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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

Second Appellate District, Division Four

EVERLOVING HOME HEALTH, INC., EHSAN DOROUDI, AND SHAIDA MOGHADDAM,

Plaintiffs / Cross-Defendants and Appellants,

v.

JOSEPH AMIRIAN PHYSICAL THERAPY, JOSEPH W. AMIRIAN, JA SERVICES, INC., SILVA AMIRIAN,
Defendants / Cross-Complainants and Respondents.

APPELLANTS' OPENING BRIEF

Appeal from the Superior Court of California, County of Los Angeles, No. 19STCV36658, Honorable Gail Killefer

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I. INTRODUCTION

This appeal arises from a series of rulings by the Los Angeles Superior Court, that collectively left Appellants Everloving Home Health, Inc., Ehsan Doroudi, and Shaida Moghaddam (collectively "Everloving" or "Appellants") without any civil remedy for the crimes committed against their company for substantial fraud and identity theft, while simultaneously ordering them to return $240,000 in criminal restitution they received as victims of that fraud.

The result in this case, if allowed to stand, would be perverse. The respondent, a criminal, plead guilty to a felony and agreed to a stipulated restitution amount and paid it. Years later, he vacated his conviction on technical immigration advisement grounds only. The respondent should not be allowed to now sue to get back the restitution he agreed to pay and agreed was the loss. He was spared possible deportation but should not get a crime spree windfall as to the loss due to his crimes. This is a perverse result that cannot stand.

The fraud at the heart of this case is not disputed: Respondent Joseph Amirian entered a plea of nolo contendere on June 20, 2018, admitting violations of Penal Code section 530.5(a), a felony, arising from providing physical therapy services to seniors at Everloving's health care facility without a license, doing so by impersonating a real, licensed physical

therapist named Josef Hochleitner, using a falsified driver's license and fabricated credentials. (CT 1205–1206; RT Jan. 18, 2023, p. 4.) As part of his criminal plea, Amirian stipulated to pay $240,000 in restitution to Everloving and completed those payments by August 7, 2019. (CT 1207.)

Years later, Amirian petitioned successfully to vacate his conviction under Penal Code section 1473.7 on the ground that he had not been properly advised of the immigration consequences of his plea, including as to the restitution component of his sentencing. (CT 1207.) All charges were then dismissed under Penal Code section 1385 in the interest of justice. (CT 1207.) Armed with that vacatur, Amirian filed a cross-complaint against Everloving asserting unjust enrichment and seeking return of the entire $240,000.

The Superior Court decided judgment on the cross-complaint, holding as a matter of law that: (1) because Amirian's conviction was vacated, there was no longer a legal predicate for the restitution, and Everloving had no claim to the $240,000; and (2) the equitable doctrine of unclean hands could not override "clear policy set by statute", citing *People v. Chavez* (2016) 5 Cal.App.5th 110, 116–117, for the proposition that a Penal Code section 1385 dismissal wipes the slate clean as if the defendant was never convicted. (CT 1210–1211.) This should not be the

case for a technical immigration violation that results in the vacating of a conviction on immigration grounds.

Appellants challenge those rulings on multiple grounds. First, Penal Code section 1202.4, which authorized the restitution, requires a conviction as its predicate; when the conviction is vacated, the prospective obligation to pay stops, but nothing in sections 1473.7 or 1385 creates a new civil cause of action to recover restitution already fully paid. Second, Amirian's own stipulation to pay restitution without requiring Everloving to prove its losses constituted a binding judicial admission that he forfeited the right to reclaim those funds. Third, the unclean hands doctrine does apply here because the fraud Amirian admitted at trial, presenting a falsified driver's license and impersonating a licensed professional, was the direct cause of every dollar that changed hands, and is inseparable from the transaction at issue. Fourth, the court erred in sustaining the demurrer to Appellants' Third Amended Complaint without leave to amend where the complaint adequately alleged all six causes of action and the court refused to even consider Appellants' opposition.

It was an error to Rely on Penal Code section 1385. This statute was created in 1872. Penal Code section 1473.7 was enacted originally in 2016 and revised again effective January 1, 2026. No where in the new statute relied upon by Amirian to

vacate his conviction did it provide for a return of paid criminal restitution.

Using the same analysis this Division used in *Ahn v. Parisotto*, (2025) 114 Cal.App.5th 697, 706, to apply section 1385. This Court stated, it is general in nature, relating to the broad scope of dismissal, while when the legislature enacts a specific section relating to the limited power of a vacating a conviction for an immigration advisement issue, a specific provision relating to a particular subject will govern a general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates. No where is there a return of restitution remedy in the later enacted 1473.7 Penal Code statute. Had the legislature wanted that, it would have authorized it. The civil trial court added remedies that were simply never contemplated.

Appellants respectfully request this Court reverse the Judgment of Dismissal entered May 22, 2023 (CT 1007), the Judgment After Bench Trial entered June 27, 2025 (CT 1218), and the denial of the Motion for New Trial (CT 1262), and remand with directions consistent with this brief.

The Appellants already paid the judgment to avoid execution while on appeal. The judgment was satisfied on April 22, 2026 and respondent is on notice that a reversal will require

the return on the monies paid plus interest. Appellants will file a motion for judicial notice with their reply brief.

II. STATEMENT OF APPEALABILITY

The Judgment of Dismissal entered May 22, 2023 (CT 1007) after sustaining of a demurrer without leave to amend was interlocutory because Respondent's cross-complaint against the same parties remained pending and unresolved. (*Id.*, Judgment of Dismissal, p. 1: "Amerian's Cross-Complaint … continues before this Court.") The Judgment After Bench Trial entered June 27, 2025 (CT 1218) is the final judgment on the cross-complaint. The August 26, 2025 denial of the Motion for New Trial (CT 1262) is directly appealable. (Code Civ. Proc., §904.1, subd. (a)(4).) The Notice of Appeal filed September 18, 2025 (CT 1269) is timely as to all orders. The 2023 interlocutory judgment is now properly before this Court on appeal from the final judgment. (Code Civ. Proc., §906; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 741.)

III. ISSUES PRESENTED

1. Did the Superior Court err in sustaining Respondent's demurrer to Appellants' Third Amended Complaint without leave to amend, including refusing to consider Appellants' opposition to the demurrer as untimely, where: (a) the conversion cause of action pleaded an anticipated sum of $475,000 (TAC ¶21, CT 819); (b) the fraud cause of action

pleaded specific misrepresentations, the identity of the maker, the recipients, and Respondent's own admissions that his license was revoked four years before contracting with Everloving (TAC ¶¶25–26, CT 819–821); (c) the fiduciary duty cause of action alleged access to confidential patient and billing records and the trust relationship arising therefrom (TAC ¶35, CT 823–824); (d) the defamation cause of action alleged libel per se by specific false statements in the healthcare community (TAC ¶44, CT 826–827); and (e) the fifth and sixth causes of action were predicated on the same adequately-pled wrongful conduct?

