B349733

IN THE COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

Everloving Home Health Care, Inc. et al.
Plaintiff and Appellant,

vs.

Joseph Amirian Physical Therapy
Defendant and Respondent.

APPEAL FROM THE SUPERIOR COURT FOR LOS ANGELES
The Hon. Gail Killefer (Case No. 19STCV36658)

DEFENDANT AND RESPONDENT'S APPELLATE BRIEF

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APP-008

COURT OF APPEAL 2nd APPELLATE DISTRICT, DIVISION 1	COURT OF APPEAL CASE NUMBER: B349733
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: Dariush Adli, Esq., SBN 204959; Jacob Mojarro, Esq., SBN 194992 FIRM NAME: ADLI LAW GROUP, P.C. STREET ADDRESS: 3453 Newbridge Drive CITY: Rancho Palos Verdes STATE: CA ZIP CODE: 90275 TELEPHONE NO.: (213) 623-6546 FAX NO.: E-MAIL ADDRESS: adli@adlilaw.com; jacob.mojarro@adlilaw.com ATTORNEY FOR (*name*): Joseph Amirian Physical Therapy	SUPERIOR COURT CASE NUMBER: 19STCV36658
APPELLANT/ PETITIONER: Everloving Home Health Care, Inc. et al. RESPONDENT/ REAL PARTY IN INTEREST: Joseph Amirian Physical Therapy	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

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(1)		
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(3)		
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Date: August 07, 2026

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I. INTRODUCTION

This appeal asks the Court to do two things it cannot do: treat allegations from a pleading that was dismissed on demurrer as though they were proven facts, and treat a criminal plea that was vacated as legally invalid as though it still existed. The judgment should be affirmed.

The procedural posture is straightforward, and Appellants' brief obscures it. Between October 2019 and November 2022, Appellants Everloving Home Health, Inc., Ehsan Doroudi, and Shaida Moghaddam (collectively "Everloving") filed four successive complaints against Respondent Joseph W. Amirian. The superior court sustained a demurrer to every one of them — and it was not one judge's view: two different judges of the court, presiding in succession, reached the same conclusion. Three times the court granted leave to amend and identified, in written rulings, precisely what was missing: a sum certain for conversion, particularized allegations of who said what to whom for fraud, and facts showing a voluntarily undertaken fiduciary obligation. (See CT 663–668 [Dec. 6, 2021 tentative ruling]; CT 550–554 [June 22, 2022 ruling]; CT 793–798 [Sept. 27, 2022 ruling].) Three times Everloving filed a substantially identical pleading. On January 18, 2023, after the fourth failed attempt, the court sustained the demurrer to the Third Amended Complaint without leave to amend. (CT 952–959.) No claim of Everloving's was ever tried, and no allegation of Everloving's was ever proven.

What was tried, in a one-day bench trial on April 8, 2025, was Respondent's cross-claim for unjust enrichment. That claim rested on

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documents whose authenticity no one disputed. In 2018, Respondent entered a plea in a criminal proceeding and was ordered to pay $240,000 in victim restitution under Penal Code section 1202.4. He paid it in full by August 7, 2019. On May 24, 2021, the criminal court vacated the restitution order. On July 12 and 15, 2024, the criminal court vacated the plea and the conviction under Penal Code section 1473.7, expressly finding "a statutory and constitutional defect in the taking of the plea." The charges were then dismissed under Penal Code section 1385. (CT 1207; RT 314:17–21.)

The superior court drew the only conclusion those orders permit. Restitution under section 1202.4 is payable by "a defendant convicted of that crime." (Pen. Code, § 1202.4, subd. (a)(1).) When the conviction was set aside as legally invalid, the sole legal basis for Everloving's possession of the $240,000 disappeared with it. Retention of money whose legal foundation has been judicially nullified is the paradigm case of unjust enrichment. (CT 1205–1211.)

Appellants' response is to insist that the vacated criminal case remains operative for civil purposes. It does not. A plea vacated under section 1473.7 is vacated because it was "legally invalid" — invalid when taken, not invalid going forward. (Pen. Code, § 1473.7, subd. (a)(1).) Appellants cannot rebuild an unclean hands defense out of a plea the criminal court withdrew and charges the criminal court dismissed, particularly when their own civil claims premised on the identical conduct failed four times at the pleading stage.

Nor does *Ahn v. Parisotto* (2025) 114 Cal.App.5th 697 assist them. *Ahn* construed a single statutory definition — Labor Code section 139.21,

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subdivision (a)(4)(C), which defines "convicted" to include "[a] plea of guilty . . . accepted by a . . . court." (*Ahn*, at p. 704.) The physician in *Ahn* obtained only a section 1385 dismissal; his guilty plea was never vacated and remained intact. (*Id.* at p. 702.) That surviving plea was the entire basis for the decision. Here, the plea itself was vacated. *Ahn* holds that a section 1385 dismissal does not erase an accepted guilty plea. It says nothing about a plea that a court has withdrawn under section 1473.7, and this Court expressly cautioned in *Ahn* that "cases are not authority for propositions that are not considered." (*Id.* at p. 706.)

Finally, the denial of a new trial was well within the court's discretion. The parties had briefed the dispositive legal question before trial, at trial, and in post-trial supplemental briefs the court itself requested. Appellants identified no irregularity, no surprise, no evidentiary gap, and no legal error. (Code Civ. Proc., § 657.)

The judgment and the order denying a new trial should be affirmed.

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II. STATEMENT OF APPEALABILITY

Respondent does not dispute Appellants' statement of appealability. The Judgment After Bench Trial entered June 27, 2025 (CT 1218–1220) is an appealable final judgment. (Code Civ. Proc., § 904.1, subd. (a)(1).) The Judgment of Dismissal entered May 22, 2023 (CT 1007) is reviewable on appeal from that final judgment. (Code Civ. Proc., § 906.) The order denying the motion for new trial, entered August 26, 2025 (CT 1262), is reviewable on appeal from the judgment.

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III. COUNTERSTATEMENT OF THE CASE

Because Appellants' Statement of Facts blends unproven pleading allegations with trial evidence, Respondent sets forth the record as it actually stands, distinguishing the pleading record from the evidentiary record.

A. The Pleading Record: Four Complaints, Four Sustained Demurrers

1. The original Complaint and the December 6, 2021 ruling.

Everloving filed its original Complaint on October 11, 2019, alleging six causes of action against all defendants collectively: conversion, fraud, breach of fiduciary duty, defamation, breach of the implied covenant of good faith and fair dealing, and intentional infliction of emotional distress. (CT 76.)

Respondent demurred to the original Complaint. Everloving filed no timely opposition, and Respondent filed a notice of non-opposition. (CT 288.) Everloving then filed a late opposition. (CT 291.) On December 6, 2021, the court issued a detailed tentative ruling sustaining the demurrer as to every cause of action and identifying the specific defects, and it continued the hearing to afford Everloving an opportunity to correct the pleading. (CT 300; see RJN, Exh. A [Dec. 6, 2021 tentative ruling], CT 660, 663–668.) As to conversion, the court held that an alleged "expectation to receive revenue" was insufficient because "Plaintiffs were required to plead a specific, identifiable sum to bring a claim for conversion of money." As to fraud, the court held that the Complaint "fails to allege what representations Joseph Amirian, and not the other Defendants made to Plaintiffs," and "fails to allege how Joseph Amirian

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intended to induce reliance on his statements, or how Plaintiffs were harmed by Joseph Amirian's statements." As to breach of fiduciary duty, the court held that the Complaint "fails to plead how Joseph Amirian undertook any fiduciary duty to Plaintiffs." As to the fourth through sixth causes of action, the court held that the Complaint "alleges conduct by defendants in the aggregate and fails to differentiate what statements or conduct are attributed to Joseph Amirian instead of the other defendants." (RJN, Exh. A, CT 663–668.)

Everloving did not amend or otherwise cure the identified defects during the continuance. On March 15, 2022, after argument, the Honorable Richard J. Burdge, Jr. adopted his tentative as the final order: "Defendant Joseph Amirian's demurrer is sustained as to each cause of action raised in the Complaint. Plaintiffs are granted 30 days leave to amend." (CT 356.) As Respondent's counsel later recounted without contradiction, the court had "gave [Everloving] additional three months to amend the complaint" and "continued the demurrer to March of 2022, specifically telling them you should look at my ruling and amend your complaint accordingly," yet Everloving "[r]efused to amend." (RT 6:1–9.)

2. The First Amended Complaint and the June 22, 2022 ruling.

Everloving filed its First Amended Complaint on April 14, 2022, "alleging identical causes of action." (CT 366.) The action was then reassigned from Judge Burdge to the Honorable Gail Killefer, as reflected in Plaintiffs' own Notice of Case Assignment filed May 16, 2022. (CT 424.) Everloving did not oppose the ensuing demurrer. On June 22, 2022, Judge Killefer sustained the demurrer in its entirety with leave to amend, again finding the conversion claim defective for want of a sum certain, the fraud

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claim defective for failure to allege what representations Respondent individually made and with what intent, and the fiduciary duty claim defective for failure to plead how Respondent undertook any fiduciary duty. The court observed that "Plaintiffs' FAC has not substantively addressed those deficiencies and has merely realleged the vast majority of allegations using identical language." (CT 550–554.)

