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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff and Appellant, v. LOS ANGELES COUNTY CHILD SUPPORT SERVICES DEPARTMENT, Defendant and Respondent.	B270398 (Los Angeles County Super. Ct. No. BC564336)

APPEAL from a judgment of the Superior Court of the County of Los Angeles, William F. Fahey, Judge. Affirmed.

Garrett & Tully, Ryan C. Squire and Lisa Grant, for Plaintiff and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Defendant and Respondent.

Following a bench trial, the trial court issued a statement of decision and determined laches barred a lender's claim for equitable subrogation to the rights of a prior lien holder on real property and then dismissed the entire action.[1] The lender did not object to anything in the statement of decision or advise the trial court of any omissions or ambiguities. On appeal, the lender asserts errors of law and largely eschews challenges to the sufficiency of the evidence. For the reasons that follow, we conclude the legal challenges have no merit and the implied findings doctrine limits the scope of our appellate review into the sufficiency of the evidence claims. We therefore affirm.

FACTUAL BACKGROUND

Beginning in March 1999, defendant and respondent Los Angeles County Child Support Services Department (the County) recorded a series of abstracts of judgment in the total amount of $351,209.46 against John F. Hall IV (son) for unpaid child support.[2]

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[1] The trial court's statement of decision indicates all defendants were dismissed before trial except the County, Patricia Jones and Yvette Hall-Hester and, as to those individual defendants "the case was resolved . . . by way of a stipulation for judgment." The court also found Fannie Mae had not sued an indispensable party.

[2] The abstracts were recorded as follows: March 22, 1999 in the amount of $32,543.71; August 18, 1999 in the amount of $5,677.32; January 31, 2000 in the amount of $55,001.81; May 25, 2001 in the amount of $97,125.97; August 5, 2004 in the amount of $54,434.43; March 29, 2007 in the amount of $79,951.62; and June 27, 2013 in the amount of $26,474.60.

Son's father, John F. Hall III (father), a widower, died intestate on August 8, 2006. His heirs were son and two adult daughters, Pam F. Hall (Pam) and Yvette Hall-Hester (Yvette). At the time of his death, father lived in and owned residential property (the property) encumbered with a 2004 recorded deed of trust in favor of Aames Funding Corporation dba Aames Home Loan (Aames).

Within weeks after father's death, Yvette recorded a grant deed that purported to transfer the property to Patricia Jones (Jones), a half-sister on their mother's side. The deed recited it was "a bonafide gift and the grantor [received] nothing in return . . . ." The notarized deed bore Yvette's signature, purportedly as father's "attorney-in-fact," and was dated March 23, 2006, i.e., four months before father's death.[3]

Jones thereafter applied for a loan from Stearns Lending Inc. (Stearns). On October 3, 2006, Stearns received a "Commitment for Title Insurance" from First American Title Insurance Company that showed Jones owned the property subject to certain tax liens and the Aames deed of trust. The title insurer advised it would not issue a policy until a "name search necessary to ascertain the existence" of "defects, liens, encumbrances or other matters which name parties with similar names as JOHN F. HALL AND PATRICIA A. JONES" was conducted.

On October 20, 2006, Jones signed a promissory note for a $210,000 loan from Stearns, secured by a deed of trust on the property. The deed was recorded November 1, 2006. Most of the loan proceeds paid the outstanding balance on the Aames loan.

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[3] Neither the trial nor appellate record included a power of attorney signed by father.

After payment of settlement charges, Jones received $52,232.24 in cash.

Son, as the administrator of father's estate, had initiated probate proceedings. In 2007, he amended the probate petition to assert causes of action against Jones and Yvette for "ownership of estate property" and damages. Son alleged the August 21, 2006 recorded grant deed to Jones was fraudulent because Yvette did not have father's power of attorney during his lifetime and, in any event, she signed the deed after father's death.