2. Did the Superior Court err in ruling as a matter of law that Penal Code sections 1473.7 and 1385 entitle Respondent to civil recovery of the $240,000 in restitution he voluntarily stipulated to pay Appellants as part of his criminal plea, where those statutes contain no provision authorizing such civil recovery and where Respondent's stipulation constituted a binding judicial admission?
3. Did the Superior Court err in ruling that the doctrine of unclean hands cannot apply to Respondent's unjust enrichment claim, where: (a) unjust enrichment is an equitable doctrine subject to equitable defenses; (b) Respondent admitted at trial that he presented a falsified

driver's license to Everloving (RT Apr. 8, 2025, p. 355); (c) that fraud directly infected and was inseparable from the very transaction at issue; and (d) the court applied *People v. Chavez*, a criminal case, to categorically bar the defense?

4. Did the Superior Court abuse its discretion in denying the Motion for New Trial where the court's rulings rested on errors of law, the evidence was insufficient to support the judgment, and the court summarily denied the motion without engaging with the substantive arguments raised?
5. Should a conviction that is vacated pursuant to Penal Code section 1473.5 preclude a windfall for the criminal defendant who admitted to the crime and stipulated to the restitution?
6. Is a civil trial court without jurisdiction to order a return of paid restitution in a criminal case?
7. Does this Division's recent opinion in *Ahn v. Parisotto*, (2025) 114 Cal.App.5th 697, that was rendered AFTER the notice of appeal was filed require an immediate reversal?
8. If this Court's holding in *Ahn v. Parisotto*, (2025) 114 Cal. App.5th 697, holds that a 1385 dismissal does not require a return of a restitution, by analogy affirming the same rational as the affirmance in *Ahh, supra*, is a reversal of this judgment warranted?

IV. STATEMENT OF FACTS

A. Everloving Home Health and Respondent's Engagement

Appellants Everloving Home Health, Inc. ("Everloving"), Ehsan Doroudi (CEO and founding partner), and Shaida Moghaddam (Director of Nursing and co-founding partner) operate a California corporation providing licensed home healthcare services, including physical therapy, to patients with chronic conditions, disabilities, and acute care needs in Los Angeles County. Everloving built its reputation for excellence through the employment of licensed healthcare professionals. (TAC ¶¶8–11, CT 817–818.)

Commencing on or about August 1, 2016, Everloving entered into a contract with a party who presented himself as Josef Hochleitner, a licensed physical therapist, operating through a business entity called JA Physical Therapy and JA Services, Inc. (TAC ¶13, CT 818; RT Apr. 8, 2025, pp. 337–338.) The contract, attached to the TAC as Exhibit 4 (CT 875), provided that Defendants would supply physical therapy services to Everloving's patients.

In fact, the individual was Respondent Joseph W. Amirian. Amirian's physical therapy license had been revoked, a fact that became public record in 2014, four years before his contract with Everloving. Amirian himself admitted this in judicial admissions

in this lawsuit. (TAC ¶¶7, 14, 34, CT 817–818, 823.) To conceal his revoked license, Amirian presented Everloving with a falsified California driver's license bearing the name of a real, licensed physical therapist named Josef Hochleitner, along with automobile insurance documentation and a certificate of liability insurance, all in Hochleitner's name. (RT Apr. 8, 2025, pp. 344; 355.) Amirian admitted at trial on cross-examination that he presented a falsified driver's license to Everloving. (RT Apr. 8, 2025, p. 355.)

Everloving conducted background checks and verified the physical therapy license associated with "Josef Hochleitner" through the California Department of Consumer Affairs' BREEZE online portal, confirming an active license status. Everloving also ran a criminal background check on "Josef Hochleitner." The home health industry does not require fingerprinting for contracted therapists, and nothing in Everloving's due diligence would have revealed that the individual before them was not the person whose credentials he presented. (RT Apr. 8, 2025, pp. 346–348.)

B. Amirian's Fraud and Its Impact on Everloving

The TAC alleges, and the evidence at trial confirmed, that Amirian, operating through JA Services, Inc. (of which he was the actual owner), provided physical therapy services to Everloving's Medicare patients from approximately September

2016 through May 2017 under the alias "Josef Hochleitner." Everloving submitted Medicare claims for these services in the name of Josef Hochleitner. Medicare paid Everloving, and Everloving in turn paid JA Services, Inc. invoiced amounts. (RT Apr. 8, 2025, pp. 337–338, 340–341.)

Amirian also directly billed Medicare in the name of Josef Hochleitner for eight of Everloving's own patients who were simultaneously receiving home health services from Everloving, Medicare paid Amirian's company rather than Everloving for those claims, resulting in overlap billing losses of $25,699.85. (RT Apr. 8, 2025, pp. 334.)

The TAC alleges that Amirian also made defamatory statements in the community of healthcare providers that Everloving's business practices were unlawful and fraudulent, impugning Everloving's good reputation. (TAC ¶44, CT 826–827.) The resulting reputational damage caused hospital case managers and referring physicians to cease referring patients to Everloving. The agency's patient census dropped dramatically after Amirian's termination in May 2017. (RT Apr. 8, 2025, pp. 331-332.) To rebuild its referral network, Everloving hired two marketers and spent approximately $15,000 per month in marketing costs for roughly one year, approximately $180,000 in extraordinary marketing expenditures. (RT Apr. 8, 2025, pp. 331-333.) The financial disruption also required a tax filing extension,

generating approximately $18,000 in penalties. (RT Apr. 8, 2025, p. 329.)

Total invoices paid to Amirian's company during his engagement amounted to $257,305.50. Everloving's aggregate documented economic damages, including invoice payments, tax penalties, census decrease, marketing costs, and overlap billing, exceeded $551,897.72, as disclosed in interrogatory responses served October 1, 2024. (RT Apr. 8, 2025, pp. 323-324.)

C. The Criminal Proceedings, Plea, and Restitution

On December 4, 2017, the California Department of Consumer Affairs prosecuted the matter of People v. Amirian (LASC Case No. LA087334) arising from charges that Amirian provided physical therapy services without a license to seniors at Everloving's facility. (CT 1206.) On June 20, 2018, Amirian entered a plea of nolo contendere and was convicted of violating Penal Code section 530.5(a), a felony, and was ordered to make restitution to the victim pursuant to Penal Code section 1202.4(f). (CT 1207.)

Critically, rather than require Everloving to make a showing of its actual losses to the criminal court, Amirian stipulated to paying restitution of $240,000 to Everloving. Everloving accepted this amount as partial compensation for losses that far exceeded $551,000. (RT Apr. 8, 2025, pp. 323-324.) Amirian paid the full

$240,000 in installments, completing payment by August 7, 2019. (CT 1207; RT 316-317.)

Sheena Fernandez, Everloving's Administrative Manager since 2012, who oversees day-to-day operations, finances, and billing, participated in the criminal restitution proceedings and was present at the Van Nuys Criminal Courthouse when Amirian personally presented restitution checks. Amirian admitted on cross-examination that he did see Ms. Fernandez at the courthouse and presented checks to her as part of the settlement. (RT Apr. 8, 2025, pp. 354.)

D. Vacatur of the Criminal Conviction

On May 24, 2021, the criminal court vacated the restitution order (Order No. 62018) pursuant to Penal Code section 1473.7. (CT 1207.) On July 12, 2024, the criminal court granted Amirian's motion to vacate his plea and dismissed all felony and misdemeanor counts. On July 15, 2024, the Hon. Judge Shellie Samuels signed an order confirming the vacatur. (CT 1207.)

