SUPREME COURT CASE NO.: S274147

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

DAVID MEINHARDT,
Petitioner,
-vs
CITY OF SUNNYVALE, SUNNYVALE PERSONNEL BOARD,
Respondent.

SUNNYVALE DEPARTMENT OF PUBLIC SAFETY,
Real Party in Interest.

APPLICATION TO FILE AMICUS BRIEF AND PROPOSED BRIEF OF *AMICUS CURIAE* BALLONA WETLANDS LAND TRUST IN SUPPORT OF PETITIONER DAVID MEINHARDT

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION ONE	COURT OF APPEAL CASE NUMBER: S27417
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 202505 NAME: BRIAN ACREE FIRM NAME: LAW OFFICE OF BRIAN ACREE STREET ADDRESS: 331 J STREET, SUITE 200 CITY: SACRAMENTO STATE: CA ZIP CODE: 95814 TELEPHONE NO.: 510-517-5196 FAX NO.: E-MAIL ADDRESS: BRIAN@BRIANACREE.COM ATTORNEY FOR (*name*): BALLONA WETLANDS LAND TRUST	SUPERIOR COURT CASE NUMBER: D079551 , 19CV346911
APPELLANT/ PETITIONER: DAVID MEINHARDT RESPONDENT/ REAL PARTY IN INTEREST: CITY OF SUNNYVALE	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

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[ ] Continued on attachment 2.

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Date: 12/7/2022

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APPLICATION TO FILE AMICUS BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, amicus curiae Ballona Wetlands Land Trust respectfully requests leave to file the incorporated brief in support of petitioner David Meinhardt. This application is timely made pursuant to Rule 8.520(f)(7)(2).

Interest of Amicus Curiae

Amicus curiae Ballona Wetlands Land Trust ("BWLT") is a non-profit, 501(c)(3) organization founded in 1994 with the mission of protecting the greater Ballona Wetlands ecosystem, the last remaining intact coastal wetlands ecosystem in Los Angeles County and located on the westside of Los Angeles, from ongoing threats of urban encroachment. Like many non-profit environmental organizations, BWLT has frequently availed itself of writ relief in the Los Angeles Superior Court in furtherance of its conservation mission. In the past three decades, BWLT has filed petitions for writ of mandate to enforce a number of public interest statutes in furtherance of protecting this natural treasure, including the California Public Records Act, the California Environmental Quality Act, the Brown Act, and the Bagley-Keene Open Meeting Act. BWLT's ability to effectively pursue writ relief, like most similarly situated petitioners, has been hampered by the recent growing confusion in the appellate

and superior courts caused by *City of Calexico v. Bergeson* (2021) 64 Cal.App.5th 180, *Laraway v. Pasadena Unified School Dist.*, (2002) 98 Cal.App.4th 579, and the underlying case in this matter regarding what constitutes a "judgment" in a writ proceeding, for purposes of appellate review and the timing of post-judgment motions.

The Proposed Amicus Curiae Brief May Assist The Court In Deciding The Matter

Trials in writ proceedings, following the procedures set forth in Code of Civil Procedure and the Rules of Court, generally begin with the court issuing a tentative decision, hearing argument, and then issuing a final ruling or statement of decision that sets forth the legal and factual basis for either granting or denying the writ petition. (Code Civ. Proc. §§632, 1019.5; California Rule of Court ("CRC") 3.1308, 3.1590.) The prevailing party, or the court, then prepares a proposed final judgment granting or denying the writ. Objections to the proposed judgment, if any, may then be heard and decided, after which the court enters a final judgment. (CRC 3.1590(f)-(k).) Notice of entry of that judgment is then either served and filed by the clerk, or by a party, and if the petition was granted, a writ is issued by the clerk in conformance with the judgment.

