

## **APPENDIX**

## APPENDIX

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## APPENDIX A

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### Cal Supreme Petition for Review Denied

Supreme Court of California Case Notification for:  
S285143

Date: Wed, 24 Jul 2024 10:58:04 -0700

From: Notify@jud.ca.gov

To: bob@ushawks.org

bob@ushawks.org, the following transaction has  
occurred in:

**MARIEN v. KUCZEWSKI**

Case: S285143, Supreme Court of California

Date (YYYY-  
MM-DD): 2024-07-24

Event Petition for review

Description: denied

For more information on this case, go to:

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[https://appellatecases.courtinfo.ca.gov/search/case/  
disposition.cfm?  
dist=0&doc\\_id=3067456&doc\\_no=S285143&request\\_t  
oken=OCIwLSEnXkw4W1BdSCNNSENIUFA0  
UDxTKyNOQz5TTDtNCg%3D%3D](https://appellatecases.courtinfo.ca.gov/search/case/disposition.cfm?dist=0&doc_id=3067456&doc_no=S285143&request_token=OCIwLSEnXkw4W1BdSCNNSENIUFA0UDxTKyNOQz5TTDtNCg%3D%3D)

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**APPENDIX D**

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**UNPUBLISHED**

Filed 4/16/24

Marien v. Kuczewski CA4/1

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**COURT OF APPEAL, FOURTH APPELLATE DISTRICT**

**DIVISION ONE**

STATE OF CALIFORNIA

ROBIN MARIEN et al., Plaintiffs and Respondents, v. ROBERT MICHAEL KUCZEWSKI, Defendant and Appellant.	D080658 (Super. Ct. No. 37-2015- 00015685-CU- DF-CTL)
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APPEAL from a judgment of the Superior  
Court of San Diego County, Kenneth J. Medel, Judge.  
Affirmed.

Robert Michael Kuczewski, in pro. per., for  
Defendant and Appellant.

Shewry & Saldaña and Christopher C. Saldaña  
for Plaintiffs and Respondents.

This case is before us a third time. We do not  
repeat the factual and procedural background that  
we set forth in the nonpublished opinion, *Marien v.*

*Kuczewski*, D069836 (Sept. 28, 2017) (*Marien I*), where we explained that plaintiffs and appellants Robin Marien, Gabriel Jebb and Air California Adventure, Inc. sued Robert Michael Kuczewski in a first amended complaint alleging 33 causes of action, including 27 for defamation regarding their operation of the Torrey Pines Gliderport. We affirmed the trial court's order denying Kuczewski's motion to strike the complaint under Code of Civil Procedure<sup>1</sup> section 425.16, the anti-SLAPP (strategic lawsuit against public participation) statute. (*Marien I, supra*, D069836.) We held, "Contrary to Kuczewski's assertion, we conclude none of his 33 causes of action alleged in the [first amended complaint] arise out of any statements or other conduct in connection with any public issue or issue of public interest within the meaning of section 425.16, subdivision (e)(3) or

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<sup>1</sup> Undesignated statutory references are to the Code of Civil Procedure.

(4). . . . [W]e conclude that, to the extent the . . . causes of action are based on Kuczewski's statements about [p]laintiffs (e.g., defamation causes of action), those statements involved, at most, a private controversy or dispute between [p]laintiffs and Kuczewski and not any public issue or issue of public interest." (*Marien I, supra*, D069836.)

In the nonpublished opinion *Marien v. Holland*, D077586 (Jul. 20, 2021) (*Marien II*), we pointed out that plaintiffs in a second amended complaint added Marjorie Holland as a named defendant. She filed a section 425.16 motion, which the trial court denied. We affirmed that ruling, reiterating: "Contrary to Holland's assertion, we conclude none of the 32 causes of action alleged against her in the [second amended complaint] arise out of any statements or other conduct in connection with any public issue or issue of public interest

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within the meaning of section 425.16, subdivision (e) (3) or (4)." (*Marien II, supra*, D077586.)

On remand, a jury by special verdict found Kuczewski committed defamation *per se* against all plaintiffs. It also found against Kuczewski on all cross-claims. The jury awarded plaintiffs \$1,750,003.00 plus \$50,000 in punitive damages.

On July 8, 2022, Kuczewski filed a notice of appeal.

On July 15, 2022 Kuczewski moved for a new trial and a judgment notwithstanding the verdict. The court denied both motions.

On July 20, 2022, the court entered judgment.<sup>2</sup>

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2 We construe this appeal as taken from the July 20, 2022 judgment. We liberally construe notices of appeal "so as to protect the right of appeal if it is reasonably clear what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced'" (*In re Joshua S.* (2007) 41 Cal.4th 261, 272; accord, Cal. Rules of Court, rule 8.100(a)(2).)

