PARTY WITHOUT ATTORNEY OR ATTORNEY
NAME: Stephanie J. Finelli
STATE BAR NUMBER: 173462
FIRM NAME: Law Office of Stephanie J. Finelli
STREET ADDRESS: 3110 S Street
CITY: Sacramento
STATE: CA ZIP CODE: 95816
TELEPHONE NO.: 916-443-2144
FAX NO.: 916-443-1512
E-MAIL ADDRESS: Steph@finellilaw.com
ATTORNEY FOR (name): Attorney for Petitioner, Ekaterina Strulyov

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara
STREET ADDRESS: 201 North First Street
MAILING ADDRESS: 191 North First Street
CITY AND ZIP CODE: San Jose, CA 95113
BRANCH NAME:

PETITIONER: Ekaterina Strulyov
RESPONDENT: Eugene Strulyov
OTHER PARENT/PARTY:

REQUEST FOR ORDER ☐ CHANGE ☐ TEMPORARY EMERGENCY ORDERS

- ☐ Child Custody
- ☐ Child Support
- ☐ Property Control
- ☐ Visitation (Parenting Time)
- ☐ Domestic Violence Order
- ☒ Other *(specify)*: Request for attorney fees for appeal
- ☐ Spousal or Partner Support
- ☒ Attorney's Fees and Costs

CASE NUMBER: 19FL001660

NOTICE OF HEARING

1. TO *(name(s))*: Eugene Strulyov
   ☐ Petitioner ☒ Respondent ☐ Other Parent/Party ☐ Other *(specify)*:

2. **A COURT HEARING WILL BE HELD AS FOLLOWS:**
   a. Date: Time: ☐ Dept.: ☐ Room.:
   b. Address of court ☐ same as noted above ☐ other *(specify)*:

3. **WARNING to the person served with the *Request for Order*:** The court may make the requested orders without you if you do not file a *Responsive Declaration to Request for Order* (form FL-320), serve a copy on the other parties at least nine court days before the hearing (unless the court has ordered a shorter period of time), and appear at the hearing. *(See form FL-320-INFO for more information.)*

(Forms FL-300-INFO and DV-400-INFO provide information about completing this form.)

COURT ORDER
(FOR COURT USE ONLY)

It is ordered that:

4. ☐ Time ☐ for service ☐ until the hearing is shortened. Service must be on or before *(date)*:
5. ☐ A *Responsive Declaration to Request for Order* (form FL-320) must be served on or before *(date)*:
6. ☐ The parties must attend an appointment for child custody mediation or child custody recommending counseling as follows *(specify date, time, and location)*:
7. ☐ The orders in *Temporary Emergency (Ex Parte) Orders* (form FL-305) apply to this proceeding and must be personally served with all documents filed with this *Request for Order*.
8. ☐ Other *(specify)*:

Date:

JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
FL-300 [Rev. July 1, 2016]

REQUEST FOR ORDER

Family Code, §§ 2045, 2107, 6224, 6226, 6320–6326, 6380–6383;
Government Code, § 26826
Cal. Rules of Court, rule 5.92
www.courts.ca.gov

PETITIONER: Ekaterina Strulyov RESPONDENT: Eugene Strulyov OTHER PARENT/PARTY:	CASE NUMBER: 19FL001660

REQUEST FOR ORDER

Note: Place a mark [X] in front of the box that applies to your case or to your request. If you need more space, mark the box for "Attachment." For example, mark "Attachment 2a" to indicate that the list of children's names and birth dates continues on a paper attached to this form. Then, on a sheet of paper, list each attachment number followed by your request. At the top of the paper, write your name, case number, and "FL-300" as a title. (You may use *Attached Declaration* (form MC-031) for this purpose.)

1. ☐ RESTRAINING ORDER INFORMATION
One or more domestic violence restraining/protective orders are now in effect between *(specify)*:
☐ Petitioner ☐ Respondent ☐ Other Parent/Party *(Attach a copy of the orders if you have one.)*
The orders are from the following court or courts *(specify county and state)*:
a. ☐ Criminal: County/state *(specify)*: Case No. *(if known)*:
b. ☐ Family: County/state *(specify)*: Case No. *(if known)*:
c. ☐ Juvenile: County/state *(specify)*: Case No. *(if known)*:
d. ☐ Other: County/state *(specify)*: Case No. *(if known)*:

2. ☐ CHILD CUSTODY
☐ VISITATION (PARENTING TIME) ☐ I request temporary emergency orders
a. I request that the court make orders about the following children *(specify)*:

Child's Name	Date of Birth	☐ Legal Custody to *(person who decides: health, education, etc)*:	☐ Physical Custody to *(person with whom child lives)*:

☐ Attachment 2a.

b. ☐ The orders I request for ☐ child custody ☐ visitation (parenting time) are:
(1) ☐ Specified in the attached forms:
☐ Form FL-305 ☐ Form FL-311 ☐ Form FL-312 ☐ Form FL-341(C)
☐ Form FL-341(D) ☐ Form FL-341(E) ☐ Other *(specify)*:
(2) ☐ As follows *(specify)*:

☐ Attachment 2b.

c. The orders that I request are in the best interest of the children because *(specify)*:

☐ Attachment 2c.

d. ☐ This is a change from the current order for ☐ child custody ☐ visitation (parenting time).
(1) ☐ The order for legal or physical custody was filed on *(date)*: . The court ordered *(specify)*:

(2) ☐ The visitation (parenting time) order was filed on *(date)*: . The court ordered *(specify)*:

☐ Attachment 2d.

PETITIONER: Ekaterina Strulyov RESPONDENT: Eugene Strulyov OTHER PARENT/PARTY:	CASE NUMBER: 19FL001660

3. ☐ CHILD SUPPORT
(Note: An earnings assignment may be issued. See *Income Withholding for Support* (form FL-195))
a. I request that the court order child support as follows:

Child's name and age	☐ I request support for each child based on the child support guideline.	Monthly amount ($) requested (if not by guideline)

b. ☐ I want to change a current court order for child support filed on *(date):* ☐ Attachment 3a.
The court ordered child support as follows *(specify):*

c. I have completed and filed with this *Request for Order* a current *Income and Expense Declaration* (form FL-150) or I filed a current *Financial Statement (Simplified)* (form FL-155) because I meet the requirements to file form FL-155.
d. The court should make or change the support orders because *(specify):* ☐ Attachment 3d.

4. ☐ SPOUSAL OR DOMESTIC PARTNER SUPPORT
(Note: An *Earnings Assignment Order For Spousal or Partner Support* (form FL-435) may be issued.)
a. ☐ Amount requested *(monthly):* $
b. ☐ I want the court to ☐ change ☐ end the current support order filed on *(date):*
The court ordered $ per month for support.
c. ☐ This request is to modify (change) spousal or partner support after entry of a judgment.
I have completed and attached *Spousal or Partner Support Declaration Attachment* (form FL-157) or a declaration that addresses the same factors covered in form FL-157.
d. I have completed and filed a current *Income and Expense Declaration* (form FL-150) in support of my request.
e. The court should should make, change, or end the support orders because *(specify):* ☐ Attachment 4e.

5. ☐ PROPERTY CONTROL
a. The ☐ petitioner ☐ respondent ☐ other parent/party ☐ I request temporary emergency orders be given exclusive temporary use, possession, and control of the following property that we ☐ own or are buying ☐ lease or rent *(specify):*

b. The ☐ petitioner ☐ respondent ☐ other parent/party be ordered to make the following payments on debts and liens coming due while the order is in effect:
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
c. ☐ This is a change from the current order for property control filed on *(date):*
d. Specify in Attachment 5d the reasons why the court should make or change the property control orders.

PETITIONER: Ekaterina Strulyov RESPONDENT: Eugene Strulyov OTHER PARENT/PARTY:	CASE NUMBER: 19FL001660

6. [x] ATTORNEY'S FEES AND COSTS
I request attorney's fees and costs, which total *(specify amount):* $ 11,830.74 . I filed the following to support my request:
a. A current *Income and Expense Declaration* (form FL-150).
b. A *Request for Attorney's Fees and Costs Attachment* (form FL-319) or a declaration that addresses the factors covered in that form.
c. A *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) or a declaration that addresses the factors covered in that form.

7. [ ] DOMESTIC VIOLENCE ORDER
- Do not use this form to ask for domestic violence restraining orders! Read form DV-505-INFO, *How Do I Ask for a Temporary Restraining Order,* for forms and information you need to ask for domestic violence restraining orders.
- Read form DV-400-INFO, *How to Change or End a Domestic Violence Restraining Order* for more information.

a. The *Restraining Order After Hearing* (form DV-130) was filed on *(date):*
b. I request that the court [ ] change [ ] end the personal conduct, stay-away, move-out orders, or other protective orders made in *Restraining Order After Hearing* (form DV-130). (*If you want to change the orders, complete 7c.)*
c. [ ] I request that the court make the following changes to the restraining orders *(specify):* [ ] Attachment 7c.

d. I want the court to change or end the orders because (*specify*): [ ] Attachment 7d.

8. [ ] OTHER ORDERS REQUESTED *(specify):*
ia a Writ of Execution and Abstract of Judgment [ ] Attachment 8.

9. [ ] TIME FOR SERVICE / TIME UNTIL HEARING I urgently need:
a. [ ] To serve the *Request for Order* no less than *(number):* court days before the hearing.
b. [ ] The hearing date and service of the the *Request for Order* to be sooner.
c. I need the order because *(specify):*
[ ] Attachment 9c.

10. [x] FACTS TO SUPPORT the orders I request are listed below. The facts that I write in support and attach to this request cannot be longer than 10 pages, unless the court gives me permission. [x] Attachment 10.

See attachment 10: Declaration of Stephanie J. Finelli and Exhibits thereto; Memo of Points & Authorities

I declare under penalty of perjury under the laws of the State of California that the information provided in this form and all attachments is true and correct.

Date: June 30, 2025

Ekaterina Strulyov
(TYPE OR PRINT NAME)

E Strulyov
(SIGNATURE OF APPLICANT)

Requests for Accommodations
Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

PETITIONER/PLAINTIFF: Ekaterina Strulyov RESPONDENT/DEFENDANT: Eugene Strulyov OTHER PARTY:	CASE NUMBER: 19FL001660

REQUEST FOR ATTORNEY'S FEES AND COSTS ATTACHMENT

1. I am completing this form because:
   a. I need to have enough money for attorney's fees and costs to present my case adequately;
      ☐ I am receiving free legal services from an attorney at a nonprofit legal services agency or a volunteer attorney.
   b. I have less money or limited access to funds to retain or maintain an attorney compared to the party that I am requesting pay for my attorney's fees and costs; and
   c. the party that I want the court to order to pay for my attorney's fees and costs has or is reasonably likely to have the ability to pay for attorney's fees and costs for me and himself or herself.

2. I am asking the court to order that *(check all that apply)*: ☑ petitioner/plaintiff ☐ respondent/defendant ☐ other party *(specify)*: pay for my attorney's fees and costs in this legal proceeding as follows:
   a. ☑ Fees: $ 11,335
   b. ☑ Costs: $ 595.74

3. The requested amount includes *(check all that apply)*:
   a. ☐ a fee in the amount of: $ to hire an attorney in a timely manner before the proceedings in the matter go forward.
   b. ☑ attorney's fees and costs incurred from the beginning of representation until now in the amount of: $ 11.830.74
   c. ☐ estimated attorney's fees and costs in the amount of: $
   d. ☐ attorney's fees and costs for limited scope representation in the amount of: $

4. Have attorney's fees and costs been ordered in this case before?
   a. ☐ No.
   b. ☑ Yes. If so, describe the order:
      (1) The ☐ petitioner/plaintiff ☑ respondent/defendant ☐ other party must pay: $ 60,000 for attorney's fees and costs.
      (a) This order was made on *(date)*: 4-2-2022
      (b) From the payment sources of *(if known)*:
      (c) The payments ☑ have been made ☐ have not been made ☐ have been made in part since the date of the order.
      (2) ☑ Additional information *(specify)*:
      Respondent was also sanctioned by this court $999 in January 2023 and another $700 by this court in an order that was finalized April 16, 2025. The awards were paid.

5. Along with this *Request* form, you must complete, file and serve:
   a. A current *Income and Expense Declaration* (form FL-150). It is considered current if you have completed form FL-150 within the past three months and no facts have changed since the time of completion; and

PETITIONER/PLAINTIFF: Ekaterina Strulyov RESPONDENT/DEFENDANT: Eugene Strulyov OTHER PARTY:	CASE NUMBER: 19FL001660

5. b. A personal declaration in support of your request for attorney's fees and costs that explains why you need an award of attorney's fees and costs (either *Supporting Declaration for Attorney's Fees and Costs Attachment (*form FL-158) or a comparable declaration that addresses the factors covered in form FL-158).

6. The party requesting attorney's fees and costs must provide the court with sufficient information about the following factors:
   a. The attorney's hourly billing rate;
   b. The nature of the litigation, its difficulty, and the skill required and employed in handling the litigation;
   c. Fees and costs incurred until now; anticipated attorney's fees and costs; and why the fees and costs are just, necessary, and reasonable;
   d. The attorney's experience in the particular type of work demanded; and
   e. If it is a limited scope fee arrangement, the scope of representation.

Notice to Responding Party

7. To respond to this request, you must complete, file, and serve:
   a. A *Responsive Declaration* (form FL-320);
   b. A current *Income and Expense Declaration* (form FL-150). It is considered current if you have completed form FL-150 within the past three months and no facts have changes since the time of completion; and
   c. A personal declaration explaining why the court should grant or deny the request for attorney's fees and costs (either *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) or a comparable declaration that addresses the factors covered in form FL-158).

8. Number of pages attached to this *Request* form: _____

I declare under penalty of perjury under the laws of the State of California that the information contained on all pages of this form and any attachments is true and correct.

