S285429

No. _____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

JONIE A. HOLLAND ET AL.,

Petitioner-Plaintiffs,

v.

SILVERSCREEN HEALTHCARE, INC.

Respondent-Defendant.

Court of Appeal for the Second Appellate District,
Division Two, Case No. B323237

Los Angeles Superior Court
Hon. Michelle Williams, Presiding,
Case No. 22STCV01945

PETITION FOR REVIEW

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Cal. Rules of Court, Rule 8.208)

This form is submitted on behalf of Petitioners. Pursuant to California Rules of Court, rule 8.208(e), counsel for the Petitioners states that he is not aware of any other entity or person apart from the parties that has a financial or other interest in the outcome of the proceeding that the party reasonably believes the justices should consider in determining whether to disqualify themselves under Canon 3E of the Code of Judicial Ethics.

Dated: June 19, 2024

KLAPACH & KLAPACH, P.C.

By: /s/ Joseph S. Klapach
Joseph S. Klapach

Attorneys for Petitioners

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CONSTITUTIONS, STATUTES, AND REGULATIONS

Petitioners ("Petitioners") seek review of the Second Appellate District's published opinion in *Holland v. Silverscreen Healthcare, Inc.* (2024) 101 Cal.App.5th 1125 (Case No. B323237). A copy of the Second Appellate District's Slip Opinion and its subsequent publication order, dated May 10, 2024, are included as an appendix to this Petition.

QUESTION PRESENTED FOR REVIEW

1. Can a skilled nursing facility compel a decedent's heirs to arbitrate a wrongful death cause of action arising from the facility's failure to protect the decedent from falls and infection pursuant to arbitration agreement signed by the decedent but not the decedent's heirs?

INTRODUCTION

This Court should grant review in this case to resolve a conflict amongst the lower courts regarding the proper interpretation and application of this Court's decision in *Ruiz v. Podolsky* (2010) 50 Cal.4th 838. As a general rule, a party cannot be compelled to arbitrate a cause of action unless that party has agreed to do so. In *Ruiz*, this Court announced a narrow exception to this rule. In *Ruiz,* this Court held that Code of Civil Procedure section 1295 authorizes patients of health care providers to agree to arbitrate wrongful death claims belonging to their heirs, so long as those wrongful death claims arise out of professional malpractice. (*Id*. at p. 841.)

Since *Ruiz*, the overwhelming majority of Courts of Appeal have limited *Ruiz* to wrongful death claims arising out of professional negligence. These Courts of Appeal hold that *Ruiz* does not apply to wrongful death claims based on allegations of neglect, and that non-signatory family members who file wrongful death claims based on neglect cannot be compelled to arbitrate those claims pursuant to arbitration agreements signed by the decedents. (See, e.g., *Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 843; , *supra*, 20 Cal.App.5th at p. 843 [holding wrongful death claim based on long-term acute care hospital's failure to correct dislodged feeding tube not subject to arbitration]; *Daniels v. Sunrise Senior Living, Inc.* (2013) 212 Cal.App.4th 674, 680 [holding wrongful death claim based on residential care facility's failure to treat pressure sores not subject to arbitration]; *Valentine v. Plum Healthcare*

Group, LLC (2019) 37 Cal.App.5th 1076, 1084 [holding wrongful death claim based on skilled nursing facility's failure to treat resident's sepsis infection not subject to arbitration].)

This case involves a wrongful death claim that is materially indistinguishable from the wrongful death claims in *Avila*, *Daniels*, and *Valentine*. Petitioners allege that their son, Skyler Womack, died from a skilled nursing facility's neglect in failing to protect him "from multiple falls" and from "infections which caused him pain and suffering." 1 AA 6, 11. Because this case involves a claim of wrongful death that is nearly identical to those in *Avila*, *Daniels*, and *Valentine*, it should not be subject to arbitration under the holdings of those cases.

In the proceedings below, however, the Second Appellate District "respectfully disagree[d]" with *Avila*, *Daniels*, and *Valentine* and chose, instead, to compel Petitioners to arbitrate their wrongful death claim, even though this case is factually and legally indistinguishable from *Avila*, *Daniels*, and *Valentine*. (Slip Op. at p. 12.) The Second Appellate District's published opinion cannot be reconciled with *Avila*, *Daniels*, and *Valentine* and has created a lack of uniformity on an important legal question of widespread public interest.

In addition to this conflict in the case law, the Second Appellate District also contains a number of serious analytical errors that threaten to sow great confusion amongst the lower courts. Most notably, the Second Appellate District mistakenly holds that a decedent's heirs cannot bring wrongful death claims based upon allegations of neglect because "the law does not

permit [a decedent's] parents to assert their own claim for neglect under the Elder Abuse Act, … and they cannot circumvent this well-settled principle simply by labeling their claim as one for wrongful death, a cause of action 'clear[ly]' subject to" the rule stated in *Ruiz*. (Slip Op. at p. 11.)

This holding represents a clear error of law. When a decedent's heirs file a wrongful death action based upon allegations of neglect, such an action does not derive from the Elder Abuse Act. The wrongful death statute itself expressly authorizes a decedent's heirs to file wrongful death actions based upon "neglect." Code of Civil Procedure section 377.60 provides that "[a] cause of action for the death of a person caused by the wrongful act or ***neglect of another*** may be asserted by … the following persons," including the decedent's surviving spouse, domestic partner, children, issue, and heirs. (Code of Civ. Proc., § 377.60(a) [emphasis added].) Thus, the Second Appellate District commits a serious legal error when it incorrectly suggests—contrary to the plain language of Code of Civil Procedure section 377.60—that a decedent's heirs lack standing to file a wrongful death action based upon allegations of "neglect."

The Second Appellate District also departed from longstanding authority when it evaluated the legal sufficiency of Petitioners' allegations of "neglect" in the context of ruling upon a motion to compel arbitration. The purpose of a motion to compel arbitration has never been to test the legal sufficiency of a plaintiff's claims, but rather to determine the appropriate forum in which those claims should be litigated. Even if it were true

that Petitioners' complaint's allegations of neglect required greater specificity, the law specifically allows plaintiffs to amend their complaints to allege any additional facts necessary to establish such a claim. The Second Appellate District's ruling endorses a brand new procedure by which a court may review the legal sufficiency of a complaint's allegations of neglect without providing for leave to correct any correctable deficiencies in the pleadings. In doing so, the Second Appellate District greatly undermines the rule allowing the liberal amendment of complaints by inviting trial courts to finally adjudicate the sufficiency of a wrongful death act's "neglect" allegations in the context of a motion to compel arbitration.

For these reasons, which are discussed in more detail below, this Court should grant review to secure uniformity of decision amongst the Courts of Appeal by resolving the conflicting decisions in *Avila*, *Daniels*, and *Valentine*, on the one hand, and the Second Appellate District's published decision in this case. This petition also provides this Court with the opportunity to provide the lower courts with much needed guidance on what types of wrongful death claims fall outside the scope of the rule stated in this Court's decision in *Ruiz*.

STATEMENT OF THE CASE

A. The Underlying Facts.

Petitioner Skyler A. Womack ("Skyler") was a dependent adult who suffered from physical and developmental disabilities that required long-term custodial care. 1 AA 6, 10. Respondent

Silverscreen Healthcare, Inc. is a licensed, 24-hour skilled nursing facility that provides long-term custodial care under the business name Asistencia Villa Rehabilitation and Care Center ("Asistencia"). 1 AA 7.