The criminal court's signed order explained the basis for vacatur: "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). The

Court's ruling was predicated on a statutory and constitutional defect in the taking of the plea and not based on, or arising out of equitable considerations." (CT 1207.) After the conviction was vacated, the charges were dismissed pursuant to California Penal Code section 1385 in the interest of justice. (CT 1207.)

No court has found that Amirian was factually innocent of the underlying conduct, that Everloving's losses were not genuine, or that the $240,000 restitution was unwarranted as a matter of fact. The vacatur was solely procedural on immigration grounds only, premised on deficient immigration advisement at the time of plea.

V. STATEMENT OF THE CASE

A. Procedural History of Demurrer Rulings

Appellants filed their original complaint on October 11, 2019, alleging six causes of action: (1) conversion; (2) fraud; (3) breach of fiduciary duty; (4) defamation; (5) breach of the covenant of good faith and fair dealing; and (6) intentional infliction of emotional distress. (CT 76.)

On December 6, 2021, the court sustained Amirian's demurrer to the original complaint. (CT 300.) The court gave Appellants leave to amend. On April 14, 2022, Appellants filed their First Amended Complaint ("FAC") alleging identical causes of action. (CT 366.) On June 22, 2022, the court sustained Amirian's demurrer to the FAC entirely, entering a ruling

identifying specific deficiencies. (CT 549–554.) Appellants filed their Second Amended Complaint ("SAC") on July 25, 2022. (CT 561.) On September 27, 2022, the court sustained Amirian's demurrer to the SAC entirely (the "September 27 Order"). (CT 792–798.) The September 27 Order gave specific guidance: Plaintiffs were required to plead a specific, identifiable sum certain for conversion; to identify specifically to whom misrepresentations were made and with what intent; and to establish a fiduciary duty beyond the contractor relationship in the contract.

On November 7, 2022, Appellants filed their Third Amended Complaint ("TAC"). (CT 815.) The TAC named Joseph W. Amirian and Silva Amirian as defendants, and alleged the same six causes of action. It was dated and signed November 7, 2022 by Steven C. Gambardella as attorney for Plaintiffs. (CT 833.) On December 22, 2022, Amirian filed a demurrer to the TAC along with a motion to strike and a request for sanctions. (CT 890.)

Appellants' opposition to the demurrer was filed January 11, 2023. (CT 900–940.) However, the court found this opposition untimely as a timely opposition was due January 4, 2023 under Code of Civil Procedure sections 1005(b) and 1013(c). Accordingly, the court did not consider Appellants' opposition in making its ruling. (CT 953.) This is itself an issue on appeal: Appellants were

denied the benefit of a substantive opposition to the final demurrer.

The demurrer hearing was held on January 18, 2023. (RT Jan. 18, 2023, pp. 1–8.) Appellants' counsel, Mr. Gambardella, argued that the TAC adequately stated all six causes of action and that the court had overlooked specific allegations. Counsel specifically argued: (1) the court was improperly considering matters outside the four corners of the complaint, including defense arguments that Everloving had a duty to investigate Amirian's credentials; (2) the TAC pleaded intentional misrepresentations at paragraph 26 and following; (3) the TAC pleaded a fiduciary relationship based on Amirian's access to confidential records; (4) the TAC pleaded $475,000 in expected recovery; (5) the TAC pleaded libel per se defamation at paragraph 44; (6) the fifth cause of action for breach of the covenant of good faith and fair dealing had not been addressed in the tentative; and (7) sufficient allegations of the criminal enterprise supported the IIED claim. (RT Jan. 18, 2023, pp. 3–6.)

On January 18, 2023, the court adopted its tentative ruling and sustained the demurrer to the TAC without leave to amend. The court entered an Order of Dismissal on January 18, 2023 (CT 950), with a formal Judgment of Dismissal entered May 22, 2023 (CT 1007). The court's written ruling (CT 952–959), dated January 18, 2023, found as follows:

Conversion (First Cause of Action): The TAC "again fail[ed] to identify a specific sum certain for conversion." The court found that the TAC's allegation that revenue "was anticipated to accrue to the amount of $475,000.00" (TAC ¶21, CT 819) was insufficient because it pleaded only an anticipated/expected sum, not a sum certain. (CT 956.)

Fraud (Second Cause of Action): The court found that the TAC "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 court also relied on the Amirian demurrer argument that Plaintiffs could not plead justifiable reliance because as the contracting supervisory party they had a duty to verify sub-contractor credentials. (CT 956–957.)

Fiduciary Duty (Third Cause of Action): The court found the TAC "still fails to sufficiently plead an existing fiduciary duty undertaken by Defendant Amirian," noting the contract attached as Exhibit 4 described Amirian as a "contractor" with Plaintiffs bearing "responsibility to supervise and evaluate," and that "a misrepresentation made by a person without a previous history with claimant is sufficient to build a fiduciary relationship" was without legal support. (CT 957–958.)

Remaining Causes of Action (Fourth through Sixth): The court found: defamation failed because the TAC "does not allege

any specific defamatory statements" (TAC ¶¶44–45, CT 826–827); breach of covenant failed because Amirian "is again not alleged to be a contracting party"; and IIED failed because the TAC "does not allege any specific outrageous conduct" by Amirian. (CT 958.)

The court concluded: "Plaintiffs have again failed to utilize this opportunity to allege sufficient facts to support their causes of action." (CT 958.) On the question of leave to amend: "Joseph Amirian's demurrer is sustained, without leave to amend. The Complaint is dismissed. Joseph Amirian is to give notice." (CT 959.)

B. Trial on the Cross-Complaint for Unjust Enrichment

On January 11, 2022, Amirian filed a cross-complaint against Everloving, Doroudi, and Moghaddam asserting seven causes of action. (CT 305.) On December 24, 2024, Amirian dismissed all causes of action except the fifth, unjust enrichment, seeking return of the $240,000 in restitution he had paid. (CT 1206.) The court scheduled a hearing on the legal issue for February 10, 2025. After further proceedings, trial was set for April 8, 2025. (CT 1206.)

At the outset of trial on April 8, 2025, the court denied Amirian's two Motions in Limine without prejudice. (RT Apr. 8, 2025, p. 307.) The court admitted Defendant's Trial Exhibits 1 through 4 into evidence, the criminal case documentation

establishing the plea, restitution payments, restitution vacatur, and conviction vacatur. (RT Apr. 8, 2025, p. 314.)

Appellants asserted the affirmative defense of unclean hands, arguing that Amirian's admitted fraud in gaining access to Everloving, by impersonating a licensed physical therapist through identity fraud, barred him from equitable relief. Appellants called Sheena Fernandez, Administrative Manager, as their sole witness. Ms. Fernandez testified that she has been associated with Everloving since 2012, serving as Administrative Manager overseeing all day-to-day operations, finances, and billing. (RT Apr. 8, 2025, pp. 325–326.)

Through Ms. Fernandez, Appellants introduced an accounting (Exhibit A) reflecting five categories of documented economic damages: (1) invoices paid to Amirian's company, JA Services, Inc., totaling $257,305.50; (2) $18,000 in tax penalties; (3) $70,892.37 in decreased patient census revenue over six months; (4) $180,000 in advertising and marketing for one year; and (5) $25,699.85 in Medicare overlap billing losses. (RT Apr. 8, 2025, pp. 327–334.) Ms. Fernandez testified that the basis for these figures was derived from financial and census reports generated from the company's software, with the last and final reports dated December 19, 2018. (RT Apr. 8, 2025, p. 335.)