Where there was not previously, there appears now to be growing confusion in the Courts of Appeal and superior courts

regarding whether a court's statement of decision or its final judgment "triggers the clock" for both appellate review and post judgment motions in writ proceedings. Most courts have followed the view expressed in cases such as *Alan v. American Honda Motor Co.*, (2007) 40 Cal.4th 894, which holds that the service of notice of entry of judgment starts the time to request appellate review, but provides an equitable exception in the rare case where a judgment has not been filed or is defective that allows a ruling or statement of decision to be treated as a judgment for purposes of appeal. However, the opinions in *Laraway, Calexico,* and now the underlying case, appear to have confused the exception with the rule, holding that a ruling or statement of decision is in fact *always* the final "judgment" in a mandamus case. For these courts, an otherwise valid judgment entered after a court's ruling or statement of decision is irrelevant and void, since "judgment" had already been entered by filing and service of the ruling.

Petitioner Meinhardt presents an excellent analysis of how the Court of Appeal's Opinion in this case misconstrued the applicable law regarding what constitutes a "judgment", the equitable exceptions that permit a ruling prior to judgment to be treated as a judgment for purposes of appeal, and the events that trigger the time period in which to file post-judgment motions and request appellate review. Amicus curiae Ballona Wetlands

Land Trust provides this amicus brief to describe in further detail the ordinary and well-established procedures provided by statute and court rule for obtaining judgment in a writ proceeding, and why the holding of *Meinhardt* cannot be harmonized with the Code of Civil Procedure and the California Rules of Court. Amicus also provides further analysis of the unacceptable uncertainty the opinion creates regarding what constitutes a final judgment, and the difficulty that presents for attorneys, judges, and court personnel in determining when post-judgment motions and appeals must be filed, and how and when judgments in writ proceeding can be enforced.

PROPOSED BRIEF OF AMICUS CURIAE

ARGUMENT

I
The Court of Appeal's Opinion is Inconsistent with Statutory Procedure and Court Rules Regarding Entry of Judgment

Traditional and administrative mandamus cases in California trial courts are "special proceedings" governed by the writ procedures established by Part 3, Title 1 of the Code of Civil Procedure. Except as otherwise provided by the procedures described in Part 3, Title 1, the "rules of practice" for mandamus cases are the same as those in civil actions. (Code Civ. Proc. §1109.) Additionally, mandamus proceedings are also governed by provisions of the California Rules of Court and also local superior court rules, particularly in counties where mandamus proceedings are specifically addressed in the local rules. (See e.g., Los Angeles Superior Court ("LASC") Local Rule 3.231 Sacramento Superior Court ("SSC") Local Rule 2.26(e) and accompanying "Guide To The Procedures For Prosecuting Petitions For Prerogative Writs"[1])

[1] Pursuant to SSC Local Rule 2.26(e), a "guide to the procedures for prosecuting petitions for prerogative writs in the Sacramento Superior Court", which counsel are obliged to follow, is published at https://www.saccourt.ca.gov/local-rules/docs/chapter-02.pdf

Generally, both alternative and peremptory writ actions are resolved through a bench trial based on written and oral arguments, and on an administrative record, or where there is not a record, on declarations and other evidence submitted by the parties. (Code Civ. Proc. §§1094, 1095, LASC Rule 3.231 (l)-(m).) Tentative decisions in such bench trials, indicating how the court intends to rule and providing the basis for the ruling, are permitted by CRC 3.1308 and 3.1590, and while not required, are not uncommon. Both rules provide that the tentative decision on the matter may be adopted by the court as its statement of decision after hearing.

Following the merits hearing, a court may issue a notice of ruling or a statement of decision that provides the basis for granting or denying the petition, or may require the prevailing party to prepare such a statement. (Code Civ. Proc. §632, 1019.5; CRC 3.1590(c-f).) Importantly, a ruling or statement of decision is *not* a judgment. A formal separate judgment must still follow the ruling or statement of decision. (Code Civ. Proc. §635; CRC 3.1590(f)-(k) [requiring separate statement of decision and judgment]; *Alan v. American Honda Motor Co*. (2007) 40 Cal.4th 894, 901 ["[A] statement of decision is not treated as appealable when a formal order or judgment does follow[.]"]; *see also Hadley v. Superior Court* (1972) 29 Cal.App.3d 389.) This judgment is then separately entered in the "judgment book" or register of

actions of the court. (Code Civ. Proc. §§668, 668.5.) Thus, a statement of decision or notice of ruling is instead usually denominated as an "order" precisely because it is not a "judgment". (Code Civ. Proc 1003 ["Every direction of a court or judge, made or entered in writing, and not included in a judgment, is denominated an order."])

