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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

YIN FALK,

Plaintiff and Respondent,

A131786

v.

**(San Francisco County
Super. Ct. No. CGC09486921)**

LINDA S. CATRON et al.,

Defendants and Appellants.

This action arises out of a \$250,000 loan plaintiff Yin Falk made to defendant Linda S. Catron. After Catron failed to repay the loan, Falk sued Catron and her agent, Richard E. Warren, Jr. (collectively, defendants) for, among other things, fraud. The trial court granted Falk's motion for summary adjudication. The court also granted Falk's motion for an order permitting discovery of defendants' financial information pursuant to Civil Code section 3295.¹ After a trial on punitive damages, the court ordered defendants to pay Falk \$750,000 in punitive damages.

Defendants appeal. Catron claims the court erred by granting summary adjudication on Falk's fraud claims. Catron also challenges the punitive damages award. She claims there was insufficient evidence she intended to deprive Falk of property or

¹ Unless otherwise noted, all further statutory references are to the Civil Code.

otherwise injure her as required by section 3294. She also argues substantial evidence does not support the finding that she can afford to pay the punitive damages award.

Warren contends the punitive damages award must be reversed because it is disproportionate to his ability to pay and because there was insufficient evidence of his financial condition to support the award. Warren also claims his conduct does not justify an award of punitive damages and that the court misapplied the doctrine of respondeat superior.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Falk was born in 1960.² She lived in Taiwan until the early 1990's, when she moved to the United States. Falk's native language is Mandarin; English is her second language. After moving to the United States, Falk worked two jobs for several years and eventually saved enough money to buy a house in Mill Valley. In 2006, Falk purchased a condominium in San Francisco's North Beach neighborhood. Falk was unable to sell her Mill Valley house, so she rented it out to help pay the mortgage and lived in her North Beach condominium. Falk is a physical therapist; she has no training in real estate or investing.

Catron — who has an undergraduate degree from Mills College and masters and Ph.D. degrees from the University of North Carolina and the University of California, San Francisco, respectively — began investing in real estate in 1985, when she inherited property and other assets worth approximately \$1.5 million dollars. Catron began buying apartment buildings and other properties; by 2008 or early 2009, she owned 28 or 29

² Warren does not cite to the appellate record in violation of California Rules of Court, rule 8.204(a)(1)(C). Falk's factual recitation is incomplete, argumentative, and does not provide sufficient record references. (Cal. Rules of Court, rule 8.204(a)(1)(C).) "We disregard all factual and procedural assertions in the brief[s] which are not supported by record citations[.]" (*Warren-Guthrie v. Health Net* (2000) 84 Cal.App.4th 804, 808, fn. 4, disapproved on another point in *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 393, fn. 8; accord, *Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379.) We ordered Catron to produce the 28 trial exhibits upon which she relied in her opening brief. She produced all but six of the exhibits.

properties and had an extensive net worth. Catron met Warren in 1988. Warren worked as Catron's loan broker and helped her obtain financing for several properties, including financing for a building she purchased at 1554 Greenwich Street in San Francisco.

In 2007, Falk decided to purchase a \$1.5 million dollar condominium in Rincon Towers in San Francisco's South Beach neighborhood. She put down a deposit on the condominium. Later, however, she backed out of the escrow agreement because she could not sell her Mill Valley house and could not afford to purchase the condominium. Falk met Warren in 2007; some time thereafter, they began dating. Warren told Falk he owned Redwood Financial Group and was a loan broker.³ Falk went to several parties at Warren's house, a large home with a tennis court and pool. Warren told Falk he owned the home and rented it out for \$20,000 per month.

In 2008, Warren suggested Falk loan \$250,000 to Catron. He explained it was an investment opportunity for Falk because Catron would repay the money in three months, along with interest of 10 percent per month, and would secure the loan with a deed of trust on Catron's Greenwich Street property. Warren told Falk that Catron owned "lots of propert[ies]" in Lake Tahoe, Woodside, and San Francisco. Warren later introduced Catron and Falk.

In late June 2008, Falk and Catron met at a grocery store. They walked to a nearby Starbucks, where Falk talked with Catron and gave her a check for \$50,000. Falk did not receive a promissory note or a deed of trust.⁴ Shortly thereafter, Falk met Catron outside of a South Beach apartment building where Falk was visiting her friend. Falk gave Catron a check for \$200,000. Because she felt "very uncomfortable" with the transaction, Falk asked Catron to sign a \$200,000 promissory note and Catron complied. Falk also asked Catron, "How are we going to . . . put my name onto the deed" and Catron "said she [would] take care of that and . . . let [Falk] know." Warren also told

³ Warren was not a licensed loan broker when he met Falk.

⁴ Warren later prepared two promissory notes — one for \$50,000 and another for \$200,000 — and emailed them to Falk.

