Case No. S274147

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DAVID MEINHARDT,

Petitioner and Appellant,

vs.

CITY OF SUNNYVALE, SUNNYVALE PERSONEL BOARD,

Respondent and Real Party in Interest.

After Decision by the Court Of Appeal For the Fourth Appellate District, Division One
Civil No.: D079551

After An Appeal from the Superior Court of Santa Clara County
Judge Hon. Peter Kirwan
Case Number 19CV346911

ANSWER TO PETITION FOR REVIEW

Suzanne Solomon, Bar No. 169005
David A. Urban, Bar No. 159633
LIEBERT CASSIDY WHITMORE
6033 West Century Boulevard, 5th Floor
Los Angeles, California 90045
Telephone: 310.981.2000
Facsimile: 310.337.0837
Email: ssolomon@lcwlegal.com;
durban@lcwlegal.com

Attorneys for Respondent
City of Sunnyvale

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rules of Court, Rule 8.488 and 8.208, Respondent City of Sunnyvale, to the best of its knowledge, is unaware of any entities or persons who have a financial or other interest in the outcome of this proceeding that would be relevant to the question of disqualification under Canon 3E of the Code of Judicial Ethics.

Dated: May 9, 2022 LIEBERT CASSIDY WHITMORE

By: */s/ David Urban*
Suzanne Solomon
David A. Urban
Attorneys for Respondent City of Sunnyvale

TABLE OF CONTENTS

Page

I. INTRODUCTION 6

II. BACKGROUND 8

A. MEINHARDT'S EMPLOYMENT AND SUSPENSION 8

B. THE UNTIMELY NOTICE OF APPEAL 9

III. THE COURT OF APPEAL CORRECTLY DETERMINED THAT THE NOTICE OF APPEAL WAS UNTIMELY 10

A. CALIFORNIA CASE LAW HAS ESTABLISHED THAT A COMPLETE ADJUDICATION OF A PETITION FOR WRIT OF MANDATE ON THE MERITS CONSTITUTES AN APPEALABLE FINAL JUDGMENT 10

B. THE BRIGHT-LINE PROCEDURAL RULE DESCRIBED BY THE COURT OF APPEAL ADVANCES SOUND POLICIES, AND ALWAYS HAS 16

IV. THIS CASE DOES NOT MEET THIS COURT'S STANDARDS FOR GRANT OF REVIEW 19

A. REVIEW IS NOT NECESSARY TO SECURE UNIFORMITY OF DECISION 19

B. REVIEW IS NOT NECESSARY TO SETTLE AN IMPORTANT QUESTION OF LAW 20

V. CONCLUSION 21

TABLE OF AUTHORITIES

Page(s)

Cases

City of Calexico v. Bergeson
(2021) 64 Cal.App.5th 180 6

Connick v. Myers
(1983) 461 U.S. 138 9

Dahlia v. Rodriguez
(2013) 735 F.3d 1060 9

Dana Point Safe Harbor Collective v. Superior Ct.
(2010) 51 Cal.4th 1 12

Dhillon v. John Muir Health
(2017) 2 Cal.5th 1109 15

Dunn v. Mun. Ct., Eureka Jud. Dist.
(1963) 220 Cal.App. 2d 858 14

Griset v. Fair Political Practices Com.
(2001) 25 Cal.4th 688 ..... 12, 14

Hadley v. Superior Court
(1972) 29 Cal.App.3d 38 16

Haight v. City of San Diego
(1991) 228 Cal.App.3d 413 14

Laraway v. Pasadena Unified School Dist.
(2002) 98 Cal.App.4th 579 ..... 6, 12

Meinhardt v. City of Sunnyvale
(2022) 76 Cal.App.5th 43 ..... 7, 16

Olson v. Cory
(1983) 35 Cal.3d 390 12

Pickering v. Board of Education
(1968) 391 U.S. 563 9

Protect Our Water v. County of Merced
(2003) 110 Cal.App.4th 362 19

Sullivan v. Delta Air Lines, Inc.
(1997) 15 Cal.4th 288 12

Townsel v. San Diego Metropolitan Transit Development Bd. (1998) 65 Cal.App.4th 940 14

