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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' REPLY BRIEF

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

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES 4

I. INTRODUCTION 6

II. RESPONDENT'S "BLENDED NARRATIVE" OBJECTION DOES NOT ANSWER ANY ARGUMENT IN APPELLANTS' BRIEF 8

III. THE DEMURRER TO THE THIRD AMENDED COMPLAINT WAS ERRONEOUSLY SUSTAINED WITHOUT LEAVE TO AMEND 9

A. The TAC Alleges an Already-Diverted, Quantified Sum, Not Merely an Expectancy 9

B. The Fraud Allegations Identify Amirian Individually, Not Merely "Defendants" in the Aggregate 10

C. The Fiduciary Duty Allegations Do Not Depend on the Word "Contractor" 12

D. The Remaining Causes of Action 13

E. Leave to Amend Should Have Been Granted, and Appellants Now Make the Rakestraw Showing 14

F. Respondent's Own Challenge Answers Itself 18

IV. NEITHER SECTION 1473.7 NOR SECTION 1385, NOR THE COMMON LAW OF UNJUST ENRICHMENT, ENTITLES RESPONDENT TO RECOVER RESTITUTION HE VOLUNTARILY PAID FOR THE CONSEQUENCES OF HIS OWN FRAUD 19

A. Vacatur Under Section 1473.7, Subdivision (a)(1) Is Not a Finding That Respondent Did Not Commit the Conduct 19

B. Everloving Is Holding Less Than Half of What Respondent's Fraud Cost It 21

C. Respondent's Own Stipulation Forecloses Recovery 23

V. THE UNCLEAN HANDS DOCTRINE BARS RESPONDENT'S CLAIM BECAUSE HIS FRAUD IS ESTABLISHED BY HIS OWN SWORN TRIAL ADMISSION, NOT BY THE VACATED PLEA 23

A. Respondent Conflates the Vacated Conviction With the Conduct He Admitted at This Trial 24

B. The Fraud and the Restitution Are the Same Transaction, Which Is All the Doctrine Requires 26

C. Respondent's Cases Defeat His Own Argument 28

D. Respondent's Personal-Knowledge Objection Does Not Reach the Admission That Matters 30

VI. THE CRIMINAL LAW'S "SLATE WIPED CLEAN" FICTION DOES NOT ERASE FACTS ESTABLISHED AT TRIAL 31

VII. THE DENIAL OF THE MOTION FOR NEW TRIAL SHOULD BE REVERSED FOR THE SAME REASONS 32

VIII. CONCLUSION 33

CERTIFICATE OF WORD COUNT 34

TABLE OF AUTHORITIES

Page

Cases

Ahn v. Parisotto (2025) 114 Cal.App.5th 697 ..... 20, 31

Aubry v. Tri-City Hospital Dist. (1992) 2 Cal.4th 962 17

Baldwin v. Marina City Properties, Inc. (1978) 79 Cal.App.3d 393 17

Blank v. Kirwan (1985) 39 Cal.3d 311 8

California Satellite Systems, Inc. v. Nichols (1985) 170 Cal.App.3d 56 ..... 28, 28

Camp v. Jeffer, Mangels, Butler & Marmaro (1995) 35 Cal.App.4th 620 24

Careau & Co. v. Security Pacific Business Credit, Inc. (1990) 222 Cal.App.3d 1371 9

Carman v. Athearn (1947) 77 Cal.App.2d 585 ..... 28, 28

City of Stockton v. Superior Court (2007) 42 Cal.4th 730 16

Fladeboe v. American Isuzu Motors, Inc. (2007) 150 Cal.App.4th 42 ..... 24, 24

Foreman & Clark Corp. v. Fallon (1971) 3 Cal.3d 875 ..... 30, 31

Hacala v. Bird Rides, Inc. (2023) 90 Cal.App.5th 292 16

Jay Bharat Developers, Inc. v. Minidis (2008) 167 Cal.App.4th 437 ..... 26, 27

Kabran v. Sharp Memorial Hospital (2017) 2 Cal.5th 330 17

Kendall-Jackson Winery, Ltd. v. Superior Court (1999) 76 Cal.App.4th 970 ..... 24, 26, 27

Lazar v. Superior Court (1996) 12 Cal.4th 631 11

Michelson v. Hamada (1994) 29 Cal.App.4th 1566 13

Nealis v. Carlson (1950) 98 Cal.App.2d 65 ..... 28, 29

Okun v. Superior Court (1981) 29 Cal.3d 442 13

Panopulos v. Maderis (1956) 47 Cal.2d 337 16

People v. Glimps (1979) 92 Cal.App.3d 315 21

People v. Matthews (1992) 7 Cal.App.4th 1052 21

Rakestraw v. California Physicians' Service (2000) 81 Cal.App.4th 39 ..... 8, 9, 10, 15, 16, 18, 19