3. The Second Amended Complaint and the September 27, 2022 ruling.

Everloving filed its Second Amended Complaint on July 25, 2022. (CT 561.) On September 27, 2022, the court sustained the demurrer in its entirety, granting a third opportunity to amend. The court found the conversion claim insufficient because "the SAC again does not plead that Plaintiffs expected to receive a sum certain of revenue"; the fraud claim insufficient because "the Complaint fails to allege what representations Joseph Amirian, and not the other Defendants made, if any, to Plaintiffs"; and the fiduciary claim insufficient because "the SAC fails to plead how Joseph Amirian undertook any fiduciary duty to Plaintiffs." The court also struck all references to Respondent's incomplete criminal record. It concluded: "While the court's March 15, 2022 and June 22, 2022 Minute Orders gave specific analysis as to the deficiencies of the original Complaint and the FAC, Plaintiffs' SAC has not substantively addressed those deficiencies and has merely realleged the vast majority of allegations using identical language. Plaintiffs have again failed to utilize this opportunity to allege sufficient facts to support their causes of action." (CT 792–798.)

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4. The Third Amended Complaint and the January 18, 2023 ruling.

Everloving filed its Third Amended Complaint on November 7, 2022, again "alleging identical causes of action." (CT 815.) Respondent demurred on December 22, 2022. (CT 890.) Everloving's opposition was due January 4, 2023 and was filed January 11, 2023. (CT 900–940.) The court noted the opposition was untimely under Code of Civil Procedure sections 1005, subdivision (b) and 1013, subdivision (c), and exercised its discretion under California Rules of Court, rule 3.1300(d) not to consider it. (CT 953.)

Everloving's counsel nonetheless appeared at the January 18, 2023 hearing and argued the merits at length, contending that the Third Amended Complaint adequately pleaded each cause of action. (RT 4:2–5:23.) The court sustained the demurrer without leave to amend, addressing each cause of action on its merits:

> • Conversion: "Plaintiffs have not pled that they have an immediate right to possession of personal property, and have yet again failed to identify a specific sum certain as necessary to establish a crucial element for a conversion claim. . . . Plaintiffs have failed to do so a fourth time."
>
> • Fraud: "[T]he TAC once more fails to allege what representations Joseph Amirian, and not the other Defendants made, if any, to Plaintiffs, with what intent, and how the reliance on those representations was reasonable . . . . The TAC also fails to allege how Joseph Amirian intended to induce reliance on his statements, or how Plaintiffs were harmed by Joseph Amirian's statements."

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> • Breach of fiduciary duty: "[T]he TAC still fails to sufficiently plead an existing fiduciary duty undertaken by Defendant Amirian."
>
> • Fourth through sixth causes of action: "Plaintiffs fail to allege specific defamatory statements . . . ; Plaintiffs fail to plead sufficient allegations to show Defendant Amirian was a contracting party . . . ; and Plaintiffs fail to plead sufficient facts to show outrageous conduct."

(CT 952–959.)

The court concluded that Everloving "again allege[d] conduct by defendants in the aggregate and fail[ed] to differentiate what statements or conduct are attributed to Joseph Amirian specifically," and "provide[d] only conclusory claims to establish the elements of their claims." (CT 958.) An Order of Dismissal was entered January 18, 2023 (CT 950), and a Judgment of Dismissal on May 22, 2023 (CT 1007).

B. The Criminal Proceedings and Their Vacatur

The following facts were established at trial by documentary exhibits. The court granted judicial notice of Exhibits 1 through 4 and admitted them into evidence, and Cross-Defendants stated they had "[n]o objection as to the admissibility" of the exhibits. (RT 314:2–21.)

In *People v. Amirian*, LASC Case No. LA087334, Respondent entered a plea on June 20, 2018 and was ordered to pay victim restitution to Everloving pursuant to Penal Code section 1202.4. Rather than require Everloving to prove its claimed losses, the parties stipulated to $240,000. Respondent paid that sum in full, completing payment on August 7, 2019. (CT 1207; RT 316:26–317:9.)

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On May 24, 2021, the criminal court granted Respondent's motion under Penal Code section 1473.7 and vacated the restitution order entered at sentencing. (CT 1207.)

On July 12, 2024, the criminal court granted Respondent's motion to vacate his plea. On July 15, 2024, the Honorable Shellie Samuels signed an order confirming the vacatur, stating: "The Court ruled that there was a statutory and constitutional defect in the taking of the plea, within the meaning of California Penal Code § 1473.7. The Court found that prior to entering the plea, Defendant JOSEPH AMIRIAN had not been properly advised as to the immigration consequences, including as to the restitution component of the sentencing." (CT 1207.) All counts were then dismissed pursuant to Penal Code section 1385. (CT 1207.)

C. The Bench Trial on the Cross-Complaint

Respondent filed his cross-complaint on January 11, 2022. (CT 305.) On December 24, 2024, he dismissed every cause of action except the fifth, for unjust enrichment, seeking return of the $240,000. (CT 1206.) Trial proceeded on that single equitable claim on April 8, 2025.

Respondent's case consisted of four documentary exhibits establishing the plea, the restitution payments, the vacatur of the restitution order, and the vacatur of the conviction. (RT 314:17–21.) Cross-Defendants offered the testimony of Sheena Fernandez and an accounting (Exhibit A) purporting to show economic losses aggregating $551,897.72, in support of their unclean hands defense. (RT 323:23–324:2, 327–335.) Ms. Fernandez testified that the underlying financial and census reports were last generated on December 19, 2018 (RT

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335:27–28), and the damages figures were first disclosed in interrogatory responses served October 1, 2024 (RT 323:23–324:2).

At the close of evidence the court ordered supplemental briefing on two questions: when and how Cross-Defendants produced their damages information in discovery, and whether unclean hands may operate as an affirmative defense to unjust enrichment in this context. (RT 356:20–357:13.) Both parties submitted supplemental briefs. (CT 1184; CT 1191–1203.)

D. The Order After Bench Trial, Judgment, and New Trial Motion

On May 29, 2025, the court issued its Order After Bench Trial. (CT 1205–1211.) It found that because the conviction had been vacated under section 1473.7 and the charges dismissed under section 1385, "Amirian was in effect not convicted of a crime and there is no longer a legal basis for Cross-Defendants to receive restitution from Amirian." (CT 1209.) On the unclean hands defense, applying the framework of *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, the court found that Cross-Defendants had no viable claim against Respondent, that no analogous authority supported the defense, that Respondent's conduct did not infect the unjust enrichment claim because that claim arose from a court order that is no longer valid, and that "the doctrine of unclean hands cannot override clear policy set by statute." (CT 1210–1211.)

Judgment was entered June 27, 2025 in the amount of $240,000. (CT 1218–1220.) Cross-Defendants moved for a new trial (CT 1224–1253); Respondent opposed (CT 1257); and the motion was denied on August 26,

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2025 (CT 1262; RT 604:7–18). Notice of appeal was filed September 18, 2025. (CT 1269.) The judgment was satisfied on April 22, 2026.

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IV. STANDARDS OF REVIEW

A judgment or order of the trial court is presumed correct, all intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Appellants bear the burden of demonstrating prejudicial error on an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.)

Demurrer. An order sustaining a demurrer is reviewed de novo to determine whether the complaint alleges facts sufficient to state a cause of action under any legal theory. The court treats the demurrer as admitting all material facts properly pleaded, "but not contentions, deductions or conclusions of fact or law." (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 525; see *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Where an exhibit attached to the complaint contradicts the pleading's allegations, the exhibit controls.

Leave to amend. Denial of leave to amend is reviewed only for abuse of discretion, and "[t]he burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank v. Kirwan, supra,* 39 Cal.3d at p. 318.) To carry that burden, the plaintiff "must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43.) An abstract assertion of a right to amend does not suffice; the plaintiff must identify the applicable substantive law, the elements of the claim, and the specific factual allegations that would satisfy those elements. (*Id.* at pp. 43–44.)

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Judgment after bench trial. The trial court's factual findings are reviewed for substantial evidence. "When a finding of fact is attacked on the ground that there is not any substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact." (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) An appellant challenging the sufficiency of the evidence must set forth in its opening brief *all* material evidence on the point, not merely the evidence favorable to itself; failure to do so forfeits the contention. (*Ibid.*) The legal effect of undisputed criminal court orders is a question of law reviewed de novo.

Unclean hands. Because the material facts were undisputed, the trial court treated the availability of the unclean hands defense as a question of law. (CT 1208, citing *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 274–275, and *Jay Bharat Developers, Inc. v. Minidis* (2008) 167 Cal.App.4th 437, 445–446.) So framed, the ruling is reviewed de novo. To the extent the decision whether to apply the doctrine rests on the trial court's assessment of the nature of the misconduct and its relationship to the claimed injuries, it is reviewed for abuse of discretion and any subsidiary factual findings for substantial evidence. (*Kendall-Jackson Winery, Ltd. v. Superior Court, supra,* 76 Cal.App.4th at pp. 978–979.) The ruling should be affirmed under either standard, and Respondent does not ask the Court to choose between them.

New trial. An order denying a new trial is reviewed for abuse of discretion, and that discretion is "very broad." Reversal is warranted only on a manifest and unmistakable abuse. (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871–872.) In all events, no judgment may be

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reversed absent a resulting miscarriage of justice. (Cal. Const., art. VI, § 13.)

