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**ORDER DENYING REVIEW,
SUPREME COURT OF CALIFORNIA
(JULY 8, 2026)**

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

JANE DOE, ET AL.,

*Plaintiffs and
Appellants,*

v.

WAL-MART ASSOCIATES INC., ET AL.,

*Defendants and
Respondents.*

No. S296889

Court of Appeal, Second Appellate District,
Division Seven - No. B323435

Before: GUERRERO, Chief Justice.

The petition for review is denied.

/s/ Guerrero
Chief Justice

**OPINION, CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT,
DIVISION SEVEN
(APRIL 22, 2026)**

FILED 4/22/26

NOT TO BE PUBLISHED
IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA SECOND APPELLATE
DISTRICT - DIVISION SEVEN

JANE DOE, ET AL.,

*Plaintiffs and
Appellants,*

v.

WAL-MART ASSOCIATES INC., ET AL.,

*Defendants and
Respondents.*

No. B323435

(Los Angeles County Super. Ct.
Nos. BC698048, BC716975)

Appeal from a Judgment of the Superior Court of Los
Angeles County, Terry A. Green, Judge. Affirmed.

Before: Gonzalo C. MARTINEZ, Presiding Justice,
Gail RUDERMAN FEUER, Natalie P. STONE,
Justices.

Florence Washington and Santane Glasgow, cashiers at a Walmart store in Torrance, appeal from a judgment in favor of Wal-Mart Associates Inc. (Walmart) and assistant store managers Lamar Davenport and Flor Garcia Solares following a jury trial on their consolidated causes of action for sexual harassment and retaliation under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.; FEHA) and related claims. Washington and Glasgow alleged that Solares circulated explicit, nude photographs of Washington—obtained from Davenport (Washington’s former boyfriend)—to other Walmart employees. Further, when they complained, Walmart failed to address the issue and instead reprimanded Washington and terminated Glasgow. However, the jury made findings that Solares and Davenport did not distribute photographs of Washington, Washington and Glasgow were not harassed at work, and Walmart’s adverse employment actions were not retaliatory.

On appeal, Washington and Glasgow contend the trial court committed numerous evidentiary errors, including that the court improperly limited “me-too” evidence of harassment of other employees, excluded phone records that would have impeached Davenport’s denial of a relationship with Washington, and excluded evidence of Davenport’s prior felony convictions. They also contend the court erred in imposing a 31-hour limit on their case presentation; the court improperly suggested a Walmart manager’s racial identity was relevant to whether she exhibited racial bias; an

expert witness referred to excluded matters; and the court erroneously instructed the jury. Finally, Washington and Glasgow contend the court erred in denying their motion for new trial.¹

Washington and Glasgow fail to show the trial court abused its discretion or committed prejudicial error. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Washington's Complaint (Case No. BC698048)

On March 14, 2018 Washington filed a complaint against Walmart, Davenport, and Solares.² Washington alleged she was a 51-year-old Black woman who began working for Walmart in 2009. In October 2016 Washington transferred to a Walmart store on Hawthorne Boulevard in Torrance (the Torrance store). She became romantically involved with Davenport, who was an assistant manager at the store, and she sent him explicit nude photographs of herself. Davenport shared these photographs with Solares, whom he was also dating (at various times Davenport dated at least four women who worked at Walmart). On March 14, 2017 Solares sent Washington a text message containing the nude photographs and crude, derogatory comments. Washington learned Solares was also showing the

¹ As we will discuss, Washington and Glasgow have forfeited multiple other contentions because they presented only conclusory arguments unsupported by legal authority and citations to the record.

² Washington filed her complaint under the fictitious name “Jane Doe,” and Glasgow filed her complaint as “Jane Roe.” Both plaintiffs agreed to be identified by their true names at trial, and they use their names on appeal.

photographs to other employees at the Torrance store. Washington lodged a complaint with Walmart's management, which failed to address the harassment.

Washington asserted causes of action under FEHA for sexual harassment and hostile work Environment against all three defendants (Gov. Code, § 12940, subd. (j)) and against Walmart for harassment on the basis of sex; retaliation; and failure to prevent discrimination, retaliation, and harassment (*id.*, § 12940, subds. (a), (h), (k)). Washington also asserted causes of action for violation of whistleblower protections (Lab. Code, § 1102.5) and against Washington and Solares for intentional distribution of private photographs without consent in violation of the "revenge porn" statute (Civ. Code, § 1780.85). Several more causes of action were dismissed or adjudicated before trial.

B. Glasgow's Complaint (Case No. BC716975)

On August 9, 2018 Glasgow filed a complaint against Walmart, Solares, and Torrance store manager Tina Sims.³ Glasgow alleged she was a 27-year-old Black woman who worked as a cashier in the Torrance store. Coworker Solares frequently shared explicit details about her sex life and showed Glasgow "aggressive sexual communications." In late 2016 Glasgow learned Solares was upset because Solares found out that Davenport, her boyfriend at the time, was also dating Washington, and in May 2017 Solares showed Glasgow sexually explicit photographs of Washington. Solares showed the photographs to other coworkers and made derogatory sexual comments about Wash-

³ On September 23, 2019 the trial court entered summary judgment in favor of Sims; Sims is not a party to this appeal.

ington. Glasgow lodged a complaint with Sims, who did nothing to protect Glasgow. Instead, beginning in September 2017, Sims began to target Glasgow: she refused to give Glasgow time off for a family medical emergency and reprimanded Glasgow for contrived infractions. On February 14, 2018 Walmart terminated Glasgow, purportedly for cashing an unsigned check.

Glasgow asserted causes of action against Walmart under FEHA for sexual harassment, discrimination, retaliation, failure to prevent discrimination, retaliation, and harassment, and hostile work Environment (Gov. Code, § 12940, subds. (a), (h), (j), (k)). Additional claims that proceeded to trial included whistleblower retaliation against Solares and Walmart (Lab. Code, § 1102.5), violation of Glasgow's right to "Kin Care" leave (*id.*, § 233), and wrongful discharge in violation of public policy.

Glasgow's and Washington's lawsuits were consolidated on November 27, 2018.

C. The Evidence at Trial

A jury trial on Washington's and Glasgow's claims commenced on March 15, 2022 and continued over 13 days. Washington and Glasgow called 14 witnesses, including two experts; Walmart and the individual defendants called five additional witnesses, including one expert.

1. The obscene text messages sent to Washington

Washington testified she first met Davenport around 2015 when she was a customer at the Torrance store and he was an associate. Against company policy,

he flirted with her and asked her out. Over the next couple of months, they spoke and exchanged messages, but they did not meet outside of the store. After Washington was hired as a cashier at the Torrance store in October 2016, she and Davenport began a sexual relationship that she believed was exclusive. At the time, Davenport was a department manager in the paint and sporting goods department, a nonexempt hourly position, without any female reports.

According to Washington, during their relationship and at Davenport's request, she sent him photographs of herself, including two nude photographs that she told him to delete. She broke up with Davenport in January 2017 after learning he was expecting a baby with another woman. Around that time, Davenport transferred to Walmart's Compton store, where he worked as an asset protection associate.

Washington testified that on March 14, 2017 she received a string of obscene and derogatory text messages from a number she did not recognize. The first message stated, "Hi is so funny how ugly fat bitch u look." (Punctuation omitted.) The sender then transmitted photographs of a cell phone screen that displayed messages Washington had sent to Davenport with her nude photographs. One photograph showed that on November 27, 2016 Washington wrote, "Baby last minute Thinkin" and sent a photograph of her vagina. Another photograph showed that on December 24 she wrote, "You Got Yr Keys. . . . Make sure you Park in my Spot" and sent a photograph of herself lying naked in bed with her buttocks exposed. She signed these messages "Ms. Gorgeous." After transmitting these photographs, the anonymous sender wrote, "Nasty bitch . . . dirty ass" and "Ms. Gorgeous lmao from

where???? Cause ur pussy ur ass well everything is ugly ass hell honey look for ling somewhere else bitch!!!!”

Washington did not receive any other messages from the anonymous sender and could not trace the number. At trial, screenshots of Washington’s phone showing the March 14, 2017 derogatory messages and embedded nude photographs were admitted into evidence; however, Washington testified she purchased a new phone in late 2018 (six months after filing the lawsuit), and she therefore no longer had the original phone and the messages on it, including the March 14 messages.

Washington suspected Solares was responsible for sending the March 14 messages. She believed Solares was the mother of Davenport’s baby, and Solares regarded her as a homewrecker. (In fact, another Walmart associate, Jasmine Alaimalo, was the mother of Davenport’s baby.) In late March Washington drove to the Compton Walmart store to confront Davenport about the messages. Davenport brushed off her assertion that Solares had sent the messages using photographs from his phone, telling Washington he had changed phones and thrown away his old phone’s memory card.

At trial, Davenport denied that he ever had a sexual relationship with Washington. Although they exchanged flirtatious messages, he never received nude photographs of Washington, let alone shared nude photographs with Solares. He admitted he had been to Washington’s house but said it was to help her move a large appliance. He denied going to her house on December 24, 2016.

Solares testified that she did not have any nude photographs of Washington and did not send the March 14 messages. In 2016 (when Washington allegedly sent Davenport nude photos), Davenport was living with Alaimalo. Solares began living with Davenport after January 2017. In late January 2017 Alaimalo gave birth to Davenport's baby.

2. Washington's complaint to Walmart

In early April 2017 Washington called Walmart's central corporate "Ethics Hotline" to report harassment by Solares. Washington told the hotline representative that on March 14, as she passed Solares in the Torrance store, Solares said, "Oh you're here," even though the two had not spoken in months and barely knew each other. Later that day Solares sent Washington "an inappropriate text being rude and nasty" using a disguised number. Solares also sent Washington photographs of Washington "with a former associate." Washington did not tell the hotline representative that Solares sent nude photographs or identify Davenport. Walmart's ethics department followed up with Washington, but Washington did not respond. The department did not have enough information to investigate the report, but it notified Patricia Hernandez, Walmart's human resources manager for the Los Angeles South Bay region, that the report had been made.

Later in April Washington told the Torrance store comanager, Gloria Lujan, that Solares was harassing her, and Lujan asked Washington to submit a written statement. Washington reported that she was concerned about Solares spreading information about her, but she did not mention the text messages, nude photographs, or insults.

When Lujan interviewed Solares about Washington's complaint, Solares reported that Washington was "always making faces" and called her a "fat Mexican bitch" in front of another cashier. Two weeks earlier, Washington had shouted "fuck you" and "bitch" at Solares as Solares drove through the parking lot. Lujan also interviewed Davenport, who stated Washington was jealous of his relationship with Solares and was always saying "ugly things" and spreading rumors about Solares. Davenport told Lujan that he changed his phone number because Washington was constantly messaging him and interfering with his relationship with Solares, including coming to the Compton store to argue about Solares. At trial, Washington denied insulting Solares.

In May 2017 Sims replaced Lujan as the Torrance store comanager. Solares complained to Sims that Washington had called her names and flipped her off; Washington told Sims that Solares had called her a "fat bitch." After speaking with Hernandez, Sims learned of Washington's earlier ethics complaint and Lujan's investigation.

3. Glasgow's complaints about Solares's workplace behavior

Glasgow, who worked at the Torrance store as a cashier and in customer service, testified she was "work friends" with Solares. Solares frequently discussed with Glasgow her sex life in explicit terms. Although this made Solares uncomfortable, she did not say anything to management. In particular, Solares shared with Glasgow explicit details about Solares and Davenport's sexual activities and predilections. Solares also "vented" to Glasgow about Washington, saying Washington was a "whore" who

was “sleeping with some of the guys in the back room.” Solares confessed to Glasgow that she disliked Washington because Washington was involved with Davenport. At trial, Solares denied that she ever had a conversation in which she called Washington a whore or said Washington was promiscuous.

Glasgow testified that during a lunch break in late May or early June 2017 Solares handed Glasgow her phone and told Glasgow she had photographs confirming that Washington was a whore. Glasgow looked at the phone and saw a photograph of Washington wearing clothes, but as she scrolled down, she saw a photograph of Washington’s vagina. Glasgow said she was not interested and handed the phone back, but Solares simply laughed and continued scrolling through the photographs and making jokes. Solares told Glasgow she was thinking about posting the photographs on the internet.

Glasgow felt conflicted about the encounter, and about 10 days later she spoke with a supervisor to get advice on what to do. On June 14, 2017 she submitted a complaint letter to Sims stating that Solares showed her nude photographs of Washington. Sims had recently received Washington’s complaint and took the lead in investigating both matters in collaboration with Hernandez and Walmart’s ethics officers in its Arkansas headquarters. On June 20, Sims interviewed Glasgow, who repeated her allegations and added, “I know for a fact that [Solares] has shown the pictures to Tasha [Jones] and Malika [Sharif].”⁴

⁴ On June 26, 2025 Washington and Glasgow moved to augment the record to include 26 trial exhibits, including Sims’s notes from her June 20, 2017 interview with Glasgow (trial exhibit

However, when Sims interviewed Jones and Sharif, they denied that Solares showed them photographs of Washington. Solares also denied that she possessed or shared any photographs of Washington, telling Sims that Glasgow had approached her inside the Torrance store “asking about the pictures I showed her” and “going on and talking about these pictures” that Solares knew nothing about.

Sims also interviewed Solares’s supervisor, Travetta Jenkins, who stated that Solares “came to me one day and told me she was going to leak nude pictures of [Washington] on the Internet since she likes sending them to her male friend.” Jenkins reported that she had not seen any photographs. At trial, Jenkins testified that it was around Christmas in 2016 when Solares told Jenkins that she found photographs “on her man’s phone” and was thinking about posting them online. Jenkins advised Solares not to post them, but Jenkins did not believe Solares actually had photographs, so Jenkins did not report the incident to store management.

Around August 29, 2017 the investigating team (Sims, Hernandez, and the Arkansas ethics officers) concluded the allegations in Glasgow’s and Washington’s complaints that Solares transmitted or circulated nude photographs of Washington were unsubstantiated due to the “instability of the evidence” and the absence of corroborating witnesses. Sims arranged for Solares to transfer to another store away from Washington and Glasgow. Sims explained that although

51). Walmart opposed the motion with respect to exhibits 346 and 424, which were not admitted at trial. We grant the motion to augment except for exhibits 346 and 424.

the allegations were unsubstantiated, she felt the “back and forth” feuding among the employees was unacceptable and interfered with Walmart’s core focus on customer service.

4. Other testimony about sexual photographs

Matthew Rickett, a former Torrance store department manager who had supervised Solares, testified that in early 2017 Solares shared explicit sexual details about her relationship with Davenport and on one occasion showed him a photograph of Washington. Rickett recalled that in the photograph Washington was standing in front of a bathroom mirror in white lingerie. Rickett saw Solares show the same photograph to another associate. Rickett told Solares it was inappropriate, but he did not report it to upper management. Rickett was terminated for gross misconduct on July 31, 2017 following complaints that he showed an associate a pornographic video and another associate sat on his lap.

Deon Phillips, a customer service manager who supervised Washington, on June 14, 2017 wrote a “witness statement” asserting that he heard Solares and Sharif discussing nude photographs of Washington and insulting her appearance, and that he had reported it to former manager Lujan. He took a photograph of his statement and sent it to Washington, but he did not submit it to Walmart. At trial, Phillips recanted and testified his witness statement was entirely false; Washington put him up to it; and she dictated everything he wrote. It is not clear from the record whether Washington submitted Phillips’s witness statement to Walmart during the investigation. Phillips also sent Glasgow photographs of his penis, but she did not object or report it.

Ruthie Martin, an assistant manager at the Torrance store, testified that Solares threatened to disseminate nude photographs of Martin that Solares had obtained from Davenport. Martin began a sexual relationship with Davenport in 2013. At some point in 2017, Solares found out that Davenport was sleeping with Martin and confronted Martin at Martin's house. A short time later Martin learned she was pregnant with Davenport's child and sent a private message to Solares on social media saying, "I [am] pregnant by your man." Solares responded with insults, and the two became embroiled in an online dispute that culminated with Solares sending Martin a photograph of Martin's naked torso and breasts, which Martin had shared with Davenport. Solares wrote, "Look at you, assistant manager. You nasty." On June 9, 2017 Martin lodged a complaint with Walmart alleging that Solares was showing inappropriate photographs of her to other associates at the store. Walmart investigated the complaint (in conjunction with its initial investigation of Washington's complaint) and found there were no witness statements that supported Martin's allegations.⁵

5. Glasgow's termination

Glasgow testified that beginning in 2017, after the investigation concluded, she felt "targeted" by Torrance store management because she started receiving complaints about her work and was told she

⁵ When interviewed, Martin told the ethics officer about the confrontation at her house and that Solares sent her the nude photograph and threats, but Martin no longer claimed that Solares circulated the photograph at the store; rather, Martin told the ethics officer she filed the complaint to head off such a disclosure.

was “messing up” transactions. When she sought positions in other departments, she was turned down even though she was more qualified than other people who were promoted.

On the morning of September 24, 2017, Glasgow asked Sims for a leave of absence to take her daughter to the hospital after the child sustained a spider bite. Sims told her that if she left work it would be marked as an “occurrence,” and because it was Glasgow’s ninth occurrence, it would be grounds for termination. Glasgow stayed at work, but Sims later chastised her for trying to call her mother to ask her to take Glasgow’s daughter to the hospital. Glasgow was told, “I’m on the clock[,] and I either need to go get on a register or look for another job.”

In January 2018 Glasgow received a “third-level coaching” (Walmart’s highest level of reprimand) from Sims after Glasgow added \$800 onto a customer’s debit card without collecting any money from the customer. She had already received a first-level coaching for poor customer service in December 2017. Sims testified she dissuaded another manager from terminating Glasgow over the error.

On February 14, 2018 Walmart terminated Glasgow. Sims reported that on February 11, Glasgow cashed a check for \$392 without obtaining the customer’s signature, causing another loss for the store. Glasgow testified that she did not fail to obtain a signature, and when a store manager met with her to tell her she was being terminated, the manager denied Glasgow’s request for a copy of the unsigned check, claiming she had already sent the check out.

6. Washington's reprimands

On April 1, 2018 (two weeks after she filed her lawsuit), Washington received a second-level coaching after two customers complained to customer service that Washington was rude and had a bad attitude. In December 2018 she received a third-level coaching stating she was very disrespectful to her supervisor and ignored his directions. She was cautioned that further misbehavior would result in termination.

In April 2019 two assistant store managers spoke to Washington about multiple customer complaints that she refused to bag purchases in customers' reusable bags. On April 19 Washington lodged a formal complaint that the assistant store managers and a customer service manager were harassing her in retaliation for filing the lawsuit. After interviewing the parties, Hernandez deemed the complaint as unsubstantiated.

Washington was still employed as a cashier at the Torrance store at the time of trial in April 2022.

D. The Jury's Verdict and Judgment

On April 1, 2022 the jury reached a verdict in favor of Walmart, Solares, and Davenport on all causes of action. As to Washington's action, the jury answered "No" in response to the following questions on the special verdict form:

1. "Did Lamar Davenport intentionally distribute by any means one or more photograph(s) of Florence Washington?"

Answer: "No."

7. “Did Flor Garcias Solares intentionally distribute by any means one or more photograph(s) of Florence Washington?”

Answer: “No.”

- 13, 20 & 27. Under FEHA, “Was Florence Washington subjected to harassing conduct because she is a woman?”

Answer: “No.”

36. Under FEHA, “Was Florence Washington’s opposition to retaliation and/or harassment, filing of a complaint, or assisting in any proceeding under [FEHA] a substantial motivating reason for Walmart’s decision to subject Florence Washington to any adverse employment action?”

Answer: “No.”

44. Under Labor Code section 1102.5, “Were Florence Washington’s complaints a contributing factor in Walmart’s decision to subject [her] to any adverse employment action?” Answer: “No.” The special verdict form was structured so that the jury was precluded from answering further questions and awarding damages based on these findings.

As to Glasgow, the jury returned similar negative findings (answering “No”) on her FEHA claims. With respect to Glasgow’s whistleblower cause of action (Lab. Code § 1102.5), however, the jury found her complaints to management contributed to Walmart’s decision to terminate her (question no. 25), but the jury answered “Yes” to question no. 28: “Would Walmart

have terminated Santane Glasgow’s employment or subjected her to an adverse employment action anyway at that time, for a legitimate, independent reason?” The verdict form directed the jury based on a “Yes” answer to question No. 28 not to answer questions about damages. The jury also made findings against Glasgow on her causes of action for Kin-Care leave and wrongful discharge in violation of public policy.

On June 15, 2022 the trial court entered judgment based on the jury’s findings on the special verdict form, which was incorporated into the judgment. Washington and Glasgow timely filed a motion for new trial and motion for judgment notwithstanding the verdict. After briefing and a hearing, on August 22 the court denied the motion.

Washington and Glasgow timely appealed from both the judgment and the order denying their motion for new trial or judgment notwithstanding the verdict.⁶

DISCUSSION

A. The Trial Court Did Not Abuse Its Discretion in Its Evidentiary Rulings

1. Governing law and standard of review

“Only relevant evidence is admissible.” (*People v. Helzer* (2024) 15 Cal.5th 622, 667; see Evid. Code,

⁶ Although “an order *denying* a motion for new trial is not independently appealable” under Code of Civil Procedure section 904.1, subdivision (a)(4), it may be reviewed “on appeal from the underlying judgment.” (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 19; accord, *People v. Ashford University, LLC* (2024) 100 Cal.App.5th 485, 502, fn. 4.)

§ 350.) “‘Relevant evidence’ means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, § 210.) Even if evidence is otherwise admissible, the trial court has discretion to exclude it under Evidence Code section 352 “if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create a substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” (See *People v. Hamilton* (2009) 45 Cal.4th 863, 930 [trial court did not abuse its discretion under Evid. Code, § 352 by excluding evidence with limited probative value where presentation would result in time-consuming “mini-trial” on collateral issues].)

We review a trial court’s decision to admit or exclude evidence for abuse of discretion. (*People v. Helzer, supra*, 15 Cal.5th at p. 667; *Kourounian v. California Dept. of Tax & Fee Administration* (2023) 91 Cal.App.5th 1100, 1112; see *Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1317 “[t]rial court rulings on the admissibility of evidence, whether in limine or during trial, are generally reviewed for abuse of discretion”). “[W]e accord deference to a trial court’s determination that the probative value of a particular piece of evidence outweighs any danger of prejudice” (*People v. Dworak* (2021) 11 Cal.5th 881, 899-900), and “we will not disturb the trial court’s ruling “except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted

in a manifest miscarriage of justice.”” (*Briley v. City of West Covina* (2021) 66 Cal.App.5th 119, 132; accord, *People v. Miles* (2020) 9 Cal.5th 513, 587-588.) “A miscarriage of justice results only if ‘it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.’” (*Briley*, at p. 132.) “In appeals challenging discretionary trial court rulings, it is the appellant’s burden to establish an abuse of discretion.” (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 281.)

2. The trial court did not abuse its discretion in limiting evidence of other Walmart employees’ sexual harassment complaints

Washington and Solares contend the trial court improperly excluded evidence that two other Walmart employees, Zondra Flowers and Colleen Brown, complained about workplace sexual harassment, and another employee complained that Davenport called a customer a “stupid white bitch.”

“Courts have sanctioned the use of ‘me too’ evidence, which is evidence of an employer’s alleged gender bias ‘in the form of harassing activity against women employees other than the plaintiff’ in certain circumstances.” (*Pinter-Brown v. Regents of University of California* (2020) 48 Cal.App.5th 55, 96; accord, *Pantoja v. Anton* (2011) 198 Cal.App.4th 87, 114 (*Pantoja*); see *Meeks v. AutoZone, Inc.* (2018) 24 Cal.App.5th 855, 871 [“California courts have held so-called ‘me-too’ evidence . . . may be admissible evidence in discrimination and harassment cases.”].) “Where evidence of workplace discrimination is proffered to cast doubt on an employer’s stated justification for an adverse employment action, for

example, ‘me too’ evidence can be admissible to show intent or motive, which could establish that the employer’s stated reason was a pretext.” (*Pinter-Brown*, at p. 96; accord, *Johnson v. United Cerebral Palsy/Spastic Children’s Foundation* (2009) 173 Cal.App.4th 740, 760.) However, “‘me too’ evidence . . . is never admissible to prove an employer’s propensity to harass.” (*Pinter-Brown*, at p. 96; see *Pantoja*, at p. 111 [“in a sexual harassment case, [Evid. Code] section 1101, subdivision (a), bars evidence of sexual harassment of other employees, unknown to the plaintiff, if it is offered to prove a defendant’s propensity to harass”].)

“The relevance of evidence concerning conduct toward nonparty employees is inherently “fact based and depends on many factors, including how closely related the evidence is to the plaintiff’s circumstances and theory of the case.”” (*Meeks v. AutoZone, supra*, 24 Cal.App.5th at p. 871; accord, *Johnson v. United Cerebral Palsy/Spastic Children’s Foundation, supra*, 173 Cal.App.4th at p. 767.) “[S]imilar considerations are involved in balancing the probative value of the evidence against its prejudicial effect.’ [Citation.] Me-too evidence is therefore not subject to any per se rule of exclusion, and may be admissible to prove a defendant’s motive or intent even where the conduct occurred outside the plaintiff’s presence and at times other than when the plaintiff was employed.” (*Meeks*, at p. 871; accord, *Pantoja, supra*, 198 Cal.App.4th at pp. 115-116.)

