'reprehensibility,' to constrain significantly an award that purports to punish a defendant's conduct."). Substantial evidence was presented at trial regarding the Kazal family's wealth, including the $21.5 million sale of an Australian retail space in 2017. Joint Trial Ex. 51. The award of punitive damages is reasonable in light of all the evidence.

2. The Verdict Was Not Against the Weight of the Evidence

For the reasons discussed above in Section II.B.2, the Court finds that Plaintiff presented substantial evidence during the trial to allow a reasonable jury to conclude that Defendants stalked Plaintiff David. *See supra* Section II.B.2. Accordingly, the Court declines to grant Defendant's Motion on this ground, as the verdict was not against the weight of the evidence presented at trial.

CONCLUSION

For the foregoing reasons, the Court **DENIES** Defendants' renewed Motion for Judgment as a Matter of

Law, or in the alternative New Trial. The jury's award of compensatory and punitive damages is reasonable. Accordingly, the Court also **DENIES** Defendants' Motion to remit the damages awards.

IT IS SO ORDERED.

Dated: March 14, 2019 /s/ Andre Birotte
HONORABLE
ANDRE BIROTTE JR.
UNITED STATES DISTRICT
COURT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THUNDER STUDIOS, INC.; RODRIC DAVID, Plaintiffs-Appellees, v. CHARIF KAZAL; et al., Defendants-Appellants.	No. 19-55413 D.C. No. 2:17-cv-00871-AB-SS Central District of California, Los Angeles ORDER (Filed Dec. 10, 2021)

Before: W. FLETCHER and LEE, Circuit Judges, and AMON,* District Judge.

Appellee Rodric David has filed a petition for rehearing en banc (Dkt. No. 67). Judge W. Fletcher has voted to deny the petition for rehearing en banc, and Judge Amon so recommends. Judge Lee has voted to grant the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellee's petition for rehearing en banc is **DENIED**.

* The Honorable Carol Bagley Amon, United States District Judge for the Eastern District of New York, sitting by designation.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
THE HON. JUDGE ANDRE BIROTTE JR.,
JUDGE PRESIDING

THUNDER STUDIOS, INC.; RODRIC DAVID, PlaintiffS, vs. CHARIF KAZAL; TONY KAZAL; ADAM KAZAL; AND DOES 1 to 100, INCLUSIVE, Defendants.	)	NO. 17-CV-00871-AB

JURY TRIAL – DAY 2

(1:40 p.m. to 4:32 p.m.)

Los Angeles, California

Thursday, December 6, 2018

LISA M. GONZALEZ, CSR No. 5920, CCRR
U.S. District Courthouse
350 West 1st Street – Suite 4455
Los Angeles, California 90012
213.894.2979
www.lisamariecsr.com

* * *

[7] questions, please.

BY MR. GEBELIN:

Q So I understand you moved back to Sydney.

A Yeah.

Q What was it that – after you moved to Sydney, what was it that made you or your family move away from Sydney again?

A Well, there were a couple of incidents. Obviously, the conflict between Rodric and the Kazal brothers was escalating. There were some lawsuits back and forth about the liquidation of the business and what to do moving forward, and there was a lot of acrimony and, in my opinion, a lot of irrational behavior on the part of some of the Kazal brothers where they were following people we knew, confronting them, accosting them in the streets of Sydney.

And they also had me followed in 2010 by a private investigator who, after the course of a very long day and three visits to different police stations, the end of that day was when the investigator they hired stole my husband's phone, knocked him over with his car.

We were out the front of my children's elementary school – we were going to the elementary school to tell the principal to be sure that they wouldn't release our children to anyone but us, and we were out front the school when we saw the man that the Kazals had hired again.

And my husband went to find him, because he had [8] driven past us and was down the block, and was trying to take video of the car and the license plate so we can figure out who this person was. The man grabbed my husband's phone while his arm was there and then started driving off, which obviously hit my husband with his car, knocked him over –

THE COURT: Counsel. You have to ask a question and get an answer from the witness. That's how we do it. Okay?

MR. GEBELIN: I understand, Your Honor. I'm trying not to interrupt the witness.

THE COURT: Well, ask a question that's not a narrative and elicit the testimony from the witness, please.

MR. GEBELIN: Yes, Your Honor.

