INDEX OF APPENDICIES

APPENDIX A
DENIAL OF REVIEW
BY CALIFORNIA SUPREME COURT

S251954

IN THE SUPREME COURT OF CALIFORNIA

En Banc

WILLIAM RAMIREZ et al., Petitioners,

v.

COURT OF APPEAL, THIRD APPELLATE DISTRICT et al., Respondents;

MEGAN MANGIARACINA, Real Party in Interest.

The petition for writ of mandate is denied.

CANTIL-SAKAUYE

Chief Justice

APPENDIX B
DENIAL OF TRANSFER
BY CALIFORNIA COURT OF APPEALS

IN THE

Court of Appeal of the State of California

IN AND FOR THE THIRD APPELLATE DISTRICT

MEGAN MANGIARACINA,
Plaintiff and Respondent,
v.
WILLIAM RAMIREZ et al.,
Defendants and Appellants.

C087944
El Dorado County
No. SCU20170067

BY THE COURT:

The petition for transfer filed September 18, 2018, is denied. The clerk of this court is directed to immediately return the record filed in this matter to the trial court clerk.

Mauro
MAURO, Acting P.J.

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cc: See Mailing List

APPENDIX C
DENIAL OF APPLICATION FOR RECONSIDERATION AND
IN RE REQUEST FOR TRANSFER TO THE COURT OF APPEALS
BY CALIFORNIA SUPERIOR COURT APPELLATE DIVISION

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO
APPELLATE DEPARTMENT

EL DORADO CO. SUPERIOR CT.
FILED AUG 28 2018
BY _____ Deputy

MEGAN MANGIARACINA,

Plaintiff/Respondent,

vs

BILLIE RAMIREZ and STACEY RAMIREZ,

Defendants/Appellants.

_____/

EL DORADO COUNTY SUPERIOR COURT NO. SCU20170067

EL DORADO CO. SUPERIOR COURT APPELLATE DEPT. NO. SCU20170067

ORDER RE PETITION FOR REHEARING AND APPLICATION FOR CERTIFICATION FOR TRANSFER

Having reviewed Appellants' request and the record, the Court denies Appellants' Application for Certification for Transfer under California Rules of Court, Rule 8.1005, to the Third District Court of Appeal. Appellants have failed to establish transfer is necessary to secure uniformity of decision or to settle an important question of law.

Further, Appellants' Petition for Rehearing is also denied for lack of merit.

DATED: 8/28/18

_____
VICKI ASHWORTH, ASSISTANT PRESIDING JUDGE OF THE SUPERIOR COURT

DATED: 8-28-18

_____
KENNETH J. MELIKIAN, JUDGE OF THE SUPERIOR COURT

DATED: _____

_____
WARREN C. STRACENER, JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO
APPELLATE DEPARTMENT

MEGAN MANGIARACINA,

Plaintiff/Respondent,

vs

BILLIE RAMIREZ and STACEY RAMIREZ,

Defendants/Appellants.

_____/

EL DORADO COUNTY
SUPERIOR COURT NO.
SCU20170067

EL DORADO CO. SUPERIOR
COURT APPELLATE DEPT.
NO. SCU20170067

ORDER RE PETITION FOR REHEARING AND APPLICATION FOR CERTIFICATION FOR TRANSFER

Having reviewed Appellants' request and the record, the Court denies Appellants' Application for Certification for Transfer under California Rules of Court, Rule 8.1005, to the Third District Court of Appeal. Appellants have failed to establish transfer is necessary to secure uniformity of decision or to settle an important question of law.

Further, Appellants' Petition for Rehearing is also denied for lack of merit.

DATED: 8/28/18

VICKI ASHWORTH, ASSISTANT PRESIDING JUDGE OF THE SUPERIOR COURT

DATED: _____

KENNETH J. MELIKIAN, JUDGE OF THE SUPERIOR COURT

DATED: 8-28-18

WARREN C. STRACENER, JUDGE OF THE SUPERIOR COURT

CLERK'S CERTIFICATE OF MAILING

I, LYNN CAVIN, Deputy Clerk of the Superior Court of the County of El Dorado, State of California, do hereby certify that I am a citizen of the United States and employed in the County of El Dorado; I am over the age of eighteen years and not a party to the within action; my business address is Superior Court of the State of California, County of El Dorado, 495 Main Street, Placerville, 95667; and that I delivered a copy of the **ORDER RE PETITION FOR REHEARING AND APPLICATION FOR CERTIFICATION FOR TRANSFER** to the individual(s) listed below:

WILLIAM RAMIREZ AND
STACEY RAMIREZ
P.O. BOX 262
CEDARVILLE, CA 96104

SCOTT W. SOUERS
ALLING & JILLSON
P.O. BOX 3390
LAKE TAHOE, NV 89449

I am familiar with the business practice of El Dorado County Superior Court with regard to collection and processing of documents for mailing. The documents described above were placed for collection and mailing in Placerville, California, through either the United States Post Office, Inter-Departmental Mail or Courthouse Attorney Box.

Executed on August 28, 2018 at Placerville, California.

EL DORADO COUNTY SUPERIOR COURT

BY: _____
Lynn Cavin, Court Clerk IV, Appeals

APPENDIX D
DECISION ON APPEAL
BY CALIFORNIA SUPERIOR COURT APPELLATE DIVISION

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO
APPELLATE DEPARTMENT

MEGAN MANGIARACINA,

Plaintiff/Respondent.

