Torsten M. Bassell, Esq. (SBN: 249331)
Nicole Lari-Joni, Esq. (SBN: 252451)
LARI-JONI & BASSELL, LLP
11661 San Vicente Boulevard, Suite 203
Los Angeles, CA 90049
Telephone: (310) 803-9088
Facsimile: (310) 803-9084

Attorneys for the Plaintiffs,
DEANN FATTORINI and FERDINAND FATTORINI

Electronically FILED by Superior Court of California, County of Los Angeles 11/09/2026 11:36 PM David W. Slayton, Executive Officer/Clerk of Court, By M. Pratt, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEANN FATTORINI and FERDINAND FATTORINI,

Plaintiffs,

v.

SHAWNE MERRIMAN; MONICA MAASS; ELIAS WEHBE; WARWICK LA; THE HIGHLIGHT ROOM; J.P. CASTRO; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 19STCV25769
Assignment: Hon. Lawrence Cho (Dept K)
Filing Date: July 19, 2019
Trial Date: August 4, 2025

PLAINTIFFS' OPPOSITION TO DEFENDANT ELIAS WEHBE'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF TORSTEN M. BASSELL

Date: December 4, 2026
Time: 10:00 a.m.
Department: K

COME NOW the Plaintiffs, DEANN FATTORINI and FERDINAND FATTORINI, and hereby submit their Opposition to Defendant Elias Wehbe's Motion for Judgment Notwithstanding the Verdict. This Opposition is based on the following Memorandum of Points and Authorities, the Declaration of Torsten M. Bassell, the records and file herein, and such evidence and argument as may be presented at the hearing of this matter.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Wehbe brings his motion for judgment notwithstanding the verdict after a long history of making the exact same arguments to this Court and the one that handled Wehbe's original demurrer and MSJ. Not only did the prior judge reject the arguments, but this Court read, considered, and rejected them on multiple occasions during trial on Wehbe's motion for nonsuit/directed verdict, arguments on jury instructions, and post-trial objections to the proposed judgment. The current arguments are also contrary to the position that Wehbe took post-trial originally, when he proposed that his negligence percentage be combined with Merriman's percentage since they were found to be co-conspirators in negligence.

As discussed in further detail below, Plaintiffs request this Court deny this new attempt at winning an argument that has been rejected throughout this case. Plaintiffs ask the Court to deny the motion for judgment notwithstanding the verdict.

II. FACTUAL AND PROCEDURAL BACKGROUND

The following additional factual and procedural background is being provided to supplement what has already been provided in the opening brief. It is being provided as a small smattering of what all the substantial evidence was in Plaintiffs' case, as Plaintiffs have had only ten days to oppose the JNOV motion, which motion Wehbe has had almost a year to prepare. Nevertheless, these facts alone would be more than enough for the Court to deny Wehbe's motion under the standards before this Court applicable to ruling on a motion for JNOV.

A. Wehbe Sends Kim Fattorini Text Messages Asking Her to Come to His House to Consume Cocaine

Wehbe's motion for JNOV avoids reference to a significant amount of factual evidence that was admitted in the trial, which jurors could take any number of reasonable inferences from in reaching their conclusions on conspiracy to commit negligence. One of the first most prominent aspects of the

evidence was Defendant Wehbe's messages to Kimberly Fattorini on 07/21/2017 in which he asks her to come to her house to consume "blow" (aka cocaine) which he expects to receive from his dealer shortly after sending the message. (See admitted Trial Ex. 139-4 attached hereto as Exhibit A.)

B. Wehbe Sends JP Castro Text Messages Informing Him That He Has Women Over, He Has Them Consuming Cocaine, and He Is Putting One to Sleep for Someone to "Bang Her"

After Kimberly Fattorini arrived at Wehbe's residence, Wehbe coordinated with JP Castro to come join him, as he was already entertaining women with cocaine and trying to put one to sleep for another contact to "bang" her (aka have sex with her). The evidence was admitted at trial and was substantial evidence that Wehbe was involved in a scheme to drug women to make them more willing to engage in sexual relations, as he was "putting her to sleep". (See admitted Trial Ex. 138-3 to 138-7 attached hereto as Exhibit B.) He later claimed to Castro that he had sent the girl to Castro in a coordinated plan to offer him up to him while inebriated.

C. Wehbe Contacts Shawne Merriman to Come Get Kim and Take Her Off His Hands and Then Proceeds to Escort Her Inebriated to an Uber for Merriman

It was established at trial that Wehbe knew that Shawn Merriman had a history of using GHB. (See Ex. C, Page 46 - Transcript Excerpts of Elias Wehbe on 08/18/2025.) Both Wehbe and Merriman would see each other doing it while out partying. (*Id.*) Wehbe also recognized Merriman often being out stumbling and woozy, almost falling over as he would be on GHB. (*Id.* at Page 118 to Exhibit C). Wehbe also knew the effects of GHB on people that were intoxicated. (*Id.* at Page 45 to Ex C.) It would make them really disoriented, stumble, and get extremely inebriated. (*Id.*) At one point in the trial as well, Wehbe responded to Plaintiffs' counsel upon questioning about who had brought the GHB over that Plaintiffs' counsel "know[s] the name", implicated Shawn Merriman as the one who brought GHB to his home. (*Id.* at Pg. 143-144 to Ex. C.)

Yet, Wehbe with this knowledge, sent text messages to Shawn Merriman on July 21, 2017, in which he boasted about having "whores over" (including Kim's name), who he wanted Merriman to

take off his hands. (See admitted Trial Exhibit 140-2 attached hereto as Exhibit D.) Merriman and Wehbe discussed Merriman coming over and taking Kim to a hotel because he wasn't in the mood for games. (*Id.*) When Merriman arrived as planned to take Kim from Wehbe, after she was already inebriated, Wehbe admitted at trial that she was drunk and messed up. (See Ex. C, Pages 118 and 121.) As coordinated, Wehbe assisted Merriman in walking Kim to the door and taking her while in her inebriated state. (*Id.*) He did this with the full knowledge from her text message at 9:20 or thereabouts that morning that she claims Wehbe's friend put GHB in her drink. (*Id.* at pg. 119.)

D. Wehbe Communicates With Castro, Merriman, and Maass After They Left His Home and Held Multiple Meetings with Them After Kim's Death to Get Their Stories Straight

It was uncovered during trial that, in addition to the text messages sent between Wehbe and Castro while Castro, Merriman and Maass were at Maass's apartment, that Wehbe actively met up on the day of Kim's death and afterwards. The evidence only further served to support the existence of their conspiracy, which under the law as stated by CACI and to the jury, can be implied by the conduct of the conspirators.

E. This Court and the Prior Court Previously Concluded This Was a Jury Issue and That Conspiracy to Commit Negligence Is a Permissible Theory of Liability

Wehbe previously asserted the same arguments that he asserts here to the Court that ruled on his demurrer and MSJ. That judge rejected the arguments and recognized that it was a question of fact for a jury. When arguments were made before this Court on a motion for nonsuit, when jury instructions were discussed and ruled upon, and when Wehbe objected to the proposed judgment, this Court similarly rejected the arguments. As this Court stated at the hearing of Wehbe's objections: "I'm going to find that Defendant Wehbe was found liable for conspiracy to commit negligence, which is a theory of vicarious liability. And therefore, proposition 51 allocation of fault for noneconomic damages does not govern."

III. STANDARDS GOVERNING MOTIONS FOR "JNOV"

Defendant Wehbe moves for judgment notwithstanding the verdict ("JNOV") with regard to conspiracy liability. His JNOV motion repeats the same arguments made by Wehbe on his demurrer, summary judgment motion, nonsuit motion, motion for directed verdict, and objections to Plaintiffs' proposed judgment. The arguments were rejected by this Court and the prior assigned judge at every stage.

Yet, Wehbe continues to assert those prior rulings were wrong. He relies on partial quotes from closing arguments, opening statements, motions, and some general contentions about what the evidence showed. However, the *evidentiary* factual background that Wehbe argues is effectively restricted to 1-2 pages of his memorandum. Even those citations fail to provide ample discussion of the evidence. His exhibits providing support for his citations, which his counsel attached to his declaration, are similarly limited. Wehbe produces minimal and selective excerpts and omits reference to entire days of testimony. For example:

- Wehbe Exhibit I (08/12/25 Day of Examination of Detective Baljet)
    - *Wehbe produces 6 pages of* Detective Baljet's *90 Pages* of Testimony Given on This Date and Omits Reference to Wehbe's Statements That Were Played During the Examination and Filed With the Court
- Wehbe's Exhibit J (08/13/25 Day of Examination of Detective Baljet Continued)
    - *Wehbe Produces 8 Pages of Hundreds* of Pages of Testimony
- Wehbe's Exhibit K (08/18/25 - Day of Examination of Wehbe)
    - *Wehbe Produces 26 Pages of 287* Pages of Testimony
- Wehbe's Exhibit L (08/19/25 - Day of Examination of Wehbe and Castro)
    - *Wehbe Produces 1 Page of 186 Pages* of Wehbe's Testimony and *Completely Omits All 57 Pages of* J.P. Castro's Testimony
- Wehbe's Exhibit M (08/20/25 - Day of Examination of Shawne Merriman)
    - *Wehbe Produces 1 Non-Testimony Page* and *Completely Omits All 107 Pages of* Shawne Merriman's Testimony

- Additionally, Wehbe's Exhibits *OMITS* the Following (not exhaustive list):
    - 150 Pages of Shawne Merriman's Testimony from 08/21/25 Transcript
    - All Pages of His Autobiography That Were Admitted as Exhibits
    - All Phone Records of Wehbe, Maass, and Merriman
    - All Text Messages Exchanged Between Wehbe and All Alleged Co-conspirators
    - All Social Media Posts Admitted
    - All Transcripts of Recordings Played at Trial of Statements to Police

In summary, Wehbe asks this Court to make the determination that there was a lack of substantial evidence to support the judgment, yet Wehbe fails to sustain his burden due to an absolute dearth of supporting evidence. Plaintiffs provide this preliminary summary of evidence supporting Wehbe's motion, as the following rules pertaining to JNOV motions illustrate how Wehbe fails to provide adequate support for this Court to grant a JNOV.

A. JNOV Motions Can Only Be Granted When No Other Reasonable Conclusion Is Legally Deducible From the Evidence

"A judgment notwithstanding the verdict can be sustained only when it can be said as a matter of law that no other reasonable conclusion is legally deducible from the evidence, and that any other holding would be so lacking in evidentiary support that the reviewing court would be compelled to reverse it, or the trial court would be compelled to set it aside as a matter of law . . ." (*Moore v. City of San Francisco* (1970) 5 Cal.App.3d 728, 733.)

B. The Court Does Not Weigh the Evidence or the Credibility of Witnesses in Ruling on JNOV Motions

As noted in *Spillman v. City and County of San Francisco* (1967) 252 Cal.App.2d 782, 786, "The court is not authorized to determine the weight of the evidence or the credibility of witnesses. (Citation.) Even though a court might be justified in granting a new trial, it would not be justified in directing a verdict or granting judgment notwithstanding the verdict on the same evidence." For

example, the jury could have found Wehbe completely lacked credibility, since he lied to the police and gave inconsistent statements at trial and in his deposition. When weighing the other evidence, such as his communications with Merriman and Castro, his assistance to Merriman in taking Kimberly to the Uber, his supplying cocaine to the women at his house, and his comments about putting one of the women to sleep, the jury could reasonably have inferred that he and Merriman conspired to commit negligence. He did not have to intend to kill Kim or intend for Merriman to negligently give Kim too much GHB in her drink. The jury only needed to conclude that he conspired in Merriman's negligence or the overall plan to intoxicate the women, which ultimately resulted in Kim's death. These conclusions are solely within the jury's purview and the evidence the jury used in making such conclusions cannot be reweighed.

C. If Evidence Is Conflicting or Several Reasonable Inferences May Be Drawn, a JNOV Motion Should Be Denied

"If the evidence is conflicting or if several reasonable inferences may be drawn, the motion for judgment notwithstanding the verdict should be denied." (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110.) Here, for example, Wehbe attempts to argue that his self-serving testimony that he made no agreement with Merriman to drug Kim should be controlling. However, there was substantial conflict in the evidence, which must be read in favor of Plaintiffs. Wehbe knew that Merriman used GHB and would bring it with him to party with girls and take them away to have sexual relations with them. He repeatedly told Merriman and Castro that he had been consuming cocaine with the women that were at his house and that he was putting one to sleep. He also knew that Kim was inebriated as he escorted her to the door with Merriman to leave via an Uber, despite having read her text about his friend putting G in his drink. Ultimately, a jury could easily have reasonably inferred that he had conspired with Merriman negligently or otherwise. The jury's determination that he and Merriman were liable for conspiracy to commit negligence establishes that the jury made such a determination, especially since it was made via a general verdict, which implies all findings necessary to support the verdict.

D. Evidence Is Viewed in the Light Most Favorable to the Party Securing the Verdict

"A motion for judgment notwithstanding the verdict of a jury may properly be granted only if it appears from the evidence, *viewed in the light most favorable to the party securing the verdict*, that there is no substantial evidence to support the verdict. If there is any substantial evidence, or reasonable inferences to be drawn therefrom, in support of the verdict, the motion should be denied." (*Brandenburg v. Pac. Gas & Elec. Co.* (1946) 28 Cal.2d 282, 284, italics added.)

Even evidence improperly admitted during trial constitutes "substantial evidence" on a JNOV motion. The proper remedy to review erroneous evidentiary rulings is a motion for new trial or appeal, not a JNOV. (See *Donahue v. Ziv Television Programs, Inc.* (1966) 245 Cal.App.2d 593, 609.)

IV. CIVIL CONSPIRACY LIABILITY IN CALIFORNIA CAN BE BASED ON NEGLIGENCE AND IS NOT LIMITED TO INTENTIONAL TORTS

The fundamental flaw in Defendant Wehbe's arguments is that Wehbe incorrectly believes that a "tortious act" or "civil wrong" refers only to intentional torts. They do not. As noted in clear bold type within the Rutter Group's Personal Injury treatise: "**Not limited to intentional torts:** The tortious act that forms the basis for liability need not constitute an intentional tort. A conspirator may be liable where the predicate act is only negligent (or reckless)." (Haning et al., Cal. Practice Guide: Personal Injury (The Rutter Group 2026) ¶ 2:956.1, emphasis in original, citing *Navarrete v. Meyer* (2015) 237 Cal.App.4th 1276, 1293-1294.) As discussed below, the law clearly authorized the jury to find Wehbe liable on the basis of conspiracy to commit negligence without a separate requirement that Wehbe engage in an intentional tort.

A. Conspiracy to Commit Negligence Is Recognized as a Basis for Conspiracy Liability by the Most Recent California Authority on the Subject

In *Navarrete v. Meyer* (2015) 237 Cal.App.4th 1276, 1293, the defendant made the *identical* arguments made by Wehbe in his JNOV motion. Specifically:

> *[Defendant] finally argues*, relying on federal or out-of-state authorities, that because [the plaintiff] only alleged [that co-conspirator] was negligent and the

> evidence does not permit a finding that either she or [co-conspirator] intended to harm anyone, there is no basis for liability; *that there cannot be a civil conspiracy to commit a negligent act.* We acknowledge *there is a split within out-of-state authorities, most of which hold that parties cannot conspire to commit a negligent or unintentional act* and such a conspiracy is a legal impossibility. ¶ *But the law in California remains that a civil conspiracy requires an express or tacit agreement only to commit a civil wrong or tort, which then renders all participants "responsible ... for all damages ensuing from the wrong ...*
>
> (*Navarette*, *supra*, at pg. 1293, italics added, footnote 5 omitted.)

In other words, *Navarette* recognized that California is unique from any other jurisdictions in recognizing negligence actions as the type of wrongful conduct that supports a conspiracy finding. An example of this is easily found within *Navarette* where the Court of Appeal noted that the evidence only need raise an issue of a tort, such as the defendant and his co-conspirator exceeding the speed limit regardless of what the end result might prove to be. (*Id.* at pg. 1293-1294.) As the Court of Appeal told the defendant in *Navarette*, his authorities, "while they involve intentional torts, do not expressly limit conspiracy liability to instances where participants direct their tortious or unlawful acts at a particular person." (*Id.* at 1293.)

It also bears mentioning that the discussion in *Navarrete* considers and references the vast majority of cases cited by Wehbe to support his arguments on Pages 7-8 of his Memorandum regarding "Civil Conspiracy Cannot Be Predicated on Negligence as a Matter of Law". (See e.g. *Navarrete*, *supra*, 237 Cal.App.4th 1276, 1293-1294 and footnote 5 [discussing *U.S. v. Sdoulam*; *Wright v. Brooke Group*; *Sonnenreich v. Philip Morris*; *Sackman v. Liggett*; *Koehler v. Pulvers*; *Wyatt v. Union Mortgage*; *Applied Equipment*; and *Kidron v. Movie Acquisition Corp*.) However, *Navarrette* explicitly rejected such arguments and citations. It affirmed that one can conspire in the tort of negligence. Yet, Wehbe brazenly cites *Navarrete* to this Court for the proposition that conspiracy to commit negligence is not permitted in California. This Court should reject such arguments and deny the motion for JNOV, as it and the prior court have already on Wehbe's previous attempts.

B. <u>The Reason Conspiracy to Commit Negligence Is Legally Sound Is That Negligence Qualifies as a "Tortious/Wrongful Act" or "Civil Wrong"</u>

Wehbe cites to the case of *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510-511, for the bare proposition that conspiracy is not an independent tort. (See Wehbe Memorandum, Pg. 7 Ln 20.) Plaintiffs do not disagree with such a pronouncement. However, *Applied* also generally described the elements of civil conspiracy. (*Applied*, *supra*, at pg. 511.) Citing to its own precedent, the California Supreme Court explained: "... 'In such an action the major significance of the conspiracy lies in the fact that it renders each participant in *the wrongful act* responsible as a joint tortfeasor for all damages ensuing from the wrong, irrespective of whether or not he was a direct actor and regardless of the degree of his activity.' " (*Id.*, italics added.) In other words, it is the "wrongful act" by a co-conspirator that sets off conspiratorial liability. The term, however, is not restricted to "intentional torts" as Wehbe attempts to argue.

The term "wrongful act" has seen various iterations throughout case law. For example, Wehbe cites to *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1581, which refers to "wrongful act" as a "tortious act". The *Kidron* court derived "tortious act" from the term "civil wrong" that was used in *Youst v. Longo* (1987) 43 Cal.3d 64, 79. In *Youst*, the California Supreme Court noted: "[T]he conspirators must agree to do some act which is classified as a 'civil wrong'." (*Id.*)

Wehbe seeks to avoid the true historical meaning of a "civil wrong", "wrongful act", or "tort" in hopes of re-defining it to mean "intentional tort" or something where all co-conspirators were direct actors with intent. However, as noted by the California Supreme Court in *de Vries v. Brumback* (1960) 53 Cal.2d 643, 649-650:

> There is a clear distinction in the law of conspiracy as applied to criminal as differentiated from civil cases. (Citations).[1] The gist of the crime of conspiracy is the agreement to commit the unlawful act (Citations), *while the gist of the tort is the damage resulting to the plaintiff from an overt act or acts done pursuant to the common design*. (Citations.) *In tort "the major significance of the conspiracy lies*

[1] It bears noting that the distinction between civil and criminal conspiracy is also important when reviewing the criminal case citations in Wehbe's brief, which effectively attempts to use criminal conspiracy citations such as used in *People v. Koenig* and bootstrap them to civil conspiracy law, which is a different animal entirely.

> *in the fact that it renders each participant in the wrongful act responsible as a joint tort-feasor for all damages ensuing from the wrong, irrespective of whether or not he was a direct actor and regardless of the degree of his activity.*" (Citation.)
>
> (Emphasis added.)

