Filed 12/10/10 Vargas v. Martinez-Senftner Law Firm CA3
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

MARIA VARGAS, Plaintiff and Respondent, v. MARTINEZ-SENFTNER LAW FIRM, et al., Defendants and Appellants.	C055633 & C056198 (Super. Ct. No. SCV17868)

Plaintiff Maria Vargas sued her former employer, Martinez-Senftner Law Firm, P.C. (MSLF), its principal Gloria Martinez-Senftner (Martinez-Senftner), Martinez-Senftner's husband James Senftner, and her son Wayne Senftner[1] for sexual harassment and retaliation under California's Fair Employment and Housing Act

[1] Because James Senftner and Wayne Senftner share the same surname, we shall refer to each by their first name for clarity and ease of reference.

(Gov. Code, § 12940, subds. (h), (j).)[2] Plaintiff also asserted causes of action against MSLF for gender discrimination and failure to take all reasonable steps to prevent sexual harassment from occurring. (*Id.* at subds. (a), (k).)

A jury found James and Wayne sexually harassed plaintiff while plaintiff worked at MSLF, and that MSLF failed to take all reasonable steps to prevent such harassment. The jury found against plaintiff on her remaining claims.

The jury awarded plaintiff $68,000 in compensatory damages ($18,000 in economic damages and $50,000 in general damages) and determined she was entitled to punitive damages. In a bifurcated proceeding, the jury awarded plaintiff $75,000 in punitive damages against each MSLF and James, and $150,000 against Wayne. Following the entry of judgment, the trial court granted plaintiff's application for attorney fees in the amount of $211,111.63. (§ 12965, subd. (b).)

MSLF, James, and Wayne (collectively defendants) appeal, contending: there is insufficient evidence to support the verdicts against them; the trial court prejudicially erred in instructing the jury; the verdicts on the first (sexual harassment) and third (failure to prevent sexual harassment)[3]

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[2] Further undesignated statutory references are to the Government Code.

[3] Defendants refer to the failure to prevent cause of action as the fourth cause of action consistent with the verdict form. Consistent with the complaint, we refer to the failure to prevent cause of action as the third cause of action.

causes of action conflict; the trial court abused its discretion in excluding evidence of plaintiff's sexual conduct; the verdict form is defective and the trial court failed to cure the defect; the jury engaged in misconduct; plaintiff's trial counsel committed misconduct; there is insufficient evidence to support the award of punitive damages; and the attorney fees awarded "are excessive, contrary to the law, and not supported by sufficient evidence."

None of defendants' contentions warrant reversal. Accordingly, we shall affirm the judgment and the postjudgment order awarding attorney fees.

FACTUAL AND PROCEDURAL BACKGROUND[4]

Martinez-Senftner graduated from law school in 1959 and married James in 1960. They have five children. Wayne is the eldest; he was born in 1961.

Martinez-Senftner moved to California in 1990 and opened MSLF in approximately 1992. At all relevant times, James spent the majority of his time in South Dakota, where he operated an automobile dealership. He traveled to California as often as possible.

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[4] Where, as here, a party challenges the sufficiency of the evidence to support a finding, that party must set forth, discuss, and analyze all the evidence on that point, both favorable and unfavorable. (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.) Defendants have failed to do so. Their opening briefs set forth only their version of the evidence, omitting any reference to the conflicting evidence submitted by plaintiff, as described below in our statement of facts.

Plaintiff worked as a legal assistant and paralegal at MSLF from October 2003 until her termination on April 16, 2004. She primarily worked with attorneys Lilia Alcaraz and Blake Nordahl.

James was at MSLF at various times between October 2003 and April 2004 because Martinez-Senftner requested his assistance. He had a workspace inside Martinez-Senftner's office. Among other things, he assisted with "Yellow Page advertising," "the 401(k)" plan, and insurance for the law firm. While he was at MSLF, he would go "door-to-door" asking employees how they were doing and "how we could improve the firm." He "tr[ied] to help lower . . . costs in terms of overheard. . . . [and] did a lot of seeing how [MSLF] could get deals on office supplies." He was authorized to sign checks for MSLF and did so on occasion. He was compensated for some of his work.

There was conflicting testimony as to who was the office manager during the time plaintiff worked at MSLF. Martinez-Senftner and Daniel Lapham, a paralegal at MSLF, testified Lapham was the office manager until October 2003, at which time Martinez-Senftner managed MSLF herself. Nordahl, however, testified that Martinez-Senftner told him and others that James would be the office or business manager. Plaintiff and John Wallpe, an attorney at MSLF, also heard James referred to as the office or business manager.

During plaintiff's employment at MSLF, James grabbed or slapped her buttocks at least three times. On one occasion, James slapped plaintiff on the buttocks with a rolled up piece

of paper, and plaintiff reported the incident to Lapham. Lapham told her he would speak to James, but he never did.[5]

James also touched plaintiff's breast. While plaintiff was discussing a case with Alcaraz, James sat down next to plaintiff with some photographs. As Alcaraz looked at the photographs, James put his arm around plaintiff and touched the side of her breast with his fingers. When he left, Alcaraz closed the door and said, "Oh, my God. I can't believe that just happened." Plaintiff asked Alcaraz to help her, and to her knowledge, Alcaraz spoke to Martinez-Senftner about the incident.[6] Plaintiff did not report the incident to Martinez-Senftner because she did not know how Martinez-Senftner would react since she was married to James.[7]

Sandra Mahood, a paralegal at MSLF, complained to Wallpe on an ongoing basis about James' sexually inappropriate conduct.

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[5] James acknowledged "tapping" plaintiff on the buttocks with a piece of paper one time. He explained that plaintiff had a habit of sticking her buttocks out into the hall as he walked by, and on one such occasion, he tapped her on the buttocks with a piece of paper and told her, "It is totally inappropriate for you to stick your buttocks out into the hallway every time I come by."

[6] Alcaraz testified she saw James "feel the side of [plaintiff's] boob" while plaintiff was sitting in plaintiff's cubicle and complained to Martinez-Senftner about it. According to Alcaraz, James had a habit of touching women at the office and had "tapped" her on the buttocks.

[7] Martinez-Senftner did not recall any employee complaining to her that he or she was uncomfortable working around James. Nor did she ever hear James make a sexually inappropriate comment to an employee.

She complained that James slapped her on her buttocks, rubbed her shoulders, put his arm around her, and made her feel very uncomfortable. Wallpe initially told Mahood to contact James directly because he "didn't want to deal with it." Eventually, however, he raised the issue with Martinez-Senftner.

In February 2004, Wayne began working part-time at MSLF as a courier. He was living with Martinez-Senftner at the time, was going through treatment for a drinking problem, and had charges pending against him for sexual battery. Martinez-Senftner was aware of the charges but was not concerned about having Wayne work at MSLF because he claimed he was innocent and nothing he told her about the facts alarmed her.[8] She "was trying to get him to do something . . . rather than just staying at home moping [and] sleeping."

Numerous witnesses, including plaintiff, testified that Wayne discussed his sexual conquests, made sexually inappropriate comments, printed pornographic photographs, and shared pornographic photographs with employees at MSLF. According to Nordahl, Wayne was preoccupied with sexual topics and acted "[a]s though he had just hit puberty." Nordahl complained to Martinez-Senftner about Wayne, and Martinez-Senftner said she would speak to him.

On one occasion, opposing counsel in an ongoing case advised Wallpe that Wayne had "hit on" an opposing party whom he

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[8] In May 2004, Wayne pleaded no contest to misdemeanor sexual battery.

was supposed to serve with documents. Wallpe reported the incident to Martinez-Senftner, who appeared to be concerned.[9] Wallpe later raised the issue with Wayne in Martinez-Senftner's presence. Wayne "joked it off," and Martinez-Senftner rolled her eyes and said, "That's Wayne."

Mahood complained to Martinez-Senftner that Wayne used her computer when she was not around to contact women on social networking sites. One of those women sent nude photographs to Mahood's computer. Martinez-Senftner responded by telling Wayne he was not to use any computers.

Wayne often came into plaintiff's workspace, discussed his sexual exploits, commented on her appearance and the appearance of other women in the office, and stared at her breasts while she worked. Approximately one week before plaintiff was terminated, Wayne attempted to act out a scene from the movie The Passion of the Christ with plaintiff after plaintiff told him she did not want to hear about it. In doing so, he backed her up against a wall and grabbed at her arms and hip. Plaintiff told him to stop and to leave her alone. At that point, Martinez-Senftner tapped Wayne on the shoulder and instructed him to "come here." Later that afternoon, Wayne told plaintiff that Martinez-Senftner told him not to speak to plaintiff or associate with her in any way.

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[9] Martinez-Senftner testified that after hearing of the complaint, she instructed Wayne "never to talk to the people [he] serve[d] . . . ."

The next day, Alcaraz or Nordahl asked plaintiff to accompany Wayne to the immigration office in Sacramento. On the way to Sacramento, Wayne told plaintiff about a party where he had drugged a woman and exposed himself to her. As he was telling the story, plaintiff glanced at him and saw that he had his penis out of his pants and was holding it in his hand. Once he was aware plaintiff had seen his penis, he laughed. Plaintiff told him to "put it away." On the way back to MSLF, he asked plaintiff if she "knew why he had been recently released from jail." She said she heard "he had been released for a [driving under the influence (DUI)] charge . . . ." He acknowledged he had been charged with a DUI, but said that was not the reason he had been in jail. He explained that he had been in jail because of an incident with a woman at a flower shop. He had flirted with the woman, and when she reciprocated, he brushed her hair and grabbed her arm. She then went into the backroom, and soon thereafter, the police showed up and accused him of sexually assaulting her.

