



# WELCOME TO THE DANGER ZONE

The Brave New World of NDA's, Arbitration Agreements,  
and Severance Agreements

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An aerial photograph of an airport tarmac. Three commercial airplanes are parked at gates. To the right, a large, multi-story terminal building with a reddish-brown facade is visible. The tarmac is paved and has various ground support equipment and vehicles scattered around.

**Arbitration Agreements**

**Non-Disclosure Agreements**

**Severance Agreements**

**Three Staples**



Iconic Scene #1

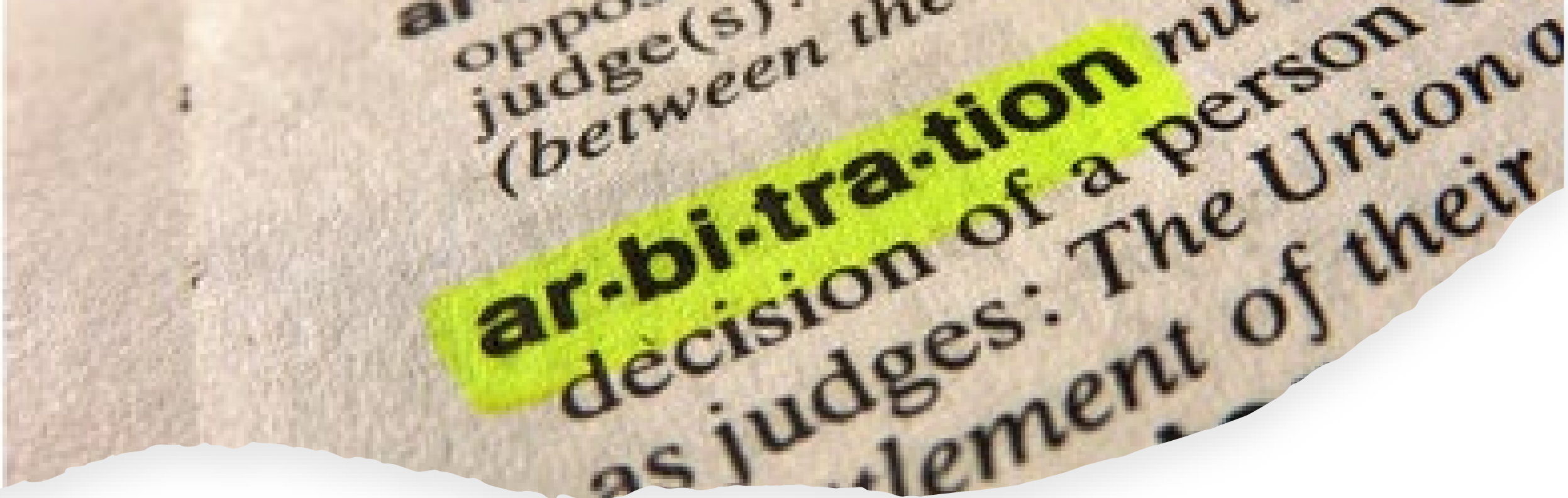


# är-bə-trā- shən

The action of arbitrating, *especially*, the hearing and determination of a disputed case by an arbitrator.

# Arbitration Clause

- Arbitration. In consideration of Employee's employment with Employer, its promise to arbitrate all employment-related disputes, and Employee's receipt of the compensation, pay raises and other benefits paid to Employee by Employer, at present and in the future, Employee agrees that any and all controversies, claims or disputes with anyone (including Employer and any employee, officer, director, shareholder or benefit plan of Employer in their capacity as such or otherwise) arising out of, relating to, or resulting from Employee's employment with Employer or termination thereof, including any breach of this Agreement, will be subject to binding arbitration under the Tennessee Arbitration Act (the "Act"), and pursuant to Tennessee law. The Federal Arbitration Act shall also apply with full force and effect, notwithstanding the application of procedural rules set forth under the Act.