Schultz v. Harney (1994) 27 Cal.App.4th 1611 8

Scott v. City of Indian Wells (1972) 6 Cal.3d 541 17

Ward v. Taggart (1959) 51 Cal.2d 736 16

Welco Electronics, Inc. v. Mora (2014) 223 Cal.App.4th 202 ..... 10, 18

Wiley v. Wiley (1943) 59 Cal.App.2d 840 30

Statutes

Code of Civil Procedure, § 430.41, subd. (e)(1) 14

Code of Civil Procedure, § 472c 16, 17

Code of Civil Procedure, § 473, subd. (a)(1) 17

Code of Civil Procedure, § 657 32

Labor Code, § 139.21, subd. (a)(4)(C) 31

Penal Code, § 851.8 ..... 21, 21

Penal Code, § 1202.4 31

Penal Code, § 1385 ..... 21, 31, 32

Penal Code, § 1473.7 ..... 7, 19, 19, 20, 31

Other Authorities

17 California Forms of Pleading and Practice—Annotated (2026) § 206.36 15

I. INTRODUCTION

Respondent's brief asks this Court to affirm on the theory that Appellants are trying to smuggle dismissed pleading allegations into the trial record. That is not what this appeal is about, and Respondent's own brief shows why. On the demurrer, Appellants ask this Court to do exactly what de novo review requires: read the Third Amended Complaint's own allegations, on their own terms, without importing the trial evidence at all. On the cross-complaint, Appellants ask this Court to look at what actually happened at the one-day trial, not at anything alleged in a superseded pleading. The two records are not blended in Appellants' brief. They are blended in Respondent's argument, which spends sixteen pages insisting the two records must be kept separate and then spends the rest of the brief asking this Court to treat the vacatur of a criminal conviction as though it were a finding that Respondent never did what he was prosecuted, convicted, and ordered to pay restitution for.

Respondent was not exonerated. Nothing in this record says he was. The order vacating his plea, which both sides quote in full, says the opposite: it 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.) Respondent's own brief never once asserts that he did not commit the conduct underlying his conviction. He does not deny that he presented a falsified California driver's license bearing another licensed physical therapist's name and photograph to obtain the position from which he billed Everloving's patients. He admitted it under

oath, on cross-examination, at the very trial whose judgment he now defends:

> "Q. When you presented credentials to Everloving, you presented a falsified driver's license, isn't it true? A. That is correct." (RT 355:3-6.)

That admission has nothing to do with the criminal case. It is trial testimony, given in this civil action, subject to cross-examination, and it stands whether or not the criminal conviction that first exposed the fraud survives.

That single, undisputed fact answers most of Respondent's brief. The vacatur relieved Respondent of a criminal conviction on immigration-advisement grounds. It did not, and could not, unmake the fact that he lied his way into Everloving's confidence, billed its patients and Medicare under a stolen professional identity, and was ordered to pay Everloving $240,000 for the losses that fraud caused, an amount he himself insisted on paying without requiring Everloving to prove a dollar of it. (CT 1036.) Respondent paid that money for his own admitted wrongdoing. He does not get it back merely because the immigration consequences of his plea were not properly explained to him at the time.

Respondent argues that section 1473.7 requires the restitution back, that unclean hands does not apply, and that the new trial ruling should stand. Each argument rests on the same premise that the vacated conviction erased what Respondent actually did. It did not. The trial testimony and the stipulated

restitution order establish that conduct independently of the criminal case, and nothing in the vacatur changes either one.

II. RESPONDENT'S "BLENDED NARRATIVE" OBJECTION DOES NOT ANSWER ANY ARGUMENT IN APPELLANTS' BRIEF

Respondent devotes his first sixteen pages to the proposition that the demurrer record and the trial record must be kept separate. Appellants' brief already respects that line throughout. The demurrer arguments in Part III below rest exclusively on the face of the Third Amended Complaint and the exhibit attached to it, precisely the material available to the trial court in January 2023 and precisely what this Court reviews de novo. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The unclean hands and new trial arguments in Parts V and VII rest exclusively on the evidence actually admitted at the April 8, 2025 trial and the August 26, 2025 hearing. Nowhere does Appellants' brief ask this Court to treat a TAC allegation as evidence of anything, and nowhere does it ask this Court to treat trial testimony as curing a pleading filed twenty-six months earlier.

The one place Appellants' opening brief does connect the two records is in explaining why leave to amend should have been granted, and that connection is legally proper rather than improper. Under *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43, a plaintiff seeking leave to amend must identify the substantive law, the elements, and the specific facts that would be added, but "the plaintiff may make this showing for the first time on appeal." (Ibid., citing *Schultz v.*

Harney (1994) 27 Cal.App.4th 1611, 1623; *Careau & Co. v. Security Pacific Business Credit*, Inc. (1990) 222 Cal.App.3d 1371, 1386-1388.) Pointing to the trial record to identify what a further amendment would say is not blending the records improperly; it is doing precisely what *Rakestraw* contemplates. Part III.E below takes up that showing directly.

