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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GIANNA BRELIANT,

Plaintiff and Appellant,

v.

DARRYL FUJIHARA et al.,

Defendants and Respondents.

B249378

(Los Angeles County  
Super. Ct. Nos. EC057245, EC059174)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Donna Fields Goldstein, Judge. Reversed in part, affirmed in part.

Arent Fox, Stephen G. Larson, Steven E. Bledsoe and R.C. Harlan for Plaintiff  
and Appellant.

Gravitas Law Group and David J. Scharf for Defendants and Respondents Darryl  
Fujihara and Seacliff Recovery Center.

Lewis Brisbois Bisgaard & Smith, Judith M. Tishkoff and Vicki Greco for  
Defendant and Respondent Carrie Fisher.

Masserman & Ducey, Mitchell F. Ducey and Terri L. Masserman for Defendant  
and Respondent Jacob Schmidt.

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In this action for wrongful death and other torts, the trial court sustained demurrers without leave to amend in favor of defendants Darryl Fujihara and Seacliff Recovery Center (Seacliff) as to the second amended complaint, and defendants Carrie Fisher and Jacob Schmidt as to the third amended complaint.<sup>1</sup> Plaintiff appealed from the orders, which we affirm as to Fujihara and Seacliff, but reverse as to Fisher and Schmidt.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In September 2010, plaintiff Gianna Breliant's daughter, Amy Breliant, died from a heroin overdose at Schmidt's home on Laurelwood Drive.<sup>2</sup> Plaintiff filed two actions that were consolidated below. In *Breliant v. Marmer* (Super. Ct. L.A. County, No. EC057245), she sued Amy's physicians for alleged professional negligence in treating Amy's drug addiction and other problems. Those defendants—Stephen Marmer, M.D., Eric Lifshitz, M.D., and Gary Chase, M.D.—are not parties to this appeal. In *Breliant v. Boyd* (Super. Ct. L.A. County, No. EC059174), plaintiff sued Amy's "interventionist"—defendants Warren Boyd and his business entity Commerce Resources

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<sup>1</sup> The record contains a written order of dismissal as to Fujihara and Seacliff, but not as to Fisher and Schmidt. With regard to Fisher and Schmidt, plaintiff filed a notice of appeal from the June 26, 2013 minute order sustaining their demurrers without leave to amend. That is not an appealable order. (Code Civ. Proc., § 904.1.) Although we could dismiss that portion of the appeal, the matter is fully briefed and neither Fisher nor Schmidt has objected to the appeal. In the interests of judicial economy, we will order the entry of an order of dismissal nunc pro tunc, and deem the appeal to be taken from that order (judgment) of dismissal. (*Cochran v. Cochran* (2001) 89 Cal.App.4th 283, 286, fn. 3.)

<sup>2</sup> Because plaintiff and her daughter share the same last name, we refer to the daughter by her first name; no disrespect is intended.

International, Inc. (jointly, Boyd)<sup>3</sup>—and his alleged joint venture partners—Fisher, Schmidt, Seacliff, and Fujihara—for wrongful death and other torts.<sup>4</sup>

In an appeal from a dismissal after the sustaining of a demurrer, we accept as true the material allegations of the complaint. (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 401.) The facts as alleged in plaintiff’s complaint are summarized as follows.

Boyd is an “interventionist” who claims to assist “addicts and drug dependent individuals with their behavior and their drug dependence by ‘intervening’ in their lives” and using “whatever means are necessary” in order to end drug dependence and use.” After gaining notoriety through a cable television series called “The Cleaner,” Boyd attracted “celebrities and the children of celebrities” as clients. He “developed a series or network of ‘houses’ or venues” to house his clients with “caregivers and ‘sober companions.’” However, he lacked the necessary licenses to perform the services he provided—including psychological counseling, medical care for drug dependence, alcoholism, and detoxification—and his employees lacked the proper “background, training, expertise or licensure to provide medical or other care or emotional support.” In addition to providing medications without prescriptions, he “provided illegal substances to essentially untreated and uncared for addicts and drug-dependent persons, including Amy, in order to keep them from leaving his ‘service,’ as ‘rewards’ for staying off drugs, and to protect Boyd (and his co-defendants) from loss of revenue which would follow if he did not keep his clients and their drug dependence satisfied.”

