2d Civ. No. B318956

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 4

MARIA NARANJO, et al.

Plaintiffs and Respondents,

v.

JOSE R. INZUNZA, et al.

Defendants and Appellants.

Appeal from Los Angeles County Superior Court
Case No. BC678942
Honorable Mel R. Recana

APPELLANT JOSE R. INZUNZA'S REPLY BRIEF

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INTRODUCTION

Two basic principles accompany damages awards: (1) evidence must support them; and (2) those seeking them must have standing to bring the underlying claims. In this wrongful death case, the noneconomic damages awarded to plaintiffs/respondents Maria Naranjo, Carla Silva-Naranjo, and Luis R. Naranjo violate one or the other of those principles.

Excessive noneconomic damages awarded to widow Maria Naranjo. Plaintiffs failed to proffer any real evidence that could possibly justify the jury's $3.625 million noneconomic damages awarded to Maria. Rather than addressing the deficiency of plaintiffs' evidence, the respondents' brief argues that evidence of plaintiffs' close family bonds and the decedent's kindly demeanor was neither improper nor prejudicial—a proposition no one challenges on appeal. This argument avoids addressing the lack of evidence in the record supporting the noneconomic damages. The respondents' brief also ignores the proper legal analysis—i.e., that in assessing the noneconomic damages awarded to Maria, the jury must consider Maria's relationship with decedent Jose I.V. Naranjo *at the time of his death*. The evidence of Jose's kind demeanor towards Maria involves events that occurred decades ago, while the remaining evidence regarding her loss of society damages is vague and conclusory.

Multiple prejudicial errors made by the trial court caused this noneconomic damages award to be excessive as a matter of

law. The trial court erroneously:

- Admitted irrelevant testimony by a nonparty involving purely sentimental loss;
- Allowed plaintiffs' counsel to repeatedly accuse the defense of denying liability—even though liability had been deemed admitted and the trial court had expressly prohibited the defense from offering any evidence regarding liability; and
- Allowed plaintiffs' counsel to personally vouch for plaintiffs.

Despite contrary arguments in the respondents' brief, the fact that defendant/appellant Jose R. Inzunza does not challenge the other plaintiffs' noneconomic damages awards as excessive does not undermine the challenge as to Maria's noneconomic damages award. It is entirely appropriate for a defendant to challenge only one category of damages based on insufficient evidence, and here, the evidence supporting Maria's $3.625 million noneconomic damages award is virtually nonexistent.

Arguments in the respondents' brief attempting to excuse plaintiffs' improper evidence and arguments at trial also are irrelevant. It doesn't matter that the defense did not stipulate to liability (it was determined by way of deemed admissions), or that plaintiffs' counsel did not make personal attacks on defense counsel or defendants in addition to vouching for the plaintiffs. Neither has any bearing on whether the evidence was prejudicial.

Given the lack of evidence supporting the noneconomic damages awarded to Maria, there is a reasonable chance—more than an abstract possibility—that the amount would have been different without the prejudicial errors made by the trial court.

Improper award of noneconomic damages to adult stepchildren Carla Silva-Naranjo and Luis R. Naranjo. The decedents' stepchildren financially supported the decedent, rather than the other way around. As they were not dependents at the time of their stepfather's death, they lacked standing to bring a wrongful death claim. Yet they, too, recovered improper noneconomic damages. The trial court erred by mis-instructing the jury as to the legal standard for stepchild standing in a wrongful death action.

Authorities cited in the respondents' brief only highlight the fact that the adult stepchildren were not financially dependent on their stepfather. There is *no* evidence of any net support from their stepfather at the time of his death. And the law is clear that financial dependence under the wrongful death statute must be *actual dependence*—i.e., dependence for the necessaries of life *at the time of death*. The trial court erroneously instructed the jury with plaintiffs' proposed special jury instruction regarding stepchild standing (which implied that dependence could occur at any point in the stepchild's life), rather than defendants' proposed special jury instruction (which contained the correct standard). Contrary to plaintiffs' waiver arguments, the defense's proposed instruction set forth the proper temporal standard as set forth by California law.

The awards as to Maria Naranjo, Carla Silva-Naranjo, and Luis R. Naranjo must be reversed. The noneconomic damages awarded to Maria Naranjo should be vacated and the matter remanded to the trial court to retry those damages. The noneconomic damages awarded to Carla Silva-Naranjo and Luis R. Naranjo also should be vacated, with instructions to the trial court to enter a defense judgment as to them.

Finally, the respondents' brief does not contest that if the judgment is reversed against defendant/appellant CRGTS, Inc., the judgment against defendant/appellant Inzunza must be reversed, as the liability of the two is congruent (indeed, CRGTS's liability is wholly dependent on that of Inzunza) and it would be inconsistent to have differing verdicts against the two.

ARGUMENT

I. The Noneconomic Damages Awarded To Maria Were Excessive As A Matter Of Law.

A. The Evidence Was Insufficient To Support An Award Of $3.625 Million In Noneconomic Damages.

The noneconomic damages awarded to Maria are supported by nothing except:

(1) Maria's one-worded "Yes" answers to plaintiffs' counsel's questions regarding possible bases for noneconomic damages that were listed in the jury instruction (4RT 1558-1559; 4AA 933);

(2) Maria's two-word responses of "My husband"—with no elaboration or detail—when asked "who would get up in the middle of the night when something happened" and who would provide her protection at night (4RT 1558); and

(3) Maria's testimony that Jose organized family gatherings and celebrations (4RT 1561-1563).[1]

That's it.