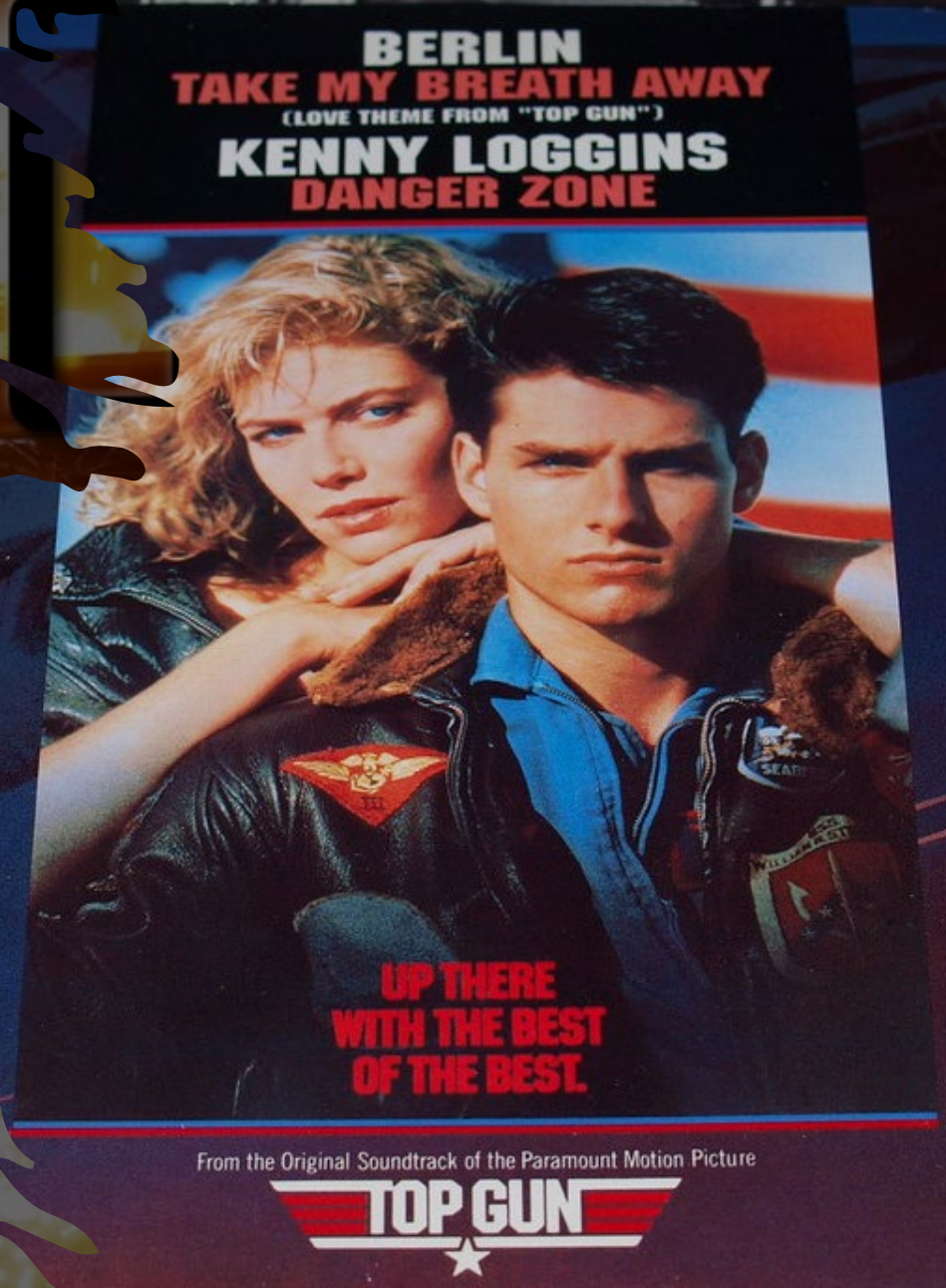
# Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021

No predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute.

Section 402

# ANGERZ

## Danger Zone #1







IFM



*RetroActive*  
FM Archives Volume 1


- Effective Date:  
March 3, 2022

- BUT . . .