Trial in the probate action resulted in a judgment that voided the August 21, 2006 recorded grant deed to Jones, placed title to the property into father's estate, and ordered Jones to pay the estate the $52,232.24 she received from the Stearns loan. The probate judgment, recorded March 6, 2009, was silent as to the Stearns deed of trust. But at that point, son held an undivided one-third interest with his siblings; and the County's judgment liens against son for unpaid child support were matters of public record. An abstract of judgment reflecting the monetary award against Jones was recorded October 12, 2011.

Although the Jones deed of trust was voided in 2009, Stearns assigned it to JP Morgan Chase Bank N.A. (JP Morgan) in March 2012. That same month, Jones initiated a Chapter 7 bankruptcy proceeding. The bankruptcy court discharged Jones' debt obligations on June 25, 2012 and terminated proceedings on January 14, 2013.

PROCEDURAL BACKGROUND

The only recourse for JP Morgan, foreclosed by the bankruptcy discharge from seeking to collect Jones's debt from her, was to sue to enforce its own deed of trust against the

property or to impress an equitable lien based on the paid-off Aames deed of trust. It filed the verified complaint in this action on November 18, 2014 against son (individually and as the administrator of father's estate), Jones, Yvette, the County, and others[4] asserting causes of action for quiet title, declaratory relief, judicial foreclosure, equitable subrogation, and equitable lien.

Son defaulted; the County, Yvette, and Jones appeared. Federal National Mortgage Association (Fannie Mae) substituted in as plaintiff and true beneficiary under the Stearns deed of trust and filed a document entitled "Stipulation for Judgment as to Defendants [Jones and Yvette]."[5]

Shortly before trial, Fannie Mae announced its intention to dismiss the cause of action for judicial foreclosure. Fannie Mae also advised it would proceed with the "causes of action to impress an equitable lien and equitable subrogation" only if it failed to obtain declaratory relief or to quiet title in its own name.

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[4] The complaint did not name Pam as a party, even though it is undisputed she held an undivided one-third ownership interest in the property.

[5] The document's title is somewhat misleading. There was no stipulation for entry of a judgment; rather, the stipulation provided that Jones and Yvette need not participate further in the pending action and "agree[d] to be bound by an order or judgment issued by the Court in favor of [Fannie Mae]." Other than "the obligations, covenants and conditions" of the stipulation, the parties mutually released each other from all claims concerning the property, the loan, and the Stearns deed of trust.

Counsel apparently met with the trial judge the week before the scheduled trial date and then prepared supplemental trial briefs. As a result of the pretrial conference, Fannie Mae conceded its deed of trust was unenforceable because the grant deed to Jones had been voided. Fannie Mae argued it was entitled to be equitably subrogated to the Aames deed of trust that was recorded in 2004 during father's lifetime. At that time, the County had judgment liens against son, but not yet against the property. Accordingly, Fannie Mae intended to proceed to trial to collect the unpaid balance of the Aames loan, plus interest on that loan, rather than attempt to enforce its own, larger deed of trust.

As a result of Fannie Mae's decision to proceed only on the equitable subrogation/lien issue, the County for the first time asserted laches as a bar to recovery. The County did not include laches as an affirmative defense in its answer, but discussed it in the supplemental pretrial brief.

The November 4, 2015 court trial was an abbreviated event: The parties stipulated to the admission of 30 documentary exhibits;[6] no witnesses testified. Counsel presented closing arguments and engaged in colloquies with the trial court as to the affirmative defense of laches.

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[6] Trial counsel stipulated to the admissibility of the exhibits, but not to the truth of all matters in them. Reading between the lines of a cold record, it appears counsel meant that statements and figures were included in certain documents in lieu of witness testimony. There is no explanation as to why the parties decided not to offer declarations under penalty of perjury or deposition excerpts into evidence.

Although the trial was conducted in fewer than eight hours, the trial court issued a comprehensive statement of decision two days later. The trial court found laches barred Fannie Mae's equitable claims and Fannie Mae failed to sue an indispensable party, Pam, who was also a one-third owner of the property with her siblings.

