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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

JEANNE HAWORTH, as Trustee, etc., et al.,

Plaintiffs and Respondents,

v.

NESS ADAMS, INC.,

Defendant and Appellant.

B260148

(Los Angeles County  
Super. Ct. No. BC495095)

APPEAL from a judgment of the Superior Court of Los Angeles County. J.  
Stephen Czuleger, Judge. Affirmed as to Ness Adams, Inc.

Leslie Richards & Associates and Leslie Richards for Defendant and Appellant.

Law Offices of Joseph C. Girard and Joseph C. Girard; Law Offices of Gregory R.  
Ellis and Gregory R. Ellis for Plaintiffs and Respondents.

Defendant and appellant Ness Adams, Inc. (Ness) appeals from the judgment entered in favor of plaintiffs and respondents Jeanne Haworth (Haworth), as trustee of the McGinty Family Revocable Trust dated September 7, 2006 (the Trust), and Kathleen McGinty (Kathleen)<sup>1</sup> following a trial in which the jury found that Ness and defendant Noam Bouzagloul (Bouzagloul)<sup>2</sup> had fraudulently induced Kathleen's brother Tim McGinty (Tim) to transfer title to the family home to Bouzagloul. The jury awarded compensatory damages to the Trust in the amounts of \$803,280 against Bouzagloul and \$1,331,608.77 against Ness and awarded Kathleen \$17,000 in compensatory damages against Bouzagloul. The jury also awarded the Trust punitive damages of \$8,032,800 against Bouzagloul and \$13,316,087.70 against Ness.

After the jury verdicts were entered, a bench trial was held on plaintiffs' equitable claim for rescission of the quit claim deed and the agreement transferring the home to Bouzagloul. The trial court ordered the quit claim deed and property transfer agreement to be void and cancelled, and the home was returned to the Trust.

Ness contends the judgment must be reversed because the trial court erred by denying defendants' motion to exclude certain evidence and by denying Ness's motion for judgment notwithstanding the verdict (JNOV). Ness further contends the compensatory and punitive damages awards were excessive.

We affirm the judgment.

## **BACKGROUND**

### **Creation of the Trust for Kathleen's benefit**

The Trust is a special needs trust established for Kathleen's benefit by her mother, Delores McGinty, in 2006. Its principal asset is a 1,477 square foot single family home

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<sup>1</sup> Some of the individuals involved in this case share the same surname, and we refer to them by their first names to avoid confusion.

<sup>2</sup> Bouzagloul also appealed from the judgment, but, as discussed *infra*, we dismissed his appeal for lack of standing. Bouzagloul and Ness are referred to collectively herein as defendants, and the Trust and Kathleen are referred to collectively as plaintiffs.

located at 2205 Hill Street in Santa Monica (the home), which Delores owned free and clear.

Kathleen suffers from a pervasive development disorder, diagnosed as autism, which makes it difficult for her to form thoughts, communicate, and socialize. Kathleen lived in the home with Delores and continued to live there after Delores's death in 2009.

Kathleen's brother Tim was appointed as the initial trustee of the Trust. Tim suffered throughout his life from bipolar disorder, depression, and substance addiction. At times, he was suicidal, psychotic, and delusional.

Both Tim and Kathleen suffered severe depression after Delores's death. After a period of hospitalization, Tim moved into the home with Kathleen in 2009. He was unemployed, and his sole source of income was a disability payment of \$865 per month.

On August 18, 2012, the City of Santa Monica "red-tagged" the home's detached garage as dangerous and noncompliant with standards for occupancy. The City did not cite any problems with the home itself. To address the problem with the garage and to modernize the plumbing and wiring in the house, Tim obtained a \$75,000 loan against the home.

On September 15, 2010, Tim contracted with Triangle Construction, Inc. for \$3,500 to begin the planning and permitting process for the garage repair. The contract was later increased to \$16,480 to rebuild rather than simply repair the garage. Tim paid the updated contract price; however, Triangle Construction never began any actual construction work on the home.