In January 2020, Asistencia admitted Skyler as an inpatient resident of its facility. 1 AA 10, 26-27. While under Asistencia's care and treatment, Skyler "suffered from multiple falls with injury, and infections which caused him pain and suffering and were substantial factors in his untimely demise." 1 AA 11. On October 29, 2020—ten months after being admitted to Asistencia's facility—Skyler died from the injuries that he sustained at Asistencia's facility. 1 AA 6.

B. This Litigation.

In January 2022, Skyler's mother and successor-in-interest, Jonie A. Holland, filed this action in Los Angeles Superior Court. 1 AA 6-15. The complaint stated three individual causes of action on Skyler's behalf against the defendants, including Asistencia, for dependent adult abuse under Welfare & Institutions Code §§ 15600 et seq., negligence, and violations of a resident's rights under Health & Safety Code, § 1430(b). 1 AA 6. The complaint also stated a cause of action for wrongful death by Skyler's parents, Ms. Holland and Wayne D. Womack. 1 AA 6.

In February 2022, Asistencia filed a motion to compel arbitration of the entire action pursuant to a "Resident-Facility Arbitration Agreement" signed by Skyler and a "family representative" when he was admitted into Asistencia's facility.

1 AA 16-22, 26-27. The Arbitration Agreement provided as follows:

- "[A]ny dispute as to medical malpractice, that is as to whether any medical services rendered under this contract were unnecessary or unauthorized or were improperly, negligently or incompetently rendered, will be determined by submission to arbitration as provided by California law…."
- "[A]ny dispute between Resident and Asistencia … that relates to the provision of care, treatment and services the Facility provides to the Resident …, including any action for injury or death arising from negligence, intentional tort and/or statutory causes of action (including all California Welfare and Institutes Code sections), will be determined by submission to binding arbitration as provided by California law…."
- "This Agreement is binding on all parties, including the Resident's representatives, executors, family members, and heirs. The Resident's representatives, agents, executors, family members, successors in interest and heirs who execute this Agreement below on the 'Resident Representative/Agent Signature' line are doing so not only in their representative capacity for the Resident, but also in their individual capacity and thus agree that any claims brought individually by the Resident's representatives, agents, executors, family members, successors in interest and heirs are subject to binding arbitration."

1 AA 26.

In opposition, Petitioners argued Plaintiffs Jonie Holland and Wayne Womack did not sign the arbitration agreement and, therefore, could not be compelled to arbitrate their wrongful death claim under *Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835. 1 AA 29-34.

In August 2022, the trial court (the Hon. Michelle Williams) granted the motion to compel arbitration as to Skyler's individual causes of action for dependent adult abuse, negligence, and violation of the resident's statutory rights, but denied the motion to compel arbitration as to the fourth cause of action for wrongful death. 1 AA 64-73. The trial court noted that this Court "carv[ed] out an exception to the general rule that arbitration agreements must be the subject of consent rather than compulsion in *Ruiz v. Podolsky* (2010) 50 Cal.4th 838," which held that "all wrongful death claimants are bound by arbitration agreements entered into pursuant to section 1295, at least where, as here, the language of the agreement manifests an intent to bind these claimants." 1 AA 69.

The trial court observed: "The question, then, is whether *Ruiz* is controlling here, and we must therefore determine whether this case is about 'professional negligence,' as defined by MICRA, or something else." 1 AA 69. Although noting "at least some overlap" between wrongful death claims based on professional negligence and those based on neglect, the trial court ruled that the wrongful death claim in this case was based on neglect. 1 AA 70-71. The trial court reasoned: "The complaint alleges a 'conscious and continued pattern of withholding the most basic care and services,' which included a lack of monitoring, supervision, assistance, and other adequate care and services. It alleges the lack of availability of a physician, [and] failure to provide properly trained staff and nursing, among other things." 1 AA 70-71. Citing and quoting *Avila*, the trial court

concluded: "As in *Avila*, Plaintiffs' wrongful death claim is based upon neglect within the meaning of the Elder Abuse and Dependent Adult Civil Protection Act. Plaintiffs' 'chose to plead a cause of action under the Act, and they did so successfully. The fact that they could have also pleaded a claim for medical malpractice, had they wished to do so, is irrelevant. Accordingly, we conclude the plaintiffs' claim is not one within the ambit of section 1295, and therefore, *Ruiz*'s holding does not apply.'" 1 AA 71 [quoting *Avila*, *supra*, 20 Cal.App.5th at p. 843].) Respondent appealed from the portion of the trial court's order denying arbitration of the wrongful death cause of action. 1 AA 90.

C. The Court of Appeal's Decision.

On April 16, 2024, Division Two of the Second Appellate District issued a decision reversing the trial court. (*Holland v. Silverscreen Healthcare, Inc.* (2024) 101 Cal.App.5th 1125.) The Court of Appeal began by stating that "the parents' bare bones claim against Asistencia sounds in professional negligence. Specifically, the complaint alleges that Asistencia owed Skyler duties, that Asistencia failed to meet its duties, and that '[a]s a proximate result of negligence and 'neglect' … [Sklyer] died." (Slip Op. at pp. 9, 10.)

The Court of Appeal then addressed and rejected Petitioners' argument that "the wrongful death claim is not subject to *Ruiz* because it is one for dependent adult abuse, not professional negligence." (Slip Op. at p. 10.) While acknowledging that "neglect can constitute abuse under the Elder Abuse Act," the Court of Appeal stated that "the law does not

permit Skyler's parents to assert their own claim for neglect under the Elder Abuse Act." (*Ibid.*) It thus reasoned that "if the parents cannot maintain a claim for abuse under the Elder Abuse Act in their own name, it makes no sense for them to be able to pursue a claim for wrongful death based upon that same alleged abuse." (*Id.* at p. 11.)

The Court of Appeal sought to distinguish "[t]he various Court of Appeal decisions that have confined *Ruiz's* holding to wrongful death claims predicated on medical malpractice or professional negligence" on the ground that "the parents' wrongful death claim sounds in professional negligence." (Slip Op. at p. 11 [citing *Valentine v. Plum Healthcare Group, LLC* (2019) 37 Cal.App.5th 1076, 1084; *Daniels*, *supra*, 212 Cal.App.4th at p. 677; *Bush v. Horizon West* (2012) 205 Cal.App.4th 924, 929.) The Court of Appeal then expressly disagreed with *Avila*: "To the extent these cases hold otherwise, we respectfully disagree. (See, e.g., *Avila*, *supra*, 20 Cal.App.5th at p. 842 ['If the primary basis for the wrongful death claim sounds in professional negligence as defined by MICRA, then section 1295 applies. If, as plaintiffs claim here, the primary basis is under the Elder Abuse and Dependent Adult Civil Protection Act … then section 1295 does not apply and neither does *Ruiz*'s exception to the general rule that one who has not consented cannot be compelled to arbitrate.']." (Slip Op. at p. 12.)

Finally, the Court of Appeal stated that "even if we agreed that a wrongful death claim based upon dependent adult abuse falls outside the scope of *Ruiz* and cannot be ordered to

arbitration, that principle would not apply here. While a cause of action for statutory dependent adult abuse is distinct from one for medical malpractice …, plaintiffs do not allege with adequate specificity how their claims here constitute dependent adult abuse and not professional negligence." (Slip Op. at p. 12.)