As a matter of law, these cryptic responses are not substantial evidence and, thus, cannot justify a multi-million-

[1] For purposes of clarity, we again refer to plaintiffs/respondents collectively as "plaintiffs" and individually by their first names. We refer to decedent Jose I.V. Naranjo as "Jose" and defendant/appellant Jose R. Inzunza as "Inzunza." We intend no disrespect.

dollar noneconomic damages award. If that were the case, any plaintiff could prevail on a claim simply by reading a list of elements in a jury instruction and testifying—without explanation—that each element was met.

One-word "yes" responses to an attorney's blanket statements without follow-up questions do not support a finding in plaintiffs' favor. (See *Honchariw v. FJM Private Mortgage Fund, LLC* (2022) 83 Cal.App.5th 893, 904 [one-word "yes" response to question of whether a late charge represented a fair and reasonable estimate, without follow-up questions or documentary support, was insufficient to support a finding that a mortgage fund had attempted to estimate its damages in the amount of breach and that the late fee represented the reasoned outcome of that attempt].) Nor, as plaintiffs state in another section of their brief, do counsel's leading questions qualify as "evidence." (RB 68.) Counsel's leading questions listing each jury instruction element followed by Maria's conclusory responses are not evidence at all.

The lack of evidence also contradicted plaintiffs' counsel's description of the law in closing argument: He argued that each of the 11 noneconomic damages elements is separate, and that the jury "must decide the damages for each of the elements of loss." (4RT 1852; see Inzunza AOB 24-25.) But he never even asked Maria whether Jose provided her with two of the elements: "love" and "the enjoyment of sexual relations." (4RT 1558-1559, 1891; 4AA 910.) So, the record is devoid of even conclusory responses as to the existence of those two categories of loss.

As for the remaining elements, Maria's conclusory responses do not support the jury's $3.625 million noneconomic damages award.

Rather than addressing plaintiffs' deficient evidence, the respondents' brief argues that evidence of "close family bonds" is neither improper nor prejudicial. (RB 73-76.) But that argument misses the mark. Inzunza never contended that the jury could not consider such evidence. Indeed, Inzunza recognized that evidence of a close family unit and Jose's kindly demeanor are relevant to Maria's claim for noneconomic damages. (Inzunza AOB 33.) Yet, as explained in the opening brief, such evidence does not qualify as substantial evidence of any quantifiable loss of society, comfort, and affection—or any other noneconomic damages elements—specifically as to Maria.[2] (*Ibid.*) Plaintiffs had the burden to prove these elements. Accordingly, plaintiffs' arguments regarding the *admissibility* of such evidence—which Inzunza does not contest—are inapposite.

For instance, the respondents' brief relies on *Griott v. Gamblin* (1961) 194 Cal.App.2d 577 and *Benwell v. Dean* (1967)

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[2] The respondents' brief also states: "Inzunza argues that testimony from non-plaintiffs about family events and activities that did not directly involve Maria Naranjo somehow improperly influenced the jury's verdict solely with respect to Maria's non-economic damages amount." (RB 73.) The only non-plaintiff's testimony Inzunza challenges is Jose's granddaughter's irrelevant testimony regarding her quinceañera, her personal experience, and her non-party siblings' personal experiences with their grandfather's passing. (See Inzunza AOB 38-40; see also § I.C.1, *post*.)

249 Cal.App.2d 345, 349, to support the argument that it was not prejudicial to permit the jury to hear about the family's relationship prior to the time of death. (RB 73-74.) But the "sole question" the Court of Appeal decided in *Griott* was whether the damages awarded were so excessive as to show passion or prejudice. (*Id.* at p. 580.) It did not address the admissibility of evidence regarding the closeness of the family unit during the decedent's life and therefore does not support the respondents' brief's argument. And, while *Benwell* noted that "evidence of the nature of the personal relationship that existed between the decedent and the beneficiaries of a wrongful death action has a bearing on the compensation for loss of society, comfort and protection, and is ordinarily admissible in such an action," the court nonetheless affirmed the trial court's exclusion of the evidence. (*Id.* at pp. 349, 355.) Thus, *Benwell* does not support the respondents' brief's argument that other cases have "held admissible such evidence of the closeness of the family unit, the warmth of feeling between family members." (RB 74.)

In any event, Inzunza does not, as plaintiffs claim (RB 73-74), argue that the jury could not consider evidence of the close relationship between the plaintiffs and Jose. Nor does Inzunza challenge the admissibility of evidence describing Jose's kind demeanor. (See RB 74-75, citing *Cook v. Clay St. Hill R.R. Co.* (1882) 60 Cal. 604, 609 [testimony regarding decedent's kind and loving demeanor and relationship with his family was admissible]; *Krouse v. Graham* (1977) 19 Cal.3d 59, 68 [listing cases holding admissible evidence of family unit closeness and

decedent's kind and loving character]; *Corder v. Corder* (2007) 41 Cal.4th 644, 661-662 [pecuniary value of the society, comfort, and protection that is lost may be considerable in cases where decedent had demonstrated a "kindly demeanor" toward the statutory beneficiary]; *Soto v. BorgWarner Morse TEC Inc.* (2015) 239 Cal.App.4th 165, 201 [same].)

Plaintiffs' argument that "witnesses are not limited to describing specific moments in time that defendants deem appropriate" because the jury may consider evidence of close family bonds "over long periods of time" (RB 73) also misses the mark. Such evidence is irrelevant unless those ties continued until the decedent's death. In assessing noneconomic damages awardable to Maria, the law considers her relationship with Jose at the time of death.