### **Contracts with Ness and Bouzaglou**

Bouzaglou worked as a salesman at Triangle Construction. He also owned and operated Ness, his own construction company. Bouzaglou, in his capacity as an officer of Ness, met with Tim in April 2011 to discuss the garage repair.

On June 3, 2011, Tim entered into a contract with Ness to rebuild the garage, remodel the main house, and build a 650 square foot guesthouse for \$397,000. He paid a total of \$24,000 to Ness over the next two to three weeks. Because Tim did not have the

money to pay for the balance of the contract, Bouzaglou helped him obtain a \$400,000 construction loan. Bouzaglou's attorney, Andrew Stern, took control of the loan funds.

Bouzaglou arranged and attended a meeting with Stern and Tim on August 23, 2011. At that meeting, Tim signed a letter indicating that Stern was acting as Tim's attorney. Tim also signed a document authorizing the escrow company holding the loan funds to disburse the funds into Stern's client trust account.

Some of the loan funds were used to pay off the initial \$75,000 loan Tim had obtained against the home and other debts Tim had incurred. After those debts were paid, \$294,000 of the \$400,000 in loan funds remained. On August 29, 2011, Stern disbursed \$270,000 to Ness.

On September 27, 2011, Tim signed another contract with Ness -- a work order for an additional \$29,800 to pay for plans and permits for the construction work contemplated in the original contract. One month later, Tim signed a second work order, for an additional \$228,500 for additional remodeling work on the house. The second work order did not specify the scope of work contemplated, and it duplicated some of the work included in the original contract.

On March 1, 2012, Tim signed a third work order for an additional \$214,500 for work relating to the porch and trellis of the main house, as well as the guest house. The third work order duplicated some of the work described in the second work order. The following day, Bouzaglou moved Tim and Kathleen out of the home and had Kathleen sign a lease for an apartment in Encino. After moving to Encino, Kathleen suffered from depression, sleeplessness, and stomach pain.

On April 24, 2012, Tim attempted suicide by overdosing on medication prescribed for his bipolar disorder. He was placed on a psychiatric hold at a facility in Alhambra.

Tim purportedly signed a fourth work order for \$29,220.13 on April 25, 2012, while he was confined in a facility on a psychiatric hold. The work order purported to be for permit fees and exterior work on the house. It cancelled construction of the guesthouse provided for in the original contract, but did not reflect any credit for the cancelled work.

Tim was released from the hospital on May 9, 2012. Due to hospital overcrowding, he was released two to four weeks earlier than he should have been. He was still depressed and psychotic at the time of his discharge.

One week after Tim's release from the hospital, Bouzaglou had Tim sign an agreement transferring ownership of the home to Bouzaglou. Tim also signed a quitclaim deed to transfer his interest in the home to Bouzaglou.

Tim died of a stroke on October 16, 2012. His cousin, Haworth, succeeded him as trustee of the Trust.

### **The instant lawsuit**

Haworth, as successor trustee of the Trust, filed the instant action against Bouzaglou on November 2, 2012, for rescission of the property transfer agreement and quitclaim deed based on undue influence and failure to understand, constructive trust, constructive fraud, quiet title, and a lis pendens on the home. Bouzaglou filed an answer and a cross-complaint against the Trust.

The Trust, together with Kathleen, filed a first amended complaint on February 13, 2013, adding Ness and Stern as defendants and alleging causes of action against all three defendants for fraud, negligent misrepresentation, aiding and abetting breach of trust, and financial abuse of dependent adult; against Bouzaglou for constructive trust, quiet title, cancellation of the quitclaim deed, and a preliminary injunction prohibiting him from interfering with plaintiffs' use of the home; and against Stern for professional negligence and breach of fiduciary duty.<sup>3</sup>

On January 10, 2014, Haworth filed a notice of a related superior court case -- *Ness Adams, Inc. v. Noam Bouzaglou*, Los Angeles Superior Court case No. SC120000 -- that Ness had filed in February 2013 to foreclose on a mechanic's lien it allegedly held on the home. The trial court ruled that the two cases were not related, noting that a

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<sup>3</sup> The first amended complaint also asserted a cause of action against a Doe surety company to foreclose on a contractor's license bond issued on behalf of Ness and Bouzaglou.

judgment in the other action had been entered on September 30, 2013, “such that no efficiency would be gained” by deeming them related.

