No. S241431

IN THE SUPREME COURT

FOR THE STATE OF CALIFORNIA

JANICE JARMAN,

Plaintiff and Appellant,

vs.

HCR MANORCARE, INC. and MANOR CARE OF HEMET CA, LLC,

Defendants and Appellants.

REPLY BRIEF ON THE MERITS

After a Published Opinion
of the Fourth District Court of Appeal, Division Three
Case No. G051086

Superior Court of the State of California
County of Riverside
Hon. Phrasel Shelton and Hon. John Vineyard
Case No. RIC10007764

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TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES AND REGULATIONS

OTHER AUTHORITIES

I. INTRODUCTION

Plaintiff fails to address most of the arguments in ManorCare's Brief. Plaintiff's overarching theory is that Health & Safety Code Section 1430(b) must provide for multiple awards of up to $500 for each violation of a resident right, as well as punitive damages, because large amounts are necessary to compensate injured residents of nursing facilities. Otherwise, Plaintiff contends, the Long-Term Care Act's (LTCA) purposes cannot be fulfilled.

Plaintiff is incorrect. While the LTCA provides various avenues of enforcement, Section 1430(b) is a strict liability statute that does not compensate residents for injury. The legislative history reflects that the statute was enacted because there was no public or private enforcement mechanism for violations of resident rights that did not cause injury and had "*only a minimal relationship*" to resident health and safety.[1]

Plaintiff misleadingly describes Section 1430(b) as the means of redress for "serious" violations that cause physical injury or have a direct relationship to health or safety. She never mentions Section 1430(a), which addresses those very concerns, and predated Section 1430(b) by nine years. The LTCA preserves *other* claims, including tort and statutory claims that might provide substantial compensation and punitive damages.[2] Plaintiff does not mention that compensatory and punitive damages may be available under other legal theories. But their availability shows why Section 1430(b) cannot be contorted to provide substantial monetary awards to protect residents. Plaintiff herself pursued negligence and elder abuse claims to compensate for alleged physical harm.

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[1] Cal. Code Regs., tit. 22, § 72701, subd. (a)(4) (emphasis added).
[2] §§ 1433, 1430, subd. (c).

Fundamental statutory interpretation principles confirm that the monetary award under Section 1430(b) is limited to a maximum of $500 per lawsuit, and cannot be multiplied by number of violations or causes of action. Statutory language limits the award to $500 per "civil action," not per "cause of action," as the Court of Appeal concluded, and not per "violation," as Plaintiff asserts.[3] (*Nevarrez v. San Marino Skilled Nursing & Wellness Centre* (2013) 221 Cal.App.4th 102, 137; *Lemaire v. Covenant Care Cal., LLC* (2015) 234 Cal.App.4th 860, 868.) Legislative history also reveals the intended $500-per-lawsuit limit.

The required statutory analysis for punitive damages is settled: if, as here, there is clear legislative intent that a statute does not allow punitive damages, that intent controls. Plaintiff has no meaningful response to the Legislature's specific consideration and rejection of punitive damages when enacting Section 1430(b) and its statement that the remedies chosen were "instead" of punitive damages. (See *infra* Part III.B.1.) She speculates that the Legislature declined to authorize punitive damages under Section 1430(b) because it may have believed other parts of the statute authorized them. No legislative history supports such speculation.

Plaintiff also argues that Section 1430(b) may be interpreted to authorize punitive damages because it allows enforcement of rights that pre-existed the statute. But that test (which applies only in the absence of clear legislative intent, and thus is inapplicable) is whether the statute codifies prior *common law*, not pre-existing statutes and regulations.

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[3] Plaintiff mischaracterizes the issue as whether Section 1430(b) authorizes $500 per *violation*. (Plaintiff's Brief 1.) The Opinion essentially rejected the per-violation interpretation, deciding the statute authorized "a third option": $500 per *cause of action*. Plaintiff and the Court of Appeal are wrong for the same reasons.

The Court of Appeal erred in holding that Section 1430(b) authorizes multiple awards and punitive damages.

II. PLAINTIFF'S STATEMENT OF FACTS IS IRRELEVANT

Plaintiff's lengthy factual statement has one purpose: to prejudice ManorCare. The facts regarding Mr. Jarman's stay at ManorCare are not at issue. The matter presents pure legal questions regarding statutory interpretation. The Petition presented no liability issue.

Plaintiff chose to sue for violation of resident rights under Section 1430(b), which was enacted to address violations having only a minimal relationship to health and safety. Serious violations, including those that cause injury, are covered under numerous tort and statutory causes of action. Plaintiff's factual recitation might have been relevant if one of these other laws were at issue. None is. Her recitation of facts is irrelevant.

III. ARGUMENT

A. Section 1430(b) Authorizes a Single Monetary Award of Up to $500 in Any Civil Action.

1. Section 1430(b)'s Text Demonstrates That Its Monetary Remedy Is Limited to $500.

The starting point of statutory analysis is the statute's language. (*Winn v. Pioneer Medical Group* (2016) 63 Cal.4th 148, 155-156.) The Court "consider[s] the ordinary meaning of the statutory language, its relationship to the text of related provisions, terms used elsewhere in the statute, and the overarching structure of the statutory scheme." (*Ibid.*)

Section 1430(b) states a plaintiff may obtain "up to five hundred dollars ($500)" in "a civil action."

A "civil action" means a lawsuit. (ManorCare 22, fn. 10; Code Civ. Proc., § 30 ["Civil action defined. A civil action is prosecuted by one party against another for the declaration, enforcement or protection of a right, or the redress or prevention of a wrong."].) The plain meaning of the statute is that the maximum recovery in a lawsuit is $500. (*Nevarrez*, 221 Cal.App.4th at 130; see also *Yates v. Pollock* (1987) 194 Cal.App.3d 195, 198-199 [interpreting MICRA provision stating "[i]n *no action* shall the amount of damages for noneconomic losses exceed" $250,000 to cap noneconomic recovery in a lawsuit at $250,000] [emphasis in *Yates*].)

a. Plaintiff Wants to Rewrite the Statute.