Nelson v. County of Los Angeles (2003) 113 Cal.App.4th 783, provides the correct analysis. It assessed the plaintiffs' *present* relationship with the decedent. (*Id.* at p. 793-794.) Evidence that the decedent had not seen the plaintiffs "at any time during the 20 years preceding his death" and only contacted them through occasional phone calls and about a half-dozen cards over several years was insufficient to support a noneconomic damages award of $2 million. (*Ibid.*) Although *Nelson* may involve somewhat different facts (see RB 76), these different facts do not affect its holding that requires the factfinder to evaluate noneconomic damages based on plaintiff's *current* relationship with the decedent (*Nelson*, at pp. 793-794; see also *Mendoza v. City of West Covina* (2012) 206 Cal.App.4th 702, 720 ["Damages

for wrongful death are measured by the financial benefits the heirs were receiving *at the time of death*, those reasonably to be expected in the future, and the monetary equivalent of loss of comfort, society, and protection," italics added]).

Indeed, plaintiffs' cases prove this very point. (RB 73-74, citing, e.g., *Griott*, *supra*, 194 Cal.App.2d at p. 579 [noting that "[t]he closeness of the family unit *continued to Mr. Griott's death* and was predicated upon the great love and devotion that he gave to the comfort, society and protection of his children," and describing specific examples of how Mr. Griott provided that comfort, society, and protection to his children, italics added]; and *Cook*, *supra*, 60 Cal. at p. 609 [plaintiff testified that she and decedent shared a happy married life, that she was dependent on decedent in the eight years leading to his death as she had been an invalid and was unable to leave the house, and that he had been very kind and attentive *during that time*].)

The evidence of Jose's kind demeanor towards Maria consisted of events that occurred decades ago. For instance, Maria testified that Jose stayed with her in the hospital 40 years ago, when Luis had gotten sick as a child. (4RT 1554-1555.) She also testified that on their first date—also decades ago—Jose invited her mother and children to join them at Disneyland and showed kindness toward her children. (4RT 1555-1556.) Both of these instances were irrelevant to Maria's present relationship with Jose, and both were insufficient to demonstrate Maria's loss of comfort, care, or protection at the time of Jose's death.

As for the argument in the respondents' brief that "the jury was expressly instructed not to consider sadness or grief in its deliberations or verdict," and that this Court must presume the jury followed the instruction (RB 76), that presumption is only true "[a]bsent some contrary indication in the record" (*Soto*, *supra*, 239 Cal.App.4th at p. 200). The lack of evidence supporting the noneconomic damages awarded to Maria indicates that the jury improperly included in its calculations some measure of damages for Maria's emotional distress. (See Inzunza AOB 36-37.)

Other than Maria's conclusory responses to counsel's leading questions, the only evidence of Maria and Jose's present relationship was Maria's testimony that Jose organized family gatherings and celebrations (4RT 1561-1562), and that he would get up in the middle of the night "when something happened" in a house where other adult children also lived (4RT 1558, 1569). But there's no evidence as to when or how often this occurred. This limited evidence is too vague, indefinite, and insufficient to demonstrate any quantifiable loss of society, comfort, affection, or any other relevant factor compensable to Maria as noneconomic damages. It cannot possibly support a $3.625 million award.[3]

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[3] The respondents' brief notes multiple times that the defense did not object to alleged evidence of Jose's close family bonds with all of his statutory beneficiaries. (E.g., RB 13-14, 28, 32, 38, 39, 42, 75, 76.) Again, Inzunza does not argue that such testimony was improper. It was simply irrelevant to the non-economic damages analysis—to the extent the evidence did not pertain to Maria—or it was insufficient to support the $3.625 million in

B. Because The Evidence Could Not Support The $3.625 Million Award, The Only Plausible Explanation Was That It Resulted From Passion Or Prejudice.

The lack of evidence establishing Maria's pecuniary loss of society and affection means the $3.625 noneconomic damages award is unsupportable. The only plausible explanation for the award is that the jury improperly based it on passion or prejudice. (*Mendoza*, *supra*, 206 Cal.App.4th at p. 721.)

Plaintiffs mischaracterize Inzunza's challenge of Maria's noneconomic damages award—and not the other plaintiffs' noneconomic damages awards—"as though the jury was able to turn its passion and corruption on and off like a switch." (RB 72; see also RB 73.) This argument lacks merit. As Inzunza explained in his opening brief, each child's noneconomic damages award was only about 12 percent of Maria's noneconomic damages award. (Inzunza AOB 45, fn. 5 [citing 4AA 957-959].) The respondents' brief cites no authority requiring a party to challenge all categories of damages that the jury awarded to demonstrate that one category of damages is excessive. That's likely because multiple authorities hold otherwise—that it *is* appropriate to challenge only one category of damages based on insufficient evidence. (See *Bigler-Engler v. Breg, Inc.* (2017)

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noneconomic damages awarded to Maria. (See *Corder*, *supra*, 41 Cal.4th at p. 661 [in awarding noneconomic wrongful death damages, jury may consider decedent's "'kindly demeanor' *toward the statutory beneficiary*" and whether decedent "rendered assistance or 'kindly offices' *to that person*"], italics added.)

7 Cal.App.5th 276, 284-285 [appealing the jury's award of noneconomic and punitive damages, but not economic damages]; *Briley v. City of West Covina* (2021) 66 Cal.App.5th 119, 123-124 [challenging the jury's award of noneconomic damages but not economic damages].) Here, Inzunza contests the noneconomic damages awarded to Maria because the evidence supporting that $3.625 million award was insufficient. The jury instructions were clear that the jury "should decide the case of each plaintiff *separately as if it were a separate lawsuit*," and "[e]ach plaintiff is entitled to *separate consideration* of each plaintiff's own claim(s)." (4AA 945, italics added.)

The respondents' brief disagrees that the noneconomic damages award resulted from the jury's passion or prejudice because the jury awarded less than what plaintiffs' counsel requested. (RB 74-75.) But counsel's inflated request has no bearing on the excessive damages analysis here. By that logic, plaintiffs could have asked for $100 million in noneconomic damages and an award of $50 million—half of the requested amount—would have "indicat[ed] a sober and dispassionate review of the evidence." (RB 14.) The amount awarded must have sufficient evidentiary support. That was not the case here.