On January 17, 2014, defendants filed a motion in limine to exclude all evidence related to the validity of the original construction contract and the additional work orders, the amounts Tim had expended pursuant to the contract and work orders, and the reasonable value of construction costs expended pursuant to the contract and work orders. The trial court denied the motion without prejudice, stating “[i]t appears that what went on with the construction contract is part and parcel of the entire action” and that the challenged evidence “seems to be highly probative.”

The trial commenced in March 2014. Bouzaglou filed a chapter 7 bankruptcy petition on August 5, 2014. At the conclusion of the trial, the jury found Ness and Bouzaglou liable for fraud and awarded compensatory damages of \$1,331,608.77 against Ness in favor of the Trust; \$803,280 against Bouzaglou in favor of the Trust, and \$17,000 against Bouzaglou in favor of Kathleen. The jury found Stern liable for fraud and malpractice but awarded no damages against him.

In the punitive damages phase of the trial, the jury awarded the Trust \$13,316,087.70 in punitive damages against Ness and \$8,032,800 in punitive damages against Bouzaglou.

Ness moved for JNOV, arguing that neither the Trust nor Kathleen properly alleged fraud; the evidence did not support the jury’s finding of fraud; and the trial court erred by failing to exclude evidence pertaining to the construction contract and the additional work orders. The trial court denied the motion, finding there was a unity between Bouzaglou and Ness such that his actions were attributable to the corporation and that there was “abundant evidence that Bouzaglou acted with fraud.” The trial court further found that the first amended complaint sufficiently alleged fraud against Ness and that the evidence supported the jury’s finding of fraud.

Following a separate bench trial on plaintiffs’ equitable claims, the trial court ordered the quitclaim deed transferring the home to Bouzaglou to be void and cancelled,

and the property transfer agreement between Tim and Bouzaglou to be rescinded and of no effect.

On September 5, 2014, the Trust and Kathleen notified the trial court that the automatic stay in Bouzaglou's chapter 7 bankruptcy case had been terminated by operation of law. A judgment incorporating the compensatory and punitive damages awards, cancelling the quitclaim deed, and rescinding the property transfer agreement was entered on September 18, 2014. The Trust elected the remedy of rescission in lieu of compensatory damages against Bouzaglou as an individual. The judgment accordingly ordered the court clerk to execute a grant deed transferring title to the home from Bouzaglou to the Trust.

Defendants filed a motion for a new trial, which the trial court denied, after finding the evidence related to the construction contract and work orders was "very probative," and that the compensatory and punitive damages awards were supported by the evidence.

## **DISCUSSION**

### **I. Standing**

Plaintiffs challenged defendants' standing to appeal. As to Bouzaglou, they argued that his filing of a chapter 7 bankruptcy petition before judgment was entered in this action deprived him of standing to appeal from the judgment. As to Ness, plaintiffs argued that its suspension by the Franchise Tax Board for failure to pay taxes deprived the company of the right to litigate this appeal.

Ness provided evidence that it is no longer a suspended corporation, and it may accordingly prosecute this appeal. (*Peacock Hill Asso. v. Peacock Lagoon Constr. Co.* (1972) 8 Cal.3d 369, 373-374.) Even if Ness was a suspended corporation at the time it filed the notice of appeal in this action, the subsequent revival of its corporate powers validates the earlier notice of appeal. (*Bourhis v. Lord* (2013) 56 Cal.4th 320, 323.)

We issued an order to show cause re dismissal to Bouzaglou as to why his appeal should not be dismissed for lack of standing. A chapter 7 debtor's right to appeal an adverse judgment is property of the bankruptcy estate. (*Mozer v. Goldman (In re Mozer)*

(C.D. Cal. 2003) 302 B.R. 892, 896.) Absent abandonment of that right by the bankruptcy trustee, by order of the bankruptcy court, or by operation of law, a chapter 7 debtor may not prosecute a claim belonging to the bankruptcy estate. (11 U.S.C. § 554; *Bostanian v. Liberty Savings Bank* (1997) 52 Cal.App.4th 1075, 1081-1082.) Bouzaglou provided no evidence of such abandonment, and for that reason we dismissed his appeal.

