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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

FELIX C. NATNAT et al., Plaintiffs and Appellants, v. CALIFORNIA PACIFIC HOME LOANS et al., Defendants and Respondents.	A126919 (Alameda County Super. Ct. No. HG04188305)

Appellants Felix and Charito Natnat obtained a loan from respondent Capital Alliance Funding Corporation (Capital Alliance) secured by their two residential properties. After the closing on the loan, they failed to make any payments on the loan, but instead sued Capital Alliance and their mortgage broker, alleging that they had been deceived into granting a security interest on the second property. After a two-phase trial to a jury and to the court, judgment was entered for the defendants. The Natnats file an appeal in propria persona that we find virtually incomprehensible and, in any event, completely devoid of merit to the point of being frivolous.

We affirm the judgment. We further find Felix Natnat to be a vexatious litigant henceforth subject to a prefiling order pursuant to Code of Civil Procedure section 391.7.[1]

[1] All statutory references are to the Code of Civil Procedure unless otherwise indicated.

I. BACKGROUND

As we discuss in greater detail *post*, the Natnats provide virtually no citations to the record in their briefs. We therefore look to the augmented record supplied by Capital Alliance in the respondent's appendix and to the trial court's findings of fact on the Natnats' equitable claims for the facts.

In August 2004, the Natnats sought to refinance their home in Lathrop, California (the Lathrop property). At the time, they were significantly in arrears on a variety of financial obligations, including mortgage payments on both the Lathrop property and other residential property they owned in Hayward, California (the Hayward property). They retained California Pacific Home Loans (California Pacific) and its employee Michael Del Campo as mortgage brokers to secure a loan on their behalf. Capital Alliance agreed to make a loan of $344,000 to the Natnats, but only on condition that the loan be cross-collateralized and secured by both the Lathrop and the Hayward properties. The Natnats could obtain no alternative loan due to their credit history, which included delinquencies, collection actions, judgments, and liens. The Hayward property was appraised in October.

Close of escrow on the loan occurred on October 26, 2004, at North Bay Title Company in Santa Rosa. The Natnats were present. Felix Natnat had an opportunity to review all of the documents presented to him for signature, and he signed all of the loan documents, including a deed of trust on each property and at least three other documents (an addendum to the escrow instructions, a federal truth-in-lending disclosure, and the promissory note for the loan) expressly stating that Capital Alliance would obtain a security interest in both properties. Felix Natnat had completed law school in the Phillipines, attended one year of law school in California, and was licensed as a real estate broker in the State of California in 1999.[2] He was also a licensed real estate appraiser. Between 1998 and the time of trial, he had participated as a real estate

[2] Felix Natnat's real estate license was revoked in 2003 as a result of a domestic violence conviction in 2001.

professional in an estimated 150 escrow transactions. He testified that he realized there were two deeds of trust presented to him for signature, but alleged that he was assured, in a telephone conversation with Del Campo, that they were only "copies."[3] He then signed all of the closing documents without reviewing them further.

The first payment on the loan was due on December 1, 2004. On December 7, 2004, the Natnats sued Capital Alliance, California Pacific, Del Campo and two title companies involved in the refinancing transaction. In a third amended complaint filed in September 2005, the Natnats alleged that Capital Alliance, California Pacific and Del Campo misled them into believing that only the Lathrop property would be used as security for the loan and accused the defendants of wrongfully recording a deed of trust on the Hayward property. They also alleged that they had received only $230 in net cash from the loan proceeds (after payment of outstanding debts), rather than the almost $10,000 they had been promised. They asserted causes of action for: (1) slander of title; (2) intentional misrepresentation; (3) negligent misrepresentation; (4) failure to disclose; (5) violation of Financial Code section 4979.5 (against California Pacific and Del Campo only); (6) violation of Financial Code section 4973, subdivision (j); (7) unfair competition; and (8) unjust enrichment (against California Pacific and Del Campo only). In November 2005, the trial court sustained a demurrer to the sixth cause of action without leave to amend. Del Campo and the title companies were dismissed from the action before trial.