**It is Retroactive**

This Photo by Unknown Author is licensed under CC BY-SA-NC

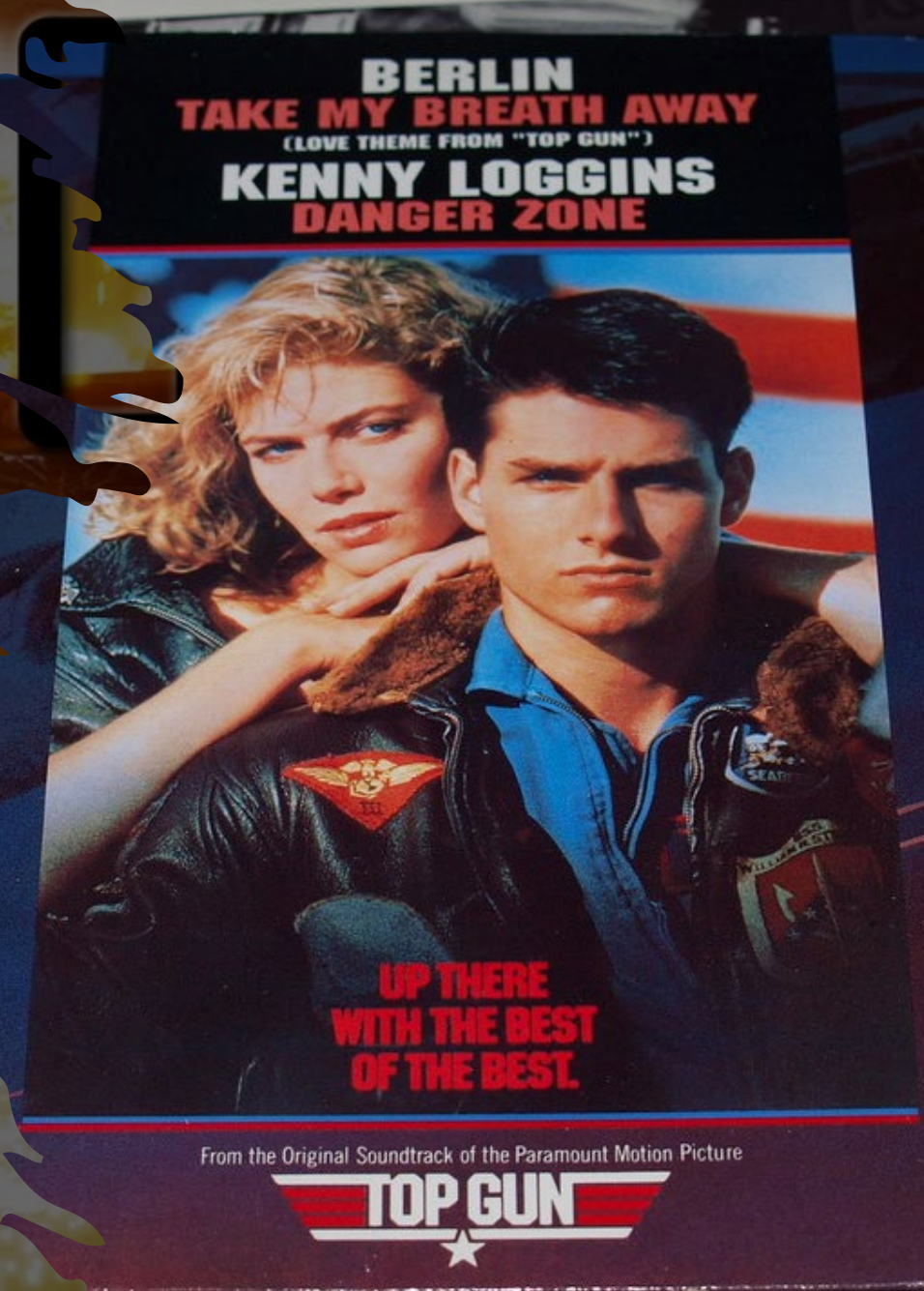
# Scope

- Causes of Action
    - Sexual Assault
    - Sexual Harassment
  - Individual or Class Actions
  - Plaintiff's Choice
- 

# ANGERZ

## Danger Zone #2

THE STATUTE DOES  
NOT JUST APPLY TO  
EMPLOYEES.



A glass sphere containing a miniature globe of the Earth, set against a background of colorful bokeh lights. The sphere is the central focus, with a vibrant, multi-colored background of out-of-focus lights in shades of red, orange, yellow, and green. The globe inside the sphere shows continents and oceans, with a bright light source from the right creating a lens flare effect.

## What is the Future?

- **Expansion:**  
race, gender,  
disability, age,  
etc.
- **Claim Splitting**



Iconic Scene #2

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# Non-Disclosure Agreements



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October  
2017

# The New York Times

U.S.