While *de Vries* was a continuing conspiracy case, the distinction the California Supreme Court made is important as it reveals how one need not be a direct actor in the tort. Moreover, the term "wrongful act" or "civil wrong" has long been used to refer to negligently tortious conduct. For example, in *Barrett v. Superior Court* (1990) 222 Cal.App.3d 1176, 1191, the Court of Appeal addressed the term in the context of the wrongful death statute Code of Civil Procedure section 377.[2] In response to a challenge regarding the meaning of "wrongful act" as used in the wrongful death statute, the Court of Appeal reached "the conclusion that the term 'wrongful act', as used in section 377, means any *tortious act*." (*Id.*, italics in original.) In fact, as the Court of Appeal further explained:

> [A]pplying the doctrine of *ejusdem generis* to the phrase "wrongful act or neglect," we first conclude that "neglect" is a specific word, an example of one kind of "wrongful act." Thus, the term "wrongful act" must define a class of behavior, of which "neglect" is a member. Defendant urges that the class defined by "wrongful act" consists of willful or intentional torts; yet negligence is not a willful or intentional tort. On the other hand, 'wrongful act' has been defined in other cases as meaning simply any tortious conduct, i.e., any act for which the defendant may be liable in tort. This definition of 'wrongful act' would include not only intentional and willful torts, but strict products liability as well. Such a definition would serve the public policies behind both the wrongful death statute and strict products liability, and, as noted above, makes sense, given the rationale behind the use of the doctrine of *ejusdem generis* in the interpretation of statutory language.
>
> (*Id.*, underscore added, italics in original.)

Other historical examples of the use of this terminology also support the conclusion that the tort of negligence, as a tort and wrongful act, can form the basis of a conspiracy. (See, e.g., *Fackrell v. City of San Diego* (1945) 26 Cal.2d 196, 210 [negligence is not the act itself but is a fact which defines the

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[2] Code of Civil Procedure section 377 no longer exists, as it was recodified in 1992 with the survivor statutes into various subsections, such as C.C.P. § 377.60. However, the discussion in *Barrett* continues to be relevant to the wrongful death due to negligence in this case.

character of an act in respect to its being a "civil wrong"].) By analogy, there are a number of cases involving negligent drunk driving and intoxicated driving that also are considered to be wrongful and heinous conduct even though they are still categorized as negligent. Defendant Wehbe simply wishes to misconstrue the conspiracy elements to require an intentional tort by Wehbe to establish conspiracy liability, however California case law does not support such a proposition.

C. The Evidence Demonstrated a Common Plan and Scheme to Get Kimberly Fattorini Intoxicated and Taken Away by Shawne Merriman

Defendant Wehbe argues that you cannot plan to be negligent. However, as noted earlier, negligence is not the act itself but is a fact which defines the character of an act in respect to it being a civil wrong. (See, e.g., *Fackrell v. City of San Diego* (1945) 26 Cal.2d 196, 210.) To put it another way, Wehbe, Merriman, Maass, and Castro were perfectly capable of being part of a general scheme or plan to get Kim intoxicated to make it easier to do what they wanted with her and to move her from Eli Wehbe's house. Such a scheme is a civil wrong and wrongful act, which one can conspire to do. The ultimate result of Kim being given too much drugs by Merriman to the point of her dying does not need to be intended by the co-conspirators such as Wehbe, so long as Wehbe intended to conspire in the original scheme. There was substantial evidence of that conspiring by Wehbe in the scheme at trial, as he pushed Kim to come to his house and consume cocaine, provided cocaine on a plate to Kim and the other women at his house, invited Merriman over to take her from him, knew of his history with GHB and that he was not in the mood for games, and escorted Kim into an Uber with Merriman while Kim was intoxicated with full knowledge that she had texted him moments earlier that his friend and dosed her with GHB.

The jury instruction provided by the Court in this matter on the essential factual elements of conspiracy support this conclusion. The Court read CACI 3600, which explained to the jury that: (1) "A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged coconspirators" and (2) "Plaintiffs are not required to prove that each defendant personally committed a wrongful act or that they knew all the details of the agreement or the identities of all the other participants." The instruction also clarified that the

"agreement" to commit a wrongful act may be "implied by the conduct of the parties". Given all the evidence in the trial, which included admitted exhibits of cell phone records, text message communications, toxicology levels showing excessive amounts of GHB in Kim's blood, communications between alleged co-conspirators after Kim's death, communications between co-conspirators at the scene while police had just arrived, Wehbe's attempts to coordinate their stories, Wehbe's lies to the police, as well as Wehbe's own admissions from his autobiography about how he used women to satisfy celebrities like Merriman and his history of knowing that Merriman used GHB and that they both "partied with it", as well as his assistance in putting Kim while inebriated into the Uber, all were more than substantial enough evidence for a jury to conclude that he conspired to commit negligent which resulted in the wrongful death of Kimberly Fattorini.

D. <u>Defendant Wehbe's Motion Ignores the Separate Basis of Conspiracy Liability - i.e. Ongoing Conspiracy</u>

Defendant Wehbe has consistently attacked the concept of conspiratorial liability by focusing on Wehbe's contention that he didn't know Merriman was going to drug Kim Fattorini. Setting aside for the sake of argument whether he knew before Merriman drugged Kim, there was ample evidence that a jury could have concluded that Wehbe joined the conspiracy at a later time. The Court permitted CACI 3601 and instructed the jury as follows: "If you decide that a defendant joined the conspiracy to commit negligence or battery, then that defendant is responsible for all acts as part of the conspiracy, whether they occurred before or after that defendant joined the conspiracy." In other words, the jury could potentially have concluded that Wehbe joined the conspiracy at a later time but was responsible for all the acts of the conspiracy, even if some of the acts, such as providing GHB had occurred prior to Wehbe's joining the conspiracy. This could easily be supported by the fact that Kim texted Wehbe about the GHB being put in her drink, she showed the signs of someone inebriated on GHB, and yet Wehbe's joining the conspiracy after that was shown by his helping Kim into the car with the person he believed would have provided the GHB and he knew "partied with it". He also knew that Merriman was "in no mood for games" and that he intended to take her to a hotel originally. When she was in such a state at his home, he could have prevented her from leaving, taken her to the hospital, called an

ambulance, or done any number of things, but instead he chose to put her into the Uber with Shawne Merriman despite everything he knew. As such, he could have easily been found liable for joining an ongoing conspiracy, which is an independent ground for liability that is not addressed by Wehbe's motion for JNOV. On that ground alone, this Court should deny the JNOV.

V. THIS COURT ALREADY REJECTED DEFENDANT'S ARGUMENT REGARDING APPORTIONMENT AND SHOULD DENY THIS REPEAT ATTEMPT

For over a year, the judgment in this action was delayed from being entered due to the objections of Wehbe.

First, the jury's general verdict found in favor of Plaintiffs on Plaintiffs' conspiracy to commit negligence claim against Merriman and Wehbe. Those findings created "joint and several" liability against Merriman and Wehbe regardless of any apportionment percentages set forth under Question 26 of the jury's general verdict. (See, e.g., *Kesmodel v. Rand* (2004) 119 Cal.App.4th 1128, 1142-1143 [civil conspiracy liability creates joint and several liability; several liability for noneconomic damages under Civil Code section 1431.2 is inapplicable to tortfeasors that are members of a civil conspiracy].)

On October 31, 2025, Wehbe acknowledged the correctness of this legal principle in "Defendant Elias Wehbe's Objections to Plaintiffs' Proposed Judgment on Jury's General Verdicts" (hereafter "Wehbe's First Objection"). In Wehbe's First Objection, Wehbe noted the conspiracy findings and acknowledged that Merriman and Wehbe should be jointly and severally liable for each other's respective negligence. (See Pg. 2 Ln. 18-26 to Wehbe's First Objection.) Although Plaintiffs and Wehbe disagreed with respect to the joint and several liability pertaining to Maass and Castro, Wehbe's First Objection contended that the Court should make him jointly and severally liable with Merriman for $2,520,000.00. (See Pg. 2 Ln 23-26 to Wehbe's Objection [although Wehbe disputes that he should be jointly and severally liable for Castro/Maass negligence, he requests that this Court reduce the $3,960,000.00 (i.e. 99% of the damages awarded) by $1,440,000.00, which would equate to a judgment against him for $2,520,000.00].)

When the Court held the hearing on those objections, the Court agreed that the allocation for negligence needed to be combined such that the defendants were jointly and severally liable for 99% on

of the damages (with the added exception of 100% for Merriman due to the finding of battery against him.) This had already been prepared in Plaintiffs' original draft, but Plaintiffs prepared a revised parred down draft per the Court's order. However, that revised draft was again objected to by Wehbe.

Unfortunately, when the Court switched the non-appearance judgment review hearing to an appearance hearing only seven days before the March 30, 2025 appearance hearing took place, Plaintiffs' counsel was already out of the country and counsel's staff did not receive notice of the hearing at the electronic service address on file with the court. As a result, Plaintiffs' counsel missed the March 30 hearing, and the Court ordered Wehbe's counsel to revise the judgment. Plaintiffs waited for months for the revised judgment from Wehbe's counsel to be filed and served, only to receive service of the identical proposed judgment that Plaintiffs submitted at the beginning of 2025. The Court then made some edits to that version, but still entered judgment with 99% allocation of the damages to Wehbe and his co-conspirators. In other words, Wehbe's version, Plaintiffs' version, and the Court's revised version all imposed the same $3,960,000.00 in liability on Wehbe.

Nevertheless, Wehbe is renewing objections again. Separate and apart from the fact that Wehbe can be said to have waived objections at this point by his prior submissions, including his original objections that contended he could be held liable for Merriman's "negligence" percentage, his legal arguments now still do not hold water.

Nothing Wehbe has stated in his brief modifies the rule of law in *Kesmodel v. Rand* (2004) 119 Cal.App.4th 1128, 1142-1143, namely that civil conspiracy liability creates joint and several liability for noneconomic damages. This principle was also reflected in the quote made earlier in this brief in the case of *de Vries v. Brumback* (1960) 53 Cal.2d 643, 649-650: "In tort 'the major significance of the conspiracy lies in the fact that *it renders each participant in the wrongful act responsible as a joint tort-feasor for all damages ensuing from the wrong, irrespective of whether or not he was a direct actor and regardless of the degree of his activity*.' (Citation.)" (Italics added.)

Finally, Defendants Castro and Maass were defaulted defendants. At trial, there were multiple discussions with the Court about how liability did not need to be proven against them because it is established by their being in default. This is consistent with the law regarding defaults. When it comes to defaults, plaintiff only needs to establish a prima facie case for judgment on the complaint's

allegations against the defaulted defendant. (See *Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361-362 [finding the trial court erroneously applied a preponderance of the evidence standard to a plaintiff's default prove-up of damages].) This prima facie case is established as to liability and theories of liability by simply referring to the allegations in the complaint, because, when a defendant permits his or her default to be entered, the defaulted defendant is deemed to confess and admit all material allegations in the complaint against him or her. This was succinctly summarized in *Fitzgerald v. Herzer* (1947) 78 Cal.App.2d 127, 131-132, wherein the Court of Appeal explained:

> *By permitting his default to be entered he confessed the truth of all the material allegations in the complaint* (citations) including the allegations of wantonness, recklessness and gross carelessness. (Citation.) *A judgment by default is as conclusive as to the issues tendered by the complaint as if it had been rendered after answer filed and trial had on allegations denied by the answer*. (Citations.) Such a judgment is *res judicata as to all issues aptly pleaded in the complaint* and defendant is estopped from denying in a subsequent action any allegations contained in the former complaint.
>
> (Emphasis added.)

Here, Plaintiffs' complaint alleged against Castro and Maass multiple allegations regarding their involvement in a conspiracy and assisting Merriman and Wehbe with their negligence and alleged battery. At trial, Plaintiffs established Merriman's and Wehbe's involvement in the conspiracy to commit negligence, and Merriman's involvement in the conspiracy to commit battery and aiding-and-abetting negligence. The fact that the defaults constitute conclusive admissions by Maass and Castro that they were involved in those conspiracies is an independent finding that Plaintiffs are entitled to in light of their defaults. Therefore, it was entirely proper to include their percentages of fault in the total fault for damages ascribed to Wehbe in the judgment.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs request the motion be denied.

DATED: 11/09/2026

LARI-JONI & BASSELL, LLP

By: _____

TORSTEN M. BASSELL
Attorneys for the Plaintiffs

DECLARATION OF TORSTEN M. BASSELL

I, Torsten M. Bassell, hereby declare and state:

1. I am an attorney duly licensed to practice law before all the courts of the State of California. I am a partner at the law firm of Lari-Joni & Bassell, LLP, which serves as counsel of record for the Plaintiffs herein. I have personal knowledge of the facts set forth herein, and, if called up on to do so, can and would testify completely to them.

2. Attached hereto as Exhibit A is a true and correct copy of Exhibit 139-1 to 139-6 (text messages between Elias Wehbe and Kimberly Fattorini), which was admitted at the trial in this action.

3. Attached hereto as Exhibit B is a true and correct copy of Exhibit 138-1 to 138-14 (text messages between Elias Wehbe and JP Castro), which was admitted at the trial in this action.

4. Attached hereto as Exhibit C are excerpts from the certified transcript of the trial in this action on August 18, 2025, which contain excerpts of Wehbe's testimony.

5. Attached hereto as Exhibit D is a true and correct copy of Exhibit 140-1 to 140-10 (text messages between Elias Wehbe and Shawne Merriman), which was admitted at the trial in this action.

I swear under the penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 9th day of November in the year 2025.

Torsten M. Bassell
Declarant

PROOF OF SERVICE

STATE OF CALIFORNIA – COUNTY OF LOS ANGELES:

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 11661 San Vicente Boulevard, Suite 203, Los Angeles, CA 90049.

I am readily familiar with the business practices at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the regular course of business.

On **11/09/2026** , I served the within **PLAINTIFFS' OPPOSITION TO DEFENDANT ELIAS WEHBE'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF TORSTEN M. BASSELL** on the interested parties in said action by the following methods of delivery (method of service indicated on per party basis on attached service list):

xxx I *electronically* served the foregoing documents from an email address from my law firm's electronic service domain address of "ljblaw.com" to the electronic service domain addresses for the attorneys' or their employees' from the following law firms:

xxx By placing true copies thereof in sealed envelope(s), with postage thereon fully prepaid, in the United States *mail* at Los Angeles, California, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **11/09/2026**, at Los Angeles, California.

Torsten Bassell
(Print Name)

(Signature)

ATTACHED SERVICE LIST

COUNSEL/PARTY	SERVICE METHOD
Scott L. MacDonald, Esq. Elizabeth C. Tingen, Esq. MACDONALD & CODY, LLP 28 Executive Park, Third Floor Irvine, CA 92614 Telephone: (714) 831-1713 Facsimile: (714) 823-3229 Electronic: smacdonald@macdonaldcody.com mfleischman@macdonaldcody.com Attorneys for the Defendant: **ELIAS WEHBE**	☐ Mail ☐ Express Mail ☐ Overnight ☒ Electronic ☐ Facsimile ☐ Personal
Dean Olson, Esq. 555 South Flower Street, Ste 2400 Los Angeles, CA 90071 Telephone: (213) 891-9100 Facsimile: (213) 488-1178 Electronic: dolson@clarkhill.com mcervantes@clarkhill.com Attorneys for the Defendant: **SHAWNE MERRIMAN**	☐ Mail ☐ Express Mail ☐ Overnight ☒ Electronic ☐ Facsimile ☐ Personal
Laurie N. Stayton, Esq. LEWIS BRISBOIS 633 West 5th Street, Suite 4000 Los Angeles, CA 90071 Telephone: (213) 358-6134 Facsimile: (213) 250-7900 Electronic: Laurie.Stayton@lewisbrisbois.com Matthew.Trejo@lewisbrisbois.com laqualia.oliver@lewisbrisbois.com Attorneys for the Defendants: **THE HIGHLIGHT ROOM; TAO GROUP HOLDINGS LLC; and, TG HOSPITALITY GROUP LLC**	☐ Mail ☐ Express Mail ☐ Overnight ☒ Electronic ☐ Facsimile ☐ Personal

ATTACHED SERVICE LIST

COUNSEL/PARTY	SERVICE METHOD
Matthew C. Wolf (SBN 223051) Lauren K. VanDenburg (SBN 299957) TURNER HENNINGSEN WOLF & VANDENBURG, LLP 707 Wilshire Boulevard, Suite 3700 Los Angeles, California 90017 Telephone: (323) 653-3900 Facsimile: (323) 653-3021 Electronic: mwolf@thwvlaw.com lvandenburg@thwvlaw.com Attorneys for Defendants, **SUNSET WILCOX, LLC dba THE WARWICK**	☐ Mail ☐ Express Mail ☐ Overnight ☒ Electronic ☐ Facsimile ☐ Personal
Charles T. Meyer, Esq. BURGER, MEYER & D'ANGELO, LLP 999 Corporate Drive, Suite 225 Ladera Ranch, CA 92694 Telephone: (949) 427-1888 Facsimile: (949) 427-1889 Electronic: cmeyer@burgermeyer.com Association Counsel for the Defendants: **THE HIGHLIGHT ROOM; TAO GROUP HOLDINGS LLC; and, TG HOSPITALITY GROUP LLC**	☐ Mail ☐ Express Mail ☐ Overnight ☒ Electronic ☐ Facsimile ☐ Personal
J.P. Castro 11280 Green Glen Street Moreno Valley, CA 92557 Defendant in Default	☒ Mail ☐ Express Mail ☐ Overnight ☐ Electronic ☐ Facsimile ☐ Personal
Monica Maass 802 N. West Knoll Drive, Apt 201 West Hollywood, CA 90069-4726 Electronic: mmaass23@gmail.com Defendant in Pro Per	☐ Mail ☐ Express Mail ☐ Overnight ☒ Electronic ☐ Facsimile ☐ Personal

Exhibit "A"