Trede v. Superior Court (1943) 21 Cal.2d 630 18

Statutes

Civ. Proc. Code, Section 1013(a) 10

State Rules

Cal. R. Ct., Rule 8.104(a)(1)(a) 10

Cal. R. Ct., Rule 8.104(a)(1)(b).) 11

Cal. R. Ct., Rule 8.488 ..... 2, 6

Cal. R. Ct., Rule 8.500 (b)(1) 19, 20

Other Authorities

Asimow, et al., Cal. Practice Guide: Administrative Law (The Rutter Group 2021) 17

Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2020) 11, 18

I. INTRODUCTION

By the instant petition, Petitioner David Meinhardt ("Petitioner" or "Meinhardt") requests that this Court grant review of the Court of Appeal's decision that it lacked jurisdiction over Meinhardt's case, because Meinhardt did not file a timely notice of appeal. The Court of Appeal, following consistent California precedent, including *City of Calexico v. Bergeson* (2021) 64 Cal.App.5th 180, and *Laraway v. Pasadena Unified School Dist.* (2002) 98 Cal.App.4th 579, held that the trial court's order denying Meinhardt's petition for writ of mandate, and contemplating no further action in the case, constituted an appealable final judgment, so that the 60-day time limit for a notice of appeal set forth in California Rule of Court 8.104(a)(1)(a) began to run at that time the order was issued. Meinhardt, a public safety officer for Respondent City of Sunnyvale, who had filed the writ petition in the trial court to challenge a short 44-hour suspension he received, filed his notice of appeal outside this 60-day time period. "Compliance with the time for filing a notice of appeal is mandatory and jurisdictional. If a notice of appeal is not timely, the appellate court must dismiss the appeal." (*Laraway, supra,* 98 Cal.App.4th at 582 [citations omitted]; see, Cal. R. Ct. 8.104, 8.108.)

The petition for review contends that the rule of procedure followed by this Court is wrong, and that the notice of appeal time-limit should instead run from a subsequent document formally denominated as a "judgment," that simply re-states what is in the trial court's order resolving the writ petition. This contention contradicts decades of California precedent, and the reasoning of this Court, that orders finally resolving petitions for writ of mandate in the trial court, and contemplating no further action in the case, are appealable orders, triggering the 60-day time period for a notice of appeal.

(See, *infra,* Section III.A.) The rule followed by the Court of Appeal here advances sound policy, among other reasons because it does not require parties to wait to appeal until a trial court enters a judgment that simply duplicates what is in the prior final order. Also, the rule prevents a subsequently entered judgment, that could be entered many months or more later, from arbitrarily re-starting the 60-day time or other limit for filing a notice of appeal. (See, *Meinhardt v. City of Sunnyvale* (2022) 76 Cal.App.5th 43, 70; *infra*, Section III.B.)

The petition for review to this Court ultimately should be denied because it does not show the instant case meets this Court's standards for review. In particular, the petition does not present this Court with a matter involving the need for "uniformity of decision" among appellate courts or any "important question of law" for this Court to consider. (Cal. R. Ct. 8.500(b)(1).) The petition does not point to meaningful precedent that contradicts the rule followed by the Court of Appeal here and that shows any lack of "uniformity of decision." (See, *infra*, Section IV.A.) Although the Court of Appeal's opinion states that it is "critical" for practitioners to understand and follow the rule at issue, see, *Meinhardt, supra,* 76 Cal.App.5th at 51, the Court did not reference any widespread confusion or controversy over the rule, supporting the notion that the petition for review presents no "important question of law" for this Court to consider. Nor does the petition for review itself reference any such controversy among scholars or practitioners over this particular rule. (See, *infra*, Section IV.B; Cal. R. Ct. 8.500(b)(1).)

For the foregoing reasons, and those described below, this Court should deny the instant petition for review.

