Supreme Court Number S285429

In the Supreme Court of the State of California

JONIE A. HOLLAND, et al.,

Plaintiffs and Petitioners,

v.

SILVERSCREEN HEALTHCARE, INC.,

Defendant and Respondent.

After a Decision by the Court of Appeal
For the Second Appellate District, Division Two
Second Civil Case Number B323237

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INTRODUCTION

Individuals who receive services from a health care provider may agree to arbitrate their own claims based on professional negligence as well as those belonging to their heirs for wrongful death. This authority arises from Code of Civil Procedure section 1295 ("section 1295"), which was enacted as part of the Medical Injury Compensation Reform Act of 1975 (MICRA) so as "to encourage and facilitate arbitration of medical malpractice disputes." (*Reigelsperger v. Siller* (2007) 40 Cal.4th 574, 577–578.) Because arbitration "furthers MICRA's goal of reducing costs in the resolution of malpractice claims and

therefore malpractice insurance premiums," section 1295 is construed liberally. (*Ruiz v. Podolsky* (2010) 50 Cal.4th 838, 844 (*Ruiz*).)

Consequently, this court in *Ruiz* held a nonsignatory to an arbitration agreement may be compelled to arbitrate his or her claim for wrongful death where the following conditions are met: (1) the agreement is between an individual and a medical provider; (2) the agreement complies with the notice requirements set forth in section 1295; and (3) the claimant's wrongful death claim is premised on allegations of professional negligence. (*Ruiz, supra,* 50 Cal.4th at p. 841.)

In *Holland v. Silverscreen Healthcare, Inc.* (2024) 101 Cal.App.5th 1125, 1133 (*Holland*), the Court of Appeal properly applied *Ruiz* and section 1295 to find that all three conditions for compelling plaintiffs' Jonie A. Holland and Wayne D. Womack's (collectively, "the heirs") wrongful death claim to arbitration were satisfied: (1) decedent Skyler Womack entered into an arbitration agreement with a skilled nursing facility before his death, (2) the arbitration agreement complied with section 1295, and (3) Womack's parents alleged in their complaint that decedent died as a result of the facility's purported professional negligence. [AA 10–11, 13, 15, 26–27.] While the heirs' wrongful death claim was pled as one for neglect under the Elder Abuse and Dependent Adult Civil Protection Act, Welfare and Institutions Code section 15610, et seq. (the EADACPA or the Act), the crux of the heirs' claim sounded in professional negligence. Thus, the Court of

Appeal properly held the heirs' wrongful death claim must be compelled to arbitration. This result is in keeping with the goals of the Legislature when enacting MICRA—along with section 1295—and of this court as expressed in *Ruiz*. (*Ruiz, supra,* 50 Cal.4th at p. 841.)

Yet, the heirs argue the Court of Appeal erred because their wrongful death claim is "materially indistinguishable" from those claims at issue in *Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 843 (*Avila*), *Daniels v. Sunrise Senior Living, Inc.* (2013) 212 Cal.App.4th 674, 677 (*Daniels*), *Hearden v. Windsor Redding Care Center, LLC* (2024) 103 Cal.App.5th 1010, 1018–1019 (*Hearden*) and *Valentine v. Plum Healthcare Group, LLC* (2019) 37 Cal.App.5th 1076, 1084 (*Valentine*). Those cases, which are distinguishable in material ways, held the nonsignatory heirs' claims for wrongful death did not sound in professional negligence and were not subject to arbitration. Thus, the heirs contend, the same result should have occurred here.

This case is fundamentally distinguishable from *Avila, Daniels*, *Hearden*, and *Valentine*. First, none of the arbitration agreements at issue in those decisions complied with section 1295 or were governed by MICRA. Second, the gravamen of the heirs' wrongful death claim in this case falls squarely within the rule regarding arbitrability of wrongful death claims established in *Ruiz*. The heirs' wrongful death claim is based on injuries Skyler Womack experienced that were allegedly caused by negligent

medical care. In contrast, the wrongful death claims at issue in *Avila*, *Daniels*, *Hearden* and *Valentine* were specifically pled to sound in elder abuse/neglect arising under the EADACPA, or something else entirely.

Additionally, the Court of Appeal's decision correctly articulates the long-standing principle that heirs have no individual right to bring claims under the Act for abuse or neglect on their own behalf. (*Holland, supra,* 101 Cal.App.5th at pp. 1133–1134.) A claim for dependent adult abuse/neglect lies with the alleged victim, rather than his or her heirs. (See *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1263 (*Quiroz*).) In an attempt to circumvent *Quiroz*, the heirs argue their wrongful death claim for neglect is brought pursuant to Code of Civil Procedure section 377.60 ("section 377.60"), which contains a reference to death "caused by the wrongful act or neglect of another[.]" (Code Civ. Proc., § 377.60, subd. (a).)

In doing so, the heirs do not address the Court of Appeal's reasoning, nor do they acknowledge that they previously took the position in both the superior court and the Court of Appeal that their wrongful death claim sounded in neglect under the EADACPA. Not only is the heirs' position before this court inconsistent with their earlier contentions, but their argument also seeks to engraft the definition of "neglect" under the EADACPA into section 377.60. This argument was forfeited and further, is contrary to established cannons of statutory construction.

Ultimately, the heirs fail to show the Court of Appeal decided incorrectly. The Court of Appeal's decision is merely the logical extension of existing jurisprudence in California interpreting the enforceability of arbitration agreements as well as the scope of MICRA and the EADACPA. Indeed, the Court of Appeal's decision bridges the gap between *Ruiz* and its progeny by showing when an arbitration agreement satisfies the prerequisites for compelling a nonsignatory heir's wrongful death claim to arbitration. The Court of Appeal also articulates the differences between the rights of various claimants under the Act. Lower courts and litigants alike stand to benefit from these clarifications of the law.

STATEMENT OF THE CASE

A. Skyler Womack enters into an arbitration agreement with Silverscreen binding himself, and any claims of his heirs, to arbitration.

Skyler Womack was a resident at the Asistencia Villa Rehabilitation and Care Center, which is a licensed 24-hour skilled nursing facility operated by defendant Silverscreen Healthcare, Inc. ("Silverscreen"). [Appellant's Appendix ("AA") 7.] Womack signed a binding arbitration agreement with Asistencia upon his admission. [*Id.* at pp. 26–27.] The agreement expressly stated that not only the resident, Womack, will be bound by its terms, but "all parties, including the Resident's representatives, executors, family members and heirs." [*Id.* at p. 26.] Further, the arbitration agreement complied with section 1295. For example, Article 1 provides:

> It is understood that any 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, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. Both parties to this contract, by entering into it, are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration.

[AA 26.]

Additionally, the following language appears immediately above each signature line in capitalized 12-point red font:

> NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL PRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL.

[AA 27.]

The arbitration agreement also states that it is governed by the Federal Arbitration Act and that the parties agree Code of Civil Procedure section 1281.2, subdivision (c), is excluded and does not apply to its terms. [AA 27.]

B. After Womack passes away, his heirs file suit against Silverscreen.

Womack's parents, Jonie A. Holland and Wayne D. Womack (collectively, "the heirs"), sued Silverscreen in Los Angeles County. Womack's mother sued as Womack's successor

and in her individual capacity, and his father sued only in his individual capacity. [AA 7–8.] The complaint purports to set forth four causes of action against Silverscreen: (1) dependent adult abuse, (2) negligence, (3) violation of residents' rights, and (4) wrongful death. [*Id.* at pp. 6, 10–14.]

All of the causes of action alleged in the complaint rest on the same factual allegations, to wit: "While under the care and treatment of Asistencia . . . WOMACK suffered from multiple falls with injury, and infections which caused him pain and suffering and were substantial factors in his untimely demise." [AA 11.] Each cause of action also rests on the theory that Silverscreen failed to exercise reasonable care. [*Id.* at p. 10.]