The only way to achieve the multiple awards Plaintiff wants is to insert "per violation" or "per cause of action" after "up to five hundred dollars ($500)." Plaintiff, like the Court of Appeal, wants to rewrite the statute. However, courts may not insert words into a statute. (Code Civ. Proc., § 1858; *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 939.)

It makes no difference whether a court believes the statute would better serve the statutory purpose if additional language were read into it. "A court may not rewrite a statute, either by inserting or omitting language, to make it conform to a presumed intent that is not expressed." (*Cornette v. Dep't of Transp.* (2001) 26 Cal.4th 63, 73-74; *Scher v. Burke* (2017) 3 Cal.5th 136, 145.)

Plaintiff ignores this rule. It is controlling. There is no way to accept Plaintiff's or the Opinion's interpretation without violating it.

b. Plaintiff Rejects the Legislature's Choice to Omit Language Used in Closely Related Statutes.

Plaintiff asks the Court to violate another interpretive principle: if the Legislature uses language in one statute but not in a related or similar statute, "we generally presume that the Legislature did so deliberately, in order 'to convey a different meaning.'" (*Scher*, 3 Cal.5th at 144-145 [citation omitted]; see also *Wasatch Prop. Mgmt. v. Degrate* (2005) 35 Cal.4th 1111, 1118 ["'[W]hen the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded.'"] [citation omitted].)

Plaintiff argues this well-established presumption is a mere "rule of thumb" that "does not apply when the statute under consideration does not contain language found in another statute but the other statute is not facially applicable to the same subject." (Plaintiff's Brief 26.) Plaintiff is wrong.

First, she argues Section 1430(b) deals with a different subject from Section 1424.5 (incorporated into Section 1430(a)), so that the absence of language used in Section 1424.5 is insignificant. But the statutes' subjects are nearly identical: Section 1430(b) addresses the amount of the monetary award for Class C violations under Section 1430(b); Section 1424.5 addresses the amount of the monetary award for Class A and B violations under Section 1430(a). Plaintiff's narrow reading of the statutes to try to sever their connection is contrary to the integrated LTCA statutory scheme. It also makes the Legislature's use of per-violation language in Section 1424.5 and other statutes meaningless surplusage.[4]

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[4] Statutory "[i]nterpretations that ... render words surplusage are to be avoided." (*Tuolumne Jobs & Small Bus. Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1037 [citations omitted].)

Second, Plaintiff invokes an inapplicable exception to the maxim regarding omission from a statute of language used in another statute, relying on *Covenant Care v. Superior Court* (2004) 32 Cal.4th 771. There, defendant argued that the maxim of statutory interpretation "courts generally may not insert what the Legislature has omitted from a statute" meant that CCP section 425.13, imposing requirements for pleading punitive damages in professional negligence actions, applied to claims for custodial neglect under the Elder Abuse Act because it did not expressly exempt elder abuse claims. (*Covenant Care*, 32 Cal.4th at 786.) The Court rejected the argument, because CCP section 425.13 on its face does not apply to elder abuse claims. (*Ibid.*) That CCP section 425.13 did not exempt elder abuse claims did not mean it applied to such claims.

This concept is irrelevant. ManorCare is not arguing Section 1430(b) claims are "exempt" from another statute that does not facially apply. Rather, ManorCare argues that the Legislature used "per citation" language when it set the monetary award for Class A and B violations in Section 1424.5 (enforceable under Section 1430(a)), and it did not use such language when it set the monetary award for Class C violations in Section 1430(b). The general principle—that the Legislature's omission from a statute of language used in a similar statute indicates a different meaning—demonstrates the Legislature intended that the monetary award under Section 1430(b) not be multiplied.

c. Plaintiff Ignores the Statute's Plain Text.

Plaintiff asks the Court to interpret the statute by looking at one isolated sentence: "The licensee shall be liable for up to five hundred dollars ($500), and for costs and attorney fees, and may be enjoined from

permitting the violation to continue." Plaintiff argues the provision for injunctive relief to enjoin the facility "from permitting *the violation* to continue" means the monetary award pertains to a single "violation" and may be multiplied for multiple violations.

Plaintiff ignores key statutory text: a resident may bring "a civil action" (singular) against a licensee who "violates any rights of the resident" (plural). In that single "civil action," "[t]he licensee shall be liable for *up to five hundred dollars* ...." If the licensee could be subject to multiple awards, the statute would not say the licensee would be "liable for up to $500" because liability could far exceed $500.

Nevarrez rejected linking "liable for up to $500" to "enjoined from permitting the violation to continue" as support for multiple awards. The court explained "[t]his interpretation is frustrated by the [sentence's] intervening reference to 'costs and attorney fees,' as these are awarded to the prevailing party in a civil action, but not on a 'per violation' basis." (*Nevarrez*, 221 Cal.App.4th at 131.)

Plaintiff argues *Nevarrez* "conflates" attorneys' fees and the monetary award under Section 1430(b). (Plaintiff's Brief 26.) Plaintiff misunderstands *Nevarrez*. *Nevarrez* did not say that awarding attorneys' fees on a per-lawsuit basis meant the $500 under Section 1430(b) could only be awarded on a per-lawsuit basis. Instead, *Nevarrez* said that interpreting the first provision (up to $500) based on the language of the third provision (injunction) failed because any link was broken by the intervening second provision (attorneys' fees).

The Opinion also rejected this part of *Nevarrez*, but for different reasons, which also are erroneous. (ManorCare 33-35.) Plaintiff does not defend the Court of Appeal's misreading of *Nevarrez*.

2. The LTCA Demonstrates the Opinion's Incorrect Interpretation.

a. The Legislature Did Not Intend Section 1430(b) to Protect Residents or Compensate for Harm.

Plaintiff's statutory interpretation argument refuses to acknowledge that the Legislature segmented the statute and provided remedies for different problems in different sections.

Plaintiff contends Section 1430(b) must be interpreted to provide substantial monetary awards to remedy violations with "a direct relationship to health, safety, and security" (Plaintiff's Brief 23), for "the most serious violations" (*ibid.*), to prevent "physical and mental harm and danger to the patient's health, safety and well-being" (*id.* at 30), and to deter infliction of "significant humiliation, indignity, anxiety or other emotional trauma." (*Id.* at 31.)