II. BACKGROUND

A. MEINHARDT'S EMPLOYMENT AND SUSPENSION

Respondent the City of Sunnyvale ("the City") issued a 44-hour unpaid suspension to Petitioner David Meinhardt ("Meinhardt") for publicizing a lie about an Internal Affairs Lieutenant who had investigated him in a previous matter (hereinafter referenced as "the IA Lieutenant").[1] In 2015, Meinhardt was a subject of an investigation conducted by the IA Lieutenant. Meinhardt was upset by the investigatory interview, and as a result, his relationship with the IA Lieutenant soured. (Administrative Record ("AR") 144:25-147:22.) He held a grudge for over a year, at one point even asking the incoming Chief, Phan Ngo, in early 2017, not to promote the IA Lieutenant, and threatening to "go to the press" if the Chief did. (AR 214:8-215:23.) Then, in 2017, Meinhardt wrote a letter to Union members, Department employees, and the City Council expressing dissatisfaction with Chief Ngo—which he had a right to do. (AR 716; see also, AR 331:22-332:15.) But a portion of the letter falsely stated that Chief Ngo had involuntarily "removed" the IA Lieutenant from his position and suggested that the removal was for poor performance on "a fairly large" IA case. (AR 716.) In reality, the IA Lieutenant had requested to leave the assignment. (AR 151:20-152:24; AR 153:1-15; AR 216:13-217:11.) Meinhardt knew this when he wrote the letter because the City Manager had told him. (AR 176:13-178:11.) Meinhardt received his short suspension because this false statement harmed the IA Lieutenant and the Department.

[1] The parties referenced him in this manner in Trial Court briefing to protect his reputation. Meinhardt was the union president for his bargaining unit, and the IA Lieutenant was one of the very union members he was responsible for representing.

B. THE UNTIMELY NOTICE OF APPEAL

The City served a notice of intent to discipline to Meinhardt in August 2018, with the proposed penalty of a 44-hour unpaid suspension. (AR 502-605.) After Meinhardt's pre-disciplinary due process, the City issued the final Notice of Discipline on October 17, 2018. (AR 702-703.) Meinhardt appealed to the Sunnyvale Personnel Board, which conducted an evidentiary hearing that occurred on January 30, 2019 and February 4, 2019. (AR 475-477.) The Personnel Board issued its decision on February 4, 2019, upholding the suspension. (AR 477.)

On May 3, 2019, Meinhardt filed a petition for writ of mandate pursuant to California Civil Procedure Code section 1094.5 seeking to overturn the Personnel Board's decision. (Appellant's Appendix ("AA") 0006.) Following briefing, the Trial Court conducted a hearing on May 28, 2020. (AA 0100.) Meinhardt's only argument was that his short suspension violated his constitutional right to free speech. The Trial Court rejected his argument, relying on well-established principles allowing public employees to be disciplined for their speech under certain circumstances. (See, *Dahlia v. Rodriguez* (2013) 735 F.3d 1060, 1067.)[2] (AA 0111-0118.)

On August 6, 2020, the Trial Court entered its order setting forth this reasoning, and denying Meinhardt's petition for writ of mandate. (AA 0111-0118.) This constituted an appealable order, since it "contemplated no further action, such as the preparation of another order or judgment" and

---

[2] Meinhardt's speech at issue here lacked First Amendment protection, first, because it was not speech on a matter of "public concern." (*Connick v. Myers* (1983) 461 U.S. 138, 147.) It lacks protection for the separate and distinct reason that, even if his speech was on a matter of "public concern," the applicable balancing of interests decisively favored the City. (*Pickering v. Board of Education* (1968) 391 U.S. 563, 568.) The Trial Court here correctly found in favor of the City on this balancing.

"disposed of all issues between all parties." (*Laraway, supra,* 98 Cal.App.4th at 583.) The August 6, 2020 Order denying the petition for writ of mandate includes a proof of service by Deputy Clerk Sandra Vera declaring that she served the Order by regular mail on that date, on Meinhardt's counsel Gregg McLean Adam. (AA 0130.) That service commenced the 60-day time period for a notice of appeal to run. (Cal. R. Ct. 8.104(a)(1)(A) [notice of appeal must be filed "60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, showing the date either was served . . . ."].) The service by mail did not operate to extend the time for a notice of appeal. (Civ. Proc. Code, § 1013(a).)