When plaintiff and Wayne arrived at MSLF, she told Lynn Aparicio, a bookkeeper, what had happened. Aparicio reported the incident to Lapham, whom she believed would report the incident to Martinez-Senftner.

The incident occurred on Friday, April 9, 2004, and plaintiff did not return to work until the following Thursday, April 15, 2004. She was feeling "beyond ill" over what had transpired with Wayne. She attempted to report the incident to

Martinez-Senftner the day she returned, but Martinez-Senftner was unavailable.

Plaintiff was terminated the following day, along with at least two other employees. Martinez-Senftner told plaintiff she was being terminated due to "money issues" and because she talked too much.

Wayne continued to work at MSLF after plaintiff was terminated. Victoria Contreras, a legal assistant hired after plaintiff was terminated, testified that Wayne commented on her body, and on one occasion, made a reference "to a camel in the desert," which she understood to refer "to [her] pants being tight and [her] private parts."[10] He also continued to print pornographic photographs and show them to other employees.

Shortly after Alcaraz joined MSLF in August or September 2003, Armando Sacalxot, a paralegal, began sexually harassing her. He yelled at her in front of clients. He constantly made remarks containing sexual innuendos and "only picked on women." Alcaraz also observed Sacalxot harass "Jessica," Maria Fluentes, and Gloria Gamino. When Alcaraz complained to Martinez-Senftner, Martinez-Senftner told her, "Oh, Lilia [Alcaraz], you are so sensitive. This is what happens to women and women have

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[10] Wayne previously made a similar comment about another employee's pants, stating: "[I]t looks like a camel got lost in the jungle." "Cameltoe is a slang term that refers to the outline of the labia majora seen through tight clothes." (Wikipedia, The Free Encyclopedia, Cameltoe <http://en.wikipedia.org/wiki/Cameltoe> [as of June 30, 2010].)

to put up with it."[11] Alcaraz suffered panic attacks as a result of Sacalxot's harassment, was hospitalized, and placed on medication. When she returned to work two or three weeks later, Sacalxot no longer yelled at her, but he began "sabotaging" her computer.

Martinez-Senftner had a habit of patting and caressing Alcaraz's buttocks. She also masturbated while in the same hotel room with Alcaraz on a business trip, while Alcaraz pretended to be asleep.

MSLF had no written policies or procedures concerning sexual harassment or discrimination other than two posters from the California Department of Fair Employment and Housing and Equal Employment Opportunity Commission, each of which was last revised in 1996. Employees were not trained on how to handle sexual harassment claims. According to Martinez-Senftner, she was the person designated to receive complaints of sexual harassment.

Defendants called a number of witnesses in their defense.[12] Martinez-Senftner denied treating male and female employees differently. She always made herself available to her employees. She met with the attorneys everyday and with staff

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[11] Martinez-Senftner testified that Alcaraz complained to her about Sacalxot "[m]aybe two times," and each time Martinez-Senftner told Sacalxot to stay away from Alcaraz.

[12] Wayne did not appear at trial despite being served by plaintiff with a valid notice to appear. (Code Civ. Proc., § 1987, subd. (b).)

two to three times a week. They discussed "[e]verything under the sun." At no time did plaintiff complain to her about James or Wayne.

Martinez-Senftner acknowledged sharing a room with Alcaraz when the two travelled out-of-state for a convention but denied caressing Alcaraz's buttocks or gratifying herself in the hotel room on that trip. She did acknowledge "spanking" Alcaraz on one occasion when Alcaraz jokingly told Martinez-Senftner she was pregnant.

Martinez-Senftner said Alcaraz complained to her about Sacalxot and "[j]ust about everybody in the office." Sacalxot's office was right next to Martinez-Senftner's office, and she never heard him yell at anyone. She repeatedly spoke to Alcaraz and Sacalxot about the discord between them and monitored the situation. She eventually separated them by placing them at opposite ends of the office.

James denied ever touching plaintiff's breast. He tapped her on her buttocks once to "tell her to shape up" and stop sticking her buttocks into the walkway when he came past.

Mahood, who continued to work at MSLF at the time of trial, denied James ever touched her buttocks or any other part of her body inappropriately. She never observed him touch anyone at MSLF inappropriately. While she worked at MSLF, a nude picture "popped up" on her computer screen. She told Wayne she did not appreciate the photograph, and he denied putting it there. Mahood later told James about the photograph and asked him to tell Wayne not to use her computer. She never had a similar

problem again. Mahood never heard Sacalxot be disrespectful to anyone at MSLF.

Lapham testified that while he ceased being the office manager in October 2003, employees continued to bring workplace complaints to him. Neither Aparicio nor plaintiff ever complained to him about Wayne. Nor did he recall ever having a conversation with Alcaraz or plaintiff concerning James touching plaintiff's breast. He did recall plaintiff complaining that James "swatted or patted" her on her buttocks a week or so before she was terminated. Lapham told plaintiff he would discuss the matter with James, but he never did. Lapham observed James massaging Mahood's shoulders as she worked. Mahood never complained to him about James touching her.

Lapham described Wayne as a "chatty individual" who liked to share stories. On occasion, Wayne talked to Lapham about things of a sexual nature. Lapham never mentioned this to Martinez-Senftner. Wayne also tried to show Lapham "sexually inappropriate pictures," which Lapham did discuss with Martinez-Senftner. Martinez-Senftner was not happy. She called Wayne into her office and closed the door. Lapham did not hear what was said.

Lapham observed plaintiff "take off for hours on end with Wayne to do ridiculously minute things like show him where the courthouse was in Sacramento, the one that he had been to many times."

Gregory Tate, who worked as a legal assistant at MSLF from approximately October 2002 to October 2005, testified he never

observed anyone being treated differently because they were female. Plaintiff was a "bubbly person" who liked to talk to the point of becoming distracting. Tate saw plaintiff and Wayne talking at work. He never heard plaintiff tell Wayne to leave her alone. On one occasion, plaintiff mentioned that she met Wayne at a dance club over the weekend and that she "freaked" him. "Freaking" is a slang term used to describe a dance move "where the girl is rubbing up against the guy."

Virginia Blackman worked next to plaintiff at MSLF. Plaintiff talked a lot and was friendly with Wayne. Blackman never heard plaintiff tell Wayne to go away. On more than one occasion, she observed plaintiff and Wayne leave the office at about the same time and return at about the same time. Plaintiff never looked upset or angry when she returned. Blackman never observed James or Wayne act in an offensive or inappropriate manner at work.

Sacalxot, who continued to work at MSLF at the time of trial, testified that he socialized with plaintiff outside of work. He helped put together some furniture at her home, and on New Year's Eve 2003, plaintiff invited him to watch the fireworks, go "clubbing," and spend the night. He observed plaintiff and Wayne together at MSLF, and they appeared to be friendly. He never heard plaintiff complain about Wayne.

During breaks, plaintiff paraded around moving her hips back and forth in front of Tate, who would make "funny" remarks. Plaintiff never complained when Tate made his remarks. Plaintiff made "all sorts of" sexual comments at MSLF, but

Sacalxot could not recall any specific comments and did not find any of them offensive.

Sacalxot treated men and women equally at MSLF. He did not raise his voice in the office. When Alcaraz had her "physical/mental breakdown" at the office, she asked Sacalxot to accompany her to the hospital, where he remained for an extended period of time. It was only after Alcaraz's hospitalization that their relationship deteriorated.

On redirect, plaintiff testified she never went out with Wayne socially and never told Tate she went dancing with Wayne or that she "freaked" him.

Judgment was entered on February 26, 2007. On April 30, 2007, the trial court denied defendants' motions for new trial. Following the entry of judgment, the trial court granted plaintiff's request for attorney fees in the amount of $211,111.63.

MSLF on the one hand and James and Wayne on the other separately appealed from the judgment and postjudgment order awarding attorney fees. The appeals were consolidated on November 19, 2007.

DISCUSSION

The jury found James and Wayne sexually harassed plaintiff in violation of subdivision (j) of section 12940 (hereafter subdivision (j)) and that MSLF failed to take all reasonable steps to prevent such harassment in violation of subdivision (k) of that same section (hereafter subdivision (k)). Thus, it is helpful to begin with a discussion of those subdivisions.

Subdivision (j)(1) provides that it is unlawful for an employer or any other person to sexually harass an employee. When the harasser is a supervisor or agent, the employer is strictly liable for the supervisor's actions. When the harasser is a nonsupervisory employee, employer liability turns on a showing of negligence (that is, the employer, or its agents or supervisors, knew or should have known of the harassment and failed to take appropriate corrective action). (See also *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 707.) "An employee of an entity subject to . . . subdivision [(j)] is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer . . . knows or should have known of the conduct and fails to take immediate and appropriate corrective action." (Subd. (j)(3).)

Subdivision (k) provides that it is unlawful "[f]or an employer . . . to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring."