The statement of decision recited the factual and procedural history of the deeds and the probate proceedings. Turning to this lawsuit, the trial court noted there was no evidence of the property's current market value or that "JP Morgan . . . obtained a new title report [in 2012]" when Stearns assigned the loan and deed of trust. Although counsel for Fannie Mae represented in closing argument her client learned of the 2009 probate judgment sometime in 2012 when it sought to foreclose on the property, she admitted, "I cannot prove that. I don't have any documentation to prove that it was indeed the date that the lender found out." She also offered that Fannie Mae may have learned of the probate judgment and the County's liens via a title company report, "but no such title report was introduced into evidence."

The statement of decision concluded both Fannie Mae and Stearns "had constructive notice of the numerous potential and actual encumbrances on the property. . . . [¶] Neither Stearns nor [Fannie Mae] acted diligently in dealing with the recorded judgments going back to 1999. In 2006, Stearns failed to get a complete title report. There was no name search which would have revealed that there were multiple recorded judgments against [son] which, per [Code of Civil Procedure section] 697.340(b), would attach when he acquired an interest in the home. [¶] More significantly, the Judgment voiding the Jones'

deed was recorded on March 6, 2009. . . . [JP Morgan] itself was on constructive notice of the voided deed in May 2012 when it was assigned the note and deed of trust from Stearns. [¶] In fact, [Fannie Mae] effectively concedes that both it and Stearns were on constructive notice of the liens when they were recorded. As noted, [Fannie Mae's] Brief admits that a July 2013 title search revealed the voided Jones deed."

The statement of decision next addressed Fannie Mae's failure to "really deal with the delay in filing this lawsuit for more than five years after the Probate Court Judgment voiding the Jones' deed." The trial court pointed out Stearns never sought any type of relief after the probate judgment was entered. Neither Stearns nor JP Morgan sought relief at the time of the assignment. Fannie Mae never offered any proof concerning when it or a predecessor learned of the voided judgment; it simply argued it knew no later than July 2013 that the deed had been voided, but still waited another 16 months before initiating this action. "In other words, [observed the trial court,] there was a pattern of dilatory conduct."

Prejudice was proven and obvious to the trial court. The County was required by law to record the child support judgment liens against son. The County met that obligation. "On the other hand, to adopt [Fannie Mae's] position, the salutary purpose of the Family Code would be violated by limiting the County's ability to collect long overdue child support payments."

Finally, the trial court determined Pam was an indispensable party and "it would not be proper to grant plaintiff's request for relief without" her presence. (Code Civ. Proc., § 762.010.)

No party filed objections, brought any omissions or ambiguities to the trial court's attention or asked the court to address additional controverted issues. (Cal. Rules of Court, rule 3.1590.)

The trial court followed the statement of decision with a judgment of dismissal with prejudice as to all defendants. Fannie Mae timely appealed.

DISCUSSION

A. Legal Principles

1. *Standard of Review*

"[T]he question of the proper standard of review . . . 'is present in *every* case . . . .'" (*People v. Alice* (2007) 41 Cal.4th 668, 678.) It looms large here. Fannie Mae contends our review of the trial court decision is de novo because the facts are undisputed. On the other hand, if our review is limited to whether substantial evidence supports the trial court's judgment, both sides agreed at oral argument the doctrine of implied findings controls because no one objected to the statement of decision or brought any omissions or ambiguities to the trial judge's attention. And under the implied findings doctrine, Fannie Mae has the burden to demonstrate no substantial evidence supports the judgment. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 48 (*Fladeboe*).)

Fannie Mae's reliance on the de novo standard of review based solely on the presentation of undisputed evidence at trial was rejected in *Nellie Gail Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982 (*Nellie Gale*): "[Appellants] contend the doctrine of implied findings does not apply because all relevant

facts were undisputed, and therefore the trial court did not resolve any factual issues in reaching its decision. Thus, [appellants] conclude they have raised only legal issues subject to de novo[, i.e., independent,] review. We disagree. There are many disputed factual issues underlying the court's judgment. . . . Moreover, we do not independently review factual issues unless the facts are undisputed *and* no conflicting inferences can be drawn from the facts. [Citations.] [Appellants] failed to establish no conflicting inferences could be drawn from the evidence presented at trial." (*Id.* at p. 996.) Fannie Mae has similarly failed.

