Filed 12/17/10 Best Financial Consultants v. Chapman CA4/1

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BEST FINANCIAL CONSULTANTS, INC., Cross-complainant, Cross-defendant and Appellant, v. WILLIAM CHAPMAN et al., Cross-defendants, Cross-Complainants and Respondents, BEN WILLIAMS et al., Cross-defendants and Appellants.	D055522 (Super. Ct. No. 37-2007-00071738-CU-OR-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Jay M. Bloom, Judge. Affirmed.

Best Financial Consultants, Inc. (Best), Ben Williams (Ben), and Andre Williams (Andre) (collectively Brokers) appeal a judgment entered after a jury found them liable for damages in an action filed by William Chapman and Martha Chapman (together the

Chapmans) arising out of Brokers' representation of the Chapmans in the sale of an apartment building they inherited. On appeal, Brokers contend the evidence is insufficient to support the following findings: (1) the Chapmans suffered economic and noneconomic damages; (2) Brokers' alleged wrongful actions were a legal cause of the Chapmans' damages; (3) Brokers were liable on the cause of action for fraud by misrepresentation; (4) Brokers were liable on the cause of action for fraud by concealment; (5) Brokers were liable on the causes of action for negligence and negligent misrepresentation; (6) Brokers were liable on the cause of action for breach of fiduciary duty; (7) Brokers were liable on the cause of action for financial elder abuse; (8) Andre or another officer, director, or managing agent of Best authorized, or knew of and subsequently adopted or approved, any wrongful actions by William Wyckoff, Ben, or Andre; and (9) Ben, Andre, Wyckoff, and/or Best committed the wrongful acts with malice, oppression, or fraud, a finding required to support the awards of punitive damages against Best and Ben. Brokers further contend the trial court erred by denying them due process of law and denying Best's request for a special verdict on its cross-complaint for recovery of a real estate commission.

FACTUAL AND PROCEDURAL BACKGROUND

In 2006, William Chapman's step-grandfather died, leaving a trust naming the Chapmans as beneficiaries of an eight-unit apartment building (Property) on Cleveland Avenue in San Diego. They retained long-time friend Wyckoff, an accountant (and real estate agent), to advise and assist them regarding the tax and accounting aspects of the estate. An appraisal of the Property was obtained for estate tax purposes, showing its fair

market value was $1,640,000 as of June 10, 2006, the date of the step-grandfather's death. To reduce the amount of the estate tax, Wyckoff advised the Chapmans to obtain an amended appraisal with a lower value for the Property. Wyckoff called the original appraiser and stated he needed an appraisal showing a value of $1,200,000 instead of $1,640,000.[1] On December 10, 2006, the appraiser issued an appraisal showing the fair market value of the Property was $1,200,000.

In or about February 2007, Wyckoff suggested that the Chapmans sell the Property so they could retire. In May 2007, the Chapmans obtained title to the Property. In late June 2007, Wyckoff called the Chapmans and told them he had a potential buyer for the Property. On June 28, Martha met Wyckoff and Ben and showed them the Property. Wyckoff had recently begun working for Best, which was managed by Ben (not a licensed real estate agent). Andre, Ben's father, was the licensed real estate broker for Best. Later on June 28, Wyckoff met the Chapmans at their Temecula home and had them sign an exclusive listing agreement with Best for the sale of the Property with a listing price of $1.3 million to $1.4 million, but guaranteeing the Chapmans net proceeds of $1.2 million after payment of commissions, escrow, and other costs. Neither Wyckoff nor anyone else at Best provided the Chapmans with any information regarding comparable property listings or sale prices to support the listing price for the Property. The listing agreement provided for a commission of 7 percent of the sale price if another

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[1] According to Wyckoff's deposition testimony, he stated he suggested to the appraiser that the reappraisal show the Property's value was between $1 million and $1.25 million.

broker was involved (i.e., 4 percent commission to Best as the listing broker and 3 percent to the buyer's broker), but an increased commission of 10 percent would be paid to Best if it represented both the seller and the buyer.[2]

On June 30, Martha met Wyckoff and Ben at the Property for a showing of the Property to Kamran Shoberi, a prospective buyer. On July 1, Wyckoff met the Chapmans at their Temecula home and presented an offer by Shoberi, whom Wyckoff (and Best) also represented, to purchase the Property for $1,333,000.[3] Shoberi's offer provided that he would be required to obtain a loan prequalification letter from a lender within seven days of the Chapmans' acceptance of his offer. The offer also provided that it would be deemed a binding agreement when a copy of the Chapmans' signed acceptance of the offer was personally received by Shoberi or by his authorized agent. The offer provided that escrow was to close within 60 days after acceptance. On July 1, at Wyckoff's urging, the Chapmans signed an acceptance of Shoberi's offer.

On July 5, Wyckoff presented the Chapmans with a "backup" offer from Art Bell to purchase the Property for $1,400,000. Bell's offer provided the price would be paid entirely with cash (i.e., without any loan) and escrow would close within 14 days after the

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2 At trial, Roger Holtsclaw, the Chapmans' expert on the standard of care for real estate agents, testified that he had never before seen such an arrangement that provided the listing broker with a disincentive to list a property on the MLS (i.e., the local multiple listing service). According to Holtsclaw, that increased "dual" commission amount was the opposite of what other brokers would have offered to a property seller.

3 After deduction of Best's 10 percent dual commission, the Chapmans' net sale proceeds would be about $1,200,000, which happened to be the minimum guaranteed amount of net sales proceeds per their listing agreement.

Chapmans' acceptance, and was contingent on nonperformance of the pending sale to Shoberi. At Wyckoff's urging, the Chapmans signed an acceptance of Bell's backup offer.

On July 7, because Shoberi had not yet provided a loan prequalification letter, the Chapmans met Wyckoff who presented them with a 24-hour notice for Shoberi to perform on the purchase agreement. They signed the notice. On July 9, Shoberi obtained a prequalification letter from Washington Mutual Home Loans. Also on that date, Wyckoff presented the Chapmans with a notice to Shoberi of cancellation of contract, which they signed. Wyckoff then informed Bell's real estate agent that Bell was free to proceed with his purchase of the Property pursuant to his backup offer. The Chapmans then proceeded toward closing the sale of the Property to Bell.