Date: 6-30-2025

Ekaterina Strulyov
(TYPE OR PRINT NAME)

E Strulyov
(SIGNATURE)

PETITIONER/PLAINTIFF: Ekaterina Strulyov RESPONDENT/DEFENDANT: Eugene Strulyov OTHER PARTY:	CASE NUMBER: 19FL001660

SUPPORTING DECLARATION FOR ATTORNEY'S FEES AND COSTS ATTACHMENT

To: ☑ ***Request for Attorney's Fees and Costs Attachment*** **(form FL-319)**

☐ ***Responsive Declaration*** **(form FL-320)**

1. I am
   a. ☑ the petitioner/plaintiff.
   b. ☐ the respondent/defendant.
   c. ☐ the other party.

2. I request that the court ☑ grant ☐ grant in part ☐ deny the request for attorney's fees and costs.

3. I am providing the following information ☑ in support of ☐ in opposition to the request for attorney's fees and costs.
   a. The ☐ petitioner/plaintiff ☑ respondent/defendant ☐ other party has the ability to pay
      (1) ☑ my attorney's fees and costs.
      (2) ☐ his or her own attorney's fees and costs.
      (3) ☑ both my and his or her own attorney's fees and costs.
      (4) ☐ other *(specify):*

   b. The attorney's fees and costs can be paid from the following sources:
      Savings and prior income; earnings from current job at $200,000 per year; investments.

   c. The court should consider the following facts in deciding whether to grant, grant in part, or deny the request for attorney's fees and costs *(describe):*
      ☐ See Attachment 3c.
      The appellate court declined to order fees as sanctions, but the standard for an award of fees by the appellate court is much higher than an award under Family Code section 271. The standard in the appellate court requires the appeal be frivolous and/or solely for purposes of delay. (CCP 906; Citizens for Amending Proposition L v. City of Pomona (2018) 28 Cal.App.5th 1159, 1194.) "[A]n appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit." (In re Marriage of Flaherty (1982) 31 Cal.3d 637, 650.) The appellate court did not find Eugene's motives were "clearly improper" but that court's experience with this case is far more limited. As should be clear, Eugene will continue to litigate and appeal and litigate, regardless of merit.

   d. If appropriate, describe the reasons why a non-spouse party or domestic partner is involved in the case and whether he or she should or should not pay attorney's fees and costs:
      ☐ See Attachment 3d.

PETITIONER/PLAINTIFF: Ekaterina Strulyov RESPONDENT/DEFENDANT: Eugene Strulyov OTHER PARTY:	CASE NUMBER: 19FL001660

4. Has an order already been made for payment of child support in this case?
   a. ☐ No.
   b. ☑ Yes. If so, describe the order:
      (1) The ☐ petitioner/plaintiff ☑ respondent/defendant ☐ other party must pay: $ per month for child support.
      (a) This order has been in effect since *(date)*: 12-17-2024
      (b) The payments ☑ have been made ☐ have not been made ☐ have been made in part since the date of the order.
      (2) ☑ Additional information *(specify)*:

      Eugene was ordered to pay $1,934 per month in child support on Dec. 17, 2024. On December 20, 2024, Eugene filed a motion to modify. After several hearings, the motion to modify was denied for no change of circumstances. Eugene was sanctioned $700.

5. Has an order already been made for payment of spousal, partner, or family support in this case?
   a. ☐ No.
   b. ☑ Yes. If so, describe the order:
      (1) The ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other party must pay: $ per month for ☐ spousal support ☐ partner support ☐ family support.
      (a) This order has been in effect since *(date)*:
      (b) The payments ☐ have been made ☐ have not been made ☐ have been made in part since the date of the order.
      (2) ☑ Additional information *(specify)*:

      The parties have waived any spousal and jurisdiction of this Court to order it has been terminated.

6. If you are or were married to, or in a domestic partnership with, the person you are seeking fees from, the court must consider the factors in Family Code section 4320 in determining whether it is just and reasonable under the relative circumstances to award attorney's fees and costs. Complete and attach *Spousal or Partner Support Declaration Attachment* (form FL-157) or a comparable declaration to provide the court with information about the factors described in section 4320.

7. You must complete, file, and serve a current *Income and Expense Declaration* (form FL-150). It is considered current if you have completed form FL-150 within the past three months and no facts have changed since the time of completion.

8. Number of pages attached to this *Supporting Declaration*: _____

I declare under penalty of perjury under the laws of the State of California that the information contained on all pages of this form and any attachments is true and correct.

Date: 6/30/2025

Ekaterina Strulyov
(TYPE OR PRINT NAME)

▶ EStrulyov
(SIGNATURE)

***Strulyov v. Strulyov,* Santa Clara County case number 19FL001660**
ATTACHMENT 10 to Request for Order

DECLARATION OF STEPHANIE J. FINELLI

I, Stephanie J. Finelli, hereby, hereby declare and if called as a witness would competently testify as follows:

1. I am an attorney, duly licensed and practicing in the State of California. I represented Ekaterina Strulyov ("Ekaterina") on her successful defense against Eugene Strulyov's ("Eugene's") appeals, including the most recent one. A true and correct copy of the appellate Opinion filed March 20, 2025 is attached hereto as **Exhibit A**. A true and correct copy of the prior appellate Opinion filed July 27, 2023 is attached hereto as **Exhibit B**. Both are incorporated herein by reference.

2. By this Declaration I am seeking $11,830.74 in attorney fees and costs incurred on the most recent appeal, consisting of $9,400.00 in attorney fees and $535.74 in costs, plus another $1,820.00 in fees and $60.00 in costs to prepare and file this motion. The $535.74 in appellate costs are also being sought by the cost memorandum filed concurrently herewith.

3. The fees are based on (1) my time to prepare the Respondent's Brief; (2) my time to prepare for and appear remotely at oral argument; and (3) my time (5.2 hours) to prepare the instant motion, based on my hourly billing rate of $350.00. This rate of $350 per hour is reasonable, if not low, for an attorney of my experience and qualifications, which are as follows:

a. I am a 1994 graduate of the University of California, Davis, School of Law, and became licensed to practice law in December 1994 and have continuously practiced since then. My first year in practice was as a fellow at the Criminal Justice Legal Foundation, at which I wrote amicus curiae briefs to the California and United States Supreme Courts on various constitutional issues. From 1996 to 2003, I was an associate at Freidberg Law Corporation, a small Sacramento firm specializing in complex business litigation and legal malpractice. In August 2003, I started my own practice, which continues to this day. My primary focus is civil litigation and appeals, including many family-law appeals. I am certified as an appellate specialist by the California Bar and am a member of the California Academy of Appellate Lawyers.

b. I have tried dozens of cases, including lengthy family-law trials, numerous other bench trials, and nine jury trials. I have had numerous published appellate opinions over my career. Some of my more recent are *In re Marriage of Gilbert-Valencia & McEachen* (2023) 98 Cal.App.5th 520; *Swan v. Hatchett* (2023) 92 Cal.App.5th 1206; *McGee v. State Dept. of Health Care Services* (2023) 91 Cal.App.5th 1161; *Fowler v. Golden Pacific Bancorp, Inc.* (2022) 80 Cal.App.5th 205; *In re Marriage of Mullonkal & Kodiyamplakkil* (2020) 51 Cal.App.5th 604, *Bayramoglu v. Nationstar Mortgage LLC* (2020) 51 Cal.App.5th 726; *Pasco v. Pasco* (2019) 42 Cal.App.5th 585; *C.A. v. C.P*. (2018) 29 Cal.App.5th 27; and *In re Marriage of Davis* (2015) 61 Cal.4th 846. I have many others; these are some of the recent and notable ones.

c. Approximately 40% of my work involves litigation at the trial level and I have tried family law and civil cases, both bench and jury trials, in various counties including Sacramento, Placer, Calaveras, Contra Costa, Alameda, Marin, San Mateo, and San Joaquin and in the United States District Court for the Eastern District. Many of my trials, including family-law trials, have spanned a week or more; I have several trials that spanned three weeks or more.

d. I have been named a "Super Lawyer" of Northern California in from 2016 through 2025, as well as one of the "Top Lawyers of Sacramento" by Sacramento Magazine.

4. I repeatedly tried to resolve the issue of the Google stock after the first appellate decision. Despite my best efforts, Mr. Strulyov refused all offers of reasonable settlement. This included before the hearing on the Google stock on remand and after the court's decision thereon.

5. My billing statements are attached hereto as **Exhibit C** showing the time I spent on the appeal at my regular hourly rate for this case of $350.00, not including for this motion. I also spent at least 5.2 hours preparing the instant motion including the Request for Order and other forms, the Points & Authorities, this declaration, and the exhibits. At my hourly rate of $350.00, this totals another **$1,820.00**. All such time was reasonable and necessary in my representation.

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

Dated: June 30, 2025

By: *Stephanie J. Finelli*
STEPHANIE J. FINELLI

MEMORANDUM OF POINTS & AUTHORITIES

A. This Court Is the Proper Court for This Fee Motion

Following appeal, a motion for attorney fees incurred on the appeal is generally made by the trial court, following the remittitur. (See CRC Rule 3.1702(c) [providing time-frame for filing request for appellate fees in trial court]; see also *Butler-Rupp v. Lourdeaux* (2007) 154 Cal.App.4th 918, 924 ["trial courts retain discretion to award attorney fees incurred on appeal to the eventual prevailing party without any order from the appellate court, even where the appellate court, in its remand order, orders the parties to bear their own appellate costs."])

The appellate court declined to award fees as sanctions. But the standard for an award of fees by the appellate court is much higher than an award under Family Code section 271. The standard in the appellate court requires the appeal be frivolous and/or solely for purposes of delay. (Code Civ.Proc. §906; *Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1194.) "[A]n appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.)

The appellate court awarded costs to Ekaterina. Such neither includes nor precludes an award of fees. (See CRC Rule 8.278(d).) Rather, as noted above, it is for this Court to determine, based on its greater knowledge and experience with the case, whether to award such fees. (See, e.g., *SASCO v. Rosendin Electric, Inc.* (2012) 207 Cal.App.4th 837, 849 [as prevailing party on appeal, defendants were entitled to attorney fees, and although appellate court had the power to fix attorney fees on appeal, "'the better practice is to have the trial court determine such fees.'"] Citations omitted.)

The appellate court did not find Eugene's motives were "clearly improper" and thus declined to award fees under that stringent standard. But that Court's experience with this case is far more limited. As should be clear, Eugene will continue to litigate, regardless of merit. This Court may and should view the fee request based on the history of this case and its background.

This Court has already held that Ekaterina is entitled to attorney fees under Family Code section 271 for Eugene's conduct in the 2021 trial, as well as in the most recent request to modify

child support within days of entry of a support award. This Court may and should award fees for Eugene's unsuccessful and unmeritorious appeal.

B. Fees Are Warranted Under Family Code Section 271

It is well established that if fees are recoverable pursuant to statute or the parties' agreement, they are available for services on appeal. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 637.) Fees are recoverable under Family Code section 271(a), which provides, "the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation…."

Eugene's actions in bringing this appeal frustrated settlement and were clearly designed to delay and cause Ekaterina to incur more money in fees. This has been Euguene's modus operandi from the start of this litigation. As evidenced by this appeal, he is unlikely to stop. Despite Ekaterina's efforts to resolve the issue of the Google stock before the hearing on remand, and again before and during the pendency of Eugene's second appeal, Eugene refused all reasonable offers to settle. (Declaration of Stephanie J. Finelli ["Finelli Decl."] at ¶ 4.)

The appeal was entirely meritless and without legal basis. The Sixth District soundly rejected all of Eugene's arguments in a unanimous opinion. (See **Exh A**.) Fees are warranted.

1. Eugene's argument that the Google stock was not an omitted asset was baseless

In denying Eugene's argument that he should have been awarded one-half of the Google stock, the Sixth District reiterated the presumption of correctness and the high burden an appellant faces in seeking to overturn a court's discretionary ruling. (Exh A p. 7.) It then addressed Euguene's argument that the omitted Google stock was not actually omitted, stating

> Eugene contends that section 2556 is not applicable to the present case because the omitted asset—here, the Schwab account containing the 36 Google shares previously deemed to be community property—was not, in fact, omitted but was already included in the cash value divided at equalization. He argues that since Katia had already received cash value for the 18 Google shares, the grant of another 18 Google shares in kind effectively awarded her 100 percent of the asset ("50% via equalization + 50% in kind").

> ***This argument disregards this court's prior opinion in which we upheld the determination that the 36 shares of Google stock were not adjudicated in the judgment and thus were an omitted asset. Eugene's argument also misconstrues the sole issue to be determined on remand***, which was whether the interests of justice required an unequal division of the omitted asset (§ 2556), not to relitigate whether the Google stock had been omitted. Eugene's reliance on *In re Marriage of Rossi* (2001) 90 Cal.App.4th 34 to distinguish these facts from a case in which the omitted asset was "truly omitted" (boldface omitted) because one party concealed and retained the asset, while the aggrieved party received nothing at all, ***is inapt***.

(Exh A pp. 8-9, emphasis added footnote omitted.)

In this second appeal, Eugene disregarded the prior appellate Opinion, which explicitly stated that the Google stock was an omitted asset. (**Exh B**, p. 26 [affirming the finding of omitted asset].) And he misconstrued the sole issue the appellate court had remanded for determination. These arguments were entirely meritless and in fact frivolous. While the appeal may not have been frivolous in its entirety, this argument was certainly frivolous.

Eugene's credibility, or lack thereof, was also a factor in the Sixth District's Opinion. In affirming this Court's decision regarding the Google stock, the Sixth District also pointed out that this Court had found Eugene's credibility lacking, stating, "In considering these [each parties'] arguments, the trial court weighed the evidence and assessed each side's credibility." (Exh A, p. 11.) It further stated,

> The trial court found that Eugene's unilateral selection of those stocks he transferred to Katia (rather than transferring one-half of all stock holdings valued at the time of transfer), through which he allocated capital gains to her but not to himself, resulted in Katia receiving less than one-half of the community stock assets. The court further found Eugene's testimony not credible regarding his lack of awareness about the impact of the tax basis when deciding which stocks to transfer to Katia. The court found it was undisputed that Eugene did not factor into his calculations the additional 10 shares of Google stock that he received between the parties' separation in April 2019 and the division of community assets in July 2019, but simply kept those shares.

(Exh A p. 11.)

In affirming, the Sixth District stated the evidence supported this court's credibility finding "in which it rejected Eugene's claim that he was unaware of the impact of the tax basis or its effect on the value of the assets he transferred." (Exh A, pp. 11-12.)

