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16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA  
18 SOUTHERN DIVISION

19 TREVOR BAUER,  
20 Plaintiff,

21 v.

22 LINDSEY C. HILL and NIRANJAN  
23 FRED THIAGARAJAH,  
24 Defendants.

Case No. 8:22-cv-00868-JVS-ADS  
Assigned for all purposes to the Hon.  
James V. Selna

**NOTICE OF MOTION AND  
MOTION BY PLAINTIFF/  
COUNTERCLAIM DEFENDANT  
TREVOR BAUER TO DISMISS  
DEFENDANT/ COUNTERCLAIM  
PLAINTIFF LINDSEY C. HILL'S  
COUNTERCLAIM COMPLAINT  
UNDER FEDERAL RULE 12(b)(6);  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Hearing Date: November 21, 2022  
Hearing Time: 1:30 p.m.  
Department: 10C  
Action Filed: April 25, 2022

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on November 21, 2022 at 1:30 p.m. or as soon  
3 thereafter as this matter may be heard in Courtroom 10C of the above-entitled court,  
4 located at 411 West Fourth Street, Santa Ana, CA, 92701, Plaintiff/Counterclaim  
5 Defendant Trevor Bauer will and does hereby move this Court to dismiss the  
6 Counterclaim Complaint filed by Lindsey C. Hill.

7 This Motion is made pursuant to Federal Rule of Civil Procedure 12(b)(6) on  
8 the grounds that Ms. Hill's counterclaims are barred in full under the doctrine of  
9 collateral estoppel. Ms. Hill's Counterclaim Complaint contains the same allegations  
10 Ms. Hill previously alleged against Mr. Bauer in the case captioned *In re Matter of*  
11 *Hill/Bauer*, Case No. 21STRO03198 before the Los Angeles Superior Court. In that  
12 prior proceeding, the Los Angeles Superior Court fully and finally ruled against Ms.  
13 Hill on the issue of whether any Mr. Bauer committed any acts of abuse against her—  
14 the identical issue she seeks to re-litigate here. Ms. Hill—a disappointed litigant—  
15 may not re-litigate this issue in the hope of a different outcome. This is exactly what  
16 collateral estoppel is designed to prevent.

17 This Motion is made following the conference of counsel pursuant to L.R. 7-  
18 3, which took place on August 18, 23, and 31, 2022.

19 This Motion is based on the Notice of Motion, the Memorandum of Points and  
20 Authorities, the concurrently-filed Request for Judicial Notice and Declaration of  
21 Blair G. Brown, the pleadings and papers on file with the Court in this matter, all  
22 matters upon which this Court must or may take judicial notice, and upon all  
23 arguments that this Court may allow at the time of the hearing of the Motion.

24

25 DATED: September 13, 2022

ZUCKERMAN SPAEDER LLP

26

By: /s/ Blair G. Brown

27

Blair G. Brown

28

Attorney for Plaintiff Trevor Bauer

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1           **I. INTRODUCTION**

2           Defendant/Counterclaim Plaintiff Lindsey C. Hill’s Counterclaim Complaint  
3 seeks to relitigate issues she fully litigated and lost after a trial in which she was  
4 represented by some of the same lawyers who filed the instant Counterclaim. *See In*  
5 *re Matter of Hill/Bauer*, Case No. 21STRO03198. In that prior proceeding, the Los  
6 Angeles Superior Court held that Plaintiff/Counterclaim Defendant Trevor Bauer did  
7 not sexually assault or batter Ms. Hill during two sexual encounters between Ms. Hill  
8 and Mr. Bauer that occurred on April 22, 2021 and May 16, 2021. Although Ms. Hill  
9 may not have liked the outcome of that proceeding, as the judge rejected her version  
10 of events, the judgment precludes re-litigation of those issues here.

11           On June 29, 2021, Ms. Hill filed a petition for a domestic violence restraining  
12 order (the “DVRO Petition”) alleging the same false allegations of sexual assault and  
13 battery based on her two sexual encounters with Mr. Bauer that she now re-alleges  
14 in her Counterclaim Complaint. In August 2021, Judge Dianna Gould-Saltman of the  
15 Los Angeles Superior Court held a four-day hearing to determine whether to grant  
16 Ms. Hill a permanent restraining order (the “DVRO Proceeding”). Under the  
17 California Family Code, a court may grant a permanent restraining order if it finds  
18 “reasonable proof of a past act or acts of abuse.” Cal. Fam. Code § 6300(a). “Abuse”  
19 is defined to include, among other things, “to intentionally or recklessly cause or  
20 attempt to cause bodily injury,” “sexual assault,” and “any behavior that has been or  
21 could be enjoined pursuant to Section 6320” *Id.* § 6203(a). One of the behaviors listed  
22 in Section 6320 is battery—*the exact same cause of action Ms. Hill brings here. Id.*  
23 § 6320. Following a four-day hearing that included Ms. Hill’s lengthy testimony  
24 about the two sexual encounters, the court concluded that Mr. Bauer did not batter or  
25 sexually assault Ms. Hill or engage in nonconsensual sex with her. The court found  
26 that *Ms. Hill* requested and consented to rough sex with Mr. Bauer on April 22, 2021  
27 and May 16, 2021, and that Mr. Bauer respected every boundary set by Ms. Hill. The  
28 court also determined that Ms. Hill’s DVRO Petition was “materially misleading.”



1 Although Ms. Hill had a statutory right to appeal that decision, she chose not to do  
2 so.

3 The DVRO judgment is final and necessarily resolved the same issues raised  
4 by Ms. Hill’s Counterclaim. While filing the Counterclaim may advance Ms. Hill’s  
5 ultimate goal of harming Mr. Bauer and his career in professional baseball—the same  
6 goal Mr. Bauer alleges is her motive for defamation in Mr. Bauer’s Complaint (ECF  
7 No. 1)—, preventing re-litigation of issues that have already been decided is exactly  
8 what the law of collateral estoppel or issue preclusion is designed to do.

## 9 II. ISSUE TO BE DECIDED

10 Whether Ms. Hill’s Counterclaim Complaint should be dismissed on the basis  
11 of issue preclusion because her allegations about her April 22, 2021 and May 16,  
12 2021 sexual encounters with Mr. Bauer in this lawsuit are identical to those she  
13 asserted in the prior proceeding before the Los Angeles Superior Court, in which the  
14 court found: (i) Mr. Bauer did not commit “an act of abuse,” including battery and  
15 sexual assault, against Ms. Hill; and (ii) that both encounters were consensual.