## **II. Alleged evidentiary error**

Ness contends the trial court erred by denying defendants' motion in limine to exclude evidence related to the validity of the construction contracts between Ness and Tim, the amounts Tim paid Ness, and Ness's costs of construction, because that evidence was unduly prejudicial and not relevant to the issues presented at trial. The denial of a motion in limine is reviewed for abuse of discretion. (*Madirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 269.)

The record discloses no abuse of discretion. At the hearing on defendants' motion, the trial court considered the scope of the evidence defendants sought to exclude and its relevance to plaintiffs' fraud claims. The court found that "what went on with the construction contract is part and parcel of the entire action." The trial court further found that defendants' representations as to the scope and cost of construction, the increasing costs during the course of construction, and Tim's eventual transfer of the property to Bouzaglou, were "highly probative" of the fraud claims.

Ness argues that the ruling denying plaintiffs' request to have this case deemed related to the action filed by Ness against Bouzaglou to foreclose on a mechanic's lien imposed on the home was "tantamount" to res judicata on the motion in limine. Ness offers no legal analysis or authority, however, explaining how or why the doctrine of res judicata applies to the evidentiary ruling at issue. We therefore exercise our discretion to disregard that argument. (*In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3 [reviewing court may disregard contentions unsupported by legal analysis].)

The trial court did not abuse its discretion by denying defendants' motion in limine.



### III. Motion for JNOV

Ness contends its motion for JNOV should have been granted because the first amended complaint does not properly allege fraud against it and because the evidence was insufficient to support a finding of fraud. The trial court's order denying the motion for JNOV is not properly before us, however, because Ness did not appeal from that order. An appeal from an order denying a motion for JNOV must be filed within the time frames prescribed by rule 8.104(a) of the California Rules of Court. (Code Civ. Proc., §§ 629 & 904.1, subd. (a)(4).) In its notice of appeal, Ness indicated only that it was appealing from the judgment after jury trial. It did not appeal from "[a]n order or judgment under Code of Civil Procedure section 904.1(a)(3)-(13)," nor did it otherwise identify its appeal as being from the trial court's order denying the motion for JNOV. "The taking of an appeal is not merely a procedural step, but is jurisdictional, and where no appeal is taken from an appealable order, a reviewing court has no discretion to review its merits; the court must disregard all issues concerning the order on its own motion even if no objection has been made. [Citations.]" (*Berge v. International Harvester Co.* (1983) 142 Cal.App.3d 152, 158.)

Even if we construe Ness's argument as an attack on the sufficiency of the evidence supporting the jury's verdict against Ness on the fraud cause of action, Ness has demonstrated no error. The first amended complaint alleges a unity of interest between Ness and Bouzaglou such that they should be treated as alter egos of one another. "Ordinarily, a corporation is regarded as a legal entity separate and distinct from its stockholders, officers and directors. Under the alter ego doctrine, however, where a corporation is used by an individual or individuals, or by another corporation, to perpetrate fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may disregard the corporate entity and treat the corporation's acts as if they were done by the persons actually controlling the corporation. . . . ' [Citations.]" (*Robbins v. Blecher* (1997) 52 Cal.App.4th 886, 892.)

There are two requirements for disregarding the corporate entity. First, there must be a sufficient unity of interest and ownership between the corporation and the individual

controlling it such that the separate personalities of the individual and the corporation no longer exist. Second, failure to disregard the corporate entity would sanction a fraud, promote injustice, or cause an inequitable result. (*Webber v. Inland Empire Investments, Inc.* (1999) 74 Cal.App.4th 884, 900.) This determination is a question of fact, and “the conclusion of the trier of fact will not be disturbed if it is supported by substantial evidence. [Citations.]” (*Alexander v. Abbey of Chimes* (1980) 104 Cal.App.3d 39, 47.)