The heirs allege Silverscreen committed dependent adult abuse because it "failed to exercise the degree of care that reasonable persons in a like position would exercise." [AA 10.] The heirs also allege Silverscreen was negligent because it breached "statutory, regulatory, and common law duties of care." [*Id.* at p. 11.]

The heirs claim Silverscreen violated Womack's resident's rights because it did not "adhere[] to the applicable rules, laws, and regulations, as well as the acceptable standards of practice governing the operation of a skilled nursing facility." [AA 13.]

The heirs' final cause of action, for wrongful death, incorporates all of their preceding allegations and alleges that Silverscreen "owed statutory and common law duties to

WOMACK," and "failed to meet their statutory and common law duties to WOMACK[.]" [AA 14.]

C. Silverscreen petitions to compel arbitration, which the heirs oppose.

Silverscreen filed a petition to compel arbitration supported by a copy of the signed arbitration agreement. [AA 16–27.] In support of its petition, Silverscreen argued the arbitration agreement should be enforced because it was signed by Womack who was charged with having read and understood the agreement's contents. [*Id.* at p. 19.] Further, Silverscreen demonstrated the arbitration agreement applied to the heirs' dispute. Specifically, the heirs' wrongful death claim must be compelled to arbitration pursuant to *Ruiz, supra,* 50 Cal.4th 838. [*Id.* at p. 21.] Silverscreen also asserted discovery should be stayed pending a ruling on its petition. [*Ibid.*]

The heirs argued in opposition that the arbitration clause does not apply to their wrongful death cause of action because they did not sign the arbitration agreement. [AA 29–34.] Additionally, the heirs argued section 1295 did not apply to the arbitration agreement because the "primary basis" for their wrongful death claim arises under the EADACPA. [*Id.* at p. 31.]

The heirs also contended the arbitration agreement did not comply with 42 Code of Federal Regulations section 483.70(n)(ii) and (n)(ii)(2). [AA 34.] Lastly, the heirs urged the trial court to exercise its discretion to deny the petition to compel arbitration

as to all causes of action under Code of Civil Procedure section 1281.2, subdivision (c). [*Id.* at p. 35.]

In its reply, Silverscreen argued section 1295 governs the arbitration agreement because Silverscreen is a health care provider and the heirs' wrongful death cause of action is for medical negligence, rather than elder abuse. [AA 56–58.] Silverscreen also pointed out that the arbitration agreement complies with 42 Code of Federal Regulations section 483.70 and, even if it did not, that regulation would not bar enforcement of the agreement. [*Id.* at p. 58.]

Finally, Silverscreen argued the trial court did not have authority to apply Code of Civil Procedure section 1281.2, subdivision (c), because the parties agreed to exclude that provision from the arbitration agreement and that the FAA would govern the agreement. [AA 58–61.]

D. The trial court orders Skyler Womack's survivor causes of action to arbitration, but finds the heirs' wrongful death cause of action must go to trial.

The trial court ruled Womack's survivor claims must be compelled to arbitration because Silverscreen established the existence of an agreement to arbitrate, and federal regulations did not bar enforcement of the agreement. [AA 66–68.] However, the trial court ruled the heirs' wrongful death claim could not be compelled to arbitration because "plaintiffs' wrongful death claim [was] based upon neglect within the meaning of the Elder Abuse and Dependent Adult Civil Protection Act." [*Id.* at p. 71.] In doing

so, the trial court relied primarily on *Avila, supra,* 20 Cal.App.5th 835. [*Id.* at pp. 69–71.] Lastly, the trial court rejected the heirs' argument that the court should deny arbitration of all claims under Code of Civil Procedure section 1281.2, subdivision (c). [*Id.* at p. 72.] The heirs also did not carry their burden to establish the provision waiving section 1281.2, subdivision (c), was unconscionable. [*Id.* at pp. 72–73.]

Silverscreen timely filed a notice of appeal from the trial court's order partially denying the petition to compel arbitration. [AA 90.]

E. On appeal, Silverscreen demonstrates the heirs' wrongful death cause of action must also be arbitrated.

On appeal, Silverscreen argued the heirs' wrongful death claim should be compelled to arbitration. The Court of Appeal agreed, holding that the parents were bound by the arbitration agreement signed by Womack because the agreement complied with section 1295 and was governed by *Ruiz, supra,* 50 Cal.4th 838. (*Holland, supra,* 101 Cal.App.5th at p. 1128.)

All three conditions of *Ruiz* were satisfied: (1) Womack entered into the arbitration agreement with a skilled nursing facility; (2) the agreement complied "to the letter" with section 1295; and (3) the parents' wrongful death claim was within the scope of *Ruiz*. (*Holland, supra,* 101 Cal.App.5th at p. 1133.)

Applying the analytical framework of past precedent interpreting *Ruiz*, the Court of Appeal determined the heirs' wrongful death claim sounded in professional negligence and not elder abuse/neglect. (*Holland, supra,* 101 Cal.App.5th at p. 1133.) According to the court, "[t]he 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." (*Ibid.*, quoting Code Civ. Proc., § 1295, subd. (g)(2).) Referencing *Quiroz, supra*, 140 Cal.App.4th 1256, 1282–1283, the court also noted that "the law does not permit Skyler's parents to assert their own claim for neglect under the Elder Abuse Act" in order to avoid arbitration. (*Holland,* at p. 1133.)

The court then distinguished *Valentine*, *Avila*, *Daniels* and *Bush v. Horizon West* (2012) 205 Cal.App.4th 924 (*Bush*), where courts held *Ruiz* did not apply to compel nonsignatories' wrongful death claims to arbitration. (*Holland, supra,* 101 Cal.App.5th at pp. 1134–1135.) Because the heirs in *Holland* did "not allege with adequate specificity how their claims here constitute dependent adult abuse and not professional negligence," their wrongful death claim must be compelled to arbitration and the trial court's order reversed. (*Ibid.*)

LEGAL DISCUSSION

I. The Court of Appeal Correctly Applied Existing Precedent to Hold the Heirs' Wrongful Death Claim Must Be Arbitrated Under *Ruiz* and Section 1295.

A. The heirs' wrongful death claim satisfies the three prerequisites for concluding a nonsignatory heir's wrongful death claim must be arbitrated pursuant to this court's decision in *Ruiz v. Podolsky*.

The heirs do not dispute that Silverscreen is a skilled nursing facility, which qualifies as a medical provider under section 1295. (Code Civ. Proc., § 1295, subd. (g)(1).) As the Court of Appeal noted, "[t]he 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." (*Holland, supra,* 101 Cal.App.5th at p. 1133.) Indeed, the terms of the parties' arbitration agreement comply with subdivisions (a) and (b) of section 1295 to the letter. Thus, the first and second conditions of *Ruiz* are satisfied—decedent Skyler Womack entered into an arbitration agreement with a skilled nursing facility before his death and the arbitration agreement complies with section 1295.

The heirs, however, dispute that their "bare bones" wrongful death claim sounds in professional negligence rather than neglect and "falls squarely within the scope of *Ruiz* and must be ordered to arbitration." (*Holland, supra,* 101 Cal.App.5th at p. 1133.) In other words, the heirs contend that the third condition of *Ruiz* is not satisfied. The heirs are incorrect. An

examination of *Ruiz* shows that the heirs' wrongful death claim is within the scope of section 1295 and the trial court's ruling to the contrary was properly reversed.