A document titled "Judgment" was entered on September 25, 2020, but it did not change the original order denying the petition in any way. (AA 0144-0154.) Similarly, nothing in the prior order suggested that a subsequently entered judgment would alter it. (AA 0111-0117.) The September 25, 2020 document was thus irrelevant for purposes of calculating the time for a notice of appeal.

Sixty days from August 6, 2020 falls on October 5, 2020. Appellant did not file the notice of appeal until October 15, 2020. (AA 0155.) Thus, for the reasons described by the Court of Appeal, the notice of appeal was untimely, and the Court lacked jurisdiction over the appeal. (*Meinhardt, supra,* 76 Cal.App.5th at 70.)

III. THE COURT OF APPEAL CORRECTLY DETERMINED THAT THE NOTICE OF APPEAL WAS UNTIMELY

A. CALIFORNIA CASE LAW HAS ESTABLISHED THAT A COMPLETE ADJUDICATION OF A PETITION FOR

WRIT OF MANDATE ON THE MERITS CONSTITUTES AN APPEALABLE FINAL JUDGMENT

The Court of Appeal's holding here is not a shift or departure from California precedent on what constitutes a judgment for purposes of triggering the notice of appeal deadline in a petition for writ of mandate action. Instead, the Court of Appeal's holding that the August 6, 2020 order denying the petition for writ of mandate constituted an appealable judgment applies well-established principles in statute and judicial precedent.

California Rule of Court 8.104 provides (subject to exceptions not applicable here) that a notice of appeal has to be filed "60 days after the party filing the notice of appeal serves or is served by a party with a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service . . . ." (Cal. R. Ct. 8.104(a)(1)(b).) The term "judgment" for purposes of the rule, however, encompasses far more than the traditional judgment entered at the conclusion of a civil case. It "includes an appealable order if the appeal is from an appealable order." (Cal. R. Ct. 8.104(e).)

Authorities have articulated what constitutes an appealable judgment or order as follows: "The general test of finality focuses on whether and to what extent issues remain to be decided in the lower court case." (Eisenberg et al., California Practice Guide: Civil Appeals and Writs (The Rutter Group 2020) (hereinafter "Civil Appeals and Writs"), ¶ 2:36.) This Court has articulated the test as follows: "[W]here no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final

determination of the rights of the parties, the decree is interlocutory." (*Olson v. Cory* (1983) 35 Cal.3d 390, 399.) This Court has further explained that an order or judgment is final "when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined." (*Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 304.) This Court has explained: "It is not the form of the decree but the substance and effect of the adjudication which is determinative." (*Dana Point Safe Harbor Collective v. Superior Ct.* (2010) 51 Cal.4th 1, 5 [quoting *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 698]; see also, Civil Appeals and Writs, ¶ 2:38 ["If it is a final judgment in legal effect, even a seemingly nonappealable 'order' may be an appealable final judgment."].)

A line of Court of Appeal decisions stretching back many decades has faithfully applied this test to trial court denials of petitions for writ of mandate, holding that a trial court order that resolves all issues presented, and contemplates no further action by the court, constitutes a final judgment for purposes of appeal.

In *Laraway v. Pasadena Unified School Dist.* (2002) 98 Cal.App.4th 579, the petitioner sought records from a school district under the California Public Records Act, and filed a petition for writ of mandate when the petitioner received an allegedly inadequate response. (*Id.* at 580.) The trial court ruled on the petition in an August 23, 2000 order that "completely resolved all issues between all parties" and did not "contemplate nor direct the preparation of any further order or judgment." (*Id.* at 582.) The trial court later, however, entered a "judgment" that "simply reiterated that the court had 'ruled by Order dated August 23, 2000' on the petition, set forth the same rulings as contained in the order denying the petition, added a provision

that judgment was entered in favor of respondent and against petitioner, and awarded respondent $0 in costs against petitioner." (*Ibid.*)