III. THE DEMURRER TO THE THIRD AMENDED COMPLAINT WAS ERRONEOUSLY SUSTAINED WITHOUT LEAVE TO AMEND

A. The TAC Alleges an Already-Diverted, Quantified Sum, Not Merely an Expectancy

Respondent's entire conversion argument rests on isolating paragraph 21's reference to revenue "anticipated to accrue to the amount of $475,000.00." (TAC ¶21, CT 819.) Read on its own, that clause does describe an expectancy. But a demurrer tests the complaint as a whole, and paragraph 21 does not stand alone. The same paragraph continues, in the past tense: "Defendants absconded, converted and stole such sum(s) from the Plaintiffs." (TAC ¶21, CT 819, italics added.) Paragraph 20 alleges that Defendants "caused to be rendered false and fraudulent billing in payment of services that were either not performed or were illicit due to the unlicensed status of the contracting defendant(s)," and paragraph 17 alleges that Defendants "took possession of ill-gotten gains and revenue from the Plaintiffs." (TAC ¶¶17, 20, CT 819.) Read together, and with the reasonable inferences the demurrer standard requires in Appellants' favor, the TAC alleges that a specific, quantified sum, $475,000, was already billed,

already paid, and already diverted through Respondent's fraudulent billing, precisely the "specific, identifiable sum" conversion of money requires (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 209), not that Appellants merely hoped to earn that amount someday. Whether Appellants could ultimately prove that figure was a question for trial. Whether they alleged a specific, identifiable sum rather than an open-ended hope is a question of pleading, and the TAC's use of "absconded," "converted," and "stole" answers it.

The TAC does not itself use the phrase "overlap billing" or name the eight patients whose Medicare claims Respondent diverted, for the simple reason that this evidence was developed at trial, after the TAC was filed. Appellants raise it for the separate and properly presented purpose described in Part III.E: to satisfy *Rakestraw*'s requirement that Appellants identify, with particularity, facts that a further amendment would add and that would independently establish a sum certain for conversion. This is not a belated attempt to introduce a new theory the trial court never saw. Part III.E below explains why *Rakestraw* permits exactly this showing on this record, regardless of the timing of Appellants' opposition.

B. The Fraud Allegations Identify Amirian Individually, Not Merely "Defendants" in the Aggregate

Respondent's fraud argument treats paragraph 26 as though it names only an undifferentiated group of "Defendants." It does not. Paragraph 26 begins: "*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." (TAC ¶26, CT 820, italics added.) The phrase "for himself" separates Amirian's individual conduct from the conduct of the entities he used; it is not an aggregated pleading against an undifferentiated group of defendants. Subparagraph 26B goes further, incorporating Amirian's own judicial admission that "[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 ¶26B, CT 821.) That is not a recitation of the elements of fraud in the abstract; it is a specific, dated, sourced factual admission attributed to Amirian by name.

The particularity requirement asks how, when, where, to whom, and by what means the representations were made. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) The TAC answers each: the "how" and "by what means" is the contract itself, attached as an exhibit to the pleading (TAC ¶25, CT 820); the "when" is "on and after August 1, 2016" (*id.*); the "where" is the transaction by which Amirian was engaged to provide services at Everloving's facility; and the "to whom" is the three named Plaintiffs, not an unidentified class. Respondent cites no authority holding that a fraud claim naming three specific plaintiffs, a specific contract, a specific date, and a specific admitted misrepresentation about licensure fails particularity as a matter of law.

Nor does Respondent's justifiable-reliance argument fare better on reply. Respondent again relies solely on the contract's use of the word "contractor" and its assignment of a "responsibility to supervise and evaluate." Respondent cites no case for this proposition because none exists. A contractual duty to supervise a contractor does not mean, as a matter of law, that a party can never be defrauded by that contractor's forged documents, and certainly not on demurrer, before any evidence has been taken. Whether a contractual duty to evaluate service quality encompasses an obligation to detect a forged driver's license is a purely factual question that cannot be resolved at the pleading stage.

C. The Fiduciary Duty Allegations Do Not Depend on the Word "Contractor"

Respondent recasts the TAC's fiduciary duty theory as "a deception practiced to obtain access created the very fiduciary relationship the deception was designed to exploit," and calls that theory self-defeating. That is not the TAC's theory. The TAC alleges that Amirian's access to confidential patient records, protected health information, and Medicare billing data, the kind of access California law recognizes can independently give rise to fiduciary obligations regardless of the formal label the parties place on their relationship. The duty was created by the trust inherent in that access, not the lie that got him in the door. (TAC ¶35, CT 823-824.)

A contractor who gains access to a principal's confidential business information can and does incur fiduciary obligations

with respect to that information notwithstanding the "contractor" label, where the relationship in substance involves the kind of trust the law protects. "Confidential and fiduciary relations are, in law, synonymous, and may be said to exist whenever trust and confidence is reposed by one person in the integrity and fidelity of another," and a contract for services "does not preclude recovery for breach of a confidential relationship" where the party who received that trust misappropriates what it gave him access to. (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1579-1580.) Respondent's brief does not address this authority. That the TAC also alleges Amirian obtained that access through fraud is not, as Respondent suggests, fatal to the claim; it explains why Amirian should be held to the obligations that came with the access he in fact received and used.

D. The Remaining Causes of Action

Respondent's defamation argument again requires more than California law asks. *Okun v. Superior Court* (1981) 29 Cal.3d 442, 458 requires that the substance of a defamatory statement be pleaded, not the exact words. The TAC identifies the subject matter (false statements that Everloving's practices were unlawful and fraudulent), the community in which the statements were made (healthcare providers), the speaker (Amirian), and the effect (damage to reputation and referrals). (TAC ¶44, CT 826-827.) Respondent does not explain what additional substance Okun requires beyond this.