## Harvey Weinstein Paid Off Sexual Harassment Accusers

By JODI KANTOR and MEGAN TWOHEY OCT. 5, 2017



RELATED COVER



**Alyssa Milano** 

@Alyssa\_Milano

Follow 

If you've been sexually harassed or assaulted write 'me too' as a reply to this tweet.

Me too.

Suggested by a friend: "If all the women who have been sexually harassed or assaulted wrote 'Me too.' as a status, we might give people a sense of the magnitude of the problem."

1:21 PM - 15 Oct 2017

**24,482** Retweets **53,013** Likes



#MeToo

200,000

19,000,000



Tax Cuts and  
Jobs Act of  
2017

Effective  
Dec. 22, 2017

*One Hundred Fifteenth Congress  
of the  
United States of America*

**AT THE FIRST SESSION**

# ANGERZ

## Danger Zone #3

### Settlement Agreements



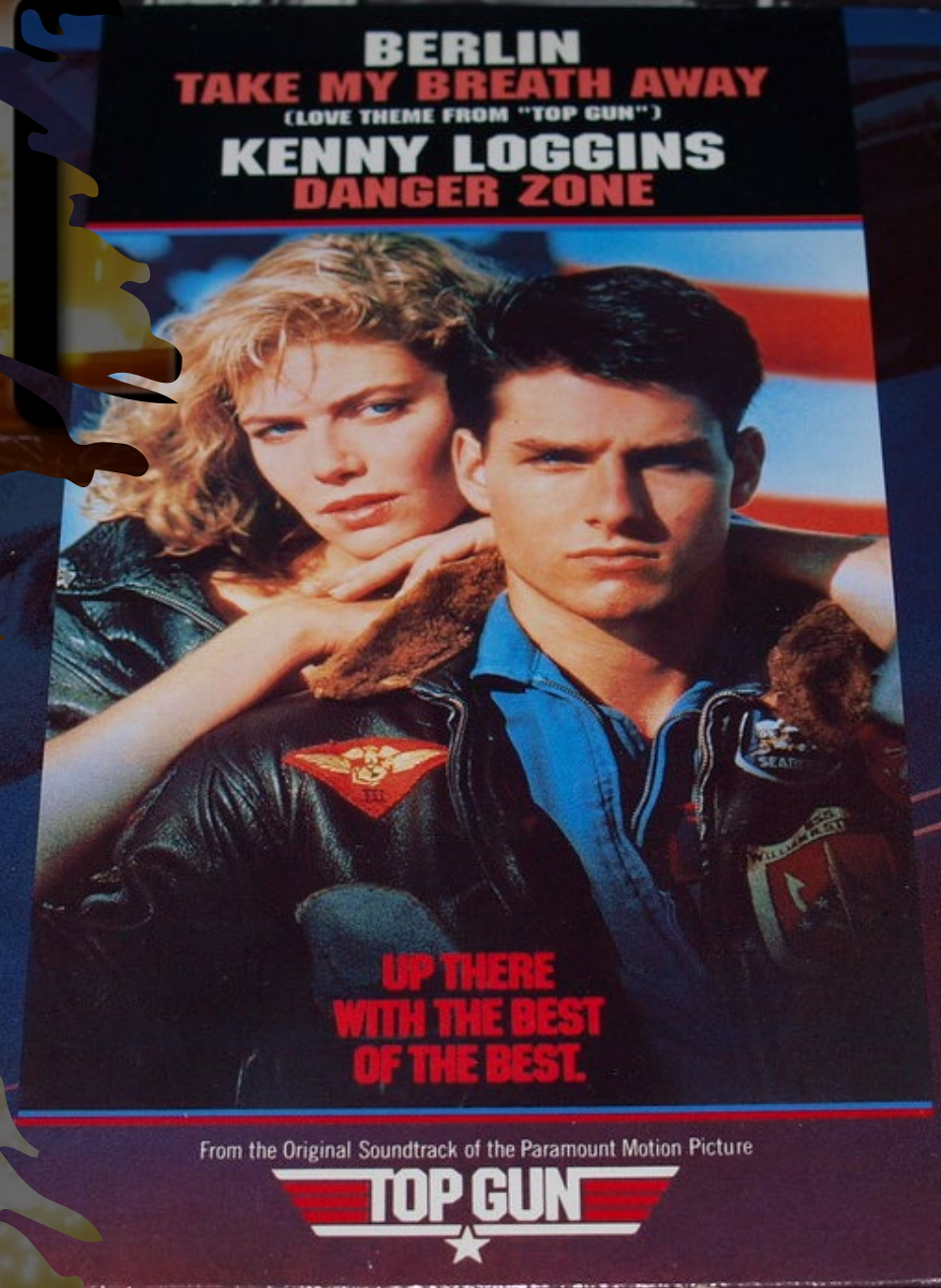
# Tax Cuts and Jobs Act of 2017

<b>Section 162(f)</b>	<b>Section 6050X</b>	<b>Section 162(q)</b>
<p data-bbox="249 511 835 872">NO DEDUCTION of any amount paid to a governmental entity because of a statutory investigation</p> <p data-bbox="359 968 726 1100">Includes EEOC Investigations</p> <p data-bbox="198 1196 886 1400">EXCEPTION if the payment is made to come into compliance with the law.</p>	<p data-bbox="937 511 1607 715">Information Return by the governmental entity receiving the payment</p> <p data-bbox="937 815 1607 1019">Reporting any payment to settle a governmental suit or investigation</p>	<p data-bbox="1689 511 2321 786">NO DEDUCTION of ~ any amount to settle a sexual harassment or sexual abuse claim</p> <p data-bbox="1964 815 2046 862">OR</p> <p data-bbox="1658 891 2351 1019">~ attorneys' fees related to the settlement</p> <p data-bbox="1982 1048 2028 1095">IF</p> <p data-bbox="1684 1123 2326 1252">the settlement is subject to non-disclosure</p>

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Danger Zone #4

Standard NDAs



Tennessee Code  
Annotated  
§ 50-1-108  
Effective May 15, 2018



State of Tennessee  
**PUBLIC CHAPTER NO. 965**  
HOUSE BILL NO. 2613

(a) An employer, as defined in § 50-1-304, shall not require an employee, as defined in § 50-1-304, or a prospective employee to execute or renew a non-disclosure agreement with respect to sexual harassment in the workplace as a condition of employment.

(b) Any employee injured as a result of a violation of subsection (a) has the same rights and remedies available to employees under § 50-1-304.