The trial evidence in this case consisted of a stack of 30 documents. As mentioned (see fn. 6, *ante*), there was no live witness or deposition testimony or any declarations as to what inferences the trial court could draw from those documents. As discussed, *post,* although the evidence before the trial court was undisputed, it was subject to conflicting inferences. Accordingly, the doctrine of implied findings applies in this appeal.

2. Doctrine of Implied Findings

"'[T]he doctrine of implied findings . . . presumes the trial court made all necessary findings supported by substantial evidence. [Citations.] This doctrine "is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error."'" (*Nellie Gale, supra,* 4 Cal.App.5th at p. 996.) Under this doctrine, we "must infer . . . the trial court impliedly made every factual finding necessary to support its

decision. . . . The appellant . . . must bring ambiguities and omissions in the factual findings of the statement of decision to the trial court's attention. If the appellant fails to do so, the reviewing court will infer the trial court made every implied factual finding necessary to uphold its decision, even on issues not addressed in the statement of decision. The question then becomes whether substantial evidence supports the implied factual findings." (*Fladeboe, supra,* 150 Cal.App.4th at p. 48.)[7] On a substantial evidence review, Fannie Mae has the burden demonstrate "there is no substantial evidence whatsoever to

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[7] More recently the Court of Appeal explained we may "disable" the doctrine of implied findings on appeal only if "both steps of the two-step procedure under [Code of Civil Procedure] section[s] 632 and 634 [are] followed." (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 983 (*Thompson*).) Although unbidden to do so by the parties, the trial court issued a statement of decision. Neither party, however, engaged in the first step—no one specified controverted issues or made any suggestions as to the content for the statement of decision. (See, e.g., Code Civ. Proc., § 632.) Second, because neither party objected to the statement of decision, thereby "depriving the trial court of the opportunity to clarify or supplement its statement of decision before losing jurisdiction . . . [we may deem] objections to the adequacy of a statement of decision . . . waived on appeal. [Citation.] Because either procedural defect impedes the trial court's ability to fulfill its duty under [Code of Civil Procedure] section 632 and potentially undermines the effectiveness of any statement of decision it prepares as a tool of appellate review, strict adherence to both steps of the process is necessary before we will reverse the presumption of correctness generally accorded trial court judgments on appeal." (*Thompson, supra,* 5 Cal.App.5th at p. 983.)

support the findings." (*Young v. City of Coronado* (2017) 10 Cal.App.5th 408, 419.)

3. Laches

With these legal precepts in mind, we turn to the law of laches. The Supreme Court set forth the principles governing laches in *Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624: Laches is an affirmative defense the defendant must prove. In a case like this one, it requires both unreasonable delay in filing suit and prejudice to the defendant as a result of that delay. Laches typically presents as a question of fact for the trial court. (*Id.* at p. 624.) Because the laches finding is fact-driven, a judgment of dismissal based on laches is affirmed on appeal if the trial court's "findings are not palpable abuses of discretion." (*Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037, 1046.) The Supreme Court also has observed, "The defense of laches has nothing to do with the merits of the cause . . . . [It] 'constitutes an affirmative defense which does not reach the merits of the cause.'" (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 77 (*Johnson*); see also *Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1220.)