Vs

BILLIE RAMIREZ and STACEY RAMIREZ,

Defendants/Appellants.

EL DORADO SUPERIOR COURT
AND SUPERIOR COURT APPELLATE
NO. SCU20170067

OPINION

After court trial on August 1, 2017 the court entered judgment in favor of plaintiff and against defendants for possession of the subject real property and $6,876.26 in damages and costs. Defendants/Appellants filed several ex parte motions to vacate the judgment, quash the writ for possession, and after being evicted, to restore defendants/appellants to possession of the property, which were heard on August 15, August 22, September 8, and September 18, 2017. At the hearing on August 22, 2017 the court amended the judgment by only reducing the amount of damages and costs awarded to $5,776.46. All other motions and requests were denied. Defendants/Appellants then filed an ex parte motion for reconsideration, which was heard and determined on September 18, 2017. On October 6, 2017 defendants/appellants filed a notice of appeal and petition for writ of mandate to restore possession of the property to defendants/appellants. Defendants'/ Appellants' petition for writ of mandate was denied on May 22, 2018.

Defendants/Appellants appeal from the judgment on various grounds and plaintiff/respondent opposes the appeal on various grounds. Defendants/Appellants replied to the opposition.

Timeliness of Appeal

"Unless a statute or rule 8.823 provides otherwise, a notice of appeal must be filed on or before the earliest of: ¶ (1) 30 days after the trial court clerk mails the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was mailed; ¶ (2) 30 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or ¶ (3) 90 days after the entry of judgment. ¶ (4) Service under (1) and (2) may be by any method permitted by the Code of Civil Procedure, including electronic service when permitted under Code of Civil Procedure section 1010.6 and rules 2.250-2.261." (Rule of Court, Rule 8.822(a).)

Plaintiff/Respondent argues that the appeal was not timely filed and must be dismissed, because plaintiff/respondent served a copy of the proposed amended judgment on defendants/appellants by mail on August 16, 2017, the 30 day time limitation to file the notice of appeal commenced to run on August 22, 2017 when the judgment was entered in the presence of defendants/appellants, and, therefore, the filing of the notice of appeal on October 6, 2017 was untimely.

The amended judgment was not entered until August 22, 2017 after a court hearing. Therefore, at the time purported notice of entry of judgment was served on defendants/appellant by plaintiff/respondent, it was merely a proposed judgment with no legal effect whatsoever. It is only after the judgment is entered and a notice of entry of that final judgment is served after entry of the judgment, that the 30 day time limitation to file a notice of appeal commences to run. Plaintiff/Respondent not having served a notice of entry of judgment after the judgment was entered, defendants/appellants had 90 days from entry of judgment to file the notice of appeal (Rule 8.822(a)(3).). Therefore the filing of the notice of appeal on October 6, 2017 was timely.

Scope of Review on Appeal

Plaintiff/Respondent argues that since appealable orders in limited civil cases are limited to those stated in Code of Civil Procedure § 904.2, the defendants/appellants can not raise issues related to the rulings on the motion to quash service of the 1st Amended Complaint, the demurrer, the motion to vacate the judgment, and the motion to vacate the amended judgment.

Plaintiff/Respondent fails to recognize the distinction between directly appealable orders and review of non-appealable orders on appeal from the appealable judgment that is entered in the case.

"Upon an appeal pursuant to Section 904.1 or 904.2, the reviewing court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party, including, on any appeal from the judgment, any order on motion for a new trial, and may affirm, reverse or modify any judgment or order appealed from and may direct the proper judgment or order to be entered, and may, if necessary or proper, direct a new trial or further proceedings to be had. The respondent, or party in whose favor the judgment was given, may, without appealing from such judgment, request the reviewing court to and it may review any of the foregoing matters for the purpose of determining whether or not the appellant was prejudiced by the error or errors upon which he relies for reversal or modification of the judgment from which the appeal is taken. The provisions of this section do not authorize the reviewing court to review any decision or order from which an appeal might have been taken."(Code of Civil Procedure § 906.)

The appellate panel will consider all claims of error that are raised by defendants/appellants that were not waived at the trial court and involve an intermediate ruling, proceeding, order, or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of defendants/appellants.

Order on Motion to Quash Service of 1st Amended Complaint

Defendants/Appellants concede in both their motion to quash service of the 1st Amended Complaint and the opening brief that the 1st Amended Complaint was served on them by mail. (Motion to Quash Service of 1st Amended Complaint Filed on July 18, 2017, page 3, lines 7-8; and Appellants' Opening Brief, page 14, Section I.C.)

Citing Code of Civil Procedure, § 1952.3(a)(1) defendants/appellants contend that after having made a general appearance by filing a demurrer to the initial complaint, plaintiff/respondent was required to personally serve defendants/appellants with the 1st Amended Complaint and, therefore, the service by mail was invalid and should have been quashed.

"(a) Except as provided in subdivisions (b) and (c), if the lessor brings an unlawful detainer proceeding and possession of the property is no longer in issue because possession of the property has been delivered to the lessor before trial or, if there is no trial, before judgment is entered, the case becomes an ordinary civil action in which: ¶ (1) The lessor may obtain any relief to which he is entitled, including, where applicable, relief authorized by Section 1951.2; but, if the lessor seeks to recover damages described in paragraph (3) of subdivision (a) of Section 1951.2 or any other damages not recoverable in the unlawful detainer proceeding, the lessor shall first amend the complaint pursuant to Section 472 or 473 of the Code of Civil Procedure so that possession of the property is no longer in issue and to state a claim for such damages and shall serve a copy of the Amended Complaint on the defendant in the same manner as a copy of a summons and original complaint is served." (Civil Code, § 1952.3(a)(1).)