On July 7, Dan Floit submitted to Best an offer to purchase the Property for $1,425,000. However, that offer was never presented to the Chapmans by Best, Wyckoff, Ben, or Andre. A Best representative (either Wyckoff or Ben) informed Floit that the Property was already under contract for sale to another purchaser.[4] On or about July 17, Floit offered to pay $50,000 to Brokers and $50,000 to the buyer with the first contract for assignment to him of that buyer's rights to purchase the Property. Apparently on or about July 18 or 19, Ben called William and demanded that he allow a new buyer to view the Property, stating he had an obligation to do so. William became upset because

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4 At trial, Floit testified he thought he was told at the time that there was an offer and a backup offer.

he interpreted Ben's statement as a threat. William apparently refused Ben's demand that he show the Property.

On July 20, Floit offered to pay $50,000 to Brokers and $75,000 to Shoberi for assignment of Shoberi's contract to purchase the Property, with payment to be made one day after closing of the sale to Floit.[5] Apparently on July 21, Shoberi signed an acceptance of Floit's offer to acquire assignment of Shoberi's right to buy the Property.

Around this time, the Chapmans contacted Carlos Santiago, Bell's real estate agent, and learned that Ben had conveyed an offer to assign Shoberi's contract to Bell for $75,000, which offer Bell had refused. The Chapmans then retained an attorney, John Schau, to advise them. On July 23, Schau sent a letter to Best informing Best that the Chapmans were terminating its services as the listing agent for the sale of the Property. Also on July 23, the Chapmans and Bell opened an escrow at a different escrow company for the closing of the sale of the Property to Bell. On July 24, that escrow closed and the sale of the Property by the Chapmans to Bell was completed.[6]

On July 24, Floit filed a complaint against the Chapmans seeking specific performance of Shoberi's contract rights, which had been assigned to him. On July 25, Floit recorded a lis pendens on the Property, but it was too late to stop the sale of the

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[5] Apparently, Shoberi would pay Brokers $15,000 of the $75,000 he would receive from Floit for assignment of his contract rights.

[6] The final purchase price was reduced from $1,400,000 to $1,350,000, apparently to reflect the absence of a requirement to pay a 4 percent commission to a listing agent (i.e., Best).

Property to Bell that occurred the previous day (i.e., on July 24). Apparently, Floit then amended his complaint to add Bell as a defendant. The Chapmans filed a cross-complaint against Brokers, Wyckoff, Shoberi, and Floit, alleging various causes of action. Best, Ben and Andre filed a cross-complaint against the Chapmans for commissions earned.[7] Apparently, Floit, Shoberi, and Bell entered into settlements before trial.

Following a trial, the jury returned verdicts in favor of the Chapmans on their causes of action against Brokers and Wyckoff and on Best's causes of action against the Chapmans. The jury awarded the Chapmans compensatory damages as follows: (1) against Wyckoff for $20,300 for economic loss and $15,000 for noneconomic loss; (2) against Best for $14,500 for economic loss and $1,500 for noneconomic loss; (3) against Andre for $2,900 for economic loss and $1,500 for noneconomic loss; and (4) against Ben for $20,300 for economic loss and $12,000 for noneconomic loss. The jury further awarded the Chapmans punitive damages as follows: (1) against Wyckoff for $225,000; (2) against Ben for $200,000; and (3) against Best for $200,000. On April 24, 2009, the trial court entered a judgment on the jury verdicts, awarding the Chapmans the damages

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[7] The record on appeal does not contain copies of the complaint and cross-complaints. We presume the Chapmans' statement of the case accurately describes those pleadings.

set forth above. The court denied Brokers' posttrial motions for judgment notwithstanding the verdict and for a new trial. Brokers timely filed a notice of appeal.[8]

DISCUSSION

I

Appellants' Burdens on Appeal Generally

On appeal, the judgment of the trial court is presumed to be correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Accordingly, if the judgment is correct on any theory, the appellate court will affirm it regardless of the trial court's reasoning. (*Estate of Beard* (1999) 71 Cal.App.4th 753, 776-777; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18-19.) If the appellate court affirms the judgment on certain grounds, it generally need not address alternative grounds for affirmance. (*Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 513 (*Sutter*).) All intendments and presumptions are made to support the judgment on matters as to which the record is silent. (*Denham*, at p. 564.) An appellant has the burden to provide an adequate record and affirmatively show reversible error. (*Ibid.*; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) If an appellant does not provide an adequate record to support a contention of insufficiency of the evidence to support a finding, that contention may be deemed waived. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132; *Goldring v. Goldring* (1949) 94 Cal.App.2d 643, 645.) Furthermore, it is the appellant's duty to

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[8] Wyckoff did not file a notice of appeal challenging the judgment against him. Accordingly, we address only the contentions raised on appeal by Brokers (i.e., Best, Ben, and Andre).

support arguments in his or her briefs by references to the record on appeal, including citations to specific pages in the record. (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856 (*Duarte*).) "Failure to set forth the material evidence on an issue waives a claim of insufficiency of the evidence." (*Brockey v. Moore* (2003) 107 Cal.App.4th 86, 96.) If an argument is not supported with necessary citations to the record on appeal, that portion of the brief may be stricken and/or the argument may be deemed waived.[9] (*Duarte*, *supra*, 72 Cal.App.4th at p. 856.) Likewise, if an argument is not supported with citations to legal authorities, that argument may be deemed waived. (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 522.)

Because the arguments on appeal must be restricted to evidence in the record, any reference to matters outside the record on appeal generally will not be considered.[10] (Cal. Rules of Court, rule 8.204(a)(2)(C) [appellant's opening brief must provide a summary of significant facts limited to matters in the record on appeal]; *Banning v. Newdow* (2004) 119 Cal.App.4th 438, 453, fn. 6 (*Banning*).) Furthermore, "[a]ppellate briefs must provide argument and legal authority for the positions taken. 'When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]' " (*Nelson v.*

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9 Accordingly, to the extent Brokers refer to evidence without accompanying citations to the record on appeal, we disregard that evidence and, if that evidence is the only evidence in support of their argument, we deem that argument to be waived.

10 Accordingly, to the extent Brokers refer to evidence or other matters not contained in the record on appeal, we disregard them.

Avondale Homeowners Assn. (2009) 172 Cal.App.4th 857, 862 (*Nelson*).) "We are not bound to develop appellants' argument for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 (*Falcone & Fyke*); see also *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2 (*Associated Builders*); *People v. Stanley* (1995) 10 Cal.4th 764, 793 (*Stanley*).)