MR. TAYLOR: Your Honor, I have to move to strike those portions of her testimony that are not based on personal knowledge.

THE COURT: The objection is overruled.

BY MR. GEBELIN:

Q I understand this is emotional, Ms. David –

A Sorry. I will wait for you to ask the question. I apologize.

Q You just mentioned an incident where people were following you in Australia. In response to that

incident, did you and your family start making plans to move?

A That evening the – being followed, the police told us

* * *

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[108] *CERTIFICATE*

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript format is in conformance with the regulations of the Judicial Conference of the United States.

Date: February 12, 2019

/s/ Lisa M. Gonzalez
Lisa M. Gonzalez, U.S. Court Reporter
CSR No. 5920

Matt Price

From: Adam Kazal <adamkazal@gmail.com>

Sent: Thursday, October 27, 2016 10:43 PM

To: Rodric David

Cc: Charif; tonykazal@hotmail.com; Info; Carey Martell; Dave Finger, Michael Abend; Stephan Manpearl; Matt Price; Jacqueline Carroll

Subject: Adam Kazal Demands Answers from the Online Identity Thief Rodric David – Day 1

Rodric David,

You defrauded companies you owned with my brothers Charif & Tony.

You admitted under Oath to being the one the Sydney Morning Herald wrote their lies for to fabricate an ICAC Inquiry.

You used the Herald articles to avoid prosecution and steal the $180 million company you owned with Charif & Tony Global Renewables with help on the theft from CEO David Singh.

You had the Herald write an article attacking all of our family members and Oscar is suing them for that.

Now I find for at least the last 6 months you have stolen my identity to publish disgusting lies to embarrass me and my family just because I am Charif & Tony's brother. You also stole the identity of Charif, Tony & Karl.

You made it personal and I will show you that I am not going to put up with the crap you tried to dish out to my brothers.

My team in LA are going to expose you wherever you go until you are charged with your crimes and my team in Sydney will expose all of the spineless thieves who thought they could help themselves to steal from my family.

Getting your hyena to scream at the LA Police like she did yesterday exposing how the disgustingly racist elements of your family are not restricted just to your Syrian David blood is not going to stop me and my crew!!

I will show the good people of LA what scum they have allowed into their city that Australia is glad to be rid of. Let's see how you like having the truth of what you get up to reported for the world to see your true colours.

You and your crime lord father John David might be used to stealing white collar style with help from your family's ex-politician lapdog but I really don't care about any of that.

You start a fight with me, I will show you how Adam Kazal is different to the rest of the family.

See you around grub.

Adam Kazal
@AdamKazal

Revenge is sweet and not fattening - Alfred Hitchcock Hobbies: Hunting Pigs, Catching Thieves

Sydney
Joined April 2013

202 Photos and videos

TWEETS 6,071 | FOLLOWING 705 | FOLLOWERS 12K | LIKES 4

Follow

Tweets | Tweets & replies | Media

Adam Kazal @AdamKazal · 4h

hey @Rodric_David my team in LA are going to expose you wherever you go! – Day 1 @australian @thr #kazal @Thunder_Inc

Rodric David

From: **Adam Kazal**
Date: Fri, Oct 28, 2016 at 4:42 PM
Subject: Adam Kazal Demands Answers from the Online Identity Thief Rodric David - Day 1
To: rodric david rdavid@thunderstudios.com
Cc: Charif <Charif@awtrading.biz>, "tonykazal@hotmail.com" <tonykazal@hotmail.com>, info@thunderstudios.com, cmartell@thunderstudios.com, dfinger@thunderstudios.com, mabend@thunderstudios.com,smanpearl@thunderstudios.com, mprice@thunderstudios.com, jcarroll@thunderstudios.com

Rodric David,

You defrauded companies you owned with my brothers Charif & Tony.

You admitted under Oath to being the one the Sydney Morning Herald wrote their lies for to fabricate an ICAC Inquiry.

You used the Herald articles to avoid prosecution and steal the $180 million company you owned with Charif & Tony Global Renewables with help on the theft from CEO David Singh.