Falk a title company was “working” on the property Catron was going to use to secure the loan.

To make the loan, Falk used her life savings of \$50,000 and borrowed \$200,000 from her home equity line of credit. The \$250,000 she loaned Catron was “all [her] equity.” Catron did not repay the loan.

The Complaint

In April 2009, Falk sued defendants and others for intentional and negligent misrepresentation, false promise, reformation of the promissory notes, money had and received, and conspiracy.⁵ The operative first amended complaint sought compensatory and punitive damages, reformation of the promissory notes, interest, and attorney fees. Falk alleged Warren — acting as Catron’s agent — solicited Falk to loan \$250,000 to Catron by representing the loan would be secured by the equity of Catron’s real estate portfolio and by promising Falk that Catron would repay the loan within three months with 10 percent monthly interest. Falk further alleged Catron executed two promissory notes prepared by Warren wherein she agreed to repay the \$250,000 plus 10 percent interest within three months but Catron never repaid the loan, never secured the promissory notes with any of her real property, and never intended to repay the principal or the interest on the loan. Each defendant answered the complaint in propria persona.

Discovery

Falk served form interrogatories, requests for admission, and requests for production of documents on defendants. Catron did not respond to the discovery requests and Falk moved to compel responses to the interrogatories and requests for production. She also sought an order deeming requests for admission admitted. The court granted Falk’s unopposed motion and ordered Catron to respond to the interrogatories and document demands within 15 days. The court also deemed the requests for admission admitted and imposed monetary sanctions.

⁵ Catron filed for bankruptcy the same day Falk filed the original complaint. The bankruptcy petition was later dismissed.

Catron did not comply with the order and Falk moved for an order compelling responses to the interrogatories and document requests and for monetary sanctions. Catron hired an attorney and opposed the motion. The court ordered Catron to respond to the discovery requests and to pay monetary sanctions. Catron responded to the form interrogatories and requests for production, but the responses were inadequate, prompting Falk to move for a further order striking Catron's affirmative defenses and imposing monetary sanctions. The court granted the motion, struck Catron's affirmative defenses and awarded sanctions. The court made similar orders with respect to Warren: it deemed the requests for admission admitted, struck Warren's affirmative defenses, and imposed monetary sanctions.

Falk's Motion for Summary Adjudication

Falk moved for summary adjudication on her claims for intentional misrepresentation, false promise, fraud, reformation of the promissory notes, and money had and received. Falk argued the order deeming the requests for admission admitted conclusively established: (1) Warren was acting as Catron's agent when he solicited the loan; (2) Warren induced Falk to loan Catron the money by telling her the loan would be "short term" and that Catron would pay back the loan within three months; (3) Warren represented the loan would be safe because it "would be secured in the equity of several pieces of improved real estate owned by . . . Catron[;]" (4) Warren told Falk the 10 percent interest rate was legal and that he "had years of experience in the loan brokerage business and possessed expert knowledge of the lending laws and the preparation of legally enforceable promissory notes and other loan documents[;]" (5) Warren prepared two promissory notes, one for \$50,000 and another for \$200,000; (6) Catron "failed to pay . . . any amount of principal or interest on the loans[;]" (7) when Falk loaned Catron the money, Catron did not intend to secure the loan in her real property and did not secure the loan; (8) when Falk made the loan, Catron "intended to accuse [Falk] of usury to avoid paying [her] any amount of interest[;]" (9) when Falk loaned Catron the money, Warren knew Catron did not intend to repay the money, secure the loan in her real property, or pay interest on the loan; and (10) Catron owes Falk \$250,000 plus interest.

Falk submitted a declaration in support of the motion averring Warren introduced himself to her as “an experienced loan broker” and told her he “owned a company called Redwood Financial Group” specializing in “making loans secured in real estate.” Warren also told Falk that Catron owned “numerous real properties in California” and needed a “‘bridge’ loan for three months pending long term financing that was currently in process.” Falk averred she relied “exclusively” on Warren’s advice and loaned Catron \$250,000. Falk explained she relied on Warren because he said “he was an experienced loan broker and [was] knowledgeable about the lending laws and securing these types of loans in real property.” Falk further stated she trusted Warren and did not know he was “lying” to her or that he was “not licensed to arrange this loan and that he was breaking the law by acting as a loan broker.” Falk averred that if she “had known the truth, [she] would never have trusted . . . Warren and would never have loaned the money to . . . Catron.”

In their joint opposition to the motion, defendants asserted they were barred “from disputing [Falk’s] allegations” by the court’s orders striking their affirmative defenses and deeming the requests for admission admitted. Defendants did not file a separate statement of material facts or submit any evidence in opposition to the motion. Instead, they “respectfully request[ed] that the Court deny [Falk’s] motion on the basis that [they] cannot effectively respond to the undisputed facts, and as a result have no defense to this suit involving a large amount of money. . . .”