I

Substantial Evidence Supports The Jury's Verdict Against James and Wayne On The Sexual Harassment Cause of Action

As noted, "An employee of an entity subject to . . . subdivision [(j)] is personally liable for any harassment . . . that is perpetrated by the employee, regardless of whether the employer . . . knows or should have known of the conduct and fails to take immediate and appropriate corrective action."

(Subd. (j)(3).) To be actionable the harassment must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.

Defendants contend that there is insufficient evidence to support the jury's implied findings that James was an employee of MSLF, and that James' and Wayne's conduct was severe or pervasive.[13] Each contention lacks merit.[14]

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[13] While the jury was given a general verdict form, it was instructed in the language of CACI No. 2522A (Hostile Work Environment Harassment--Conduct Directed at Plaintiff--Essential Factual Elements--Individual Defendant (Gov. Code, § 12940(j)) in pertinent part as follows:

"[Plaintiff] claims that [MSLF] and/or Gloria Martinez-Senftner subjected her to harassment based on gender causing a hostile or abusive work environment. To establish this claim, [plaintiff] must prove all of the following: One, that [plaintiff] was an employee of [MSLF] and/or Gloria Martinez-Senftner; two that [plaintiff] was subjected to unwanted harassing conduct because she was female; three, that the harassing conduct was so severe, widespread, or persistent that a reasonable female in [plaintiff's] circumstances would have considered the work environment to be hostile or abusive; four, that [plaintiff] considered the work environment to be hostile or abusive; five, that James Senftner and/or Wayne Senftner participated in the harassing conduct . . . ."

Thus, in finding James and Wayne liable for sexual harassment, the jury impliedly found James was an employee of MSLF and that James' and Wayne's conduct was severe or pervasive. While the instruction failed to state that plaintiff claimed James and Wayne subjected her to harassment, the jury plainly understood the sexual harassment cause of action as encompassing James and Wayne as demonstrated by their verdict against James and Wayne and in favor of MSLF and Martinez-Senftner on that cause of action.

[14] As discussed *post*, at least one court has held that an employee cannot prevail on a cause of action for failure to

When, as here, a party contends insufficient evidence supports a jury verdict, we apply the substantial evidence standard of review. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, superseded by statute on another ground as noted in *DeBerard Properties, Ltd. v. Lim* (1999) 20 Cal.4th 659, 668.) In doing so, we "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . ." (*Ibid.*) Our power "'"begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below.'" (*Ibid.*)

A. James' Employment Status

There is ample evidence to support a finding that James was employed by MSLF. He had a workspace at MSLF. He was there at Martinez-Senftner's request. He assisted with matters such as advertising, retirement benefits, and insurance; he was authorized to sign checks for MSLF and did so on occasion; and he was compensated for at least some of his work. On this record, a juror reasonably could find James was employed by MSLF.[15]

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prevent harassment where no harassment occurred. Thus, if the verdicts against James and Wayne for sexual harassment are not supported by sufficient evidence, plaintiff's claim against MSLF for failure to prevent harassment would also fail.

[15] As defendants correctly note, the jury impliedly found James and Wayne were not supervisors or agents in finding in MSLF's favor on the sexual harassment cause of action. Where

B. Severe or Pervasive

"'For [hostile work environment] sexual harassment to be actionable, it must be sufficiently severe or pervasive "to alter the conditions of [the victim's] employment and create an abusive working environment."' [Citation.] [¶] Whether the sexual conduct complained of is sufficiently pervasive to create a hostile or offensive work environment must be determined from the totality of the circumstances. [Citation.] The plaintiff must prove that the defendant's conduct would have interfered with a reasonable employee's work performance and would have seriously affected the psychological well-being of a reasonable employee and that she was actually offended. [Citation.]" (*Fisher v. San Pedro Peninsula Hosp.* (1989) 214 Cal.App.3d 590, 609-610, fn. omitted.)

"The factors that can be considered in evaluating the totality of the circumstances are: (1) the nature of the unwelcome sexual acts or works (generally, physical touching is more offensive than unwelcome verbal abuse); (2) the frequency of the offensive encounters; (3) the total number of days over which all of the offensive conduct occurs; and (4) the context in which the sexually harassing conduct occurred." (*Fisher*, *supra*, 214 Cal.App.3d at p. 610.) While "occasional, isolated,

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the harasser is a supervisor or agent, an employer is liable regardless of whether the employer knows of such conduct or takes corrective action. (Subd. (j)(1).) Thus, had the jury concluded (it did not) James or Wayne was a supervisor or agent, MSLF would have been strictly liable for their harassing conduct. (*Roby v. McKesson Corp.*, *supra*, 47 Cal.4th at p. 707; subd. (j)(1).)

sporadic, or trivial" acts are not sufficiently pervasive (*ibid.*), a single incident of physical groping of the plaintiff constitutes actionable conduct. (*Myers v. Trendwest Resorts, Inc.* (2007) 148 Cal.App.4th 1403, 1419).

Defendants argue there is insufficient evidence James' or Wayne's conduct was severe or pervasive because "the period of harassment alleged was of short duration . . . ." Defendants' argument ignores the severity of their conduct.

The evidence adduced at trial showed that James grabbed or tapped plaintiff's buttocks at least three times and touched her breast once. There was also evidence that, in addition to discussing his sexual conquests with plaintiff, Wayne grabbed plaintiff's arms and hip after backing her up against a wall and exposed his penis to her while they were driving to Sacramento on business. Indeed, Wayne concedes the incident involving him exposing his penis was serious and severe. On this record, we have no trouble concluding there is sufficient evidence to support findings James' and Wayne's harassing conduct was severe, if not pervasive.

II
The Trial Court Properly Instructed The Jury On Failure To Prevent Sexual Harassment

MSLF contends the trial court prejudicially erred in failing to instruct the jury that "notice of coworker or third party sexual harassment" is a necessary element of "failure to act liability."[16] This contention assumes that notice is a

necessary element of a cause of action for failure to prevent sexual harassment under subdivision (k). As we shall explain, it is not. Accordingly, the trial court did not err in instructing the jury on that cause of action.

As set forth above, subdivision (k) makes it unlawful "[f]or an employer . . . to fail to take all reasonable steps necessary to *prevent* discrimination and harassment from occurring." (Italics added.) Notably, subdivision (k) does not mention notice, and MSLF fails to cite any legal authority requiring a plaintiff to show that the employer knew or should have known of the harassing conduct to establish a claim under that subdivision. While subdivision (j)(1) provides that an employer may be liable for harassment of its employees by nonsupervisory employees or nonemployees if the employer "knows or should have known of this conduct and fails to take immediate and appropriate corrective action," subdivision (k) "describes a

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16 The jury was instructed in the language of CACI No. 2527 (Failure to Prevent Harassment, Discrimination, or Retaliation--Essential Factual Elements--Employer or Entity Defendant) as follows: "[Plaintiff] claims that [MSLF] and/or Gloria Martinez-Senftner failed to prevent harassment, discrimination based on gender. To establish this claim [plaintiff] must prove all of the following: One, that [she] was an employee of [MSLF] and/or Gloria Martinez-Senftner; two, that [she] was subjected to harassing conduct or discrimination because she was female; three, that [MSLF] and/or Gloria Martinez-Senftner failed to take reasonable steps to prevent the harassment or discrimination; four, that [she] was harmed; and five, that [MSLF] and/or Gloria Martinez-Senftner's failure to take reasonable steps to prevent harassment or discrimination was a substantial factor in causing [her] harm." Contrary to MSLF's assertion, the jury was not instructed with a modified version of CACI No. 2527. (See CACI No. 2527.)

separate unlawful employment practice." (*Carter v. California Department of Veterans Affairs* (2006) 38 Cal.4th 914, 925, fn. 4.)

Contrary to defendants' assertions, *Trujillo v. North County Transit District* (1998) 63 Cal.App.4th 280 (*Trujillo*) does not hold that a plaintiff must establish that the employer knew or should have known of the harassing conduct before the employer can be held liable for failing to prevent the harassment. In *Trujillo*, the Fourth District held that a private right of action based on subdivision (k) exists only when "discrimination or harassment actually occurred at the plaintiffs' workplace." (*Id.* at p. 289.) There, the jury returned a special verdict finding that none of the defendants, including the employer, "had committed . . . discriminatory, racially harassing, or retaliatory conduct," but found the employer had nonetheless violated subdivision (k) by "failing to take all reasonable steps necessary to prevent discrimination and harassment from occurring." (*Id.* at p. 283.) In concluding the plaintiffs could not prevail on their failure to prevent cause of action, the court explained: "We do not believe the statutory language supports recovery on such a private right of action where there has been a specific factual finding that no such discrimination or harassment actually occurred at the plaintiff's workplace." (*Id.* at pp. 288-289.)[17] Quoting the

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[17] Our Supreme Court has declined to express a view on whether subdivision (k) "require[s] a finding of actual discrimination

trial court, the court of appeal observed: "'[T]here's no logic that says an employee who has not been discriminated against can sue an employer for not preventing discrimination that didn't happen, for not having a policy to prevent discrimination when no discrimination occurred . . . .'" (*Id.* at p. 289.)