II

Substantial Evidence Standard of Review

When an appellant contends the evidence is insufficient to support a judgment or factual finding, we apply the substantial evidence standard of review. "Where findings of fact are challenged on a civil appeal, we are bound by the 'elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court." (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.) "Substantial evidence" is not synonymous with "any" evidence; rather, it means the evidence must be of ponderable legal significance, reasonable, credible, and of solid value. (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) An appellate court presumes in favor of the judgment all

reasonable inferences. (*Id*. at pp. 1632-1633.) If there is substantial evidence to support a finding, an appellate court must uphold that finding even if it would have made a different finding had it presided at the trial. (*Rupf v. Yan* (2000) 85 Cal.App.4th 411, 429-430, fn. 5; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) An appellate court does not reweigh the evidence or evaluate the credibility of witnesses, but rather defers to the trier of fact. (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968 (*Lenk*); *Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631 (*Howard*).)

III

Substantial Evidence of the Chapmans' Damages

Brokers contend the judgment against them must be reversed because the evidence is insufficient to support the findings that the Chapmans suffered economic and noneconomic damages.

A

Brokers assert there was no evidence the Chapmans suffered any *economic* damages because neither they, nor a qualified expert, testified regarding the fair market value of the Property. Brokers argue that absent evidence of the Property's actual value, the evidence is insufficient to support the jury's finding that the Chapmans suffered economic loss.

Although we assume arguendo Brokers correctly argue that proof of a property's value can only be proved by opinion testimony of a property owner or a qualified expert pursuant to Evidence Code section 813, we conclude there is substantial evidence the

Chapmans suffered economic damages regardless of the Property's fair market value.[11] The crux of the Chapmans' trial theory was that Brokers wrongfully underpriced the Property and wrongfully persuaded the Chapmans to accept unreasonably low offers, thereby depriving them of a higher sale price that could, and should, have been obtained for the Property (e.g., from Floit). As discussed above, the Chapmans accepted Bell's backup offer of $1,400,000 and ultimately sold the Property to Bell for $1,350,000. There is substantial evidence to support a finding that had Brokers properly advised the Chapmans to list the Property with a price range greater than $1.3 million to $1.4 million and/or to wait for an offer higher than those made by Shoberi and Bell (made within only a few days of the Property's listing), the Chapmans would have obtained a higher price for the Property. There is evidence regarding the amount of money that Floit would have paid to purchase the Property. He offered to pay $50,000 to Brokers and $75,000 to Shoberi for assignment of Shoberi's contract to purchase the Property. Shoberi had offered $1,333,000 for the Property. Therefore, Floit, in effect, was ready and willing to pay $1,458,000 ($1,333,000, plus $50,000, plus $75,000) to purchase the Property and, arguably, would have paid more. Accordingly, there is evidence showing the Chapmans could have obtained a gross sales price of $1,458,000 had they been properly represented and advised by Brokers, which amount is at least $58,000 (based on Bell's initial offer of

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11 Evidence Code section 813 provides: "(a) The value of property may be shown only by the opinions of any of the following: [¶] (1) Witnesses qualified to express such opinions. [¶] (2) The owner or the spouse of the owner of the property or property interest being valued. . . ."

$1,400,000) or $108,000 (based on Bell's ultimate purchase price of $1,350,000) greater than the gross sales price they actually obtained.

Even after deduction of applicable commissions, there is evidence to support a finding the Chapmans would have received greater net sales proceeds had they been properly represented and advised by Brokers. Assuming arguendo a 10 percent "dual" commission was properly due Brokers for a sale to Floit, the Chapmans would have received net sale proceeds of at least $1,312,200 from a sale to Floit ($1,458,000, less $145,800 commission). However, based on the testimony of Holtsclaw described above, there is evidence to support a finding by the jury that Brokers should not have obtained a "dual" commission greater than 7 percent. After deduction of that reasonable commission, the Chapmans would have received net sale proceeds of at least $1,364,690 ($1,458,000, less $93,310 commission). In contrast, the Chapmans apparently received net sale proceeds of about $1,309,500 after presumably paying Santiago a 3 percent buyer's agent's commission ($1,350,000, less $40,500 commission). (Alternatively, the jury may have found the Chapmans effectively received $1,302,000, based on Bell's original offer of $1,400,000 and deduction of a 7 percent commission of $98,000.) There is substantial evidence showing the Chapmans suffered actual economic damages of at least, and probably more than, $55,190 (i.e., $1,364,690 less $1,309,500).

The two appraisals of the Property were *not* the only evidence to support the Chapmans' claim for economic damages. Rather, the actual money offered by a willing and able buyer (i.e., Floit) to purchase the Property, less the actual money received by the Chapmans from the sale to Bell, provides substantial evidence of the actual economic

damages they suffered. To the extent Brokers cite evidence to support a contrary conclusion, they either misconstrue or misapply the applicable substantial evidence standard of review.

B

Brokers also assert the evidence is insufficient to support the finding the Chapmans suffered *noneconomic* damages.[12] However, we conclude there is substantial evidence to support the jury's finding that the Chapmans suffered emotional distress from Brokers' wrongful conduct. Martha testified that William perceived Ben's telephone call demanding that William allow him to show the Property to a new (i.e., third) buyer as a threat and was upset by the call. The jury could also infer the Chapmans became upset and suffered emotional distress when they learned Brokers were continuing to "shop" the Property to another buyer (i.e., Floit) even though they were about to close escrow on the sale of the Property to Bell. There is also evidence William suffered emotional distress when he was served with Floit's summons and complaint at a time when he had no knowledge of Floit or his purported claims pursuant to the assignment to him of Shoberi's contract rights. Finally, the jury could infer the Chapmans suffered emotional distress

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12 To the extent Brokers argue the evidence is insufficient to support their liability on a cause of action for intentional or negligent infliction of emotional distress, that argument is misguided. Based on the trial court's instructions, the jury's special verdict and the judgment entered, those causes of action were not submitted to, or decided by, the jury. Rather, to the extent noneconomic damages were awarded by the jury, they were associated with the causes of action described above (i.e., causes of action for fraud by misrepresentation, fraud by concealment, negligence, negligent misrepresentation, breach of fiduciary duty, and financial elder abuse).

when they learned Brokers failed to inform them of Floit's original offer of $1,425,000 to purchase the Property and then arranged potential compensation to themselves (Brokers) and Shoberi for assignment of Shoberi's contract rights despite the Chapmans' cancellation of Shoberi's contract. There is substantial evidence to support the jury's finding that the Chapmans suffered emotional distress. To the extent Brokers cite evidence to support a contrary conclusion, they either misconstrue or misapply the applicable substantial evidence standard of review.

