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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SONOMA

MICHAEL PARKS, as successor in interest to ROBERT PARKS (Decedent) Plaintiffs, vs ENSIGN MONTGOMERY, LLC dba PARK VIEW POST ACUTE; FLAGSTONE HEALTHCARE NORTH, INC.; THE ENSIGN GROUP, INC.; LUKE ENSIGN, an individual, ENSIGN SERVICES, INC., and DOES 1 through 50, inclusive, Defendants.	CASE NO.: SCV-273878 **[PROPOSED] ORDER ON DEFENDANT THE ENSIGN GROUP, INC.'S AND ENSIGN SERVICE'S, INC.'S MOTIONS FOR SUMMARY JUDGMENT OR ADJUDICATION** DATE: October 14, 2026 TIME: 3:00 p.m. DEPT.: 19 Assigned for all purposes to Hon. Oscar A. Pardo Complaint Filed: August 7, 2023 SAC Filed: December 24, 2025 Date of Trial: March 5, 2027

Defendants The Ensign Group, Inc.'s and Ensign Services, Inc.'s motions for summary judgment or summary adjudication came on for hearing on October 14, 2026. Jianlin Song from Wilson, Elser, Moskowitz, Edelman & Dicker LLP appeared for the Defendants. Daniel Jay from York Law Corporation appeared for the Plaintiffs. After consideration of the moving and opposing papers and the oral argument of the parties, the Court hereby rules as follows:

Plaintiff Michael Parks ("Plaintiff"), as successor-in-interest to decedent Robert Parks ("Decedent"), filed the presently operative second amended complaint (the "SAC") against defendants Ensign Montgomery, LLC ("Montgomery"), Flagstone Healthcare North, Inc. ("Flagstone, Inc."), Flagstone Healthcare North, LLC ("Flagstone LLC", formerly Doe 2), The Ensign Group ("TEG"), Luke Ensign ("Individual Defendant"), Ensign Services, Inc. ("ESI", together with other named defendants "Defendants"), and Does 1-50, arising out of Defendants' care of Decedent. The SAC contains causes of action for: 1) elder neglect/abuse; 2) negligence; 3) Violations of the Patient's Bill of Rights; 4) Violations of California's Unfair Competition Law under Business and Professions Code § 17200 *et seq*. (the "UCL"); 5) fraud; and 6) wrongful death. Demurrers have been sustained to the fraud and negligence causes of action without leave to amend.

This matter is on calendar for motions by TEG and ESI ("Moving Defendants") for summary judgment pursuant to Cal. Code Civ. Proc. ("CCP") § 437c, or in the alternative, summary adjudication of the causes of action. Moving Defendant's motions for summary judgment are **DENIED**.

I. Evidentiary and Procedural Issues

A. Plaintiff's Objections in Opposition

Plaintiff's objections to TEG's evidence in support ¶¶ 1-5, 7-8, 10, 12-15, 17-19 are OVERRULED. Plaintiff's Objection 6 is SUSTAINED as a legal conclusion. Objections ¶ 9 and 11 are SUSTAINED for lack of foundation. Objection to TEG's evidence ¶ is SUSTAINED as to TEG's Undisputed Material Facts 15, 46 and 47, and otherwise OVERRULED.

Plaintiff's objections to ESI's evidence in support ¶¶ 1-13 are OVERRULED.

B. Moving Defendants' Objections on Reply

TEG's Objections ¶ 1-5 are SUSTAINED on the basis of hearsay. TEG's Objection 6 is OVERRULED. TEG's reliance on Evid. Code § 1292 is misplaced, as Evid. Code § 1292 provides a hearsay exception, and not a separate basis upon which to preclude evidence. Evid. Code § 1292 does not affect Shepard's deposition testimony because his testimony is admissible under other hearsay exceptions, admission of a party opponent. While TEG opines that Shepard's testimony is only as to the entity at issue in that case, that testimony is tendered in almost precisely the same method that his

Declaration proffered by TEG is admissible. Shepard is propounded as TEG's expert on their corporate structure, and in much the same manner that he reviewed no documentation specific to Montgomery here, his general inconsistencies in testimony as to TEG's function is admissible to counterweigh his declaration. TEG's Objections 7-20 are preserved under CCP § 437c (q), as their disposition does not appear necessary to adjudication of the motion since the underlying evidence does not impact the result of the motion. TEG's Objections ¶ 21-22 are overruled as statements of a party opponent.

ESI's identical objections come to the same result based on the same reasoning. ESI's Objections 1-5 are sustained. Objections 6, 21, and 22 are OVERRULED. Objections 7-20 are reserved.

C. Separate Statement on Reply

The Court does not consider Moving Defendants' Separate Statements on Reply. The statute explicitly prohibits production of evidence on reply. CCP § 437c (b)(4). Accordingly, there is no statutory basis for the moving party being able to file a responsive separate statement on reply. While Moving Defendants do not actually attach any new evidence on reply, the principle that they "dispute" any of Plaintiff's additional material facts is nothing more than indicative of the existence of triable issues of material fact. Moving Defendants' objections are relevant to determine the scope of the oppositional evidence, but their contention that Plaintiff's statements are subject to conflicting evidence merely affirms the existence of triable issues. Any such contentions go to the weight of Plaintiff's evidence, a matter improper for the Court to consider at summary judgment.

II. Underlying Facts

A. Facts in Both TEG and ESI's Separate Statement

Decedent was a resident of Montgomery, dba Park View Post Acute (the "Facility") from March 25, 2021 through June 2, 2021. TEG's Separate Statement (TEGSS"), ¶ 1. The Facility is a skilled nursing facility located at 3751 Montgomery Drive, Santa Rosa, California. TEGSS ¶ 2. Plaintiff filed the instant action on August 7, 2023. Plaintiff alleges that Decedent's existing pressure injuries worsened during his residency at the Facility, that he developed additional pressure injuries, and that those injuries ultimately contributed to his death. TEGSS ¶ 4. The remaining causes of action

against Moving Defendants are (1) Elder Abuse and Neglect; (2) Unfair Business Practices; and (3) Wrongful Death. TEGSS ¶ 8; ESI's Separate Statement ("ESISS"), ¶ 8.