In *Ruiz, supra,* 50 Cal.4th 838, a patient signed an arbitration agreement, prior to undergoing surgery, applicable to all medical malpractice claims. (*Id.* at p. 841.) The agreement provided that the parties intended not only to bind themselves but also "any spouse or heirs of the patient and any children, whether born or unborn." (*Id.* at p. 842.) When the patient died after surgery, his wife and adult children sued for medical malpractice and wrongful death. The trial court denied the physician's petition to compel arbitration as to the adult children, but granted the petition as to the wife. (*Ibid.*) On appeal, the court held the wife's wrongful death claim had to be arbitrated, but the adult children could not be required to arbitrate their wrongful death claim because they did not consent to the agreement. (*Ibid.*)

This court reversed, holding that "all wrongful death claimants are bound by arbitration agreements entered into pursuant to [Code of Civil Procedure] section 1295, at least when, as here, the language of the agreement manifests an intent to bind these claimants." (*Ruiz, supra,* 50 Cal.4th at p. 841.) Section 1295 governs agreements to arbitrate professional negligence or medical malpractice claims in medical services contracts with health care providers. (See Code Civ. Proc., § 1295, subd. (a).) "[S]ubdivision (a) contemplates arbitration 'of any dispute as to

professional negligence of a health care provider.'" (*Id.* at p. 849.) Subdivision (g)(2) subsequently defines "professional negligence" "as '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*.'" (*Ibid.*, original italics.) The plain language of section 1295 thus encompasses the arbitration of personal injury as well as wrongful death claims. (*Ibid.*)

Because the Legislature's goal in enacting section 1295 was to control the runaway costs of medical malpractice by promoting arbitration of such disputes, this court found it unsurprising that "section 1295 does not distinguish between malpractice claims asserted by the patient or the patient's estate, and wrongful death claims arising out of alleged malpractice committed against the patient[.]" (*Ruiz, supra,* 50 Cal.4th at p. 850.) It is "evident" that the Legislature intended both types of claims to be subject to arbitration agreements entered into pursuant to section 1295. (*Ibid.*) Indeed, there are "other provisions of MICRA [that] apply to wrongful death actions arising from medical malpractice." (*Ibid.*, citing *Yates v. Pollock* (1987) 194 Cal.App.3d 195, 199 [Civil Code section 3333.2's $250,000 cap on medical malpractice noneconomic damages applies in wrongful death actions].)

As this court explained, the alternative of "requiring potential wrongful death claimants to be signatories to an arbitration agreement is highly problematic." (*Ruiz, supra,* 50

Cal.4th at p. 850.) If heirs were required to sign arbitration agreements pertaining to the provision of medical services, then the patient's medical treatment could be delayed due to the difficult prospect of identifying all heirs and obtaining their consent to arbitration. (*Ibid.*, citing *Herbert v. Superior Court* (1985) 169 Cal.App.3d 718, 725.) Likewise, such a process would raise substantial privacy concerns by "potentially 'authoriz[ing] an intrusion into a patient's confidential relationship with a physician.'" (*Ruiz,* at p. 850, quoting *Gross v. Recabaren* (1988) 206 Cal.App.3d 771, 782.) Invariably, obtaining the signature of heirs to an arbitration agreement related to an individual's medical treatment "would require to some degree the disclosure of confidential medical information regarding the condition a patient seeks to treat." (*Ruiz,* at p. 851.)

The purpose of section 1295 would also be frustrated if a spouse or adult children were allowed to litigate their wrongful death or loss of consortium claims while the patient's claims proceeded in the arbitral forum. (*Ruiz, supra,* 50 Cal.4th at p. 851.) The medical provider would be required to litigate a suit in two separate forums based on identical facts. (*Ibid.*, citing *Mormile v. Sinclair* (1994) 21 Cal.App.4th 1508, 1515.) As a result, "[n]o savings would be effected" and the costs MICRA endeavored to check would continue to run rampant. (*Ruiz,* at p. 851.) In short, requiring heirs to sign a patient's arbitration agreement in order to compel any potential wrongful death claim to arbitration is impractical and contrary to public policy.

The third condition of *Ruiz* is satisfied, and that decision's public policy furthered, because the heirs' wrongful death claim here sounds in professional negligence. The heirs bring four causes of action against Silverscreen for dependent adult abuse, negligence, violation of residents' rights and wrongful death. [AA 6, 10–14.] With regard to the survivor claims of dependent adult abuse, negligence and violation of residents' rights, the complaint alleges that "[w]hile under the care and treatment" of Silverscreen, Skyler Womack "suffered from multiple falls with injury, and infections which caused him pain and suffering and were substantial factors in his untimely demise." [*Id.* at p. 11.] Silverscreen'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 Womack]." [*Id.* at p. 8.] Silverscreen allegedly "'neglected' [Skyler Womack] 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 withholding goods or services necessary to meet the basic needs of [Skyler Womack]...." [*Id.* at pp. 10–11, italics and capitalization omitted.]

Specific to the wrongful death cause of action, the complaint alleges Silverscreen owed Skyler Womack statutory and common law duties and failed to meet its duties. "As a proximate result of [Asistencia's] negligence and 'neglect,'" the heirs contend Womack died. [AA 14.] They allege that they

"sustained the loss of the society, comfort, attention, and love of" Skyler Womack "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) ...." of Silverscreen. [*Ibid.*, italics omitted.]

Because the complaint alleges that Silverscreen owed Skyler Womack duties, Silverscreen failed to meet its duties, and that "[a]s a proximate result of negligence and 'neglect' ... [Skyler Womack] died," the heirs' claim for wrongful death sounds in professional negligence as contemplated by *Ruiz*. (*Holland, supra,* 101 Cal.App.5th at p. 1133.) Moreover, "[t]he 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." (*Ibid.*, quoting Code Civ. Proc., § 1295, subd. (g)(2).) As such, the heirs actually allege negligent—not neglectful—care under the Act.

A court will find that an omission alleged in a complaint amounts to medical malpractice if it originates from a healthcare provider's negligent care of a patient. (*Barris v. County of Los Angeles* (1999) 20 Cal.4th 101, 110–111.) Professional care includes not only medical diagnosis and treatment requiring advanced medical training, but also those acts in furtherance of treatment. (*Flores v. Presbyterian Intercommunity Hosp.* (2016) 63 Cal.4th 75, 85 (*Flores*) ["A medical professional or other hospital staff member may commit a negligent act in rendering

medical care, thereby causing a patient's injury, even where no particular medical skills were required to complete the task at hand"].) For example, "if hospital staff place a violently coughing patient on a gurney for X-rays, and the patient falls to the ground after the staff negligently leave her unsecured while the film is developed, the hospital has caused injury in the rendering of professional services to the patient, even though fastening straps requires no special skill." (*Id.* at pp. 85–86.)

Here, Silverscreen's alleged duty to provide fall protection and infection control is directly related to the professional services provided by a skilled nursing facility when treating patients. Fall protection and infection control are ordinary and usual parts of medical professional services provided by medical providers, including licensed skilled nursing facilities. (See *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 408–409 (*Carter*); *Bellamy v. Appellate Dept.* (1996) 50 Cal.App.4th 797, 806.) Silverscreen's alleged failure to provide fall protections and infection control constitutes professional negligence because those professional services are part of the usual services provided by a skilled nursing facility.

The heirs' own complaint belies their arguments that the wrongful death claim arises from Skyler Womack's purported neglect under the EADACPA. The heirs allege the provisions of Code of Civil Procedure section 364 apply and that they complied with the 90-day notice requirement for professional negligence claims before they filed suit. [AA 8.] The heirs also allege

Silverscreen failed to exercise the degree of care that reasonable skilled nursing facilities would exercise when providing fall protection and infection control to their patients. [*Id.* at p. 10.] These allegations are indicative of professional negligence. The heirs' arguments to the contrary throughout these proceedings are nothing more than an attempt to avoid arbitration. That effort fails as "[n]o amount of descriptive adjectives or epithets may turn a negligence action into an action for intentional or wilful [*sic*] misconduct." (*Mahoney v. Corralejo* (1974) 36 Cal.App.3d 966, 973.)