In contrast, here, the jury specifically found plaintiff was sexually harassed at her workplace. Nevertheless, MSLF claims the jury's findings that James and Wayne sexually harassed plaintiff is insufficient to support plaintiff's cause of action for failure to prevent harassment "because it is the finding the *[e]mployer* is not liable that causes the inconsistency for the *Trujillo* court." (Italics added.)

Nothing in *Trujillo* or subdivision (k) suggests that an employer can be held liable for failing to prevent harassment where the harassment is perpetrated by the employer but not where it is perpetrated by its employees or others. To the contrary, subdivision (k) generally requires an employer "take all reasonable steps necessary to prevent discrimination and harassment from occurring." The jury's findings that James and Wayne sexually harassed plaintiff satisfy *Trujillo's* requirement that harassment actually occur. (63 Cal.App.4th at. p. 289.)

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or harassment under FEHA before a plaintiff may prevail under" that subdivision. (*Carter v. California Department of Veterans Affairs*, *supra*, 38 Cal.4th at p. 925, fn. 4.) We need not decide that issue here because even assuming a finding of actual discrimination or harassment is required, the jury made such a finding here.

Contrary to defendants' assertion, subdivision (k) imposes a duty on employers to take all reasonable steps necessary to prevent harassment even where they have "no notice of the harassment and should not have known of the harassment." While an employer will not be held liable for failing to take such steps absent a showing that the employee was actually harassed, it does not follow that the employer need not take steps to prevent such harassment from occurring in the first instance.

MSLF appears to confuse the *preventive* steps required under subdivision (k) with the *corrective* action required under subdivision (j)(1). The two are not synonymous. The former is proactive, while the latter is reactive. Stated another way, the former is designed to prevent harassment from occurring, while the latter comes into play only when the preventive steps taken are inadequate or otherwise fail. It would make no sense to impose a notice requirement with respect to the preventive steps required under subdivision (k) because, by definition, those steps are to be taken to prevent harassment from occurring in the first instance. Accordingly, notice is not an element of a cause of action for failure to prevent sexual harassment under subdivision (k), and the trial court did not err in failing to so instruct the jury.[18]

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[18] Because the jury found in favor of MSLF on plaintiff's sexual harassment cause of action, we need not consider whether there was sufficient evidence to support a finding MSLF failed to take immediate and appropriate corrective action.

In their reply brief, defendants assert that plaintiff's focus "on the 'prevention' question" is misplaced because that question was not before the jury. Defendants base their assertion on the verdict form, which asked the jury to determine whether MSLF was liable "[o]n [plaintiff's] claim for failure to take all reasonable steps to *end* gender discrimination and sexual harassment." (Italics added.) Defendants' assertion ignores the complaint, the jury instructions, and the verdict. In the third cause of action in plaintiff's complaint, labeled "Failure to *Prevent* Discrimination/Harassment/Violation of FEHA, Gov't Code § 12940(k)," plaintiff alleged MSLF "breached [its] affirmative duty to take all reasonable steps necessary to *prevent* discrimination and harassment from occurring . . . ." (Italics added.) At trial, the jury was instructed in the language of CACI No. 2527 (Failure to *Prevent* Harassment, Discrimination, or Retaliation--Essential Factual Elements--Employer or Entity Defendant) in pertinent part as follows: "[Plaintiff] claims that [MSLF] and/or Gloria Martinez-Senftner failed to *prevent* harassment, discrimination based on gender. To establish this claim [plaintiff] must prove . . . [MSLF] and/or Gloria Martinez-Senftner failed to take reasonable steps to *prevent* the harassment or discrimination . . . ." (Italics added.) Moreover, the jury's verdict in favor of MSLF on plaintiff's sexual harassment cause of action (which, under the circumstances of this case, required a finding that MSLF knew of the harassment and failed to take appropriate corrective action) and against MSLF on plaintiff's failure to prevent cause of

action (which does not contain a notice requirement) reflects that despite the careless use of the word "end" in the verdict form, the jury understood that the subject cause of action involved the failure to prevent sexual harassment in the first instance.

III

The Jury's Verdict in Favor of MSLF On The Sexual Harassment Cause of Action Does Not Conflict With Its Verdict Against MSLF On The Failure To Prevent Cause of Action

Defendants contend the jury's verdict in MSLF's favor on the first cause of action (sexual harassment) necessarily included a finding that MSLF "had no notice of harassment" and therefore is inconsistent with the verdict on the third cause of action (failure to prevent sexual harassment). As previously discussed, notice is not an element of a cause of action for failure to prevent sexual harassment under subdivision (k). Accordingly, the jury's finding that MSLF was not liable for sexual harassment does not conflict with its finding that MSLF failed to take all reasonable steps to prevent it.

IV

Any Error In Instructing The Jury On Employer Liability For Sexual Harassment Was Harmless

Defendants contend the trial court erred in instructing the jury on the issue of employer liability for sexual harassment by stating that MSLF was liable for sexual harassment if (1) James or Wayne knew of the sexual harassment regardless of their employment status, and (2) James or Wayne "merely participated in the sexual harassment."

We need not address the merits of this contention because defendants have failed to establish they were prejudiced by the alleged errors. (*Rutherford v. Owens-Illinois* (1997) 16 Cal.4th 953, 983 [instructional error requires reversal only where there is a reasonable probability the error prejudicially affected the verdict]; see also Code Civ. Proc., § 475.)

The jury found in favor of MSLF on plaintiff's sexual harassment cause of action. Thus, any error in instructing the jury on that cause of action was harmless as to MSLF. Contrary to MSLF's suggestion, it is not reasonably probable the alleged error affected the verdict against it on the failure to prevent sexual harassment cause of action. As previously discussed, MSLF's assertion that its liability for failure to prevent sexual harassment was dependent upon its knowledge of the harassing conduct lacks merit.

As for James and Wayne, they fail to explain how the error prejudiced them except to say that the instruction is "incomprehensible" and "could only have contributed to the jury's utter confusion." Such vague assertions are insufficient to establish prejudice.

V

The Trial Court Did Not Abuse Its Discretion
In Excluding Evidence Of Plaintiff's Sexual Conduct
As "Witnessed And Encountered" By Sacalxot

Defendants contend the trial court abused its discretion in prohibiting Sacalxot from testifying "about [plaintiff's] sexual

conduct he had witnessed and encountered." Again, they are mistaken.

Prior to trial, plaintiff moved in limine to exclude evidence of plaintiff's sexual conduct as irrelevant and inadmissible under Evidence Code section 1106, subdivision (a). The trial court ruled that evidence of plaintiff's sexual conduct with anyone other than the named defendants was inadmissible. At trial, counsel for James and Wayne questioned plaintiff about her conduct on New Year's Eve 2003. In response to counsel's questioning, plaintiff testified she drove to downtown Sacramento with Sacalxot late that evening and left him shortly after they arrived. Counsel then asked plaintiff if she later returned to Sacalxot. Plaintiff's counsel objected on relevance grounds. In response, James' and Wayne's counsel made the following proffer: "Sacalxot will testify that after [plaintiff] went off on her own she returned with two men, one of whom she was engaging in sexual activities with openly in front of him, inviting a foursome, which would have been three guys and her, [and] that she was incredibly drunk . . . . Ultimately she passed out and was brought home by Mr. Sacalxot. And I'm not suggesting that sex occurred. I'm just saying that was the conclusion of that particular evening." The trial court reiterated its earlier ruling that evidence of plaintiff's sexual conduct with persons other than the named defendants was inadmissible and told counsel that "if that truly is where you're headed, it's going to be barred under [Evidence Code] section 1106, and it's going to be barred under [Evidence Code]

section 352 . . . ." Sacalxot later testified, over plaintiff's objection, that on New Year's Eve 2003, plaintiff invited him to go see the fireworks, go clubbing, and spend the night.

We review a trial court's rulings on the admission and exclusion of evidence for abuse of discretion. (*People v. Thompson* (2010) 49 Cal.4th 79, 128.) Evidence Code section 1106 excludes evidence of a plaintiff's sexual conduct in a civil action for sexual harassment, except for "the plaintiff's sexual conduct with the alleged perpetrator." (Evid. Code, § 1106, subds. (a), (b).) In *Rieger v. Arnold* (2002) 104 Cal.App.4th 451, 455 (*Rieger*), we held that "this exception includes both a named defendant and any other person for whom a plaintiff would hold a named defendant liable." Sacalxot is not a named defendant; thus, the question is whether he is a person for whom plaintiff sought to hold any of the named defendants liable.

Defendants assert that plaintiff alleged Sacalxot's conduct contributed to a hostile work environment; however, they fail to cite to anything in the record that supports their assertion. Because this claim is not properly presented, we need not consider it further. (See *Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 113.)

Even assuming plaintiff did seek to hold MSLF liable for Sacalxot's conduct, only evidence concerning plaintiff's sexual conduct *with Sacalxot* would have been admissible under Evidence Code section 1106, not all sexual conduct witnessed by Sacalxot as defendants contend.

Evidence Code section 1106, as interpreted in *Rieger,* limits evidence of plaintiff's sexual conduct to conduct *with* a named defendant and any other person for whom a plaintiff would hold a named defendant liable. (Evid. Code, § 1106, subds. (a), (b); *Rieger*, *supra,* 104 Cal.App.4th at p. 456.) Thus, evidence plaintiff openly engaged in sexual activity with another man, even if witnessed by Sacalxot, was inadmissible.