IV

Substantial Evidence of Causation

Brokers contend the evidence is insufficient to support the jury's finding that their alleged wrongful actions were a legal cause of the Chapmans' damages. However, in so arguing, Brokers do not cite evidence in support of the finding of causation. Instead, they improperly cite evidence and make inferences only in their favor and also improperly refer to evidence excluded at trial and other matters not in the record on appeal. Accordingly, we deem Brokers' argument to be waived. (*Brockey v. Moore*, *supra*, 107 Cal.App.4th at p. 96 ["Failure to set forth the material evidence on an issue waives a claim of insufficiency of the evidence."]; see also Cal. Rules of Court, rule 8.204(a)(2)(C) [appellant may not refer to matters outside the record on appeal]; *Banning*, *supra*, 119 Cal.App.4th at p. 453, fn. 6.)

Assuming arguendo Brokers have not waived their argument, we nevertheless conclude they have not carried their burden on appeal to show the evidence is insufficient to support the jury's finding that their wrongful actions were a legal cause of the

Chapmans' damages. Based on the evidence of Brokers' actions and inactions described above, the jury could reasonably infer those actions were a legal cause of the Chapmans' damages. The jury could infer from the evidence that Brokers wrongfully underpriced the Property and wrongfully persuaded the Chapmans to accept unreasonably low offers, thereby depriving them of a higher sale price that could, and should, have been obtained for the Property (e.g., from Floit). Therefore, there is substantial evidence that conduct was a substantial factor in causing the damages described above.

To the extent Brokers attempt to lay the blame on the Chapmans' attorney for causing the Chapmans' damages, they improperly cite evidence outside the record and improperly make inferences in support of their argument and contrary to the jury's findings. In any event, it is not our function to reweigh the evidence or make inferences therefrom in determining whether there is substantial evidence to support the jury's finding. (*Lenk, Inc.*, *supra*, 89 Cal.App.4th at p. 968; *Howard*, *supra*, 72 Cal.App.4th at p. 631.)

To the extent Brokers rely on evidence excluded by the trial court (e.g., conduct of the Chapmans' attorney, evidence of Bell's control of the second escrow company, or evidence of purported criminal or other improper conduct by officers of the escrow company), they may not cite such evidence in arguing the evidence is insufficient to support the jury's finding. (Cal. Rules of Court, rule 8.204(a)(2)(C) [appellant may not refer to matters outside the record on appeal]; *Banning*, *supra*, 119 Cal.App.4th at p. 453, fn. 6.) Alternatively, to the extent Brokers argue the trial court abused its discretion by excluding that evidence, they do not provide any substantive legal analysis showing such

abuse of discretion or showing the error was prejudicial. Accordingly, we deem any assertion of evidentiary error to be waived. (*Nelson*, *supra*, 172 Cal.App.4th at p. 862; *Falcone & Fyke*, *supra*, 164 Cal.App.4th at p. 830; *Associated Builders*, *supra*, 21 Cal.4th at p. 366, fn. 2; *Stanley*, *supra*, 10 Cal.4th at p. 793.)

To the extent Brokers assert the special verdict forms were too vague regarding causation, they waived or forfeited that assertion by expressly agreeing to the special verdict form and not requesting a more precise verdict form on the issue of causation. (*Telles Transport, Inc. v. Workers' Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159, 1167 (*Telles*); *Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, 1158 (*Greer*).) In any event, Brokers do not carry their burden on appeal to present substantive legal argument persuading us the verdict form was erroneous and any error was prejudicial.

Finally, Brokers argue events occurring after termination of their exclusive listing agreement on July 23, 2007, were an intervening, superseding cause of the Chapmans' damages. In so doing, they make an argument appropriate at trial, but not on appeal. It is not our function on appeal to reweigh the evidence or make inferences in determining whether there is substantial evidence to support the jury's finding. (*Lenk, Inc.*, *supra*, 89 Cal.App.4th at p. 968; *Howard*, *supra*, 72 Cal.App.4th at p. 631.) Rather, in considering the evidence and making all reasonable inferences to support the jury's finding, we conclude the jury could reasonably infer from the evidence that Brokers wrongfully underpriced the Property and wrongfully persuaded the Chapmans to accept unreasonably low offers, thereby depriving them of a higher sale price that could, and should, have been obtained for the Property (e.g., from Floit). Furthermore, the jury could reasonably

infer from the evidence that the Chapmans properly terminated Brokers' services on July 23, 2007, and proceeded to close the sale of the Property to Bell on July 24. Therefore, it could infer any conduct by the Chapmans, their attorney, Bell, or officers of the second escrow company related to the closing of that escrow and completion of the sale of the Property to Bell was not an intervening, superseding cause of the Chapmans' damages. Brokers do not carry their burden on appeal to persuade us otherwise.[13] Accordingly, we conclude there is substantial evidence to support the jury's finding that Brokers' wrongful conduct was a legal cause of the Chapmans' damages.

V

Andre's Liability for Fraud by Misrepresentation

Brokers contend the evidence is insufficient to support the jury's finding of Andre's liability on the cause of action for fraud by misrepresentation. In so arguing, however, they do not discuss the evidence in support of or contrary to a finding that Andre is liable for fraud by misrepresentation, but rather argue the jury's answers on the special verdict form do not support liability.[14] We agree.

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13 Brokers' argument that the Chapmans could not properly open an escrow with the second escrow company to complete the sale of the Property to Bell while the first escrow with Shoberi remained open is unsupported by any substantive legal analysis with citations to legal authorities. Furthermore, we discern absolutely no merit to that argument.