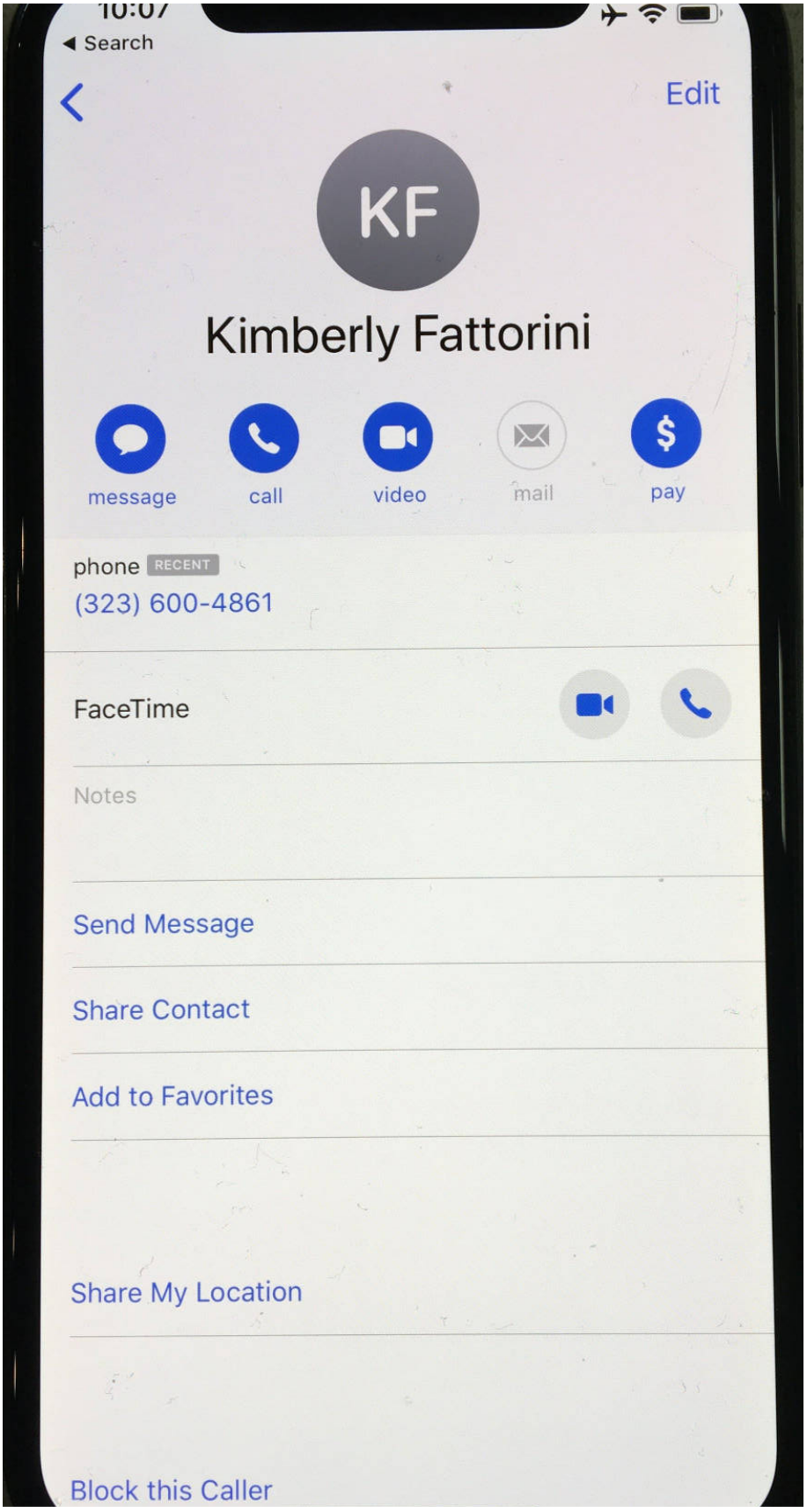
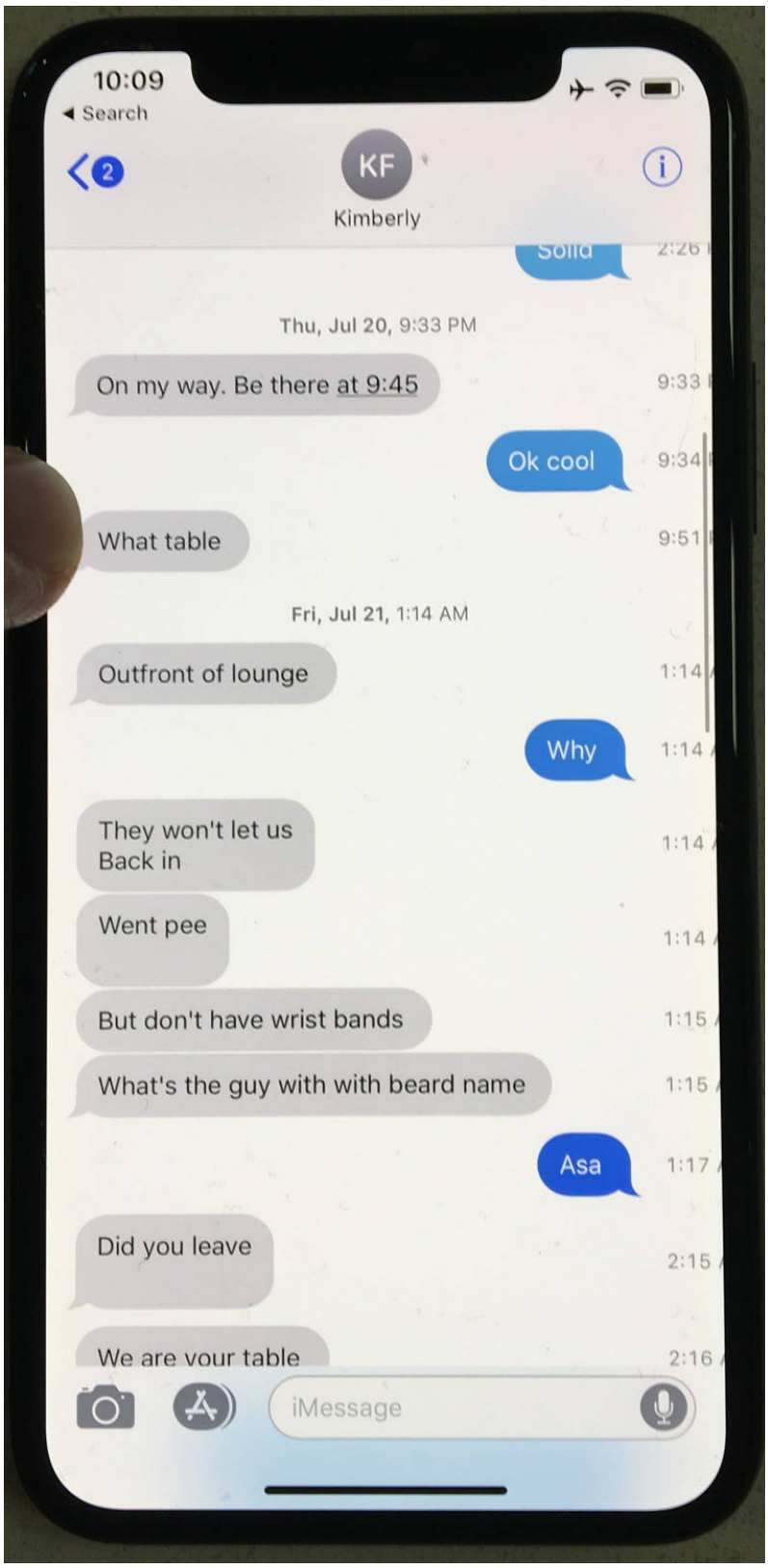


Exhibit 139–1



Exhibit 139–2



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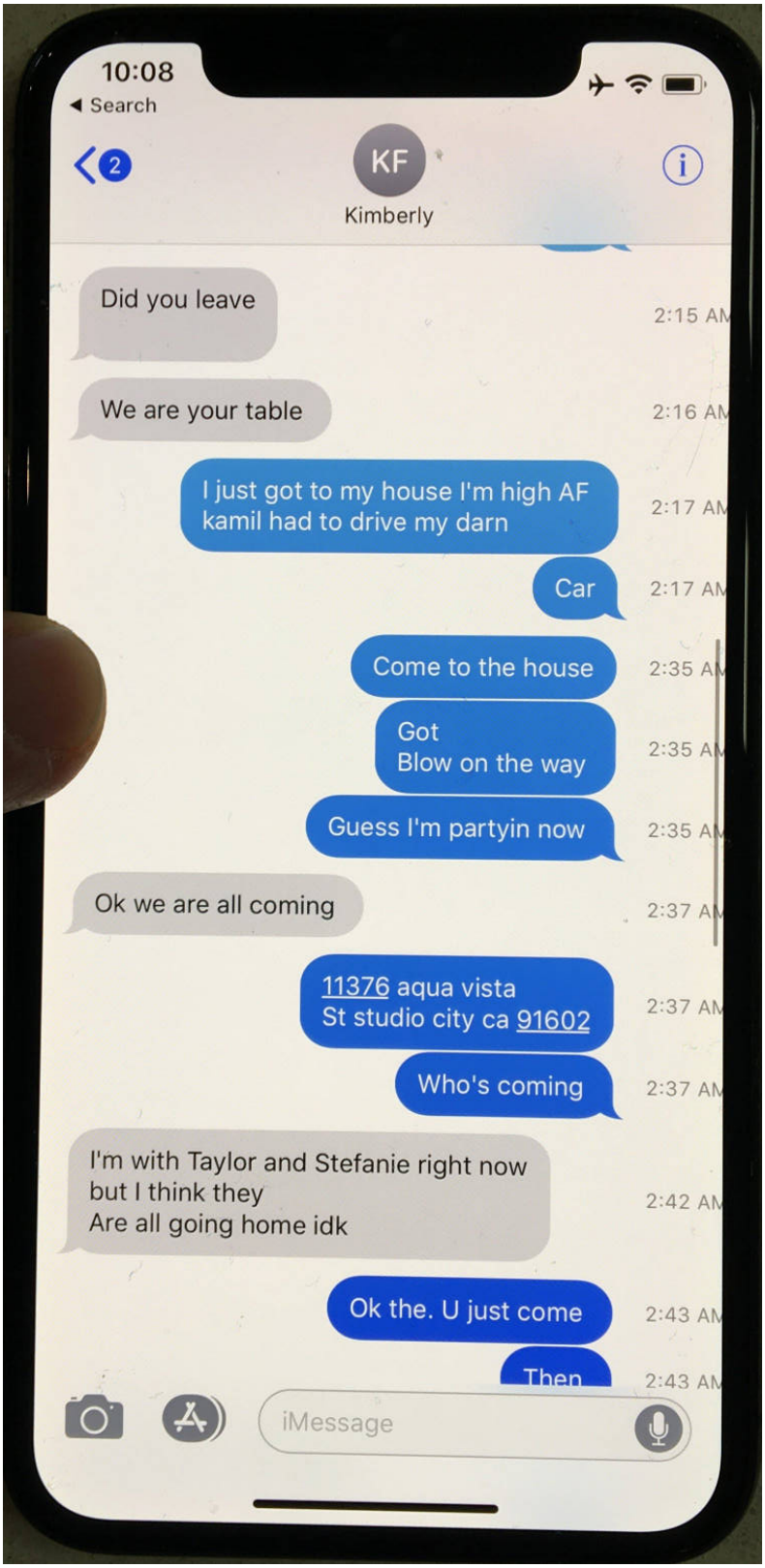

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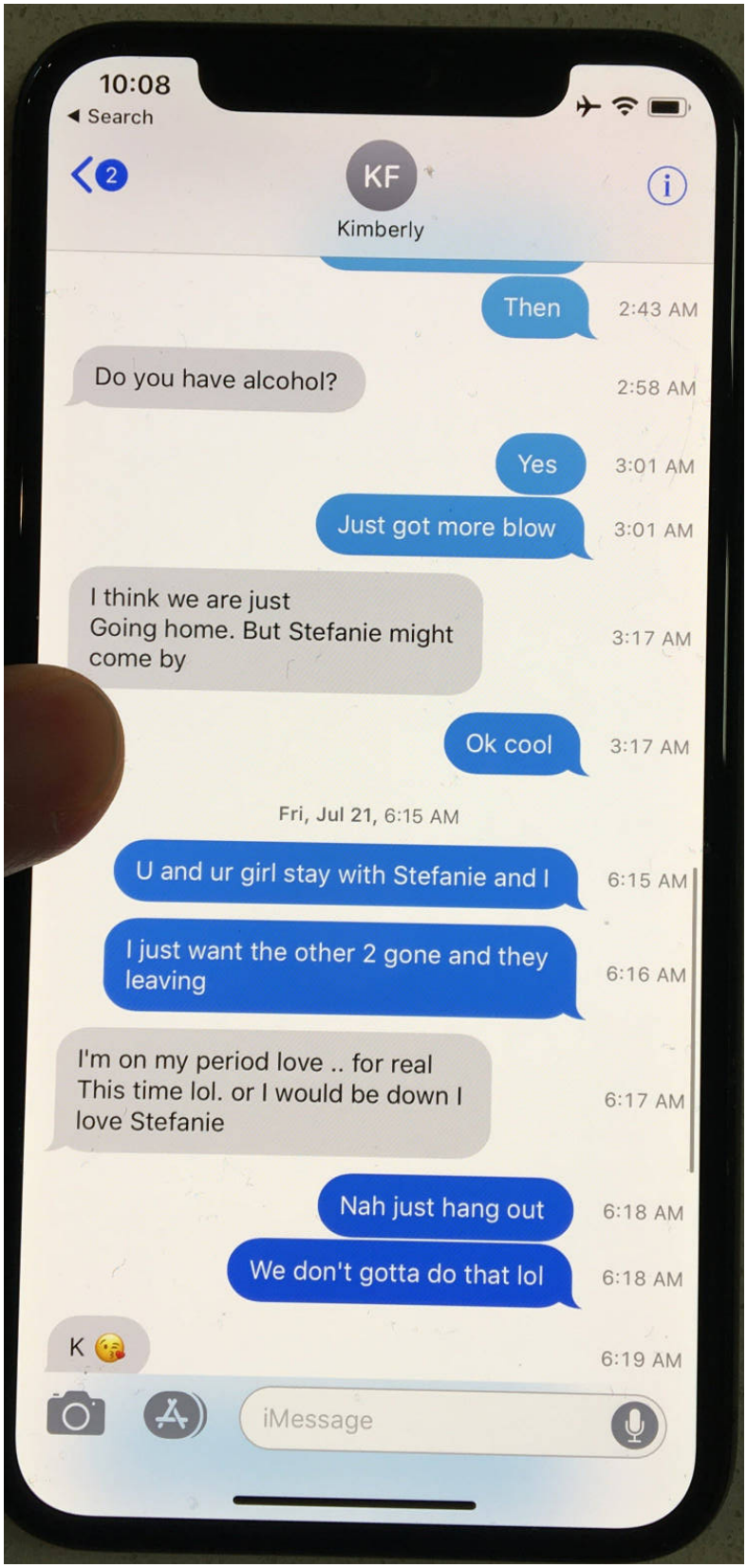

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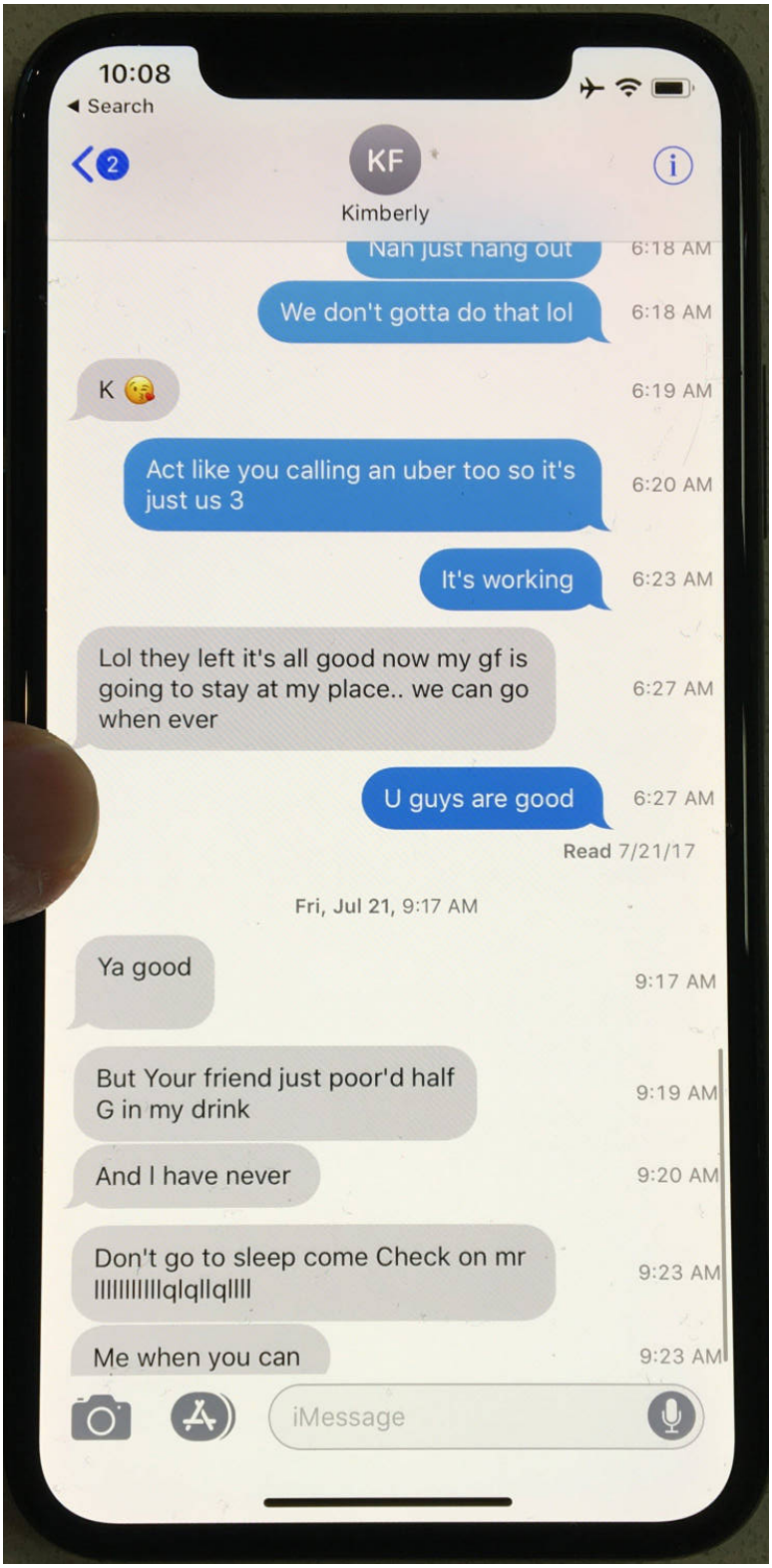

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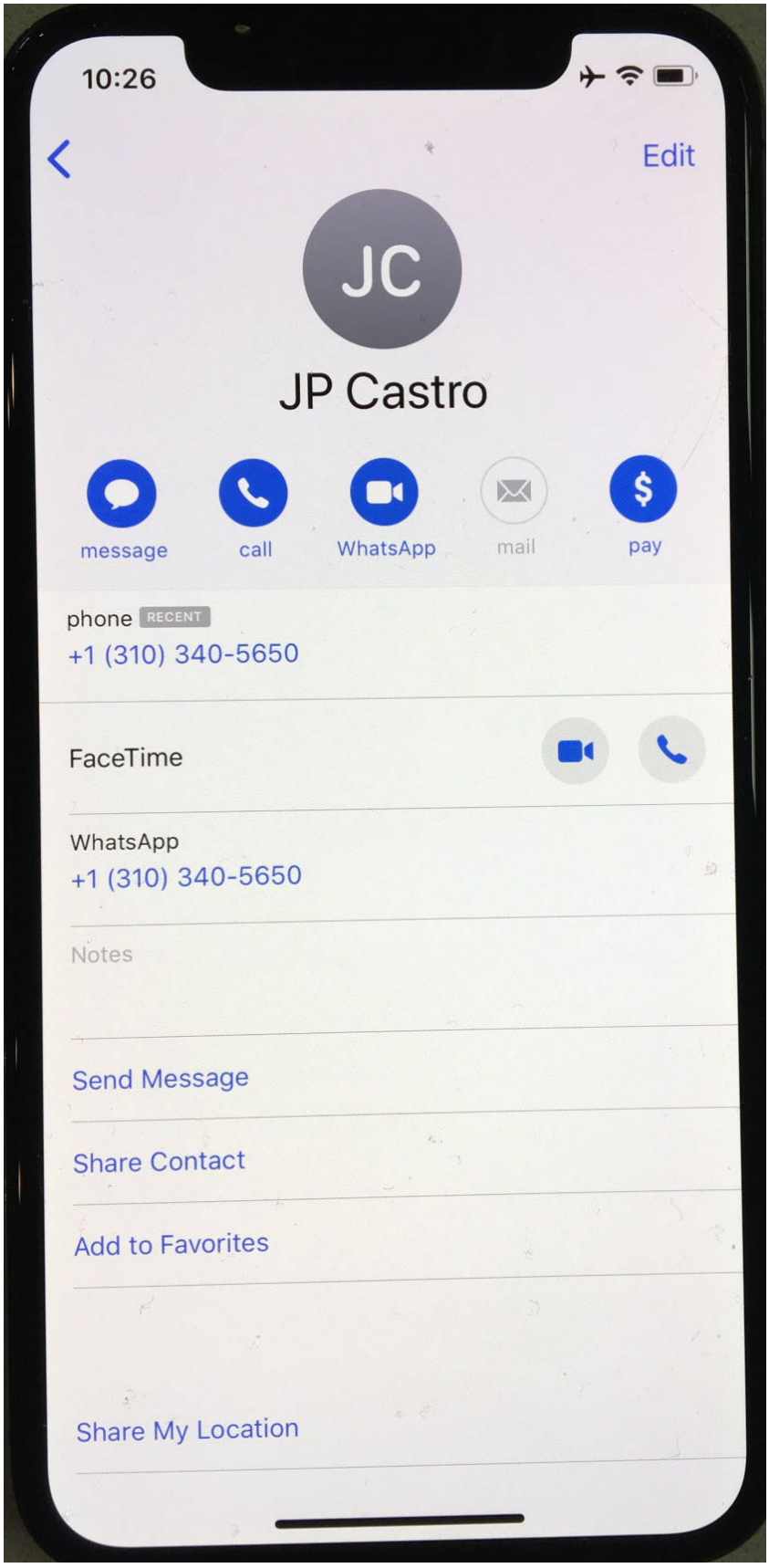

