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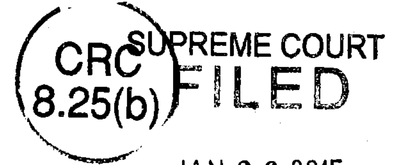

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Deputy

IN THE SUPREME COURT OF CALIFORNIA

F.P.,

Plaintiff and Respondent,

vs.

JOSEPH MONIER,

Defendant and Appellant.

No. S216566

3 Civil No. C062329

Sacramento County Superior Court
Case No. 06AS00671

REPLY BRIEF ON THE MERITS

After a decision of the
Court of Appeal, Third Appellate District

Appeal from a Judgment of the Superior Court
Of the State of California, County of Sacramento
Honorable Robert Ahern, Judge

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{00042207; 1}

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INTRODUCTION

F. P.'s answer brief is largely comprised of irrelevant statements falsely disparaging appellant Joseph Monier; arguments that disregard this Court's numerous decisions squarely holding that failure to issue a required statement of decision requires reversal; digression into irrelevant criminal law; and exaggerated, cliché pleas to judicial efficiency.

Monier does not, as F. P. contends, ask for a new rule of per se reversibility. This Court has stated almost since statehood that a judgment must be reversed for failure to provide required findings, and has restated the rule time and again since adoption of Article VI, § 13 of the California Conetitution.

Exceptions to the rule do not, as F. P. asserts, obliterate it. They are cases in which Code of Civil Procedure § 632, by its express terms and as judicially construed, does not require a statement of decision and the failure to provide one is not reversible because it is not error at all.

But when a statement of decision is required, the failure to provide it is "structural error" that mandates reversal. *Soule v. General Motors Corp* (1994) 8 Cal.4th 548, 579. Under this Court's precedents, a failure or refusal to issue a required statement of decision denies a full and fair trial, and the error "defies evaluation for harmlessness." *Id.*

Nor does the rule of per se reversibility unduly burden trial courts or impair the efficient administration of justice. Nothing indicates that the

many reversals by this Court and the courts of appeal for failure to issue a statement of decision have led to congestion of the trial courts or diminished their ability to dispense justice efficiently. Numerous judges have acknowledge that the per se reversal rule assures compliance with § 632 without imposing any great burden on trial courts but abolishing the rule would substantially burden the appellate courts. And the goal of advancing judicial efficiency may not be achieved at the expense of litigants' rights to a full and fair trial, to which a statement of decision is indispensable.

I
F.P.'S DISPARAGEMENT OF MONIER IS WRONG AND IRRELEVANT

F.P.'s repeated assertion that Monier has "never contested his liability for the sexual assaults" is wrong and irrelevant. Answer Brief on the Merits at 1, 5, 7. Wrong because Monier vigorously disputed F.P.'s charges from the outset. CT 1-2. His case at trial was that her charges were false and made in retaliation for a lawsuit his parents filed against her; her evidence did not support her claims; and that his evidence proved that he did nothing wrong. RT 877-910.

Indeed, the reason the case went to trial was to make F. P. prove her allegations and allow Monier to challenge the sufficiency of her evidence to carry her burden of proof, and to present evidence of his innocence.

F. P.'s further claim that Monier has not denied liability on appeal is unwarranted. Fundamental principles of appellate review effectively pre-

clude Monier from attacking the trial court's finding of liability. An appellate court must uphold a judgment when there is "*any* substantial evidence" supporting it. *Overton v. Vita–Food Corp.* (1949) 94 Cal.App.2d 367, 370, disapproved on other grounds in *Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 866, fn. 2 (emphasis in original).

Monier cannot deny that the record contains evidence that can support the trial court's finding of liability. F. P. testified directly that he molested her. I RT 98-105. The testimony of a single witness, even a party himself or herself, can sustain a finding. *In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.

The trial judge obviously believed F. P.'s evidence and found it convincing. An appellate court has "no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom." *Overton*, 94 Cal.App.2d at 370.

It is unfair to denigrate Monier for complying with these most basic principles of appellate review and not arguing that the judge should have rejected F. P.'s evidence, accepted his, and found him not liable.

F.P.'s incorrect and unjust assertion that Monier has never denied liability is also a red herring. Monier is unaware of any authority holding that a defendant who appeals may not obtain reversal of a judgment without showing that the trial court erred in finding him or her liable. The finding

that he is liable does not render the court's failure to issue a statement of decision apportioning damages any less erroneous or reversible. *Klein v. Milne* (1926) 198 Cal. 71 (upholding findings of liability but reversing for awarding lump sum damages and not making findings on individual items of damages); *Gordon v. Wolfe* (1986) 179 Cal.App.3d 162, 167 (defendant admitted liability and case tried solely on damages; reversed where statement of decision did not state amounts awarded for each element of damages. See also *James v. Haley* (1931) 212 Cal. 142, 147-148.