Section 1430(a), not 1430(b), addresses these concerns. (ManorCare 18-19.) While rights enforceable under Section 1430(b) cover a wide range of violations, Section 1430(b) is not intended as the mechanism to address situations where violations have injured or threaten to injure a resident, nor is it intended to provide the primary protection or deterrent from injury. (*Nevarrez*, 221 Cal.App.4th at 135 ["[The] assumption that section 1430, subdivision (b) aims solely or largely to protect the health and safety of nursing home residents [is] incorrect ...."].)

The nature of the violation, not the underlying right, determines whether to sue under Section 1430(b) or Section 1430(a).[5] The fact that

[5] Section 1430(a) provides a private right of action for Class "A" and "B" violations, but is not available "when the Department has taken action and the violations have been corrected to the Department's satisfaction." (*Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 150.) There was no

violation of a particular resident right is *capable* of causing harm does not mean the violation *does* cause or threaten harm in every instance. That is why the LTCA expressly provides that a violation of the Patients' Bill of Rights *is* a Class "A" or "B" violation (enforceable under Section 1430(a)) *if* it causes or threatens harm:

> Unless otherwise determined by the state department to be a class "A" violation ..., any violation of a patient's rights as set forth in Sections 72527 and 73523 of Title 22 of the California Code of Regulations, that is determined by the state department to *cause, or under circumstances to be likely to cause, significant humiliation, indignity, anxiety, or other emotional trauma* to a patient is a class "B" violation.

(§ 1424.5, subd. (a)(4) [emphasis added].) The concerns Plaintiff cites as reasons to increase the Section 1430(b) award are irrelevant to Section 1430(b), but are addressed by Section 1430(a), which provides substantial monetary awards for Class "A" and "B" violations on a per-violation basis. (*Id.*, subds. (a)(2), (4).) Plaintiff never mentions Section 1430(a).

Violations not meeting the statutory criteria for "A" or "B" are Class C, which means they have "only a minimal relationship to the health, safety or security of the skilled nursing facility patients." (Cal. Code Regs., tit. 22, § 72701, subd. (a)(4).) Section 1430(b) was enacted because *Class C* violations were slipping through the cracks without a means for public or private enforcement. (*Nevarrez*, 221 Cal.App.4th at 135; *Lemaire*, 234 Cal.App.4th at 867.) If a plaintiff experienced harm from a residents' rights violation, that is not a reason to interpret Section 1430(b) as providing a greater award; it is a reason to bring a Section 1430(a) claim. By choosing to pursue a claim under Section 1430(b) and forgoing any

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allegation or evidence that the Department took action with respect to Mr. Jarman's claims.

claim under Section 1430(a), Plaintiff conceded the violations alleged in this case were Class C and thus had no direct impact on or relationship to patient health or safety. Viewing Section 1430(b) as focused on Class C violations does not "trivialize" the statute or its remedy. Plaintiff ignores the legislative history confirming Section 1430(b) was intended as a vehicle to redress Class C violations. (Plaintiff's Brief 22; see also ManorCare 54.) The remedies available for rights violations are structured to be commensurate with the impact of the violation on the resident. When the impact is "minimal," it is redressable under Section 1430(b); if more than "minimal," it is redressable under Section 1430(a). Recognizing that Section 1430(b) provides only a limited monetary remedy merely recognizes its place in the statutory scheme the Legislature devised to deal with facilities' violations of laws and resident rights.

Moreover, the LTCA expressly preserves residents' claims under other legal theories, such as those alleged in this case (negligence and elder abuse), which may entitle residents to substantial monetary remedies. (§§ 1433, 1430, subd. (c); *Winn*, 63 Cal.4th at 156 [discussing Elder Abuse Act's definitional examples of actionable "neglect" and noting the heightened remedies available for such conduct].) Plaintiff does not acknowledge that the LTCA allows residents to pursue other compensatory remedies.

b. If Section 1430(b)'s Award Were Per Violation, Its Remedies Could Be Vastly Disproportionate to Those for More Serious Violations.

Under Plaintiff's theory, a plaintiff could receive $100 for each Class B violation with a "*direct or immediate* relationship to the health,

safety, or security" of a resident, but $500 for each Class C violation with "*only a minimal* relationship" to the resident's health, safety or security. This is absurd, and courts must "avoid a construction that would produce absurd consequences, which we presume the Legislature did not intend." (*In re Greg F.* (2012) 55 Cal.4th 393, 406 [citations omitted].) Section 1430(b) cannot be interpreted as Plaintiff urges without violating this maxim.

Further, when Section 1430(b) was enacted, the award for B-level violations was *capped at $250 per violation*. (MJN Ex. 24, p. 112.) In 1982, a plaintiff could recover no more than $250 for each Class B violation. If Section 1430(b) provided a per-violation award, the 1982 plaintiff could recover *double that amount* for each Class C violation.

3. The Legislative History Confirms the Opinion's Interpretation Is Wrong.

Section 1430(b)'s legislative history—its initial enactment as well as the *eight* attempts over 22 years to increase the maximum award—demonstrates the Legislature intended the monetary award to be capped at $500 per lawsuit. Even in 2004, when the Legislature *did* amend Section 1430(b) to broaden the scope of enforceable rights by adding that residents could sue for violation of "any other right provided for by federal or state law or regulation," it still rejected another proposed amendment in the same bill to increase the maximum award from $500 to $5,000. (MJN Ex. 21, p. 96; ManorCare at 28.)[6] The Opinion ignored this history. Plaintiff,

[6] In 2004, the Legislature also acknowledged that "current law ... limits a nursing home's liability to $500." (*Id.*)

recognizing her argument cannot be reconciled with the legislative history, asks this Court to ignore it as well.

a. ManorCare Discussed the Legislative History of SB 1930.

Plaintiff asserts that ManorCare "does not discuss the legislative history of the bill that became section 1430(b), SB 1930 (1981-1982 Reg. Sess.)." (Plaintiff's Brief 27.)