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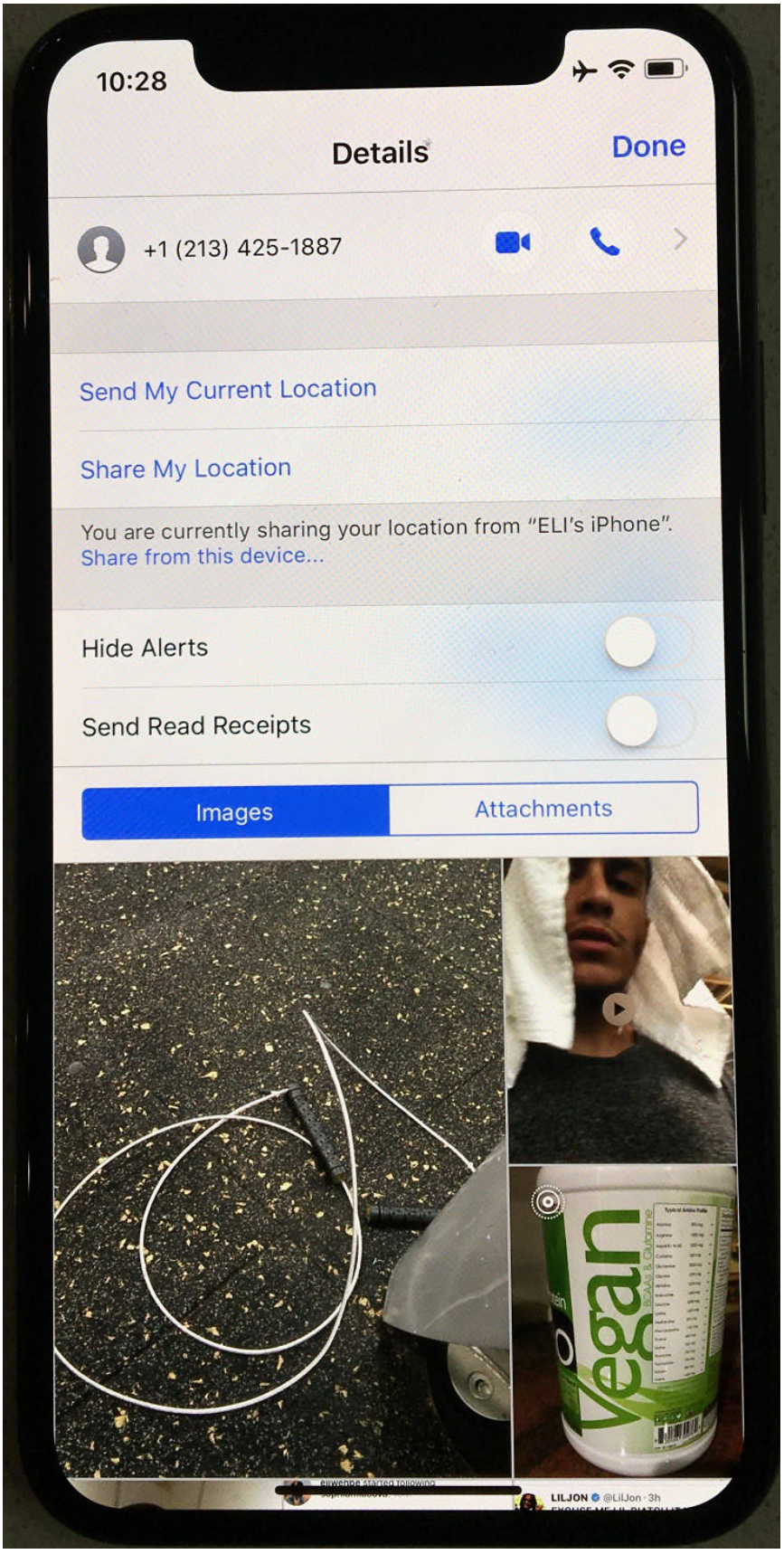

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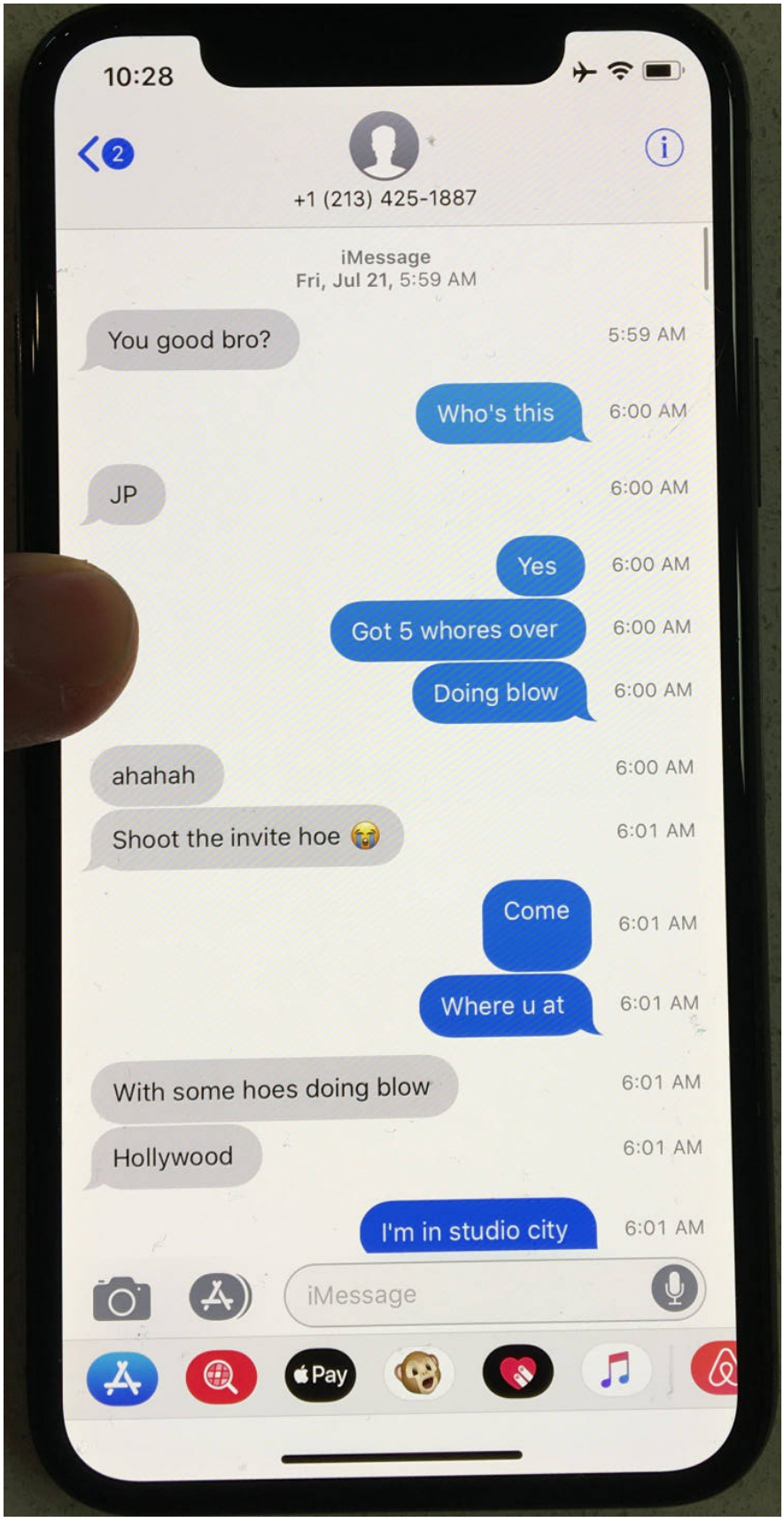

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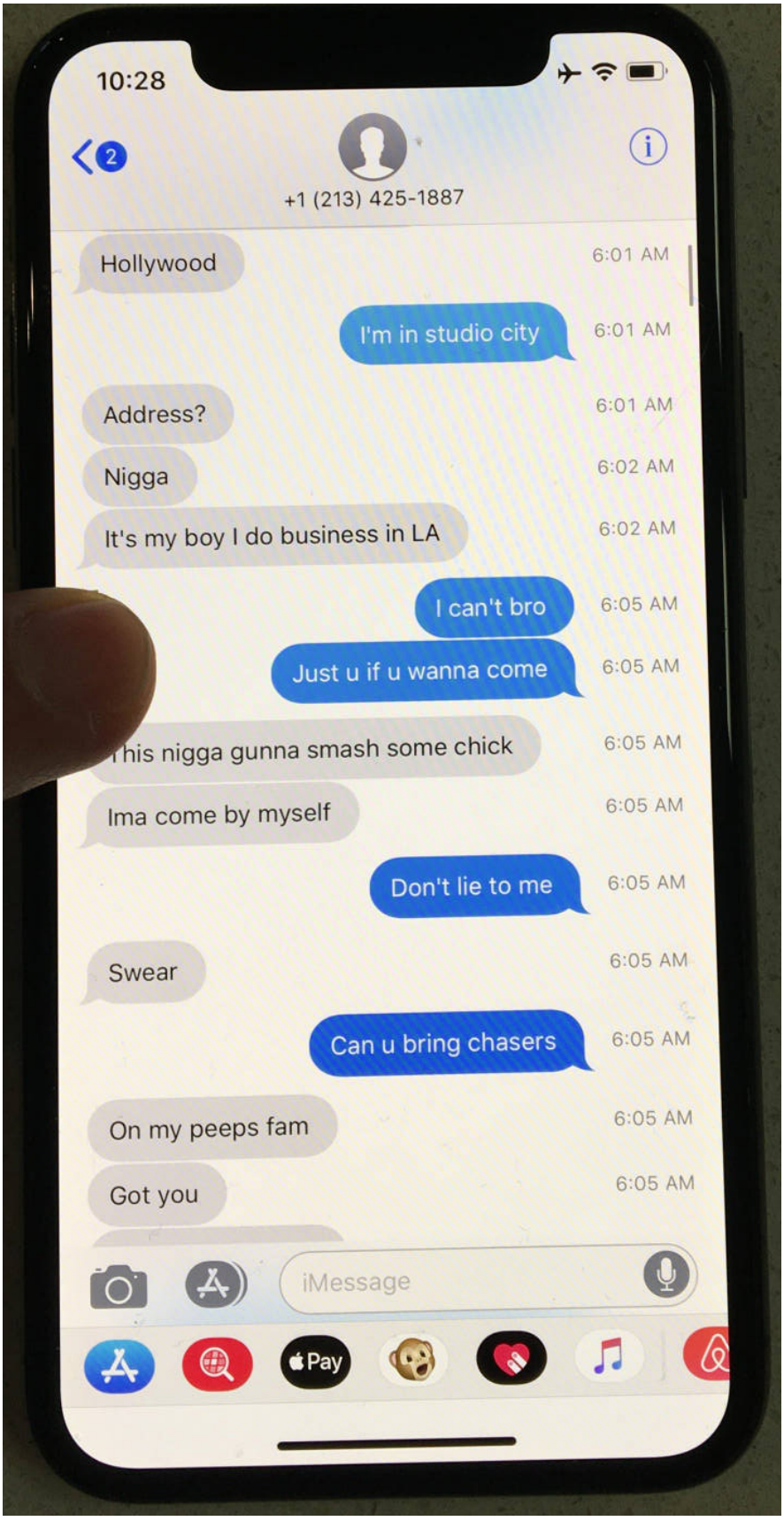

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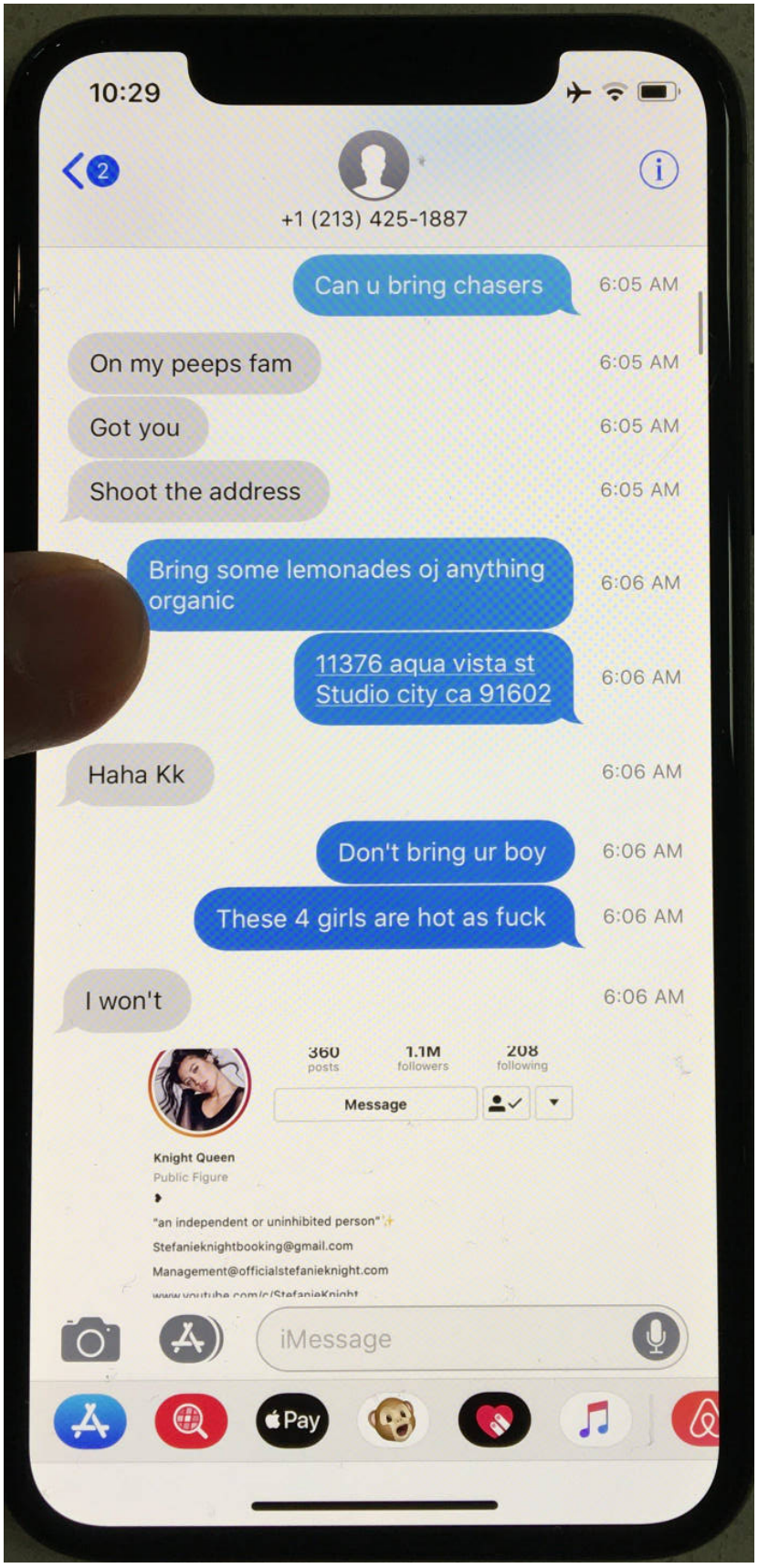

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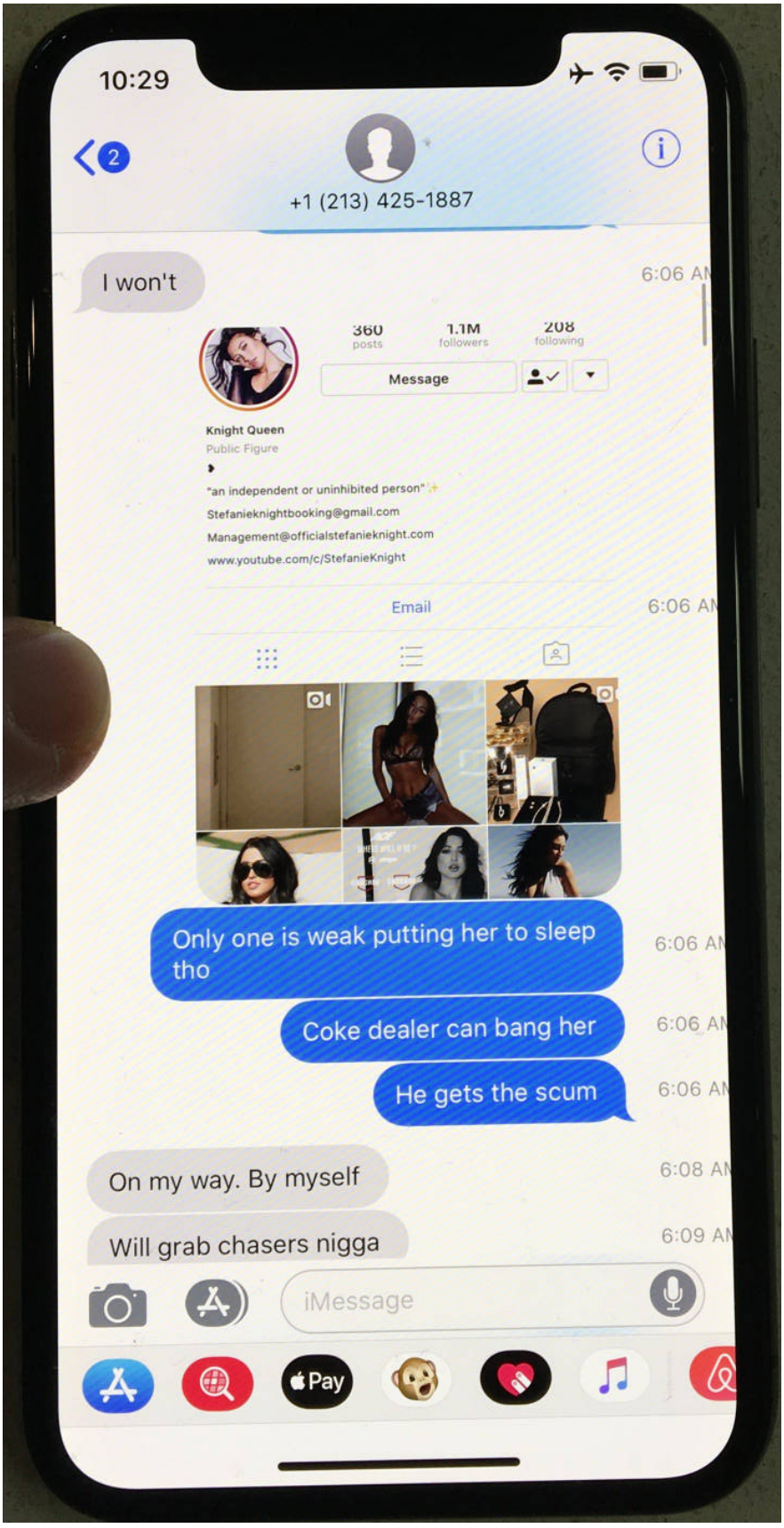