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V. ARGUMENT

A. Preliminary Argument: The Court Should Disregard Appellants' Improperly Framed Statement of Facts.

Before reaching the merits, this Court should address a defect that runs through Appellants' entire brief. Appellants' Statement of Facts narrates the allegations of the Third Amended Complaint in declarative form — as historical fact — and then carries those assertions forward into every argument, including the arguments directed to the bench trial and the equitable defenses. That is not a stylistic imperfection. It is an attempt to obtain on appeal the factual findings Appellants never obtained below.

1. The standard of review permits the Third Amended Complaint to be used only to test legal sufficiency, and only as to the demurrer issues.

On review of an order sustaining a demurrer, the court assumes the truth of properly pleaded material allegations for one purpose and one purpose only: to decide whether the pleading states a cause of action. (*Blank v. Kirwan, supra,* 39 Cal.3d at p. 318; *Berkley v. Dowds, supra,* 152 Cal.App.4th at p. 525.) That assumption is a rule of decision, not a finding. It does not transform allegations into evidence, and it does not extend beyond the pleading question to which it applies. Even within the demurrer inquiry, the assumption does not reach "contentions, deductions or conclusions of fact or law." (*Berkley v. Dowds, supra,* at p. 525.)

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This appeal presents two categories of issues arising from two different records. The demurrer issues are decided on the face of the Third Amended Complaint and matters judicially noticed. (*Blank v. Kirwan, supra,* 39 Cal.3d at p. 318.) The judgment on the cross-complaint and the order denying a new trial are decided on the evidentiary record made at the April 8, 2025 trial — the exhibits admitted, the testimony given, and the judicially noticed criminal court orders. (RT 314:17–21.) Nothing in the Third Amended Complaint is evidence of anything for purposes of the second category.

Appellants collapse that distinction. Their Statement of Facts opens with a narrative built on "TAC ¶¶8–11, CT 817–818," "TAC ¶13, CT 818," "TAC ¶¶7, 14, 34, CT 817–818, 823," and "TAC ¶44, CT 826–827," interspersed with trial transcript citations, presented as a single seamless account of what occurred. A reader is given no way to distinguish what was proven from what was merely alleged and found legally insufficient four times over.

2. Appellants present dismissed allegations as if they were proved facts.

The premise of Appellants' factual narrative is that Respondent did what the Third Amended Complaint accused him of doing. But there was no trial on Everloving's complaint. There was no evidentiary hearing on its allegations. There were no findings adopting them. To the contrary, the superior court held four separate times that those allegations were legally insufficient, and on the fourth occasion held that Everloving "provide[d] only conclusory claims to establish the elements of their claims." (CT 958.)

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The point is sharpened by what the superior court did with a portion of those very allegations. In its September 27, 2022 ruling, the court ordered that "[a]ll references to the incomplete criminal record of Joseph Amirian are disregarded and ordered stricken from the SAC." (CT 792–798.) It reached the same conclusion as to the Third Amended Complaint, finding "references to Amirian's criminal record to be insufficiently pled for the same rationale as the September 27 Order." (CT 952–959.) Appellants now rebuild that stricken material into the opening pages of their appellate Statement of Facts. Allegations stricken from a pleading below cannot be reintroduced as fact on appeal.

Nor may Appellants improve the standing of a dismissed pleading through artful drafting. An allegation assumed true for demurrer purposes remains an allegation. It carries no evidentiary weight, supports no finding, and cannot substitute for proof. (*Berkley v. Dowds, supra,* 152 Cal.App.4th at p. 525.)

3. The Court should keep the demurrer record and the bench-trial record separate.

The need for separation is acute here because the two proceedings were more than two years apart and concerned entirely different claims. The demurrer was sustained on January 18, 2023 on Everloving's six tort causes of action. (CT 950.) The trial occurred on April 8, 2025 on Respondent's single equitable claim for return of money paid under a vacated restitution order. Whatever evidence was introduced at that trial was admitted in connection with that claim and the affirmative defense asserted against it. It was not admitted, and could not have been

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admitted, to prove Everloving's dismissed causes of action — those claims were no longer in the case.

This cuts in both directions, and Respondent states the limitation candidly. The trial testimony concerning Respondent's presentation of credentials (RT 355:3–6), and Cross-Defendants' damages accounting (RT 327–335), bear only on whether unclean hands barred Respondent's unjust enrichment claim. That evidence cannot retroactively cure the pleading defects in the Third Amended Complaint, cannot supply allegations Everloving failed to make in four attempts, and cannot establish liability on claims that were dismissed. Conversely, the allegations of the Third Amended Complaint cannot supply evidence the unclean hands defense lacked.

Appellants argue the opposite on both fronts. They contend that "[t]he facts proven at trial . . . confirm that every cause of action in the TAC rested on real, provable facts," and that leave to amend should therefore have been granted. That argument is untenable. A trial court cannot abuse its discretion by failing to anticipate testimony that would be given twenty-six months later on a different claim. The propriety of a demurrer ruling is assessed on the pleading before the court when the ruling was made.

4. The blended narrative is prejudicial because it seeks to relitigate dismissed claims.

The prejudice is concrete. Appellants ask this Court to view the equities of Respondent's unjust enrichment claim through accusations that were never proven and were held legally insufficient at the pleading

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stage — and, in the case of the criminal record allegations, stricken outright. Their unclean hands argument depends on it: the misconduct they invoke is precisely the misconduct alleged in the dismissed complaint. Having failed to plead those claims, Appellants seek to import them into the equitable analysis without ever carrying the burden of proof that would have attended them.

The rules of appellate procedure do not permit this. Every reference to a matter in the record must be supported by a citation to the volume and page number where the matter appears. (Cal. Rules of Court, rule 8.204(a)(1)(C).) The rule exists so that a reviewing court can verify the source and status of an asserted fact. A citation to a paragraph of a dismissed complaint discloses only that an allegation was made; it establishes nothing about what occurred.

Respondent therefore asks the Court to disregard Appellants' factual assertions to the extent they present Third Amended Complaint allegations as established facts, and to confine consideration of those allegations to the demurrer issues for which the limited pleading presumption applies. Throughout the remainder of this brief, Respondent identifies where Appellants' arguments depend on that improper conflation.

B. Argument I: The Trial Court Correctly Sustained the Demurrer to the Third Amended Complaint Without Leave to Amend.

Reviewed de novo, the Third Amended Complaint fails to state facts sufficient to constitute any cause of action. Reviewed for abuse of

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discretion, the denial of a fifth pleading attempt was not merely permissible but compelled by the record and by statute.

1. The first cause of action for conversion fails because the Third Amended Complaint alleges no specific, identifiable sum and no immediate right to possession.

Conversion requires (1) the plaintiff's ownership or right to possession of personal property, (2) the defendant's disposition of that property inconsistent with the plaintiff's rights, and (3) resulting damages. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.) Money may be converted only where "the claim involves a specific, identifiable sum." (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 209.)

The operative allegation, unchanged across four pleadings, is that Defendants "gave explicit assurances that at all times revenue generated by their billing practices for services rendered were for the benefit and immediate possession of such revenue by the Plaintiffs. Such revenue was *anticipated to accrue* to the amount of $475,000.00." (TAC ¶21, CT 819, italics added.)

Appellants' own characterization defeats the claim. Their brief describes the $475,000 as "the expected recovery under the parties' billing arrangement" — that is, an expectancy. An expectancy is the antithesis of a specific, identifiable sum. Money "anticipated to accrue" has not accrued; it is not property the plaintiff owns; and it is not property in which the plaintiff has an immediate right to possession. The superior court identified this defect in December 2021, again in June 2022, again

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in September 2022, and again in January 2023. Each time Everloving repleaded the same words.

The independent failure to allege an immediate right to possession is equally fatal, and Appellants' brief does not address it. A contractual expectation of future revenue creates, at most, a right to payment. A mere contractual right to money does not support conversion; the plaintiff must have a possessory interest in identifiable property. Everloving alleged only that it "had the right and expectation to receive revenue from the services provided by Defendants." (TAC ¶15, CT 818.)

Appellants now argue that the Third Amended Complaint separately alleged "overlap billing" for eight identified patients, and that Ms. Fernandez quantified the resulting loss at $25,699.85 at trial. (RT 334:6–26.) This is the conflation described above. The trial testimony postdates the demurrer ruling by twenty-six months and was given on a different claim. As to the pleading itself, the Third Amended Complaint neither identifies the eight patients, nor the eleven claims, nor the sum — and a demurrer is decided on the face of the pleading. (Code Civ. Proc., § 430.30, subd. (a).)

2. The second cause of action for fraud fails because it is not pleaded with particularity.

Fraud is subject to a heightened pleading standard. "[T]he policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect." The plaintiff must plead facts showing "how, when, where, to whom, and by what means the representations were tendered." (*Stansfield v. Starkey* (1990) 220

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Cal.App.3d 59, 73; *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) "Every element of the cause of action for fraud must be alleged in the proper manner and the facts constituting the fraud must be alleged with sufficient specificity to allow defendant to understand fully the nature of the charge made." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216–217.) Particularity requirements are heightened, not relaxed, where multiple defendants are named. (*Ibid.*)

The Third Amended Complaint does the opposite. Paragraph 26 alleges that "Defendants Joseph W. Amirian, for himself and for the business entity which he intended to operate under, Joseph Amirian Physical Therapy and JA Services, Inc., and DOES 1 through 200, inclusive, made intentional, false misrepresentations to the Plaintiffs EVERLOVING HOME HEALTH, INC., EHSAN DOROUDI and SHAIDA MOGHADDAM." (CT 820.) Every actor is aggregated. Every recipient is aggregated. Two hundred Doe defendants are swept in.