Section 1952.3(a)(1) only applies where the possession of the property is no longer at issue and the unlawful detainer action is converted to an ordinary civil action for damages for past due rent and holdover damages. That is not the procedural posture of the instant case at the time the 1st Amended Complaint was filed and served. Section 1952.3(a)(1) does not apply.

"Except with leave of the court, all pleadings subsequent to the complaint, together with proof of service unless a summons need be issued, shall be filed with the clerk or judge, and copies thereof served upon the adverse party or his or her attorney." (Code of Civil Procedure, § 465.)

"After a party has appeared in litigation and designated a counsel of record, the general rule is that future pleadings and notices may be served on that counsel. (See §§ 465, 1010 ["Notices and other papers may be served upon the party or attorney in the manner prescribed in this chapter, when not otherwise provided by this code."].)" (*Abers v. Rohrs* (2013) 217 Cal.App.4th 1199, 1209.)

An Amended Complaint is effectively served on counsel by mail. (See *Bristol Convalescent Hospital v. Stone* (1968) 258 Cal.App.2d 848, 865.) Therefore, the same can be said of service of the amended complaint in this action by mail on defendants/appellants, in pro per, who have previously appeared in this action.

The court did not err in effectively denying the motion to quash service of the 1st Amended Complaint.

Order Overruling Demurrer to 1st Amended Complaint

Defendants/Appellants contend that they were prepared to present evidence to establish that the 1st Amended Complaint was fatally defective by establishing that the amount of past due rent stated in the three day notice was grossly inflated. Defendants/Appellants contend that the court's purported lack of interest in hearing testimony on the issue was reversible error.

Defendants'/Appellants' argument that the trial court was required to hear testimony and consider evidence in ruling on a demurrer lacks merit.

When any ground for objection to a complaint appears on its face, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by demurrer to the pleading. (Code of Civil Procedure, § 430.30(a).)

"'A demurrer admits all material and issuable facts properly pleaded. [Citations.] However, it does not admit contentions, deductions or conclusions of fact or law alleged therein.' (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713 [63 Cal.Rptr. 724, 433 P.2d 732].) Also, '... "plaintiff need only plead facts showing that he may be entitled to some relief [citation]." [Citation.] Furthermore, we are not concerned with plaintiff's possible inability or difficulty in proving the allegations of the complaint.' (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572 [108 Cal.Rptr. 480, 510 P.2d 1032].)" (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 696-697.)

Holding a trial on the truth of the facts alleged in the 1st Amended Complaint would be in error. Truth of the complaint's allegations is presumed for the purposes of the demurrer. The defect must appear on the face of the pleading and matters of which judicial notice may be taken. It is irrelevant for the purposes of demurrer that the demurring party can present evidence and testimony to establish that the plaintiff will not be able to prove her case. Submission of the evidence in support of a judgment on the merits of the case is reserved for trial or motion for summary judgment, not demurrer proceedings.

The trial court did not err in focusing only on the 1st Amended Complaint and not on evidence outside the four corners of the pleading.

Time Limitation to Respond to 1st Amended Complaint

Citing Code of Civil Procedure, § 594(b) and Rules of Court, Rule 3.1320(g), defendants/appellants contend that their right to due process was violated by setting trial within six days of ruling on the demurrer to the 1st Amended Complaint, instead of providing 10 days advance notice, and by shortening the time to file the answer to the 1st Amended Complaint.

The settled statement states that the court shortened time to answer the 1st Amended Complaint to three days; provided more than five days advance notice of the trial; and defendants/appellants did not object to the order at the time it was issued, thereby waiving the issue. (Clerk's Transcript (CT) 187-188.)

The defendants/appellants have not cited to any portion of the record wherein they objected to the orders setting the trial date and time to answer the 1st Amended Complaint at the time that order was issued.

"As a general rule, a claim of error will be deemed to have been forfeited when a party fails to bring the error to the trial court's attention by timely motion or objection. (*People v. Simon* (2001) 25 Cal.4th 1082, 1103, 108 Cal.Rptr.2d 385, 25 P.3d 598; *Keener v. Jeld–Wen, Inc.* (2009) 46 Cal.4th 247, 265–266, 92 Cal.Rptr.3d 862, 206 P.3d 403.) " ' " 'The purpose of the general doctrine of waiver [or forfeiture] is to encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had....' " [Citation.] " 'No procedural principle is more familiar to this Court than that a constitutional right,' or a right of any other sort, 'may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.' ..." [Citation.] [¶] "The rationale for this rule was aptly explained in *Sommer v. Martin* (1921) 55 Cal.App. 603 at page 610, 204 P. 33.... ' "In the hurry of the trial many things may be, and are, overlooked which would readily have been rectified had attention been called to them. The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal." ' " ' " (*People v. Simon, supra,* at p. 1103, 108 Cal.Rptr.2d 385, 25 P.3d 598.) Nonetheless, it is within this court's discretion to make an exception to this rule when the issue on appeal relates to a question of law only, or where the public interest or public policy is involved. (*Bayside Timber Co. v. Board of Supervisors* (1971) 20 Cal.App.3d 1, 5, 97 Cal.Rptr. 431.)" (*Avalos v. Perez* (2011) 196 Cal.App.4th 773, 776-777.)