In fact, ManorCare *did* discuss the history of SB 1930, and demonstrated how that bill supported interpreting the statute to allow a single maximum award of $500. ManorCare explained that, as introduced, the March 17, 1982 legislation provided that "[t]he licensee shall be liable for up to two thousand five hundred dollars ($2,500) or three times the actual damages, whichever is greater, and for costs and attorney fees, and may be enjoined from permitting the violation to continue." (ManorCare 26; MJN Ex. 2.) There is no room in this language for authorizing a plaintiff to obtain $2,500 each for multiple violations. Under the original bill, the plaintiff could be awarded *either* an amount "up to" $2,500 *or* treble damages in the lawsuit. The words "up to" and "action" remained in the enacted version of the legislation.

ManorCare also discussed the May 12, 1982 amendment to SB 1930 deleting the $2,500 maximum and the treble damages provision, and instead providing unlimited liability for proven damages. (ManorCare 26; MJN Ex. 3, p. 12].) Unlimited liability is a single amount, not a per-violation award.

Finally, ManorCare discussed the August 2, 1982 amendment to SB 1930, deleting the provision for unlimited proven damages, and replacing it

with an award of a maximum of $500 per "civil action," as it remains today. (ManorCare 26, 51; MJN Ex. 4, p. 14.)

b. The Legislative History of SB 1930 Confirms ManorCare's Interpretation.

Plaintiff briefly discusses some of the legislative history materials discussed in *Nevarrez*. Plaintiff's reliance on an outlier analysis and other materials is unavailing, and does not undermine the conclusion that the Legislature intended Section 1430(b) to provide one award of up to $500.

Nevarrez explained "*[w]ith the exception* of the minority analysis for the Assembly Committee on the Judiciary, *no legislative history material* on Senate Bill 1930 ... suggests that the $500 maximum was to be recovered per violation." (*Nevarrez*, 221 Cal.App.4th at 133 [emphasis added]; *Lemaire*, 234 Cal.App.4th at 867.) Plaintiff nonetheless relies on that outlier minority analysis, referencing a per-violation award.[7] That minority analysis was the single item from the legislative history that the Opinion acknowledged. Neither Plaintiff nor the Opinion identified any reason to interpret the statute in light of a minority analysis when the copious legislative history is directly contrary.[8]

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[7] Plaintiff's description of the minority analysis as the "only" legislative history material "from within the Legislature itself" is flatly wrong. The various iterations of SB 1930, showing amendments to alter the monetary remedies, emanated "from within the Legislature itself." (MJN Exs. 2, 3, 5.) And an analysis of the Senate Committee on Judiciary states "[t]he damages for which a licensee could be liable under this bill would be *limited* to $2,500 or three times the actual damages, whichever was greater, and for costs and attorney fees." (MJN Ex. 1, p. 215 [emphasis added].) This analysis shows the $2,500 award could not be multiplied. (*In re Chavez* (2004) 114 Cal.App.4th 989, 993 [legislative committee reports relevant to legislative intent].)

[8] The Department of Aging's enrolled bill report, stating SB 1930 does "not restrict[] damages to present amounts for 'A' and 'B' citations" (MJN Ex.

c. Failure to Pass Legislation Incorporating a Particular Meaning Is Evidence That the Legislature Did Not Intend That Meaning.

Plaintiff asks the Court to disregard the numerous subsequent legislative efforts to raise Section 1430(b)'s maximum award, because the proposed increases did not pass. Plaintiff does not discuss the proposed bills or attempt to reconcile these failed proposals with her view of the statute. Plaintiff wants to bury this history.

Subsequent legislation may not show what the Legislature was thinking when it passed the original bill. But legislative analyses and communications regarding proposed amendments are directly relevant to establish that the Legislature has consistently viewed the $500 as a per-lawsuit limit each time it considered changing the law. (Cf. *Lemaire*, 234 Cal.App.4th at 868.) Every time the Legislature was asked to increase the amount of the award, and was presented with arguments just like Plaintiff's—that a larger monetary award was necessary to ensure effective enforcement of rights violations—the Legislature declined.

The failed proposals to increase the Section 1430(b) award speak volumes. The only proposed change to the remedy provision was the amount of the award. Had legislation proposing increases to $10,000 or even $25,000 passed, under Plaintiff's theory it would have unleashed massive multiple recoveries of these higher amounts on a per-violation

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1, p. 288), does not support Plaintiff. As *Nevarrez* explained, the report was erroneous because a $500 award under Section 1430(b) was less than the $5,000 maximum Class A award at the time. (*Nevarrez*, 221 Cal.App.4th at 133-134.) Plaintiff says *Nevarrez* is wrong, because $500 per violation could exceed $5,000 if Section 1430(b) allowed multiple recoveries. But Class A awards are authorized per-violation under Section 1430(a); multiple Section 1430(b) awards would almost certainly be less than multiple Class A awards.

basis. There is no indication that the Legislature imagined that the many proposed increases to the maximum penalty could be recovered on a per-violation basis. Indeed, the very consideration of dramatically increased amounts is evidence that the Legislature knew it was addressing only the *maximum* amount recoverable *once* in the action. At the least, one would expect to see some legislative rejection of the proposed penalty increases as unnecessary because existing law already authorized multiple recoveries in the same action. There is none.[9] Instead, the language of the statute—allowing "up to" $500 in the "action"—never changed and no proponent of the penalty increases tried to change the language to reflect a per-violation recovery.

When proposed legislation would have made changes to a statute to reflect a meaning urged by one party, the failure of that legislation to pass indicates the Legislature chose *not* to incorporate that meaning. (*Joannou v. City of Rancho Palos Verdes* (2013) 219 Cal.App.4th 746, 760-761; *Lemaire*, 234 Cal.App.4th at 868.) Minimally, "'the failure of the Legislature to enact the proposed bill, in one form or another, is some evidence that the Legislature does not consider it necessary or proper or expedient to enact such legislation.'" (*California Chamber of Commerce v. State Air Res. Bd.* (2017) 10 Cal.App.5th 604, 630 [citation omitted].) The Legislature's repeated consideration and rejection of increases to the maximum award under Section 1430(b) forcefully indicate the

[9] Contrarily, the Legislature was aware of the views of opponents of any increase "that current resident rights penalties of up to $500 were enacted to provide residents with a remedy when they have suffered an intangible harm of nominal value and that increasing the penalty to $5000 creates a substantial financial incentive to sue facilities and dramatically changes the purpose of the law." (MJN Ex. 2, p. 13.)