Ms. Fernandez further explained that Amirian had presented himself as Josef Hochleitner, providing Everloving with

a falsified driver's license bearing Hochleitner's picture but Amirian's appearance, automobile insurance, and a liability certificate, all in Hochleitner's name. Everloving had run background checks and verified Hochleitner's license through the BREEZE portal. (RT Apr. 8, 2025, pp. 345-346.) Ms. Fernandez confirmed she had personally participated in the criminal restitution hearings. (RT Apr. 8, 2025, p. 347.) She confirmed Everloving agreed to accept $240,000 as partial restitution for losses ultimately exceeding $551,897.72, because "there were more damages than $240,000." (RT Apr. 8, 2025, p. 347.)

Respondent called Joseph Amirian as a rebuttal witness. Amirian testified he was the actual owner of JA Services, Inc. (RT Apr. 8, 2025, p. 351.) He stated he had not seen Ms. Fernandez during his employment with Everloving, however, on cross-examination he admitted he did see Ms. Fernandez at the Van Nuys Criminal Courthouse during the restitution proceedings and presented restitution checks to her there. (RT Apr. 8, 2025, pp. 353-354.) He admitted on cross-examination that when he presented credentials to Everloving, "That is correct" that he presented a falsified driver's license. (RT Apr. 8, 2025, p. 355.)

At the conclusion of the April 8, 2025 proceedings, the court requested post-trial supplemental briefs from both parties, due May 1, 2025, addressing: (1) when and how Appellants produced

their damages information in discovery; and (2) whether the unclean hands doctrine can operate as an affirmative defense to a claim of unjust enrichment in this context. (RT Apr. 8, 2025, pp. 356-357.) On May 1, 2025, the court took the matter under submission. (CT 1183.) On May 2, 2025, Respondent filed a supplemental brief (CT 1184), and on May 5, 2025, Appellants filed their supplemental brief (CT 1191–1203).

C. Order After Bench Trial, Judgment, and Motion for New Trial

On May 29, 2025, the court filed its Order After Bench Trial. (CT 1205–1211.) The court ruled in favor of Respondent on two independent grounds. First, it found that because Amirian's conviction was vacated under Penal Code section 1473.7 and all 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.) Second, on unclean hands, the court found: (a) Appellants had no viable claim against Amirian (all claims having been dismissed at the demurrer stage); (b) neither party had cited analogous case law; (c) Amirian did not "infect" the unjust enrichment claim because his conduct related to a court order that is no longer valid; and (d) "the doctrine of unclean hands cannot override clear policy set by statute," citing *People v. Chavez* (2016) 5 Cal.App.5th 110, 116–117, for the proposition that a section 1385

dismissal "wipes the slate clean." (CT 1210–1211.) The court ordered Everloving to pay $240,000 to Amirian. (CT 1211.)

The Judgment After Bench Trial was entered June 27, 2025, awarding judgment in the amount of $240,000 to Joseph Amirian, to be paid jointly and severally by Everloving, Doroudi, and Moghaddam. (CT 1218-1220.)

On July 10, 2025, Appellants timely filed their Notice of Motion for New Trial, followed by their Memorandum of Points and Authorities in Support on July 21, 2025. (CT 1224-1253.) Respondent filed his opposition on July 31, 2025. (CT 1257.) The motion was heard on August 26, 2025. At that hearing, the court denied the motion, stating: "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, and your motion for a new trial is denied." (RT Aug. 26, 2025, 604.) The Notice of Ruling was filed August 28, 2025 (CT 1263), and the Notice of Appeal was filed September 18, 2025. (CT 1269.)

VI. STANDARD OF REVIEW

The ruling sustaining a demurrer is reviewed de novo. The reviewing court independently evaluates whether the complaint

states facts sufficient to constitute a cause of action under any legal theory, treating all material facts properly pleaded as true and drawing all reasonable inferences in the plaintiff's favor. (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 525.) Whether leave to amend should have been granted is also reviewed for abuse of discretion, and the burden is on the plaintiff to demonstrate a reasonable possibility that the pleading can be cured by amendment. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

Questions of statutory interpretation, including the scope and effect of Penal Code sections 1473.7 and 1385, are reviewed de novo as pure questions of law. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.) The court's legal conclusion that those statutes entitle Respondent to civil recovery of previously paid criminal restitution is reviewed without deference to the trial court.

Whether the doctrine of unclean hands applies is an equitable determination generally reviewed for abuse of discretion or substantial evidence. (*Aguayo v. Amaro* (2013) 213 Cal.App.4th 1102, 1109).The denial of a motion for new trial is reviewed for abuse of discretion. (Code Civ. Proc., §657.) Where the denial rests on an error of law, it is reviewed de novo. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860.)

VII. ARGUMENT

A. The Court Erred in Sustaining the Demurrer to the Third Amended Complaint Without Leave to Amend.

A demurrer tests the legal sufficiency of a pleading. (Code Civ. Proc., §430.30(a).) The court must treat all material facts properly pleaded as true, draw all reasonable inferences in favor of the plaintiff, and determine whether a cause of action has been stated under any legal theory. (Code Civ. Proc., §452; *Berkley v. Dowds*, *supra*, 152 Cal.App.4th at p. 525.) "[A]ll that is required of a plaintiff, as a matter of pleading, even as against a special demurrer, is that his complaint set forth the essential facts of the case with reasonable precision and with sufficient particularity to acquaint the defendant with the nature, source and extent of his cause of action." (*Rannard v. Lockheed Aircraft Corp.* (1945) 26 Cal.2d 149, 156-157.) "[I]t is an abuse of discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment." (*Goodman v. Kennedy*, *supra*, 18 Cal.3d at p. 349.)

Before reaching the merits, this Court should note a threshold procedural deficiency that permeates the January 18, 2023 demurrer ruling: the trial court expressly refused to consider Appellants' opposition to the demurrer, finding it untimely. (CT 953.) A timely opposition was due January 4, 2023; Appellants

filed January 11, 2023. This meant the court ruled on the sufficiency of Appellants' pleading having heard argument from only Respondent, and effectively denied Appellants the ability to present legal authority in response to the specific deficiencies identified. Under these facts, it was an abuse of discretion. While a trial court has discretion to refuse an untimely brief under California Rules of Court, rule 3.1300(d), exercising that discretion to entirely disregard an opposition, while simultaneously denying leave to amend, creates an inherently one-sided proceeding that offends basic tenets of due process. Where a court refuses to consider an opposition to a demurrer, the demurrer is effectively decided ex parte. The failure to consider Appellants' opposition, combined with the denial of leave to amend, compounded the error and warrants particular scrutiny on de novo review. The trial court had many other less drastic remedies. This was unnecessary.

1. The Court Erred in Sustaining the Demurrer to the First Cause of Action for Conversion.

To plead conversion, a plaintiff must allege (1) ownership or right to possession of personal property; (2) defendant's disposition inconsistent with plaintiff's rights; and (3) resulting damages. (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208.) "Money may be the subject of conversion if the claim

involves a specific, identifiable sum; it is not necessary that each coin or bill be earmarked." (*Id*.)