Evidence plaintiff invited Sacalxot to engage in a foursome, however, would have been admissible. (*Rieger, supra,* 104 Cal.App.4th at p. 462 [sexual conduct includes "statements concerning prior, proposed, or planned sexual exploits"].) MSLF, however, fails to explain how such evidence would have impacted the verdict against it, while James and Wayne argue in conclusory fashion that such evidence "goes to [plaintiff's] credibility and also whether she was actually harmed by the alleged conduct, and whether the conduct was welcome, and whether she considered the environment hostile."

Because MSLF was found liable based on its own conduct in failing to prevent harassment and not based on Sacalxot's or anyone else's conduct, any error in excluding evidence plaintiff invited Sacalxot to engage in a foursome was harmless as to MSLF. As for James and Wayne, the most the jury reasonably could have inferred from such evidence is that plaintiff welcomed *Sacalxot's* conduct and was unaffected thereby. Such a finding, however, has no bearing on whether she welcomed James' or Wayne's conduct. As we explained in *Rieger, supra,* 104 Cal.App.4th at page 465: "A plaintiff might feel comfortable

engaging in ribald horseplay and humor or exchanging embraces with some people, yet find such familiarity with others to be odious." In any event, evidence plaintiff invited Sacalxot to participate in a foursome would have added little given Sacalxot's testimony that plaintiff invited him to spend the night that same evening. On this record, there is no reasonable probability the jury would have reached a more favorable verdict as to any of the defendants had Sacalxot been permitted to testify plaintiff invited him to engage in a foursome. (*People v. McNeal* (2009) 46 Cal.4th 1183, 1203.)

VI

Defendants Forfeited Their Contention That The Jury Was Misled By Mistakes In The Verdict Form

Defendants contend mistakes in the verdict form--namely the omission of a space for the jury to indicate whether plaintiff was entitled to punitive damages and the failure to number the compensatory and punitive damages portions of the verdict form--constituted reversible instructional error. We disagree.

Plaintiff drafted a proposed verdict form. As noted *post*, defendants did not submit a proposed verdict form. Defense counsel, however, requested various changes to plaintiff's proposed form. The trial court agreed to nearly all of the changes requested by defense counsel, provided counsel with an amended verdict form, and asked counsel to "take a look . . . and make sure we are okay . . . ." Counsel acknowledged the court had incorporated all of the agreed upon changes.

After instructing the jury as to the law on the various causes of actions, the court turned to damages. The court explained that if the jury found plaintiff had "proved her claim" against any of the defendants, it "must also decide how much money will reasonably compensate [plaintiff] for the harm." After going through the various types of economic and noneconomic damages, the court instructed the jury that "[i]f you decide that any of the defendants' conduct caused plaintiff['s] . . . harm, you must decide whether that conduct justifies an award of punitive damages. At this time you must decide whether plaintiff . . . has proved by clear and convincing evidence that any of the defendants engaged in that conduct with malice, oppression, or fraud. *The amount of punitive damages, if any, will be decided later.*" (Italics added.)

As initially presented to the jury, the damages portion of the verdict form read:

> "Complete the section below only if you find in favor of [plaintiff] on at least one of her claims.
>
> "We award [plaintiff] the following damages:
>
> "$_____ For economic damages
>
> "$_____ For general damages
>
> "We the Jury find that [plaintiff] is entitled to an award of punitive damages against Defendants [MSLF] and/or GLORIA MARTINEZ-SENFTNER and/or JAMES SENFTNER and/or WAYNE SENFTNER, as agents and employees."

During deliberations, the jury sent a note to the court indicating that it would "like to counsel with the Judge on the specific points on each charge: [CACI Nos.] 2500, 2505, 2520, 2522, 2527 and clarification versus the Verdict Form." Without conferring with counsel, the court responded in writing, asking the jury if it could "provide a better description of the clarification you need" and instructing the jury to "write any specific questions you have in this regard." The jury did not respond to the court's note, and approximately two hours and twenty minutes later, it notified the court it had reached a verdict.

Upon reviewing the jury's verdict but before the verdict was read, the trial court discovered the verdict form did not include a space for the jury to indicate whether plaintiff was entitled to punitive damages. After conferring with counsel, the court advised the jury that it was "going to write a further question on here for you to answer."[19] The court added the following language at the bottom of the verdict form, directly below the passage concerning punitive damages:

"Yes_____ No _____ If yes, as to _____

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[19] The reporter's transcript reflects the court held a sidebar before addressing the jury. It was not reported; thus, we do not know whether counsel agreed in advance to the actions taken by the trial court.

defendant(s)"[20]

The court then instructed the jury "to go back and deliberate just on that single question" and to "take as long or as little as you need."

After the jury left the courtroom, the court informed counsel of the jury's note and of the court's written response. The court explained that it did not contact counsel earlier because it "wasn't responding with a legal definition or anything. [It] was just asking for more clarification which [the jury] turned out not to need."

The jury returned 11 minutes later. It had placed an "X" in the space next to "Yes" and wrote "James S., Wayne S., and Law Firm" in the space above "defendant(s)."

After the court read the verdict, it advised the jury that insofar as it had determined plaintiff was entitled to punitive damages, it would be necessary for it to determine the amount of such damages. The jury foreperson asked "do we have just the one single issue that's presented to us or are we going to be going back again and again? I think we were surprised by the way this is --where we are right now." The court responded that the only remaining issue was "the determination of the amount of punitive damages, if any, as to the three defendants against whom you have determined punitive damages may be awarded." The foreperson then stated that "some of the numbers we have dealt

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[20] A copy of the jury's verdict from the first phase of the trial is attached as an appendix to this opinion.

with may include or may not include what we believed would be--" The court interjected, "Well, that again, there have already been instructions on those issues and the sole remaining issue is whether or not punitive damages, if any, should be awarded against any of the defendants who have been listed affirmatively in the last question on the verdict form. Okay?"[21]

In a bifurcated proceeding, the jury awarded plaintiff $75,000 in punitive damages against each MSLF and James, and $150,000 against Wayne.

On appeal, defendants contend the mistakes in the verdict form misled the jury into thinking that it should include punitive damages in its computation of compensatory damages and that defendants were liable "as a matter of law and fact." They further assert that the jury's confusion was evidenced by its note requesting clarification and statements by the foreperson, and that the trial court "did not take appropriate action to resolve the instructional mistake[s] by reinstructing the jury" to reevaluate the entire verdict. Plaintiff contends defendants forfeited these contentions because they never objected in a timely fashion to the mistakes in the verdict form or to the court's actions in responding thereto. We agree these contentions are forfeited.

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[21] To the extent the trial court stated that the remaining issue was whether punitive damages, if any, should be awarded, it misspoke. As the court previously stated, the sole remaining issue was the amount of punitive damages, if any, to be awarded.

Failure to object in a timely manner to alleged defects in the verdict form forfeits any challenge to its adequacy, because a party cannot allow defects to go to the jury without objection and then claim later that they misled the jury. (*People v. Bolin* (1998) 18 Cal.4th 297, 330 [failure to object to a defect in the verdict form at the time the court proposed to submit it or when the jury returned its findings forfeits the issue]; *People v. Jones* (2003) 29 Cal.4th 1229, 1259 [same]; *Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265, 1287 ["belated references during posttrial proceedings to purported defects in the special verdict forms [do] not preserve the issue"]; *Olson v. Arnett* (1980) 113 Cal.App.3d 59, 66 [contention trial court erred in submitting the case on the special verdict form rather than instructing the jury in detail on principles of contract law was forfeited by failure to object to the special verdict form or to request contract instructions below].)

With one exception not relevant here,[22] defendants approved the verdict form. They did not object to the additional language proposed by the trial court or the court's additional instructions to the jury. Nor did they voice any objection when the jury returned its finding that plaintiff was entitled to

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[22] James objected to the verdict form's failure to include a "special finding for whether [he] is an employee or supervisor . . . ." As the trial court observed, "both sides tendered basically the same jury instructions on those exact definitions." Thus, the court concluded there was no need to provide further clarification and that doing so would "actually induce confusion into the jury form."

punitive damages. They did not ask the court to "reinstruct the jury to reevaluate the entire First Verdict." Nor did they object to the court's handling of the jury's note. Accordingly, defendants forfeited their contentions related to the mistakes in the verdict form.[23]

Relying on *Woodcock v. Fontana Scaffolding and Equipment Co.* (1968) 69 Cal.2d 452, defendants argue there was no forfeiture "because there was no evidence that the Plaintiff failed to object to gain a tactical advantage." In *Woodcock*, an employee sued a scaffolding company for injuries he received when a number of metal scaffold frames fell on him. (*Id.* at p. 454.) The scaffolding company denied the allegations, alleged negligence on the part of the employee's employer, and claimed a setoff of the workmen's compensation benefits the employee had received. (*Ibid.*) The employer's workmen's compensation carrier filed a $4,311.76 lien against any recovery and intervened to protect its claim. (*Ibid.*) The jury returned a

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[23] Contrary to defendants' assertion, they did not object "to the verdict before the jury was dismissed on the grounds that the jury included punitives in the initial verdict." During the punitive damages phase of the trial, James' and Wayne's counsel "restate[d] [her] concern about punitive damages in the absence of apportionment . . . ." In doing so, she said she "still believe[d] that the jury panel intended to include all of the damages when they made their numbers in their compensatory damages and I still believe that they misunderstood the punitive damages instruction in relation to the verdict form that we gave them after the fact." Counsel's statement that she believed the jury included punitive damages in its computation of compensatory damages did not amount to an objection to the verdict form.

verdict finding in favor of the employee and against the scaffolding company, and assessed the plaintiff's damages in the sum of $13,000. (*Id.* at p. 455.) Judgment was entered in the full amount of the verdict, and the scaffolding company moved to correct the judgment, arguing that the $4,311.76 previously paid as workmen's compensation benefits should have been deducted from the judgment. (*Ibid.*) The trial court denied the motion, and the scaffolding company appealed.