II
THE RULE THAT FAILURE TO ISSUE A STATEMENT OF DECISION IS REVERSIBLE ERROR PER SAY IS NEITHER OUTDATED NOR NEW

Contrary to F.P.'s dismissive assertion, Monier does not seek to establish a new rule of reversibility nor does his argument rest on decisions of "some lower courts" that "have rotely followed outdated precedent" without regard to Article VI, § 13 of the California Constitution. Answer Brief on the Merits at 4. This Court has repeatedly held since the constitutional provision was enacted that, when findings are required (or, since 1981, a statement of decision), "if the court renders judgment without making findings on all material issues, the case must be reversed." *James v. Haley* (1931) 212 Cal. 142, 147. The failure to make findings or render a statement of decision when required constitutes """prejudicial error entitling the complaining suitor to reversal."' [Citation.]" *Estate of Pendell* (1932) 216

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Cal. 384, 386; see also *Carpenter v. Pac. Mut. Life Ins. Co. of Cal.* (1937) 10 Cal.2d 307, 326 aff'd sub nom. *Neblett v. Carpenter* (1938) 305 U.S. 297, 59 S.Ct. 170, 83 L.Ed. 182; *Fairchild v. Raines* (1944) 24 Cal.2d 818, 830; *Parker v. Shell Oil Co.* (1946) 29 Cal.2d 503, 512; *De Burgh v. De-Burgh* (1952) 39 Cal.2d 858, 873; *Edgar v. Hitch* (1956) 46 Cal.2d 309, 312.

And it is this Court, not "some lower courts" as F. P. says, that relied on some of these authorities in holding that, when findings are required on a material issue and substantial evidence would support a finding in apppel-lant's favor on the issue, reversal is compelled." *Guardianship of Brown* (1956) 16 Cal.3d 326, 333.

F. P.'s argues that these cases are not controlling because they do not refer to Article VI, § 13. The argument suggests that the Court was una-ware of or simply ignored the provision. But it must be presumed that the Court "was aware of, and followed, the applicable law and considered all the relevant facts and arguments." *Peake v. Underwood* (2014) 227 Cal.App.4th 428, 447. The presumption is especially strong here, where the applicable law is not stated in an obscure section of a specialized code or in a single, isolated decision. The applicable law is the California Con-stitution and § 632, a provision of the Code of Civil Procedure this Court has frequently considered.

III
FAILURE TO ISSUE A STATEMENT OF DECISION IS STRUCTURAL ERROR UNDER *SOULE*

Failure to render a statement of decision is not, as F. P. would have it, a trivial technicality. It is a "structural defect" in the trial proceeding, as the Court described reversible error in *Soule*, 8 Cal.4th at 579. The failure to render a statement of decision impairs two fundamental rights of civil litigants.

The first is the right to a trial, which necessarily includes the right to a decision on the matters in dispute. A trial is not merely the introduction of evidence and arguments of counsel. It "'is the *determination* of an issue of law of fact. . . .'" *McDonough Power Equipment Co. v. Superior Court* (1972) 8 Cal.3d 527, 531, quoting *Berri v. Superior Court* (1955) 43 Cal.2d 856, 859 (emphasis added). It is "the examination before a competent tribunal, according to the law of the land, of the facts or law put in issue in a cause for the purpose of determining such issue." *Tregambo v. Comanche Mill & Mining Co.* (1881) 57 Cal. 501, 505; see also Black's Law Dictionary (9th ed. 2009) ("[a] formal judicial examination and determination of legal claims in an adversary proceeding.") The purpose of trial is "to determine the cause on the merits, and it is not completed until the decision of the court is made and filed with the clerk . . . ." *Superior Oil Co. v. Superior Court* (1936) 6 Cal.2d 113, 116.

Thus, when Code of Civil Procedure § 632 required findings and conclusions, trial to a judge was decided "only when the court signs and files its findings of fact and conclusions of law." *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 459. Unless findings were waived, if judgment was entered without findings on all material facts, there was a mistrial. *Brison v. Brison* (1891) 90 Cal. 323, 328. The judgment was "against law," since it amounted to a decision before the case was fully tried. *Id.; Knoch v. Haizlip* (1912) 163 Cal. 146, 153; *Great Western Gold Co. v. Chambers* (1908) 153 Cal. 307, 310.