## 16 III. STATEMENT OF FACTS

17 At the outset, Mr. Bauer notes that, while he must accept as true all facts in the  
18 Counterclaim Complaint under the Rule 12(b)(6) standard, the Court is not required  
19 to accept as true allegations that contradict matters properly subject to judicial notice.  
20 *See Sogbandi v. Markham*, 2002 WL 31855299, at \*2 (N.D. Cal. Dec. 17, 2002)  
21 (Breyer, J.). The vast majority of the “facts” pleaded in the Counterclaim Complaint  
22 are merely a disappointed litigant’s contentions that have already been rejected on  
23 the merits in a final decision by a Los Angeles Superior Court judge.

### 24 A. Ms. Hill Files A Petition In Los Angeles Superior Court For A 25 Domestic Violence Restraining Order Against Mr. Bauer Based 26 On Two Sexual Encounters.

27 Ms. Hill and Mr. Bauer met on two occasions—April 22, 2021 and May 16,  
28 2021—for the purpose of having sex. Countercl. Compl. ¶¶ 13–22, 23–34. On both

1 occasions, Ms. Hill consented to rough sex, which included choking. *Id.* ¶¶ 52, 56.  
2 On June 29, 2021, Ms. Hill filed the DVRO Petition in Los Angeles Superior Court,  
3 alleging that Mr. Bauer abused her during their two sexual encounters. Brown Decl.  
4 Ex. A (Ms. Hill’s DVRO Petition). In Question 27 of the DVRO Petition, Ms. Hill  
5 was asked to describe how Mr. Bauer abused her. *Id.* at 5. The DVRO Petition form  
6 specifically explained that “abuse” means “to intentionally or recklessly cause or  
7 attempt to cause bodily injury to you; or to place you or another person in reasonable  
8 fear of imminent serious bodily injury; or to...assault (sexually or  
9 otherwise)...batter...or contact you.” *Id.* In response to Question 27, Ms. Hill  
10 attached a declaration where she alleged in graphic detail that Mr. Bauer sexually  
11 assaulted and battered her during the two sexual encounters. *Id.* at 7–15.

12 **B. The Los Angeles Superior Court Denies Ms. Hill’s DVRO**  
13 **Petition On The Grounds That No Acts Of Abuse Occurred And**  
14 **Both Of The Sexual Encounters Were Consensual.**

15 In August 2021, Judge Dianna Gould-Saltman of the Los Angeles Superior  
16 Court held a four-day hearing to determine whether Ms. Hill should be granted a  
17 permanent DVRO. *See generally*, Brown Decl. Ex. B (full transcript of DVRO  
18 Proceeding). In order to grant a permanent DVRO, Judge Gould-Saltman had to find  
19 “reasonable proof of a past act or acts of abuse.” Cal. Fam. Code § 6300. During the  
20 DVRO Proceeding, Ms. Hill took the stand for parts of three days and provided  
21 lengthy testimony about her April 22, 2021 and May 16, 2021 sexual encounters with  
22 Mr. Bauer. Brown Decl. Ex B at Tr. 1–275, 336–362, 368–457. While she was on  
23 the stand, Ms. Hill testified under oath that the April 22, 2021 encounter was entirely  
24 consensual. *See* Tr. 528:23–24 (Ms. Hill’s counsel’s closing argument stating:  
25 “Without hesitation, Lindsey admitted under oath that the first night was  
26 consensual.”). The court also heard from various fact and expert witnesses called by  
27 both sides. *Id.* at Tr. 277–336, 463–475, 476–517. Both Mr. Bauer and Ms. Hill were  
28 represented by counsel in the DVRO Proceeding. *Id.*

1 At the conclusion of this four-day proceeding on the merits, Judge Gould-  
2 Saltman made detailed findings on the record. She held that Mr. Bauer did not abuse,  
3 batter, or assault Ms. Hill nor did he engage in nonconsensual sex with her. *Id.* at Tr.  
4 580:24–587:11. Judge Gould-Saltman further found that Ms. Hill consented to rough  
5 sex and that Mr. Bauer respected the boundaries set by Ms. Hill. *Id.* The court also  
6 found that Ms. Hill’s motivations were to seek attention for herself and cause harm  
7 to Mr. Bauer. *Id.* Ultimately, Judge Gould-Saltman’s own words are most instructive:  
8 “*[Ms. Hill] was not ambiguous about wanting rough sex in the parties’ first*  
9 *encounter and wanting rougher sex in the second encounter. [Ms. Hill] was asked*  
10 *by [Mr. Bauer] to decide whatever she wanted to let [Mr. Bauer] know was off*  
11 *limits, and she did. If she had set limits and he had exceeded them, this case would*  
12 *be very clear. But she set limits without fully considering all of the consequences*  
13 *and [Mr. Bauer] did not exceed the limits that [Ms. Hill] set.”* *Id.* at Tr. 585:22–  
14 586:2 (emphasis added). The judge also characterized Ms. Hill’s DVRO Petition—  
15 which was submitted under oath—as “materially misleading.” *Id.* at Tr. 586:3–7.

16 The judge’s decision was accompanied by certain factual findings that directly  
17 bear on Ms. Hill’s instant Counterclaim. For example, the court found that nothing  
18 nonconsensual occurred at any time during Mr. Bauer and Ms. Hill’s two encounters,  
19 including when Ms. Hill alleged to have been unconscious. *Id.* at Tr. 584:24–585:4.  
20 The court did not find Ms. Hill’s testimony credible nor did it find any evidence that  
21 Mr. Bauer had anal sex with her during the first encounter, while she alleged to have  
22 been unconscious or otherwise. *Id.* In fact, Ms. Hill herself testified that nothing  
23 nonconsensual occurred during the first encounter. *Id.* at Tr. 528:23–24. And the  
24 court found that Mr. Bauer proactively discussed and sought to establish boundaries  
25 with Ms. Hill—all of which he honored, including stopping every time Ms. Hill asked  
26 him to stop. *Id.* at Tr. 584:24–585:4. The court also found that Ms. Hill’s bruising  
27 was simply a potential consequence of the sexual acts to which she sought out and  
28

1 consented. *Id.* at Tr. 584:18–23. Finally, the court found that Mr. Bauer did not pursue  
2 Ms. Hill, nor did he threaten or coerce her into sexual activity. *Id.* at Tr. 585:5–8.