The court granted summary adjudication for Falk on her claims for intentional misrepresentation, false promise, reformation of the promissory notes, and money had and received. The court denied the motion for summary adjudication on Falk’s punitive damages claim, concluding “[t]he granting or awarding of punitive damages pursuant to . . . section 3294 is properly reserved for the jury or finder of fact at trial and is not for determination by the Court in a motion for summary adjudication.”

Discovery of Defendants’ Financial Information Pursuant to Section 3295

While the motion for summary adjudication was pending, Falk moved for an order permitting discovery of defendants’ financial information pursuant to section 3295,

subdivision (c).⁶ The court granted the motion, concluding there was a substantial probability Falk would prevail on her punitive damages claims.

Falk then propounded special interrogatories and requests for production of documents relating to defendants' financial condition. Catron provided untimely, unverified, and evasive responses to the discovery requests.⁷ For example, in response to each special interrogatory, Catron stated: "Defendant's investigation is ongoing and this interrogatory will be amended and provided once more information is obtained." To each request for production, Catron responded, "See Master Documents #1." Catron produced 76 pages consisting of: (1) eight pages of summaries of information on her real properties; (2) seven months of account statements for a bank account at Borel Private Bank & Trust Company from 2009 to 2010; and (3) four pages of notes on a copy of document demands to Warren.

After Falk moved to compel further responses, Catron provided verified supplemental responses to the special interrogatories. The supplemental responses listed a car Catron owned, a mineral lease, LLC's with "zero value[,] and a trust holding title to two properties. Catron did not name the trust. The supplemental responses also listed real property owned by Catron but did not provide the estimated value of those properties. In her supplemental responses to the requests for production, Catron stated

⁶ Section 3295, subdivision (c) prohibits the discovery of a defendant's financial information to support a punitive damages claim "unless the court enters an order permitting such discovery pursuant to this subdivision. . . . Upon motion by the plaintiff supported by appropriate affidavits . . . the court may . . . enter an order permitting the discovery otherwise prohibited by this subdivision if the court finds, on the basis of the supporting and opposing affidavits presented, that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294."

⁷ Warren did not respond to the requests for production. In an email to Falk's counsel, Warren stated, "pls [*sic*] find the answer to this special interrogatories and financial information. [¶] I am hiking and camping in national park for the whole next month so I don't have the proper legal format with me at the moment and have forwarded this same answer to [Catron's attorney] to request the proper legal format. Sorry for any inconvenienced [*sic*]." The "responses" to the special interrogatories listed two 1997 Range Rovers and two bank accounts.

she was unable to locate any additional documents in addition to those already produced but she then produced 30 pages of documents including deeds to three pieces of real property, a 2008-2009 secured property tax bill for 849 Haight Street, a 2010 mineral lease, and a July 2010 list of Catron's real properties with information on projected income per property and loan balances.

The court granted Falk's motion to compel further responses from Catron, concluding her initial and supplemental responses were "inadequate, evasive and incomplete." The court ordered Catron to provide supplemental responses to the request for production seeking documents relating to trusts in which Catron was a beneficiary or held a legal or equity interest, and supplemental responses to the special interrogatories seeking information about Catron's business entities and trusts. A few days later, Catron produced 50 additional pages of documents.

In late October 2010, Falk served Catron with a Code of Civil Procedure section 1987, subdivision (c) notice to appear and produce documents, including Catron's tax returns, additional materials relating to her LLCs and trusts, and additional materials relating to the valuation of her real estate holdings. Falk also moved for an order pursuant to section 3295, subdivision (d) requiring Catron to produce "complete records of her financial condition at trial, including her tax returns." Falk argued Catron had withheld information about her financial condition and had selectively produced documents to "lead the Court to the false conclusion that she has a negative net worth." Falk also moved in limine for an order waiving the requirement that she provide evidence of Warren's financial condition at trial. Falk claimed Warren did not respond to the requests for production or produce documents and had provided an unsigned, undated, and unverified "response" to the special interrogatories.

On November 15, 2010, the day before trial, Catron produced additional material, including broker opinions and appraisal reports for several properties, two months of bank statements for the True Light Trust, and a "real estate schedule" updated in July 2010. The next day, the court held a hearing on Falk's motions. Counsel for Falk explained he was seeking tax returns and "statements or ledgers showing the amounts

held in trust by [Catron's former attorneys] and others" and noted Catron "still has not produced all the documents." In response, counsel for Catron stated it would take "several days" to get the documents Falk requested. Counsel explained Catron could produce "a list of the amounts she owes on loans. . . . Most of her loans are currently in foreclosure or in default, so she's not receiving current balance statements. I'm not sure how we can handle that particular item if she's not receiving statements from the bank." Counsel continued, "we did produce a lot of documents yesterday showing broker opinions on how much some of these properties are worth. There was also included . . . two appraisals from 2009. . . . [¶] As far as a restructuring plan, she has no written documentation showing that."