The 1981 revision to § 632 providing for a statement of decision did not make issuance of a statement of decision any less a necessary element of a trial than was the rendition of findings and conclusions. Like findings and conclusions, the statement of decision is the court's final decision. *In re Marriage of Boblitt* (2014) 223 Cal.App.4th 1004, 1029, citing *Benway v. Benway* (1945) 69 Cal.App.2d 574, 580; *In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 647.

Accordingly, when a trial judge becomes unable or unavailable to render a statement of decision, "the parties have been deprived of a full and fair trial" and the case must be re-tried. *Raville v. Singh* (1994) 25 Cal.App.4th 1127, 1132 (trial judge died without having considered objections to proposed statement of decision; different judge, who had not heard trial, could not sign statement of decision and judgment); *Armstrong v. Pic-*

quelle (1984) 157 Cal.App.3d 122, 127 (same where judge retired after announcing tentative decision).

The trial court's failure to perform its mandatory duty imposed by § 632 to issue a statement of decision is a failure to decide the case. It is structural error. See *Biscaro v. Stern* (2010) 181 Cal.App.4th 702, 709-710 (failure to rule disabled litigant's motion for reasonable accommodation).

Looking at "structural defect" from the other direction—what it is not—demonstrates how and why the failure to issue a statement of decision is a structural defect. There is no structural defect "if a civil litigant was permitted to introduce evidence, cross-examine witnesses, and present argument before a fairly selected jury *that rendered its honest verdict on the trial record*. . . ." *Soule*, 8 Cal.4th at 579 (emphasis added).

The Court's holdings that the judge in a bench trial performs the function of a jury and his or her findings are in, substance, a special verdict, (e.g., *Breeze v. Doyle* (1861) 19 Cal. 101, 104; *Murphy v. Bennett* (1886) 68 Cal. 528, 536), also make the failure to issue a statement of decision structural error. Entering judgment without issuing a required statement of decision is tantamount to holding a jury trial and entering judgment without having the jury render a verdict.

In this regard, like statements of decision, "well-conceived special verdicts simplify and often eliminate issues on appeal. . . ." *Codekas v. Dyna-Lift Co.* (1975) 48 Cal.App.3d 20, 25. But there is a significant dif-

ference: except with respect to punitive damages, "a special verdict is entirely within the judge's discretion." 7 Witkin Procedure, Trial § 342, p. 398. But, when the case is tried to the court and a proper, timely request is made, § 632 imposes a mandatory duty to provide a statement of decision. *Espinoza v. Calva* (2008) 169 Cal.App.4th 1393, 1397-1398.

The failure to render a statement of decision is also structural error in the sense that it "defies evaluation for harmlessness." *Id.*, 8 Cal.4th at 579. The trial judge's initial, intended decision is exactly that: an intended decision, not a *final* decision. "The tentative decision does not constitute a judgment and is not binding on the court." Cal. Rules of Court, rule 3.1590, subd. (b). "[I]t is fundamental that a court is not bound by its statement of intended decision and may enter a wholly different judgment than that announced." *Canal-Randolph Anaheim, Inc. v. Wilkoski* (1978) 78 Cal.App.3d 477, 494; see also *Boblitt*, 223 Cal.App.4th at 1029-1030; 7 Witkin, California Procedure 5th (2008), Trial § 394, p. 462 ("Witkin Procedure").

The statement of decision procedure affords the trial court the opportunity to review its intended decision and "'to make . . . corrections, additions or deletions it deems necessary or appropriate.'" *Ditto*, 206 Cal.App.3d at 647, quoting *Miramar Hotel Corp. v. Frank B. Hall & Co.* (1985) 163 Cal.App.3d 1126, 1129. Thus, when a judge ignores a request for statement of decision and enters judgment without going through the

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required procedure to issue one, it is impossible to speculate what the result might have been had the judge complied with the mandate of § 632. *Cf.*, *Southern Pacific Transportation Co. v. Santa Fe Pacific Pipelines, Inc.* (1999) 74 Cal.App.4th 1232, 1246 (exclusion of extrinsic evidence bearing on meaning of ambiguous contract language reversible per se where court would "have to engage in speculation as to what the court might conclude upon properly heeding the proffered extrinsic evidence. . . .")

This is not to say that a court may not decide a case without a statement of decision. Under § 632, the right to have the judge complete the trial by issuing a statement of decision can be waived by not requesting one.