During the eight months preceding her death, Amy and her mother paid Boyd over \$222,000 for providing “intervention” services to Amy. Through false representations,

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<sup>3</sup> Boyd is not a party to this appeal. We note there is a pending appeal (No. B251349) in which plaintiff challenges the order dismissing her claims against Boyd as a terminating sanction for a discovery violation.

<sup>4</sup> Amy’s father, William Breliant, was named as a nominal defendant in the wrongful death cause of action (Code Civ. Proc., § 377.30). He is not a party to this appeal.

he persuaded them to pay for nonexistent expenses such as photographs, a filming project, acting and modeling expenses, a writing coach, a fitness instructor, yoga lessons, and massages.

In May 2010, Boyd requested a \$27,000 payment to place Amy at Seacliff. Plaintiff authorized him to charge that sum on her credit card. Boyd charged the \$27,000 payment on plaintiff's card, but had no intention of placing Amy at Seacliff. Through an agreement with Seacliff's principal, Fujihara, the payment was distributed as follows: \$21,500 was remitted to Boyd as a secret payment and profit; \$5,000 was retained by Fujihara as payment of a previous loan to Boyd, and \$500 was retained by Seacliff as payment for facilitating the credit card transaction. Instead of being sent to Seacliff, plaintiff was placed at a residence previously rented by Boyd where she "was again deprived of proper supervision or any other form of rehabilitation services."

Boyd's unlicensed and untrained "caregivers and 'sober companions'" supplied Amy with illegal drugs, traded drugs for sex, and injected substances into her body. These unlawful activities occurred at various locales, including Fisher's guest house and Schmidt's residence on Laurelwood Drive, where Amy was isolated from her family. During the last week of June 2010, Keith Salmon, a client who was staying at Fisher's guest house with Amy, provided her with drugs in return for sex.

Amy died of a drug overdose at Schmidt's Laurelwood Drive residence on September 21, 2010. The fatal drugs were provided by Boyd, Schmidt, or Joe Dolo (a "sober companion" who was staying with Amy at the Laurelwood Drive residence), or were obtained by Amy while away from "the Laurelwood Drive home early on the 21st of September or at some other time."

Plaintiff sued Boyd, Fujihara, Seacliff, Fisher, and Schmidt for wrongful death, fraud, dependent adult abuse, unfair business practices, and other claims. After plaintiff amended her complaint twice, the trial court sustained the demurrers of Fujihara and Seacliff to the second amended complaint, and dismissed them from the action.

In her third amended complaint, which is the operative pleading as to Fisher and Schmidt, plaintiff alleged that Fisher and Schmidt were "care providers" who "undertook

to provide services to protect Amy from her own drug dependence,” limit her “access to third persons including social contacts,” and “direct her activities.” They participated in the “business of providing care and treatment to drug and alcohol dependent persons.” In return for providing her guest house to Boyd’s clients, Fisher received “a share of Boyd’s profit or revenue, equal to cash payments of \$10,000, weekly.” Having received past payments for providing Boyd’s clients with housing, Schmidt acquired the Laurelwood Drive property “in anticipation of additional revenue from such arrangements.” Schmidt provided his Laurelwood Drive property to Boyd’s clients “in consideration of a substantial share of Boyd’s profit.”

Fisher and Schmidt allowed their properties to be used for Boyd’s unlawful activities, knowing that:

“A. Their co-defendants, including Boyd, were interventionists who charged large sums for service, but who were unlicensed and unqualified to provide any form of treatment to alcohol and drug dependent persons,

“B. Amy and others had been in their co-defendants’ care and were dependent on drugs and entrusted to the care of said co-defendants,

“C. While in their care and their co-defendant’s care, Amy and other such persons were at times unsupervised or were at other times supervised by untrained and unqualified care givers working at the direction and control of Boyd and Commerce.

“D. Amy and others were provided with marijuana and other drugs including heroin by Boyd and his co-defendants and employees.