C. Improper Evidence And Arguments At Trial Prejudiced Defendants.

The lack of evidence supporting the jury's award suggests that the jury failed to base its award on the evidence, and instead was influenced by improper factors. (See *Bigler-Engler*, *supra*, 7 Cal.App.5th at pp. 304-305 [reversing the jury's excessive

noneconomic damages award because it "was excessive, not supported by the evidence, and motivated by passion or prejudice"].) For instance, the jury may have improperly relied on "inflammatory evidence, misleading jury instructions, improper argument by counsel, or other misconduct." (*Id.* at p. 299; see also *Mendoza*, *supra*, 206 Cal.App.4th at pp. 720-721 [reviewing courts will not defer to the jury's discretion as to a damages award if "the record shows inflammatory evidence, misleading instructions, or improper argument by counsel that would suggest that the jury relied on improper considerations"].)

As explained in Inzunza's opening brief (Inzunza AOB 29), in assessing whether a trial error was prejudicial, this Court independently determines whether there was a reasonable chance, more than an abstract possibility, of a different result. (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 715 [prejudice means "merely a *reasonable chance*, more than an *abstract possibility*" of a different outcome, original italics].)

As we now show, two errors made by the trial court were reasonably probable to have contributed to the excessive $3.625 million in noneconomic damages awarded to Maria in this case: (1) allowing plaintiffs' counsel to introduce irrelevant and highly prejudicial sympathy evidence via Jose's granddaughter's testimony; and (2) allowing plaintiffs' counsel to make arguments that were irrelevant, improper, and inflammatory throughout trial.

1. The granddaughter's testimony is reasonably probable to have contributed to the excessive verdict.

Over defense counsel's repeated objections, the trial court allowed plaintiffs' counsel to garner sympathy towards plaintiffs by eliciting irrelevant, emotional testimony from Jose's granddaughter about her quinceañera. (3RT 971-972.) Over defense counsel's objections, the court also allowed plaintiffs' counsel to proffer a photo of Jose's granddaughter standing over her grandfather's casket. (3RT 973-975.) The trial court later questioned the relevance of this non-party testimony—the vast majority of which focused on her own grief and personal experiences with her grandfather—but the court, nonetheless, allowed the prejudicial testimony to remain on the record. (3RT 981-983.)

The granddaughter's testimony was inadmissible. Not only was she not a party to this case, but her testimony was irrelevant to weighing the factors the jury was supposed to consider in awarding plaintiffs' damages. (See 4AA 933.) And, even if she were a party to the case, her testimony would be irrelevant because plaintiffs may not recover "for such things as the grief or sorrow attendant upon the death of a loved one, or for [their] sad emotions, or for the sentimental value of the loss." (*Nelson*, *supra*, 113 Cal.App.4th at p. 793.)

Plaintiffs do not dispute that the granddaughter's testimony as to the quinceañera was improper. They only assert that the testimony was brief (RB 27, 75) and wrongly assert that

the defense objection to this testimony "was sustained" (RB 75). In fact, the trial court *overruled* defense counsel's repeated objections to this testimony and, despite eventually agreeing with the defense that it was irrelevant, neglected to strike the testimony from the record. (3RT 971-975, 981-983.) As the first trial witness, the granddaughter testified about her feelings, personal experience, and her siblings' personal experiences with their grandfather's passing. (3RT 976-979, 981.) Her testimony—improperly offered to evoke sympathy for plaintiffs—set the tone for the entire trial. (See *Martinez v. Department of Transportation* (2015) 238 Cal.App.4th 559, 566 [an attorney must not "pander to the prejudice, passion or sympathy of the jury"]; *Briley*, *supra*, 66 Cal.App.5th at p. 142 [the jury "may not abandon analysis for sympathy," internal quotation marks omitted].)

Proffering a nonparty's highly emotional, irrelevant testimony constitutes impermissible pandering to the jury and impedes the defense's right to a fair trial on damages. (See *Howland v. Oakland Consol. St. Ry. Co.* (1896) 115 Cal. 487, 493-495 [reversing judgment, in part, because plaintiff's counsel improperly questioned plaintiff regarding his previous involvement in a train collision, "bringing specially and prominently into the case a fact in itself wholly irrelevant to the issues, which, in view of the nature of the action, was well calculated to excite the sympathy of the jury in behalf of plaintiff in his misfortune, and possibly induce a verdict in excess of that warranted by any proper evidence in the case"]; *People v. Burns*

(1952) 109 Cal.App.2d 524, 541-542 [trial court abused its discretion by admitting, over defendant's objection, three photographs of the decedent where "a view of them was of no particular value to the jury," and it was "obvious that the only purpose of exhibiting them was to inflame the jury's emotions against defendant"]; *McGaw v. Wassmann* (Wis. 1953) 57 N.W.2d 920, 923-924 [reversing and remanding for a new trial in a personal injury case arising from a car accident: Plaintiff's counsel described to the jury a monument built in honor of plaintiff's son who had been killed while serving as a soldier in the United States Army, which was "improper and an unwarranted emotional appeal to the jury, which was obviously intended to create bias and rouse feelings to sympathy and favoritism toward the plaintiff"].)

