NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CHRIS CURRY, Plaintiff and Respondent, v. ACADEMY POINTE, INC., et al., Defendants and Appellants.	B290505 (Los Angeles County Super. Ct. No. BC621282)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gregory W. Alarcon, Judge. Affirmed as modified; remanded.

Horvitz & Levy, Jason R. Litt, Stanlety H. Chen; The Cameron Law Firm, Parry G. Cameron for Defendants and Appellants.

Pine Tillett Pine, Norman Pine, Scott Tillett; Reisman & Reisman, Daniel Alan Reisman, Erin Kristina Reisman; Law Office of John J. Perlstein, John J. Perlstein for Plaintiff and Respondent.

A jury found that Academy Pointe, Inc. and J.K. Residential Services, Inc., the owners of a 199-unit apartment building, and Anza Management Company, the building manager, failed to accommodate the disability of Chris Curry, who was dependent on an electric wheelchair, by failing to maintain the building's three elevators. The jury awarded Curry $750,000 in compensatory damages and $4.5 million in punitive damages.

Defendants contend the compensatory damages award was excessive, the punitive damages award was unsupported by substantial evidence, and the court erred in awarding pre-judgment interest. (Curry waives any opposition on this last point.) We reduce the punitive damages award to $750,000, and affirm the judgment as modified except as to interest, which must be recalculated.

BACKGROUND

Academy Pointe owned the Villa California apartment building, which had three elevators. J.K. Residential Services oversaw the property, which was managed by Anza Management Company (Anza). (We will refer to Academy Pointe and J.K. Residential collectively as "Villa.")

In 2011, Villa's prior manager warned the owners that the building's three elevators "desperately needed[ed]" repairs, without which they would cease to function. Villa essentially ignored the problem for several years despite many complaints and intermittent malfunctions, during which one, two, or all three elevators would cease to function.

In April 2015, Villa hired an elevator maintenance contractor but refused to pay for permanent repairs. Between April and September 2015, Villa's elevators broke down several

times, necessitating multiple calls to the fire department to rescue residents trapped in the elevators.

In September 2015, the City of Los Angeles cited Villa for its nonoperational elevators and ordered it to "maintain at least one operational passenger elevator." Villa's prior manager terminated its management contract and was replaced by Anza. Anza sought authorization for repairs in mid-September, but Villa failed to authorize them until mid-October. Due to unavailability of parts, the elevators were not repaired until late December 2015, at a cost of $27,000.

Due to elevator breakdowns, Curry was unable to leave his apartment on six to nine occasions beginning in September 2015, including during four days over Thanksgiving. He was unable to ascend to his apartment on five other occasions, necessitating that firefighters carry him in his 300-pound wheelchair up the stairs.

Curry sued defendants for violation of the Fair Employment and Housing Act (FEHA), seeking compensatory damages for past emotional distress and punitive damages.

At trial, Curry testified that being carried up the stairs by firefighters was frightening and humiliating, and he felt worried and "defeated" by the prospect of being trapped in his apartment during an emergency. Curry "hated heights," and feared that the firefighters might stumble and injure them all in the very narrow stairwells, or that due to their unfamiliarity with his wheelchair might accidentally break it, leaving him helpless and "[un]able to drive." Curry's roommate confirmed that lack of elevator access deeply distressed Curry, leaving him unable to relax in the evening and uncertain about his ability to get to work. Curry presented a bank statement, two income statements, and a

balance sheet indicating that Villa made approximately $1.5 million per year in profits. And Curry's counsel suggested that $2 million would be a "fair" noneconomic award.

The jury found defendants liable, and awarded Curry $750,000 for past emotional distress.

In Phase II of the trial, concerning punitive damages, the evidence revealed that Villa was a subsidiary of two parent companies. Anil Mehta, the president of the parent companies, testified that Villa made a profit of approximately $1,600,000 in 2015.

The jury awarded Curry $4.5 million in punitive damages against Villa only, on a finding that Villa had acted oppressively or maliciously.

Defendants moved for a new trial and for judgment notwithstanding the verdict, both of which were denied.

All three defendants appeal.

DISCUSSION

I. The Award for Compensatory was not Excessive

Defendants contend no substantial evidence supports the $750,000 award for past emotional distress damages, which was inflated by jurors desiring to compensate Curry in an amount necessary to purchase other housing. We disagree.