14 Because Brokers do not expressly contend, much less present any substantive legal analysis showing, there is insufficient evidence to support the jury's finding of Ben and Best's liability for fraud by misrepresentation, we conclude any such assertion is waived or forfeited for purposes of appeal. (*Nelson*, *supra*, 172 Cal.App.4th at p. 862; *Falcone & Fyke*, *supra*, 164 Cal.App.4th at p. 830; *Associated Builders*, *supra*, 21 Cal.4th at

The jury answered "no" to Question No. 1 of the special verdict form on whether Andre made a false representation of an important fact to the Chapmans. The jury also answered "no" to Question No. 2 on whether Andre knew the representation was false, or made the representation recklessly and without regard for its truth. Because the jury found Andre did not make a false representation of an important fact to the Chapmans and did not know the representation was false or made recklessly and without regard for its truth, two elements of the cause of action against Andre for fraud by misrepresentation were not proved. Accordingly, Andre was, in effect, found not liable on that cause of action. Any arguably inconsistent answers by the jury on the remaining elements of that cause of action do not show Andre is liable for fraud by misrepresentation.[15]

VI

Ben and Best's Liability for Fraud by Concealment

Brokers contend the evidence is insufficient to support the jury's finding of Ben and Best's liability on the cause of action for fraud by concealment.[16] In its special verdict, the jury found Ben and Best (as well as Wyckoff) intentionally failed to disclose an important fact that the Chapmans did not know and could not have reasonably

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p. 366, fn. 2; *Stanley*, *supra*, 10 Cal.4th at p. 793.) In any event, we are not persuaded by that assertion.

15 The jury answered "yes" to the questions whether Andre intended the Chapmans to rely on the representation, whether the Chapmans reasonably relied on the representation, and whether the Chapmans' reliance on the representation was a substantial factor in causing harm to them.

16 The jury's special verdict did not find Andre liable for fraud by concealment.

discovered, intended to deceive the Chapmans by concealing that fact, and intended the Chapmans to rely on that deception. The jury further found the Chapmans reasonably relied on that deception and it was a substantial factor in causing them harm.

We conclude there is substantial evidence to support the jury's finding that Ben and Best are liable for fraud by concealment. On one theory, the jury could have reasonably found that Ben and Best (along with Wyckoff) intentionally did not disclose to the Chapmans the true value of the Property when they obtained the listing agreement to list the Property for sale at a price range of $1.3 million to $1.4 million, with a guarantee of net sale proceeds of $1.2 million.[17] As discussed above, the jury could have found Ben and Best knowingly underpriced the Property in obtaining the listing agreement and then persuaded the Chapmans to accept Shoberi's offer and Bell's backup offer. The jury could reasonably infer from the evidence that the Chapmans did not have experience in owning or valuing apartment or commercial properties and therefore could not have reasonably discovered the true value of the Property, intentionally concealed by Ben and Best (and Wyckoff). The jury could also reasonably infer Ben and Best (and Wyckoff), by concealing the true, higher value of the Property, intended to deceive the Chapmans and intended them to rely on that deception in signing the listing agreement

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17 Ben and Best wrongly assume the jury's finding was based, at least in part, on the theory that they intentionally failed to disclose to the Chapmans that the escrow with Shoberi was still open when the Chapmans opened the second escrow and completed the sale of the Property to Bell. The record does not support that assumption. Rather, based on the record, the jury could have based its finding of fraud by concealment on either or both of the two theories discussed herein.

and accepting Shoberi's offer and Bell's backup offer. Based on the evidence, the jury could infer the Chapmans reasonably relied on that deception and that it was a substantial factor in causing them harm (e.g., by accepting those offers instead of waiting for a higher offer with a purchase price closer to the Property's true value).

On another theory, the jury could have found that Ben and Best intentionally failed to disclose to the Chapmans both Floit's initial offer to purchase the Property from them for $1,425,000, as well as the money or profits (described in the Chapmans' briefs as "kickbacks" and "bribes") Ben and Best would receive pursuant to Floit's offer to buy Shoberi's contract rights to purchase the Property. As discussed above, Floit offered $50,000 to Best and $75,000 to Shoberi ($15,000 of which Shoberi would pay to Best) for assignment of Shoberi's contract rights. The jury could reasonably infer Ben and Best intentionally concealed those additional profits (i.e., $65,000), beyond their 10 percent commission of $133,300, they would receive were Floit successful in enforcing Shoberi's contract rights to purchase the Property for $1,333,000. The jury could also reasonably infer the Chapmans could not have reasonably discovered that deception. The jury could also infer Ben and Best intended the Chapmans to rely on that deception in an attempt to obtain those secret profits. Finally, the jury could infer the Chapmans reasonably relied on that deception and that it was a substantial factor in causing them harm.

Although Ben and Best assert they could not disclose the money or profits offered to them for arranging the assignment of Shoberi's contract rights to Floit because they owed a fiduciary duty to Shoberi, they do not cite any legal authority so holding and, in any event, the jury clearly was not persuaded by that argument at trial. Rather, the jury

could reasonably conclude Ben and Best could, and should, have disclosed those potential secret profits to the Chapmans, but intentionally chose to conceal them. Furthermore, to the extent Ben and Best argue the Chapmans could not have suffered any damages from their intentional concealment of a material fact, we discussed the issues of damages and causation in parts III and IV, *ante*. We conclude Ben and Best have not carried their burden on appeal to show the evidence is insufficient to support the jury's findings that they are liable for fraud by concealment.

VII

Liability for Negligence

Brokers contend the evidence is insufficient to support the jury's finding of Ben and Best's liability on the cause of action for negligence. In so arguing, however, they do not discuss the evidence in support of or contrary to a finding that they are liable for negligence, but rather conclusively argue the jury's special verdict was deficient because it did not "recite any act that was below the standard of care that would support any of [the jury's] findings of negligence on the part of BEST or BEN."[18] Brokers assert that because it is impossible to ascertain which fact or circumstance the jury relied on in finding Ben and Best were negligent, the part of the judgment imposing liability on them

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18 Because Brokers do not expressly contend, much less present any substantive legal analysis showing, the evidence is insufficient to support the jury's finding of Ben and Best's liability for negligence, we conclude any such assertion is waived or forfeited for purposes of appeal. (*Nelson*, *supra*, 172 Cal.App.4th at p. 862; *Falcone & Fyke*, *supra*, 164 Cal.App.4th at p. 830; *Associated Builders*, *supra*, 21 Cal.4th at p. 366, fn. 2; *Stanley*, *supra*, 10 Cal.4th at p. 793.) In any event, we are not persuaded by the assertion.

for negligence must be reversed. However, because, as discussed above, Brokers have not carried their burden on appeal to show Ben and Best's liability for fraud by misrepresentation and fraud by concealment must be reversed, their liability on those causes of action is sufficient to support the judgment's award of economic and noneconomic damages against them. (*Sutter*, *supra*, 171 Cal.App.4th at p. 513.) Neither the jury's special verdict nor the judgment awarded damages as to each cause of action, but rather awarded damages generally as to all causes of action on which Brokers were found liable. Because we uphold the judgment to the extent it imposes liability on Ben and Best for fraud by misrepresentation and fraud by concealment, any liability of Ben and Best for negligence is redundant and/or moot in our decision to affirm the judgment's award of economic and noneconomic damages against them. Therefore, we need not address Brokers' challenge of Ben and Best's liability for negligence based on the jury's special verdict.[19] (*Sutter*, *supra*, 171 Cal.App.4th at p. 513.)