The trial court instructed the jury not to "let bias, sympathy, prejudice, or public opinion influence [its] decision." (4AA 939.) But, a court should not presume that the jury followed its instructions, or that the verdict reflects the legal limitations imposed by the instructions where there is "some contrary indication in the record." (*Soto*, *supra*, 239 Cal.App.4th at p. 200.) Here, the evidence supporting Maria's noneconomic damages award was insufficient, and the record is clear that: (1) the granddaughter was a nonparty; and (2) the trial court, while first overruling the defense's objections as to relevance, later *agreed* with the defense that the granddaughter's testimony was irrelevant (but nevertheless neglected to strike the testimony from the record). (3RT 971-975, 981-983.) These factors indicate

that—despite the court's instruction to the jury that it "must not let bias, sympathy, prejudice, or public opinion influence [its] decision" (4AA 939)—the jury either was unaware that the testimony was prejudicial or, despite instructions to the contrary, was swayed by this improper evidence in awarding noneconomic damages to Maria.

Given the lack of evidence supporting the noneconomic damages awarded to Maria, there is a reasonable chance—more than an abstract possibility—that the amount would have been different without the granddaughter's testimony. (*College Hospital*, *supra*, 8 Cal.4th at p. 715.)

2. Plaintiffs' counsel's improper advocacy is reasonably probable to have contributed to the excessive verdict.

Plaintiffs' counsel's improper advocacy throughout trial—which is reasonably probable to have contributed to the excessive noneconomic damages award to Maria—consisted of the following:

- Accusing the defense of denying and failing to disprove liability *in an admitted liability case*;
- Implying that the defense was responsible for the six years it took for trial to occur;
- Personally vouching for plaintiffs;
- Putting himself in plaintiffs' shoes and asking the jury to do to the same; and

- Arguing a legally improper damages formula.

(See Inzunza AOB 40-45.)

The respondents' brief fails to overcome the prejudice caused by counsels' improper advocacy. First, plaintiffs contend that because defendants did not stipulate to liability before trial, plaintiffs' counsel had the right to repeatedly accuse the defense of denying, and failing to disprove, liability where the trial court had deemed liability admitted. (RB 77.) Whether or not defendants admitted liability had no bearing on whether such accusations were proper. The trial court had already deemed defendants liable and—at plaintiffs' request—*prohibited* the defense from offering any evidence as to liability. (3AA 451-452, 509.) Defense counsel complied with the court's express order and informed the jury in his opening statement that the scope of the evidence was limited to damages. (3RT 949.) It therefore was entirely improper and misleading for plaintiffs' counsel to reiterate that the defense "had not brought you a single witness to deny or dispute any fact in the case." (4RT 1847.) Counsel continued to make these accusations during closing argument even after the defense objected to them and the trial court, yet again, deemed liability admitted. (4RT 1844-1845, 1847-1848.)

Plaintiffs try to excuse counsel's misleading and inflammatory comments on the basis that he "never made personal attacks on defense counsel or defendants themselves." (RB 77.) So what? His improper and prejudicial arguments still were reasonably probable to have contributed to the excessive verdict. He personally vouched for plaintiffs and asserted

personal knowledge of and personal belief in plaintiffs, which the trial court allowed over defense counsel's objection. (4RT 1847.) As a matter of law, such statements are improper. (See *People v. Tyler* (1991) 233 Cal.App.3d 1456, 1459-1460 [neither prosecutor nor defense counsel may assert personal belief in the righteousness of their client's cause]; *Garden Grove School Dist. of Orange County v. Hendler* (1965) 63 Cal.2d 141, 143 [counsel's misconduct denying defendants a fair trial included alluding to personal knowledge in summation to the jury].)

Plaintiffs' counsel also improperly implied that the defense was responsible for the litigation delay. (4RT 1853 ["The family is here for justice. After six years, they beg you for justice"].) And he violated the "golden rule" by asking the jurors to put themselves in plaintiffs' position. (4RT 1880-1881 ["It's up to you to see that justice is done for all of us"]; see *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 797 [categorically prohibiting "golden rule" arguments].) Even though the court sustained defense objections to his improper statements, the bell had already been rung.

Finally, plaintiffs' counsel misled the jurors with a legally improper, and inherently inflated, noneconomic damages formula. (Inzunza AOB 43-45; 4RT 1856-1857.) The fact that plaintiffs' counsel provided the jury with the same formula for each plaintiff rather than just for Maria does *not* moot the issue, as asserted in the respondents' brief. (RB 77.) Again, a party does not have to challenge all damages as excessive to demonstrate that one category of plaintiff's damages is excessive.

(See *Bigler-Engler*, *supra*, 7 Cal.App.5th at pp 284-285 [challenging only noneconomic and punitive damages awards, but not economic damages award]; *Briley*, *supra*, 66 Cal.App.5th at pp. 123-124 [challenging only noneconomic damages award but not economic damages award]; see also 4AA 945 [instructing the jury to "decide the case of each plaintiff separately as if it were a separate lawsuit"].) Plaintiffs cite no contrary authorities. Inzunza contests the noneconomic damages awarded to Maria due to the lack of evidence supporting that specific $3.625 million award. That lack of evidence suggests that the jury failed to base its award to Maria on the evidence, but instead was influenced by improper factors—including a proposed damages formula that likely would yield duplicative (i.e., excessive) noneconomic damages. (See *Bigler-Engler*, *supra*, 7 Cal.App.5th at p. 304.)

The lack of evidence supporting the noneconomic damages awarded to Maria also constitutes a clear "indication in the record" that the jury was swayed by counsel's improper arguments throughout trial, despite the jury being instructed that attorney arguments are not evidence of damages (4AA 937), and that the jury must not let bias, sympathy, or prejudice influence its decision (4AA 939). (See *Soto*, *supra*, 239 Cal.App.4th at p. 200 [courts will not presume that the jury follows its instructions and that the jury's "verdict reflects the legal limitations those instructions imposed" where there is "some contrary indication in the record"].)

Accordingly, there is a reasonable chance—more than an abstract possibility—that the amount the jury awarded to

Maria would have been significantly less in the absence of counsel's inflammatory and improper arguments. (*College Hospital*, *supra*, 8 Cal.4th at p. 715.)