It is unlawful for the owner of a multifamily dwelling building to fail to make the building accessible by disabled persons. (Gov. Code, §§ 12955, subd. (a), 12955.1.) Failure to make the building accessible can subject the owner to actual and punitive damages, including damages for emotional distress. (Gov. Code, § 12989; *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1247.)

" 'The amount of damages is a fact question, first committed to the discretion of the jury and next to the discretion of the trial court on a motion for new trial." (*Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal.App.4th 397, 410.) "All presumptions favor the trial court's ruling, which is entitled to great deference because the trial judge, having been present at trial, necessarily is more familiar with the evidence and is bound by the more demanding test of weighing conflicting evidence rather than our standard of review under the substantial evidence rule." (*Westphal v. Wal-Mart Stores, Inc.* (1998) 68 Cal.App.4th 1071, 1078.) "The power of the appellate court differs materially from that of the trial court in passing on this question. An appellate court can interfere on the ground the judgment is excessive only on the ground that the verdict is so large that, at first blush, it shocks the conscience and suggests passion, prejudice or corruption on the part of the jury.' " (*Kelly-Zurian*, at p. 410.) "[W]e do not reassess the credibility of witnesses or reweigh the evidence. To the contrary, we consider the evidence in the light most favorable to the judgment, accepting every reasonable inference and resolving all conflicts in its favor." (*Westphal*, at p. 1078.)

As outlined above, the jury awarded Curry $750,000 in past emotional distress damages. Substantial evidence presented at trial demonstrates he was trapped in his apartment six to nine times and stranded outside five times due to lack of an elevator. Substantial evidence also indicated that even though the building had three elevators, it was unknown day-to-day whether any would work, or would stop working while someone was inside. Being carried upstairs in his 300-pound wheelchair "terrif[ied]" Curry because he "hated heights" and feared the firefighters

might stumble or break the wheelchair, leaving him helpless, or that he would be unable to exit the building in an emergency.

From these facts the jury could reasonably infer that Curry suffered bouts of fear, humiliation, and social isolation when trapped within or without his apartment, as well as daily anxiety due to uncertainty about his mobility, ability to work, or ability to escape the building in case of emergency.

Defendants argue the emotional distress damages were excessive because Curry was referred to no psychological treatment and suffered no lasting impact on his general health, ability to enjoy life, or personal relationships. He suffered no nightmares, high blood pressure, or trouble sleeping or eating, and had not withdrawn from social or business activities. On the contrary, he continued to run a profitable business. Defendants compare the award to awards in similar cases, and argue that the jury's award of such a substantial sum on so little evidence of serious injury suggests the jury acted out of passion and prejudice. We disagree.

"The mere fact that the judgment is large does not validate an appellant's claim that the verdict is the result of passion or prejudice of the jury." (*DiRosario v. Havens* (1987) 196 Cal.App.3d 1224, 1241.) Curry was deprived of his mobility, which subjected him to fear, humiliation, and social isolation in the moment, and to ongoing anxiety about his future. In this context, the award was not so "grossly disproportionate as to raise a presumption that it is the result of passion or prejudice." (*Cunningham v. Simpson* (1969) 1 Cal.3d 301, 308, 309.)

Further, that the jury awarded approximately one-third of the requested amount of $2 million suggests it was not ruled by passion or prejudice. And we note that defendants' claim of

excessive damages was raised in connection with their motion for a new trial, which was denied by a trial judge unbound by passion or prejudice. In such a circumstance we ordinarily defer to the court's conclusion because the trial court has greater familiarity with the case. (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 64 (*Bertero*).)

On this record, we find the compensatory damages award was not excessive.

Nor are we persuaded by defendants' comparison of the award to awards in other cases. "Each case must be determined on its own facts." (*DiRosario v. Havens*, *supra*, 196 Cal.App.3d at p. 1241.) "The vast variety of and disparity between awards in other cases demonstrate that injuries can seldom be measured on the same scale. . . . For a reviewing court to upset a jury's factual determination on the basis of what other juries awarded to other plaintiffs for other injuries in other cases based upon different evidence would constitute a serious invasion into the realm of fact-finding." (*Bertero, supra,* 13 Cal.3d at pp. 64-65, fn. 12.)

Defendants argue the compensatory damages award was tainted by juror misconduct, as two jurors declared that the jury considered $750,000 to be necessary to compensate Curry for the cost of buying or renting a new house. We disagree.