Brokers do *not* assert either that the evidence is insufficient to support the jury's finding that *Andre* is liable for negligence or that the jury's special verdict was erroneous by not specifying any particular act constituting negligence by Andre. Brokers do not

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19 To the extent Brokers assert the jury's special verdict was too vague regarding Ben and Best's negligence, they waived or forfeited that assertion by expressly agreeing to the special verdict form and not requesting a more precise verdict form on the issue of negligence. (*Telles*, *supra*, 92 Cal.App.4th at p. 1167; *Greer*, *supra*, 141 Cal.App.4th at p. 1158.) In any event, Brokers do not carry their burden on appeal to present substantive legal argument persuading us that the verdict form was erroneous by not specifying any particular act by Ben and/or Best that constituted negligence or that such error or omission was prejudicial.

provide any substantive factual and legal analysis showing insufficiency of the evidence or special verdict error (much less any analysis showing any error was prejudicial). Accordingly, we deem any challenge by Brokers to the jury's finding that Andre is liable for negligence to be waived.[20] (*Nelson*, *supra*, 172 Cal.App.4th at p. 862; *Falcone & Fyke*, *supra*, 164 Cal.App.4th at p. 830; *Associated Builders*, *supra*, 21 Cal.4th at p. 366, fn. 2; *Stanley*, *supra*, 10 Cal.4th at p. 793.)

VIII

Remaining Causes of Action

Brokers also contend the evidence is insufficient to support the findings of liability on the causes of action for negligent misrepresentation, breach of fiduciary duty, and financial elder abuse. However, because, as discussed above, Brokers have not carried their burden on appeal to show that Ben and Best's liability for fraud by misrepresentation and fraud by concealment must be reversed or that Andre's liability for negligence must be reversed, their respective liability on those causes of action is sufficient to support the judgment's award of economic and noneconomic damages against them. Neither the jury's special verdict nor the judgment awarded damages as to each cause of action, but rather awarded damages against each of Brokers (i.e., Best, Ben, and Andre) generally as to all causes of action on which each of Brokers was found

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20 In any event, based on our review of the record, there appears to be ample evidence to support the jury's finding that Andre was negligent, as Best's broker of record and otherwise, in supervising the actions of Ben and Wyckoff regarding the Chapmans and the sale of the Property.

liable. Accordingly, because we uphold the judgment to the extent it imposes liability on Ben and Best for fraud by misrepresentation and fraud by concealment and on Andre for negligence, any liability of each of them on the remaining causes of action is redundant and/or moot to our decision to affirm the judgment's award of economic and noneconomic damages against them. Therefore, we need not address Brokers' contention that the evidence is insufficient to support the jury's findings of liability on the causes of action for negligent misrepresentation, breach of fiduciary duty, and financial elder abuse. (*Sutter*, *supra*, 171 Cal.App.4th at p. 513.)

IX

Best's Authorization of Agents' Actions

Brokers contend the evidence is insufficient to support the jury's finding that Andre or another officer, director, or managing agent of Best authorized, or knew of and subsequently adopted or approved, any wrongful actions by Wyckoff, Ben, or Andre.

A

Despite the heading in Brokers' opening brief for this argument, they argue the jury's special verdict on this question was erroneous because it failed to "[specify] any persons or actions to whom or to which this [question] applied." The record shows the jury answered "yes" to Special Verdict Question No. 24: "Did [the Chapmans] prove by clear and convincing evidence that an officer, a director, or a managing agent of [Best] authorized any defendant's action or knew of any defendant's action and adopted or approved it after it accrued?" However, to the extent Brokers assert that special verdict was too vague regarding the persons and actions involved, we conclude they waived or

forfeited that assertion by expressly agreeing to the special verdict form and not requesting a more precise verdict form on that issue. (*Telles, supra,* 92 Cal.App.4th at p. 1167; *Greer, supra,* 141 Cal.App.4th at p. 1158.) In any event, Brokers do not carry their burden on appeal to present substantive legal argument persuading us that the verdict form was erroneous as asserted by Brokers or that the error was prejudicial.[21]

B

Brokers also assert the evidence is insufficient to support a finding that Wyckoff acted within the scope of his agency for Best when he committed the wrongful acts against the Chapmans. However, they either misconstrue or misapply the substantial evidence standard of review and cite only evidence and inferences favorable to their argument. When an appellant argues the evidence is insufficient to support a finding, we must "view the evidence in the light most favorable to the prevailing party [e.g., the Chapmans], giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the [substantial evidence] standard of review . . . ." (*Jessup Farms v. Baldwin, supra,* 33 Cal.3d at p. 660.) In applying that standard of review, we do not reweigh the evidence or evaluate the credibility of witnesses, but rather

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21 To the extent Brokers assert there was no evidence showing Andre was an officer, director, or managing agent of Best and therefore could not be liable under Question No. 24, Brokers are misguided. First, Question No. 24 pertained to *Best's* liability for authorized actions of Wyckoff, Ben, and/or Andre. It did not impose liability on Andre. Second, contrary to Brokers' assertion, there is substantial evidence to support a finding that Andre was an officer of Best. At trial, Andre testified he was the vice president of Best.

defer to the trier of fact. (*Lenk, Inc., supra*, 89 Cal.App.4th at p., 968; *Howard*, *supra*, 72 Cal.App.4th at p. 631.)