But when a proper, timely request has been made, the court's failure to provide a statement of a decision is the denial of the right to a full and fair trial.

IV
THE EXCEPTIONS TO THE RULE OF REVERSIBLE ERROR PER SE ARE CASES IN WHICH § 632 DOES NOT REQUIRE A STATEMENT OF DECISION

Despite the Court's repeated statement of the rule compelling reversal for failure to render a statement of decision, F.P. asserts that the exceptions to the rule Monier acknowledged in the opening brief on the merits "swallow the rule. . . ." Answer Brief on the Merits at 25, fn. 10. She misconceives the basis and nature of the exceptions.

They are cases in which § 632 does not require a statement of decision. They primarily involve the appellant's failure to comply with the statute or misapplication of the statute. Failure to issue a statement of decision cannot be considered reversible error when the trial court had no duty to issue one because appellant failed to do what § 632 requires, or attempted to utilize it in a proceeding to which it does not apply.

At the risk of undue repetition, a statement of decision is not required, and there is no basis to reverse for failure to issue one when:

- Appellant did not request one. *Frame v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1971) 20 Cal.App.3d 668, 671; *In re Marriage of Jeffries* (1991) 228 Cal.App.3d 548, 553, fn. 4.

- Appellant's request was made after the time within which § 632 provides that a request "must be made. . . ." *In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 980.

- The request was for a statement of decision on a motion; § 632 requires a statement of decision only in a trial. *Beckett v. Kaynar Mfg. Co.* (1958) 49 Cal.2d 695, 699; but see *Gruendl v. Oewel Partnership, Inc.* (1997) 55 Cal.App.4th 654, 660–661 (required on motion to join alter ego as judgment debtor).

- The request was for a statement of decision on a question of law. "It is axiomatic that a statement of decision is required only as to issues of fact decided by the trial court (§ 632: 'upon the trial of a question of fact by

the court'), not as to issues of law." *City of Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277, 1291.

- The request was a general request that did not comply with the requirement of § 632 that a request "shall specify those controverted issues as to which the party is requesting a statement of decision." § 632; *City of Coachella*, 210 Cal.App.3d at 1292-1293.

- The request specified some, but not all, controverted issues; an appellant waives the right to a statement of decision on issues not specified. *Atari Inc., v. State Bd. of Equalization* (1985) 170 Cal.App.3d 665, 675.

- The request was for a statement of decision on issues that were not controverted. *Sacre v. Chalupnik* (1922) 188 Cal. 386, 390 (defendants admitted facts alleged in complaint); *James v. P.C.S. Ginning Co.* (1969) 276 Cal.App.2d 19, 24 (case submitted on agreed facts). A fact may also be uncontroverted because there was no evidence at trial from which it could be established. *Geddes & Smith, Inc. v. St. Paul Mercury Indem. Co.* (1965) 63 Cal.2d 602, 605.

- The request sought a statement of decision on issues that were not "principal" factual issues—ultimate, core facts such as necessary elements of a claim or defense. *Central Valley General Hosp. v. Smith* (2007) 162 Cal.App.4th 501, 513.[1]

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[1] Perhaps the most common cases in this category are those in which request were for statements of decision on "evidentiary" rather than

- The request sought a statement of decision on issues that were immaterial as they could not affect the outcome because they were not "'"relevant and essential to the judgment and closely and directly related to the trial court's determination of the ultimate issues in the case.'" *R. E. Folcka Construction, Inc. v. Medallion Home Loan Co.* (1987) 191 Cal.App.3d 50, 53, quoting *Kuffel v. Seaside Oil Co.* (1977) 69 Cal.App.3d 555, 565.

These exceptions in which a statement of decision is not required at all do not tear the rule of reversibility per se asunder. The rule remains in-tact: in a bench trial on disputed facts, when appellant has made a proper, timely request and substantial evidence supports a finding in appellant's favor on a material fact in issue, the entry of judgment without issuing a statement of decision on all material issues as to which a statement has been requested, compels reversal. *James*, 212 Cal. at 147; *Brown*, 16 Cal.3d at 333.

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ultimate facts, asking the court to detail the evidence on which it relied in deciding the case and state how it resolved conflicts in the evidence. E.g., *In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1318, citing *Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1124-1125. Dozens of decisions holding that a judgment may not be reversed for failure or refusal to make findings on evidentiary facts are collected in Westlaw Key Number System, Trial § 395(5), Ultimate or evidentiary facts.