You had the Herald write an article attacking all of our family members and Oscar is suing them for that.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
THE HON. JUDGE ANDRE BIROTTE JR.,
JUDGE PRESIDING

THUNDER STUDIOS, INC.; RODRIC DAVID, PlaintiffS, vs. CHARIF KAZAL; TONY KAZAL; ADAM KAZAL; AND DOES 1 to 100, INCLUSIVE, Defendants.	NO. 17-CV-00871-AB

JURY TRIAL – DAY 1

(1:20 p.m. to 4:50 p.m.)

Los Angeles, California

Thursday, December 4, 2018

LISA M. GONZALEZ, CSR No. 5920, CCRR
U.S. District Courthouse
350 West 1st Street – Suite 4455
Los Angeles, California 90012
213.894.2979
www.lisamariecsr.com

* * *

[88] BY MR. WIENER:

Q Did you have any sense what your father's emotional reaction was upon learning of the e-mail?

A This e-mail and others, what he saw, what we all saw as a family was an acceleration, an increasing nature of – of terroristic-style harassment caused us to share great fear as a family and caused him great anxiety, great pain, great emotional distress in the last few months of his life.

MR. TAYLOR: I would object to the first part as nonresponsive, Your Honor.

THE COURT: I'll allow it. Overruled.

Next question, please.

BY MR. WIENER:

Q What did you understand the statement to be that Adam Kazal – he'll show you how Adam Kazal is different to the rest of the family?

A The next action was not going to be in words.

Q And did the fact that he told you, "See you around, grub" contribute to your understanding?

A Yes.

Q I'd like you to turn to Exhibit 11.

Is this a true and correct copy of a Tweet that you received from Adam Kazal?

A Yes.

MR. WIENER: I'd like to move Exhibit 11 into

* * *

-o0o-

[124] CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript format is in conformance with the regulations of the Judicial Conference of the United States.

Date: February 13, 2019

/s/ Lisa M. Gonzalez

Lisa M. Gonzalez, U.S. Court Reporter
CSR No. 5920


ER208
FRAUDSTER
RODRIC DAVID
EXPOSED!!
CORPORATE THIEF
STOLE $180 MILLION
ROBBED HIS BUSINESS PARTNERS OF $180 MILLION
DON'T BE HIS NEXT VICTIM!!!
READ THE FULL STORY - www.KazalFamilyStory.com
OTHERS INVOLVED WILL
BE EXPOSED!!
Case: 19-55413, 09/04/2019, ID: 11420026, DktEntry: 24-2, Page 182 of 300


FRAUDSTER
RODRIC DAVID
EXPOSED!!
CORPORATE THIEF
STOLE $180 MILLION
ROBBED HIS BUSINESS PARTNERS OF $180 MILLION
DON'T BE HIS NEXT VICTIM!!!
READ THE FULL STORY - www.KazalFamilyStory.com
OTHERS INVOLVED WILL BE EXPOSED!!
ECONOLINE 250
ER209


FRAUDSTER
RODRIC DAVID
EXPOSED!!
CORPORATE THIEF
STOLE $180 MILLION
ROBBED HIS BUSINESS PARTNERS OF $180 MILLION
DON'T BE HIS NEXT VICTIM !!!
READ THE FULL STORY - www.KazalFamilyStory.com
OTHERS INVOLVED WILL BE EXPOSED!!
ER210
Case: 19-55412, 09/04/2019, ID: 11420076, DktEntry: 24-2, Page 194 of 300
(219 of 325)

12/9/2017 ICS of California Mail – Service Agreement – Field Work

[Quoted text hidden]

Thu, Nov 10, 2016 at 12:32 PM

Jamie Brown <jrtbrown@icloud.com>
To: Victor Fuentes <victor.fuentes@icsofca.com>
Cc: Mark Woodward <mark.woodward@icsofca.com>

Hi Victor and Mark
Thanks for the Info,
I will pass to Tony.
I know the reply will be for me to ask about the van driver price. I told them as we discussed a reduced rate for the driver as there was no investigation work, just a licensed PI. Is the rate quoted the reduced rate?

And if not is there another option for the driver at a flat daily rate we may have to forgo the PI as a driver at $122 per hour may not be acceptable?

Let me know your thoughts before I send info on to Tony.

Thanks.