Legislature's intent to allow only "up to" $500 in an "action," coupled with other specified remedies. The Legislature's refusal to amend a bill's language in response to arguments that a provision should be added is strong indication that the Legislature did not intend the statute to be read to include that provision. (See *Fahlen v. Sutter Central Valley Hospitals* (2014) 58 Cal.4th 655, 682-683.)

4. Plaintiff's Policy Arguments Are Unavailing.

Plaintiff's policy-based arguments do not bolster her contention that Section 1430(b) provides multiple awards.

First, she argues the LTCA's policies of patient protection and deterrence of violations support interpreting Section 1430(b) to provide multiple awards. As discussed, Section 1430(b) is only one part of the overall scheme, and was enacted to address violations with only a minimal relationship to health and safety.

Plaintiff's assumption about Section 1430(b)'s policy cannot trump the statute's plain language. That a particular policy might be served by a larger award does not empower courts to rewrite legislation. (*Scher*, 3 Cal.5th at 145.) If the award provided by the statute is too small to accomplish its purpose, change is for the Legislature. (*Nevarrez*, 221 Cal.App.4th at 132.) The Legislature has repeatedly declined requests to increase the award.

Second, Plaintiff argues remedial statutes must be construed liberally, and strict construction of statutory language will not apply when "'the palpable intent of the Legislature [was] to impose a new liability consonant with new conditions.'" (Plaintiff's Brief 32.)[10] She argues the

[10] But see *Encino Motorcars, LLC v. Navarro* (2018) 138 S.Ct. 1134, 1142

state's cuts in services were "new conditions." (*Ibid.*) But Section 1430(b)'s primary focus was providing residents a means to enforce violations of *existing* rights that the Attorney General never had the statutory authority to enforce. (MJN Ex. 6, p. 17.)

Finally, Plaintiff argues it is absurd to allow only a $500 recovery for multiple resident rights violations, compared to the $100,000 negligence award in this case. The smaller award does not make this result absurd; rather, it reconfirms that Section 1430(b) is not intended to compensate for injury, but that an injured plaintiff may be compensated under other laws. Section 1430(b) has nothing to do with causation or compensation, so the fact that Plaintiff could recover large tort damages but only $500 for the statutory violation is perfectly sensible.

5. The Primary Right Theory Does Not Work.

The Opinion provided no statutory support for its conclusion that Section 1430(b) allows multiple awards based on the number of "causes of action." Neither does Plaintiff. The absence of support for this interpretation in the statutory text or history—particularly where the plain language, statutory context, and legislative history authorize only a single award of up to $500—should end the inquiry. If this Court considers the Opinion's "per cause of action" holding (reached sua sponte, without briefing), ManorCare has shown why that approach does not work here. (ManorCare 36-48.)

(rejecting argument that statutory exemptions must be read narrowly because of statute's "remedial purpose"; where the statute "gives no 'textual indication' that its exemptions should be construed narrowly, 'there is no reason to give [them] anything other than a fair (rather than a "narrow") interpretation'") (citation omitted).

a. The Primary Right Theory Is Unworkable to Determine the Amount of a Section 1430(b) Award.

An interpretation that would allow a plaintiff to obtain up to $500 for each Section 1430(b) "cause of action" under a primary right analysis does not work. (*Los Angeles Unified Sch. Dist. v. Garcia* (2013) 58 Cal.4th 175, 194 ["under settled principles of statutory construction, a court is obligated to avoid a construction that would lead to impractical or unworkable results"].) The primary right theory is too uncertain to be the basis for imposing multiple fines against a nursing home. Even where the primary right theory applies, it is "notoriously uncertain." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 395.) "'The scope of the primary right ... depends on how the injury is defined.'" (*Hong Sang Market v. Peng* (2018) 20 Cal.App.5th 474, 490 [citation omitted].) Facilities could be subject to vastly differing awards for similar conduct, depending on how a particular court sorts the violations into "causes of action."

The Opinion itself demonstrates how malleable the $500-per-primary right theory is. The court assumed the jury found 382 discrete primary rights by effectively defining "primary right" as each distinct violation of particular resident rights statutes and regulations—an extremely narrow definition that would allow a plaintiff to easily argue for enormous awards.[11] This is analogous to one approach argued in *Villacres*

[11] The Opinion held a continuing violation of a right "would presumably qualify as a single cause of action" (Op. 25), contrary to its conclusion that 382 resident rights violations constituted 382 primary right violations. Mr. Jarman resided at ManorCare for three months (1-CT-3 ¶ 7), and the complaint alleged violations of seven resident rights. If a continuing violation of one resident right equals one primary right, that equals seven violations, making 382 primary rights violations impossible.

v. ABM Industries (2010) 189 Cal.App.4th 562, where employees sought to avoid the res judicata effect of a prior settled class action, urging a narrow definition of primary rights that corresponded to each particular Labor Code violation and corresponding PAGA penalty. Thus, they asserted "the primary right to premium pay," "the primary right to 'consumption,'" "the primary right to 'elimination,'" and "the primary right to a full explanation of gross and net wages." (*Id.* at 580-581.)

But the primary right in a Section 1430(b) case also could be defined more broadly, with alleged violations of different resident rights representing various aspects of *one* primary right, such as sufficient staff to meet the resident's needs. Thus, in *Villacres*, the employer argued for a broadly defined primary right, that "employees must assert all known Labor Code violations and PAGA penalties in a single suit, at least where the violations are related to wages."[12] (*Id.* at 580.) Here, Plaintiff alleged violations of various resident rights statutes and regulations, but also alleged the violations arose from the predicate right to sufficient staff. (1-CT-6 ¶ 23(b).) By way of comparison, under the Elder Abuse Act, there is only a single primary right: "to be free from the alleged harm inflicted by defendants." (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1276, fn. 25.)