The court ordered Catron to produce the documents, noting "there's a long history of failures to comply with discovery obligations in this case. . . . I think the lion's share of even the list that [Falk] provided today has already been requested. To the extent that they haven't been produced in time for this trial, these requests have been outstanding for many months and we'll deal with the consequences of the failure to produce the documents as the law provides." The court stated, "[t]hese documents should have been produced a long time ago. If they can't be produced by 4 o'clock today, then the consequences that the law provides for will ensue."

The court denied Falk's motion to waive the requirement that she provide evidence of Warren's financial condition but granted the motion requiring him to produce evidence of his current financial condition at trial. The court ordered Warren to produce responsive documents by 4:00 p.m. that day, noting the "history of failures to comply with discovery obligations by Mr. Warren."

After the first day of trial, Catron produced draft profit and loss statements for 2006 through 2008, and "an assortment of bank statements for . . . Catron, as well as . . . notes from her regarding her conversation with Bank of America yesterday regarding various loan balances . . . due under several loans." She did not produce documents relating to her LLCs or trusts. Warren produced a "Uniform Residential Loan Application" he prepared in October 2010 for the purpose of showing his financial

condition at trial. In it, Warren stated his rent was \$1,900 a month and his income was approximately \$4,000 per month. Warren also produced two title documents and bank statements for an account at Bank of America for the year preceding the trial.

Punitive Damages Trial

1. Evidence Regarding Catron's Financial Condition

During her nearly 25-year career as a real estate investor, Catron purchased and renovated many properties in the Bay Area. In Summer 2008, Catron owned 28 or 29 properties. None were in foreclosure. She had “perfect credit . . . and . . . a significant . . . net worth.” By 2009, however, Catron was in “serious economic trouble” and “foreclosures were happening” on some of her properties. At that time, she authorized her then-attorneys to form six LLCs on her behalf; she also created the “True Light Trust.” Catron’s previous attorney, Richard Sinclair, apparently told counsel for Falk that he and his partner “would save [Catron’s] assets so [she] would have a net worth after they were done of 4 to \$5 million.” Catron planned to put that money into the LLCs.

At the time of trial, Catron owned nine properties in Woodside, San Francisco, San Rafael, and in the Lake Tahoe area. Catron estimated she had lost “two thirds of [her] properties” and was “struggling” to keep the remainder. She conceded, however, that she decided which properties to keep and which properties to surrender to foreclosure and admitted she survived the recession in the 1990’s and expanded her portfolio of properties.⁸

Catron paid her attorneys with income generated by her rental properties. She paid one of her former attorneys, Richard Sinclair, at least \$150,000. She planned to sell “collectibles” in her house to retain the Page and Haight Street properties. She acknowledged that she had “pulled out about a million dollars of equity” from a property she owned on Page Street in San Francisco. She had also pulled about \$3.5 million

⁸ Catron’s property on Greenwich Street in San Francisco had a value of \$1.3 to \$1.7 million at the time of trial; a property she owned on Haight Street in San Francisco had a value of \$2.6 million.

dollars out of the Woodside property and about \$4.5 million out of the a property in the Lake Tahoe Area.

Catron blamed her failure to produce documents on her poor recordkeeping system, but she also blamed one of her former attorneys, Sinclair, for failing to produce documents she had given him.⁹ Catron acknowledged she did not disclose information regarding a trust and an LLC she controlled, nor did she produce statements for bank accounts set up by a former attorney. She conceded she did not produce a “crucial” email supposedly demonstrating her intent to repay Falk with a funding source she expected to receive. She admitted she falsely answered at least one interrogatory about property she owned and conceded she merely “glanced” at interrogatory responses she verified. Finally, Catron admitted she did not produce a trust agreement with Cydney Sanchez, a woman to whom Catron had apparently transferred title to two properties.

2. Evidence Regarding Warren’s Financial Condition

Warren received an undergraduate degree in electrical engineering from Purdue University. He attended an M.B.A. program at the University of Chicago and worked on “Wall Street” advising institutional investors and for Standard Oil of Indiana. He began working in real estate finance in the late 1980’s; he acquired real estate in San Francisco and Napa in the late 1990’s. Warren had a real estate broker’s license from 1991 to 2005.

Warren testified he “receives . . . income” of approximately \$37,500 annually. He rents a house called “Monkswell Manor” in Napa for \$1,900 or \$2,000 per month. He sublets the house for approximately \$15,000 per month.¹⁰ Warren pays for upkeep, maintenance, and capital improvements on the house but keeps all profits associated with subletting the house. Warren admitted he does not pay rent to the property owner: he pays “operating expenses” averaging approximately \$1,900 per month, which he

⁹ Catron brought “boxes” of documents to her tax preparer before trial about a week after the tax preparer requested them. Catron’s home contained “almost two . . . rooms” filled with documents relating to her real estate holdings.

