S298312

No. S _____

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

DEREK SKYLAR AUD, as Successor in Interest, etc.,

Plaintiff, Appellant, and Cross-Respondent,

v.

RRT ENTERPRISES, LP; BOARDWALK WEST FINANCIAL SERVICES, LLC; SHLOMO RECHNITZ; ROCKPORT ADMINISTRATIVE SERVICES, LLC,

Defendants, Respondents, and Cross-Appellants.

Court of Appeal, Second Appellate District, Division Seven
Civil No. B341254

Appeal from Los Angeles County Superior Court
Case No. 22STCV21164
Honorable Stephanie M. Bowick

PETITION FOR REVIEW

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ISSUES PRESENTED

This case presents questions that increasingly confront courts regarding the Medical Injury Compensation Reform Act (MICRA)—questions that *Holland v. Silverscreen Healthcare, Inc.* (2025) 18 Cal.5th 364 left unanswered:

1. In determining whether MICRA's noneconomic damages cap (Civ. Code, § 3333.2) applies,

    a. Does a licensed health care provider's negligence in developing and implementing a medically necessary care plan become "custodial neglect" exempt from MICRA protections merely because the plan includes measures pertaining to daily life activities or caregiving tasks?

    b. Does MICRA applicability depend either on whether negligence is in identifying appropriate measures or in implementing them, or on whether an omission was due to lack of resources?

    c. Does the analysis vary depending on the *type* of health care provider—e.g., do skilled nursing facilities receive less protection than hospitals and acute care facilities?

2. How does MICRA's noneconomic damages cap apply to damages stemming from a mix of professional negligence and other omissions?

INTRODUCTION

The Medical Injury Compensation Reform Act (MICRA) limits claims against health care providers based on professional negligence. (*Lopez v. Ledesma* (2022) 12 Cal.5th 848, 855-856, 859.) The Legislature imposed those limits to rein in soaring medical malpractice insurance premiums that jeopardized the availability of medical services for Californians. (*Ibid.*)

This Court recently considered MICRA's scope in *Holland v. Silverscreen Healthcare, Inc.* (2025) 18 Cal.5th 364. But *Holland* left lingering many important, frequently recurring legal questions on how to determine whether claims against health care providers who perform both medical and custodial functions fall within MICRA. This case squarely presents those questions, in the context of a different MICRA provision than was at issue in *Holland*—namely, MICRA's cap on noneconomic damages (Civ. Code, § 3333.2). Review is warranted to settle those important questions. (Cal. Rules of Court, rule 8.500(b)(1).)

Holland observed, "[t]here is potential for confusion" on when MICRA applies to claims against health care providers that both "'perform custodial functions *and* provide professional medical care.'" (18 Cal.5th at p. 379.) That describes many health care providers, including hospitals, acute and sub-acute care facilities, skilled nursing facilities, nurses, and others. A mixture of functions "complicate[s] efforts to draw lines between claims concerning the provision of professional medical services and other services the facilities may provide." (*Id.* at p. 380.) Where these lines are drawn for purposes of MICRA's damages

cap substantially impacts the damages available against health care providers and, hence, the size of their insurance premiums—MICRA's central focus. This, then, is an area where clear lines are necessary, and the lines must be drawn in a way that does not eviscerate the cap.

Holland described the dividing line this way: "[A]cts or omissions by a skilled nursing facility in its capacity as a health care provider fall under the banner of professional negligence" while "'a failure to fulfill custodial duties'" does not. (18 Cal.5th at p. 380.)

Holland recognized, though, that "this distinction is not always an easy one to draw . . . ." (18 Cal.5th at p. 382.) And *Holland* did not draw it: *Holland* involved a pleading-stage issue of whether MICRA's arbitration provision applied, and the Court found it "impossible" to determine from the complaint whether the claim at issue was based on MICRA-covered medical negligence or non-MICRA-covered neglect. (*Id.* at p. 385.) Unable to answer that question, the Court instead remanded for further development. (*Ibid.*)

This case requires the line-drawing that *Holland* didn't perform, on a type of claim that all kinds of health care providers frequently face—namely, a claim that a provider negligently failed to develop and implement medically necessary measures due to understaffing or a lack of resources.

Plaintiff's main injuries were from a fall that she contended the defendant skilled nursing facility should have prevented by

determining and implementing measures tailored to her medical condition. She attributed the shortcomings to insufficient staffing and resources. Her trial evidence included testimony from two medical experts about what fall-prevention measures were and were not appropriate in light of her medical condition, which included neurocognitive decline, prior falls, a recent hip surgery, and being on multiple medications. The jury found the facility committed negligence and neglect and awarded substantial noneconomic damages.

The trial court reduced the jury's noneconomic damages award to the MICRA cap, finding that the plaintiff's claims were based on professional negligence. (Opinion 6; see Civ. Code, § 3333.2.) The Court of Appeal reinstated the award, holding that *Holland*'s "principles" made the claims custodial rather than medical. (Opinion 18, 41.)

But *Holland* did not provide any test or rule dictating the Court of Appeal's conclusion. *Holland* involved MICRA's arbitration provision, not its damages cap. And even if *Holland*'s principles nonetheless apply, *Holland* did not address multiple key aspects of this case. *Holland* observed that a claim based on "negligence in prescribing *or executing* a plan to address a resident's medical needs" "may sound in professional negligence," but that a claim of injury based on "failure to adequately supervise and render assistance to residents as they undertake daily activities" "generally does not." (18 Cal.5th at pp. 381-382, italics added.) *Holland* did not discuss how MICRA applies where those two things overlap—that is, where a resident's

medical needs include medically appropriate measures for daily activities. Nor did *Holland* address a distinction between prescribing and implementing measures, or the impact of a plaintiff attributing omissions to understaffing or other lack of resources—points that the Opinion seems to treat as relevant, but without articulating a clear test that future courts or juries can apply.

Holland also did not delve into MICRA's application where plaintiffs argue a mix of medical and custodial omissions. The Opinion nonetheless appears to conclude that a damages award is entirely exempt from MICRA's damages cap if the court deems *any* of the injury-causing omissions custodial. (Opinion 18-22.) On this issue too, the Opinion fails to articulate any clear test leading to its conclusion.

The Opinion's MICRA discussion is published. (Opinion 2-3.) It has potentially far-ranging implications not just for skilled nursing facilities, but also for other health care providers: Much of hospitals', acute and sub-acute facilities', and skilled nursing facilities' *medical* function includes caregiving aspects. A broad swath of claims traditionally understood to be subject to MICRA's damages cap will lose that protection if negligence in designing or implementing medically needed measures is deemed outside of MICRA simply because the measures relate to caregiving or daily activities. And if attributing omissions to understaffing or limited resources or including a claim that injuries were caused at least *in part* by custodial neglect is a way around MICRA,

plaintiffs will include those allegations in every case; indeed, they often already do.

Curtailing the scope of MICRA's damages cap is at odds with this Court's direction that MICRA "'*should be construed liberally* in order to promote the legislative interest'" in reducing medical malpractice insurance premiums. (*Lopez*, *supra*, 12 Cal.5th at p. 859, italics added.) Insurers will respond to a curtailed damages cap by increasing providers' insurance premiums. Indeed, even *uncertainty* as to the scope of the cap will have that effect, because uncertainty leaves insurers unable to evaluate risk and price policies—and insurers will raise premiums to cover the unknown.

Review is needed to provide guidance that the Court didn't have an opportunity to provide in *Holland*—and the time for that review is *now*, before the Opinion ripples throughout litigation and insurance premiums statewide.

Review, thus, should be granted to answer the following important questions of law (Cal. Rules of Court, rule 8.500(b)):

1. In determining whether MICRA's noneconomic damages cap (Civ. Code, § 3333.2) applies,

    a. Does a licensed health care provider's negligence in developing and implementing a medically necessary care plan become "custodial neglect" exempt from MICRA protections merely because the plan includes measures pertaining to daily life activities or caregiving tasks?

b. Does MICRA applicability depend either on whether negligence is in identifying appropriate measures or in implementing them, or on whether an omission was due to lack of resources?

c. Does the analysis vary depending on the *type* of health care provider—e.g., do skilled nursing facilities receive less protection than hospitals and acute care facilities?

2. How does MICRA's noneconomic damages cap apply to damages stemming from a mix of professional negligence and other omissions?

STATEMENT OF THE CASE

A. Trial court proceedings.

1. Plaintiff sues Defendants, alleging claims arising out of her stay at a skilled nursing facility.

Plaintiff Betsy Jentz was a patient at a skilled nursing facility.[1] (Opinion 3-4 & fn. 2.) Such facilities serve "patients whose primary need is for availability of skilled nursing care on an extended basis." (Health & Saf. Code, § 1250, subd. (c)(1).)

Jentz was 84 years old when she entered the facility to rehabilitate from hip surgery. (Opinion 15, fn. 10; 22.) She had what her lawyer described as "many complex medical conditions," including neurocognitive decline, atrial fibrillation, Parkinsonism, and high blood pressure, and she was on multiple medications. (7RT 1824-1826, 1842-1843, 1846-1847; 11RT 3153-3154.)

Jentz fell multiple times while at the facility, suffering injuries. (Opinion 4-5.) She sued Defendants—the facility's licensee and its alleged joint venturers or alter egos—alleging elder abuse and neglect (Welf. & Inst. Code, § 15600 et seq.) and common-law negligence, among other things. (Opinion 2, 4-5.)

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[1] Jentz's great-nephew Derek Skylar Aud initially represented Jentz in this litigation under a power of attorney, and substituted in after she died while the appeal was pending. (Opinion 3.)

2. The jury awards Plaintiff $1.8 million in noneconomic damages.

Jentz's claims proceeded to a jury trial. (Opinion 5.) She presented evidence, and argued, that:

● The facility failed to create a fall-prevention plan until 10 months after she was admitted or to update the plan after multiple falls;

● The facility failed to provide fall-prevention interventions that her testifying *medical* experts—a doctor and a registered nurse—deemed appropriate, and instead used interventions that those medical experts deemed inappropriate; and

● The fall causing her primary injuries—a fractured arm and pelvis—occurred when she walked back from the bathroom unescorted.

(See, e.g., Opinion 18; Petition for Rehearing 9-12; 7RT 1823-1849, 1902-1909; 11RT 3151-3155, 3161-3164; 12RT 3321-3327.)

Jentz contended that the facility did not adequately supervise or assist her because it was understaffed. (Opinion 18.) Although not the primary focus of her injury claim, she also presented evidence that she developed pressure ulcers and was not provided with adequate nutrition or with eating assistance after she fractured her arm. (*Id.* at p. 19.)

The jury found that the facility's licensee committed elder neglect or abuse, but *not* with the recklessness, oppression, fraud, or malice necessary to trigger enhanced remedies under the Elder

Abuse Act. (Opinion 5; 1AA 238; Welf. & Inst. Code, § 15657.)[2] It also found that the licensee was negligent and violated Jentz's resident's rights, and that the other defendants were the facility's joint venturers or alter egos. (Opinion 5.)

The jury awarded $1,837,032 in noneconomic damages, along with economic and statutory damages. (Opinion 5.) The trial court entered judgment based on the verdict. (*Id.* at p. 6.)

3. The trial court reduces the $1.8 million noneconomic damages award to the MICRA cap.

Defendants filed post-judgment motions challenging various aspects of the judgment.

Relevant to this petition, the trial court granted JNOV reducing the noneconomic damages award to $250,000, the then-applicable MICRA cap for noneconomic damages in professional negligence claims against a health care provider. (Opinion 6, 13, 15; Civ. Code, § 3333.2, former subds. (a), (b).)

Relying on *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771 and *Delaney v. Baker* (1999) 20 Cal.4th 23, the court reasoned that the jury's finding that the skilled nursing facility licensee did not act with recklessness, fraud, oppression, or

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[2] Although the jury also found in response to a different question that the licensee acted with fraud, malice, or oppression (1AA 241), the trial court concluded that in context, that answer "clearly pertain[ed]" only to the resident's rights claim. (2AA 1300.)

malice as to the negligence/neglect meant that the verdict was based on professional negligence rather than neglect. (2AA 1299-1300.)

The trial court also granted Defendants' motions on other issues, including eliminating the joint venture findings and ordering a new trial on alter ego. (Opinion 6.)

Jentz appealed, and Defendants cross-appealed. (Opinion 6.)

B. In a published opinion, the Court of Appeal holds that the MICRA damages cap does not apply because Plaintiff's claims are based on custodial neglect rather than professional negligence.

