CASE NO. S274147

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DAVID MEINHARDT,

Petitioner and Appellant

vs.

CITY OF SUNNYVALE, SUNNYVALE PERSONNEL BOARD,

Respondent and Real Party in Interest.

AFTER DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
CIVIL NO.: D079551

AFTER AN APPEAL FROM THE SUPERIOR COURT OF SANTA CLARA COUNTY
JUDGE PETER KIRWAN
CASE NUMBER 19CV346911

RESPONDING BRIEF

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I. INTRODUCTION

The Court of Appeal in this case correctly dismissed the appeal as untimely. Petitioner David Meinhardt ("Petitioner" or "Meinhardt") requests that this Court reverse the Court of Appeal's decision that it lacked jurisdiction over Meinhardt's case. But 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, correctly 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 when the order was served. Meinhardt, a public safety officer for Respondent City of Sunnyvale, who had filed the writ petition in the trial court to challenge a 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. Rules of Court, rules 8.104, 8.108.)

Petitioner contends that the rule of procedure followed by the Court of Appeal in this case is wrong, and that the notice of appeal time-limit should instead run from a subsequent document, perhaps one 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. As

appealable orders, they trigger the 60-day time period for a notice of appeal. (See *infra*, Section III.A.) The rule followed by the Court of Appeal here rests on the straightforward rule that once an order is appealable, the time clock for an appeal begins to run. This Court has acknowledged that a decision on a petition for writ of mandate that leaves nothing more to be determined by the court is an appealable order. (*Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, 1113–14 ["California cases have uniformly held that a trial court's complete denial of a petition for administrative mandamus is a final judgment that may be appealed by the petitioner. The cases have also held that a trial court's judgment granting administrative mandamus, and ordering the substantive relief sought by the petitioner, is a final judgment that may be appealed by the respondent agency."].) The California Rules of Court governing "special proceedings" such as a petition for writ of administrative mandate provide that a "[j]udgment" "includes any judgment *or order* that may be appealed." (Cal. Rules of Court, rule 8.10(4) [emphasis added].) In turn, a "judgment's" service by the trial court or a party starts the time clock for an appeal. (Cal. Rules of Court, rule 8.104(a)(1) [prescribing time limits for notice of appeal based in various forms on entry of "judgment"].) Because the Court of Appeal's decision here is mandated by statute and court rule, and precedent like *Dhillon*, Petitioner's recourse is with the Legislature, not this Court.

The rule described by the Court of Appeal in this case also advances sound policy, among other reasons because it does not require parties to wait to appeal until a trial court enters a judgment or other document that simply duplicates what is in the prior final order. Also, the rule prevents a subsequently entered judgment, that could be entered months or even years

later, from arbitrarily re-starting the 60-day time limit for filing a notice of appeal. (See *Meinhardt v. City of Sunnyvale* (2022) 76 Cal.App.5th 43, 70, review granted June 15, 2022, S274147; *infra*, Section III.B.)

Finally, the arguments advanced by Petitioner in his Opening Brief do not justify this Court departing from a procedural rule that has been in place in California for at least twenty years, and has the support of well-established jurisprudential rules and California statute. Meinhardt argues for what he terms a "finality-plus-separate-entry" rule, i.e., one that mirrors the familiar rule in some contexts that a court's decision like a summary judgment ruling cannot be appealed but that instead a final judgment is necessary as the appeal platform. (*Infra*, Section III.C.) Meinhardt's arguments invite the parties and this Court to delve deeply into prior precedent to analyze background facts from prior published decisions and to interpret isolated strands of reasoning from them, but the end result is that statute and case authority simply do not require a "finality-plus-separate-entry" rule for appealing decisions on petitions for writs of mandate. They instead support the plain reading of the rule the Court of Appeal reiterated here.

In addition, the rule Petitioner advances leads not just to the potential for delay in appellate proceedings commencing, but to illogical results. In reviewing the Opening Brief's endorsements of a final "order" and a separate mirroring "judgment," one sees among other things two separate appealable orders/judgments, i.e., two "final judgments," apparently both appealable, that have to be harmonized with the venerable "one final judgment rule." One sees an appealable "order" on which the 60-day (or 180-day) time limit runs have its appellate properties brought back to life by entry of a corresponding "judgment" months or years later,

commencing a new 60-day or other time limit. Alternatively, one sees a final "order" remaining appealable for the indefinite future, until a corresponding "judgment" starts the appellate time-clock that will close the door to appellate review. These possibilities do not present the "clarity" Petitioner and litigants seek; instead the Court of Appeal's well-reasoned conclusion and decision here does.