Further, in *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771 (*Covenant Care*), this court held that elder abuse, as defined by the EADACPA, is not an injury that is "directly related" to the provider's professional services. A claim under the EADACPA alleges the provider or the individual failed to fulfill the custodial duties owed by a custodian, and is unrelated to the provision of health care services. (*Id.* at p. 786.) For example, courts have held that failures to provide treatment for pressure sores, failures to provide medications, failures to stock a crash cart, false documentation, and inadequate medication testing (even with reckless or fraudulent allegations appended) are insufficient to support a claim for abuse under the EADACPA. (*Carter, supra,* 198 Cal.App.4th at p. 410.) The heirs' allegations here that Silverscreen failed to provide fall protections and infection control "implicates a duty that the [skilled nursing facility] owes to a patient by virtue of being a health care provider." (*Flores, supra,* 63 Cal.4th at p. 88.) Thus, allegations of

a failure to provide fall protections and infection control that allegedly led to decedent's injuries constitute allegations of professional negligence within the scope of the skill, prudence, and diligence commonly exercised by medical practitioners at skilled nursing facilities. (*Ibid*.)

Contrary to the heirs' arguments, the Court of Appeal did not hold that *Ruiz* applies to wrongful death claims alleging dependent adult abuse/neglect under the Act. [Opening Brief on the Merits (OBM), pp. 41–44.] Rather, the opinion states in full: "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." (*Holland, supra,* 101 Cal.App.5th at p. 1134.) The Court of Appeal then elaborated that to the extent *Valentine*, *Avila*, *Daniels* and *Bush* "hold otherwise," that is hold that the respective plaintiffs' wrongful death claims sounded in elder abuse/neglect and were not arbitrable, the court respectfully disagreed. While the heirs here make much of the Court of Appeal's purported disagreement with these decisions from other district Courts of Appeal, the *Holland* court did not hold that a wrongful death claim alleging something other than professional negligence was within the scope of *Ruiz*.

Because this court has held that California courts must look beyond the labels and examine what the complaint actually alleges, it is determinative that the gravamen of the heirs'

complaint sounds in professional negligence. Indeed, as the Court of Appeal points out, past precedent does not warrant a different result precisely because the heirs did not successfully plead a claim for dependent adult abuse. (*Holland, supra,* 101 Cal.App.5th at p. 1134.) Therefore, the Court of Appeal correctly decided that the heirs' wrongful death claim should be compelled to arbitration as all prerequisites of *Ruiz* and section 1295 are satisfied.

B. The Court of Appeal's decision is the logical extension of *Ruiz* and its progeny.

The Court of Appeal's decision follows California's established precedent interpreting *Ruiz* so as to avoid the impracticalities of obtaining heirs' signatures and further public policy favoring the arbitration of nonsignatory heirs' claims for professional negligence. While the heirs contend the Court of Appeal should not have held their wrongful death claim was arbitrable based on *Avila*, *Daniels*, *Hearden* and *Valentine*, they ignore that none of those cases involved wrongful death claims that satisfied the three prerequisites for compelling a nonsignatory heirs' wrongful death claim to arbitration. Consequently, each of those cases affirmed the lower court's order denying arbitration of the wrongful death claims at issue based on one or more missing prerequisites. Here, however, all the requirements of section 1295 and *Ruiz* were met and the heirs were properly bound to arbitrate their wrongful death claim. The mere fact the Court of Appeal's opinion was the first published opinion to apply *Ruiz* to a set of facts where all three

prerequisites are satisfied, including that the wrongful death claim actually sounds in professional negligence, does not mean the decision is a departure from prior precedent, as the heirs claim.

In *Daniels, supra*, 212 Cal.App.4th 674, an elderly woman's surviving heir sued a residential care facility, alleging survivor claims for negligence, breach of contract, willful misconduct, and elder abuse. (*Id.* at pp. 677–678.) The heir also alleged a wrongful death claim based on allegations that the decedent purportedly developed pressure sores that were not noticed and not treated. The decedent then developed septic shock, pneumonia, dehydration and a staph infection. (*Id.* at p. 677.) The heir alleged the decedent died due to receiving "inadequate care" at the residential care facility. (*Id.* at p. 676.) The defendants petitioned to compel arbitration based on an arbitration clause within the residency agreement that the decedent's heir signed on behalf of the decedent, but not in her personal capacity. (*Id.* at p. 678.) The defendants asserted *Ruiz* applied to compel the nonsignatory heir's wrongful death claim to arbitration. (*Id.* at p. 677.)

Relevant here, the court in *Daniels* affirmed the trial court's order declining to compel arbitration on the ground that the defendants could not satisfy the prerequisites for applying *Ruiz* to compel the heir's wrongful death claim to arbitration. (*Daniels, supra,* 212 Cal.App.4th at p. 681.) The arbitration clause did not comply with section 1295's notice requirements.

(*Id.* at p. 684.) Also, the arbitration clause was entered into "with a person other than a health care provider for claims other than medical malpractice." (*Id.* at p. 683.) The Court of Appeal found it dispositive that the defendant was a residential care facility for the elderly, which does not have "any statutory analog to section 1295," and which poses a "heightened danger, not present in the medical malpractice or health care provider context, that a person may enter into an arbitration agreement without knowingly waiving his or her right to a jury trial on their health care-related claims or their heirs' derivative wrongful death claims." (*Id.* at p. 684.)

While the heirs argue their allegations are akin to those brought in *Daniels*, that decision did not analyze the allegations of the heirs' complaint. The *Daniels* decision merely stated the wrongful death claim was not based on medical malpractice. (*Daniels, supra,* 212 Cal.App.4th at p. 684.) The court's determination in *Daniels* that the wrongful death claim did not involve medical malpractice was based on the defendant's status as a residential care facility rather than an examination of the wrongful death allegations. Here, the Court of Appeal found *Daniels* unpersuasive because the gravamen of the heirs' wrongful death claim in this case sounds in professional negligence. (*Holland, supra*, 101 Cal.App.5th at p. 1134.)

The heirs also rely on *Avila*, *supra,* 20 Cal.App.5th 835, which concluded the complaint's detailed allegations set forth a claim under the Act. (*Id.* at p. 843.) In *Avila*, the decedent's son

brought suit against a long-term acute care hospital alleging claims for negligence, elder abuse and wrongful death. The complaint alleged the hospital neglected the decedent because a feeding tube became dislodged causing a heart attack. (*Id.* at pp. 838–839.) The complaint also alleged "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." (*Id.* at p. 843.) Further, the complaint alleged "the lack of availability of a physician, failure to provide properly trained staff and nursing, among other things." (*Ibid.*)

On appeal, the *Avila* court considered "whether this case is about 'professional negligence,' as defined by MICRA, or something else." (*Avila, supra,* 20 Cal.App.5th at p. 842.) While the court acknowledged "[t]he complaint includes allegations that could be categorized as professional negligence as well as elder abuse," the court held the complaint was pleaded as one for negligence/willful misconduct, elder abuse and neglect under the Act, and wrongful death. (*Id.* at p. 843.) The court found it dispositive that the plaintiffs alleged "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." (*Ibid.*) The complaint also alleged "the lack of availability of a physician, failure to provide properly trained staff and nursing, among other things." (*Ibid.*)

Based on these detailed allegations of neglect that tracked the elements of a cause of action for neglect under the Act, the court held the plaintiffs successfully pleaded a cause of action under the Act and their wrongful death claim was not within the scope of section 1295. (*Avila, supra,* 20 Cal.App.5th at p. 843.) Accordingly, all three criteria set forth in *Ruiz* were *not* satisfied. Here, however, the heirs' complaint contains only bare bones allegations that do not successfully plead a claim for abuse/neglect under the Act. The Court of Appeal correctly applied the principles espoused in *Avila* to hold that a cause of action under the Act must be alleged with "particularity." (*Holland, supra,* 101 Cal.App.5th at pp. 1134–1135.) The heirs' allegations thus fall short of the pleading standard articulated in *Avila* and instead sound in professional negligence. (Cf., *Avila,* at p. 843.)

