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7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**

9  
10 ASHLEY JUDD, an individual, ) CASE NO. 18-cv-05724-PSG (FFMx)  
11 Plaintiff, )  
12 vs. ) **MOTION FOR LEAVE TO FILE**  
13 HARVEY WEINSTEIN, an individual, ) **BRIEF AS *AMICUS CURIAE*;**  
14 Defendant. ) ***AMICUS CURIAE*’S BRIEF IN**  
15 ) **SUPPORT OF PLAINTIFF’S**  
16 ) **OPPOSITION TO DEFENDANT’S**  
17 ) **MOTION TO DISMISS THE**  
18 ) **SECOND CAUSE OF ACTION OF**  
19 ) **PLAINTIFF’S FIRST AMENDED**  
20 ) **COMPLAINT**

21 ) **Hearing:**  
22 ) Date: January 14, 2019  
23 ) Time: 1:30 P.M.  
24 ) Place: 350 West 1<sup>st</sup> Street,  
25 ) Courtroom 6A, 6<sup>th</sup> Floor  
26 ) Los Angeles, CA 90012  
27 )  
28 )  
29 )

1                   **MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE***

2                   The California Women’s Law Center (CWLC) respectfully requests  
3 permission to file the accompanying *amicus curiae* brief in support of Plaintiff  
4 Ashley Judd’s Opposition to Defendant’s Motion to Dismiss the Second Cause of  
5 Action of Plaintiff’s First Amended Complaint. The *amicus* brief addresses the  
6 legislative history and public policy behind California Civil Code section 51.9 in  
7 the context of the instant matter, especially regarding hostile environment sexual  
8 harassment, and argues that this Court should deny Defendant’s motion to dismiss.  
9

10                   *Amicus* is uniquely situated to provide assistance to this Court given its  
11 nature and the work that it does. CWLC is a non-profit legal advocacy organization  
12 dedicated to the advancement and protection of women and girls’ civil rights and  
13 the corresponding elimination of sex discrimination. Since its inception in 1989,  
14 CWLC has placed a particular emphasis on eradicating all forms of discrimination  
15 and violence against women, and has worked to secure equal opportunities for  
16 women and girls in education, housing, public accommodations, and the  
17 workplace, including the right to be free from all forms of sexual harassment and  
18 sexual violence. CWLC has played an instrumental role in the passage and  
19 enforcement of state and federal civil rights laws, including as an organizational  
20 supporter of AB 519 in 1999, the operative version of Civil Code § 51.9 at the time  
21 the original complaint was filed in this matter in state court. CWLC has filed  
22 numerous *amicus* briefs in federal and state appellate courts advocating on behalf  
23 of victims of sexual discrimination, harassment and assault.  
24

25                   CWLC offers a perspective on the issues presented in this case that will  
26 assist the Court in viewing those issues in context, in particular, how the district  
27 court’s opinion will likely have an impact that will either frustrate or further the  
28 stated goals of Civil Code Section 51.9 in addressing, deterring, and punishing acts  
29 of sexual harassment independent from an employment setting. It is within a

1 district court’s discretion to accept and consider *amicus* briefs from non-parties  
2 concerning legal issues that have potential ramifications beyond parties directly  
3 involved, or if *amicus* has unique information or perspective to assist the Court.  
4 *NGV Gaming, Ltd., v. Upstream Point Molate, LLC*, 355 F.Supp. 2d 1061, 1067  
5 (2005).  
6

7 Because the accompanying *amicus* brief may assist the Court in deciding the  
8 issues presented on the Defendant’s Motion to Dismiss, leave to participate as  
9 *amici curiae* should be granted.

10  
11 December 17, 2018

Respectfully submitted,

12  
13 /s/ Amy C. Poyer

14 Amy C. Poyer  
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**AMICUS CURIAE BRIEF**

**CORPORATE DISCLOSURE STATEMENT**

The California Women’s Law Center is a non-profit organization. It does not have a parent corporation or issue publicly-traded securities.

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**INTEREST OF *AMICUS CURIAE***

The California Women’s Law Center (CWLC) is a non-profit law and policy center whose mission is to break down barriers and advance the potential of women and girls through transformative litigation, policy advocacy and education. Since its inception in 1989, CWLC has placed a particular emphasis on eradicating all forms of discrimination and violence against women, and has worked to secure equal opportunities for women and girls in education, housing, public accommodations, and the workplace, including the right to be free from all forms of sexual harassment and sexual violence. CWLC has played an instrumental role in the passage and enforcement of state and federal civil rights laws, including as an organizational supporter of AB 519, the 1999 Assembly Bill enacting the operative version of California Civil Code section 51.9 at the time the original complaint was filed in this matter. CWLC has filed numerous *amicus* briefs in federal and state appellate courts advocating on behalf of victims of sexual discrimination, harassment and assault.