In 2008, the case proceeded to trial against Capital Alliance and California Pacific. The slander of title and deceit claims were first tried to a jury beginning on May 29, 2008. The Natnats were represented by counsel. At the close of the Natnats' case in chief, the court granted Capital Alliance's motion for nonsuit with respect to all four

[3] As we discuss below, the trial court rejected this testimony, finding that the Natnats were aware of the cross-collateralization, and that their contrary testimony was not credible.

causes of action.[4] The court ruled: "First, there is no false publication by any defendant concerning any property as required by the complaint's first cause of action for slander of title[. S]econd, . . . [¶] . . . [¶] . . . as matter of law the plaintiffs were unable to show a reasonable reliance required by the second, third, and fourth causes of action. While there is some dispute in the evidence about when the collateralization of the [Hayward] property was disclosed to the Natnats, there is no dispute that it was plainly disclosed in the escrow documents that were made available at the close of escrow. Mr. Natnat acting on behalf of both plaintiffs was given as much time as he needed to review these documents and had been trained as a lawyer and as a real estate broker and he held a real estate license. . . . [T]he only reasonable inference from the evidence is that he would have understood these documents if he had read them[] . . . , but he did not read them. [¶] Plaintiffs contend Mr. Del Campo told them in advance of the loan that the loan would be collateralized only by the [Lathrop] property. They further contend on the day of escrow Mr. Del Campo told them by telephone that the second trust deed in the escrow documents was a copy for them, meaning, I think, that it was a copy of the trust deed on the [Lathrop] property. This evidence[] . . . is hotly disputed, but even if that evidence were believed by the jury, it would not excuse Mr. Natnat from reading the documents that were provided in the escrow. [¶] . . . [¶] If anyone can be required to read the terms of a real estate loan before alleging fraud, it's a licensed real estate broker who is not prevented or impeded from reading the documents at issue[.]"

A court trial on the unfair competition and unjust enrichment claims commenced on August 17, 2009. The Natnats appeared in propia persona. California Pacific did not appear. Following the close of the Natnats' case, the court granted Capital Alliance's motion for judgment pursuant to section 631.8 and ruled in California Pacific's favor in a default prove-up hearing. In its statement of decision, the court wrote, "The Court finds, on the basis of the testimony and evidence submitted in phase 1 (the jury trial) and

[4] So far as we can determine from the rather confused record, the fifth cause of action was abandoned, because the claim was apparently not tried.

phase 2 (the bench trial) that far from being misled, plaintiffs were constructively if not actually aware of the cross-collateralization that was repeatedly referenced in the loan documents plaintiffs (including plaintiff Felix Natnat, a real estate professional with legal training from the Phillipines) signed." The court specifically found the Natnats' testimony that at closing they asked Del Campo why there were two deeds of trust in the escrow packet and Del Campo told them the second deed of trust was simply a copy of the first, not to be credible. On October 30, 2009, the court ordered entry of final judgment in favor of Capital Alliance and California Pacific.

The Natnats appeal from the "Decision of Hon Judge Jon Tigar after the Trial of Summary Judgment August 17, 2009," which we construe as an appeal from the judgment. They served Capital Alliance and California Pacific with the notice of appeal. Only Capital Alliance filed a respondent's brief.

II. DISCUSSION

A. *The Appeal*

As we have noted above, the Natnats' arguments on appeal are barely comprehensible. They provide no adequate record and do not properly cite either to the paltry record they assembled or to the augmented record provided by Capital Alliance. They provide no comprehensive factual or procedural background to assist the court in considering their arguments. Instead of an appellant's appendix containing relevant portions of the trial record, they submitted unauthorized "Exhibits" with argumentative highlighting and annotations. They do not support their arguments with legal reasoning applying legal rules to the facts of their case. They candidly admit that one of their arguments was never raised in the trial court and they provide no persuasive argument why we should consider it for the first time on appeal. For all of these reasons, their appeal fails and, to the extent we are able to address it substantively at all, we find it to be devoid of any merit.