¹⁰ Warren has not filed tax returns since approximately 1999. He filed for bankruptcy in 2007; it was discharged in 2008. Before he declared bankruptcy in 2007, his net worth was “over \$10 million.”

considers his “rent.” Warren acknowledged it was a “very complicated situation” for him to occupy the property, pay the expenses, and keep any rental income above the cost of maintaining the property.

He testified he grosses approximately \$50,000 annually by renting out the property and spends \$25,000 annually on upkeep. Warren, however, could only account for about \$5,000 of expenses in 2010. He admitted he does not always deposit rental income in his bank account; often he cashes the check because he has “IRS and Franchise Tax Board liens and . . . other liens, county liens, against my – against me, they can sweep my accounts at any day.” Although he initially denied taking vacations, Warren later admitted he spent an entire month hiking and camping instead of attending a mandatory settlement conference in the case. Warren also admitted traveling in Utah, Nevada and Colorado.

Warren holds three accounts at Bank of America; two of the accounts have a combined total of fewer than \$25 dollars. He admitted transferring \$3,600 out of his primary bank account in March 2010 but claimed he could not remember any details about the transaction. Warren conceded making numerous deposits into his primary bank account, including one deposit of \$42,000 and another of \$10,000.¹¹ In spite of these deposits, Warren lamented, “I’ve lost everything. I have no assets. I have a judgment against me for over \$300,000. Because of the fraud nature of the judgment, I can’t hold a real estate license any longer . . . I can’t hold a securities license. . . . I can’t hold a commodities . . . license. I cannot own any real estate the rest of my life.”

Statement of Decision and Judgment

In its statement of decision and judgment, the court determined punitive damages were appropriate and that \$750,000 was a “just amount.” First, the court concluded

¹¹ Warren did not include this money in his estimation of his annual income. Warren testified the \$42,000 dollars was not income because it was a settlement of a lawsuit and because he spent about \$10,000 dollars on attorney fees. Warren later testified he wrote a check for \$2,400 dollars to his attorneys. He explained, “[t]here were other fees paid but I don’t see them on [the bank statements].” Warren claimed his mother lent him \$10,000 dollars.

defendants acted reprehensibly when they defrauded Falk — an unsophisticated immigrant — of her life savings. Next, the court determined the proposed 3:1 ratio between punitive and compensatory damages was appropriate.

Third, the court found defendants “waived any complaint about deficient evidence of their financial condition.” The court determined defendants’ “egregious breaches of their obligations during punitive damages discovery deprived . . . Falk of information she could have used in proving their financial condition.” The court noted defendants “had months to respond to Falk’s punitive damages discovery” but declined to respond in a meaningful way. According to the court, “Catron testified to possessing ‘a sea’ of relevant financial documents, but she had produced only a relative handful during punitive damages discovery. Warren produced no discovery documents at all. (Defendants each finally disgorged a few financial document during the . . . trial, forcing Falk’s counsel to react on the fly.)”¹² The court explained defendants admitted concealing assets: “Catron admitted to evading creditors by temporarily transferring her Victorian mansion in San Francisco’s Pacific Heights and her house in leafy Woodside to a ‘Cydney Sanchez.’ Warren admitted to keeping cash out of his bank account to avoid ‘sweeps’ by the IRS and other tax authorities. Thus, even had [d]efendants complied with their discovery obligations by producing financial documents to Falk, those documents would likely have portrayed their wealth falsely.”

Next, the court concluded “despite [d]efendants’ stonewalling of discovery and concealment of assets, there is adequate evidence in the trial record to support a \$750,000 punitive damages award.” The court noted Catron “retained ownership of nine properties valued in the several millions” and Warren rents out a Napa Valley mansion and “gets to keep the rent he collects.” The court rejected defendants’ argument that their negative net worth precluded an award of punitive damages. The court explained that net worth was only one measure of financial condition and was a “particularly unhelpful measure

¹² During trial, the court noted, “the purpose of pretrial discovery is to get the evidence out so that the other side can take depositions or get more documents . . . which they can’t do when something’s produced right at trial.”

when [d]efendants’ discovery stonewalling and concealment of assets render their true net worth difficult to discern.” Finally, the court noted a high likelihood defendants would “gain more wealth in the future” given their education, intellect, and previous real estate success.

The court entered judgment for Falk on her intentional misrepresentation claim against defendants. It also entered judgment for Falk on her claims against Catron for promise without intent to perform and reformation of the promissory notes. The judgment ordered Catron to pay Falk \$250,000 in compensatory damages, plus interest, attorney fees of \$60,340, and Falk’s costs. The judgment further ordered defendants to pay punitive damages jointly and severally in the amount of \$750,000 .