Although the Second Appellate District initially issued an unpublished decision, it issued an order on May 10, 2024, certifying its April 16, 2024, decision for publication. (5/10/24 Order.) Petitioners bring this petition asking this Court to grant review of the Second Appellate District's published opinion.

REASONS REVIEW SHOULD BE GRANTED

I. THIS COURT SHOULD GRANT REVIEW IN THIS CASE TO RESOLVE THE CONFLICT BETWEEN THE *AVILA V. SOUTHERN CALIFORNIA SPECIALTY CARE, INC.* (2018) 20 CAL.APP.5TH 835, LINE OF CASES AND THE SECOND APPELLATE DISTRICT'S PUBLISHED OPINION IN THIS CASE.

A. The Second Appellate District's Decision Cannot Be Reconciled With *Avila*, *Daniels*, and *Valentine* Because It Compels The Arbitration Of A Wrongful Death Claim That Is Indistinguishable From The Wrongful Death Claims That *Avila*, *Daniels*, and *Valentine* Held Were Not Arbitrable.

This Court should grant review in this case to resolve a conflict amongst the lower courts regarding the proper interpretation and application of this Court's decision in *Ruiz v. Podolsky* (2010) 50 Cal.4th 838. As a general rule, parties cannot be compelled to arbitrate legal claims that belong to them unless they have personally agreed to arbitration. (See, e.g., *Victoria v. Superior Court (Kaiser Found. Hosps.)* (1985) 40 Cal.3d 734, 744

["there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate"].)[1]

"In California, a wrongful death claim is an independent claim" which belongs to the decedent's heirs, not to the decedent. (*Avila*, *supra*, 20 Cal.App.5th at p. 843; see *Daniels*, *supra*, 212 Cal.App.4th at p. 680.) As this Court has explained: "Unlike some jurisdictions wherein wrongful death actions are derivative, Code of Civil Procedure section 377.60 'creates a *new cause of action* in favor of the heirs as beneficiaries, based upon their own pecuniary injury suffered by loss of a relative, and distinct from any the deceased might have maintained had he survived.'" (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 283.) Because the Legislature created an independent wrongful death cause of action in favor of a decedent's heirs, the California courts have generally held that non-signatory family members cannot be compelled to arbitrate wrongful death actions pursuant to arbitration agreements signed by the decedent. To put it simply, decedents cannot agree to arbitrate wrongful death claims that belong to their heirs. Only the heirs can so agree.

In *Ruiz*, this Court carved out a narrow exception to this general rule against the arbitration of wrongful death claims

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[1] See also *Herman Feil, Inc. v. Design Ctr. of Los Angeles* (1988) 204 Cal.App.3d 1406, 1414 (contractual arbitration "only comes into play when the parties to the dispute have agreed to submit to it"]; *Air Line Pilots Ass'n. v. Miller* (1998) 523 U.S. 866, 876 ("arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit").

where a wrongful death claim arises out of the "professional negligence of a health care provider." (50 Cal.4th at p. 842.) In *Ruiz*, a deceased patient's family sued a surgeon for medical malpractice and wrongful death, alleging the surgeon "failed to adequately identify and treat [the patient's] hip fracture resulting in complications, and eventually his death." (*Ibid*.) The surgeon moved to compel arbitration of the family's wrongful death claim pursuant to a "Physician-Patient Arbitration Agreement" the decedent had signed. (*Id*. at p. 841.) This Court held that because Code of Civil Procedure section 1295 "contemplates that all medical malpractice claims, including wrongful death claims, may be subject to arbitration agreements between a health care provider and the patient," section 1295 allows patients who agree to arbitration to bind their heirs to the arbitration of wrongful death actions arising out of medical malpractice. (*Ibid*.)

Since *Ruiz*, the Courts of Appeal have ruled that *Ruiz*'s holding is limited solely to wrongful death actions arising out of medical malpractice by a health care provider. These courts have held that *Ruiz* does not apply to wrongful death actions based upon neglect. (*Avila*, *supra*, 20 Cal.App.5th at p. 843; *Daniels*, *supra*, 212 Cal.App.4th at p. 680; *Valentine*, *supra*, 37 Cal.App.5th at p. 1084.) These courts reason that (1) section 1295 extends only to medical malpractice claims against health care providers, not to claims for neglect; and (2) this Court has repeatedly distinguished between claims based on professional negligence and claims based on custodial neglect. (See, e.g.,

Delaney v. Baker (1999) 20 Cal.4th 23, 32; *Covenant Care* (2004) 32 Cal.4th 771, 783; *Country Villa Claremont Healthcare Center* (2004) 120 Cal.App.4th 426, 432.) Under this Court's decisions, a claim for professional malpractice is based upon "the substandard performance of medical services," whereas a claim for neglect is based upon the "failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations." (*Covenant Care*, *supra*, 32 Cal.4th at p. 783.)

Applying these principles, the vast majority of California's Courts of Appeal have held that a decedent's non-signatory family members cannot be compelled to arbitrate wrongful death actions arising out of neglect based upon an arbitration agreement signed by the decedent. (See, e.g., *Valentine*, *supra*, 37 Cal.App.5th at p. 1084; *Avila*, *supra*, 20 Cal.App.5th at p. 843; *Daniels*, *supra*, 212 Cal.App.4th at p. 680.)

In the proceedings below, the Second Appellate District acknowledged the rule espoused in *Valentine*, *Avila*, and *Daniels*, but it then refused to apply that rule to this case, even though this case involves wrongful death allegations that are virtually identical to those in *Valentine*, *Avila*, and *Daniels*.

In this case, Petitioners allege that their son, Skyler, died from the Respondent's neglect when the Respondent failed to protect him "from multiple falls" and from "infections which caused him pain and suffering," and ultimately, his death. 1 AA 6, 11. These allegations are exactly the same type of allegations

that *Avila*, *Daniels*, and *Valentine* found to state a claim based on neglect, rather than professional malpractice.

In *Avila*, the Fourth Appellate District held that a decedent's son could not be forced to arbitrate a wrongful death claim against a long-term acute care hospital where "[a] dislodged feeding tube began infusing into the throat and/or esophagus instead of the stomach," impairing the decedent's "gag reflex," preventing the decedent from "clear[ing] his lungs," and ultimate "resulting in cardiopulmonary arrest." (20 Cal.App.5th at p. 838.) The Fourth Appellate District acknowledged that "[t]he complaint includes allegations that could be categorized as professional negligence as well as elder abuse," and that "there is at least some overlap between the two." (*Id.* at p. 842.)