“E. In order for their co-defendants to accomplish their plan, their co-defendants were using the homes, apartments or guest houses of Fisher and Schmidt where alcohol and drug dependent persons could be housed during defendants’ illegal intervention, care and treatment, all in relative isolation from family and friends.

“F. Prior to Amy’s death, others like Amy who looked to Boyd and Commerce for assistance with their drug dependence, and had subjected themselves to the care and custody of Boyd and Commerce, had died of drug overdose as a result of inadequate supervision, treatment and care while in the care and custody of Boyd and Commerce.”

In their respective demurrers to the third amended complaint, Fisher and Schmidt contended the allegations were insufficient to state a cause of action on a joint venture theory of liability. Schmidt argued the complaint was devoid of “any factual allegations as to the manner in which [he] ‘exercised control and direction’ over a business; what ‘profits’ [he] derived from a business; or what ‘ownership interest’ [he] had in an enterprise. The [pleading] contains only broad, unsubstantiated allegations[.]” He also argued the complaint failed to allege any facts to show a legal duty to Amy. Fisher made similar arguments, and contended the primary factual allegation against her—that she was paid \$10,000 per week for Amy’s use of her guest house—showed nothing more than the payment of rent.

The trial court sustained Fisher’s and Schmidt’s demurrers without leave to amend, finding the third amended complaint’s allegations were insufficient to plead a cause of action or a joint venture theory of vicarious liability.

Plaintiff appealed from the adjudication in favor of Seacliff and Fujihara as to the second amended complaint, and Fisher and Schmidt as to the third amended complaint.

## **DISCUSSION**

“On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed ‘if any one of the several grounds of demurrer is well taken. [Citations.]’ [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966–967.)

## I

Based on a joint venture theory, plaintiff alleged causes of action against Fisher and Schmidt for fraudulent misrepresentation (second cause of action), fraudulent concealment (third cause of action), dependent adult abuse (fifth cause of action), wrongful death (sixth cause of action), and violation of the unfair competition law (Bus. & Prof. Code, § 17200 et seq. (UCL)) (seventh cause of action). The trial court sustained Fisher's and Schmidt's demurrers to the joint venture theory and the second, third, fifth, sixth, and seventh causes of action without leave to amend.

For the reasons that follow, we conclude the complaint contains sufficient facts to allege a joint venture theory against Fisher and Schmidt. We reinstate the fifth and seventh causes of action against Fisher, and the fifth, sixth, and seventh causes of action against Schmidt.

### A. *Joint Venture Theory*

“‘A joint venture . . . is an undertaking by two or more persons jointly to carry out a single business enterprise for profit.’ (*Nelson v. Abraham* (1947) 29 Cal.2d 745, 749.) ‘There are three basic elements of a joint venture: the members must have joint control over the venture (even though they may delegate it), they must share the profits of the undertaking, and the members must each have an ownership interest in the enterprise. [Citation.]’ (*Orosco v. Sun–Diamond Corp.* (1997) 51 Cal.App.4th 1659, 1666.) ‘Whether a joint venture actually exists depends on the intention of the parties. [Citations.] [¶] . . . [¶] [W]here evidence is in dispute the existence or nonexistence of a joint venture is a question of fact to be determined by the jury. [Citation.]’ (*April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 819–820.)” (*Unruh-Haxton v. Regents of University of California* (2008) 162 Cal.App.4th 343, 370.)

“The incidents of a joint venture are in all important respects the same as those of a partnership. (9 Witkin, Summary of Cal. Law (10th ed. 2005) Partnership, § 9, p. 584.) One such incident of partnership is that all partners are jointly and severally liable for partnership obligations, irrespective of their individual partnership interests. (*Id.* at § 39, p. 613.)” (*Myrick v. Mastagni* (2010) 185 Cal.App.4th 1082, 1091.)

The operative complaint alleged that in return for a share of Boyd's profits, Fisher and Schmidt knowingly allowed Boyd to use their respective residences to shelter drug dependent clients who, like Amy, were provided with illegal drugs and left unsupervised or supervised by untrained and unqualified care givers. The allegation is that Fisher and Schmidt knew Boyd was receiving substantial fees to provide these unlawful services and that previous clients had died of drug overdoses while under his care. Because this is a pleading case, we must "assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken. [Citation.]" (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 225.)