The heirs also rely on *Valentine*, *supra,* 37 Cal.App.5th 1076, which did not analyze the allegations supporting the children's wrongful death claims asserted in that case or whether *Ruiz* and section 1295 apply. In *Valentine*, the decedent's husband entered into arbitration agreements on behalf of his wife with the defendants who owned and operated a skilled nursing facility. (*Id.* at pp. 1081–1082.) After the decedent passed away, the defendants petitioned to compel arbitration of the plaintiffs' claims for elder abuse, violation of the Patients' Bill of Rights and wrongful death premised on reckless neglect and abuse. (*Id.* at p. 1083.) The trial court ruled that the decedent's husband was bound by the arbitration agreements in his individual capacity,

but the agreements were not binding on the children's wrongful death claims because they did not allege medical malpractice or professional negligence so as to invoke *Ruiz*. (*Id.* at pp. 1083–1084.) The court ultimately denied the petition to compel arbitration under Code of Civil Procedure section 1281.2 due to the possibility of conflicting rulings. (*Id.* at p. 1084.)

On appeal, the court affirmed the trial court's order denying the defendants' petition to compel arbitration on the basis that the husband lacked agency authority to sign the agreement and could not bind the children to arbitrate their wrongful death claims. (*Valentine, supra,* 37 Cal.App.5th at p. 1090.) Consequently, there was a likelihood of inconsistent rulings, and the trial court properly exercised its discretion under Code of Civil Procedure section 1281.2 to deny the petition. (*Ibid.*) Because the court in *Valentine* addressed only whether the husband had agency authority to enter into the arbitration agreement on behalf of his wife, that decision does not address *Ruiz* and is not relevant here. (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 67 [noting cases are "not authority for propositions not considered and decided"].)

Hearden, *supra,* 103 Cal.App.5th 1010, the last decision the heirs rely on in detail, mirrors the Court of Appeal's reasoning in this case when evaluating whether a wrongful death claim sounds in professional negligence or neglect under the Act. As *Hearden* notes, "[t]he elder abuse cause of action asserted in the first amended complaint alleged the failure to adequately staff

the facility, provide basic custodial care to residents, monitor residents, provide sufficient equipment and training to prevent the spread of COVID-19 in the facility, and enact or comply with policies and procedures to prevent the spread of COVID-19 at the facility." (*Id.* at p. 1019.) Given the specificity with which the elder abuse cause of action was pleaded, the court in *Hearden* held that the "primary basis" of the wrongful death claim was not malpractice or professional negligence. (*Ibid.*)

Similarly, here the Court of Appeal held the heirs' wrongful death claim did "not allege with adequate specificity how [the heirs'] claims here constitute dependent adult abuse and not professional negligence." (*Holland, supra,* 101 Cal.App.5th at p. 1134.) Absent specific allegations of neglect under the Act, the court stated it could not "ignore our Supreme Court's mandate in *Ruiz*." (*Id.* at p. 1135.) As pleaded, the "primary basis" of the heirs' wrongful death claim lies in professional negligence—*not* dependent adult abuse/neglect.

The heirs' additional authorities purportedly showing that a failure to prevent or treat falls and infections is within the scope of civil neglect, criminal neglect, and parental neglect, do not support overturning *Holland*. [OBM, pp. 37–39.] As a threshold matter, each example contains more detail than the allegations found in the heirs' complaint here. The heirs' vague and conclusory allegations of falls and infections are far too general to demonstrate the heirs' wrongful death claim sounds in abuse/neglect under the EADACPA. [AA 10–11, 13–14.]

For example, the heirs' additional authorities pertaining to civil neglect each allege a significant element of abuse/neglect claims under the Act that is missing here: namely, any allegations that Silverscreen's conduct was reckless, oppressive, fraudulent or malicious. In order to sufficiently allege abuse/neglect under the Act, a plaintiff must allege the defendant "has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse[.]" (Welf. & Inst. Code, §§ 15657, 15610.07, subd. (a).) Instead, the heirs' causes of action rely on language found in medical malpractice and professional negligence claims speaking to breach, duty and proximate cause. [AA 11, 14.]

As for the heirs' remaining case authorities pertaining to criminal neglect and parental neglect, each of those cases arises under a disparate statutory scheme differing from both MICRA and the EADACPA. Cases involving cruelty to animals are not relevant and arise under Penal Code section 597, which contains its own elements and definitions. [OBM, p. 38.] The same applies to the heirs' authorities regarding parental neglect, which arise under the statutes pertaining to the safety of children such as Welfare and Institutions Code section 300 (children subject to jurisdiction of the juvenile court) and the Uniform Child Custody Jurisdiction and Enforcement Act, Family Code sections 3400 to 3465, et seq. [*Id.* at pp. 38–39.] None of the authorities are persuasive or even on point with respect to the issues in this case.

In an effort to shore up the allegations of their complaint, the heirs argue that even if their allegations overlap with professional negligence, the primary basis for those allegations is neglect under the Act. As explained above, the heirs' allegations speak not of the failure to provide medical care, but of the negligent undertaking of medical services. (Cf. *Sababin v. Superior Court* (2006) 144 Cal.App.4th 81, 89.) When the gravamen of the complaint is examined, it becomes apparent that there are no overlapping allegations of neglect and professional negligence. [AA 6–15.] There are only allegations of professional negligence regarding Silverscreen's alleged breach of its duty to provide adequate fall protections and infection control to Skyler Womack. [*Id.* at pp. 11, 13–14.]

Finally, the heirs raise an entirely new argument that if this court finds the heirs' wrongful death claim states "alternative" claims based on both neglect and professional negligence, the court should sever the non-arbitrable wrongful death claim based on neglect. [OBM, pp. 40–41.] As support, the heirs rely on the California Arbitration Act, including Code of Civil Procedure section 1281.2, subdivision (c). [*Id.* at p. 40, fn. 5.] Because it is contrary to this court's policy to consider arguments that were not briefed or addressed below, this confusing and ambiguous argument should be disregarded. (*Lopez v. Ledesma* (2022) 12 Cal.5th 848, 866.)

Even if the argument is considered, the plain language of the arbitration agreement and the Federal Arbitration Act (FAA)

preclude the heirs' argument. Previously, the trial court found the arbitration agreement is governed by the FAA pursuant to Article 7 of the agreement. [AA 71–72 ("This Agreement relates to Resident's admission to the Facility, and the Facility, among other things, participates in the Medicare and/or Medi-Cal programs and/or procures supplies from out of state vendors. The parties, therefore, agree that the underlying admission to the Facility involves interstate commerce. Accordingly, this Agreement invokes the Federal Arbitration Act"), quoting *id.* at p. 27.] Subsequently, the trial court found that Code of Civil Procedure section 1281.2, subdivision (c) did not apply to deny arbitration of the survivor claims even though the court ruled the heirs' wrongful death claim was not arbitrable. [*Id.* at p. 72.] Article 6 of the arbitration agreement, excluding the application of section 1281.2(c), was enforceable and not unconscionable. [*Id.* at pp. 27, 72–73.] As the heirs did not challenge these rulings on appeal, the trial court's rulings that the FAA governs the arbitration agreement and that section 1281.2(c) does not apply may not now be disturbed. (Cf. Code of Civ. Proc., § 1294.2.)

C. Courts have long pierced the pleadings when determining whether a claim sounds in professional negligence or something else beyond the scope of MICRA.

While the heirs argue the Court of Appeal should not have evaluated the "legal sufficiency" of their wrongful death claim, courts have long recognized that artful pleading has the potential to erode the protections and policies of MICRA:

> The problem is that additional causes of action frequently arise out of the same facts as a medical malpractice cause of action. These may include battery, products liability, premises liability, fraud, breach of contract, and intentional or negligent infliction of emotional distress. Indeed, a plaintiff hoping to evade the restrictions of MICRA may choose to assert *only* seemingly non-MICRA causes of action. Thus, 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 so as to trigger MICRA.

(See *Smith v. Ben Bennett, Inc.* (2005) 133 Cal.App.4th 1507, 1514 (*Smith*), original italics.)