In determining the scaffolding company had not "waived" the issue by failing to object, the court acknowledged that "[f]requently, failure to object to the form of a verdict before the jury is discharged has been held to be waiver of any defect," but observed that "waiver is not automatic, and there are many exceptions." (*Woodcock*, *supra*, 69 Cal.2d at p. 457, fn. 2.) For example, "[w]aiver is not found where the record indicates that the failure to object was not the result of a desire to reap a 'technical advantage' or engage in a 'litigious strategy.'" (*Ibid.*)

Unlike this case, *Woodcock* involved an ambiguity in the verdict as opposed to a mistake in the verdict form. As noted above, since *Woodcock*, courts, including our Supreme Court, have held that failure to timely object to a defect in the verdict form forfeits any challenge to its adequacy. (*People v. Bolin*, *supra*, 18 Cal.4th at p. 330; *People v. Jones*, *supra*, 29 Cal.4th at p. 1259; *Heppler v. J.M. Peters Co.*, *supra*, 73 Cal.App.4th at p. 1287; *Olson v. Arnett*, *supra*, 113 Cal.App.3d at p. 66.) In any event, even assuming *Woodcock* applies and defendants did not

forfeit their contentions, reversal is not warranted because any possible ambiguity in the verdict or verdict form was dispelled by the court's instructions.

In *Woodcock,* the court held that where, as there, the verdict standing alone is ambiguous, "'the party adversely affected should request a more formal and certain verdict. Then, if the trial judge has any doubts on the subject, he may send the jury out, under proper instructions, to correct the informal or insufficient verdict.' [Citations.] But where no objection is made before the jury is discharged, it falls to 'the trial judge to interpret the verdict from its language considered in connection with the pleadings, evidence and instructions.' [Citations.] Where the trial judge does not interpret the verdict or interprets it erroneously, an appellate court will interpret the verdict if it is possible to give a correct interpretation. [Citations.] If the verdict is hopelessly ambiguous, a reversal is required, although retrial may be limited to the issue of damages." (*Id.* at pp. 456-457, fn. omitted.)

In that case, the trial court interpreted the verdict's award of $13,000 as representing the net or reduced amount of damages after exclusion of the workmen's compensation benefits previously paid to the employee. (*Woodcock, supra,* 69 Cal.2d at p. 457.) In concluding the trial court erred in it interpretation, the court referred to the jury instructions. (*Id.* at p. 459.) In particular, the court explained that "the pivotal instruction in this case is the one which commanded the

jury to 'determine the full amount of the damages.' It illuminates the content of both the verdict and the prior damages instructions, and dispels the ambiguity which appears when the verdict and instructions are read separately." (*Ibid.*)

The same is true here. After explaining what is included in compensatory damages, the court instructed the jury that "[i]f you decide that any of the defendants' conduct caused plaintiff['s] . . . harm, you must decide whether that conduct justifies an award of punitive damages. At this time you must decide whether plaintiff . . . has proved by clear and convincing evidence that any of the defendant engaged in that conduct with malice, oppression, or fraud. *The amount of punitive damages, if any, will be decided later.*" (Italics added.) These instructions made it abundantly clear that the jury was to decide only whether plaintiff was entitled to punitive damages at that point in the trial; it was not to determine the amount of punitive damages, much less include them in their computation of compensatory damages.

We are also mindful that we are required to interpret the verdict in a manner that makes the jury's findings consistent. (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 540-541, overruled on other grounds in *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 574, 580.) Here, the jury awarded punitive damages totaling $300,000 -- an amount far greater than the $68,000 in compensatory damages it awarded. Had the jury intended to include punitive damages in its computation of compensatory damages, there would have been no need to award

additional damages, much less damages in an amount that far exceeded the amount of compensatory damages awarded.

Contrary to defendants' assertion, the jury foreperson's statement that "some of the numbers we have dealt with may include or may not include what we believed would be--" is not evidence the jury included punitive damages in its computation of compensatory damages. The comment is vague, and defendants' claim as to its meaning is pure speculation.

Defendants also argue that the punitive damages portion of the verdict form, as initially submitted to the jury, operated as an instruction that defendants were liable as a matter of law. Again, the instructions made it abundantly clear that it was up to the jury to determine whether defendants were liable. At the outset, the jury was instructed that it must decide what the facts are and determine whether plaintiff proved each of the elements of the various causes of action. Moreover, the verdict form itself asked the jury to indicate whether it found in favor of plaintiff or defendant(s) on each cause of action and instructed the jury to complete the damages section "only if you find in favor of [plaintiff] on at least one of her claims."

In sum, when considered in light of the jury instructions, neither the verdict nor the verdict form were ambiguous -- the jury was not to include punitive damages in its computation of compensatory damages and it was up to the jury to determine whether defendants were liable. Accordingly, the trial court did not err in failing to instruct the jury to reevaluate the entire verdict. As for the court's handling of the jury's note,

we discern no error, as the jury's note was unintelligible. Moreover, defendants fail to explain what, if anything, they would have done differently had the note been shared with them earlier. Accordingly, they have failed to show they were prejudiced by the alleged error. (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069; *In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337; see also Code Civ. Proc., § 475.)

VII

The Evidence Defendants Rely On To Support Their Contention That The Jury Engaged In Misconduct Is Inadmissible

Defendants filed motions for a new trial on the ground, among others, that the jury engaged in misconduct. The motions were accompanied by the declarations of Martinez-Senftner, James' and Wayne's trial counsel Ellen Dove, and jury consultant Robert J. Cassinelli. They declared in pertinent part as follows: Martinez-Senftner was contacted by juror Kent Lewis who told her the jury was confused as to "whether all questions had to be answered YES before any finding of liability could be made for any particular defendant." Lewis also said he believed that punitive damages were included in the $68,000 in compensatory damages awarded to plaintiff. Dove retained Cassinelli to survey the jury to determine "whether the jurors understood the verdict form and the application of the elements of the causes of action to that form." Dove anticipated Lewis would provide a declaration confirming that a majority of jurors concluded plaintiff was not harmed by defendants' acts, and thus, the verdicts against defendants were "not supportable."

Cassinelli surveyed three jurors who indicated punitive damages were included in the $68,000 in compensatory damages awarded to plaintiff.

Plaintiff objected to the declarations, arguing, among other things, that they were inadmissible under Evidence Code section 1150 and constituted inadmissible hearsay. The trial court agreed, sustained the objections, and denied defendants' motions for new trial.

Thereafter, at the hearing on plaintiff's application for attorney fees, defendants filed a declaration by Lewis, stating a majority of the jurors found that James' and Wayne's conduct did not cause plaintiff harm, the jury was confused because the instructions indicated there were "six charges" and the verdict form only listed four, and the jury included punitive damages in its computation of compensatory damages. The trial court declined to consider the declaration, finding it was "untimely and irrelevant to the motions at hand" and "constitute[d] an improper attempt by defendants to have the court revisit or reconsider motions previously determined by the court and/or to pad the record for appeal."

On appeal, defendants appear to contend the trial court abused its discretion in refusing to consider the declarations and in turn in denying their motions for new trial. We disagree.

It is settled that a "'jury verdict may not be impeached by hearsay affidavits.'" (*People v. Williams* (1988) 45 Cal.3d 1268, 1318.) Thus, to the extent the declarations of Martinez-

Senftner, Dove, and Cassinelli purport to relate statements by jurors, they were inadmissible.

Evidence Code section 1150, subdivision (a) provides: "Upon an inquiry as to the validity of a verdict, any otherwise admissible evidence may be received as to statements made, or conduct, conditions, or events occurring, either within or without the jury room, of such a character as is likely to have influenced the verdict improperly. *No evidence is admissible to show the effect of such statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined*." (Italics added.)

Mesecher v. County of San Diego (1992) 9 Cal.App.4th 1677 is instructive on the meaning of "mental processes by which the verdict was determined." There, the defendants appealed a jury's verdict in favor of plaintiff, claiming, among other things, that the jury engaged in misconduct. (*Id.* at p. 1680.) In rejecting defendants' claim of jury misconduct, the court concluded the declarations from six jurors were inadmissible to impeach the verdict under Evidence Code section 1150, subdivision (a). (*Ibid.*) In their declarations, the jurors said they reached their verdict on a battery cause of action using a definition of battery that conflicted with the court's instruction. (*Id.* at pp. 1682-1683.)