The TAC alleged at paragraph 21 (CT 819) 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. Defendants absconded, converted and stole such sum(s) from the Plaintiffs." The court sustained the demurrer because this pleaded only an "anticipated" sum, not a "sum certain." (CT 956.)

This ruling misapplied the law. The $475,000 figure was not presented as a rough estimate or a range, it was a specific dollar amount representing the expected recovery under the parties' billing arrangement, based on contractual rights to revenue from services rendered. Moreover, the TAC also alleged that Amirian billed Medicare directly for eight of Everloving's own patients without authorization (the overlap billing), diverting specific, identifiable payments that should have gone to Everloving. The identity of the eight patients and their eleven claims was known and documented, as Ms. Fernandez confirmed at trial. (RT Apr. 8, 2025, p. 334.) Even if the initial pleading lacked granular detail, there was a reasonable possibility that this defect could be cured by amendment to explicitly name the patients and claims. Refusing leave to amend under these

circumstances constitutes a clear abuse of discretion, as a sum derived from specific, identifiable billings for identified patients satisfies conversion pleading. The demurrer as to the first cause of action should not have been sustained.

2. The Court Erred in Sustaining the Demurrer to the Second Cause of Action for Fraudulent Misrepresentation.

The elements of fraud are: (1) a misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud, i.e., induce reliance; (4) justifiable reliance; and (5) resulting damage. (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 173.) Fraud must be pleaded with specificity-"how, when, where, to whom, and by what means the representations were tendered." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) "Every element of a fraud cause of action must be alleged both factually and specifically." (*Lazar, supra*, 12 Cal.4th at p. 645.)

The court found the TAC failed to allege what representations Joseph Amirian specifically made to Plaintiffs, with what intent, and how reliance was reasonable. (CT 957.) This finding cannot survive de novo review. Paragraph 26 of the TAC (CT 820–822) specifically 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." The misrepresentations are then enumerated in subparagraphs 26A through 26J (CT 820–822):

Paragraph 26A: "The Defendants were not in fact who they said they were in the contract, Exhibit 4." This identifies the speaker (Amirian), the content (false identity), the recipients (Everloving, Doroudi, Moghaddam), and the vehicle (the contract).

Paragraph 26B: "The Defendants were not licensed Physical Therapist(s), doing business as a company or companies registered and licensed to provide Physical Therapy services"…and the TAC expressly incorporates Amirian's own judicial admission that "Defendant's (Amirian's) loss of license was public record and occurred in 2014, four (4) years prior to entering a contract with Everloving Home Health Inc." (TAC ¶¶7, 14, 26B, CT 817-822.)

Paragraph 26C alleges Defendants were "not capable of providing honest, competent services and billing." Paragraphs 26D through 26J allege the falsity, Amirian's knowledge of falsity, intent to induce reliance, actual reliance, harm, and causation, each element of fraud, specifically attributed to Joseph Amirian by name.

The court's additional finding that reliance was unjustifiable because Plaintiffs had a supervisory duty under the contract to

verify sub-contractor credentials is error. This analysis imports a factual defense (comparative fault, assumption of risk, or contributory conduct) into the pleading stage, where it does not belong. The contract's grant of supervisory authority over service quality does not, as a matter of law, impose a duty to fingerprint contractors or independently verify that the person presenting credentials is not an identity thief. Whether Everloving's reliance was "justifiable" given their due diligence efforts, including BREEZE license verification and a criminal background check on "Josef Hochleitner", is a triable fact question, not one appropriately resolved on demurrer. The court was considering matters outside the four corners of the complaint, as Appellants' counsel correctly noted at the January 18, 2023 hearing. (RT Jan. 18, 2023, pp. 6-7.)

The TAC's fraud allegations, read as a whole with all reasonable inferences drawn in Appellants' favor, satisfy the particularity requirements of California law. The demurrer to the second cause of action should not have been sustained.

3. The Court Erred in Sustaining the Demurrer to the Third Cause of Action for Breach of Fiduciary Duty.

The elements of breach of fiduciary duty are: (1) the existence of a fiduciary duty; (2) breach; and (3) damage

proximately caused by the breach. (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086.)

The court found the TAC "still fails to sufficiently plead an existing fiduciary duty undertaken by Defendant Amirian," reasoning that the contract described Amirian as a "contractor" and gave Plaintiffs supervisory authority, and that "a misrepresentation made by a person without a previous history with claimant" is insufficient to establish a fiduciary relationship. (CT 957-958.)

This ruling fails to engage with the TAC's specific allegations. Paragraph 35 (CT 823-824) alleges that Amirian "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." The TAC further alleges that Defendants "understood that such confidential information, including lists of patients and private, confidential information, such as the patients Personal Health Information was necessary and required to invoice for services, and was proprietary information of the Plaintiffs." (TAC ¶35, CT 823.) The TAC alleges that Amirian "agreed to preserve, protect, and not to misuse its position of trust and confidence. Absent the creation of this fiduciary duty, Plaintiffs would never have employed Defendants." (TAC ¶35, CT 824.)

Under California law, a fiduciary or confidential relationship may arise anachronistically or within a contract where one party reposes a high degree of trust and confidence in another, and the other knowingly accepts that trust. (*O'Byrne v. Santa Monica-UCLA Medical Center* (2001) 94 Cal.App.4th 797, 811; *Persson v. Smart Inventions, Inc.* (2005) 125 Cal.App.4th 1141, 1160 [a confidential relationship arises where trust is reposed and there is a resulting superiority, influence, or vulnerability].)

The court's reliance on the "contractor" label misses the point; formal legal labels do not insulate a party from fiduciary liability if their actual relationship involves the systematic disclosure of protected trade secrets and proprietary data. (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1579-1580 [holding that an independent contractor relationship between doctors became fiduciary when one trusted the other with billing, invoicing, and patient information data].)

Here, Amirian was given access to patients in their homes, to Protected Health Information, and to Medicare billing data, access that goes far beyond a typical arms-length contractor relationship and that healthcare regulations require be granted only to licensed, trusted professionals. The nature of that access, to vulnerable patients' homes and sensitive medical billing data, is precisely the kind of special trust that gives rise to fiduciary obligations, notwithstanding the contract's use of the word

"contractor." That the TAC alleged Amirian fraudulently induced this trust does not defeat the claim; it is the predicate for it.

4. The Court Erred in Sustaining the Demurrer to the Remaining Causes of Action.

a) Defamation (Fourth Cause of Action).

The TAC alleged at paragraph 44 (CT 826–827) that Amirian "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 EVERLOVING HOME HEALTH, INC., EHSAN DOROUDI and SHAIDA MOGHADDAM, was unlawful, fraudulent and otherwise impugned the Plaintiffs' interest in their good reputation in the community as competent, honest and capable providers of home healthcare services."

The court found the TAC did "not allege any specific defamatory statements." (CT 958.) But California law does not require a plaintiff to plead the exact words of a defamatory statement, only the general substance. (*Okun v. Superior Court*, (1981) 29 Cal. 3d 442, 458) The TAC identified the subject matter (false statements that Everloving's practices were unlawful and fraudulent), the community in which they were made (healthcare providers), the speaker (Amirian and Does), and the effect

(damage to reputation and referrals). This satisfies the pleading requirement.