(a) Zondra Flowers

Glasgow testified during her deposition that Flowers, an associate at the Torrance store, told Glasgow that she had complained to assistant customer

service manager Chastity Martinez and later to an unspecified store manager that Solares was harassing her. According to Glasgow, Solares was always “[m]aking snide remarks to [Flowers], looking at her sideways, just different things” and had “threatened Zondra with photos” that Flowers had sent to Davenport, with whom Flowers previously had a relationship. Glasgow stated Martinez took no action to help Flowers because Martinez was sexually involved with Solares.

Walmart filed a motion in limine “to exclude evidence of sexual relationships and alleged harassment complaints of third party witnesses.” (Capitalization omitted.) In relevant part, Walmart sought to preclude Glasgow from testifying about Flowers’s complaints, arguing the testimony was hearsay, lacked foundation, and presented a substantial risk of prejudice, confusion, and waste of time. Washington and Glasgow argued in their opposition that the evidence showed Walmart was aware of Solares’s and Davenport’s “various promiscuous engagements” with other employees (including Davenport’s relationship with Flowers) but failed to take action, and it was relevant to show the “sexually toxic” Environment and culture at Walmart and Walmart’s hostility toward women. (Capitalization, boldface and underlining omitted.) Further, the evidence was relevant to show Solares made similar threats to expose nude photographs of female employees sent to Davenport.

At the Evidence Code section 402 hearing, Glasgow admitted she never saw Solares harass Flowers, and her knowledge of Solares’s harassment and management’s inaction was based entirely on what Flowers told her. Glasgow never complained to management

about Solares's harassment of Flowers, and there was no evidence Walmart received a complaint from Flowers. The trial court ruled Glasgow could not testify about what nonparties told her about inappropriate workplace relationships and harassment because it was hearsay, *unless* there was evidence Walmart knew or should have known of the complaints by the nonparties. However, the court denied Walmart's request for a blanket order excluding other employees' complaints of harassment, and it allowed a significant amount of "me-too" evidence to be presented at trial, including Martin's testimony that Solares harassed her and threatened her with disclosure of nude photographs.

The trial court did not abuse its discretion. Flowers's statements to Glasgow were undisputedly hearsay: Flowers did not testify, and there was no evidence (or an offer to provide evidence) that anyone witnessed Solares's harassment of Flowers or that Flowers, or anyone on her behalf, complained to management. On appeal, Washington and Glasgow argue that Flowers's statements to Solares were nonhearsay because they were not offered for "the truth of the matters asserted," but instead, as evidence that Walmart knew Solares and Davenport were harassing female employees. But the evidence would only show Walmart's knowledge of the harassment if the testimony was admitted for a hearsay purpose—to show that Flowers was harassed and complained to management.

(b) Colleen Brown

During trial, plaintiffs' attorney elicited an admission from human resources manager Hernandez that Walmart had investigated allegations that nude photographs were circulating at a nearby Walmart store ("Big Torrance") managed by Sims. However, Hernandez

testified the investigation into nude photographs was already underway when Sims started working at the Big Torrance store in 2018, and Hernandez, not Sims, conducted the investigation. At this point, plaintiffs' attorney sought to introduce for impeachment Walmart's interrogatory response in a sexual harassment lawsuit filed by former employee Brown, in which Walmart admitted that Brown had complained to management about nude photographs on February 17, 2019, *i.e.*, when Sims was already the store manager. Walmart's attorney objected to admission of the interrogatory response on the ground that the trial court had granted Walmart's motion in limine to exclude evidence of other lawsuits against Walmart.

The trial court sustained the objection, finding plaintiffs' attorney had already established there was a similar claim at Sims's other store, and the attorney was free to clarify the timeline, but she could not get "into the weeds" by introducing documents filed in another lawsuit. Hernandez subsequently testified, after her recollection was refreshed with the interrogatory response, that Walmart received the complaint in February 2019.

Washington and Glasgow's contention that the trial court improperly excluded relevant me-too evidence is meritless. They ignore the court's in limine order, which only excluded evidence of other sexual harassment lawsuits filed against Walmart. Plaintiffs' attorneys were not precluded from asking Walmart about harassment claims at other stores, and the jury learned Brown was harassed with nude photographs at the Big Torrance store and an investigation resulted in termination of the offender. And, contrary to their assertion on appeal, Washington and Glasgow

were not precluded from impeaching Hernandez about the investigation timeline. The court therefore acted well within its discretion in excluding the litigation documents in Brown's lawsuit as unnecessary, confusing, a waste of time, and unduly prejudicial.

(c) Davenport's use of a slur against a customer

Washington and Glasgow contend the trial court erred in preventing them from examining Walmart's corporate human resources director, Laura Kish, about an investigation into a racial discrimination complaint made by a white employee at the Compton store, who alleged that Davenport called a customer a "stupid white bitch" in the employee's presence. At trial, plaintiffs' attorney argued Davenport's slur had a sexual aspect and was admissible me-too evidence of sexual harassment. The court excluded evidence of the complaint as not relevant because the alleged slur was investigated in the context of a racial discrimination case and was made after the investigation into Washington's and Solares's cases had been closed.

We generally agree with Washington and Glasgow that Davenport's use of the slur "stupid white bitch" in some circumstances would be admissible as me-too evidence of a hostile work Environment based on sexual harassment. For example, in *Pantoja, supra*, 198 Cal.App.4th at pages 118 to 122, the Court of Appeal held the trial court abused its discretion in excluding evidence the defendant supervisor frequently called other female employees "bitches" because use of the term "bitch" clearly "express[ed] contempt for women." However, in *Pantoja*, unlike this case, the slurs against the other women were pervasive and similar to the slurs made against the

plaintiff, and the me-too evidence was offered to impeach the supervisor's trial testimony that he did not insult other female employees. (*Id.* at pp. 115-116.)

Here, there was no evidence that Davenport made sexist slurs to Washington or Glasgow or to any other employees. Further, evidence that Davenport allegedly called a customer a "stupid white bitch" in the Compton store, a year after he left the Torrance store—and well after the investigation into Washington and Glasgow's claims was completed—had minimal (if any) relevance to Washington's and Glasgow's claims. Moreover, it would be highly prejudicial for the jury to hear evidence that Davenport made a racist comment, which had no relevance to the sexual harassment claims. (*See McCoy v. Pacific Maritime Assn.* (2013) 216 Cal.App.4th 283, 296-297 [trial court did not abuse its discretion in lawsuit for FEHA retaliation in excluding evidence that manager made racially derogatory remarks and engaged in sexually offensive conduct with other employees].)

3. The trial court did not abuse its discretion in excluding phone records not produced during discovery

Washington and Glasgow contend the trial court erroneously excluded Washington's phone records (monthly bills from her service provider) that would have shown that Davenport and Washington frequently spoke and exchanged messages between late October 2016 and mid-January 2017. In particular, they argue, the records would have shown (and they do show) that Washington texted Davenport's telephone number on November 27 and December 24, 2016, at the exact times of the timestamps on the amorous text mes-

sages and vagina photograph Washington claimed she sent to Davenport on those dates. Washington and Glasgow argue the records were admissible to impeach Davenport's testimony that he was not in a sexual relationship with Washington, Washington never sent him nude photographs, and he did not go to Washington's house on December 24, 2016. Walmart⁷ argues the court properly excluded the records based on its in limine ruling to exclude documents that were not produced in discovery. We agree the phone records were responsive to Walmart's document demands, and the court did not abuse its discretion.

(a) Relevant procedural background

On June 25, 2018, Walmart served Washington with requests for production of documents that included a request for "[a]ll DOCUMENTS constituting or RELATING TO any COMMUNICATIONS between YOU and Lamar Davenport RELATING TO the allegations in YOUR COMPLAINT." On October 9, 2019 Walmart served a supplemental request for production asking Washington to review and update her responses. Washington did not produce her phone records prior to the discovery cutoff in November 2019 (or at any time before trial).

On March 4, 2022, one week before the trial, Washington and Glasgow filed a motion in limine (No. 1) to "exclude the introduction of witnesses or documents not previously disclosed in response to discovery." (Capitalization omitted.) They argued, "Needless to say, it would be incredibly prejudicial to

⁷ Walmart filed a respondent's brief, which was joined by Davenport and Solares. For simplicity, we refer to Walmart in discussing the respondents' arguments on appeal.

Plaintiffs if Defendants are allowed to introduce documentary or testimonial evidence at trial that was properly requested, not objected to (properly) and yet not produced or revealed. Plaintiffs will not have had an opportunity to examine or inquire about such documents or testimony by way of deposition and/or other discovery. Allowing Defendants to use at trial documents withheld during discovery would be tantamount to rewarding Defendants for their abuse of the discovery process.” The trial court granted the motion in limine, ruling “We’re going to exclude the introduction of witnesses and documents that were asked for and not disclosed in discovery.”

After plaintiffs’ attorney presented her opening statement, Walmart’s attorney objected to exhibit 145, titled Washington’s “Phone Records.” Walmart’s attorney argued that Washington and Glasgow should not be allowed to introduce Washington’s phone records because they were not produced in discovery. The trial court indicated it would sustain the objection if the records had been requested but not produced. At a subsequent hearing, the court reviewed Walmart’s request for production and found Washington’s phone records were “clearly something that was clearly sought,” and Washington was “obliged to turn [them] over” if she wanted to use them at trial. The court sustained the objection in light of its in limine ruling.

(b)Washington’s phone records were responsive to Walmart’s document requests

On appeal, Washington and Glasgow argue the phone records were not responsive to Walmart’s request for production because Walmart asked for “communications,” whereas “phone records [are] busi-

ness records, not communications.” As discussed, Walmart requested “[a]ll documents constituting or relating to any communications” between Davenport and Washington, which, as the trial court correctly found, clearly sought phone records. (Capitalization omitted.) Moreover, Washington and Glasgow’s argument is disingenuous because they offered the phone records as direct evidence of Washington’s communications with Davenport.

Washington and Glasgow next argue that they objected that the document request was “overbroad,” and Walmart did not file a motion to compel production. Although they cite no legal authority, it is generally true that a court may impose evidentiary sanctions for discovery abuses under Code of Civil Procedure sections 2023.010 and 2023.030 only after a party files a motion to compel and the motion is granted. (*See New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1426.) But the trial court did not impose a discovery sanction; rather, it enforced the order on the motion in limine. Further, as Washington and Glasgow argued in their motion, it would be “incredibly prejudicial” if an opposing party could introduce evidence at trial that was requested but not produced. Moreover, Washington and Glasgow made no showing the document request was overbroad. They therefore failed to meet their burden to show the court abused its discretion. (*See Shaw v. County of Santa Cruz, supra*, 170 Cal.App.4th at p. 281.)⁸

⁸ Washington and Glasgow also argue Walmart, Davenport, and Solares were not prejudiced in defending the case without Washington’s phone records because they had access to Davenport’s phone records, which they could have used to investigate whether Washington and Davenport were in contact. But it is sheer spe-

4. The trial court did not abuse its discretion in excluding evidence of Davenport's 25-year-old felony convictions

Washington and Glasgow challenge the trial court's order granting Davenport's motion in limine to exclude reference to his prior felony convictions. It is undisputed that in 1995 Davenport was convicted of armed robbery, for which he served 10 years in prison. Davenport was also convicted of felony assault in approximately 1998, and he was sentenced to 16 months in prison. Plaintiffs' attorney argued Davenport's history was highly relevant and admissible under Evidence Code section 788 because he admitted at his deposition that he lied on his 2012 application to work at Walmart by stating he had no felony convictions, and Walmart failed to investigate Davenport's record in hiring an "armed robber."

The trial court excluded the convictions, finding, as Davenport had argued, they were remote in time, Davenport had subsequently led a "legally blameless life" (with no arrests), Walmart's hiring of a former felon was not blameworthy (and a "good thing"), the

culation that Walmart had Davenport's 2016 phone records, especially given that Davenport changed his telephone number in 2017. And even if Walmart had access to Davenport's phone records, Walmart was not on notice that Washington and Glasgow intended to use Washington's phone records, and Walmart was denied an opportunity to explore Washington's phone records in discovery. Further, the phone records Washington introduced at trial included very heavy redactions and covered a narrow time period, notably omitting the period in 2017 when Washington was allegedly harassed. Had Washington and Glasgow provided the requested discovery, Walmart would have had an opportunity to explore the completeness of the phone records and any relevant communications they reflected.

felonies had nothing to do with whether Washington's nude photographs were circulated, and admission of the prior convictions would be highly prejudicial.

Evidence Code section 788 provides, "For the purpose of attacking the credibility of a witness, it may be shown by the examination of the witness or by the record of the judgment that he has been convicted of a felony. . . ." "Because evidence of other crimes may be highly inflammatory, the admission of such evidence ""must not contravene other policies limiting admission, such as those contained in Evidence Code section 352."" (*People v. Davis* (2009) 46 Cal.4th 539, 602; see *Robbins v. Wong* (1994) 27 Cal.App.4th 261, 274 ["upon proper objection to the admission of a prior felony conviction for purposes of impeachment in a civil case, a trial court is bound to perform the weighing function prescribed by section 352"]; accord, *Jameson v. Desta* (2013) 215 Cal.App.4th 1144, 1150, fn. 3.) The court "should consider, among other factors, whether [the prior conviction] reflects on the witness's honesty or veracity, whether it is near or remote in time, [and] whether it is for the same or similar conduct as the charged offense." (*People v. Clark* (2011) 52 Cal.4th 856, 931; accord, *People v. Carter* (2014) 227 Cal.App. 4th 322, 329-330.)

"Even [a crime] involving fraud or stealing, for example, if it occurred long before and has been followed by a legally blameless life, should generally be excluded on the ground of remoteness." (*People v. Beagle* (1972) 6 Cal.3d 441, 453; accord, *People v. Muldrow* (1988) 202 Cal.App.3d 636, 647; cf. *People v. Mendoza* (2000) 78 Cal.App.4th 918, 925 [admitting evidence of 11-and 21-year-old convictions where the defendant suffered three theft convictions and served

several prison terms since oldest offense].) We review a trial court’s decision whether to exclude prior convictions for an abuse of discretion. (*People v. Edwards* (2013) 57 Cal.4th 658, 722.)

Washington and Glasgow principally contend the fact Davenport lied about his felony conviction on his 2012 Walmart job application “suggest[s] his moral character had not changed,” and impeachment with the convictions was necessary to show Walmart’s defective hiring practices. As to the latter contention, the record does not reflect what Walmart found (or did not find) in Davenport’s background check or whether his status as a felon was a disqualifying factor for employment. Moreover, the trial court considered the relevant factors and made findings that the convictions were minimally relevant and remote in time, and Davenport had since then led a legally blameless life. There was no abuse of discretion. (*See Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1685 [although plaintiff’s 10-year-old fraud conviction was “probative with regard to credibility,” defendant failed to show “that its exclusion was arbitrary, capricious, or patently absurd, or that it resulted in a manifest miscarriage of justice.”].)⁹

⁹ Washington and Glasgow also contend the trial court abused its discretion in granting Davenport and Solares’s motion to exclude evidence that in September 2021 Solares filed a request for a restraining order against Davenport after the two broke up, arguing the court “denied plaintiffs the opportunity to show Davenport had assaulted Solares and threatened to kill her.” Even if Davenport’s alleged conduct constituted a felony, evidence of uncharged crimes “may be viewed as ‘inherently prejudicial’ and ““are admissible only if they have *substantial* probative value.”” (*People v. Rogers* (2013) 57 Cal.4th 296, 331.) The codefendants’ breakup four years after the relevant period, even

5. Washington and Glasgow forfeited their remaining evidentiary contentions

“In order to demonstrate error, an appellant must supply the reviewing court with some cogent argument supported by legal analysis and citation to the record.” (*United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 153; *see ibid.* [the appellate court is not bound to develop the appellant’s arguments].) “[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.” (*Perez v. Galt Joint Union Elementary School Dist.* (2023) 96 Cal.App.5th 150, 170.) Thus, we disregard “conclusory arguments that are not supported by pertinent legal authority.” (*United Grand Corp.*, at p. 153.)

Likewise, “[i]t is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations.” (*Woolard v. Regent Real Estate Services, Inc.* (2024) 107 Cal.App.5th 783, 785; *see* Cal. Rules of Court, rule 8.204(a)(1)(C) [brief must “[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears”].) “If no citation ‘is furnished on a particular point, the court may treat it as [forfeited].’” (*Citizens for Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609, 626, fn. 8; *see Woolard*, at pp. 785-786 [court may disregard any factual contention not supported by a proper

if it involved violent threats, is not probative of issues in the case, and is clearly prejudicial.

citation to the record]; *Hernandez v. Vitamin Shoppe Industries Inc.* (2009) 174 Cal.App.4th 1441, 1453 [same].)

In their opening brief, Washington and Glasgow raise a number of contentions in a scattershot fashion, providing conclusory arguments without cogent legal analysis or supporting authority. In multiple instances, they provide a one-or two-sentence assertion followed by a lengthy cite to multiple pages of the reporter's transcript, which, upon inspection, are not consistent with the assertion. In other places they simply cite legal arguments they made in the trial court rather than evidence. On this basis, Washington and Glasgow have forfeited the following contentions in their opening brief (AOB):

- (1) AOB, p. 63: Washington and Glasgow were not allowed "to talk about how Davenport was an intimidating person." This single-sentence contention is followed by a string-citation to the reporter's transcript, without identifying a contested ruling.
- (2) AOB, p. 63: The trial court "did not enforce" an in limine ruling precluding Walmart from inquiring into the cause of Washington's former partner's death. (Capitalization and boldface omitted.) Washington and Glasgow do not identify the challenged proceedings or provide any legal authority, and the cited transcript pages do not support their contention.¹⁰

¹⁰ In their reply brief, Washington and Glasgow belatedly explain that Walmart's attorney and a defense expert mentioned that Washington's former partner was murdered, in contravention

- (3) AOB, p. 64: “Defense expert witness Dr. Hinkin referred to Washington’s IRS audit in front of the jury in violation of Plaintiff’s MIL No. 9.” (Capitalization and boldface omitted.) Washington and Glasgow provide a paragraph describing the trial court proceedings, but they fail to present any legal argument or authority addressing how the trial court abused its discretion.
- (4) AOB, p. 65: The trial court’s “failure to help Plaintiff procure Alaimalo for trial prejudiced the result.” Washington and Glasgow provide only a conclusory argument, which is not supported by the cited transcript pages.
- (5) AOB, p. 74: The trial court admitted hearsay when it “allowed Market HR Hernandez to read from a report regarding an investigation and multiple witness statements rather than requiring the witnesses to testify.” Washington and Glasgow present no further argument (*e.g.*, a description of what was read, what the testimony was offered to show, what objections were made, how the court ruled, or why the testimony was inadmissible).
- (6) AOB, pp. 74-75: The trial court improperly precluded plaintiffs’ attorney from examining

of a limine ruling excluding mention of the manner of his death. However, the trial court sustained plaintiffs’ attorney’s objections to the references, struck the testimony, and admonished the jury not to consider the statements. Washington and Glasgow do not provide any support for their implicit contention the court, which otherwise ruled entirely in their favor, abused its discretion in denying their motion to hold Walmart’s attorney in contempt.

Kish about a complaint against Davenport for racial discrimination. Washington and Glasgow present only a conclusory argument.

- (7) AOB, p. 75: “Walmart was aware Solares was coached for body shaming on September 21, 2016 and was on her second written warning.” Washington and Glasgow present no legal argument.
- (8) AOB, pp. 75-76: The trial court committed reversible error by excluding me-too evidence that Jenkins was accused of favoritism and Sims had a “hostile response” to a nonparty disability complaint. Washington and Glasgow fail to address the trial court’s rulings and present no argument on the evidence’s admissibility and how they were prejudiced.

B. The Trial Court Did Not Abuse Its Discretion in Limiting Washington and Glasgow’s Trial Presentation to 31 Hours

Washington and Glasgow contend the trial court denied them due process by “severely” limiting their case presentation to 31 hours. Their argument is not persuasive.

A trial court has inherent and statutory authority to place and enforce time limits on the presentation of evidence as long as the limits are “reasonable” and the court remains “mindful that each party is entitled to a full and fair opportunity to present its case.” (*California Crane School, Inc. v. National Com. for Certification of Crane Operators* (2014) 226 Cal.App.4th 12, 21 (*Crane*); accord, *People v. ConAgra Grocery Products Co.* (2017) 17 Cal.App.5th 51, 150 (*ConAgra*);

see Code Civ. Proc., § 128, subd. (a)(3); Evid. Code, § 765, subd. (a).¹¹ To that end, “[f]or those cases in which the trial judge believes time limits should be set, the court should first elicit estimates from the parties,” and then “independently evaluate” those estimates “based on the arguments of the parties, the state of the pleadings, the legal and factual issues presented, the number of witnesses likely to testify, the court’s trial schedule and hours, and the court’s experience in trying similar cases.” (*Crane*, at p. 20; accord, *ConAgra*, at p. 149.) The court should set time limits in “court hours” rather than “court days” in order to give the parties an “incentive to be diligent,” and it should keep the parties “advised on a regular basis . . . of how much time each side” has remaining. (*Crane*, at pp. 20-21; accord, *ConAgra*, at p. 150.)

“[I]t is also important that [time] limits be enforced.” (*Crane*, *supra*, 226 Cal.App.4th at p. 22; accord, *ConAgra*, *supra*, 17 Cal.App.5th at p. 150.) However, the court should be open “to allow[ing] additional time at the end of the trial when a showing was made that more time was necessary.” (*ConAgra*, at pp. 150-151; see *Crane*, at p. 21 [“if an unanticipated trial event causes a party to call additional witnesses not originally scheduled to testify, then the court would be justified in increasing that party’s time allotment *provided* the court was given timely notice of the

¹¹ Under Code of Civil Procedure section 128, subdivision (a)(3), a trial court has the power “[t]o provide for the orderly conduct of proceedings before it.” Evidence Code section 765, subdivision (a), states the court “shall exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth.”

request, found that party's claim of surprise credible, determined that its surprise was not the result of inattention or lack of preparation and concluded that said party had otherwise managed its case in a diligent manner"].) We review the time limits a court imposes and enforces for an abuse of discretion. (*ConAgra*, at p. 148; *Crane*, at p. 23.)

In this case, the trial court assiduously and expressly followed the protocol for managing time limits prescribed in *Crane* and *ConAgra*. When the parties submitted their witness lists, plaintiffs' attorney estimated Washington and Glasgow needed 36.4 hours for their case. At the final pretrial conference, however, plaintiffs' attorney conceded "most of these witnesses will not be called," and she estimated the trial would take "about three weeks total." Consistent with plaintiffs' attorney's time estimate, the court allocated 25 hours to each side, which the court estimated would take approximately three weeks, assuming four hours per day of trial time. The court advised the prospective jurors it would be a three-week trial.¹² At regular intervals throughout the trial, the court advised the parties how much of their time had been used. At the end of the first week, the court observed plaintiffs' attorneys used a lot of time on their initial witnesses, and on several occasions it advised plaintiffs' attorneys to "plan your time accordingly" to ensure they did not run out of time; the court also noted when their time use had not been efficient.

Notwithstanding the trial court's advisements, by the time Washington and Glasgow's 25-hour allo-

¹² Including voir dire and deliberation, the trial took three weeks and two days.

cation elapsed, their attorneys still had not finished examining key witnesses for their case in chief, including Sims, Washington, and Glasgow. Citing *Crane*, the court gave both parties six more hours to allocate as they wished to their remaining presentation (including one hour for closing argument). On the final afternoon scheduled for witness testimony, Washington and Glasgow's new allocation (apart from the hour for closing argument) elapsed during their re-cross examination of Walmart's damages expert. As a result, the court did not allow plaintiffs' attorneys to cross-examine Walmart's final three witnesses: Cindy Lehigh, Tammy Johnson, and Wakouisha Walker, each of whom was an assistant store manager at the Torrance store in 2018. The three witnesses testified very briefly about the disciplinary actions taken against Washington and Glasgow, which testimony was cumulative of testimony elicited from Washington, Glasgow and Sims. The trial court denied the motion to strike each witness made by plaintiffs' attorneys.

The trial court did not abuse its discretion in setting and enforcing the time limits. The court considered the parties' initial estimates and allocated time in light of the witness lists, case issues, and the parties' agreement that the trial could be completed in three weeks. (See *Crane, supra*, 226 Cal.App.4th at p. 20.) It gave frequent time updates and warnings. (*Id.* At p. 21.) And when it became clear Washington and Glasgow could not finish critical witnesses in time, the court increased their time by a reasonable amount and admonished their attorneys to allocate their time wisely. (*Ibid.*)

Washington and Glasgow contend the trial court's enforcement of the 31-hour time limit was "manifestly

prejudicial” and denied them due process because the court “arbitrarily [cut] off their presentation of evidence.” But plaintiffs’ attorneys chose to devote much of their additional time to a second day examining Sims and the party witnesses, despite the court cautioning them that no further extensions would be given. Plaintiffs’ attorneys should not have been surprised when their time ran out before they could cross-examine Lehigh, Johnson, and Walker. (*See Crane, supra*, 226 Cal.App.4th at p. 21, fn. 5 [“If a plaintiff heedlessly exhausts its time limit during its case-in-chief, then it will have no time to cross-examine defense witnesses.”].)