The appellate panel finds that defendants/appellants waived their right to raise on appeal the issue related to the advance notice of the date of trial and time period given to answer the 1st Amended Complaint.

Even if the advance notice of trial issue is not waived, Code of Civil Procedure, § 594(a) only provides for five days advance notice of the trial date in unlawful detainer actions. The July 25, 2017 minute order overruling the demurrer and setting the trial date for six days later on August 1, 2017 expressly states that defendants/appellants were present in court at the time the trial date was announced, thereby giving them actual notice of the trial date that was set more than five days later. (See CT 60.) There was no violation of their right to five days advance notice of the trial date.

In addition, assuming for the sake of argument that the issue of the time specified to answer the complaint was not waived, Rule 3.1320(g) specifies that unless the court states otherwise, the demurring party has five days to answer an unlawful detainer complaint after a demurrer is overruled. The Rule is not mandatory. That Rule provides for a specific time period to answer a pleading following a demurrer "unless otherwise ordered". (Rules of Court, Rule 3.1320(g).) The trial court in this case ordered otherwise. Therefore, the trial court did not err in setting the time limitation to answer the 1st Amended Complaint at three days.

Defendants/Appellants point to no portion of the record wherein they presented evidence that they were prejudiced by not having two additional days to prepare an answer. They merely claim they were forced to comply or risk further harm. Under the totality of the circumstances reflected in the administrative record of the proceedings, the trial court acted within the proper scope of its discretion and did not abuse its discretion.

Substantial Evidence to Support Judgment

Without citation to any portion of the administrative record, defendants/appellants state a broad conclusion that they had and have evidence that proved: 1) the respondent's three day notice was

fatally flawed; 2) the records they attempted to introduce at trial were well qualified by the trial court's own questions; and 3) the trial court's decision to find for the respondent was not supported by any evidence whatsoever. Defendants further contend that to the extent that the rules of evidence should be followed, defendants should be forgiven as they are pro per litigants and their evidence should have been admitted.

First, pro per litigants are not entitled to special treatment and are expected to adhere to the rules of procedure and evidence as any other party. "A party proceeding in propria persona "is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys." (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210, 51 Cal.Rptr.2d 328.) Indeed, " 'the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.' " (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125-1126, 29 Cal.Rptr.2d 711.)" (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.)

Second, the defendants/appellants have not cited to any portion of the record on appeal where they objected to any evidentiary rulings of the court and do not even identify such rulings. The purported exclusion of records they purportedly attempted to have introduced at trial is waived.

Finally, there appears to be substantial evidence in the record to support the trial court's amended judgment.

"On appeal, a judgment of the trial court is presumed to be correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, 86 Cal.Rptr. 65, 468 P.2d 193.) Accordingly, if a 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, 84 Cal.Rptr.2d 276; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18–19, 112 Cal.Rptr. 786, 520 P.2d 10.) All intendments and presumptions are made to support the judgment on matters as to which the record is silent. (*Denham, supra,* at p. 564, 86

Cal.Rptr. 65, 468 P.2d 193.) We presume the trial court followed applicable law. (*Wilson v. Sunshine Meat & Liquor Co.* (1983) 34 Cal.3d 554, 563, 194 Cal.Rptr. 773, 669 P.2d 9.) When no statement of decision is requested and issued, we imply all findings necessary to support the judgment. (*In re Marriage of Cohn* (1998) 65 Cal.App.4th 923, 928, 76 Cal.Rptr.2d 866.)" (Emphasis added.) (*Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, 956.)

The Third District Court of Appeal has stated: "A judgment of the trial court is presumed to be correct, and all intendments and presumptions are indulged to support it on matters as to which the record is silent. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, 86 Cal.Rptr. 65, 468 P.2d 193.) It is the appellant's burden to affirmatively demonstrate reversible error. (*In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 978, 127 Cal.Rptr.2d 271.)" (*California Pines Property Owners Assn. v. Pedotti* (2012) 206 Cal.App.4th 384, 392.) ""Under the substantial evidence standard of review, 'we must consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.] [¶] It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, in support of the judgment.' " (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1266, 35 Cal.Rptr.3d 343.) "All presumptions favor the trial court's ruling, which is entitled to great deference...." (*Westphal v. Wal–Mart Stores, Inc., supra,* 68 Cal.App.4th at p. 1078, 81 Cal.Rptr.2d 46.)" (*In re Estate of Kampen* (2011) 201 Cal.App.4th 971, 992.)

"We must not reweigh the evidence, but rather must defer to the jury's factual findings if there is any substantial evidence to support them. (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 111, 120 Cal.Rptr. 681, 534 P.2d 377 ["appellate court is bound to view the evidence in the light most favorable to the party securing the verdict"].) However, we independently review all questions of law, and are not bound by

the trial court's rulings in that regard. (*Stratton v. First Nat. Life Ins. Co.* (1989) 210 Cal.App.3d 1071, 1083, 258 Cal.Rptr. 721 ["We also conduct independent review of the trial court's determination of questions of law. We are not bound by the trial court's stated reasons, if any, supporting its ruling; we review the ruling, not its rationale."].)" (*Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1687.)

Plaintiff testified under oath that all statements in the 1st Amended Complaint were true and correct. Defendant Stacey Ramirez testified under oath that all matters stated in the answer to the 1st Amended Complaint were true and correct. Both parties presented argument and the court entered judgment for possession of the property and for damages, which was later amended on August 22, 2017. (See CT 38 – 1st Amended Complaint; CT 61, Answer to 1st Amended Complaint; and CT 64 – August 1, 2017 Minute Order.)