Consequently, it is the gravamen of the complaint—not the labels a plaintiff chooses to attach to his or her claims—that determines whether a plaintiff brings a claim for medical negligence, or one for statutory violations of the EADACPA. (*Carter, supra,* 198 Cal.App.4th at p. 412 [court must look to the gravamen of the cause of action, not the form or label of the cause of action]; *Smith, supra,* 133 Cal.App.4th at p. 1525 [the gravamen of the complaint governs, not the label]; *Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker* (2016) 2 Cal.App.5th 252, 259–260 [court should give more weight to the substance, or gravamen of the complaint, than to the form of the complaint].) And the practice of piercing the pleadings to determine the gravamen of a plaintiff's wrongful death claim is well-established in the arbitration context.

As previously discussed, past precedent relied on the allegations of the plaintiff's complaint to hold that the wrongful death claim sounded in elder abuse/neglect, or something else entirely, and that *Ruiz* did not apply to compel a nonsignatory plaintiff's wrongful death claim to arbitration. (See, e.g., *Avila, supra,* 20 Cal.App.5th at p. 843 [plaintiffs "chose to plead a cause of action under the [Elder Abuse] Act, and they did so successfully"]; *Bush, supra,* 205 Cal.App.4th at p. 929 ["this case does not involve a wrongful death claim by Jennings predicated on medical malpractice, but instead involves a claim of negligent infliction of emotional distress predicated on alleged elder abuse"].) It was within this context that the Court of Appeal here correctly concluded a cause of action brought pursuant to the Act must be alleged with "adequate specificity" to demonstrate the heirs' "claims here constitute dependent adult abuse and not professional negligence." (*Holland, supra,* 101 Cal.App.5th at p. 1134.) Otherwise, plaintiffs could "circumvent *Ruiz* through intentionally opaque pleading." (*Id.* at p. 1135.)

By analyzing the heirs' pleadings, the Court of Appeal applied the same analysis as that used in the *Daniels* and *Hearden* decisions. Indeed, as the heirs concede, "a court's task in ruling upon a motion to compel arbitration is to review 'the *nature* of claims to determine whether they are arbitrable.'" [OBM, p. 45, original italics.] In *Nagrampa v. MailCoups, Inc.* (9th Cir. 2006) 469 F.3d 1257, 1271, which the heirs cite, the Ninth Circuit noted that "the federal court must decide claims attacking the validity of the arbitration provision, even if

substantive state law requires an examination of the making of the entire contract as part of that analysis." When evaluating whether an arbitration agreement is valid and enforceable, courts look to whether the plaintiff's claims are within the scope of the arbitration agreement. (*Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell* (1999) 76 Cal.App.4th 227, 230.) The gravamen of the heirs' complaint necessarily bears on whether the heirs' wrongful death claim must be compelled to arbitration under *Ruiz* and section 1295.

Although the heirs contend the Court of Appeal's decision curtails a plaintiff's ability to amend their complaint, the opportunity to amend their pleadings was available to the heirs and remains available to future litigants. (Code Civ. Proc., § 472, subd. (a).) At the time Silverscreen petitioned to compel arbitration, the heirs could have filed an amended complaint. Silverscreen's petition to compel arbitration argued the heirs' wrongful death claim was subject to arbitration under *Ruiz*. [AA 21, 56–57.] Further, the previous *Daniels*, *Avila* and *Bush* decisions all involved courts evaluating the allegations of a complaint in order to determine the gravamen of the claims alleged therein and whether *Ruiz* applies. Under the liberal policy permitting amendments to complaints, the heirs could have amended their complaint during the trial court proceedings to add any further details regarding the alleged neglect of Skyler Womack under the Act. The heirs did not do so. Presumably, they considered the complaint adequately pleaded.

Additionally, the heirs contend that their complaint's allegations satisfy "the minimal pleading requirements" for a wrongful death claim premised on dependent adult abuse/neglect under the Act. [OBM, p. 46.] Not so. "Ordinarily, negligence may be pleaded in general terms and the plaintiff need not specify the precise act or omission alleged to constitute the breach of duty." (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.) However, the Act does not apply to alleged simple, or even gross, negligence by health care providers. (*Covenant Care, supra,* 32 Cal.4th at pp. 783–784; *Delaney v. Baker* (1999) 20 Cal.4th 23, 28, fn. 2, 31.) "To obtain the enhanced remedies of section 15657, 'a plaintiff must demonstrate by clear and convincing evidence that defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent, or malicious conduct."" (*Worsham v. O'Connor Hospital* (2014) 226 Cal.App.4th 331, 337, quoting *Delaney,* at p. 31.) As such, a plaintiff must do much more than comply with the minimal pleading standard for negligence in order to bring a claim for abuse/neglect under the Act.

Moreover, a statutory cause of action, such as a claim for elder abuse/neglect under the Act, must be pleaded with particularity. (See, e.g., *Covenant Care, supra,* 32 Cal.4th at p. 790 ["statutory causes of action must be pleaded with particularity"]; *Carter, supra,* 198 Cal.App.4th at p. 407 ["the facts constituting the neglect and establishing the causal link between the neglect and the injury 'must be pleaded with particularity,' in accordance with the pleading rules governing

statutory claims"].) Relevant here, a claim for neglect under the Act must allege facts showing the defendant:

> (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care [citations];
>
> (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs [citations]; and
>
> (3) denied or withheld goods or services necessary to meet the elder or dependent adult's basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness) [citations].

(*Carter, supra,* 198 Cal.App.4th at pp. 406–407.) "The plaintiff must also allege (and ultimately prove by clear and convincing evidence) that the neglect caused the elder or dependent adult to suffer physical harm, pain or mental suffering." (*Id.* at p. 407.)

Here, the only "ultimate facts" alleged in the heirs' complaint sound in professional negligence rather than neglect as defined by the Act. Here, the survivor claims rest on allegations that "[w]hile under the care and treatment" of Silverscreen, Skyler Womack "suffered from multiple falls with injury, and infections which caused him pain and suffering and were substantial factors in his untimely demise." [AA 11.] Silverscreen'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 Womack]." [*Id.* at p. 8.] Silverscreen allegedly "'neglected' [Skyler Womack] as that term is defined in Welfare and Institutions Code [section] 15610.57 in that [Silverscreen] ... failed to exercise the degree of care that reasonable persons in a like position would exercise by denying or withholding goods or services necessary to meet the basic needs of [Skyler Womack]...." [*Id.* at pp. 10–11, italics and capitalization omitted.]

The wrongful death claim alleges Silverscreen owed Skyler Womack statutory and common law duties and failed to meet its duties. "As a proximate result of [Asistencia's] negligence and 'neglect,'" the heirs allege that Skyler Womack died. [AA 14.] They also allege that they "sustained the loss of the society, comfort, attention, and love of" Skyler Womack "[a]s a proximate result of the negligent acts (both negligence and neglect as that term is defined in Welfare [and] Institutions Code [section] 15610.57) ...." of Silverscreen. [*Ibid.*, italics omitted.] There are no allegations that Silverscreen "denied or withheld goods or services necessary to meet [Skyler Womack's] basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness)[.]" (*Carter, supra,* 198 Cal.App.4th at pp. 406–407.) The additional allegations the heirs cite were all pleaded as purported violations of Health and Safety Code section 1430, subdivision (b), the Patient's Rights Act, and not as indicia of neglect under Welfare

and Institutions Code sections 15610.57 and 15657. [OBM, pp. 47–48.] The heirs brought this complaint and thus the heirs bore the burden of pleading their cause of action for wrongful death with sufficient particularity under the Act.

Ultimately, a plaintiff may not engage in artful pleading so as to avoid arbitration. (*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 & Manufacturing Co.* (1977) 70 Cal.App.3d 675, 682 [same]; see also *Bos Material Handling, Inc. v. Crown Controls Corp.* (1982) 137 Cal.App.3d 99, 112 ["If arbitration defenses could be foreclosed simply by naming third party Does, the utility of arbitration agreements would be 'seriously compromised'"].) While it has long been a common tactic for plaintiffs to artfully plead their claims so as to avoid the effect of an arbitration agreement, the Court of Appeal's decision here puts a stop to this practice. Neither the scope of an arbitration agreement, nor that of MICRA, should be allowed to be frustrated "through intentionally opaque pleading." (*Holland, supra,* 101 Cal.App.5th at p. 1135.) Otherwise, "MICRA's goal of reducing costs in the resolution of malpractice claims and therefore malpractice insurance premiums" by encouraging the arbitration of medical malpractice disputes as a faster and less expensive means of dispute resolution would be eviscerated. (*Ruiz, supra,* 50 Cal.4th at p. 844.)