## BACKGROUND AND SUMMARY

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The California Women’s Law Center (CWLC) urges this Court to deny Defendant’s Motion to Dismiss the Second Cause of Action of Plaintiff Ashley Judd’s First Amended Complaint (Motion), filed October 19, 2018. As the First Amended Complaint (FAC) and Plaintiff’s Opposition to Defendant’s Motion to Dismiss (Opposition) describe in detail, Defendant Harvey Weinstein, a well-known and powerful movie producer, set up a “general” business meeting in the mid-1990’s with actor Ashley Judd at the Beverly Hills hotel where he was staying. Instead of arriving to a professional business meeting as expected, Ms. Judd was directed to Mr. Weinstein’s private hotel room, where he met her wearing a bathrobe and inappropriately asked Ms. Judd to give him a massage and watch him shower. In fear for her physical safety and to escape from the room, Ms. Judd agreed to a mock “bargain” with Mr. Weinstein. FAC at ¶¶ 26-28.

Mr. Weinstein retaliated against Ms. Judd by making false and disparaging statements to *The Lord of the Rings* director Peter Jackson and screenwriter Fran Walsh, and benefitted from the retaliatory acts by stifling Ms. Judd’s quote or precedent (past film project payments) and subsequently lowering her bargaining power; as a result, Mr. Weinstein later was able to hire Ms. Judd at a lower rate than he would have had he not maliciously interfered with *The Lord of the Rings* casting decisions. FAC at ¶¶ 30-49. Mr. Weinstein continued to sexually harass Ms. Judd at multiple film industry events over the following years after she fled his hotel room by reminding her of the “terms” of the “bargain” she had ostensibly made with him to secure her safe exit from that room. FAC at ¶ 29.

Ms. Judd’s FAC alleges ample facts to support her claim for sexual harassment under California Civil Code section 51.9: she had a professional business relationship with Mr. Weinstein and the relationship was not easily terminated without jeopardizing Ms. Judd’s career, given the nature of the



1 entertainment industry. Importantly, the express language of the statute and its  
2 underlying public policy contemplate precisely the type of sexual harassment Ms.  
3 Judd alleges here: Mr. Weinstein engaged in “conduct of a sexual... or hostile  
4 nature based on gender, that w[as] unwelcome and pervasive and severe.” Cal. Civ.  
5 Code § 51.9(2). Further, granting Mr. Weinstein’s Motion to Dismiss would  
6 contradict the clear language of the 1994 and the 1999 versions of § 51.9, that it is  
7 applicable to all business, service, or professional relationships, “including but not  
8 limited to,” that of subsection (a)(1)(F), and not merely those enunciated in  
9 subsections 51.9(a)(1)(A)-(E).  
10

11 Because the parties’ professional relationship falls squarely within the scope  
12 of Civil Code § 51.9 and Ms. Judd has established both that the relationship was  
13 not easily terminated, and Mr. Weinstein’s harassment was unwelcome and  
14 pervasive or severe, this Court should deny Defendant’s Motion.

## 15 ARGUMENT

### 16 **I. Plaintiff and Defendant’s Relationship Falls Within the** 17 **Scope of Civil Code Section 51.9 in That it Was an Ongoing** 18 **Professional Relationship, One Not Easily Terminated; and the** 19 **2018 Amendment to Civil Code Section 51.9 Clarifies the Various** 20 **Relationships That Section 51.9 Encompasses, Bolstering** 21 **Plaintiff’s Claim.**

22 Ms. Judd’s FAC explains at length the nature and extent of her professional  
23 relationship with Mr. Weinstein, and in doing so provides the basis for establishing  
24 that Ms. Judd and Mr. Weinstein’s relationship is a professional relationship  
25 contemplated by Civil Code § 51.9. FAC at ¶¶ 24-48. For purposes of a motion to  
26 dismiss, the Court must accept all allegations in the FAC as true. *Daniels–Hall v.*  
27 *Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010). The plain language of Civil  
28 Code § 51.9 provides an express remedy for sexual harassment in non-employment  
29 situations that involve a business, service, or professional relationship. Both the  
original 1994 version and the 1999 amendments to § 51.9 make clear that it is