Crane is instructive. In that case, the trial court enforced a 12-day time limit, divided evenly between the parties, for each side to present their case on plaintiffs’ claims for antitrust violations and unfair competition; as a result, plaintiffs were precluded from calling five victim-witnesses and presenting evidence to rebut defendants’ damages expert and other defense evidence. (*Crane, supra*, 226 Cal.App.4th at p. 24.) The Court of Appeal rejected plaintiffs’ contentions they were denied the right to present evidence and to a fair trial, after considering the trial court’s process in setting and enforcing the time limits. (*Id.* at p. 23.) The court concluded the trial court was well within its discretion in holding the plaintiffs to the original time allotment, especially because the record showed the plaintiffs “were unable to present rebuttal evidence because they did not manage their case-in-chief in a manner that permitted time for rebuttal.” (*Ibid.*)

In re Marriage of Carlsson (2008) 163 Cal.App.4th 281, cited by Washington and Glasgow, is inapposite. There, the Court of Appeal found the husband “in a

routine marital dissolution case” was denied his due process right to a full and fair hearing where “the family law judge suddenly declared an end to the trial before the husband had finished putting on his case-in-chief.” (*Id.* at p. 284.) Indeed, “[a]fter displaying impatience . . . the judge ended the trial while an expert witness . . . was on the witness stand and counsel was in the midst of asking a question.” (*Ibid.*; *see id.* at pp. 289-290 [judge exited the courtroom and “never returned,” leaving the courtroom clerk to inform counsel the trial was over].) *Carlsson* did not involve the setting and enforcing of time limits in a jury trial. It also did not involve the extensive efforts to manage time limits and shepherd the trial to a timely conclusion that were made by the trial court in this case.

C. Washington and Glasgow Were Not Prejudiced by the Trial Court’s Comment About Sims’s Race

While examining Sims about the diligence of her investigation and why she did not interview all 280 Torrance store employees about whether they saw Washington’s nude photographs, plaintiffs’ attorney asked Sims, “And so you thought that one employee seeing the nude photos of Ms. Washington was not enough to substantiate that [Solares] had actually shown nude photos of Ms. Washington?” Sims answered, “Yes. You have one person saying that they saw it and you have another person saying that they never obtained any nude photos.” Plaintiffs’ attorney then asked, “And the reason you thought one person wasn’t enough was because Ms. [Glasgow] is an African-American female and Ms. Washington is an African-American female?” Sims answered, “No.”

The trial court interjected, “Excuse me. You mentioned African American[.]” The court then asked Sims, “How would you identify your racial background?” Sims responded that her mother was Hispanic and her father was “Black and Portuguese.” The court then told plaintiffs’ attorney, “You just asked the question if she judged these people differently because they’re African American. That is quite an allegation. So you’ve got to have for the record the ethnicity of the witness that you asked that question.”

Washington and Glasgow contend the trial court’s question about Sims’s race and its “lecture” to plaintiffs’ attorney in front of the jury was improper because it implied that if Sims was Black, she could not be racially biased. Walmart, citing federal district court cases, responds that although there is no presumption an employer cannot discriminate against members of the same race, a jury may reasonably consider an employer’s (or supervisor’s) race. (*See, e.g., Saenger v. Montefiore Medical Center* (S.D.N.Y. 2010) 706 F.Supp. 2d 494, 510, fn. 9 [“a number of courts have recognized” that members of the same protected class as the plaintiffs are “less likely” to discriminate than nonmembers].)

Regardless of whether the trial court erred in suggesting in front of the jury that Sims’s race was a relevant consideration in determining whether she had any racial bias, any error was harmless. Sims denied that Washington’s and Glasgow’s race factored into her approach to the investigation, and the jury could evaluate Sims’s credibility in denying she was racially biased. Washington and Glasgow argue that the court’s intervention “presumably impacted the jury, because it is a distinction which may never have

crossed the jurors' mind had the judge not made it an issue." But this is entirely speculative, and, in any event, plaintiffs' attorney, by her questioning of Sims on her racial bias, had already suggested to the jurors that racial bias may have factored into Sims's investigation. Further, Washington and Glasgow did not allege race-based harassment or discrimination, and nothing in Sims's earlier testimony suggested she acted out of racial bias. Under these circumstances, it is not "reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (See *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 801-802 [harmless error standard under *People v. Watson* (1956) 46 Cal.2d 818, 834 applies to civil cases].)

D. The Trial Court Did Not Err in Instructing the Jury

We review a claim of instructional error de novo. (*Suffolk Construction Co., Inc. v. Los Angeles Unified School Dist.* (2023) 90 Cal.App.5th 849, 869; *Holistic Supplements, LLC v. Stark* (2021) 61 Cal.App.5th 530, 548.) "A judgment may not be reversed for instructional error in a civil case 'unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.' [Citation.] . . . [¶] Instructional error in a civil case is prejudicial 'where it seems probable' that the error 'prejudicially affected the verdict.'" (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580.)

1. The trial court did not err in instructing the jury on hostile environment sexual harassment

With respect to Washington’s and Glasgow’s claims for hostile Environment sexual harassment (Gov. Code, § 12940, subd. (j)), the trial court instructed the jury with CACI No. 2521A (“Hostile Work Environment Harassment”) which provided in relevant part: “Florence Washington and/or Santane Glasgow claim that they were subjected to harassment based on sex at Walmart and that this harassment created a work Environment that was hostile, intimidating, offensive, oppressive or abusive. [¶] To establish this claim, Florence Washington and Santane Glasgow must prove all of the following: . . . [¶] . . . [¶] Two, that Florence Washington and/or Santane Glasgow was subjected to harassing conduct because they are women. . . .”

Washington and Glasgow contend as to the second element that the trial court erred in denying their request to instruct the jury that they had to prove they “were subjected to harassing conduct because of sex” rather than “because they are women.”¹³ (Italics added.) Under FEHA’s definitions, “Sex” includes pregnancy, childbirth, and nursing (and related medical conditions), and it “also includes, *but is not limited to*, a person’s gender.” (Gov. Code, § 12926, subd. (r)(1)-(2), italics added.) Washington

¹³ The CACI No. 2521 pattern jury instruction allows the trial court to designate the protected status, stating as to the second element: “2. That [*name of plaintiff*] was subjected to harassing conduct because [*he/she/nonbinary pronoun*] was [*protected status, e.g., a woman*].”

and Glasgow argue the gravamen of their hostile Environment sexual harassment claim was not that Walmart was an Environment where employees were harassed because they are women, but because of their sexuality and sex characteristics. For example, employees exchanged photographs of both vaginas and penises; Solares talked about all manner of sexual activities; and men (such as Rickett) received nude photographs. By instructing the jury to find harassment “because they are woman,” they contend, the court too narrowly circumscribed the actionable behaviors that were pervasive at the Torrance store.

We are not persuaded. Washington and Glasgow are women (a protected class under FEHA), and the jury instructions, read together, instructed the jury to find Walmart liable for any sex-or sexuality-related harassment of the two women at work. CACI No. 2521A, as given, stated that Washington and Glasgow “claim that they were subjected to harassment *based on sex* at Walmart.” (Italics added.) And immediately after the trial court instructed the jury on the elements of work Environment harassment, it instructed the jury with CACI No. 2523 (“‘Harassing Conduct’ Explained”), which provided: “Harassing conduct may include, but is not limited to, any of the following: a. Verbal harassment, such as obscene language, demeaning comments, sexual conversations, slurs, or threats and defamatory statements, sexual remarks; or b. Visual harassment, such as offensive pictures, text messages, internet postings, emails, posters, objects, cartoons, or drawings.” The instructions captured every form of harassment that Washington and Glasgow claim to have encountered. Thus, the jury instructions allowed the jury to find harassing conduct if it believed Solares

had regaled Glasgow with details about Davenport’s penis or his enjoyment of specific sexual activities, or if it believed Solares shared nude pictures of Washington.¹⁴

2. The trial court did not err in declining to instruct the jury on hostile environment based on harassment of coworkers

Washington and Glasgow contend the trial court erred in denying their request to instruct the jury with CACI Nos. 2521B (corporate defendants) and 2522B (individual defendants) for hostile work Environment harassment based on harassment of coworkers. Under FEHA, “[a] plaintiff may be the victim of hostile Environment sexual harassment “even though no offensive remarks or touchings are directed to or perpetrated upon’ her.” (*Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 615, quoting *Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 284.) “Generally, however, sexual conduct that involves or is aimed at persons other than the plaintiff is considered less

¹⁴ Because we find the jury instruction was not erroneous, we reject Washington and Glasgow’s contention the special verdict form was defective because it used the “because they are women” language. Washington and Glasgow also contend the special verdict form was defective as to their Labor Code section 1102.5 whistleblower retaliation claim because it did not specify that Walmart had a heightened burden to prove by clear and convincing evidence that it terminated Glasgow or disciplined Washington for a legitimate, independent reason. But the special verdict form did not specify *any* burdens of proof, nor should it have, and Washington and Glasgow cite no contrary authority. Moreover, the trial court properly instructed the jury that Walmart had to prove it had a legitimate reason for termination or discipline by clear and convincing evidence.

offensive and severe than conduct that is directed at the plaintiff. [Citations.] A hostile work Environment sexual harassment claim by a plaintiff who was not personally subjected to offensive remarks and touchings requires ‘an even higher showing’ than a claim by one who had been sexually harassed without suffering tangible job detriment: such a plaintiff must ‘establish that the sexually harassing conduct permeated [her] direct work environment.’” (*Lyle*, at pp. 284-285; accord, *Thomas*, at pp. 615-616.) “To meet this burden, the plaintiff generally must show that the harassment directed at others was in her immediate work environment, and that she personally witnessed it.” (*Lyle*, at p. 285.)

As a general matter, “[a] trial court must give a requested [jury] instruction only if it is supported by substantial evidence, that is, evidence sufficient to deserve jury consideration.” (*People v. Leon* (2020) 8 Cal.5th 831, 848; accord, *People v. Larsen* (2012) 205 Cal.App.4th 810, 823 [“[A] trial judge’ . . .’has the authority to refuse requested instructions on a defense theory for which there is no supporting evidence.”].) “Substantial evidence is evidence sufficient to ‘deserve consideration by the jury,’ that is, evidence that a reasonable jury could find persuasive.” (*People v. Barton* (1995) 12 Cal.4th 186, 201, fn. 8.) An instruction is not required where only “[s]peculative, minimal, or insubstantial evidence” is presented. (*People v. Simon* (2016) 1 Cal.5th 98, 132.)

Substantial evidence did not support a jury instruction on harassment of coworkers. In their opening brief, Washington and Glasgow list instances when, according to Glasgow’s testimony, Solares made graphic sexual comments or showed photographs to Glasgow,

and they argue “[a] reasonable woman, or man, would have been affected by the harassment.” But Solares’s testimony provided evidence of direct harassment. Washington and Glasgow do not identify a single instance when Glasgow or Washington personally witnessed sexual harassment of a coworker in their immediate work environment. (Cf. *Lyle v. Warner Brothers Television Productions*, *supra*, 38 Cal.4th at p. 285.)

E. The Trial Court Did Not Abuse Its Discretion in Denying the Motion for New Trial

Finally, Washington and Glasgow challenge the trial court’s order denying their motion for new trial.¹⁵ “The denial of a new trial motion is reviewed for an abuse of discretion, except that a trial court’s factual determinations are reviewed under the substantial evidence test.” (*Minnegren v. Nozar* (2016) 4 Cal.App.5th 500, 514, fn. 7; *see People v. Johnson* (2019) 8 Cal.5th 475, 524 [“We will not disturb a trial court’s denial of a motion for a new trial unless ‘a “manifest and unmistakable abuse of discretion” clearly appears.”].)

Washington and Glasgow acknowledge their motion for new trial was based principally on the arguments they raise on appeal. Because we have concluded the trial court did not abuse its discretion in its evidentiary rulings, trial management, or in instructing the jury, the court did not abuse its discre-

¹⁵ Washington and Glasgow do not argue the trial court erred in denying their motion for judgment notwithstanding the verdict, nor do they contend the verdict was not supported by substantial evidence.

tion in denying the motion for new trial on the same grounds.

Washington and Glasgow also raise in a single paragraph 10 examples of the “court’s additional improper conduct.” However, they provide no argument beyond a conclusory assertion of one sentence or less, no legal authority, and no attempt to marshal the evidence beyond string citations to page ranges in the reporter’s transcript (many of which reflect the attorneys arguing with each other and the court). Washington and Glasgow have therefore forfeited their contentions. (*Perez v. Galt Joint Union Elementary School Dist.*, *supra*, 96 Cal.App.5th at p. 170; *United Grand Corp. v. Malibu Hillbillies, LLC*, *supra*, 36 Cal.App.5th at p. 153.)¹⁶

DISPOSITION

¹⁶ Plaintiffs also argue “the jury began deliberating before the conclusion of the evidence” in contravention of CACI No. 100 (Preliminary Admonitions). Midway through the trial, the court shared with the parties outside the presence of the jury that the courtroom attendant advised the court that the jury may have started deliberating because there “was a chart on the wall with some markings on it.” With the agreement of the attorneys, the court admonished the jury not to discuss the case or deliberate until the conclusion of the case. Washington and Glasgow cite no evidence indicating the jury failed to comply with this admonition. Moreover, plaintiffs’ attorneys did not object to the court’s admonition, request a further curative instruction, or seek a mistrial, thereby forfeiting any objection on appeal. (See *People v. Johnsen* (2021) 10 Cal.5th 1116, 1169-1170 [A “defendant forfeits . . . claims of prejudicial juror misconduct when . . . counsel does not ‘propose additional questions [be asked of jurors], object to any juror’s continued service, or request a mistrial on the ground of juror misconduct.’”].)

The judgment is affirmed. Walmart, Solares, and Davenport are to recover their costs on appeal.

/s/ Feuer
J.

We concur:

/s/ Martinez
P.J.

/s/ Stone
J.

**JUDGMENT, SUPERIOR COURT OF
THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
(JUNE 15, 2022)**

FILED
Superior Court of
California County of
Los Angeles
06/15/2022

SUPERIOR COURT OF THE STATE OF
CALIFORNIA COUNTY OF LOS ANGELES

JANE DOE,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., an Arkansas
Corporation, dba Wal-Mart; FLORA GARCIA
SOLARES, an Individual; LAMAR DAVENPORT,
an Individual; and DOES 1 through 50, Inclusive,

Defendants.

JANE DOE,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., an Arkansas
Corporation, dba Wal-Mart; FLORA GARCIA

SOLARES, an Individual; TINA SIMS, an Individual; and DOES 1 through 50, Inclusive,

Defendants.

Lead Case No. BC698048
(Consolidated Case No. BC716975)

Action Filed: March 14, 2018

Trial Date: March 7, 2022

Before: Hon. Terry A. GREEN,
Judge of the Superior Court.

JUDGMENT

This action came on for trial on March 7, 2022, in Department 14, of the Los Angeles Superior Court, Stanley Mosk Courthouse, before the Honorable Terry A. Green, Judge presiding. Plaintiffs Florence Washington and Santane Glasgow appeared through their attorneys, Twila White S. White of the Law Offices of Twila S. White, and Adrian Baca of the Law Offices of Adrian M. Baca.

Defendant Walmart appeared through their attorneys, Cheryl Johnson-Hartwell and Susan E. Coleman of Burke, Williams & Sorenson, LLP.

Defendants Lamar Davenport and Flor Garcia Solares appeared through their attorney, Vicki Greco of Collinson, Daehnke, Inlow & Greco.

A jury of twelve was regularly impaneled and sworn to try the remaining causes of action. After hearing the evidence and arguments of counsel, the jury was duly instructed by the court and the case was

submitted to the jury with directions to complete the Special Verdict Form for each Plaintiff. The jury deliberated and, on April 1, 2022, returned the Special verdict forms signed by the jury foreperson for Florence Washington and Santane Glasgow, attached hereto as Exhibit “1” and “2” and incorporated by reference herein. The Special Verdict forms were filed with the court clerk and entered upon the minutes.

IT IS THEREFORE ORDERED, ADJUDGED,
AND DECREED that:

Judgment is entered based on the Special Verdict forms attached.

/s/ Hon. Terry A. Green
Judge of the Superior Court

Dated: 06/15/2022

EXHIBIT 1 – SPECIAL VERDICT

SUPERIOR COURT OF THE STATE OF
CALIFORNIA COUNTY OF LOS ANGELES

FLORENCE WASHINGTON,

Plaintiff,

v.

WALMART INC., an Arkansas Corporation,
dba Walmart; FLORA GARCIA SOLARES,
an Individual; LAMAR DAVENPORT,
an Individual,

Defendants.

SANTANE GLASGOW,

Plaintiff,

v.

WALMART INC., an Arkansas Corporation,
dba Walmart; FLORA GARCIA SOLARES,
an Individual,

Defendants.

Lead Case No. BC698048
(Consolidated Case No. BC716975)

Dept. 14

Before: Hon. Terry A. GREEN,
Judge of the Superior Court.

SPECIAL VERDICT

**VIOLATION OF CIVIL CODE SECTION
1708.85-LAMAR DAVENPORT**

1. Did Lamar Davenport intentionally distribute by any means one or more photograph(s) of Florence Washington?

Answer: No ☒

**VIOLATION OF CIVIL CODE SECTION
1708.85-FLOR GARCIA SOLARES**

7. Did Flor Garcia Solares intentionally distribute by any means one or more photograph(s) of Florence Washington?

Answer: No ☒

**HOSTILE WORK ENVIRONMENT
HARASSMENT—CLAIM AGAINST SOLARES**

13. Was Florence Washington subjected to harassing conduct because she is a woman?

Answer: No ☒

**HOSTILE WORK ENVIRONMENT
HARASSMENT—CLAIM AGAINST
DAVENPORT**

20. Was Florence Washington subjected to harassing conduct because she is a woman?

Answer: No ☒

**HARASSMENT-HOSTILE WORK
ENVIRONMENT—CLAIM AGAINST WALMART**

27. Was Florence Washington subjected to harassing conduct because she is a woman?

Answer: No ☒

RETALIATION

34. Did Florence Washington oppose retaliation and/or harassment, file a complaint, or assist in any proceeding under the Fair Employment and Housing Act (FEHA)?

Answer: Yes ☒

35. Did Walmart subject Florence Washington to any adverse employment action?

Answer: Yes ☒

36. Was Florence Washington's opposition to retaliation and/or harassment, filing of a complaint, or assisting in any proceeding under the Fair Employment and Housing Act (FEHA) a substantial motivating reason for Walmart's decision to subject Florence Washington to any adverse employment action?

Answer: No ☒

VIOLATION OF LABOR CODE SECTION 1102.5

41. Did Walmart believe that Florence Washington disclosed to a person with authority over Florence Washington or an employee with authority to investigate, discover, or correct legal violations/ noncompliance regarding the Fair Employment and Housing Act, Civil Code Section 1708.85, or Penal Code Section 647 (j)?

Answer: Yes ☒

42. Did Florence Washington have reasonable cause to believe that the information disclosed a violation of the Fair Employment and Housing Act, Civil Code Section 1708.85, or Penal Code Section 647 (j)?

Answer: Yes ☒

43. Did Walmart subject Florence Washington to any adverse employment action?

Answer: Yes ☒

44. Were Florence Washington's complaints a contributing factor in Walmart's decision to subject Florence Washington to any adverse employment action?

Answer: No ☒

[. . .]

Presiding Juror must sign and date this Special Verdict and return it to the Court Attendant.

Date: 4/1/22 Print Name: Nicole Castro

Presiding Juror: #2

EXHIBIT 2 – SPECIAL VERDICT

SUPERIOR COURT OF THE STATE OF
CALIFORNIA COUNTY OF LOS ANGELES

FLORENCE WASHINGTON,

Plaintiff,

v.

WAL-MART INC., an Arkansas Corporation,
dba Walmart; FLORA GARCIA SOLARES,
an Individual; LAMAR DAVENPORT,
an Individual,

Defendants.

SANTANE GLASGOW,

Plaintiff,

v.

WALMART INC., an Arkansas Corporation,
dba Walmart; FLORA GARCIA SOLARES,
an Individual,

Defendants.

Lead Case No. BC698048
(Consolidated Case No. BC716975)

Dept. 14

Before: Hon. Terry A. GREEN,
Judge of the Superior Court.

SPECIAL VERDICT

**HOSTILE WORK ENVIRONMENT
HARASSMENT—CLAIM AGAINST SOLARES**

1. Was Santane Glasgow subjected to harassing conduct because she is a woman?

Answer: No ☒

**HARASSMENT-HOSTILE WORK
ENVIRONMENT—CLAIM AGAINST WALMART**

8. Was Santane Glasgow subjected to harassing conduct because she is a woman?

Answer: No ☒

RETALIATION

15. Did Santane Glasgow oppose retaliation and/or harassment, request to leave to care for a family member, file a complaint, or assist in any proceeding under the Fair Employment and Housing Act (FEHA)?

Answer: Yes ☒

16. Did Walmart terminate or subject Santane Glasgow to any adverse employment action?

Answer: Yes ☒

17. Was Santane Glasgow's opposition to retaliation and/or harassment, request to leave to care for a family member, filing of a complaint, or assisting in any proceeding under the Fair Employment and

Housing Act (FEHA) a substantial motivating reason for Walmart's decision terminate or subject Santane Glasgow to any adverse employment action?

Answer: No ☒

VIOLATION OF LABOR CODE SECTION 1102.5

22. Did Walmart believe that Santane Glasgow disclosed to a person with authority over Santane Glasgow or an employee with authority to investigate, discover, or correct legal violations/noncompliance regarding the Fair Employment and Housing Act, Civil Code Section 1708.85, or Penal Code Section 647 (j)?

Answer: Yes ☒

23. Did Santane Glasgow have reasonable cause to believe that the information disclosed a violation of the Fair Employment and Housing Act, Civil Code Section 1708.85, or Penal Code Section 647 (j)?

Answer: Yes ☒

24. Did Walmart terminate or subject Santane Glasgow to any adverse employment action?

Answer: Yes ☒

25. Were Santane Glasgow's complaints a contributing factor in Walmart's decision to terminate or subject Santane Glasgow to any adverse employment action?

Answer: Yes ☒

26. Was Santane Glasgow harmed?

Answer: Yes ☒

27. Was Walmart's conduct a substantial factor in causing Santane Glasgow's harm?

Answer: Yes ☒

28. Would Walmart have terminated Santane Glasgow's employment or subjected her to an adverse employment action anyway at that time, for a legitimate, independent reason?

Answer: Yes ☒

Go to question 29.

KINCARE LEAVE

29. Was Santane Glasgow eligible for Kincare leave?

Answer: Yes ☒

30. Did Santane Glasgow request sick leave to care for the illness of a sick child?

Answer: Yes ☒

31. Did Walmart deny Santane Glasgow the right to sick leave to care for the illness of sick child?

Answer: No ☒

WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

35. Was Santane Glasgow's opposition to retaliation and/or harassment, request to use sick leave to care for a family member, filing of a complaint, or assisting in any proceeding under the Fair Employment and Housing Act (FEHA), Penal Code section 647(j), and/or Civil Code section 1708.5 a substantial motivating reason for Walmart's decision to discharge Santane Glasgow?

Answer: No ☒

[. . .]

Presiding Juror must sign and date this Special Verdict and return it to the Court Attendant.

Date: 4/1/22 Print Name: Nicole Castro

Presiding Juror: #2

**ORDER DENYING REHEARING, CALIFORNIA
COURT OF APPEAL, SECOND APPELLATE
DISTRICT, DIVISION SEVEN
(MAY 11, 2026)**

Court of Appeal
– Second Dist.
Filed
May 11, 2026

IN THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA SECOND APPELLATE
DISTRICT - DIVISION SEVEN

JANE DOE, ET AL.,

*Plaintiffs and
Appellants,*

v.

WAL-MART ASSOCIATES INC., ET AL.,

*Defendants and
Respondents.*

No. B323435

(Los Angeles County Super. Ct. No. BC698048)
Before: Gonzalo C. MARTINEZ, Presiding Justice,
Gail RUDERMAN FEUER, Natalie P. STONE,
Justices.

ORDER

THE COURT:

Appellants Jane Doe et al.'s petition for rehearing
filed May 5, 2026, is denied.

/s/ Martinez

P.J.

/s/ Feuer

J.

/s/ Stone

J.

**PERTINENT CONSTITUTIONAL AND
STATUTORY PROVISIONS**

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Cal. Gov't Code § 12940(j)(1)
(pertinent part)**

For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, reproductive health decisionmaking, or veteran or military status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract.

Cal. Gov't Code § 12940(j)(4)(C):

For purposes of this subdivision, 'harassment' because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy,

childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

Cal. Gov't Code § 12923(c)

The existence of a hostile work environment depends upon the totality of the circumstances and a discriminatory remark, even if not made directly in the context of an employment decision or uttered by a nondecisionmaker, may be relevant, circumstantial evidence of discrimination. In that regard, the Legislature affirms the decision in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512 in its rejection of the “stray remarks doctrine.”

Cal. Gov't Code § 12923(d):

The legal standard for sexual harassment should not vary by type of workplace. It is irrelevant that a particular occupation may have been characterized by a greater frequency of sexually related commentary or conduct in the past. In determining whether or not a hostile environment existed, courts should only consider the nature of the workplace when engaging in or witnessing prurient conduct and commentary is integral to the performance of the job duties. The Legislature hereby declares its disapproval of any language, reasoning, or holding to the contrary in the decision *Kelley v. Conco Companies* (2011) 196 Cal.App.4th 191.

Cal. Const. art. VI, § 13

No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any

matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

**CLOSING ARGUMENT,
CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT,
RELEVANT EXCERPT
(MARCH 30, 2022)**

COURT OF APPEAL OF THE STATE OF
CALIFORNIA SECOND APPELLATE DISTRICT

JANE DOE,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., an Arkansas
Corporation, dba Wal-Mart; FLORA GARCIA
SOLARES, an Individual; LAMAR DAVENPORT,
an Individual; and DOES 1 through 50, Inclusive,

Defendants.