DISCUSSION

The Court Properly Granted Summary Adjudication on Falk’s Fraud Claims

Catron concedes the court determined Falk made the necessary showing of reasonable reliance but claims it erred by granting summary adjudication in Falk’s favor on her fraud claims “[b]ecause the finder of fact would have been free to reject . . . Falk’s claim of justified reliance. . . .” To support this argument, Catron relies on Falk’s testimony at the punitive damages trial.¹³

Catron’s novel argument — raised for the first time on appeal — has no merit. It is well settled “the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

Here, the court properly granted summary adjudication on Falk’s fraud claims because there was no triable issue of material fact. Defendants did not — and could not — show the existence of a triable issue of material fact, because Falk averred she relied

¹³ As Catron concedes, testimony from the punitive damages trial has absolutely no bearing on whether the court properly granted Falk’s motion for summary adjudication.

“exclusively” on Warren’s advice when she made the loan. She also testified she trusted Warren and did not know he was “lying” to her and, had she “had known the truth, [she] would never have trusted . . . Warren and would never have loaned money to . . . Catron.” Falk therefore created an inference her reliance was reasonable. In addition, the court had previously deemed the requests for admission admitted, including the request that Warren induced Falk to make the loan and represented it would be “safe.”

Moreover, defendants did not oppose the motion for summary adjudication in any meaningful way. They did not submit evidence in opposition to the motion, nor did they file a separate statement of material facts. Instead, they admitted the facts were undisputed and that they had “no defense to this suit involving a large amount of money. . . .” The court properly granted summary adjudication for Falk on her fraud claims, concluding her reliance on defendants’ misrepresentations was reasonable.

The Court Made the Necessary Findings to Award Punitive Damages

Catron contends the court erred by awarding punitive damages because Falk did not establish — and the court did not find — “Catron intended to deprive [her] of her property or otherwise injure her. . . .” The problem with this argument is — in Catron’s own words — that trial counsel “didn’t specify this issue as a controverted factual matter in either of his trial briefs, he never requested a statement of decision, and he made no mention of this issue in his objections to the tentative statement of decision. Not surprisingly, the lack of a finding on this issue was not ‘brought to the attention of the trial court either prior to entry of judgment or in conjunction with a motion under [Code of Civil Procedure] [s]ection 657 or 663. . . .’ (Code Civ. Proc., § 634.)” Catron has failed to articulate a reasoned argument or cite any authority for the proposition that this court should correct a perceived oversight or omission by her own counsel at trial.

Warren’s Conduct Was Sufficiently Reprehensible and the Court Did Not Misapply the Respondeat Superior Doctrine

A plaintiff may recover punitive damages “[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. . . .” (§ 3294, subd.

(a.) “Fraud in the context of punitive damages 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.*’” (*Fariba v. Dealer Services Corp.* (2009) 178 Cal.App.4th 156, 175, quoting § 3294, subd. (c)(3).)

Warren claims his conduct was not sufficiently reprehensible to support an award of punitive damages. To determine “the degree of reprehensibility of the defendant’s misconduct,” the United States Supreme Court has “instructed courts to consider whether ‘[1] the harm caused was physical as opposed to economic; [2] the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; [3] the target of the conduct had financial vulnerability; [4] the conduct involved repeated actions or was an isolated incident; and [5] the harm was the result of intentional malice, trickery, or deceit, or mere accident.’” (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 712-713 (*Roby*), quoting *State Farm Mut. Automobile Ins. Co. v. Campbell* (2003) 538 U.S. 408, 419 (*State Farm*).)

Here, the court found defendants engaged in reprehensible conduct justifying an award of punitive damages because “[t]wo highly intelligent real estate investors defraud[ed] an unsophisticated immigrant of her life savings. . . . Indeed, even Warren admits that Falk was his ‘then-girlfriend’ and that the circumstances of the loan were ‘ethically questionable.’” Warren’s conduct was reprehensible under *State Farm, supra*, 538 U.S. at page 419, because he knew Falk was a financially vulnerable and unsophisticated investor and because he repeatedly solicited loans without the proper license. In addition, Warren’s admission of “‘ethically questionable’” conduct creates an inference that Warren purposefully exploited Falk’s trust and that his “‘conduct evinced an indifference to or a reckless disregard of the health . . . of others.’” (*Roby, supra*, 47 Cal.4th at p. 713, quoting *State Farm, supra*, 538 U.S. at p. 419.) Falk was not, as Warren suggests, required to prove she sustained physical harm or that she “sustained any recoverable damages for her emotional distress in the loss of \$250,000 that she lent to Catron.”