A jury may not award an improper category of damages or fashion a method for awarding damages that includes an improper category. (See *Moore v. Preventive Medicine Medical Group, Inc.* (1986) 178 Cal.App.3d 728, 743 [jurors improperly fashioned formula for computing lost future earnings capacity that was not based on trial evidence].) Extensive discussion among jurors may evidence an agreement to fashion such an award. (See also *Tramell v. McDonnell Douglas Corp.* (1984) 163

Cal.App.3d 157, 172-173 [extensive discussion evidenced "an implied agreement to inflate . . . verdict to compensate for attorney fees and taxes"].)

In examining whether jury misconduct occurred, a court first determines whether affidavits supporting a misconduct allegation are admissible. The court then determines whether the facts establish misconduct, and finally whether any misconduct was prejudicial. (Code Civ. Proc., § 657, par. 2; *Stokes v. Muschinske* (2019) 34 Cal.App.5th 45, 52.)

Here, the jury was instructed that no award could exceed Curry's past non-economic damages. We presume the jury followed its instruction.

But defendants offered two juror declarations supporting their new trial motion, to the effect that in reaching a figure for compensatory damages, the jury considered how much would be necessary to allow Curry to purchase different housing. One juror declared $750,000 "reflect[ed] the amount that would be enough to cover the cost of a house." He stated, "I told the jury that $750,000 would be an appropriate amount because it is about the cost of a house in the local area. [¶] The jurors voted on various amounts of damages awards about four times. During this time, the jurors discussed awarding the plaintiff, Chris Curry, enough money to buy or rent a house with wheelchair ramps."

The other juror declared that "the jurors came to an agreement that $750,000 would be the appropriate amount to award so that Mr. Curry would be compensated both for his emotional distress and so that he could get a house to live in comfortably." He stated, "I and a few other jurors" recommended

awarding enough damages to "allow a disabled person to get a house."

A court may receive "any otherwise admissible evidence . . . as to statements made, or conduct, conditions, or events occurring, . . . of such a character as is likely to have influenced the verdict improperly." (Evid. Code, § 1150, subd. (a).) But "[n]o evidence is admissible to show the effect of such statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined." (*Ibid*.)

Pursuant to Evidence Code section 1150, the above declarations were admissible only to the extent they described discussions amongst the jurors, not to the extent they offered an interpretation why the jurors awarded $750,000. (*Maxwell v. Powers* (1994) 22 Cal.App.4th 1596, 1604, fn. 3 [juror declaration inadmissible insofar as it recites "the reasoning process the jury employed during deliberations to arrive at its damages figures"].)

Neither juror specified how many jurors (other than "a few") suggested that housing costs were a relevant factor in determining Curry's damages, nor how often or for how long. Fleeting improper comments do not imply that the jury agreed to base the award on improper criteria.

II. Substantial Evidence Supported a Punitive Damages Award

Villa contends the punitive damages award was unsupported by substantial evidence, in that nothing indicated it harbored malice toward Curry or acted oppressively, and nothing indicated it would be able to pay punitive damages. We disagree.

Punitive damages may be awarded upon a showing of oppression or malice. (Civ. Code, § 3294, subd. (a).) Malice is

"conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) It may be found where a defendant acts in callous disregard for the plaintiff's rights, knowing that the conduct "was substantially certain to vex, annoy, and injure" the plaintiff. (*Schroeder v. Auto Driveaway Co*. (1974) 11 Cal.3d 908, 922.) Oppression is "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).)

Here, the evidence showed that Villa held a longstanding disdain for its mobility-disabled tenants, refusing for years despite several complaints to authorize what turned out to be a $27,000 repair, which was effected only after—immediately after—the City of Los Angeles cited Villa for failing to maintain the building's elevators. We conclude that such evidence supports a finding that Villa callously and despicably disregarded its tenants' rights to access and leave their apartments without fire department assistance and, given the uncertainty of the elevators' functioning, knew its conduct was substantially certain to vex and annoy Curry and anyone else who was mobility impaired.

Villa argues that evidence predating Curry's problems with the elevators "cannot constitute evidence of malice or oppression as a matter of law." We disagree. Such evidence demonstrated that Villa was long put on notice of the elevator's problems but deliberately chose to ignore them.

Villa argues it was at most merely negligent, as in good faith it engaged a contractor to maintain the elevators,

evidencing its regard—not disregard, much less callous disregard—for its disabled tenants' rights. The record is to the contrary. Although Villa engaged a maintenance contractor, it refused to pay for repairs, and for months knew that maintenance was failing to correct the elevators' problems.