Nonetheless, the Fourth Appellate District concluded that the wrongful death action was based on the hospital's neglect because it focused on the hospital's "failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults," rather than the hospital's "substandard performance of medical services." (*Id.* at p. 843 [quoting *Sababin v. Superior Court* (2006) 144 Cal.App.4th 81, 88].) The Fourth Appellate District explained that "[t]he complaint alleges a 'conscious and continued pattern of withholding the most basic care and services,' which included a lack of monitoring, supervision, assistance, and other adequate care and services. It alleges the lack of availability of a physician [and] failure to provide properly trained staff and nursing, among other things." (*Id.* at p. 843.) The Fourth Appellate District further explained:

"Plaintiffs, within the limits of established law, are essentially free to plead their case as they choose. … The fact that they could have also pleaded a claim for medical malpractice, had they wished to do so, is irrelevant. Accordingly, we conclude the plaintiff's claim is not one within the ambit of section 1295, and therefore, *Ruiz's* holding does not apply." (*Ibid.*)

In *Daniels*, the Fourth Appellate District held that a decedent's daughter could not be forced to arbitrate a wrongful death claim based upon a residential care facility's neglect in allowing the decedent to "develop[] pressure sores on both of her heels and ankles," which caused "her health [to] deteriorate[]" and ultimately led to her death. (212 Cal.App.4th at pp. 677, 680.) The Fourth Appellate District "disagree[d] that Daniels should have been compelled to arbitrate her personal wrongful death claim along with the survivor claims pursuant to the rationale articulated in … *Ruiz*" and held that *Ruiz* has "no bearing on third party wrongful death claims outside the context of section 1295." (*Id.* at p. 677.) Because "Daniels's wrongful death claim is not based on medical malpractice," the Fourth Appellate District affirmed the trial court's order denying the residential care facility's motion to compel arbitration of the survivor's wrongful death claim. (*Id.* at p. 684.)

In *Valentine*, the Third Appellate District held that a decedent's husband and children could not be forced to arbitrate a wrongful death claim based on a skilled nursing facility's neglect in failing to treat the decedent's sepsis infection, "[d]espite her symptoms of sepsis and complaints of abdominal

pain." (37 Cal.App.5th at p. 1084.) The Third District affirmed the trial court's holding that *Ruiz* and section 1295 did not apply because "[t]he children did not allege medical malpractice or professional negligence." (*Id.* at pp. 1084, 1085.)

In the published opinion subject to this petition, the Second Appellate District holds that Petitioners' wrongful death claim based on Respondent's failure to protect their son from falls and infections is subject to arbitration under *Ruiz*. In doing so, the Second Appellate District tersely states that *Avila*, *Daniels*, and *Valentine* "do not compel a different result" here because "the parents' wrongful death claim sounds in professional negligence." (Slip Op. at p. 11.) But the Second Appellate District does not explain how the allegations in this case are any different from the allegations in *Avila*, *Daniels*, and *Valentine*. Like the failure to treat a sepsis infection in *Valentine*, the complaint in this case alleges that Respondent failed to treat Skyler's infections. And, like the failure to monitor and treat the decedents' feeding tube and pressure sores in *Avila* and *Daniels*, the complaint in this case alleges that Respondent failed to monitor and treat Skyler's repeated falls. If this Court fails to grant review, the Second Appellate District's conclusory and unpersuasive attempt to distinguish *Avila*, *Daniels*, and *Valentine* will sow confusion amongst the trial courts.

After the Second Appellate District's decision in *Holland*, how is a lower court supposed to decide which wrongful death claims are based upon neglect and which wrongful death claims

are based upon professional malpractice?[2] Which failures to treat an infection are based on neglect and which are based on professional malpractice? And why do some failures to provide basic care constitute neglect (such as failing to monitor a feeding tube in *Avila* and failing to monitor the development of pressure sores in *Daniels*), whereas other failures to provide basic care—such as the failure to monitor and protect Skyler from repeated falls—constitute professional malpractice? The Second Appellate District declines to follow *Avila*, *Daniels*, and *Valentine* without offering any cogent explanation. If the Second Appellate

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[2] Nor can this case be distinguished on the ground that Respondent is a skilled nursing facility and, therefore, a "health care provider" subject to MICRA and Code of Civil Procedure section 1295. Both *Avila* and *Valentine* also involved wrongful death claims against health care providers subject to MICRA (there, a hospital and a skilled nursing facility), yet the Third and Fourth Appellate Districts held that the wrongful death claims were not subject to arbitration because they were based on the health care providers' neglect, rather than professional negligence. (*Avila*, *supra*, 20 Cal.App.5th at p. 843; *Valentine*, *supra*, 37 Cal.App.5th at pp. 1084, 1085.) Indeed, *Avila* expressly rejected the hospital defendant's attempt to distinguish *Daniels* on the ground that "the defendant in that case was not a licensed health care provider." (*Avila*, *supra*, 20 Cal.App.5th at p. 842.) The Fourth Appellate District explained: "What matters is not the license status of the defendant, but the basis of the claims as pleaded in the complaint. If the primary basis for the wrongful death claim sounds in professional negligence as defined by MICRA, then section 1295 applies. If, as plaintiffs claim here, the primary basis is under the Elder Abuse and Dependent Adult Civil Protection Act …, then section 1295 does not apply and neither does *Ruiz*'s exception to the general rule that one who has not consented cannot be compelled to arbitrate." (*Ibid*.)

District's decision is allowed to stand, the Superior Courts throughout California will be left without any meaningful basis for deciding when a wrongful death claim is subject to arbitration under Code of Civil Procedure section 1295.

B. The Second Appellate District's Analysis Is Deeply Flawed And Will Create Dangerous Doctrinal Confusion Unless This Court Grants Review.

As explained above, the Second Appellate District's published decision in this case cannot be reconciled with the holdings or the facts of *Avila*, *Daniels*, and *Valentine*. But even apart from this conflict in the case law, the Second Appellate District's decision contains a series of analytical errors that will create tremendous uncertainty in the lower courts. This Court can—and should—grant review in order to correct these errors.

First, the Second Appellate District's decision unduly restricts the scope of viable wrongful death actions based upon allegations of neglect. The Second Appellate District holds that family members cannot bring wrongful death claims based upon allegations of neglect under the Elder Abuse Act. More specifically, the Second Appellate District reasons: "Certainly neglect can constitute abuse under the Elder Abuse Act. (See, e.g., Welf. & Inst. Code, § 15610.57, subds. (a)(1), (b)(2), (b)(3).) That is why Skyler's successor in interest can absolutely pursue a cause of action under the Elder Abuse Act on Skyler's behalf. But the law does not permit Skyler's parents to assert their own claim for neglect under the Elder Abuse Act, … and they cannot circumvent this well-settled principle simply by labeling their

claim as one for wrongful death, a cause of action 'clear[ly]' subject to section 1295." (Slip Op. at p. 11.)

This holding constitutes a clear error of law. A wrongful death action based upon allegations of neglect is not derivative of a decedent's claim under the Elder Abuse Act. The wrongful death statute itself expressly authorizes a decedent's heirs to file wrongful death actions based upon "neglect." Code of Civil Procedure section 377.60 provides that "[a] cause of action for the death of a person caused by the wrongful act or ***neglect of another*** may be asserted by … the following persons," including the decedent's surviving spouse, domestic partner, children, issue, and heirs. (Code of Civ. Proc., § 377.60(a) [emphasis added].) Because the wrongful death statute itself creates an independent cause of action for "the death of a person caused by … neglect," the Second Appellate District is simply wrong when it holds that heirs cannot bring a wrongful death action based upon neglect because they lack standing to assert a decedent's claims for neglect under the Elder Abuse Act. (Slip Op. at p. 11.)