Warren claims the court “expressly found that [at] all times [he] was acting as the agent for his principal, Catron.” According to Warren, the court misapplied the respondeat superior doctrine and “committed a clearly erroneous and reversible error by charging [him] with implied or constructive knowledge of many of the specific acts of fraud and intentional misrepresentation engaged in by his principal, Catron.” This argument fails for several reasons. First, Warren has waived the argument by not supporting it with citations to the record. “‘It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations.’ [Citations.] If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived.” (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856, quoting *Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205.)

Second, the only case Warren cites to support his argument — *Pacific Mutual Life Insurance Co. v. Haslip* (1991) 499 U.S. 1 (*Haslip*) — does not assist him. In that case, the United States Supreme Court held that an insurance company could be responsible for its employee’s acts and that imposing liability on the insurance company under the respondeat superior doctrine was not fundamentally unfair. (*Id.* at pp. 11, 13.) Warren has not demonstrated *Haslip* applies here and has not demonstrated the court erred by determining Catron was liable for his punitive damages under the respondeat superior doctrine.

Defendants Forfeited Any Complaints Regarding Deficient Evidence of Their Financial Condition

On appeal, Catron contends the court erred by awarding punitive damages because she did not forfeit her right to insist on adequate evidence of her ability to pay and because there is insufficient evidence she can afford to pay the award. Warren similarly claims there is insufficient evidence of his financial condition to support the punitive damages award.

A plaintiff may recover punitive damages “for the sake of example and by way of punishing the defendant.” (§ 3294, subd. (a).) “An award of punitive damages hinges on three factors: the reprehensibility of the defendant’s conduct; the reasonableness of the relationship between the award and the plaintiff’s harm; and, in view of the defendant’s financial condition, the amount necessary to punish him or her and discourage future wrongful conduct.” (*Kelly v. Haag* (2006) 145 Cal.App.4th 910, 914.) A plaintiff seeking punitive damages must introduce meaningful evidence of the defendant’s financial condition. The rationale for this rule is the punitive damages award should be sufficient to deter future misconduct without being so disproportionate to the defendant’s ability to pay that it is excessive. (*Adams v. Murakami* (1991) 54 Cal.3d 105, 110-112; *Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1185.) A plaintiff typically proves ability to pay with evidence of a defendant’s net worth; “evidence of liabilities should accompany evidence of assets, and evidence of expenses should accompany evidence of income.” (*Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 680.)

There is an exception to this rule: a defendant who fails to comply with a trial court order to produce records of his or her financial condition may be estopped from challenging that award on grounds of the lack of evidence of financial condition. (*Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 608-609 (*Davidov*).) *Davidov* is instructive. There, the jury rendered a verdict for plaintiff on his fraud claim. The trial court granted the plaintiff’s request to conduct discovery on the defendant’s financial condition and ordered him to produce “all records regarding his net worth” by the following day. (*Id.* at p. 603.) The defendant failed to comply and the court awarded the plaintiff \$96,000 in punitive damages. (*Id.* at p. 604.)

The defendant appealed, contending the plaintiff had failed to produce sufficient evidence of his financial condition. (*Davidov, supra*, 78 Cal.App.4th at p. 605.) The Second District Court of Appeal rejected this argument and held the defendant waived his right to complain about the lack of evidence by disobeying the trial court’s order to produce records reflecting his financial condition. (*Id.* at pp. 608-609.) As the *Davidov* court explained, the “defendant’s records were the only source of information regarding

his financial condition available to plaintiff. By his disobedience of a proper court order, defendant improperly deprived plaintiff of the opportunity to meet his burden of proof on the issue. Defendant may not now be heard to complain about the absence of such evidence. As defendant has not called our attention to anything in the record which otherwise reflects that the punitive damage award is excessive, we will affirm the award.” (*Id.* at p. 609.)¹⁴

Defendants concede the court ordered them to produce documents reflecting their financial condition but they contend *Davidov* is distinguishable “for the simple reason that the defendant in that case never produced a single document.” Catron claims she complied with the court order by producing 250 pages of documents “detailing every piece of real estate, every business entity, and every bank account in which she’d had any interest in the previous several years.” Warren makes a similar argument: he contends he “substantially complied in good faith with the trial court’s . . . discovery order on the first day of trial.”

The first problem with defendants’ argument is they read *Davidov* too narrowly. As the Second District Court of Appeal explained in *Streetscenes*, “it may not be a defendant’s burden to prove its net worth, but if it is ordered to produce that evidence it is under an obligation to do so. [Citation.] Once the court makes the order there is no justification for not *specifically* following that order. [Citation.]” (*Streetscenes, supra*, 103 Cal.App.4th at pp. 243-244, italics added.) *Davidov* applies when the defendants fail to make a full, good faith disclosure regarding financial condition despite a proper order to do so. (See *Davidov, supra*, 78 Cal.App.4th at pp. 608-609.)