The distinction between an "order" contained in a statement of decision or notice of ruling and a "judgment" that terminates a case is important. Mandamus proceedings can only end in a "judgment". (Code Civ. Proc. §1064 ["A judgment in a special proceeding is the final determination of the rights of the parties therein."]; Code Civ. Proc. §1094.5(f) ["The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ."]; Code Civ. Proc. §1095, [requiring issuance of peremptory writ "[i]f judgment be given for the applicant"]. Pursuant to California Rules of Court, the procedure for entering a final judgment requires the preparation of a "proposed" judgment, either by the court or by a prevailing party. (CRC 3.1590(c, f-k), *see also* LASC Local Rule 3.231(n).) Logically, a proposed judgment can only be prepared after the court informs the parties of its intended decision through either the issuance of a notice of ruling or statement of decision informing the parties of the decision after the hearing on the merits. Both the California Rules of Court and many local rules

provide a timeline and describe procedures for objecting to a proposed judgment and for resolving objections through hearing. (CRC 3.1590(f-k), *see also* LASC Rule 3.231(n)) The objection and review period prior to entry of judgment serves an important procedural purpose, since it allows parties the opportunity to bring defects in the judgment to the court's attention before the judgment becomes final. (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 983.)

Once a final judgment has been signed and entered by the court, Code Civ. Proc § 664.5(a) requires that "in any contested action or special proceeding, the party submitting an order or judgment for entry shall prepare and serve a copy of the notice of entry of judgment to all parties who have appeared in the action or proceeding and shall file with the court the original notice of entry of judgment together with proof of service." Service of this notice of entry of judgment is the event that formally begins the timeline for requesting appellate review and filing post-judgment motions such as motions for fees and costs. (CRC 8.104(a)(1), 3.1700(a))

II
The Procedure for Appellate Review When a Trial Court Fails to Enter Judgment or the Judgment is Otherwise Defective

As Petitioner Meinhardt correctly notes in his briefing, in the rare situation where a court fails to enter a final judgment, or where the judgment is otherwise defective, this Court and the Courts of Appeal have developed equitable exceptions to the rule that appeals may only be taken from a final judgment in order to proceed with review, rather than require litigants to petition the trial court to correct a defective judgment before seeking appellate review. (AOB, pp.10-12.) In these rare instances, a statement of decision or notice of ruling, if it exists, may be treated as a final judgment for purposes of appellate review, since it contains the trial court's ruling and the basis for its decision. (*Alan*, 40 Cal.4th at 901, *Estate of Lock* (1981) 122 Cal.App.3d 892, 896-899 [Holding that memorandum of decision that was signed and filed was not a "judgment", but could be treated as judgment for purposes of appeal to avoid dismissal as premature.]) These cases however do not stand for the proposition that a statement of decision must *always* be treated as a final judgment, or that the statutes and court rules regarding entry of final judgment after a statement of decision is issued are void, moot, or ineffective. Rather, they set forth a discretionary rule that a statement of decision *may* be treated as a final judgment for purposes of appeal, but *only* in the rare circumstance where a subsequent judgment does not follow. (*Alan*, 40 Cal.4th at p. 901.)