Civil Code section 2295 provides: "An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency."[22] "Under the doctrine of respondeat superior, an employer is vicariously liable for his employee's torts committed within the scope of the employment." (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967.) Furthermore, "an employee's [or agent's] willful, malicious and even criminal torts may fall within the scope of his or her employment for purposes of respondeat superior, even though the employer has not authorized the employee to commit crimes or intentional torts." (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296-297.) Both counsel agreed to the trial court's jury instructions, which included instructions that Wyckoff *was* an agent of Best and, if the jury found he "was acting within the scope of [his] agency when the incident occurred, then [Best] is responsible for any harm caused by [Wyckoff's] intentional or negligent misrepresentation, breaches of fiduciary duty, concealment, negligence, or elder abuse." The court further instructed on the Chapmans' alternative theory that Wyckoff intended to act on Best's behalf, Best learned of his conduct after it

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22 An agency relationship may be actual or ostensible. (Civ. Code, §§ 2299, 2300.) It is *actual* when the agent "is really employed by the principal" and *ostensible* "when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him." (Civ. Code, §§ 2299, 2300.)

occurred, and Best approved his conduct. Brokers did not request any further instructions on agency.

Considering the evidence and all reasonable inferences favorably to support the judgment, we conclude there is substantial evidence to support a finding by the jury that an officer, director, or managing agent of Best authorized, or knew of and subsequently adopted or approved, any wrongful actions committed by Wyckoff against the Chapmans. Although Wyckoff had an existing personal and business relationship with the Chapmans before June 2007, the evidence supports the reasonable inference and finding that he was acting as Best's agent in late June 2007, when he told the Chapmans he had a potential buyer for the Property. Wyckoff testified at trial that in June 2007 Ben hired him to work for Best. Wyckoff told Ben about the Property and that it would be beneficial for Best to obtain the listing for the Property if they had a buyer. On June 28, after the Chapmans showed the Property to Wyckoff and Ben, Wyckoff had them sign an exclusive listing agreement with Best for the sale of the Property with a listing price of $1.3 million to $1.4 million and with the other provisions discussed above. However, neither Wyckoff nor anyone else at Best provided the Chapmans with any information regarding comparable property listings or sale prices to support the listing price for the Property. On July 1, at Wyckoff's urging, the Chapmans signed an acceptance of Shoberi's offer. On July 5, again at Wyckoff's urging, the Chapmans signed an acceptance of Bell's backup offer. On July 7, because Shoberi had not yet provided a loan prequalification letter, Wyckoff presented the Chapmans with a 24-hour notice for Shoberi to perform on the purchase agreement. They signed the notice. On July 9,

Shoberi obtained a prequalification letter from Washington Mutual Home Loans. Also on that date, Wyckoff presented the Chapmans with a notice to Shoberi of cancellation of contract, which they signed. Wyckoff then informed Bell's real estate agent (Santiago) that Bell was free to proceed with his purchase of the Property pursuant to his backup offer. The Chapmans then proceeded to close the sale of the Property to Bell. On July 23, the Chapmans terminated Best's services as the listing agent for the sale of the Property. On July 24, the sale of the Property by the Chapmans to Bell was completed.

Construing that evidence favorably to support the judgment, there is substantial evidence to support a finding that Wyckoff was acting as Best's agent from June 28, 2007, when he persuaded the Chapmans to sign the listing agreement with Best for the sale of the Property, until at least July 23, when the Chapmans terminated Best as the listing broker for sale of the Property. Therefore, it can reasonably be inferred that all of Wyckoff's actions during that period were performed within the scope of his employment as an agent of Best *or*, at least, with the subsequent approval of an officer, director, or managing agent of Best (e.g., Ben) with knowledge of those actions. Accordingly, there is substantial evidence to support the jury's findings that Wyckoff was an agent of Best and was acting within the scope of his agency when he harmed the Chapmans, and that an officer, director, or managing agent of Best authorized Wyckoff's action or knew of his action and approved it after it occurred.

As noted above, in arguing the insufficiency of the evidence to support those findings, Brokers cite only evidence and inferences favorable to their argument. Accordingly, we reject their assertion that the evidence showed Wyckoff acted as a

"rogue" agent and unilaterally diverged from the scope of his agency with Best in committing the wrongful acts against the Chapmans.

X

Punitive Damages

Brokers contend the evidence is insufficient to support the finding that Ben, Andre, Wyckoff, and/or Best committed the wrongful acts with malice, oppression, or fraud, a finding required to support the awards of punitive damages against Best and Ben.

A

On March 20, 2009, the jury returned a special verdict finding the Chapmans proved by clear and convincing evidence that Wyckoff, Ben, Andre, and Best "acted with recklessness, malice, oppression or fraud." On March 23, 2009, after a bifurcated trial on punitive damages, the jury returned a special verdict awarding the Chapmans punitive damages of $225,000 against Wyckoff and $200,000 against Ben. The jury further found "the conduct constituting malice, oppression, or fraud [was] committed by one or more officers, directors, or managing agents of [Best] acting on behalf of [Best] and/or . . . an agent of [Best] engage[d] in the conduct with malice, oppression, or fraud, and/or . . . one or more officers, directors, or managing agents of [Best] authorize[d] this conduct and/or [knew] of this conduct and adopt[ed] or approve[d] it after it occurred." It then awarded the Chapmans punitive damages of $200,000 against Best.

B

After citing applicable law regarding the proof required for an award of punitive damages, Brokers merely make a conclusory argument that the evidence is insufficient

that *Andre* "committed wrongful acts of such a despicable nature to justify a punitive damages award" and therefore the punitive damages awards against *Ben* and *Best* must be reversed. In so doing, we deem they have waived or forfeited that argument by their failure to present a substantive analysis of the evidence and law to support their argument. (*Duarte*, *supra*, 72 Cal.App.4th at p. 856; *McComber v. Wells*, *supra*, 72 Cal.App.4th at p. 522.) They do not discuss the evidence in support of and contrary to the jury's findings regarding the malicious, oppressive, and/or fraudulent acts committed by Ben personally and by Wyckoff and Ben as agents of Best.

In any event, assuming arguendo Brokers did not waive or forfeit that argument, we nevertheless conclude there is substantial evidence to support the jury's findings regarding the malicious, oppressive and/or fraudulent acts committed by Ben and by agents of Best. The jury could reasonably infer Wyckoff used his existing personal and business relationship with the Chapmans and his knowledge of their circumstances to persuade them to list the Property with Best at a price substantially below its true value and then to accept offers substantially below the Property's true value. The jury could reasonably infer such acts by Wyckoff were malicious, oppressive, and/or fraudulent and that he committed those acts within the scope of his agency with Best and/or that an officer, director, or managing agent of Best (e.g., Ben) authorized those acts and/or knew of those acts and adopted or approved them after they occurred. Therefore, there is substantial evidence to support the jury's finding of malicious, oppressive, and/or fraudulent acts committed by an agent on behalf of Best.

