

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

<p>Jane Doe Plaintiff/Petitioner(s) VS. The Stronach Group et al Defendant/Respondent (s)</p>	<p>No. 22CV005139 Date: 01/17/2024 Time: 9:01 AM Dept: 22 Judge: Jeffrey Brand  ORDER After TRIAL &amp;ndash; FINDINGS OF FACT AND CONCLUSIONS OF LAW - DAMAGES</p>
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Action Filed: January 7, 2022

Trial Date: October 27, 2023

## I. INTRODUCTION

This matter came on for trial on October 27, 2023 in Department 22 of the above-captioned Court, the Honorable Jeffrey Brand presiding. Plaintiff Jane Doe (“Plaintiff”) was represented by Randall E. Strauss of Gwilliam, Ivory, Chiosso, Cavalli & Brewer. Defendant Ari Herbertson (“Defendant Herbertson”) did not appear. Plaintiff initiated this action on January 7, 2022, alleging various causes of action against several defendants. For purposes of this trial, the relevant causes of action directed at Defendant Herbertson are for Sexual Battery, Battery, Gender Violence, Ralphs Civil Rights Act, Conspiracy to Commit Rape and Battery and Intentional Infliction of Emotional Distress.

Only Plaintiff testified at trial. The Court, after considering the pleadings herein, the evidence and testimony presented at trial, and the arguments of counsel, makes findings of fact and conclusions of law stated below.

## II. NOTICE TO DEFENDANT

The Court takes judicial notice of its own files in this matter for the following findings regarding notice of this hearing to Defendant Herbertson. Defendant Herbertson filed a General Denial to this action on April 18, 2022. He listed his address for all purposes related to this action as Santa Rita Jail (“the Jail”) 5325 Broder Blvd., Dublin, California. A search of the entire file in this matter indicates that Defendant Herbertson failed to notify the court or the parties of any subsequent address for purposes of service in this matter.

Accordingly, the Court and the parties had no choice but to continue to use the Jail address for service to him, even though it is apparent that he has subsequently been released from the Jail. Plaintiff testified that she had obtained an address in Richmond, California where Defendant Herbertson was rumored to reside, and Plaintiff’s counsel thereafter served him at that address

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out of an abundance of caution.

In any event, as Defendant Herbertson chose to represent himself, he bears sole responsibility for advising the Court and the parties of his address for service. Because he failed to do so, the Parties and the Court were left with no recourse but to continue to serve him at the Jail. The Court notes that the clerk served notice to Defendant Herbertson of this trial date, and associated hearing dates, at the Jail address. Accordingly, the Court finds that Defendant Herbertson received proper and sufficient notice of the trial of this action, and his failure to appear at trial and present evidence in his defense is solely attributed to him, and expressly not the fault of the Court or Plaintiff.

### III. FINDINGS OF FACT

The Court finds that Plaintiff and her testimony in this trial are credible. There are no indications that she did anything other than honestly, forthrightly, and fully testify as to the relevant facts in this case. Obviously, Defendant Herbertson's failure to participate in any way in this litigation, after filing a General Denial, has deprived the court of any opportunity to assess his credibility or weigh any challenges he may have wished to present as to Plaintiff's version of these events. Nonetheless, Defendant Herbertson's admission that he committed assault with a deadly weapon on Plaintiff lends credence to Plaintiff's version of events. With those preliminary findings in mind, the Court further finds as follows:

1. Plaintiff testified as the only witness at the trial. She is a single mother with a twelve-year-old son. She currently works as an insurance agent. Before that, she was a sworn deputy for the Alameda County Sheriff's Department, until she became medically disabled.
2. Before the incident that is the subject of this litigation, Plaintiff frequently went to Golden Gate Fields ("GGF") for recreation. GGF is a horseracing venue located in Berkeley, California. Plaintiff grew up around horses and took great pleasure in being around them and visiting with friends who also attended the races. Plaintiff views being around horses as a form of therapy and felt like she was among family while at the track.
3. On January 12, 2019, Plaintiff went to GGF at approximately 12:30 p.m. She went to the Paddock Bar at GGF and visited with her friend Cindy Desimone ("Ms. Desimone,") who owns horses that were racing that day. At first, Plaintiff and Ms. Desimone were alone in the bar, but eventually Defendant Herbertson and his friend Justin Rivera ("Mr. Rivera") entered the bar. Plaintiff and Defendant Herbertson were casually acquainted, but did not have a dating relationship, or any other relationship beyond occasionally seeing each other at the track. She did not have his phone number. Plaintiff, Ms. Desimone, Defendant Herbertson and Mr. Rivera each had a shot of tequila together, and then Plaintiff resumed her conversation with Ms. Desimone. Defendant Herbertson and Mr. Rivera sat on the other side of the bar.
4. Plaintiff then ordered a mimosa from bartender Reagan Kenney ("Ms. Kenny.") Plaintiff had one small sip of the mimosa, and then went with Ms. Desimone to the paddock area to inspect Ms. Desimone's horse, which was about to race. The two of them then returned to the Paddock Bar to watch the race. They also resumed their conversation. Shortly thereafter Defendant Herbertson called over to Plaintiff and asked her if she was going to nurse her drink all day or finish it. Plaintiff waved Defendant Herbertson away, and then had a second sip of her mimosa. Almost immediately, she felt the sensation that she had been drugged. She stated that she had not consumed enough alcohol to be intoxicated; yet she started behaving as if she was completely intoxicated. Plaintiff believes that her drink had been spiked with a date rape drug. She was told

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to leave the bar by the bartender, Ms. Kenney, after she began acting this way. Plaintiff testified that she kissed a security guard and asked him for sex, writing her phone number on his hand. Plaintiff also related that she howled at a helicopter that she perceived circling over the track. (It is unclear to the Court whether that helicopter existed or whether Plaintiff was hallucinating.) At some point, Plaintiff vomited.

5. Many of Plaintiff's memories that day, after her apparent drugging, were recovered through a medically supervised modality called EMDR, or Eye Movement Desensitization and Reprocessing. Plaintiff began EMDR therapy after she had a flashback while driving in Kentucky of being raped. She became concerned about the danger that might result from such flashbacks and concluded that they should occur in a medically controlled environment, rather than while driving on a freeway. Plaintiff testified that through EMDR therapy she recovered "a clear memory" of the events of January 12 and January 13, 2019 that are relevant to this action.

6. After behaving in an intoxicated manner, as described above, Plaintiff was carried out of GGF by Defendant Herbertson and Mr. Rivera and placed in Defendant Herbertson's truck, which was parked close to the track's exit. She was then driven to her car, which was parked elsewhere in the track parking lot. Either Defendant Herbertson or

Mr. Rivera then searched her and located Plaintiff's car keys. Mr. Rivera then drove Plaintiff in her car to an adjacent soccer field and parked. Defendant Herbertson followed in his own truck. Defendant Herbertson and Mr. Rivera then proceeded to forcefully rape Plaintiff, both vaginally and anally. They covered her mouth with their hands, stripped off her clothing, and proceeded with the rape. Plaintiff cannot clearly remember if the rape happened on the soccer field where her car was parked by Mr. Rivera, or elsewhere. The Court finds that Plaintiff's failure to recall this detail does not detract from or undermine the overall credibility of her testimony. Plaintiff vomited several times during the attack, eventually passing out.

7. When Plaintiff awoke, she testified that her boots were half-pulled on and her clothes were rearranged, as if Defendant Herbertson and Mr. Rivera had attempted to re-dress her. She was lying face up on the tilted driver's seat, her mouth filled with vomit. She testified that she felt that she had been left for dead and feared that she very well might have died by drowning in her own vomit. Her car was turned off, and she was freezing cold. Plaintiff turned on her vehicle for warmth, vomited again, and passed out for another couple of hours. When she awoke for a second time, her car was still running. She headed for a hospital in Antioch, California, closer to her home. Before reaching the hospital, she decided to go home. Once she arrived at home, Plaintiff removed her clothes and preserved them in a garbage bag. She stated that as a trained law enforcement officer, she was aware that to preserve evidence she should not shower. However, she explained that she had an overwhelming desire to clean up and take a shower, which she did. She then reported the events to the police.