III
The Court of Appeal's Opinion in this Case Mistakenly Substituted the Exception for the Rule

In the case below, the Court of Appeal mistakenly read the equitable exception described in the section above as the rule, holding that any "order" of the court that provides a ruling and the basis for the ruling is in fact the final "judgment", regardless of whether a judgment is subsequently entered. (*Meinhardt v. City of Sunnyvale* (2022) 76 Cal.App.5th 43, 58.) That is simply not the case, and directly conflicts with well settled case law and numerous provisions of the Code of Civil Procedure and the Rules of Court that detail how a mandamus case or other special proceedings move from trial to judgment.

A hearing on the merits will commonly be followed by the court issuing either a notice of ruling pursuant to Code of Civil Procedure section 1019.5 or a statement of decision pursuant to Code of Civil Procedure section 632 and CRC 3.1590. However, neither of these documents are considered a "judgment". (*Alan*, 40 Cal.4th at 901 ["[A] statement of decision is not treated as appealable when a formal order or judgment does follow, as in this case."]; *Estate of Lock* (1981) 122 Cal.App.3d 892, 896 ["[A]n oral or written intended decision of the court is not generally

considered a final judgment"]; *Industrial Indemnity Co. v. City and County of San Francisco* (1990) 218 Cal.App.3d 999, 1003 fn.3 ["It is the judgment, not the statement of decision, that is appealable."]) In fact, the rules of court explicitly provide that if a court proceeds by statement of decision it *must* "prepare and serve a proposed statement of decision **and** a proposed judgment on all parties that appeared at the trial", or direct one of the parties to do so, which only makes sense if the judgment and statement of decision are two separate documents. (CRC 3.1590(f)(emphasis added))

A judgment also is treated as separate from a ruling or statement of decision under the code of civil procedure, which provides specific administrative instructions to judges and court personnel regarding how such documents are recorded. (Code of Civ. Proc. §635 ["In all cases where the decision of the court has been entered in its minutes . . . the formal judgment or order conforming to the minutes may be signed by the presiding judge"], see also §§668, 668.5 [providing filing procedures for "judgments" in either the court's judgment book or register of actions.]) It is highly unlikely that the legislature intended for court clerks to evaluate rulings, statements of decision, and other documents on their own to determine if the document disposed of the action sufficiently to be considered a "judgment" for purposes of meeting these filing requirements. Thus, the case law holding

that such documents may be considered to be judgments for the purposes of appeal are best read as meaning that the appellate courts may, at their discretion, consider such documents to be judgments in order to not dismiss an appeal as premature, or as being taken from the wrong document.

Finally, the entry of a judgment procedurally generally requires the issuance of a proposed judgment, either by the court or a party, and an opportunity to hear objections to the form and substance of the proposed judgment. (CRC 3.1590 (f)-(k); LASC Local Rule 3.213, 3.231(n)["After trial, the prevailing party will be ordered to prepare a proposed judgment and any writ of mandate, serve them on the opposing parties for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and applicable writ along with a declaration stating the existence or non-existence of any unresolved objections. An order to show cause re: judgment hearing will be set for purposes of resolving any objections and signing the judgment."] These review provisions are important, because they allow the court to correct errors in the judgment or ruling before losing jurisdiction over the matter. [2] (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970,

[2] As an example of the importance of this process, when a court's decision is to grant the petition for writ of mandamus, the judgment must contain the language of the writ that is to be

983.) However, it would make no sense for court rules to require the preparation and entry of a proposed judgment, and set forth a procedure for hearing and resolving objections to the form of the judgment, if the ruling or a statement of decision itself is the final "judgment".

Given the above, the opinion of the court below simply cannot be harmonized with numerous provisions of the Code of Civil Procedure and court rules, or the well-established case law regarding appealable judgments.

IV
The Court's Decision Will Cause Unnecessary Confusion Regarding the Procedure For Entry And Enforcement of Judgment, the Procedure for Filing Post Judgment Motions, and the Procedure for Noticing Appeal

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issued by the court clerk, as it is the court clerk that will ensure that the language of the proposed writ matches what is in the document entitled "judgment," before the court clerk will issue the writ that is required to be served on the respondent. As another example, a proposed judgment may include an order enjoining respondent and/or real party in interest from taking certain action, but the parties may disagree on the breadth or terms of the injunction, which will be resolved by the process of objections and an OSC hearing or other hearing on the proposed judgment before judgment is entered. This process permits the trial court to correct issues with the judgment before yielding jurisdiction to the court of appeal. A judgment thus truly cannot be final until this process is completed.