The appellate court also refuted Eugune's argument that this court's equal division of the Google stock exacerbated an unequal division of community assets, sating, "Eugene's argument is based on the faulty premise that the trial court's task was to divide the omitted Schwab account to ensure that each party received an equal division of overall community assets. This was not the posture of the case on remand, ***nor could it have been given the nature of the property division under the 2019 judgment, which was by agreement of the parties pursuant to a stipulated order***." (Exh A, p. 12, emphasis added.) The appellate court reiterated that "the purpose of the hearing on remand was not to relitigate the fairness or relative values of the original division of property under the 2019 judgment." (Exh A, p. 12.) That such was not the purpose was clear, and would have been clear to Eugene, from the language of the Sixth District's prior opinion, in which it "remanded 'for the limited purpose of a determination by the trial court whether the interests of justice require an unequal division of the Google stock' under sections 2556 and 2550." (Exh A, p. 2.)

2. Eugene's argument that he was entitled to a statement of decision was baseless

The Sixth District also soundly rejected Eugene's argument that the trial court was required to issue a statement of decision and that such required reversal. (Ehx A, p. 13.)

First, Eugene did not even address the threshold issue of whether a statement of decision was required, given "the narrow scope" of the remand. The appellate court held that the remand "falls outside the purview of a "trial of a question of fact" as specified in the statute." (Exh A, p. 14.) Thus, Eugene was unable to even get past the threshold question of whether a Statement of decision was even required.

Second, Eugene's argument strayed from legal argument based to personal attacks on this Court, accusing this Court "of subjecting him to unequal treatment (because he is male) and violating his right to equal protection, based on the court issuing a statement of decision in response to Katia's request in the earlier proceeding while refusing to issue a statement of decision in this proceeding." (Exh A, pp. 14-15.) But as the Sixth District explained, this "differential treatment" was due to the differences in the proceedings: the limited nature of the remand issues versus the two-day evidentiary trial regarding multiple issues and findings of fact. (Exh A, p. 15.)

Third, Eugene did not show, or even try to show, prejudice as a result of the denial of a SOD. In fact, he cited prior, superseded law in support of his incorrect legal position that the failure to issue a Statement of Decision (assuming one was required) was reversible per se. (Exh A, p. 15.) As the law clearly provides, and as Ekaterina explained in her Respondent's Brief, the failure to issue a Statement of Decision, even assuming one was required, is subject to harmless error. (Exh A, p. 15.) This standard is well settled and grounded in our constitution. (Cal. Const. art. VI, § 13; Code Civ.Proc. §475; *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800.) Yet nowhere in his Opening Brief did Eugene even address this fundamental issue.

3. Eugene's peremptory challenge argument was baseless

Eugene had no legal basis for appealing the denial of the peremptory challenge. As Ekaterina argued and the Sixth District held, the denial of a preemptory challenge is not an appealable order. (Exh A, p. 17.) The Court stated that Eugene apparently recognized that the order was not appealable, stating "In apparent recognition that he may not seek review of the denial of his peremptory challenge on appeal, Eugene frames his argument in terms of due process." (Exh A, p. 17.) But then the court noted that Euguene's claims of prejudice based on adverse decisions were severely lacking, stating, "Eugene offers no authority to support his otherwise conclusory contentions that these decisions, which he perceives as adverse, were, in fact, the result of prejudice." (Exh A p. 18.)

And there was no evidentiary support for Eugene's claims. As the Sixth District stated,

> Nor does our review of the record reveal support for Eugene's characterization of the trial judge's decisions. On the contrary, the record reflects that the judge attempted to limit both parties at the evidentiary hearing to evidence and examination that was relevant to the narrow issue on remand and did not allow one side to "relitigate old issues" while imposing lopsided limits on the other side.

(Exh A, p. 18.)

C. An Award of Fees Is Proper Despite the Appellate Court's Denial of Sanctions

Ekaterina did not seek fees from the appellate court based on Family Code section 271; she sought fees as sanctions for a frivolous appeal under Code of Civil Procedure section 907. (Exh

A, p. 19.) The issue of fees as sanctions under Family Code section 271 has thus not been decided by the appellate court. Only the issue of appellate sanctions under CCP section 907 was decided.

As set forth above, the standard for an appellate court to award sanctions is far higher than the standard for a family law court to award attorney fees under Family Code section 271. A prime example of this distinction between trial court sanctions and appellate sanctions is found in *Winick Corp. v. County Sanitation Dist. No. 2* (1986) 185 Cal.App.3d 1170, 1182, in which the Second District affirmed an award of sanctions by the trial court, but denied sanctions for the appeal, stating, "Affirmance of sanctions does not itself justify further sanctions." It further stated, "If lack of merit were the only test for imposing sanctions on appeal, we would then be empowered to impose sanctions on virtually all appeals affirming a trial court's imposition of sanctions." (*Id.*, at p. 1182.) And yet lack of merit ***is*** a valid legal basis for imposing Family Code section 271 sanctions, particularly in a case such as this one, in which a litigant (Eugene) repeatedly puts forth unmeritorious arguments and positions, causing the other party to incur fees and costs.

As the Sixth District stated in deciding not to award sanctions, "Whether to impose appellate sanctions is a matter within our discretion." (Exh A, p. 19.) That court exercised its discretion in favor of not awarding sanctions. (Exh A, p. 20 ["We therefore decline to exercise our discretion to impose sanctions and deny Katia's motion."])

What that decision came down to was that Court's finding that Eugene's arguments were not "entirely unreasonable" and its determination—based on its own review of the record before it—that Eugene's motives were not necessarily "clearly improper." (Exh A, p. 20.) That is not the standard for awarding fees as sanctions under Family Code section 271.

Sanctions under Family Code section 271 are based on "the extent to which any conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." (Fam.Code §271(a).) Here, Eugene absolutely refused to compromise. He refused to entertain any settlement offers prior to trial and even after the court spoke, he filed an appeal, forcing Ekaterina to incur additional fees defending against it.

As the Opinion itself demonstrates, the appeal was meritless. It was not even a close case. It did not make any new law. It was based on well-settled law regarding the division of assets, and

particularly on its own prior decision in which it set forth the narrow grounds for remand. An award of attorney fees as sanctions is appropriate.

C. The Fees Sought Are Reasonable and Directly Related to the Appeal

Ekaterina seeks $9,400.00 in attorney fees and $535.74 in costs incurred on the most recent appeal, plus another $1,820.00 in fees and $60.00 in costs to prepare and file this motion. The $535.74 in appellate costs are also being sought by the cost memorandum filed concurrently herewith. The appellate fees are set forth in the billing statements attached as Exhibit C. Such fees are not merely reasonable, they are low. Eugene should be grateful they are not significantly higher. And they are all entirely related to and were necessitated by his unsuccessful appeal.

Eugene's opening brief on appeal was 40 pages long, much of it single-spaced. He raised three issues, none of which was meritorious, and Ekaterina prevailed on both. But this required a review of the brief, the record, legal research, and preparation of the Respondent's Brief. All of this time is detailed in Exhibit C.

Eugene also sought oral argument. This likewise required preparation and appearance at same. This time is likewise in Exhibit C.

The Opinion incorporates many of the arguments and citations from Ekaterina's brief. (See Exh A.) Her counsel needed to ensure the law was thoroughly researched and the arguments clear and persuasive. Her counsel has significant experience in handling family-law appeals, and has had numerous published opinions, as well as many more unpublished ones. (See Finelli Decl.)

An award of $9,400.00 in attorney fees and $535.74 in costs for successfully opposing the appeal, including oral argument in the Sixth District is reasonable, and all such fees were directly related to and required by Eugene's meritless appeal.

D. Ekaterina Is Entitled to $1,820 in Fees and $60 in Costs for This Motion

As set forth in the Declaration of Stephanie J. Finelli, attached hereto, counsel spent at least another 5.2 hours preparing the instant motion and will incur $60.00 in costs to file this motion. (Finelli Decl. at ¶¶ 2, 5.) This is another $1,820.00 in fees and $60 in costs sought herein, all of which is appropriate. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141 ["'absent circumstances

rendering the award unjust, fees recoverable...ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim.'"]) Ekaterina is thus entitled to an award of **$1,880.00** as reasonable attorney fees and costs pursuant to Family Code section 271 for having to file this motion.

E. Sanctions of $11,830.74 Is Not an Unreasonable Financial Burden on Eugene

The most recent I&E Eugene provided to this Court in support of his failed attempt to modify support showed he earns at least $200,000 per year. He lives in Pennsylvania and rents out his Southern California home for a sum he has not revealed to Ekaterina or this Court, but which likely nets him further income (otherwise there is no rational for renting it out).

Furthermore, after receiving the appellate Opinion, Eugene filed a petition for review to the California Supreme Court. This was time-consuming and incurred additional fees and costs. And he had no realistic chance of being granted review, as the issues were hardly novel. It is Eugene's burden to show that he lacks the financial ability to pay $11,830.74 in fees and costs. He cannot. The financial impact of the 271 fees is not a basis for denying this motion.

Dated: June 30, 2025

By: *Stephanie J. Finelli*
STEPHANIE J. FINELLI
Attorney for Ekaterina Strulyov

Filed 3/20/2025

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of EKATERINA and EUGENE STRULYOV.	H052147 (Santa Clara County Super. Ct. No. 19FL001660)
EKATERINA STRULYOV, Respondent, v. EUGENE STRULYOV, Appellant.	

This dissolution of marriage action returns to us for the second time on appeal. Appellant Eugene Strulyov asserts that the trial court, after conducting a limited hearing on the division of an omitted stock asset, erred in ordering him to transfer half of the shares of the community's omitted Google stock to respondent Ekaterina (Katia) Strulyov. Eugene[1] also challenges the trial court's denial of his request for a statement of decision and his peremptory challenge against the trial judge. Katia disputes Eugene's contentions and asks this court to levy sanctions against him.

[1] Because the parties share a last name, for clarity we refer to them by first name.

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For the reasons explained below, we affirm the trial court's findings and order after hearing and deny the motion for sanctions.

I. FACTS AND PROCEDURAL BACKGROUND

A. The Prior Appeal

The prior appeal in this case addressed three trial court rulings challenged by Eugene and affirmed two of the three, reversing and remanding on the limited issue of the division of the Google stock. (*In re Marriage of Strulyov* (July 27, 2023, H050115) [nonpub. opn.].)[2] Specifically, in *Strulyov*, we upheld the trial court's determination under Family Code[3] section 2556 that the Google stock was an omitted asset in the November 2019 judgment of dissolution (2019 judgment). Nevertheless, we concluded that the trial court had abused its discretion by failing to address Eugene's argument that there was good cause to order the Google stock should *not* be divided equally, based on his assertion that Katia had received the equivalent value for her share of the Google stock in the division of assets under the 2019 judgment. We remanded "for the limited purpose of a determination by the trial court whether the interests of justice require an unequal division of the Google stock" under sections 2556 and 2550. We expressly refrained from dictating how the trial court should exercise its discretion with respect to the division of the Google stock and left to the trial court whether it should make its determination based on the existing record or consider additional evidence.

The remittitur transferring jurisdiction back to the trial court issued on September 26, 2023.

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[2] On our own motion, we take judicial notice of the record on appeal filed in this court in H050115, as well as this court's unpublished opinion in that matter. (Evid. Code, §§ 451, subd. (a), 452, subd. (d), 459, subd. (a).) As the parties are already familiar with the facts and procedural history set forth in the unpublished opinion in H050115, we do not repeat them here.

[3] All further unspecified statutory references are to the Family Code.

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B. Proceedings on Remand

In October 2023,[4] the parties appeared before the trial court to set the hearing on the remanded issue of the Google stock division. The same bench officer whose findings and orders were the subject of the prior appeal presided at the hearing and scheduled a half-day evidentiary hearing for November 29.

1. Eugene's Peremptory Challenge

On November 3, Eugene filed a peremptory challenge to the trial judge pursuant to Code of Civil Procedure section 170.6. Eugene asserted that following his successful appeal, he believed he could not "have a fair and impartial trial or hearing before this Judge." Katia opposed the peremptory challenge on the ground that the matter to be decided was not a "new trial" within the meaning of Code of Civil Procedure section 170.6, subdivision (a)(2)[5] and so there was no legal basis for a peremptory challenge. Eugene argued in his reply that the remand did set the matter for a new trial, given the nature of the evidence and findings required to evaluate whether there was good cause for an unequal division of assets and considering the appellate court in *Strulyov* expressly recognized that the trial court might elect to consider additional evidence in making that determination. The trial court denied the peremptory challenge as untimely.

2. Evidentiary Hearing on Division of Google Stock

The parties exchanged trial briefs and Eugene filed motions in limine prior to the evidentiary hearing.

In his trial brief, Eugene requested a statement of decision on specified issues including the "dollar value" of the community asset division, how an asset can be

[4] Unless otherwise stated, further date references are to 2023.

[5] This subdivision provides in pertinent part that a party may bring a motion for peremptory challenge "following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. . . . The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment." (Code Civ. Proc., § 170.6, subd. (a)(2).)

" 'omitted' " when the party had already received the dollar value of that asset, and why the trial court ruled that the peremptory challenge was untimely despite the timing of the remittitur and filing of the peremptory challenge. Eugene argued that (1) Katia already received the full cash value of her share of the Google stock when the parties divided the community assets in 2019, and (2) Katia already received more than half of the community property, which the trial court's April 2022 order and imposition of sanctions (addressed in the prior appeal) further exacerbated. To remedy these inequities, Eugene requested that the trial court reverse the order requiring equal division of the Google stock, reconsider its prior sanctions order of $60,000, and consider an award of attorney fees in his favor.

Katia filed an amended trial brief in which she identified an additional 10 shares of Google stock that Eugene had received between April and July 2019, and which he disclosed in his trial brief on remand as having vested after the date of separation. These additional 10 shares were not included in the earlier accounting of the 36 shares of stock that the trial court determined were an omitted asset and which were the subject of the remand in *Strulyov*, *supra*, H050115. Katia asserted that Eugene's failure to divide the Google stock constituted a breach of fiduciary duty. Katia argued that Eugene failed to divide the accounts equally by transferring stocks based on their value in April 2019 (when he calculated the division) rather than July 2019 (the date of division), retaining for himself those stocks with a zero or positive cost basis (thereby avoiding taxes or offsetting other gains), and selecting stocks for her on which she would have to pay capital gains tax (thereby shifting the tax burden to her). She asserted that these breaches of fiduciary duty undermined his good cause argument for an unequal division of the Google stock.