1 broadly applicable to business, service, or professional relationships, “including,  
2 but not limited to, any” of those enumerated in subsections 51.9(a)(1)(A)-(E).  
3 Subsection 51.9(a)(1)(F) clarifies the intention that the range of the statute’s reach  
4 is extensive, stating that the statute also includes any relationships that are  
5 “substantially similar to any of the above.”  
6

7 The enumerated examples all have a common thread of a power differential  
8 in the relationship that adversely affects the party without the power, a differential  
9 that plainly existed between a young actress in her 20’s and a well-established,  
10 influential movie producer. “You’ll never work again in this town!” is not just a  
11 famous line from a movie; it reflects the reality of the movie industry’s culture  
12 where very few people hold the purse strings and dictate who will or will not get  
13 the roles that define a career. Given the realities of the entertainment industry and  
14 the influence and power that Mr. Weinstein wielded, Ms. Judd did not have the  
15 ability to easily terminate her relationship with him, despite his unwelcome sexual  
16 advances. *See* FAC at ¶¶ 7-29.

17 The 2018 amendments to § 51.9(a) merely add additional examples of  
18 relationships with power differentials. Defendant cited the Senate Rules  
19 Committee analysis of SB 224, the 2018 bill amending §51.9, in support of his  
20 Motion to Dismiss. Motion at p. 6. The Senate analysis states in part: “This bill  
21 adds investor, elected official, lobbyist, director, and producer to the list of  
22 examples of relationships that are covered by Civil Code Section 51.9’s imposition  
23 of civil liability for sexual harassment in business, service, or professional  
24 contexts. **Because the current list of examples is not exclusive, this bill is**  
25 **declaratory of existing law.** Nonetheless, it serves to highlight that investors,  
26 elected officials, lobbyists, directors, and producers can be subject to liability if  
27 they engage in sexual harassment.” Dkt. 31-2 at p.1 (emphasis added). Thus, the  
28 2018 amendment further clarifies that any business, service, or professional  
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1 relationship is covered under the statute; not merely the illustrative examples of  
2 relationships listed within the statute. Ms. Judd has alleged sufficient facts in her  
3 FAC to show that she was in an ongoing professional relationship with Mr.  
4 Weinstein, and that it was not one she could easily terminate.  
5

6 **II. The Defendant's Conduct was Unwelcome and Pervasive or**  
7 **Severe, Creating a Hostile Environment, and was Therefore Not a One-**  
8 **Time Act of Harassment.**

9 Mr. Weinstein's conduct toward Ms. Judd was "unwelcome and pervasive or  
10 severe" as set forth in the FAC and Opposition. Equally important, Mr.  
11 Weinstein's conduct towards dozens of other similarly situated women over the  
12 course of many years and many other business and professional relationship  
13 settings was also certainly "unwelcome and pervasive or severe." FAC at ¶¶ 7-23,  
14 15-23; Dkt. 31-2 at p. 5, n.3. It would be absurd for the law to allow a serial  
15 perpetrator of abusive and harassing conduct to escape liability by attempting to  
16 silo each act upon each woman stepping forward, when the pattern of sexual  
17 harassment has created a hostile environment of sexual harassment in a  
18 professional or business setting. *See, e.g., Meritor Sav. Bank FSB v. Vinson*, 477  
19 U.S. 57, 67 (1986) (hostile environment sexual harassment actionable under Title  
20 VII); *Patricia H. v. Berkeley Unified School Dist.*, 830 F.Supp. 1288, 1291-93  
21 (1993) (hostile environment sexual harassment actionable under Title IX); *Taylor*  
22 *v. Nabors Drilling USA, LP*, 222 Cal. App. 4th 1228, 1235-36 (2014) (hostile  
23 environment sexual harassment actionable under FEHA), *Hughes v. Pair*, 46 Cal.  
24 4th 1035, 1049-50 (2009) (hostile environment sexual harassment actionable under  
25 § 51.9, but not found in *Hughes*).