The Court of Appeal reversed the trial court's conclusion that the MICRA cap applies to Jentz's claims and reinstated the $1.8 million noneconomic damages award. (Opinion 2-3.) Its published holding relied on *Holland*, *supra*, 18 Cal.5th 364, which was decided while the appeal was pending. (*Id.* at pp. 16, 18.)

Holland explained that fall claims "based on negligence in prescribing or executing a plan to address a resident's medical needs . . . may sound in professional negligence" while claims "based on a failure to adequately supervise and render assistance to residents as they undertake daily activities" generally do not. (18 Cal.5th at pp. 381-382.)

The Opinion held that Jentz's claims sounded in custodial neglect rather than professional negligence. (Opinion 18-26.) It noted that Jentz suffered her most severe injuries when she fell while walking back from the bathroom unsupervised and characterized the failure to assist Jentz in getting to the bathroom as a failure to "adequately supervise and assist her as she undertook daily activities" and therefore custodial under *Holland*. (*Id.* at pp. 18-19, 22.)

The Opinion rejected Defendants' argument that the gravamen of Jentz's claims was that the facility failed to develop, implement, and modify a fall-avoidance plan that was appropriate in light of her medical condition—an omission that *Holland* described as sounding in professional negligence. (Opinion 20, 22.) The Opinion concluded that although Jentz argued that the facility was negligent in failing to create a fall-prevention plan and failing to update the plan after Jentz continued to fall, that argument "did not transform Jentz's claim into one 'based on negligence in prescribing or executing a plan to address [her] medical needs.'" (*Id.* at p. 21.)

The Opinion emphasized that Jentz claimed the facility should have implemented measures to prevent her from falling but failed to do so because it did not have enough staff. (Opinion 18, 22.) It characterized the measures that Jentz argued the facility should have implemented—observing her more closely, responding to her call light, taking her to the bathroom regularly, and placing an alarm to notify staff if she got up—as "custodial and caregiving tasks." (*Id.* at p. 22.) And it concluded that "even

if *creating* an appropriate plan *implicated medical staff's expertise and judgment*, [the facility] lacked the staff and custodial resources to *implement* the plan, and it was that failure that caused Jentz's injuries." (*Ibid.*, italics added.)[3] The Opinion did not explain what test led it to characterize as entirely custodial a failure to implement measures that Jentz's *medical* experts testified were appropriate in light of her specific *medical* circumstances. (See, e.g., 7RT 1823-1849, 1902-1909.)

The Opinion also noted evidence of the facility's custodial neglect in ways unrelated to fall prevention, such as the facility's failure to provide Jentz adequate food, water, and feeding assistance, and failure to reposition her and clean her skin, causing bedsores. (*Id.* at p. 19.)

Finally, the Opinion rejected Defendants' argument that if Jentz's claims could be characterized as both custodial neglect *and* professional negligence, MICRA's cap still applies under *Delaney*, *supra*, 20 Cal.4th 23, because the jury found that Jentz failed to prove that the licensee acted with recklessness,

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[3] In the Opinion's view, "Jentz did not claim that [the facility's] medical staff was negligent in assessing her fall risk." (Opinion 21.) That ignores Jentz's medical experts' testimony that the facility "underestimated" and "only superficially assessed" Jentz's neurocognitive decline, that Jentz's prescribed medications could potentially increase her fall risk, and that the facility failed to create a comprehensive, individualized care plan, including reviewing her medications and dosage timing—which made falls "predictable." (7RT 1892-1897; Petition for Rehearing 9-10.) And, as noted above, the Opinion acknowledges that Jentz argued that the facility was negligent in not "creating a fall-prevention plan . . . ." (Opinion 21.)

oppression, fraud, or malice in connection with the neglect. (Opinion 23-26.) The Opinion noted that *Holland* "shied away from that aspect of *Delaney*"—i.e., determining MICRA applicability based on the defendant's mental state—and instead relied on the distinction between custodial care and medical care. (*Id.* at pp. 25-26.)[4]

Defendants petitioned for rehearing, requesting, among other things, that the Court of Appeal modify the Opinion to address various factual misstatements and omissions, some relating to the MICRA issue. (Petition for Rehearing 8-12.)

The Court of Appeal summarily denied the petition. (August 10, 2026 Order.)

[4] The Court of Appeal affirmed the trial court's post-judgment rulings on the remaining issues—i.e., the grant of a new trial on economic damages and on alter ego, and JNOV on joint venture—in unpublished portions of the Opinion. (Opinion 1, fn.*, 3, 8-13, 26-37.)

WHY REVIEW SHOULD BE GRANTED

This case presents important recurring legal questions regarding MICRA's scope—questions that *Holland* did not resolve. And if not reviewed, the Opinion's conclusion that the claims here are outside of MICRA's damages cap will eviscerate MICRA protections for hospitals, acute and sub-acute care facilities, skilled nursing facilities, nurses, and other health care providers throughout the State. Review is necessary before malpractice insurance premiums skyrocket and health care becomes less available.

I. MICRA's Scope Is An Issue Of Significant Statewide Importance.

A. The Legislature enacted MICRA to ensure continued availability of medical services in California.

MICRA is a central part of California's health care policy: The Legislature enacted it "'in response to rapidly increasing premiums for medical malpractice insurance' that threatened the availability of adequate medical care in California." (*Lopez*, *supra*, 12 Cal.5th at p. 859.) MICRA "aims 'to contain the costs of malpractice insurance by controlling or redistributing liability for damages, thereby maximizing the availability of medical services to meet the state's health care needs.'" (*Ibid.*)

A "'key component'" of MICRA is that it caps noneconomic damages in actions against a health care provider "'based on professional negligence. . . .'" (*Lopez*, *supra*, 12 Cal.5th at

pp. 857, 859; Civ. Code, § 3333.2.) The cap "was designed 'to control and reduce medical malpractice insurance costs by placing a predictable, uniform limit on the defendant's liability for noneconomic damages.'" (*Lopez*, at p. 859.) The operative cap in this case is $250,000. (Civ. Code, § 3333.2, former subds. (a), (b).) The cap is higher for more recently filed cases, but the coverage remains the same: The cap applies "[i]n any action for injury that does not involve wrongful death against one or more health care providers or health care institutions *based on professional negligence* . . . ." (Civ. Code, § 3333.2, subds. (b)(1), (g), italics added.)

"'[P]rofessional negligence'" in this context means "a negligent act or omission to act by a health care provider in the rendering of professional services"—or, as this Court summed up, "medical treatment falling below the professional standard of care." (Civ. Code, § 3333.2, former subd. (c)(2) & current subd. (j)(4); *Barris v. County of Los Angeles* (1999) 20 Cal.4th 101, 113.)

The MICRA cap applies to licensed skilled nursing facilities just as it does to hospitals and other providers—i.e., for acts or omissions in their capacity as health care providers. (*Holland*, *supra*, 18 Cal.5th at p. 380; Civ. Code, § 3333.2, former subd. (c)(1) & current subd. (j)(1); Health & Saf. Code, § 1250.)

This Court has directed that MICRA provisions, including the damages cap, "'should be construed liberally in order to promote the legislative interest'" in reducing medical malpractice insurance premiums. (*Lopez*, *supra*, 12 Cal.5th at p. 859.)

B. This Court has repeatedly deemed MICRA issues worthy of review.

This Court has granted review of numerous MICRA issues in recent years. (See, e.g., *Holland*, *supra*, 18 Cal.5th 364 [applicability of MICRA arbitration provision to claims against skilled nursing facility]; *Gutierrez v. Tostado* (2025) 18 Cal.5th 222 [applicability of MICRA statute of limitations to claims by plaintiff injured in collision with ambulance]; *Lopez*, *supra*, 12 Cal.5th 848 [applicability of MICRA damages cap to alleged malpractice by physician's assistant]; *Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75 [applicability of MICRA statute of limitations to hospital's alleged negligence in allowing patient's bed rail to collapse]; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771 [applicability of MICRA prerequisites for pleading punitive damages to Elder Abuse Act claims]; *Delaney, supra*, 20 Cal.4th 23 [applicability of MICRA to reckless neglect within the Elder Abuse Act].)

This repeated intervention reflects MICRA's importance and the prevalence of cases presenting MICRA issues in California's courts. And issues regarding the MICRA damages cap are particularly important, given that the Legislature intended the cap to ensure predictable, controlled noneconomic damage awards to avoid skyrocketing insurance premiums that could jeopardize the availability of medical care. (*Lopez*, *supra*, 12 Cal.5th at p. 859.) Any potential curtailing of the cap's scope warrants careful review, because it risks exactly what the Legislature sought to prevent: soaring premiums that threaten

the availability of medical care. (See *Flores*, *supra*, 63 Cal.4th at p. 82, fn. 1 [the scope of conduct protected by MICRA provisions "'must be determined after consideration of the purpose underlying each of the individual statutes"'].) As we now discuss, the Opinion here poses that risk.

II. Review Is Necessary To Determine Questions Unanswered By This Court's Recent *Holland* Decision Regarding How MICRA Applies To Facilities That Provide Both Medical Care And Custodial Services.

Courts frequently wrestle with whether claims fall within MICRA—specifically, whether the claims arise from "professional negligence" or from something else such as custodial negligence or neglect. That question is important not only in the skilled nursing context presented in this case, but also for hospitals, nurses, acute and sub-acute care facilities, and other institutions. It is particularly important as to MICRA's damages cap, a key component in achieving the Legislature's goal of reining in skyrocketing medical malpractice insurance premiums. (See § I.A., *ante*.) And absent this Court's intervention, the Opinion's path to concluding that MICRA's damages cap does not apply here risks eviscerating MICRA protections for all those institutions.

A. *Holland* recognized that distinguishing between professional negligence and custodial neglect claims can be complicated and difficult.

This Court's prior decisions have framed the MICRA question as whether an injury was a result of negligence in rendering services owed by the defendant *by virtue of being a health care professional*, or by virtue of being a custodian or business owner. (E.g., *Holland*, *supra*, 18 Cal.5th at pp. 378-381; *Flores*, *supra*, 63 Cal.4th at pp. 88-89; *Covenant Care*, *supra*, 32 Cal.4th at p. 786.)

But as the Court has recognized, this standard is difficult to apply, especially where defendants provide both medical care and caretaking for basic needs. As *Holland* put it, a facility's wearing multiple hats "can complicate efforts to draw lines between claims concerning the provision of professional medical services and other services the facilities may provide." (18 Cal.5th at p. 380; see also *id.* at p. 382 ["this distinction is not always an easy one to draw where, as here, the facility provides both medical and custodial care"].)

Indeed, *Holland* found line-drawing "impossible" on the record before the Court. (18 Cal.5th at p. 385.) The complaint alleged that the defendant skilled nursing facility failed to protect the decedent from falls and infections, to employ enough qualified staff, to keep the facility in good repair, and to provide decedent with sufficient nutrition and fluids. (*Id.* at pp. 371-372.) It further alleged that the facility failed to exercise reasonable care to meet the decedent's "'basic needs,'" and that the decedent

died as a result of that negligence and neglect. (*Ibid.*) *Holland* concluded that this was not enough information to determine whether the wrongful death claim sounded in professional negligence or in neglect for purposes of MICRA's arbitration provision. (*Id.* at p. 385.)

Holland held that not *all* claims of injuries from falls and infection are necessarily based on professional negligence, but that some such claims are. (18 Cal.5th at pp. 380-381.) And without knowing "*how* [the facility's] alleged understaffing, failure to keep its facility in good repair, and failure to attend to [decedent's] basic needs" allegedly caused the decedent to fall or incur infections, *Holland* could not answer which category the plaintiffs' claim was in. (*Id.* at pp. 380-381, 385.) It instead remanded for further development—the result of which is that *Holland* does not provide an example of how the principles it stated work in practice.

B. This case presents frequently recurring questions on the line between MICRA-covered professional negligence and non-MICRA-covered negligence/neglect, in the context of MICRA's damages cap.

This case requires the line-drawing that *Holland* deferred, on a different MICRA provision than was at issue in *Holland*—and the Opinion articulates no clear rule guiding its conclusion that Jentz's claims are custodial. The Opinion does not specify, for example, what criteria courts or juries should use to determine the MICRA cap's application in future cases. That

sows uncertainty, exactly the opposite of what is needed in applying a statute designed to "'plac[e] a predictable, uniform limit on the defendant's liability for noneconomic damages.'" (*Lopez*, *supra*, 12 Cal.5th at p. 859.)