Villa argues no punitive damages were proper because no evidence indicated it could pay them. (See *Adams v. Murakami* (1991) 54 Cal.3d 105, 111 [an award can be "so disproportionate to the defendant's ability to pay that the award is excessive *for that reason alone*"].) This is so, it argues, because evidence of yearly profits, without evidence of financial liabilities, is insufficient; a plaintiff must put forth evidence of the defendant's net worth as a matter of law. The argument is without merit.

"Where the defendant's oppression, fraud or malice has been proven by clear and convincing evidence, California law permits the recovery of punitive damages 'for the sake of example and by way of punishing the defendant.' [Citations.] . . . [T]he defendant's financial condition is an essential factor in fixing an amount that is sufficient to serve these goals without exceeding the necessary level of punishment. '[O]bviously, the function of deterrence . . . will not be served if the wealth of the defendant allows him to absorb the award with little or no discomfort.' [Citation.] . . . [Citation.] On the other hand, 'the purpose of punitive damages is not served by financially destroying a defendant.' " (*Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1184-1185.)

"A reviewing court cannot make a fully informed determination of whether an award of punitive damages is excessive unless the record contains evidence of the defendant's financial condition." (*Adams v. Murakami*, *supra*, 54 Cal.3d at p. 110.) The evidence must provide a "balanced overview of the

defendant's financial condition; a selective presentation of financial condition evidence will not survive scrutiny." (*Farmers & Merchants Trust Co. v. Vanetik* (2019) 33 Cal.App.5th 638, 648.) "In most cases, evidence of earnings or profit alone" is "not sufficient 'without examining the liabilities side of the balance sheet.' " "Normally, 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.)

But our Supreme Court has expressly declined "to prescribe any rigid standard for measuring a defendant's ability to pay." (*Adams v. Murakami*, *supra*, 54 Cal.3d at p. 116, fn. 7; see *County of San Bernardino v. Walsh* (2007) 158 Cal.App.4th 533, 546 [rejecting net worth as the only measure of a defendant's ability to pay]; *Zaxis Wireless Communications, Inc. v. Motor Sound Corp.* (2001) 89 Cal.App.4th 577, 582 [same]; but see *County of San Bernardino v. Walsh*, at p. 546 ["A defendant's 'net worth' is the critical determinant of financial condition, but there is no rigid formula and other factors may be dispositive especially when net worth is manipulated and fails to reflect actual wealth"]; *Kenly v. Ukegawa* (1993) 16 Cal.App.4th 49, 57 ["in most cases there must be evidence of the defendant's net worth"; "An award based solely on the alleged 'profit' gained by the defendant, in the absence of evidence of net worth, raises the potential of its crippling or destroying the defendant, focusing as it does solely on the assets side of the balance sheet *without examining the liabilities side of the balance sheet*. Without evidence of the entire financial picture, an award based on 'profit' could leave a defendant devoid of assets with which to pay his other liabilities"].)

The issue turns not on Villa's net worth, but on whether the amount of punitive damages exceeds the level necessary to punish and deter.

Here, Anil Mehta, the president of Villa's parent companies, testified that Villa California (the apartment building itself) made a "net profit" of approximately $700,000 in 2015. A 2016 annual income statement showed it made $1,586,982.11 in "net profits after all expenses," and a 2017 partial (January to September) annual income statement showed it made $1,487,784.57 in "net profits after all expenses." A statement for the 12-month period immediately preceding trial showed Villa California made a "net profit after all expenses" of $1,674,113.71.

Villa argues that although these figures may indicate how much its apartment building profited, they fail to reflect the financial condition of either Academy Pointe itself, which owned the building, or J.K. Residential Services, which oversaw the property. On the contrary, Villa argues, the only evidence about J.K. Residential's financial condition was Mehta's testimony that as a management company, it operated in a "breaking-even situation."

We disagree. An apartment building's annual profits equal to roughly twice the punitive damages award (as reduced, *post*), adequately establish that such an award is not more than necessary to punish and deter the building's owner and property manager. And nothing in the record indicates Villa would be unable to pay such an award. On the contrary, an award of roughly one-half the profits realized from an ongoing enterprise in which wrongdoing has occurred will normally be deemed payable. If such an award means the tortfeasor cannot meet liabilities arising from other enterprises, that default would result from the tortfeasor's choice to divert funds from one enterprise to another, not from the award itself. The state has no

interest in subsidizing a tortfeasor's wrongdoing on the theory that profits realized in part from the wrongdoing are needed elsewhere.