The trial court concluded the complaint merely recited the elements of a joint venture without alleging sufficient facts to support the existence of one. The trial court found the complaint contained no facts to show that Fisher and Schmidt were engaged in a joint venture with Boyd. Without expressing any views on the merits of the case, we disagree.

"In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." (Code Civ. Proc., § 452.) Upon a general demurrer, if the complaint may reasonably be held to imply or state a fact essential to the statement of a cause of action, or to support the theory upon which a cause of action is based, it will be liberally construed with a view to substantial justice. (*American Tel. & Tel. Co. v. California Bank* (1943) 59 Cal.App.2d 46, 54.)

Plaintiff's operative complaint states in relevant part that "Fisher and Schmidt agreed to assist Boyd in his illegal and wrongful activity by offering their respective residences as shelter to Amy and others, as an additional 'venue' for Boyd's clients, and did so in return for substantial payments. Accordingly, Fisher provided a 'guest house' on her residence as shelter for Amy and others in return for a share of Boyd's profit or revenue, equal to cash payments of \$10,000 weekly, and Amy was then assigned to Fisher's guest house for 'rehabilitation' within Boyd and Commerce's narcotics treatment



program. Schmidt had in the past also received money from Boyd to provide living accommodations to Boyd's clientele, and in anticipation of additional revenue from such arrangements with Boyd, in 2008 Schmidt purchased or leased a residence on Laurelwood Drive in Studio City and made it available to Boyd's clients in consideration of a substantial share of Boyd's profit. Boyd would later assign Amy to Schmidt's care and supervision at that location and it was in Schmidt's home that Amy received an overdose of drugs including heroin or morphine which caused her death . . . . No effective or legal rehabilitative care is or was provided in any of these settings."

It also states: "Upon information and belief, at all times relevant in this proceeding, Schmidt and Fisher acted as co-joint venturers with their co-defendants and as described hereinafter also became directly involved in conduct which caused injury to Amy and upon which this action is based. Each Defendant exercised control and direction of the business of providing care and treatment to drug and alcohol dependent persons, each shared in the profit of the operation of the business of providing such care and treatment, and each had an ownership interest in the said enterprise."

The complaint is far from a model pleading, but its allegations when liberally construed with a view to substantial justice between the parties are sufficient to allege a joint venture between Boyd and Fisher for the use of her guest house, and between Boyd and Schmidt for the use of his Laurelwood Drive residence, for the purpose of assisting "Boyd in his illegal and wrongful" interventionist activities by providing "shelter to Amy and others, as an additional 'venue' for Boyd's clients . . . in return for substantial payments." The complaint alleges that at their respective residences, Fisher and Schmidt "became directly involved in conduct which caused injury to Amy and upon which this action is based." Fisher and Schmidt each "exercised control and direction of the business of providing care and treatment to drug and alcohol dependent persons, each shared in the profit of the operation of the business of providing such care and treatment, and each had an ownership interest in the said enterprise." Fisher and Schmidt participated in the venture, knowing of the possible harm that could result to Boyd's clients while housed at their respective homes. They knew that Amy and other drug

dependent adults were provided at their residences with “marijuana and other drugs including heroin by Boyd and his co-defendants and employees” and that “others like Amy who looked to Boyd and Commerce for assistance with their drug dependence . . . had died of drug overdose as a result of inadequate supervision, treatment and care while in the care and custody of Boyd and Commerce.”