3 Judge Gould-Saltman then denied Ms. Hill’s request for a permanent DVRO  
4 and dissolved the temporary restraining order. *Id.* at Tr. 587:8–11. Ms. Hill did not  
5 appeal.

6 Following Judge Gould-Saltman’s decision, the Los Angeles District Attorney  
7 stated publicly that his office would not file criminal charges against Mr. Bauer.  
8 Brown Decl., Ex. C. The District Attorney’s Office stated that “[a]fter a thorough  
9 review of the available evidence, including the civil restraining order proceedings,  
10 witness statements and the physical evidence, the People are unable to prove the  
11 relevant charges beyond a reasonable doubt.” *Id.*

12 **C. Mr. Bauer Sues Ms. Hill For Defamation Based On Her False**  
13 **Allegations, and Ms. Hill Files An Answer And Counterclaims**  
14 **In Response To The Defamation Complaint.**

15 Having been absolved of any wrongdoing by the Los Angeles Superior Court  
16 and with Ms. Hill’s allegations found to be “materially misleading,” Mr. Bauer filed  
17 the instant Complaint against Ms. Hill for defamation based on her intentionally false  
18 and malicious statements to law enforcement accusing Mr. Bauer of serious crimes.  
19 ECF No. 1. On July 19, 2022, Ms. Hill filed an Answer to the Complaint. ECF No.  
20 34. Three weeks later, on August 9, 2022, Ms. Hill filed the Counterclaim Complaint  
21 that is the subject of this Motion to Dismiss. ECF No. 36. She did not file her  
22 Counterclaim Complaint as an amendment to her previously filed Answer pursuant  
23 to Fed. R. Civ. P. 15(a). *Id.* Nor did Ms. Hill seek leave of court to file the  
24 Counterclaim Complaint as a Supplemental Counterclaim pursuant to Rule 13(e). *See*  
25 Docket.

26 **D. Ms. Hill’s Counterclaim Complaint Asserts Two Claims For**  
27 **Battery Arising From The Same Two Sexual Encounters That**  
28 **Were Found To Be Consensual By The Los Angeles Superior**  
**Court.**

1 Ms. Hill’s Counterclaim Complaint asserts causes of action for sexual battery  
2 and battery, both of which arise from her April 22, 2021 and May 16, 2021 sexual  
3 encounters with Mr. Bauer. Countercl. Compl. ¶¶ 41–49, 50–60. The Counterclaim  
4 Complaint contains substantively the same allegations about the two sexual  
5 encounters as contained in her prior DVRO Petition. *Compare* Countercl. Compl.  
6 ¶¶ 13–22, 23–34 *with* Brown Decl. Ex. A at 7–15. For example, the Counterclaim  
7 Complaint alleges that in the first encounter, Mr. Bauer choked Ms. Hill to the point  
8 of unconsciousness and then had nonconsensual anal sex with her. Countercl. Compl.  
9 ¶¶ 2, 13–22. The DVRO Petition also contained this allegation. Brown Decl. Ex. A  
10 at p. 8–9, ¶¶ 8–10. The Counterclaim Complaint alleges that in the second encounter,  
11 Mr. Bauer choked Ms. Hill to the point of unconsciousness and then punched her in  
12 the face, buttocks, and vagina. Countercl. Compl. ¶¶ 3, 23–34. The DVRO Petition  
13 also contained this allegation. Brown Decl. Ex. A at p. 9–11, ¶¶ 13–16.

#### 14 IV. LEGAL STANDARDS

15 Under Rule 12(b)(6), “a complaint must contain sufficient factual matter,  
16 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v.*  
17 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
18 570 (2007)). The plausibility standard requires “more than a sheer possibility that a  
19 defendant has acted unlawfully” and is met only when the plaintiff pleads facts that  
20 allow the Court “to draw the reasonable inference that the defendant is liable for the  
21 misconduct alleged.” *Id.* A defendant may bring a motion to dismiss under Rule  
22 12(b)(6) based on the doctrines of res judicata or collateral estoppel if the court can  
23 take judicial notice of all relevant facts. *See Sogbandi*, 2002 WL 31855299, at \*2;  
24 *Mullis v. U.S. Bankr. Ct. for Dist. of Nevada*, 828 F.2d 1385, 1388 (9th Cir. 1987)  
25 (“Facts subject to judicial notice may be considered on a motion to dismiss.”).  
26 Importantly, a court is not required to accept as true allegations that contradict matters  
27 properly subject to judicial notice. *Sogbandi*, 2002 WL 31855299, at \*1 (citing  
28 *Mullis*, 828 F.2d at 1388).

1           When ruling on a motion to dismiss, “courts must consider a complaint in its  
2 entirety, as well as other sources courts ordinarily examine . . . in particular,  
3 documents incorporated into the complaint by reference, and matters of which a court  
4 may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308,  
5 322 (2007). A court may take judicial notice of prior judicial proceedings when  
6 determining whether a complaint should be dismissed on the basis of collateral  
7 estoppel. *See Sogbandi*, 2002 WL 31855299, at \*2; *Afr. Firefighters in Benevolent*  
8 *Ass’n v. Harris-Dawson*, 2021 WL 5263853, at \*2 (C.D. Cal. Sept. 21, 2021) (stating  
9 “a federal court may take judicial notice of a state court decision and the briefs filed  
10 in that court to determine if an issue was raised and decided by the state court for res  
11 judicata purposes”) (alteration and internal quotations omitted).

## 12           V.     **ARGUMENT**

### 13                   **A. The Court Must Dismiss The Counterclaim Complaint Because** 14                   **The Los Angeles Superior Court Already Found That Mr. Bauer** 15                   **Did Not Sexually Assault Or Batter Ms. Hill And That Their** 16                   **Sexual Encounters Were Consensual.**

17           Ms. Hill’s Counterclaim Complaint fails to state a claim under Rule 12(b)(6).<sup>1</sup>  
18 No set of facts can be proven that would constitute a valid claim because her  
19 counterclaims are barred in full by the doctrine of collateral estoppel.

