Court of Appeal, First Appellate District
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Court of Appeal, First Appellate District
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MICHAEL MARRACCINI
[redacted]
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Respondent in Pro Per

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION ONE

LAURA OWENS,
Petitioner and Appellant,

v.

MICHAEL MARRACCINI,
Respondent.

Court of Appeal No. A175236

(San Francisco County Superior Court
No. FDV-18-813693, Hon. Carolyn Gold)

RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION TO AUGMENT AND CORRECT THE RECORD ON APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MICHAEL MARRACCINI

TO THE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL, FIRST APPELLATE DISTRICT:

Respondent Michael Marraccini, in pro per, opposes Appellant Laura Owens's Motion to Augment and Correct the Record on Appeal, filed July 13, 2026. This opposition is filed pursuant to this Court's July 15, 2026 order, which deferred ruling on the motion and set July 28, 2026 as the deadline for any opposition, and is timely under that order and California Rules of Court, rule 8.54(a)(3). It is based on the accompanying Memorandum of Points and Authorities, the Declaration of Michael Marraccini filed with it, the record on appeal, and the files in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Appellant asks this Court to build a new record rather than review the one the superior court made. Every item of relief in the motion reduces to one of three requests: to give record status to materials that were never filed or lodged in the superior court (the November 2025 emails, a flight receipt, and hospital records generated after the ruling); to rewrite a minute order that accurately records what the superior court did; or to import a withdrawn attorney's fee motion that has no bearing on the order under review. Rule 8.155 of the California Rules of Court authorizes none of it.

The motion's premise is that the record on appeal reflects "only an unexplained non-appearance" and consists of "a five-page reporter's transcript and a single-paragraph minute order." (Mot., p. 2.) That is not the record before this Court. The clerk's transcript runs 718 pages in three volumes. It contains the register of actions and Appellant's own December 3, 2025 Motion to Correct and Augment the Record with her supporting declaration, in which she describes, quotes, and swears to every communication she now seeks to add: the reporter emails, her objection and non-waiver, her two medical-emergency notifications, and the court staff's two written acknowledgments. (1 CT 4–13; 3 CT 680–706.) What Appellant contends the superior court knew when it ruled is already visible on the face of the record. What the record does not contain, and what augmentation cannot supply, is evidence that was never filed or lodged below.

Appellant filed this motion on July 13, 2026, nearly four months after the record was certified on March 19, 2026. By order filed July 15, 2026, this Court deferred ruling, set July 28, 2026 for any opposition, and on its own motion extended Appellant's opening-brief deadline to fifteen days after the ruling on this motion. The scheduling emergency the motion invokes therefore no longer exists, and the motion can be decided on whether the rules permit the relief requested. They do not. The motion should be denied.

II. STATEMENT OF FACTS

A. The dismissal under review.

Appellant sought to renew a domestic violence restraining order and was ordered to appear in person for trial. On October 21, 2025, the matter was continued because no court reporter was available; the register of actions recites that Appellant "did not appear in person as previously ordered." (1 CT 12.) On October 22, 2025, the matter was continued to November 5, 2025, as a reasonable accommodation at Appellant's request. (1 CT 12.) On November 4, 2025, this Court, Division One, denied Appellant's petition for writ of mandate and her request for an immediate stay of the hearing. (1 CT 12 [No. A174706].) On November 5, 2025, Appellant did not appear. The superior court called the matter at 9:26 a.m., noted that Appellant was not present, and dismissed the renewal request. The minute order records the dismissal "[b]ecause of the non-appearance of Petitioner" and states that no order was prepared for the hearing. (Mot., pp. 6–7; Owens Decl., ¶ 26.) A certified shorthand reporter transcribed the hearing, and the reporter's transcript is part of the record on appeal. (Mot., p. 6.)

B. Appellant's December 3, 2025 motion, already in the clerk's transcript.

On December 3, 2025, Appellant filed in the superior court a Motion to Correct and Augment the Record with a supporting declaration. Both are in the clerk's transcript. (3 CT 680–706.) The declaration recounts, with quotations, the November 4, 2025 reporter emails, her written objection to the appointment of the reporter pro tempore, her non-waiver, her two November 5, 2025 medical-emergency notifications, and the court staff's two written acknowledgments. (3 CT 681–685.) On December 4, 2025, one day after filing that motion, Appellant filed her notice of appeal. (3 CT 707.) As Appellant has acknowledged to this Court, the notice of appeal divested the superior court of jurisdiction over her pending motion. (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189, cited in Appellant's April 23, 2026 application, p. 2.)