In Kuczewski's opening brief he contends:

"The single most egregious error (of many) by the superior court was issuing improper jury instructions which cast the matter as a private dispute between private citizens in a private matter." (Some capitalization omitted.) We glean additional arguments: He argues respondents did not operate their business under a proper lease, and that the trial court "should have clearly recognized the importance of this issue and its fatality to [their] case. Yet the court refused to consider the matter and curtailed [his] probing of the matter in court." (Some capitalization omitted.) He also argues the court "refused to allow key video files to be presented to the jury," and it continually limited his questioning of witnesses throughout the trial, particularly of an expert witness.

Plaintiffs respond: "Kuczewski's opening brief is a largely incomprehensible manifesto comprised of

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non-sequiturs and inflammatory statements. [He] entirely fails to frame his appeal by reference to claims of error, record evidence, and authority bearing on his claimed error.” They explain the court issued a settled statement “regarding unreported items occurring in the case, which includes discussions and rulings on jury instructions and verdict forms, and the unreported testimony of [certain] witnesses[.]” Plaintiffs also contend Kuczewski fails to cite to the record and provide cogent arguments or sound legal analysis and therefore has not presented sufficient grounds for reversal.<sup>3</sup> We agree and affirm.

## DISCUSSION

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3 In reply, Kuczewski challenges plaintiffs’ critique of his opening brief, but does not attempt to address the deficiencies they pointed out. He merely responds: “Appellant admits to being inexperienced, but asserts that all of the statements in the [opening brief] are true and accurate. Respondents [sic] need to resort to such characterizations reveals the weakness in their response.”

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“Every brief must support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears. (Cal. Rules of Court, rule 8.204(a)(1)(C).) . . . If a party fails to support an argument with the necessary citations to the record, the argument will be deemed waived.” (*LA Investments, LLC v. Spix* (2022) 75 Cal.App.5th 1044, 1061; accord, *In re S.C.* (2006) 138 Cal.App.4th 396, 408.)

Any ambiguity in the record is resolved in favor of the judgment. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608.) On appeal, this court starts with a presumption that the judgment or order being appealed is correct; the burden is on the appellant to affirmatively show error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [“‘All intendments and presumptions are indulged to support [the judgment or order] on matters as to which the record is silent, and error must be affirmatively shown’”].)

As an appellant, Kuczewski is further obligated to demonstrate how the rulings he challenges prejudiced him. (See *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800-802; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 105-106 [“[O]ur duty to examine the entire cause arises when and only when the appellant has fulfilled his duty to tender a proper prejudice argument. Because of the need to consider the particulars of the given case, rather than the type of error, the appellant bears the duty of spelling out in his brief exactly how the error caused a miscarriage of justice”]; *Vaughn v. Jonas* (1948) 31 Cal.2d 586, 601 [“[t]o presume in favor of error or prejudice would be directly contrary to the policy of this state”].)

Based on the above principles and Kuczewski’s deficient briefing, he has not overcome the appellate presumptions set forth above and we must resolve this appeal in favor of the judgment. Kuczewski has

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forfeited his claims because he has not set forth the portion of the courts' rulings or the jury's findings he disagrees with or made cogent arguments assigning error with proper citations to the record and the applicable law. The presentation of an appeal is not merely a rehash of arguments unsuccessful at trial, but instead is a careful assertion of *legal* error and resulting prejudice. (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.)

Kuczewski acknowledges his opening brief lacks proper citation to legal authority. Under a section titled "Table of Authorities," he writes: "None submitted. . . . Appellant lacks the experience and resources to find appropriate authorities and begs the Appellate Justices to use their own extensive background in the law for any such references. Appellant also asserts that the questions at issue are fundamental rights granted by the First Amendment to the United States Constitution.

These include freedom of speech and freedom of the press, and should be interpreted to favor the rights to speak and publish.” Kuczewski misapprehends the scope of our review, and overlooks that the above appellate review principles apply regardless of whether an appellant is represented by counsel or is self-represented. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.) “By failing to provide an adequate record, [Kuczewski] cannot meet his burden to show error and we must resolve any challenge . . . against him.” (*Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348.)

We also decline to address Kuczewski’s challenge to the settled statement raised for the first time in his reply brief.<sup>4</sup> “For obvious reasons of fairness, points raised for the first time in a reply

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<sup>4</sup> Kuczewski contends: “The ‘Settled Statement’ was not a settled statement at all. The court completely ignored [his] proposed settled statement. Instead, the court adopted plaintiff’s [sic] lawyer’s version which was a re-write of the actual history of the testimony.” (Some capitalization omitted.)

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brief will ordinarily not be considered.” (*Rubinstein v. Fakheri* (2020) 49 Cal.App.5th 797, 809.)

**DISPOSITION**

The judgment is affirmed.

**O'ROURKE, J.**

**WE CONCUR:**

**McCONNELL, P. J.**

**BUCHANAN, J.**

**Additional material  
from this filing is  
available in the  
Clerk's Office.**