B. Analysis

1. Laches

The County established the facts of unreasonable delay and prejudice based on the length of time Fannie Mae's predecessors had constructive notice of the County's support judgment liens and the voided grant deed, yet did nothing to protect their rights while the County's ability to satisfy the support judgment liens eroded. Even though the finding of laches was fact-based, Fannie

Mae's primary challenges to the judgment were couched in terms of legal error.[8] According to Fannie Mae, the trial court's reliance on constructive notice as a basis to deny equitable subrogation was contrary to California law because: (i) constructive notice of the County's judgment liens and the 2009 probate judgment "is simply not grounds for rejecting the equitable subrogation claim"; (ii) Stearns had a right to rely on the record of title for the property as it existed in 2006, which showed Jones as the owner of the property; (iii) Stearns could not have discovered the existence of the County's judgment liens in 2006 because those liens were recorded in son's name and not against any particular property; (iv) neither Stearns nor its assignee JP Morgan could be charged with notice of the 2009 probate judgment voiding Stearns' 2006 deed of trust; and (v) neither Stearns nor JP Morgan was a party to the probate judgment, so their rights under the Jones deed of trust could not be affected.

To the extent these arguments present legal challenges to the merits of Fannie Mae's equitable subrogation/lien claim, they fail because the laches defense had "nothing to do with the merits of" those claims. (*Johnson, supra,* 24 Cal.4th at p. 77.) To the

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[8] At oral argument, counsel also mentioned the County had not asserted laches as an affirmative defense in its answer. But laches is an affirmative defense to an equitable cause of action. Until the pretrial conference, Fannie Mae took the position it would not proceed with the equitable theories. When Fannie Mae changed its legal strategy and proceeded only on the equitable claims, laches was tried to the court. Under the doctrine of "theory of the case by trial," "a party may not permit an issue to be tried as though it were properly before the court and then on appeal complain that it was not properly pleaded." (*Rouse v. Underwood* (1966) 242 Cal.App.2d 316, 328.)

extent these arguments challenge the sufficiency of the evidence to support the trial court's finding of laches based on delay and prejudice to the County, they fall short under the implied findings doctrine because Fannie Mae failed to demonstrate the court's findings are not supported by substantial evidence.

The County obtained a series of judgments against son for unpaid child support beginning in 1999. Those judgments did not attach to the property at that time. The Aames deed of trust was recorded in 2004, and father died in 2006. Also in 2006, but after father's death, the gift grant deed in favor of Jones and the Stearns deed of trust were recorded and the Aames deed of trust was retired. The probate court voided the Jones deed of trust in February 2009, and that judgment was recorded against the property in March 2009.

In 2006, when Stearns was processing Jones's loan application, it knew she received the property as a gift from father, through Yvette as his attorney in fact. But no power of attorney demonstrating Yvette's authority to transfer real property on his behalf was produced or recorded. The title insurer declined to issue a policy until name searches had been conducted for John F. Hall and Patricia A. Jones. One inference is that Stearns, as an institutional lender, could simply rely on the recorded grant deed. Another inference is that these facts triggered a duty to make inquiries. (See, e.g., *Triple A Management Co., Inc. v. Frisone* (1999) 69 Cal.App.4th 520, 531 [a lender is not "entitled to ignore reasonable warning signs that appear in the recorded documents . . ."].) Under the doctrine of implied findings, however, we imply the duty of inquiry put Stearns on constructive notice in 2006 that the Jones grant deed might not be valid.

The record in this case is silent as to whether Stearns had notice in 2009 of the probate judgment voiding the Jones grant deed. One inference from the silent record is that Stearns had no such notice. A conflicting inference is that Stearns did have notice in 2009 because Jones, the borrower on its note, was a party in the probate proceedings. Under the doctrine of implied findings, we imply Stearns had notice in 2009 of the probate judgment.

As Fannie Mae's trial counsel conceded, there was no evidence in the record as to when Fannie Mae or a predecessor learned of the 2009 probate judgment. She maintained, however, Fannie Mae did not know until the Jones loan went into default or until foreclosure proceedings were initiated. A conflicting inference is that JP Morgan was charged with the evidence of record title at the time it acquired the deed of trust in early 2012.