The enumerated subparagraphs do not cure the defect; they compound it. Subparagraph 26A alleges that "[t]he Defendants were not in fact who they said they were in the contract, Exhibit 4." Subparagraph 26B alleges that "[t]he Defendants were not licensed Physical Therapist(s)." Subparagraph 26C alleges that Defendants were "not capable of providing honest, competent services and billing." (CT 820–822.) These are characterizations of a status, not statements attributed to a speaker. The Third Amended Complaint never alleges that Joseph Amirian said any particular thing, to any particular plaintiff, on any particular occasion, by any particular means. It does not allege which of the three plaintiffs heard the representation, or when, or what each of them did in reliance.

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Appellants' answer is that subparagraphs 26D through 26J "allege the falsity, Amirian's knowledge of falsity, intent to induce reliance, actual reliance, harm, and causation." That is a recitation of elements. Reciting the elements of fraud in the language of the elements is precisely what the particularity requirement forbids. (*Stansfield v. Starkey, supra,* 220 Cal.App.3d at p. 74 ["[g]eneral and conclusory allegations are not sufficient"].)

The trial court also correctly concluded that the pleading failed to allege justifiable reliance. The contract attached as Exhibit 4 to the Third Amended Complaint designates the therapy practice a "contractor" and assigns Everloving the "responsibility to supervise and evaluate" the services provided. (CT 875.) That document is part of the pleading, and where an exhibit contradicts the complaint's allegations the exhibit governs. Everloving pleaded itself into a supervisory role and then alleged that it was entitled to rely without verification. Appellants characterize this as importing a factual defense into the pleading stage, but the court did not go outside the four corners of the complaint — it read the complaint's own exhibit.

3. The third cause of action for breach of fiduciary duty fails because no voluntarily undertaken fiduciary obligation is alleged.

A fiduciary duty is not imposed by accident, and it is not imposed by a plaintiff's subjective trust. "[B]efore a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of law." (*City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 386; see *Stanley*

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v. Richmond (1995) 35 Cal.App.4th 1070, 1086.) An independent contractor relationship is not among the relationships that impose fiduciary status as a matter of law.

The Third Amended Complaint alleges the opposite of a knowing undertaking. Paragraph 35 alleges that Respondent "made intentional misrepresentations to the Plaintiffs . . . *to gain the trust, confidence and access to confidential information* which would only be available to persons such as the Defendants in a fiduciary relationship with the Plaintiffs." (CT 823–824, italics added.) The theory is that a deception practiced to obtain access created the very fiduciary relationship the deception was designed to exploit.

That theory inverts the doctrine. A fiduciary obligation arises from a voluntary assumption of responsibility for another's interests. A person who obtains access by deception has, by the pleading's own account, assumed no such responsibility — he has disclaimed it. As the trial court observed, quoting Respondent's demurrer, "[t]here is also no legal authority that supports the contention that a misrepresentation made by a person without a previous history with claimant is sufficient to build a fiduciary relationship." (CT 957–958.) Appellants have cited none in four rounds of pleading and none on appeal.

Appellants' authorities do not fill the gap. Each concerns a genuine relationship of trust actually reposed and actually accepted — not one procured by fraud. And each addresses the *existence* of a confidential relationship as a matter of proof, not the *pleading* of a knowing undertaking. The Third Amended Complaint alleges that Respondent "agreed to preserve, protect, and not to misuse [his] position of trust and

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confidence" (CT 824), but pleads no facts — no communication, no term of the contract, no course of dealing — from which such an agreement could be inferred. The contract attached to the pleading says the reverse: it designates Respondent's practice a contractor subject to Everloving's supervision. (CT 875.)

4. The fourth, fifth, and sixth causes of action fail on their own terms and as derivatives of the defective fraud allegations.

a. Defamation.

Paragraph 44 alleges that Respondent "made defamatory statements constituting Libel per se by commenting and spreading false statements in the community of healthcare providers that the business practices and conduct of the Plaintiffs . . . was unlawful, fraudulent and otherwise impugned the Plaintiffs' interest in their good reputation." (CT 826–827.)

That allegation identifies no statement. It identifies a subject matter. Appellants rely on *Okun v. Superior Court* (1981) 29 Cal.3d 442, 458 for the proposition that a plaintiff need not plead the exact words. But *Okun* requires the substance of the statement to be pleaded, and the Third Amended Complaint pleads no statement at all — no words, no substance, no occasion, no listener, no date, no context. It alleges only that unspecified defamatory things were said at unspecified times to an unspecified "community of healthcare providers." A defendant cannot answer such a pleading, cannot assess privilege, cannot assess truth, and cannot assess the statute of limitations.

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Appellants' fallback — that Ms. Fernandez later gave general testimony about a decline in patient referrals and census (RT 331:14–332:13) — again confuses the two records. That testimony was given in April 2025 in defense of a different claim. It has no bearing on the sufficiency of a pleading ruled upon in January 2023, and it does not identify a statement by Respondent in any event.

b. Breach of the implied covenant of good faith and fair dealing.

The implied covenant is a creature of contract and cannot exist absent a contract between the plaintiff and the defendant. The trial court found the Third Amended Complaint failed to plead that Respondent personally was a contracting party. (CT 958.) Appellants say that finding is "plainly contrary to the allegations," citing paragraphs 13, 25, and 33. Those paragraphs allege that Everloving contracted with "Joseph W. Amirian, *by and through his alter ego(s) and aliases,* including but not limited to Josef Hochleitner, and business name(s), Defendant JA Physical Therapy." (CT 818–823, italics added.) The contract itself, Exhibit 4, names the entity. (CT 875.)

An allegation that a defendant contracted "through alter egos and aliases" is an alter ego allegation, and alter ego must be pleaded with supporting facts — unity of interest and ownership, and an inequitable result from treating the acts as those of the corporation alone. The Third Amended Complaint pleads the conclusion without the facts. That was the defect the court identified across four pleadings.

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c. Intentional infliction of emotional distress.

The claim requires extreme and outrageous conduct directed at the plaintiff, intent or reckless disregard, severe emotional distress, and causation. The Third Amended Complaint alleges at paragraphs 62 through 65 that Respondent's conduct "was so outrageous that any reasonable person would be mortally offended." (CT 831–832.) That is the legal conclusion, unaccompanied by the conduct. The only conduct described anywhere in the pleading is the same aggregated, unparticularized misrepresentation conduct that failed under the second cause of action.

This is where the derivative nature of the fourth through sixth causes of action becomes dispositive. Each is built on the fraud allegations of paragraph 26. When those allegations failed for want of particularity — as they did in the Complaint, the First Amended Complaint, the Second Amended Complaint, and the Third Amended Complaint — every claim resting on them failed with them. A derivative claim cannot be more particular than the allegations from which it derives. Appellants' brief does not dispute this dependency; it simply assumes the fraud claim was adequately pleaded and reasons forward from that assumption.

5. The trial court did not abuse its discretion in denying a fifth pleading attempt.

The burden on this issue is Appellants'. They must "show in what manner [they] can amend [the] complaint and how that amendment will change the legal effect of [the] pleading," identifying the applicable substantive law, the elements, and the specific facts they would allege.

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(*Rakestraw v. California Physicians' Service, supra,* 81 Cal.App.4th at pp. 43–44.) Appellants have not attempted that showing at any point — not in the trial court, and not in their opening brief.

Their argument is instead that the Third Amended Complaint was *already sufficient*. That is a merits argument, and it concedes the point on leave to amend: a party who maintains that its pleading needs no amendment has necessarily failed to identify an amendment that would cure it. The only forward-looking assertion in the opening brief is that "[h]ad Appellants been given leave to amend to allege those facts with even greater particularity, amendment would have cured any pleading deficiencies." An assertion of an abstract right to amend does not satisfy *Rakestraw*.

The record independently supports the ruling. Everloving pleaded four times. Three written rulings identified the same defects in the same terms. Each successive pleading "merely realleged the vast majority of allegations using identical language." (CT 792–798.) By the fourth ruling the court found Everloving had "failed to do so a fourth time." (CT 952–959.) Where a plaintiff has been told what is missing and thrice declines to supply it, the inference that it cannot be supplied is not merely permissible — it is the only reasonable one.

That inference is stronger still because the conclusion was not the product of a single judge's view of the pleadings. The Honorable Richard J. Burdge, Jr. sustained the demurrer to the original Complaint. (CT 356.) After the action was reassigned to the Honorable Gail Killefer on Plaintiffs' own notice (CT 424), Judge Killefer independently sustained the demurrers to the First Amended Complaint (CT 550–554), the Second

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Amended Complaint (CT 793–798), and the Third Amended Complaint (CT 952–959). Two judges of the superior court, across four successive rulings, found the same allegations legally insufficient and identified the same defects. That concurrence forecloses any suggestion that the demurrers rested on an idiosyncratic or mistaken reading of the complaint, and it confirms that the defects were inherent in Everloving's claims rather than curable by further amendment.