Moreover, Ms. Fernandez testified at trial that hospital case managers and referring physicians directly told her they would not refer patients because of the fraud allegations associated with Everloving, confirming the real-world injury the defamation claim sought to address. (RT Apr. 8, 2025, p. 330-332.). To the extent the trial court demanded the identity of specific medical providers who heard or acted upon these statements, such details are evidentiary matters. Even if the court deemed those specific details essential to the pleading, it was an abuse of discretion to deny leave to amend.

b) Breach of Covenant of Good Faith and Fair Dealing (Fifth Cause of Action).

The TAC alleged at paragraphs 51-59 (CT 828-831) that the contractual arrangement between Plaintiffs and Amirian contained an implied covenant of good faith and fair dealing, which Amirian breached by lying, stealing, and scheming to defraud Plaintiffs. The court found Amirian "is again not alleged to be a contracting party." (CT 958.) This finding is directly contradicted by the TAC: paragraphs 13, 25, and 33 each allege that Defendants, including Amirian, "entered into a business arrangement stated in a contract attached hereto as Exhibit 4." (TAC ¶¶13, 25, 33, CT 818–823.) Exhibit 4 to the TAC (CT 875) is

the contract itself. The finding that Amirian was not alleged to be a contracting party is plainly contrary to the allegations of the complaint.

c) Intentional Infliction of Emotional Distress (Sixth Cause of Action).

The TAC alleged at paragraphs 62-65 (CT 831-832) that Amirian knew his fraudulent conduct would be personally and professionally offensive to Doroudi and Moghaddam, who had built Everloving from the ground up; that his conduct was so outrageous that any reasonable person would be mortally offended; and that it resulted in severe emotional distress to both individual plaintiffs. The court found no "specific outrageous conduct" was alleged. (CT 958.) Perpetrating a criminal enterprise by identity theft, fraudulently billing Medicare, and diverting revenue from a business over the course of nearly a year, conduct for which Amirian ultimately pleaded nolo contendere to a felony, is precisely the kind of extreme and outrageous conduct that can support an IIED claim. These allegations, taken as true, easily satisfy the pleading requirement.

5. **The Court Abused Its Discretion in Denying Leave to Amend.**

"[G]enerally it is an abuse of discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment." (*Goodman v. Kennedy*,

supra, 18 Cal.3d at p. 349.) The facts proven at trial, Amirian's own admission that he presented a falsified driver's license, the overlap billing for eight specifically identified patients, the documented marketing and tax costs, and the census decline, confirm that every cause of action in the TAC rested on real, provable facts. Had Appellants been given leave to amend to allege those facts with even greater particularity, amendment would have cured any pleading deficiencies. The denial of leave to amend was an abuse of discretion.

6. The Court Improperly Refused to Consider Appellants' Opposition.

The court's refusal to consider Appellants' opposition to the demurrer, solely because it was filed seven days late, compounded the error. While timeliness rules exist for good reason, courts retain discretion to consider late-filed papers in appropriate circumstances. (Cal. Rules of Court, rule 3.1300(d).) Where, as here, the demurrer would result in dismissal with prejudice and denial of all further amendment opportunities, the court's failure to exercise any discretion to consider the opposition effectively decided the case ex parte. The result, a ruling that did not engage with Appellants' legal authorities and arguments, was prejudicially unfair and warrants reversal. This is especially more glaring in that a criminal was making a creative argument to have his criminal restitution returned in a different civil court.

B. The Court Erred in Ruling That Penal Code Sections 1473.7 and 1385 Entitle Respondent to Recover Restitution Paid Pursuant to a Stipulated Plea Agreement.

The trial court's Order After Bench Trial (CT 1205–1211) rests on a fundamental legal error: it treats the vacatur of a criminal conviction as automatically creating a civil cause of action to recover restitution already paid. No California statute or appellate decision supports that proposition. The law does not support this result.

1. Section 1202.4 Requires Conviction as a Predicate for Restitution; Vacatur Removes That Predicate Only Prospectively.

Penal Code section 1202.4(a)(1) states: "It is the intent of the Legislature 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***." (Pen. Code, § 1202.4, subd. (a)(1); emphasis added.)

The statute makes clear that conviction is the predicate for the restitution obligation. When Amirian's conviction was vacated, the prospective obligation to make future restitution payments ceased. The restitution order itself was vacated on May 24, 2021 (CT 1207), before Amirian had any remaining payment obligation, since he had already paid in full by August 7, 2019.

But 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. Any motions should have been made in the criminal trial court and notice given to the victims. This does not create a civil remedy in a different court.

The trial court's Order After Bench Trial (CT 1207) acknowledges that Amirian's claim rests on the proposition that "if Amirian holds the status of never being prosecuted, then there never was a statutory requirement for Amirian to pay restitution under Penal Code § 1203.4(f)." But this confuses two distinct questions: (1) whether Amirian had a prospective legal obligation to continue paying; and (2) whether Everloving must return amounts already received. The answer to (1) is yes, the vacatur ended that obligation. The answer to (2) is no, no statute creates that return obligation, and the common law of unjust enrichment cannot fill a gap that neither statute nor policy creates, particularly where, as here, the recipient suffered real losses exceeding what was paid.

Unjust enrichment requires that the defendant's retention of a benefit be unjust and "would unjustly enrich the recipient". (*Munoz v. MacMillan* (2011) 195 Cal.App.4th 648, 661; *Professional Tax Appeal v. Kennedy-Wilson Holdings, Inc.* (2018) 29 Cal.App.5th 230, 238, holding "The elements of a cause of action for unjust enrichment are simply stated as "receipt of a

benefit and unjust retention of the benefit at the expense of another."[internal citation omitted].) Everloving was not benefited, they were made partially whole due to the crimes of Respondent Amirian.

Here, Everloving's retention of $240,000, against documented losses of over $551,000, is not unjust by any equitable measure. Everloving accepted far less than it lost. The equitable obligation Respondent seeks to impose on Everloving does not flow from any statutory text.

2. The Court's Analysis Under *People v. Chavez* Is Inapposite.

The trial court relied on *People v. Chavez* (2016) 5 Cal.App.5th 110, 116–117, *aff'd on other grounds* (2018) 4 Cal.5th 771, for the proposition that a dismissal under Penal Code section 1385 "wipes the slate clean as if the defendant never suffered the prior conviction." (CT 1210–1211.) This principle is sound within its domain, the criminal law. *Chavez* and the cases it cites (*People v. Haro* (2013) 221 Cal.App.4th 718, 720; *People v. Barro* (2001) 93 Cal.App.4th 62, 66) address the effect of a section 1385 dismissal on the defendant's criminal record, eligibility for enhanced sentencing in future proceedings, and immigration consequences. None of those cases holds that a section 1385 dismissal retroactively entitles a formerly convicted defendant to recover civil restitution paid years earlier.

The "slate-clean" principle means that the conviction cannot be used against Amirian in future criminal or certain civil proceedings. It does not mean that completed private transactions, including a voluntarily stipulated payment of $240,000 to a private party, are unwound. Extending *Chavez*'s criminal-law principle to civil restitution recovery would be an unprecedented expansion of its holding, unsupported by any reasoning in that decision. The trial court's categorical application of a criminal-law doctrine to create a civil cause of action against an innocent victim was error.