II. The Court of Appeal Correctly Held the Heirs' Wrongful Death Claim Must Be Arbitrated Because the Heirs Have No Individual Right to Bring a Claim for Neglect Under the EADACPA on Their Own Behalf.

A. The heirs' argument that their wrongful death claim does not arise under the EADACPA should not be considered because it was not previously raised.

A claim for dependent adult abuse/neglect lies with the alleged victim, rather than his or her heirs. (See *Quiroz, supra,* 140 Cal.App.4th at p. 1263.) The heirs seek to avoid the effect of *Quiroz*, which the heirs recognize imposes "standing limitations applicable to Elder Abuse Act actions when [heirs] file wrongful death actions based on neglect[.]" [OBM, p. 29.] The heirs argue for the first time that their wrongful death claim does not arise under the EADACPA but instead under section 377.60. [*Ibid.*] This argument is contrary to the heirs' position in the trial court and appellate proceedings, was raised for the first time in the heirs' petition for review and marks a significant departure from their complaint. The heirs' argument should be deemed waived. (Cal. Rules of Court, rule 8.500(c)(1).)

"[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, citing *People v. Saunders* (1993) 5 Cal.4th 580, 589–590.) "As a matter of policy, '[the Supreme Court] normally do[es] not consider any issue that could have been but was not timely raised in the briefs

filed in the Court of Appeal.'" (*Lopez v. Ledesma, supra,* 12 Cal.5th at p. 866, quoting *Flannery v. Prentice* (2001) 26 Cal.4th 572, 591.) Recently, in *Lopez v. Ledesma, supra,* 12 Cal.4th 848, this court declined to consider a secondary issue included in a grant of review where the plaintiff failed to raise the issue in the trial court or in the Court of Appeal. The plaintiff raised the secondary issue for the first time in her petition for rehearing, and again, in her petition for review. This was insufficient to preserve the secondary issue because the issue was case-specific and turned on facts not addressed by the trial court. (*Id.* at pp. 865–866.)

A similar result is warranted here where the heirs argued before the trial court and on appeal that their wrongful death claim for neglect arises under the EADACPA. The heirs' complaint repeatedly refers to "neglect" "as that term is defined in Welfare and Institutions Code §15610.57 [*sic*]" rather than section 377.60. [AA 10–11, 14, ¶¶ 18, 37, italics omitted.] Indeed, the heirs' wrongful death claim specifies that Skyler Womack allegedly passed away "[a]s a proximate result of negligence and 'neglect' as that term is defined in Welfare & Institutions Code §15610.57 [*sic*]…." [AA 14, ¶ 37, italics omitted.] Consequently, the trial court's order denying the petition to compel arbitration refers to the heirs' wrongful death claim as one for "neglect within the meaning of the Elder Abuse and Dependent Adult Civil Protection Act" and rules that the heirs' claims are not subject to arbitration under *Avila, supra,* 20 Cal.App.5th 835. [AA 71.]

On appeal, the heirs again argued their wrongful death claim arises under the EADACPA:

> Indeed, the Complaint itself, aside from referring expressly to the ACT in the First Cause of Action, alleged the facts giving rise to liability under the ACT, including that APPELLANT failed to provide for and denied to Sklyer Womack the goods and services to meet his basic needs.

[Respondents' Brief, pp. 21–22.] This theme continues throughout the heirs' respondents' brief and there is no mention of section 377.60 as authority for their wrongful death claim for neglect.

The heirs' petition for review and opening brief on the merits radically depart from their prior arguments when they now argue their claim for wrongful death does not arise under the EADACPA. Now, according to the heirs, their wrongful death claim is authorized by section 377.60's language referring to causes of action for the death of a person caused by the "neglect of another." [OBM, p. 29, italics omitted, quoting Code Civ. Proc., § 377.60, subd. (a).] This argument was not timely raised in the Court of Appeal—despite Silverscreen asserting the heirs had no individual right to bring a claim for wrongful death under the EADACPA. Further, the heirs essentially seek to amend the complaint while this case is pending before the Supreme Court to excise their allegations that the neglect claim is brought pursuant to the EADACPA. Since neither the trial court, nor the appellate court considered the arbitrability of the heirs' wrongful death claim in light of these wholly new allegations, this argument should not be considered. Doing so would condone the

heirs' bait and switch strategy employed to circumvent *Quiroz, supra,* 140 Cal.App.4th 1256.

B. Even if the heirs' interpretation of the wrongful death statute is considered, that interpretation is fatally flawed and *Quiroz* controls.

According to the heirs, they had an independent right to bring a wrongful death claim premised on neglect because section 377.60 refers to deaths "caused by the wrongful act or neglect of another." [OBM, p. 28–29, italics omitted.] The heirs also argue that they cite the EADACPA in the allegations of their wrongful death claim because the EADACPA defines "neglect" and aids in construing "neglect" as it appears in section 377.60. [*Id.* at p. 31.] As section 377.60 provides the heirs a right to pursue a wrongful death claim for neglect, they contend the Court of Appeal erred by holding "a decedent's heirs cannot assert wrongful death action [*sic*] based upon allegations of 'neglect.'" [*Ibid.*] The heirs' argument not only misses the thrust of the Court of Appeal's secondary holding, but introduces fatal inconsistencies into the heirs' position on review.

The Court of Appeal here held that "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." (*Holland, supra,* 101 Cal.App.5th at p. 1132.) While neglect may constitute abuse under the EADACPA, which gives an elder or dependent adult's successor in interest a right to pursue a survivor claim under the Act, the law does not allow the

successor in interest to assert his or her own claim for neglect under the Act. (*Id.* at p. 1133.) "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." (*Id.* at p. 1134.) In reaching this conclusion, the Court of Appeal relied on *Quiroz's* analysis of a successor in interest's standing under the EADACPA. The Court of Appeal did not address whether the heirs could bring a claim for neglect pursuant to section 377.60 because that issue was not raised below.

Significantly, none of the heirs' arguments address *Quiroz* or the effect of that decision on their ability to bring a wrongful death claim for neglect under the EADACPA. In *Quiroz, supra,* 140 Cal.App.4th 1256, the court held that the mother of a deceased dependent adult who had resided at a skilled nursing facility prior to his death was not entitled to the heightened remedies available under the EADACPA in connection with her own wrongful death claim. (*Id.* at p. 1284.) According to the court, "none of these indicators of the Act's expansive scope or character means that a relative or an heir of an elder or dependent adult has an independent claim under the Act or that such a person may recover statutory heightened remedies in his or her own wrongful death claim." (*Ibid.*) Claims and heightened remedies under the Act "are afforded only to *victims* of elder or dependent adult abuse." (*Ibid.*, original italics.) If the alleged victim of dependent adult abuse passes away, "the cause of action survives, in which case it is or becomes a survivor action pursued by the

personal representative of the estate or the decedent's successor in interest *on the decedent's behalf*." (*Ibid.*, original italics.)