To be sure, when a decedent dies while under the care of another, the resulting legal action may include both (1) a wrongful death action for neglect filed by a decedent's heirs; and (2) a decedent's personal claim for neglect under the Elder Abuse Act brought by the decedent's successor in interest. These two claims are not duplicative or "derivative" of one another because they arise from separate and distinct legal rights. Code of Civil Procedure section 377.60 authorizes a decedent's heirs to file a wrongful death action for neglect to recover for "their own

independent pecuniary injury suffered by [the] loss of a relative, and distinct from any the deceased might have maintained had he survived." (*Horwich*, *supra*, 21 Cal.4th at p. 283; *Avila*, *supra*, 20 Cal.App.5th at p. 844.) This injury to the heirs includes the loss of the decedent's comfort, society, and companionship. By contrast, the Welfare & Institutions Code authorizes dependent adults or elderly persons who have been the victims of neglect to file an action against their neglectful caregivers to recover the personal injuries that they have suffered as a result of that neglect. (Welf. & Inst. Code, §§ 15610.07, 15657, 15610.57.) As such, a wrongful death action for neglect brought by a decedent's heirs does not constitute an improper attempt to assert a derivative Elder Abuse Act claim, as the Second Appellate District's decision incorrectly holds.

Moreover, when heirs bring wrongful death actions based upon neglect, they often cite the Elder Abuse Act, especially Welfare and Institutions Code section 15610.57. But a decedent's heirs do not cite the Elder Abuse Act because an heir's wrongful death action for neglect arises under the Elder Abuse Act. They cite section the Elder Abuse Act because—unlike the wrongful death statute—the Elder Abuse Act defines "neglect." The Elder Abuse Act provides that "neglect" includes a caretaker's "[f]ailure to assist in personal hygiene, or in the provision of food, clothing or shelter," "[f]ailure to provide medical care for physical or mental health needs," "[f]ailure to protect from health and safety hazards," or "[f]ailure to prevent malnutrition or dehydration." (Welf. & Inst. Code, § 15610.57(b)(1)-(4).) For this reason, the

Elder Abuse Act is relevant in interpreting the scope of an heir's independent wrongful death action for "neglect" under Code of Civil Procedure section 377.60. The Elder Abuse Act's definition of "neglect" represents a helpful aid to the construction of Code of Civil Procedure section 377.60. (See, e.g., *Francisco v. Industrial Accident Commission* (1923) 192 Cal. 635, 641 [noting "well-recognized rule[] of construction" that "definition of … term" in one statute "should be applied" to other statutes "in the absence of anything to indicate that any other or different meaning" was intended].)

In short, the Second Appellate District commits a grave legal error when it incorrectly suggests—contrary to the plain language of Code of Civil Procedure section 377.60—that a decedent's heirs lack standing to file a wrongful death action based upon allegations of "neglect."

Second, the Second Appellate District mistakenly evaluated the legal sufficiency of Petitioners' allegations of "neglect" in the context of ruling upon a motion to compel arbitration. The purpose of a motion to compel arbitration is <u>not</u> to test the legal sufficiency of a plaintiff's claims; it is to compel the plaintiff to litigate those claims in an arbitral forum. (Code of Civ. Proc., § 1281.2; see *Bouton v. USAA Cas. Ins. Co.* (2008) 43 Cal.4th 1190, 1199.) To hold otherwise would be to permit a court to evaluate the legal sufficiency of a claim where the moving party is contending that the merits of that claim must be decided in another forum.

Despite the narrow focus of a motion to compel arbitration,

the Second Appellate District analyzed the legal sufficiency of Petitioners' wrongful death claim. The Second Appellate District stated that "[w]hile a cause of action for statutory dependent adult abuse is distinct from one for medical malpractice, plaintiffs do not allege with adequate specificity how their claims here constitute dependent adult abuse and not professional negligence." (Slip Op. at p. 12.) This too was error.

A motion to compel arbitration does not constitute the proper procedural context for a court to determine the legal sufficiency of a plaintiff's allegations of neglect. Even if it were true that Petitioners' complaint's allegations of neglect required greater specificity, the law specifically allows plaintiffs to amend their complaints to allege any additional facts necessary to establish such a claim. (See, e.g., *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747 ["If the plaintiff has not had an opportunity to amend the complaint in response to the demurrer, leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that it is incapable of amendment."].) The Second Appellate District's ruling undermines the rule allowing the liberal amendment of complaints by inviting trial courts to adjudicate the sufficiency of a wrongful death act's "neglect" allegations without giving a plaintiff (1) an opportunity to fully brief whether the complaint as alleged is sufficient to state a claim for neglect; or (2) leave to amend the initial complaint to add the further specifics necessary to allege a valid claim for neglect. Because the Second Appellate District's holding conflicts with well-established rules governing

the amendment of pleadings, this Court should grant review.

Third, the Second Appellate District misapplied the pleadings standards for claims involving neglect. In their complaint, Petitioners alleged that while Skyler was under Asistencia's care and treatment, he "suffered from multiple falls with injury, and infections which caused him pain and suffering and were substantial factors in his untimely demise." 1 AA 11. Petitioners further alleged that Asistencia acted with "a conscious disregard of the health, rights, and safety" of Skyler and "den[ied] or with[eld] goods or services necessary to meet the basic needs" of Skyler. 1 AA 10-11. In concluding that these allegations were legally sufficient to allege "neglect," the trial court analogized the allegations of Petitioners' complaint to those in *Avila*: "The complaint alleges a 'conscious and continued pattern of withholding the most basic care and services,' which included a lack of monitoring, supervision, assistance, and other adequate care and services." 1 AA 70-71 [quoting *Avila*, *supra*, 20 Cal.App.5th at p. 843].

The Complaint's allegations satisfy the minimal pleading requirements for neglect. As noted above, Welfare & Institutions Code section 15610.57 defines "neglect" to include a "[f]ailure to provide medical care for physical … health needs" and a "[f]ailure to protect from health and safety hazards." These standards surely encompass a skilled nursing facility's failure to identify and treat a resident's infections. Indeed, the wrongful death action in *Valentine* was based upon nearly identical allegations that a skilled nursing facility had failed to identify and treat a

resident's sepsis infection, and the Third Appellate District held that the plaintiffs' claim of neglect was sufficient to take the wrongful death action out of the rule stated in *Ruiz*. (37 Cal.App.5th at p. 1084; see *Covenant Care, Inc.*, *supra*, 32 Cal.4th at p. 778 [finding neglect based, in part, on skilled nursing facility's failure to identify and treat resident's infection].)

Petitioners also sufficiently alleged Respondent's neglect in the form of its failure to protect Skyler from the safety hazards associated with falls. Falls are a classic fact pattern supporting claims of neglect because they involve a failure that is custodial rather than professional in nature. (See, e.g., *Norman v. Life Care Centers of America, Inc.* (2003) 107 Cal.App.4th 1233, 1243 [upholding neglect under Elder Abuse Act where skilled nursing facility failed to update resident's care plan "in order to meet [her] needs resulting in several falls and injuries"]; *Nevarrez v. San Marino Skilled Nursing & Wellness Centre, LLC* (2013) 221 Cal.App.4th 102, 109-11 [describing elder abuse action against nursing home based on failure to protect resident from repeated falls].) If the failure to monitor the decedent's feeding tube in *Avila* and the failure to treat the decedent's pressure sores in *Daniels* sufficiently allege wrongful death claims based on neglect, it follows that Petitioners' allegations that Respondent failed to protect Skyler from "multiple falls" also sufficiently alleges a wrongful death claim based on neglect.