Petitioner argued that the 60-day time period for a notice of appeal did not begin to run until this later-filed judgment was entered. The Court of Appeal, however, disagreed, applying the rules for finality articulated by this Court. It acknowledged that the earlier filed order operated as an appealable judgment and began the 60-day period running. The August 23, 2000 order "contemplated no further action, such as the preparation of another order or judgment [citation], and disposed of all issues between all parties." (*Id.* at 583.) The Court of Appeal wisely reasoned that allowing a later-filed document that provided the same thing would infringe the finality rule and make little practical sense. It described:

> "Once a final, appealable order or judgment has been entered, the time to appeal begins to run. The [r]ules of [c]ourt do not provide, once a judgment or appealable order has been entered, that the time to appeal can be restarted or extended by the filing of a subsequent judgment or appealable order making the same decision. Thus, once the August 23, 2000 order was entered, the time within which to file a notice of appeal therefrom began to run, and could not be restarted by the relabeling of the trial court's earlier decision and then entering such 'judgment' at a later date."

(*Ibid.*)

Some two decades later, the Court of Appeal applied these principles in *City of Calexico v. Bergeson* (2021) 64 Cal.App.5th 180, determining that the trial court's order that denied all of the parties' claims for relief in their

entirety, and did not contemplate any further action in the case, constituted a separately appealable order, and thus was properly treated as a final judgment for purposes of the timing of a notice of appeal. (*Id.* at 189-92 [holding that a notice of cross-appeal was not timely, because it was filed more than the requisite time period after service of notice of entry of the order at issue].)

These citations confirm that for at least twenty years, the rule concerning the appealability of writ of mandate rulings has been part of California precedent. But the rule appears even earlier in published California cases. (See, *Townsel v. San Diego Metropolitan Transit Development Bd.* (1998) 65 Cal.App.4th 940, 944, fn. 1 ["[E]ven if a separate formal judgment has not been entered on an order denying a petition for writ of mandate, the order is properly treated as a final judgment in a special proceeding for purposes of appeal."]; *Haight v. City of San Diego* (1991) 228 Cal.App.3d 413, 416, fn. 3 ["Even though a separate formal judgment has not been entered upon the order denying the petition for writ of mandate, such is properly treated as a final judgment in a special proceeding for purposes of appeal."]; *Dunn v. Mun. Ct., Eureka Jud. Dist*. (1963) 220 Cal.App.2d 858, 863 fn. 1 ["An appeal lies to the District Court of Appeal from the granting or denial of relief in a proceeding in mandamus."].)

This principle at the core of *Laraway*, *Calexico*, and this case has been one that courts and litigants in California have essentially taken as established without the need for comment or question. In *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688 699, this Court found in the course of determining the appealability of an order in a case challenging a political practices law by petition for writ of mandate: "[W]e conclude the 1991 superior court ruling . . . was a final judgment" because "the superior court's denial of plaintiffs' petition for a writ of mandate disposed of all issues

in the action between plaintiffs and the [defendant]").

Similarly, in *Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, this Court considered whether a trial court's order granting, in part, a surgeon's petition for writ of administrative mandate regarding suspension of his clinical privileges, and remanding the matter for further administrative proceedings was an appealable final judgment. (*Id.* at 1116.) This Court concluded that the trial court's order was an appealable final judgment, because although further administrative proceedings on the merits would occur, the proceedings in the trial court had concluded. This Court reasoned that the trial court's order on the petition granted or denied each of the surgeon's claims and "did not reserve jurisdiction to consider any issues." (*Id.* at 1116–1117.) This Court described: "once the trial court issued the writ, nothing remained to be done in that court; no issue was then left for the court's '"future consideration except the fact of compliance or noncompliance with the terms of the first decree."'" (*Id.* at 1117 [quoting *Griset, supra,* 25 Cal.4th at 698].)