JANE DOE,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., an Arkansas
Corporation, dba Wal-Mart; FLORA GARCIA
SOLARES, an Individual; TINA SIMS, an
Individual; and DOES 1 through 50, Inclusive,

Defendants.

Superior Court Case No. BC 698048

Appeal from the Superior Court of
Los Angeles County -Reporter's Transcript of
Proceedings Tuesday, March 30, 2022

Before: Hon. Terry A. GREEN, Judge Presiding.

[March 30, 2022, Transcript, p. 6730]

. . . make sure it's correct so if you have any questions, ask us, or give a note to the clerk.

In terms of hostile work environment. Sexual harassment. This is based on a hostile work environment. Both of the plaintiffs are bringing the claim so you are going to get one verdict form for Santane and one for Florence.

The plaintiff has to prove—most of the time in the jury instruction and the verdict form, it's going to be in the singular because each of them has to prove it happened to them. So there's two plaintiffs, but here it's in the singular because you have to look at each. She was subjected to harassing conduct because she's female.

Now, this is important because if someone doesn't like someone, or there is some other reason and it's not because of gender then it doesn't meet this element. It has to be severe or pervasive. Not a one-time thing. Let's say someone is called a bitch in passing. Okay. That is not a nice thing to call someone, but that is not severe enough for a one-time thing to be enough and if it doesn't happen again, it's not pervasive.

If a nude photo is shown it might be severe enough. So you have to consider whether it's severe or pervasive. A reasonable person in plaintiff's circumstance would consider the work Environment to be hostile, intimidating, offensive, oppressive, or. . . .

[. . .]

[March 30, 2022, Transcript, p. 6734]

statements. She didn't report them, and she considered Flor a friend.

With Santane sexually harassed by Flor because she's a women. Santane is not suing Lamar. She's just suing Flor on this basis. Again, they were friends. They talked. They shared things about her sex life. Santane saw photos, she said a week, a week and a half earlier, but she didn't report it until June 14, 2017. She never mentioned being offended, or being intimidating by the photos.

She told you she reported it to the benefit of Florence. She came forward for Florence, who by the way didn't ask her to, but Santane was not offended by Deon's photos. If anything, Flor shared the photos, or talked about her sex life to claim Lamar. Not because of Santane's gender. This has to be gender-base because of her being female.

This isn't a case where a man in power is doing something to intimidate, or oppress women. This is something where friends are sharing things and then well-it starts out with sharing things.

Let's talk about if whether Florence was sexually harassed by Lamar or Flor. Florence is suing both of them. Again, it has to be harassing conduct

because she's a woman. No one told her they saw nude photos except Santane. Lamar never said anything offensive to her. Flor only said, "you here." Didn't talk to her. She said they only exchanged words like one time. She never heard anyone discussing sex at work. She never saw nude photos of anyone at work. She didn't name Lamar to ethics. She considered his role girlfriend, boyfriend stuff.

She did name Flor, but the dispute was over Lamar. Not based on gender. Lamar's dating, it's not harassment. It's private consensual. Florence never told you that it was not consensual, or that there was anything wrong with that. Some of the evidence I realize, and i'm sorry that it's a little repetitive. The elements kinda consider some of the same stuff.

Lamar was not a supervisor. If you look at the organizational that we have here. Department managers, there is no one underneath him. Sporting goods. They said he was an indirect supervisor. There is no dispute that he never supervised Flor. He never supervised Florence. Ruthie was at a different store. He never supervise Santane. The definition of supervisor, he had to be able to hire. He couldn't hire. He couldn't transfer people. He couldn't promote them. He could only recommend a good evaluation. He couldn't discipline them without the permission of the store manager. He would have to consult with them to initiate some discipline. He couldn't discharge them.

That applies to people in his department. Not just Florence, Santane, and even in his department. Acting on their grievances, again, he would have to refer them up. He had no power to do that.

[Transcript, p. 6750]

....and convincing evidence. This is a much higher standard. It's not a preponderance of evidence. It's a lot higher standard that Walmart acted with malice or oppression. Malice is the intent to cause injury or conduct that is despicable and known with the willful and knowing disregards of the rights and safety of another. This is someone like pulling legs off an animal to torture them. Malice is a very high standard of intent. It's done to cause harm.

Oppression, if it's despicable and subjected plaintiff to cruel and unjust hardship knowing disregard of her rights. These are very high intense standards for punitive damages, and they have to be shown with clear and convincing evidence. So things that they told that you they think will justify punitive damages were rewarding the culprits. They said Lamar and Flor were promoted. Lamar wasn't promoted. He was lateraled. He earned exactly the same pay. In fact, he had a lower title. He's an asset protection associate. He was never made a manager or the head of lost prevention.

Flor wasn't promoted either. It was lateral. When you go to the verdict form in the back, there is some claims first that only apply to Flor and Lamar. I think revenge porn. But then you look at was Florence Washington's objective to harass and conduct because she is a woman? No. There wasn't anything directed at her because of her being a woman. Maybe there was some problem between her and Flor that they had a conflict. Not because she is a woman.

This is against Solares and davenport and against Walmart. Because she's a woman? We don't even know the photos is the strongest evidence that Florence has, and we don't know where those photos came from. The phone was not kept and you can make a decision that is unfavorable to her because she got rid of the phone.

Retaliation. Did Florence oppose retaliation or harassment and file a complaint? Yes. We'll give her that one. She did file. She does have a protected complaint. Did they terminate her or subject her to adverse action? No. She had some coachings. But they didn't impair her job. She didn't prohibit her from advancing in the future. They didn't change the nature of her job.

Failure to prevent. So it tells you the instructions, for example, here if you answered, no, to questions 19, 26, 33, or 37 in question 41. You can see how this could get confusing. Did Walmart believe Florence Washington disclosed to a person with authority to investigate discover? We give them this one, yeah. She disclosed to the right person. Did she have reasonable cause to believe it could be a violation of law? Sure.

But did they terminate or subject Florence Washington any other adverse action? No. And if for some reason you think, okay, well if they changed her hours or they coached her that is adverse. And you put

[. . .]

**JURY INSTRUCTIONS,
HOSTILE WORK ENVIRONMENT
(MARCH 29, 2022)**

Jury Instruction/Special - No. 2521B

Authorities - CACI 2521B

Requested by Plaintiffs ☒

Instruction - No 2521B

**Hostile Work Environment Harassment—
Conduct Directed at Others—Essential Factual
Elements—Employer or Entity Defendant
(Gov. Code, § 12940(j))**

Florence Washington and Santane Glasgow claim that coworkers at Walmart were subjected to harassment based on sex and that this harassment created a work Environment for Florence Washington and/or Santane Glasgow that was hostile, intimidating, offensive, oppressive or abusive.

To establish this claim, Florence Washington and/or Santane Glasgow must prove all of the following:

1. That Florence Washington and/or Santane Glasgow was employee of Walmart;
2. That Florence Washington and/or Santane Glasgow, although not personally subjected to unwanted harassing conduct, personally witnessed harassing conduct that took place in their immediate work environment;
3. That the harassing conduct was severe or pervasive;

4. That a reasonable woman in Florence Washington's and/or Santane Glasgow's circumstances would have considered the work Environment to be hostile, intimidating, offensive, oppressive, or abusive;

5. That Florence Washington and/or Santane Glasgow considered the work Environment to be hostile, intimidating, offensive, oppressive or abusive;

6. That a supervisor engaged in the conduct; or Walmart, or its supervisors or agents knew or should have known of the conduct and failed to take immediate and appropriate corrective action;

7. That Florence Washington and/or Santane Glasgow was harmed; and

8. That the conduct was a substantial factor in causing Florence Washington's and/or Santane Glasgow's harm.

Jury Instruction/Special - No. 2522B
Authorities - CACI 2522B
Requested by Plaintiffs ☒

Instruction - No 2522B

**Hostile Work Environment Harassment—
Conduct Directed at Others—Essential Factual
Elements—Employer or Entity Defendant (Gov.
Code, § 12940(j))**

Florence Washington and Santane Glasgow claim that coworkers at Walmart were subjected to harassment based on sex and that this harassment created a work Environment for Florence Washington and/or Santane Glasgow that was hostile, intimidating, offensive, oppressive or abusive.

To establish this claim, Florence Washington and/or Santane Glasgow must prove all of the following:

1. That Florence Washington and/or Santane Glasgow was employee of Walmart;
2. That Florence Washington and/or Santane Glasgow, although not personally subjected to unwanted harassing conduct, personally witnessed harassing conduct that took place in their immediate work environment;
3. That the harassing conduct was severe or pervasive;
4. That a reasonable woman in Florence Washington's and/or Santane Glasgow's circumstances would have considered the work Environment to be hostile, intimidating, offensive, oppressive, or abusive;

5. That Florence Washington and/or Santane Glasgow considered the work Environment to be hostile, intimidating, offensive, oppressive or abusive toward women;

6. That Lamar Davenport and/or Flor Garcia Solares participated in, assisted or encouraged the harassing conduct;

7. That Florence Washington and/or Santane Glasgow was harmed; and

8. That the conduct was a substantial factor in causing Florence Washington's and Santane Glasgow's harm.

COURT OF APPEAL OF THE STATE OF
CALIFORNIA SECOND APPELLATE DISTRICT

JANE DOE,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., an Arkansas
Corporation, dba Wal-Mart; FLORA GARCIA
SOLARES, an Individual; LAMAR DAVENPORT,
an Individual; and DOES 1 through 50, Inclusive,

Defendants.

JANE DOE,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., an Arkansas
Corporation, dba Wal-Mart; FLORA GARCIA
SOLARES, an Individual; TINA SIMS, an
Individual; and DOES 1 through 50, Inclusive,

Defendants.

Lead Case No. BC 698048

Appeal from the Superior Court of
Los Angeles County -Reporter's Transcript of
Proceedings Tuesday, March 29, 2022

Volume 4 of 4

Before: Hon. Terry A. GREEN, Judge Presiding.

[March 29, 2022, Transcript, p. 19]

This thing, do the negligence dance. 400, You know, 401.

MR. BACA: We understand, your honor.

The sixth cause of action, it specifically says negligence—

THE COURT: But that's not a cause of action.

MR. BACA: well, it's pled as a cause of action.

THE COURT: Okay. Read the instruction you want. It refers you back to the basic negligence causes of action instruction.

MR. BACA: We'll meet and confer. We disagree but we'll meet and confer with counsel, your honor.

THE COURT: Well, look at Turner versus Seterus, a doctrine of negligence per se is not a separate cause of action but creates an evidentiary presumption that affects the standard of care cause of action for negligence.

So, you know, it says what it says.

MR. BACA: It does, your honor. We'd like further opportunity to review that and perhaps—

THE COURT: Okay. So what's your next cause of action?

MS. WHITE: Your honor, the next cause of action that we have is—sorry, I’m just pulling up the operative complaint. We have a hostile work Environment claim.

THE COURT: I’m sorry. Hostile work Environment. What are those?

MS. WHITE: That’s CACI 2521a and b.

THE COURT: Okay. 25. What would be the instruction 25, 21.

MS. WHITE: And then 2522, a and b.

THE COURT: 2521—Hang on. I have this is a Private nuisance.

MS. WHITE: No, 2521.

THE COURT: Oh, 20—, I’m sorry. It’s my Mistake. Okay. Where are we? 25—Hostile work Environment.

2521, Okay. Here we go. Work Environment harassment. Conduct directed at plaintiff.

Now is there something that leads into this or is this—where is—that’s sexual harassment.

MS. WHITE: Well, 2521 and 2522, they are the Hostile work Environment CACIS.

THE COURT: Okay. Are those the next two you Want?

MS. WHITE: Yes. And the next four. 2521 a and b, and 2522, a and b. Because one is against the Employer entity—

THE COURT: Okay. Any objection to this, Plaintiff?

MS. WHITE:—Individuals—

MS. JOHNSON-HARTWELL: Yes. We do object to 2521b and 2522b. Because there has been no evidence thus far about the conduct directed at others.

THE COURT: Hang on. Hang on. What does it Mean “conduct”—

MS. WHITE: I’m sorry, your honor?

THE COURT: Hang on. No, it doesn’t. Isn’t This Glasgow?

MS. WHITE: Yes.

THE COURT: This is Glasgow?

MS. WHITE: And also, your honor, it’s not just Glasgow, it’s Washington. Because Washington—she Learns about what happens to martin, and there’s other things in the workplace that—

THE COURT: I think a and b are probably Appropriate. Okay.

So now you have 2220—you have 22a. Same Thing?

MS. WHITE: Yeah 22—2522a and b as well.

THE COURT: Well, that just superficially looks like it probably applies. We can discuss it in greater specificity later, but what’s the next cause of action?

MS. WHITE: Well, the next cause of action, Your Honor, is the retaliation.

THE COURT: Where is that?

MS. WHITE: That is CACI 2505.

THE COURT: Hang on. 25—Any objection to this?

MS. JOHNSON-HARTWELL: Not to 2505, your honor.

THE COURT: Okay. What's the next one?

MS. WHITE: The next would be the failure to

[. . .]

[Transcript p. 365]

. . . change.

MS. WHITE: If you make the changes and send them to me, I think we can figure it out.

MS. JOHNSON-HARTWELL: Okay. Thank you.

So, your honor, are we still going, or are we going to—

THE COURT: Yeah. You said, “4/4”?

MS. GRECO: April 4th is the mask mandate.

THE COURT: Oh, yeah. But no, we have to do this; Okay?

So the next one is 2513, business judgment.

MS. WHITE: That's something that they want, Which is usually requested.

THE COURT: No, I wouldn't do it.

All right. Hostile work environment, Harassment. Any objection to this?

MS. JOHNSON-HARTWELL: One moment.

MS. WHITE: Did you make any changes?

MS. JOHNSON-HARTWELL: I'm sorry. I wish I could tell you for sure. I thought that I was using yours, but I think I may have—

MS. WHITE: Looks like you made changes, from what I can see.

MS. JOHNSON-HARTWELL: I think the only change is, you had “Wal-Mart associates, inc.,” and I changed it to “Wal-Mart” throughout. But I don’t think any substantive changes.

THE COURT: All right. Where are we on this?

MS. WHITE: I think this—let me see. I don’t think there were any major changes, so when miss Johnson sends a revision over, your honor, I’ll look at it, and I’m sure we can figure it out.

THE COURT: Okay. Conduct directed at others. This is what’s her face, Ruthie?

MS. WHITE: Ruthie, or whoever the testimony that comes out after the plaintiffs testify.

THE COURT: So Ruthie goes from a “me too” witness to a cause of action? Is that what it is?

MS. WHITE: No. But conduct directed at others, the pictures of miss Washington were not directed at miss Glasgow. But that still forms the basis of a hostile work environment.

THE COURT: Oh, I see what you’re saying.

MS. JOHNSON-HARTWELL: but miss Glasgow has her own cause of action for harassment.

MS. WHITE: Yeah, she does.

MS. JOHNSON-HARTWELL: And there’s no others that there’s evidence of conduct being directed at. This is about creating a hostile work environment. Ruthie martin had her own pictures sent to her on a private message on Facebook while she was at her home and on a leave of absence. And even if she had been employed at the time or had been going—had not been home

at the time, she was at a different store. She wasn't even at this store.

So the idea that there's a hostile work Environment created by that action just doesn't make sense. There's no evidence that her pictures were ever circulated or that anyone ever saw them at store 5874.

MS. WHITE: I would agree with that, but for miss Washington testified that she reached out to miss martin, because miss martin was an assistant manager, to speak about telling her what she should do and how she should react. Miss Washington also testified that she learned about Ruthie Martin's claims through this litigation. And miss Washington is still employed there.

So when you talk about a hostile work environment, conduct directed at others, it's what the plaintiff knows about in their work environment. So the fact that miss Washington knew about someone else that had the same thing happen to them in terms of private photos being circulated, or at least back to them, I think, is highly relevant to this CACI conduct directed at others for miss Washington.

Now, as to miss Glasgow, the conduct that was directed at miss Washington through the showing of photos is relevant to her.

MS. JOHNSON-HARTWELL: As to Ruthie martin, I—I disagree. I think it does create a cause of action for something—

THE COURT: Yeah. We're losing the Ruthie Martin cause of action.

MS. WHITE: No, it's not.

MS. JOHNSON-HARTWELL: As to miss Glasgow, she has her own sexual harassment claim just by being shown the picture. Doesn't matter who it's of. It could have been a random picture of a naked person. If that's shown in the workplace by a coworker or a supervisor, there's the potential that that would be sexual harassment. We don't need this—this instruction.

MS. WHITE: That's not true, because if the court looks at the sources and authority, it states in this section, "the plaintiffs' work Environment is affected not only by conduct directed at herself but also by the treatment of others. A woman's perception that her work Environment is hostile to women will obviously be reinforced if she witnesses the harassment of other female workers."

So that also applies to miss Washington and miss Glasgow.

THE COURT: Well, I—except, though, we have to go back to the time that all this happened and not have subsequent events. I now know a year, two years later what was going on back then, and boy, it was really hostile back then. But of course, that was back then.

What was going on when this was going on? I mean, that's the relevant inquiry, isn't it?

MS. JOHNSON-HARTWELL: Right. I was going to say first in a lot of what miss white just read, it kept saying "work environment." As I stated what happened with miss martin happened exclusively

in her own home while she was on a leave of absence from work.

But, uh—I just lost my train of thought. I'm sorry.

THE COURT: Also, they didn't find out until much, much later.

MS. JOHNSON-HARTWELL: Right.

MS. WHITE: No, but miss Washington found out prior to November 12, 2019, before this cutoff.

MS. JOHNSON-HARTWELL: But that—

MS. WHITE: She learned about this happening to another woman and the handling of it by Wal-Mart. And that's—that's—that's very much relevant to her perception of how women are treated. If—if, you know, a manager is dating a subordinate or supervisor, and he gets nude photos, and he allows some other woman to have them, and that happens to miss Washington, and it happens to somebody else and miss Washington learns about it and finds that some other woman's complaint was handled in the same manner, that's part of the hostile work environment. And how women are being treated.

MS. JOHNSON-HARTWELL: Well, as your honor stated, she testified that she learned about Ruthie Martin's claims at her deposition after the lawsuit was already filed. And so she didn't know about it back at the time of the events. And she didn't—I believe I heard the word "witness." She didn't witness the conduct towards miss martin. She only heard about it through miss martin.

THE COURT: You know, frankly, frankly, both Glasgow and Washington have their own—have their own claim. And at the time of the claim, there was—there was the indisputable evidence. There was no one else who saw anything.

MS. WHITE: But you're just talking about the handling of—you're talking about the altercation, if you want to call it that, between miss martin and miss Solares and while Mr. Davenport are there. The court is just talking about that aspect of it. But what I'm talking about is the perception of how women are treated.

THE COURT: Okay. But what's the evidence up to the time the lawsuit was filed?

MS. WHITE: But it's not up to the time the lawsuit was filed, because we had a stipulation November 12, 2019.

THE COURT: But what was going on?

MR. BACA: May I add?

THE COURT: Yeah.

MR. BACA: We have a gif of a blowjob from Matt Rickett. We have the confrontation at the Parking lot at Wal-Mart. I think it may be a difference, though, with jasmine Alaimalo.

MS. WHITE: Right.

MR. BACA: Then we have pictures that come out that women are talking about pictures of Mr. Davenport's—

MS. WHITE: Private parts. And that came out today in miss Coleman's cross—exam about some witness that was saying that she had seen photos or

heard about photos of miss Solares circulating pictures of Mr. Davenport's private parts.

MR. BACA: And then we're going to get Miss Glasgow's testimony about the specifics about the sex talk that we've that alluded to.

THE COURT: All right, all right. Okay.

MS. JOHNSON-HARTWELL: can I respond on that?

MS. WHITE: And then Mr.—Then we had Dionne Phillips and those pictures circulated. Then there was testimony saying matt Rickett said that miss Solares said that Mr. Davenport had a big dick.

MS. JOHNSON-HARTWELL: Okay.

MS. WHITE: And so—

MS. JOHNSON-HARTWELL: As to the matt Rickett, that was a confidential investigation, and they didn't—neither of the plaintiffs knew anything about that at the time. There's no evidence that they ever saw the videos or that they ever talked to or knew that the women who saw the videos had seen them. As to jasmine, I don't know which altercation is being referred to. One of them was hearsay that was admitted only for the effect on the recipient, not for the truth of the matter, and jasmine is not coming to testify.

MR. BACA: If may I interrupt.

MS. JOHNSON-HARTWELL: As to the—

MR. BACA: Miss Washington will testify to that.

THE COURT: Who will?

MR. BACA: Miss Washington will also testify to that.

MS. JOHNSON-HARTWELL: She may testify what happened. She cannot testify about the truth of what miss Alaimalo said during that incident.

MR. BACA: We'll ask for a limiting instruction.

MS. WHITE: She knows what was said to her and her perception of it.

MS. JOHNSON-HARTWELL: Counsel, could I please finish?

THE COURT: Okay, yes.

MS. JOHNSON-HARTWELL: I allowed you to finish.

As to the other incident with jasmine between jasmine and miss Solares, I don't know how that has anything to do with sexual harassment. That was an altercation because of a picture of a child on the internet, allegedly.

MS. WHITE: Well—

MS. JOHNSON-HARTWELL: As to the pictures of Lamar's private parts, Kimberly said that two individuals told her that she was showing pictures of Lamar's private parts. Those individuals were both asked, "did you ever see any naked pictures?" They did not. So with that double hearsay, there's no admissible evidence that Lamar's private parts were ever shown.

As to the sex talk that miss Glasgow is going to testify she heard from miss Garcia Solares, she also testified at her deposition—and we elicit here—that she did not report that to anyone. And miss Garcia Solares and miss Glasgow were coworkers. And so if it's not reported, Wal-Mart has no liability for that.

And as to the Dionne Phillips pictures, those were snap—chatted or texted between Dionne Phillips and Santane Glasgow, and Santane Glasgow herself never reported that.

MS. WHITE: That's an incorrect statement of law. If it's a coworker, it's—the employer knew or should have known, and it hasn't been explored. It's a subjective component to a hostile work Environment claim as to how these plaintiffs perceived their work Environment to be.

THE COURT: Just give me a second.

Well, okay. We'll give it. I—I—I—I don't think there's a great deal of evidence to back it up, but, you know, we'll just argue it.

Okay. The next one I have is 2522(a), conduct. We need this.

MS. WHITE: So your honor, the only difference between 2521 and 2522 series is one is against the employer, and then the other one is against the individual. And then the other one, the other set is again the same; conduct directed at others, conduct that's direct.

So they're like mirrors of each other.

THE COURT: Defense?

MS. JOHNSON-HARTWELL: Wal-Mart doesn't have a response on 2522(b) or (a) because they're directed towards the individual defendants.

THE COURT: All right. Individuals?

MS. GRECO: Yeah, your honor. On 2522(b), you know, I'm assuming the same arguments that plaintiffs made regarding all the other conduct.

You know, there's a lot of—miss martin's story, it all happened at her home, not the workplace, and she even testified that the photograph that she received was never transmitted or shown to anybody at anywhere else, including the workplace.

So I'm not sure how Ruthie martin's situation, you know, is applicable to the acts or

[. . .]

[Transcript p. 960]

. . . 5005; Multiple parties, second paragraph.

MS. JOHNSON-HARTWELL: It doesn't say he's the only defendant. It says he is only a defendant.

THE COURT: Even when I read out loud, I can't proofread. All right. All right. I got it. Forget it. Forget it.

5006—

MS. JOHNSON-HARTWELL: 5007 Comes out, your honor

THE COURT: Hang on. 5006 Is in.

5007.

MS. WHITE: That one comes out?

THE COURT: Yeah. You can leave alternate Jurors in there, 5011.

MS. JOHNSON-HARTWELL: It's actually 111.

THE COURT: 111. 113, Bias is fine. 114 Is Fine. 117 Is fine. 200 Is fine. 201 Is fine. 202 Is fine. 203 Is fine. 204 Is fine. 205 Is fine. 206 Is fine. 208 Is fine. 209 Is fine.

MS. JOHNSON-HARTWELL: We didn't use interrogatories.

MS. WHITE: I don't think we used them.

THE COURT: Okay.

MS. JOHNSON-HARTWELL: We didn't use request for admissions for 210.

THE COURT: Okay. The RFAS are out.

MS. JOHNSON-HARTWELL: So that would be instruction 210 is also omitted?

[. . .]

[Transcript p. 967]

. . . Add it, counsel?

MS. WHITE: Where it says, "even if Jarod Strout"—and it will say, "Leticia," and then the Second part will have "Jarod Strout, Leticia."

MS. JOHNSON-HARTWELL: Okay. I'll make that change.

THE COURT: Next one I have is 2512.

MS. WHITE: Let me see. Hold on.

THE COURT: Okay. 2513.

MS. WHITE: You're on 2513?

THE COURT: Right. This is the one you had the motion on.

MS. JOHNSON-HARTWELL: No, your honor. Wait. 2513 or—

THE COURT: 2521(A).

MS. JOHNSON-HARTWELL: No, 2521.

THE COURT: B.

MS. JOHNSON-HARTWELL: B as to Wal-Mart and 2522(B) as to the individual defendants.

MS. WHITE: I have an edit to make, your honor, because it reads funny.

THE COURT: Do you want to add it for 2521(A)?

MS. WHITE: Yeah. So the second prong of it should be, "subjected to harassment because they are a Woman or because of sex."

THE COURT: I don't care. Whatever you guys Want.