This fundamental problem of how to translate alleged violations of statutes and regulations into "primary rights" makes primary right theory an unsatisfactory and unfair basis for multiplying the fine imposed on

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[12] *Villacres* did not decide between the competing definitions of primary rights. It held res judicata barred the second suit because the plaintiff could have raised the additional claims in the class action and the class settlement barred such claims. (*Id.* at 581.)

facilities, particularly where the statute itself plainly forecloses both "cause of action" analysis and multiplication on any basis.[13]

b. Plaintiff Does Not Reconcile the Confusion About Res Judicata.

How primary rights are defined in a particular case leads to the Court of Appeal's concern that plaintiffs limited to $500 in Section 1430(b) lawsuits could bring successive lawsuits to recover $500 for each primary right violated. Whether such suits would be barred by res judicata is a matter of great uncertainty under California law. On one hand, California applies the minority primary right theory instead of the transactional theory adopted in most jurisdictions. (James, *Res Judicata: Should California Abandon Primary Rights?* (1989) 23 Loy. L.A. L. Rev. 351, 353-354.) One line of cases establishes that subsequent suits asserting different primary rights arising from a single set of facts are not barred. (*Branson v. Sun-Diamond Growers* (1994) 24 Cal.App.4th 327, 344.)

But under other, equally well-established case law, subsequent suits based on similar facts as a prior suit *are* barred:

> If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it could have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged.

(*Villacres*, 189 Cal.App.4th at 576 [citation omitted]; see also *Thibodeau v. Crum* (1992) 4 Cal.App.4th 749, 755 ["'A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised

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[13] Given the multitude of resident rights enforceable under Section 1430(b), this Court's decision likely would not eliminate uncertainty in defining primary rights. (Plaintiff's Brief 39.)

or could have been raised, on matters litigated or litigable.'"] [citation omitted]; *Hong Sang Market*, 20 Cal.App.5th at 495.)

Villacres held that for res judicata purposes, the violations alleged in the second suit *could have* been brought in the prior suit and thus were barred. The court cited cases holding that res judicata barred specific claims related to previous, more general claims. For example, *Villacres* cited cases where:

- a "suit seeking unpaid salary and bonuses barred by res judicata because employee could have sought that relief in prior suit alleging other wage claims; both suits involved same injury to employee, namely, insufficient remuneration";
- "employee's bankruptcy claim seeking wages, sick leave pay, and vacation pay barred by res judicata because that relief could have been sought in prior civil action for wrongful discharge";
- "employee's action for compensation barred by res judicata because that relief could have been sought in prior action alleging discriminatory termination."

(*Villacres*, 189 Cal.App.4th at 584 [citations omitted].) These cases were from jurisdictions applying the transactional theory of res judicata. However, *Villacres* also cited California cases applying the primary right theory, but holding a second claim barred where it could have been raised in a prior action. (*Id.* at 585.)

The Opinion underscores the uncertainty of the primary right approach—uncertainty revealed by California opinions expanding the primary right concept to the point where it approaches the "transactional"

approach of the Restatement Second.[14] Despite Plaintiff's effort to discredit the transactional approach, it has proved workable in many jurisdictions. (Heiser, *California's Unpredictable Res Judicata (Claim Preclusion) Doctrine* (1998) 35 San Diego L. Rev. 559, 570-571.) If this Court is inclined to adopt the Opinion's per-cause-of-action approach to Section 1430(b), this case presents an opportunity to make clear that an expansive definition, essentially embracing the transactional approach, is the proper one. (Cf. *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 909, fn. 13 [declining request to reconsider the primary right doctrine where the result in the case would be the same under the transactional theory].)

c. Due Process Concerns Persist.

The primary right theory could lead to vast awards in violation of a facility's due process rights. (*Nevarrez*, 221 Cal.App.4th at 135.) *Nevarrez* noted Section 1430(b) "provides no notice as to what evidentiary facts constitute a single continuing violation or separate violations of a patient's right, or whether a practice or a course of conduct gives rise to one or more violations." (*Id.*) The Opinion acknowledged due process concerns. (Op. 25.)

Plaintiff cites *People v. Casa Blanca Convalescent Homes* (1984) 159 Cal.App.3d 509, where a statute explicitly authorized separate penalties for "each violation." In determining how to define "violation" yet protect the defendant from an outsized award violating due process, the court approved the trial court's grouping of violations according to various

[14] *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1203.

factors, including "number of violations of a specific regulation" and "the nature, the seriousness, the detrimental health impact of a particular violation." This approach avoided "an unreasonable or oppressive statutory penalty" while furthering the statute's deterrent goal and punishing "cumulative and blatant violations." (*Id.* at 534-535.)

That procedure does not work under Section 1430(b). The statute in *Casa Blanca* authorized awards "for each violation"; the award was not "per primary right." There is no authority for a court to exercise broad discretion to "group" distinct primary rights in order to reduce the monetary award expressly provided by statute. Section 1430(b) confers discretion to determine the amount of an award within the range from $1 to $500, but if the statute is interpreted to allow a plaintiff to recover a separate award for each violation of a separate primary right, an award could quickly become harsh and oppressive, violating a defendant's due process rights, if the particular court defines primary rights narrowly. (See *Hale v. Morgan* (1978) 22 Cal.3d 388, 399-403 [discussing oppressive penalties].)

d. Section 1430(b) Is Not Based on Harm.

Plaintiff argues that the mere fact that a resident right was violated causes "harm" to the resident, so the "harm" component of a primary right is established by the violation itself. However, the examples Plaintiff cites involve harm that, while intangible, goes beyond the mere fact of violation of a right. Specifically, violations of the right to privacy may "impair[] the mental peace and comfort of the person and may cause suffering ...." (Plaintiff's Brief 38.) A nuisance claimant may experience "discomfort and annoyance." (*Ibid.*, fn. 3.) While such harms may *arise from* the violation of some residents' rights, they may not arise in every case as to every right,

and at any rate are irrelevant to whether a plaintiff can recover under Section 1430(b), which provides a monetary award for a violation of rights without a showing or presumption of harm. This underscores that the primary right analysis here is unwieldy and yields unclear results.

e. *Miller* Does Not Support a Per-Cause-of-Action Theory.