20           Issue preclusion, or collateral estoppel, precludes re-litigation of an issue  
21 already determined in a previous proceeding between the same parties. *Pike v.*

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22           <sup>1</sup> The Counterclaim Complaint is also procedurally deficient under Federal  
23 Rules 13 and 15. Ms. Hill flouted these Rules by filing the Counterclaim Complaint  
24 out of the blue without styling it as an amended answer or otherwise seeking leave to  
25 file a supplemental counterclaim under Fed. R. Civ. P. 13(e). And if a compulsory  
26 counterclaim is not asserted in a defendant’s answer, it is waived. *Palumbo Design,*  
27 *LLC v. 1169 Hillcrest, LLC*, 2020 WL 5498065, at \*4 (C.D. Cal. July 14, 2020). If  
28 the Court determines that Ms. Hill should have sought leave to file her Counterclaim,  
it should deny leave because Ms. Hill cannot show that the Counterclaim “matured  
or was acquired by the party after serving” her Answer, and because the Counterclaim  
is barred by issue preclusion and therefore futile. Fed. R. Civ. P. 13(e). Mr. Bauer  
does not move to strike the Counterclaim on this basis at present because the  
Counterclaim Complaint should be dismissed with prejudice now under Rule  
12(b)(6), but Mr. Bauer raises this procedural deficiency for preservation purposes  
and reserves all rights to move to strike on this basis.

1 *Hester*, 891 F.3d 1131, 1138 (9th Cir. 2018) (holding that findings in prior restraining  
2 order proceeding were preclusive in subsequent case in federal court, applying  
3 Nevada law). Collateral estoppel “has the dual purpose of protecting litigants from  
4 the burden of relitigating an identical issue with the same party or his privy and of  
5 promoting judicial economy by preventing needless litigation.” *Salisbury v.*  
6 *Hickman*, 974 F. Supp. 2d 1282, 1288 (E.D. Cal. 2013). Here, Mr. Bauer and Ms.  
7 Hill have already fiercely litigated the very issue in California state court of whether  
8 Mr. Bauer sexually assaulted or battered Ms. Hill in their two sexual encounters. As  
9 such, this Court must estop Ms. Hill—a disappointed litigant in the first proceeding—  
10 from dragging Mr. Bauer into further needless litigation in an improper attempt to re-  
11 litigate the same issue to a different conclusion. Enough is enough.

12 State judicial proceedings receive the same full faith and credit in every federal  
13 court as they would have in courts of the state in which the matter originated. 28  
14 U.S.C. § 1738. Section 1738 “directs a federal court to refer to the preclusion law of  
15 the State in which the judgment was rendered.” *Marrese v. American Academy of*  
16 *Orthopaedic Surgeons*, 470 U.S. 373, 381 (1985) (“§ 1738 requires a federal court to  
17 look first to state preclusion law in determining the preclusive effects of a state court  
18 judgment”). Therefore, this Court must apply California law to determine whether  
19 the prior decision of the Los Angeles Superior Court will preclude Ms. Hill from  
20 relitigating whether any sexual assault or battery occurred during her two encounters  
21 with Mr. Bauer.

22 Under California law, collateral estoppel precludes re-litigation of an issue  
23 previously adjudicated when the following elements are satisfied. First, the issue  
24 sought to be precluded from re-litigation must be identical to that decided in a former  
25 proceeding. *Hernandez v. City of Pomona*, 46 Cal. 4th 501, 513 (2009). Second, this  
26 issue must have been actually litigated in the former proceeding. *Id.* Third, it must  
27 have been necessarily decided in the former proceeding. *Id.* Fourth, the decision in  
28 the former proceeding must be final and on the merits. *Id.* Finally, the party against

1 whom preclusion is sought must be the same as, or in privity with, the party to the  
 2 former proceeding. *Id.*

3 Here, the record demonstrates that the issue of whether Mr. Bauer sexually  
 4 assaulted or battered Ms. Hill was raised in the former proceeding, submitted for  
 5 decision, and actually decided against Ms. Hill.

6 **1. The issue of whether Mr. Bauer sexually assaulted or battered Ms. Hill**  
 7 **is identical in both proceedings.**

8 The issue of whether Mr. Bauer sexually assaulted or battered Ms. Hill on  
 9 April 22, 2021 and May 16, 2021 is identical in both proceedings for two primary  
 10 reasons. First, Ms. Hill raises the identical factual allegations about what occurred  
 11 during those two encounters in both proceedings. Second, the legal issue of whether  
 12 Ms. Hill can prove by a preponderance of the evidence that what occurred during  
 13 those two encounters constituted sexual assault or battery is identical in both  
 14 proceedings.

15 **(a) The factual allegations in both proceedings are identical.**

16 California law is clear that “[t]he ‘identical issue’ requirement addresses  
 17 whether ‘identical factual allegations’ are at stake in the two proceedings, not  
 18 whether the ultimate issues or dispositions are the same.” *Lucido v. Superior Ct.*, 51  
 19 Cal. 3d 335, 342 (1990); *see also Hernandez*, 46 Cal. 4th at 512 (same). Here, there  
 20 can be no dispute that the DVRO Petition and the Counterclaim Complaint contain  
 21 identical factual allegations. A side-by-side comparison is helpful:

<b><u>April 22, 2021 Encounter</u></b>	
<b>DVRO Petition</b>	<b>Counterclaim Complaint</b>
Ms. Hill alleges that she drove to Mr. Bauer’s home on the evening of April 21, 2021. (¶ 5).	Ms. Hill alleges that she met Mr. Bauer at his home on the evening of April 21, 2021. (¶ 14).
Ms. Hill alleges that the two talked for several hours and then began having	Ms. Hill alleges that after talking for several hours, during the early morning



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consensual sex early in the morning on April 22, 2021. (¶¶ 5–6)	of April 22, 2021, the two began having vaginal sex. (¶ 15)
Ms. Hill alleges that Mr. Bauer wrapped Ms. Hill’s hair around her neck and choked her until she became unconscious. (¶ 8)	Ms. Hill alleges that Mr. Bauer flipped her onto her stomach, wrapped her hair around her neck, and used her hair to choke her unconscious. (¶ 16)
Ms. Hill alleges that she woke up face down on the bed, disoriented, and realized Mr. Bauer was having sex with her in her anus. (¶ 9)	Ms. Hill alleges that when she regained consciousness, to her shock, she realized that Mr. Bauer was having anal sex with her. (¶ 18)
Ms. Hill alleges that as soon as she was able, she said “Can we stop” and he immediately did. (¶ 9)	Ms. Hill alleges that after regaining consciousness, she asked Mr. Bauer to stop having anal sex with her. Mr. Bauer stopped. (¶ 20)
Ms. Hill alleges that she went to use the bathroom and noticed she was bleeding from her anus. (¶ 10)	Ms. Hill alleges that after Mr. Bauer stopped having anal sex with her, she walked to the bathroom. While in the bathroom, she discovered she was bleeding from anus. (¶ 22)