MS. JOHNSON-HARTWELL: One moment, your honor.

MS. GRECO: Want to say, "they are women"?

MS. WHITE: I said, "because of sex."

MS. GRECO: Yeah, before that. "Because they are a woman" or do you want to say "because they are women"?

MS. WHITE: I don't care. But "because of Sex" is my preferred language.

THE COURT: You want gender.

MS. WHITE: Well, sex is gender.

MS. JOHNSON-HARTWELL: No, it's not.

THE COURT: Whoa, whoa. Okay. I won't tell.

MS. JOHNSON-HARTWELL: Sex is a biological Condition; gender is a state of mind.

MS. WHITE: Well, I mean, I'm talking about from an employment law point of view.

THE COURT: I don't care. What do you guys want?

MS. JOHNSON-HARTWELL: I believe it should be “because they’re women.”

MS. WHITE: I want it to be “because of Sex,” because it reads weird.

MS. JOHNSON-HARTWELL: No. 2 In the CACI, the protected status example is “e.g., A woman.” doesn’t say anything about sex or gender.

THE COURT: Okay. Leave it the way it is.

MS. JOHNSON-HARTWELL: But I think it should be “because they are women.”

THE COURT: Okay. That’s fine.

MS. WHITE: Yeah, but it reads funny, your honor, that it’s a hostile work Environment because they’re women, because it wasn’t just because they were women. It was because of the sex talk. So I understand that counsel’s giving a sample of where it says “e.g.” In the CACI of women, but that’s not really accurate in terms of the facts of this case.

MS. JOHNSON-HARTWELL: This particular element is about the protected status, not about the conduct that’s being alleged.

MS. WHITE: Yeah, but the protected status is sexual harassment.

MS. JOHNSON-HARTWELL: No, the protected status is—

THE COURT: Is a class.

MS. JOHNSON-HARTWELL:—Is a class; disability, gender, sex.

MS. WHITE: Yeah. So basically, let me tell you the dilemma. If there were men that were hearing the sex talk, it wouldn't be because they were men.

THE COURT: Oh, I thought of that last night when I read this.

MS. WHITE: It's because of sex.

THE COURT: You have a title ix issue with these instructions.

MS. WHITE: That's what I said. It's because of sex. It's not because they're women.

THE COURT: Well, put gender down. Just put gender down.

MS. WHITE: But it's not because they're just women. Because Solares could have not—your honor, Solares could have gone up to a man and showed nude photos, and it would still be a hostile work Environment claim.

THE COURT: But that didn't happen. That didn't happen.

MS. WHITE: I know, but it's about sex.

MS. JOHNSON-HARTWELL: What is the protected class that's being alleged?

MS. WHITE: It's what I'm saying. It's about sex. It's not about because they're women. It's not about because they're men.

THE COURT: I don't have the original in front of me.

MS. JOHNSON-HARTWELL: No. This is that, name of plaintiff, was subjected to harassing conduct

because he/she/nonbinary pronoun was protected status.

MS. WHITE: But it has to be modified based upon the circumstance.

THE COURT: Ask your Horvitz & Levy friend.

MS. JOHNSON-HARTWELL: Yes. He's telling me what I already knew, which is, this is protected status. It's not about the conduct that's being . . .

[. . .]

. . . individual claim. She has—she doesn't need two claims. I mean, it's double punishment.

Okay. Harassing conduct defined. 2523.

MS. WHITE: You took out 2522(b) as well?

THE COURT: Right. 2524 Is okay.

2526. And in the second—to—the—last paragraph, I think you have a typo.

MS. WHITE: Second—to—the—last one?

THE COURT: You have, “including her ability or report the conduct without facing undue risk.”

MS. JOHNSON-HARTWELL: Change “or” to “to.”

THE COURT: “Including her ability to report the conduct”?

MS. JOHNSON-HARTWELL: Yes, your honor.

THE COURT: Okay. 2940(K) is okay.

MS. WHITE: Which one are you on now?

THE COURT: Failure to prevent harassment or retaliation.

MS. JOHNSON-HARTWELL: It's CACI 2527. It's based on government code 12940.

THE COURT: The next one I have is 4603. I have this flagged for some reason.

MS. JOHNSON-HARTWELL: I believe it may have been because counsel wanted to add penal code section 647(J).

THE COURT: That's what it is.

MS. WHITE: Your honor, so back to what I was stating previously about protected class.

THE COURT: Right.

MS. WHITE: So section 12940(j)(1) prohibits harassment on the basis of sex, gender, gender identity, gender expression—

THE COURT: Well, pick one.

MS. WHITE:—And sexual orientation. And I stated I wanted to say “on the basis of sex.”

THE COURT: Why are we fighting over whether it's going to be sex or gender? Of all the things we fought about—

MS. WHITE: Because it doesn't make sense, and the one that applies to this case, based on government code 12940(j)(1) prohibits harassment on the basis of sex, gender, gender identity, gender expression, sexual orientation.

This case is about sex. We wanted it to read sex, not because they're women, not because of gender. Sex.

MS. JOHNSON-HARTWELL: And that's the issue of the prejudice is, they're conflating the allegations

that there was sexual conduct, sex talk, things like that, with the protected category. That's why gender is a more appropriate category here.

THE COURT: Gender was one of the options; right?

MS. JOHNSON-HARTWELL: Correct.

MS. WHITE: Well, sex is one of the options. That's in the statute. That's what the statute says. And the example she gave is just an example. It's not written in stone. It's an example.

MS. JOHNSON-HARTWELL: Just think there's a potential for prejudice given the way that the case has been argued by plaintiffs.

MS. WHITE: It's not prejudice. It's about what the case is about. If it was a man, it wouldn't apply. It's about the code section speaks. It Says—

THE COURT: Denied. Just put gender.

MS. WHITE: It says—the code says, “sex, gender, gender identity, gender expression, sexual orientation.” So why are we picking gender when the statute says sex?

THE COURT: I think sex makes less sense than gender, actually.

MS. WHITE: No. I think it makes sense, because it's what the case is about.

THE COURT: What do you mean it's what the case is about? And gender is not?

MS. WHITE: They weren't harassed because of their gender. They could have been men being harassed.

THE COURT: They were harassed because of sex?

MS. JOHNSON-HARTWELL: Yes. That's not a protected class.

MS. WHITE: Well, your honor, you should tell that to the legislature. I'm looking at the statute.

MS. JOHNSON-HARTWELL: Your honor, can I propose an alternative?

THE COURT: Gender identity?

MS. JOHNSON-HARTWELL: No. It's definitely not gender identity. We could go with sex as long as it's not on the basis of sex but on the basis of their sex or her sex.

MS. WHITE: But they weren't harassed on the basis of their sex. They weren't harassed because they—because they're women. They weren't harassed because—

THE COURT: That's what—okay, then. Should I grant nonsuit, then?

MS. GRECO: Yeah.

THE COURT: Because that one calls for protected class.

MS. WHITE: There's no basis for a nonsuit when the statute says sex as a protected class. Look at the statute.

THE COURT: You're conflating sex as a class with sex as an act.

MS. WHITE: No. Your honor, the court is not understanding. If you look at 12940 subsection a, it enumerates protected classes. They are race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical

condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military, and veteran status of a person. Those are the protected classes.

MS. JOHNSON-HARTWELL: Right, and it's—Ms. White: sex is a protected class. It is in the statute, is what I'm telling the court.

MS. JOHNSON-HARTWELL: And it's biological sex, not sex and talk of sex or allegations of sex. It is a category. Biological sex and gender identity. So we are fine with either their gender or their sex.

THE COURT: Their gender or their sex. Pick one.

Would you prefer their gender or their sex, Ms. White?

MS. WHITE: It should say based on sex because—

THE COURT: Okay, great.

MS. WHITE:—That is a protected class.

THE COURT: My friend, you've won a lot of arguments tonight—

MR. BACA: We're going to agree—

THE COURT:—But you're not going to win that one.

MR. BACA:—We're—we're going to agree to it right now.

MS. JOHNSON-HARTWELL: Either of their gender or of their sex?

THE COURT: Okay. You pick one. I don't care.

MR. BACA: Then I would say—

MS. WHITE: Sex.

MR. BACA: Yeah.

MS. WHITE: All right.

THE COURT: Okay. So we—we're on—we were on 4603. Are you okay with that?

MS. JOHNSON-HARTWELL: Yes, your honor.

THE COURT: All right. 4603. Hang on.

4604.

MR. BACA: We apologize.

MS. WHITE: We apologize. We want it to say women.

MR. BACA: That's etched in stone.

MS. WHITE: Sorry.

THE COURT: Apology accepted. Move on.

MR. BACA: We are.

THE COURT: Okay.

MS. WHITE: Did you get that Miss Johnson-Hartwell?

MS. JOHNSON-HARTWELL: Yes.

THE COURT: 4604. Come on.

Now, these damage instructions, how many times do I get to say "physical pain, mental suffering"?

MS. WHITE: Which one are we on now?

THE COURT: 3900.

Jury Instruction/Special - No 2521A

Authorities - CACI 2521A

Requested by Plaintiffs ☒

Requested by Defendants ☒

Instruction - No 2521A

**Hostile Work Environment Harassment—
Conduct Directed at Plaintiff—Essential
Factual Elements—Employer or Entity
Defendant (Gov. Code, § 12940(j))**

Florence Washington and Santane Glasgow claim that they were subjected to harassment based on sex at Walmart and that this harassment created a work Environment that was hostile, intimidating, offensive oppressive, or abusive.

To establish this claim, Florence Washington and/or Santane Glasgow must prove all of the following:

1. That Florence Washington and/or Santane Glasgow was an employee of Walmart;
2. That Florence Washington and/or Santane Glasgow was subjected to harassing conduct because they are women;
3. That the harassing conduct was severe or pervasive;
4. That a reasonable woman in Florence Washington's and/or Santane Glasgow's circumstances would have considered the work Environment to be hostile, intimidating, offensive, oppressive or abusive;
5. That Florence Washington and/or Santane Glasgow considered the work Environment to be hostile, intimidating, offensive, oppressive or abusive;

6. That a supervisor engaged in the conduct; or that Walmart or its supervisors or agents knew or should have known of the conduct and failed to take immediate and appropriate corrective action;

7. That Florence Washington and/or Santane Glasgow was harmed; and

8. That the conduct was a substantial factor in causing Florence Washington's and/or Santane Glasgow's harm.

Jury Instruction/Special - No 2522A

Authorities - CACI 2522A

Requested by Plaintiffs ☒

Requested by Defendants ☒

Requested by Individual Defendants ☒

Instruction - No 2522A

**Hostile Work Environment Harassment—
Conduct Directed at Plaintiff—Essential
Factual Elements—Individual Defendant
(Gov. Code, § 12940(j))**

Florence Washington claims that Lamar Davenport and Flor Garcia Solares subjected her to harassment based on sex at Walmart and that this harassment created a work Environment that was hostile, intimidating, offensive, oppressive or abusive.

Santane Glasgow claims that Flor Garcia Solares subjected her to harassment based on sex at Walmart and that this harassment created a work Environment that was hostile, intimidating, offensive, oppressive or abusive.

To establish this claim, Plaintiffs must prove all of the following:

1. That Plaintiffs were employees of Walmart;
2. That Plaintiffs were subjected to harassing conduct because they are women;
3. That the harassing conduct was severe or pervasive;
4. That a reasonable woman in Florence Washington and/or Santane Glasgow's circumstances would

have considered the work Environment to be hostile, intimidating, offensive, oppressive, or abusive;

5. That Florence Washington and/or Santane Glasgow considered the work Environment to be hostile, intimidating, offensive, oppressive or abusive toward women;

6. That Lamar Davenport and/or Flor Garcia Solares participated in, assisted, or encouraged the harassing conduct;

7. That Florence Washington and/or Santane Glasgow was harmed; and

8. That the conduct was a substantial factor in causing Florence Washington and/or Santane Glasgow's harm.

Jury Instruction/Special - No 2523

Authorities - CACI 2523

Requested by Plaintiffs ☒

Requested by Defendants ☒

Requested by Individual Defendants ☒

Instruction - No 2523

“Harassing Conduct” Explained

Harassing conduct may include, but is not limited to, any of the following:

- a. Verbal harassment, such as obscene language, demeaning comments, sexual conversations, slurs, or threats or defamatory statements, sexual remarks; or
- b. Visual harassment, such as offensive pictures, text messages, internet postings, emails, posters, objects, cartoons, or drawings.

**TRIAL TRANSCRIPT ON
PHONE RECORDS AND
DOCUMENT PRODUCTION
(MARCH 28, 2022)**

COURT OF APPEAL OF THE STATE OF
CALIFORNIA SECOND APPELLATE DISTRICT

JANE DOE,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., an Arkansas
Corporation, dba Wal-Mart; FLORA GARCIA
SOLARES, an Individual; LAMAR DAVENPORT,
an Individual; and DOES 1 through 50, Inclusive,

Defendants.

JANE DOE,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., an Arkansas
Corporation, dba Wal-Mart; FLORA GARCIA
SOLARES, an Individual; TINA SIMS, an
Individual; and DOES 1 through 50, Inclusive,

Defendants.

Superior Court Case No. BC 698048

Court of Appeal Case Number: B323435

Appeal from the Superior Court of
Los Angeles County -Reporter's Transcript of
Proceedings Tuesday, March 28, 2022

Dept 14

Before: Hon. Terry A. GREEN, Judge Presiding.

[March 28, 2022, Transcript, p. 6007]

(Whereupon the following was held between the court and counsel.)

THE COURT: Okay. On the record in the trial matter. Jury is not present. Counsel is present.

What's going on, plaintiff? Plaintiff? Plaintiff?

MR. BACA: Now would be a good time to address that there was a motion in limine to exclude the phone records for Florence Washington, and the court never made a ruling on that.

THE COURT: It's my understanding this was a discovery issue, that they were sought and not turned over.

MR. BACA: The problem is if you look at the deposition of Mr. Davenport, he withheld his own number. He didn't know his own carrier. So it went to impeachment. When Ms. White asked what his telephone was, he established the phone number, which he always knew what it was. But I thought that he was—well, it is not forthcoming. So it goes towards impeachment.

The phone records that match up to the text message including the time that she sent it, he sent it back and she sent it again. So it goes towards impeachment. They always had their own phone records.

They were asking for documents regarding communications between them. This is not communications. These are phone records, which he denied that that was—or he didn't remember his phone. So I think it's a clear case of impeachment.

MS. COLEMAN: Your honor, they're talking about Florence Washington's phone records, which were requested in discovery and not produced.

THE COURT: Yeah. That's what I thought we were talking about.

MS. GRECO: That's correct, your honor.

MS. COLEMAN: And then they're heavily redacted so you can't see who else she might have messaged or sent stuff to, but the bigger issue is they were specifically requested in several discovery requests and never provided. And Ms. Washington presumably if she was texting and dating Mr. Davenport, knew his number. So whether or not he came up with his number, she had that number.

THE COURT: So time out. Plaintiff wants to get in Ms. Washington's number or Mr. Davenport's number? Ms. White: Mr. Davenport's number.

MS. COLEMAN: Ms. Washington's phone records. The court: you want to get into evidence Mr. Davenport's phone records?

MS. WHITE: Correct, his phone number.

THE COURT: Wait. Wait. I don't understand. You say phone records. In my mind, I'm picturing a phone bill.

MS. WHITE: Your honor, let me explain.

MS. COLEMAN: They have her phone records.

THE COURT: Wait your turn.

MS. WHITE: Mr. Davenport denied receiving and sending the text—the photograph at issue to Ms. Washington.

THE COURT: Right.

MS. WHITE: But the phone record will—is impeachment because it shows his number and the date and the exact time of exhibit 4.

THE COURT: Okay. Wait. Time out. So you want to get in Ms. Washington's phone number to show that—Hey, phone records to show that on the record, there's Mr. Davenport's phone?

MS. WHITE: Correct.

MS. COLEMAN: No. They have the records from Ms. Washington's phone bills.

THE COURT: Right. So they want to get in the Plaintiff's phone bill.

MS. GRECO: May I be heard, your honor?

THE COURT: Why is that a bad thing?

MS. GRECO: First of all, your honor, her cell phone bill does not confirm Mr. Davenport's number. It's a telephone number. And most importantly, these records are from October and November of 2016.

They were requested during discovery and never produced.

THE COURT: Okay. Where was the request? Show me the request.

MS. GRECO: Right here, your honor.

MS. WHITE: And, your honor—

THE COURT: Hang on. They're showing me the request.

MS. WHITE: I was going to just bring back the issue of the number when Mr. Davenport—at his deposition, he said he didn't remember his telephone number, but on the stand the same number that's in Ms. Washington's phone records is what he said his number was.

THE COURT: Guys, hold on. So where is the request?

MS. GRECO: Number 8 is relevant. I think also request number 6, and I've highlighted the definition of documents.

THE COURT: Document or documents to mean writing or writings as defined by the evidence code. There's writing, printed, typed, recorded, contracted, voices, credits, credit files, tabulation reports, recordings of telephone calls and other communications, limited to notes, notations, memoranda or other writings, and relating to telephone conversations, conferences, minutes, notes, transcripts and other communications of any type.

Now turning to 6, all documents relating to communication between you and any present or former employee, agent of Walmart.

Who is this to, Washington?

MS. GRECO: Yes, jane doe. And number 8 too, your honor.

THE COURT: Number 8, all documents relating to any communication between you and—well, Lamar davenport. Okay. It looks like it's clearly covered.

MR. BACA: Well, it's not quite what they said. They didn't ask for the cell phone records. So they could have specifically asked for cell phone records. That is so broad that it—

THE COURT: That's right, it is very broad, and that's why it usually provokes a response from the other side saying it's overbroad, and they want me to come back and modify it, but I don't recall that—

MS. WHITE: Your honor, we objected. We stated this was vague and ambiguous and overbroad.

THE COURT: Did I rule on this?

MS. WHITE: No, you didn't. They never met and conferred. They didn't file a motion or anything.

MR. BACA: So I think our objection stands. And then it also goes to Mr. Davenport, who denied at his deposition that he didn't know his number when he was at the Torrance store, and he didn't even remember his Carrier, and he didn't remember who paid the phone bill.

THE COURT: So what happened, you served this, You objected, then what happened?

MS. WHITE: Nothing.

MS. GRECO: No. They also then provided supplemental responses and produced a bunch of—245 Pages of documents that are all bates stamped. The phone

records that they have were never produced, and they were clearly in her possession and control.

THE COURT: Okay. Guys, wait. Wait. So they objected, and then the ball is in your court to file a Motion to compel.

MS. GRECO: Well, we met and conferred, and supplemental responses were provided.

THE COURT: Oh, I didn't know that. And in the supplemental responses, were there phone records?

MS. GRECO: No phone records.

MS. WHITE: But the supplemental responses, we still have the objections. The objections don't go away.

MS. GRECO: There's an obligation to produce everything.

THE COURT: Actually, they do.

MS. WHITE: No, they don't.

THE COURT: Well, yeah.

MS. WHITE: We asserted the same objections.

THE COURT: Then why did you agree to supplement?

MS. WHITE: What do you mean? We didn't agree to supplement. They propounded supplemental requests. We made our objections. Still, there was no meet and confer.

And, your honor, there's been documents they produced during this trial that we've never received. For example, the write-up for Ms. Solares for body shaming. That exhibit was never produced. There have been a lot of documents in this trial that we're just now getting that we asked for that

fully fall within the scope of discovery. And they're introducing these documents based on November 12, 2019, being the cutoff.

THE COURT: Okay. So what? You filed—you got supplemental responses, and then you filed—at the end of discovery, did you file a cleanup request?

MS. GRECO: Yes. Plaintiffs did not respond to that.

MR. BACA: And the objections still stand. They could have said we want to circle back.

MS. GRECO: Your honor, if a propounding party makes a request for documents, we have—we are entitled to assume that the documents they are producing are all that they have in their control. I've never been obligated to come back and say, oh, I'm sorry, you must have these, you must be lying, you must have these, and if you don't give them to us—why is the burden on the propounding party to ensure that a person is producing everything in my possessing and control? Oh, no, you're not. Yes, you are.

THE COURT: Now, it's my turn; okay?

MS. GRECO: Yes.

THE COURT: How many times do I tell people that if you want to use something, you turn it over? And I could see this is very relevant evidence. And if I had this in my possession, I would turn it over in a heartbeat because I want to use it. So I tell everybody that. I'm sure I've told you that. That, and my war stories you're probably sick of hearing, but that's what I tell everybody.

And so if it's not turned over, and it's something that you want to use, and it's important, and I think this is important, you're obliged to turn it over.

And I'm a bit at a loss for words because both parties brought a motion in limine here that they want to exclude things not turned over in discovery. And neither party objected when I said granted as to both.

And you talk about a rule honored as breached. Then after I rule on that, we have a new definition of discovery cutoff or something. And suddenly things are coming in that hadn't been turned over.

And, you know, I'm—I rule on objections, and—but this is clearly something that was clearly sought, and there were two discovery requests. Plus my lectures about if you want to use it, turn it over. Plus the fact that I have—I ruled on two motions in limine to keep out things not turned over in discovery.

So I—you know, unless I'm going to be just Making rulings and then ignoring them, I think I have to sustain the objection, plaintiff.

MS. WHITE: But, your honor, you haven't sustained objections regarding documents that they've been introducing.

THE COURT: Well, remember we had this discussion about—about now we're going to bring in events that occurred after the filing of the complaint, and then we had the discussion, well, that's going to open up all kinds of things that weren't sought in discovery.

And I said—I kind of threw my hands in the air and said, you guys, we—remember we had this discussion absent good cause. If the parties agree, you can do anything you want short of animal sacrifice. That was meant to be a joke. But, you know, you're doing that. You're doing that.

You decided that after bringing these motions in limine, you're going to redefine events or materials for the jury, and we had this discussion about how that's going to disrupt discovery, and it has. Yeah, it has. And, you know—

MR. BACA: Your honor, if I could add to that, I don't disagree, but this is classic impeachment. Mr. Davenport said in his deposition he's never been to Florence Washington's house. He said that. We're going to play that clip. Then on the stand, he said, the first time I went over there. It was like the first time; Right? So he's been denying this all along.

This is classic impeachment when we have a defendant who is not being forthcoming in his deposition, who says he's never been over to her house, now admits he's been over to her house at least once.

This is impeachment. That's saying you can get the keys, and he's coming over to her house. So I think that's classic impeachment that had we not had Mr. Davenport not—had he been forthcoming, then it certainly is not impeachment.

But because he's not been forthcoming in his deposition, and he's denying things that are obvious, that's classic impeachment, your honor.

THE COURT: Well, the fact that it may have an impeaching effect isn't determinative. What's determinative, as you know, is this evidence properly admitted in the case in chief. That's what's determinative.

And if this proves your case affirmatively, which it does, as well as impeach, it proves your case affirmatively. It's evidence properly admitted in the case in chief.

So you can't go back to the day when this discovery was propounded 2016 and say, well, you know, four years hence this is going to be used to impeach Mr. Davenport.

I don't know. I'm a little surprised after everything I—I talk until I'm blue in the face about how if you want to use something, turn it over.

MS. WHITE: Your honor, it clearly—

THE COURT: Wait a minute.

MS. WHITE: Your honor, it hasn't been both sided, and so that's the problem, you know.

THE COURT: That's not the problem. We're dealing with phone records now.

MS. WHITE: But we were dealing with—I requested the personnel files of Lamar davenport and Ms. Solares. I've gotten hodgepodge responses. I never got the actual personnel files. They cherry-picked what they produced. They made objections, vague, ambiguous, whatever they made.

Now, in trial they're producing write-ups that we never saw. They don't even—they're cherry-picking it, and so it should go both ways.

THE COURT: Guys, now, wait a minute. You have got to have mercy on your trial Judge. You guys are living—apparently because you have a new definition of what's relevant in this case, you're living in your own discovery universe, and I'm not part of that universe.

I mean the universe I'm a part of is the one where there's a discovery cutoff, and we have a complaint that proves what's at issue, and then it's easy. I grant motions to keep out evidence not turned over in discovery. But you guys have upset the apple cart here. And I don't know what's in your notebooks, and I don't know what—you know, when you change the rules and you agree to change the rules midstream, I'm really not part of that.

And, you know, I don't know what to say. You say it's not mutual and therefore I should let in this note that's sought after in the beginning of litigation. It doesn't make any sense to me.

One last thing and then we've got to bring the jury in.

MS. COLEMAN: I just wanted to add for the record that plaintiff's counsel didn't object to the coaching of Flor Garcia coming in, even though they could have objected that it wasn't produced in discovery, But-

THE COURT: I don't remember this.

MS. COLEMAN: The phone records clearly were responsive and—

MR. BACA: Can I add one last thing?

THE COURT: One last thing, sure.

MR. BACA: Had they asked for the phone records—initially, Ms. Greco said, yeah, we asked for the phone records. No. It was some hodgepodge thing that all you have to do is send one discovery request, and that is the whole universe of possible things.

THE COURT: Right. That's what I did.

MR. BACA: I think they did not specifically ask for the phone records. Their client was not forthcoming. They had equal access to those records.

Had their client been honest with them and said What was your phone number, who was your carrier. He denied it all along, denied he's been to the house.

Now we have proof of it. It's clearly impeachment. It doesn't go towards proving our causes of action, but it proves that—it goes towards his credibility.

THE COURT: It absolutely proves your cause of action. It proves that he was sending these text messages and photographs at the time and dates that you alleged, and it's absolutely something that's admissible in your case in chief.

MS. WHITE: And also, your honor, the court has, like, omitted, like, pretty much all of our impeachment evidence of Mr. Davenport. This is just one extra piece of evidence.