The allegation that Boyd ran the enterprise does not preclude the existence of a joint venture. There is nothing that precludes the parties from assigning control over the venture’s operations as they see fit. As Division One of this district stated, “there may be joint participation in the management and control of a joint venture where the contributions of the respective parties to the enterprise are unequal and not of the same character. [Citation.] . . . [A]lthough joint control of the undertaking and equal power to direct the enterprise is an essential element of a joint venture, ‘this is not to say that there cannot be a joint venture where the parties have unequal control of operations.’ (*Stilwell v. Trutanich* [(1960)] 178 Cal.App.2d 614, 619.) In the case just cited, it was held that there could be such joint control between a seafood company and a vessel owner on a single ocean voyage in spite of the fact that the seafood company had no right to direct their coadventurers in the making of the voyage. Similarly in *Oakley v. Rosen* [(1946)] 76 Cal.App.2d 310, it was held that an agreement under which one party was to produce a play and the other party to provide merely the necessary finances, and there was to be a sharing of any profits, a joint venture was created, ‘[b]ecause it does not differ . . . from joint ventures for mining, building, promotion and other undertakings, . . .’ ([*Id.* at] p. 313.)” (*Rosen v. E. C. Losch, Inc.* (1965) 234 Cal.App.2d 324, 332.)

Here the complaint alleged that “Fisher and Schmidt agreed to assist Boyd in his illegal and wrongful activity by offering their respective residences as shelter to Amy and others, as an additional ‘venue’ for Boyd’s clients, and did so in return for substantial payments.” Reasonably construed, this language supports the inference that Fisher and Schmidt contributed their respective residences to an illegal enterprise run by Boyd, in return for substantial payments. The fact that Fisher and Schmidt did not have equal control of the enterprise is not fatal to the allegations of a joint venture.

In short, we conclude the complaint alleges sufficient facts to support plaintiff's theory that each homeowner had a separate joint venture with Boyd to house his clients while they were receiving interventionist services, including the unlawful provision of illegal drugs and medications without a prescription or license, in return for a share of the profits. Of course, the truth of these allegations cannot be determined on demurrer.

*B. Fraudulent Misrepresentation and Concealment*

Plaintiff contends she would not have paid Boyd \$222,000 for intervention services if she had known that his representations were false and incomplete.<sup>5</sup> “The elements of fraud or deceit (see Civ. Code, §§ 1709, 1710) are: a representation, usually of fact, which is false, knowledge of its falsity, intent to defraud, justifiable reliance upon the misrepresentation, and damage resulting from that justifiable reliance. [Citations.] [¶] ‘Every element of the cause of action for fraud must be alleged in the proper manner and the facts constituting the fraud must be alleged with sufficient specificity to allow defendant to understand fully the nature of the charge made.’ [Citation.]” (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 72–73.)

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<sup>5</sup> According to the operative pleading, Boyd falsely represented that “he was an interventionist, that he had access to professional, trained and educated providers of treatment for Amy’s problems, and for her rehabilitation, that Amy would be supervised, cared for, that she would be secure in her person, that her emotional needs would be properly addressed, and that Boyd would in this and other ways, assist Amy in adopting a life style free from abuse of drugs and that he would use any means necessary to accomplish these goals, since the consequences of unaddressed drug addiction could mean death for Amy.” “Amy reasonably relied upon these representations and agreed that Boyd would provide such interventionist services to Amy and agreed to pay Boyd’s fees and costs which ultimately amounted to \$222,000 over an 8-month period ending in Amy’s death.” The complaint alleged that Boyd’s representations were false. “Boyd had no training in ‘intervention’ for drug or alcohol dependent persons, other than his experiences related to his own drug and alcohol dependence; he was neither associated with, nor part of any recognized rehabilitation service and instead typically housed his victims in the homes of friends, former addicts, and or illicit drug users. In addition, subjects such as Amy were routinely allowed access to marijuana and other drugs including heroin, in order to keep them ‘comfortable’ in their ‘rehabilitative’ setting.” In addition, the complaint alleged that Boyd failed to disclose that Amy’s physical and emotional health would be endangered through his services, and that she could be injured or die.

“‘[T]he elements of an action for fraud and deceit based on concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.’ [Citation.]” (*Lovejoy v. AT&T Corp.* (2004) 119 Cal.App.4th 151, 157–158.)

In this case, the complaint alleged that the fraudulent misrepresentations (second cause of action) and concealments (third cause of action) were committed by Boyd. There were no allegations of a false representation or concealment by Fisher or Schmidt or anyone other than Boyd. Because the trial court rejected the joint venture theory, it found there was no basis to hold Fisher and Schmidt liable for Boyd’s fraudulent misrepresentations or concealments, and it sustained their demurrers without leave to amend.