Finally, the "per cause of action" concept recognized in *Miller v. Collectors Universe* (2008) 159 Cal.App.4th 988 does not translate to Section 1430(b). The statute in *Miller* focused on *compensating for harm*, so it was easier and clearer to apply primary right analysis to evaluate how many times the defendant's "use" harmed the plaintiff. That approach does not work for a statute that does not require proof of harm.

B. Punitive Damages Are Not Available.

The Opinion concluded that punitive damages may be awarded for Section 1430(b) violations. It ignored the analysis that courts must undertake to determine whether punitive damages are available for a statutory violation.

1. The Legislature Deliberately Refused to Provide Punitive Damages.

When the Legislature considered SB 1930, it specifically considered punitive damages. (ManorCare 50-51.) A provision authorizing punitive damages was added in May 1982, two months after the bill was proposed. (MJN Ex. 3, p. 12.) The Legislative Counsel's Digest reported "[S]B 1930, as it passed the Senate ... made a licensee of a skilled nursing facility or intermediate care facility liable for punitive damages upon proof of

repeated or intentional violations of any rights of a resident or patient of those facilities." (MJN Ex. 1, p. 256.)

But the Legislature deleted the punitive damages provision. It did so, not because it believed the provision was unnecessary or duplicative, but because it *decided* that punitive damages are not available for violations of Section 1430(b). This is not speculation. The legislative history shows the Legislature paid specific attention to punitive damages, when it added, then eliminated, the provision as part of an ongoing discussion over remedies under Section 1430(b). The Legislative Counsel's Digest reported "[t]he Assembly amendments, ***instead*** [of punitive damages] make the licensee civilly liable for up to $500." (MJN Ex. 1, p. 256 [emphasis added].) The Legislature knowingly rejected punitive damages under Section 1430(b).

Given this undisputed history, the rule is clear: "'The rejection by the Legislature of a specific provision contained in an act as originally introduced is most persuasive to the conclusion that the act should not be construed to include the omitted provision.'" (*People v. Soto* (2011) 51 Cal.4th 229, 245 [citation omitted]; see also *Fahlen*, 58 Cal.4th at 682-683.)

Plaintiff speculates that perhaps the Legislature believed other parts of the statutory scheme supported punitive damages and decided an express mention of punitive damages would be duplicative. She says the interpretive principles discussed above do not apply where "general language in the statute includes the specific instance." (Plaintiff's Brief 46.)

This theory is flawed. First, "courts *may not speculate* that the legislature meant something other than what it said." (*Page v. MiraCosta Cmty. Coll. Dist.* (2009) 180 Cal.App.4th 471, 492 [citation omitted;

emphasis added].) The Legislature included an express punitive damages provision and then deleted it, explaining the $500 cap was "instead" of punitive damages. "Speculation and reasoning as to legislative purpose must give way to expressed legislative purpose." (*Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 831.) No legislative history supports Plaintiff's speculation.

Second, neither Section 1430, subdivision (c) nor Section 1433 supports punitive damages for Section 1430(b) violations. There was no duplication leading the Legislature to believe Section 1430(b)'s punitive damages provision was redundant. (ManorCare 50.) Provisions making remedies under a particular statute cumulative to other remedies are not reasonably interpreted as providing additional remedies for *violation of the particular statute*. The only reasonable reading of such provisions is that the statute does not limit the plaintiff's ability to obtain other remedies if it proves violations of *other* laws. (*Romano v. American Trans Air* (1996) 48 Cal.App.4th 1637, 1640, 1643 [interpreting similar provision in a federal statute to mean that state tort claims were not preempted].) Were it otherwise, compensatory and punitive damages would be available under the UCL, which states "[u]nless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state." (Bus. & Prof. Code, § 17205.) But they are not. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1148.)

Yu v. Signet Bank/Virginia (2002) 103 Cal.App.4th 298, disapproved on other grounds by *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2018) 4 Cal.5th 637, does not support Plaintiff. In *Yu*, the Legislature deleted from a bill amending CCP section 425.16 language

stating that an anti-SLAPP motion must be filed within 60 days of service of the complaint "or any amended or supplemental complaint." (*Id.* at 313-314.) Plaintiffs alleged the deletion meant the Legislature intended that "complaint" did not include amended or supplemental complaints.

The court noted "'since there are other statutes in the Code of Civil Procedure where the term 'complaint' implicitly encompasses 'amended complaint[,]' the Legislature may have decided that it would have been superfluous to refer to amended complaints in section 425.16 .... That reference might also have been regarded as unnecessary in view of the bill's other provision directing that the anti-SLAPP statute be broadly construed." (*Id.* at 314-315 [citations omitted].)

Here, Sections 1433 and 1430, subdivision (c) do not authorize punitive damages under Section 1430(b). The Legislature could not have relied on those statutes to find that a specific provision for punitive damages was superfluous.

Plaintiff also argues the Legislature's deletion of the punitive damages language from the final bill is "not conclusive." (Plaintiff's Brief 46.) The proposition applies only when language deleted from a statute before passage was "*replaced by general language that includes the specific instance*" that was deleted. (*California Association of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17-18 [emphasis added].) Section 1430(b)'s deleted provision was replaced, not by general language encompassing punitive damages, but by a flat "fine" of up to $500 that the Legislature declared was "instead" of punitive damages.

2. Section 1430(b) Did Not Codify Common-Law Rights.

Clear legislative intent not to allow punitive damages ends the analysis.

For completeness, ManorCare's Brief also explained that courts may consider whether the statute creates new rights/obligations or codifies pre-existing common-law ones. (ManorCare 53-55; *Rojo v. Kliger* (1990) 52 Cal.3d 65, 79 ["As a general rule, where a statute creates a right that did not exist at common law and provides a comprehensive and detailed remedial scheme for its enforcement, the statutory remedy is exclusive."].)[15] That analysis demonstrates that Section 1430(b) created a new right, mandating a conclusion that no punitive damages are available.