The evidentiary hearing took place on February 27, 2024, and was reported by a court reporter. The trial court noted that the issue before the court was "very limited" and that the court would issue "a written order" rather than a statement of decision. The court

heard testimony from both parties, each of whom was cross-examined, and considered their written closing statements. Katia disputed the equitability of the property division carried out by Eugene under the 2019 judgment based on his unilateral decisionmaking about which stocks to transfer, the timing of the security transfers, their cost bases and tax impacts on the respective parties, and Eugene's undisclosed receipt of 10 additional Google stock shares. Katia also argued for an award of attorney fees for what she characterized as Eugene's breach of fiduciary duty. Eugene asserted that his documentation in 2019 accurately reflected the division of the investment accounts, that the Court of Appeal had agreed that the " 'full [investment] value . . . was included in the numbers from which Katia and Eugene determined the total value of the community property' " (citing *Strulyov*, *supra*, H050115, italics omitted), and that her receipt of more than half of the community property in 2019 justified returning the shares of Google stock to him.

3. Findings and Order After Hearing

On March 25, 2024, the trial court issued a written findings and order after hearing (order). The court clarified that it would not address or rule upon any of the additional issues raised by the parties in their briefing or at trial. After summarizing the parties' positions, the court explained that it found persuasive Katia's argument concerning Eugene's unilateral selection of which stocks to transfer, and the tax consequences of those selections, "with respect to the valuation and division of the parties' stock, and in particular, the omitted Google stock." The court did not find credible Eugene's testimony that he was unaware of the impact of the tax basis or its effect on the "actual value" of the assets. It found that Eugene admitted that he had not factored the additional shares of Google stock received between April and June 2019 into the community property division. It further found that "factoring the post-tax value of an asset allows for a more accurate calculation of its value."

Based on its findings, the trial court concluded that "[t]he parties received different values of stock in what was to be an equal division of an asset." Because "there was not an equal division of their stock," the court found there was "good cause for an unequal division of assets." With respect to the omitted asset, the court ordered Eugene to transfer "one-half of the community shares of Google stock (36 shares as of July 2019, including any subsequent stock splits) to [Katia]." The court did not explicitly address, and declined to divide, the additional 10 shares of Google stock Eugene had acquired after separation but before the division of assets. The court also declined to award Eugene any attorney fees.

This appeal followed.

II. DISCUSSION

Eugene raises three primary claims on appeal. He challenges the trial court's decision not to order an unequal division of the omitted Google stock by arguing that the court's findings do not justify its order, that it relied on inapplicable law, and that it abused its discretion in refusing to offset any amount that Katia already received as value for that asset. In addition, he asserts the trial court erred by refusing to issue a statement of decision. He also contends the trial court violated his right to due process by denying his peremptory challenge and failing to explain its decision in the requested statement of decision. Katia challenges Eugene's claims on the merits and further argues the appeal was brought for an improper purpose, warranting the imposition of sanctions.

A. Division of the Google Stock

The remand in *Strulyov* directed the trial court to decide "whether the interests of justice require an unequal division of the Google stock" under sections 2556 and 2550. (*Strulyov*, *supra*, H050115.) The parties agree that this issue, grounded in the principles that govern the division of community property, is reviewed for an abuse of discretion. (See *In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1572; *In re Marriage of*

Schleich (2017) 8 Cal.App.5th 267, 276.) Eugene also asks this court to review de novo the trial court's application of sections 2556 and 2550.

We begin our analysis mindful that an "order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) We review orders concerning the distribution of marital property upon the dissolution of a marriage for abuse of discretion. (*In re Marriage of Greaux & Mermin* (2014) 223 Cal.App.4th 1242, 1250 (*Greaux & Mermin*).) Where, as here, the trial court has broad discretion to decide whether good cause has been shown to require an unequal division of the omitted asset, " ' " 'appellate courts must act with cautious judicial restraint in reviewing these orders.' " ' [Citation.] An abuse of discretion occurs ' "when it can be said that no judge reasonably could have made the same order." ' " (*In re Marriage of Grimes & Mou* (2020) 45 Cal.App.5th 406, 424 (*Grimes & Mou*).) More specifically, " '[i]f the court's decision is influenced by an erroneous understanding of applicable law or reflects an unawareness of the full scope of its discretion, the court has not properly exercised its discretion under the law.' " (*Wade v. Superior Court* (2019) 33 Cal.App.5th 694, 709.) Thus, an abuse of discretion occurs " 'if the trial court based its decision on impermissible factors [citation] or on an incorrect legal standard.' " (*Ibid*.) We further review the trial court's factual findings for substantial evidence, deferring to the trial judge on issues of credibility. (*Grimes & Mou*, at p. 421; see *Jennifer K. v. Shane K.* (2020) 47 Cal.App.5th 558, 579.) To the extent that Eugene challenges the trial court's application of sections 2556 and 2550, we review de novo the construction of a statute and its applicability to the facts. (*In re Marriage of Thornton* (2002) 95 Cal.App.4th 251, 253–254.)

Examining the statutory law and record on remand, we conclude the trial court neither erred in applying section 2556 nor abused its discretion in ordering Eugene to transfer one-half of the 36 shares of Google stock as of July 2019, including any

subsequent stock splits, to Katia. This court's remand in *Strulyov* expressly directed the trial court to consider the application of sections 2556 and 2550 to the division of the omitted asset. (*Strulyov*, *supra*, H050115.) Section 2550 reflects the broad statutory powers conferred to the family courts "to accomplish a just and equal division of marital property" (*Greaux & Mermin*, *supra*, 223 Cal.App.4th at p. 1250, citing §§ 2550, 2553) and affords the court " 'broad discretion to determine the manner in which community property is awarded in order to accomplish an equal allocation.' " (*Greaux & Mermin*, at p. 1250.) Section 2556 provides the courts continuing jurisdiction to address community assets or community liabilities that were not "previously adjudicated by a judgment in the proceeding." Under the statute, "the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability." (§ 2556.)

Eugene contends that section 2556 is not applicable to the present case because the omitted asset—here, the Schwab account containing the 36 Google shares previously deemed to be community property—was not, in fact, omitted but was already included in the cash value divided at equalization. He argues that since Katia had already received cash value for the 18 Google shares, the grant of another 18 Google shares in kind effectively awarded her 100 percent of the asset ("50% via equalization + 50% in kind").

This argument disregards this court's prior opinion in which we upheld the determination that the 36 shares of Google stock were not adjudicated in the judgment and thus were an omitted asset.[6] Eugene's argument also misconstrues the sole issue to be determined on remand, which was whether the interests of justice required an unequal

[6] As related in our prior opinion, the determination of an "omitted" asset under section 2556 depends on whether the asset was actually litigated and divided—not whether it was mentioned in the property division. (See *Strulyov*, *supra*, H050115; *In re Marriage of Thorne & Raccina* (2012) 203 Cal.App.4th 492, 501.)

division of the omitted asset (§ 2556), not to relitigate whether the Google stock had been omitted. Eugene's reliance on *In re Marriage of Rossi* (2001) 90 Cal.App.4th 34 to distinguish these facts from a case in which the omitted asset was "truly omitted" (boldface omitted) because one party concealed and retained the asset, while the aggrieved party received nothing at all, is inapt.

Having reviewed the transcript of the evidentiary hearing, we conclude that the trial court did not err in applying section 2556. The court correctly recognized that the question before it was limited to the division of the omitted Google stock. Specifically, this court's remand directed the trial court to determine whether the interests of justice required an unequal division of that specific community asset. (§ 2556.) After conducting the evidentiary hearing and reviewing the parties' written submissions, the court concluded that the interests of justice did *not* require an unequal division of the omitted Google stock. In explaining that decision, the court explicitly found "good cause for an unequal division of assets," citing factors including Eugene's unilateral exercise of control over which stocks to transfer and the financial consequences of those choices. We understand this finding to pertain to the community assets in general—not specifically to the Google stock. In other words, even assuming (as seems likely) the trial court accepted Eugene's arguments about having divided the value of the Schwab investment account as of April 2019, it nevertheless decided the omitted asset in question, i.e., the 36 shares of Google stock, should remain equally divided even if that ultimately led overall to an unequal division of community assets.[7]

[7] Admittedly, the language in the trial court's order is somewhat ambiguous. The ruling that "[t]he parties received different values of stock in what was to be an equal division of an asset. Thus, there was not an equal division of their stock" and that there is "good cause for an unequal division of assets" could be interpreted to mean that even if the stock value overall was equally divided (as Eugene contends), an unequal division favoring Katia (based on the division of the 36 shares of Google stock) was justified based on Eugene's attempt to capture the tax benefits for himself and the other factors

Eugene argues that the trial court abused its discretion by refusing to apply offsets to the award of in kind Google stock despite his showing that the full value of both Schwab accounts (including the account containing the Google shares) was included in the value calculated at equalization. He points to this court's statement in the prior appeal noting that his exhibits filed in opposition of Katia's motion for determination and division of the Google stock "support[ed] his contention that the full value of both Schwab accounts was included in the numbers from which Katia and Eugene determined the total value of the community property" and argues that since Katia admittedly received the equalization payment, the trial court "had the duty to quantify" any alleged underpayment "and award only that amount to [Katia]."

This is not what the statute requires. The family court's broad discretion to award community property "to accomplish a just and equal division" (*Greaux & Mermin*, *supra*, 223 Cal.App.4th at p. 1250) extends to an omitted or unadjudicated community asset or liability after judgment, "unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability." (§ 2556.) The statute does not delineate or constrain the trial court in considering factors relevant to the interests of justice in allocating the omitted asset, nor does it require the court to expressly identify the value of each previously divided asset in determining whether the interests of justice warrant unequal division of the omitted asset.

In this case, the trial court heard evidence and testimony from both sides regarding the division of assets under the 2019 judgment. Eugene sought to establish that Katia received more than half of the community property based on his calculations of stock values—whether applying April 2019 stock values (when Eugene calculated the equalization) or July 2019 stock values (when Eugene divided the accounts). Katia

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cited by the court. Regardless of which interpretation applies, we uphold the trial court's order as a valid exercise of its discretion based on those findings, for which there is substantial evidence.

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countered that by transferring those stocks to her with the lowest cost basis and saddling her with potentially significant higher taxes, and by calculating stock values as of April rather than July 2019, Eugene failed to divide the investment account equally. In considering these arguments, the trial court weighed the evidence and assessed each side's credibility.

The trial court found that Eugene's unilateral selection of those stocks he transferred to Katia (rather than transferring one-half of all stock holdings valued at the time of transfer), through which he allocated capital gains to her but not to himself, resulted in Katia receiving less than one-half of the community stock assets. The court further found Eugene's testimony not credible regarding his lack of awareness about the impact of the tax basis when deciding which stocks to transfer to Katia. The court found it was undisputed that Eugene did not factor into his calculations the additional 10 shares of Google stock that he received between the parties' separation in April 2019 and the division of community assets in July 2019, but simply kept those shares. The court thus concluded that "there was not an equal division" of the community property stock assets and rejected Eugene's request for unequal division of the omitted asset. It ordered Eugene to transfer "one-half of the community shares of Google stock (36 shares as of July 2019, including any subsequent stock splits)" to Katia. Furthermore, the court declined to address additional issues raised by the parties at the hearing on remand, including Katia's breach of fiduciary duty claim and her request for division of the 10 additional Google shares.

Examining the entire record, we perceive no abuse of discretion in the trial court's evaluation of the evidence or its good cause determination. Substantial evidence in the record, including the April 8, 2019 e-mail from Eugene to Katia cited in the trial court's order, demonstrated Eugene's sophisticated financial literacy and understanding of investment strategy and tax consequences. This evidence supports the court's credibility finding in which it rejected Eugene's claim that he was unaware of the impact of the tax

basis or its effect on the value of the assets he transferred. The record also supports the trial court's determination that factoring the post-tax value of an asset provides a more accurate picture of value and that the parties "received different values of stock in what was to be an equal division of an asset." Based on its finding that Eugene failed to divide the investment account equally, the trial court did not act arbitrarily in ordering Eugene to transfer one-half of the 36 Google shares previously held to be an omitted asset. On this record, we decide it cannot be said " ' "that no judge reasonably could have made the same order." ' " (*Grimes & Mou*, *supra*, 45 Cal.App.5th at p. 424.)

Eugene contends that the trial court's order dividing equally the 36 shares of Google stock exacerbates what he maintains was an already unequal division of community assets. However, Eugene's argument is based on the faulty premise that the trial court's task was to divide the omitted Schwab account to ensure that each party received an equal division of overall community assets. This was not the posture of the case on remand, nor could it have been given the nature of the property division under the 2019 judgment, which was by agreement of the parties pursuant to a stipulated order.

Division of the community estate by agreement negates the requirement that the community estate be divided equally. (§ 2550 ["*Except upon the written agreement of the parties*, . . . the court shall, either in its judgment of dissolution of the marriage, . . . divide the community estate of the parties equally." (Italics added)].) Thus, the relative value of the property divided in the 2019 judgment (including vehicles, Eugene's condominium, and other assets raised in the parties' arguments and testimony on remand) and whether it reflected equal division or was skewed slightly in favor of one party, as Eugene contends, might have been a relevant factor for the court's consideration but was by no means determinative in the court's assessment of good cause under section 2556 to order the omitted asset be divided unequally.

In sum, the purpose of the hearing on remand was not to relitigate the fairness or relative values of the original division of property under the 2019 judgment. The remand

required the trial court to decide whether the omitted asset—here, the 36 shares of Google stock—should be equally divided between the parties pursuant to section 2556, or whether the interests of justice required an unequal division under that provision. We conclude that substantial evidence in the record supports the trial court's finding of good cause as to the overall division of assets, based on the factors it considered in relation to Eugene's unilateral control over that division, its rejection of Eugene's request for unequal division of the omitted Google stock, and its implicit rejection of Katia's request for an award of additional stock shares and attorney fees. The court thus did not abuse its discretion in ordering Eugene to transfer one-half of the 36 Google shares in the account as of July 2019 to Katia.

B. Statement of Decision

Eugene contends the trial court was required to issue a statement of decision and the error requires reversal. We disagree.