The Court of Appeal in this case simply applied these well-established principles in a straightforward way. The August 6, 2020 ruling on the petition for writ of mandate resolved all the issues between the parties and left nothing more to be determined by the trial court. (AA 0111-0118.) Accordingly, it was an appealable, final judgment, and triggered the jurisdictional 60-day period for filing a notice of appeal. (*City of Calexico, supra*, 64 Cal.App.5th at 196; *Laraway, supra*, 98 Cal.App.4th at 582.) Under California Rules of Court, rule 8.104(a)(1)(A), the 60-day period for filing a notice of appeal began August 6, 2020 and ended October 5, 2020. Meinhardt did not file his notice of appeal until 10 days later on October 15, 2020. (AA 0155.) Accordingly, the Court of Appeal properly dismissed his

appeal. (See, *Meinhardt, supra,* 76 Cal.App.5th at 70.)

B. THE BRIGHT-LINE PROCEDURAL RULE DESCRIBED BY THE COURT OF APPEAL ADVANCES SOUND POLICIES, AND ALWAYS HAS

The rule described in the opinions in this case, *Calexico*, *Laraway*, and others concerning the appealability of orders finally resolving petitions for writ of mandate advances sound public policies. A rule treating those orders as merely preliminary to an appealable final judgment would be flawed because it would create unnecessary delay. A trial court in a writ proceeding could, for whatever reason, not enter any document titled "judgment," thereby delaying any appellate review of the trial court's decision. Indeed, in deciding this case, the Court of Appeal considered the decision in *Hadley v. Superior Court* (1972) 29 Cal.App.3d 389. There, a police officer who did not prevail on a petition for writ of mandate against his employer had to petition the Court of Appeal to require the trial court to enter a judgment, and only obtained a directive from that Court over two years after the trial court order at issue. (*Id.* at 391-92, 396.) Under the rule of appealability advanced by Meinhardt's petition for review, litigants in the future will be faced with potentially having to go through the same exercise whenever they lose a petition for writ of mandate, and face delay if a trial court is recalcitrant in entering an additional document that simply repeats what is in a prior order.

Meinhardt could ultimately argue that both the order on the petition and the document titled "judgment" should be appealable, but this approach would also contravene the intent of the Legislature in setting forth finite time periods in which for an appeal to begin. If a subsequent document simply titled "judgment," that repeats what is in a prior final order, could re-create

the ability to appeal, this would mean that for writ of mandate proceedings, the 60-day and other time limits for commencing an appeal can effectively be bypassed. As the Court in *Laraway* explained: "The [r]ules of [c]ourt do not provide, once a judgment or appealable order has been entered, that the time to appeal can be restarted or extended by the filing of a subsequent judgment or appealable order making the same decision." (*Laraway, supra,* 98 Cal.App.4th at 583.)

As a main policy argument, the petition contends that a common understanding of the rules of appellate procedure is that an appeal lies only from a "final judgment" and rules that treat something as appealable prior to the entry of an actual document titled "judgment" create a trap for the unwary. The argument lacks merit, first, because the procedural rule the Court of Appeal applied in this case has existed in the clearly articulated *Laraway* opinion for two decades, and has in fact been in place long before *Laraway*. In that time, it has not generated controversy among practitioners or legal scholars. The petition cites no authority – not a single scholarly article or practitioner publication – that criticizes this particular rule.[3] Second, the Court of Appeal in the instant case, by publishing its opinion, expressly stated that its goal was in part to warn civil practitioners of the "critical" need to determine "whether a ruling on a petition for writ of

---

[3] The petition for review cites the Asimow Rutter treatise on administrative law, which warns about a lack of clarity in the appealability of orders writ of mandate proceedings. (See, Asimow, et al., California Practice Guide: Administrative Law (Rutter 2021), ¶ 21:22.1.) But the treatise does not state that the law in this area should be changed. Instead, it advises practitioners to be vigilant of and follow the type of rule articulated by the Court of Appeal here. (*Ibid.* [describing that "an order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal, even if the order is not accompanied by a separate formal judgment."].)

mandate is a final judgment in seeking appellate review of such a ruling." (*Meinhardt, supra,* 76 Cal.App.5th at 51.) The publication of the *Meinhardt* decision should further guard against its rule becoming a trap for the unwary.