¹⁴ Other courts have reached similar results. (*Caira v. Offner* (2005) 126 Cal.App.4th 12, 41 (*Caira*); see also *StreetScenes v. ITC Entertainment Group, Inc.* (2002) 103 Cal.App.4th 233, 243-244 (*Streetscenes*) [following *Davidov*].) For example, in *Caira*, the Second District Court of Appeal held that a “trial court’s order directing [the defendant] to produce a current financial statement precludes [him] from claiming on appeal that the record contains insufficient evidence of his financial condition. [Citation.]” (*Caira*, 126 Cal.App.4th at p. 41.)

Here, defendants did not make a good faith disclosure of documents regarding their financial condition. Catron’s initial and supplemental responses to the interrogatories and requests for production concerning her financial condition were, in the words of the court, “inadequate, evasive and incomplete.” For example, in her supplemental responses to the requests for production, Catron stated she was unable to locate additional responsive documents, but she then produced 30 pages of documents. The court repeatedly ordered Catron to produce additional documents, noting the “requests have been outstanding for many months” and that the requested documents “should have been produced a long time ago.”

At trial, Catron admitted she made little or no effort to produce the requested information during discovery. Catron acknowledged she did not disclose information regarding a trust she controlled, and did not produce bank accounts set up by a former attorney. She conceded she did not produce a “crucial” email regarding her intent to repay Falk. She admitted falsely answering at least one interrogatory about property she owned and merely “glanc[ing]” at interrogatory responses she verified. And Catron admitted she did not produce a trust agreement with Cydney Sanchez, a woman to whom Catron had apparently transferred title to two properties. Catron failed to produce these documents, which were under her exclusive control and which would have provided Falk with substantial information concerning Catron’s financial condition.

Despite having “almost two . . . rooms” filled with documents relating to her real estate holdings, Catron produced only 250 pages of documents in a piecemeal fashion. Catron’s production of documents just before trial and the production of additional documents after trial began does not constitute “*specifically* following” the court’s order. (*Streetscenes, supra*, 103 Cal.App.4th at p. 243, italics added.) As the court aptly observed, “the purpose of pretrial discovery is to get the evidence out so that the other side can take depositions or get more documents . . . which they can’t do when something’s produced right at trial.” Moreover, Catron’s attempt to blame her former attorney for failing to produce documents relating to her financial condition was unconvincing, particularly because Catron brought “boxes” of documents to her tax

preparer before trial about a week after the tax preparer requested them. The court was well within its discretion to conclude Catron waived any objection to the requirement that Falk produce evidence of Catron's financial condition. (See *County of San Bernardino v. Walsh* (2007) 158 Cal.App.4th 533, 547 [defendants "intentionally concealed their assets, testified falsely regarding many factual issues, and were, at best, evasive and nonresponsive in answering questions as to their financial condition. This conduct gave the court wide latitude to make inferences from the evidence unfavorable to" defendants].)

Warren similarly failed to make a good faith effort to produce meaningful evidence of his financial condition. He did not respond to the requests for production and his "response" to the special interrogatories consisted of an unverified email to counsel for Falk. Warren eventually produced a smattering of self-serving documents, including a Uniform Residential Loan Application he prepared shortly before trial to illustrate his financial condition. At trial, Warren gave evasive answers and unconvincing explanations for activity in his bank accounts. For example, he could not explain why he transferred large sums of money out of his bank account; he also admitted he cashed checks instead of depositing them to prevent the Internal Revenue Service and Franchise Tax Board from collecting money he owed.

Warren's tactics made it impossible for the court to determine his financial condition, and implies he sought to conceal his financial condition from the trier of fact. Counsel for Falk expressed frustration at his inability to trace Warren's money: "you're testifying here today . . . that you have no money. . . . But you introduced all this evidence that says that at one point you had three very valuable pieces of property. So I'm trying to track down what you did with the properties. . . . In particular I am interested in if you refinanced the property and pulled out equity, what you did with the money. . . . So that's why I'm asking these questions. And I'm not talking about small amounts of money. I'm taking about very large amounts of money, \$700,000."

As in *Davidov*, defendants' refusal to produce relevant documents in a timely fashion and their eventual meager production of documents "improperly deprived [Falk]

of the opportunity to meet [her] burden of proof on the issue” of defendants’ financial condition. (See *Davidov, supra*, 78 Cal.App.4th at p. 609.) Substantial evidence supports the court’s conclusion that defendants did not make a full, good faith disclosure regarding their financial condition and thereby waived any claim of error by their repeated failure to comply with the court’s orders to produce financial records.

Having reached this result, we need not address Falk’s contention that defendants are barred from raising the issue of the propriety of awarding punitive damages because they failed to move for new trial. We also need not address defendants’ contention that they are unable to pay the punitive damages award.

DISPOSITION

The judgment is affirmed. Falk is entitled to costs on appeal.

Jones, P.J.

We concur:

Simons, J.

Needham, J.