V
PER SE REVERSIBILITY FURTHERS THE EFFICIENT ADMINISTRATION OF JUSTICE

F. P. contends that automatic reversal for failure to issue a statement of decision would frustrate the purpose of Article VI, § 13 to promote judicial efficiency because it would unduly burden the judicial system. She does not support the claim with facts or argument.

Over the century since Article VI, § 13 was adopted this Court, in the cases previously cited, as well as every court of appeal, have treated the failure to render findings on material, disputed issues as error so serious that it mandates reversal. F. P. offers nothing to suggest that these reversals to assure compliance with § 632 has unduly burdened the judicial system or noticeably impaired the efficient administration of justice.

Justices of our courts of appeal, with their own substantial experience as trial court judges, uniformly agree that insisting that trial courts adhere to the legislative mandate of § 632 "imposes no substantial burden upon trial courts. . . ." *Miramar*, 163 Cal.App.3d 1130; *Bevli v. Brisco* (1985) 165 Cal.App.3d 812, 822; *In re Marriage of S.* (1985) 171 Cal.App.3d 738, 748; *Whittington v. McKinney* (1991) 234 Cal.App.3d 123, 129, fn. 5 ("no extra burden"); *Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 311; *J.H. McKnight Ranch, Inc. v. Franchise Tax Bd.* (2003) 110 Cal.App.4th 978, 984; see also *People v. Sanchez* (1994) 23 Cal.App.4th 1680, 1690 (dis. opn, of Kline, P.J.) Under California Rules of

Court, rule 3.1590, subd. (f), the court need not even write the statement of decision. A party "may be, and often should be, required to prepare the statement.'" *Whittington*, 234 Cal.App.3d at 129, fn. 5. The trial court is then "required only to review the statement and any objections thereto and to make or order to be made any corrections, additions, or deletions it deems necessary or appropriate." *Miramar*, 163 Cal.App.3d at 1130.

On the other hand, as a statement of decision "facilitate[s] appellate review" (*Gruendl v. Oewel Partnership, Inc.* (1997) 55 Cal.App.4th 654, 661), were the appellate courts to condone the failure of trial courts to comply with § 632,

> we would be thrusting a quite substantial burden upon the litigants and also the appellate courts. [W]here a request for statement of decision has been made and an inadequate statement or no statement whatsoever has been provided, then each appeal is inevitably based upon what is tantamount to a claim that the judgment is not supported by substantial evidence. This in turn requires both the litigants and the appellate court to conduct an examination of the entire record in order to properly review the trial court decision.
>
> It thus becomes apparent that the legislative provision of section 632 as augmented by rule [3.1590] is the most effi-

cient and judicially economic manner of fulfilling the trial court function.

Miramar, 163 Cal.App.3d at 1130; *Marriage of S.*, 171 Cal.App.3d at 748 (quoting *Miramar*); *Whittington* 234 Cal.App.3d at 127-128 (same); *People v. Gutierrez* (1991) 227 Cal.App.3d 1634, 1648 (conc. opn. of Kline, P.J., same).[2]

F. P. asserts that returning the case for a retrial on damages would be affected by the passage of time but does not explain why that should be. She merely makes an overstated, conclusionary assertion sending her case back for retrial—one single case out of the hundreds our appellate courts reverse and remand every year—would, by itself, "further clog the court system" and "decrease public faith in the institution. . . ." Answer Brief on the Merits at 36. Such an exaggeration needs no reply.

Advancing efficient administration of justice and conservation of judicial resources are unquestionably important goals. But, as this Court has held, those ends may not be achieved by "impairing the countervailing in-

[2] F. P. cites authorities from other jurisdictions holding that a failure to make findings is reviewed for prejudicial error. The Georgia Supreme Court agrees with the well established California rule these authorities state that the failure to render findings or a statement of decision impedes appellate review, if it does not make review impossible. *Graham v. Graham* (1998) 269 Ga. 413, 414, 499 S.E.2d 67. When sufficient findings have not been made, the judgment must be reversed for the trial court to make findings that will "enable the parties to specify the errors the trial court purportedly made, and enable the appellate court to review the judgment adequately and promptly." *Id.*

terests of litigants as well as the interest of the public in being afforded access to justice, resolution of a controversy on the merits, and a fair proceeding." *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1353.

Soon after the constitutional provision that is now Article VI, § 13 was adopted, the Court explained that the provision, which then applied only to criminal proceedings, was intended to modify the former law that often required appellate courts to

> grant new trials to defendants on account of technical errors or omissions, even though a review of the evidence, if such review could legally have been undertaken, would have shown that that the guilt of the accused had been established beyond question and by means of a procedure which was substantially fair and just.