Defendants/Appellants conceded in their motion to vacate, which was heard on August 22, 2017, that prior to the addition of $25 for the writ fee, the calculation of past due rent and holdover damages should have been $5,813.12 and not $6,876.26 as stated in the August 1, 2017 judgment. (See CT 72, lines 18-21.) The court effectively set aside the judgment in part and entered an amended judgment in the amount of $5,776.46. (CT 84.) Defendant Stacey Ramirez stated at the hearing on August 22, 2017 that the number on the amended judgment looked correct. (Partial Transcript of Proceedings on August 22, 2017, page 4, lines 26-28.)

Viewing all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, resolving conflicts in support of the findings, and without weighing any conflicts and disputes in the evidence, the appellate panel finds that there was substantial evidence to support the amended judgment entered in favor of plaintiffs.

Motions to Vacate the Initial August 1, 2017 Judgment and to Quash Writ for Possession and to Vacate the Amended Judgment Entered on August 22, 2017 and to Quash the Writ for Possession

Defendants/Appellants contend that the trial court abused its discretion in denying the motion to vacate the August 1, 2017 in its entirety and restore possession of the property to defendants/appellants. Defendants/appellants further contend the trial court abused its discretion by merely amending the Judgment during the hearing on the motion to vacate the initial judgment on August 22, 2017, by reducing the amount of holdover damages that defendants/appellants contended were excessive. They finally contend the trial court abused its discretion in denying the September 7, 2017 motion to vacate the amended judgment on the ground that the trial court erred in not vacating the August 1, 2017 judgment in its entirety and refusing to restore possession of the property to defendants/appellants.

Defendants/Appellants also raised the claim of wrongful eviction on August 30, 2017. The appellate panel will address that issue in the next section of this ruling.

Defendants/Appellants previously filed a Petition for Writ of Mandate regarding the denial of these two motions, which was denied on the following grounds: the petition was untimely; the defendants/appellants failed to establish irreparable harm arising from the August 30, 2017 eviction; and the defendants'/appellants' claim of wrongful forcible entry to evict them is without merit. The appellate panel's written ruling on the Petition for Writ of Mandate seeking an order to restore possession of the property to defendants expressly stated that the panel only considered the issue of whether the defendants/appellants were entitled to immediate repossession of the property and not any issues raised in the appeal from the judgment. (See May 22, 2018 Ruling on Petition for Writ of Mandate, page 7, lines 8-11.)

- Law of the Case

""The law of the case doctrine states that when, in deciding an appeal, an appellate court 'states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal.' " (*Kowis v. Howard* (1992) 3 Cal.4th 888, 892-893, 12 Cal.Rptr.2d 728, 838 P.2d 250.)" (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1354.)

"It is clear that the law of the case doctrine can apply to pretrial writ proceedings. When the appellate court issues an alternative writ, the matter is fully briefed, there is an opportunity for oral argument, and the cause is decided by a written opinion. The resultant holding establishes law of the case upon a later appeal from the final judgment. (*Palma, supra,* 36 Cal.3d at p. 182, 203 Cal.Rptr. 626, 681 P.2d 893; *Price v. Civil Service Com.* (1980) 26 Cal.3d 257, 267, fn. 5, 161 Cal.Rptr. 475, 604 P.2d 1365.)" (*Kowis v. Howard* (1992) 3 Cal.4th 888, 894.)

Although there is a written ruling on the Petition for Writ of Mandate, the alternative writ apparently was not issued, the parties apparently were not allowed oral argument, and the appellate panel expressly stated the issues raised in the appeal were not being decided in the writ proceedings. Therefore, the decision is not the law of the case.

- Validity of Judgment and Amended Judgement

Defendants/Appellants' argument boils down to an assertion that the trial court miscalculated the damages awarded and entered judgment in excess of the amount allowable, therefore, the entire judgment, including the judgment for possession, should have been vacated.

Defendants/Appellants conceded in their motion to vacate, which was heard on August 22, 2017, that prior to the addition of $25 for the writ fee, the calculation of past due rent and holdover damages should have been $5,813.12, not $6,876.26 as stated in the August 1, 2017 judgment. (See CT 72, lines 18-21.) At the August 22, 2017, hearing the court effectively vacated/set aside the judgment in

part only as to damages and only amended the judgment on the issue of damages by correcting the amount of damages awarded to $5,776.46. (CT 84.) Defendant Stacey Ramirez stated at the hearing on August 22, 2017 that the number on the amended judgment looked correct. (Partial Transcript of Proceedings on August 22, 2017, page 4, lines 26-28.) The prior Writ for Possession (Writ number 2) was not quashed.

After the August 22, 2017 Amended Judgment reducing the award of damages was entered, defendants/appellants filed another Motion to Vacate the Judgment and to Quash the Writ for Possession. The same grounds as asserted in the first motion to vacate were repeated in the second motion and defendants/appellants added the ground that the amended judgment should be vacated, because the court found the August 1, 2017 judgment null and void.

Defendants/Appellants never sought a new trial on the damages issue and only sought to vacate the entire judgment and be restored to possession of the subject real property.

"A judgment or decree, when based upon a decision by the court, or the special verdict of a jury, may, upon motion of the party aggrieved, be set aside and vacated by the same court, and another and different judgment entered, for either of the following causes, materially affecting the substantial rights of the party and entitling the party to a different judgment: ¶ 1. Incorrect or erroneous legal basis for the decision, not consistent with or not supported by the facts; and in such case when the judgment is set aside, the statement of decision shall be amended and corrected. ¶ 2. A judgment or decree not consistent with or not supported by the special verdict." (Code of Civil Procedure, § 663.)