Code of Civil Procedure section 632 provides that "upon the trial of a question of fact by the court," the trial court "shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial." The rule of court governing procedures for issuance of a statement of decision similarly applies "[o]n the trial of a question of fact by the court." (Cal. Rules of Court, rule 3.1590.)

It is settled law that Code of Civil Procedure section 632 generally "applies when there has been a trial followed by a judgment. [Citation.] It does not apply to an order on a motion. [Citation.] This is true even if the motion involves an evidentiary hearing and the order is appealable." (*In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1040 (*Marriage of Askmo*); see also *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1294; accord *City and County of San Francisco v. H.H.* (2022) 76 Cal.App.5th 531, 544.) Although courts have created exceptions to the general rule for special proceedings (often for decisions involving child custody), application of the exception is based on " ' "(1) the

importance of the issues at stake in the proceeding, including the significance of the rights affected and the magnitude of the potential adverse effect on those rights; and (2) whether appellate review can be effectively accomplished even in the absence of express findings." ' " (*Marriage of Askmo*, at p. 1040; *H.H.*, at p. 545.)

Katia argues that a statement of decision was not required here because the limited issue on remand was "not a 'trial of a question of fact' " within the meaning of Code of Civil Procedure section 632 but "more akin to a hearing on a motion." Eugene does not directly address the applicability of Code of Civil Procedure section 632 and appears to assume that a statement of decision was required in light of his timely request to the trial court.[8]

We agree with Katia that the narrow scope of this court's remand in *Strulyov*, *supra*, H050115, requiring only a decision on whether there exists good cause to divide the omitted Google stock asset unequally, falls outside the purview of a "trial of a question of fact" as specified in the statute. The evidentiary hearing that took place and the trial court's factfinding role in weighing the credibility of the parties' testimony concerning Eugene's 2019 division of the investment account does not render it a trial of fact for purposes of requiring a statement of decision. (*Marriage of Askmo*, *supra*, 85 Cal.App.4th at p. 1040.) Nor has Eugene shown that the issue on remand, confined solely to the disputed division of the omitted Google shares, is of such importance and magnitude, or so infeasible to review on appeal in the absence of express findings, as to except it from the general rule on issuance of a statement of decision.

Eugene accuses the trial court of subjecting him to unequal treatment (because he is male) and violating his right to equal protection, based on the court issuing a statement of decision in response to Katia's request in the earlier proceeding while refusing to issue

[8] Given Eugene's request to the trial court for a statement of decision and his arguments on appeal concerning the court's failure to provide the requested statement of decision, we decline to resolve this aspect of the appeal on the basis of forfeiture.

a statement of decision in this proceeding. However, this differential treatment derives from the statutory distinction between a limited scope hearing on remand and a "trial of a question of fact" (Code Civ. Proc., § 632), such as occurred in this case in March 2022, giving rise to the appeal in *Strulyov*, *supra*, H050115. In that two-day bench trial, the parties litigated multiple issues, including, among others, the parties' breach of fiduciary duty claims, the community or separate property status of certain real property, the division of the investment account, and Katia's entitlement to attorney fees, costs, and sanctions. The trial court did not err in its application of Code of Civil Procedure section 632, and its decision on remand to issue an order rather than a statement of decision does not evince bias against Eugene.

Even assuming that a statement of decision was required, Eugene has not shown that the failure to issue a statement of decision meets the standard for reversal. Eugene relies on *Miramar Hotel Corp. v. Frank B. Hall & Co.* (1985) 163 Cal.App.3d 1126, 1127, 1130 for the proposition that a trial court's failure to provide a statement of decision when timely requested is per se reversible error. However, our Supreme Court has since clarified that a trial court's erroneous failure to issue a statement of decision is not reversible per se but is subject to harmless error analysis. (*F.P. v. Monier* (2017) 3 Cal.5th 1099, 1108 (*Monier*); see Cal. Const., art. VI, § 13; *Alafi v. Cohen* (2024) 106 Cal. App. 5th 46, 61 (*Alafi*).)

As explained in *Monier*, the California Constitution "explicitly identifies 'any error as to any matter of procedure' ([Cal. Const., art. VI, § 13]) as error that warrants reversal only if a miscarriage of justice would otherwise result." (*Monier*, *supra*, 3 Cal.5th at p. 1113.) The " 'express terms' " of the Constitution " 'weigh against automatic reversal' [citation] for a court's procedural error in failing to issue a statement of decision." (*Ibid*.) Reversible error in this context thus "requires a demonstration of prejudice 'arising from the reasonable probability the party "would have obtained a better outcome" in the absence of the error.' " (*Alafi*, *supra*, 106 Cal. App. 5th at p. 62.)

Eugene argues that this case "easily meets" the miscarriage of justice and reversible standard discussed in *Monier*. He maintains that the trial court could not meaningfully evaluate good cause for unequal division of the Google shares without addressing the specific issues, particularly the "dollar value of community property" (boldface omitted) divided in 2019, which he asked the court to address in a statement of decision. He disputes Katia's assertion that there can be no prejudice because the court's order after hearing adequately addressed the bases for the court's ruling and thus sufficed as a statement of decision.

We are not persuaded by either argument. For the reasons discussed *ante*, the trial court was not obligated on remand to make factual findings on the precise value of the community property divided at equalization to exercise its discretion on remand to decide whether good cause justified unequal division of the omitted asset. Furthermore, the trial court's order adequately set forth the basis for its decision, finding that Eugene's prior allocation of stock to Katia did not result in an equal division of the assets in that account and that Eugene's testimony explaining the allocation was not credible. The issues that Eugene contends the trial court failed to address in its order are not, in fact, necessary for determination and do not compromise this court's ability to exercise appellate review. Thus, this is not a situation in which one or more material issues "left unaddressed by a court's failure to issue" a statement of decision effectively inhibits adequate appellate review. (*Monier*, *supra*, 3 Cal.5th at p. 1116.) We conclude that any failure by the trial court to issue a statement of decision or expressly address the questions posed by Eugene in his trial brief is, at most, harmless error.

C. Peremptory Challenge

Eugene challenges the trial court's denial of his Code of Civil Procedure section 170.6 peremptory challenge, and its refusal to explain the basis for its untimeliness ruling in a statement of decision, as a violation of his right to due process.

Code of Civil Procedure section 170.6 authorizes a motion to disqualify the assigned judge "following reversal on appeal of a trial court's decision, . . . if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter." (Code Civ. Proc., § 170.6, subd. (a)(2).) A party must bring the disqualification motion "within 60 days" after being notified of the assignment following reversal on appeal. (*Ibid*.) The denial of a disqualification motion may be reviewed only by petition for writ of mandate filed and served within 10 days of written notice of the court's decision on disqualification. (Code Civ. Proc., § 170.3, subd. (d).) Thus, " '[a]n order denying a peremptory challenge is not an appealable order and may be reviewed only by way of a petition for writ of mandate.' " (*People v. Superior Court (Tejeda)* (2016) 1 Cal.App.5th 892, 900; see *People v. Hull* (1991) 1 Cal.4th 266, 275 (*Hull*) ["The Legislature, through [Code of Civil Procedure] section 170.3[, subdivision] (d), has specifically determined that a writ of mandate shall be the exclusive means of challenging a denial of a motion to disqualify a judge."].) A trial court's denial of a peremptory challenge under Code of Civil Procedure section 170.6 is reviewed de novo. (*Sandoval v. Superior Court* (2023) 95 Cal.App.5th 1274, 1282.)

In apparent recognition that he may not seek review of the denial of his peremptory challenge on appeal, Eugene frames his argument in terms of due process. He cites *People v. Mayfield* (1997) 14 Cal.4th 668, a death penalty case abrogated on other grounds in *People v. Scott* (2015) 61 Cal.4th 363, 390, footnote 2, and *Marshall v. Jerrico, Inc.* (1980) 446 U.S. 238, as support for his contention that he did not receive a "fair trial before 'an impartial and disinterested tribunal.' " In *Mayfield*, the California Supreme Court recognized that although a petition for writ of mandate is the exclusive method of review of a judicial disqualification motion, "a defendant may assert on appeal a claim of denial of the due process right to an impartial judge." (*Mayfield*, at p. 811.) After examining the entire record, the court declared it found nothing to support the defendant's charge that the judge in that case had to be disqualified for bias and racial

prejudice. (*Id*. at pp. 810–811.) Meanwhile, *Marshall* addresses the potential for bias in the enforcement of federal child labor standards and does not support Eugene's contention that the denial of his peremptory challenge gives rise to a due process violation. (Cf. *Marshall*, at pp. 244–247.)

Eugene lists several examples of alleged prejudice by the trial judge, including the court's "inexplicable denial" of the peremptory challenge, "allowing [Katia] to relitigate old issues that she had already lost" while refusing to rule on his reasserted claim of duress, and the "refusal to issue [a] statement of decision" or "make any determination as to the" dollar amounts. (Some capitalization omitted.) He also asserts bias in relation to several issues raised in the prior appeal.

Eugene offers no authority to support his otherwise conclusory contentions that these decisions, which he perceives as adverse, were, in fact, the result of prejudice. (See *People v. Avila* (2009) 46 Cal.4th 680, 696 (*Avila*) [" '[A] trial court's numerous rulings against a party—even when erroneous—do not establish a charge of judicial bias, especially when they are subject to review.' "].) Nor does our review of the record reveal support for Eugene's characterization of the trial judge's decisions. On the contrary, the record reflects that the judge attempted to limit both parties at the evidentiary hearing to evidence and examination that was relevant to the narrow issue on remand and did not allow one side to "relitigate old issues" while imposing lopsided limits on the other side.

Whether the trial court erred in calculating the timeliness of Eugene's peremptory challenge based on the 60-day window available on remand (Code Civ. Proc., § 170.6, subd. (a)(2)) is not reviewable in this appeal. (Code Civ. Proc., § 170.3, subd. (d); *Hull*, *supra*, 1 Cal.4th at p. 275.) Moreover, with respect to his due process claim, Eugene has not shown that that any such error in denying the peremptory challenge was because the judge had prejudged the case or was not impartial. (See, e.g., *People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 994 [rejecting capital defendant's judicial bias claim on the merits]; *Avila*, *supra*, 46 Cal.4th at p. 696.)

We conclude that Eugene has failed to provide persuasive support for his claims of judicial prejudice, bias, and deprivation of his due process right to a fair trial.

D. Katia's Motion for Sanctions

Katia seeks sanctions in the form of attorney fees in the amount of $10,475.74 against Eugene because the appeal is "objectively devoid of merit on its face" and was brought "for an improper purpose." In arguing the appeal is meritless, Katia points to the limited question presented for determination on remand, the discretion afforded the trial court to consider additional evidence and decide on the division of the omitted stock asset, and the court's reasoned findings and order, including its rejection of her request for some portion of the additional 10 shares of Google stock and for attorney fees. She maintains that under the circumstances, there "is simply no legal basis on which a reasonable person could believe [the appeal] ha[s] any legal merit." Katia further asserts that Eugene brought the appeal not to raise meritorious legal claims but as a vehicle for airing his grievances with the trial court, repeating the same arguments raised at the hearing and in the prior appeal and causing her to expend additional time and resources to defend against the appeal.

Eugene counters in his reply brief that the appeal is not frivolous but presents an issue of first impression as "the first 'omitted assets' case in history" where the " 'aggrieved party' " (1) "had already received cash value of the 'omitted' asset and then was awarded the asset itself by the Family Court" and (2) "had already received more than half of community property in the initial division and then had her share further increased by [the] Family Court."

"Whether to impose appellate sanctions is a matter within our discretion. [Citation.] Under [Code of Civil Procedure] section 907 and California Rules of Court, rule 8.276(a)(1), we may award sanctions when an appeal is frivolous and taken solely to cause delay." (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1194.) "[A]n appeal should be held to be frivolous only when it is

prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) "The two standards are often used together, with one providing evidence of the other. Thus, the total lack of merit of an appeal is viewed as evidence that appellant must have intended it only for delay." (*Id*. at p. 649.) Furthermore, to avoid chilling the assertion of a litigant's rights on appeal, the sanctions power "should be used most sparingly to deter only the most egregious conduct." (*Id*. at p. 651.)

Having reviewed the record and arguments of the parties, we conclude the threshold for imposing sanctions has not been reached in this case. It is true that the claims raised in the appeal are largely premised on Eugene's misapprehension of the nature of the remand order and his erroneous insistence that the trial court was obligated to ensure an equal division of the overall community property when dividing the Google stock. Nevertheless, we disagree with Katia that Eugene's arguments are entirely unreasonable. Nor do we agree from our review of the record that Eugene's motives were clearly improper.

We therefore decline to exercise our discretion to impose sanctions and deny Katia's motion.

III. DISPOSITION

The March 25, 2024 order after hearing is affirmed. Respondent is entitled to her reasonable costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

EXHIBIT A

_____
Danner, Acting P. J.

WE CONCUR:

_____
Wilson, J.

_____
Bromberg, J.

H052147
Strulyov v. Strulyov

EXHIBIT A

Filed 7/27/23

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of EKATERINA and EUGENE STRULYOV.	H050115 (Santa Clara County Super. Ct. No. 19FL001660)
EKATERINA STRULYOV, Respondent, v. EUGENE STRULYOV, Appellant.	

Appellant Eugene Strulyov (Eugene) and respondent Ekaterina Strulyov (Katia) entered into a stipulated judgment of dissolution of marriage.[1] Representing himself, Eugene appeals from postjudgment orders. Eugene contends the trial court abused its discretion by (1) refusing to set aside a postjudgment stipulation and order that required him to pay for one-half of his daughter's private school tuition, (2) granting Katia's motion to determine Google stock is an omitted asset that should be divided, and (3) imposing $60,000 in sanctions against him while declining to impose sanctions against Katia. For the reasons explained below, we reject Eugene's first and third contentions.

[1] For clarity and consistency with the parties' briefing, we refer to them by first name.

EXHIBIT B

We affirm the trial court's conclusion that the Google stock is an omitted asset but reverse the order on its division and remand for further consideration.