Third, the issue does not raise one of *constitutional* dimensions. There is no due process right to an appeal, i.e., to have additional jurists review the decision of a trial court judge. Instead, the right is purely statutory. (*Trede v. Superior Court* (1943) 21 Cal.2d 630, 634 ["There is no constitutional right to an appeal; the appellate procedure is entirely statutory and subject to complete legislative control."] [quoting authority].)

Finally, the public policy argument that the Court should make the laws of appellate practice utterly simple is weak because it would compromise existing doctrine and sound practice. The facts of this case demonstrate this clearly. Meinhardt's argument suggests that the Court should ignore how orders actually function in favor of making a new rule that expands the appealability of trial court orders to allow for what the parties and trial courts choose to call them, i.e., "judgments." Contrary to Meinhardt's arguments, such an expansion would not simplify the issue because it would contradict well-established law. Indeed, the Rutter treatise cited by Meinhardt does not decry this area of law for containing practitioner traps, but is instead stoic about its complexity: "The line between an appealable 'final' judgment and a nonappealable 'interlocutory' judgment is not always clear. There is no statutory 'test' per se; but guidelines have evolved through decisional law." (Civil Appeals and Writs, ¶ 2:37.) For these reasons, and those discussed by the Court of Appeal, sound policy favors the Court of Appeal's ruling, which reflects how courts have treated the issue for decades.

IV. THIS CASE DOES NOT MEET THIS COURT'S STANDARDS FOR GRANT OF REVIEW

A. REVIEW IS NOT NECESSARY TO SECURE UNIFORMITY OF DECISION

California Rules of Court, Rule 8.500 (b)(1) provides that "[t]he Supreme Court may order review of a Court of Appeal decision: (1) When necessary to secure uniformity of decision or to settle an important question of law . . . ."[4] Addressing the first component of this standard, "uniformity of decision," Meinhardt's petition for review does not point to any meaningful conflict among published decisions of the Court of Appeal.

The case on which Meinhardt primarily relies is *Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, in which the Court of Appeal suggests a rule contrary to *Laraway*, but does so in a footnote only and with no supporting discussion. (*Id.* at 368 fn. 2.) The Court simply concludes: "[T]he appeal was filed within 60 days after entry of the judgment, and the judgment is appealable." (*Ibid*.) The Court does not mention *Laraway*, or the cases that support it. *(Ibid.*) The Court of Appeal here appropriately held: "We respectfully decline to follow this footnote of *Protect Our Water* to the extent that it may be read to suggest that an order that fully resolves a petition for writ of mandate and contemplates no further action in this case is not a judgment." (*Meinhardt, supra*, 76 Cal.App.5th at 67.) The Court of Appeal here went on to explain why the cases *Protect Our Water* referenced in support of the footnote did not support the Court's

[4] Rule 8.500 (b) includes other grounds for review not at issue here.

conclusion. (*Ibid*.)

Protect Our Water is the petition for review's most persuasive authority for a supposed lack of uniformity in decision among appellate courts, but its value as precedent is almost non-existent. Accordingly, a need for uniformity of decision does not serve as a basis for review here. (Cal. R. Ct. 8.500(b)(1).)

B. REVIEW IS NOT NECESSARY TO SETTLE AN IMPORTANT QUESTION OF LAW

California Rules of Court, Rule 8.500 (b)(1) provides that "[t]he Supreme Court may order review of a Court of Appeal decision: (1) When necessary . . . to settle an important question of law . . . ." Here, the question of the appealability of an order finally adjudicating a petition for writ of mandate is squarely settled. A consistent line of Court of Appeal precedent has explained the rule. (*City of Calexico, supra*, 64 Cal.App.5th at 189-92; *Laraway, supra,* 98 Cal.App.4th at 582; see also, e.g., *Townsel, supra,* 65 Cal.App.4th at 944, fn. 1 [final order on petition for writ of mandate is appealable].) Understandably, this precedent has generated no controversy among scholars or practitioners, and the petition for review cites no authority to support that an important question of law exists on this issue. Therefore, Meinhardt's petition also fails to meet this standard for the Court's accepting review. (Cal. R. Ct. 8.500 (b)(1).)