For the foregoing reasons, and those described below, this Court should affirm the decision of the Court of Appeal.

II. STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

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"). 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.) In 2017, Meinhardt wrote a letter to Union members, Department employees, and the City Council expressing dissatisfaction with Chief Ngo. (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 that. (AR 176:13-178:11.) Meinhardt received his short suspension because his false

statement harmed the IA Lieutenant and the Department.

B. PROCEDURAL BACKGROUND

The City served a notice of intent to discipline 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 his discipline 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 administrative mandate pursuant to Code of Civil Procedure 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.) (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 "disposed of all issues between all parties." (*Laraway, supra,* 98 Cal.App.4th at 583.) The file-stamped 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 0111-18.) That service of the Order commenced the 60-day time period for a notice of appeal to run. (Cal. Rules of Court, rule 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. (Code Civ. Proc., § 1013, subd. (a).)

About a week later, on August 14, 2022, the City's counsel served a Notice of Entry that attached the August 6, 2022 order. (AA 0119-0130.) This would have started the time clock for a notice of appeal if the August 6, 2022 mailing did not. (Cal. Rules of Court, rule 8.104(a)(1)(B)).

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. ARGUMENT

A. THE COURT OF APPEAL HAS APPLIED A WELL-ESTABLISHED RULE OF APPELLATE PROCEDURE IN DETERMINING THE NOTICE OF APPEAL IN THIS CASE WAS UNTIMELY

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 principles that are well-established in statute and judicial precedent.

1. Statutes and Rules of Court Regarding the Time for a Notice of Appeal in a Petition for Writ of Mandate Proceeding

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 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 . . . ." (Cal. Rules of Court, rule 8.104(a)(1) The parties do not dispute that if the Trial Court's August 6, 2020 order denying the petition for writ of mandate in this case constituted a "judgment" for purposes of this rule, then Meinhardt's appeal was untimely. The August 6, 2020 mailing of a file-stamped judgment by the Court then started the 60-day period to run under rule 8.104(a)(1)(A). Alternatively, the City's mailing of a Notice of Entry started the 60-day period under rule 8.104(a)(1)(B).

As a threshold matter, the Code of Civil Procedure and California Rules of Court answer the question of whether the August 6, 2020 order constituted a "judgment" for purposes of the rule. For civil actions generally, the Code of Civil Procedure defines a judgment more broadly than a document that simply has that title. Instead, it describes: "A judgment is the final determination of the rights of the parties in an action or proceeding." (Code Civ. Proc., § 577.) Part 3 of the Code of Civil Procedure which concerns "Special Proceedings," including petitions for writ of administrative mandate under section 1094.5, defines a "judgment" as follows: "A judgment in a special proceeding is the final determination of the rights of the parties therein." (Code Civ. Proc., § 1064.) The Code of Civil Procedure's section discussing appeals, in Part 2 of the Code, covers appeals in both "civil actions and proceedings." (Code Civ. Proc., § 901.) It provides: "An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following: (1) From a judgment . . . ." (Code Civ. Proc., § 904.1 subd. (a)(1).) Read with section 1064, this means an appeal may be taken from "the final determination of the rights of the parties" in any "special proceeding" (Code Civ. Proc., § 1064), which includes a petition for writ of administrative mandate of the type at issue here. (Code Civ. Proc., § 1094.5).

Under California Rule of Court 8.104(a)(1)(A), then, the service of a file-stamped copy of the "judgment" started the 60-day time period. Indeed, provisions of the Rules of Court confirm this analysis by confirming that the definition of "judgment" for purposes of appellate rules includes any "appealable order." California Rule of Court 8.10(4) defines a "judgment" as follows: "'Judgment' includes any judgment or order that

may be appealed." Elsewhere the rules describe that the term "includes an appealable order if the appeal is from an appealable order." (Cal. Rules of Court, rule 8.104(e).) This Court's analysis need proceed no further than this point. The straightforward conclusion above flows directly from application of California statutory law.

Even going beyond statutory language and the rules of court, this Court's holding in *Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, confirms that a final decision on a petition for writ of administrative mandate under Section 1094.5, that leaves nothing further for the trial court to decide, constitutes an appealable final judgment. (*Id.* at 1116-17.) This is true even where no final document titled "judgment," or other separate document, is entered. Indeed, it appears no other document entitled judgment was ever entered in *Dhillon*.