I. FACTS AND PROCEDURAL BACKGROUND

A. *Marriage and Stipulated Judgment of Dissolution*

Eugene and Katia married in 2010 and separated in 2019. They have one child (daughter), born in 2013. Katia petitioned for dissolution of their marriage in Santa Clara County Superior Court, and they engaged in private mediation in April and May 2019.

In May 2019, Katia and Eugene executed a stipulated judgment of dissolution of marriage. That same day, Katia and Eugene exchanged unsigned preliminary declarations of disclosure about their finances (see Fam. Code, § 2104[2]). There were no attachments, including statements and required backup documentation, to their schedules of assets and debts.

In November 2019, the trial court entered the judgment of dissolution to which the parties had stipulated in May (2019 judgment). The 2019 judgment addressed a number of issues, including custody, spousal support, maintenance of health insurance for daughter, division of assets, child support and additional child support in the form of expenses, including for daughter's education. It provided that Eugene and Katia would each be responsible for one-half of "all educational costs" for daughter through her high school graduation. It did not specify the school daughter would attend.

Regarding the division of assets, the 2019 judgment listed property, including financial accounts. It awarded Katia (among other property) a one-half interest in "Charles Schwab Investment account no. -6350" but did not specify the assets in the account or provide a value for it.

[2] Unspecified statutory references are to the Family Code.

The 2019 judgment also attached a DissoMaster[3] report, which listed Katia's monthly wages and salary as $4,389.

B. Postjudgment Proceedings, Including 2020 Stipulation and Order

Following entry of the 2019 judgment, Eugene and Katia disputed a number of issues, including child and spousal support and payment of daughter's private school tuition. In January 2020 Eugene and Katia unsuccessfully engaged in mediation. In March 2020 they reached a settlement in which each was represented by counsel. At the time of the settlement negotiations, Katia was earning $11,249 per month (she had started a new job in February 2020) but did not disclose that fact, leading Eugene to believe her income had not changed when in fact her salary had nearly tripled.[4]

In April 2020 the trial court issued an order pursuant to the stipulation the parties had reached in March (2020 stipulation and order). The stipulation and order addressed a variety of issues, including child support, spousal support and private school tuition. Pursuant to the stipulation and order, the parties agreed that daughter "shall continue to attend private school at [named school] through eighth grade or until further agreement of the parties[] or order of the court." They agreed to each pay one-half of the tuition costs, and Eugene agreed to reimburse Katia for one-half of the tuition costs she had advanced.

On August 17, 2020, after learning of Katia's previously undisclosed salary increase, Eugene filed a request for order seeking vacatur of the 2020 stipulation and order based on fraud and concealment (August 2020 RFO). He also requested the court order Katia to reimburse him for all monies he had paid for private school tuition. Additionally, he requested that the court recalculate child support based on Katia's true

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[3] DissoMaster is a computer software program widely used by courts and the family law bar in setting child and spousal support pursuant to the statewide uniform guidelines set by the Family Code and local rules. (See *In re Marriage of Olson* (1993) 14 Cal.App.4th 1, 5, & fn. 3.)

[4] The trial court made this factual finding, which Katia does not challenge on appeal, in its April 2022 findings and orders after hearing.

EXHIBIT B

income and that it terminate spousal support. Eugene sought an unspecified amount of sanctions and attorney fees and costs pursuant to section 271 and Code of Civil Procedure section 128.5 "to include $5,000 paid by [Eugene] to Mathew Rudy [his former attorney], and all fees paid to the Law Office of Joseph Camenzind to file and prosecute this Request for Order, and reimbursement of all expenses paid based on fraudulent conduct."

Eugene submitted a declaration asserting he and Katia had agreed when they separated in April 2019 to send daughter to a public school and they had "carefully selected [daughter]'s public school together." He stated Katia decided in July 2019 to send daughter to private school, and he had refused to pay invoices for 50 percent of the monthly cost. Eugene declared that Katia had failed to disclose she had received a significant pay increase and was earning significantly more income than she had previously disclosed. He argued that had he known Katia's true income, he would not have agreed in the 2020 stipulation to pay for one-half of the costs of daughter's private school.

On March 8, 2021, Katia filed a request for order seeking determination and division of omitted assets and sanctions (March 2021 RFO). She asserted Eugene had failed to disclose community assets, including restricted stock units he received from his former employer Google LLC (hereafter Google stocks).

In support of her March 2021 RFO, Katia declared that Eugene had been employed by Google throughout their marriage and she believed he had received Google stocks. She stated that, "[p]rior to engaging the help of the mediator," Eugene had told her that he had "certain Google stocks and investment which are both held in Schwab accounts," but his schedule of assets and debts listed only one Schwab account (ending in 6350). Based on this disclosure, only that Schwab account was divided in the judgment. Only after receiving discovery later in the litigation did Katia discover that Eugene had a "separate Schwab account containing Google stocks" (Schwab GOOG account), which had not been divided. She attached as exhibits to her declaration a copy of Eugene's

schedule of assets and debts, his paystubs from Google, and a copy of an account statement of the separate Schwab account containing the Google stocks that is titled "GOOG."

Katia's declaration included a request for sanctions and detailed actions by Eugene over the past year that she contended were sanctionable. That conduct included failing to divide the Google stocks, unilaterally choosing to withhold support and payments for additional child support expenses, and removing daughter from his health insurance.

Eugene opposed Katia's March 2021 RFO. In support of his opposition, he filed a declaration stating that he has two Charles Schwab accounts: A Schwab Equity Awards account, into which his restricted stock units (i.e., his Google shares) vest, and a Schwab Brokerage account. In April 2019, Eugene sent Katia an e-mail describing his financial assets, which listed the two Schwab accounts as separate line items and indicated they contained $161,107.95 and $43,457.40, respectively. The Judicial Council Forms, form FL-142, he exchanged with Katia contained a single line-item for "Schwab," and listed its value as "$205,622.38."

Eugene declared that the amount listed in the Judicial Council Forms, form FL-142, was slightly higher than the figures in the April e-mail because the value of the stocks had slightly increased. Eugene attached to his declaration account statements for the Schwab Equity Awards account for the period April 1, 2019, through June 30, 2019, and the Schwab Brokerage account (ending in 6350) for April 1 through April 30, 2019. The Schwab Equity Awards statement listed the closing value of the Google (Alphabet)[5] stock in the account as $49,721.86. The Schwab Brokerage account listed the closing value as $153,858.47. According to the account statement, the brokerage account contained shares of AT&T, Facebook, Ford Motor, Honda Motor, and Micron Technology. Eugene's declaration asserted the Schwab Equity Account had increased in

[5] The "Account Summary" listed the account as "GOOG." Under "Account Statement" was the heading "Alphabet Inc Class C."

EXHIBIT B

value because additional Google stocks vested on April 29 and May 30; the Schwab Brokerage account had decreased because Eugene had transferred $10,000 to Katia's checking account.

Eugene's declaration stated that Katia had been overpaid because the Google shares that vested on May 30, 2019, should not have been considered marital property. It further asserted that the marital property division was based on the $205,622.38 he had entered on the Judicial Council Forms, form FL-142, which included the value from both the Schwab Equity and Schwab Brokerage accounts. Eugene's trial brief contended that the e-mails and account statements attached to his declaration demonstrated that the parties had equally divided the community property, including the Google stock.

C. March 2022 Trial and Subsequent Filings

A trial, at which both Eugene and Katia were represented by counsel, occurred on March 8 and 9, 2022. The record on appeal does not contain a transcript or settled statement of the trial proceedings.

The trial addressed a number of pending motions, including Katia's March 2021 RFO related to the Google stocks, her requests for attorney fees and sanctions pursuant to section 721, and Eugene's August 2020 RFO seeking vacatur of the April 2020 stipulation and order.

The court heard testimony from both Eugene and Katia, and it admitted exhibits into evidence.

On March 23, 2022, following the trial, Katia's then-attorney (Golnesa Monazamfar) filed a declaration in support of Katia's request for attorney fees and sanctions against Eugene. The declaration explained the grounds for the $109,737 in sanctions sought. Monazamfar stated that the trial court had not yet ordered attorney fees in the family law case and there were several requests for fees and sanctions that had not yet been adjudicated.

Monazamfar declared that Katia had sought to settle issues with Eugene, but Eugene had directly frustrated settlement in a number of ways. She also asserted Eugene had omitted assets, forcing Katia to file a motion with the court.

In the declaration, Monazamfar addressed various categories of Eugene's misconduct and the basis for and amount of sanctions requested. As to Eugene's conduct related to settlement negotiations, Monazamfar stated that Katia incurred attorney fees totaling $10,745 pursuant to section 271. Monazamfar declared Katia had attempted to settle with Eugene "on every single issue subject to litigation" but that all "settlement efforts have been futile and resulted in litigation." For instance, Eugene and Katia had reached an agreement at one settlement conference but "immediately after the hearing and after the presiding officer sent the stipulation summary recap [Eugene]'s counsel informed everyone[] that [Eugene] had changed his mind." [6]

Monazamfar's declaration appended a number of exhibits, including court orders and billing statements from Katia's attorneys (Monazamfar and Rod Firoozye). Firoozye's invoices totaled $77,370 and Monazamfar's invoices totaled $92,292.50, which reflected all the attorney fees and costs Katia had incurred through March 22,

[6] Additionally, the Monazamfar declaration listed attorney fees and costs incurred by Katia related to Eugene's omission of assets ($29,785 and "in accordance with Family Code sections 271, 1101, 2100 et seq[,] and . . . Code of Civil Procedure section 3294 for breach of his obligations"); Eugene's violation of court orders requiring him to maintain daughter on his health insurance ($2,637.50 under section 271); production of documents and communications related to Eugene obtaining life insurance naming Katia as a beneficiary and Eugene's violation of court orders ($2,205 under section 271); custody issues ($20,605 in attorney fees under section 271 and $10,817 for the evaluator and reconnection therapist); a request for continuance of the trial following Katia's father's death after Eugene refused her request to reschedule the trial ($1,610 under section 271); Eugene's untimely and unsuccessful motion for reconsideration ($1,357.50 under Code of Civil Procedure sections 1008(d), 128.5, and 128.7, and an additional $7,000 under section 271); disqualifying Eugene's prior counsel, Joe Camenzind ($5,790 under section 271); and an assortment of "other issues" including dividing an E*Trade account, enforcing Eugene's obligation to pay for daughter's educational costs and his payment of tuition, and other work on issues requiring litigation ($17,185 under section 271).

EXHIBIT B

2022. The declaration asserted that Katia requested attorney fees and costs and sanctions "at a minimum in the amount of $109,737" against Eugene for his conduct in the litigation.

On March 23, 2022, Eugene filed a declaration from his then-attorney Dale Chen in support of Eugene's request for attorney fees under section 271 and seeking a substantial amount of attorney fees and costs that were billed by Chen and by Eugene's prior counsel.

On March 28, 2022, the trial court issued a written statement of decision. The court decided Katia was entitled to sanctions but did not set an amount. The court found Eugene had frustrated the court's policy of promoting settlement and failed to adhere to court orders, including by not listing Katia as a beneficiary on his life insurance policy. It found Eugene had engaged in other conduct that frustrated settlement or resulted in an increase in litigation.

D. *April 2022 Findings and Orders After Hearing*

On April 8, 2022, the trial court issued the findings and orders that are the subject of this appeal. The challenged court orders address Eugene's request to set aside the 2020 stipulation and order as to daughter's tuition, the division of the Google stocks, and the imposition of sanctions on Eugene but not on Katia (collectively, April 8, 2022 orders after hearing).

As to daughter's schooling, the trial court found daughter had attended private kindergarten prior to the divorce, was enrolled in private school for first grade, and the judgment provided the parties would equally share education costs. The court found that Eugene had refused to pay his share of the private school tuition, Katia obtained counsel to enforce the terms, and thereafter the parties had entered into the stipulation that was the subject of the 2020 stipulation and order.

Regarding Eugene's request to set aside the 2020 stipulation and order based on mistake or fraud, the court declined to vacate the order but found Katia had failed to

disclose her increased income. The court concluded this failure to disclose warranted a modification of child support. However, with respect to his request that the court terminate spousal support, the court noted that Eugene's reliance on a DissoMaster calculation was improper, and there was no evidence or testimony regarding the marital standard of living. The court denied Eugene's request to set aside the spousal support provision of the 2020 stipulation and order.

Addressing Eugene's request to set aside the "education provision" in the stipulation and order based on his claim he had "traded" spousal support for educational expenses, the court found it had no evidence of the value of Katia's agreement to terminate spousal support. Moreover, the court found that the 2019 judgment obligated Eugene to pay for one-half of daughter's education expenses. The court rejected Eugene's claim that he had not actually agreed to pay for daughter's tuition as part of her educational costs. The court noted the judgment's language referred to "all educational costs incurred on behalf of" daughter and contained no limiting language. The court decided that "all educational costs" reasonably included tuition. Prior to the entry of judgment, the court found Katia and Eugene had looked at private schools for daughter, had selected the particular private school, and had paid a deposit. The court found Eugene did not unenroll daughter from private school, did not provide evidence that he attempted to do so (or that he asked Katia to unenroll daughter), and that "[a]t the time the parties agreed to split 'all educational costs' [daughter] was enrolled in private school." The court concluded that both the 2019 judgment and 2020 stipulation and order obligated Eugene to pay one-half of daughter's private school tuition.

As to the division of the Google stocks, the trial court observed that Eugene's schedule of assets and debts listed only one Schwab account, with no account number associated with it. The schedule did not include any attachments or required documentation. The court found the judgment was silent as to the account in which the Google stocks were located and it appeared that Katia had not received any Google stock.

The court granted Katia's request for division of the Google stock and awarded her one-half of the shares in the account. The trial court did not directly address Eugene's contention that the parties had already equally divided the community property, or the evidence that the figure Eugene had disclosed with respect to the Schwab account and from which Eugene and Katia had divided the marital property included the value of the Google shares.

The trial court addressed both Eugene's and Katia's request for an award of attorney fees as sanctions. It ordered Eugene to pay $60,000 in attorney fees "as a sanction under Family Code [section] 271 and related sanctions." The trial court did not specify any statutory provision other than section 271; elsewhere in its April 2022 order it quoted the provisions of section 271 and case law applying that provision.