The Legislature has drawn the same line. "In response to a demurrer and prior to the case being at issue, a complaint or cross-complaint shall not be amended more than three times, absent an offer to the trial court as to such additional facts to be pleaded that there is a reasonable possibility the defect can be cured to state a cause of action." (Code Civ. Proc., § 430.41, subd. (e)(1).) Everloving had amended three times. The statutory allowance was exhausted, and Everloving made no offer of additional facts. Denial of leave was consistent with, and supported by, section 430.41, subdivision (e)(1).

6. The refusal to consider the untimely opposition was within the court's discretion and, in any event, harmless.

Appellants' final demurrer argument is procedural: the court declined to consider an opposition filed seven days late. The argument fails at three levels.

First, the discretion is expressly conferred. "No paper may be rejected for filing on the ground that it was untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate." (Cal. Rules of Court, rule 3.1300(d).)

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The court did exactly that, and said so on the record. (CT 953.) Appellants offered no explanation for the delay below and offer none now. A trial court does not abuse its discretion by enforcing a filing deadline against a party that has offered no reason for missing it.

Second, the premise that the demurrer was "effectively decided ex parte" is contradicted by the record. Everloving's counsel appeared at the January 18, 2023 hearing and argued the merits at length, addressing each cause of action, the four-corners issue, paragraph 26, the fiduciary allegations, the libel per se allegation, and the fifth and sixth causes of action. (RT 4:2–5:23, 6:24–7:6.) Indeed, counsel candidly conceded that the late opposition "wouldn't have made any difference," because his disagreement was with the court's reasoning, not with any lack of opportunity to be heard. (RT 4:2–8.) The court's written ruling then addressed each cause of action substantively. (CT 952–959.) Appellants were heard.

Appellants may observe that the same judge later elected to consider both parties' untimely post-trial briefs. (CT 1206 ["Although neither party filed a timely post-trial brief, the court considers both."].) That is the point: rule 3.1300(d) commits the question to the court's discretion in each instance, and a court that exercises that discretion differently in different circumstances is doing exactly what the rule contemplates. The post-trial briefs were ordered by the court itself, addressed a question the court had framed, and were filed within days. The demurrer opposition was a fourth-round filing offered without explanation for its lateness, in a case where three prior written rulings had already identified the same defects.

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Third, and dispositively, any error would be harmless. This Court reviews the sufficiency of the Third Amended Complaint de novo. (*Blank v. Kirwan, supra,* 39 Cal.3d at p. 318.) Whatever the superior court did or did not read, this Court reads the pleading independently, and Appellants have had a full opportunity to present every argument in their opening brief. No judgment may be set aside absent a miscarriage of justice. (Cal. Const., art. VI, § 13.) Appellants do not explain what argument the untimely opposition contained that they have been unable to make here.

C. Argument II: Substantial Evidence and Settled Law Support the Judgment Awarding Restitution of the $240,000.

The elements of unjust enrichment are "receipt of a benefit and unjust retention of the benefit at the expense of another." (*Professional Tax Appeal v. Kennedy-Wilson Holdings, Inc.* (2018) 29 Cal.App.5th 230, 238; *Munoz v. MacMillan* (2011) 195 Cal.App.4th 648, 661.) Both elements were established, and Appellants' contrary arguments rest on a misreading of Penal Code section 1473.7.

1. The evidentiary predicates are undisputed and independently documented.

Respondent's case at trial consisted of four exhibits. When Respondent's counsel requested judicial notice and admission, Cross-Defendants' counsel stated "[n]o objection as to the admissibility" of the exhibits, and the court granted judicial notice of Exhibits 1 through 4 and admitted them into evidence. (RT 314:2–21.) They establish: that Respondent paid $240,000 to Everloving, completing payment August 7, 2019; that on May 24, 2021 the criminal court vacated the restitution

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order under Penal Code section 1473.7; that on July 12 and 15, 2024 the criminal court vacated the plea and the conviction under section 1473.7, finding "a statutory and constitutional defect in the taking of the plea"; and that the charges were then dismissed under section 1385. (CT 1207.)

Appellants disputed none of this at trial and dispute none of it now. When the court asked whether their "sole dispute" was that the full $240,000 had been paid, their counsel answered, "That is correct." (RT 317:4–6.) Their opening brief recites the same chronology. (See AOB, Statement of Facts, §§ C–D.) Receipt of a benefit is therefore conclusively established: Everloving received and retains $240,000 of Respondent's money.

To the extent Appellants intend a substantial evidence challenge, it is forfeited. An appellant attacking the sufficiency of the evidence must set forth in its opening brief all material evidence bearing on the point, not merely the evidence favorable to itself. (*Foreman & Clark Corp. v. Fallon, supra,* 3 Cal.3d at p. 881.) Appellants' brief recounts their own damages accounting at length while omitting the documentary record on which the judgment rests.

2. Once the conviction was vacated as legally invalid, the sole legal basis for retaining the $240,000 ceased to exist.

Appellants' own statutory argument establishes Respondent's case. They correctly observe that Penal Code section 1202.4, subdivision (a)(1) provides that "a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from *a defendant convicted of that crime*." (Italics added.) Conviction is the

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statutory predicate. Everloving's entitlement to the $240,000 existed only because, and only for so long as, Respondent stood convicted.

That predicate has been judicially eliminated. Section 1473.7 authorizes vacatur where "[t]he conviction or sentence *is legally invalid* due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence." (Pen. Code, § 1473.7, subd. (a)(1), italics added.) The statute speaks of legal invalidity, not of subsequent expiration. And it prescribes a specific remedy: "[i]f the court grants the motion to vacate a conviction or sentence obtained through a plea of guilty or nolo contendere, the court shall allow the moving party to withdraw the plea." (*Id.,* subd. (e)(1).) Withdrawal of a plea is not a prospective adjustment. It restores the parties to the position they occupied before the plea was entered.

Appellants' contrary construction — that "vacatur removes that predicate only prospectively" — has no textual foundation. Section 1473.7 contains no language limiting the effect of vacatur to future obligations, and Appellants cite none. A conviction adjudged legally invalid because the plea that produced it was defectively taken was never a valid conviction. There is no coherent sense in which a plea can be "validly invalid" for the period before the order issued.

The consequence follows directly. The money was paid pursuant to a restitution order that has been vacated, entered on a conviction that has been vacated, arising from a plea that has been withdrawn, in a case that has been dismissed. Nothing remains to support Everloving's retention. That is unjust retention at Respondent's expense.

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The trial court's ruling rests on settled restitution principles, not on any novel remedy. "Under the law of restitution, an individual may be required to make restitution if he is unjustly enriched at the expense of another." (*Ghirardo v. Antonioli* (1996) 14 Cal.4th 39, 51.) "Common law principles of restitution require a party to return a benefit when the retention of such benefit would unjustly enrich the recipient." (*Munoz v. MacMillan, supra,* 195 Cal.App.4th at p. 661.) The obligation "is an obligation (not a true contract) created by the law without regard to the intention of the parties," arising wherever "a person obtains a benefit that he or she may not justly retain." (*City of Oakland v. Oakland Raiders* (2022) 83 Cal.App.5th 458, 477–478; see 1 Witkin, Summary of Cal. Law (11th ed. 2022) Contracts, § 1050.) The trial court cited each of these authorities. (CT 1207–1208.) Applying them to an undisputed transfer whose legal foundation has been judicially nullified is the ordinary operation of the doctrine.

3. Unjust enrichment is a common law equitable claim and requires no statutory authorization.

Appellants' principal argument is that "nothing in section 1202.4, section 1473.7, or section 1385 creates a new affirmative civil cause of action entitling a former defendant to recover restitution already paid." That is true and irrelevant. Respondent did not plead a statutory cause of action. He pleaded unjust enrichment — a common law equitable claim for restitution that exists independently of, and long predates, the Penal Code provisions at issue. (See *Dunkin v. Boskey* (2000) 82 Cal.App.4th 171, 183.)

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The argument in fact runs backwards. Where a transfer of money loses its legal justification and no statute addresses the consequence, the common law of restitution supplies the remedy. That is the doctrine's function. Appellants' reasoning would mean that money can never be recovered unless a statute expressly authorizes its recovery — a proposition that would abolish quasi-contract altogether.

Appellants' related contention that "[a]ny motions should have been made in the criminal trial court" is likewise unavailing. The criminal court had already granted the relief within its power: it vacated the restitution order, the plea, and the conviction, and dismissed the charges. Restitution *from a private party* who has received money without legal justification is a civil claim between private parties. Appellants identify no authority stripping the superior court of jurisdiction to adjudicate it, and none exists.

4. The stipulation to restitution was not a judicial admission surviving vacatur.

Appellants argue that Respondent's stipulation to the $240,000 figure was a binding judicial admission forever barring recovery. The argument fails for three independent reasons.

First, the stipulation was a term of the plea. The criminal court vacated that plea as legally invalid, finding that Respondent "had not been properly advised as to the immigration consequences, *including as to the restitution component of the sentencing*." (CT 1207, italics added.) The restitution stipulation was thus the specific subject of the constitutional defect the criminal court found. An admission contained in

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a plea that has been withdrawn does not outlive the plea; if it did, section 1473.7 relief would be meaningless.

Second, a judicial admission is binding in the action in which it is made. Appellants cite no authority — and Respondent is aware of none — holding that a stipulation entered in a criminal proceeding, in a plea later vacated, operates as a conclusive admission foreclosing a civil claim in a separate action years later.