# Rights and Remedies?

- Claim for Retaliatory Discharge
- Back Wages
- Damages (subject to caps on compensatory damages)
- Attorneys' Fees & Costs



# Sample Language

However, Confidential Information will not include information which is public knowledge, becomes public knowledge through no fault of the parties, **concerns an issue of sexual harassment in the workplace,** or is received independently from a third party who had such information independently from the parties hereto, and who had the right to disclose such information





Iconic Scene #3





# Separation Agreements

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Danger Zone #5

Standard NDAs



# Tax Cuts and Jobs Act of 2017

<b>Section 162(f)</b>	<b>Section 6050X</b>	<b>Section 162(q)</b>
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# Just an Idea

- **By executing this Agreement, \_\_\_\_\_ affirmatively represents to Corporation that he is not aware of and has no information or knowledge of any compliance violations or illegal or fraudulent activity taking place at or related to Corporation, except those actions specifically set forth in Exhibit A, which is attached to this Agreement and incorporated into this Agreement. \_\_\_\_\_ affirmatively represents to Corporation that he has informed Corporation of any and all conduct, facts, and circumstances that he has a duty to report to Corporation, and that he has not made any reports of compliance issues or made any complaints to any third parties or governmental agencies which he has not also reported to Corporation. \_\_\_\_\_ further represents that he has been paid or reimbursed for all wages, compensation, and reimbursable expenses to which he is entitled, other than any payment for work performed or reimbursable expenses incurred during the pay period immediately prior to the Termination Date, and that he has fully and completely reported to Corporation, in writing, on Exhibit A any errors in his wages, compensation, paychecks, or expense reimbursements prior to the Termination Date. Finally, \_\_\_\_\_ represents that he has not made any complaints or allegations of sexual harassment relating to Corporation and that that no part of the Severance Payment is being paid as settlement of any claim of sexual harassment.**

# Iconic Scene #5





Questions?

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