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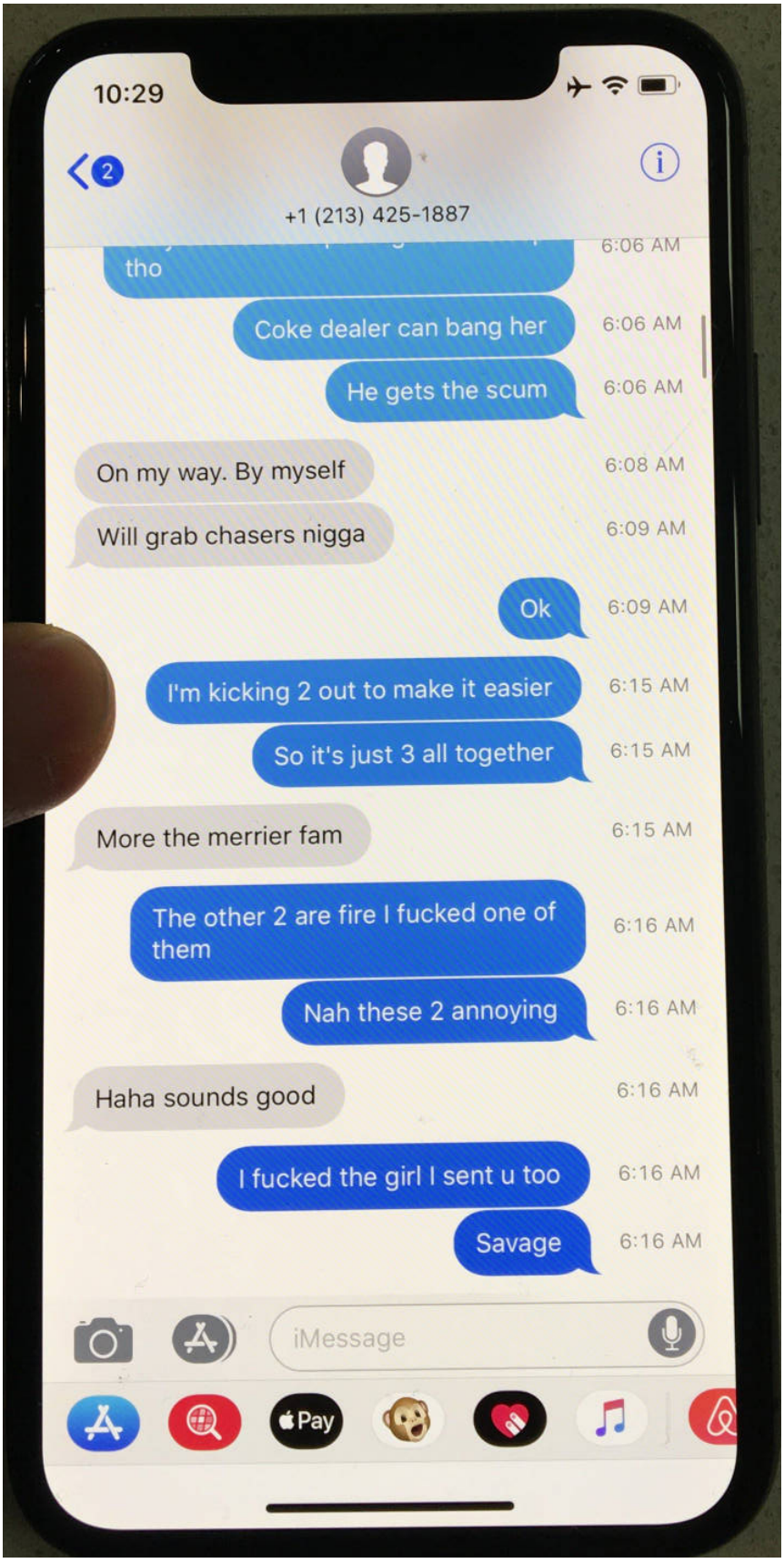

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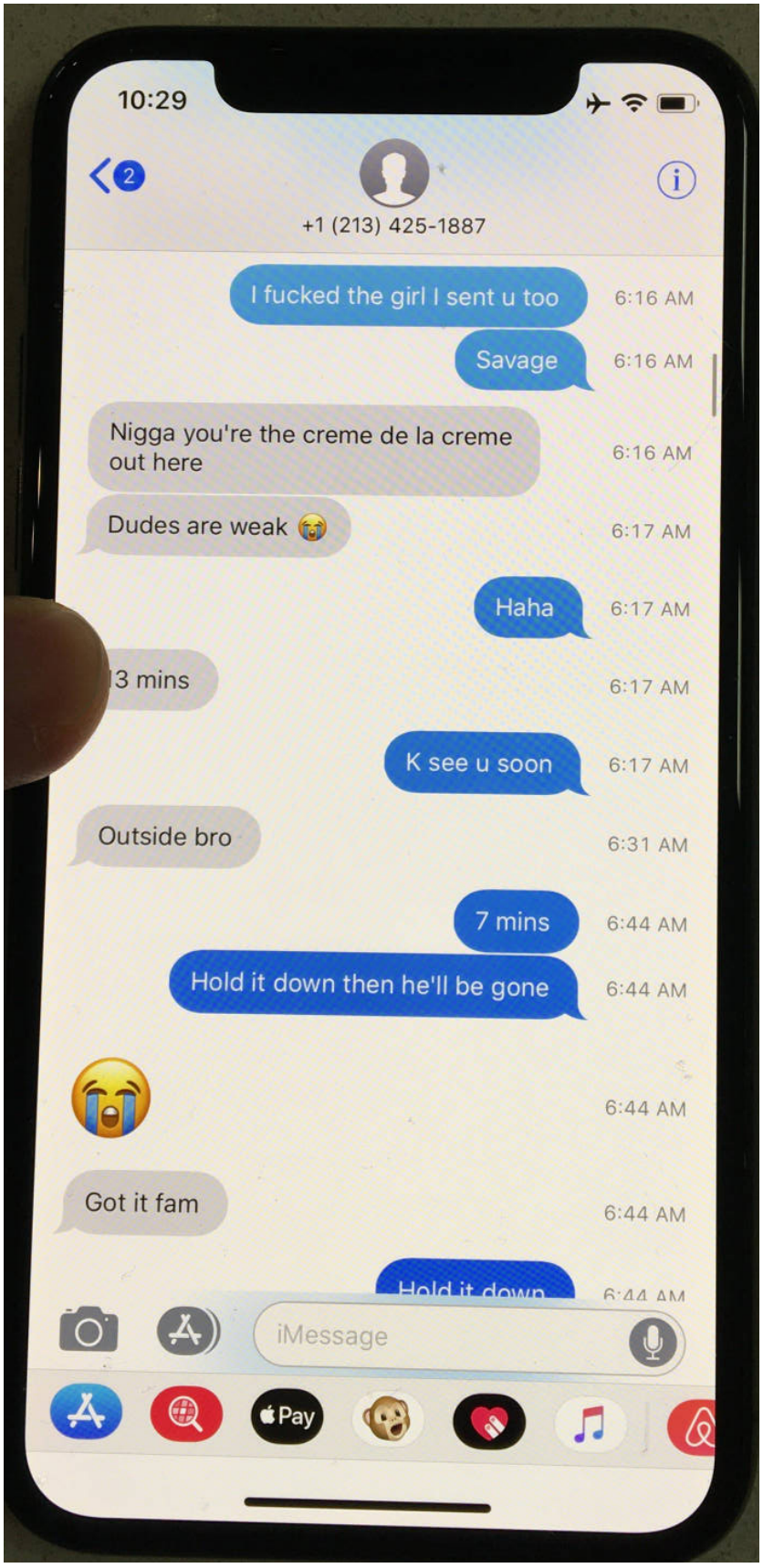

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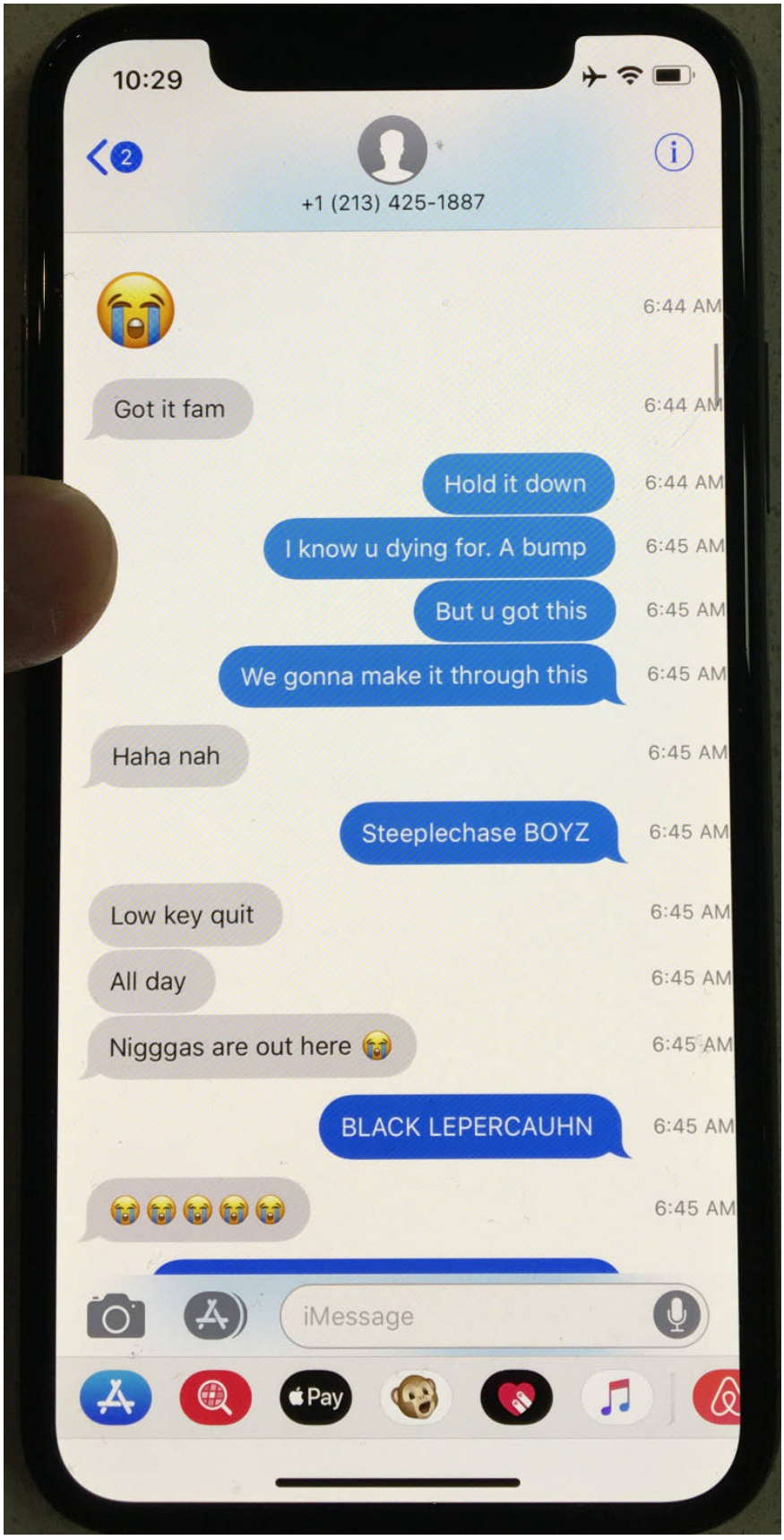

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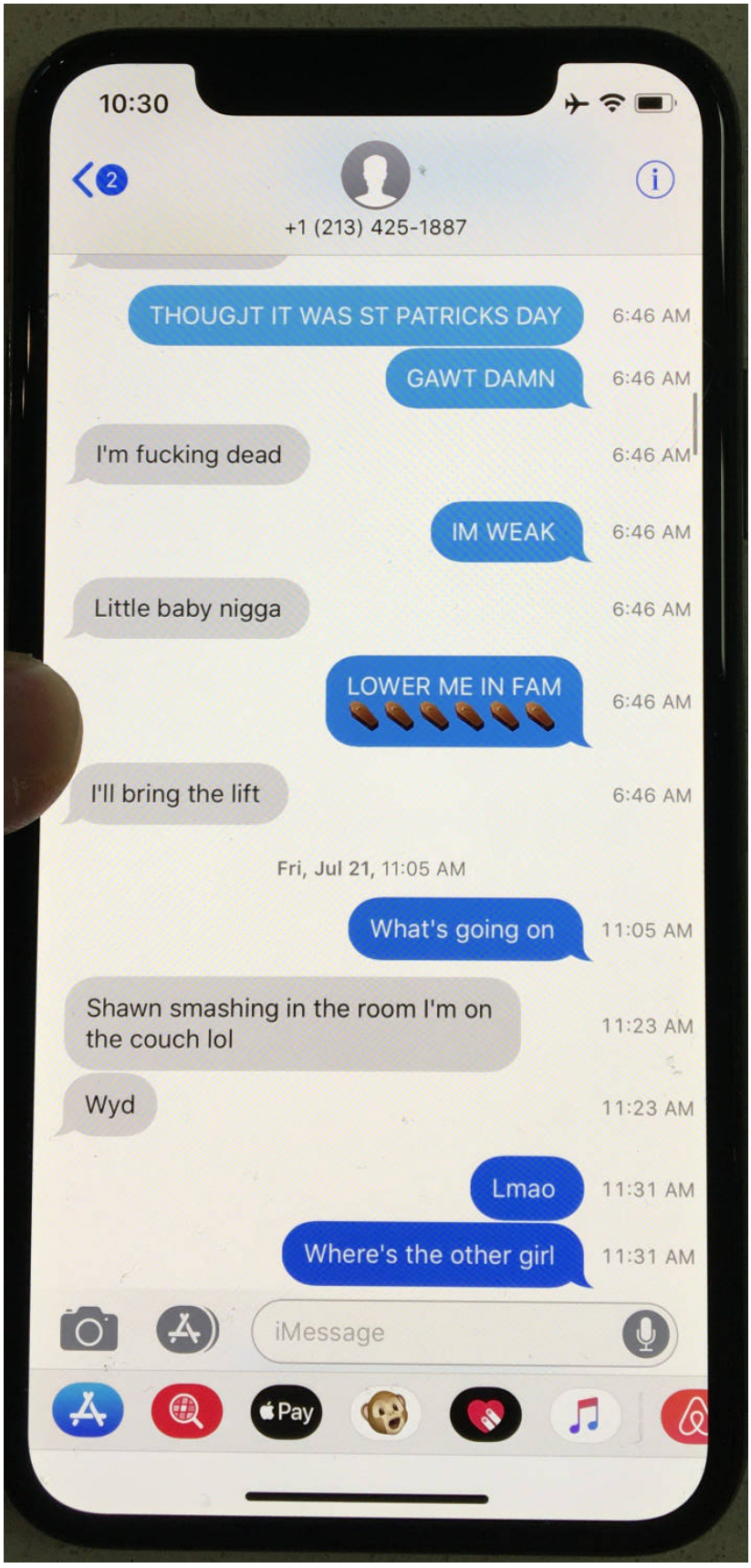

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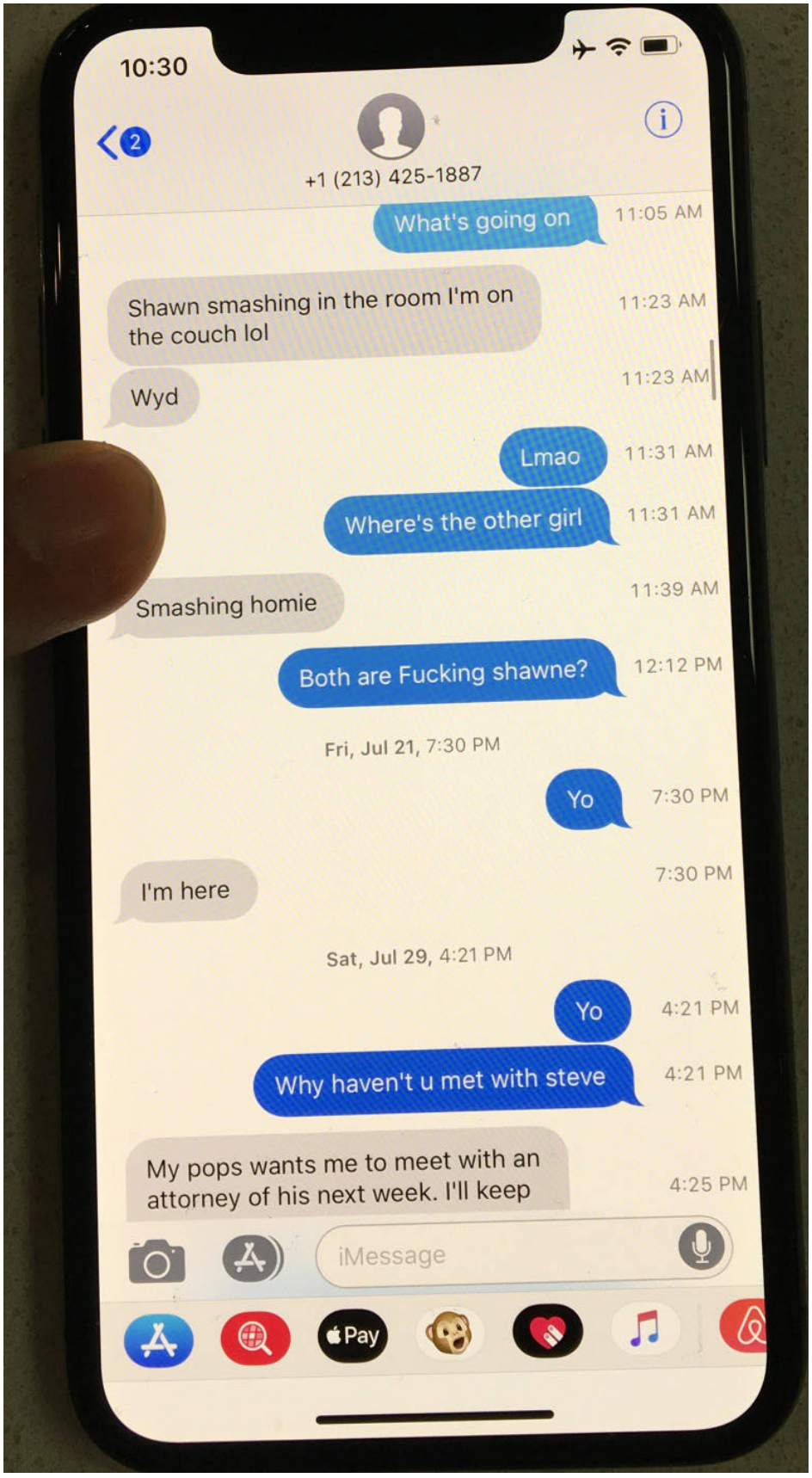