1. Failure to Provide a Sufficient Appellate Record

"The party seeking to challenge an order on appeal has the burden to provide an adequate record to assess error. [Citation.] Where the party fails to furnish an adequate

record of the challenged proceedings, his claim on appeal must be resolved against him. [Citations.]" (*Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 46.) On their form notice designating the record on appeal, the Natnats listed documents not part of the trial court file and requested a transcript of a hearing that did not take place. The superior court clerk thus filed a clerk's transcript consisting solely of those documents that must be included in every clerk's transcript. (See Cal. Rules of Court, rule 8.122(b)(1).)[5] The Natnats then lodged a large volume of trial exhibits directly with this court, without complying with the procedures for including exhibits in the appellate record. (See rule 8.122(a)(3), (b)(3)(B).) They also attach documents to their briefs that do not appear to be part of the appellate record, and failed to comply with court rules for attaching such documents, or for augmenting the appellate record. (See rules 8.204(d), 8.155(a).) They then refer to these documents in their briefs as if they were part of the record. The Natnats describe one such document ("Hud dated November 4, 2004") as "newly discovered" evidence, which certainly implies it was not part of the trial court record. If so, the document may not properly be included in the appellate record.[6] (See rule 8.122(b); *Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1 (*Doers*) [documents not presented in the trial proceeding cannot be included in appellate record and must be disregarded on appeal].) Although Capital Alliance enhanced the record before us by augmenting it with a copy of the trial transcript and an with appendix including several trial exhibits and orders of the court, these actions do not excuse the Natnats' omissions and violations of court rules or satisfy *appellants'* burden to provide the record.

[5] All rule references are to the California Rules of Court.

[6] On the other hand, the document is Bates-stamped (331), which suggests it may have been produced in discovery proceedings in the trial court. If the Natnats had the document before trial but did not introduce it at trial because they only later "discovered" its significance, they have forfeited any argument based on that evidence and cannot rectify the problem on appeal.

2. Failure to Provide Record Citations

Even if the Natnats had submitted an adequate record, it would have been useless to us because they do not properly cite to the record in their appellate briefs. Their opening brief contains not a single citation to the clerk's transcript filed with the court or even to the volume of "Exhibits" they improperly attempt to lodge with the court. Instead, the Natnats drop footnotes in their briefs that cryptically refer to poorly-defined documents that may (or may not) be one of the attachments to their briefs. For example, as factual support for the following statement—"Ocwen foreclosed the property 880 Waterman Ave. Lathrop, CA 95330 resulted from Capital Alliance Funding Corporation breached" (interim fn. omitted)—they write in a final footnote, "See escrow closing date and funding date which is October 29, 2004." No document is identified. They follow similar practices in their reply brief (referring to the "exhibits" attached to their reply brief), despite presumably having had the benefit of the augmented record that was prepared by Capital Alliance. It is the appellant's duty to cite accurately to evidence in the record that supports their factual representations in their appellate briefs and the court will not step in to perform the task for them. (See *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115 (*Guthrey*) [appellate court may treat as waived any factual contentions not supported by a citation to the record].)

3. Failure to Provide Any Reasoned Argument

The Natnats do not support their arguments with reasoned legal analysis. (See *Guthrey*, *supra*, 63 Cal.App.4th at pp. 1115–1116 [appellate court may deny claim on appeal that is unsupported by legal argument applying legal principles to the particular facts of the case on appeal].) They often cite case law with only aphoristic characterizations of the cases' holdings, without any description of the cases' factual context and with no reasoned application of the legal rules of the cited cases to the facts of this case. For example, in support of the sentence, "To gain back their over expenses they incurred, [t]he respondents abused their power in escrow, . . . [and] included another property of the appellants as cross collateral . . . ," they wrote with no further analysis,

"People v. Brock, 143 Cal App 4th 1266 (A108062), 49 Cal. Rptr. 3d. 879; 2006 Fraud vitiates consent."

4. The Natnats Fail to Demonstrate Error

Finally, the Natnats utterly fail to meet their burden of demonstrating error in the judgment. " 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. . . .' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The appellant has the burden of demonstrating error on the part of the trial court. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140–1141.) In the absence of a lucid explanation in the appellant's opening brief of how the trial court committed prejudicial error warranting reversal of the court's judgment, this court must affirm the lower court. The Natnats' arguments are anything but lucid. They often write in incomplete if not incomprehensible sentences. For example, under the title, "Core of Problem," the Natnats write, "When the parties agreement pertains to: [¶] When it depends to the condition of the events certain to happen. Failure to perform the conditions within his control will terminate the agreement. On October 29, 2004 and repeatedly on November 2, 2004 without modification agreed upon with appellant. On Sheyko v. Saenz (Oct 29, 2003) 112 Cal App. 4th 675, ..." We will not ignore the substance of a self-represented litigant's brief simply because of inartfulness or grammatical errors; however, it is not our role to cull a logical argument out of a string of incomplete thoughts not clearly connected to the facts of the case. (See *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522–523 [pro se litigants are not entitled to special treatment and are required to follow the rules].) The Natnats have also violated rules of court that are designed to bring clarity to their arguments. (See rules 8.204(a)(1)(B) ["[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation to authority"]; 8.204(a)(2)(A) [opening brief must state "the nature of the action, the relief sought in the trial court, and the judgment or order appealed from"].) They have simply failed to present cogent argument on appeal.