There is nothing in the complaint to show that Boyd’s alleged joint ventures with each homeowner, which were limited in scope to the intervention activities at each residence, extended to Boyd’s fraudulent misrepresentations and omissions. Given that plaintiff has had ample opportunity to amend her pleading, we conclude she is incapable of alleging a cause of action against Fisher and Schmidt for fraudulent misrepresentation (second cause of action) or concealment (third cause of action).

*C. Dependent Adult Abuse*

Welfare and Institutions Code section 15610.23, subdivision (a) defines a dependent adult as “any person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities . . . .” Tracking the language of this statute, the complaint alleged in the fifth cause of action that Amy was a dependent adult whose

“physical and mental limitations in the form of emotional and drug dependency . . . restricted her ability to carry out normal activities or to protect herself or her rights.”

Plaintiff contends that in violation of the statutory protections afforded to dependent adults, Amy was subjected to neglect,<sup>6</sup> physical abuse,<sup>7</sup> and financial abuse.<sup>8</sup>

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<sup>6</sup> Welfare and Institutions Code section 15610.57 provides:

“(a) ‘Neglect’ means either of the following:

“(1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.

“(2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

“(b) Neglect includes, but is not limited to, all of the following:

“(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

“(2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

“(3) Failure to protect from health and safety hazards.

“(4) Failure to prevent malnutrition or dehydration.

“(5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.”

<sup>7</sup> Welfare and Institutions Code section 15610.63 provides in relevant part:

“‘Physical abuse’ means any of the following: . . . (d) Unreasonable physical constraint . . . (e) Sexual assault . . . (f) Use of . . . psychotropic medication . . . (3) For any purpose not authorized by the physician and surgeon.”

<sup>8</sup> Welfare and Institutions Code section 15610.30 provides in relevant part:

“(a) ‘Financial abuse’ of an elder or dependent adult occurs when a person or entity does any of the following:

“(1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

“(2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

“(3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.

Based on these allegations, she seeks statutory damages and reasonable attorney fees and costs.<sup>9</sup> The statutory damages provision exempts the successful plaintiff from the usual limitation on damages found in Code of Civil Procedure section 377.34, which ordinarily precludes recovery for the decedent's pain, suffering, or disfigurement. (Welf. & Inst. Code, § 15657.5, subd. (b).)

The trial court sustained the demurrer to this cause of action without leave to amend, concluding the failure to plead a theory of joint venture liability was fatal to this claim. Plaintiff contends this was error because Amy was subjected to neglect at each residence.

In light of our determination that the complaint alleged the existence of separate joint ventures between Boyd and the owner of each residence, we conclude the allegations are sufficient to state a claim for dependent adult abuse against Fisher and Schmidt, limited to the alleged violations that occurred at his or her own residence. The complaint alleged, for example, that Fisher and Schmidt knowingly assisted Boyd in his interventionist business by housing his clients, including Amy, who were paying for services they did not receive and were being provided with "powerful psychoactive drugs" without a prescription or licensed medical care. Whether these acts occurred and Amy meets the definition of a dependent adult are questions of fact.

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"(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult."

<sup>9</sup> Welfare and Institutions Code section 15657.5, subdivision (b) provides: "Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, and where it is proven by clear and convincing evidence that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse, in addition to reasonable attorney's fees and costs set forth in subdivision (a), compensatory damages, and all other remedies otherwise provided by law, the limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply."

*D. Wrongful Death*

The complaint alleged that Fisher and Schmidt were liable for Amy’s wrongful death because they were involved in an unlawful joint venture that they knew would endanger the lives of vulnerable drug-addicted clients who, like Amy, would be housed at their residences with untrained “sober companions,” and left without adequate supervision, and provided with illegal drugs including marijuana and heroin or morphine while isolated from their parents and families. The trial court sustained their demurrers to this cause of action without leave to amend, concluding the failure to plead a joint venture theory of liability was fatal to this claim.

Given our determination that the complaint alleged the existence of separate joint ventures between Boyd and the owner of each residence, we conclude the wrongful death cause of action does not apply to Fisher, who played no role in Amy’s death. We conclude that Fisher’s demurrer to the wrongful death claim was properly sustained without leave to amend.