On the covenant of good faith and fair dealing, Respondent's brief characterizes the TAC's allegation that

Amirian contracted "by and through his alter ego(s) and aliases" as conceding Amirian was not personally a contracting party. It is the opposite: an alter ego allegation is an allegation that the individual and the entity are one and the same for purposes of liability; it does not concede that the individual is a legal stranger to the contract. To the extent the alter ego allegation calls for more specific supporting facts, that is precisely the kind of defect amendment exists to cure, and one more reason amendment, not dismissal without leave, was the correct disposition.

The intentional infliction of emotional distress claim rests on the identical premise: Respondent argues only that it is derivative of the same paragraph 26 allegations and cannot survive if those allegations lack particularity. It fails for the same reason Respondent's argument fails elsewhere: the fraud allegations satisfy the particularity requirement, as Part III.B above demonstrates, so the derivative claims built on them survive as well.

E. Leave to Amend Should Have Been Granted, and Appellants Now Make the *Rakestraw* Showing

Code of Civil Procedure section 430.41, subdivision (e)(1) does not impose an automatic bar after three amendments. It conditions a fourth on an offer, to the court considering the demurrer, of additional facts showing a reasonable possibility that the pleading's defects can be cured. No one below ever framed the question in those terms. Appellants' untimely opposition argued that the Third Amended Complaint was already sufficient as filed; it did not propose what a further

amendment would add. (CT 900-921.) Appellants' counsel took the identical position at the January 18, 2023 hearing, defending the existing allegations rather than offering new ones. (RT 4:2-5:23.) The court's ruling, in turn, addressed only whether the TAC as filed stated a claim; it never reached, because no one asked it to reach, the distinct question *Rakestraw* poses. (CT 952-959.)

Respondent invokes this same case against Appellants, arguing they forfeited leave to amend by never making this showing below. (RB 13, 28.) That is why *Rakestraw* holds that the reasonable-possibility-of-cure showing may be made for the first time in this Court. (81 Cal.App.4th at p. 43 ["When a demurrer is sustained without leave to amend, this court decides whether a reasonable possibility exists that amendment may cure the defect; if it can we reverse, but if not we affirm. The plaintiff bears the burden of proving there is a reasonable possibility of amendment. [Citation.] The plaintiff may make this showing for the first time on appeal. [Citations.]") Plaintiff's showing need not be made in the trial court, however, as long as it is made to the reviewing court. (17 California Forms of Pleading and Practice—Annotated § 206.36 (2026).)

This is not an isolated or novel reading of *Rakestraw*. The "first time on appeal" rule was part of the standard the court applied to decide the case, affirming because the plaintiffs there identified no facts or theory of amendment at all. (*Rakestraw, supra,* 81 Cal.App.4th at pp. 43-44.) "The issue of leave to amend is always open on appeal, even if not raised by the plaintiff.

[Citations]." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 746.) California courts continue to apply *Rakestraw* and *City of Stockton* together exactly for this theory. (*See, e.g., Hacala v. Bird Rides, Inc.* (2023) 90 Cal.App.5th 292 [citing both].) This is also consistent with the rule that a party may raise a new theory on appeal where, as here, only a question of law is presented on facts already in the record. (*Ward v. Taggart* (1959) 51 Cal.2d 736, 742; *Panopulos v. Maderis* (1956) 47 Cal.2d 337, 341.)

Rakestraw does not excuse a plaintiff who asked the trial court for leave and was refused; it exists for the circumstance presented here, where the question of what a further amendment would add was never presented to any court at all. Appellants make that showing now.

This is not a courtesy this Court could decline to extend. Code of Civil Procedure section 472c, subdivision (a), provides that when a demurrer is sustained without leave to amend, "…the question as to whether or not such court abused its discretion in making such an order is open on appeal even though no request to amend such pleading was made." This applies even where the plaintiff asked for nothing in the trial court and raises nothing on appeal:

> Where the complaint is defective, '[i]n the furtherance of justice great liberality should be exercised in permitting a plaintiff to amend his complaint, and it ordinarily constitutes an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility that the

> defect can be cured by amendment. [Citations.]' " (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549 [99 Cal.Rptr. 745, 492 P.2d 1137]; see Code Civ. Proc., § 472c.) This abuse of discretion is reviewable on appeal "even in the absence of a request for leave to amend" (*Scott, supra*, 6 Cal.3d at p. 550, citing Code Civ. Proc., § 472c), and even if the plaintiff does not claim on appeal that the trial court abused its discretion in sustaining a demurrer without leave to amend. (*Baldwin v. Marina City Properties, Inc.* (1978) 79 Cal.App.3d 393, 413-414 [145 Cal.Rptr. 406].)

(*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 971.)

The policy behind the statute is the same policy that requires courts to grant leave to amend with great liberality "in furtherance of justice": whether a complaint could state a claim is a question California law prefers to resolve on the merits, not to forfeit over when counsel got around to asking. (Code Civ. Proc., § 473, subd. (a)(1).) This is narrower than the rule for subject matter jurisdiction, which "cannot be conferred by waiver, estoppel, or consent," so that "a claim based on a lack of ... fundamental jurisdiction[] may be raised for the first time on appeal." (*Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 339.) Here, the same result follows not from an inherent limit on the Court's power, but from the Legislature's deliberate choice to exempt this one question from ordinary forfeiture.