Section 663 is a remedy that is used when the evidence is uncontradicted and the court errs in entry of judgment. "A motion to vacate under section 663 is a remedy to be used when a trial court draws incorrect conclusions of law or renders an erroneous judgment on the basis of uncontroverted evidence. The motion to vacate under section 663 is speedier and less expensive than an appeal, and is distinguished from a motion for a new trial, to be used when, e. g., the evidence is insufficient to

support the findings or verdict. (See generally 5 Witkin, Cal.Procedure, Supra, pp. 3699-3700.)" (*Simac Design, Inc. v. Alciati* (1979) 92 Cal.App.3d 146, 153.)

"Upon entry of a judgment, in the absence of clerical error in the rendition or entry of that judgment, the trial court may not summarily amend judgment, no matter how erroneous it may be, on its own motion. (Code of Civil Procedure, sec. 663; *Bowman v. Bowman*, 29 Cal.2d 808, 814, 178 P.2d 751, 170 A.L.R. 246; *Eisenberg v. Superior Court*, 193 Cal. 575, 759, 226 P. 617; *Chase v. Superior Court*, 210 Cal.App.2d 872, 875, 27 Cal.Rptr. 383.) Absent inadvertence, clerical error or extrinsic fraud in the entry of a judgment, an erroneous decision may only be rectified by a motion to vacate the judgment under Section 663 of the Code of Civil Procedure, or by motion for a new trial. (*Greene v. Superior Court*, 55 Cal.2d 403, 405—406, 10 Cal.Rptr. 817, 359 P.2d 249; *Estate of Harris*, 200 Cal.App.2d 578, 590—592, 19 Cal.Rptr. 510; *Hunydee v. Superior Court*, 198 Cal.App.2d 430, 432, 17 Cal.Rptr. 856.)" (*Duff v. Duff* (1967) 256 Cal.App.2d 781, 784–785.)

The parties appear to have conceded at the hearing on August 22, 2017 that the evidence did not support entry of judgment in the amount of $6,876.26 as stated in the August 1, 2017 judgment and instead agreed that the correct number was $5,776.46. Therefore, it appears that the court vacated only a portion of the judgment related to damages and corrected the amount to reflect the true amount of damages incurred by plaintiff on the basis of uncontroverted evidence. Reference to the prior judgment being null and void merely stated the trial court's conclusion that the uncontradicted evidence established the trial court rendered an erroneous judgment on the amount of damages awarded and vacated that portion of the judgment in order to enter a corrected, amended judgment reflecting the amount of damages defendants/appellants concede was correct. The trial court confirmed in the amended judgment that it appropriately granted possession of the property to the plaintiff in the initial judgment by not vacating and amending the judgment for right to possession of the real property and by refusing to quash the writ for possession, which defendants/appellants had also requested in the

motion. This leads to the conclusion that the "null and void" language was directed only at the damages awarded. The trial court did not err in amending the August 1, 2017 Judgment during proceedings on a motion to vacate the judgment wherein among the grounds raised for vacating the judgment was that, in light of the evidence presented, the court erroneously calculated the amount of damages.

Post-Judgment Eviction

Defendants/Appellants argue that service of writ of possession number 2 was invalid as that writ was issued pursuant to the initial judgment that had been replaced by the August 22, 2017 Amended Judgment and superseded by the issuance of Writ of Possession number 3, which only corrected the amount of damages to be recovered. Defendants/Appellants further argue that since Writ number 2 was invalid, the Sheriff's Department's reliance on the properly served Writ number 2 to lock plaintiffs out of the residence rendered the lock out illegal and requires that the appellate division order possession be returned to defendants/appellants.

Defendants/Appellants cite *Bedi v. McMullan* (1984) 160 Cal.App.3d 272 for the proposition that the lock out premised upon service of Writ number 2 was illegal.

Although not the law of the case, the appellate division reviewed and entered a ruling on this exact issue in response to defendants'/appellants' Petition for Writ of Mandate. The appellate panel having independently reviewed and considered the record on appeal, the arguments on appeal, and the law cited on appeal finds that the rationale for the prior ruling on this same issue in the Petition for Writ of Mandate proceeding applies with equal force to the same issue raised on appeal.

Defendants/Appellants concede that Writ number 2 was validly served and assert that Writ number 2 had to be returned without citation to any authority for that legal position. In addition, defendants/appellants do not cite any portion of the record on appeal establishing that Writ number 2 for possession of the real property was ever returned prior to the August 30, 2017 eviction/lockout or that Writ number 2 was ordered vacated/withdrawn by the court. (Appellants' Opening Brief, page 24.)

"(a) A judgment for possession of real property may be enforced by a writ of possession of real property issued pursuant to Section 712.010. The application for the writ shall provide a place to indicate that the writ applies to all tenants, subtenants, if any, name of claimants, if any, and any other occupants of the premises." (Code of Civil Procedure, § 715.010(a).)

"After entry of a judgment for possession or sale of property, a writ of possession or sale shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the judgment is to be enforced. The application shall include a declaration under penalty of perjury stating the daily rental value of the property as of the date the complaint for unlawful detainer was filed. A separate writ shall be issued for each county where the judgment is to be enforced. Writs may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned." (Code of Civil Procedure, § 712.010.)