As this Court noted in *Alan*, litigants in trial courts should not have "to guess, at their peril," what action by the court "trigger[s] the duty to file a notice of appeal." (*Alan*, supra, 40 Cal.4th at p. 905.) Nor should litigants have to guess when the deadline for filing post-judgment motions for costs and other matters has commenced, or which document constitutes the "judgment" for purposes of enforcement actions or requesting the issuance of writs of mandate by the clerk.

The Court of Appeal's Opinion creates confusion regarding an incredibly important issue. For instance, in this case, the Court of Appeal held that when the trial court judge entered a "judgment" following the issuance of a ruling denying the writ, that action was "irrelevant", since "judgment" had already been entered. (*Meinhardt v. City of Sunnyvale* (2022) 76 Cal.App.5th 43, 63.) However, if the judge in the proceedings below believed that the case had been terminated by issuance of a notice of ruling and that entry of a separate judgment was not necessary, he would have declined to enter the duplicative judgment. It can hardly be said that in this instance the trial court did not contemplate any further action in the case to bring the case to termination. The court clearly did contemplate, and took, such further action by subsequently entering a formal judgment.

A "substance over form" approach to determining when an "order", "ruling", or "statement of decision" is in fact a "judgment"

is only a practical inquiry on appeal when a "judgment" does not exist or is defective. That is what this Court held in *Alan*, and what numerous cases have held before and since. This Court explicitly rejected opening that inquiry to cases where a valid judgment has been issued, since doing so essentially casts doubt on every judgment, and will invite endless inquiry into where, how and when a court "decided" a matter. The lack of certainty this will create regarding the finality of judgments will cause confusion regarding when parties must file post-judgment motions and appeals and will do without providing any discernible benefit for courts or litigants.

There is a reason that "judgments" were originally separately defined in the Code of Civil Procedure and required separate entry in a "judgment book". Treating a judgment as a separate and unique document permits practitioners, judges, and court personnel to easily identify the document that terminates a proceeding. Doing so permits court personnel to easily identify the "judgment" to be enforced through a writ of mandate, or through other judgment enforcement mechanisms. It permits litigants to easily mark the commencement of deadlines to file a notice of appeal or post-judgment motions for fees and costs, and other post-judgment motions. The Code of Civil Procedure and rules of court were clearly designed to make the "form" of the judgment separate and easily identifiable because of its

importance in the efficient functioning of the judicial system. The court's decision below would, essentially, make all separately entered judgments in mandamus and other actions "irrelevant" and void, and on that basis, its reasoning should be rejected.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision below and hold that in all prerogative writ proceedings, it is a Notice of Entry of Judgment that triggers the relevant appellate deadline and associated post-judgment actions.

Dated: December 7, 2022

Respectfully submitted,

Venskus & Associates A.P.C.
Law Offices of Brian Acree

/s/ Brian Acree
Brian Acree
Attorney for Petitioner,
Ballona Wetlands Land Trust

CERTIFICATE OF WORD COUNT

I certify that, pursuant to California Rules of Court, rule 8.204(c)(1), the attached Appellant's Opening Brief is proportionately spaced, has a typeface of 13 points or more, and contains 3,380 words, as determined by a computer word count.

December 7, 20212

Respectfully submitted,

Law Offices of Brian Acree

/s/ Brian Acree
Brian Acree

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/s/ Brian Acree

Brian Acree

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STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **MEINHARDT v. CITY OF SUNNYVALE (SUNNYVALE DEPARTMENT OF PUBLIC SAFETY)**
Case Number: **S274147**
Lower Court Case Number: **D079451**

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/s/brian acree

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Law Office of Brian Acree

Law Firm