Plaintiff makes the same mistake the Court of Appeal made, arguing that Section 1430(b) allows enforcement of pre-existing rights. But the pre-existing rights enforceable under Section 1430(b) are found in *statutes and regulations*. The question is whether the right existed *at common law*. (*Ibid.*) The rule does not extend to pre-existing statutes and regulations.

That some enumerated rights might be similar to rights enforceable under some common-law theory does not mean Section 1430(b) codified common law. Section 1430(b) was enacted because there was no method of enforcing statutory and regulatory rights violations *qua* resident rights violations, without showing injury, causation, intent, and other elements required to prove common-law claims. (MJN Ex. 6, p. 17.) Section

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[15] Plaintiff argues Section 1430(b)'s remedy is inadequate, weighing toward allowing punitive damages. It is not inadequate, as it was not intended to compensate for harm. Had the Legislature believed it was inadequate, it would not have rejected punitive damages and refused to pass numerous bills increasing the assertedly inadequate award. (ManorCare 25-29.)

1430(b) "is not a substitute for the standard damage causes of action for injuries suffered by residents of nursing care facilities." (*Lemaire*, 234 Cal.App.4th at 867.) "[N]ot a substitute" means something new, not a codification of existing common law. (Plaintiff's Brief 32 [arguing Section 1430(b) was "enacted to meet new conditions"].)[16]

That punitive damages are not available under Section 1430(b) does not foreclose their recovery on *other* claims. If a plaintiff brings tort or elder abuse claims, she may be entitled to punitive damages for the same rights-violating conduct, upon requisite proof. (Welf. & Inst. Code, § 15657; *Winn*, 63 Cal.4th at 156, 160.)

3. Punitive Damages Are Not Available in the Absence of Compensatory Damages.

This Court has explained, in the LTCA context, that "actual damages are an *absolute predicate* for an award of exemplary or punitive damages." (*Kizer*, 53 Cal.3d at 147 [emphasis added].) Where compensatory damages are zero or not recoverable, there can be no punitive damages. (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 530.) "'[A]ctual damages' are those which compensate someone for the harm from which he or she has been proven to currently suffer or from which the evidence shows he or she is certain to suffer in the future.... '[A]ctual damages' is a term synonymous with compensatory damages ...." (*Saunders v. Taylor* (1996) 42 Cal.App.4th 1538, 1543-1544 [citations omitted].) The monetary award under Section 1430(b) is not "damages." (*Kizer*, 53 Cal.3d at 147.) Plaintiff does not discuss *Kizer*.

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[16] *Greenberg v. Western Turf Ass'n* (1903) 140 Cal. 357 allowed punitive damages under a penalty statute that codified a pre-existing common-law right. (*Brewer v. Premier Golf* (2008) 168 Cal.App.4th 1243, 1255, fn. 10.)

Plaintiff cites passing references to "damages" in isolated pieces of Section 1430(b)'s legislative history. But the Legislature specifically chose not to use the word "damages" in Section 1430(b)—in fact, it *deleted* it from an earlier draft of the bill. It *did* use the word "damages" in Section 1430(a), invoking the rule that "'[w]hen the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded.'" (*Wasatch Prop. Mgmt.*, 35 Cal.4th at 1118.) No matter the label, the Section 1430(b) award clearly is not compensatory, the required predicate for punitive damages.

Plaintiff asserts "[t]he prerequisite to punitive damages ... is not an *award* of damages, but a *showing* that plaintiff has been damaged." (Plaintiff's Brief 53 [emphasis in original].) This is incorrect, outside of narrow contexts not present here. For instance, in *Contento v. Mitchell* (1972) 28 Cal.App.3d 356, the court acknowledged the "well-settled rule that there can be no award of punitive damages without a finding of actual damages," but explained "in an action for damages based on language defamatory per se, *damage to plaintiff's reputation is conclusively presumed* and he need not introduce any evidence of actual damages in order to obtain or sustain an award of damages." (*Id.* at 357-358 [emphasis added].) The Section 1430(b) award is available without any showing or presumption of injury.

In *James v. Public Finance Corp.* (1975) 47 Cal.App.3d 995, the court concluded that although the jury had written "0" compensatory damages on the verdict form, a punitive award could be upheld because the tort was admitted and the evidence established actual damages. The verdict form could be construed as covering actual and punitive damages. (*Id.* at 1006.) Here, there is no equivalent concept. Money awarded under

Section 1430(b) does not compensate for harm, and evidence of harm is neither necessary nor relevant. Further, subsequent cases have noted that *James'* "liberal construction" of the verdict form was "a euphemism for nullification" and declined to follow it as "wrongly decided." (*Jackson v. Johnson* (1992) 5 Cal.App.4th 1350, 1358-1359; *Berkley*, 152 Cal.App.4th at 532.)

4. Allowing Punitive Damages for Section 1430(b) Violations Produces Absurd Results.

Plaintiff ignores the absurd results of allowing punitive damages under Section 1430(b). Under Plaintiff's theory, a plaintiff with no or nominal harm may obtain punitive damages, but a plaintiff with actual harm cannot, as Section 1430(a) caps damages. A court "must harmonize the various parts of a statutory enactment ... by considering the particular clause or section in the context of the statutory framework as a whole" and avoid a construction with absurd consequences. (*Greg F.*, 55 Cal.4th at 406 [citations omitted].)

IV. CONCLUSION

The Court should reverse the decision and hold that $500 is the maximum monetary award in any Section 1430(b) lawsuit and that punitive damages are not available under Section 1430(b).

Dated: September 17, 2018 MANATT, PHELPS & PHILLIPS, LLP

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WORD COUNT CERTIFICATION

Pursuant to California Rules of Court, Rule 8.504, subdivision (d), I certify that this Reply Brief on the Merits contains 8,365 words, not including the table of contents, table of authorities, the caption page or this certification page.

Dated: September 17, 2018 MANATT, PHELPS & PHILLIPS, LLP

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PROOF OF SERVICE

I, Brigette Scoggins, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On **September 17, 2018**, I served the within: **REPLY BRIEF ON THE MERITS** on the interested parties in this action addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **(BY MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that the foregoing is true and correct. Executed on **September 17, 2018**, at Los Angeles, California.

/s/ Brigette Scoggins
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