You know, first it was the TRO, and then it's the felony conviction. Now, it's the fact that he's lying

about his telephone number and receiving texts and pictures of Ms. Washington.

THE COURT: I don't know what to say. I'm almost to the point where I just—I'm speechless.

MR. BACA: Well, your honor, you've said enough then, and we're not going to change your opinion. We vehemently disagree with your honor, and we submit. And I will mark exhibit number 145 as next in order. I think that is g, isn't it, court exhibit?

THE COURT: I don't know. That's fine. No problem with that.

(Whereupon exhibit 145 was marked for Identification.)

THE CLERK: You're admitting an exhibit?

MS. COLEMAN: Well, it's already in the exhibit Binder.

MR. BACA: Then we'll just by reference 145. I'll reference that as the court exhibit.

THE COURT: Great. Ms. Cortez, bring the jury In, please.

THE CLERK: Sure. I didn't get what just happened. There's an exhibit that was not—

THE COURT: There was an objection to introducing phone records. That was sustained.

And then counsel is going to give you what the Phone records are. So it's part of the record for Appeals; right?

MS. COLEMAN: It's court exhibit g, but it's in their exhibit binder as 145 currently.

THE COURT: All right. Bring the jury in, Please.

(Whereupon the following was held in open Court.)

THE COURT: Okay. On the record. Jury is Present.
Counsel is present. Good morning.

THE WITNESS: Good morning.

THE COURT: Thank you for being here on time. I
really appreciate it.

We had a matter that we had to discuss that
we

[. . .]

[Transcript, p. 6078]

Photos, and someone by the name of Flor Solares.
Do you know who Flor Solares is?

A. Yes.

Q. Okay. Now, did you have any interactions with
Ms. Solares that you thought were inappropriate?

A. Quite a few.

Q. Okay. Now, how many would you say—if you had
to estimate, how many incidents would you say
were inappropriate with Ms. Solares? What
number would you give? We don't have the time
to go through all of them, but what number for
the jury would you say it would be? At least, how
many times?

MS. COLEMAN: Objection. Vague as to time. The
court: oh, at all times?

MS. WHITE: Yes.

THE WITNESS: Overall, since 2015, I would say a
good 20 to 30 times.

BY MS. WHITE:

Q. Okay. At least?

A. At least.

Q. So we don't have the time to go through every single incident in this trial, but if you could go back in time to the incident, the first incident that you recall that stands out for you, tell us where are you in the store?

A. We were on the front end.

Q. All right.

A. Where the cash registers are, and she was telling me about an incident that she had with one of the managers, Chasiti, and she was saying how after work the night before or the night before that, they were in the parking lot, and they were in the car, and they were kissing and rubbing each other.

Is it okay if I speak freely?

THE COURT: Please.

THE WITNESS: Yeah. They were kissing and rubbing on each other and sucking each other's neck, and then Chasiti finger-banged her in the parking lot.

BY MS. WHITE:

Q. Okay. So pause. So you're at the register, and you have—a coworker comes up to you and tells you about a female manager that she's making out with in the parking lot?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. So what is going through your mind at this point?

A. I was kind of surprised. I didn't like—at first, I didn't believe her, and I told her, like, I don't know. And then she showed me the hickey she had on her neck. I was just, like, okay. And I kind of eased out of the conversation by telling her I had to go back to work because I didn't want to engage in that conversation.

Q. Did you report that incident?

A. I did not.

Q. Why not?

A. Because she's talking about having a sexual relationship with a manager, so I'm thinking if I do report it, I don't think nothing is going to happen. She's talking about a manager.

Q. Okay. So what is the next incident that stands out for you that you believe to be inappropriate concerning an interaction with Ms. Solares?

A. So the biggest—the biggest one was the conversation about Lamar. She was having a conversation with two other cashiers, Megan and Kwan, and I walked up on the conversation, and I asked what are you guys talking about. And Megan and Kwan kind of laughed and walked away.

But Flor proceeded to tell me. She was telling me that the night before they had all got together, and she was discussing with them her sex life with Lamar, and they felt that maybe he might be down low.

Q. And can you pause here? What do you mean “down low”?

A. That he might like guys, but kept it in the closet.

Q. Now, this is the conversation that’s happening where in the store?

A. On the front end.

Q. So you’re on the front end. Ms. Solares is recounting this conversation to you that she had with Megan and Kwan?

A. Yes.

Q. All right. Continue.

A. And she’s, like, oh, they’re saying he might be gay because he liked his butt played with, that he liked for her to tickle his booty hole. She went in to tell me, like, the other things that they were discussing about her sitting on his face and how he liked his dick sucked from the back, just different sexual themes.

Q. So it’s pretty graphic stuff. What are you thinking when you’re having this type of conversation at work?

A. That she gets around, that she’s a very sexual person.

Q. Okay. So this conversation about what Lamar davenport likes in bed, this is happening after Ms. Solares has told you she’s been in the parking lot with a female manager?

A. Yes.

Q. So what are you thinking at this point?

A. How is she able to have these relationships with these managers, and it's just okay?

Q. Do you report this incident?

A. I didn't.

Q. Why not?

A. Because again, we're talking about a manager that she's sleeping with. I've already had conversations with her and other cashiers and other people on the front end where they're telling me that certain things have happened, and they went to management. Even situations that they've had with Flor, they go to Chasiti, and nothing was done. I didn't think it would be any different with me.

Q. Okay. So fast forwarding, you know Florence Washington; right?

A. Yes.

Q. So at this point are you work friends with Ms. Solares? What's the relationship like?

A. Me and Flor, we were pretty cool. I would say we were work friends, yeah.

Q. Okay. And how about at this point your relationship with Ms. Washington, were you work friends?

A. No, not at all.

Q. Tell us why.

A. So I'm a very outgoing person, and I interact with everybody. But when it came to Florence, you could tell that she just came to work to do her job and that's it. Like don't get me wrong, she would

speak, she would say hi. When we walk past each other, she would say excuse me, and I would do the same. But you knew that she was only there to do her job and nothing more.

Q. Okay. So at some point in time, getting to these photos, did Ms. Solares discuss photos of Ms. Washington with you?

A. Yeah. Amongst other things.

Q. Okay. So tell us—all right. So are you weren't allowed to date anybody—a manager. Just like management wasn't allowed to date anybody on the front end, the sales floor, the back room. Like, those relationships weren't allowed.

Q. Sure. So let's get to these photos. Tell us how you learned about these photos of Ms. Washington.

A. So as I was previously stating, we had had previous conversations about Florence, and she would tell me things. And she had told me before about her having the photos of Florence.

When she told me, I didn't believe her. She was just, like, she had the photos, and she was thinking about putting them on the internet. And I was just like, okay. I didn't believe her. So I really didn't indulge in the conversation. But when she showed me the photos, it became a different thing.

Q. Let's go back to that day she showed you the photos. Where are you?

A. We—if I'm not mistaken, I was either going on my lunch and my 15, and it was the same for her, and we had went out to my car.

Q. Okay. So you and Ms. Solares go to your car; right?

A. Yes.

Q. Where are you sitting? In the driver's seat or passenger seat, the back seat, where are you sitting?

A. I'm sitting in the driver's seat, and she's in the passenger seat.

Q. So let's go to this conversation. What is Ms. Solares saying?

A. Well, we're talking, and she's venting about Florence. And I'm just telling her, like, the situation between them is petty, that, you know, she has this big issue with her over a man. And she pulls out her phone, and she's just, like, oh.

Q. Here's a phone. You be Ms. Solares. Show us.

A. She pulls out the phone.

Q. Show us.

A. She hands me the phone, and she was like I told you she was a whore. And I'm flicking on through the pictures, and I see—the first picture I saw was Florence, and she was fully clothed. I keep scrolling. There was a picture of her vagina. Once I saw that picture, I gave her phone back, and I said I don't want to see this.

THE COURT: Okay. The witness gave gestures as if she were going up—flipping through pages on a phone.

BY MS. WHITE:

- Q. So once you tell Ms. Solares I don't want to see this, what do you—
- A. I told her I don't want to see it, and she shouldn't be showing it to me, that it's not okay.
- Q. And how did she respond when you said, hey, I don't want to see it, that's not okay?
- A. She didn't respond. She just kind of laughed, and she kept scrolling through her phone.
- Q. How many photos did she show you of Ms. Washington?
- A. It was at least four.
- Q. Okay. And what are you seeing in these photos that Ms. Solares is showing you of Ms. Washington?
- A. It started off as just regular photos, Florence fully clothed, and then it's a half naked photo, and it's the photo of her vagina, and it's another one of her smiling.
- Q. Okay. So how does that conversation end at this point?
- A. After I told her that I didn't want to see the photos, and she shouldn't have showed me, and she laughed or whatever like it was a joke, I told her I had to get back to my shift, it was time for me to go back in.
- Q. What did you do next in response to those photos being shown to you?
- A. That day, I just went back to work.
- Q. So what are you thinking as you go back to work about? Are you thinking I'm going to report this,

I'm not going to report this, I'm going to keep my mouth shut? What's going through your mind?

- A. That day, I think I was just more so uncomfortable. I didn't really think much about the photos and coordinate. But as time went on, I became super conflicted. I didn't know whether I should or shouldn't.

[. . .]

**TRIAL TESTIMONY, EXCERPTS
(MARCH 29, 2022)**

COURT OF APPEAL OF THE STATE OF
CALIFORNIA SECOND APPELLATE DISTRICT

JANE DOE,

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., an Arkansas
Corporation, dba Wal-Mart; FLORA GARCIA
SOLARES, an Individual; LAMAR DAVENPORT,
an Individual; and DOES 1 through 50, Inclusive,

Defendants.

JANE DOE,

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WAL-MART ASSOCIATES, INC., an Arkansas
Corporation, dba Wal-Mart; FLORA GARCIA
SOLARES, an Individual; TINA SIMS, an
Individual; and DOES 1 through 50, Inclusive,

Defendants.

Superior Court Case No. BC 698048

Court of Appeal Case Number: B323435

Appeal from the Superior Court of
Los Angeles County -Reporter's Transcript of
Proceedings Tuesday, March 29, 2022

Dept 14

Before: Hon. Terry A. GREEN, Judge Presiding.

[March 29, 2022, Transcript, p. 6425]

MS. COLEMAN: Your honor, I handed out the powerpoint for reading to show that he had exactly the same slides in there compared to—

THE COURT: You can—you can use—he can testify to this. He can testify to it.

MS. WHITE: But reading is not here to—

THE COURT: But the powerpoint that we're talking about, we're talking about nothing. This is demonstrative evidence. I assume it's going to parallel what his testimony in court's going to be. But if you haven't seen—we haven't got time to go through this demonstrative evidence now.

He can testify to whatever he testified to at his deposition under Kennemur and anything that he gave Dr. Reading between then and now, but he can testify to all of that. But I'm not going to go through and fight page by page on this. We simply have to finish this trial.

MS. WHITE: I understand, your honor. And I thank you for your ruling about these exhibits and the court excluding them; however, we still move to preclude this witness from testifying because the court has indicated that we don't have time to cross-examine, and we strike the testimony.

THE COURT: You have 21 minutes.

MS. WHITE: My clients litigate as plaintiffs. They have to be entitled to due process. They have to be entitled to cross-examine witnesses. And basically what the court has stated is that we only have 20 minutes left. We will not have enough time to cross-examine a crucial witness that is a psychologist and their Defense—

THE COURT: How much? You wanted eight hours. I gave you six. How many more hours do you want?

MS. WHITE: I'm just telling you, if the court is only giving us 20 minutes, we move to strike and exclude Hinkin from testifying. You know, we have to be entitled to due process.

And the plaintiffs, there are two plaintiffs. There are six—approximately six causes of action per plaintiff, and we've been efficient with trying this case. We've even had to eliminate, you know, a five-minute clip of a witness because of the court's imposition of 20 minutes.

THE COURT: We have to move on.

MS. WHITE: We've had to eliminate Ms. Sims's clips that we didn't play the other day, which are cumulatively about five minutes. And we're proceeding with two three-minute clips, and we're not able to cross-examine the defense mental health expert in this case. So we move to strike the testimony.

THE COURT: Well, that's denied. I mean, the California Crane School case expressly says it's unfair to one party who is within the time limits to not enforce time limits to the other party.

I've given you six hours. That is three or four times more than I've ever done in my life. And, you know, you wanted eight. I gave you six. And I still have heard no answer how much more time you want, but we still have to move on.

MS. WHITE: We need time to cross-examine Hinkin.

THE COURT: Okay.

MS. WHITE: And then i—they have a line full of witnesses outside the door in their case. And so, basically, it's one thing for the court to limit plaintiffs in their own case, but now what the court is essentially doing by its ruling in the crane case—which I disagree with the court's interpretation because they're distinguishable—what they're doing is basically eating up our time. We don't have time really to properly finish playing our clips. But to give us 20 minutes, and they have four, five witness, and we can't cross-examine them—

THE COURT: I gave you six hours.

MS. WHITE: That's reversible error, your honor. I'm sorry.

THE COURT: You know something? It may be, except you're going to have to reverse California crane school, inc., Versus national commission. You're going to have to reverse that and all the cases cited thereunder; all right?

So maybe they can do that because they're the court of appeal, and they can do things like that. But right now I am bound by the laws in the state of California.

You asked for eight hours. I gave you Six hours. And now we're—i want you to have an hour for final argument because this case demands that, but we simply have to finish this case.

MS. WHITE: Every case demands under the code and laws of this state that we get to cross-examine the witnesses.

THE COURT: Okay. Great. Awesome. You know, you had six hours to allocate any way you wanted. So now we need to move on. The motion to denied.

MS. COLEMAN: One question, your honor?

THE COURT: Yes.

MS. COLEMAN: After they're out of time from playing their clips or however they choose to allocate the time, I'd like to request that the—or that they not be permitted to say in front of the jury that they're out of time, that the court has limited them, that it's not fair, any other kind of—

THE COURT: Okay.

MR. BACA: No. Your honor, again, I understood that. Your honor has been very clear. I respect your honor. Again, it's Ms. Coleman who is trying to occupy the purview of the court and telling us we don't know how to try our case.

I respect your honor. Ms. White respects your honor. We are very clear we will not do that in front of

[. . .]

[Transcript, p. 6492]

Thank you. You're excused. Get on out of here before they think of anything else.

All right. The Defense?

MR. BACA: Walmart calls Cindy Tejada.

THE COURT: Stand here and raise your right hand.

THE CLERK: Do you solemnly state the testimony you may give in the cause now pending before this court will be the truth, the whole truth, and nothing but the truth so help you god?

THE WITNESS: Yes, ma'am.

THE CLERK: Thank you. Please be seated. please state and spell your first and last name for the Record.

THE WITNESS: Cindy Lehigh. C-i-n-d-y, L-e-h-i-g-h.

THE COURT: Thank you. Welcome. Please proceed.

**Cindy Lehigh,
The witness herein, having been
first duly sworn,
Was Examined And Testified As Follows:
Direct examination**

BY MS. HARTWELL:

Q. Good afternoon.

A. Good afternoon.

Q. In 2017 and 2018, did you have a different last name?

A. Yes, ma'am.

Q. What was it?

A. Tejada.

Q. Can you spell that.

A. T-e-j-a-d-a.

Q. When were you hired by Walmart?

A. April 11, 2006.

Q. And did you ever work at store 5874?

A. Yes, ma'am.

Q. And when did you first start working there?

A. It was December of 2017 through the end of 2018.

Q. What was your position at the little Torrance store?

A. Assistant store manager.

Q. Were you at this store in the summer of 2017?

A. No, I was not.

Q. Did you ever hear that Ms. Glasgow and Ms. Washington made a complaint about sexual harassment that was investigated in the summer of 2017?

A. No, I did not.

Q. What is a cash shortage at Walmart?

A. The difference between what should be in the till and what actually is in the till.

Q. And as assistant manager, would you have been notified about a cash shortage?

A. I would, yes, ma'am.

Q. How would you have been notified?

A. Well, the cash office was either managed by a cash office associate or myself if I'm available.

and we get reports the following day once everything was settled and finalized. And it would show any differences or shortages or overages. Anything over \$20, we have to investigate.

Q. What would that investigation entail?

A. We would pull the receipt for that transaction. Each transaction has the associate's operator number assigned to that set receipt, the amount, date and time it happened. We would review video to make sure who was doing the transaction. And then if any disciplinary action needed to take place—I'm so sorry—we would do so at that time.

Q. Do you do that type of an investigation in every case where you discipline someone for a cash shortage?

A. I do.

Q. Did you give Santane Glasgow a coaching in July of 2018?

A. Yes.

Q. Will you look at Exhibit 385.

MS. HARTWELL: It's admitted.

BY MS. HARTWELL:

Q. Can you tell the jury what led to this coaching?

A. So it says right there on January 24 there was a shortage of \$800, which should have been a money load, so the money should have been loaded onto the customer's card. And in return we should have accepted \$800 cash from the customer, an even exchange. That did not happen. The

money was actually given, cash given, so it Caused a \$1,600 shortage.

Q. What is it where it says transaction 4847 at the top?

A. That's the transaction number.

Q. Where does that come from?

A. The receipt and the report that we can backtrack and find what it was.

Q. And what is operator 954?

A. That's the associate's cashier id number. Each associate—usually it's the number you were hired into the store with. Each has their own operator number and password that only they're supposed to use. That way we know who is using the register at that time.

MS. HARTWELL: I'd like to introduce Exhibit 446.

THE COURT: Any objection?

MS. WHITE: Well, I haven't seen it yet. Can I see it?

MR. BACA: Yes, your honor.

THE COURT: Grounds?

MR. BACA: The grounds is failure to produce.

MS. HARTWELL: As I stated before when court began, I wanted to address this outside the presence of the jury.

THE COURT: Oh, brother.

MS. HARTWELL: This witness—excuse me, plaintiff Santane Glasgow never was served discovery in this case.

THE COURT: Is that true?

MS. WHITE: The case was consolidated. That is not true, and I don't want to—

THE COURT: Okay, guys. I know you're dying to see more artwork, but I'm here, and I can't paint. So—

MS. HARTWELL: Your honor, I'm happy to just have the witness look at it and not enter it into evidence.

THE COURT: Okay. Fine.

BY MR. HARTWELL:

Q. Well, if you could take a look at this and tell me what it is.

A. This is a receipt for this transaction that the coaching is linked to.

Q. Is this what you referenced earlier that you would have researched and looked up in order to determine where the cash shortage occurred?

A. Yes, ma'am.

Q. And does it have the operator number on it?

A. Yes, ma'am.

Q. What is the operator number?

A. Operator number is 954.

Q. And what is the transaction number?

A. 4847.

MS. HARTWELL: If we could look at exhibit 385 again? Oh, it's still—okay.

BY MS. HARTWELL:

Q. You see the part that says “action plan” and there’s typed in comments?

A. Yes, ma’am.

Q. Who wrote those comments?

A. The associate did.

Q. So Ms. Glasgow testified earlier today that you told her what to type; is that accurate?

A. No, ma’am.

Q. How do you know that?

A. So anytime I give a coaching—and this is what is supposed to happen. This is what I do because I like to follow the rules.

I sit the associate down, and I say you need to type a plan of action in your own words on how you’re going to improve your behavior. I have them sit at the computer, and they type it in their own words because it’s their statement, not mine. They are the one that has to correct the behavior, not me.

So the associate sits down and types it and then we both sign the document electronically, and we’re done.

Q. And tina sims testified that this high of a loss would have been enough for termination. Would you agree?

A. It can be, absolutely.

Q. But she didn’t terminate her for this cash shortage?

A. No. The levels—we did a 2-level coaching because it was such a significant amount, so yeah.

Q. And does Walmart cash checks for customers?

A. Yes, ma'am, we do.

Q. And is there a procedure that a customer—that a cashier follows when cashing a check?

A. Yes. So it's called a walk-around check. Every register has a mat located in front of it. And the thing you need to check for is that the check is issued to the person whose id you're getting, that the *id* is valid, and the picture matches the person, that the name written on the check matches the id, and the amount of the check matches the wording. And you also have to check and make sure the routing number is not 0000518, which is the united states treasury, which is a false check.

And then once you've verified all these things and you run it through, you have to have the customer endorse the back of the check, or we can't cash it with the bank.

Q. And are the cashiers trained on this?

A. Yes, ma'am.

Q. Is—so if the customer doesn't sign the back of the check or endorse it, what happens?

A. We still have to send it out the next day to the bank, but it gets returned, and it counts as a shortage on the store, a loss to the store. So then disciplinary action, depending on the amount, would happen.

Q. Do you perform a similar investigation like you described for the debit load?

A. Yes, ma'am.

MS. HARTWELL: And if we could look at 387?

BY MS. HARTWELL:

Q. Did you terminate Santane Glasgow?

A. Yes, ma'am.

Q. And what happened that led to her termination?

A. She had a cash that was returned and caused a shortage on the register again. Unfortunately, she was already on a level 3, so the next step was termination.

Q. And how do you know Santane Glasgow failed to get the endorsement?

A. The operator numbers, I would have reviewed video to make sure and done my research.

Q. Okay. And I'll use the same procedure, and I'm handing you what has been marked as exhibit 447 to Counsel and to the witness.

MS. HARTWELL: I am not asking to introduce it, Just to refresh her memory.

THE WITNESS: Thank you.

BY MS. HARTWELL:

Q. If you could tell me what that document is.

A. It's the check—sorry. The receipt for the cashing of the check in reference.

Q. And does it have an operator number on it?

A. Yes, ma'am. 954.

Q. And is that Ms. Glasgow's operator number?

A. Yes, ma'am.

Q. And did you have authority to terminate an associate like Ms. Glasgow on your own?

A. Yes.

Q. Did you need approval from tina sims or the store manager?

A. No, I did not.

Q. If a store manager or any manager like tina sims had told you to terminate an associate without proper evidence supporting that termination, would you have done it anyways?

A. Absolutely not.

Q. Why not?

A. My integrity means a lot to me. Not only that, this is an associate's life. This is their job. So I'm going to do everything I can to make sure I mind my p's and q's. I work in HR now. If I felt something was not right, I would go above their head. I would go to market. So I would not do that.

Q. Have you ever served on the board of directors for Walmart?

A. No.

Q. Have you ever been an officer at Walmart, inc.?

A. No.

Q. As an assistant manager, did you have authority to create Walmart policy?

A. No.

Q. Do you know who creates the personnel or human resources policies at Walmart?

A. People at home office, but I don't know personally.

MS. HARTWELL: Nothing further. Thank you.

THE COURT: individuals?

MS. GRECO: No, your honor.

THE COURT: Okay. You're out of time.

MS. WHITE: Well, your honor, we move to strike the testimony. We have to be able to cross-examine witnesses.

THE COURT: Oh, well, gee whiz. How often have we discussed this?

MR. BACA: Well, I was trying to—

THE COURT: Well, now I'm going to tell the jury what's going on. According to this opinion, I can.

MR. BACA: I was trying to get Dr. Hinkin to ask the question, and so it's like yes or no, and he didn't. So I didn't want to—we ask two minutes for questioning.

THE COURT: Now that it—in every case I try as a Judge, I impose time limits on all lawyers, and I impose time limits based on their input. And in about half the cases, the lawyers need more time, and I give it to them. I don't think I've ever said no. I've never said no in this case. It's just it has reached a point where we have to simply finish this case.

MR. BACA: Your honor, I was trying to get yes or no from Dr. Hinkin, and that's—

THE COURT: You know, we really—I don't know what to say. I—

MS. WHITE: Your honor, move to strike if we can't cross-examine the witness.

THE COURT: Motion is denied.

MS. HARTWELL: Your honor, I would like to call the next witness.

THE COURT: Thank you. You're excused.

MS. HARTWELL: Walmart calls tammy Johnson to the stand.

THE COURT: Please stand here, and madam clerk will swear you in.

THE CLERK: Please raise your right hand.

Do you solemnly state that the testimony you may give in the cause now pending before this court to be the truth, the whole truth and nothing but the truth so help you god?

THE WITNESS: Yes.

THE CLERK: Thank you. Please be seated.

Please state and spell your first and last name for the record.

THE WITNESS: First name Tammy, T-a-m-m-y. Last Name Johnson, J-h—j-o-h-n-s-o-n.

THE COURT: Thank you. Welcome. Please Proceed.

**Tammy Johnson,
The witness herein, having
been first duly sworn,
Was Examined and Testified as Follows:
Direct Examination**

BY MS. HARTWELL:

Q. Good afternoon.

A. Good afternoon.

Q. Where do you work?

A. Walmart.

Q. How long have you been there?

A. This will be my 15th year coming on December 3rd.

Q. And did you start as an hourly associate?

A. Yes.

Q. What is your current position?

A. Team lead.

Q. Is that like a former assistant manager?

A. Yeah. It's kind of the pay scale of assistant manager, but hourly now.

Q. Did you ever work at store 5874 known as the little Torrance store?

A. Yes.

Q. What was your position there?

A. I was a salaried assistant manager.

Q. When did you first start working there?

A. I started in September 2017.

Q. And in September of—

A. 2018, I'm sorry.

Q. So were you at the Torrance store in summer of 2017?

A. No.

Q. Did you receive a report of an incident between CSM Akeem Abad and Florence Washington in December of 2018?

A. Yes.

Q. Can you tell the jury what happened?

MR. BACA: Objection. Vague as to time.

THE COURT: What was the time?

MS. HARTWELL: I said December 2018.

THE COURT: Okay. Fair enough. Go on.