This Division has recently addressed an analogous issue that came out shortly AFTER the notice of appeal was filed in this case analyzing *Chavez*, the same case the trial court relied upon.

This Division held *Ahn v. Parisotto*, (2025) 114 Cal.App.5th 697, 700-01, that a 1385 dismissal does not erase a guilty plea. In that case, Ahn was a licensed physician. In May 2019, he pled guilty to a misdemeanor violation of Business and Professions Code section 650, which bars consideration as compensation for patient referrals. As the factual basis for the plea, Ahn admitted that he was a "licensed physician in the state of California and [he had] received consideration as compensation or inducement for referring patients" for certain services. The plea agreement provided that additional counts would be dismissed, Ahn would

pay $80,114 in restitution and $8,000 to the victim witness emergency fund, and Ahn could move for dismissal in May 2022 at the completion of his three-year probation period.

At a hearing in August 2020, before the end of his probation period, Ahn provided the court with proof that his ordered restitution and emergency fund amounts had been paid. He orally moved to dismiss the case pursuant to Penal Code section 1385. Over the People's objection, the court granted the motion and dismissed the matter in "furtherance of justice."

This Division rejected Ahn's argument, the same one advanced here. A 1385 dismissal wipes away a conviction so everything is undone. No so. Here is what the administrative law judge said that this Divisions affirmed:

> "Following a hearing, an administrative law judge (ALJ) issued a written ruling. The ruling noted that the "Violation of B&P Code 650 is a violation that involved definition of [*sic*] fraud, is a financial crime, relates to qualifications, functions and duty of the provider, pertains to patient care, and places the patient in danger." The ruling summarized the parties' arguments, and noted that the count against Ahn was dismissed after "there was already substantial compliance with the imposed sentence," including Ahn's payment of over $80,000 in restitution. The ruling stated, **"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." The ALJ recommended that Ahn's suspension proceed. (emphasis added) (See *Ahn v. Parisotto*, 114 Cal. App. 5th 697, 702, (2025).)

Obviously, this Division noted that if a 1385 dismissal does not require the return of a restitution, it truly does not wipe the slate clean.

3. ***Frandsen* Is Distinguishable and Does Not Support Recovery.**

The trial court considered *People v. Frandsen* (2019) 33 Cal.App.5th 1126, cited by Appellants in the trial court for the proposition that Amirian forfeited any right to challenge the restitution order by stipulating to it. The court distinguished *Frandsen* on the grounds that *Frandsen* involved a defendant who failed to object to restitution at sentencing and failed to preserve the issue for appeal, whereas here Amirian's plea and restitution order were vacated by the court. (CT 1209.)

But this distinction, while accurate, does not end the *Frandsen* analysis. *Frandsen* stands for a broader principle: a defendant who voluntarily agrees to restitution as part of a

negotiated plea bargain cannot later complain that the restitution was improper. (*Frandsen*, *supra*, 33 Cal.App.5th at pp. 1153–1154.) Here, Amirian's own trial brief acknowledged he "stipulated to making restitution to Everloving in the amount of $240,000" "rather than require cross-defendants to make a showing to the Court." (CT 1208.) That voluntary, negotiated decision, to pay $240,000 without requiring proof of Everloving's losses, is the very kind of agreed-upon resolution that *Frandsen* protects from retroactive attack, even in a different procedural posture.

4. Respondent's Stipulation Constituted a Binding Judicial Admission That He Forfeited the Right to Reclaim the Funds.

Independently of the statutory analysis, Amirian's voluntary stipulation to pay $240,000 in criminal restitution, without requiring any showing of Everloving's actual losses, constituted a binding judicial admission. "A judicial admission is a party's unequivocal concession of the truth of a matter, and removes the matter as an issue in the case. [Citations.]" (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 48,), accord *Minish v. Hanuman Fellowship*, (2013) 214 Cal. App. 4th 437, 456.)

By stipulating to pay, and by acknowledging in his own trial brief that the stipulation was made "rather than require cross-defendants to make a showing," Amirian conceded that Everloving was entitled to at least that amount. He cannot now, in a civil

proceeding, relitigate the question he resolved by stipulation in the criminal proceeding. To permit such relitigation would undermine the reliability of all negotiated criminal resolutions and would be fundamentally inequitable. Amirian made his choice when he stipulated; that choice binds him.

C. The Doctrine of Unclean Hands Bars Respondent's Unjust Enrichment Claim.

The trial court's categorical ruling that "the doctrine of unclean hands cannot override clear policy set by statute" (CT 1211) rests on a misapplication of both the doctrine and the statute. This ruling should be reversed.

1. The Court Applied the Wrong Legal Standard.

Unjust enrichment is an equitable remedy, not a statutory one. The trial court's Order After Bench Trial itself recognized this, citing cases establishing that unjust enrichment is a "quasi-contract" and equitable remedy under common law principles of restitution. (CT 1207, citing *Munoz v. MacMillan*, *supra*, 195 Cal.App.4th at pp. 661–662; *Professional Tax Appeal*, *supra*, 29 Cal.App.5th at p. 238.) Having identified the claim as equitable, the court was then obligated to apply equitable defenses, including unclean hands.

The court held that unclean hands cannot override "clear policy set by statute," citing *People v. Chavez*. (CT 1211.) But

Chavez is a criminal case interpreting the effect of a Penal Code section 1385 dismissal within the criminal law. It says nothing about whether equitable defenses apply to civil claims for unjust enrichment brought by a formerly convicted defendant. Using a criminal-procedure case to categorically bar an equitable defense to an equitable civil claim is a category error.

The proper standard for unclean hands in a civil unjust enrichment case is the three-part test set forth in *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 979: (1) analogous case law; (2) the nature of the misconduct; and (3) the relationship of the misconduct to the claimed injuries. (CT 1208.) Having identified the correct test, the court then misapplied it.

2. Respondent's Fraud Directly Infected the Transaction at Issue.

The unclean hands rule is qualified by the requirement that the party against whom it is asserted must have engaged in misconduct that "directly infected the actual cause of action before the court." (*Pond v. Insurance Co. of North America* (1984) 151 Cal.App.3d 280, 290; CT 1210.) The court found that Amirian did not "infect" his unjust enrichment claim because "his conduct related to a court order that is no longer valid and Cross-Defendants have no cause of action against Amirian." (CT 1211.) This finding is wrong on both counts.

First, Amirian's misconduct did not "relate to" a court order, it was independently committed fraud: using a falsified driver's license bearing another person's name and photograph, fabricating insurance documents, and impersonating a licensed professional to gain access to Everloving's patients and billing systems. Amirian admitted this fraud at trial. (RT Apr. 8, 2025, p. 355.) That fraud is not erased by the vacatur of his criminal conviction; it happened.