B. TEG's Separate Statement

TEG is a holding company whose independently licensed subsidiaries provide healthcare services, including skilled nursing, senior living, rehabilitative services, and related ancillary services. TEGSS ¶ 11. TEG owned 100% of Flagstone, Inc. during Decedent's admission to the Facility, which in turn fully owned Montgomery during that period. TEGSS ¶ 18-19. Flagstone LLC is the current 100% owner of Montgomery, which is fully owned by TEG. TEGSS ¶ 20-21. TEG does not itself generate revenue. TEGSS ¶ 13. TEG has no employees or direct operating assets. TEGSS ¶ 14. TEG reports consolidated financial results in its SEC filings that include the financial performance of its subsidiary entities. TEGSS ¶ 16. Montgomery was the entity licensed to operate the Facility at the time of Decedent's admission. TEGSS ¶ 17. Montgomery has its own management, employees, and assets. TEGSS ¶ 25. There is no agreement for TEG and Montgomery to share profits or losses. TEGSS ¶ 26, 29; Declaration of Robert Shepard, ¶ 15. Montgomery receives certain nonclinical services, including human resources, risk management, and legal services, from ESI pursuant to contractual agreements. TEGSS ¶ 26. TEG is not listed as a party to that agreement. TEGSS ¶ 28. There is no agreement for TEG to jointly operate the Facility to Montgomery. TEGSS ¶ 30.

On or about October 1, 2013, TEG entered into a Corporate Integrity Agreement ("CIA") with the Office of Inspector General of the United States Department of Health and Human Services. TEGSS ¶ 31. The CIA was entered into in connection with a settlement agreement with the United States. TEGSS ¶ 32. The settlement agreement related to allegations concerning Medicare billing for rehabilitation therapy services at certain skilled nursing facilities, including the Facility. TEGSS ¶ 33. The CIA collectively referred to The Ensign Group, Inc. and its operating subsidiaries as the "Ensign Group." TEGSS ¶ 34. During the term of the CIA, the Ensign Group was required to maintain a compliance program designed to promote compliance with Federal health care program requirements. TEGSS ¶ 35. The compliance program required by the CIA included policies, procedures, practices, training, and oversight mechanisms. TEGSS ¶ 36. TEG completed the requirements of the CIA, and the CIA expired in 2019. No CIA is currently in effect. TEGSS ¶ 38. TEG is not a licensed healthcare

provider and does not hold a license, certificate, or permit to operate a skilled nursing facility. TEGSS ¶ 39. TEG does not directly determine the Facility's staffing levels or staffing needs. TEGSS ¶ 41. TEG does not engage in direct staffing or human resources decisions at the facility, including hiring, firing, supervising, evaluating, or directing Facility employees. TEGSS ¶ 40. TEG does not prepare the Facility's employee work schedules. TEGSS ¶ 42. TEG does not prepare or approve the Facility's financial projections. TEGSS ¶ 43. TEG does not issue the Facility's resident care policies and procedures. TEGSS ¶ 44. During Decedent's residency at the Facility, TEG did not provide any services directly to Decedent. TEGSS ¶ 45.

C. ESI's Separate Statement

TEG owned 100% of ESI prior to Decedent's admission to the Facility through the current day. ESISS ¶ 11. TEG identifies ESI and other wholly owned subsidiaries that provide centralized, non-clinical administrative support services as "Service Centers" in its SEC filings and Medicare cost reports. ESISS ¶ 12. ESI, as a Service Center, provides centralized non-clinical administrative support services to certain affiliated healthcare facilities, including Montgomery, pursuant to Independent Consulting and Centralized Services Agreements ("ICCSA"). ESISS ¶ 13. The services provided under the ICCSA include non-clinical services such as accounting, payroll, accounts payable, centralized cash management, human resources, information technology, legal, risk management, and cost-reporting support. ESISS ¶ 14. ESI's seminar trainings are voluntary and some policies provided for facilities are optional for use. Exhibit F to Singh Decl., 142:21-22; Exhibit B to Singh Decl., 95:4-7[1]. ESI is not a licensed healthcare provider and does not hold a license, certificate, or permit to operate a skilled nursing facility. ESISS ¶ 16. The ICCSA does not grant ESI any ownership interest in the Facility or any right to own, lease, operate, manage, or control the Facility. ESISS ¶ 17. For services provided under the ICCSA, ESI charges a flat fee equal to five percent (5%) of the client facility's gross revenue on a monthly basis, regardless of the nature or amount of services actually used by the facility during a given period. ESISS ¶ 18. There is no profit or loss sharing arrangement between ESI and Montgomery. ESISS ¶ 19.

ESI has no ownership interest in Montgomery or Park View Post Acute. ESISS ¶ 21. ESI and Montgomery are separate corporate entities with separate corporate records, financial accounts,

employees, management structures, and business responsibilities. ESISS ¶ 22. ESI and Montgomery do not commingle assets or funds. ESISS ¶ 23. There is no contractual agreement for ESI and Montgomery to jointly operate the Facility or jointly control the Facility's operations. ESISS ¶ 24. Montgomery is responsible for the Facility's licensing requirements and regulatory compliance. ESISS ¶ 26. ESI does not provide medical care, make clinical decisions, or perform clinical functions at the Facility and does not provide or participate in the care or services provided to residents at the Facility. ESISS ¶ 28. ESI does not participate in the Facility's day-to-day management. ESISS ¶ 30. Montgomery employs the Facility's staff. ESISS ¶ 31.

D. Plaintiff's Additional and Disputed Facts

TEG chooses the directors of ESI. Plaintiff's Additional Facts in Opposition to TEG's Motion[2] ("PAF"), ¶ 4. TEG's CEO is the President of ESI. PAF ¶ 5. In 2021, Mr. Christensen, TEG's President, also was the paid President of ESI, and the paid Officers of ESI were TEG executives. PAF ¶ 6. TEG, the Flagstone Entities, ESI, and Montgomery have the same principal place of business. PAF ¶ 10. The signatory on behalf of Montgomery on the ICCSA was TEG's President at the time. PAF ¶ 11. ESI controls information technology systems across Ensign-affiliated facilities. PAF ¶ 12. ESI determines what software application functionality or user access is granted to employees at Montgomery. PAF ¶ 13. ESI has access to patient data and assigns Montgomery employees' access to electronic health records and patient information. PAF ¶ 14.