Moreover, to the extent any potential rules can be *inferred* from the Opinion, they warrant close examination because they risk eviscerating MICRA's protections not only for skilled nursing facilities, but also for hospitals and an array of other health care institutions. That evisceration of the damages cap and other protections will increase the cost of health care providers' insurance and decrease the availability of care for Californians. We summarize here some salient questions that this case presents regarding line-drawing.

1. Does the failure to develop and implement medically necessary measures become "custodial neglect" exempt from MICRA's damages cap merely because the measures relate to daily life activities?

Holland distinguished between two types of claims relating to falls and infections: (1) claims based on "negligence in prescribing or executing a plan to address a resident's medical needs" and (2) claims "based on a failure to adequately supervise and render assistance to residents as they undertake daily activities, or the failure to ascertain whether residents need medical treatment despite easily observable physical manifestations of possible illness." (18 Cal.5th at pp. 380-381.) It explained that "the first sort of claim may sound in professional

negligence," but "the second sort of claim generally does not." (*Id.* at p. 381.)

Holland was correct to recognize that negligence in prescribing or executing a plan to meet medical needs may sound in professional negligence: Patients in hospitals, acute or sub-acute care facilities, and skilled nursing facilities by definition have serious medical needs. Developing a plan to meet those needs requires medical judgment, both in assessing the patient's particular risks and in tailoring measures to safely address those risks in light of the patient's overall medical condition. (See, e.g., 42 C.F.R. § 483.21, subds. (b)(1), (b)(2)(ii) ["comprehensive person-centered care plan[s]" must be "[p]repared by an interdisciplinary team" including the attending physician and a registered nurse], (b)(3)(i) [services in a comprehensive care plan must "[m]eet professional standards of quality"].)

Fall-prevention plans, for example, encompass medically necessary patient care in hospital wards, acute and sub-acute care facilities, and skilled nursing facilities. Such plans often require evaluating a patient's gait and balance, muscle strength, blood pressure, cognition, medications, neurologic status, and postoperative limitations; determining whether the patient requires assisted transfers, mobility devices, physical or occupational therapy, alarms, or increased clinical monitoring; and ongoing reassessment as the patient's condition changes. Indeed, Jentz presented testimony from *medical* experts—a doctor and a registered nurse—regarding what fall-prevention

measures were and were not appropriate in light of her specific *medical* condition. (7RT 1823-1849, 1902-1909.)

Infection-prevention plans likewise require medical judgment, including clinically assessing a patient's susceptibility to infection, wound or surgical-site status, invasive devices such as urinary catheters and central lines, respiratory status, aspiration risk, degree of immunocompromise, and signs of emerging infection.

But under *Holland*'s paradigm, what happens where the plaintiff argues that the facility negligently failed to prescribe and execute a fall-prevention plan tailored to the plaintiff's medical condition, and that an appropriate plan would have involved supervising and rendering assistance as she undertook daily activities? That claim combines the two "sort[s]" of fall-injury claims that *Holland* identified, and *Holland* provides no answer.

Flores, however, suggests an answer: It determined MICRA applicability based on whether the negligence was "integrally related to the medical treatment and diagnosis of the patient," not on whether the negligently-performed or omitted task was medical in and of itself. (63 Cal.4th at pp. 84-85, 88-89 [professional negligence includes negligently maintaining a bedrail that a doctor ordered raised or negligently providing a patient with food other than a doctor-ordered special diet].) Here, that would mean focusing on whether failure to implement appropriate interventions was "integrally related" to the

medically needed fall-prevention plan, not on the character of the interventions themselves.

The Opinion does not use an "integrally related" standard. Instead, it treats Jentz's claim as custodial because the immediate cause of her injury was a lack of assistance in walking to the bathroom, a daily activity, and because the interventions Jentz argued should have been provided struck the court as "custodial and caregiving tasks." (Opinion 18-19, 22.)

But the claimed lack of assistance stemmed from a failure to prescribe interventions that Jentz's *medical* condition required. Indeed, Jentz's counsel argued to the jury that the facility should have had "meetings to *determine the root cause [of her falls]* and address it," and that "[w]ith a resident with so many complex *medical* conditions," what the facility did "simply wasn't enough." (11RT 3153-3154, italics added.) In line with that argument, Jentz presented evidence that the facility failed to re-assess her fall risk after each fall; that the interventions it implemented were inadequate or inappropriate for her condition, including in the view of her *medical* experts; and that her falls were "predictable" based on the facility's failure to create and update a fall-prevention care plan. (E.g., 5RT 1210-1211, 1299-1300, 1343-1345, 1349, 1369; 6RT 1633-1634; 7RT 1832-1833, 1838, 1892-1895, 1906-1907, 1911-1912, 1917, 1923, 1934-1936; 8RT 2239.) And, the jury was instructed that the facility "had a duty to develop and implement comprehensive, individualized care plans" for Jentz that "meet her *medical, nursing, and mental needs*." (1AA 267, italics added.)

The Opinion does not grapple with this medical overlay, nor does it cite any authority for its apparent premise that what matters is whether the omitted measure strikes the court as custodial/caregiving, not whether the defendant ordered—or should have ordered—the measure in its role as a health care provider. Yet the Opinion will now be cited for that proposition, with far-reaching consequences: If a doctor orders that a patient be given a specific meal, provided with a certain fall-prevention measure, or positioned a certain way in bed, is a claim for injury based on the failure to comply now outside of MICRA's damages cap because feeding, escorting, and getting a person into bed are caretaking tasks? If that is the rule, hospitals, acute and sub-acute care facilities, skilled nursing facilities, and other providers will face uncapped, unpredictable noneconomic damage awards any time that their professional negligence relates to something deemed a daily or caregiving activity—and all plaintiffs will pitch their cases that way.

Review is necessary to settle this important issue on MICRA's scope.

2. Does the MICRA damages cap's applicability depend either on whether negligence is in identifying appropriate measures or in implementing them, or on whether an omission was due to lack of resources?

The Opinion may be read as drawing a line between negligence in *creating* a medically appropriate plan and in

implementing the plan, or based on the *reason* a plan was not implemented: In finding Jentz's claims not subject to MICRA's damages cap, the Opinion states, "[E]ven if creating an appropriate plan implicated the medical staff's expertise and judgment, [the facility] lacked the staff and custodial resources to implement the plan, and it was that failure that caused Jentz's injuries." (Opinion 22.)

A line based on creation vs. implementation would be at odds with this Court's statement in *Holland* that "negligence in prescribing *or executing* a plan" may sound in professional negligence. (18 Cal.5th at pp. 381-382, italics added.) On the other hand, *Holland* also distinguished between "'the *undertaking* of medical services'" (professional negligence) and the "'failure to *provide* medical care'" (custodial). (*Id.* at p. 380, quoted at Opinion 17, italics in *Holland*.) Some litigants or courts may view a failure to design and implement a medically appropriate plan as custodial under that framework because it is a failure to provide medical care. This is a recipe for confusion and inconsistent results.

Further inviting inconsistency and confusion is the Opinion's reference to the facility lacking staff and resources to implement a plan. (Opinion 22.) Treating an implementation failure as custodial because it's attributed to a lack of qualified staff or other resources would be inconsistent with *Holland*, which recognized that the plaintiffs' claim might be on either side of the medical/custodial line despite allegations that the facility

was understaffed and not in good repair. (18 Cal.5th at pp. 371, 385.)

Removing MICRA protections where injuries stem from a lack of resources or staffing would also be in tension with *Faiaipau v. THC-Orange County, LLC* (2025) 117 Cal.App.5th 292, a post-*Holland* decision involving a long-term acute care hospital's alleged failure to monitor and reconnect a ventilator. *Faiaipau* held that the plaintiffs' wrongful death claim was based on professional negligence—even though plaintiffs "characterize[d] the issue as neglect because [the hospital] failed to have a staff member available to observe and check on" the patient—i.e., insufficient staffing. (*Id.* at p. 305.)

And, such a rule would produce nonsensical results extending far beyond fall-prevention. If a doctor prescribes medication but the facility doesn't administer it because the facility is running short on the medication or because no staff is available, does the claim become custodial? What if the doctor doesn't prescribe the medication in the first place, because the doctor knows that the facility is running short on the medicine or on staff? The failure to prescribe a needed medication is surely professional negligence—but a test that treats lack of resources as dispositive would take the claim out of MICRA's protection.

On these issues too, review is necessary to provide clarity.

3. Does the line-drawing standard vary depending on whether the defendant is a hospital, a skilled nursing facility, or another type of provider?

Hospitals, acute care facilities, and skilled nursing facilities all provide medical care, and all can "have a robust caretaking or custodial relationship with a patient . . . ." (*Frankland v. Etehad* (2025) 113 Cal.App.5th 503, 515; see also *Stewart v. Superior Court* (2017) 16 Cal.App.5th 87, 91, 102 [hospital had "'care or custody'" of elderly patient]; *Faiaipau*, *supra*, 117 Cal.App.5th at pp. 297, 304 [acute-care hospital was decedent's custodian].)

Claims against all of these types of facilities, thus, require line-drawing. But negligence that has been characterized as protected by MICRA in the hospital context would be outside of MICRA under the Opinion's analysis.

For example, *Mitchell v. Los Robles Regional Medical Center* (2021) 71 Cal.App.5th 291, held MICRA applied to a hospital patient's claim that emergency room nurses "negligently failed to assist her in walking to and from the toilet, causing her fall," because "the nursing staff's judgment that appellant could use the restroom without their assistance was a judgment made in the course of providing medical care to her." (*Id.* at pp. 298-299.) By contrast, the Opinion held that a skilled nursing facility's failure to implement appropriate measures to help Jentz walk to and from the bathroom was *not* within MICRA. (Opinion 22.)

And *Flores*, *supra*, 63 Cal.4th 75 held that MICRA applied to allegations that a hospital patient fell out of her bed because the hospital negligently failed to maintain a bedrail that a doctor had ordered be raised. (*Id.* at pp. 88-89.) Raising a bed rail is a fall prevention measure, just like a call light or a staff escort. Yet the Opinion treats the failure to implement fall prevention measures as outside of MICRA.

Mitchell and *Flores* drew lines between professional negligence and general negligence, rather than between professional negligence and custodial negligence/neglect. But the fact remains that they treated the failure to prevent a fall as within MICRA, while the Opinion does the opposite. The Opinion, thus, could be read as applying different standards to different types of health care providers. And if the answer is instead that all health care providers are subject to the principles outlined in *Holland* and to the Opinion's reasoning, then hospitals, acute, and sub-acute care facilities now face dramatically increased exposure to uncapped noneconomic damages awards. Review is necessary to provide clarity on this important issue.

C. Review is also necessary to determine whether, and how, MICRA's damages cap applies where damages stem from a mix of professional negligence and caregiving omissions.

Holland noted a Court of Appeal opinion that handled "the challenge of drawing a bright line in this context" by asking whether "'*the primary basis*'" for the claim "'sounds in' medical

malpractice or in custodial neglect." (18 Cal.5th at p. 382, citing *Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 842, italics in *Holland*.) But *Holland* declined to analyze whether that is the correct standard, because the parties before the Court agreed that it was. (*Holland*, at p. 382.)

The Opinion fails to specify whether it applies the "primary basis" test, or some other test. Jentz argued that the facility was negligent in failing to create and update a fall-prevention plan. (Opinion 21; p. 31, *ante*; Petition for Rehearing 9-12.) The Opinion concluded that "*even if creating an* appropriate plan *implicated the medical staff's expertise and judgment*," MICRA's cap on noneconomic damages did not apply because the facility "lacked the staff and custodial resources to implement the plan, and it was that failure that caused Jentz's injuries." (Opinion 22, italics added.)

The Opinion also notes that, although Jentz's falls "caused her most significant injuries," Jentz presented evidence of custodial neglect *unrelated* to fall prevention, including the facility's failure to provide adequate food, water, and feeding assistance, and failure to reposition her and clean her skin, causing bedsores. (Opinion 19.) But the Opinion fails to explain how those claims factored into the MICRA application analysis—i.e., how these claims were relevant, and to what degree.

The Opinion's conclusion raises more questions than answers. Who decides whether the injuries are caused by lack of a plan or lack of implementation? How is that determination made? And how does the cap apply where damages are from a

mix of medical and custodial negligence: Is the cap's applicability an all-or-nothing proposition, or are damages allocated between medical and custodial negligence, with the cap applying to the medical portion? And if the cap's applicability *is* an all-or-nothing proposition, what is the test for whether it applies: Whether professional negligence is the "primary basis" for the damages award? Whether *any* component of the award is based on something other than professional negligence? Something else?