THE WITNESS: Yes. I was the only manager at the time on duty. Akeem came, and he was very agitated. So he had been the only manager on duty at the time.

I asked him what was the problem, and he said him and a cashier got into it. And I asked him, well, what cashier was it? And then he proceeded to let me know it was Florence. And I said, okay, give me a minute so I could pull you guys both in the office so I could see what happened because I didn't know at the time what happened because I wasn't there to see it.

I just know that he came. He was very irate. So I wanted to come and see what happened, pull them both in the office to see what was the problem.

BY MS. HARTWELL:

Q. And what happened when you got in the office?

A. So I got in the office—me and Akeem got in the office. Typically, when you put an associate in the office, they're standing closer to the door. So anytime they're free to walk out because they're

closer to the door. So we're standing on the opposite side.

Akeem proceeded to tell Florence what she did wrong, and he was just trying to give her some direction, and he felt like Florence wasn't receiving it properly.

Q. Go ahead.

A. So I told him to explain again because I wasn't there. So I told him to explain so I could understand what happened. So I know he said he told her to go to a register, register 6. And she didn't want to go to the register. And they got into a back and forth. It was very—

MR. BACA: Objection. Hearsay, your honor.

THE COURT: Well, that's interesting. As to the responses of Ms. Washington, it's overruled.

As to the statements from Akeem—is that his name—that's like the other statements we had where it's being offered not to prove what he said was true, but just to prove that what he said provoked a response from Ms. Washington or provoked a response from this witness or provoked a response from somebody else.

And based on that, they did certain things or didn't do certain things. On that basis, I'll overrule the objection. Go ahead.

BY MS. HARTWELL:

Q. You can continue.

A. Okay. So the argument—so they got into a argument. It was no longer a conversation. They start arguing. Florence just felt like—this is what she

said, and I was there. She felt like Akeem wasn't the same ever since he got the promotion. So she just felt like he changed. He wasn't the same as he was before, before he became a member of management.

So nothing was getting accomplished, so I asked Akeem to step out the room so I can talk to Florence, just me and Florence. The—

Q. Did you have any customer complaints about Florence Washington?

MR. BACA: Objection, your honor. The witness was going to continue to answer the question.

THE COURT: Had you finished the answer?

THE WITNESS: Yes. Pertaining to the Akeem Situation, yes.

THE COURT: Okay. Go ahead.

BY MS. HARTWELL:

Q. Did you have any customer complaints about Florence Washington?

A. Yes.

Q. In retail is it common to get customer complaints?

A. Yes, it's common to get customer complaints.

Q. What type of complaints did you get about Ms. Washington?

A. It was typically they didn't—customers didn't like the attitude. Customers felt like she wasn't respecting them. Customers felt like—just basic things that in retail should be given, it wasn't

given, and they couldn't understand what was the reason.

Q. Like what?

MR. BACA: I'm going to object to all these theys. Lack of foundation. Personal observation.

THE COURT: Again, maybe the customers were accurate. Maybe they weren't accurate. That's not the test, but apparently complaints were made, and this witness did or didn't do something. Overruled.

MR. BACA: Thank you, your honor.

BY MS. HARTWELL:

Q. Were you interviewed as part of an ethics investigation in the spring of 2019?

A. Yes.

MS. HARTWELL: If we could look at exhibit 420, Page 7 to 10?

BY MS. HARTWELL:

Q. Do you recognize this document?

A. Yes.

MS. HARTWELL: If we could go down to the last Page, page 10. Actually, that page right there—I Apologize, page 9.

BY MS. HARTWELL:

Q. Is that your signature at the bottom?

A. Yes.

Q. And what is the date?

A. April 19, 2019.

Q. If we could—did you tell Patricia Hernandez as part of this investigation that two customers had called back to back to complain that Ms. Washington would not bag their items?

A. Yes.

MS. HARTWELL: If we could take a look at 420, Page 7?

BY MS. HARTWELL:

Q. Did you also tell Ms. Hernandez about the incident between Akeem and Ms. Washington that you were just describing?

A. Yes.

Q. And do you see the part where it says she got mad and blew up saying, so now you want to act like a boss?

MS. HARTWELL: It might be down further. Maybe it's not on page 8.

BY MS. HARTWELL:

Q. Do you see about halfway down?

“At the time he was working on register 8. So he told her to go to 10. She got mad and blew up, and said, so now you want to act like a boss?”

Did you tell her that?

A. Yes.

MR. BACA: Your honor, I'm going to object. It's two levels of hearsay now, and apparently this witness was not the percipient witness to the incident, but she heard about it later, so it's hearsay.

THE COURT: Did you hear her say this?

THE WITNESS: Yes. I was in the office at the time. This happened when we—when all three of us went into the office.

THE COURT: Overruled.

MR. BACA: My objection was more specific. She wasn't on the floor to witness it. Later on they were together in the office, but she didn't witness what happened on the floor, I don't believe.

THE COURT: Well, yeah. But again, it's not being admitted to prove what was said is true or false, just that it was said.

And this person was a witness to the argument, and a witness to what was said in the room, so overruled.

BY MS. HARTWELL:

Q. The next part says "so we pulled her in the office to give her the coaching. She was not happy. She was going off, saying, I'm not going to talk to you because now you want to be somebody's boss. Her hands was all over the place."

Did you tell Ms. Hernandez that?

A. Yes.

Q. Was it an accurate statement?

A. Yes.

Q. Did you tell Ms. Hernandez about an incident with another customer that happened a few months before?

A. Yes.

Q. At the bottom of that page where it says, “it had to be two months ago. It had to be two months ago and had to address for bad customer service. He said she asked him do he want a bag? And first he said no. He changed his mind and asked for one. And Flor got—told him no. So he came and got me from”—

MS. HARTWELL: All the way down the page—by Ms. Hartwell:

Q. —“The service desk,” page 1960. Do you remember this incident?

A. Yes.

Q. Can you finish telling the story?

A. I was already at customer service dealing with another customer, so the customer came and tapped me on the shoulder. He was very upset. And I said—originally, he said he didn’t want a bag. And so when he realized how much stuff he had, he decided he wanted a bag. Like, I changed my mind; I want a bag.

And Florence said no, and she just didn’t talk to him. So he said he was trying to, you know, tell her, engage with her, and say the bag—but she was just completely shut down. So he said, can I have my receipt? And she just didn’t say anything. So I just stepped in, and I bagged his stuff, and I gave him his receipt.

Q. And did you coach her for any of these customer complaints that you’ve been describing?

A. No. Because how Walmart works is I thought it was a supervisor—the only supervisor there, you

have to be the supervisor over them. So each assistant had their own area. So I couldn't do the coaching because she wasn't directly under me. So I—I was a supervisor, but I couldn't supervise her because the company wants you to be responsible for the area that you're in.

Q. Have you ever served on the board of directors for Walmart?

A. No.

Q. Have you ever been an officer of Walmart, Inc.?

MR. BACA: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: No.

BY MS. HARTWELL:

Q. As assistant store manager, do you have the authority to create Walmart policy?

A. No.

Q. Do you know who creates the personnel or human resource policy at Walmart?

A. No.

MS. HARTWELL: Nothing further.

THE COURT: Individuals?

MS. WHITE: Move to strike the testimony as plaintiffs are not being allowed to cross-examine witnesses.

THE COURT: As we have discussed, and I cited you the leading case in the area, it's improper for counsel to comment on a time limit in front of the jury.

MS. WHITE: I didn't comment on the time. I said I move to strike. I'm creating my record based on the—

THE COURT: Well, we can create the record outside the presence—

MS. WHITE:—Denial of the right to cross-examine witnesses.

MR. BACA: Thank you, your honor.

THE COURT: And as I said, I have already given the plaintiffs several hours more time. I just cannot give more time because we have to finish this case.

MS. WHITE: I understand, your honor. I'm making my objections for the record.

THE COURT: Okay. Denied. Motion to strike denied. Thank you. You're excused.

MS. HARTWELL: We would like to call Wakouisha Walker.

THE COURT: Ms. Walker, please stand and raise your right hand. Madam clerk will swear you in.

THE CLERK: Please raise your right hand.

Do you solemnly state the testimony you may give in the cause now pending before this court will be the truth, the whole truth, and nothing but the truth so help you god?

THE WITNESS: Yes.

THE CLERK: Thank you. Please be seated. Please state and spell your first and last name for the record.

THE WITNESS: Wakouisha walker, W-a-k-o-u-i-s-h-a; walker, w-a-l-k-e-r.

THE COURT: Thank you. Welcome. Please Proceed.

**Wakouisha walker,
The witness herein, having
been first duly sworn,
Was Examined and Testified as Follows:
Direct examination**

BY MS. HARTWELL:

Q. Good afternoon, Ms. Walker.

A. Good afternoon.

Q. Who is your current employer?

A. Walmart.

Q. When were you hired by Walmart?

A. In 2007.

Q. What was your first position with Walmart?

A. Phone operator.

Q. What is your current position?

A. I'm now a coach, which is formerly assistant manager.

Q. Did you ever work at the little Torrance store?

A. Yes.

Q. Are you still there?

A. Yes.

Q. What was your position at the little Torrance store when you first began?

A. When I first began at little Torrance, I was assistant manager.

Q. And when did you first get there?

A. Three years ago.

Q. Can you give us a year?

A. 2018, At the end of 2018.

Q. Were you at the little Torrance store in December of 2017?

A. No.

Q. Did you ever get any customer complaints about Florence Washington?

A. Yes.

Q. What were they?

A. Unfriendly, not wanting to bag items, and just a whole attitude.

Q. Did you ever coach her for those customer complaints?

A. No.

MS. HARTWELL: If we could pull up exhibit 395?

BY MS. HARTWELL:

Q. Did you and rose do give Ms. Washington the coaching in December of 2018?

A. Yes.

Q. The jury has heard the story many times, so I'm not going to ask you to repeat the reason for it, but is this the incident between Akeem and Ms. Washington?

A. Yes.

Q. And—okay. Have you ever served on the board of directors for Walmart?

A. No.

Q. Have you ever been an officer of Walmart, inc.?

A. No.

Q. As an assistant store manager, gm coach, do you have the authority to create Walmart policy?

A. No.

Q. Do you know who creates the personnel or human resources policies at Walmart?

A. No.

MS. HARTWELL: Nothing further.

THE COURT: Individuals?

MS. GRECO: No. Thank you, your honor.

THE COURT: Thank you. You're excused.

MS. WHITE: Move to strike. Same grounds.

THE COURT: Denied.

MS. HARTWELL: Walmart calls as its final witness, Tina Sims.

THE COURT: Good morning. We should re-swear the witness, Madam Clerk.

THE CLERK: Do you solemnly state the testimony you may give in the cause now pending before this court will be the truth, the whole truth, and nothing but the truth so help you god?

THE WITNESS: Yes.

THE CLERK: Thank you. Please be seated.

**Tina sims,
The witness herein, having
been first duly sworn,
Was Examined and Testified as Follows:
Direct examination**

BY MS. HARTWELL:

Q. Welcome back, Ms. Sims.

A. Thanks.

THE COURT: Yeah. Welcome back. Sorry.

THE WITNESS: Thank you.

BY MS. HARTWELL:

Q. Was Kimberly Andrews ever a salaried member
of

[. . .]

[p. 1836]

How could they be negligent in hiring him if they
didn't know about it? Frankly --

Ms. White: It's a question of fact of whether they knew
or they didn't know. The point is that he committed
perjury several times during the course of this
litigation.

The Court: You can ask in a deposition, did you lie on
your employment application. That's the perjury;
right?

Ms. White: He committed perjury as to his felony
convictions. He said it was only an assault. It
turns out from his own attorney it was multiple
armed robberies. He lied about the jail time he

served. He said it was a year and a half. Turns out it was ten years. Then went back to the paperwork said it was 16-year sentence.

Mr. Baca: If I can add --

Ms. White: Hang on. He lied about his middle name?

The Court: How do you know he lied about his middle name?

Ms. White: Because, your honor, what you said you just finished reading we provided it to you.

The Court: What's his middle name?

Ms. White: We provided the transcript to you. He said his middle name -- he couldn't spell it.

The Court: Okay. You can bring that up.

Ms. White: He also stated -- well, the records we've given you says that --

The Court: Fine. You win. You win. You can bring out the fact that he lied about his middle name and he couldn't spell his name. You can say he's trying to mislead you. That's fine.

Ms. White: Okay. But can we -- so what else can we say? I feel like we've being stymied, your honor, from being able to show the dishonesty of this defendant. And I don't know why The Court is trying dress him up, you know. I understand that, you know, his convictions may have been whatever they were, but they are what they are. He has an obligation like any other witness in this case to be honest. This is various witnesses one word against the other. How do we prove that? We have to give the jury some basis to determine who is lying and who is telling the truth, but we shouldn't be

stifled and placed at an unfair disadvantage because they are trying to dress the defendant up. You know --

The Court: You know, I said it yesterday. I'm very troubled that so much of this case, a case that, you know, where you have really -- it is aberrant workplace conduct where you circulate pictures, nude pictures of other employees. Let's face it that didn't happen -- it didn't happen, to my knowledge, in the D.A.'S office. It doesn't happen on the bench or maybe it does. Maybe I'm just living in a cave but, you know, I think that's odd. You know, it really bothers me when you have a case that serious allegations like this one and it's going to tip on the fact that a guy has multiple armed robbery convictions unrelated to this. I mean, it would be -- it could be relevant if he robbed Jane Doe or Roe. It'd be relevant if he pulled a gun Roe or Doe. Then you could say, well, all right, well, you know, he hasn't outgrown his evil ways, but we're sitting here and saying, in the final analysis you're going to say, you know, ladies and gentlemen of the jury, this comes down to who do you believe and, you know something, this guy over here is an armed robber, prior felony convictions.

Ms. White: Your honor, you're presenting it in a case in a way that we're not presenting how we would use it at all. In fact, your honor, if you look at my briefing I provided you the Jaimez case.

Ms. Coleman: I hate to interrupt.

The Court: Wait. Wait. Your turn.

Ms. White: J-a-i-m-e-z versus DaiOhs U.S.A., 181 Cal.App.4th 1286. Your honor, it's second district court of appeal case.

The Court: It's also a class action where this was a class rep and there was no doubt a motion in that case to remove the class rep.

Ms. White: But the point is not whether it is a class action or not. The point is it's a credibility issue and we're trying to use it for the purpose to show he lied.

The Court: All right.

Ms. White: The manner in which your honor is talking about parading his felony that is not what I'm seeking to do at all. What I'm seeking to do is show this is what WalMart's policies were. This is his employment application.

The Court: Guys, guys. Go ahead.

Ms. White: This is what WalMart's policies and procedures are. This is his employment application. This is the authorization for background check. You signed and you were dishonest and you were dishonest multiple times about it. We don't even have to disclose. We don't even have to say felony conviction.

The Court: No.

Ms. White: We don't have to say felony.

The Court: Yeah, you do have to say felony because otherwise the jury is free to speculate. Okay. This is a command decision. I think what happened on the employment application is a collateral matter. This is impeachment on a collateral matter. I

think it is overly prejudicial and god forbid that this case ultimately turned on whether or not under 788 of the Evidence Code, he was a convicted felon. I mean, I really I'm bothered by that. If in fact Mr. Davenport did all these bad acts you should be able to prove that to the jury. And in fact you should be able to prove that he's not a truthful person by comparing his testimony to the testimony of others, and the physical evidence in this case. You should be able to argue that based on his demeanor. It shouldn't come from a prior felony conviction in 1995 or a lie on an employment application.

Ms. White: But, your honor, is The Court concerned that all of these other employees, including the women that he dated, including Ms. Martin and Ms. Doe, is The Court concerned that these women had to pass a background check, that they had to be honest when they got a job there and that for some reason an exception was made for him? Is The Court concerned about the disparity and policies there?

The Court: Who made an exception for him?

Ms. White: WalMart did, his employer.

The Court: His employer said, Mr. Davenport, everybody else has to go through a background check --

Ms. White: Everybody else. They've already testified to that.

The Court: -- But you don't.

Ms. Coleman: He went through one too.

The Court: Wait, wait, wait. But you don't.

TRIAL EXHIBIT 145, EXCERPTS

Statement for: FLORENCE WASHINGTON

Account number: [REDACTED]

Bill close date: Dec 27, 2016

The date and time corresponds to Pacific Time
(PST/PDT).

App.165a

Date and time	Number	Destination	Direction
12/22/16, 11:57 AM	(323) 503-8770	Los Angeles, CA	Outgoing
12/22/16, 5:37 PM	(323) 503-8770	Los Angeles, CA	Outgoing
12/24/16, 8:28 AM	(323) 503-8770	Los Angeles, CA	Outgoing
12/24/16, 6:22 PM	(323) 503-8770	Los Angeles, CA	Incoming
12/24/16, 6:27 PM	(323) 503-8770	Los Angeles, CA	Outgoing
12/24/16, 6:28 PM	(323) 503-8770	Los Angeles, CA	Incoming
12/24/16, 6:29 PM	(323) 503-8770	Los Angeles, CA	Outgoing
11/26/16, 11:49 AM	(323) 503-8770	Los Angeles, CA	Outgoing
11/26/16, 11:49 AM	(323) 503-8770	Los Angeles, CA	Outgoing
11/26/16, 4:06 PM	(323) 503-8770	Los Angeles, CA	Outgoing
11/26/16, 4:47 PM	(323) 503-8770	Los Angeles, CA	Incoming
11/26/16, 4:50 PM	(323) 503-8770	Los Angeles, CA	Outgoing

App.166a

11/26/16, 4:50 PM	(323) 503-8770	Los Angeles, CA	Outgoing
11/26/16, 5:38 PM	(323) 503-8770	Los Angeles, CA	Incoming
11/26/16, 5:40 PM	(323) 503-8770	Los Angeles, CA	Outgoing
11/26/16, 9:20 PM	(323) 503-8770	Los Angeles, CA	Outgoing
11/26/16, 9:20 PM	(323) 503-8770	Los Angeles, CA	Outgoing
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App.167a

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11/27/16, 1:26 PM	(323) 822-8544	Los Angeles, CA	Incoming

App.168a

11/27/16, 1:55 PM	(323) 503-8770	Los Angeles, CA	Incoming
11/27/16, 1:57 PM	(323) 503-8770	Los Angeles, CA	Outgoing
11/27/16, 2:14 PM	(323) 503-8770	Los Angeles, CA	Incoming
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11/27/16, 3:21 PM	(323) 503-8770	Los Angeles, CA	Outgoing
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11/27/16, 4:19 PM	(323) 503-8770	Los Angeles, CA	Outgoing
11/27/16, 5:15 PM	(323) 503-8770	Los Angeles, CA	Outgoing

App.169a

11/27/16, 7:31 PM	(323) 503-8770	Los Angeles, CA	Incoming
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11/27/16, 8:58 PM	(323) 503-8770	Los Angeles, CA	Outgoing
11/27/16, 10:43 PM	(323) 503-8770	Los Angeles, CA	Outgoing
11/27/16, 10:43 PM	(323) 503-8770	Los Angeles, CA	Outgoing

APPELLANTS' OPENING BRIEF, EXCERPTS

California Court of Appeal, Second Appellate
District, Division Seven
No. B323435

[. . .]

[Page 79]

III. The Hostile Environment Harassment CACI 2521(A) and 2522(A) Instructions and Special Verdict Wording Given by The Court That Plaintiff Was Subjected to Harassing Conduct Because She Was A Woman Was Legally Erroneous and Highly Prejudicial

The jury instructions regarding Hostile Environment harassment were both legally erroneous and highly prejudicial.

The court gave CACI 2521A – Work Environment harassment – Conduct Directed at the Plaintiff-Factual Elements—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940, subd. j and 2522A Work Environment harassment – Conduct Directed at the Plaintiff-Factual Elements—Individual Defendant. (9AA10587, 9AA10589.) However, the court should have also given omitted instructions CACI 2521B and 2522B Work Environment harassment Directed at Others (Corporate and Individual) although they were requested by Plaintiffs. Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j)). (9AA10291–92.)

Despite Plaintiffs' attorneys protest, as to the instructions allowed, the court required that first element to state that "(name of Plaintiff) was subjected to harassing conduct *because she was a woman.*" (9AA10519; 11AA12349–50; 23RT6750:24–6751:2.)

In this case, Plaintiffs enjoyed protected statuses, i.e, woman, gender, sex, etc. But the harassing conduct occurred not because the harassers were targeting women because of their protected status, but rather because they were using the women's sexual characteristics, their intimate female personhood against them. There was also sexual conduct regarding men being shown nude photos, which they found offensive, and sexual talk and discussion among both men and women that was unwanted. The court's required language "because she was a woman" instruction was legally incorrect, prejudicial, and fatally determinative.

The special verdict form contained the same error "1. Was Florence Washington subject to harassment because she was a woman?" "1. Was Santane Glasgow subject to harassment because she was a woman?" The special verdict questions also failed to make the distinction between harassment based upon sexual hostility and sex.

Government Code section 12940, subdivision (a) lists categories for protected status. As relates to this case, specifically, they include sex and gender. They also include gender identity and sexual orientation. Government Code section 12940, subdivision (j)(1) makes employers liable for harassment of an employee with protected status. Subsection (j)(3) makes employees personally liable. Subsection (j)(4)(C) specifically states: "For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender

harassment, ... Sexual harassment need not be motivated by sexual desire.”

Counsel argued there was a difference of harassment due to gender or because someone is a woman versus harassment due to sexual conduct, “sex” and “sexual hostility” in the workplace. (24RT6967:26–6971:21; 24RT6941:5–6950:11.) Counsel wanted the Jury Instruction to read “was subjected to harassing conduct because of sex.” (24RT6968:8–12.)

The Special Verdict form should have read “Was Florence Washington subject to harassment because of sex?” (See Minute Order Granting Motion to Tax Costs in which the Court acknowledges Plaintiff requested because of sex, not woman or gender. (11AA12349–50).) The court acknowledges it chose woman. (p. 4.)

Making Plaintiff’s point and prejudicing Plaintiff’s cases, in her closing, Defense counsel argued Washington and Glasgow were not subjected to harassing conduct because “she was a woman.” (23RT6750:24–6751:2).)

Putting the nail in Plaintiffs’ case, the jury answered “No” to that question for both Plaintiffs against Walmart and the individual defendants and never reached any of the other elements. (24RT6959:6–20 – Washington, (10–2, 10–1, 10–2 vote); 24RT6961:17–27, Glasgow, (12–0, 11–1).)

Sex discrimination under FEHA distinguishes between both sex and gender. Gov. Code, § 12926, subd. (r)(2). Simply put, gender and sex are separate protected classes, even though in some instances they might be included under the general term “Sex.” The context of the word “sex” has various connotations.

“Sex” can be used to refer to a gender of someone, which was not what this case was about. Or “sex” can be used to refer to an act, such as engaging in sex. Or “sex” can be used to refer to a subject matter or topic, such as engaging in sexual talk, talking about penis sizes, big dicks, or referring to or showing nude photos, or displaying someone’s penis or vagina.

The work Environment at issue was not hostile because of one’s gender—both penises and vaginas were shown. Men were subjected to the conduct as well as women because it permeated the workplace, of Solares talking about dicks, sex, how big Davenport’s penis was, how he likes to have sex, etc., to men and women alike. For example, Mathew Rickett, a male, was shown graphic nude photos by Solares of Washington.

Witness Deon Phillips, a gay man, testified to showing penis pictures to plaintiff Glasgow at work. Hence, “sex” or subjected to “sexual hostility” were the more appropriate terms to use and not the Court’s constant steering to use “woman” or “gender”. Ms. White explained to the court about the workplace culture of what plaintiffs experienced and what the case was about. (12RT3330:12–3331:7; 14RT4058:4–12; 15RT4348:23–4350:3; 4373:3–3-10; 4363:25–4365:27; See (6RT1534:9–12 (Court describes Washington’s texting the photos to Davenport as aberrant behavior).) The jury instructions are supposed to be used as models, not as rigid tools which defy common sense or logic. *See, People v. Fonseca* (2003) 105 Cal.App.4th 543 [a rigid and isolated reading of jury instruction (discussing CALJIC No. 2.11.5) will mislead jurors into disregarding relevant and admissible evidence.]

A. The Court's Failure to Give CACI 2521B and 2522B Was Dispositive and Fatally Affected Plaintiffs' Case

The court declined to give CACI 2521B and 2522B Work Environment harassment Directed at Others (Corporate and Individual) although they were requested by Plaintiffs. Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j)).

According to Defendants (9AA11466), not giving CACI Nos. 2521B and 2522B was proper and not prejudicial given the lack of evidence that plaintiffs personally witnessed harassing conduct directed at others. (*See Beyda v. City of Los Angeles* (1998) 65 Cal.App.4th 511, 519.)

However, Plaintiff Glasgow was subjected to Solares's sexual comments and descriptions of her sex life (at least 20 to 30 times), Solares's showing Glasgow the phone pictures of Washington, Washington's having to confirm the pictures were the same; Phillips sending Glasgow dick picks and having to participate in and be witness to a sexual harassment investigation. (See 23RT6613:11–6614:21; 6616:18–6617:1 court's comment dick picks weren't enough.)

If the actual display in the workplace of male and female genitalia is not enough, in a sexual harassment case, what would ever be enough?

A reasonable woman, or man, would have been affected by the harassment.

APPELLANTS' REPLY BRIEF, EXCERPTS

California Court of Appeal, Second Appellate
District, Division Seven
No. B323435

[p. 9]

INTRODUCTION

Walmart claims Plaintiffs' Appeal has no merit. But, as set forth in the Argument Section, the trial court and Walmart's Defense counsel acknowledged the trial was fraught with appealable issues.