**May 16, 2021 Encounter**

<b>DVRO Petition</b>	<b>Counterclaim Complaint</b>
Ms. Hill alleges that she arrived at Mr. Bauer’s house around midnight on May 16, 2021. (¶ 13)	Ms. Hill alleges that she arrived at Mr. Bauer’s house around midnight on May 16, 2021. (¶ 24)
Ms. Hill alleges that the two started having sex around 2 a.m. (¶ 13)	Ms. Hill alleges that later in the morning of May 16, the two began having vaginal sex. (¶ 25)
Ms. Hill alleges that Mr. Bauer wrapped her hair around her neck and choked her until she lost consciousness. (¶ 14)	Ms. Hill alleges that Mr. Bauer flipped her onto her stomach, wrapped her hair around her neck, and used her hair to choke her to the point that she could not breathe and became unconscious. (¶ 26)
Ms. Hill alleges that as she was regaining consciousness, Mr. Bauer began punching her face. (¶ 14)	Ms. Hill alleges that when she began regaining consciousness, Mr. Bauer began to forcefully and repeatedly punch her in the face. (¶ 28)

<p>1 Ms. Hill alleges that Mr. Bauer flipped 2 her back on her stomach and began 3 choking her with her hair. (¶ 15)</p>	<p>Ms. Hill alleges that Mr. Bauer flipped her onto her stomach and again used her hair to choke her unconscious for a second time. (¶ 29)</p>
<p>4 Ms. Hill alleges that when she regained 5 consciousness, Mr. Bauer opened her 6 legs and began punching her in the 7 vagina. (¶ 16)</p>	<p>Ms. Hill alleges that while she was trying to regain consciousness, Mr. Bauer spread her knees to expose her vagina, and then began using a closed fist to punch her vagina and groin area. (¶ 31)</p>

8 As demonstrated above, it is beyond dispute that Ms. Hill’s Counterclaim Complaint  
9 simply regurgitates the *identical* factual allegations from the DVRO Petition in  
10 blatant pursuit of a second bite at the apple.

11 **(b)The legal issues, including the standard of proof, in both**  
12 **proceedings are identical.**

13 In the DVRO Proceeding, the core question was whether Ms. Hill should be  
14 granted a DVRO, which would statutorily require a finding of “reasonable proof of  
15 a past act or acts of abuse.” Cal. Fam. Code § 6300(a). Ms. Hill’s DVRO Petition  
16 alleged that her April 22, 2021 and May 16, 2021 sexual encounters with Mr. Bauer  
17 constituted “acts of abuse” under the statute. *See* Brown Decl. Ex. A at p. 5, 7–15  
18 (Ms. Hill’s response to Question 27). Mr. Bauer, for his part, argued that Ms. Hill  
19 could not meet the showing of “reasonable proof” because he did not abuse Ms. Hill  
20 and both encounters were consensual.

21 In the DVRO Proceeding, “reasonable proof” required a preponderance of the  
22 evidence, just as in a civil suit. *Gdowski v. Gdowski*, 175 Cal. App. 4th 128, 137, 95  
23 Cal. Rptr. 3d 799, 805 (2009) (“issuance of a protective order under the DVPA”  
24 requires “a preponderance of the evidence”); *Croteau v. Croteau*, 2015 WL 2448273,  
25 at \*2 (Cal. Ct. App. May 21, 2015) (court can “issue the requested restraining order  
26 if the applicant shows the requisite abuse by a preponderance of the evidence”). As  
27 the standard of proof is the same in both proceedings, the fact that Ms. Hill could not  
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1 prove her allegations under the preponderance of the evidence standard in the DVRO  
2 Proceeding is outcome dispositive in this lawsuit. Indeed, the Los Angeles District  
3 Attorney recognized this point when declining to prosecute because if the allegations  
4 could not be proven under a preponderance of the evidence standard, they certainly  
5 could not be proven beyond a reasonable doubt. Brown Decl., Ex. C.

6 For purposes of the DVRO Proceeding, “abuse” was defined as “(1) To  
7 intentionally or recklessly cause or attempt to cause bodily injury,” “(2) Sexual  
8 assault,” “(3) To place a person in reasonable apprehension of imminent serious  
9 bodily injury to that person or to another,” or “(4) To engage in any behavior that has  
10 been or could be enjoined pursuant to Section 6320,” which lists a range of other  
11 conduct, *including battery*. Cal. Fam. Code § 6203(a) (citing Cal. Fam. Code  
12 § 6320). Under this statutory regime, by denying Ms. Hill’s DVRO Petition, the Los  
13 Angeles Superior Court must have found that she failed to show by a preponderance  
14 of the evidence that Mr. Bauer committed any acts of abuse in the parties’ two  
15 encounters, which statutorily includes battery and sexual assault.

16 Moreover, in determining whether a sexual assault or battery occurred, the  
17 state court also had to address the issue of whether Ms. Hill consented to the sexual  
18 activities that took place between her and Mr. Bauer. Under California law, one “who  
19 consents to an act is not wronged by it.” Cal. Civ. Code § 3515. Consistent with this  
20 principle, courts have found no sexual battery where “the relationship was  
21 consensual.” *Jacqueline R. v. Household of Faith Fam. Church, Inc.*, 97 Cal. App.  
22 4th 198, 208 (2002); 5 Witkin, Summary of Cal. Law, 11th Torts § 457 (2022) (“A  
23 person may, by participating in a game or by other conduct, consent to an act that  
24 might otherwise constitute a battery.”). In denying Ms. Hill’s DVRO Petition, the  
25 state court considered the evidence and found that the two encounters were entirely  
26 consensual. *See* Brown Decl. Ex. B at Tr. 583:9–586:2.