These uncertainties will have ripple effects in voluminous cases throughout the State, because as this case demonstrates, plaintiffs typically allege multiple types of negligent acts and omissions, not just one.

Without further guidance, the Opinion could be read to mean that MICRA's damages cap doesn't apply *at all* to damages for injuries that stem from a mix of professional and custodial omissions. That wholesale exclusion would gut the cap, allowing plaintiffs to evade it entirely by arguing that a custodial omission caused even a small portion of their injuries, or that the same injuries were caused by both medical and custodial negligence. And if that is not the standard, health care providers, insurers, litigants, and courts need to know what the standard is. Review, thus, is necessary to settle the important legal question of how MICRA's damages cap applies when a plaintiff's injuries stem from a mix of professional and custodial omissions.

CONCLUSION

The $1.8 million noneconomic damages award against a licensed health care provider in this case squarely tees up numerous important, unsettled legal questions regarding how to determine what is and is not within MICRA's damages cap. The answers affect numerous pending and future cases across the State—and, by extension, implicate the medical malpractice premium and health care availability concerns that led the Legislature to enact MICRA. The Court should grant review to provide much-needed clarity and to ensure that MICRA's damages cap continues to serve the legislative interest it was designed to advance.

Date: August 28, 2026

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.504(d)(1), (d)(3), I certify that this **PETITION FOR REVIEW** contains 6,814 words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: August 28, 2026

/s/ Alana H. Rotter
Alana H. Rotter

Filed 7/22/26

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DEREK SKYLAR AUD, as Successor in Interest, etc., Plaintiff and Appellant, v. RRT ENTERPRISES, LP et al., Defendants and Appellants.	B341254 (Los Angeles County Super. Ct. No. 22STCV21164)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County, Stephanie M. Bowick, Judge. Affirmed in part and reversed in part with directions.

Lanzone Morgan, Ayman R. Mourad, Elizabeth M. Kim, and Christopher W. Petersen for Plaintiff and Appellant.

Ekpebe Law Group and Vona S. Ekpebe for Defendants and Appellants Boardwalk West Financial Services, LLC, Shlomo Rechnitz, and Rockport Administrative Services, LLC.

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* Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication with the exception of parts B, D, E, and F of the Discussion.

Greines, Martin, Stein & Richland, Alana H. Rotter and Laura G. Lim for Defendants and Appellants Boardwalk West Financial Services, LLC and Shlomo Rechnitz.

Gittler & Berg, Randy A. Berg and Marvin G. Fischler for Defendant and Appellant RRT Enterprises, LP.

INTRODUCTION

Betsy Jentz sued RRT Enterprises LP dba Country Villa Wilshire Convalescent Center, Boardwalk West Financial Services, LLC, Rockport Administrative Services, LLC, and Shlomo Rechnitz (collectively, the defendants) for violating the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.,[1] the Elder Abuse Act), violating the rights of a resident or patient (Health & Saf. Code, § 1430, subd. (b)), and negligence. The jury found in favor of Jentz and awarded her $2,342,800. The trial court granted the defendants' motions for judgment notwithstanding the verdict and for a new trial, conditionally reducing the verdict to $372,962.

In the published portion of this opinion we conclude the trial court erred in granting the defendants' motions for judgment notwithstanding the verdict and conditionally granting the defendants' motion for a new trial unless Jentz accepted a reduction in noneconomic damages from $1,837,032 to $250,000, the maximum allowed under the Medical Injury Compensation Reform Act (MICRA). We conclude Jentz's causes of action were

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

based on Country Villa Wilshire's acts and omissions as Jentz's custodian and caregiver, not as her health care provider.[2] Therefore, under *Holland v. Silverscreen Healthcare, Inc.* (2025) 18 Cal.5th 364 (*Holland*), which the Supreme Court decided while this appeal was pending, MICRA's cap on noneconomic damages does not limit Jentz's recovery.

In the unpublished portion of this opinion we conclude the trial court did not err in (1) conditionally granting the defendants' motion for a new trial unless Jentz accepted a reduction in economic damages to $69,812.19, the amount Medicare and Medi-Cal paid for her medical care; (2) granting the motions for judgment notwithstanding the verdict and for a new trial on whether Rockport or Boardwalk was engaged in a joint venture with RRT; and (3) granting the motion for a new trial on whether Rockport, Boardwalk, and Rechnitz were alter egos of RRT. We also conclude any error in excluding evidence of conversations between Rechnitz and Jentz's grandnephew, Derek Skylar Aud,[3] was harmless.

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[2] We refer to RRT Enterprises LP dba Country Villa Wilshire Convalescent Center as RRT. We refer to the skilled nursing facility as Country Villa Wilshire.

[3] Jentz died while this appeal was pending. We granted Aud's motion to substitute him for Jentz. (See Cal. Rules of Court, rule 8.36(a).)

FACTUAL AND PROCEDURAL BACKGROUND

A. *Jentz Files This Action Against RRT and Others*

Jentz filed this action in 2022 against RRT, Boardwalk, and Rechnitz, later amending her complaint to add Rockport as a defendant. RRT operated Country Villa Wilshire, a skilled nursing facility, under a state-issued license.[4] Rechnitz was the manager of RRT. Boardwalk and Rockport provided consulting services to Country Villa Wilshire.

Jentz alleged that she was over the age of 65 and that, before she moved to Country Villa Wilshire, she "was in excellent physical condition and enjoyed running marathons." After Jentz fell and fractured her hip in November 2020 she was admitted to Country Villa Wilshire "to receive custodial care and rehabilitation services." Jentz alleged that, though Country Villa Wilshire assessed her as having a "high risk for falls," Country Villa Wilshire did not create a care plan to prevent her from falling or provide her with "supervision, monitoring, and assistance" with activities of daily living. As a result, Jentz alleged, she suffered "from falls and injury, pressure sores, infection, and poor nutrition, hydration, and hygiene." Jentz alleged she fell multiple times during her stay at Country Villa Wilshire, with the worst fall occurring on October 4, 2021, when she was found lying on the floor of the bathroom with fractures to

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[4] We take judicial notice of licenses the California Department of Public Health issued to RRT. (See Evid. Code, §§ 452, subd. (c), 459.)

her humerus, pubic ramus, and ischium.[5] Jentz alleged that her injuries caused her quality of life to decline steeply, that her "shoulder injury causes her severe pain and immobility," and that she "has become bedbound, which has caused her great discomfort and emotional distress." Jentz asserted causes of action for elder abuse and neglect under the Elder Abuse Act, violation of her rights as a resident or patient (Health & Saf. Code, § 1430, subd. (b)), and negligence.

B. *The Jury Returns a Verdict for Jentz*

A jury found that RRT committed elder neglect or abuse, but that RRT did not act with recklessness, oppression, fraud or malice, as required to recover enhanced remedies under the Elder Abuse Act. (See § 15657.) The jury also found RRT was negligent. On Jentz's causes of action for violating the Elder Abuse Act and negligence the jury awarded her $452,618 in past economic damages, $551,111 in past noneconomic damages, and $1,285,921 in future noneconomic damages. The jury found RRT violated Health & Safety Code section 1430 (resident's rights) 132 times and awarded Jentz $53,150 in statutory damages. The jury found that Rockport and Boardwalk were engaged in a joint venture with RRT and that Rockport, Boardwalk, and Rechnitz were alter egos of RRT. The jury also found RRT acted with malice, oppression, or fraud, but the jury did not award any

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[5] The humerus is "the bone that runs from the shoulder to the elbow." (*David v. Hernandez* (2017) 13 Cal.App.5th 692, 700.) The pubic ramus and ischium are bones of the hip and pelvis. (*Daniels v. Astrue* (M.D. Pa., Apr. 15, 2009, No. 4:08-CV-1676) 2009 WL 1011587, at p. 14; *Powers v. Deatherage* (C.D. Ill., Mar. 30, 2009, No. 02-1372) 2009 WL 856296, at p. 6.)

punitive damages. The trial court entered judgment. The court granted in part Jentz's motion for attorneys' fees and costs. Jentz's appeal from that order is pending. (See *Aud v. RRT Enterprises LP*, Case No. B340727.)

C. *The Trial Court Grants the Defendants' Motions for Judgment Notwithstanding the Verdict and for a New Trial*

The defendants filed motions for judgment notwithstanding the verdict and for a new trial. The trial court granted a motion for new trial for all defendants on economic damages unless Jentz accepted a reduction in damages from $452,618 to $69,812.19. The court granted a motion by all the defendants for judgment notwithstanding the verdict, reducing Jentz's noneconomic damages from $1,837,032 to $250,000. The court also conditionally granted a motion by Rockport, Boardwalk, and Rechnitz for a new trial on the noneconomic damages award, unless Jentz accepted a reduction in damages to $250,000.[6] The court granted motions by Rockport and Boardwalk for judgment notwithstanding the verdict and for a new trial on the joint venture claim, finding substantial evidence did not support the jury's verdict. Finally, the court granted a motion by Rockport, Boardwalk, and Rechnitz for a new trial on the alter ego claim, ruling alter ego "is an equitable issue to be determined by the Court." Jentz timely appealed from the judgment and the various orders on the defendants' posttrial motions, and the defendants cross-appealed.

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[6] The court denied without explanation RRT's motion for a new trial on noneconomic damages.

DISCUSSION

A. *Applicable Law and Standards of Review*

"'"A motion for judgment notwithstanding the verdict may 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 in support. . . . As in the trial court, the standard of review [on appeal] is whether any substantial evidence—contradicted or uncontradicted—supports the jury's conclusion."'" (*Webb v. Special Electric Co., Inc.* (2016) 63 Cal.4th 167, 192, brackets in original; see *Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 770; *Doe v. County of Orange* (2025) 113 Cal.App.5th 1276, 1284.) "In reviewing the evidence, we draw all reasonable inferences in [the nonmoving party's] favor and disregard evidence that conflicts with any evidence which supports the verdict." (*Doe*, at p. 1284; see *Lurner v. American Golf Corp.* (2023) 97 Cal.App.5th 121, 132.) When the motion "raises legal issues like the interpretation of a statute or the application of law to undisputed facts, we review the trial court's ruling under a de novo standard of review." (*Lurner*, at p. 133; see *Guzman v. NBA Automotive, Inc.* (2021) 68 Cal.App.5th 1109, 1114.)

The trial court may grant a new trial on certain grounds "materially affecting the substantial rights" of a party, including "[i]rregularity in the proceedings," "[e]xcessive . . . damages," "[i]nsufficiency of the evidence to justify the verdict" or the verdict "is against law," and "[e]rror in law." (Code Civ. Proc., § 657, subds. 1, 5, 6, 7.) We review an order granting or denying a motion for a new trial for abuse of discretion. (*Pomona Valley Hospital Medical Center v. Kaiser Foundation Health Plan, Inc.*

(2026) 119 Cal.App.5th 43, 59; see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859.) "We review the ruling underlying the new trial order, however, '"under the test appropriate to such determination."'" (*Pomona Valley Hospital*, at p. 59; see *Aguilar*, at p. 859.) When the trial court grants a motion for a new trial because of an error in law, "[w]hether that initial denial was an error in law is an issue we review de novo." (*Pomona Valley Hospital*, at p. 59; see *Smith v. Magic Mountain LLC* (2024) 106 Cal.App.5th 1128, 1135.) We review the trial court's evidentiary rulings for abuse of discretion. (*Pilliod v. Monsanto Co.* (2021) 67 Cal.App.5th 591, 630; *Mangano v. Verity, Inc.* (2009) 179 Cal.App.4th 217, 222.)

B. *The Trial Court Did Not Err in Conditionally Granting the Motion for a New Trial on Economic Damages*

The jury awarded Jentz $452,618 in economic damages. The defendants filed a motion for a new trial on the grounds the award was excessive and unsupported by the evidence. The defendants argued Jentz could not recover past medical expenses more than the $69,812.19 Medicare and Medi-Cal paid for her medical care. The trial court granted the motion under Code of Civil Procedure section 657, subdivisions 5 and 6, and issued a conditional order for a new trial unless Jentz consented "to a remittitur in the reduced amount of $69,812.19 in economic damages."