26 Just as a hostile work environment exists where there is a pattern of  
27 pervasive harassment, a hostile professional environment was created here by Mr.  
28 Weinstein's pattern of sexual harassment of multiple women over at least a dozen  
29

1 years. FAC at ¶¶ 7-23, 15-23; Dkt. 31-2 at p. 5, n.3. The 1999 § 51.9 amendment  
2 expressly incorporated the “hostile environment” language from the Fair  
3 Employment and Housing Act (FEHA), California’s employment discrimination  
4 statute, into § 51.9, citing examples of prohibited conduct:

5 Section 51.9 [as enacted in 1994] prohibits “sexual advances,  
6 solicitations, sexual requests, or demands for sexual compliance.” This  
7 definition is more narrow than that developed by the Fair Employment  
8 and Housing Commission, and which the state courts that have used in  
9 interpreting the FEHA. Specifically, the implementing regulations for  
10 FEHA prohibit verbal harassment (such as epithets, derogatory  
11 comments, or sexual slurs), physical harassment (such as assault,  
12 impeding or blocking movement, or any physical interference with  
13 normal work or movement) visual harassment (such as derogatory  
14 posters, cartoons, or drawings) and sexual favors (such as unwanted  
15 sexual advances).

16 In addition, the type of harassment mentioned under the current  
17 provisions of Section 51.9 cover only “quid pro quo” harassment  
18 where the harasser conditions some benefit or potential harm to the  
19 plaintiff on sexual favors. It does not cover hostile environment sexual  
20 harassment, a second and widely recognized form of sexual  
21 harassment. **This legislation would add the language, or “other  
22 verbal, visual, or physical conduct of a sexual or hostile nature  
23 based upon gender” in the definition of sexual harassment,  
24 bringing the definition into conformity with FEHA.**

25 Dkt. 13-2 at p. 5 (emphasis added). By bringing § 51.9 in conformity with  
26 FEHA, §51.9 includes hostile environment sexual harassment, an environment  
27 embodied by the defendant herein, as alleged throughout the FAC. Because Mr.  
28 Weinstein’s ongoing conduct over a number of years with many women created a  
29 hostile work environment, his unwelcome conduct was pervasive or severe, and  
this Court should deny Defendant’s Motion.

1           **III. The Public Policy Behind Section 51.9 Affirms Applicability**  
2           **to the Instances and Acts of Sexual Harassment Alleged Against**  
3           **Mr. Weinstein in This Matter.**

4           When § 51.9 was initially proposed, its stated purpose was to provide for a  
5           cause of action for sexual harassment. *See* Exhibit A to the concurrently filed  
6           Declaration of Katherine A. Paspalis (“Paspalis Decl.”), at p. 2. Senator Tom  
7           Hayden, the original author of Senate Bill 612 which sought to enact Civil Code §  
8           51.9 in 1994, stated in his written comments to the bill the following: “studies  
9           show that 50% to 85% of American women will be victims of sexual harassment at  
10          some point during their working or academic life. ...[V]ictims of sexual  
11          harassment currently have a limited set of recourses for suing their harasser.  
12          ...[M]aking a defendant liable for damages for his or her sexual harassment will  
13          give victims more effective relief and be a better deterrent against such  
14          unwarranted conduct.” *Id.* at 2. The enactment of § 51.9 and corollary amendment  
15          to § 52 confirmed that it is the public policy of the State of California to deter  
16          sexual harassment and to punish harassers with a series of remedies. *See* Cal. Civ.  
17          Code § 52(b) (“Whoever denies the right provided by Section 51.7 or 51.9, or aids,  
18          incites, or conspires in that denial, is liable for each and every offense for the  
19          actual damages suffered by any person denied that right and, in addition, the  
20          following: [exemplary damages and attorney's fees].”) Refinements to § 51.9 since  
21          1994 have only strengthened this public policy to further protect potential and  
22          actual victims of unwarranted and unwelcome harassment.

23          These protections extend to any relationship covered by the statute: from a  
24          student harassed by a teacher, an intern harassed by a appointed or elected official,  
25          to those who may now have greater or lesser name recognition, whether they be a  
26          lead, supporting role, or day player. And powerful men do not escape liability by  
27          attempting to frame their serial harassment as one-time acts. The facts as alleged in  
28          the FAC are sufficient to survive Defendant’s Motion, which should be denied.  
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**CONCLUSION**

Because Ms. Judd and Mr. Weinstein’s professional relationship falls squarely within the scope of Civil Code § 51.9 and Ms. Judd has established both that the relationship was not easily terminated, and that Mr. Weinstein’s harassment was unwelcome and pervasive or severe, this Court should deny Defendant’s Motion to Dismiss the Second Cause of Action of Plaintiff’s First Amended Complaint.

Respectfully submitted,

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