27 In the instant case, Ms. Hill asserts claims for battery and sexual battery based  
28 on the same two encounters between her and Mr. Bauer that were the subject of the

1 DVRO Proceeding. *See supra* § V.A.1 (comparing allegations in both proceedings  
2 side-by-side). Under California law, “[t]he elements of civil battery are: (1) defendant  
3 intentionally performed an act that resulted in a harmful or offensive contact with  
4 plaintiff’s person; (2) plaintiff did not consent to the contact; and (3) the harmful or  
5 offensive contact caused injury, damage, loss or harm to plaintiff.” *Pallamary v. Elite*  
6 *Show Servs., Inc.*, 2018 WL 3064933, at \*13 (S.D. Cal. June 19, 2018). But under  
7 the definition of “acts of abuse” under the California Family Code, the state court  
8 already considered whether Mr. Bauer “intentionally or recklessly cause[d] or  
9 attempt[ed] to cause bodily injury.” Cal. Fam. Code § 6203(a). The state court found  
10 that he did not. The state court also considered whether Ms. Hill consented to  
11 everything that occurred between her and Mr. Bauer. *See Brown Decl. Ex. B at Tr.*  
12 *583:9–586:2*. The state court found that she did. Thus, under no set of facts can Ms.  
13 Hill prevail on her civil battery counterclaim as the state court judge already found  
14 in favor of Mr. Bauer on at least two elements of this cause of action.

15 As for Ms. Hill’s second counterclaim for sexual battery, this is defined as: (1)  
16 an “act[] with the intent to cause a harmful or offensive contact with an intimate part  
17 of another, and a sexually offensive contact with that person directly or indirectly  
18 results;” or (2) an “act[] with the intent to cause a harmful or offensive contact with  
19 another by use of his or her intimate part, and a sexually offensive contact with that  
20 person directly or indirectly results;” or (3) an “act[] to cause an imminent  
21 apprehension of the conduct described in paragraph (1) or (2), and a sexually  
22 offensive contact with that person directly or indirectly results.” Cal. Civ. Code  
23 § 1708.5(a). California law further makes clear that the sexual battery statute “is  
24 interpreted to require that the batteree did not consent to the contact.” *Angie M. v.*  
25 *Superior Ct.*, 37 Cal. App. 4th 1217, 1225 (1995). Ms. Hill cannot meet any of these  
26 elements. She cannot show that Mr. Bauer intended to cause harmful or offensive  
27 contact with any part of her body because the state court already resolved that he did  
28 not. Cal. Fam. Code § 6203(a). In finding that no “act of abuse” occurred, the state

1 court also necessarily found that Mr. Bauer did not place Ms. Hill “in reasonable  
2 apprehension of imminent serious bodily injury.” *Id.* Finally, as the state court found  
3 that Ms. Hill consented to everything that occurred during the two sexual encounters,  
4 Ms. Hill cannot show that she did not consent. *See Brown Decl. Ex. B at Tr. 583:9–*  
5 *586:2.* At bottom, there is no set of facts under which Ms. Hill could prevail on her  
6 counterclaim for sexual battery, as the state court already found in favor of Mr. Bauer  
7 on every element of California’s sexual battery statute.

8 As if this were not enough, the California Family Code defines an “act of  
9 abuse” to include both “sexual assault” and “battery.” Cal. Fam. Code § 6203(a)  
10 (incorporating conduct listed in § 6320, which includes battery). Indeed, Ms. Hill  
11 knew this when she filed her DVRO Petition because Question 27 of the DVRO  
12 Petition lists “assault (sexually or otherwise)” and “battery” as examples of acts of  
13 abuse under the statute. *See Brown Decl. Ex. A at p. 5.* She had every opportunity to  
14 litigate whether a sexual assault or battery occurred—and she *did* litigate this issue.  
15 *See infra* § V.A.2. As “act of abuse,” “sexual assault,” and “battery” are one in the  
16 same under California Family Code § 6203(a), the issue in the DVRO Proceeding of  
17 whether any “act of abuse” occurred resolved the issue of whether any sexual assault  
18 or battery occurred. This forecloses any possibility that Ms. Hill could prevail on  
19 either of her claims in this lawsuit without running afoul of the state court’s prior  
20 ruling and its preclusive effect. *See Clemmer v. Hartford Insurance Co.*, 22 Cal.3d  
21 865, 875 (1978) (one of the purposes of collateral estoppel is “to prevent inconsistent  
22 judgments which undermine the integrity of the judicial system.”).

23 **2. The issue of whether Mr. Bauer sexually assaulted or battered Ms. Hill**  
24 **was actually litigated in the DVRO Proceeding.**

25 “An issue is actually litigated when it is *properly raised*, by the pleadings or  
26 otherwise, and is submitted for determination, and is determined.” *Ayala v. Dawson*,  
27 13 Cal. App. 5th 1319, 1330 (2017) (citations and quotations omitted) (holding that  
28 issue was actually litigated where plaintiff raised an issue in the pleadings that was

1 the central focus of an evidentiary contest at a hearing where the issue was ultimately  
2 decided against plaintiff).

3 Here, the DVRO Proceeding was vigorously litigated by both sides. First off,  
4 Ms. Hill filed the detailed DVRO Petition in which she put the issue of whether she  
5 was sexually assaulted or battered by Mr. Bauer in central focus. *See* Brown Decl.  
6 Ex. A. Second, before and throughout the DVRO Proceeding, Ms. Hill and Mr. Bauer  
7 were represented by sophisticated counsel from established law firms who, according  
8 to the state court judge, “present[ed] the best case on both sides.” *See* Brown Decl.  
9 Ex. B at Tr. 580:24-27. Third, before the testimony began, the parties engaged in  
10 discovery and motion practice by and through their respective counsel.<sup>2</sup> Fourth, the  
11 DVRO Proceeding itself consisted of a four-day hearing, during which both Ms. Hill  
12 and Mr. Bauer called multiple fact and expert witnesses, and both had the opportunity  
13 to be heard. Indeed, Ms. Hill was on the stand for parts of three days. Ms. Hill’s  
14 testimony concerned the same two encounters with Mr. Bauer that she complains  
15 about in the instant case. *Compare* Brown Decl. Ex. B at Tr. 1–275, 336–362, 368–  
16 457 *with* Counterclaim Compl. ¶¶ 13–22, 23–34. She testified in detail about what  
17 occurred between her and Mr. Bauer in those encounters, and whether she consented  
18 to the sexual acts that the two engaged in. Brown Decl. Ex. B at Tr. 1–275, 336–362,  
19 368–457. Notably, she testified “without hesitation” that the entirety of the April 22,  
20 2021 encounter was consensual—a sentiment echoed by her counsel in closing  
21 arguments. *Id.* at 528:23–24.<sup>3</sup> Mr. Bauer (whom the District Attorney had not yet  
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23 <sup>2</sup> While the parties had every opportunity to engage in discovery, it has come  
24 to light that Ms. Hill improperly withheld evidence in the DVRO Proceeding, *see*  
25 Compl. ¶¶ 132–43 (alleging that Ms. Hill and her counsel buried evidence), that  
26 further exonerates Mr. Bauer. The Pasadena Police Department recently produced a  
videotape that Ms. Hill took of herself shortly after the May 16, 2021 encounter  
where she appears to be willingly in bed with a sleeping Mr. Bauer, and is smirking  
and uninjured. *See* Brown Decl., Ex. D.