We conclude, however, that the court erred in sustaining Schmidt’s demurrer to the wrongful death claim, given the allegations that Amy died at his residence after taking an overdose of drugs that were provided by Schmidt, Boyd, Dolo (a “sober companion”), or were obtained by Amy. The truth of these allegations must be resolved at a future date.

*E. Unfair Competition Law*

The complaint also alleged a claim against Fisher and Schmidt for violation of the UCL. “‘By proscribing “any unlawful” business practice, “[Business and Professions Code] section 17200 ‘borrows’ violations of other laws and treats them as unlawful practices” that the [UCL] makes independently actionable.’ (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.) ‘An unlawful business practice under [Business and Professions Code] section 17200 is “an act or practice, committed pursuant to business activity, that is at the same time *forbidden by law*. [Citation.]’” (*Progressive West Ins. Co. v. Yolo County Superior Court* (2005) 135 Cal.App.4th 263, 287/) “‘Virtually any law—federal, state or local—can serve as a

predicate for an action under Business and Professions Code section 17200. [Citation.]” (Ticconi v. Blue Shield of California Life & Health Ins. Co. (2008) 160 Cal.App.4th 528, 539.)” (Hale v. Sharp Healthcare (2010) 183 Cal.App.4th 1373, 1382.) A private plaintiff has standing to bring a claim under Business and Professions Code section 17200 only if he or she “‘has suffered injury in fact and has lost money or property as a result of the unfair competition’ (Bus. & Prof. Code, § 17204 . . . .)” (Hale, *supra*, at p. 1381.)

Plaintiff alleged that providing medical and other services without the required licenses constituted an unfair business practice in violation of state law and public policy. She alleged that Amy was injured as a result of the unfair competition and incurred damages at minimum of \$222,000. As Amy’s successor in interest, plaintiff requested an injunction precluding Fisher and Schmidt from offering or providing unlicensed services to those with alcohol or drug dependency, and from accepting payment or compensation for such services.

The trial court sustained Fisher’s and Schmidt’s demurrers to this cause of action, finding the complaint failed to plead sufficient facts to demonstrate that they were engaged in an unlawful, unfair, or fraudulent business practice. Plaintiff contends the allegations regarding the violations of numerous licensing and regulatory requirements were sufficient to state a claim against each homeowner for violation of the unfair competition law.

A regulatory statute may form the basis of a claim for violation of the unfair competition law. “The Supreme Court has long held that the ‘unlawful’ practices which form the basis of [an unfair competition law violation] are ‘. . . *any practices forbidden by law*, be it civil or criminal, federal, state, or municipal, statutory, *regulatory*, or court-made. [Citation.] It is not necessary that the predicate law provide for private civil enforcement. [Citation.]’ (Saunders v. Superior Court (1994) 27 Cal.App.4th 832, 838–839, italics added, quoting *People v. McKale* (1979) 25 Cal.3d 626, 632.)” (Stevens v. Superior Court (1999) 75 Cal.App.4th 594, 606.)



Within the parameters of Schmidt's and Fisher's respective joint enterprises with Boyd, limited to the activities at his or her own residence, we conclude the complaint is sufficient to state a claim against each of these homeowners for violation of the unfair competition law.

## II

We turn to the dismissal of Fujihara and Seacliff. The sole issue on appeal is whether the second amended complaint, which is the operative pleading as to Fujihara and Seacliff, stated a cause of action for fraud with regard to a \$27,000 payment that plaintiff had authorized Boyd to charge on her credit card in order to place Amy at Seacliff.