Because a wrongful death claim is an independent claim that gives a successor in interest a new entitlement to relief, that claim is comprised of "'the tort (negligence or other wrongful act), the resulting death, and the damages, consisting of the *pecuniary loss* suffered by the *heirs*. [Citation.]'" (*Quiroz, supra,* 140 Cal.App.4th at p. 1263, original italics.) A survivor claim brought by an estate, however, is a claim that belonged to the decedent before death. (*Id.* at p. 1264.) Generally, the damages available in an action brought by a decedent's personal representative or successor in interest on a decedent's behalf under Code of Civil Procedure section 377.34 are limited. (Code Civ. Proc., § 377.34, subd. (a) ["In an action or proceeding by a decedent's personal representative or successor in interest on the decedent's cause of action, the damages recoverable are limited to 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 do not include damages for pain, suffering, or disfigurement"].) The EADACPA expands the recovery available on a decedent's cause of action by lifting the limitation of section 377.34, subdivision (a), and allowing for recovery of the decedent's predeath pain and suffering. (Welf. & Inst. Code, § 15657, subd. (b); *Quiroz, supra,* at pp. 1264–1265.)

Yet, the expanded recovery under Welfare and Institutions Code section 15657 "does not affect or expand the type of damages recoverable by a decedent's heir in a wrongful death action in which that plaintiff seeks compensation *for his or her own injuries*, which are separate and distinct from the decedent's predeath injuries for which compensation is sought in a survivor action." (*Quiroz, supra,* 140 Cal.App.4th at p. 1265, original italics; see also 6 Witkin, Summary of Cal. Law (11th ed. 2023) Torts, § 1865.) Thus, a claim for wrongful death does not permit the successor in interest to recover for his or her own injuries based on an alleged violation of the Act that purportedly harmed the decedent. (*Quiroz,* at p. 1269.) The enhanced remedies under the Act apply only to those actions brought by, or on behalf of, victims of elder or dependent abuse. (*Id.* at p. 1283.)

Relying on this distinction, the Court of Appeal here determined the heirs had no individual right to bring a wrongful death claim premised on neglect under the Act. (*Holland, supra,* 101 Cal.App.5th at pp. 1133–1134.) Accordingly, the heirs "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." (*Id.* at p. 1134.) The heirs' allegations pertaining to dependent adult abuse/neglect in the complaint under the EADACPA did not prevent the court from applying *Ruiz* and section 1295. And the heirs cannot recover for the dependent adult abuse/neglect of Skyler Womack in their own wrongful death claim.

The heirs now attempt to circumvent the court's secondary holding by parsing the language of section 377.60. The heirs claim that section 377.60 relies on the same definition of "neglect" as the Act. [OBM, p. 31.] The heirs provide no support for this argument—and the history of section 377.60 in fact demonstrates "neglect" differs from the definition of custodial neglect set forth in the EADACPA.

Because there was no right to sue for wrongful death at common law, California created such a right by enacting the wrongful death statute in 1862. (See generally *Chavez v. Carpenter* (2001) 91 Cal.App.4th 1433, 1438, citing Stats. 1862, ch. 330, §§ 1–4, pp. 447–448.) Subsequently, in 1872 the statute was codified as former section 377 and the "neglect of another" language added. (See Historical Note, 14 West's Ann. Code Civ. Proc. (1973 ed.) § 377, pp. 60–61.) Then in 1992, the Legislature repealed former section 377 enacting the wrongful death statute relied upon today that continues to refer to deaths caused by the "wrongful act or neglect of another." (Stats. 1992, ch. 178, § 20, p. 890; Cal. Law Revision Com. com., reprinted at 14 West's Ann. Code Civ. Proc. (2001 supp.) § 377, p. 23; see Code Civ. Proc., §§ 377.60–377.62.) The language "wrongful act or neglect" appears in both section 377.60 with regard to standing to sue for wrongful death and Code of Civil Procedure section 377.62 with regard to joinder of such claims with the decedent's cause of action.

While section 377.60 does not define "neglect of another," the words in a statutory scheme are given their usual and

ordinary meaning and interpreted within the context of that scheme. (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000.) When the "neglect of another" language was added to Code of Civil Procedure section 377 in 1872, the noun "neglect" was defined as "[o]mission; forbearance to do any thing that can be done or that requires to be done." (See <https://webstersdictionary1828.com/Dictionary/neglect> [as of Oct. 21, 2024].) "Neglect" was also defined simply as "[n]egligence." (*Ibid.*) Courts will also consider "the text of related provisions, terms used in other parts of the statute, and the structure of the statutory scheme." (*Larkin v. Workers' Comp. Appeals Bd.* (2015) 62 Cal.4th 152, 157.) In both Code of Civil Procedure section 377.60 and 377.62 "neglect" appears along with "wrongful act" to characterize the decedent's cause of action. Within this statutory framework, the negligent act of "neglect" was intended to contrast with the intentional "wrongful act" purportedly causing the decedent's death.

Meanwhile, the EADACPA is contained within a separate statutory scheme that was not enacted until 1982—over 100 years after the Legislature codified the right to bring a wrongful death claim. Relevant to the heirs' argument, in 1994 the EADACPA first defined "neglect" as "[t]he negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise." (Welf. & Inst. Code, § 15610.57, subd. (a)(1).) This definition is unique to actions brought under the Act and did not exist when the wrongful death statute was

originally enacted or when the Legislature repealed Code of Civil Procedure section 377 to enact the current version of the wrongful death statute. "Neglect" under the Act must also be proven by clear and convincing evidence "that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse[.]" (Welf. & Inst. Code, §§ 15657, 15610.07, subd. (a).) There is no such requirement under section 377.60.

As these differences between the two statutory schemes show, "neglect" under the Act is a term of art specific to the EADACPA. The heirs cannot simply engraft the definition of "neglect" provided by Welfare and Institutions Code section 15610.57, subdivision (a)(1), into the wrongful death statute. Indeed, when interpreting neglect under Welfare and Institutions Code section 15610.57, courts have stated that "the statute was not meant to encompass every course of behavior that fits either legal or colloquial definitions of neglect." (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 159.)

The heirs' statutory construction argument is fatally inconsistent with their contentions that *Ruiz, supra,* 50 Cal.4th 838, and section 1295 do not apply to their claim for wrongful death. As the heirs' complaint and prior briefs demonstrate, they attempted to allege a wrongful death claim premised on neglect under the EADACPA. However, as discussed above and found by the Court of Appeal, the gravamen of the heirs' wrongful death allegations sound in professional negligence. Additionally, the

heirs' attempt to retroactively assert a generalized claim for neglect under section 377.60 falls apart upon examination. There is no support for the heirs' tortured interpretation of section 377.60—and no justification for avoiding the effect of *Quiroz, supra,* 140 Cal.App.4th 1256, on their wrongful death claim. Under *Quiroz*, the *Holland* court correctly held that the heirs had no right to a wrongful death claim premised on neglect as set forth in the Act and could not rely on that claim to avoid *Ruiz* and section 1295. Put another way, the heirs' wrongful death claim must be compelled to arbitration under both holdings advanced by *Holland*.

CONCLUSION

For the foregoing reasons, this court should affirm the Second District Court of Appeal's decision in *Holland*. Building on past precedent, the Court of Appeal properly held that the gravamen of the heirs' wrongful death claim sounded in professional negligence such that *Ruiz* and section 1295 applied to compel the heirs' claim to arbitration. Additionally, the Court of Appeal properly held that a successor in interest, such as the heirs, does not have an independent right to relief under the EADACPA. Thus, a successor in interest may not bring a claim for wrongful death predicated on any alleged violations of the EADACPA. These holdings are consistent with the Legislature's goals in enacting MICRA, a logical extension of California's arbitration jurisprudence and should remain binding precedent.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 8.204

I, the undersigned, Tracy D. Forbath, declare that:

1. I am a partner in the firm of Lewis, Brisbois, Bisgaard & Smith LLP, counsel of record for defendant and appellant Silverscreen Healthcare, Inc.

2. This certificate of compliance is submitted in accordance with rule 8.204 and 8.520 of the California Rules of Court.

3. This answer brief on the merits was produced with a computer. It is proportionately spaced in 13-point Century Schoolbook typeface. The brief contains 11,680 words, including footnotes.

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Executed at San Diego, California, on October 21, 2024.

/s/ Tracy D. Forbath
Tracy D. Forbath

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Second Civil Number B323237
Supreme Court Number S285429

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/s/ Raquel Legaspi
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Date

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