8. Plaintiff participated in and attended court hearings related to the criminal prosecution of Defendant Herbertson. She was present in Court when he pleaded no contest to a reduced charge of assault with a deadly weapon, a felony. She read an impact statement to that court, as she powerfully did to this Court. The Court finds that Defendant's no contest plea is conclusive evidence of Defendant's guilt in the criminal

proceeding. First, criminal defendants are voir dired by the Court as to whether they understand that the plea of no contest is the equivalent of a guilty plea. Second, the Court notes that regardless of whether the plea was no contest or guilty, this is a civil action with a lesser burden of proof (a preponderance of the evidence versus proof beyond a reasonable doubt.) The Court finds that the evidence produced at the civil trial supports a finding that it is more probable than

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not that Defendant Herbertson raped Plaintiff. In the criminal matter, Defendant was sentenced to one-year incarceration and two years' probation.

9. Plaintiff is aware that Defendant Herbertson has been released from custody but does not know where he currently resides. Plaintiff stated that she heard rumors that he is in Florida.

10. Plaintiff has sought extensive medical treatment for the trauma she experienced because of the rape. In addition to the EMDR therapy discussed above, Plaintiff sought counseling through various providers at Kaiser. In addition, Dr. Lynne Ponton, a psychiatrist who specializes in victims of sexual assault, has evaluated Plaintiff.

11. Plaintiff testified that she is not the same person that she was before the events described in her testimony. Plaintiff testified to a tremendous and ongoing fear of people, to the extent that she rarely socializes or goes out. She has stopped seeing her circle of friends and focuses almost exclusively on her son, whom she has tried to protect from knowing the full details of what happened to her. Plaintiff also testified that she is concerned that any beverage she may purchase in public has been drugged. Plaintiff related that she intentionally gained approximately 50 pounds to make herself less attractive so that she would not be raped again. She also stated that she experiences memory loss that she characterized as "holes" in her brain. Plaintiff described not knowing "who she is any more" and "doesn't like what she sees." The Court finds that any loss of memory, which Plaintiff may now suffer, does not undermine her credibility here. Further the Court finds that a result of the events described Plaintiff suffered severe emotional distress.

#### IV. CONCLUSIONS OF LAW

The Court finds that Plaintiff has sustained her burden of proof with respect to Defendant Herbertson's liability to her for the tort of Sexual Battery (First Cause of Action,) in that Defendant Herbertson raped Plaintiff by engaging in acts to which Plaintiff did not consent and suffered harm from those acts. (CACI 1306)

The Court finds that Plaintiff has proved by a preponderance of the evidence that Defendant Herbertson is liable to her for the tort of Battery (Second Cause of Action), in that Defendant Herbertson raped Plaintiff by engaging in acts to which Plaintiff did not consent and suffered harm from those acts. (CACI 1300)

The Court finds that Plaintiff has proved by a preponderance of the evidence that Defendant is liable to her for Gender Violence pursuant to Civil Code Section 52.4 (Third Cause of Action), which authorizes an award of actual damages, compensatory damages, punitive damages and attorney's fees and costs when a plaintiff has been subjected to gender violence by the defendant. The Court finds that Defendant raped Plaintiff, establishing the right to recovery under Civil Code Section 52.4.

The Court finds that Plaintiff has proved by a preponderance of the evidence that Defendant is liable to her under the Ralph Civil Rights Act (Fourth Cause of Action) pursuant to Civil Code Sections 51, 51.7 and 52, in that Defendant raped Plaintiff, in violation of the Act.