Montgomery's "Governing Body" has four members, two of which are employees of the Flagstone Entities and two of which are Montgomery employees. PAF ¶ 17. The Flagstone employees are appointed to the Governing Body on the authority of the Flagstone Entities, not on the authority of anyone at Montgomery. PAF ¶ 18. Montgomery's Governing Body oversees "financial stewardship, decision-making, day-to-day" operations. PAF ¶ 19. The Governing Body has an obligation to make sure the facility is operated in compliance with the law, provides services that meet professional standards, and is responsible for assuring quality of care. PAF ¶ 20. Montgomery's Governing Body confers on operational issues as specific as terminated employees to determine whether a terminated employee's problem is "systemic." PAF ¶ 21. It approves capital expenditures and sets hourly wages for CNAs. PAF ¶ 22-23. Montgomery's administrator reports to the Governing

Body and may be disciplined or terminated by them. PAF ¶ 24. The Governing Body monitors a "large spectrum of things" regarding the administrator's management of the Facility, reviews financial reports and sets financial goals for the Facility. PAF ¶ 25-26. It approves the patient care policies used at the Facility. PAF ¶ 27. Montgomery's administrator cannot take a day off without approval from his boss, who is an employee of the Flagstone Entities. PAF ¶ 28. The administrator of Montgomery has access to other Ensign- affiliated nursing facilities' financial and operational metrics, and vice versa. PAF ¶ 37. An administrator of an Ensign affiliated facility can work at two Ensign facilities at the same time but is paid for by only one facility. PAF ¶ 38. Other classes of employees can work at two Ensign-affiliated facilities at once. PAF ¶ 39. Every dollar earned by Montgomery is deposited in a sweep account where, on a daily basis, Montgomery's revenue is swept into a concentration bank account controlled by and solely in the name of ESI. PAF ¶ 42. ESI then transfers Montgomery's revenue to a disbursement account if Montgomery has obligations that need to be paid. PAF ¶ 43. ESI pays any obligations owed by Montgomery from the disbursement account. PAF ¶ 44. ESI keeps any remaining revenue (i.e., profit) belonging to Montgomery by either leaving it in the concentration account or moving it to an investment account. PAF ¶ 45. Montgomery's revenue is/can be used to pay the expenses of other Ensign-affiliated nursing homes across the country. PAF ¶ 47. Montgomery's revenue is also used to pay TEG's Board of Directors. PAF ¶ 48. ESI is capable of using Montgomery revenue to pay ESI's obligations if it lacked the capital to do so. PAF ¶ 49. ESI pays the Flagstone Entities employees who supervise Montgomery's administrator. PAF ¶ 50. Montgomery's administrator has no authority to decline to have Montgomery's revenue deposited into the sweep account. PAF ¶ 51. ESI uses positive cash flows from facility operations to pay dividends to shareholders, and TEG's Board of Directors. PAF ¶ 52-53.

ESI charges 5% of revenue to Montgomery for services regardless of the nature and quantity of services it provides. PAF ¶ 54. ESI provides services to the Flagstone Entities but it does not charge Flagstone for them; the fee is paid by Flagstone's subsidiaries such as Montgomery. PAF ¶ 55. There is no written agreement reflecting the services provided by ESI to the Flagstone Entities. PAF ¶ 58. ESI provides services to TEG, its parent company, but there is no written agreement documenting the services provided, and ESI does not charge for the services. PAF ¶¶ 56-57, 59. Montgomery's

Medicare cost reports reflect TEG as its "home office". PAF ¶ 61. TEG's general counsel, and not Montgomery's administrator, makes the decision on which liability insurance to obtain for the Facility. In investor materials, TEG states that "through its ownership of a majority voting interest" it controls Montgomery and similar facilities. PAF ¶ 65. TEG has the authority to make decisions about significant components relating to the compensation of Montgomery's administrator, including the award of stock options and performance bonuses. PAF ¶ 68.

TEG has a Quality Assurance and Compliance Committee of their Board of Directors, comprised of three board members. PAF ¶ 72-73. The Quality Assurance and Compliance Committee (the "Compliance Committee") of the Board of Directors promulgates a written Corporate Compliance Program including written policies, procedures, and standards of conduct. PAF ¶ 74. The Compliance committee designates a Chief Compliance Officer. PAF ¶ 75. The Compliance Committee monitors the subsidiary facilities' regulatory compliance. PAF ¶ 76. The Compliance Committee ensures the delivery of compliance training and education to the officers and employees of its subsidiaries. PAF ¶ 77. The Compliance Committee has an established system for escalating compliance and quality control issues. PAF ¶ 78. The Compliance Committee oversees a system for internal monitoring and auditing of compliance and quality control issues and corrective actions. PAF ¶ 79. The Compliance Committee reports to the Board any material non-compliance with the laws and regulations that the Corporation's Corporate Compliance Programs were designed to prevent. PAF ¶ 81. TEG has established a Code of Conduct that applies to employees at Montgomery and ESI. The Code of Conduct applies to Ensign facilities, every employee, agencies, clinics, Service Center and other business units, so they understand how TEG expects them to act. PAF ¶ 83-84. The Code of Conduct establishes a process for auditing and documenting efforts to comply with all applicable laws and TEG's own internal policies and procedures. PAF ¶ 85. A Montgomery employee could be terminate for not complying with the Code of Conduct. PAF ¶ 86. The Code of Conduct prohibits Montgomery employees from engaging in activities that would be considered a conflict of interest and holds that "[a]ny business or financial opportunities you discover through the use of our information or your position belongs to us and may not be used for personal gain." PAF ¶ 89. The Code of Conduct imposes a duty on employees of Montgomery to report any and all possible

violations of the Code of Conduct, and cooperate with any investigations into compliance violations. PAF ¶ 90-91. TEG's Code of Conduct requires any contract entered into by Montgomery to be reviewed by Ensign's Legal & Risk Department if its value is over $25,000. PAF ¶ 94. Participating in training and education are required under the Code of Conduct. PAF ¶ 95.

TEG's "Compliance & Ethics Program" is required for all affiliated entities. PAF ¶ 96. TEG's Chief Compliance Officer is responsible for ensuring that training occurs for employees of Montgomery on the Code of Conduct. The Chief Compliance Officer is responsible for developing and monitoring corrective action plans and ensuring that necessary remedial action occurs, revising the compliance program and monitoring activities or controls as necessary in response to incidents of non-compliance, and responding to compliance-related inquiries of external auditors and reviewing bodies. PAF ¶ 99-101. Under that program, TEG monitors high risk areas and conducts assessments of its subsidiaries' nursing and therapy functions to test whether compliance controls are effective. PAF ¶ 104. TEG uses its monitoring results to decide whether to subject a subsidiary to an internal audit. PAF ¶ 105. TEG's Compliance Team audits Montgomery and other facilities for regulatory and clinical compliance through its compliance program which no Ensign facility can opt out of. PAF ¶ 106. Issues of non-compliance at an Ensign facility are investigated and appropriate corrective actions are implemented if non-compliance is detected. PAF ¶ 108. The Chief Compliance Officer reports compliance efforts, findings, and concerns quarterly to TEG's Board of Directors. PAF ¶ 109. TEG's "Compliance Investigations" policy requires an affiliated entity like Ensign Montgomery, LLC to develop a corrective action plan to be taken when compliance violations have been found, which includes validation and ongoing monitoring by TEG. PAF ¶ 112.