Aud argues the trial court erred in ruling Jentz "did not 'actually incur' most of her medical expenses, despite the copious amounts of evidence proving otherwise." In his opening brief Aud discusses the evidence, but he does not cite to the record. He

therefore forfeited the argument. (See *Wentworth v. Regents of University of California* (2024) 105 Cal.App.5th 580, 596 ["parties forfeit arguments by failing to support statements in the argument section of a brief with record citations"]; Cal. Rules of Court, rule 8.204(a)(1)(C) [an appellate brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears"].)

Even if not forfeited, Aud's argument is meritless. Code of Civil Procedure section 657 provides that "'on appeal from an order granting a new trial upon the ground of the insufficiency of the evidence . . . or upon the ground of excessive or inadequate damages, . . . *such order shall be reversed as to such ground only if there is no substantial basis in the record for any*'" of the reasons stated by the trial court. (*Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 405, 411-412; see *Baker v. American Horticulture Supply, Inc.* (2010) 185 Cal.App.4th 1059, 1067.) "The trial court . . . is in the best position to assess the reliability of a jury's verdict and, to this end, the Legislature has granted trial courts broad discretion to order new trials. The only relevant limitation on this discretion is that the trial court must state its reasons for granting the new trial, and there must be substantial evidence in the record to support those reasons." (*Lane*, at p. 412; see *Baker*, at p. 1068.)

Substantial evidence supported the trial court's finding Jentz incurred only $69,812.19 in economic damages, the amount Medicare and Medi-Cal paid for her medical care. A "plaintiff may recover as economic damages *no more* than the reasonable value of the medical services received and is not entitled to recover the reasonable value if his or her actual loss was less." (*Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th

541, 555 (*Howell*); see *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1325-1326 ["Damages for past medical expenses are limited to the lesser of (1) the amount paid or incurred for past medical expenses and (2) the reasonable value of the services."].) Therefore, a "tort plaintiff's recovery for medical expenses . . . is limited to the amount 'paid or incurred for past medical care and services, whether by the plaintiff or by an independent source . . . .'" (*Howell*, at p. 553; see *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635, 641.)

Where a medical provider "accepts as full payment, pursuant to a preexisting contract with the injured person's health insurer, an amount less than that stated in the provider's bill," the injured person may not "recover from the tortfeasor, as economic damages for past medical expenses, the undiscounted sum stated in the provider's bill but never paid by or on behalf of the injured person." (*Howell*, *supra*, 52 Cal.4th at p. 548.) A "Medi-Cal beneficiary may recover as damages from the tortfeasor only the amount payable to the provider under Medi-Cal." (*Id.* at p. 553; see *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 827 ["Because the provider may no longer assert a lien for the full cost of its services, the Medicaid beneficiary may only recover the amount payable under Medicaid as his or her medical expenses in an action against a third party tortfeasor."].)[7]

Aud argues that Jentz actually incurred more than $496,497 in medical expenses billed by RRT, a hospital, and the

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[7] "Medi-Cal is California's implementation of the federal Medicaid program. [Citation.] The amounts paid by Medicaid programs are 'usually, if not always' less than a provider's ordinary charges." (*Howell*, *supra*, 52 Cal.4th at p. 553, fn. 3.)

rehabilitation center where she lived after the hospital stay. But the evidence showed Medicare paid $54,000.45 and Medi-Cal paid $15,811.74 to settle those charges, for a total of $69,812.19. Under *Howell* Jentz is entitled to recover only that amount. Aud does not address the authority limiting Jentz's recovery to the amounts Medicare and Medi-Cal paid Jentz's medical providers. Instead, he argues that Medicare and Medi-Cal "only helped pay for a small portion" of Jentz's bills and that Jentz "was legally obligated to pay her medical bills." Aud relies on Jentz's medical bills but cites no evidence or authority Jentz was responsible for paying the difference between the amount billed and the amount Medicare and Medi-Cal paid.

Aud selectively quotes from *Qaadir v. Figueroa* (2021) 67 Cal.App.5th 790, but that case does not support his argument. In *Qaadir* the plaintiff "sought medical treatment for his injuries from lien providers who did not accept his insurance plan." (*Id.* at p. 794.) The defendants argued the trial court erred in admitting evidence of the lien providers' unpaid medical bills. (*Ibid.*) The court in *Qaadir* stated that, because the plaintiff sought treatment outside his insurance plan, "the plaintiff, rather than the health insurer, is the entity who is obligated to pay." (*Id.* at p. 804.) Therefore, the "uninsured plaintiff's past medical damages are limited to his or her prospective liability for unpaid medical bills, i.e., the amounts he or she has incurred." (*Ibid.*) The court explained that, under *Howell*, *supra*, 52 Cal.4th 541, the amount "'paid or incurred'" was "*the actual amount that fully satisfies the medical provider for services rendered*." (*Qaadir*, at p. 804.)

Aud quotes the court's statement in *Qaadir* that "the billed amount is generally relevant because the plaintiff is financially

liable for it," but he omits the context. The full statement is: "The unpaid medical bill is a detriment proximately caused by the tort only if a plaintiff has incurred the full amount of the bill. Thus, even in the scenario where the billed amount potentially exceeds its reasonable value, *the billed amount is generally relevant because the plaintiff is financially liable for it*. Our conclusion also comports with *Pebley* [*v. Santa Clara Organics, LLC* (2018) 22 Cal.App.5th 1266], which held an unpaid medical bill is relevant to prove economic damages for medical services when: (1) the plaintiff is 'uninsured,' and (2) the 'uninsured' plaintiff is obligated to pay the medical bill." (*Qaadir v. Figueroa*, *supra*, 67 Cal.App.5th at p. 805, italics added.) In other words, if an uninsured plaintiff is financially liable to a medical provider for a billed amount, evidence of the billed amount is relevant to prove economic damages. That was not the case here, where Jentz was not uninsured, and her providers accepted payment of a reduced amount from Medicare and Medi-Cal.

Aud also argues the trial court erred in relying on *Bermudez v. Ciolek* (2015) 237 Cal.App.4th 1311 as authority on whether Jentz actually incurred medical expenses, when *Bermudez* instead addressed the requirement the plaintiff prove the reasonable value of medical services. The trial court may have cited the wrong portion of the court's opinion in *Bermudez* (the discussion of the reasonable value of the services rather than the discussion of amount actually incurred) (see *id.* at p. 1335), but the trial court correctly stated the legal standard prescribed by the Supreme Court in *Howell* and properly applied that standard to the evidence. And as discussed, substantial evidence

supported the trial court's ruling Jentz incurred only $69,812.19 in economic damages.[8]

C. *The Trial Court Erred in Granting the Defendants' Motions for Judgment Notwithstanding the Verdict on Noneconomic Damages*

The jury awarded Jentz $1,837,032 in noneconomic damages on her causes of action for negligence and elder abuse. The defendants filed motions to vacate, for a new trial, and for judgment notwithstanding the verdict under MICRA, which caps health care providers' liability for noneconomic damages. (See Civ. Code, § 3333.2.) The trial court granted all of the defendants' motions for judgment notwithstanding the verdict, reducing the amount of noneconomic damages from $1,837,032 to $250,000 and conditionally granted the motion by Rockport, Boardwalk, and Rechnitz for a new trial on the amount of noneconomic damages unless Jentz accepted a reduction to $250,000.

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[8] In their cross-appeal the defendants argue that, rather than affirming the order granting a new trial on economic damages, we should reduce Jentz's damages to $69,812.19 because "a new trial could not result in any larger an award." In the cases the defendants cite, however, it was "futile to permit a new trial" because "the allegations and proof, as a matter of law, [were] legally insufficient to state or prove a cause of action." (*Milton v. Hudson Sales Corp.* (1957) 152 Cal.App.2d 418, 441; see *Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 261, fn. 15 [where "allegations and proof of the plaintiff are insufficient to establish liability," the reviewing court may reverse the judgment rather than affirm the order granting new trial].) Jentz established liability; the issue for the new trial is the amount of economic damages.

1. *Applicable Law*

a. *The Elder Abuse Act*

"The Legislature enacted the Elder Abuse Act to protect elders and other dependent adults from 'gross mistreatment in the form of abuse and custodial neglect.'" (*Holland*, *supra*, 18 Cal.5th at p. 376; see *Delaney v. Baker* (1999) 20 Cal.4th 23, 33 (*Delaney*).) As originally enacted in 1982, the Elder Abuse Act focused on "reporting abuse and using law enforcement to combat it." (*Id.* at p. 33.) In 1991 amendments to the Elder Abuse Act, "the focus shifted to private, civil enforcement of laws against elder abuse and neglect." (*Ibid.*) The Legislature added section 15657, which provides, "in addition to all other remedies otherwise provided by law," for enhanced remedies where a defendant commits elder neglect with "recklessness, oppression, fraud, or malice." (§ 15657; see *Holland*, at p. 376; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 781.)[9]

""Neglect' " under the Elder Abuse Act is defined as '[t]he negligent failure of any person having the care or custody of an

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[9] A plaintiff who proves recklessness, oppression, fraud, or malice by clear and convincing evidence may also recover attorneys' fees and costs (§ 15657, subd. (a)), and a personal representative of a decedent may recover damages for the decedent's pre-death pain and suffering, not to exceed the limit under Civil Code section 3333.2. (See § 15657, subd. (b) [the "limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply"].)

elder[10] or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.' [Citation.] The Elder Abuse Act lists several examples of 'neglect,' including the failure to: 'assist in personal hygiene, or in the provision of food, clothing, or shelter'; 'provide medical care for physical and mental health needs'; 'protect from health and safety hazards'; and 'prevent malnutrition or dehydration.'" (*Holland*, *supra*, 18 Cal.5th at p. 376; see § 15610.57, subds. (a)(1), (b)(1)-(4).)

b. *MICRA*

The Legislature enacted MICRA in 1975 as a ""response to a perceived crisis regarding the availability of medical malpractice insurance'" due to the high cost of coverage." (*Holland*, *supra*, 18 Cal.5th at p. 375; see *Ruiz v. Podolsky* (2010) 50 Cal.4th 838, 843.) "'Accordingly, MICRA includes a variety of provisions all of which are calculated to reduce the cost of insurance by limiting the amount and timing of recovery in cases of professional negligence.'" (*Lopez v. Ledesma* (2022) 12 Cal.5th 848, 856.) One of those provisions is Civil Code section 3333.2, which (at the time Jentz filed this action) capped noneconomic losses at $250,000 in "any action for injury against a health care provider based on professional negligence." (Civ. Code, § 3333.2, former subds. (a), (b).)[11]

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[10] An elder is any person 65 years or older residing in California. (§ 15610.57.) Jentz was 84 years old when she moved into Country Villa Wilshire.

[11] For cases filed on or after January 1, 2023, the limit is $350,000. (Civ. Code, § 3333.2, subds. (b)(1), (g).)

c. *Holland*

While this appeal was pending the Supreme Court decided *Holland*, *supra*, 18 Cal.5th 364, which addressed the interaction between the Elder Abuse Act and MICRA's arbitration provision. (See Code Civ. Proc., § 1295.) In *Holland* the plaintiffs sued their disabled son's skilled nursing facility, asserting causes of action for dependent adult abuse under the Elder Abuse Act, negligence, violation of resident's rights on behalf of their son (Health & Saf. Code, § 1430), and wrongful death in their personal capacities. (*Holland*, at p. 371.) The facility filed a motion to compel arbitration based on an arbitration agreement signed by the son, which stated the agreement was binding on the resident's representatives, family members, and heirs. (*Id.* at p. 372.) The facility relied on the Supreme Court's holding in *Ruiz v. Podolsky*, *supra*, 50 Cal.4th at pages 849 to 850 that, if "a patient agreed to arbitrate medical malpractice disputes in compliance with [Code of Civil Procedure section 1295], the patient-provider agreement may bind the patient's heirs in a wrongful death action, even if the heirs themselves never agreed to arbitration." (*Holland*, at p. 370.)

The trial court in *Holland* granted the motion to compel arbitration of the three survivor causes of action, but denied the motion to compel arbitration of the wrongful death cause of action because the plaintiffs pleaded that cause of action as one for elder abuse, not for professional negligence. (*Holland*, *supra*, 18 Cal.5th at p. 372.) In affirming the order denying the motion to compel arbitration of the wrongful death cause of action, the Supreme Court stated: "Not every claim of injury against a health care provider qualifies as a claim of professional negligence that comes within [Code of Civil Procedure]

section 1295. By its terms, [Code of Civil Procedure] section 1295 applies only to claims based on negligence in the provision of medical services . . . ." (*Id.* at p. 378.)