CONCLUSION

This Court should grant review to secure uniformity of decision among the Courts of Appeal on an important legal question of widespread public interest. Although this case and *Avila*, *Daniels*, and *Valentine* arise on identical facts, the Courts of Appeal reached diametrically opposite results. In *Avila*, *Daniels*, and *Valentine*, the Courts of Appeal held that the wrongful death actions were not subject to arbitration, whereas the Second Appellate District in this case held that a materially indistinguishable wrongful death action was subject to arbitration.

Moreover, even apart from the conflict in the case law, the Second Appellate District's decision create a great deal of doctrinal mischief. The Second Appellate District misstates the legal basis for wrongful death actions arising from neglect and falsely states that an heir cannot bring wrongful death actions arising from neglect. The Second Appellate District mistakenly evaluated the legal sufficiency of Petitioners' allegations of neglect, even though this issue was not properly before the Court of Appeal on a motion to compel arbitration. And, the Second Appellate District misapplied the legal standards governing the sufficiency of claims for neglect in holding that Petitioners' allegations were legally insufficient.

For these reasons, this Court should grant this petition and review the Second Appellate District's decision.

DATED: June 19, 2024	Respectfully submitted, KLAPACH & KLAPACH, P.C. By: __/s/ Joseph S. Klapach_____ Joseph S. Klapach Attorneys for Petitioners, Skyler A. Womack, by and through his Successor-in-Interest, Jonie A. Holland, and Jonie A. Holland and Wayne D. Womack, individually

CERTIFICATE OF COMPLIANCE

I certify that the foregoing Petition for Review is in compliance with the requirements of California Rules of Court 8.204 and 8.504. The petition contains 6,500 words, including footnotes, which is less than the 8,400 words prescribed by rule for this petition.

DATED: June 19, 2024	/s/ Joseph S. Klapach Joseph S. Klapach

Appendix

Filed 5/10/24

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JONIE A. HOLLAND et al., Plaintiffs and Respondents, v. SILVERSCREEN HEALTHCARE, INC., Defendant and Appellant.	B323237 (Los Angeles County Super. Ct. No. 22STCV01945) **ORDER CERTIFYING OPINION FOR PUBLICATION**

THE COURT:

The opinion in the above-entitled matter filed on April 16, 2024, was not certified for publication in the Official Reports.

For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.

ASHMANN-GERST, Acting P. J. CHAVEZ, J. HOFFSTADT, J.

Filed 4/16/24

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JONIE A. HOLLAND et al., Plaintiffs and Respondents, v. SILVERSCREEN HEALTHCARE, INC., Defendant and Appellant.	B323237 (Los Angeles County Super. Ct. No. 22STCV01945)

APPEAL from an order of the Superior Court of Los Angeles County, Michelle Williams Court, Judge. Reversed and remanded with directions.

Lewis Brisbois Bisgaard & Smith, Tracy D. Forbath, Kathleen M. Walker and Raymond K. Wilson, Jr., for Defendant and Appellant.

Peck Law Group, Steven C. Peck and Adam J. Peck for Plaintiffs and Respondents.

Following the death of their son, Skyler A. Womack (Skyler),[1] at Silverscreen Healthcare, Inc., doing business as Asistencia Villa Rehabilitation and Care Center (Asistencia), a skilled nursing facility, Jonie A. Holland (Holland) and Wayne D. Womack (Wayne)[2] brought this action against Asistencia, alleging survivor claims for dependent adult abuse and negligence on behalf of Skyler as well as their own claim for wrongful death. Asistencia moved to compel arbitration of the entire complaint pursuant to an arbitration agreement between Skyler and Asistencia. The trial court granted Asistencia's motion as to the survivor claims. However, relying heavily upon *Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835 (*Avila*), it denied the motion as to the wrongful death cause of action on the ground that the parents did not have an enforceable arbitration agreement with Asistencia.

Asistencia appeals, arguing that pursuant to *Ruiz v. Podolsky* (2010) 50 Cal.4th 838 (*Ruiz*), the parents are bound by

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[1] Because they share the same last name, for clarity, we refer to Skyler and his father, Wayne, by their first names. No disrespect is intended.

[2] We hereinafter refer to Holland and Wayne, in their individual capacities, as the parents. We refer to the parents and Holland in her capacity as Skyler's successor in interest, collectively as plaintiffs.

the arbitration agreement signed by Skyler; therefore, the parents' wrongful death claim is subject to arbitration.

We agree with Asistencia that *Ruiz* governs this matter. Accordingly, under *Ruiz* and Code of Civil Procedure section 1295,[3] the parents' wrongful death claim must go to arbitration along with Skyler's survivor claims.

BACKGROUND

I. *Arbitration Agreement*

Skyler was a resident of Asistencia, a licensed 24-hour skilled nursing facility. On January 5, 2020, he signed a document titled, "Resident-Facility Arbitration Agreement" (arbitration agreement). (Bolding and capitalization omitted.)

The arbitration agreement provides, in relevant part, "that any dispute as to medical malpractice" and "any dispute . . . that relates to the provision of care, treatment and services the Facility provides to the Resident . . . , including any action for injury or death arising from negligence, intentional tort and/or statutory causes of action (including all California Welfare and Institutions Code sections), will be determined by submission to binding arbitration . . . ."

The arbitration agreement states that it "is binding on all parties, including the Resident's representatives, executors, family members, and heirs." It "exclude[s]" section 1281.2, subdivision (c),[4] and further provides that "[t]he parties do not

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[3] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[4] "Section 1281.2[, subd.] (c) grants a trial court discretion [to refuse] to enforce written arbitration agreements when (1) a party to the agreement also is a party to pending litigation with a

want any claims not subject to arbitration to impede any and all other claims from being ordered to binding arbitration."

II. *The Complaint*

Following Skyler's death October 29, 2020, his parents filed this action. The complaint asserts four causes of action against Asistencia: (1) dependent adult abuse; (2) negligence; (3) violation of residents' rights; and (4) wrongful death. The first three causes of action are Skyler's survivor claims (Skyler's claims) brought by his mother, Holland, in her capacity as Skyler's successor in interest. The fourth cause of action for wrongful death is brought by Holland and Wayne as individuals.

The complaint alleges that "[w]hile under the care and treatment" of Asistencia, Skyler "suffered from multiple falls with injury, and infections which caused him pain and suffering and were substantial factors in his untimely demise." Despite knowledge of problems such as understaffing, Asistencia's "officers, directors, and/or managing agents meaningfully disregarded the issues even though they knew the understaffing could, would, and did lead to unnecessary injuries to the residents and patients of their skilled nursing facilities, including [Skyler]." Asistencia "'neglected' [Skyler] as that term is defined in Welfare and Institutions Code [section] 15610.57 in that Asistencia . . . failed to exercise the degree of care that reasonable persons in a like position would exercise by denying or

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third party who did not agree to arbitration; (2) the pending third-party litigation arises out of the same transaction or series of related transactions as the claims subject to arbitration; and (3) the possibility of conflicting rulings on common factual or legal issues exists." (*Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 964.)

withholding goods or services necessary to meet the basic needs of [Skyler] . . . ." (Italics and capitalization omitted.)