The CIA between TEG and Department of Health and Human Services collectively refers to The Ensign Group, Inc. and its operating subsidiaries as "Ensign Group." PAF ¶ 127. The CIA required the Board of Directors of TEG to be responsible for the oversight of matters related to compliance with Federal healthcare program requirements. PAF ¶ 128. The Corporate Integrity Agreement required the Board of Directors of The Ensign Group, Inc. to be responsible for ensuring that Ensign Group adopts and implements policies, procedures, and practices designed to ensure compliance with Federal health care program requirements. PAF ¶ 129. The CIA defines "Covered

Persons" as officers, directors, and employees of Ensign Group, including all contractors, subcontractors, agents, and other persons who are involved directly or indirectly in the delivery of resident and/or patient care. PAF ¶ 130-131.

ESI has approximately 200 employees. Plaintiff's Separate Statement of Additional Material Facts in Opposition to ESI's Motion ("PAF to ESI"), ¶ 132. ESI employs remote "compliance resources" who go onsite to the client facilities like Montgomery. PAF to ESI, ¶ 133.

III. The Burdens and Standards on Summary Judgment and Adjudication

A. Generally

Summary judgment or adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). All evidence and inferences drawn reasonably drawn therefrom must be viewed in the light most favorable to the party opposing summary adjudication. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 ("*Aguilar*").

A moving defendant meets its initial burden to show that one or more elements of a cause of action "cannot be established" (CCP § 437c(p)(2)) by presenting evidence that, if uncontradicted, would constitute a preponderance of evidence that an essential element of the plaintiff's case cannot be established. *Aguilar, supra,* 25 Cal.4th at 851; *Kids Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879. Alternatively, a defendant may show that there is a "complete defense" to a cause of action. CCP § 437c(p)(2). To show a complete defense, a defendant must present admissible evidence of each essential element of the defense upon which it bears the burden of proof at trial. *See, e.g. Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289. A defendant cannot base its "showing" on the plaintiff's lack of evidence to disprove its claimed defense. *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 472.

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840.

If a defendant meets its initial burden to show a "complete defense," the burden shifts to the plaintiff to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(2). *Consumer Cause, Inc.*, 91 Cal.App.4th at 468. An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

"(T)he pleadings determine the scope of relevant issues on a summary judgment motion." *Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74. "(T)he burden of a defendant moving for summary judgment only requires that he or she negate plaintiff's theories of liability *as alleged in the complaint;* that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings." *Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493 (emphasis in original). Where the deficiency is with the complaint, and not the evidence presented, the legal effect of a motion for summary judgment is the same as that of a motion for judgment on the pleadings. *American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1117.

B. Vicarious Liability

"Vicarious liability means that the act or omission of one person ... is *imputed by operation of law* to another." *Miller v. Stouffer* (1992) 9 Cal.App.4th 70, 84 (emphasis original). "[T]he modern and proper basis of vicarious liability of the master is not his control or fault but the risks incident to his enterprise." *Hinman v. Westinghouse Elec. Co.* (1970) 2 Cal.3d 956, 960. "In effect, 'vicariously liable defendants are viewed, for policy reasons, as a single entity.'" *Schreiber v. Lee* (2020) 47 Cal.App.5th 745, 754.

1. Agency

"An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency." Civ. Code, § 2295. An agent may bind a principal under their actual or ostensible authority, and any rights or liabilities derived from the actions of the agent under that authority are also attributable to the principal. Civ. Code, § 2330.

"An agent's authority may be proved by circumstantial evidence." *Tomerlin v. Canadian Indemnity Co.* (1964) 61 Cal.2d 638, 644. The burden of proving agency is upon the party asserting

that relationship. *Oswald Machine & Equipment, Inc. v. Yip* (1992) 10 Cal.App.4th 1238, 1247; *Aspen Pictures, Inc. v. Oceanic S.S. Co.* (1957) 148 Cal.App.2d 238, 253; *Hill v. Citizens Nat. Trust & Sav. Bk.* (1937) 9 Cal.2d 172, 177. Although the existence of an agency relationship is usually a question of fact, it "becomes a question of law when the facts can be viewed in only one way." *Metropolitan Life Ins. Co. v. State Bd. of Equalization* (1982) 32 Cal.3d 649, 658; *Angelotti v. The Walt Disney Co.* (2011) 192 Cal.App.4th 1394, 1404.

Agency may be either actual or ostensible. Cal. Civ. Code ("CC") § 2298; *Vallely Investments v. BancAmerica Commercial Corp.* (2001) 88 Cal.App.4th 816, 826. Actual agency exists "when the agent is really employed by the principal." CC § 2299.

"We start with the firm proposition that neither ownership nor control of a subsidiary corporation by a foreign parent corporation, without more, subjects the parent to the jurisdiction of the state where the subsidiary does business. (*Citation*) 'Control' in this context means the degree of direction and oversight normal and expected from the status of ownership; it comprehends such common characteristics as interlocking directors and officers, consolidated reporting, and shared professional services." *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 540–541 (internal citations omitted). "It is the nature of the control exercised by the parent over the subsidiary that is crucial, because some degree of control is an ordinary and necessary incident of the parent's ownership of the subsidiary. Only when the degree of control exceeds this level and reflects the parent's purposeful disregard of the subsidiary's independent corporate existence that the principal/agent theory will be invoked." *Virtualmagic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal.App.4th 228, 245. "As a practical matter, the parent must be shown to have moved beyond the establishment of general policy and direction for the subsidiary and in effect taken over performance of the subsidiary's *day-to-day* operations in carrying out that policy." *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 542.

"The existence of an agency relationship is a factual question for the trier of fact whose determination must be affirmed on appeal if supported by substantial evidence. (*Citations*) 'Only when the essential facts are not in conflict will an agency determination be made as a matter of law.'"

Garlock Sealing Techs., LLC v. NAK Sealing Techs. Corp. (2007) 148 Cal.App.4th 937, 965 (internal citations omitted).

2. Alter Ego

"To succeed on their alter ego claim, plaintiffs must be able to show: (1) such a unity of interest and ownership between the corporation and its equitable owner that no separation actually exists, and (2) an inequitable result if the acts in question are treated as those of the corporation alone." *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 417.

The alter ego test encompasses a host of factors: [1] [c]ommingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses; [2] the treatment by an individual of the assets of the corporation as his own; [3] the failure to obtain authority to issue stock or to subscribe to or issue the same; [4] the holding out by an individual that he is personally liable for the debts of the corporation; the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities; [5] the identical equitable ownership in the two entities; the identification of the equitable owners thereof with the domination and control of the two entities; identification of the directors and officers of the two entities in the responsible supervision and management; sole ownership of all of the stock in a corporation by one individual or the members of a family; [6] the use of the same office or business location; the employment of the same employees and/or attorney; [7] the failure to adequately capitalize a corporation; the total absence of corporate assets, and undercapitalization; [8] the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation; [9] the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities; [10] the disregard of legal formalities and the failure to maintain arm's length relationships among related entities; [11] the use of the corporate entity to procure labor, services or merchandise for another person or entity; [12] the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another; [13] the contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal

liability, or the use of a corporation as a subterfuge of illegal transactions; [14] and the formation and use of a corporation to transfer to it the existing liability of another person or entity.