The Supreme Court acknowledged "there is potential for confusion 'in the fact that some health care institutions, such as nursing homes, perform custodial functions *and* provide professional medical care.'" (*Holland*, *supra*, 18 Cal.5th at p. 379; see *Delaney*, *supra*, 20 Cal.4th at p. 34.) Reviewing its previous decisions concerning MICRA in the nursing home context, the Supreme Court explained "only acts or omissions by a skilled nursing facility in its capacity as a health care provider fall under the banner of professional negligence. [Citation.] By contrast, 'a failure to fulfill custodial duties owed by a custodian who happens also to be a health care provider . . . is at most incidentally related to the provider's professional health care services.' [Citation.] The failure to provide basic necessities, such as assistance in personal hygiene, food, hydration, or clothing, are paradigmatic examples of a failure to fulfill custodial duties. [Citations.] The same is true of a failure to provide an adequate and habitable living space or protect from routine safety hazards. [Citations.] Similarly, a failure of staff to attend to, monitor, or assist a resident in obtaining appropriate medical care generally falls on the custodial side of the line because such omissions involve 'not . . . the *undertaking* of medical services, but . . . the failure to *provide* medical care.'" (*Holland*, at p. 380; see *Covenant Care, Inc. v. Superior Court*, *supra*, 32 Cal.4th at p. 783; *Delaney*, at p. 34.)[12]

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[12] The Supreme Court in *Holland* stated the "challenge of drawing a bright line in this context is part of what motivated the court in *Avila* [*v. Southern California Specialty Care, Inc.* (2018)

2. *Because Jentz's Causes of Action Were Based on Custodial Neglect, MICRA Does Not Apply*

Applying the principles the Supreme Court enunciated in *Holland*, we conclude Jentz's causes of action for negligence and elder abuse arose out of Country Villa Wilshire's acts and omissions as Jentz's custodian and caregiver, not as her health care provider. Jentz's primary argument at trial was that she fell multiple times because Country Villa Wilshire's staff did not adequately supervise or assist her. Jentz presented evidence that she could not call for help because the call light was frequently out of reach or not working and that, when the call light did work, it took 30 to 45 minutes for someone to respond. Jentz's expert testified Jentz's falls were caused by "lack of supervision." Jentz argued Country Villa Wilshire should have offered to take her to the bathroom every two hours, stationed a staff member near her room, or installed an alarm to notify staff if Jentz got out of bed. Country Villa Wilshire did not implement any of these measures, Jentz argued, because it did not have enough staff. Jentz suffered her most severe injuries (which may have accounted for much of the $1.8 million the jury awarded in noneconomic damages) on October 4, 2021 when, after no one responded to her call, she got out of bed, went to the bathroom, fell on the way back, and broke her arm and pelvis. Country Villa Wilshire's failure to assist Jentz in moving from her bed to

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20 Cal.App.5th 835, 842], which asked whether '*the primary basis* for the wrongful death claim sounds in' medical malpractice or in custodial neglect." (*Holland*, *supra*, 18 Cal.5th at p. 382.) The Supreme Court further stated "both parties in this case have agreed that *Avila* states the correct rule, so we have no occasion to further address the issue here." (*Ibid.*)

the bathroom was a failure to fulfill custodial duties, not a failure to provide medical care. (See *Holland*, *supra*, 18 Cal.5th at p. 380 ["failure of staff to attend to [or] monitor" a resident "falls on the custodial side of the line"]; *Covenant Care, Inc. v. Superior Court*, *supra*, 32 Cal.4th at p. 785 ["[n]eglectful elder abuse . . . is 'the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults . . . to carry out their *custodial* obligations'"].)

Though Jentz's falls, particularly the one on October 4, 2021, caused her most significant injuries, she also argued Country Villa Wilshire committed custodial neglect in ways unrelated to fall prevention. She presented evidence she developed pressure ulcers (bedsores) because Country Villa Wilshire failed to reposition her and clean contamination from her skin. She also presented evidence that Country Villa Wilshire did not provide adequate food and water and that no one helped her eat after she broke her arm and could not move it. (See *Holland*, *supra*, 18 Cal.5th at p. 380 [failure to assist with personal hygiene, food, and hydration are "paradigmatic examples" of failure to fulfill custodial duties].)

The defendants argue Aud forfeited his MICRA argument by failing to support his factual assertions with citations to the record and by failing to provide "any reasoned argument." (See *Jogani v. Jogani* (2026) 118 Cal.App.5th 823, 840 ["We may treat as forfeited any point that the appellant does not support with reasoned argument and legal authority."]; Cal. Rules of Court, rule 8.204(a)(1)(C) [an appellate brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears"].) The defendants also argue Aud "should not be permitted to develop an

argument for the first time in [his] reply brief, as that would deprive [the defendants] of an opportunity to respond." The defendants are correct that Aud's argument on this issue is cursory and conclusory and that he violated rule 8.204(a)(1)(C) by not citing the record. As the defendants anticipated, in his reply brief Aud provided the missing record citations and developed his argument more fully. But the Supreme Court decided *Holland* after Aud filed his opening brief and before the defendants filed their respondents' briefs, and Aud was entitled in his reply brief to make or more fully develop an argument based on that new authority. In addition, because the defendants filed a cross-appeal, they had the opportunity to, and did, respond to Aud's reply brief in their cross-appellants' reply brief. We therefore disregard Aud's noncompliance with rule 8.204(a)(1)(C). (See Cal. Rules of Court, rule 8.204(e)(2)(C).)

On the merits the defendants argue Jentz's causes of action were based on professional negligence, not custodial neglect, because the "gravamen of [Jentz's] claim here was that the facility failed to develop, implement, and modify a fall-avoidance plan that was appropriate in light of her medical condition." The defendants contend "[f]all-risk assessments and fall-avoidance plans, including diagnosing risk and determining appropriate interventions, implicate the facility's *medical* role, including its medical staff's expertise and judgment . . . ." The Supreme Court addressed this issue in *Holland*, where the nursing facility argued that, "because '[f]all protection and infection control are ordinary and usual parts of medical professional services,' allegations of harm from falls and infections necessarily fall on the 'medical' side of the line." (*Holland*, *supra*, 18 Cal.5th at p. 381.) The Supreme Court rejected the argument, stating it

"sweeps too broadly. Certainly, in some cases, a claim of injury from falls . . . might be based on negligence in prescribing or executing a plan to address a resident's medical needs. But in other cases, the claim of injury might be based on a failure to adequately supervise and render assistance to residents as they undertake daily activities . . . . While the first sort of claim may sound in professional negligence, the second sort of claim generally does not." (*Id.* at pp. 381-382.)[13]

True, Jentz argued Country Villa Wilshire was negligent in not creating a fall-prevention plan until 10 months after Jentz was admitted and in not updating the plan after Jentz continued to fall. But that did not transform Jentz's claim into one "based on negligence in prescribing or executing a plan to address [her] medical needs." (*Holland*, *supra*, 18 Cal.5th at pp. 381-382.) Jentz did not claim Country Villa Wilshire's medical staff was negligent in assessing her fall risk. Indeed, when Jentz entered the facility in December 2020, Country Villa Wilshire's nursing staff assessed her fall risk, concluded she was at a "high risk" for

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[13] In *Holland* the Supreme Court concluded that, because the plaintiffs' complaint did not sufficiently allege how the defendant's acts and omissions caused the death of the plaintiffs' son, it was "impossible to assess whether plaintiffs' wrongful death claim is based on the negligent rendering of medical services (in which case *Ruiz*[*v. Podolsky*, *supra*, 50 Cal.4th 838] applies), or instead on the facility's nonmedical neglect (in which case it does not)." (*Holland*, *supra*, 18 Cal.5th at p. 385.) The Supreme Court directed the trial court to give the plaintiffs leave to amend "before determining whether their wrongful death claim falls within the scope of [Code of Civil Procedure] section 1295 and thus must be ordered to arbitration." (*Ibid.*)

falls, and recommended "implement[ing] high-risk fall interventions."

To the extent Jentz argued Country Villa Wilshire failed to implement appropriate interventions to reduce Jentz's risk of falling, it was a failure to adequately supervise and assist her as she undertook daily activities (see *Holland*, *supra*, 18 Cal.5th at p. 382), such as walking to and from the bathroom. Jentz claimed Country Villa Wilshire staff should have observed her more closely, responded to her call light, taken her to the bathroom regularly, and placed an alarm to notify staff when Jentz got out of bed—all custodial and caregiving tasks. Put differently, even if creating an appropriate plan implicated medical staff's expertise and judgment, Country Villa Wilshire lacked the staff and custodial resources to implement the plan, and it was that failure that caused Jentz's injuries.

The defendants argue that Jentz came to Country Villa Wilshire to "rehabilitate after surgery for a fractured hip" and that the "gravamen" of her case was that Country Villa Wilshire "failed to create and implement a fall-prevention care plan appropriate for that medical condition." They argue Jentz's expert testified Country Villa Wilshire should have created an "individualized" plan for Jentz given her "particular medical circumstances." That Jentz arrived at Country Villa Wilshire with a medical condition, however, did not transform Country Villa Wilshire's failure to perform custodial duties into a failure to provide medical care. And the expert's testimony about "individualiz[ing] the care plan to fit the resident's needs" involved custodial duties, not medical care. Jentz's expert stated that, if a resident is getting up to use the bathroom without using the call light, staff should learn what times of day the resident

needs to use the bathroom and then "individualize the toileting schedule" for that resident. The expert also testified Country Villa Wilshire staff should have helped Jentz find something she liked to do outside her room "so that they could watch her."

Flores v. Presbyterian Intercommunity Hospital (2016) 63 Cal.4th 75, cited by the defendants, is distinguishable. In *Flores* a hospital patient was injured when the rail on her hospital bed collapsed. The Supreme Court held: "When a doctor or other health care professional makes a judgment to order that a hospital bed's rails be raised in order to accommodate a patient's physical condition and the patient is injured as a result of the negligent use or maintenance of the rails, the negligence occurs 'in the rendering of professional services' and therefore is professional negligence for purposes of" Code of Civil Procedure section 340.5, the statute of limitations for professional negligence under MICRA. (*Flores*, at p. 89.) Jentz's injuries, however, were not caused by anything a health care professional ordered. In *Holland* the Supreme Court cited *Flores* for the proposition that the "relevant question is whether the 'injury [was] suffered as a result of negligence in rendering the professional services that hospitals and others provide by virtue of being health care professionals: that is, the provision of medical care to patients.'" (*Holland*, *supra*, 18 Cal.5th at p. 379.) As discussed, Jentz's injuries were the result of Country Villa Wilshire's negligence in providing custodial care, not medical care.

Finally, the defendants argue "MICRA's limit would apply even if the conduct underlying [Jentz's] claims could be characterized as custodial neglect in addition to professional negligence." The defendants quote the following language from

the Supreme Court's opinion in *Delaney*, *supra*, 20 Cal.4th 23 at page 35: "[T]he Elder Abuse Act's goal was to provide heightened remedies for, as stated in the legislative history, 'acts of egregious abuse' against elder and dependent adults [citation], while allowing acts of negligence in the rendition of medical services to elder and dependent adults to be governed by laws specifically applicable to such negligence." Because Jentz did not prove "egregious abuse,"[14] the defendants argue, "[t]o the extent there was any ambiguity, the conduct therefore falls on the professional negligence side of the line" and MICRA's limits apply.[15]

Delaney does not support the defendants' argument. The issue in *Delaney* was "whether a health care provider which engages in the 'reckless neglect' of an elder adult within the meaning of section 15657 will be subject to section 15657's heightened remedies, or if section 15657.2[16] forbids the

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[14] As stated, the jury found RRT committed elder neglect or abuse, but did not find RRT "acted with recklessness, oppression, fraud, and/or malice as to Elder Neglect or Abuse" (as section 15657 requires to recover enhanced remedies).

[15] The trial court (which did not have the benefit of *Holland*) accepted this argument, stating that, "if the jury found that the neglect was not reckless, oppressive, fraudulent, or malicious conduct, but instead found that the neglect was negligently committed, then MICRA would apply to cap Plaintiff's damages at $250,000."