Moreover, the Natnats never identify reversible error committed by the trial court and simply reargue the merits of their case, as if we were here conducting a de novo trial. They appear to argue that California Pacific and Capital Alliance committed fraud by concealing the fact that the original terms of the loan (which required the use of only the Lathrop property as security) had been changed (requiring the use of both the Lathrop and Hayward properties as security), with the intent of inducing the Natnats to sign the loan documents so that defendants could foreclose on the properties, repurchase them at a profit, and charge the Natnats closing costs without ever giving them use of the loan proceeds.

They fail to demonstrate, however, that the trial court *erred in granting nonsuit* on those claims. " 'The granting of a motion for nonsuit is warranted when, disregarding conflicting evidence, giving plaintiff's evidence all the value to which it is legally entitled, and indulging in every legitimate inference that may be drawn from the evidence, the trial court determines that there is no evidence of sufficient substantiality to support a verdict in favor of plaintiff.' [Citations.]" (*Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1580.) To demonstrate a trial court erred in granting nonsuit, an appellant must prepare a record that includes the evidence presented at trial, cite evidence that supported his case, and explain why the cited evidence was legally sufficient to establish all of the elements of his claim. The Natnats do not even attempt to do so. Nor have they demonstrated that the trial court erred in ruling in defendants' favor on the equitable claims. We review a trial court's ruling on a motion for judgment to determine if it is supported by any substantial evidence, contradicted or uncontradicted, after all reasonable inferences from the evidence have been drawn in support of the court's findings. (*San Diego Metropolitan Transit Development Bd. v. Handlery Hotel, Inc.* (1999) 73 Cal.App.4th 517, 528.) The Natnats have not shown that the trial court's findings on the unfair competition and unjust enrichment claims, including adverse credibility findings, are unsupported by any substantial evidence in the record.

In passing, the Natnats suggest that the trial court's August 17, 2009 ruling (granting motion for judgment on the equitable claims) was invalid because the court had

already ruled in the Natnats' favor on a summary judgment motion on August 3. This argument is patently meritless. First, the Natnats themselves attach to their opening brief a copy of a August 3, 2009 minute order, which shows that on that date the court denied a motion by Capital Alliance *to exclude evidence*, explaining the motion could not be used as a substitute for a summary judgment motion. The court did not address the merits, but only ruled that Capital Alliance must follow the procedures of section 437c. Second, trial courts in any event have the inherent power to reconsider their rulings while a case is still pending before them. (*Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1156.) Third, the Natnats make no showing that they raised this objection in the trial court. (See *Ward v. Taggart* (1959) 51 Cal.2d 736, 742 [appellate courts ordinarily will not consider an argument first raised on appeal].)

Also in passing, the Natnats argue that in "[t]he previous trial, the lower court decided on the Second Amended Complaint instead of the Third Amended Complaint for reason of failure to read." They never elaborate on this comment or cite record support for the factual representation. Therefore, the argument is forfeited. (*Guthrey, supra,* 63 Cal.App.4th at pp. 1115–1116 [appellate court may deny claim on appeal that is unsupported by legal argument applying legal principles to the particular facts of the case on appeal].) Moreover, we have already addressed this issue in a previous appeal by the Natnats in this case, writing, "The July 8, 2008 order's reference to the second amended complaint is an obvious typographical error because the exhibits to the motion to dismiss and to the opposition to the motion to dismiss (including the register of actions and a March 2006 [order] overruling in part demurrers to the third amended complaint) clearly demonstrate that the third, not the second, amended complaint was the operative complaint at the time the court made its order." (*Natnat et al. v. North Bay Title Co. et al.* (March 2, 2009, A122675) [order granting respondents' motion to dismiss appeal].)