Morrison Knudsen Corp. v. Hancock, Rothert & Bunshoft (1999) 69 Cal.App.4th 223, 249–250 (internal citations and quotations omitted).

"No single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine." *Virtualmagic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal.App.4th 228, 245. "Whether a party is liable under an alter-ego theory is normally a question of fact." *Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811.

3. Joint Venture

"A joint venture has no corporate or partnership designation. It is an undertaking by two or more persons jointly to carry out a single business enterprise for profit." *Nelson v. Abraham* (1947) 29 Cal.2d 745, 749. "There are three basic elements of a joint venture: the members must have joint control over the venture (even though they may delegate it), they must share the profits of the undertaking, and the members must each have an ownership interest in the enterprise." *Orosco v. Sun-Diamond Corp.* (1997) 51 Cal.App.4th 1659, 1666. "Where a joint venture is established, the parties to the venture are vicariously liable for the torts of the other in furtherance of the venture. (*Citation*.) A joint venture, however, does not obliterate the distinct identity of the parties to the venture." *Cochrum v. Costa Victoria Healthcare, LLC* (2018) 25 Cal.App.5th 1034, 1053.

C. Elder Abuse

Elder abuse is defined under the Welfare and Institutions Code to include "(p)hysical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering" and "(t)he deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering." Welfare and Institutions Code ("WIC") § 15610.07 (a)(1-2). Neglect is "(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." WIC § 15610.57 (a)(1). "Neglect includes, but is not limited to, all of the following: (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter. (2) Failure to

provide medical care for physical and mental health needs. . . . (4) Failure to prevent malnutrition or dehydration. *Id*. at (b).

Courts have consistently held that neglect is more than simple or even gross negligence. *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 405 ("*Carter*"). "'(N)eglect' . . . does not refer to the performance of medical services in a manner inferior to 'the knowledge, skill and care ordinarily possessed and employed by members of the profession in good standing' (*Citation*), but rather to the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations." *Delaney v. Baker* (1999) 20 Cal.4th 23, 34 ("*Delaney*").

The difficulty in distinguishing between "neglect" and "professional negligence" lies in the fact that some health care institutions, such as nursing homes, perform custodial functions *and* provide professional medical care. When, for example, a nursing home allows a patient to suffer malnutrition, defendants appear to argue that this was "professional negligence," the inability of nursing staff to prescribe or execute a plan of furnishing sufficient nutrition to someone too infirm to attend to that need herself. But such omission is also unquestionably "neglect," as that term is defined in former section 15610.57.

Delaney, supra, 20 Cal.4th at 34–35.

"(I)f the neglect is 'reckless,' or done with 'oppression, fraud or malice,' then the action falls within the scope of section 15657 and as such cannot be considered simply 'based on ... professional negligence' within the meaning of section 15657.2." *Id.* at 35.

To adequately plead neglect under a cause of action for elder abuse plaintiff must plead that "defendant: (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care (Citation); (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs (Citation); 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)." *Carter, supra,* 198 Cal.App.4th at 406. The plaintiff must also allege

causation, the facts constituting neglect, and "the causal link between the neglect and the injury 'must be pleaded with particularity,' in accordance with the pleading rules governing statutory claims." *Id.* at 406–407. "In order to obtain the Act's heightened remedies, a plaintiff must allege conduct essentially equivalent to conduct that would support recovery of punitive damages." *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 789.

In elder abuse causes of action, attorney's fees and costs are recoverable where the plaintiff is able to prove "neglect as defined in Section 15610.57 . . . and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse". WIC § 15657. To permit recovery against a corporation under WIC § 15657, the standards under Civ. Code § 3294 (b) must be satisfied. WIC § 15657(c).

D. Unfair Competition Law ("UCL") – Bus. & Prof. Code § 17200

Business & Professions Code section 17200, prohibits "any unlawful, unfair or fraudulent" business practices. Bus. & Prof. Code §17200. "Since section 17200 is [written] in the disjunctive, it establishes three separate types of unfair competition" and "prohibits practices that are either 'unfair' or 'unlawful,' or 'fraudulent.'" *Pastoria v. Nationwide Ins.* (2003) 112 Cal.App.4th 1490, 1496; see also *CelTech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, (1999) 20 Cal.4th163, 180 (1999).

A party may bring a section 17200 claim only if he or she shows that he or she "suffered injury in fact and has lost money or property as a result of the unfair competition." Bus. & Prof. Code § 17204. To have standing, a plaintiff must sufficiently allege that (1) he has "lost 'money or property' sufficient to constitute an 'injury in fact' under Article III of the Constitution" and (2) there is a "causal connection" between the defendant's alleged UCL violation and the plaintiff's injury in fact. See, *Rubio v. Capital One Bank* (9th Cir. 2010) 613 F.3d 1195, 1203-1204. The UCL incorporates other laws and treats violations of those laws as unlawful business practices independently actionable under state law. *Chabner v. United Omaha Life Ins. Co.* (9th Cir. 2000) 225 F.3d 1042, 1048. Violation of almost any federal, state, or local law may serve as the "unlawful" basis for a UCL claim. *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839. In addition, a business practice may be "unfair or fraudulent in violation of the UCL even if the practice does not violate any law." *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 827.

Where plaintiff's UCL claim is entirely derivative of other fatally flawed causes of action, the UCL claim also fails. See, *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 277 [finding plaintiff's "UCL claim is derivative of [his] defamation cause of action, that is, it is based on the same [allegations] and likewise that cause of action stands or falls with that underlying claim."]. "A breach of contract may ... form the predicate for Section 17200 claims, *provided it also constitutes conduct that is 'unlawful, or unfair, or fraudulent.*" *Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 645 (internal quotations omitted, emphasis original).