C. The record on appeal and Appellant's extensions.

Appellant designated the record on December 18, 2025. (3 CT 712–715.) The superior court certified the record to this Court on March 19, 2026: three volumes of clerk's transcript totaling 718 pages, and a reporter's transcript of the November 5, 2025 hearing. (Marraccini Decl., ¶ 4.) On April 23, 2026, this Court granted Appellant's first extension of time, to June 29, 2026, on her representation that she needed the time to pursue correction of the record. On June 22, 2026, this Court granted her second application and extended the deadline to July 29, 2026, stating: "FURTHER EXTENSIONS ARE NOT CONTEMPLATED." On July 15, 2026, after Appellant filed this motion, the Court deferred ruling, set July 28, 2026 as the deadline for any opposition, and on its own motion extended Appellant's opening-brief deadline to fifteen days after its ruling on the motion. (Order, July 15, 2026 [Humes, P. J.].)

D. The June 2026 superior court filing and this motion.

On June 7, 2026, Appellant submitted a new motion to correct and augment the record in the superior court, seeking the relief she now seeks here. (Mot., p. 9.) On July 9, 2026, the clerk rejected the submission and directed her to file in the reviewing court. (Mot., p. 9; Owens Decl., ¶ 30.) Appellant filed this motion on July 13, 2026, asking the Court to rule by July 29, 2026, on an expedited basis and without a hearing. (Mot., pp. 12–13.) The Court's July 15, 2026 order superseded that request by resetting the briefing schedule.

E. The withdrawn fee motion.

On April 29, 2026, a motion for attorney's fees was filed on Respondent's behalf in Dthe superior court. It was withdrawn without prejudice on May 7, 2026. It has not been refiled. Respondent is not pursuing attorney's fees or costs and will not refile the motion; no fee motion is pending or calendared. (Marraccini Decl., ¶ 3.) Appellant's assertion that "its refiling remains calendared for July 20, 2026" (Mot., p. 12) is incorrect, and that date has now passed with no fee motion on file. (Marraccini Decl., ¶ 3.)

III. LEGAL STANDARD

A reviewing court may augment the record on appeal to include "[a]ny document filed or lodged in the case in superior court." (Cal. Rules of Court, rule 8.155(a)(1)(A).) Augmentation "does not function to supplement the record with materials not before the trial court." (*Lewis v. YouTube, LLC* (2015) 244 Cal.App.4th 118, 123, quoting *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.) Rule 8.155(c) permits correction of a record that "is incorrect in any respect," and rule 8.155(b) addresses a clerk's or reporter's omission of a required or designated portion of the existing court file. Fact-taking on appeal under Code of Civil Procedure section 909 and rule 8.252 is reserved for exceptional circumstances. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.) Rule 8.340, which Appellant also cites, governs the record in criminal appeals.

IV. ARGUMENT

A. None of the materials in Exhibits A through D was filed or lodged in the superior court, so none can be added by augmentation.

The motion concedes the dispositive fact. Appellant tells the Court that the materials "were transmitted by email rather than filed, and so were never placed in the court file" (Mot., p. 3), and again that "these communications were transmitted to the superior court by email and were not placed in its file" (Mot., p. 11). Rule 8.155(a)(1)(A) permits augmentation only with documents "filed or lodged in the case in superior court." An email sent to a department or clerk inbox is neither. Appellant does not contend that she ever presented any of these materials for filing before the dismissal, and the register of actions reflects none. (1 CT 4–13; Marraccini Decl., ¶ 6.)

The hospital records fail for a second, independent reason: they did not exist when the superior court ruled. Exhibits C and D are excerpts of an "After Visit Summary" covering a hospitalization from November 5 to November 6, 2025, including a surgical case completed November 6, 2025, the day after the dismissal. (Owens Decl., ¶ 22, Exs. C–D.) Appellant's November 5 email offered to provide medical documentation "as soon

as it becomes available." (Owens Decl., ¶ 18.) A document that came into existence after the ruling cannot be part of the record of that ruling. A reviewing court's consideration of previously unadmitted evidence is error absent exceptional circumstances. (*In re Kenneth D.* (2024) 16 Cal.5th 1087, 1094; *Lewis, supra*, 244 Cal.App.4th at pp. 123–124.) The flight receipt stands no differently: it was emailed, never filed or lodged. These materials are not omitted portions of the record. They are extra-record evidence, and augmentation is not the vehicle for them.