The overlap-billing evidence adduced at trial, without objection to its underlying facts, establishes that Amirian personally billed Medicare in the name of "Josef Hochleitner" for eight of Everloving's own patients, generating eleven separate claims, while those same patients were simultaneously receiving home health services from Everloving; Medicare paid Amirian's company rather than Everloving on those claims, for a loss of $25,699.85. (RT 334:6-26.) That is a specific, identifiable sum tied to eight named, ascertainable patients and eleven ascertainable Medicare claims, precisely the kind of sum *Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 209 requires and precisely the kind of amendment *Rakestraw* asks a plaintiff to identify. A further amendment adding these facts to the conversion cause of action, and attributing the specific falsified-license representations already admitted at trial to Amirian individually and by date in the fraud cause of action, would cure the defects the trial court identified.

F. Respondent's Own Challenge Answers Itself

Respondent closes his procedural argument by asking what argument the untimely opposition contained that Appellants have not been able to make in this Court. The candid answer is none, because the untimely opposition did not contain a *Rakestraw* showing either; like Appellants' oral argument at the January 18, 2023 hearing, it argued only that the Third Amended Complaint was already sufficient as filed. (CT 900-921; RT 4:2-5:23.) That is the point of Part III.E above, not a concession against it. *Rakestraw*'s rule exists precisely for a record like this

one, where no filing and no argument below ever addressed the reasonable-possibility-of-cure question in those terms. Appellants are not asking this Court to excuse a showing they failed to make when given the chance; they are making, for the first time anywhere in this litigation, the specific showing Part III.E sets out, exactly as *Rakestraw* contemplates.

IV. NEITHER SECTION 1473.7 NOR SECTION 1385, NOR THE COMMON LAW OF UNJUST ENRICHMENT, ENTITLES RESPONDENT TO RECOVER RESTITUTION HE VOLUNTARILY PAID FOR THE CONSEQUENCES OF HIS OWN FRAUD

A. Vacatur Under Section 1473.7, Subdivision (a)(1) Is Not a Finding That Respondent Did Not Commit the Conduct

Respondent's brief treats the vacatur of his plea as though it resolved, in his favor, the question of what he actually did. It did not. Section 1473.7 provides two independent grounds for relief: 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)), and, entirely separately, vacatur based on "[n]ewly discovered evidence of actual innocence." (*Id.*, subd. (a)(2).)

Respondent moved, and was granted relief, under the first ground only. The criminal court's order is explicit that its 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.) No court, criminal or civil, has ever found that Respondent did not present a falsified driver's license, did not impersonate a licensed physical therapist, or did not bill Medicare and Everloving's patients under a stolen identity. Respondent's own fifty-eight-page brief does not assert otherwise. He does not deny the underlying conduct anywhere in his brief; he argues only that the conduct no longer carries civil consequences because the conviction it produced was later found procedurally defective on an issue that has nothing to do with whether he did what he was accused of doing.

That distinction answers Respondent's central argument that "[a] conviction adjudged legally invalid because the plea that produced it was defectively taken was never a valid conviction," so that "[t]here is no coherent sense in which a plea can be 'validly invalid' for the period before the order issued." (RB 34.)

The criminal law's fiction that a vacated conviction is treated as though it never happened operates within the boundaries of the criminal law, for the purposes the Legislature built it to serve: relief from sentencing enhancements, from immigration consequences, and, as *Ahn v. Parisotto* (2025) 114 Cal.App.5th 697 confirms, from licensing consequences only where a specific statute says so. (114 Cal.App.5th at pp. 704-705.) Nothing in section 1473.7's text extends that fiction to rewrite, in a private civil lawsuit between the fraudster and his victim, historical facts that a witness who lived them testified to under oath and that the wrongdoer himself admitted on cross-

examination. A legal fiction erasing a conviction is not evidence that erases what happened.

It is telling that Respondent did not file a petition for factual innocence under Penal Code section 851.8. That statute lets a person who was arrested, and in some circumstances prosecuted, ask a court to find that no reasonable cause exists to believe he committed the offense. This would have given both the People and the victim a chance to oppose such a finding. (Pen. Code, § 851.8, subds. (b), (c).) It is the actual legal mechanism for the declaration Respondent's brief now asks this Court to treat as though it already occurred, and Respondent never invoked it. A dismissal is not a substitute for a section 851.8 finding and it does not mean factual innocence.

"[A] dismissal in the interest of justice (Pen. Code §1385)…does not necessarily imply factual innocence, but rather may reflect the result of a negotiated or pragmatic disposition of the case." (*People v. Matthews* (1992) 7 Cal.App.4th 1052, 1056, quoting *People v. Glimps* (1979) 92 Cal.App.3d 315, 323-324.)

The record reflects no section 851.8 petition, no finding of factual innocence, and no adjudication that Respondent did not do what he later admitted, under oath, at this trial. Respondent never filed a petition for factual innocence because he was not factually innocent.