In arguing lack of prejudice to the County as a result of the delay, Fannie Mae relies on legal arguments directed to the merits of its equitable subrogation claim, specifically that the County was always in second position behind the Aames deed of trust. But the County's burden to demonstrate that laches barred Fannie Mae's equitable claim did not require the County to prove it would defeat Fannie Mae on the merits of its equitable claim. The County only had to prove the delay resulted in prejudice.

The County did so. In terms of the unpaid principal on the Aames loan and the accumulated interest, it was in a less favorable position at the time of trial than it would have been had Stearns or its successors acted in 2006, 2009 or 2012. That evidence was sufficient to demonstrate prejudice as a result of Fannie Mae's delay.

2. Dismissal with Prejudice

Fannie Mae disputes that Pam was a necessary party to this action[9] and contends the trial court erred in dismissing the entire action with prejudice for failing to join her. The argument assumes the dismissal with prejudice was based on the failure to join a necessary party. But neither the statement of decision nor the judgment reflects that.[10]

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[9] Pam inherited an undivided one-third interest in the property. For reasons unexplained, Fannie Mae sued son and Yvette, the other two owners of the property, but failed to sue Pam. "Where . . . the plaintiff seeks some . . . type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party." (*Bank of California v. Superior Court* (1940) 16 Cal.2d 516, 522.) The failure to name an indispensable party is not jurisdictional. Rather, that omission gives the trial court discretion to dismiss the entire action "as governed by the various factors enumerated in subdivision (b) of section 389 . . . ." (S*ierra Club, Inc. v. California Coastal Com*. (1979) 95 Cal.App.3d 495, 500; Cf. Quantification Settlement Agreement Cases (2001) Cal.App.4th 758, 857.)

[10] The statement of decision explicitly advised, "it would not be proper to grant [Fannie Mae's] request for relief without the presence of Pam Hall who all parties agree is an heir of [father] and thus has an interest in the property." In the next paragraph, the trial court announced the entire action would be dismissed with prejudice.

The statement of decision is exhibit A to the judgment. But the judgment itself includes a legal description of the property and states plaintiff "shall take nothing by its Complaint."

Rather, the statement of decision appears to be ambiguous as to why the necessary party finding was made. Once again, a timely objection or inquiry to the trial court would have resolved the question. In any event, Fannie Mae has not demonstrated error, much less reversible error.

The trial court began the statement of decision by reciting the procedural posture of the case. It noted various defaults had been entered and "[a]t the August 18, 2015 hearing, [Fannie Mae's] counsel advised that the remaining defendants had been dismissed, other than the County of Los Angeles, Patricia Jones and Yvette Hall-Hester." Fannie Mae substituted in as plaintiff on October 19, 2015. The following week, "the case was resolved as to defendants Jones and Hall-Hester by way of a stipulation for judgment."

As discussed, Fannie Mae did not raise any objections, omissions or ambiguities in the statement of decision to the trial judge. The appeal proceeded by way of an appellant's appendix, so our record does not include a clerk's transcript. Other than the stipulation with Jones and Yvette (see fn. 5, *ante*), no minutes or other documents from the appendix substantiate or repudiate the trial court's recitation of the procedural posture of the case and the status of all named defendants. Accordingly, we have no basis to question the trial court's statements that all causes of action except the equitable claims and all defendants except the County, Jones, and Yvette, were previously dismissed.

As already noted, the stipulation between Fannie Mae and Jones and Yvette was not a true stipulation for entry of judgment. Rather, it simply provided in the event the trial court ruled in favor of Fannie Mae, Jones and Yvette would not interfere with any judgment or foreclosure proceedings.

Otherwise, the parties mutually released each other from all claims involving the property, the loan, and the deed of trust. With a mutual release, the dismissal with prejudice was appropriate as to Jones and Yvette. With the laches finding, the dismissal with prejudice was also appropriate as to the sole remaining defendant, the County.

DISPOSITION

The judgment of the trial court is affirmed. The County is awarded costs on appeal.

DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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* Judge of the Orange Superior Court, appointed by the Chief Justice pursuant to article VI, section 6, of the California Constitution.