Specific to the wrongful death cause of action, the complaint alleges that Asistencia owed Skyler statutory and common law duties and failed to meet its duties. "As a proximate result of [Asistencia's] negligence and 'neglect,'" the parents "sustained the loss of the society, comfort, attention, and love of" Skyler "as a proximate result of the negligent acts (both negligence and neglect as that term is defined in Welfare [and] Institutions Code [section] 15610.57) . . . ." (Italics omitted.)

III. *Asistencia's Petition to Compel Arbitration*

Asistencia filed a petition to compel arbitration of each of the four causes of action asserted in the complaint. Plaintiffs opposed the petition. They argued, inter alia, that (1) the arbitration agreement did not apply to the wrongful death cause of action because the parents did not sign it, and (2) the trial court should exercise its discretion under section 1281.2, subdivision (c), not to compel arbitration.

IV. *Trial Court's Order*

The trial court found that Asistencia had demonstrated the existence of an arbitration agreement that covered and compelled arbitration of Skyler's claims—that is, the first three causes of action for dependent adult abuse, negligence, and violation of residents' rights.

However, relying on *Avila*, *supra*, 20 Cal.App.5th 835, the trial court concluded that the parents' wrongful death cause of action was not subject to arbitration because it was "based upon neglect within the meaning of the Elder Abuse and Dependent Adult Civil Protection Act" (Elder Abuse Act) (Welf. & Inst. Code, § 15600 et seq.) rather than medical malpractice. Accordingly,

section 1295 and the holding in *Ruiz*, *supra*, 50 Cal.4th 838 did not apply.[5]

Declining to exercise its discretion under section 1281.2, subdivision (c), to refuse to enforce the arbitration agreement, the trial court granted Asistencia's petition to compel as to Skyler's claims but denied it as to the parents' wrongful death cause of action.

V. *Appeal*

Asistencia's timely appeal ensued.

DISCUSSION

The sole issue in this appeal is whether the trial court erred in denying Asistencia's petition to compel arbitration as to the parents' wrongful death cause of action.[6]

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[5] Section 1295 "create[s] certain requirements for arbitration agreements of 'any dispute as to professional negligence of a health care provider.' (§ 1295, subd. (a).)" (*Avila*, *supra*, 20 Cal.App.5th at p. 841.) In *Ruiz*, *supra*, 50 Cal.4th at page 849, "the California Supreme Court held that section 1295 permitted patients who consented to arbitration to bind their heirs in actions for wrongful death. [Citation.]" (*Avila*, *supra,* at pp. 841–842.)

[6] In their respondents' brief, plaintiffs urge us to reverse the portion of the trial court's order compelling arbitration of Skyler's claims. Because plaintiffs failed to file a cross-appeal from the order, they have forfeited their challenge. (See *Gutierrez v. Chopard USA Ltd.* (2022) 82 Cal.App.5th 383, 394 [the plaintiff's failure to file a cross-appeal from the trial court's order forfeited her challenge to the order seeking affirmative relief]; *Caliber Paving Co., Inc. v. Rexford Industrial Realty & Management, Inc.* (2020) 54 Cal.App.5th 175, 187 ["A respondent must file a notice of appeal and become a cross-appellant if the respondent seeks affirmative relief by way of appeal"].) Forfeiture aside, our

I. *Standard of Review*

Where, as here, no evidentiary conflict exists, we review de novo an order denying a motion to compel arbitration. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126.)

II. *Relevant Law*

A. General arbitration law

Generally, "a party cannot be compelled to arbitrate a dispute that he or she has not agreed to resolve by arbitration. [Citations.]" (*Daniels v. Sunrise Senior Living, Inc.* (2013) 212 Cal.App.4th 674, 680 (*Daniels*).) As relevant here, an exception to this rule was carved out by the California Supreme Court in *Ruiz*, *supra*, 50 Cal.4th 838.

Ruiz addressed the following issue: "[W]hen a person seeking medical care contracts with a health care provider to resolve all medical malpractice claims through arbitration, does that agreement apply to the resolution of wrongful death claims, when the claimants are not themselves signatory to the arbitration agreement?" (*Ruiz*, *supra*, 50 Cal.4th at p. 841.)

In answering this question, *Ruiz* focused on the legislative intent behind section 1295. Enacted as part of the Medical Injury Compensation Reform Act of 1975 (MICRA), section 1295 "contemplates that all medical malpractice claims, including wrongful death claims, may be subject to arbitration agreements between a health care provider and the patient." (*Ruiz*, *supra*, 50 Cal.4th at p. 841; see also *id.* at p. 843.) Section 1295 encourages and facilitates arbitration of medical malpractice disputes, which "furthers MICRA's goal of reducing costs in the

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conclusion that the parents' wrongful death cause of action must be sent to arbitration renders plaintiffs' argument moot.

resolution of malpractice claims and therefore malpractice insurance premiums." (*Ruiz, supra*, at p. 844.)

Ruiz concluded "that section 1295, construed in light of its purpose, is designed to permit patients who sign arbitration agreements to bind their heirs in wrongful death actions." (*Ruiz, supra,* 50 Cal.4th at p. 849.) Accordingly, *Ruiz* held "that all wrongful death claimants are bound by arbitration agreements entered into pursuant to section 1295, at least when . . . the language of the agreement manifests an intent to bind these claimants." (*Ruiz, supra*, at p. 841.)

B. The wrongful death tort and the Elder Abuse Act

At common law, personal torts expired when the victim died. Today, a cause of action for wrongful death exists by statute, giving a decedent's heirs a totally new right of action, on different principles. (§§ 377.60–377.62; *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1263 (*Quiroz*).) The elements of a wrongful death cause of action are "'the tort (negligence or other wrongful act), the resulting death, and the damages, consisting of the *pecuniary loss* suffered by the *heirs*.'" (*Quiroz*, *supra,* at p. 1263.)

"Unlike a cause of action for wrongful death, a survivor cause of action is not a new cause of action that vests in the heirs on the death of the decedent. It is instead a separate and distinct cause of action which belonged to the decedent before death but, by statute, survives that event." (*Quiroz*, *supra*, 140 Cal.App.4th at p. 1264.) The heirs can recover damages for "the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the

decedent lived, and [not including] damages for pain, suffering, or disfigurement." (§ 377.34, subd. (a).)

One exception to the rule that damages for the decedent's predeath pain and suffering are not recoverable in a survivor action is contained in the Elder Abuse Act. "The ability of the decedent's successor in interest to recover damages for the decedent's predeath pain, suffering, or disfigurement under [Welfare and Institutions Code section 15657] specifically trumps the general prohibition on such recovery provided at Code of Civil Procedure section 377.34. [Citation.]" (*Quiroz*, *supra*, 140 Cal.App.4th at p. 1265.) But the law is clear that the cause of action for a violation of the Elder Abuse Act belongs to the elder victim; the claim does not pass on to survivors. (*Tepper v. Wilkins* (2017) 10 Cal.App.5th 1198, 1209 ["the cause of action for elder financial abuse belongs to [the elder] as the real party in interest"]; *Quiroz*, *supra*, at p. 1283 ["The legislative history does not reveal any intent to apply the [Elder Abuse] Act to a wrongful death action brought by a decedent's heir on his or her own behalf"].)