In any event, before trial, Curry issued a discovery request for all of Villa's profit and loss statements, documents evidencing net worth and assets, and federal tax returns. He then offered at trial what Villa had produced. Villa argues that to the extent its production was desultory, Curry failed to pursue his discovery remedies to flesh it out. Fair enough. But once Curry produced the apartment building's financial statements showing substantial profits, the jury was entitled to infer Villa ran a highly lucrative enterprise, and a high punitive damages award was necessary to punish it for skimping on disabled access in that enterprise, and deter it from doing so in the future. If Villa wanted to present a more complete picture of its financial condition in rebuttal, it had ample opportunity to do so.

III. $4.5 Million in Punitive Damages Was Excessive

Curry contends the amount of punitive damages awarded was excessive, because: (1) improper evidence was admitted concerning the "book value" of Villa itself and of its parent corporations; (2) the amount was disproportionate to its ability to pay; (3) the amount exceeded what was necessary to punish and deter; and (4) the amount violated Villa's due process rights.

With respect to the evidentiary issue, before trial, Curry sought Villa's tax returns. Villa responded that it had filed no independent returns, as its taxes were paid as part of the returns filed by its parent companies. At trial, Curry asked Mehta, the president of the parent companies, about the assets of the real estate enterprise of which Villa was a part. Mehta testified the enterprise was worth about $500 million. During closing argument, Curry's attorney reminded the jury that Mehta had

testified that the real estate enterprise was worth $500 million, and later said that the $7.5 million in punitive damages that Curry was requesting would be "a blip according to the $500,000,000 they say is under their control."

On appeal, Villa argues this $500 million figure was irrelevant, and caused the jury to inflate punitive damages. We need not decide whether the reference to $500 million was error, because nothing in the record suggests the requisite prejudice, in other words that the jury would have awarded less than $4.5 million in punitive damages without that reference or less than the $750,000 amount to which we reduce the punitive damages award on due process grounds (a reduction we make without consideration of the objected-to $500 million figure).

Due process "prohibits states from imposing ' "grossly excessive" ' punitive damages awards on tortfeasors." (*Nickerson v. Stonebridge Life Ins. Co.* (2016) 63 Cal.4th 363, 367 (*Nickerson*).) In evaluating the size of a punitive damages award, we consider " '(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.' " (*Id.* at pp. 371-372.)

"A trial court conducts this inquiry in the first instance; its application of the factors is subject to de novo review on appeal." (*Nickerson*, *supra*, 63 Cal.4th at p. 372.)

Applying these considerations to the instant case, we conclude that the $4.5 million award violated due process.

A. Degree of Reprehensibility

[D]ifferent acts may be of varying degrees of reprehensibility, and the more reprehensible the act, the greater the appropriate punishment, assuming all other factors are equal." (*Neal*, *supra*, 21 Cal.3d at p. 928.) " 'Jurors, not appellate justices, hear the evidence and determine the facts. Properly instructed, they are the primary arbiters of acceptable behavior . . . . It is they, with their collective understanding of the limits of what decent citizens ought to have to tolerate, who are charged with assessing the degree of reprehensibility and meting out an appropriate financial disincentive . . . . Their authority is not unbridled. However, our role in reviewing the jury's work is a deferential one.' " (*Amerigraphics, Inc. v. Mercury Casualty Co.* (2010) 182 Cal.App.4th 1538, 1560.)

Here, the degree of Villa's reprehensibility was relatively low. Viewing the record in a light most favorable to the judgment, as we must, Villa's conduct involved a calculated design to neglect its elevators in order to save money, despite actually or constructively knowing that at least one of its tenants would be unable to navigate to or from his apartment without them. But Villa did not shut down the elevators deliberately, it merely risked that they would break on their own. The reprehensibility of taking an unjustified risk must be measured in terms of the harm that could result and the degree of certainty that it would result. Here, that Curry would suffer harm was virtually certain. The elevators broke down many times, sometimes for long periods, and it could reasonably be foreseen that at least one of these breakdowns would injure Curry and others. But Curry suffered only discrete episodes of humiliation, fear, and social isolation, and generalized shame and anxiety for

only a few months. The jury quantified this harm in the amount of $750,000, which we conclude was ample.