II. The Awards In Favor Of Adult Stepchildren Carla And Luis Must Be Vacated.

A. Carla And Luis Lacked Standing To Bring A Wrongful Death Claim.

1. Actual dependence—i.e., present dependence—on the decedent for the necessaries of life is a prerequisite to wrongful death claim standing.

To recover wrongful death damages, Carla and Luis who were Jose's surviving stepchildren claiming dependence under Code of Civil Procedure, section 377.60, subdivision (b)(1), must be "actually dependent, to some extent, upon the decedent for the necessaries of life." (*Chavez v. Carpenter* (2001) 91 Cal.App.4th 1433, 1446.)

While there is no strict formula for determining dependence, California case law holds that dependence should be measured at the time of the decedent's death. (*Hazelwood v. Hazelwood* (1976) 57 Cal.App.3d 693, 698 [dependency in the wrongful death context means individuals "who, *at the time of [decedent's] death*, were actually dependent, to some extent, upon the decedent for the necessaries of life," italics added]; see also *Chavez*, *supra*, 91 Cal.App.4th at p. 1446 [quoting *Hazelwood*].) At most, courts may consider a plaintiff's dependence during the two years before the decedent's death. (*Chavez*, at pp. 1436

[decedent died in 1996], 1447 [considering evidence of decedent's contributions for necessities in 1994].)

Plaintiffs claiming wrongful death damages therefore are not "actually dependent" on the decedent if the evidence does not show they depended on the decedent for the necessaries of life in the last two years before the decedent died. As neither Carla nor Luis made this showing, they failed to satisfy their burden of proving their standing to sue for wrongful death.

2. The evidence did not show that Carla depended on Jose at or near the time of Jose's December 2015 death.

Carla proffered *no* evidence that Jose aided her "'in obtaining the things, such as shelter, clothing, food and medical treatment,'" which she could and should not do without at the time of his death in 2015. (*Chavez*, *supra*, 91 Cal.App.4th at p. 1446.) Although Carla testified that Jose provided her with financial assistance in 2015 when "times were a little difficult," the bank statement allegedly reflecting cash deposits from Jose in 2015—which plaintiffs' counsel showed Carla to refresh her recollection—was never offered into evidence. (3RT 997-998.) Plaintiffs proffered *no* evidence establishing how or when Carla supposedly received the money during the time that Jose lived in a different state and only made trips down to Los Angeles once a year. (*Ibid.*)

Carla testified that she could not recall exactly how she used the cash deposits, although she recalled maybe using them for the mortgage, bills, or children's sports registration and school

supplies.[4] (3RT 999.) In any event, plaintiffs proffered *no* evidence satisfying the legal standard showing that she depended on the alleged cash deposits for the necessaries of life rather than just niceties. (*Ibid.*; see *Chavez*, *supra*, 91 Cal.App.4th at p. 1446 [if financial support "'merely makes available to [the stepchild] some of the niceties of life they might not otherwise be able to afford,'" the stepchild cannot claim dependence].) And no authorities hold that either children's sports registration or school supplies constitute "necessaries of life."

Carla's testimony that Jose provided financial assistance more than a decade before Jose's passing was irrelevant. (See *Hazelwood*, *supra*, 57 Cal.App.3d at p. 698 [financial dependency measured at the time of the decedent's death].) It was also irrelevant that Jose gave Carla a used car that she no longer had, and may have stopped using more than ten years before trial. (3RT 995, 1006.) Plaintiffs contend that "the jury could reasonably infer Carla then traded in that vehicle toward the

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[4] Plaintiffs imply that the opening brief misrepresents the record when it asserts that Carla "*possibly* used [the cash deposits] for the mortgage, bills, and children's sports registration and school supplies" since Carla did not use the word "possibly" in her testimony. (RB 30, fn. 4, citing Inzunza AOB 21.) But Carla testified that she did not recall details as to how she used the alleged cash deposits: "I cannot recall exactly what they were used for, but we used them for the mortgage, we used it for our bills, for my children's supplies, registration, for sports." (3RT 999.) She merely listed a few *possible* uses. On the other hand, more than once, the respondents' brief omits the first half of the sentence—in which Carla was clear that she did not recall exactly how she used the cash deposits. (RB 30, 85.)

purchase of another vehicle" (RB 69, bold omitted), but this is pure speculation that does not support a finding of dependance. Although Carla testified that Jose helped with car repairs, she provided no timeframe. (3RT 996.) Similarly, Carla testified that Jose helped her with school expenses such as books and tuition, but she had not been in school for 25 years. (3RT 996-997, 1005.) As a matter of law, this evidence does not support a finding that Carla was actually dependent on Jose for the necessaries of life at the time of his death.

On the other hand, there was ample testimony by Carla, Maria, and Luis that Carla provided her parents financial help whenever she could. (3RT 1006-1007 [Carla testified that in 2015, she provided $100 to Maria and $100 to Jose whenever she was able to do so]; 3RT 1243 [Luis testified at his deposition, read at trial, that Carla contributed to their mother's household expenses]; 4RT 1575-1576 [Maria testified that Carla would provide her financial help "whenever she could" and "would send us [Maria and Jose] $100 every month, 100 to each of us"].)