The Court finds that Plaintiff has proved by a preponderance of the evidence that Defendant Herbertson is liable to her for the tort of Conspiracy (Fifth Cause of Action), in that Defendant conspired with Mr. Rivera to rape her. (CACI 3600)

The Court finds that plaintiff has proved by a preponderance of the evidence that Defendant Herbertson is liable to her for the tort of Intentional Infliction of Emotional Distress (Twelfth Cause of action), in that Defendant Herbertson intentionally raped Plaintiff. (CACI 1600)

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## V. JUDICIAL NOTICE

The court takes judicial notice of the Declaration of Lynn E. Ponton, M.D. Pursuant to Evidence Code Section 1561, lodged with the Court as Exhibit 1. The Court takes judicial notice of the Adult Psychiatric Evaluation report, prepared by Dr. Ponton after examining Plaintiff, lodged with the Court as Plaintiffs Exhibit 2. Judicial notice is appropriate pursuant to Evidence Code Section 1561. The Court takes judicial notice of the Complaint, Clerks Docket and Minutes, Certificate of Magistrate and Commitment, Waiver on Plea of Guilty/No Contest (Felony), (Corrected) Clerks Docket and Minutes, and Terms and Conditions of Probation and/or Mandatory Supervision as to Defendant Ari Herbertson in the case of The People v. Ari Herbertson, Alameda County Criminal Court Case No. 20-CR-002249, lodged with the Court as Exhibit 3. The Court finds that the above-referenced documents regarding the criminal case filed against Defendant Herbertson are related to the events on which this civil action is based.

## VI. DAMAGES

Plaintiff does not seek economic damages. Regardless, the court finds that Plaintiff's testimony and the exhibits referred to here, support a finding that Plaintiff suffered severe damages, including past and future non-economic loss (physical pain and mental suffering) which were caused by Defendant Herbertson's conduct that profoundly impacted Plaintiff and no doubt will for the rest of her life.

The Court's findings are also supported by the report of Dr. Ponton. As a direct result of Defendant's conduct, Plaintiff suffers chronic severe posttraumatic stress disorder, major depressive disorder, panic disorder, and anxiety disorder. She requires extensive and ongoing treatment, which it is more probable than not will go on for years.

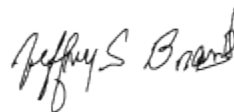
The Court further finds that based on the evidence in this case, that Defendant Herbertson's conduct was willful, despicable, knowing, and intentional. The Court accordingly finds that punitive damages are appropriate.

For such conduct, the Court awards Plaintiff general damages, including past and future non-economic loss (physical pain/mental suffering), in the amount of 3.0 million dollars) and punitive damages in the amount of 6.0 million dollars for a total recovery of 9.0 million dollars against the Defendant Ari Herbertson.

SO ORDERED.

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.


Dated : 01/17/2024



Jeffrey Brand / Judge

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Rene C. Davidson Courthouse

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	<b>FILED</b> Superior Court of California County of Alameda 01/17/2024
PLAINTIFF/PETITIONER: Jane Doe	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy
DEFENDANT/RESPONDENT: The Stronach Group et al	B. Mercado
<b>CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6</b>	CASE NUMBER: 22CV005139

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order After TRIAL & FINDINGS OF FACT AND CONCLUSIONS OF LAW - DAMAGES entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Randall Edward Strauss  
Gwilliam, Ivary, Chiosso, Cavalli & Brew  
rstrauss@giccb.com


Dated: 01/17/2024

Chad Finke, Executive Officer / Clerk of the Court

By:



B. Mercado, Deputy Clerk

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	<b>FILED</b> Superior Court of California County of Alameda 01/17/2024
PLAINTIFF/PETITIONER: Jane Doe	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy
DEFENDANT/RESPONDENT: The Stronach Group et al	B. Mercado
<b>CERTIFICATE OF MAILING</b>	CASE NUMBER: 22CV005139

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Ari Herbertson  
#8BMP806  
Santa Rita Jail, 5325 Broder Blvd.  
Dublin, CA 94568

Chad Finke, Executive Officer / Clerk of the Court

Dated: 01/17/2024

By:



B. Mercado, Deputy Clerk

**CERTIFICATE OF MAILING**