[16] Section 15657.2 states: "Notwithstanding this article, any cause of action for injury or damage against a health care provider, as defined in Section 340.5 of the Code of Civil Procedure, *based on the health care provider's alleged professional negligence*, shall be governed by those laws which

application of section 15657 under these circumstances." (*Delaney*, *supra*, 20 Cal.4th at p. 27.) The Supreme Court rejected the defendant nursing home's argument the phrase "'based on . . . professional negligence'" in section 15657.2 "broadly exempt[ed] from the heightened remedies of section 15657 health care providers who recklessly neglect elder and dependent adults." (*Delaney*, at p. 31.) Instead, the Supreme Court held, if a health care provider commits elder neglect that "is 'reckless[ ],' or done with 'oppression, fraud or malice,' then the action falls within the scope of section 15657" and the plaintiff can recover enhanced remedies. (*Delaney*, at p. 35.)

Delaney does not stand for the proposition a plaintiff who proves a defendant committed neglect within the meaning of section 15610.57, but does not prove the defendant acted with recklessness, oppression, fraud, or malice (see § 15657), is subject to MICRA. That is especially true in light of *Holland*, where the Supreme Court relied on the distinction between the custodial care and medical care a nursing home provides, not the mental state of the defendant. Indeed, the Supreme Court in *Holland* shied away from that aspect of *Delaney*, stating: "In *Delaney*, we explained that the Elder Abuse Act 'provides the way out' of any 'ambiguity' between allegations of professional negligence and neglect, in that . . . section 15657 reaches only ""acts of egregious abuse" against elder and dependent adults' and excludes 'simple' or 'mere' negligence in the rendition of medical services. [Citation.] But returning to the subject in *Covenant Care*, we never questioned that 'health care provider and elder custodian "capacities" are conceptually distinct.'" (*Holland*, *supra*,

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specifically apply to those professional negligence causes of action." (Italics added.)

18 Cal.5th at p. 380, fn. 3; see *Faiaipau v. THC-Orange County, LLC* (2025) 117 Cal.App.5th 292, 307 ["whatever the continuing vitality of *Delaney*'s mental states-based rationale when determining whether the Elder Abuse Act's heightened remedies are available for a claim of neglect based on medical care, *Holland* is clear that the type of conduct, not mental state, determines whether a wrongful death claim is for professional negligence or elder abuse for the purposes of arbitrability"].)

D. *The Trial Court Did Not Err in Granting the Motion for Judgment Notwithstanding the Verdict on Joint Venture Liability*

As discussed, the trial court granted motions by Rockport and Boardwalk for judgment notwithstanding the verdict and for a new trial. The court ruled substantial evidence did not support the jury's findings that either Rockport or Boardwalk was engaged in a joint venture with RRT.

1. *Applicable Law*

A joint venture is "'an undertaking by two or more persons jointly to carry out a single business enterprise for profit.'" (*Cochrum v. Costa Victoria Healthcare, LLC* (2018) 25 Cal.App.5th 1034, 1053; see *Simmons v. Ware* (2013) 213 Cal.App.4th 1035, 1051.) "'There are three basic elements of a joint venture: the members must have joint control over the venture (even though they may delegate it), they must share the profits of the undertaking, and the members must each have an ownership interest in the enterprise.'" (*Cochrum*, at p. 1053; see *Chambers v. Kay* (2002) 29 Cal.4th 142, 151 [a "'joint venture exists where there is an "agreement between the parties under

which they have a community of interest, that is, a joint interest, in a common business undertaking, an understanding as to the sharing of profits and losses, and a right of joint control"""].) """Whether a joint venture actually exists depends on the intention of the parties."""" (*Simmons*, at p. 1052; see *Unruh-Haxton v. Regents of University of California* (2008) 162 Cal.App.4th 343, 370.) "Where a joint venture is established, the parties to the venture are vicariously liable for the torts of the other in furtherance of the venture." (*Cochrum*, at p. 1053.)

2. *Substantial Evidence Did Not Support the Jury's Finding RRT and Boardwalk Were Engaged in a Joint Venture*

Boardwalk was a management consultant company owned by Rechnitz that provided financial consulting. The services Boardwalk provided for Country Villa Wilshire included reviewing projections and profit and loss statements and arranging financing for Country Villa Wilshire from banks. Boardwalk was not involved in the day-to-day operations of Country Villa Wilshire.

Substantial evidence did not support the jury's finding on at least two of the three elements of a joint venture. First, substantial evidence did not support the jury's finding RRT and Boardwalk each had an ownership interest in Country Villa Wilshire. There was evidence that RRT was the licensee for Country Villa Wilshire and that Rechnitz owned Boardwalk, but no evidence Boardwalk owned Country Villa Wilshire. Aud asserts "Country Villa and Boardwalk are owned and controlled by one single individual, Shlomo Rechnitz," but (assuming "Country Villa" refers to RRT) the testimony Aud cites does not

say anything about ownership or Boardwalk; it says Rechnitz controlled Country Villa Wilshire "through the management and transfer agreement" to which Rechnitz's company, West Hollywood Healthcare & Wellness Centre, LP, was a party.[17] And even if Aud were correct that Rechnitz owned both RRT and Boardwalk, to prove a joint venture between those two entities, Jentz had to prove RRT and Boardwalk each had an ownership interest in the enterprise (i.e. Country Villa Wilshire) (see *Cochrum v. Costa Victoria Healthcare, LLC*, *supra*, 25 Cal.App.5th at p. 1053), not that RRT and Boardwalk had the same owner. There was no evidence Boardwalk had an ownership interest in Country Villa Wilshire.

Second, substantial evidence did not support the jury's finding RRT and Boardwalk agreed to share Country Villa Wilshire's profits and losses. The only evidence Aud cites on this point is Rechnitz's testimony about obtaining bank loans. Aud argues Rechnitz "admitted . . . Boardwalk financed Country Villa by obtaining bank loans on their behalf—a clear and definite admission that the Defendants agreed to share the profits of the Facility." But Rechnitz did not say Boardwalk financed Country Villa Wilshire; he testified he "did not say [Boardwalk] provide[s] funding for the facilities. They deal with banks to get banks to finance facilities." When counsel for Jentz asked Rechnitz whether he would "describe Boardwalk West Financial Services as the purse for facilities such as Country Villa Wilshire," Rechnitz responded, "Not at all."

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[17] There was evidence RRT and West Hollywood Healthcare & Wellness Centre, a company Rechnitz owned, were licensed to operate Country Villa Wilshire.

Aud also argues that, because RRT and Boardwalk are both owned by Rechnitz,[18] they "agreed to share the profits and losses *implicitly*. It is not as if the profits and losses each entity owns are independently reserved—all profits and losses are incurred by Mr. Rechnitz, which is thereby shared by the entities he owns." Aud does not cite to anything in the record supporting his assertion RRT and Boardwalk shared profits and losses. Nor does he cite any legal authority for his theory a plaintiff may prove "the essential element of an agreement among [joint venturers] to share in the profits and losses of the alleged joint venture" (*Cochrum v. Costa Victoria Healthcare, LLC*, *supra*, 25 Cal.App.5th at p. 1053) merely by showing the joint venturers have a common owner.

3. *Substantial Evidence Did Not Support the Jury's Finding RRT and Rockport Were Engaged in a Joint Venture*

Rockport was a management company that managed the day-to-day operations of Country Villa Wilshire. Under a consulting services agreement, West Hollywood Healthcare & Wellness Centre (a licensee of Country Villa Wilshire) agreed to pay Rockport 5.5 percent of its gross revenues as a consulting fee.

Aud cites evidence Rockport was extensively involved in running Country Villa Wilshire: Rockport's vice president of operations, Lawrence Talebi, hired and supervised Country Villa Wilshire's administrator, Tina Brey; Brey requested budget increases from Talebi; Brey needed Talebi's approval to terminate the employment of high-ranking management staff; Country Villa

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[18] As discussed, there was evidence that Rechnitz owned Boardwalk, but not that he owned RRT.

Wilshire had to use policies and procedures provided by Rockport; and a Rockport employee directed Brey to sign Rockport's consulting service agreement. But even if Rockport had control over Country Villa Wilshire, substantial evidence did not support the jury's finding on the two other joint venture elements.

First, substantial evidence did not support the jury's finding RRT and Rockport each had an ownership interest in Country Villa Wilshire. Rockport was owned by Steven Stroll, who formed Rockport after working at an accounting firm Rechnitz had used. Rockport did not have an ownership interest in Country Villa Wilshire.

Without citing to the record, Aud argues Country Villa (which we again assume refers to RRT) and Rockport had "shared ownership by Shlomo Rechnitz." But Rechnitz did not own Rockport, and even if he did, as discussed, the issue is whether RRT and Rockport each had an ownership interest in the enterprise (i.e., Country Villa Wilshire), not whether RRT and Rockport had a common owner.

The only evidence Aud cites that Rockport had an ownership interest in Country Villa Wilshire was Brey's testimony Rockport was Country Villa Wilshire's "parent organization." Brey testified that, on a form informing the state that Brey had become Country Villa Wilshire's administrator, she checked a box indicating Rockport was Country Villa Wilshire's parent organization. Brey testified it was her "understanding" Rockport was the "parent organization." But Brey's testimony was not substantial evidence Rockport owned Country Villa Wilshire. Brey worked at Country Villa Wilshire (through a staffing agency) for only six months. Several other witnesses testified Rockport was a management consultant, a relationship

documented by a written consulting agreement. (See *65283 Two Bunch Palms Building LLC v. Coastal Harvest II, LLC* (2023) 91 Cal.App.5th 162, 168 ["'[S]ubstantial evidence is not synonymous with *any* evidence. [Citations.] "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record."'"].)

Second, substantial evidence did not support the jury's finding RRT and Rockport agreed to share Country Villa Wilshire's profits and losses. Aud argues "Country Villa and Rockport *implicitly* agreed to share profits and losses through their consulting services agreement." But under the consulting services agreement Rockport received a consulting fee of 5.5 percent of Country Villa Wilshire's gross revenues, not a share of Country Villa Wilshire's profits (or losses). (See *Wells Fargo Bank, N.A. v. 6354 Figarden General Partnership* (2015) 238 Cal.App.4th 370, 394 [the "word 'profit' refers to the 'excess of revenues over expenditures in a business transaction'"].) West Hollywood Healthcare & Wellness Centre's agreement to pay Rockport a consulting fee calculated as a share of gross revenues was not an agreement to share profits and losses. (See *Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 638 ["'NFL teams are not engaged in a joint venture'"; though they "'share revenues, they do not share profits or losses'"]; see also *Simmons v. Ware*, *supra*, 213 Cal.App.4th at p. 1055 [plaintiff must show joint venturers "agreed to *share* in the profits or losses of a single business venture as opposed to merely showing that each of their success was entwined with the success of the other"].)

E. *The Trial Court Did Not Err in Granting the Defendants' Motion for a New Trial on Alter Ego Liability*

1. *Relevant Proceedings*

Jentz proposed a special verdict question on alter ego liability. The defendants objected, arguing alter ego was an equitable issue to be decided by the trial court. The trial court agreed "the case authority does appear to say that alter ego is an equitable issue," but suggested asking the jury to make advisory findings of fact, such as unity of interest. The parties, however, apparently did not submit any proposed findings of fact on the issue. Over the defendants' objection the trial court instructed the jury on alter ego liability and submitted the issue to the jury. The verdict form asked whether Rockport, Boardwalk, and Rechnitz were alter egos of RRT; the jury answered "yes" for each. The trial court granted the defendants' motion for a new trial under Code of Civil Procedure section 657, subdivisions 1 (irregularity in the proceeding) and 7 (error in law), ruling the court, "over [the defendants'] objections, erred in deciding that the jury was to decide the equitable issue of alter ego."

2. *Alter Ego Liability Was an Equitable Issue for the Court*

To prevail on an alter ego theory, the plaintiff must show "'(1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow.'" (*Mesler v.*

Bragg Management Co. (1985) 39 Cal.3d 290, 300; accord, *Angel Lynn Realty, Inc. v. George* (2025) 114 Cal.App.5th 655, 663.) Courts have applied the alter ego doctrine to organizational forms other than corporations, including limited partnerships. (See, e.g., *Relentless Air Racing, LLC v. Airborne Turbine Ltd. Partnership* (2013) 222 Cal.App.4th 811, 817-818.)