Third, *People v. Frandsen* (2019) 33 Cal.App.5th 1126 does not support the proposition Appellants extract from it. *Frandsen* concerns forfeiture of appellate challenges to a restitution order by a defendant who failed to object at sentencing. Respondent did not fail to object; he obtained an order vacating the restitution order, the plea, and the conviction. The trial court correctly distinguished *Frandsen* on precisely this ground. (CT 1209.) Forfeiture doctrine governs the preservation of appellate claims; it does not convert a vacated plea term into a perpetual civil bar.

5. Appellants' asserted damages do not make their retention just.

Appellants' remaining argument is equitable in character: they say they lost $551,897.72 and accepted $240,000, so retention cannot be unjust. The trial court was not required to accept that framing, and substantial evidence supports its rejection.

The claimed losses have never been adjudicated. Everloving asserted them in a civil complaint that was dismissed after four failed attempts to plead it. They were not established in the criminal case either. The $240,000 was a stipulated term of the plea bargain, entered

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with "no showing of harm, no showing of loss, no showing of actual damages suffered" (RT 316:21–26), and Ms. Fernandez confirmed she never testified to the claimed losses before the criminal court (RT 343:14–17). An unadjudicated damages claim is not a legal entitlement to money already in hand.

The trial court was also entitled to weigh the evidentiary quality of that showing. The damages figures were first disclosed in interrogatory responses served October 1, 2024, five years into the litigation (RT 323:23–324:2), and rested on financial and census reports last generated December 19, 2018 (RT 335:27–28). The court expressly ordered supplemental briefing on "when and how [Cross-Defendants] produced their damages information in discovery." (RT 356:20–357:13.) Under *Foreman & Clark*, this Court does not reweigh that assessment.

More fundamentally, the argument mistakes the basis of the claim. Everloving held the $240,000 because a restitution order directed Respondent to pay it — not because a court found Everloving suffered $240,000 in damages, and not because a court found it suffered $551,897.72. When the order was vacated, the justification for retention was extinguished regardless of what Everloving might have proven had it ever pleaded a viable claim. Appellants had five years and four pleadings to establish a legal entitlement to those losses. They did not.

D. Argument III: The Trial Court Correctly Rejected the Equitable Defense of Unclean Hands.

The unclean hands doctrine "is not a legal or technical defense to be used as a shield against a particular element of a cause of action." It

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applies only where the plaintiff's misconduct "relates directly to the transaction concerning which the complaint is made." (*Kendall-Jackson Winery, Ltd. v. Superior Court, supra,* 76 Cal.App.4th at p. 979.) The misconduct must "directly infect[] the actual cause of action before the court" and must "prejudicially affect the rights of the person against whom the relief is sought." (*Pond v. Insurance Co. of North America* (1984) 151 Cal.App.3d 280, 290.) Application of the doctrine is reviewed for abuse of discretion. (*Kendall-Jackson, supra,* at pp. 978–979.)

1. The conduct Appellants invoke rests entirely on a vacated plea and dismissed charges.

The misconduct Appellants advance is the conduct charged in *People v. Amirian*. That is the whole of it. Their brief describes it as "the fraud Amirian admitted," "the crimes committed against their company," and conduct "for which Amirian ultimately pleaded nolo contendere to a felony."

But there is no operative plea. The criminal court vacated it as legally invalid, permitted its withdrawal, and dismissed every count. (CT 1207.) A withdrawn plea is not an admission of anything; that is what withdrawal means. Appellants cannot base an equitable defense on an admission that no longer exists in law.

The trial court so held in terms: "This court cannot find that dismissed and vacated criminal charges constitute misconduct and support an unclean hands defense." (CT 1211.) That conclusion follows from the nature of vacatur, not from any refusal to look at the evidence.

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Nor is there any surviving adjudication of the underlying conduct from any other source. Everloving's own civil claims premised on the identical conduct — fraud, conversion, breach of fiduciary duty — were dismissed at the pleading stage after four attempts. (CT 950; CT 1007.) Appellants thus stand before this Court asserting misconduct that no tribunal has ever found, resting on a plea that has been withdrawn and charges that have been dismissed.

Respondent addresses candidly the testimony Appellants emphasize: Respondent's acknowledgment on cross-examination concerning the credentials presented to Everloving. (RT 355:3–6.) The trial court heard that testimony and nevertheless found the unclean hands defense unavailing. That was not an oversight. Isolated testimony about historical conduct does not establish the *direct relation* that *Pond* and *Kendall-Jackson* require between the misconduct and "the actual cause of action before the court." The cause of action before the court was a claim to recover money paid under a restitution order that has been vacated. The conduct Appellants describe relates to the 2016–2017 services engagement — the subject of the claims that were dismissed — not to the transaction by which the money was paid and by which its legal basis was later nullified.

2. The trial court was entitled to weigh Cross-Defendants' evidentiary showing, and this Court does not reweigh it.

Unclean hands is an affirmative defense. The burden of proving it rested on Cross-Defendants, and the trial court sat as the trier of fact. To the extent the ruling rests on the court's assessment of the evidence, this Court asks only whether substantial evidence supports it — not whether

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the evidence might have supported a different conclusion. (*Foreman & Clark Corp. v. Fallon, supra,* 3 Cal.3d at p. 881.)

Cross-Defendants' showing came almost entirely from a single witness, Sheena Fernandez. On redirect it emerged that she had no personal knowledge of what Respondent presented to Everloving when he was engaged; she was describing documents she "acquired . . . in the file of Josef Hochleitner" while "these matters were running their process through the criminal courts." (RT 343:26–345:7.) Respondent objected that Ms. Fernandez lacked personal knowledge and foundation to testify to what was "presented directly" by him, preserving the point. (RT 344:11–21; see RT 340:25–341:19.) Ms. Fernandez also confirmed that Everloving itself billed Medicare for licensed physical-therapy services and paid JA Services, Inc. for them (RT 339:17–340:23), and Respondent testified that the only documentation he provided to Cross-Defendants Moghaddam and Doroudi regarding JA Services, Inc. was its California business permit (RT 353:4–15). Respondent contradicted material portions of Ms. Fernandez's account in rebuttal. (RT 351:11–353:15.) The trial court heard both witnesses and resolved the question against Cross-Defendants.

That resolution is entitled to deference, and Appellants' brief does not engage with it. Their brief recites Ms. Fernandez's testimony as though it were undisputed and omits the contrary testimony entirely — the omission that forfeits a sufficiency challenge under *Foreman & Clark*.

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3. Equity follows the law and cannot be used to restore the consequences of a vacated conviction.

The trial court held that "the doctrine of unclean hands cannot override clear policy set by statute." (CT 1211.) That holding is sound and is grounded in long-settled principle: "Rules of equity cannot be intruded in matters that are plain and fully covered by positive statute. . . . Nor will a court of equity ever lend its aid to accomplish by indirection what the law or its clearly defined policy forbids to be done directly." (*Lass v. Eliassen* (1928) 94 Cal.App. 175, 179; see *Timberline, Inc. v. Jaisinghani* (1997) 54 Cal.App.4th 1361, 1368, fn. 5 [declining to apply unclean hands to defeat a statutory scheme].)

The Legislature has determined that a conviction obtained through a defectively taken plea is legally invalid and must be vacated, and that the plea may be withdrawn. (Pen. Code, § 1473.7, subds. (a)(1), (e)(1).) Appellants ask this Court to hold that although the conviction is legally invalid for every purpose the Penal Code addresses, it remains sufficiently valid in a civil courtroom to bar the very restitution that the conviction alone had justified. That would use equity to reinstate, by indirection, precisely the consequence the statute removed.

This is not a holding that equitable defenses are unavailable in unjust enrichment actions generally. They plainly are. The holding is narrower and correct: a party may not construct an equitable defense out of a criminal proceeding that has been vacated and dismissed, in order to preserve a benefit that existed only because of that proceeding.

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4. Appellants cannot show the prejudice the doctrine requires.

Unclean hands additionally requires that the misconduct "prejudicially affect the rights of the person against whom the relief is sought so that it would be inequitable to grant such relief." (*Wiley v. Wiley* (1943) 59 Cal.App.2d 840, 842.) "It is not every wrongful act, nor even every fraud, which prevents a suitor in equity from obtaining relief." (*Bradley Co. v. Bradley* (1913) 165 Cal. 237, 242.)

The trial court found this element unsatisfied because Cross-Defendants had no viable claim against Respondent, all of their claims having been dismissed. (CT 1210–1211.) Appellants characterize this as "plac[ing] an impossible burden" on them. It did no such thing. Everloving had five years and four pleadings to state a claim for the harm it alleges. Its inability to do so is not an impossible burden imposed by the trial court; it is the consequence of its own pleading.

5. Appellants' own authorities confirm that the defense fails.

In the trial court, Cross-Defendants rested their unclean hands argument on three cases. Each supports affirmance.

California Satellite Systems, Inc. v. Nichols (1985) 170 Cal.App.3d 56 holds that the doctrine applies only "if the inequitable conduct occurred in a transaction directly related to the matter before the court and affects the equitable relationship between the litigants." (*Id.* at p. 70.) The Court of Appeal there found no abuse of discretion in a trial court's *rejection* of the defense where the party invoking it failed to establish misconduct sufficiently related to the matter in suit. That is this case.