27 <sup>3</sup> This is an admission by a party opponent that on its own forecloses Ms. Hill’s  
28 allegations in the Counterclaim Complaint that Mr. Bauer’s conduct in the April 22,  
2021 encounter constitutes battery. *See* Fed. R. Evid. 801(d)(2).

1 cleared of criminal charges at the time) chose not to take the stand. Ultimately, even  
2 without Mr. Bauer’s testimony, the judge’s on-the-record findings were a resounding  
3 rejection of Ms. Hill’s version of events—the same version of events she re-alleges  
4 here. *Id.* 580:24–587:11. This fulsome DVRO Proceeding is memorialized in an  
5 almost 600-page transcript and over twenty exhibits. *See Ayala*, 13 Cal. App. 5th at  
6 1330–31 (issue was actually litigated where extensive record consisted of 243-page  
7 transcript with the judge’s on-the-record findings, as well as 21 documentary  
8 exhibits).

9 California courts have routinely held that restraining order proceedings that  
10 were actually litigated have preclusive effects in subsequent civil cases. In *Salisbury*  
11 *v. Hickman*, a California federal judge found that where the plaintiff had previously  
12 obtained a civil harassment restraining order against her property manager in a one-  
13 day hearing, the defendant-property manager was precluded from relitigating the  
14 issue in federal court of whether he harassed the plaintiff. *See Salisbury*, 974 F. Supp.  
15 2d at 1289–90. In *Van Oss v. Van Oss*, the California Court of Appeals upheld a trial  
16 court’s order that issues decided in a domestic violence proceeding precluded the  
17 respondent’s subsequent malicious prosecution suit. 2005 WL 240847, at \*1 (Cal.  
18 Ct. App. Jan. 21, 2005). There, the court of appeals held that “[t]he record  
19 demonstrates . . . that the question of whether Gregory pushed Kimberly was  
20 actually litigated and necessarily decided in the domestic violence proceeding.” *Id.* at  
21 \*3. Critical to the *Van Oss* court’s decision was that “the parties submitted conflicting  
22 evidence regarding Gregory’s conduct on August 27” and the judge considered the  
23 evidence and then made factual findings based on the contested litigation. *Id.* Just as  
24 in the *Salisbury* and *Van Oss* restraining order proceedings, it is clear from the almost  
25 600-page record of the DVRO Proceeding, in which both sides submitted conflicting  
26 evidence about what occurred on April 22, 2021 and May 16, 2021, that the question  
27 of whether Mr. Bauer abused Ms. Hill was actually litigated in the DVRO Proceeding  
28 and cannot be re-litigated in a civil case in federal court.

1           **3. The issue of whether Mr. Bauer sexually assaulted or battered Ms. Hill**  
2           **was necessarily decided in the DVRO Proceeding.**

3           Statutorily, when determining whether to grant a DVRO, a California court  
4 must decide whether there is “reasonable proof of a past act or acts of abuse.” Cal.  
5 Fam. Code § 6300(a). Here, the state court did just that. The court received  
6 voluminous evidence and testimony regarding what occurred during the two sexual  
7 encounters between Ms. Hill and Mr. Bauer, and then made a legal determination as  
8 to whether that evidence constituted reasonable proof of any abuse. The court  
9 determined that it did not. *Cf. Salisbury*, 974 F. Supp. 2d at 1289 (even where court  
10 made no specific factual findings in restraining order proceeding, certain issues were  
11 necessarily decided because they were “issues that the court *had* to resolve,  
12 statutorily, in order to grant Ms. Salisbury a restraining order pursuant to California  
13 Code of Civil Procedure section 527.6”). Ms. Hill’s own counsel in the DVRO  
14 Proceeding recognized that the state court must necessarily decide this issue,  
15 beginning her closing argument by stating that her job was to “persuade the trier of  
16 fact by a preponderance of the evidence that abuse as defined in the D.V.P.A. was  
17 committed.” *See* Brown Decl. Ex. B at Tr. 524:24–26.

18           Here, not only was Judge Gould-Saltman statutorily required to decide  
19 whether an act of abuse (which includes sexual assault and battery) occurred, her  
20 actual decision made clear that she indeed made this determination. Judge Gould-  
21 Saltman’s words speak for themselves. At the conclusion of the four-day hearing, she  
22 made detailed on-the-record findings, first by explaining that: “The primary question  
23 for this court is, to what did [Ms. Hill] consent? And how did she manifest that  
24 consent to [Mr. Bauer]?” *Id.* at Tr. 584:4–6. Judge Gould-Saltman then recited the  
25 record of testimony and evidence she received that bore on those questions,  
26 including:



- 1 • “In written exchange [Ms. Hill] said that ‘she wanted all the pain.’ Those  
2 were her words. Should [Mr. Bauer] have believed her?” *Id.* at Tr.  
3 584:7–9.
- 4 • “In written communication [Ms. Hill] said she wanted to be choked out.  
5 [Mr. Bauer] sought clarification as to whether she meant ‘out,’ as in  
6 unconscious, and [Ms. Hill] replied in the affirmative. Should [Mr.  
7 Bauer] have believed her?” *Id.* at Tr. 584:10–14.
- 8 • “We consider that, in the context of a sexual encounter, when a woman  
9 says ‘No,’ she should be believed. So what about when she says ‘Yes?’”  
10 *Id.* at Tr. 584:15–17.
- 11 • “[Ms. Hill] testified that she did not consent to being punched to the  
12 point of having black eyes and having to be hospitalized. Having black  
13 eyes and being hospitalized were the potential consequences of the  
14 activities, including some of which [Ms. Hill] acknowledged that she  
15 did consent to, such as being choked.” *Id.* at Tr. 584:18–23.
- 16 • “The only evidence of anything which happened while [Ms. Hill] was  
17 unconscious was having been hit on the butt in the parties’ first  
18 encounter. Other acts occurred while [Ms. Hill] was conscious. She  
19 testified that she wasn’t able to speak part of that time but [Mr. Bauer]  
20 couldn’t know that. On at least one occasion, when [Mr. Bauer] was  
21 doing something [Ms. Hill] didn’t want and she couldn’t speak, she  
22 motioned to him and he did stop. On another, she used the first part of  
23 their agreed safe word and he did stop.” *Id.* at Tr. 584:24–585:4.<sup>4</sup>
- 24 • “[Mr. Bauer] did not pursue [Ms. Hill]. He did not threaten or coerce  
25 her into sexual activity. And he didn’t threaten her after they had  
26 engaged in sexual activity.” *Id.* at Tr. 585:5–8.
- 27 • “[Ms. Hill] complains in her testimony that one of her problems has  
28 been her desire to seek attention. Communications to her friends, which  
are entered into evidence, indicate she was excited for the attention to

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<sup>4</sup> This is a particularly important factual finding. In Ms. Hill’s Counterclaim, she alleges that Mr. Bauer anally penetrated her without her consent when she was unconscious. Compl. ¶¶ 2, 18–19, 42–44, 51–52. That allegation forms the basis of much of her Counterclaim. But the state court judge already considered the evidence, including Ms. Hill’s lengthy testimony, about what occurred while she was allegedly unconscious, and rejected these very allegations about anal sex that Ms. Hill now reasserts in her Counterclaim, not to mention Ms. Hill herself already testified in the DVRO Proceeding that the entire April 22, 2021 encounter was consensual.

1 her and, eventually, the damage that attention would have on [Mr.  
2 Bauer].” *Id.* at Tr. 585:9–14.

3 Based on these clear findings of fact, the judge concluded that:

- 4 • “Let me be clear. The injuries as shown in the photographs are terrible.  
5 Under most circumstances, merely seeing photographs such as those  
6 would serve as a per se condemnation of the perpetrator of such injuries.  
7 ***But [Ms. Hill] had and has the right to engage in any kind of sex as a  
8 consenting adult that she wants to with another consenting adult.***” *Id.*  
9 at Tr. 585:15–21 (emphasis added).
- 10 • “***She was not ambiguous about wanting rough sex in the parties’ first  
11 encounter and wanting rougher sex in the second encounter. [Ms.  
12 Hill] was asked by [Mr. Bauer] to decide whatever she wanted to let  
13 [Mr. Bauer] know was off limits, and she did.***” *Id.* at Tr. 585:22–26  
14 (emphasis added).
- 15 • “***If she had set limits and he had exceeded them, this case would be  
16 very clear. But she set limits without fully considering all of the  
17 consequences and [Mr. Bauer] did not exceed the limits that [Ms. Hill]  
18 set.***” *Id.* at Tr. 585:27–586:2 (emphasis added).

19 The judge then denied Ms. Hill’s request for a long term DVRO and dissolved the  
20 temporary restraining order. *Id.* at Tr. 587:8–11. Given the detailed nature of Judge  
21 Gould-Saltman’s ruling (not to mention the statutory requirements), it is beyond  
22 dispute that the issue of whether a sexual assault or battery occurred in the two  
23 encounters between Ms. Hill and Mr. Bauer was a critical and necessary part of her  
24 decision to deny Ms. Hill’s DVRO Petition. *Robinson v. Brown*, 2014 WL 1779460,  
25 at \*10 (E.D. Cal. May 5, 2014) (requirement that issue must be necessarily decided  
26 in first proceeding is met when “the judgment depends on a given determination and  
27 when ‘the final outcome hinges on it’”) (citing *Bobby v. Bies*, 556 U.S. 825, 834–45  
28 (2009)).

**4. The decision in the DVRO Proceeding was final and on the merits.**

There can be no dispute that the finality requirement is met. The DVRO  
Proceeding was a full four-day hearing where Mr. Bauer and Ms. Hill were

1 represented by counsel. *Salisbury*, 974 F. Supp. 2d at 1289 (finality requirement met  
2 where restraining order at issue was product of a one-day hearing and both parties  
3 were represented by counsel). “That the parties were fully heard, that the court  
4 supported its decision with a reasoned opinion, that the decision was subject to appeal  
5 or was in fact reviewed on appeal, are factors supporting the conclusion that the  
6 decision is final for the purpose of preclusion.” Restatement (Second) of Judgments  
7 § 13 cmt. g (1982). All of those factors are present in this case. The state court held  
8 a hearing, reached the merits of Ms. Hill’s petition, and issued an order denying her  
9 petition for a DVRO and explaining its decision. Ms. Hill had a statutory right to  
10 appeal the court’s decision, although she did not do so. As a result, the state court’s  
11 order is clearly final for issue preclusion purposes. *Salisbury*, 974 F. Supp. 2d at 1289  
12 (“That decision has not been appealed and is therefore final.”).

13 **5. The parties are the same in both proceedings.**

14 As with the finality requirement, there can be no dispute that the parties—Ms.  
15 Hill and Mr. Bauer—are the same in both proceedings.

16 **VI. CONCLUSION**

17 In the prior proceeding captioned *In re Matter of Hill/Bauer*, Case No.  
18 21STRO03198, the Los Angeles Superior Court found by a preponderance of the  
19 evidence—the same standard of proof as in this civil lawsuit—that Mr. Bauer did not  
20 commit any sexual assault or battery against Ms. Hill on April 22, 2021 or on May  
21 16, 2021. Thus, Ms. Hill is precluded from seeking civil tort damages in this lawsuit  
22 based on alleged battery and sexual battery that the Los Angeles Superior Court ruled  
23 fully and finally never occurred. The Court should dismiss with prejudice Ms. Hill’s  
24 Counterclaim Complaint in its entirety.

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Dated: September 13, 2022

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