As a basis for the imposition of sanctions, the trial court found Eugene had on multiple occasions frustrated settlement in the family law litigation. The court's order set out a number of examples. It found Eugene had admitted at trial that he had canceled daughter's health insurance and daughter still did not have any coverage through him, despite a judgment and subsequent orders requiring him to maintain health insurance for daughter. Eugene had also forced Katia to incur other additional expenses in the litigation. For example, Katia retained counsel to serve a document request to obtain a copy of Eugene's life insurance policy that confirmed Eugene had not complied with a court order to name Katia as a beneficiary and to effectuate a division of Eugene's E*Trade Roth IRA, as ordered by the court. Eugene had also refused to agree to continue the trial when Katia's father passed away. The court further noted Eugene had filed an untimely motion for reconsideration, which the trial court denied, and had forced Katia's counsel to move to disqualify Eugene's prior attorney upon discovery of a conflict of interest. The court also found Eugene's conduct related to the Google stocks sanctionable because he had failed to divide the Google stocks and asserted "throughout [t]rial and even in his closing arguments" that he was entitled to "divide assets outside the

terms of the [j]udgment" in a form of self-help. The court concluded that "[t]his conduct has frustrated settlement and led to the increase in fees by Katia." The trial court also found that Eugene had or was reasonably likely to have the ability to pay and the sanction awarded did not impose an unreasonable financial burden.

The trial court denied Eugene's request that it impose sanctions on Katia.

Eugene timely appealed from the April 8, 2022 orders after trial.

II. DISCUSSION

Eugene challenges on a number of grounds the trial court's April 2022 posthearing orders. First, he contends the trial court abused its discretion in denying his request to set aside the 2020 stipulation and order as it related to daughter's private school tuition. Second, he asserts the court erred as a matter of law in characterizing Eugene's Google stock as an omitted asset and ordering it divided. Third, he contends the court abused its discretion in awarding Katia $60,000 in sanctions under section 271. Additionally, Eugene's briefing asserts the trial court erred by denying his request for sanctions against Katia. Eugene also objects to procedural events and delays that occurred in the trial court, some of which occurred after the orders that are the subject of this appeal.

Katia counters that all of Eugene's claims lack merit and furthermore asserts he has forfeited his contentions of error by failing to provide an adequate record that includes a transcript of the trial that preceded the orders that are the subject of this appeal.

We turn first to the scope of matters reviewable on appeal and basic principles of appellate review. We then consider whether Eugene has demonstrated error by the trial court in the challenged orders.

A. *Appellate Record and Principles of Appellate Review*

It is "well established that 'when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered.' " (*Martinez v. Vaziri* (2016) 246 Cal.App.4th 373, 383.) The proper route for a civil litigant, where the record is incomplete, is to bring a

motion to augment the record and attach the documents to the motion. (Cal. Rules of Court, rule 8.155(a)(2).) This court must hold a self-represented litigant to the same procedural rules as an attorney. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 (*Nwosu*); accord *Martinez*, at p. 383.)

In his briefing on appeal, Eugene states he has "uploaded" documents to a Web site that appear to pertain to his motion for new trial that postdates his notice of appeal.[7] We decline to review or consider these documents based on the above principles and rules. Other than the documents included in the record on appeal and contained in the motion to augment that this court has already granted, we have not considered any additional documents from Eugene's Web site.[8]

"It has long been the general rule and understanding that 'an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.' [Citation.] This rule reflects an 'essential distinction between the trial and the appellate court . . . that it is the province of the trial court to decide questions of fact and of the appellate court to decide questions of law.' " (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.)

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[7] We previously granted Eugene's unopposed renewed motion to augment the record on appeal with a number of documents, including the exhibits submitted by both parties to the trial court at the March 8 and 9, 2022 trial.

[8] Eugene states in his opening brief that if this court elects not to review the documents uploaded on his Web site, we can ignore the " 'New Trial' " section in his opening brief. Accordingly, we do not address his arguments related to his motion for new trial that he apparently filed after the April 2022 order that is the subject of this appeal. We also decline to address other criticisms related to procedural events and delays that occurred in the trial court, some of which occurred after the orders that are the subject of this appeal, and for which he supplies no discernable legal argument or claim of error. Finally, we do not consider facts and case history that relate to events that postdate the April 8, 2022 order after trial that is the subject of this appeal. These events are not properly before us in this appeal. (See *Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073.)

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As appellant, Eugene bears the burden of demonstrating error. "To be successful on appeal, an appellant must be able to affirmatively demonstrate error on the record before the court." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 822 (*Falcone & Fyke I*).) " ' " '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. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " ' " (*Ibid*.)

Further, with respect to the challenged orders, Eugene has "an affirmative obligation to provide an adequate record so that we could assess whether the court abused its discretion." (*Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259.) " 'The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) In particular, where no error is apparent on the face of the existing appellate record and the appellant elects to proceed without a reporter's transcript, the reviewing court presumes the judgment correct as to all evidentiary matters. (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992 (*Fain*); see also *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187 [failure to provide an adequate record on an issue requires the issue to be resolved against appellant].)

Even though he is self-represented, Eugene must present an adequate record demonstrating purported error by the trial court and must support any reference to a

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matter in the record by a citation to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Nwosu*, *supra*, 122 Cal.App.4th at p. 1247.)[9]

Eugene's contentions in this appeal largely involve our review of factual determinations and discretionary rulings resolved against him by the trial court.[10] Eugene acknowledges that he has elected to proceed without a record of the oral proceedings from the two-day trial at which the trial court heard testimony and received exhibits into evidence. He concedes the trial was not reported and there is no indication he requested a suitable substitute, such as a settled statement.[11] (*Elena S. v. Kroutik* (2016) 247 Cal.App.4th 570, 574 ["A proper record includes a reporter's transcript or a settled statement of any hearing leading to the order being challenged on appeal."].) While the clerk's transcript and papers attached to Eugene's augmentation motion granted by this court contain a variety of filings and orders made throughout the action, including exhibits used at trial, we do not have a complete record of the arguments and testimony before the court at the March 8 and 9, 2022 trial.

Both parties were represented by counsel in the trial court, and nothing in the record supports an inference that the superior court was required to provide an official court reporter not privately retained by the parties. (See, e.g., Code Civ. Proc., § 269;

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[9] Inasmuch as the factual assertions in Eugene's briefing are unsupported by record citations, we will disregard them. (See *Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1267 ["plaintiffs make numerous factual assertions in their briefs without record citation" but "[w]e are entitled to disregard such unsupported factual assertions"].) For example, Eugene asserts he is unemployed but provides no record citation for that assertion.

[10] Eugene suggests we employ a de novo standard of review to his claims. He asserts that "courts have held that no transcript is required where an appeal presents a purely legal issue subject to de novo review." However, Eugene does not cite any relevant case law for this proposition. We will apply the appropriate standard of review to each of Eugene's claims.

[11] A settled statement is a summary of the trial court proceedings approved by the trial court, which an appellant may elect to use if the designated oral proceedings in the trial court were not reported by a court reporter. (Cal. Rules of Court, rule 8.137(b)(1).)

Cal. Rules of Court, rule 2.956; Super. Ct., Santa Clara County Gen. Court & Admin. Rules, rule 7.)[12] Eugene argues a settled statement "would be impossible due to distortion of [his] testimony," but we have no basis to analyze his assertion without a transcript of that testimony. We furthermore reject his conclusory and unsupported argument that a settled statement was otherwise impossible to procure in this case. (See *In re S.C.* (2006) 138 Cal.App.4th 396, 408 ["[C]onclusory claims of error will fail."].)

Katia requests we decide Eugene has forfeited his claims based on the lack of reporter's transcript. While we reject this suggestion, the absence of a record of what transpired at trial undermines many of Eugene's arguments in this appeal.

B. *Order Denying Eugene's Request to Set Aside the Stipulation and Order*

Eugene contends the trial court erred by failing to set aside the 2020 stipulation and order requiring him to pay for daughter's private school tuition. He argues, as he did in the trial court, that the provision regarding payment of educational costs in the 2019 judgment was silent as to the type of school and therefore did not require him to pay for daughter's private school tuition.

1. Legal Principles and Standard of Review

"Section 2122 governs motions to set aside judgments in dissolution proceedings. Under this statute, there are six grounds to set aside a judgment: actual fraud, perjury, duress, mental incapacity, mistake, or failure to comply with the disclosure requirements. (§ 2122, subds. (a)–(f).)" (*In re Marriage of Binette* (2018) 24 Cal.App.5th 1119, 1125.) An order granting a motion to set aside a judgment under section 2122 is reviewed under an abuse of discretion standard. (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682–683.)

The trial court's ruling on this issue turns in large part on its interpretation of the 2019 judgment and 2020 stipulation and order. " 'The meaning and effect of a judgment

[12] We observe that Eugene states in his briefing in this court that he has been able to engage a court reporter for at least one subsequent hearing in the trial court.

is determined according to the rules governing the interpretation of writings generally. [Citations.] " '[T]he entire document is to be taken by its four corners and construed as a whole to effectuate the obvious intention.' " [Citations.] " 'No particular part or clause in the judgment is to be seized upon and given the power to destroy the remainder if such effect can be avoided.' " [Citations.] [¶] Where an ambiguity exists, the court may examine the entire record to determine the judgment's scope and effect. [Citations.] The court may also " 'refer to the circumstances surrounding the making of the order or judgment, [and] to the condition of the cause in which it was entered.' " ' " (*In re Marriage of Rose & Richardson* (2002) 102 Cal.App.4th 941, 948–949.) "In the absence of ambiguity" in a judgment, "we conduct de novo review" of its provisions. (*Id*. at p. 949.)

We review the 2019 judgment and 2020 stipulation and order according to principles of contract interpretation. "The ultimate construction placed on the contract might call for different standards of review. When no extrinsic evidence is introduced, or when the competent extrinsic evidence is not in conflict, the appellate court independently construes the contract. [Citations.] When the competent extrinsic evidence is in conflict, and thus requires resolution of credibility issues, any reasonable construction [following a trial] will be upheld if it is supported by substantial evidence." (*Iqbal v. Ziadeh* (2017) 10 Cal.App.5th 1, 8.)

2. Analysis

In the trial court, Eugene sought to set aside the education provision of the 2020 stipulation and order on the ground that Katia had failed to disclose her true income. He contended he had "trad[ed]" the provision terminating spousal support for agreeing to share daughter's education expenses. However, the trial court concluded it had "no way to analyze the spousal support termination" provision in the 2020 stipulation and order as it had not received testimony regarding "the marital standard of living," one of the statutory factors it was required to consider when setting spousal support. (See § 4320.)

Furthermore, it found that Eugene was "previously obligated to splitting the education expenses" by the 2019 judgment. The trial court concluded that Katia's failure to disclose her actual income was not a ground for setting aside the stipulation and order to share education costs.

In interpreting the 2019 judgment, the trial court explained that the language stated Eugene and Katia would be responsible for one-half of daughter's "educational costs" and the agreement contained no limiting language. The court observed that "[s]uch language is not standard in most agreements" and therefore it was "reasonable to interpret 'all educational costs' as inclusive of tuition." Turning to the factual circumstances surrounding the entry of the 2019 judgment, the court found Eugene and Katia had looked at "several private schools" for daughter, had filled out applications and selected the school at which she was now enrolled, and had paid a deposit to ensure daughter's place in the private school. The court furthermore found that Eugene did not unenroll daughter from private school, had not provided evidence that he attempted to do so or asked Katia to do so, and "[a]t the time the parties agreed to split 'all educational costs' [daughter] was enrolled in private school."

Eugene has not demonstrated that the trial court erred in its interpretation of the 2019 judgment. To the extent that Eugene's challenge involves the trial court's resolution of disputed factual issues based on the trial testimony, we cannot meaningfully review those conclusions. We do not have a complete record of the arguments or evidence before the trial court on the motions and requests forming the basis for this appeal. From the record before us, we perceive no error with respect to the underlying factual findings and to the interpretation of the 2019 judgment in the trial court's ruling.

For example, the 2019 judgment does not limit educational costs in any manner but rather extends to "all" educational costs. What is more, the trial court found that at the time of the negotiations of that judgment, daughter was already enrolled in private

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school. Nothing in the record before us demonstrates that these findings lack substantial evidence.

Eugene emphasizes on appeal that the 2020 stipulation and order specified private school tuition whereas the judgment only generally referred to educational costs. However, a plain reading of the stipulation and order supports the trial court's interpretation of the 2019 judgment. The stipulation and order states that daughter would "continue" attending private school and Eugene would reimburse Katia for the tuition she had already paid for that tuition.

Additionally, Eugene argues that even if he was already obligated under the judgment to pay for daughter's private school tuition, the trial court abused its discretion in "failing to find that [Eugene] would have materially benefited" from his request to set aside the 2020 stipulation and order based on Katia's "fraudulent concealment of her true income." Although Eugene's argument on this point is not entirely clear, he appears to assert that the trial court erred in not setting aside the 2020 stipulation and order, because he would have not agreed to the education provision had he known Katia's true income. To the extent that this argument involves credibility determinations made by the trial court, we may not revisit those assessments on appeal. (See *In re Marriage of Boswell* (2014) 225 Cal.App.4th 1172, 1175.)

Generally, as the party moving for relief under section 2122, Eugene bore the burden of proving his entitlement to relief. (See *In re Marriage of Kieturakis* (2006) 138 Cal.App.4th 56, 88–89.) We perceive no error in the trial court's conclusion that he failed to meet that burden based on the language of the 2019 judgment and in its factual finding that he had already agreed to pay for daughter's tuition before the 2020 stipulation and order.

C. *Order Dividing Google Stocks*

Eugene contends the trial court's determination that the Google stocks were an omitted asset subject to division should be reversed. He argues the Google stocks were

not an omitted asset because he had disclosed the Schwab "equity awards account" containing the Google stocks and the value of that account in an e-mail to Katia dated April 8, 2019, and the asset was "litigated and divided" in the 2019 judgment. He also states that his schedule of assets and debts listed the "combined value of both his Schwab investment account #6350 and Schwab Google stock account." He furthermore asserts the trial court's division of that asset was unequal because, although he agrees that she did not receive any Google stock prior to the trial court's 2022 order, he had already paid to Katia "one-half the value of the Google stock" in "June and July 2019" so the award of the Google stocks was actually a "windfall" to Katia.