Second, the "infection" test asks whether the misconduct is directly related to the equitable claim being asserted, not whether the plaintiff has a viable cross-claim. The equitable claim before the court was Amirian's claim for return of the $240,000 he paid as restitution for his criminal conduct. That restitution was paid specifically because of the criminal conduct arising directly from his fraud. The misconduct and the equitable claim are inseparable, they are the same transaction.
Every dollar Amirian paid in restitution, and every dollar he now seeks to recover, flowed from and through his fraud. Amirian could not have obtained a position with Everloving, provided services, received payment, had criminal charges brought against him, entered a plea, or paid restitution, but for his initial and sustained fraud. The unclean hands doctrine was designed precisely for this situation: "He who comes into equity must come with clean hands." Amirian comes seeking equity having

admitted fraud. The trial court was required to deny him that relief.

3. The Court Erred in Finding No Analogous Case Law.

The trial court found that "neither party has cited to analogous case law" for applying unclean hands in this context, and rejected Appellants' reliance on *Unilogic v. Burroughs* (1992) 10 Cal.App.4th 612 as inapposite because that case involved a conversion claim submitted to a jury, not a bench trial on unjust enrichment. (CT 1210.)

The court's analysis placed an impossible burden on Appellants. By definition, the unclean hands doctrine applies to novel equitable situations, its whole purpose is to prevent inequitable outcomes that no specific rule of law yet addresses. The absence of a case with identical facts does not mean the doctrine cannot apply; it means the court must exercise equitable judgment. *Kendall-Jackson*, *supra*, 76 Cal.App.4th at p. 979, makes clear that unclean hands applies when the "nature of the misconduct" and its "relationship to the claimed injuries" make application appropriate, not only when there is a prior case on all fours.

Here, both prongs are overwhelmingly satisfied: the misconduct (identity fraud, impersonation of a licensed professional) goes to the very heart of the transaction (the

services contract, payments, and resulting criminal restitution), and the claimed injury (loss of the $240,000) is directly and entirely attributable to the consequences of that misconduct.

4. Appellants Suffered Actual Economic Damages Exceeding the Restitution Amount.

The trial court's unclean hands analysis did not grapple with the fundamental equitable reality: Everloving accepted $240,000 as partial compensation for losses the evidence at trial showed exceeded $551,897.72. (RT Apr. 8, 2025, pp. 323-324.) Everloving agreed to that figure, without requiring the criminal court to adjudicate its actual losses, specifically to facilitate Amirian's plea resolution. Respondent's own trial brief acknowledged the stipulation was made "rather than require cross-defendants to make a showing to the Court." (CT 1036.) Everloving is not unjustly enriched by retaining less than half of what it lost. A court sitting in equity cannot find unjust enrichment where the beneficiary received less than its actual damages and accepted a lesser amount precisely to accommodate the wrongdoer's plea bargain. Ordering Everloving to return the $240,000 would leave it with zero compensation for losses exceeding half a million dollars, a result that is itself the quintessence of inequity.

D. The Denial of the Motion for New Trial Was an Abuse of Discretion.

Code of Civil Procedure section 657 authorizes a new trial on grounds including error of law and insufficiency of the evidence to justify the verdict. Appellants' Motion for New Trial raised both grounds. (CT 1224–1253.) The court denied the motion summarily, stating only that it was in "the same place" as its May 29, 2025 ruling. (RT Aug. 26, 2025, 607.) This summary denial, without substantive engagement, was an abuse of discretion.

First, the court's legal conclusions were erroneous for the reasons set forth above: (a) Penal Code sections 1473.7 and 1385 do not create a civil cause of action for recovery of previously paid restitution; (b) *People v. Chavez* does not extend to bar equitable defenses in civil unjust enrichment proceedings; (c) the unclean hands doctrine was misapplied; and (d) the demurrer was sustained without considering Appellants' opposition and on grounds that do not withstand de novo scrutiny. Each of these legal errors independently supports granting a new trial.

Second, the evidence at trial was insufficient to support the judgment. Respondent's entire evidentiary case consisted of four documentary exhibits establishing the history of the criminal proceedings and the vacatur. He presented no evidence that Everloving's losses were not genuine, no rebuttal to the accounting showing $551,897.72 in damages, and no authority for the

proposition that a section 1473.7 vacatur creates a civil claim to recover paid restitution. Respondent's own trial brief, filed January 15, 2025 and on file in the CT at pages 1055-1085, conceded the critical fact that Amirian stipulated to paying restitution without requiring Everloving to make a showing of its losses. That concession undermines any finding that Everloving's retention of the funds is unjust.

Third, the denial of the motion was itself erroneous because the court failed to meaningfully engage with Appellants' arguments. At the August 26, 2025 hearing, the court stated it had already considered the issues and declined to reconsider. (RT Aug. 26, 2025, pp. 604; 607.) A court that simply restates its prior conclusion without addressing the specific legal arguments raised in a new trial motion, particularly where those arguments raise genuine legal errors, has not exercised the judicial discretion the statute demands.

VIII. CONCLUSION

For all the foregoing reasons, Appellants Everloving Home Health, Inc., Ehsan Doroudi, and Shaida Moghaddam respectfully request that this Court:

1. Reverse the Judgment of Dismissal entered May 22, 2023 (CT 1007), and remand with directions to overrule the demurrer to the Third Amended Complaint, or in the alternative, grant leave to amend;

2. Reverse the Judgment After Bench Trial entered June 27, 2025 (CT 1218–1220), and direct entry of judgment in favor of Appellants on the cross-complaint for unjust enrichment;

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

4. Hold as a matter of law that: (a) Penal Code sections 1473.7 and 1385 do not create a civil cause of action for recovery of criminal restitution already paid; (b) *People v. Chavez*'s "slate-clean" principle does not extend to bar equitable defenses in civil proceedings; (c) the doctrine of unclean hands bars equitable relief to a party whose admitted fraud was the direct cause of every dollar that changed hands in the challenged transaction; and (d) a voluntary stipulation to pay restitution without requiring proof of losses constitutes a binding judicial admission that bars subsequent civil recovery of those funds; and
5. Hold that this Division's opinion in *Ahn v. Parisotto*, (2025) 114 Cal.App.5th 697, 706, and its rationale and limitations on 1385 Penal Code dismissal applies and they do not undo paid stipulated restitution.
6. Award Appellants their costs on appeal.

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Respectfully submitted,

May 18, 2026 LAW OFFICES OF RONALD RICHARDS & ASSOCIATES, A.P.C.

/s/ Ronald Richards

By_____

RONALD RICHARDS
Attorney for Appellants Everloving Home Health, Inc., Ehsan Doroudi, and Shaida Moghaddam

CERTIFICATE OF WORD COUNT

Counsel of record hereby certifies that pursuant to the California Rules of Court, this petition is produced using 13-point Roman font and contains 10,337 words, excluding the tables. Counsel relies on the word count of the computer program used to prepare this brief, as permitted under the Rules of Court.

May 18, 2026 LAW OFFICES OF RONALD RICHARDS& ASSOCIATES, A.P.C.

/s/ Ronald Richards

By_____

RONALD RICHARDS
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18. I am not a party to this action. My business address is P. O. Box 11480, Beverly Hills, California 90213. On **May 18, 2026,** the foregoing document described as **APPELLANT'S OPENING BRIEF** is being filed and served on the interested parties in this action by true copies.

[X] BY U.S MAIL

Superior Court of California, County of Los Angeles,
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Executed on **May 18, 2026** at Washington, D.C.

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

/s/ Ronald Richards

Ronald Richards