B. The alternative request, an order directing the superior court to lodge the materials nunc pro tunc, asks the Court to correct an error that never occurred.

Appellant asks this Court to order the superior court "to lodge those materials nunc pro tunc as of the dates received." (Mot., p. 13.) Nunc pro tunc relief corrects clerical error; it makes the record show what actually happened, and it cannot make the record show something that never happened. (*Estate of Eckstrom* (1960) 54 Cal.2d 540, 544; *Carpenter v. Pacific Mut. Life Ins. Co.* (1939) 14 Cal.2d 704, 707–708.) An order that supplies substance rather than fixing a clerical slip corrects judicial error and is beyond the power. (*Morgan v. State Bd. of Equalization* (1949) 89 Cal.App.2d 674, 682; *Machado v. Myers* (2019) 39 Cal.App.5th 779, 797–798.)

No clerk mislaid a tendered document here. Nothing was tendered. The emails were sent to court staff; no one presented them for filing, and no rule made them part of the court file on receipt. Rule 8.155(b), which addresses a clerk's omission of a required or designated document from the existing file, has no application, and Appellant does not invoke it. What she requests is not correction of the record but creation of one, backdated eight months. No authority she cites permits that.

Rule 8.155(b) does have one proper application here, though not the one Appellant proposes. The November 5, 2025 minute order, the order appealed from and a required component of the clerk's transcript (Cal. Rules of Court, rule 8.122(b)(1)(D)), was designated by Appellant (3 CT 714) but does not appear in the clerk's transcript as transmitted. That document exists in the superior court file, and the rules supply its remedy:

a notice to the superior court clerk under rule 8.155(b)(1), or augmentation under rule 8.155(a)(1)(A), because it is a document actually filed in the case. Respondent does not oppose, and affirmatively supports, completing the record with the minute order as written. The contrast resolves this motion: a court record omitted by the clerk travels into the record through the channels the rules provide; materials never filed or lodged in the superior court have no such channel, and augmentation cannot build one.

C. Rule 8.155(c) does not apply because no part of the record is incorrect.

Correction presupposes an incorrect record. The reporter's transcript transcribes the November 5, 2025 hearing; Appellant does not contend it misreports a word. The minute order records what the court did: it dismissed the renewal request on Appellant's non-appearance and prepared no further order. Appellant concedes the order is accurate as far as it goes; her complaint is that it "records the effect" while "omitting the cause." (Mot., p. 11.) An order that accurately states the court's act contains no clerical error. Adding the narrative Appellant proposes, findings about what the court received, acknowledged, and should have weighed, would supplement the order with substance the court did not place there. That is a judicial act, not a clerical correction, and it is outside the power whether exercised by the superior court or directed by this one. (*Eckstrom, supra*, 54 Cal.2d at p. 544; *Morgan, supra*, 89 Cal.App.2d at p. 682.)

The completeness cases Appellant cites do not fill the gap. *Jameson v. Desta* (2018) 5 Cal.5th 594 concerns the availability of a record of what occurred; it places the burden of securing an adequate record on the appellant, not on the court to editorialize its orders. (*Id.* at pp. 608–609.) *In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281 involved a judge who ended a trial before a party finished presenting evidence. (*Id.* at pp. 290–291.) *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, superseded by statute on another point as stated in *In re Marriage of Swain* (2018) 21 Cal.App.5th 830, 840, involved a local rule that barred live testimony from a litigant who appeared and sought to be heard. Appellant was ordered to appear in person, was told the evening before that the matter "remains on calendar" and that the parties were "to appear as previously court ordered" (Owens Decl.,

¶ 14), and did not appear. None of her authorities converts an accurate minute order into an incorrect one.

D. Section 909 fact-taking is reserved for exceptional circumstances, and Appellant bypassed the trial-court remedy that exists for exactly this situation.

The authority to take evidence on appeal "should be exercised sparingly," and "[a]bsent exceptional circumstances, no such findings should be made." (*In re Zeth S.*, supra, 31 Cal.4th at p. 405; accord, *In re Kenneth D.*, supra, 16 Cal.5th at p. 1094.) Appellate courts review; they do not retry. Appellant's request inverts the design: she asks this Court to receive untested emails, a receipt, and after-created medical records as evidence in the first instance, in order to overturn the ruling below.