The Amended Judgment did not vacate the judgment for possession and only corrected the amount of damages awarded to be consistent with defendants' arguments and plaintiff's concession. The Sheriff's Department was not executing on defendant's property to collect on the judgment for damages. Writ for possession of the property number 2 was not invalid.

Furthermore, absent proof in the appellate record that Writ number 2 was returned by the Sheriff's Department to the court, the writ expired, or the writ was recalled/withdrawn by court order and notice was sent to the Sheriff's Department in time to avoid the August 30, 2017 eviction, Writ number 2 that directed the Sheriff to enforce the judgment of possession was supported by the initial August 1, 2017 judgment, as well as the Amended August 22, 2017 Judgment and the court could not issue a new writ for possession for 180 days after issuance of the writ. Writ number 2 remained valid and enforceable despite the amendment of the judgment to correct the damages awarded.

The appellate decision in *Bedi v. McMullan* (1984) 160 Cal.App.3d 272 is readily distinguishable from the facts of the instant case. In *Bedi*, supra, there was no valid judgment as the default judgment had been vacated and the landlord concealed, from the deputy marshals executing the writ for possession, the fact that the writ was premised upon a judgment that had been set aside. In the instant case, there is no evidence cited in the appellate record to establish that the Sheriff's Department was misled into evicting under an invalid writ for possession. The judgment of possession was never vacated. As stated earlier in this ruling, the trial court only vacated the portion of the judgment related to damages and corrected the amount to reflect the true amount of damages incurred by plaintiff on the basis of uncontroverted evidence.

The facts before the appellate panel is more similar to the facts before the appellate court in *Glass v. Najafi* (2000) 78 Cal.App.4th 45. The appellate court in *Glass* held that "[t]he precise issue presented in this appeal—the effect of entry under an invalid writ—was addressed in *Bedi v. McMullan* (1984) 160 Cal.App.3d 272, 206 Cal.Rptr. 578, which the Glasses regard as calling for reversal of the judgment. In *Bedi*, the plaintiffs appealed from a judgment dismissing their complaint for forcible entry and detainer entered on an order sustaining the defendants' demurrer without leave to amend. Accepting as true the factual allegations of the complaint, the court summarized the allegations as follows: "The Bedis allege defendant Robert McMullan appeared at their home one morning accompanied by two uniformed deputies of the Los Angeles County Marshal. The deputies knocked on the door and demanded entry. When the door was opened, they and McMullan forcibly entered and demanded the immediate departure of the Bedis. The Bedis left the premises and the McMullans took possession. It is alleged this eviction occurred under color of an invalid writ of execution, the underlying unlawful detainer judgment having been set aside. (Although a subsequent judgment for possession was entered in favor of the McMullans, the writ the marshal executed was not based on this judgment.) The Bedis further allege the defendants knew the unlawful detainer judgment on which the writ was

based had been set aside but deliberately concealed this information from the marshal and deceived the marshal into believing he had judicial authority to execute the writ." (*Id.* at p. 274, 206 Cal.Rptr. 578.) ¶ Reversing a judgment for the defendant, the court held that a landlord should "be liable for forcible entry and detainer if he evicts a tenant under color of a void judgment. A default judgment that has been set aside will not support a writ of execution [citation], and it is well settled a party is liable in tort if he executes a void judgment against the property of another.... [¶][¶] Clearly, an eviction is no less forcible because it is carried out by the marshal instead of by the landlord personally." (*Bedi v. McMullan, supra,* 160 Cal.App.3d at p. 275, 206 Cal.Rptr. 578.) Since the writ of execution was invalid, the court saw no relevance in the fact that the defendants later secured a judgment establishing their entitlement to possession: "A valid writ of execution is the ultimate indispensable element of the legal process by which a party entitled to possession of the property acquires possession. Allowing the landlord to forcibly evict a tenant on the strength of a judgment alone would remove the key conditions on the use of force: necessity and judicial authorization." (*Id.* at p. 276, 206 Cal.Rptr. 578.) "There is no substitute for the crucial element of a valid writ of execution." (*Id.* at p. 277, 206 Cal.Rptr. 578.) ¶ Certain language of the *Bedi* decision unquestionably supports the Glasses' argument that entry under an invalid writ is tantamount to forcible entry under Code of Civil Procedure section 1159, but we think the decision can be most reasonably read in light of the well-established distinction between forceful self-help and reliance on orderly judicial process. On the alleged facts, the defendants' conduct in *Bedi* fell in the category of forceful self-help. Knowing that the writ was based on a judgment that had been set aside, they concealed this information from the marshal and deceived him "into believing he had judicial authority to execute the writ." (*Bedi v. McMullan, supra,* 160 Cal.App.3d at p. 274, 206 Cal.Rptr. 578.) In other words, the defendants allegedly manipulated the marshal, by withholding information, so as to induce him to act on an invalid writ. ¶ In contrast, the defendants here proceeded in accordance with orderly judicial processes. They applied to the court for an order directing the clerk to issue a writ

of possession; secured the writ pursuant to the order, and recovered possession under the authority of the writ. The fact that the court later determined that it had erred in ordering issuance of the writ does not change the nature of the defendants' action: they nevertheless acted in reliance on a properly issued order in securing possession. Similarly, the defendants relied on court authorization by remaining in possession. The order recalling the writ expressly deleted proposed provisions ordering them to deliver possession to the Glasses. The legal basis of the order is immaterial for purposes of the forcible detainer statute; it matters only that they acted in accordance with orderly legal process. ¶ In our view, the *Bedi* decision must be confined to its facts. The critical element in the decision is that the defendants allegedly acted without judicial authority by inducing the marshal to execute on a writ based on a judgment that had been set aside. It is this factor that placed their action in the category of forceful self-help. The decision should not be interpreted to impose liability on parties who rely on a properly issued court order, which is ultimately determined to have been erroneously issued as the result of legal error. Such an interpretation would undermine the policy favoring orderly judicial process by placing litigants in jeopardy of liability even though they acted under the authority of the court." (Emphasis added.) (*Glass v. Najafi* (2000) 78 Cal.App.4th 45, 49–51.)