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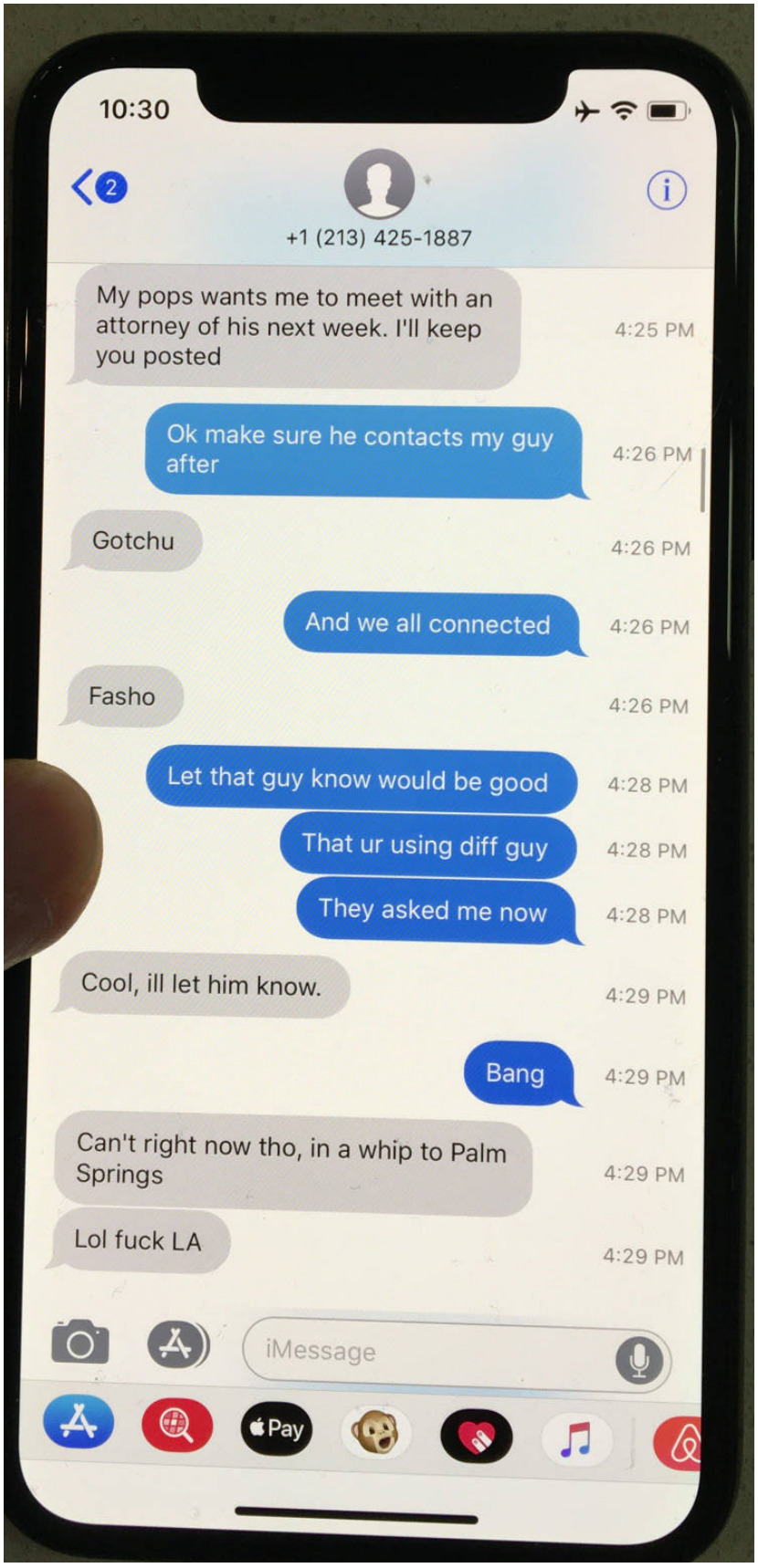

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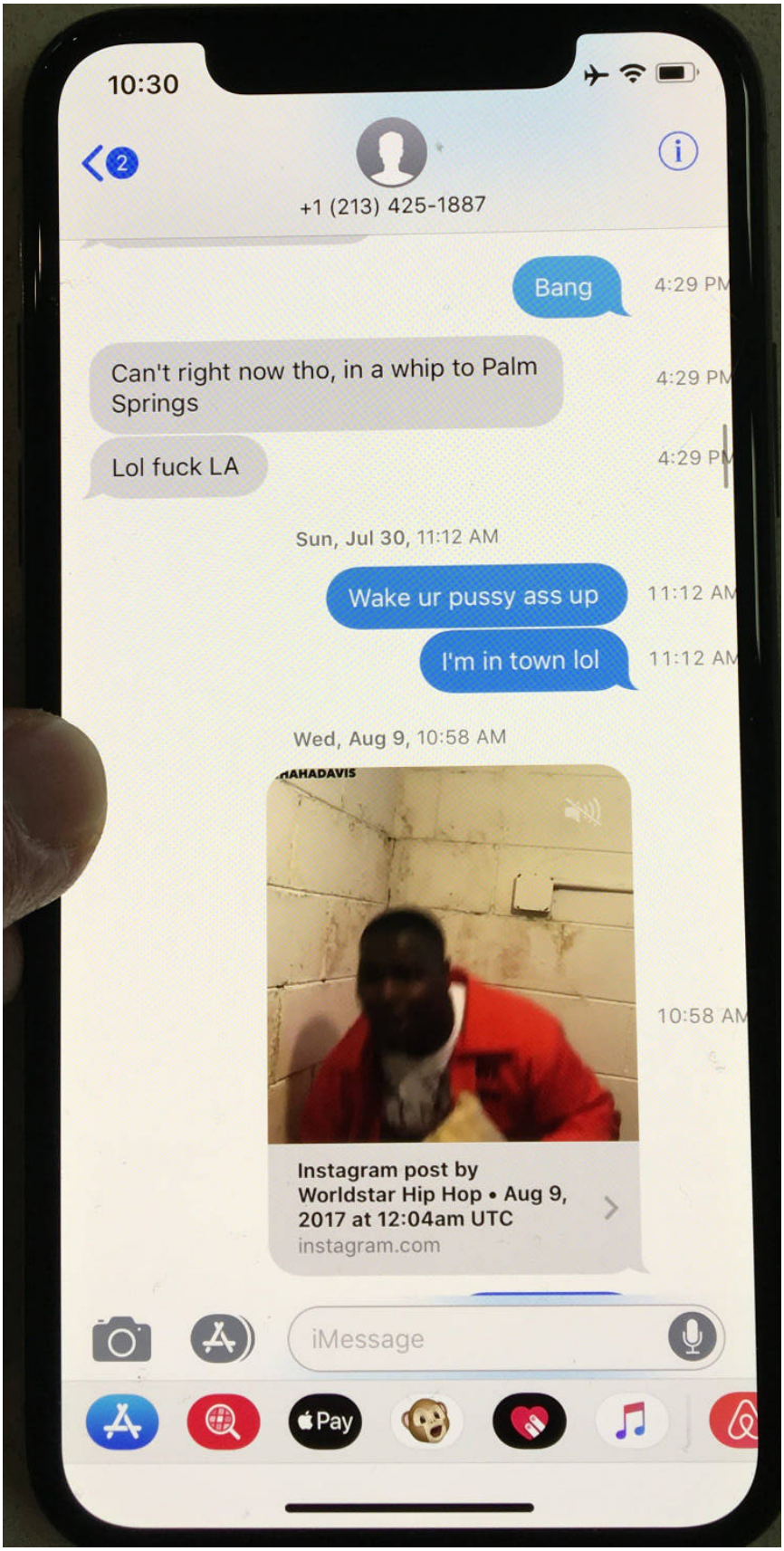

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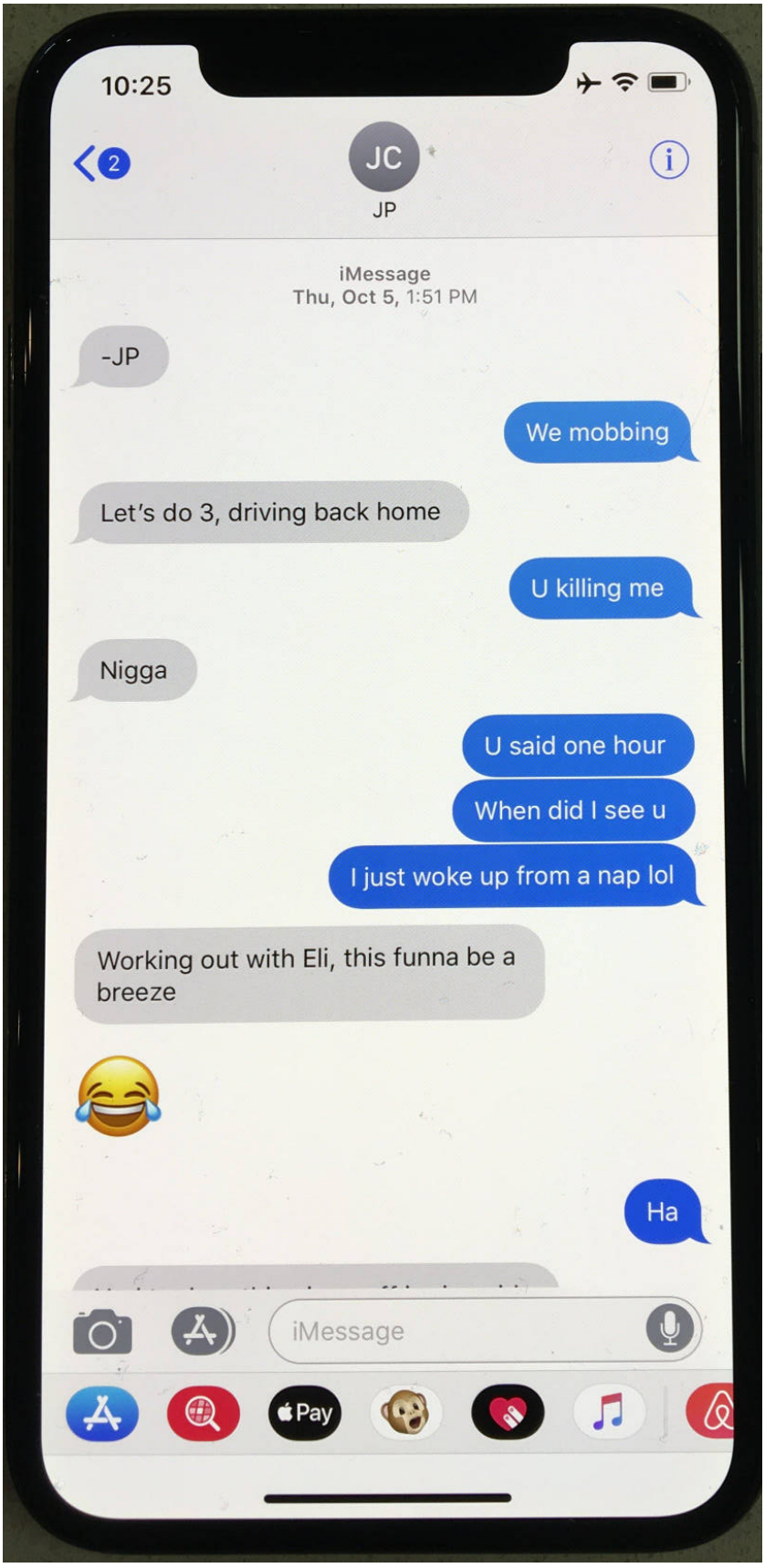

Exhibit 138–14

Exhibit "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DEPARTMENT K HON. LAWRENCE CHO, JUDGE

DEANN FATTORINI AND FERDINAND FATTORINI,	)	
PLAINTIFFS,	)	
VS.	)	CASE NO. 19STCV25769
SHAWNE MERRIMAN; MONICA MAASS; ELIAS WEHBE, WARWICK LA; THE HIGHLIGHT ROOM; J.P. CASTRO; AND DOES 1 THROUGH 50, INCLUSIVE,	)	
DEFENDANTS.	)	

REPORTER'S TRANSCRIPT
AUGUST 18, 2025

APPEARANCES ON THE FOLLOWING PAGE.

AMANDA KALLAS, CSR 13901
OFFICIAL REPORTER PRO TEMPORE

LIKE, EVERY ONCE IN A WHILE, IF SOMEBODY HAD IT WHEN THEY WERE OUT, OR WHATEVER, I WOULD DO IT. BUT, LIKE, I'M SAYING MAYBE WHEN I DID IT, IT WAS BETWEEN 20 TO 25. I'M NOT GOING TO LIE TO YOU AND SAY THAT I HAVEN'T DONE IT EVER AFTER OR EVER BEFORE, BUT I JUST WASN'T --

FREQUENTLY, I WAS ONLY DOING BLOW. I WAS DOING COKE.

Q MY FOCUS IS ACTUALLY MORE POINTED.

BECAUSE OF YOUR EXPERIENCE WITH IT, ARE YOU FAMILIAR WITH THE FACT THAT WHEN YOU COMBINE ALCOHOL AND GHB, IT CAN HAVE A -- AN EFFECT ON YOU?

A CORRECT.

Q AND PEOPLE WILL OFTEN AVOID DOING ALCOHOL AND GHB; CORRECT?

A CORRECT.

Q AND WHY IS THAT?

A I MEAN, IF YOU'RE ALREADY DRUNK AND YOU'RE DOING G, IT'S NOT LIKE YOU'RE DRUNK AND DOING COKE.

BUT I'M NOT SAYING THAT PEOPLE DON'T DRINK AND DO G; THEY DO. IT'S JUST, LIKE, IF YOU'RE ALREADY, LIKE, DRUNK, IT'S PROBABLY NOT THE BEST THING TO DO WITH IT.

Q IT'S NOT THE BEST THING BECAUSE YOU CAN START GETTING REALLY DISORIENTED, STUMBLING, THINGS LIKE THAT; CORRECT?

A CORRECT.

YOU CAN GET SUPER LIGHTHEADED OR --

THE STENOGRAPHER: I DIDN'T HEAR THAT.

THE WITNESS: YOU CAN GET LIGHTHEADED, YEAH.

BY MR. BASSELL:

Q HAVE YOU EVER SEEN MR. MERRIMAN AT ALL PARTY WITH G AND HAVE ANY KIND OF STUMBLING, OR ANYTHING LIKE THAT?

MR. OLSON: RELEVANCE, YOUR HONOR.

THE COURT: OVERRULED.

I'LL ALLOW IT.

THE WITNESS: I'VE SEEN HIM DO IT; HE'S SEEN ME DO IT.

I MEAN, WE -- WE ALL PARTY, YOU KNOW, SO...

BY MR. BASSELL:

Q I'M CORRECT, THOUGH, OTHER THAN THIS MESSAGE ON JULY 21ST, 2017, YOU HAD NEVER SEEN KIMBERLY FATTORINI DO IT; CORRECT?

A CORRECT.

Q AND WITH RESPECT TO THE NIGHTCLUB WORLD, WOULD YOU AGREE THAT THE NIGHTCLUB WORLD IS A PLACE WHERE ANY KIND OF DRUG IS AVAILABLE?

MR. WOLF: OBJECTION. CALLS FOR SPECULATION. LACKS FOUNDATION. OVERBROAD.

MS. STAYTON: ALSO VAGUE. IT'S VAGUE AS TO TIME.

THE COURT: OBJECTION'S SUSTAINED.

IT'S -- LAY SOME FURTHER FOUNDATION ON THAT QUESTION, PLEASE.

MR. BASSELL: SURE.

///

SAW HIM OUT, AND IF HE WAS, LIKE, REALLY FUCKED UP, OR SOMETHING LIKE THAT. THAT'S ABOUT IT.

"QUESTION: BUT HOW WOULD YOU KNOW IT WAS THAT PARTICULAR DRUG?

"OBJECTION. GO AHEAD.

"ANSWER: YOU KNOW, IF HE SAID TOO MUCH -- IF HE DID TOO MUCH OF IT, FALL OVER ON HIS SIDE OR JUST GET KIND OF WOOZY, YOU KNOW.

"QUESTION: HAS HE EVER SAID TO YOU, 'OH, I TOOK SOME G, OR GHB.'"

"ANSWER: I JUST KIND OF KNEW."

BY MR. BASSELL:

Q AND, SIR, IN SAYING THAT YOU "JUST KIND OF KNEW" -- BECAUSE OF THE WOOZINESS OR FALLING OVER; CORRECT?

A YEAH, IT'S BECAUSE I'VE DONE IT BEFORE.

Q RIGHT.

AND ISN'T IT TRUE THAT WHEN MS. FATTORINI WAS WALKED BY YOU TO THE UBER THAT MORNING OF JULY 21ST, 2017, THAT MS. FATTORINI STUMBLED?

A SHE WAS DRUNK. SHE HAD, LIKE --

THE STENOGRAPHER: I DIDN'T HEAR THAT.

THE WITNESS: SHE HAD, LIKE, REDDISH EYES. SHE WAS DRUNK. AND SHE HAD HEELS ON, SO SHE WASN'T WALKING GREAT, BUT THAT'S HOW A LOT OF PEOPLE LEAVE FUCKED UP FROM THE NIGHTCLUB.

BY MR. BASSELL:

Q I'M GOING TO HAVE YOU LOOK FOR A MOMENT, SIR, AT ANOTHER SET OF TEXT MESSAGES.

YOU -- MR. MERRIMAN CAME OVER, ORIGINALLY SAYING THAT HE COULD COME OVER AND TAKE KIMBERLY FATTORINI ELSEWHERE; CORRECT?

A HE DID.

Q ALL RIGHT. NOW, AFTER MS. FATTORINI SENT YOU THE TEXT MESSAGE AT 9:20 OR 9:19 IN THE MORNING ABOUT "YOUR FRIEND JUST POURED HALF G IN MY DRINK, AND I HAVE NEVER," SHE SENDS SOME TEXT MESSAGES TO SHAWNE MERRIMAN WHILE STILL IN THE SAME HOUSE.

DO YOU RECALL SEEING THAT BEFORE?

A DO I RECALL SEEING THESE TEXTS?

Q YES.

A YEAH.

Q OKAY. NOW, WHILE IN THE SAME HOUSE, MS. FATTORINI TEXTS SHAWNE MERRIMAN, "WHAT'S YOUR ADDRESS? WHERE ARE YOU," IN RESPONSE TO SOME EARLIER TEXTING WHERE HE WANTS AN ADDRESS SO HE COULD CALL A CAR.

DO YOU SEE THAT?

A I DO.

Q AND THAT'S ON 140-3.

CALLED AN UBER; CORRECT?

A FROM THESE TEXTS, I GUESS, YES.

Q RIGHT.

AND FROM READING THESE TEXTS, YOU CAN TELL THAT HE'S CALLING A CAR; CORRECT?

A I WOULD SAY SO, YES.

Q AND YOU KNOW THAT THEY LEFT IN AN UBER; CORRECT?

A THEY DID.

Q AND DID YOU WALK THEM TO THAT UBER?

A I WALKED THEM OUT OF THE DOOR AND WATCHED THEM GET IN THE VEHICLE, AND THEN I CLOSED MY DOOR.

Q AND SO YOU, AT LEAST -- IT'S YOUR TESTIMONY THAT SHE SEEMED MESSED UP, BUT NOT TOO MESSED UP AT THIS POINT IN TIME IN THE MORNING; CORRECT?

A YEAH, SHE LOOKED -- SHE LOOKED LIKE A TYPICAL PERSON LEAVING THE CLUB DRUNK.

Q RIGHT.

AND SO -- BUT WOULD YOU ALSO AGREE, THOUGH, THAT IN SENDING TEXT MESSAGES WITH SHAWNE MERRIMAN AT 9:53 A.M. IN THE MORNING, SHE DOES NOT APPEAR TO UNDERSTAND THAT HE'S ASKING FOR A DESTINATION ADDRESS BECAUSE HE'S CALLING A CAR?