Nothing about her situation is exceptional, because the Code of Civil Procedure supplies the ordinary remedy for it. A party who contends her non-appearance resulted from mistake, inadvertence, surprise, or excusable neglect may seek relief from the dismissal in the trial court under Code of Civil Procedure section 473, subdivision (b), within six months, on declarations and documentary proof subject to adversarial testing. That motion would have produced a record, made in the trial court, of the circumstances of November 4 and 5, 2025, and a ruling on them. Appellant instead filed her notice of appeal one day after her December 3, 2025 motion, divesting the superior court of jurisdiction, a consequence she has acknowledged under *Varian, supra*, 35 Cal.4th at page 189. Section 909 does not exist to give a litigant a better record than her own procedural choices produced.

E. The withdrawn fee motion is irrelevant to the dismissal under review, and the stated premise for adding it is false.

Appellant asks that the April 29, 2026 fee motion, its exhibits, the May 7, 2026 withdrawal papers, and a related correction travel with the record because "its refiling remains calendared for July 20, 2026." (Mot., p. 12.) There is no such calendar setting. The motion was withdrawn without prejudice on May 7, 2026; it has not been refiled;

Respondent is not pursuing fees and will not refile it; and July 20, 2026 has passed with no fee motion pending. (Marraccini Decl., ¶ 3.)

Relevance fails independently of the false premise. The only question in this appeal is whether the November 5, 2025 dismissal was error. Papers filed and withdrawn months later cannot bear on that question, and a reviewing court generally does not consider matters arising after the order under review. (*In re Zeth S.*, supra, 31 Cal.4th at p. 405.) The evident purpose of the request is different: the packet is the vehicle for Appellant's accusations concerning Respondent's trial counsel, which occupy much of the motion and declaration. Whatever forum those accusations belong in, they have no bearing on the propriety of the dismissal, and the record on appeal is not a repository for them.

F. The motion is untimely, and the emergency it invokes is self-created.

A motion to augment should be made promptly after the record is filed, and courts require a showing of good cause for delay. (*People v. Preslie* (1977) 70 Cal.App.3d 486, 492.) The record was certified on March 19, 2026. Appellant filed this motion on July 13, 2026, nearly four months later, and offers no cause for the delay beyond her detour to a court she knew lacked jurisdiction.

Her explanation for the delay is the superior court's handling of her June submission. The explanation fails on her own papers. Rule 8.155(a) commits augmentation of the appellate record to the reviewing court, and by April 23, 2026, Appellant was citing Varian to this Court for the proposition that the superior court had been divested of jurisdiction over record motions. Knowing that, she filed in the superior court again in June and waited there another month. A motion in this Court was available in March. The urgency the motion invokes was of Appellant's own making, and this Court's July 15, 2026 order has in any event removed it: the opening-brief deadline now runs from the ruling on this motion, so ordinary consideration prejudices no one. Section E of the motion, requesting an expedited ruling before July 29, 2026, is moot.

G. Denial deprives Appellant of nothing: her account of November 4 and 5 is already in the record, and the burden of an adequate record is hers.

The premise of the motion is that without augmentation this Court "will be asked to review the dismissal on a record that reflects only an unexplained non-appearance." (Mot., p. 2.) The clerk's transcript refutes the premise. It contains Appellant's December 3, 2025 declaration, sworn under penalty of perjury, quoting the court's November 4 reporter email, her objection and non-waiver, her two November 5 medical-emergency notifications, and the staff's two written acknowledgments, together with her motion reciting the same events. (3 CT 680–706.) It contains the register of actions showing the full procedural history, including the writ proceedings and the prior continuances. (1 CT 4–13.) The Court reviewing the dismissal can see precisely what Appellant contends the superior court received and when.

What Appellant seeks is not visibility but evidentiary status: conversion of unfiled, untested materials into record evidence after the fact. The rules assign the burden of an adequate record to the appellant and resolve failures of the record against her. (*Jameson, supra*, 5 Cal.5th at pp. 608–609.) The gaps Appellant identifies are the product of her own choices: she did not appear, did not present the materials for filing, did not seek relief from the dismissal in the trial court, and did not move this Court until nearly four months after the record was certified. The motion's extended discussion of out-of-court statements by Respondent's trial counsel requires no response; commentary is not a ground for augmentation, and Respondent does not address it here.