Regarding Ben's acts, there is evidence to support a reasonable inference that he was involved in the decision-making process with Wyckoff in the acts of obtaining the underpriced listing for the Property, obtaining and persuading the Chapmans to accept Shoberi's offer, and persuading them to accept Bell's backup offer and then cancel Shoberi's contract and proceed toward closing the sale to Bell. Furthermore, the evidence supports an inference that Ben withheld from the Chapmans the original higher offer from Floit (i.e., $1,425,000) and then concealed from them Floit's offer of increased compensation (albeit to Brokers and Shoberi) to obtain the assignment of Shoberi's contract rights to purchase the Property. Also, the evidence supports a finding that Ben threatened William when demanding that William show the Property to a third buyer (i.e., Floit). Based on that evidence, there is substantial evidence to support the jury's finding that Ben committed malicious, oppressive, and/or fraudulent acts against the Chapmans. Brokers do not persuade us the evidence is insufficient to support the awards of punitive damages against Ben and Best.[23]

XI

Best's Request for Special Verdict

Brokers contend the trial court erred by denying Best's request for a special verdict on its cross-complaint against the Chapmans for recovery of a real estate commission.

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23 We note Brokers do *not* contend on appeal that the *amount* of the punitive damages awards against Ben and Best is grossly excessive and violates their federal constitutional right to due process of law. (Cf. *State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 416-418, 424-425.)

However, Brokers do not cite to the record showing the special verdict language that Best purportedly requested or the trial court's purported denial. Absent such citations, we deem their contention to be waived or forfeited on appeal.[24] (*Duarte*, *supra*, 72 Cal.App.4th at p. 856; cf. *Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 391.) Furthermore, to the extent Brokers refer to matters outside the record on appeal, we decline to consider them. (Cal. Rules of Court, rule 8.204(a)(2)(C); *Banning*, *supra*, 119 Cal.App.4th at p. 453, fn. 6.)

XII

Denial of Due Process of Law

Brokers contend the trial court erred by denying them due process of law. They first apparently argue the court violated their constitutional right to due process of law by not requiring the testimony of William Wurth, who purportedly was an escrow officer involved in the second escrow for Bell's purchase of the Property. However, in so arguing, Brokers do not cite to the record showing they properly subpoenaed Wurth to testify at trial or that the trial court denied Brokers' requests for enforcement of a subpoena and/or for a continuance of the trial to procure Wurth's testimony or other remedial action. Absent such citations, we deem their contention to be waived or

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[24] In any event, assuming arguendo Brokers did not waive or forfeit this argument, we nevertheless are not persuaded by their argument that the trial court erred by denying the special verdict language Best purportedly requested.

forfeited on appeal.[25] (*Duarte, supra*, 72 Cal.App.4th at p. 856; cf. *Ojavan Investors, Inc. v. California Coastal Com.*, *supra*, 54 Cal.App.4th at p. 391.)

Brokers also argue they were denied due process of law when the trial court purportedly allowed the trial to continue with only one exhibit book, shared by the court, the witnesses, and Brokers and their counsel. However, Brokers' one citation to the record does not necessarily show there was only one exhibit book for the court, witnesses, and Brokers and their counsel. At most, the cited pages show there was a brief time during which only one exhibit book may have been available while the Chapmans' counsel "repaired" either the other book or the situation (whatever that may have been). In any event, Brokers do not present any substantive legal analysis showing their constitutional right to due process was violated by such purported exhibit book limitation or showing the error was prejudicial. Accordingly, we deem this argument to be waived. (*Nelson, supra*, 172 Cal.App.4th at p. 862; *Falcone & Fyke, supra*, 164 Cal.App.4th at p. 830; *Associated Builders, supra*, 21 Cal.4th at p. 366, fn. 2; *Stanley, supra*, 10 Cal.4th at p. 793.) In any event, we believe any error was, at most, state law error, subject to the more forgiving prejudice standard set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836. Because Brokers do not show it is reasonably probable they would have obtained a

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[25] In any event, assuming arguendo Brokers did not waive or forfeit this argument, we nevertheless are not persuaded by their argument that the trial court violated their constitutional right to due process by not requiring Wurth's testimony at trial. Furthermore, we conclude that any such error was not prejudicial even under the less forgiving standard set forth in *Chapman v. California* (1967) 386 U.S. 18, 24.

more favorable verdict had the purported exhibit book error not occurred, we conclude the purported error was not prejudicial. (*Watson*, at p. 836.)

Finally, Brokers argue the trial court denied them due process of law when it excluded Ben's testimony regarding the alleged actions of Schau (the Chapmans' attorney), which exclusion, according to Brokers, purportedly "prevented a full detailing of the actions of Schau and his relationships to [Bell's] colleagues in the final escrow who had criminal records and who conspired in this allegedly wrongful escrow."[26] However, in so arguing, Brokers make only a conclusory argument that the court's exclusion of the testimony violated their right to due process. Because Brokers do not present any substantive legal analysis showing their constitutional right to due process was violated by exclusion of the testimony or that the error was prejudicial, we deem this argument to be waived. (*Nelson, supra*, 172 Cal.App.4th at p. 862; *Falcone & Fyke, supra*, 164 Cal.App.4th at p. 830; *Associated Builders, supra*, 21 Cal.4th at p. 366, fn. 2; *Stanley, supra*, 10 Cal.4th at p. 793.) In any event, we believe that any error in excluding evidence was, at most, state law error, subject to the more forgiving prejudice standard set forth in *People v. Watson, supra*, 46 Cal.2d at page 836. Because Brokers do not show it is reasonably probable they would have obtained a more favorable verdict had the trial court allowed Ben (or other witnesses) to testify regarding Schau and his actions, we conclude the purported error was not prejudicial. (*Watson*, at p. 836.)

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26 The trial court sustained the Chapmans' objections, as argumentative, to questions addressed to Ben by Brokers' counsel whether Schau "became the judge for himself" in the transaction and "short-circuited the process." The court commented: "Mr. Schau is not on trial, counsel."

DISPOSITION

The judgment is affirmed. The Chapmans are entitled to costs on appeal.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.