Jamie Brown
+61 (0) 411 338 947
[Quoted text hidden]

Thu, Nov 10, 2016 at 12:38 PM

Victor Fuentes <victor.fuentes@icsofca.com>
To: Jamie Brown <jrtbrown@icloud.com>
Cc: Mark Woodward <mark.woodwardeicsofca.com>

Jaime,

That is the reduced rate. That is already taking into account less management days, less reports, includes gas (high prices and low miles per gallon on van). Unfortunately, California law requires the driver to be PI for this job. Other option would be to obtain security guard/employee with PPO and the price will be the same if not higher because of the taxes and regulations.
[Quoted text hidden]

Thu, Nov 10, 2016 at 12:40 PM

Jamie Brown <jrtbrown@icloud.com>
To: Victor Fuentes <victor.fuentes@icsofca.com>
Cc: Mark Woodward <mark.woodward@icsofca.com>

Hi Victor

Thanks

I was just saving time as I know the question would be asked.

Jamie Brown
+61 (0) 411 338 947
[Quoted text hidden]

Thu, Nov 10, 2016 at 12:41 PM

Victor Fuentes <victor.fuentes@icsofca.com>
To: Jamie Brown <jrtbrown@icloud.com>
Cc: Mark Woodward <mark.woodwardeicsofca.com>

No worries
[Quoted text hidden]

Thu, Nov 10, 2016 at 4:53 PM

Jamie Brown <jrtbrown@icloud.com>
To: Victor Fuentes <victor.fuentes@icsofca.com>

https://mail.google.com/mail/u/0/?ui=2&ik=67f8c21455&jsver=gNJGSxrCYso.en.&view=pt&q=jrtbrown%40icloud.com&qs=true&search=query&th=158 . . . 5/8

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA –
WESTERN DIVISION
HONORABLE ANDRÉ BIROTTE JR.,
U.S. DISTRICT JUDGE

THUNDER STUDIOS, INC.; RODRIC DAVID, PLAINTIFFS, vs. CHARIF KAZAL; TONY KAZAL; ADAM KAZAL; AND DOES 1 TO 100, INCLUSIVE, DEFENDANTS.	)	No. CV 17-0871-AB

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, DECEMBER 10, 2018

1:20 P.M.

LOS ANGELES, CALIFORNIA

Day 3 of Jury Trial, P.M. Session

CHIA MEI JUI, CSR 3287, CCRR, FCRR
FEDERAL OFFICIAL COURT REPORTER
350 WEST FIRST STREET, ROOM 4311
LOS ANGELES, CALIFORNIA 90012
cmjui.csr@gmail.com

> [28] (Reading:) Now this action has started against me in Australia. Can you also have the wrap guys print up stickers to cover whatever my name is, care of Adam Kazal and overstick with care of Tony Kazal?

A Yes, he asked me to do that.

Q Did you comply with that request?

A There was no need. His name and Tony's name were never on the wrap.

Q Do you know why he made that request?

A I have no clue.

Q Did Adam Kazal also write to you in the same e-mail, quote –

> (Reading:) Rodric made the complaint through his lawyers, Staying safe in the USA. So to further screw with him, overstick my name, then by Friday we should be able to go back to my name, end quote?

A Yeah, it was my understanding he didn't want to create any legal problems. That's why he wanted his name covered up.

Q What did you understand Adam Kazal to mean by – that he wanted to screw with Mr. David?

A I mean, his entire operation was kind of designed to provoke, don't you think?

[29] Q Do you think it was designed to harass Mr. David?

A No.

Q What's the difference in your mind between provoking and harassing?

A We didn't do anything illegal. Harassment is illegal. It's a pretty clear line.

Q Were you aware that Adam Kazal was found in criminal contempt?

A After the fact I did.

Q How did you learn that fact?

A Jamie Brown told me.

Q Did Adam Kazal also write you on November 7, 2016, 11:05 A.M., and write to you, quote –

> (Reading:) So to be seen complying, we just changed names. He will not expect action in the U.S.

A I'm sorry. I didn't understand – I didn't hear a question.

Q Did he say that?

A Yes.

Q All right. Do you have any understanding why Adam Kazal was seeking to provoke Mr. David?

A My understanding is limited. I can – I understand there was a business dispute, and the two guys were pretty mad at each other, it seems like.

* * *

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[106] CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: May 2, 2019.

/S/ CHIA MEI JUI
Chia Mei Jui, CSR No. 3287