MR. OLSON: FOUNDATION. SPECULATION.

MR. MACDONALD: JOIN. IRRELEVANT ALSO.

THE COURT: SUSTAINED.

BY MR. BASSELL:

Q SIR, WOULD YOU AGREE THAT MS. FATTORINI

SO LET ME ASK YOU THIS, SIR: WITH RESPECT TO MR. MERRIMAN, DID HE AT ANY POINT IN TIME TELL YOU DIRECTLY THAT HE SAW KIMBERLY FATTORINI DO ANY COCAINE?

A WE NEVER SPOKE ABOUT IT.

Q DID HE AT ANY POINT IN TIME EVER TELL YOU HE DIRECT -- HE SAW MS. FATTORINI DRINK ANY ALCOHOL ON JULY 21ST, 2017?

A NEVER SPOKE ABOUT IT.

Q DID HE EVER SAY THAT HE SAW MS. FATTORINI TAKE ANY GHB FROM HIM OR ANYBODY ELSE ON JULY 21ST, 2017?

A NEVER SPOKE ABOUT IT.

Q DID MONICA MAASS EVER TELL YOU THAT SHE SAW KIMBERLY FATTORINI CONSUME COCAINE ON JULY 21ST, 2017?

A NOT TO ME PERSONALLY, NO.

Q DID MONICA MAASS EVER TELL YOU, ON JULY 21ST, 2017, SHE SAW MS. FATTORINI CONSUME ALCOHOL?

A NOT TO ME, PERSONALLY.

Q WHAT ABOUT GHB? DID SHE EVER TELL YOU THAT PERSONALLY?

A NO.

Q DID MR. CASTRO EVER SAY THAT HE SAW MS. FATTORINI CONSUME COCAINE, ALCOHOL, OR GHB?

A HE NEVER SAID HE SAW THEM DOING THE GHB, BUT MENTIONED THAT -- THAT THE BOTTLE WAS IN THE HOUSE AND THAT IT WAS OFFERED TO HIM.

Q AND THAT IT WAS OFFERED TO HIM?

A CORRECT.

Q AND DID HE TELL YOU WHO BROUGHT THE BOTTLE?
A YOU KNOW THE NAME.
Q AND WHETHER OR NOT YOU'RE WILLING TO IDENTIFY OR POINT A FINGER AT ANYBODY, LET ME ASK YOU THIS: GIVEN WHAT YOU KNOW OF THE CASE AND HAVING SEEN ALL THE MESSAGES, KNOWING IT WAS AT YOUR HOUSE AND YOUR HOUSE ISN'T, LIKE, A --
I MEAN, IT'S A NICE HOUSE, BUT IT'S NOT SOME MASSIVE HOUSE --
A NO.
Q -- CORRECT?
A IT'S 1800 SQUARE FEET, YEAH.
Q RIGHT.
IT'S -- YOU -- DO YOU HAVE A BELIEF AS TO WHETHER MR. CASTRO PUT GHB IN MS. FATTORINI'S DRINK?
MR. OLSON: FOUNDATION. SPECULATION.
THE COURT: OBJECTION SUSTAINED.
LAY A FOUNDATION FOR HIS KNOWLEDGE.
BY MR. BASSELL:
Q YOU HAVE SPOKEN TO MR. CASTRO. YOU HAVE BEEN WITHIN EARSHOT OF PEOPLE HANGING OUT AT YOUR HOUSE ON JULY 21ST, 2017; CORRECT?
A CORRECT.
Q YOU HAVE NEVER SEEN MR. CASTRO USE GHB; CORRECT?
A CORRECT.
Q YOU'VE NEVER SEEN HIM PARTY WITH GHB; CORRECT?

Exhibit "D"