B. Everloving Is Holding Less Than Half of What Respondent's Fraud Cost It

Respondent's unjust enrichment argument boils down to one idea: he had to pay restitution because of his conviction, the

conviction is gone, so Everloving must give the money back. That argument never actually engages with what the tort requires, which is that retention of the money be unjust, and Respondent's own trial evidence answers that question against him. The uncontradicted testimony at trial was that Everloving's documented losses from Respondent's conduct, in invoice payments to his company, tax penalties, decreased patient census, marketing costs to rebuild its referral network, and Medicare overlap billing, totaled $551,897.72, more than double the $240,000 restitution figure. (RT 323:23-324:2, 327-335.) Respondent accepted the $240,000 stipulation specifically so that Everloving would not have to prove that larger figure to the criminal court. (CT 1036.) Everloving is holding less than half of what Respondent's own fraud cost it. That is not the unjust retention Respondent describes; it is the opposite.

Respondent answers that these losses were "never adjudicated" because Everloving's own civil claims were dismissed at the pleading stage. But the absence of a separate judgment quantifying Everloving's damages does not make Everloving's retention of a lesser, already-paid sum unjust; it means only that Everloving has never recovered the difference. An unadjudicated claim for additional damages is a reason Everloving is worse off than it should be, not a reason it must disgorge the partial compensation it already received for admitted fraud.

C. Respondent's Own Stipulation Forecloses Recovery

Respondent argues that his stipulation "was a term of the plea" and cannot survive the plea's vacatur, because the restitution component was itself part of the immigration-advisement defect the criminal court found. That argument conflates two different admissions. The immigration-advisement defect concerned whether Respondent was properly advised of the immigration consequences of agreeing to pay restitution as part of his plea, a question about what he was told and understood. It says nothing about the truth of the factual predicate for the amount he agreed to pay: that Everloving had suffered losses, and that $240,000 was an appropriate figure to pay "rather than require [Everloving] to make a showing to the Court." (CT 1036.) That factual concession, that Everloving was owed at least $240,000, was not conditioned on Respondent's understanding of immigration law, and nothing in the vacatur order purports to relieve him of it. A defendant does not get to walk back a factual concession about the extent of his victim's harm merely because a separate, unrelated advisement about immigration consequences was later found deficient.

V. THE UNCLEAN HANDS DOCTRINE BARS RESPONDENT'S CLAIM BECAUSE HIS FRAUD IS ESTABLISHED BY HIS OWN SWORN TRIAL ADMISSION, NOT BY THE VACATED PLEA

The unclean hands doctrine is broad, not narrow. "The doctrine demands that a plaintiff act fairly in the matter for

which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978.) The doctrine "requires unconscionable, bad faith, or inequitable conduct by the plaintiff in connection with the matter in controversy," and, once established, "provides a complete defense to both legal and equitable causes of action." (*Fladeboe v. American Isuzu Motors*, Inc. (2007) 150 Cal.App.4th 42, 56-58.)

In California, the doctrine "may apply to legal as well as equitable claims . . . and to both tort and contract remedies," so long as the misconduct "relate[s] directly to the transaction concerning which the complaint is made" and "pertain[s] to the very subject matter involved." (*Camp v. Jeffer*, *Mangels, Butler & Marmaro* (1995) 35 Cal.App.4th 620, 638.) Whether the defense applies "depends on the analogous case law, the nature of the misconduct, and the relationship of the misconduct to the claimed injuries." (*Fladeboe, supra*, 150 Cal.App.4th at pp. 56-58.) Each of those considerations, addressed in turn below, favors Appellants here.

A. Respondent Conflates the Vacated Conviction With the Conduct He Admitted at This Trial

Respondent's unclean hands argument rests entirely on the premise that "there is no operative plea" and that "[a] withdrawn plea is not an admission of anything." (RB 39.) Whatever force that premise may carry as to the plea itself, it does not reach the evidence Appellants actually rely on. Appellants do not ask this

Court to treat Respondent's vacated nolo contendere plea as an admission. Appellants rely on Respondent's own testimony, given under oath, at the April 8, 2025 civil trial on the cross-complaint, more than nine months after his conviction was vacated:

> "Q. When you presented credentials to Everloving, you presented a falsified driver's license, isn't it true? A. That is correct." (RT 355:3-6.)

That exchange has nothing to do with the criminal case. It is direct testimony in this action, given by Respondent himself, confirming that he presented a falsified California driver's license bearing another person's name and photograph to obtain his position with Everloving. Respondent's brief acknowledges this testimony "candidly" but never disputes it, never argues it was somehow inadmissible or should be disregarded, and never explains why an admission given in this proceeding, independent of the vacated plea, does not satisfy the misconduct element of unclean hands.

Respondent's brief also asks this Court to credit his own testimony that he had "never seen" Ms. Fernandez "during any previous employment with Everloving" (RT 353:24-28) and to discount her testimony instead. That request does not survive scrutiny of what Respondent himself said elsewhere in the same trial. Respondent testified that he began providing services to Everloving "[b]ack in 2017[,] [o]ctober" and that his employment ended "in April 2018." (RT 350:18-22.) But the documentary record, unchallenged by Respondent anywhere in this litigation,

shows Respondent was criminally prosecuted beginning December 4, 2017 for conduct at Everloving's facility that had already occurred (CT 1206), and Ms. Fernandez's accounting, drawn from Everloving's own financial and census software, calculated Respondent's invoices "from start of employment from September of 2016 to termination of employment in May of 2017." (RT 328:16-20.) Respondent's own account of when he worked for Everloving does not match either the criminal case's own timeline or the documentary billing record. To whatever extent this Court is asked to weigh the parties' competing accounts, that internal inconsistency in Respondent's own testimony is part of the record too.