Finally, insofar as we can decipher their arguments, the Natnats appear to argue that, after the conclusion of the trial court proceedings, they discovered new evidence that demonstrates actionable wrongdoing by respondents. They write, "Appellants newly discovered this facts which was never been disclosed by respondents and Northbay Title

Co.: The respondent Capital Alliance Funding Corporation failed to deposits the required funds to escrow on October 29, 2004 and November 2, 2004. Escrow failed for unfunded (Lack of consideration). Ocwen foreclosed the property 880 Waterman Ave. Lathrop, CA 95330 resulted from Capital Alliance Funding Corporation breached." (Fns. omitted.) An appeal, however, seeks review of a decision of the trial court, not consideration of new evidence in the first instance. (*Doers, supra,* 23 Cal.3d at p. 184, fn. 1 [evidence not presented in the trial proceeding is beyond the scope of appellate review].) The Natnats do not show that they ever requested any sort of relief based on the "new evidence" from the trial court. That argument is clearly not within the scope of our appellate review.

In sum, the Natnats fail to establish any reversible error by the trial court in this appeal.

B. *Request for Judicial Notice*

On October 27, 2010, more than a month after they filed their reply brief, the Natnats filed a request for judicial notice. We deny the request for multiple reasons.

First, the request is untimely. Ordinarily a request for judicial notice should be made well before any briefs are filed in the appeal. (*People v. Preslie* (1977) 70 Cal.App.3d 486, 494 (*Preslie*); Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2010) ¶ 5:162, pp. 5-54 to 5-55 (Rev. #1 2008).) For practical reasons, the request must be made no later than the date the moving party's final brief is filed in this court because judicially noticed evidence, like all evidence, is useless to the court unless a party draws our attention to it by citing it in a brief and explaining its relevance to the case. (Rule 8.204(a)(1)(C).)

Only one set of documents the Natnats ask us to judicially notice is even *potentially* subject to judicial notice. These are documents that are related to a different Alameda Superior Court case, *Natnat v. Ameriquest Mortgage Co.* (Super. Ct. Alameda County, 2009, No. HG04189049). A court may take judicial notice of court records. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).) Even some of these documents, however, are not file stamped by the clerk of the court and thus do not appear to be court records,

and those documents that are file stamped are not certified copies of the originals and thus not properly authenticated. (*Preslie, supra,* 70 Cal.App.3d at pp. 494–495.)

None of the other documents are proper subjects of judicial notice. In their memorandum in support of their request, the Natnats ask us to notice two cancelled checks and a "HUD" document. These documents are not evidence of "[f]acts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute" or "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, §§ 451, subd. (f); 452, subd. (h).) The Natnats include numerous other documents in their submission without ever identifying these documents in their memorandum in support of the request. Some of these documents appear to be parts of the trial court record and thus should have been included in the clerk's transcript if relevant to the appeal. (Rule 8.120.) Other documents, which are neither part of the trial court record nor subject to judicial notice, may be considered on appeal only on a proper motion asking this court to take new evidence on appeal (rule 8.252, subd. (c)) and upon a showing of extraordinary circumstances that would justify our doing so (Eisenberg et al., *supra,* ¶ 5:169, p. 5-56). The Natnats have not complied with these procedures and it seems highly unlikely they could do so successfully. Requests for judicial notice should not be used to circumvent appellate rules and procedures. (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1064–1065 [request for judicial notice of legal authority is not appropriate substitute for citing authority in brief], overruled on other grounds in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1262.)

Finally, the Natnats fail to establish the relevance of the facts they ask us to judicially notice. (See rule 8.252(a)(2)(A) [motion requesting judicial notice must state why matter to be noticed is relevant to the appeal].) They argue the documents are relevant "because the respondent misrepresented the evidence contrary to the true facts which misled the lower court in their decision." However, if the Natnats contend that the trial court's rulings are not supported by the evidence in the record, they should have

made that argument in their appellate briefs and supported the argument with citations to the record and to legal authority. They did not. If they believe they were improperly barred from presenting relevant evidence in the trial court, they should have made that argument in their briefs with supporting citations. They did not. They cannot rectify these errors through a defective request for judicial notice.

The request is denied.

B. *Vexatious Litigant Status*

This is not the first time we have been confronted with inscrutable or frivolous appellate filings by the Natnats and Felix Natnat in particular.