The prejudicial issues include: legally erroneous CACI 2521A and CACI 2522A jury instructions that ended Plaintiffs' Hostile Environment case; refusal to give CACI 2521B and 2522B Hostile Environment Directed at Others jury instructions; exclusion of impeachment evidence Manager Lamar Davenport lied about his felony convictions in deposition, to the court, and on his employment application and of phone records that corroborate the date/time Davenport received nude pictures from employee Florence Washington; the prejudicial failure to allow Plaintiffs to cross-examine Walmart witnesses regarding Plaintiffs' discipline; and the court's unequal treatment of Plaintiff and Defense "me too" hearsay. Separately and in combination, these errors warrant reversal.

[. . .]

[p. 11]

Plaintiffs' credibility was attacked by Walmart during a flawed investigation and, in a trial that never should have resulted in a defense verdict. Plaintiffs respectfully request their fair day in court.

ARGUMENT

I. The Hostile Environment Jury Instructions Given (and Not Given) by the Court Deprived Plaintiffs of a Fair Trial.

A. The CACI 2521A and 2522A Jury Instructions and Special Verdict Wrongly Required Plaintiffs To Prove They Were *Subjected To Harassing Conduct Because They Are Women*.

1. The Court's Refusal to Give Plaintiffs' Harassed "Because of Sex" Wording Amounted To A Directed Verdict.

The Hostile Environment CACI 2521A (Corporate) and 2522A (Individual) Conduct Directed At An Individual instructions required Plaintiffs Washington and Glasgow to establish they "were subjected to harassing conduct because they are women." (9 AA 10587, 9 AA 10589, 4 Supp. RT 967-

[. . .]

[p. 13-14]

. . . Environment claim because neither Washington nor Glasgow was subjected to harassing conduct because she was a woman. (23 RT 6734, 6750-52.) See AOB 81. See *Alaniz v. Sun Pac Shippers, I.P.* (2020) 48 Cal.App.5th 332, 342 (counsel's legally erroneous argument aggravated prejudice).

The Special Verdict Form ended Plaintiffs' Hostile Environment Claims:

"2. Was Florence Washington subject to harassment because she was a woman?"

"2. Was Santane Glasgow subject to harassment because she was a woman?"

(9 AA 10635, 10637, 10638-39; 9 AA 10649.)

The jury answered "No" never reaching the remaining elements. (9 AA 10635, 10637, 10638-39; 9 AA 10649; 24 RT 6959, Washington; 24 RT 6961, Glasgow.)

On appeal, despite Walmart's counsel Coleman's trial acknowledgment the CACI 2521A and 2522A wording was a post-trial appeal issue (24 RT 6967-71, 6971), Walmart calls Plaintiffs' assertions of instructional error "meritless." See RB 52.

To the contrary, the court's wrongful CACI 2521A and 2522A jury instructions ended Plaintiffs' Hostile Environment case.

2. The "Because They Are Women" Instruction and Special Verdict Forms Failed To Distinguish Between Harassment Based Upon Sex and a Sexually Charged Environment and Harassment Because of Dislike Of A Protected Class.

"Sex" is a protected class under Government Code § 12940 subd. (a). RB 52-53. AOB 80. Government Code § 12940 subd. (j) makes it unlawful for "any employer . . . because of sex . . . to harass an employee."

The court declined to use Plaintiffs' requested instruction that used FEHA specific statutory wording.¹

[. . .]

[p. 24]

. . . harassing conduct directed at others. RB 56-59. For example, Glassgow witnessed and knew about Davenport's and Solares' harassment of Washington (pictures/verbal) and Solares' harassment of Flowers (pictures/verbal). Solares' recited of her sexual acts with Davenport and Manager Chastity to Glasgow. (21 RT 6078-82). Glasgow overheard Solares telling other employees about Davenport's buttocks. (21 RT 6080-82.) *See Beyda, supra*, 65 Cal.App.4th at 519.

With the correct CACI 2521 B and 2522 B instructions, given Plaintiffs' evidence, it is reasonably probable the jury would have reached different result. *Cassim, supra*, 33 Cal.4th at 800.

II. The Trial Court's Evidentiary Rulings, Unequally Applied, Denied Plaintiffs Due Process.

A. The Trial Court Should Have Allowed Plaintiffs To Impeach Davenport With

Washington's Cell Phone Records. Washington testified to a monogamous sexual relationship with Davenport from November 2016 to

¹ "Section 12940(a) also includes gender and other protected classes. Section 12940(j) makes harassment of each Section 12940(a) protected class illegal. Under Gov't Code § 12926 (r)(2), "Sex" also includes, but is not limited to, a person's gender. RB 52-53 omits the "but is not limited to" language.

[. . .]

[p. 38-39]

. . . *Workers' Compensation Appeals Board* (1984) 153 Cal.App.3d 965, 766 (*Fremont*). Critically, Plaintiffs were prevented from rebutting Walmart's testimony as to Plaintiffs' discipline. (22 RT 6427 court acknowledges possible reversible error but have to get Crane case overturned.)⁶

Although Defendants cite *California Crane School, Inc. v. National Com. for Certification of Crane Operators* (2014) 226 Cal.App.4th 12, fn.5 (*Crane*) that: "If a plaintiff heedlessly exhausts its time limit during its case-in-chief, then it will have no time to cross-examine defense witnesses," No party was precluded from cross-examining in Crane. Id. at 12-25.

Crane, supra, 226 Cal.App.4th at 16-17 (10-day trial on an interference with business claim), does not have to be overturned for this court to find constitutional error.

Defendants' reliance on *Crane* to support the court's imposition of time limits and refusal to allow cross-examination is misplaced. RB 48-50. Here, there were two plaintiffs and multiple claims (hostile environment, retaliation, failure to prevent, negligent investigation, violation of revenge porn statute and the Family Leave Act).

⁶ After the defense rested, counsel conferred with the court ending at 4:36 p.m. (22 RT 6534.) If the court had allowed minimal cross-examination, due process requirements would have been met.

And, unlike *Crane, supra*, there is *no indication Plaintiffs were deliberately mismanaging their case in chief. Id.* at 23-24. (See AOB 69, RB 48-51.)

Defendants claim Plaintiffs took too much time calling adverse witnesses to put forth a prima facie case. RB 47. But defendants cite only to Davenport (who concealed his full name and convictions, 12 RT 3370, 3382, 3395-3396) and Solares, 12 RT 3487, 13 RT 3757-3761 (impeached re never calling anyone a “bitch”, Exhibit 215, 11 AA 12431); 3765 (for the bitches Davenport ate my ass last night, 11 AA 12435), 3788 (claims she doesn’t remember Facebook posts). Based upon the testimony elicited, Plaintiff was not only time efficient but effective in impeaching Defendants.

[. . .]

PETITION FOR REHEARING, EXCERPTS

California Court of Appeal, Second Appellate
District, Division Seven
No. B323435

[p. 4-5]

INTRODUCTION

Pursuant to California Rules of Court, Rule 8.268 Appellants Florence Washington and Santane Glasgow, the Doe and Roe Plaintiffs, hereby petition for rehearing on this Court's Opinion dated April 22, 2026. (Exhibit A attached.) The Opinion affirms the trial court's jury verdict and judgment against Plaintiffs on their FEHA sexual hostile environment harassment, failure to prevent, and retaliation claims against Walmart, et. al.

Rehearing may be granted on the grounds the Court of Appeal's opinion misstated or omitted a material fact in the case, or misstated or failed to address any material issue. (*In re Jessup's Estate* (1889) 81 Cal. 408, 471.)

The instructional error also presents a federal question. By narrowing the protected category from "sex" to "women," the instruction removed legally cognizable theories of liability from the jury's consideration and permitted a defense verdict based on an unconstitutional limitation of Plaintiffs' claims. This violated Plaintiffs' rights to due process and a fair trial under the Fourteenth Amendment to the United States Constitution.

This due process violation is not a new claim, but rather the constitutional consequence of the instructional error raised and preserved throughout the proceedings.

ARGUMENT

I. The Court of Appeal's Affirmance Of The Trial Court's CACI 2521A and 2522A Jury Instructions Which Specified That Plaintiffs Had To Prove They Were Subjected To Harassing Conduct Because "They Were Women" Ignores That The Instruction(s) Required Plaintiffs To Prove The Harassment Was *Because Of Their Protected Status As Women* Which Is Not California (or Federal) Law.

The Court's Opinion finds the jury instructions given in the trial court with respect to Washington's and Glasgow's claims for hostile environment sexual harassment under Government Code, § 12940, subd. (j)) (FEHA) were proper. See Opinion ("Op.") at 43.

Plaintiffs respectfully disagree. Not only were the CACI 2521A and 2522A instructions fatally ambiguous, defense counsel(s) used the trial court's given required wording of harassed "because they were women" instructions in closing argument to their advantage, to negate Plaintiffs' claims, and to impugn Plaintiffs' credibility.

This instructional error was not merely one of state law. By misdefining the protected category and allowing the jury to reject liability based on an impermissibly narrow and determinative formulation, the trial court deprived Plaintiffs of a meaningful

opportunity to present their claims. Such an error constitutes a violation of due process because it removes a legally valid theory of liability from the jury's consideration. (*See, e.g.*, analogous principles in federal instructional error jurisprudence.)

Plaintiffs preserved this issue at every stage of the proceedings. They requested correct instructions, objected to the

[. . .]

[p. 14]

. . . make it harassment. But the description of sexual harassment of others meets the requirements of CACI 2521B and 2522B.

The refusal to instruct on harassment of others (CACI 2521B/2522B) compounded the error. Plaintiffs presented substantial evidence that the workplace environment included sexualized conduct directed at multiple employees. By failing to instruct on this theory, the court removed an independent and legally valid basis for liability from the jury's consideration.

VI. The Testimony Excluded By The Court Because of Time Was Material and Should Have Been Allowed.

In response to the court's question during oral, Plaintiff was not able to cross-examine certain Defense witnesses regarding discipline: Cindy Lehigh, Assistant Store Manager, testified regarding an alleged cash shortage and Glasgow's termination. (22 RT 6492-6499.) Tammy Johnson, Salaried Assistant Manager, testified to an incident between Washington and another employee, and an incident regarding a customer. (22 RT

6499-6512.) Wakouisha Walker testified to customer complaints about Washington. (22 RT 6513-6515.) Tina Sims, Manager, testified she was trying to protect Washington in her initial interview. (22 RT 6517-6534.)

The court's enforcement of time limits, over Plaintiffs' objection, prevented completion of cross-examination of key witnesses. The right to meaningfully cross-examine adverse witnesses is a fundamental component of due process, and the premature termination of examination over objection resulted in the exclusion of critical credibility and liability evidence.

[. . .]

PETITION FOR REVIEW, EXCERPTS

Supreme Court of California

No. S296889

Original pages reproduced: 36-46

Plaintiffs therefore did not present a collection of unrelated evidentiary disputes.

Plaintiffs presented a single hostile-work-environment theory supported by multiple categories of evidence.

That distinction is critical because the challenged rulings did not affect separate claims. Rather, the rulings affected different components of the same hostile-work-environment theory. The challenged instructions affected how jurors understood the claim. The refusal of CACI 2521B and 2522B affected what workplace evidence jurors could meaningfully consider. The workplace-culture rulings affected Plaintiffs' ability to demonstrate the environment in which the challenged conduct occurred. The impeachment restrictions affected Plaintiffs' ability to challenge competing narratives concerning dissemination of intimate photographs, workplace investigations, management responses, and retaliatory conduct. The procedural limitations affected Plaintiffs' ability to complete examination of witnesses whose testimony bore upon workplace investigations, management responses, witness credibility, and the hostile-work-environment theory itself.

Viewed individually, each ruling may appear to involve a different subject.

Viewed collectively, however, the rulings affected the same hostile-work-environment theory.

The decision below creates uncertainty because it is difficult to reconcile FEHA's contextual framework with an appellate methodology that evaluates each challenged ruling independently while giving little consideration to how those rulings collectively affected the jury's ability to evaluate the workplace environment FEHA requires courts to consider.

This Court's guidance is therefore necessary to clarify whether hostile-work-environment claims must be evaluated through FEHA's contextual framework not only at trial, but also on appellate review.

B. The Court Of Appeal Evaluated The Challenged Rulings Through Fragmented Harmless-Error Analysis Rather Than Through FEHA's Contextual Framework

The uncertainty created by the decision below arises not merely from the result reached, but from the method of analysis employed.

The Court of Appeal did not evaluate Plaintiffs' hostile-work-environment theory as an integrated whole. Instead, the opinion addressed the challenged rulings largely as separate evidentiary, instructional, impeachment, and procedural disputes. See Opn. pp. 18-49.

The structure of the opinion itself reflects that methodology. The opinion separately addresses evidentiary rulings, related-incident evidence, impeachment restrictions, time limitations, instructional issues, and posttrial challenges before concluding that no individual ruling warrants reversal. Opn. pp. 18-49.

The refusal of CACI 2521B and 2522B was analyzed separately from workplace-culture evidence. Workplace-culture evidence was analyzed separately from related-incident evidence. Impeachment restrictions were analyzed separately from the instructional framework. Time limitations were analyzed separately from evidentiary restrictions. The opinion largely considered each category of ruling independently. Opn. pp. 18-46.

Viewed in isolation, each ruling appears to involve a different procedural subject.

One concerns jury instructions.

Another concerns conduct-directed-at-others evidence.

Another concerns workplace-culture evidence.

Another concerns impeachment.

Another concerns trial-management authority.

Another concerns limitations on examination. Opn. pp. 18-46.

But that is not how hostile-work-environment claims operate.

Nor is it how Plaintiffs presented their case.

Plaintiffs did not present separate theories corresponding to each category of ruling. Plaintiffs presented a single hostile-work-environment theory and relied upon multiple categories of evidence to establish it. The cumulative effect of the challenged rulings therefore bears directly upon whether Plaintiffs received a meaningful opportunity to present the hostile-work-environment claim recognized by FEHA.

The challenged instructions affected how jurors understood the theory.

The refusal of conduct-directed-at-others instructions affected what workplace evidence jurors could meaningfully consider in evaluating the theory.

The workplace-culture rulings affected Plaintiffs' ability to demonstrate the environment in which the challenged conduct occurred.

The impeachment restrictions affected Plaintiffs' ability to challenge competing accounts concerning dissemination of intimate photographs, workplace investigations, retaliatory conduct, and management responses.

The procedural limitations affected Plaintiffs' ability to complete examination of witnesses whose testimony bore upon workplace investigations, management responses, witness credibility, and the hostile-work-environment theory itself.

The rulings therefore did not operate independently.

They operated upon the same theory.

That distinction is critical because FEHA itself rejects artificial isolation of workplace conduct. Government Code section 12923 reflects the Legislature's determination that workplace harassment must be evaluated through workplace realities and context. Likewise, *Miller* and *Roby* emphasize that hostile-work-environment claims depend upon cumulative workplace conditions rather than isolated incidents viewed separately.

Yet the analytical framework approved below risks producing precisely the fragmentation those authorities caution against.

A plaintiff may lose workplace-culture evidence because it is viewed as collateral.

A plaintiff may lose conduct-directed-at-others instructions because the evidence is deemed insufficiently direct.

A plaintiff may lose impeachment evidence because it is viewed as cumulative.

A plaintiff may lose portions of examination because of procedural limitations.

A plaintiff may receive a narrowed instructional framework.

If each ruling is then evaluated separately, no individual ruling appears dispositive even though the combined effect materially alters the jury's ability to evaluate the hostile-work-environment claim itself.

The resulting uncertainty extends beyond this case. Hostile-work-environment litigation frequently involves overlapping evidentiary, instructional, and procedural disputes. Trial courts and reviewing courts require guidance concerning whether such rulings should be evaluated individually or through the contextual framework that FEHA itself requires.

This Court's guidance is therefore necessary to clarify whether FEHA's contextual approach applies only to the jury's evaluation of hostile-work-environment claims or also to appellate review of rulings affecting those claims.

C. The Court Of Appeal's Methodology Is Difficult To Reconcile With Government Code Section 12923, Miller, And Roby

The uncertainty created by the decision below is particularly significant because it is difficult to reconcile the analytical framework employed by the Court of Appeal with FEHA's statutory and doctrinal emphasis on context.

Government Code section 12923 reflects the Legislature's determination that workplace-harassment claims must be evaluated through workplace realities rather than through unduly restrictive approaches that minimize the significance of workplace harassment. The Legislature expressly rejected narrow constructions of harassment law and emphasized that harassment claims must be evaluated in light of the entire workplace environment. (§ 12923, subd. (b).)

Recent FEHA decisions continue to apply the same contextual approach. In *Carranza v. City of Los Angeles* (2024) 111 Cal.App.5th 388, the court emphasized evaluation of workplace-harassment claims through the totality of circumstances and workplace context rather than through isolated consideration of individual events. *Carranza* confirms that the contextual framework reflected in Government Code section 12923 remains a central feature of modern FEHA jurisprudence.

This Court's decisions reflect the same principle.

In *Miller*, *supra*, 36 Cal.4th at 462, this Court emphasized that hostile-work-environment liability depends upon the cumulative effect of workplace conduct and the conditions created by that conduct. The inquiry is not limited to isolated incidents viewed

one at a time. Rather, the relevant question is whether workplace conduct, viewed in context, altered workplace conditions and created a hostile or abusive environment.

Likewise, *Roby*, supra, 47 Cal.4th at 706-709, recognized that workplace conduct often acquires meaning through context and that acts which may appear insignificant when viewed individually may assume substantial significance when viewed collectively.

Both authorities reflect a common principle.

Context matters.

Workplace environments are experienced cumulatively rather than atomistically.

The difficulty presented by the decision below is that the Court of Appeal's methodology appears to move in the opposite direction. Rather than evaluating how the challenged rulings collectively affected Plaintiffs' ability to present their hostile-work-environment theory, the opinion largely evaluated each ruling independently and concluded that no individual ruling warranted reversal. Opn. pp. 18-49.

Under *Miller*, *Roby*, and Government Code section 12923, hostile-work-environment claims are evaluated through the totality of workplace conditions. Yet the analytical framework approved below risks evaluating restrictions affecting those claims through a series of isolated harmless-error inquiries that never fully consider how the challenged rulings interacted with one another.

The resulting uncertainty is not limited to this case. Hostile-work-environment litigation frequently

involves overlapping instructional, evidentiary, impeachment, and procedural disputes. If those rulings are evaluated separately, a reviewing court may conclude that no individual ruling appears sufficiently significant to warrant relief even though the combined effect substantially alters the jury's ability to evaluate the hostile-work-environment claim itself.

This Court's guidance is therefore necessary to clarify how Government Code section 12923, *Miller*, and *Roby* apply on appellate review and to determine whether FEHA hostile-work-environment claims may be evaluated through fragmented harmless-error analysis or must instead be evaluated through the contextual framework those authorities require.

IV. The Questions Presented Are Squarely Presented, Fully Preserved, and Necessary to the Decision Below

This case presents an appropriate vehicle for resolving the questions presented because the issues were repeatedly raised, fully litigated, and expressly decided below.

The first question presented was preserved at every stage of the proceedings. The Court of Appeal expressly addressed and rejected the arguments on the merits. Opn. pp. 42-46.

Plaintiffs repeatedly objected to the "because they are women" formulation, argued that FEHA prohibits harassment because of sex, proposed alternative language, challenged the special verdict forms, and repeatedly argued that the challenged framework improperly narrowed their hostile-work-environment theory. Plaintiffs specifically argued that the case

involved workplace sexualization, visual harassment, circulation of intimate photographs, and other forms of sex-based workplace degradation and that the challenged formulation failed to capture the theory actually being presented to the jury. 4 Supp RT 967:15-973:2; 974:8-978:5; 6RT 1522:2-1527:11; 6RT 1527:12-1537:27; 25RT 7243:2-7244:26; 25RT 7245:25-7247:5. 6AA 8273; 6AA 8335; 6 AA 8352; 6 AA 8429; 8 AA 9625; 8 AA 9747; 8 AA 9791; 8 AA 9600; 8 AA 10189.

The second question presented was likewise fully preserved.

Plaintiffs specifically requested CACI 2521B and 2522B. Plaintiffs argued that conduct directed toward other employees formed part of the workplace environment experienced by Plaintiffs and repeatedly relied upon workplace-context evidence, workplace-culture evidence, management-awareness evidence, and conduct affecting other employees as part of their hostile-work-environment theory.

The third question presented was also repeatedly preserved.

Throughout the proceedings, Plaintiffs argued that the challenged rulings could not properly be understood in isolation because each ruling affected the same hostile-work-environment theory. Plaintiffs repeatedly argued that workplace-culture evidence, conduct-directed-at-others evidence, impeachment evidence, instructional issues, and procedural limitations interacted with one another and collectively affected the jury's evaluation of the hostile-work-environment claim.

The same issues were then fully litigated on appeal.

Plaintiffs challenged the “because they are women” formulation in the opening brief, reply brief, rehearing petition, and post-argument submission. Plaintiffs challenged the refusal of CACI 2521B and 2522B and argued that workplace-culture evidence and conduct-directed-at-others evidence were central to the hostile-work-environment claims. Plaintiffs likewise argued that the challenged rulings should not be evaluated through fragmented harmless-error analysis because each ruling affected the same hostile-work-environment theory.

Most importantly, the Court of Appeal expressly decided the issues presented.

The court concluded that the challenged instructions adequately captured Plaintiffs’ theory. Opn. pp. 42-44. The court affirmed the refusal of CACI 2521B and 2522B. Opn. pp. 44-46. The court separately analyzed the challenged evidentiary, impeachment, instructional, and procedural rulings and concluded that no individual ruling warranted reversal. Opn. pp. 18-49.

The questions presented therefore do not require additional factual development. Nor do they depend upon issues the Court of Appeal declined to reach. Rather, the questions arise directly from the reasoning employed by the Court of Appeal itself.

This Court can therefore resolve the questions presented without revisiting disputed factual issues. The petition asks the Court to clarify the meaning of harassment “because of sex” under FEHA, the circumstances under which conduct-directed-at-others instructions are required, and the proper framework for. . . .

[. . .]

**REPLY IN SUPPORT OF PETITION FOR
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... authorities, but it does not reconcile them with a rule that direct harassment and conduct-directed-at-others evidence become mutually exclusive.

Respondent's contrary rule would make CACI Nos. 2521B and 2522B least available when they are most needed: when the same evidence is both direct harassment of the plaintiff and sexualized degradation of another employee. The jury should have been instructed how to evaluate both dimensions of the evidence. The refusal of the B instructions deprived the jury of the legal standards governing conduct directed at other employees.

**IV. Respondent's "Fragmentation" Argument
Misstates the Petition**

Respondent says the Court of Appeal merely used ordinary appellate methodology by addressing each ruling separately. (Ans. 11–13.) Petitioners do not ask this Court to invent a special appellate rule for FEHA cases. They ask whether prejudice in a hostile-environment case may be assessed while ignoring the combined effect of rulings that collectively shaped the instructions, verdict forms, evidentiary record, and arguments through which the jury evaluated the FEHA claims.

Section 12923 is substantive law, but that does not make it irrelevant to prejudice. If FEHA requires

hostile-environment claims to be evaluated under the totality of the circumstances, then appellate prejudice review must account for whether the jury received the instructions and evidentiary principles necessary to perform that totality assessment. A court cannot say the totality standard governs the claim while reviewing each ruling as though it affected a separate case.

Here, the challenged rulings operated together. The “because they are women” instruction narrowed the causation theory. The verdict forms repeated that narrowed theory. The refusal of CACI Nos. 2521B and 2522B removed the conduct-directed-at-others framework. evidentiary and time-limit rulings affected the evidence available to show workplace context, management awareness, and credibility. Respondent’s closing then relied on the narrowed instructions and verdict forms to argue the sexualized conduct was relationship conflict, not FEHA harassment.

Respondent’s Answer further argues there was no error and, in any event, no prejudice. But that argument depends upon the correctness of the instructions, verdict forms, evidentiary rulings, and appellate methodology the Petition challenges. The question is whether FEHA permitted the courts below to divide the case into isolated pieces after the trial court narrowed the instructions, verdict forms, and evidentiary rulings through which the jury could understand a single hostile-environment theory.

The Petition presents a related question in the FEHA context. Where multiple rulings collectively define the jury’s understanding of a hostile-work-environment claim, the prejudice inquiry cannot disregard their cumulative effect upon the presentation and evaluation of the claim.

Respondent's reliance on *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780 does not answer the question presented. Cassim discusses ordinary appellate prejudice analysis. The Petition presents a different question: whether prejudice may be assessed in a FEHA hostile-work-environment case without accounting for Government Code section 12923's contextual directive and this Court's recognition in *Miller* and *Roby* that hostile-work-environment claims are evaluated through the cumulative effect of workplace conditions rather than isolated acts. The Petition does not seek a different prejudice standard. It asks whether FEHA's substantive framework informs the application of ordinary prejudice principles where multiple rulings collectively shape the jury's understanding of a single hostile-work-environment claim.

This matters because the Court of Appeal reviewed each ruling in isolation after the instructions and verdict forms had already narrowed the hostile-environment theory. The court treated the statutory-instruction issue, the conduct-directed-at-others instructions, the evidentiary rulings, and the time-limit rulings as separate appellate boxes. But FEHA harassment doctrine asks whether the totality of what the employee was subjected to or knew about made the workplace hostile, offensive, intimidating, oppressive, or abusive. Where multiple rulings collectively prevent the jury from receiving or applying the governing FEHA standards, prejudice cannot be measured by. . . .

[. . .]