B. The Fraud and the Restitution Are the Same Transaction, Which Is All the Doctrine Requires

Respondent invokes the three-pronged inquiry of *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 979, and *Jay Bharat Developers, Inc. v. Minidis* (2008) 167 Cal.App.4th 437, 445-446, as though it favors him. It does not. That inquiry looks to analogous case law, the nature of the misconduct, and the relationship of the misconduct to the claimed injury, and it asks whether the misconduct "pertain[s] to the very subject matter involved and affect[s] the equitable relations between the litigants." (*Kendall-Jackson, supra*, 76 Cal.App.4th at p. 979.) Nothing in that formulation confines "the transaction" to the narrowest possible slice of the parties' history.

Respondent's brief attempts to satisfy the test by redefining "the transaction" as "the transaction by which the money was

paid," as though the restitution stipulation arose in a vacuum, disconnected from the conduct that made restitution necessary in the first place. That redefinition does not survive the record. The $240,000 was not a gift, a loan, or the settlement of some unrelated dispute; it was restitution, paid because Respondent was prosecuted for, and stipulated responsibility for, the fraud he committed against Everloving. (CT 1036.) The transaction by which the money was paid and the transaction in which Respondent committed his fraud are not two events; they are one continuous chain, exactly what *Kendall-Jackson* requires. Respondent could not have obtained the position from which he defrauded Everloving's patients, could not have been prosecuted, and could not have stipulated to pay restitution, but for the falsified license he admits presenting.

Jay Bharat Developers, Inc. v. Minidis (2008) 167 Cal.App.4th 437, itself illustrates the distinction Respondent needs and does not have. There, the misconduct alleged was a nondisclosure in a franchise offering circular; the relief sought was an injunction against a later, independent act of trademark infringement that had nothing to do with that earlier nondisclosure. (167 Cal.App.4th at pp. 445-446.) The two were genuinely unrelated, which is why the doctrine did not apply. Here there is no comparable gap. The fraud and the money are the same transaction, and Respondent identifies no authority holding that a party's own admitted fraud in obtaining a position becomes irrelevant to a claim for return of money paid on account of that fraud, merely because the criminal proceeding that first

quantified the loss was later vacated on an unrelated procedural ground.

C. Respondent's Cases Defeat His Own Argument

Respondent relies on *California Satellite Systems, Inc. v. Nichols* (1985) 170 Cal.App.3d 56, *Carman v. Athearn* (1947) 77 Cal.App.2d 585, and *Nealis v. Carlson* (1950) 98 Cal.App.2d 65 for the proposition that his conduct is too attenuated from, or too remote in time from, the claim before the Court. Each confirms the opposite once his admitted fraud, rather than his vacated conviction, is the conduct at issue.

California Satellite Systems asks whether the misconduct "occurred in a transaction directly related to the matter before the court." (170 Cal.App.3d at p. 70.) Respondent's admitted fraud is not collateral to his unjust enrichment claim; it is the transaction that produced the very $240,000 he now seeks to recover. He could not have obtained the position from which he billed Everloving's patients, could not have been prosecuted, and could not have been ordered to pay restitution, but for the falsified license he admitted presenting. There is no attenuation problem of the kind that defeated the defense in *California Satellite Systems*.

Carman v. Athearn (1947) 77 Cal.App.2d 585 requires that the misconduct "infect the cause of action before the court." (77 Cal.App.2d at p. 598.) *Carman* declined to apply the doctrine where the earlier wrongful conduct had been fully remedied and no live consequence of it remained before the court. Here the opposite is true: the consequence of Respondent's fraud,

Everloving's documented losses of $551,897.72 against the $240,000 it was permitted to retain, is a live, unremedied, and undisputed economic reality in this very case. Vacating a criminal conviction does not restore a dollar of that loss.

Nealis v. Carlson (1950) 98 Cal.App.2d 65 warns against placing a person "forever entirely outside the protection of the law" for a single past act. (98 Cal.App.2d at p. 69.) Appellants do not ask this Court to place Respondent outside the law's protection generally, and nothing about affirming an unclean hands defense here would do so. The question is narrower: whether Respondent may affirmatively invoke equity to reclaim money he voluntarily paid to compensate the very victim of the very criminal fraud he does not dispute committing. That narrow ruling does not put Respondent outside the law's protection. It leaves him free to pursue whatever other remedies may be available to him. It only means that equity will not help him undo the direct financial consequence of the fraud he committed.

The prejudice element fares no better for Respondent. *Wiley v. Wiley* (1943) 59 Cal.App.2d 840 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." (59 Cal.App.2d at p. 842.) Respondent argues Everloving suffers no prejudice because its own claims were dismissed. But the prejudice from granting Respondent relief is not the loss of a separate lawsuit; it is the $240,000 disgorgement itself, ordered against a company that the only evidence in this record shows lost more than twice that amount because of Respondent's own

conduct. That is prejudice within the meaning Wiley describes, whether or not Everloving's own causes of action survived demurrer.