In April 2005, the Natnats, in propria persona, filed a writ petition in this action that was denied for failure to provide a sufficient record.[7] (*Natnat v. Superior Court et al.* (April 4, 2005, A109679).) In September 2008, they filed an appeal in this action in propria persona. (*Natnat v. North Bay Title Co.* (March 2, 2009, A122675).) That appeal was dismissed because it was taken from an unappealable nonfinal order (the court's grant of nonsuit following the jury trial). (*Ibid.*) Before ultimately dismissing the appeal, this court and the superior court had to deal with multiple procedural defaults by the Natnats: failing to pay a filing fee or apply for a fee waiver, failing to file a designation of record, failing to comply with the rules for obtaining a reporter's transcript of oral proceedings, and failing to file a certificate of interested persons. We were also required to strike the Natnats' opening brief because it did not comply with court rules. We admonished the Natnats that they "must not exceed the number of attachments that are permitted and that as a general rule only material that is already part of the appellate record may be attached to a brief."

In 2004, Felix Natnat filed an appeal in propria persona in a different case that exhibited many of the same errors we encounter here, including noncompliance with court rules and frivolous litigation tactics. (*Natnat v. Valdez et al.* (Apr. 15, 2005,

[7] Counsel for the Natnats did separately file a writ petition in this action, which was successful. (*Natnat v. Superior Court* (July 13, 2007, A117903).)

A107786) [2005 WL 859292].) As we explained in our nonpublished opinion in that matter, "We experience great difficulty in stating the relevant facts, because they are not stated in comprehensible fashion in appellant's opening brief, and appellant has not provided an adequate record of the court trial in this matter so as to allow our review. . . . [¶] . . . [¶] We would also point out that appellant's briefing is completely inadequate to demonstrate any error. Appellant seemingly ignores his failure of proof at trial, as found by the court, and he instead offers disjointed and unintelligible arguments as to other issues, unsupported by proper citations to the record of the trial or relevant case authority." (*Id.*, at pp. *1, *2.) We also clearly explained to Felix Natnat his responsibilities as an appellant: "It is, of course, axiomatic that an appellant must affirmatively show error by an adequate record. (*Buckhart v. San Francisco Residential Rent etc., Bd.* (1988) 197 Cal.App.3d 1032, 1036; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 518, pp. 562–563.) Appealed judgments and orders are presumed to be correct, and an appellant has the burden of overcoming this presumption. (*Ketchum v. Moses*[, *supra*,] 24 Cal.4th [at pp.] 1140–1141.) Failure to provide an adequate record concerning an issue challenged on appeal requires that the issue be resolved against the appellant. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) [¶] Appellant's failure to provide us with a reporter's transcript of the trial proceedings precludes us from knowing the evidence actually presented to the trial court, and thus prevents us from knowing the factual basis upon which the court determined that appellant did not carry his burden of proof at trial. In the absence of such a record, we must presume the existence of substantial evidence to support the lower court's ruling. (See, e.g., *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.) . . . [¶] . . . [Natnat's] briefing, which merely complains of error without presenting coherent legal contentions, is insufficient and unworthy of further discussion on the merits, especially in light of appellant's failure to provide an adequate record to permit review. (See *Wright v. City of Los Angeles* (2001) 93 Cal.App.4th 683, 689.)" (*Natnat v. Valdez et al., supra*, at p. *2.) Despite our unequivocal admonitions, the Natnats persist undeterred in the same conduct.

Under sections 391 and 391.7, we have the power to declare certain self-represented parties vexatious litigants and "enter a prefiling order [prohibiting them] from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed[,]" on penalty of contempt of court. (§§ 391, subd. (b); 391.7, subd. (a); *In re R.H.* (2009) 170 Cal.App.4th 678, 691–693 [holding vexatious litigant law applies to appellate filings and citing cases].) A "vexatious litigant" includes a person who "[i]n any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, . . . or engages in other tactics that are frivolous or solely intended to cause unnecessary delay[,]" may be declared a vexatious litigant. (§ 391, subd. (b)(3).) It also includes a person who "[i]n the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in small claims court that have been . . . finally determined adversely to the person . . . ." (§ 391, subd. (b)(1).) The vexatious litigant statute is designed not only to protect opposing parties harassed by meritless lawsuits, but also to conserve court time and resources and protect the interests of other litigants who are waiting for their legal cases to be processed through the courts. (*In re R.H.*, at p. 696.)