1. Legal Principles

Section 2556 provides "In a proceeding for dissolution of marriage . . . the court has continuing jurisdiction to award community estate assets or community estate liabilities to the parties that have not been previously adjudicated by a judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability."

"Section 2556 applies even when former spouses were aware of the community property at the time the dissolution judgment was entered." (*In re Marriage of Huntley* (2017) 10 Cal.App.5th 1053, 1060.) "The mere mention of an asset in the judgment is not controlling. [Citation.] '[T]he crucial question is whether the benefits were actually litigated and divided in the previous proceeding.' " (*In re Marriage of Thorne & Raccina* (2012) 203 Cal.App.4th 492, 501 (*Thorne & Raccina*).)

2. Analysis

We review de novo the terms of the 2019 judgment, including whether it included the Google stocks. (See *Thorne & Raccina*, *supra*, 203 Cal.App.4th at p. 501.)

Based on the record on appeal, Eugene has not demonstrated that the trial court's conclusion the Google stocks are an omitted asset lacks substantial evidence.

The judgment is silent as to the Google stocks or the Schwab GOOG account that contained them. The language of the judgment itself does not support Eugene's conclusory claim that the question of dividing the Google stocks was actually litigated. Eugene principally argues that the stocks were not omitted and subject to section 2556 because he had told Katia about the Google stocks and their location in e-mail communications. However, he provides no authority supporting his contention that this e-mail amounts to the Google stocks having been "actually litigated and divided."

To the contrary, the authority Eugene cites undermines his position. Courts have held that the "mere mention of an asset in the judgment is not controlling" and an asset may still be omitted even if it was mentioned. (*Thorne & Raccina*, *supra*, 203 Cal.App.4th at p. 501.) The critical question is whether the asset was actually litigated and divided. (*Ibid.*) Neither the 2019 stipulated judgment nor the 2020 stipulation and order mentions the Google stocks, and nothing in the record supports Eugene's contention that they were actually litigated and divided. Thus, we uphold the trial court's determination under section 2556 that the Google stocks were not adjudicated in the judgment and thus are an omitted asset.

Eugene argues that even if the Google stocks are an omitted asset, the trial court abused its discretion in equally dividing the stocks. He contends there was good cause to require an unequal division of the asset because he had previously given Katia equivalent value for the Google stocks. The trial court did not address the applicability of the "good cause" exception in its otherwise detailed order.

Section 2550 provides, "Except upon the written agreement of the parties, or on oral stipulation of the parties in open court, or as otherwise provided in this division, in a proceeding for dissolution of marriage or for legal separation of the parties, the court shall, either in its judgment of dissolution of the marriage, in its judgment of legal separation of the parties, or at a later time if it expressly reserves jurisdiction to make such a property division, divide the community estate of the parties equally." Moreover, fault may not be a consideration in the division of community property. (See *Diosdado v. Diosdado* (2002) 97 Cal.App.4th 470, 474.) Here, the judgment provides for equal division of community assets.

As described above, Eugene's exhibits to his declaration opposing Katia's motion for determination and division of the Google stocks support his contention that the full value of both Schwab accounts was included in the numbers from which Katia and Eugene determined the total value of the community property. While the trial court correctly observed that Eugene "may not unliterally decide which assets he keeps or awards to Katia in violation of the November 18, 2019 Judgment," it did not address Eugene's argument that, under sections 2550 and 2556, good cause (based on an unequal division of other assets) supported a finding that the Google stocks should not be divided equally.

"A trial court's failure to exercise discretion is itself an abuse of discretion." (*In re Marriage of Gray* (2007) 155 Cal.App.4th 504, 515.) We decide that, on the facts here, the trial court abused its discretion in failing to decide this issue.

We will therefore remand the matter to the court to determine whether and to what extent sections 2556 and 2550 support a finding that the interests of justice require an unequal division of the Google stock. We do not intend, by anything we have said in this opinion, to suggest that the court should exercise its discretion in a particular manner with respect to division of the Google stocks. We leave to the trial court whether it may

make its determination based on the existing record or whether it should consider additional evidence.

D. *Orders Related to Sanctions*

Eugene contends the trial court erred by imposing sanctions on him while denying his request to sanction Katia. We focus, as do the parties, on section 271, the principal statutory provision discussed and applied by the trial court in its April 2022 order.

1. Legal Principles

By its terms, section 271 promotes "the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." (§ 271, subd. (a).) A sanction under section 271 is limited to "an award of attorney's fees and costs" and considers both the conduct of the parties in furthering or frustrating the policy of the law as well as the parties' incomes, assets, and liabilities and whether imposing a sanction would create an unreasonable financial burden on the subject. (*Ibid.*)

Section 271 is "designed to punish 'a party [who] has unreasonably increased the cost of litigation.' " (*In re Marriage of Blake & Langer* (2022) 85 Cal.App.5th 300, 310.) "[A] party requesting a Family Code section 271 award is not required to show any financial need for the award or any actual injury. [Citation.] The only stricture is that the sanction may not impose an unreasonable financial burden on the party sanctioned." (*Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 990 (*Falcone & Fyke II*).)

"Sanctions under section 271 are appropriate whenever a party's dilatory and uncooperative conduct has frustrated the policy of promoting settlement of litigation and cooperation among litigants. [Citation.] There is no requirement that a party suffer any actual injury as a prerequisite to requesting an award of attorney fees as sanctions under section 271." (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1317.) "Section 271 does not require that the sanctioned conduct be frivolous or taken solely for the purpose of delay. Rather, the statute is aimed at conduct that frustrates settlement of

family law litigation. Expressed another way, section 271 vests family law courts with an additional means with which to enforce this state's public policy of promoting settlement of family law litigation, while reducing its costs through mutual cooperation of clients and their counsel. 'Thus, a party who individually, or by counsel, engages in conduct frustrating or obstructing the public policy is thereby exposed to liability for the adverse party's costs and attorney fees such conduct generates.' " (*Id*. at p. 1318.)

We review an order imposing sanctions under section 271 for abuse of discretion. (*Falcone & Fyke II*, *supra*, 203 Cal.App.4th at p. 995.) " 'Accordingly, we will overturn such an order only if, considering all of the evidence viewed most favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order.' " (*Ibid*.) " ' "We review any findings of fact that formed the basis for the award of sanctions under a substantial evidence standard of review." ' " (*Ibid.*)

"In reviewing factual determinations for substantial evidence, a reviewing court should 'not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts.' [Citation.] The determinations should 'be upheld if . . . supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.' [Citations.] Uncontradicted testimony rejected by the trial court ' "cannot be credited on appeal unless, in view of the whole record, it is clear, positive, and of such a nature that it cannot rationally be disbelieved." ' " (*In re Caden C.* (2021) 11 Cal.5th 614, 640.)

2. Analysis

We discern no abuse of discretion in the trial court's decision to penalize Eugene for conduct that it found undermined the policy of promoting settlement of family law litigation. The trial court provided in both its statement of decision and subsequent April 2022 findings and order after hearing a detailed summary of the conduct Eugene had engaged in during the litigation which it concluded had frustrated settlement, including refusing to abide by court orders and thwarting settlement negotiations. "[S]anctions

under section 271 are justified when a party has unreasonably increased the cost of litigation." (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1227.) Eugene's conduct—as detailed in the court's written findings and conclusions—meets that standard.

On appeal, Eugene essentially reargues the facts favorable to his position while ignoring unfavorable findings made by the trial court. Our task, however, is limited to determining whether substantial evidence supports the trial court's ruling. Further, "[a]n appellate court ' "must *presume* that the record contains evidence to support every finding of fact . . . ." ' [Citations.] . . . It is the appellant's burden, not the court's, to identify and establish deficiencies in the evidence." (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409; see also *In re Marriage of Higinbotham* (1988) 203 Cal.App.3d 322, 328–329 [observing "the daunting burden placed on one who challenges the sufficiency of the evidence to support a trial court finding"].)

Eugene has not carried his burden of showing the trial court's decision to impose sanctions under section 271 lacks substantial evidence or that the court otherwise abused its discretion. (See *In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 292.)

Turning to the amount of sanctions, Eugene argues the award of $60,000 was excessive and untethered to the attorney fees and costs incurred by Katia. We disagree.

Eugene relies on *Sagonowsky v. Kekoa* (2016) 6 Cal.App.5th 1142, but that decision does not address similar circumstances. The appellate court in *Sagonowsky* reversed a sanctions award of $680,000 under section 271 as excessive because there was no dispute that those amounts did not relate to attorney fees or costs and "sanctions available under [section 271] are limited to 'attorney fees and costs.' " (*Sagonowsky*, at p. 1153.) It concluded that "the plain language of section 271 did not authorize the court to award $500,000 to punish" a party or $180,000 for the reduction in the sales price of a property, because those amounts were unrelated to attorney fees and costs borne by the other party. (*Id*. at p. 1156.)

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The record does not reflect the trial court made an award that was untethered to attorney fees and costs. Katia sought over $100,000 in attorney fees and costs, and a detailed declaration from her counsel supported the requested fees and costs (see pt. I.C. & fn. 8, *ante*). The amount the trial court awarded was substantially less than the figure Katia requested.

Eugene argues that the trial court should have sanctioned Katia. The record does not reflect the trial court's reasoning or explanation for why it declined to do so, although it acknowledged that Eugene sought an award of attorney fees. Absent a transcript of the arguments or evidence considered at trial, we must presume there was evidence to support the implied finding that Katia had not frustrated settlement in the family law proceedings or otherwise engaged in sanctionable conduct leading up to the trial court's order in this appeal. (See *Fain*, *supra*, 75 Cal.App.4th at p. 992.)

Eugene's contentions reflect his frustration and dissatisfaction with the trial court's denial of his request for sanctions, but they do not establish reversible error under the principles of appellate review. The trial court found that Katia had not disclosed her true income during the time the 2020 stipulation was being negotiated and, due to that finding, modified the child support calculation. Eugene argues that her lack of disclosure of her true income during their negotiations and her other litigation conduct warranted substantial sanctions. The trial court did not find Katia had frustrated settlement, and the record before us does not disclose that that conclusion lacks substantial evidence. Moreover, Eugene fails to summarize other evidence in the record supporting the trial court's implied finding that sanctions were not warranted against Katia, such as the declaration provided by Katia's attorney that Katia had attempted to settle in good faith the litigation at a number of junctures.[13]

[13] Eugene does not contend the trial court's order violated section 2107, subdivision (c), and therefore he has forfeited any claim of error as to that provision.

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III. DISPOSITION

The April 8, 2022 orders after hearing on the request to vacate the April 21, 2020 stipulation and for sanctions are affirmed. The April 8, 2022 order after hearing on determination and division of the Google stock is reversed. The matter is remanded for the limited purpose of a determination by the trial court whether the interests of justice require an unequal division of the Google stock. (Fam. Code, § 2556.) The trial court's determination that the Google stock is an omitted asset is affirmed. (*Ibid*.) The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

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Danner, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P.J.

_____
Wilson, J.

H050115
Strulyov v. Strulyov

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Law Office of Stephanie Finelli

INVOICE

3110 S Street
Sacramento, CA 95816

Invoice # 467
Date: 10/04/2024
Due On: 11/03/2024

Ekaterina Strulyov

00106-Strulyov

Appeal 2

Type	Date	Notes	Quantity	Rate	Total
Service	09/18/2024	Review AOB by Eugene and notes re same (1.2); email client re same (.2 n/c)	1.20	$350.00	$420.00
Service	09/19/2024	Begin preparing Respondents Brief: intro and facts	2.10	$350.00	$735.00
Service	09/20/2024	Continue work on RB; finish review of CT and RT; statement of facts and case; begin arguments	6.30	$350.00	$2,205.00
Service	09/23/2024	Continue preparing Respondent's Brief, review case law re same	3.00	$350.00	$1,050.00
Service	09/24/2024	Work on RB, legal research and arguments re same	2.80	$350.00	$980.00
Service	09/25/2024	Continue on RB	3.10	$350.00	$1,085.00
Service	09/26/2024	Continue on RB; review and revise same	2.10	$350.00	$735.00
Service	09/27/2024	Review and revise RB; send draft to client	2.40	$350.00	$840.00
Expense	09/30/2024	Law clerk time: Prepare tables and format brief for filing	2.00	$60.00	$120.00
Service	09/30/2024	Review client's email re atty fees; add argument re sanctions to RB; legal research re same	0.40	$350.00	$140.00
Expense	10/01/2024	Filing fee: E-file Respondent's Brief (including filing fee for brief)	1.00	$409.20	$409.20
Expense	10/01/2024	copies: Copies of Respondents brief for service	35.00	$0.15	$5.25
Expense	10/01/2024	postage: Mail serve Respondents brief to trial court	1.00	$1.29	$1.29

Total	**$8,725.74**
Payment (10/04/2024)	**-$6,500.00**
Payment (12/15/2024)	**-$1,172.80**

EXHIBIT C

Payment (01/08/2025)	**-$1,052.94**
Balance Owing	**$0.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
467	11/03/2024	$8,725.74	$8,725.74	$0.00

Account	Balance
L/O Stephanie J Finelli TRUST Balance	$0.00
Total Account Balance	**$0.00**

Please make all amounts payable to: Law Office of Stephanie Finelli

Please pay within 30 days.

EXHIBIT C

Law Office of Stephanie Finelli

INVOICE

3110 S Street
Sacramento, CA 95816

Invoice # 565
Date: 06/25/2025
Due On: 07/25/2025

Ekaterina Strulyov

00106-Strulyov

Appeal 2

Type	Date	Notes	Quantity	Rate	Total
Service	03/05/2025	Review Eugene AOB, our RB and Reply, Shephardize cases and statutes for new law	1.40	$350.00	$490.00
Service	03/12/2025	Review briefs and prepare for argument	0.50	$350.00	$175.00
Service	03/13/2025	Finalize oral argument preparation; log in and participate in argument	1.50	$350.00	$525.00
				Total	**$1,190.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
565	07/25/2025	$1,190.00	$0.00	$1,190.00
			Outstanding Balance	**$1,190.00**
			Total Amount Outstanding	**$1,190.00**

Account	Balance
L/O Stephanie J Finelli TRUST Balance	$0.00
Total Account Balance	**$0.00**

Please make all amounts payable to: Law Office of Stephanie Finelli

EXHIBIT C