“The well-known elements of a cause of action for fraud are: (1) a misrepresentation, which includes a concealment or nondisclosure; (2) knowledge of the falsity of the misrepresentation, i.e., scienter; (3) intent to induce reliance on the misrepresentation; (4) justifiable reliance; and (5) resulting damages. [Citation.]” (*Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.) “Each element in a cause of action for fraud or negligent misrepresentation must be factually and specifically alleged. [Citation.] The policy of liberal construction of pleadings is not generally invoked to sustain a misrepresentation pleading defective in any material respect. [Citation.]” (*Ibid.*)

According to the operative complaint, neither Seacliff nor Fujihara made any direct representations or promises to plaintiff or Amy. The complaint alleged that *Boyd* had solicited the \$27,000 payment by representing that “he had elected to place Amy at Seacliff’s facility because Amy needed treatment and rehabilitation there.” Boyd knew the representation was false and “had no plan to place Amy at Seacliff.” Nonetheless, he demanded plaintiff’s “credit card so that he could pay Seacliff and Fujihara the sum of \$27,000.” In reliance on Boyd’s representations, plaintiff authorized Boyd’s use of her card, and “Seacliff was credited the sum of \$27,000 as an advance for caring for Amy.” Plaintiff was unaware “that by and through an agreement between Boyd, Fujihara and Seacliff, the \$27,000 fund was distributed as follows: The sum of \$21,500 was remitted

directly to Boyd as a secret payment and profit; \$5,000 was retained by Fujihara as payment on account of a previous debt that Boyd owed Fujihara, and \$500 was retained by Seacliff . . . as payment for facilitating this transaction (the 3% credit card issuer fee x \$27,000 =+- \$500).” Amy was not taken to Seacliff, but “was transported to a hotel room (Fountain Valley Courtyard) for approximately 3 days without supervision, or support, and had no food or money for food.” From there, she went to “a residence in Newport Beach previously rented by Boyd,” where she “was again deprived of proper supervision or any other form of rehabilitation services.”

The trial court sustained the demurrer of Seacliff and Fujihara without leave to amend, and dismissed them from the action. On appeal, plaintiff challenges their dismissal only as to the fraud claim, and has abandoned all other allegations against them including the joint venture theory.

Given the complaint’s failure to allege that any misrepresentations were made by Seacliff or Fujihara, or that they knew of the fraudulent representations made by Boyd, we conclude the allegations are insufficient to support a fraudulent misrepresentation claim against them. Because the elements of a cause of action for fraud must be specifically pleaded, the policy of liberal construction will not save a complaint that fails to allege a misrepresentation and knowledge of the falsity of the misrepresentation. (*Cadlo v. Owens-Illinois, Inc.*, *supra*, 125 Cal.App.4th at p. 519.) The demurrer therefore was properly sustained without leave to amend.

Fujihara and Seacliff moved for sanctions on appeal, arguing the appeal was frivolous and filed for purposes of delay. (Code Civ. Proc., § 907; Cal. Rules of Court, rule 8.276.) They argue that “[n]o reasonable attorney would believe that a fraud action has any merit without at the very least an allegation that the defendant knew a misrepresentation had been made to plaintiff that induced the transaction.” Although we conclude plaintiff is not entitled to relief on appeal, we are not persuaded that counsel deliberately filed a meritless claim or a frivolous appeal. The request for sanctions is denied.

## **DISPOSITION**

We direct the trial court to enter nunc pro tunc an order (judgment) of dismissal in favor of Fisher and Schmidt. Plaintiff's purported appeal from the June 26, 2013 minute order sustaining Fisher's and Schmidt's demurrers is deemed to be taken from that order (judgment) of dismissal. The order (judgment) of dismissal in favor of Fisher and Schmidt is reversed.

The order sustaining Fisher's demurrer without leave to amend is affirmed as to the causes of action for fraudulent misrepresentation (2nd cause of action), fraudulent concealment (3rd cause of action) and wrongful death (6th cause of action); the order is reversed as to the causes of action for dependent adult abuse (5th cause of action) and unfair business practices (7th cause of action).

The order sustaining Schmidt's demurrer without leave to amend is affirmed as to the causes of action for fraudulent misrepresentation (2nd cause of action) and fraudulent concealment (3rd cause of action); the order is reversed as to the causes of action for dependent adult abuse (5th cause of action), wrongful death (6th cause of action), and unfair business practices (7th cause of action).

The order (judgment) of dismissal in favor of Fujihara and Seacliff is affirmed. The motion for sanctions is denied. Fujihara and Seacliff are awarded their costs on appeal. As between plaintiff, Fisher, and Schmidt, each party is to bear his or her own costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.