III. *Analysis*

Applying these legal principles, we conclude that the parents' wrongful death claim falls squarely within the scope of *Ruiz* and must be ordered to arbitration. The arbitration agreement's plain language manifests an intent between the parties to bind Skyler's heirs, i.e., the wrongful death claimants, to any claims of professional negligence. (*Ruiz*, *supra*, 50 Cal.4th at pp. 849, 851.) After all, it complies to the letter with section 1295, subdivisions (a) and (b).

And the parents' bare bones claim against Asistencia sounds in professional negligence. (See § 1295, subd. (g)(2)

["'Professional negligence' means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death . . ."]; *Unruh-Haxton v. Regents of University of California* (2008) 162 Cal.App.4th 343, 353 ["'when a cause of action is asserted against a health care provider on a legal theory other than medical malpractice, the courts must determine whether it is nevertheless based on the "professional negligence" of the health care provider'"]; *Simmons v. West Covina Medical Clinic* (1989) 212 Cal.App.3d 696, 701–702 [elements of medical malpractice].) Specifically, the complaint alleges that Asistencia owed Skyler duties, that Asistencia failed to meet its duties, and that "[a]s a proximate result of negligence and 'neglect' . . . [Skyler] died." The allegations of understaffing and the failure to prevent Skyler from falling or developing infections speak to "negligent act[s] or omission[s] to act by a health care provider in the rendering of professional services" which proximately caused Skyler's death. (§ 1295, subd. (g)(2).)

Urging us to affirm the trial court's order, plaintiffs assert that the wrongful death claim is not subject to *Ruiz* because it is one for dependent adult abuse, not professional negligence. Certainly neglect can constitute abuse under the Elder Abuse Act. (See, e.g., Welf. & Inst. Code, § 15610.57, subds. (a)(1), (b)(2), (b)(3).) That is why Skyler's successor in interest can absolutely pursue a cause of action under the Elder Abuse Act on Skyler's behalf. But the law does not permit Skyler's parents to assert their own claim for neglect under the Elder Abuse Act (*Quiroz*, *supra*, 140 Cal.App.4th at pp. 1282–1283 [only the decedent or his estate can assert an elder abuse claim; the heirs

have no claim in their own right under the Elder Abuse Act], ["the enhanced remedies provided under the [Elder Abuse Act] were intended to apply to actions by or on behalf of *victims* of elder or dependent care abuse" not "to a wrongful death action brought by a decedent's heir on his or her own behalf"]), and they cannot circumvent this well-settled principle simply by labeling their claim as one for wrongful death, a cause of action "clear[ly]" subject to section 1295. (*Ruiz*, *supra*, 50 Cal.4th at p. 849.) In other words, if the parents cannot maintain a claim for abuse under the Elder Abuse Act in their own name, it makes no sense for them to be able to pursue a claim for wrongful death based upon that same alleged abuse.[7]

The various Court of Appeal decisions that have confined *Ruiz*'s holding to wrongful death claims predicated on medical malpractice or professional negligence do not compel a different result because, as set forth above, the parents' wrongful death claim sounds in professional negligence. (See *Valentine v. Plum Healthcare Group, LLC* (2019) 37 Cal.App.5th 1076, 1084 ["a patient of a skilled nursing facility can bind her heirs to arbitrate wrongful death claims arising only from medical malpractice"]; *Avila*, *supra*, 20 Cal.App.5th at p. 843 [where a wrongful death "claim is not one within the ambit of section 1295, . . . *Ruiz*'s

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[7] This conclusion begs a question not briefed by the parties: Are the arbitrator's findings on Skyler's claims binding on the parents' wrongful death claim? (*Sanchez v. Carmax Auto Superstores California, LLC* (2014) 224 Cal.App.4th 398, 407 [""""The doctrine of res judicata applies not only to judicial proceedings but also to arbitration proceedings. [Citation.]" [Citation.]' [Citations.] The doctrine of collateral estoppel also applies. An arbitration award therefore can bar identical causes of action in court and have collateral estoppel effect"].)

holding does not apply"]; *Daniels*, *supra*, 212 Cal.App.4th at p. 677 ["*Ruiz* ha[s] no bearing on third party wrongful death claims outside the context of section 1295"]; *Bush v. Horizon West* (2012) 205 Cal.App.4th 924, 929 [*Ruiz* not applicable where case did not involve a wrongful death claim predicated on medical malpractice].) To the extent these cases hold otherwise, we respectfully disagree. (See, e.g., *Avila*, *supra*, 20 Cal.App.5th at p. 842 ["If the primary basis for the wrongful death claim sounds in professional negligence as defined by MICRA, then section 1295 applies. If, as plaintiffs claim here, the primary basis is under the Elder Abuse and Dependent Adult Civil Protection Act . . . then section 1295 does not apply and neither does *Ruiz's* exception to the general rule that one who has not consented cannot be compelled to arbitrate"].)

But even if we agreed that a wrongful death claim based upon dependent adult abuse falls outside the scope of *Ruiz* and cannot be ordered to arbitration, that principle would not apply here. While a cause of action for statutory dependent adult abuse is distinct from one for medical malpractice (*Delaney v. Baker* (1999) 20 Cal.4th 23, 31), plaintiffs do not allege with adequate specificity how their claims here constitute dependent adult abuse and not professional negligence (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 791 [a cause of action under the Elder Abuse Act must be alleged with particularity]). Absent these specific allegations, we cannot ignore our Supreme Court's mandate in *Ruiz*. (*Loshonkohl v. Kinder* (2003) 109 Cal.App.4th 510, 517.) We will not permit plaintiffs to circumvent *Ruiz* through intentionally opaque pleading. (*Groom v. Health Net* (2000) 82 Cal.App.4th 1189, 1196 ["it may reasonably be inferred [that the plaintiff's amended complaints]

were artfully drafted for the purpose of avoiding arbitration"]; *Johnson v. Hydraulic Research & Mfg. Co.* (1977) 70 Cal.App.3d 675, 682 [a plaintiff may not avoid arbitration by artfully pleading his complaint].)

DISPOSITION

The order is reversed. The trial court is directed to order the parents' wrongful death cause of action to arbitration. Asistencia is entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT

PROOF OF SERVICE

Re: Holland v. Silverscreen Healthcare, Inc. et al., Case No. B323237

I, Joseph S. Klapach, declare that I am over 18 years old, and not a party to the within action; my business address is 15303 Ventura Boulevard, Suite 1510, Sherman Oaks, California 91403.

On June 19, 2024, I served a true copy of the foregoing PETITION FOR REVIEW, on the following parties, in the manner specified below:

BY ELECTRONIC TRANSMISSION VIA TRUEFILING: Based on a court order and/or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent via TrueFiling to the persons indicated on the Service List as receiving electronic service. According to the TrueFiling website, these persons are registered TrueFiling users who have consented to receive electronic service of documents in this case. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY MAIL: I enclosed the documents in a sealed envelope or package addressed to the persons indicated in the Service List as receiving mail service. I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with a postage fully prepaid.

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

Executed on June 19, 2024, at Sherman Oaks, California.

/s/ Joseph S. Klapach

Joseph S. Klapach

Service List

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Case Name: **Jonie A. Holland et al. v. Silverscreen Healthcare, Inc.**
Case Number: **TEMP-3WEXS5LG**
Lower Court Case Number:

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ADDITIONAL DOCUMENTS	B323237_SUB_Womack Petitioners
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6/19/2024

Date

/s/Joseph Klapach

Signature

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