B. Relationship Between Compensatory and Punitive Damages

Exemplary damages must bear a reasonable relationship to " ' "*the harm likely to result* from the defendant's conduct as well as the harm that actually has occurred." ' " (*BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, 581 (*Gore*).) Although there is no " 'bright-line ratio which a punitive damages award cannot exceed,' " " 'in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.' " (*Nickerson*, *supra*, 63 Cal.4th at p. 372.) "[L]ow awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages." (*Gore*, at p. 582.) But the converse is also true: "When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." (*State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 425 (*State Farm*).)

The compensatory award in this case was substantial; the jury awarded Curry $750,000 for approximately four months of emotional distress. This was complete compensation. Moreover, the compensatory damages were likely based on a component that was duplicated in the punitive award. Much of Curry's distress was caused by the outrage and humiliation he suffered because of Villa's disdain for his right to accessible housing. A major role of punitive damages is to condemn such conduct. The compensatory award thus already contained a punitive element.

(See Rest.2d Torts (1977) § 908, com. c, p. 466 ["In many cases in which compensatory damages include an amount for emotional distress, such as humiliation or indignation aroused by the defendant's act, there is no clear line of demarcation between punishment and compensation and a verdict for a specified amount frequently includes elements of both"].)

Due process permits a lower ratio between punitive damages and a substantial compensatory award for emotional distress where the award "may be based in part on indignation at the defendant's act and may be so large as to serve, itself, as a deterrent." (*Simon v. San Paolo U.S. Holding Co., Inc.*, *supra*, 35 Cal.4th at p. 1189.)

C. Civil Penalties Authorized in Comparable Cases

The third guidepost involves consideration of "the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." (*State Farm*, *supra*, 538 U.S. at p. 418.) As a comparable civil sanction here, FEHA authorizes the Attorney General to initiate a civil action when "any person or group of persons is engaged in a pattern or practice" of housing discrimination, or "any group of persons" has been denied accessible housing because of the discrimination, and authorizes a civil penalty of up to $50,000 for a first violation and up to $100,000 for any subsequent violation. (Gov. Code, § 129893, subds. (a) & (f)(3).) (Curry identifies several other penalty provisions in the Health and Safety Code, Civil Code, and Los Angeles Municipal Code pertaining to substandard housing.)

Villa engaged in a pattern and practice of failing to provide working elevators, subjecting it to a civil penalty of up to $50,000,

and Curry was injured 11 times, potentially subjecting Villa to an additional penalty that might theoretically approach $1.1 million.

That civil penalties might reach only $1.1 million indicates the $4.5 million awarded here was excessive.

D. Conclusion

Due process entitles a tortfeasor to " 'fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.' " (*State Farm*, *supra*, 538 U.S. at pp. 416-417.) Quantification of such a penalty must be the product of the " ' "application of law, rather than a decisionmaker's caprice." ' " (*Id.* at p. 418.)

Here, the $4.5 million punitive damages award bore no reasonable relation to Villa's reprehensibility, Curry's harm, or possible civil penalties. We therefore hold that the award violated due process.

Moreover, there appears no rationale why punitive damages should exceed compensatory damages in this case. On the contrary, where the reprehensibility of an actor's wrongful conduct equates in principle with the harm actually suffered—for example where unjustified risktaking leads to exactly the harm that should have been avoided—a one-to-one relationship between compensatory and punitive damages is reasonable; a risk taker would be put on fair notice of no more. We therefore conclude that under the circumstances of this case, a one-to-one ratio between punitive compensatory and punitive damages represents the upper limit that due process would permit.

We will therefore affirm the punitive damages award but order it reduced to $750,000.

Given this result, we need not decide whether the jury's $4.5 million punitive damages award was excessive for other than due process reasons.

IV. Post-Verdict Interest

The court awarded Curry interest on the judgment from the time the verdict was rendered rather than the time judgment was entered. Defendants contend this was improper, and Curry waives any argument on the point. We will therefore remand the matter for correction of the interest award.

DISPOSITION

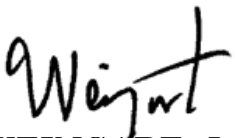
The award of punitive damages is reduced to $750,000, and the judgment is affirmed as modified except as to the amount of interest. On remand, the trial court shall recalculate the interest and enter a new judgment reflecting the proper amount. Each side is to bear its own costs on appeal.

NOT TO BE PUBLISHED

CHANEY, J.

We concur:

ROTHSCHILD, P. J.



WEINGART, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.