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Carman v. Athearn (1947) 77 Cal.App.2d 585 supplies the formulation Appellants themselves quote: "[t]he misconduct must infect the cause of action before the court." (*Id.* at p. 598.) *Carman* declined to apply unclean hands to bar reconveyance of property where the party's earlier fraudulent conveyance had been remedied and no creditor claims remained outstanding. The parallel is direct. Whatever occurred in 2016 and 2017, Respondent was prosecuted for it, and the criminal proceeding that followed has been vacated and dismissed in its entirety. There is no outstanding adjudicated claim, because Everloving's claims were dismissed after four failed pleadings.

Nealis v. Carlson (1950) 98 Cal.App.2d 65 is the most striking. Cross-Defendants quoted its central holding in their own moving papers: "A person is not placed forever entirely outside the protection of the law in a particular transaction, because, forsooth, some time in the distant past he was guilty of an improper act." (*Id.* at p. 69.) That is precisely the rule Appellants ask this Court to abandon. They contend that conduct alleged nine years ago, charged in a criminal case that has been vacated and dismissed, places Respondent permanently outside the protection of the civil law as to money he paid and that no one is now entitled to keep.

The trial court applied the correct framework — the three-pronged inquiry drawn from *Jay Bharat Developers, Inc. v. Minidis, supra,* 167 Cal.App.4th at pages 445–446, and *Kendall-Jackson, supra,* 76 Cal.App.4th at page 979 — and reached the conclusion Appellants' own authorities compel. (CT 1208, 1210–1211.)

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6. The absence of analogous authority was a permissible consideration, not an error.

Appellants fault the trial court for observing that "neither party has cited to analogous case law." (CT 1210.) But the first prong of the *Kendall-Jackson* framework is "analogous case law" — a factor the trial court was required to consider. (*Kendall-Jackson, supra,* 76 Cal.App.4th at p. 979.) The court did not treat the absence of authority as dispositive; it proceeded to analyze the nature of the misconduct and its relationship to the claimed injuries, as the framework directs. (CT 1210–1211.)

Appellants' reliance below on *Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612 was properly rejected. *Unilogic* concerned unclean hands as a defense to a claim tried to a jury on facts bearing directly on the transaction in suit. It did not address whether a vacated criminal proceeding may supply the misconduct predicate. The trial court's distinction was accurate, and Appellants offer no closer authority on appeal.

E. Argument IV: *Ahn v. Parisotto* Is Factually and Legally Inapposite.

Appellants devote much of their brief to *Ahn v. Parisotto* (2025) 114 Cal.App.5th 697, decided by this Division on September 5, 2025 and certified for publication September 24, 2025 — after the judgment and after the denial of the new trial motion. They contend it "require[s] an immediate reversal." It does not. *Ahn* is distinguishable on the dispositive fact, on the legal question presented, and on the procedural context, and this Division said as much within the opinion itself.

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1. In *Ahn* the guilty plea was never vacated — and the surviving plea was the entire basis for the holding.

This is the distinction that resolves the argument. Dr. Ahn pled guilty in May 2019 to a misdemeanor violation of Business and Professions Code section 650. He paid the ordered restitution and, in August 2020, obtained a dismissal under Penal Code section 1385. (*Ahn, supra,* 114 Cal.App.5th at p. 702.) He never moved to vacate his plea. He never obtained a finding that his plea was defectively taken. His guilty plea, and the factual admissions he made as its basis — that he "received consideration as compensation or inducement for referring patients" — remained intact throughout. (*Ibid.*)

That surviving plea was the whole of the decision. Labor Code section 139.21, subdivision (a)(4)(C) provides that an individual "is considered to have been convicted of a crime" if "[a] plea of guilty has been accepted by a federal, state, or local court." This Division held: "There is no dispute that Ahn entered a plea of guilty, which was accepted by the superior court. *This fact alone warrants affirmance.*" (*Ahn, supra,* 114 Cal.App.5th at p. 705, italics added.) The holding is that a section 1385 dismissal does not retroactively unaccept an accepted guilty plea.

Here, the plea was not merely dismissed — it was vacated. On July 12, 2024 the criminal court granted the motion to vacate the plea; on July 15, 2024 it entered an order finding "a statutory and constitutional defect in the taking of the plea, within the meaning of California Penal Code § 1473.7." (CT 1207.) Section 1473.7 required the court to "allow the moving party to withdraw the plea." (Pen. Code, § 1473.7, subd. (e)(1).) The single fact that "alone warrant[ed] affirmance" in *Ahn* — an accepted, subsisting

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guilty plea — is absent here. *Ahn* is not merely distinguishable; its rationale is inapplicable.

2. *Ahn* turned on a specific statutory definition that has no analogue in this case.

Ahn was an exercise in statutory construction of a single subdivision. This Division reasoned that "[t]he plain language of Labor Code section 139.21, subdivision (a)(4)(C) states that a guilty plea constitutes a conviction for purposes of the statute; the statute does not include any caveats or exceptions for cases that are later dismissed," and that "our role is 'not to insert what has been omitted, or to omit what has been inserted.'" (*Ahn, supra,* 114 Cal.App.5th at p. 705, quoting Code Civ. Proc., § 1858.) The Legislature had defined "convicted" in three subdivisions, one of which expressly preserved conviction status "regardless of whether . . . the judgment of conviction or other record relating to criminal conduct has been expunged." (Lab. Code, § 139.21, subd. (a)(4)(A).)

No comparable statute operates here. There is no provision of the Penal Code, the Civil Code, or any other code providing that a person whose plea has been withdrawn under section 1473.7 shall nonetheless be treated as convicted for purposes of a civil restitution claim, or for purposes of an equitable defense. Appellants have not identified one. *Ahn* stands for the proposition that a specific statutory definition governs within its own statutory scheme. Outside such a definition, it decides nothing.

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3. This Division expressly confined *Ahn* to the question before it.

The opinion itself forecloses the extension Appellants urge. Addressing *Chavez* and *Barro*, this Division wrote: "Here, however, we are not addressing criminal sentencing. Nor are we considering the issue addressed in Chavez I and Chavez II . . . . Thus, the reasoning of these cases is of little import. [Citation.] ['It is axiomatic that cases are not authority for propositions that are not considered']." (*Ahn, supra,* 114 Cal.App.5th at p. 706, quoting *Cal. Bldg. Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1043.)

That principle applies with full force to *Ahn* itself. *Ahn* did not consider the effect of a Penal Code section 1473.7 vacatur. It did not consider a civil claim between private parties. It did not consider unjust enrichment, unclean hands, or the recovery of restitution already paid. A decision construing Labor Code section 139.21 is not authority on any of those questions.

4. Appellants invert *Ahn*'s specific-over-general analysis.

Appellants seize on the *Tanner* passage in *Ahn*: that "whereas section 1385 is general in nature, relating to the broad scope of dismissal," a later-enacted specific provision "will govern a general provision." (*Ahn, supra,* 114 Cal.App.5th at pp. 706–707, quoting *People v. Tanner* (1979) 24 Cal.3d 514, 521.) They argue that because section 1473.7 is later and more specific than section 1385, and "[n]o where is there a return of restitution remedy in the later enacted 1473.7 Penal Code statute," the trial court "added remedies that were simply never contemplated."

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The analysis does not transfer. In *Ahn*, the specific later statute — Labor Code section 139.21 — *imposed a consequence* that the general statute would otherwise have negated: it commanded suspension notwithstanding dismissal. The specific-over-general canon operated to preserve that legislatively mandated consequence. Here there is no later, more specific statute preserving any civil consequence of a vacated plea. Section 1473.7 is a remedial statute conferring relief on the defendant; it is not a statute limiting the effect of the relief it confers.

Appellants' complaint that section 1473.7 contains no "return of restitution remedy" misconceives the claim once again. Respondent does not assert a remedy under section 1473.7. He asserts a common law claim for unjust enrichment, to which the section 1473.7 order is evidence — conclusive evidence — that the legal basis for Everloving's retention has been eliminated. The Legislature need not authorize a restitution remedy for the common law to supply one where a payment has lost its legal justification.

5. The passage Appellants quote is an administrative officer's reasoning, not a holding — and it supports Respondent.

Appellants block-quote, as the centerpiece of their argument, the following: "If the criminal charge was completely wiped away, it logically stand[s] that the event never occurred and [Ahn] would be entitled to reimbursement of the restitution amount, at least. This was not sought, nor provided for in the Superior Court Judge's dismissal of Count 7." They present this as a holding of "this Division." It is not.

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That passage appears in the *Factual and Procedural Background* of the opinion, in the paragraph summarizing the written ruling of the administrative law judge. (*Ahn, supra,* 114 Cal.App.5th at p. 703.) It is a recitation of what an ALJ wrote. This Division neither adopted it nor analyzed it; the opinion's Discussion section rests entirely on the plain language of Labor Code section 139.21, subdivision (a)(4)(C).

More to the point, the quoted reasoning — if given weight — favors Respondent. The ALJ's premise was conditional: *if* the charge were "completely wiped away," then reimbursement would follow. The ALJ concluded that Ahn's charge had not been wiped away, because Ahn's guilty plea survived, and because he had never sought vacatur of the plea or return of the restitution. Here both conditions are satisfied. Respondent's plea was vacated as legally invalid, and Respondent did seek the return of the restitution — first by obtaining vacatur of the restitution order itself in the criminal court on May 24, 2021, and then in this action. On the ALJ's own logic, quoted by Appellants, Respondent "would be entitled to reimbursement of the restitution amount, at least."