The evidence does not support a finding that Carla actually depended on Jose at the time of his death. At most, the evidence demonstrates that Carla had a reciprocal relationship with Jose, in that they helped each other out when they could. But there's no evidence of any net—much less necessary—support from Jose. Plaintiffs cite *Perry v. Medina* (1987) 192 Cal.App.3d 603, 610, in which decedent's purchasing $100 worth of groceries for plaintiff each month and giving plaintiff an additional $50 each month was sufficient to deem plaintiff financially dependent on

decedent under the wrongful death statute, because decedent aided plaintiff "in obtaining the things, such as shelter, clothing, food and medical treatment, which one cannot and should not do without." (RB 66.) In *Perry*, plaintiff "stated that she had a net gain on the groceries" and it therefore was clear that she was "'*actually* dependent, to some extent, upon the decedent for the *necessaries* of life.'" (*Id.* at pp. 606, 610, original italics.) Here, there is no evidence that Carla had a net gain on any financial support from Jose. The evidence shows just the opposite.

Plaintiffs also cite *Chavez*, in which the "defendant also argued appellants were not actually financially dependent on the decedent's contributions, because their own income was sufficient to support them without his assistance." (RB 82, citing *Chavez*, *supra*, 91 Cal.App.4th at pp. 1145-1448.) But, unlike here, evidence of financial dependence for the necessaries of life in *Chavez* was clear: The decedent paid plaintiffs $100 a week, which helped defray the cost of housing and utilities, regularly provided groceries and grocery money, and regularly contributed extensively to household services, property upkeep, and loan payments. (91 Cal.App.4th at p. 1447.) Indeed, one plaintiff declared: "During this period [two years before decedent's death], we came to rely on the weekly contributions of money, groceries and services provided by [decedent] to make ends meet for our ordinary and customary expenses." (*Ibid.*)

Here, there was no evidence that Carla relied on Jose for the necessaries of life at the time of his death. In fact, there was ample evidence that—unlike in *Chavez*—the contributions *flowed*

the other way, from Carla to Jose. Carla therefore could not have been "actually dependent" on Jose such that she had standing to claim wrongful death damages.

3. The evidence did not show that Luis depended on Jose at or near the time of Jose's December 2015 death.

Nor is there evidence supporting a finding that Luis actually depended on Jose for the necessaries of life. The only evidence of any financial dependence was Luis's testimony that Jose—who owned Jose and Sons Drywall, where Luis worked full time—would pay him and other employees when business was slow. (3RT 1213-1215.) But this does not demonstrate Luis's financial dependence on Jose at the time of Jose's death. The drywall-company entity was legally separate from Jose. Financial support from the company to an employee out of the company's business account is not the same as financial support from Jose to his stepson.

The respondents' brief offers no authority suggesting that a stepchild's financial dependence can be established by proffering evidence that the stepchild worked for a stepparent. Plaintiffs want the Court to simply take their word for it that the lack of any case law permitting them to establish a stepchild's financial dependence in this way doesn't matter. (RB 69.) *Chavez*, cited in the respondents' brief doesn't support this argument. (See RB 69-70.) Because while the *Chavez* decedent "helped out from time to time with [one of the plaintiff's] cleaning business when he was shorthanded or overworked," the decedent

himself regularly provided plaintiffs with $100 a week, groceries and grocery money, and other services. (91 Cal.App.4th at p. 1447.) There was no question that the *Chavez* plaintiffs relied on the decedent for life's necessaries at the time of the decedent's death. Here, Luis claims financial dependence at the time of Jose's death simply because he worked for Jose's company and continued to earn an income when business was slow. That is insufficient to satisfy plaintiffs' burden.

Plaintiffs also claim that "the source of the money the adult children used to contribute to the household was from salary paid by the Decedent himself from his own businesses. The reasonable inference is, of course, that this was merely an exercise in promoting responsibility and had no bearing on whether Decedent was capable of helping Carla and Luis in difficult times." (RB 70, italics omitted.) Even if this is true, this argument would only apply to Luis, as Carla did not work for any of Jose's businesses—she was a teacher and her husband worked as a baker. (3RT 994, 1005.) As for Luis, this argument only highlights the distinction between the drywall company's business account and Jose's personal finances.

Plaintiffs cryptically argue that "any conflicting or confused testimony about money given by adult children to their parents makes the testimony of Carla and Luis impossible or inherently improbable." (RB 70.) While this argument's meaning is unclear, the testimony was consistent across the board that financial support flowed the other way—from the adult children (including Carla and Luis) to Jose and Maria. The evidence was undisputed

that Jose and Maria's children—including Luis—would help their parents out financially whenever they could. (E.g., 3RT 1242 [Luis testified that he regularly provided his parents money in the years before Jose's passing in December 2015 and would give them each $100], 1264-1265 [Luis's stepsister Araceli testified that almost all of her siblings, including Carla and Luis, would help their parents out "when they could"]; 4RT 1574-1575, 1578 [Maria testified at her deposition read at trial that Luis would give her money in the years prior to Jose's passing].)

As with Carla, Luis failed to demonstrate that he actually depended on Jose for the necessaries of life at the time of Jose's death. The evidence as to both stepchildren was insufficient to establish standing under Code of Civil Procedure section 377.60, subdivision (b)(1).

B. The Trial Court Prejudicially Erred By Instructing The Jury With The Wrong Standard For A Stepchild's Financial Dependence.

There is yet another independent reason that the judgment in favor of Carla and Luis must be reversed: Because plaintiffs' proposed special jury instruction regarding stepchild standing—which the trial court read over defense objections—erroneously implied that dependence could occur at any point in the stepchild's life. Specifically, the court instructed the jury that a stepchild could be dependent, and thus would have standing to bring a wrongful death claim, so long as—no matter how long before the time of the step-parent's death—the "stepchild received financial support from their parent which helped them

in obtaining the things which one cannot and should not do without . . . ." (4AA 935; 4RT 1833.)

As explained above, the correct standard for stepchild dependency standing is "actual dependence"—i.e., dependence at or near the time of death. Defendants' proposed special jury instruction—which the trial court rejected in favor of plaintiffs' erroneous instruction—contained the correct standard. (4AA 856-857; 4RT 1833.)