Substantial evidence supports application of the alter ego doctrine and the jury’s implied finding that Bouzaglou and Ness were alter egos of one another. (*Kaley v. Catalina Yachts* (1986) 187 Cal.App.3d 1187, 1198 [“All inferences are drawn in favor of the respondent and the judgment must be upheld if there is substantial evidence to sustain the implied finding of the jury”].) There was evidence that Bouzaglou is the sole employee, officer, shareholder, and board member of Ness and that through Ness, he perpetrated a fraud on Tim, Kathleen, and the Trust. Bouzaglou testified that when he met with Tim in April of 2011, he did so as an officer of Ness. On behalf of Ness, Bouzaglou negotiated and drafted the construction contract between Ness and Tim, prepared the \$397,000 initial contract price, and the subsequent work orders increasing the contract price. There was evidence that the construction contract negotiated and signed by Bouzaglou on behalf of Ness was predatory and illegal, that the claimed cost of construction was “grossly inflated,” and that much of the work specified in the contract and subsequent change orders was duplicative. There was also evidence that three days after signing the construction contract, Ness charged Tim an advance payment of \$294,000, even though California law prohibits advance payments to contractors in excess of 10 percent of the agreed contract price or \$1,000, whichever is less. Although the construction contract identified certain specific work to be performed, much of that work was never undertaken, but the contract documents included no credit for the omitted work.

Substantial evidence supports the fraud verdict against Ness.

## IV. Damages

### A. *Substantial evidence supports the compensatory damages award*

Ness contends the evidence is insufficient to support the jury's compensatory damages award of \$1,331,608.77 against it in favor of the Trust.<sup>4</sup> An appellate court reviews the jury's award of damages under the substantial evidence standard and defers to the trial court's denial of a new trial motion based on excessive damages. (*Mendoza v. City of West Covina* (2012) 206 Cal.App.4th 702, 720-721 (*Mendoza*).) A reviewing court may overturn an award as excessive only when the award is so disproportionate to the injuries suffered that it shocks the conscience and suggests that it resulted from passion, prejudice, or corruption on the part of the jury. (*Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1208.) "The amount awarded is peculiarly within the jury's discretion. [Citation.]" (*Mendoza, supra*, at p. 720.) Appellate courts "usually defer to the jury's discretion unless the record shows inflammatory evidence, misleading instructions, or improper argument by counsel that would suggest the jury relied on improper considerations. [Citation.]" (*Id.* at pp. 720-721.)

The record discloses no inflammatory evidence, misleading instructions, or improper argument that would suggest the jury relied on improper considerations in making the compensatory damages award. When viewed in light of the evidence, the damages award is not so disproportionate to plaintiffs' injuries that it shocks the conscience. The evidence showed that Kathleen suffered physical, mental, and emotional distress when Bouzaglou moved her from the home where she had lived her entire life to

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<sup>4</sup> We do not address arguments concerning the compensatory or punitive damages awards against Bouzaglou, as he is not a party to this appeal and Ness has no standing to appeal the judgment against Bouzaglou. Only an aggrieved party may appeal from an adverse judgment. (Code Civ. Proc., § 902.) "One is considered 'aggrieved' whose rights or interests are injuriously affected by the judgment." [Citation.] Conversely, "a party who is not aggrieved by an order or judgment has no standing to attack it on appeal." [Citation.] [Citation.] [¶] Injurious effect *on another party* is insufficient to give rise to appellate standing. A 'party cannot assert error that injuriously affected only nonappealing coparties.' [Citation.]" (*Conservatorship of Gregory D.* (2013) 214 Cal.App.4th 62, 67-68.)

an apartment in Encino. The Trust lost not only the \$294,000 in loan proceeds paid to Ness, but also its principal asset and source of support for Kathleen. The Trust also incurred monthly rental payments on the Encino apartment and monthly interest payments owed on the \$400,000 loan Bouzaglou induced Tim to obtain. Substantial evidence supports the compensatory damages award.

### ***B. Punitive damages***

Ness contends the jury's punitive damages award in the amount of \$13,316,087.70 against it must be set aside because the award is unsupported by the evidence and because there is reason to believe that passion, prejudice, or sympathy influenced the jury to award more damages than the facts reasonably justified.