"With respect to the unlawful prong, virtually any state, federal or local law can serve as the predicate for an action under section 17200." *People ex rel. Bill Lockyer v. Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508, 515 (internal quotations omitted). "'Unfair' simply means any practice whose harm to the victim outweighs its benefits." *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 839. There are two applicable tests resulting from a circuit split to determine whether conduct is unfair. *Drum v. San Fernando Valley Bar Assn.* (2010) 182 Cal.App.4th 247, 256. For the tether test, "the public policy which is a predicate to a consumer unfair competition action under the "unfair" prong of the UCL must be tethered to specific constitutional, statutory, or regulatory provisions." *Bardin v. DaimlerChrysler Corp.* (2006) 136 Cal.App.4th 1255, 1260–1261. For the second, the Section 5 test, "the factors that define unfairness under the section 5 test are: (1) the consumer injury must be substantial; (2) the injury must not be outweighed by any countervailing benefits to consumers or competition; and (3) it must be an injury that consumers themselves could not reasonably have avoided." *Davis v. Ford Motor Credit Co. LLC* (2009) 179 Cal.App.4th 581, 597–598.

E. Wrongful Death

To prevail against (defendant) on (a) claim of wrongful death, plaintiffs must prove "(1) a 'wrongful act or neglect' on the part of one or more persons [(that is, negligence)] that (2) 'cause[s]' (3) the 'death of [another] person.' " (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 390, 87 Cal.Rptr.2d 453, 981 P.2d 79.) A person may be liable either for (1) *his own* negligence, in which case he is *directly* liable for the resulting death, or (2) *someone else's* negligence, in which case he is *vicariously* liable because—in the eyes of the law—the other person's negligence is deemed to be his own. (E.g., *Hooker v. Department of Transportation* (2002) 27 Cal.4th 198, 210, 115 Cal.Rptr.2d 853,

38 P.3d 1081; *de Villers v. County of San Diego* (2007) 156 Cal.App.4th 238, 247, 67 Cal.Rptr.3d 253.) A person acts negligently only if he " 'had a duty to use due care' " and " 'breached that duty.' " (*Brown, supra*, 11 Cal.5th at p. 213, 276 Cal.Rptr.3d 434, 483 P.3d 159.) *Musgrove v. Silver* (2022) 82 Cal.App.5th 694, 705.

Put another way, "(t)he elements of the cause of action for wrongful death are the tort (negligence or other wrongful act), the resulting death, and the damages, consisting of the *pecuniary loss* suffered by the *heirs. Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968 (emphasis original, internal quotations omitted).

F. Punitive Damages

Civil Code § 3294 authorizes the recovery of punitive damages in noncontract cases "where the defendant has been guilty of oppression, fraud, or malice…" "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294. A conscious disregard for the safety of others may constitute malice. *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 28 ("*Searle*"). "When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice." *Id.* at 29. "The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone." *Id.* at 32. "Conscious disregard of safety as an appropriate description of the Animus malus which may justify an exemplary damage award when nondeliberate injury is alleged." *Ibid.* "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. In general, as with showing fraud, oppression, or malice sufficient to support punitive

damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632 (superseded by statute on other grounds).

For an employer to be liable for punitive damages for the actions of an employee, it must be shown that "the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice." Civ. Code § 3294(b). "With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." *Ibid*. Where punitive damages are alleged against an employer under Civ. Code § 3294 (b), the knowledge on the part of the employer stands as their equivalent of oppression, fraud or malice otherwise required under Civ. Code § 3294 (a); no oppression, fraud or malice on the part of the employer need be shown. *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1154.

IV. Analysis

A. TEG's Moving Burden

As the moving party, TEG bears the burden of showing that there is no triable issue of material fact for each cause of action. TEG, for the purposes of summary judgment, attacks the principles of vicarious liability on which Plaintiff relies to attribute potential liability to TEG without their direct involvement.

1. Principal and Agent

TEG argues that there is no triable issue of fact related to their involvement in the case because they are a mere holding company, and that some control incidental of ownership is not just allowed but necessary. TEG argues that it does not have control over Montgomery sufficient that agency may be imputed in the context of corporate subsidiaries and their parent holding companies. *Virtualmagic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal.App.4th 228, 245. TEG supplies evidence in the form of the Declaration of Robert Shepard, which opines on the limited connection between Montgomery and TEG. TEG states that they have no agreement to control Montgomery's conduct. Shepard Decl.

¶ 15. TEG opines that any such control was exclusively on Montgomery, and did not extend even to Flagstone, Inc. or Flagstone, LLC (the "Flagstone Entities"), and therefore it could not possibly extend to TEG. TEG presents evidence that it exercises no direct control over provision of care, hiring and firing of staff, staffing levels, scheduling, and policies or procedures. TEG avers that it receives no direct revenue from Montgomery.

2. Alter Ego Liability

TEG also argues that there cannot be a finding of alter ego liability because Plaintiff cannot establish the elements of alter ego. TEG argues that it is a distinct and separate legal entity from Montgomery, therefore Plaintiff cannot show a unity of interest and ownership between the corporation and its equitable owner such that no separation actually exists. The Shepard Declaration opines that TEG does not directly own Montgomery, instead fully owning Montgomery's applicable parent company (either Flagstone, Inc. or Flagstone, LLC depending on the date at issue). It describes TEG's corporate, legal, and financial policies, stating that TEG has essentially no direct day to day supervision, financial entanglement, or involvement with the operations of Montgomery. The evidence presented is sufficient to shift the burden as to the first element of alter ego.

While TEG avers that Plaintiff cannot meet the second element of alter ego liability, that inequity would result if an alter ego were not found, TEG presents no genuine evidence addressing this element of the theory. Plaintiff need only raise triable issue of fact regarding the elements on which TEG shifts their burden, and were TEG fails to shift their burden with evidence, Plaintiff has *no* burden as to "*that element*". *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 468. Here, TEG has not produced evidence that Plaintiff would not otherwise achieve an equitable result in the absence of an alter ego finding. TEG avers the conclusion that remaining parties will adequately address Plaintiff's necessary remedies, but no evidence to this effect is offered. Accordingly, the burden is shifted as to only the first element.

3. Joint Venture

Based on much of the same evidence referenced above, TEG argues that Plaintiff cannot prove joint venture based solely on the affiliation of the entities involved in this case. Defendant states that Plaintiff cannot show the three elements required, an agreement to share profits and losses, a joint

proprietary interest, and equal right of control. TEG's presented evidence is sufficient to shift the burden as to joint venture.

4. Non-Delegable Duty

TEG argues that the care of Decedent was a nondelegable duty, and therefore they cannot be held liable for any alleged failure by Montgomery, who owed the duty. As Plaintiff argues, TEG has applied the principle of nondelegable duty in reverse. Nondelegable duty is a legal theory by which a party cannot abrogate duties they owe by use of independent contractors. *Srithong v. Total Investment Co.* (1994) 23 Cal.App.4th 721, 727. It has no application to protect a principal from the negligence of their agent, as is alleged here. No authority provided by TEG supplies the contrary.