The respondents' brief claims that Inzunza "misstates the record" by arguing that defendants' proposed instruction "'contained the necessary temporal restriction'" while the proposed instruction contained no such time limit. (RB 83, citing Inzunza AOB 53.) This is incorrect. Inzunza's opening brief set forth defendants' entire proposed instruction and noted that the instruction cited Code of Civil Procedure section 377.60, *Chavez*, *supra*, 91 Cal.App.4th at pp. 1445-1447, and *Hazelwood*, 57 Cal.App.3d at pp. 697-698. (Inzunza AOB 26; 4AA 856-857.) As explained above, both *Chavez* and *Hazelwood* hold that "actual dependence" is dependence at the time of death, or, at most, during the two years before death. (*Chavez*, at pp. 1436, 1446-1447; *Hazelwood*, at p. 698.) Inzunza's opening brief thus accurately states that defendants' proposed instruction contained the necessary temporal restriction because it "defin[ed] dependence as 'actually dependent,' as cabined by *Chavez* and *Hazelwood* to dependence at the time of death or, at most, the two years before death." (Inzunza AOB 53.)

The respondents' brief also claims that the defense never argued for a time restriction in the jury instruction, and therefore waived the argument. (RB 83.) Not so. Defendants in fact objected to plaintiffs' proposed instruction—which the trial court gave over defense objections—as it included factors "not even in the time frame of this." (4RT 1833.) In other words, defendants argued that plaintiffs' jury instruction cherry-picked language to fit their facts by, for example, adding in transportation as something one cannot and should not do without, based on Carla's testimony that Jose gave her a car at least ten years ago—an incident "not even in the time frame of this." (*Ibid.*) By arguing that the car was not even within the relevant timeframe, defendants thus preserved the argument that the trial court mis-instructed the jury with the wrong standard by omitting the proper temporal restriction.[5] And, as explained in Inzunza's opening brief, even if defendants had not objected, parties are deemed to have objected to the trial court's decisions to give, refuse, or modify proposed jury instructions. (See Inzunza AOB 54, citing Code Civ. Proc., § 647, *Mock v. Michigan*

[5] It doesn't matter, as the respondents' brief asserts, that Inzunza "raises no issue with the verdict form on appeal" and only challenges the jury instruction itself because the special verdict form did not set forth "the standard for the jury to consider on standing for Carla and Luis." (See RB 86.) The form simply asked whether Carla and Luis were "financially dependent, to some extent, on JOSE I.V. NARANJO for the necessaries of life." (4AA 911.) The jury had to look to the jury instruction itself to determine what constituted financial dependence for the necessaries of life.

Millers Mutual Ins. Co. (1992) 4 Cal.App.4th 306, 333-334, and *Lund v. San Joaquin Valley Railroad* (2003) 31 Cal.4th 1, 7.)

Finally, contrary to the respondents' brief, Inzunza does not "ask[] this [C]ourt to essentially hold the list in *Perry* is exhaustive" (RB 84)—i.e., that a plaintiff actually depended on the decedent for the necessaries of life *only* if the decedent provided financial assistance for "shelter, clothing, food and medical treatment" (see *Perry*, *supra*, 192 Cal.App.3d at p. 610). As explained above, Carla and Luis had to show—and the jury instruction had to make clear—that they "'were *actually* dependent, to some extent, upon [Jose] for the *necessaries* of life.'" (*Ibid.*, citing *Hazelwood*, *supra*, 57 Cal.App.3d at p. 698, original italics.) And actual dependence must be measured at the time of Jose's death. (*Hazelwood*, at p. 698.)

III. Plaintiffs Waived Any Challenge To The Argument In Inzunza's Opening Brief That If This Matter Is Retried As To CRGTS, The Judgment Against Inzunza Must Be Set Aside Pending The Outcome Of That Trial.

Inzunza argued in his opening brief that if co-defendant CRGTS, Inc. prevails on appeal and the matter is retried as to CRGTS, the judgment against Inzunza must be set aside to await the outcome of that trial. (Inzunza AOB 55-56.)

Plaintiffs failed to respond to this contention, so the argument must be deemed submitted on Inzunza's opening brief. (*California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd.* (2005) 128 Cal.App.4th 307, 316, fn. 2; see also *County of Butte v. Bach* (1985) 172 Cal.App.3d 848, 867.)

CONCLUSION

The Court should vacate the $3.625 noneconomic damages awarded to Maria in the judgment because it is unsupported by substantial evidence. Plaintiffs failed to proffer any evidence of Maria's relationship with Jose at the time of his death or what Jose did for her, other than that he organized the occasional family gathering and would be the one to get up in the event "something happened" in the middle of the night. The Court should remand the matter for a new trial as to those damages.

The Court should also vacate both of the $439,000 noneconomic damages amounts awarded to Carla and Luis in the judgment, because the evidence failed to show that either Carla or Luis depended on Jose at the time of his death for necessaries of life as required to confer standing under Code of Civil Procedure section 377.60, subdivision (b)(1). The Court should direct entry of judgment in Inzunza's favor as to Carla and Luis.

Finally, if the Court reverses the judgment as to CRGTS

and remands the matter for a new trial, the Court must reverse the judgment as to Inzunza pending the outcome of that trial.

Date: May 22, 2023

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), (c)(4), I certify that this Appellant Jose R. Inzunza's Reply Brief contains **7,899 words**, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: May 22, 2023 */s/ Laura G. Lim*

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 6420 Wilshire Boulevard, Suite 1100, Los Angeles, California 90048. On May 22, 2023, I served the foregoing document described as: **APPELLANT JOSE R. INZUNZA'S REPLY BRIEF** on the parties in this action by serving:

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

Executed on May 22, 2023, at Los Angeles, California.

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