D. Respondent's Personal-Knowledge Objection Does Not Reach the Admission That Matters

Respondent devotes several pages to Ms. Fernandez's asserted lack of personal knowledge of what Respondent "presented directly" to Everloving, noting she was describing documents she "acquired . . . in the file of Josef Hochleitner" during the criminal proceedings. (RT 343:26-345:7.) Whatever the force of that objection as to Ms. Fernandez's testimony, it has no bearing on Respondent's own admission at RT 355:3-6, quoted above, which came from Respondent's own mouth, on cross-examination, about what he himself did. A personal-knowledge objection to one witness's testimony does not disturb a party's own sworn admission.

Respondent separately argues that any challenge to the trial court's evidentiary findings is forfeited because Appellants' briefing does not recount every detail of the parties' competing damages evidence or of Ms. Fernandez's cross-examination. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; RB 41.) *Foreman & Clark*'s forfeiture rule does not apply here.

Foreman & Clark punishes a party for failing to fairly present a genuine conflict in the evidence, and there is no such conflict in what Appellants rely on. Appellants point to two things Respondent does not dispute: his own sworn admission that he presented a falsified license (RT 355:3-6), and the

criminal court's own orders, which Respondent's brief cites repeatedly without ever questioning their authenticity (CT 1036, 1207). Appellants are not asking this Court to decide which witness to believe or to reweigh conflicting testimony. They are pointing to facts Respondent has already admitted and documents he already treats as genuine, and Foreman & Clark's forfeiture rule has nothing to reach here because there is no dispute for Appellants to have misrepresented.

VI. THE CRIMINAL LAW'S "SLATE WIPED CLEAN" FICTION DOES NOT ERASE FACTS ESTABLISHED AT TRIAL

Respondent relies entirely on a generalized legal metaphor: because his criminal conviction was procedurally vacated, the entire past must be treated as a "slate wiped clean." But a legal fiction built to govern criminal status cannot rewrite history in a civil action.

As *Ahn v. Parisotto* (2025) 114 Cal.App.5th 697, 704-705 confirms, procedural dismissals or vacaturs operate strictly within the boundaries of the specific statutory schemes that create them, such as immigration or professional licensing. They are not universal erasers. *Ahn* itself illustrates the point: the guilty plea in that case was never withdrawn, and a specific statute, Labor Code section 139.21, subdivision (a)(4)(C), defined "convicted" broadly enough to preserve the licensing consequence regardless of a later dismissal. Neither fact is present here. Penal Code section 1202.4, section 1473.7, and section 1385 say nothing about undoing a restitution payment that has already been made

in full. None of them says that vacating a conviction turns a completed, restitution payment into unjust enrichment.

Respondent's argument requires this Court to adopt an absurd contradiction: that a court must pretend an event never occurred, even though Respondent admitted, under oath, on cross-examination at this very trial, that it did occur. (RT 355:3-6.) Equity does not require a court to blind itself to the truth. A vacated conviction may erase a criminal record, but it does not erase the fact of Respondent's fraud.

VII. THE DENIAL OF THE MOTION FOR NEW TRIAL SHOULD BE REVERSED FOR THE SAME REASONS

Respondent's arguments on the new trial motion are derivative of the merits arguments addressed above, and they rise or fall with them. If, as Appellants have shown, the trial court's rulings on the statutory restitution question and on unclean hands rested on legal error, that error independently supports a new trial under Code of Civil Procedure section 657, and it makes no difference that the same legal questions had been briefed before trial, at trial, and in the post-trial supplemental briefs the court itself requested.

A legal error does not become harmless, or beyond correction, merely because the parties had ample opportunity to argue about it. The trial court's own statement at the August 26, 2025 hearing, that it remained "in the same place" as its May 29, 2025 ruling because it continued to view the unclean hands doctrine as foreclosed by the section 1385 dismissal (RT 604:7-18), rests on the same legal premise Part V above shows to be

incorrect: that the vacated conviction, rather than Respondent's own trial admission, is the relevant measure of his conduct.

VIII. CONCLUSION

For the foregoing reasons and those set forth in Appellants' opening brief, Appellants respectfully renew their request that this Court reverse the Judgment of Dismissal entered May 22, 2023 (CT 1007), reverse the Judgment After Bench Trial entered June 27, 2025 (CT 1218-1220), reverse the order denying the Motion for New Trial entered August 26, 2025 (CT 1262), and remand with directions consistent with Appellants' opening brief and this reply. Appellants further request their costs on appeal.

September 28, 2026

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By /s/ Ronald Richards

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CERTIFICATE OF WORD COUNT

Counsel of record hereby certifies that pursuant to the California Rules of Court, this brief is produced using 13-point Roman font and contains 6,733 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.

September 28, 2026

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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 September 28, 2026, the foregoing document described as APPELLANTS' REPLY BRIEF is being filed and served on the interested parties in this action by true copies.

[X] BY U.S. MAIL

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Executed on September 28, 2026 at Los Angeles County, California.

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