An analogous situation is presented in the instant case. The trial court issued a valid order for a writ of possession of the real property upon a valid judgment for possession and never issued a court order vacating the portion of the judgment for possession of the real property. During a hearing on a motion to vacate the judgment on various grounds, including award of excessive damages, the court merely amended the judgment to reflect the amount the parties agreed were the proper damages to be awarded.

There was no self-help forcible entry. The plaintiff obtained a valid writ for possession, did not mislead the Sheriff's Department into executing on the writ for possession at a time when the judgment for possession had been vacated, and plaintiff proceeded in accordance with orderly judicial processes.

Dispositon:

The amended judgment is affirmed.

DATED: 7/24/18

VICKI ASHWORTH, ASSISTANT PRESIDING JUDGE OF THE SUPERIOR COURT

DATED: 7-24-18

KENNETH J. MELIKIAN, JUDGE OF THE SUPERIOR COURT

DATED: 7-24-18

WARREN C. STRACENER, JUDGE OF THE SUPERIOR COURT

CLERK'S CERTIFICATE OF MAILING

I, LYNN CAVIN, Deputy Clerk of the Superior Court of the County of El Dorado, State of California, do hereby certify that I am a citizen of the United States and employed in the County of El Dorado; I am over the age of eighteen years and not a party to the within action; my business address is Superior Court of the State of California, County of El Dorado, 495 Main Street, Placerville, CA 95667; and that I delivered a copy of the **OPINION FILED JULY 26, 2018** to the individual(s) listed below:

WILLIAM & STACEY RAMIREZ
P.O. BOX 262
CEDARVILLE, CA 96104

SCOTT W. SOUERS
ALLING & JILLSON
P.O. BOX 3390
LAKE TAHOE, NV 89449

I am familiar with the business practice of El Dorado County Superior Court with regard to collection and processing of documents for mailing. The documents described above were placed for collection and mailing in Placerville, California, through either the United States Post Office, Inter-Departmental Mail or Courthouse Attorney Box.

Executed on July 26, 2018 at Placerville, California.

EL DORADO COUNTY SUPERIOR COURT

BY: _____

Lynn Cavin, Court Clerk IV, Appeals

APPENDIX E
RELEVANT STATE STATUTORY AND RULE PROVISIONS

28 U.S.C § 1257(a)

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

CCP § 594

(a) In superior courts either party may bring an issue to trial or to a hearing, and, in the absence of the adverse party, unless the court, for good cause, otherwise directs, may proceed with the case and take a dismissal of the action, or a verdict, or judgment, as the case may require; provided, however, if the issue to be tried is an issue of fact, proof shall first be made to the satisfaction of the court that the adverse party has had 15 days' notice of such trial or five days' notice of the trial in an unlawful detainer action as specified in subdivision (b). If the adverse party has served notice of trial upon the party seeking the dismissal, verdict, or judgment at least five days prior to the trial, the adverse party shall be deemed to have had notice.

(b) The notice to the adverse party required by subdivision (a) shall be served by mail on all the parties by the clerk of the court not less than 20 days prior to the date set for trial. In an unlawful detainer action where notice is served by mail that service shall be mailed not less than 10 days prior to the date set for trial. If notice is not served by the clerk as required by this subdivision, it may be served by mail by any party on the adverse party not less than 15 days prior to the date set for trial, and in an unlawful detainer action where notice is served by mail that service shall be mailed not less than 10 days prior to the date set for trial. The time provisions of Section 1013 shall not serve to extend the notice of trial requirements under this subdivision for unlawful detainer actions. If notice is served by the clerk, proof thereof may be made by introduction into evidence of the clerk's certificate pursuant to subdivision (3) of Section 1013a or other competent evidence. If notice is served by a party, proof may be made by introduction into evidence of an affidavit or certificate pursuant to subdivision (1) or (2) of Section 1013a or other competent evidence. The provisions of this subdivision are exclusive.

SCOTUS Rule 13.1

1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

SCOTUS Rule 29.2

2. A document is timely filed if it is received by the Clerk within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing; or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days. If submitted by an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U. S. C. §1746 setting out the date of deposit and stating that first-class postage has been prepaid. If the postmark is missi! ng! or not legible, or if the third-party commercial carrier does not provide the date the document was received by the carrier, the Clerk will require the person who sent the document to submit a notarized statement or declaration in compliance with 28 U. S. C. §1746 setting out the details of the filing and stating that the filing took place on a particular date within the permitted time.

CRC 3.1320(g)

(g) Leave to answer or amend

Following a ruling on a demurrer, unless otherwise ordered, leave to answer or amend within 10 days is deemed granted, except for actions in forcible entry, forcible detainer, or unlawful detainer in which case 5 calendar days is deemed granted.

Fourteenth Amendment to the United States Constitution

Section 1.
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.
Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.
No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.
The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.
The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.