The alter ego "'doctrine is essentially an equitable one and for that reason is particularly within the province of the trial court.'" (*Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811; see *Stark v. Coker* (1942) 20 Cal.2d 839, 846; *Webber v. Inland Empire Investments* (1999) 74 Cal.App.4th 884, 908; *Dow Jones Co. v. Avenel* (1984) 151 Cal.App.3d 144, 147.)[19] Though the trial court may "empanel an advisory jury to make preliminary factual findings" on an equitable issue, those findings "are purely advisory because, on equitable causes of action, the judge is the proper fact finder." (*Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156 (*Hoopes*); see *Gonzalez v. Community Mortuary, Inc.* (2026) 119 Cal.App.5th 1006, 1029 ["trial court judges are required to decide equitable causes of action and defenses [citations], although courts may seek *assistance* from an *advisory* jury to resolve *factual* issues that underlie a decision or a ruling involving equitable issues"]; *A-C Co. v. Security Pacific Nat. Bank* (1985) 173 Cal.App.3d 462, 474 ["while a jury may be used for advisory verdicts as to questions of fact" on equitable issues, "it is

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[19] Aud argues the defendants forfeited the issue by, among other things, not complying with the trial court's request to submit alternative jury instructions on alter ego. There was no forfeiture. The defendants consistently objected to Jentz's proposed jury instruction and verdict form on the ground alter ego was an equitable issue for the court.

the duty of the trial court to make its own independent findings and to adopt or reject the findings of the jury as it deems proper"].) Because the trial court erred in submitting the issue of alter ego liability to the jury, the court did not abuse its discretion in granting the motion for a new trial.

Aud argues "California case law does not prevent juries from determining the question of alter ego," but he cites cases merely mentioning that a jury made an alter ego finding. Because none of those cases addressed whether the trial court erred in submitting the issue to the jury, they are not authority for the proposition a jury may decide alter ego liability over a party's objection. (See *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 511 [""cases are not authority for propositions not considered""]; *Geiser v. Kuhns* (2022) 13 Cal.5th 1238, 1252 [same].)

Aud also argues the "trial court may not disregard the jury's finding of ultimate fact when determining equitable relief." Though "a judge is bound by a jury's verdict rendered on *legal* causes of action," a jury's factual findings on equitable issues are only advisory. (*Hoopes*, *supra*, 168 Cal.App.4th at p. 156, italics added; see *Gonzalez v. Community Mortuary, Inc.*, *supra*, 119 Cal.App.5th at p. 1029.) If "an equitable cause of action is erroneously submitted to a jury," as happened in this case, the "trial court is not bound by the jury's verdict and must make its own independent evaluation of the evidence." (*Hoopes*, at p. 160.)

Hoopes, on which Aud relies, illustrates the distinction between a jury's findings on legal and equitable causes of action. In *Hoopes* the operator of a truck rental business sued his landlord and another tenant, who operated a restaurant, claiming he was entitled to exclusive use of a parking lot.

(*Hoopes*, *supra*, 168 Cal.App.4th at pp. 150-151.) The plaintiff asserted causes of action for breach of contract, trespass, and fraud. (*Id.* at p. 150.) The parties also raised equitable issues: the plaintiff and the defendants sought declaratory and injunctive relief, and the defendants asserted the defense of equitable estoppel. (*Ibid.*) The trial court submitted the legal causes of action to the jury and reserved the equitable issues. (*Ibid.*)

The jury returned a special verdict for the plaintiff, finding the plaintiff had exclusive right to the parking lot. (*Hoopes*, *supra*, 168 Cal.App.4th at p. 158.) In ruling on the parties' requests for declaratory and injunctive relief, however, the trial court rejected the jury's finding and found "'the intention of the parties was that the parking lot be shared.'" (*Id.* at p. 159.) The court in *Hoopes* held the trial court "erred in disregarding the jury's verdict when fashioning equitable relief. '[W]here the legal issues are tried first, the judge cannot ignore the jury's verdict and grant equitable relief inconsistent with the jury's findings.'" (*Ibid.*)

In ruling on equitable estoppel, however, the trial court was not bound by the jury's verdict, because the "defense of equitable estoppel was a distinct matter within the exclusive province of the trial judge that raised legal and factual issues undecided by the jury." (*Hoopes*, *supra*, 168 Cal.App.4th at p. 155.) The trial court found that, because the plaintiff had known for years the landlord also leased the parking lot to the restaurant, the plaintiff was equitably estopped from claiming exclusive right to the parking lot. (*Id.* at p. 161.) The court held: "While the trial judge should have considered the equitable defense first, and thus avoided an unnecessary jury trial, the order of trial was

within the court's discretion and did not divest the judge of his duty to determine applicability of equitable estoppel." (*Id.* at pp. 150-151.)

Aud argues *Hoopes* is distinguishable because it involved "the defense of equitable estoppel—a doctrine clearly distinct from that involved in our case." But Aud does not explain why a jury's findings should be advisory for one equitable doctrine but not another. (See *Gonzalez v. Community Mortuary, Inc.*, *supra*, 119 Cal.App.5th at p. 1029 [jury may render advisory verdict on "'equitable issues"']; *Dow Jones Co. v. Avenel*, *supra*, 151 Cal.App.3d at pp. 147-148 ["the 'constitutional guaranty of the right to a jury trial does not apply to actions involving the application of equitable doctrines"']; see also *Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 915 ["equitable issues retain their character, despite being raised in the context of a legal claim," and a "litigant has no constitutional right to a jury determination of an equitable issue merely because it is raised in the context of a claim at law"].)

Relying on *Hoopes*, Aud argues that, because "the factual predicates for alter ego overlapped with [Jentz's] legal claims for elder abuse and negligence, the jury was properly tasked with resolving them." The court in *Hoopes*, however, did not hold a jury could decide an equitable issue whenever the factual predicates for that issue overlapped with the factual predicates for a legal cause of action. Instead, the court in *Hoopes* stated "a jury's factual findings on legal causes of action should bind the trial court when granting ancillary equitable remedies based on the same facts." (*Hoopes*, *supra*, 168 Cal.App.4th at p. 160.) That was what happened in *Hoopes*: The jury made findings of fact on the plaintiff's legal causes of action for breach of contract,

fraud, trespass, and nuisance, which, the court in *Hoopes* held, bound the trial court in ruling on plaintiff's request for ancillary equitable remedies (declaratory and injunctive relief). (*Id.* at pp. 158-159.)

And in any event, Aud does not explain how the factual predicates for alter ego overlapped with the factual predicates for elder abuse and negligence. In fact, there was no overlap. Jentz's causes of action for elder abuse and negligence rested on RRT's failure to provide adequate care for her at Country Villa Wilshire. Alter ego, on the other hand, required the jury to decide whether RRT and the other defendants had such a unity of interest that their individual identities no longer existed or should be disregarded, and whether injustice would result if the acts of one were not treated as the acts of the other.[20]

F. *Any Error in Excluding Evidence of Rechnitz's Conversation with Aud Was Harmless*

1. *Additional Factual and Procedural Background*

According to Aud, Rechnitz called him the night before Aud was scheduled to testify. Rechnitz told Aud that, if Aud testified the next morning, "things would get very nasty" for him and Jentz. Rechnitz told Aud he was "very well connected" with the

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[20] Aud also argues that, "even if the court were to decide alter ego liability, the weight of the evidence" (capitalization omitted) shows Rockport, Boardwalk, and Rechnitz were alter egos of RRT. Because the trial court did not err in granting the motion for a new trial on alter ego liability, and because the trial court has not yet tried the issue, we do not consider whether substantial evidence would support a finding of alter ego.

Los Angeles Police Department and political leaders and "repeatedly discouraged" Aud from testifying in court. Rechnitz told Aud that he had been sued many times, that he could "drag cases out for years," and that Jentz would die before she received any judgment. Rechnitz stated: "'I get it, we fucked up, I accept full responsibility for [Jentz's] injuries, but I think what the attorneys are asking for is outrageous and ludicrous.'" Rechnitz told Aud he wanted to make a "side deal that cuts the attorneys out." Rechnitz also said Country Villa Wilshire was "severely understaffed" because his competitors kept stealing his staff by offering higher salaries. When Aud said he needed to end the call, Rechnitz said he would call back in 30 minutes with a deal Aud could not refuse.

Rechnitz called back and offered to provide Jentz up to $3 million in nursing home services if she returned to one of Rechnitz's nursing homes. Rechnitz also told Aud that his private investigators learned Jentz liked basketball and that he would give Jentz and Aud courtside seats at a professional basketball game. Rechnitz said Aud "had better take his offer" or Jentz would "'be dead before anything resolved.'"

The trial court precluded counsel for Jentz from questioning Rechnitz about these conversations. The court ruled under Evidence Code section 352 that Rechnitz's statements were "more unduly prejudicial than probative" and under Evidence Code section 1152 that Rechnitz made the statements in the context of settlement discussions, "even if some of the discussions, perhaps, got uncomfortable or heated."

2. *Excluding Evidence of Rechnitz's Phone Calls Did Not Prejudice Jentz*

Aud argues that the trial court erred in excluding Rechnitz's telephone calls under Evidence Code sections 352 and 1152 and that Rechnitz's statements to Aud were "probative of Jentz's joint venture and alter ego theories of liability." Aud contends: "Mr. Rechnitz's statement that 'we' f-ed up goes directly to alter-ego liability as it is a party admission, against his interest, with a tendency to prove that all the Defendants are engaged in not only a joint enterprise and venture, but that Defendants have the same interest and are inequitably using the corporate form to thwart a third party's rights. Further, the fact that Mr. Rechnitz called Mr. Aud under the apparent belief that he could end this entire dispute tends to show a lack of distinct entities." Aud argues the evidence of those calls "bore directly on disputed factual issues regarding alter ego liability, joint venture, staffing, management decisions, and the underlying neglect."

Any error in excluding evidence of Rechnitz's statements to Aud, however, did not prejudice Jentz: The jury found in favor of Jentz on all her causes of action and on her joint venture and alter ego claims. (See *Huntsman-West Foundation v. Smith* (2024) 104 Cal.App.5th 1117, 1131 ["'[A]n erroneous evidentiary ruling requires reversal only if "there is a reasonable probability that a result more favorable to the appealing party would have been reached in the absence of the error."'"]; see also *Bjoin v. J-M Manufacturing Co., Inc.* (2025) 113 Cal.App.5th 884, 900 ["It is the appellant's burden to establish that the error was prejudicial."].) It was the trial court that ruled against Jentz by granting the defendants' posttrial motions, and Aud does not argue that, or explain how, allowing Jentz to cross-examine

Rechnitz about his conversations with Aud would have caused the trial court to rule differently on those motions.

In his reply brief Aud argues that "the erroneous exclusion of this call prevented the jury from hearing powerful evidence of malice, oppression, and consciousness of wrongdoing." Aud, however, forfeited this argument by failing to raise it in his opening brief. (See *Gund v. County of Trinity* (2020) 10 Cal.5th 503, 525 [arguments raised for the first time in a reply brief are forfeited]; *Raceway Ford Cases* (2016) 2 Cal.5th 161, 178 ["We generally do not consider arguments raised for the first time in a reply brief."]; *Mansur v. Ford Motor Co.* (2011) 197 Cal.App.4th 1365, 1387-1388 ["We will not consider arguments raised for the first time in a reply brief, because it deprives [the respondent] of the opportunity to respond to the argument."].) Moreover, assuming Rechnitz's conduct during trial in January 2024 was relevant to whether RRT acted with malice, oppression, or fraud during Jentz's stay at Country Villa Wilshire in 2020 and 2021, Aud did not challenge the punitive damages finding (which was in Jentz's favor) or argue the evidence did not support the jury's award of $0 in punitive damages.

DISPOSITION

The judgment is affirmed in part and reversed in part. The trial court is directed to vacate its order granting the motion by RRT, Rockport, Boardwalk, and Rechnitz for motion for judgment notwithstanding the verdict on noneconomic damages and to enter a new order denying the motion. The trial court is also directed to vacate its order conditionally granting the motion by Rockport, Boardwalk, and Rechnitz for a new trial on noneconomic damages and to enter a new order denying the motion. In all other respects, the judgment is affirmed. The parties are to bear their costs on appeal.

SEGAL, J.

We concur:

MARTINEZ, P. J.

FEUER, J.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 6420 Wilshire Boulevard, Suite 1100, Los Angeles, California 90048; electronic email address: aashralieva@gmsr.com.

On August 28, 2026, I served the foregoing document(s) described as: **PETITION FOR REVIEW** on the interested party(ies) in this action, addressed as follows:

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BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

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

Executed on August 28, 2026, at Los Angeles, California.

/s/ Adelya Ashralieva
Adelya Ashralieva