People v. O'Bryan (1913) 165 Cal. 55, 64

The record here does not show it was "substantially fair and just" to assess Monier a quarter of a million dollars for all of F. P.'s general damages. She testified that her father molested her during the same period when she claims that Monier harmed her. 1 RT 105:21-22. Her experts agreed that it is not possible to differentiate between her symptoms resulting from her father's acts and those the trial judge attributed to Monier. 1 RT 209:27-210:4; 1 RT 63:19-64:21. But sexual molestation by her father, her

expert testified, was "dramatically more traumatic" for her than anything Monier did. 1 RT 64:9-12.

This is not a case where the evidence "established beyond question" (*O'Bryan*, 165 Cal. at 64) that Monier is solely and fully responsible for her injuries and that he alone should suffer liability for the entire amount of non-economic damages the court awarded her. This is particularly so under Civil Code § 1431.2, which "shields every defendant from any share of noneconomic damages beyond that attributable to his or her own comparative fault." *DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 602.

The goal of judicial efficiency does not justify denying a litigant a full and fair trial, which, unless a statement of decision is waived, requires the court to issue a statement of decision to decide the case. It does not justify discarding the long-standing rule of per se reversal that promotes judicial efficiency with minimal, if any, burden on trial courts while avoiding substantial burden on the appellate courts.

CONCLUSION

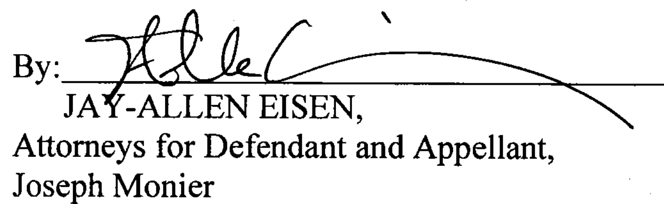
The court of appeal erred in holding that the judgment cannot be reversed for failure to provide a statement of decision because Monier could not to show that the error is prejudicial. The rule of reversibility per se promotes efficiency of the judicial process, while abandoning the rule would substantially burden the appellate courts and deprive litigants of the right to a full and fair trial that determines the issues in dispute.

This Court's precedents, the concurring decisions of the courts of appeal, and strong policy support continued adherence to the rule that, appellant has made a timely, proper request for a statement of decision, but the trial court fails to provide one, the judgment must be reversed.

The decision of the court of appeal should be reversed with instructions to reverse the judgment.

Dated: January 23, 2015

JAY-ALLEN EISEN LAW CORPORATION



By: JAY-ALLEN EISEN,
Attorneys for Defendant and Appellant,
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CERTIFICATION

I certify, pursuant to rule 8.504, Subdivision (d)(1), California Rules of Court, that the attached **REPLY BRIEF ON THE MERITS** contains 4,539 words, as measured by the word count of the computer program used to prepare this brief.

Dated: January 23, 2015

JAY-ALLEN EISEN LAW CORPORATION

By:

JAY-ALLEN EISEN

{00043610; 6}

PROOF OF SERVICE
(CCP Sections 1013a, 2015.5)

I, Michelle Micciche, declare:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within cause. My business address is 2431 Capitol Avenue, Sacramento, California 95816.

On January 23, 2015, I served the within **REPLY BRIEF ON THE MERITS** on the interested parties in said action by depositing true copies, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail addressed as follows:

John P. Henderson **Law Offices of John P. Henderson** **8150 Sierra College Blvd., Suite 170** **Roseville, CA 95661** **[Attorneys for Plaintiff and Respondent: F.P.]**	**Jeffrey L. Bleich** **Munger, Tolles & Olson, LLP** **560 Mission Street, 27th Floor** **San Francisco, CA 94105** **[Attorney for Plaintiff and Respondent: F.P.]**
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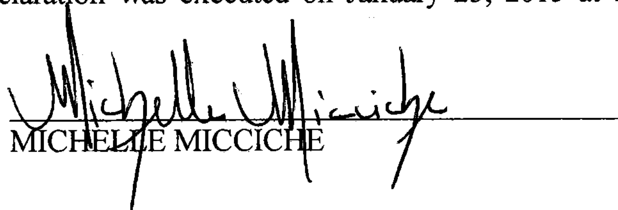
There is delivery by United States mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 23, 2015 at Sacramento, California.



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