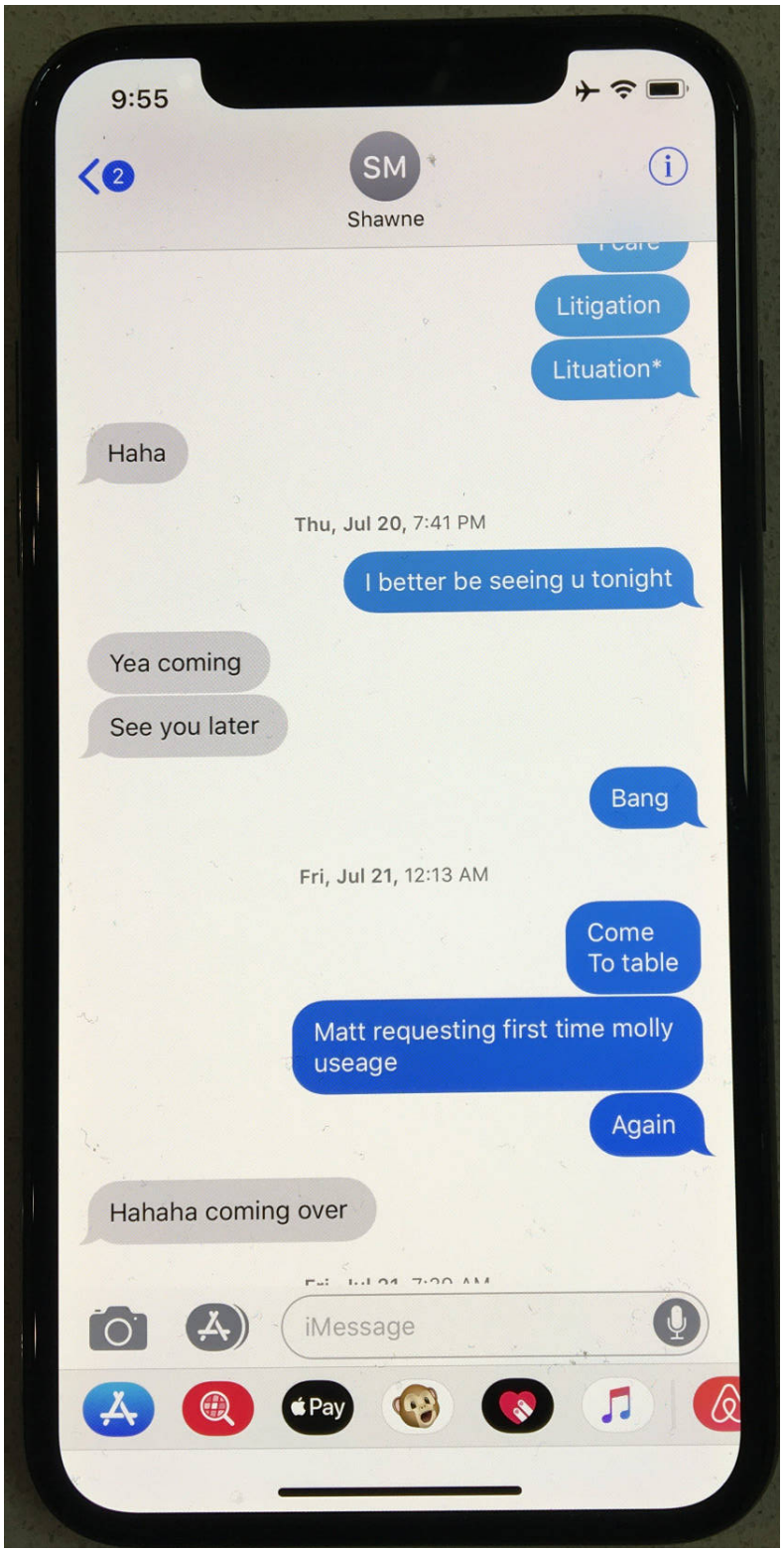

Exhibit 140–1

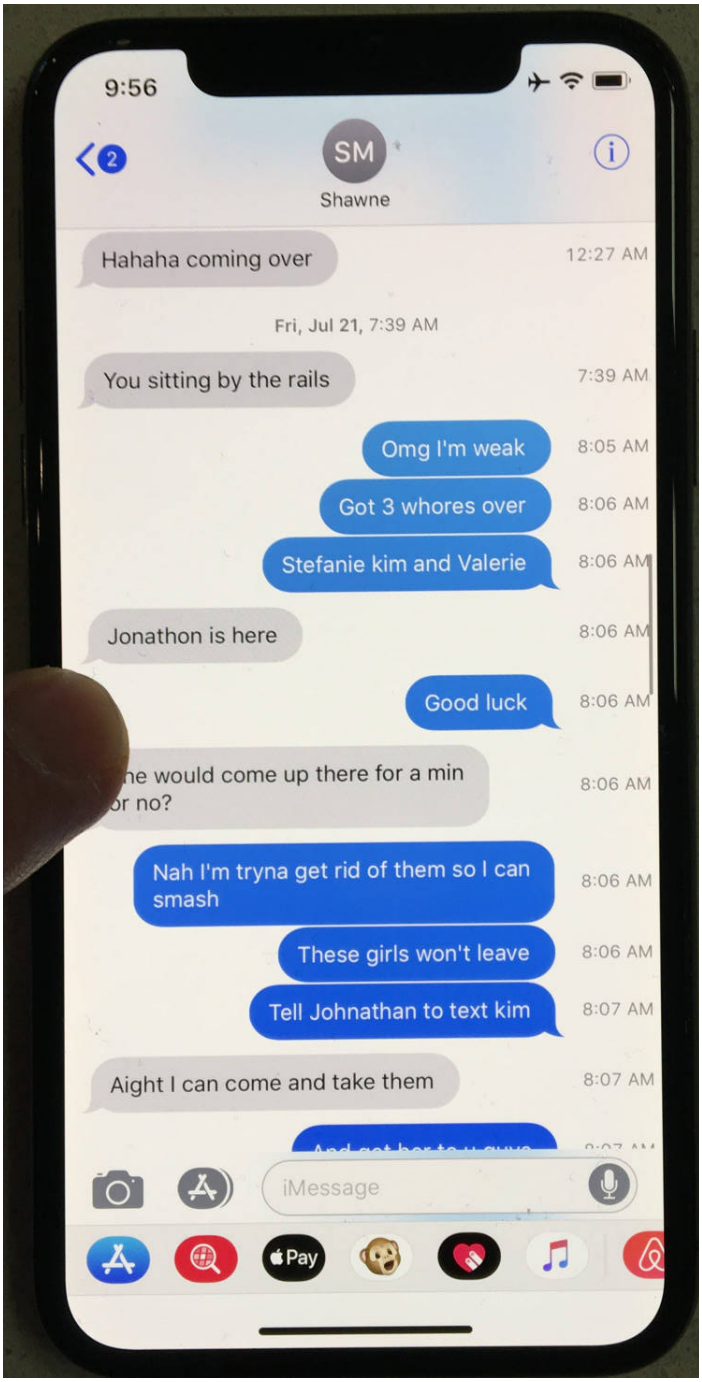

Exhibit 140–2

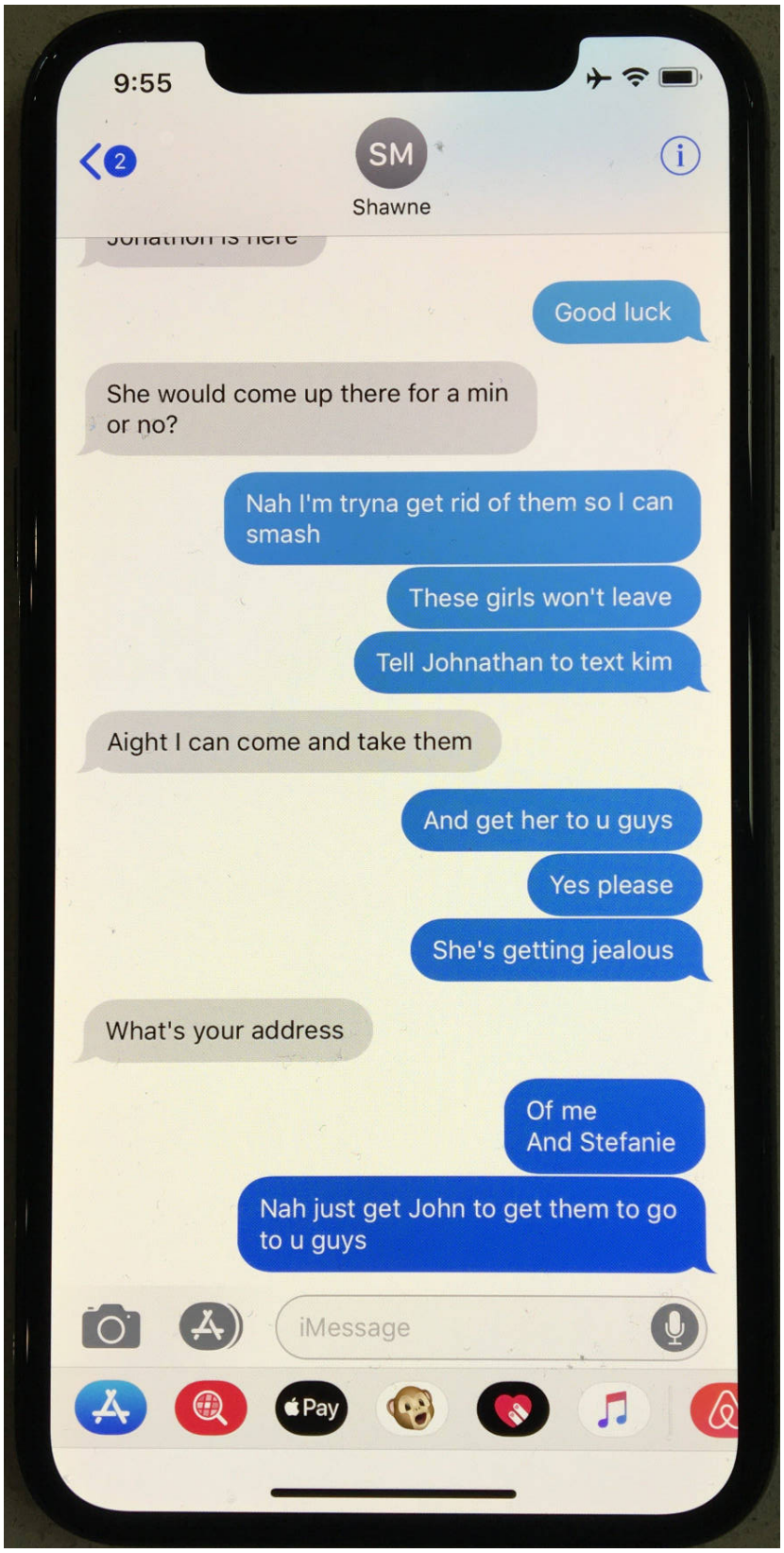

Exhibit 140–3

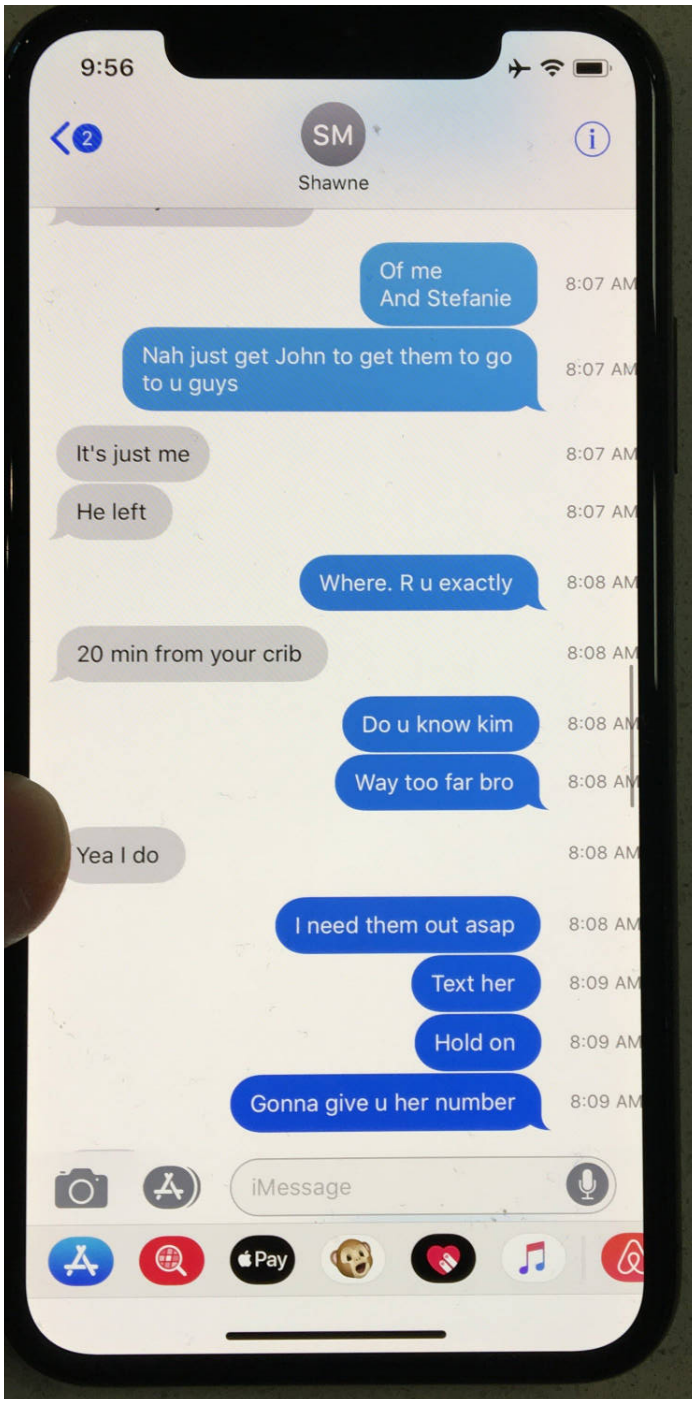

Exhibit 140–4

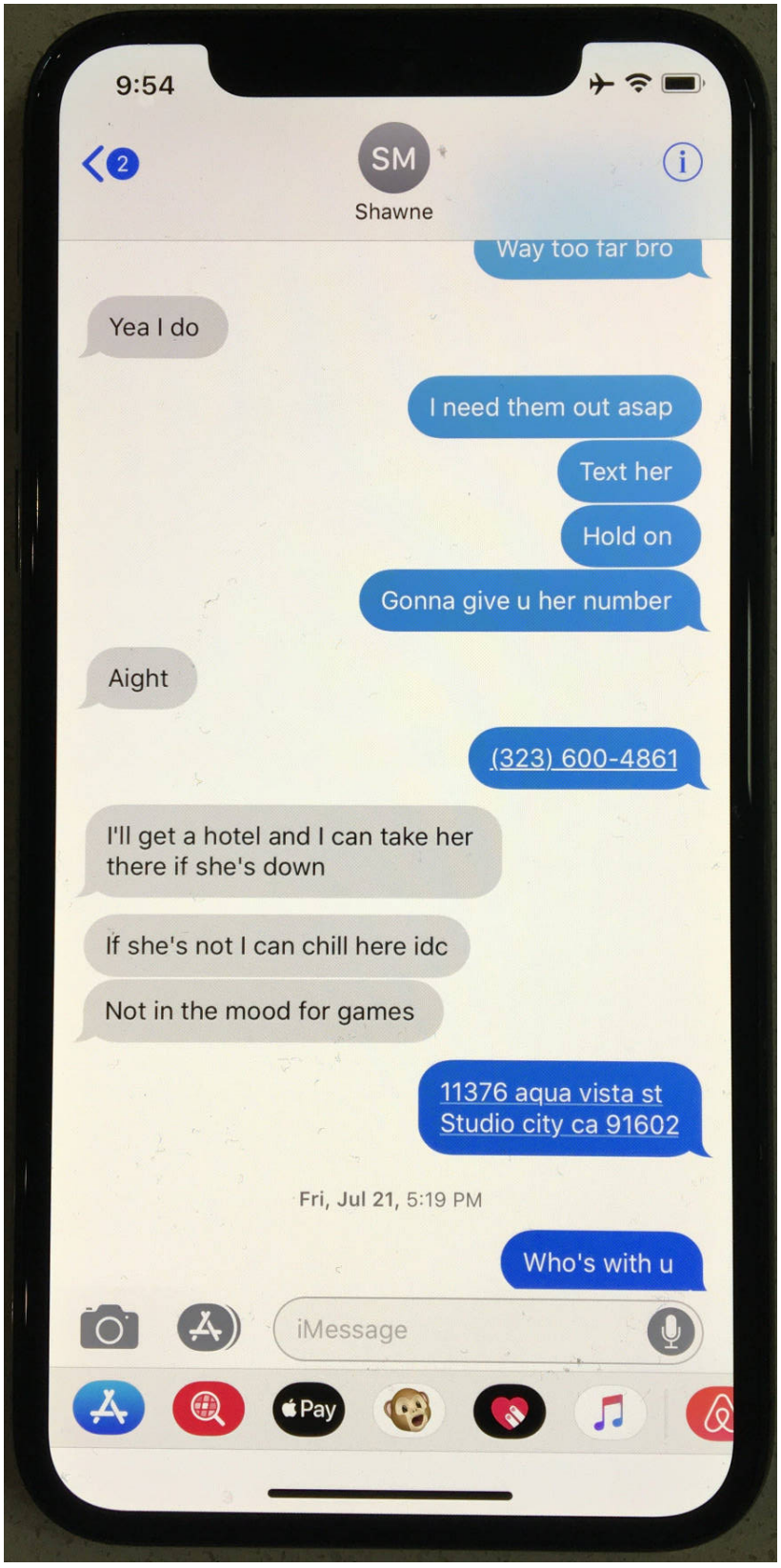

Exhibit 140–5

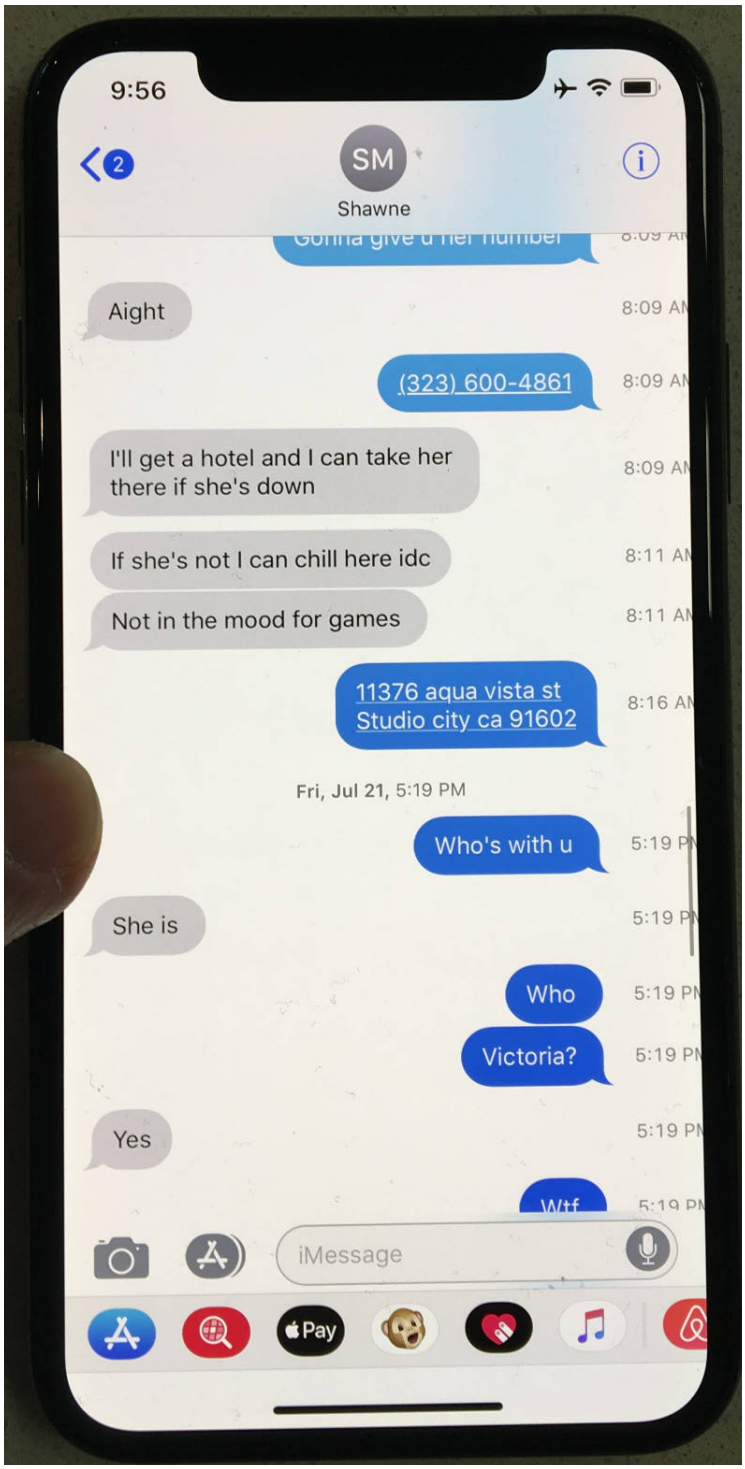

Exhibit 140–6

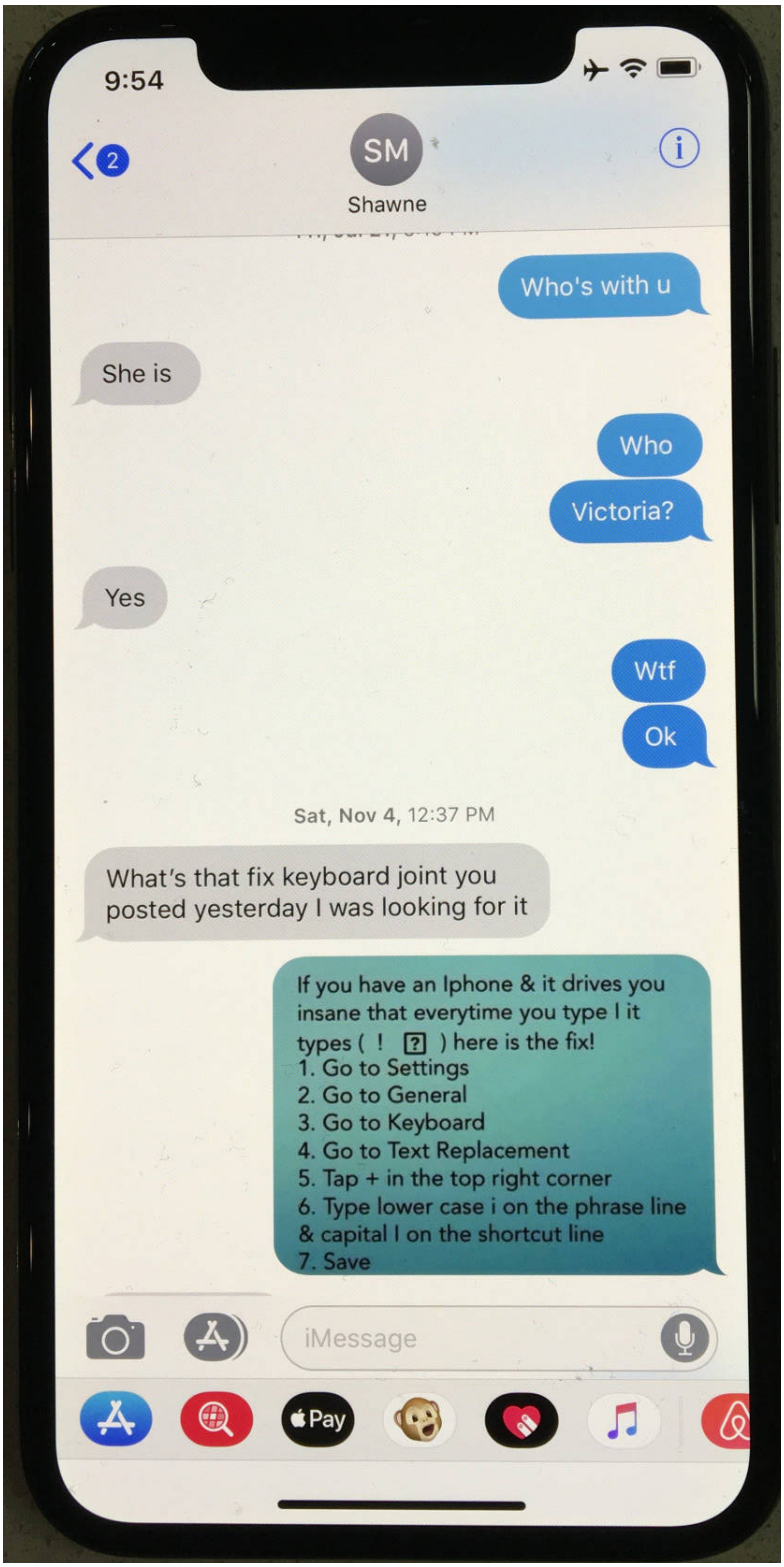

Exhibit 140–7

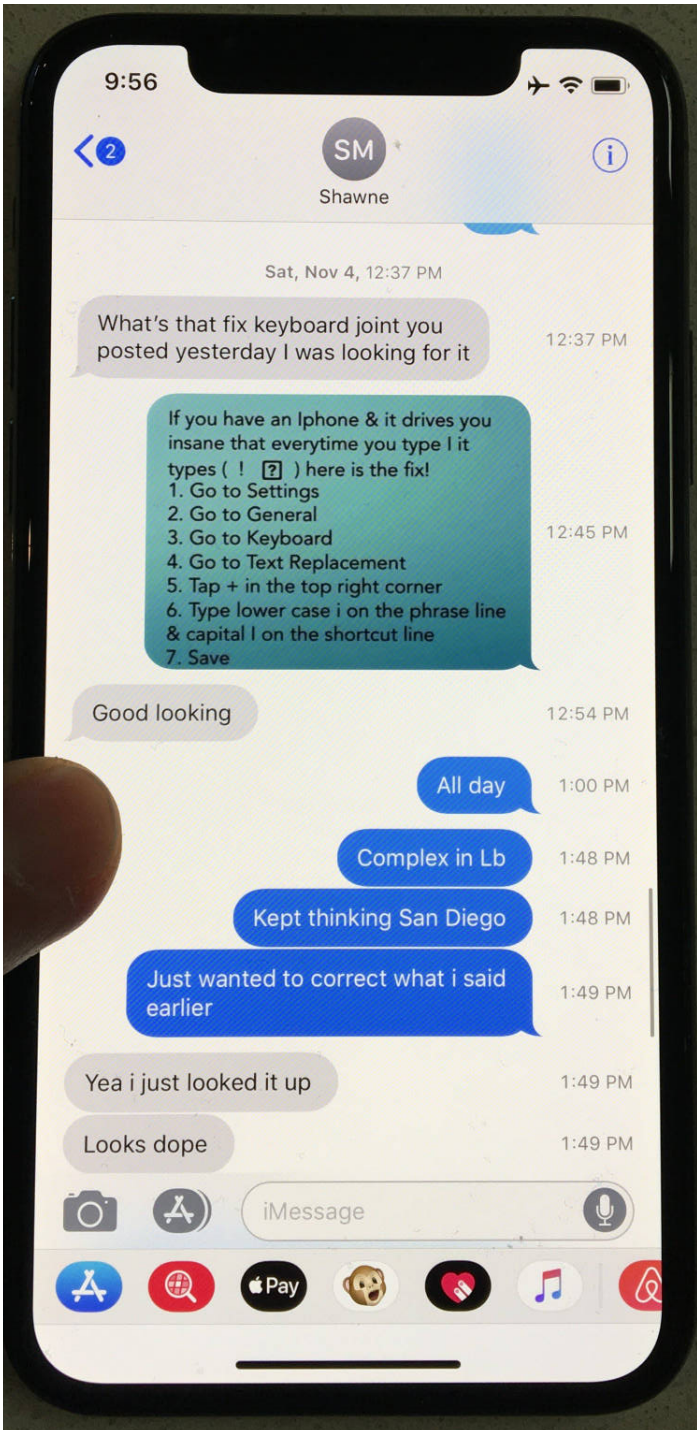

Exhibit 140–8

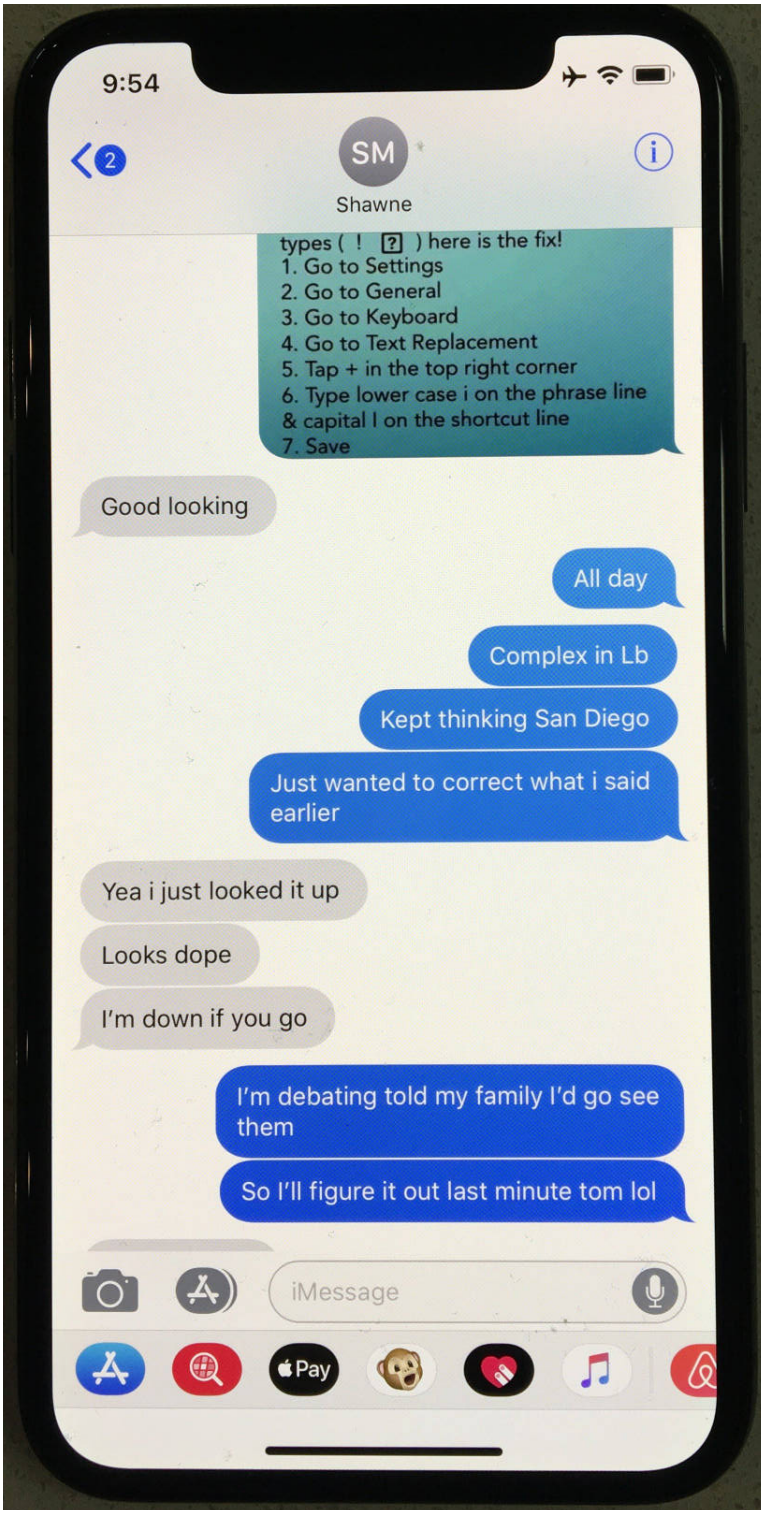

Exhibit 140–9

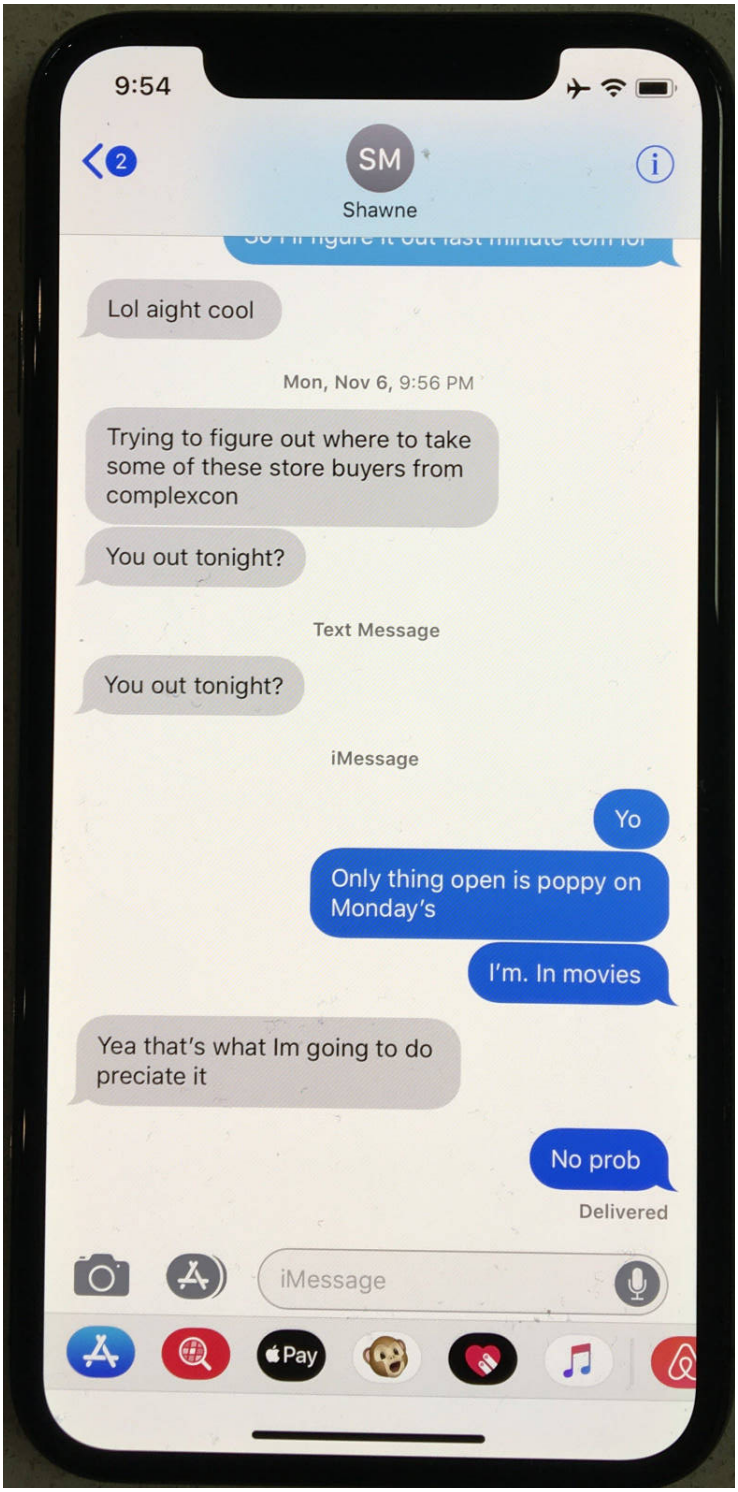

Exhibit 140–10