5. Summary Adjudication Issues

TEG's showing related to summary adjudication of the Elder Abuse, UCL, and Wrongful Death claims relies on theories entirely interrelated to their contentions that there is no basis for vicarious liability. Although TEG contends that it owed no duty to Decedent due to the lack of direct relationship, this argument ignores the entire principle of vicarious liability, under which TEG may be bound by the conduct of their alleged agent, and the duties implicated are those which their agent fostered. This is the very nature of vicarious liability. Plaintiff seeks to hold TEG liable for acts or omissions of Montgomery, as though they are a single entity. See *Schreiber v. Lee* (2020) 47 Cal.App.5th 745, 754.

TEG separately challenges the elder abuse cause of action, arguing that they did not have custody or care of Decedent. *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, is entirely inapplicable to the legal issue raised by the allegations of vicarious liability. *Winn* examined the conduct necessary to find "care or custody" of an elder, and whether that applied in the context of outpatient services. It does not analyze principles of vicarious liability. "[I]t is axiomatic that cases are not authority for propositions not considered…" *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 511. Like the argument as to duty, this also ignores the very principles of vicarious liability. If Plaintiff can show triable issue of fact as to TEG's vicarious liability, they are placed in the same position as Montgomery. TEG does not present evidence to shift the burden as to whether Montgomery did not have "care or custody" of Decedent, and accordingly this argument is

indistinguishable from the summary judgment arguments above. Wrongful death and UCL claims are similarly interwoven with the vicarious liability theories. No authority provided precludes the consideration of vicarious liability as applied to either cause of action. For the purposes of summary adjudication, TEG fails to shift their burden.

Punitive damages is subject to a slightly more nuanced analysis. The requirements for punitive damages against TEG as a corporate parent company, either under Civ. Code § 3294 (b) or WIC § 15657(c), is that a "corporate employer" must have "advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice" of the conduct by "an officer, director, or managing agent of the corporation." Civ. Code, § 3294 (b). TEG argues that given that there is no triable issue of fact as to the vicarious liability, Plaintiff cannot prove authorization. Accordingly, TEG has shifted their burden on punitive damages.

B. ESI's Moving Burden

ESI also moves for summary judgment or adjudication. ESI raises many of the same arguments at TEG, distinguished largely by their status as a subsidiary of TEG which is not in the line of ownership of Montgomery. ESI provides services to Montgomery and other TEG subsidiaries, including accounting, payroll, accounts payable, centralized cash management, human resources, information technology, and compliance support. ESI provides evidence that Montgomery was not required to utilize their services. ESI receives a flat 5% of the revenue of Montgomery as remuneration for the services provided.

1. Principal and Agent

ESI contends that it has no right of control over the conduct of Montgomery, and accordingly ESI and Montgomery do not have a principal/agent relationship. ESI contends it provides nothing more than administrative services, and therefore it cannot be found to control Montgomery's actions. ESI's evidence is sufficient to shift the burden as to agency.

2. Alter Ego

ESI contends that it cannot be held liable for alter ego, as it does not have intermingled ownership, assets or profits and loses with Montgomery. Much like TEG, ESI presents evidence which shifts the burden showing there is no unity of interest and ownership sufficient for alter ego to apply

based on the conduct alleged against Montgomery, and therefore there can be no alter ego. ESI's evidence shifts the burden as to alter ego.

Again, however, ESI does not shift the burden related to inequitable result. No evidence of the sufficiency of the remaining parties is offered.

3. Joint Venture

ESI contends that there is no triable issue of fact as to whether they entered a joint venture with Montgomery. ESI shifts the burden by averring that there is no share of profits and losses, no right of control, and no joint ownership. While ESI and Montgomery are both TEG subsidiaries, ESI and Montgomery have no direct ownership interest in each other, and ESI's income from Montgomery is based on revenue, not profits. ESI therefore shifts the burden on the theory of joint venture.

4. Summary Adjudication Issues

Much like TEG, ESI fails to show a distinguishable contention related to the summary adjudication issues from their summary judgment. Any of the causes of action at issue may be supported through vicarious liability, and ESI's attempts to sidestep the causes of action are unsuccessful unless they can avoid being placed into Montgomery's position through agency, alter ego, or joint venture.

C. Plaintiff's Burden in Opposition

As is stated above, Plaintiff's argument is largely a woven tapestry of interrelated facts between the Defendants, and their additional material facts are largely duplicative between TEG and ESI. The Court applies them as necessary.

1. TEG's Vicarious Liability

Plaintiff presents evidence implicating multiple theories of vicarious liability simultaneously. As to TEG, Plaintiff displays various pieces of evidence related to the interconnection of TEG and Montgomery. Moving Defendant's evidence establishes that TEG owns 100% of Flagstone, which in turn owns 100% of Montgomery. This alone would not be sufficient for Plaintiff to show a triable issue of fact.

Plaintiff's opposition largely provides detail on issues that TEG speaks to broadly in its moving papers, and those details add gradient to TEG's black and white showing which raises triable

issues of fact. TEG, on Reply, argues that these facts alone are not sufficient to implicate principal and agent relationships because TEG is a mere holding company, and some governance is allowable so long as it does not extend into the "day-to-day". *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 542. TEG is largely dismissive of Plaintiff's evidentiary showing, averring that none of the individual indicia is sufficient to display the necessary control to show agency. TEG misapprehends the burdens at summary judgment. First, TEG dismisses the culminative effect of the individual evidence is sufficient to raise a triable issue of fact. Plaintiff need not dispositively show that TEG implicated every relevant factor in displaying control, but rather that the totality of the factors may be found by a trier of fact in Plaintiff's favor. They need only show that there is a triable issue of fact. Issues of agency and alter ego are almost always issues of fact. *Garlock Sealing Techs., LLC v. NAK Sealing Techs. Corp.* (2007) 148 Cal.App.4th 937, 965; *Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811. The Court's role is merely to assess whether evidence of triable facts exist, not to weigh it. Plaintiff raises both TEG's significant oversight through its Compliance Committee, and the financial conduct which interweaves TEG to Montgomery.