In concluding the declarations were inadmissible, the court explained "evidence about a jury's 'subjective *collective* mental process purporting to show *how* the verdict was reached' is

inadmissible to impeach a jury verdict. [Citation.] Thus, juror declarations are inadmissible where, as here, they 'at most suggest "deliberative error" in the jury's collective mental process--confusion, misunderstanding, and misinterpretation of the law.'" (*Mesecher, supra,* 9 Cal.App.4th at p. 1683.) The court further observed that "the jurors' statements themselves did not constitute misconduct, nor do they reflect an outside influence brought into the courtroom. Rather, the alleged misconduct arose from the way in which the jury interpreted and applied the instructions. Such evidence is inadmissible." (*Id.* at p. 1684.)

The same is true here. The alleged misconduct--inclusion of punitive damages in the computation of compensatory damages and the finding of liability despite a majority of "no" votes on some of the elements of the causes of action--arose from the way in which the jury interpreted and applied the instructions and the verdict form.

Pollock v. Standard Oil Company of California (1967) 256 Cal.App.2d 307, relied on by defendants, is inapposite. There, the court found the affidavits of defense counsel and an investigator "that they had interviewed [a juror] . . ., and that she had said to them that at the time of *voir dire* she had concealed a bias in favor of the plaintiff" were admissible in determining a motion to vacate the denial of a motion for new trial. (*Id.* at pp. 308, 310.) We note that *Pollock*, which was decided in the context of a motion for relief under Code of Civil Procedure section 473, makes no reference to Evidence Code

section 1150. Moreover, unlike this case, the juror's statement concerning bias does not suggest deliberative error, but "reflect[s] an outside influence brought into the courtroom." Because the evidence at issue in *Pollock* is qualitatively different than that at issue here, *Pollock* is of no assistance to defendants. (See *Mesecher, supra,* 9 Cal.App.4th at p. 1684.) Because the declarations of Martinez-Senftner, Dove, Cassinelli, and Lewis suggest deliberative error, they were inadmissible under Evidence Code section 1150, subdivision (a), and the trial court did not err in refusing to consider them or in denying defendants' motions for new trial.[24]

XIII

Plaintiff's Counsel Did Not Engage In Misconduct

James and Wayne contend the judgment must be reversed because plaintiff's counsel engaged in misconduct by (1) referring to the underlying facts of Wayne's prior conviction for sexual battery, (2) "offer[ing] evidence of [his] DUI conviction," and (3) asking inflammatory questions. We are not persuaded counsel engaged in misconduct, and even if she did, defendants have failed to show they were prejudiced thereby.

James and Wayne contend plaintiff's counsel engaged in misconduct by "violating [an] in limine order" precluding

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[24] Because we conclude Lewis' declaration was inadmissible under Evidence Code section 1150, subdivision (a), we need not consider defendants' assertion the trial court erred in failing to sua sponte vacate the order denying the motion for new trial upon being provided with the declaration.

plaintiff from questioning witnesses about the facts underlying Wayne's sexual battery conviction. As we shall explain, the trial court made no such ruling. The court ruled "the conviction" was admissible. When asked whether plaintiff would be "allowed to question the witnesses regarding any of the facts underlying the conviction," the court responded, "we will just have to wait and see how that comes up at trial. I don't know the context in which that evidence may or may not come up, so I can't prejudge that." Later, during her direct examination of James, plaintiff's counsel asked him whether he was aware Wayne had been charged with sexual battery. When James indicated he "knew something about that," counsel asked follow-up questions concerning the substance of the charge. James and Wayne objected, arguing "the entire import of [the court's earlier] ruling is being circumvented." In overruling the objection, the court explained: "[James] has indicated that there was some recollection on his part, that he knew at some point some details about the fact that his son was charged and/or convicted of a sexual battery. [Plaintiff is] entitled to test his knowledge on that issue. [¶] Those issues are in the Court's view directly relevant to the allegations in the complaint about prevention of sexual harassment in the workplace and other allegations in the workplace." Accordingly, James' and Wayne's contention that plaintiff's counsel engaged in misconduct by "violating the in limine order" is baseless.

James and Wayne next contend plaintiff's counsel engaged in misconduct by disobeying the trial court's order by offering

evidence of Wayne's prior DUI conviction. As a point of clarification, we note that plaintiff testified that Wayne told her he had been *charged with* a DUI. Defendants fail to explain how they were prejudiced by the alleged misconduct. Accordingly, their contentions fail. (*Pool v. City of Oakland, supra,* 42 Cal.3d at p. 1069; *In re Marriage of McLaughlin*, *supra*, 82 Cal.App.4th at p. 337; see also Code Civ. Proc., § 475.) In any event, on this record, there is no reasonable probability James or Wayne would have received a more favorable result had the jury not heard testimony that Wayne had previously been charged with a DUI.

James and Wayne also complain about numerous other alleged acts of misconduct, including (1) asking questions that suggested an employee of MSLF fabricated evidence in immigration cases, (2) asking "inflammatory questions of . . . Sacalxot," (3) asking questions that contained irrelevant information about a contract attorney, (4) asking James whether he filed a joint tax return or used "the W-2s provided by [MSLF]," and (5) asking "impermissible 'did you know' questions." With the exception of asking James about his taxes, James and Wayne make no attempt to explain how they were prejudiced by any of the alleged misconduct. Having failed to do so, their contentions fail. (*Pool v. City of Oakland*, *supra*, 42 Cal.3d at p. 1069; *In re Marriage of McLaughlin*, *supra*, 82 Cal.App.4th at p. 337; see also Code Civ. Proc., § 475.)

Turning to James' and Wayne's claim that plaintiff's counsel committed misconduct by questioning James about his

taxes, James and Wayne assert "[t]he harm could not be undone. It suggests by exercising the privilege [James] is hiding the ball." This claim is forfeited because while James and Wayne objected to the questions, they failed to move for a mistrial or request a curative instruction. (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 794-795.) Contrary to James' and Wayne's assertion, there is no indication that an admonition would have been inadequate to cure any resulting prejudice. (*Id.* at p. 795.) Moreover, because the court sustained James' and Wayne's objections to counsel's questions, they had ample opportunity to request a curative admonition. By failing to do so, they forfeited their claim on appeal. (*Ibid.*)

IX

Sufficient Evidence Supports the Award of Punitive Damages

Defendants claim there is insufficient evidence to support the award of punitive damages against them.[25] We disagree.

Pursuant to Civil Code section 3294, subdivision (a), "In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or

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[25] In their reply brief, defendants assert the trial court "erroneously refused defendants' request to use the standard CACI verdict form and instead used plaintiff's general verdict form," thereby depriving this court "of the insight into the juror's reasoning necessary to evaluate the excessive nature of the punitive damages against each defendant." Defendants fail to cite to the record or to any legal authority in support of their assertion. Accordingly, we will not consider it. (See *Lewis v. County of Sacramento, supra,* 93 Cal.App.4th at p. 113.)

malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." "An employer shall not be liable for [punitive] damages . . . based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." (*Id.*, § 3294, subd. (b).)

A. MSLF

Relying on Civil Code section 3294, subdivision (b), MSLF contends that because its "sole director," Martinez-Senftner "was not aware of the hostile environment, particularly Wayne Senftner's inappropriate and crude discussions, or the exposure incident," the punitive damage award is not supported by sufficient evidence. Subdivision (b) of Civil Code section 3294, however, does not apply here because, as previously discussed, MSLF was not found liable "based upon acts of an employee," i.e. for James' or Wayne's harassment of plaintiff; rather, it was found liable based on its own acts in failing to take reasonable steps to prevent such harassment. Accordingly, plaintiff was not required to show Martinez-Senftner was aware

of the hostile work environment to justify an award of punitive damages against MSLF.

Moreover, contrary to defendants' assertion, there is ample evidence to support a finding MSLF was guilty of malice. "Malice" includes "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) Other than hang a couple of posters in the office, MSLF failed to take any steps whatsoever to protect its employees from sexual harassment. It had no written policies or procedures pertaining to sexual harassment. It took no steps to educate or train its employees about sexual harassment or the complaint process. Against that backdrop, MSLF hired Wayne to work in an office full of women knowing that there were sexual battery charges pending against him, and required that any reports of sexual misconduct be made to Wayne's mother, Martinez-Senftner. Based on those facts alone, the jury reasonably could conclude MSLF engaged in despicable conduct with a willful and conscious disregard of the rights or safety of its employees.

B. James

Without any citation to legal authority or the record below, James contends the amount of punitive damages awarded against him was "illogical and cannot stand." This claim is not properly presented and we therefore do not consider it further. (See *Lewis v. County of Sacramento, supra,* 93 Cal.App.4th at p. 113; *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3.)

James and Wayne also assert "[t]here is no malice on the part of any defendant to support an award of punitive damages." They argue we should "decline to hold [defendants] liable for punitive damages" because "the jury found [the] firm had no knowledge of the hostile environment." As discussed at length *ante*, whether MSLF was aware of James' or Wayne's harassing conduct has no bearing on whether James and Wayne acted with malice. Accordingly, their claim fails.

C. Wayne

Wayne contends the punitive damages awarded against him should be reversed because there was no evidence of his financial condition. Although it is the plaintiff's burden to produce evidence of the defendant's financial condition (*Adams v. Murakami* (1991) 54 Cal.3d 105, 119), when a defendant disobeys an order to produce information showing his or her financial condition, he or she cannot object to a punitive damage award for lack of such evidence (*Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 608-609); see also *StreetScenes v. ITC Entertainment Group, Inc.* (2002) 103 Cal.App.4th 233, 243-244). That is what happened here.