“[T]he due process of clause of the Fourteenth Amendment requires states to, among other things, provide for judicial review of the size of a punitive damages award.” (*Nickerson v. Stonebridge Life Ins. Co.* (2016) 63 Cal.4th 363, 371 (*Nickerson*); *Honda Motor Co. v. Oberg* (1994) 512 U.S. 415, 432.) The United States Supreme Court has developed a set of substantive guideposts that reviewing courts must consider when evaluating a punitive damages award. These include: “(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. [Citation.]” (*State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 418 (*State Farm*).) A trial court undertakes this analysis in the first instance; its application of the guideposts is subject to de novo review by an appellate court. (*Ibid.*; *Nickerson, supra*, at p. 372.)

Of the three guideposts for evaluating a punitive damages award, the first two are relevant here.

#### **1. Reprehensibility of defendants' conduct**

“‘[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct.’ [Citation.]” (*State Farm, supra*, 538 U.S. at p. 419.) When determining the reprehensibility of a defendant's

conduct, courts must consider whether: “[1] the harm caused was physical as opposed to economic; [2] the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; [3] the target of the conduct had financial vulnerability; [4] the conduct involved repeated actions or was an isolated incident; and [5] the harm was the result of intentional malice, trickery, or deceit, or mere accident. [Citation.]” (*Ibid.*)

Of the five factors relevant to determining defendants’ reprehensibility, all but the first applies. Although the harm suffered by the Trust was economic rather than physical, defendants’ conduct reflected a reckless disregard of the health and safety of Kathleen, a disabled adult and the Trust’s sole beneficiary. Both Kathleen and the Trust had financial vulnerability, as the home defendants acquired through their fraudulent acts was the Trust’s principal asset and Kathleen’s source of support. Defendants’ conduct involved repeated actions -- the initial construction contract, the \$400,000 loan, multiple change orders increasing the cost of construction, and inducing Tim to transfer title to the home to Bouzaglou. Defendants’ fraudulent conduct was thus highly culpable.

## **2. Ratio of punitive damages to actual or potential harm**

With regard to the second of the substantive guideposts to be applied when evaluating a punitive damages award -- disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award -- the United States Supreme Court has explained that exemplary damages must bear a “reasonable relationship” to compensatory damages. (*BMW of N. Am. v. Gore* (1996) 517 U.S. 559, 580.) The Supreme Court declined to “impose a bright-line ratio which a punitive damages award cannot exceed,” but noted that “few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.” (*State Farm, supra*, 538 U.S. at p. 425.) Following the U.S. Supreme Court’s guidance, the California Supreme Court has concluded that “ratios between the punitive damages award and the plaintiff’s actual or potential compensatory damages significantly greater than 9 or 10 to 1 are suspect and, absent special justification . . . , cannot survive appellate scrutiny under the due process clause.” (*Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1182 (*Simon*), fn. omitted.) The California Supreme Court

recently reaffirmed that a ratio of 9 or 10 to 1 is the appropriate benchmark for determining whether a reasonable relationship exists between an exemplary and compensatory damages award. (*Nickerson, supra*, 63 Cal.4th at p. 372.)

The 10 to 1 ratio between the punitive damages and compensatory damages awarded by the jury in this case is within the benchmark articulated by the California Supreme Court for determining the reasonableness of a punitive damages award. (*Nickerson, supra*, 63 Cal.4th at p. 371; *Simon, supra*, 35 Cal.4th at p. 1182.)

In its reply brief, Ness argues for the first time on appeal that the punitive damages award cannot be upheld because the record contains no meaningful evidence of financial condition. Ness waived the right to have this argument considered on appeal by failing to raise it in its opening brief, and we exercise our discretion to disregard the argument. (*Elite Show Services, Inc. v. Staffpro, Inc.* (2004) 119 Cal.App.4th 263, 270; *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 894.)

We find no basis for reversing the punitive damages award.

#### **DISPOSITION**

The judgment against Ness is affirmed.<sup>5</sup> Plaintiffs are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
HOFFSTADT

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<sup>5</sup> The judgment against Bouzaglou is not at issue because Bouzaglou's appeal was dismissed for lack of standing.