TEG partly raises that the imposition of oversight was a necessity based on the Corporate Integrity Agreement ("CIA") entered with the Department of Health and Human Services. This is not persuasive. The CIA imposed various oversight obligations on TEG over its numerous subsidiaries. These obligations were imposed due to allegations of various underlying regulatory violations. The allegations and assertions of the Department of Health and Human Services and TEG's continued performance of management and oversight, become irrelevant because its genesis is in the CIA. TEG's general prognostications of standards and practices is not alone a basis upon which to find that their corporate identity is distinct as a matter of law. The question is whether any of Plaintiff's theories of vicarious liability are implicated by the evidence presented. The oversight here appears to slightly exceed the relatively broad oversight typical of subsidiary and parent company relationships. Montgomery's administrator cannot take time off without permission from his superiors in the Flagstone Entities. His compensation, stock options and bonuses are decided by TEG. TEG directly decides what insurance Montgomery maintains. TEG's compliance program, perhaps incidental to

the CIA though still ongoing, is significant and involves not just prescribed education and standards, but direct inspections, action plans and oversight through the Chief Compliance Officer and their staff. Also bearing mention is the manner in which TEG's affiliates are treated as parts of a cohesive whole instead of independent legal entities. Plaintiff provides evidence that employees of TEG affiliates work at other locations owned by separate TEG affiliates and that TEG's executives are paid directly out of the funds provided by the affiliates (including Montgomery). Montgomery's funds are deposited daily into an ESI sweeping account, which also receives funds from other Ensign affiliates. Those funds might be used to pay the obligations of various Ensign subsidiaries without ever leaving the account.

TEG's control, oversight, and management rise to a level significant enough to implicate agency as a triable issue of fact. This, combined with the financial practices, may also implicate alter ego factors sufficient to raise triable issues of fact on that theory.

Summary Judgment as to TEG is DENIED.

2. ESI's Vicarious Liability

Plaintiff raises triable issues of fact as to ESI's theories of vicarious liability. In providing centralized accounting, there is evidence that ESI intermingles funds with Montgomery and other affiliates, merely "journaling" their respective cash balances rather than maintaining separate funds. ESI contends that this centralized accounting is a "common practice", but they provide no authority showing that it is resultingly irrelevant for determination of vicarious liability. ESI's utilization of a single account, retaining the ability to shift funds between entities as necessary, while merely noting any balance changes, does not appear to be a practice which would otherwise be acceptable in conditions of uninterested entities. This certainly speaks to the financial interconnection sufficient that there is significant question of whether the entities are legally separate, or incident to their mutual ownership and coordination, have been subsumed into a mass of corporate connections so inextricably intertwined that they are indistinct.

While ESI avers that participation in their services is voluntary, none of the evidence they provide supports that as a generalized contention, instead applying to individualized programs in ESI's portfolio. Nothing indicates that ESI's centralized accounting or oversight is optional.

Significant evidence makes the opposite clear. Plaintiff in turn provides evidence that ESI's PMQ was not aware of any non-TEG affiliate as an ESI participant. Moreover, ESI provides services to the Flagstone Entities and TEG, without payment or contract, because it receives revenue from facilities such as Montgomery. This arrangement requires that Montgomery (with other facilities) to provide revenue that support's ESI's expenses, which in turn may be shifted as necessary to cover shortfalls. Given that they "rise and fall" together, without regard for the actual use of services, distinct accounts, or transfers of property, this appears to implicate factors of alter ego.

Finally, ESI's oversight functions are clearly, based on the evidence, not voluntary, but mandatory functions of Montgomery's status as a TEG subsidiary. ESI's oversight services include investigations, compliance management, and training. In the context of this interaction, Montgomery reports to ESI regarding day to day functions of facility operations.

Despite ESI's protestations, there is evidence that ESI's services are not provided in an arms length transaction. ESI profits, functions and assesses Montgomery's facility operations. If Montgomery and its fellow affiliates were not in operation, neither would ESI operate, or provide its free services to Flagstone or TEG. Weighed together these factors raise triable issues of fact related to both agency and joint venture theories.

ESI's motion for Summary Judgment is DENIED.

3. Summary Adjudication

As the Court noted above, summary adjudication of the individual causes of action failed to be shifted to Plaintiff, as both TEG and ESI rely on principles that ignore the issues of vicarious liability. Given that the Court has found triable issues of fact as to multiple vicarious liability theories, the attacks on the causes of action fail.

4. Punitive Damages.

While Moving Defendants have each contended that punitive damages cannot be assessed under Civ. Code § 3294 (b), Plaintiff's evidence of the oversight functions of both Moving Defendants appears sufficient to show that there is sufficient basis to find a triable issue of fact as to punitive damages. The Chief Compliance Officer, a member of TEG's board, and having ostensible authority over compliance programs over all affiliates, is charged with ensuring adequate compliance and

staffing across Ensign affiliates. ESI provides those services to Montgomery as part of this program. Plaintiff alleges, and Moving Defendants do not challenge as an element of this motion, that the cause of Decedent's neglect was inadequate staffing. Given that, Plaintiff has raised triable issue of fact as to whether that neglectful conduct was within the scope of authority under the compliance program. Moving Defendants' requests for summary adjudication is DENIED.

V. Conclusion

TEG's motion for summary judgment is **DENIED**. ESI's motion for summary judgment is **DENIED**.

[1] While ESI's proposed material fact is substantially broader, nothing within the submitted evidence supports such a broad proposition. At summary judgment, the moving party's evidence is strictly construed. While the Court has made other minor adjustments to conform proposed facts of the parties to evidence, ESISS ¶ 15 deviates too far to evade specific mention.

[2] Plaintiff provides a separate statement for each of the pending motions, but 131 of the first 134 Additional Material Facts to TEG is identical (with minor variations in phrasing) to the first 131 facts responding to ESI's motion. See also PAF ¶¶ 52, 60-61. They are provided only once for clarity.

IT IS SO ORDERED.

Dated: _____, 2026

_____
Hon. Oscar A. Pardo
Judge of the Superior Court

APPROVED AS TO FORM:

Dated: October 26, 2026



Jianlin Song
Naina V. Singh
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
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COURT: **Sonoma County Superior Court**
CASE NO. **SCV-273878**
CASE NAME: **Michael Parks, et al. v. Ensign Montgomery, LLC, et al.**

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1111 Exposition Boulevard, Building 500, Sacramento CA 95815. I am over the age of 18 years and not a party to the above-entitled action.

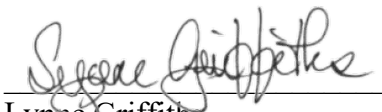
I am readily familiar with York Law Corporation's practice for collection and processing of correspondence for mailing with the United States Postal Service. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at or before the close of each day's business. (CCP Section 1013a(3) or Fed.R.Civ.P.5(a) and 4.1; USDC (E.D. CA) L.R. 5-135(a).)

On **October 26, 2026,** I caused the within, **[PROPOSED] ORDER ON DEFENDANT THE ENSIGN GROUP, INC.'S AND ENSIGN SERVICE'S, INC.'S MOTIONS FOR SUMMARY JUDGMENT OR ADJUDICATION],** be served via

XX ELECTRONIC SERVICE: Based on a Court order or on an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document described above to be sent from e-mail my address to the persons at the e-mail address(es) listed below.

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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 this Declaration is executed on October 26, 2026, at Sacramento, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Lynne Griffiths