Plaintiff served Wayne with a notice to appear at trial. (Code Civ. Proc., § 1987, subd. (b).) Wayne moved to quash the notice on the ground that he resided in Germany and thus was not subject to the trial court's jurisdiction. The trial court denied the motion, noting Wayne had submitted himself to the court's jurisdiction by filing an answer in this case. In doing so, the court concluded, "that's a valid notice to appear." A

notice to appear has the same effect as a subpoena, which is the equivalent of a court order. (Code Civ. Proc., § 1987, subds. (a),(b).) Indeed, a subpoena "is a writ or order directed to a person and requiring the person's attendance at a particular time and place to testify as a witness." (Code Civ. Proc., § 1985, subd. (a).) Thus, Wayne violated a court order in failing to appear at trial and, in doing so, "improperly deprived plaintiff of the opportunity to meet [her] burden of proof on the issue" of Wayne's financial condition. (See *Davidov, supra,* 78 Cal.App.4th at p. 609.) Accordingly, Wayne forfeited his claim that plaintiff failed to present sufficient evidence of his financial condition.

X

We Shall Not Consider Whether The Attorney Fees Awarded Are Excessive

Defendants contend the attorney fees awarded to plaintiff "are excessive, contrary to the law, and not supported by sufficient evidence." Defendants' argument, in its entirety, is as follows: "[T]he [p]laintiff recovered attorneys [*sic*] fees for two separate trial attorneys. The work done by the two attorneys was duplicative and only served to double the attorneys [*sic*] fees award. Under these circumstances the attorneys [*sic*] fees should be reduced by the fees of one attorney or the other. The record reveals Noah Kanter only examined one witness briefly. Nor did he present the opening or closing arguments. Lawrence Murray never attended the trial.

Fees for Kanter and Murray should have been denied because they were not reasonable."

Because defendants fail to support their argument with any citations to the record or legal authority, we shall not consider their claim on appeal. (See See *Lewis v. County of Sacramento, supra,* 93 Cal.App.4th at p. 113; *In re Marriage of Nichols, supra,* 27 Cal.App.4th at pp. 672-673, fn. 3.)

XI

We Decline Plaintiff's Request For Sanctions

On June 19, 2009, we granted plaintiff's motion to strike defendants' opening briefs on the ground defendants included documents in their appendix that had not been filed in the trial court and relied on those documents in their opening briefs. (Cal. Rules of Court, rule 8.204(e)(2)(B)). At that time, we reserved ruling on plaintiff's request for sanctions for consideration with the appeal. We address that request now.

Plaintiff moved to dismiss defendants' appeal or, in the alternative, to strike portions thereof, arguing, among other things, that defendants (1) included documents in their appendix that had not been filed in the trial court and (2) improperly relied upon those documents in their opening briefs.[26] Plaintiff

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[26] Plaintiff asks us to take judicial notice of our own records as to the following documents: plaintiff's motion to dismiss or in the alternative strike defendants' opening briefs or portions thereof; defendants' opposition thereto; plaintiff's reply; and our order on the motion. As a reviewing court (Evid. Code, § 459, subd. (a)), we may take judicial notice of our own records (*id.*, § 452, subd. (d)). (See *Certain Underwriters at Lloyd's*

also requested monetary sanctions in the amount of $10,000. The documents at issue were a "Motion Pursuant to Cal. Evid. Code Section 783"[27] and a special verdict form. In their opposition to the motion, defendants acknowledged that "the Evidence Code § 783 motion . . . was in fact never presented before the trial court." Defendants, however, continued to assert the special verdict form was submitted to plaintiff and the trial court.

We denied plaintiff's motion to dismiss the appeal, but granted the motion to strike defendants' opening briefs. (Cal. Rules of Court, rule 8.204(e)(2)(B). In doing so, we found the motion and special verdict form were "erroneously included in the appendix" and stated that we would disregard them.

Pursuant to California Rules of Court, rule 8.124(g): "Filing an appendix constitutes a representation that the appendix consists of accurate copies of documents in the superior court file. The reviewing court may impose monetary or other sanctions for filing an appendix that contains inaccurate copies or otherwise violates this rule." According to the Advisory Committee comment on California Rules of Court, rule 8.124(g), "sanctions do not depend on the degree of culpability

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of London v. Superior Court (2001) 24 Cal.4th 945, 955, fn. 2.) We hereby do so.

[27] Under Evidence Code section 783, where a defendant seeks to introduce evidence of the plaintiff's sexual conduct in a sexual harassment action, the defendant must bring a motion "stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the plaintiff proposed to be presented." (Evid. Code, § 783, subds. (a),(b).)

of the filing party--i.e. on whether the party's conduct was willful or negligent--but on the nature of the inaccuracies and the importance of the documents they affect."

Here, neither the motion nor the special verdict form were filed in the trial court, and as plaintiff points out, both were central to defendants' contentions concerning the verdict form and the admissibility of evidence of plaintiff's sexual conduct. The inclusion of these documents in the appendix was misleading and unacceptable. Defendants do not contend otherwise. Rather, they assert that the inclusion of the documents was inadvertent or done in good faith. However, defendants need not have acted willfully to justify the imposition of sanctions. (Advisory Com. Comm. foll. Cal. Rules of Court, rule 8.124(g).) Although we will not impose sanctions in this instance, counsel should consider this a forewarning.

DISPOSITION

The judgment and postjudgment attorney fees award are affirmed. Plaintiff shall recover her costs on appeal.

BLEASE, Acting P. J.

We concur:

HULL, J.

CANTIL-SAKAUYE, J.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND OF THE COUNTY OF PLACER

MARIA VARGAS, Plaintiff, vs. MARTINEZ-SENFTNER LAW FIRM, P.C., WAYNE SENFTNER, GLORIA P. MARTINEZ-SENFTNER, JIM SENFTNER, and DOES 1 through 50, inclusive, et al., Defendants.	Case No.: SCV 17868 VERDICT FORM

We the Jury in the above-entitled matter find, by at least 9 votes for each questions submitted, as follows:

I. On Maria Vargas' claim for sexual harassment:

A. As to Defendant Martinez-Senftner Law Firm, P.C.

_____We the Jury find in favor of Maria Vargas and against Martinez-Senftner Law Firm, P.C.

__X__We find in favor of Martinez-Senftner Law Firm, P.C. and against Maria Vargas.

B. As to Defendant Wayne Senftner:

__X__We the Jury find in favor of Maria Vargas and against Wayne Senftner

_____We find in favor of Wayne Senftner, and against Maria Vargas.

C. As to Defendant Gloria P. Martinez-Senftner:

_____We the Jury find in favor of Maria Vargas and against Gloria P. Martinez-Senftner

__X__We find in favor of Gloria P. Martinez-Senftner, and against Maria Vargas

D. As to Defendant Jim Senftner:

__X__We the Jury find in favor of Maria Vargas and against Jim Senftner

_____We find in favor of Jim Senftner, and against Maria Vargas

II. On Maria Vargas' claim for retaliation:

A. As to Defendant Martinez-Senftner Law Firm, P.C.:

_____We the Jury find in favor of Maria Vargas and against Martinez-Senftner Law Firm, P.C.

__X__We find in favor of Martinez-Senftner Law Firm, P.C. and against Maria Vargas.

B. As to Defendant Wayne Senftner:

_____We the Jury find in favor of Maria Vargas and against Wayne Senftner

__X__We find in favor of Wayne Senftner, and against Maria Vargas.

C. As to Defendant Gloria P. Martinez-Senftner:

_____We the Jury find in favor of Maria Vargas and against Gloria P. Martinez-Senftner

__X__We find in favor of Gloria P. Martinez-Senftner., and against Maria Vargas

D. As to Defendant Jim Senftner:

_____We the Jury find in favor of Maria Vargas and against Jim Senftner

__X__We find in favor of Jim Senftner, and against Maria Vargas

III. On Maria Vargas' claim for gender discriminations:

A. As to Defendant Martinez-Senftner Law Firm, P. C.

_____We the Jury find in favor of Maria Vargas and against Martinez-Senftner Law Firm, P.C.

__X__We find in favor of Martinez-Senftner Law Firm, P.C. and against Maria Vargas.

IV. On Maria Vargas' claim for failure to take all reasonable steps to end gender discrimination and sexual harassment:

A. As to Defendant Martinez-Senftner Law Firm, P. C.

__X__We the Jury find in favor of Maria Vargas and against Martinez-Senftner Law Firm, P.C.

_____We find in favor of Martinez-Senftner Law Firm, P. C., and against Maria Vargas.

Complete the section below only if you find in favor of Maria Vargas on at least one of her claims.

We award Maria Vargas the following damages:

$ 18,000 For economic damages

$ 50,000 For general damages

We the Jury find that MARIA VARGAS is entitled to an award of punitive damages against Defendants MARTINEZ-SENFTNER LAW FIRM and/or GLORIA MARTINEZ-SENFTNER and/or JAMES SENFTNER and/or WAYNE SENFTNER, as agents and employees.

Yes X No _____ If yes, as to James S, Wayne S, + Law Firm defendant(s)

Dated: Feb 2, 2007 Signed: _____
Presiding Juror

After it has been signed, deliver this verdict form to the bailiff.