6. *Ahn* arose in an administrative mandate posture with no bearing on a civil equity trial.

Finally, *Ahn* reached this Division on a petition for writ of administrative mandate under Code of Civil Procedure section 1094.5, testing whether an agency had "proceeded in the manner required by law." (*Ahn, supra,* 114 Cal.App.5th at p. 704.) The Department of Industrial Relations was executing a mandatory, non-discretionary statutory duty to suspend providers from the workers' compensation

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system — a public-protection function. The agency had no equitable discretion and exercised none.

The superior court here sat in equity, in a civil action between private parties, bound by the rules of evidence, adjudicating a claim for money had and received under a nullified order. There is no statutory command directing the outcome, no licensing scheme, no agency, and no public-protection mandate. The two proceedings share only the incidental circumstance that each involved a Penal Code section 1385 dismissal — and in *Ahn*, unlike here, that dismissal was the *only* relief the defendant obtained.

F. Argument V: The Trial Court Acted Well Within Its Discretion in Denying the Motion for New Trial.

A motion for new trial is a creature of statute, and the grounds enumerated in Code of Civil Procedure section 657 are exclusive. The moving party must establish both a statutory ground and a resulting miscarriage of justice. (Code Civ. Proc., § 657; Cal. Const., art. VI, § 13.) The trial court's ruling is reviewed for abuse of discretion, and that discretion is "very broad." Reversal requires a manifest and unmistakable abuse. (*City of Los Angeles v. Decker, supra,* 18 Cal.3d at pp. 871–872.) Deference is at its highest where, as here, the judge ruling on the motion presided over the trial.

1. Appellants applied the wrong statutory standard.

Section 657, subdivision 1 authorizes a new trial for an "[i]rregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion by which either party *was*

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prevented from having a fair trial." (Code Civ. Proc., § 657, subd. 1, italics added.) Cross-Defendants' motion asserted instead that they "were deprived of a fair trial." The substitution is not semantic. The statute requires that the irregularity have *prevented* a fair trial — that something in the proceedings blocked the party from presenting its case. A party that presented its case in full and lost has not been prevented from anything. Appellants' opening brief repeats the same substitution and never identifies any ruling that stopped them from doing anything they wished to do.

2. Cross-Defendants received more process than they were entitled to — at their own request.

The record forecloses any claim of irregularity, because the trial Cross-Defendants complain of is the trial they demanded.

Before trial, Respondent asked the court to resolve the matter on briefing in lieu of trial, on the ground that the material facts were undisputed and the effect of the vacatur was purely a question of law. The court set a hearing on that legal issue for February 10, 2025, continued sua sponte to February 14, 2025. (CT 1206.) At that hearing, *Cross-Defendants* argued that factual issues were also involved in whether Respondent was entitled to relief. "Accordingly, the court scheduled this matter for trial on April 8, 2025." (CT 1206.)

Cross-Defendants therefore obtained a full evidentiary trial over Respondent's objection, because they asked for one. They then presented their witness, introduced their damages accounting, cross-examined Respondent, and submitted post-trial briefing on a question the court

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framed for them. (RT 307:3–6, 325–355, 356:20–357:13; CT 1191–1203.) Their motions in limine were denied without prejudice. (RT 307:3–6.) A party that successfully insists on an evidentiary trial, receives one, and presents everything it wishes to present cannot be heard to say the proceedings prevented it from having a fair trial.

3. There was no accident or surprise.

The dispositive legal question — the civil effect of the section 1473.7 vacatur and the section 1385 dismissal — was identified, briefed, and argued at every stage. It was the subject of Respondent's opening trial brief filed January 15, 2025. It was the subject of the February 14, 2025 hearing the court set on the legal issue. (CT 1206.) It was tried on April 8, 2025. And it was the express subject of the supplemental briefing the court ordered from both sides at the close of evidence. (RT 356:20–357:13; CT 1184; CT 1191–1203.) A party cannot claim surprise at the resolution of the precise issue it briefed three times.

Nor could the evidence have surprised anyone. Respondent's entire case consisted of the criminal court's own minute orders and the proof of restitution payment — documents that state on their face the statutory basis for the relief sought, that were judicially noticed, and to whose admissibility Cross-Defendants stated no objection. (RT 314:2–21.) There was nothing to guard against, because there was nothing unexpected.

4. The evidence was not insufficient.

Appellants argue that Respondent's "entire evidentiary case consisted of four documentary exhibits." That is correct and it was sufficient. Those exhibits established every element of the claim: payment

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of $240,000, and the vacatur of the restitution order, the plea, and the conviction, followed by dismissal. (RT 314:17–21; CT 1207.) Where the material facts are documentary and undisputed, no more is required.

Appellants' complaint that Respondent "presented no evidence that Everloving's losses were not genuine" misallocates the burden. Unclean hands is an affirmative defense; the burden of establishing it rested on Cross-Defendants. Respondent was not obliged to disprove it.

And to the extent this is a substantial evidence challenge, it is forfeited for the reason already stated: Appellants' brief sets forth their own evidence while omitting the documentary record supporting the judgment. (*Foreman & Clark Corp. v. Fallon, supra,* 3 Cal.3d at p. 881.)

5. There was no error of law.

Appellants' asserted legal errors are the same contentions advanced in Arguments I through IV of this brief, and they fail for the reasons given. A new trial motion that simply reasserts arguments the court has already rejected establishes no ground under section 657, subdivision 7. Disagreement with a ruling is not error in the ruling.

6. The court was not required to issue a statement of reasons, and in fact gave them.

Appellants' final contention is that the denial was "summary" and reflected a failure to exercise discretion. The premise is legally mistaken. Section 657's requirement of a written specification of reasons applies to orders *granting* a new trial. No comparable requirement attaches to an order denying one. (Code Civ. Proc., § 657.) A trial court may deny a new

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trial motion without explanation, and the order is presumed correct. (*Denham v. Superior Court, supra,* 2 Cal.3d at p. 564.)

The premise is also factually mistaken. The court explained its reasoning on the record: "I agree with Amirian, that the doctrine of unclean hands cannot override clear policy set by statute. And it's my view that the effect of a dismissal under Section 1385 wipes the slate clean as if the defendant never suffered the prior conviction. So I see no reason to grant your motion. We have debated this issue for many months now, and you have my final ruling." (RT 604:7–18.)

That is a reasoned ruling by a judge who had presided over the case for years, ordered supplemental briefing on the precise question, and issued a seven-page written order resolving it. (CT 1205–1211.) A court that has "debated this issue for many months" and reaches the same conclusion has exercised its discretion, not abdicated it.

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VI. CONCLUSION

Everloving pleaded its case four times and never stated a cause of action. It was told, in three written rulings, exactly what was missing, and three times it filed substantially the same document. The superior court's decision to end the pleading cycle was correct on the merits and well within its discretion — indeed, it was the disposition contemplated by Code of Civil Procedure section 430.41, subdivision (e)(1).

On the cross-complaint, the facts were documentary and undisputed. Respondent paid $240,000 under a restitution order that a criminal court has since vacated, on a conviction that court has since vacated, arising from a plea that court found legally invalid and permitted him to withdraw, in a case that court has since dismissed. Nothing supports Everloving's continued retention of that money. Appellants' answer — that the vacated criminal case remains operative for civil purposes — finds no support in the text of Penal Code section 1473.7 and none in *Ahn v. Parisotto*, where the guilty plea was never vacated at all.

For the foregoing reasons, Respondent respectfully requests that this Court:

1. Affirm the Judgment of Dismissal entered May 22, 2023 (CT 1007);

2. Affirm the Judgment After Bench Trial entered June 27, 2025 (CT 1218–1220);

3. Affirm the order denying the Motion for New Trial entered August 26, 2025 (CT 1262); and

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4. Award Respondent his costs on appeal pursuant to California Rules of Court, rule 8.278.

Dated: August 7, 2026 Respectfully submitted,

ADLI LAW GROUP, P.C.

By: _____

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CERTIFICATE OF COMPLIANCE

Counsel of record hereby certifies that pursuant to rule 8.204(c)(1) of the California Rules of Court, the foregoing Respondent's Brief is produced using 13-point Century type, including footnotes, and contains approximately 13,480 words, excluding the cover information, tables, this certificate, and the proof of service. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: August 7, 2026 Respectfully submitted,

ADLI LAW GROUP, P.C.

By: _____

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2. a. My [ ] residence [x] business address is *(specify)*:
   3453 Newridge Dr., Rancho Palos Verdes, CA 90275
   b. My electronic service address is *(specify):* adrianna.aragon@adlilaw.com
3. I electronically served the following documents *(exact titles):*
   DEFENDANT AND RESPONDENT'S APPELLATE BRIEF
4. I electronically served the documents listed in 3. as follows:
   a. Name of person served: Ronald Richards
   On behalf of *(name or names of parties represented, if person served is an attorney)*:
   JA Services, Inc, Joseph Amirian, and Silva Amirian, and Joseph Amirian Physical Therapy
   b. Electronic service address of person served: ron@ronaldrichards.com
   c. On *(date):* 08/07/2026
   [x] The documents listed in 3. were served electronically on the persons and in the manner described in an attachment *(write "APP-009E, Item 4" at the top of the page)*.

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

Date: 08/07/2026

Adrianna Aragon
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

Document received by the CA 2nd District Court of Appeal.