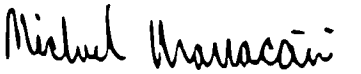
V. CONCLUSION

Respondent respectfully requests that the Court deny the motion in its entirety: deny augmentation as to the materials in Exhibits A through D, which were never filed or lodged in the superior court; deny the request to direct the superior court to lodge those materials nunc pro tunc; deny correction or supplementation of the November 5, 2025 minute order, which is accurate as written; deny inclusion of the withdrawn fee-motion papers, which are irrelevant to the order under review; and deny the request for findings or additional

evidence under Code of Civil Procedure section 909 and rule 8.252. If the Court deems it appropriate, Respondent does not oppose an order completing the record with the November 5, 2025 minute order, which Appellant designated and the clerk omitted. If the Court is inclined to grant any relief, it should be confined to documents actually filed or lodged in the superior court before the notice of appeal.

Dated: July 24, 2026

Respectfully submitted,



Michael Marraccini
Respondent in Pro Per

DECLARATION OF MICHAEL MARRACCINI

I, Michael Marraccini, declare:

1. I am the Respondent in this appeal and in San Francisco County Superior Court case No. FDV-18-813693. I submit this declaration in support of my Opposition to Appellant's Motion to Augment and Correct the Record on Appeal. I have personal knowledge of the facts stated below, and if called as a witness I could and would testify competently to them.

2. In the superior court proceedings I was represented by counsel. I appear in propria persona in this Court for purposes of this opposition.

3. On April 29, 2026, a motion for attorney's fees and costs was filed on my behalf in the superior court. On May 7, 2026, that motion was withdrawn without prejudice. It has not been refiled. I am not pursuing attorney's fees or costs arising from the dismissed renewal proceeding, and I will not refile the motion. As of the date of this declaration, no motion for attorney's fees is pending or calendared in the superior court, and the July 20, 2026 date referenced in Appellant's motion passed with no fee motion on file.

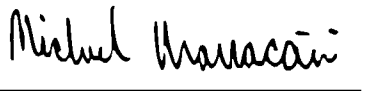
4. I have reviewed the record on appeal in this matter. The superior court certified the record to this Court on March 19, 2026. The clerk's transcript consists of three volumes totaling 718 pages, and the record includes a reporter's transcript of the November 5, 2025 hearing.

5. The clerk's transcript includes the superior court's register of actions (1 CT 4–13) and Appellant's December 3, 2025 Motion to Correct and Augment the Record together with her supporting declaration (3 CT 680–706).

6. I was a recipient of the November 4 and 5, 2025 email communications described in Appellant's motion. Based on my review of the register of actions and the clerk's transcript, none of those email communications, and no flight receipt or hospital record, appears as a document filed or lodged in the superior court before the November 5, 2025 dismissal.

7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 24, 2026, at Sacramento, California.



Michael Marraccini
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COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION ONE

LAURA OWENS, Petitioner and Appellant, v. MICHAEL MARRACCINI, Respondent.	**Court of Appeal No. A175236** (San Francisco County Superior Court No. FDV-18-813693, Hon. Carolyn Gold) **[PROPOSED] ORDER DENYING APPELLANT'S MOTION TO AUGMENT AND CORRECT THE RECORD ON APPEAL**

The Court has considered Appellant Laura Owens's Motion to Augment and Correct the Record on Appeal, filed July 13, 2026, the Declaration of Laura Owens and Exhibits A through D, Respondent Michael Marraccini's opposition, and the Declaration of Michael Marraccini.

The motion is DENIED.

Dated: _____, 2026

_____
Presiding Justice / Associate Justice
Court of Appeal, First Appellate District

Court of Appeal, First Appellate District
Charles D. Johnson, Clerk/Executive Officer
Electronically FILED on 7/24/2026 by T. Nevils, Deputy Clerk

STATE OF CALIFORNIA California Court of Appeal, First Appellate District	***PROOF OF SERVICE*** **STATE OF CALIFORNIA** California Court of Appeal, First Appellate District

Case Name: **L.O. v. Marraccini**
Case Number: **A175236**
Lower Court Case Number: **FDV18813693**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve [redacted]

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ANSWER - OPPOSITION (WITH ONE TIME RESPONSIVE FEE)	Opposition to Motion to Augment MPA + Marraccini + Proposed Order Denying Motion to Augment
PROOF OF SERVICE - PROOF OF SERVICE	Proof of Service

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Person Served	Email Address	Type	Date / Time
Laura Owens	[redacted]	e-Serve	7/24/2026 9:27:54 AM
Michael Marraccini		e-Serve	7/24/2026 9:27:54 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/24/2026
Date

/s/Michael Marraccini

Signature

Marraccini, Michael (Pro Per)

Last Name, First Name (PNum)

Law Firm