V. CONCLUSION

For all the foregoing reasons, this Court should deny the instant petition for review.

Dated: May 9, 2022 LIEBERT CASSIDY WHITMORE

By: */s/ David Urban*
Suzanne Solomon
David A. Urban
Attorneys for Respondent City of Sunnyvale

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.204(c))

I, David A. Urban, of Liebert Cassidy Whitmore, attorneys for Respondents do hereby certify in accordance with California Rules of Court, rule 8.204(c) that the word count of this Answer to Petition for Review, according to the Microsoft Word computer program used to prepare the brief, consists of 4,467 words, including footnotes.

Dated: May 9, 2022 LIEBERT CASSIDY WHITMORE

By: */s/ David Urban*
Suzanne Solomon
David A. Urban
Attorneys for Respondent City of Sunnyvale

I declare that I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: **6033 West Century Boulevard, 5th Floor, Los Angeles, California 90045.**

On May 9, 2022, I served the foregoing document(s) described as **ANSWER TO PETITION** in the manner checked below on all interested parties in this action addressed as follows:

Michael Shipley
Nathaniel Haas
KIRKLAND & ELLIS, LLP
555 S. Flower Street
Los Angeles, CA 90071
mshipley@kirkland.com
n.haas@kirkland.com

Gregg McLean Adam
MESSING ADAM & JASMINE, LLP
235 Montgomery Street, Suite 828
San Francisco, CA 94104
greeg@majlabor.com

☐ **(BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(BY FACSIMILE)** I am personally and readily familiar with the business practice of Liebert Cassidy Whitmore for collection and processing of document(s) to be transmitted by facsimile. I arranged for the above-entitled document(s) to be sent by facsimile from facsimile number 310.337.0837 to the facsimile number(s) listed above. The facsimile machine I used complied with the applicable rules of court. Pursuant to the applicable rules, I caused the machine to print a transmission record of the transmission, to the above facsimile number(s) and no error was reported by the machine. A copy of this transmission is attached hereto.

☐ **(BY OVERNIGHT MAIL)** By overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service, FedEx, for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.

☑ **(BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Liebert Cassidy Whitmore's electronic mail system from kayers@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **(BY ELECTRONIC SERVICE PROVIDER)** I am readily familiar with the firm's practice for filing electronically. Through use of OneLegal, an electronic service provider, I arranged a true and correct copy of the above-reference documents to be electronically served to the e-mail address(es) registered with the court this day in the ordinary course of business following ordinary business practices.

☐ **(BY PERSONAL DELIVERY)** I delivered the above document(s) by hand to the addressee listed above.

Executed on **May 9, 2022**, at Los Angeles, California.

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

/s/ Kamala Ayers
Kamala J. Ayers

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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**

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

2. My email address used to e-serve: **durban@lcwlegal.com**

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

Title(s) of papers e-served:

Filing Type	Document Title
ANSWER TO PETITION FOR REVIEW (WITH ONE TIME RESPONSIVE FILING FEE)	Answer to Petition

Service Recipients:

Person Served	Email Address	Type	Date / Time
Gregg Adam Messing Adam & Jasmine LLP 203436	gregg@majlabor.com	e-Serve	5/9/2022 5:31:37 PM
Suzanne Solomon Liebert Cassidy Whitmore 169005	ssolomon@lcwlegal.com	e-Serve	5/9/2022 5:31:37 PM
Michael Shipley Kirkland & Ellis LLP 233674	mshipley@kirkland.com	e-Serve	5/9/2022 5:31:37 PM
Julia Forgie NRDC 304701	jforgie@nrdc.org	e-Serve	5/9/2022 5:31:37 PM
David Urban Liebert Cassidy Whitmore 159633	durban@lcwlegal.com	e-Serve	5/9/2022 5:31:37 PM

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

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

5/9/2022
Date

/s/David Urban
Signature

Urban, David (159633)

Last Name, First Name (PNum)

Liebert Cassidy Whitmore

Law Firm