In light of Felix Natnat's persistent pattern of behavior, we have ordered him to show cause why the court should not declare him a vexatious litigant pursuant to section 391, subdivisions (b)(1) or (b)(3), and issue a prefiling order against him pursuant to section 391.7. Having considered his response,[8] we now find that he is a vexatious litigant within the meaning of section 391, subdivision (b)(3).

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[8] In support of his response to our Order to Show Cause, Felix Natnat filed a request for judicial notice. Several of the attached exhibits appear to be superior court records or Labor Commissioner rulings, which may be proper subjects of judicial notice. (Evid. Code, §§ 452, subds. (a), (c), (d), 459, subd. (a).) However, none of these records is properly authenticated (*Preslie, supra,* 70 Cal.App.3d at pp. 494–495), and most are irrelevant to whether Felix Natnat is a vexatious litigant issue based on his appellate filings (rule 8.252(a)(2)(A)). One of the superior court documents is an order pertaining to *Natnat v. Valdez et al., supra,* A107786, which is a basis for our vexatious litigant finding; however, the order has no bearing on our decision. The order purports to set

Felix Natnat has filed at least two appeals in which his violations of court rules are so egregious and his arguments are so incomprehensible that the appeals may fairly be characterized as frivolous. (See *In re Luckett* (1991) 232 Cal.App.3d 107, 109 [characterizing appeals from unappealable orders and violations of court rules as frivolous tactics within the meaning of vexatious litigant statute].) He has also filed four unmeritorious actions in propria persona in the court of appeal. (See *In re R.H., supra,* 170 Cal.App.4th at pp. 684–687 [treating repeated appeals and writ petitions from a single juvenile dependency case to be repeated litigation].) That is, he has "repeatedly file[d] unmeritorious . . . pleadings." (§ 391, subd. (b)(3).) Although his number of unmeritorious actions in propria persona is not as great as those filed by some others who have been declared vexatious litigants in published appellate opinions (see *In re R.H., supra,* 170 Cal.App.4th at p. 683, 684–687 [13 appeals and writ petitions]; *In re Luckett, supra,* 232 Cal.App.3d at pp. 109–110 [43 appeals and writ petitions]; *In re Whitaker* (1992) 6 Cal.App.4th 54, 56 [35 appeals and writ petitions]; *In re Shieh* (1993) 17 Cal.App.4th 1154, 1155–1156 [34 appeals and writ proceedings plus nine pending]), Felix Natnat's actions show a stubborn and persistent pattern of frivolousness and have consumed substantial amounts of court time and resources. Despite his legal education, he has ignored clear warnings from this court. Moreover, the patent lack of merit in this appeal warrants the conclusion that it is being prosecuted primarily, if not exclusively, to harass the respondent or delay the effect of an adverse judgment. (See *In re Marriage of Gong & Kwong* (2008) 163 Cal.App.4th 510, 516.) We conclude his litigation record satisfies both the letter and spirit of the vexatious litigant statute.

We find that Felix Natnat is a vexatious litigant within the meaning of section 391, subdivision (b)(3). Pursuant to section 391.7, henceforth Felix Natnat may not file any

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aside Natnat's notice of appeal for failure to pay the filing fee, but the appellate court docket for the appeal indicates that this court had previously waived the filing fee in that appeal and that the appeal was fully processed, resulting in the opinion quoted *ante*. Finally, exhibit "K" of Natnat's request for judicial notice is a printout of an email, which would not be a proper subject of judicial notice even if it were properly authenticated. (Evid. Code, §§ 451, subd. (f); 452, subd. (h).) The request for judicial notice is denied.

new litigation in the courts of the state of California in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. (§ 391.7, subd. (a).) Disobedience of this order may be punished as a contempt of court. (*Ibid*.) The clerk of this court is directed to provide a copy of this opinion and order to the Judicial Council. (§ 391.7, subd. (e).) Copies shall also be mailed to the presiding judge and clerk of the Alameda County Superior Court.

III. DISPOSITION

The judgment is affirmed. The Natnats shall pay Capital Alliance's costs on appeal.

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Bruiniers, J.

We concur:

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Jones, P. J.

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Needham, J.