In addition to *Dhillon*'s discussion, other California authorities use a definition of final judgment that corresponds to the statutory definition in Section 1064 of "the final determination of the rights of the parties therein." (Code Civ. Proc., § 1064.) 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 described: "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 Court* (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."].) These authorities are clear and dispositive. Once a party can appeal an order, including a decision on a petition for writ of mandate, the time period for the notice of appeal begins to run. (Cal. Rules of Court, rule 8.104 (a)(1) [prescribing time limits for notice of appeal based in various forms on service or entry of "judgment"]; Cal. Rules of Court, rule 8.10(4) [a judgment "includes any judgment or order that may be appealed."]; accord *Valero Ref. Co. - California v. Bay Area Air Quality Mgmt. Dist. Hearing Bd*. (2020) 49 Cal.App.5th 618, 633 fn. 10 ["Contrary to the suggestion by the air district parties, the appealable judgment was the court's order granting a writ of mandate, not a 'judgment' that it subsequently entered."].) [1]

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[1] The Court of Appeal here cited further authorities, including *Sandlin v. McLaughlin* (2020) 50 Cal.App.5th 805, 820 ["Although the trial court never entered a formal judgment on the petition for writ of mandate, its order denying the petition in its entirety 'constitutes a final judgment for

2. The Well-Established Rule in This Case is Explained by Numerous California Published Decisions

A line of Court of Appeal decisions stretching back many decades has faithfully applied the statutory and other authorities above 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 that can be appealed and that starts the time period running for a notice 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.) Still, the trial court later entered a "judgment" that "simply

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purposes of an appeal'"]; *Molloy v. Vu* (2019) 42 Cal.App.5th 746, 753 ["'[A]n 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'"] [quoting *Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409]; *Tomra Pacific, Inc. v. Chiang* (2011) 199 Cal.App.4th 463,481–482 ["We note that the order denying the petitions for a writ of mandate is not termed a judgment and does not explicitly address the declaratory relief causes of action. Nevertheless, we are satisfied that the order before us constitutes an appealable final judgment as it left no issue for further consideration"].)

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 and served. 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 concerning appealability 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 – that a final order on a petition for writ of mandate is appealable – 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, a party challenged a political practices law by petition for writ of mandate. This Court found in the course of determining the appealability of an order: "[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 2017 in *Dhillon, supra,* 2 Cal.5th 1109, described above, 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 service

of it 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.)

As described above, the clear weight of authority – spanning decades – supports the position of the Court of Appeal here. A footnote in a single case, *Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, suggests a rule contrary to *Laraway*. It does so 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 conclusion

asserted. (*Ibid.*)[2]

B. THE WELL-ESTABLISHED RULE INVOKED BY THE COURT OF APPEAL HERE ADVANCES SOUND PUBLIC POLICY

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

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[2] Petitioner's Opening Brief cites both of these cases from the *Protect Our Water* footnote to support its position. (Opening Brief at 4-5.) Both are inapposite, however. The first, *Catalina Investments, Inc. v. Jones* (2002) 98 Cal.App.4th 1, states in a footnote only that "a judgment denying a petition for writ of mandate is appealable," without describing the type of ruling that constitutes a judgment. (*Id.* at 5, fn. 3.) The second, *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, similarly contains no reasoning and appellate jurisdiction was not a contested issue in the case. In addition, the opinion's discussion of appellate jurisdiction in a footnote constitutes dictum because appellate jurisdiction would have existed under *Laraway* and *Calexico* in any event. The trial court issued an order denying the writ petition and then several days later a document titled judgment. The appellant filed separate notices of appeal as to both "out of an abundance of caution" (*id.* at 367 fn. 3) and the court of appeal's footnote volunteered the observation that "both the order denying its writ petition and the final judgment are appealable orders where no issues remain to be determined." (*Ibid.*) It is on this language that the *Protect Our Water* Court (and Petitioner here) relies. The language actually undercuts Petitioner's position by confirming that the first order is "appealable." It should thus start the clock running for a notice of appeal. (Cal. Rules of Court, rule 8.10(4).) In any event, the Court of Appeal here explained why its own well-reasoned analysis superseded Petitioner's reliance on the stray language in *MCM*. (*Meinhardt, supra*, 76 Cal.App.5th at 267. The footnote in *MCM* cites to the Rutter treatise without explanation, but today's Rutter treatise decisively refutes the footnote's observations that there were somehow two appealable orders - "[A]n appeal lies only from a *final judgment* that *terminates* the trial court proceedings by *completely disposing of the matter in controversy*. . . . . Under California law, there is ordinarily only *one* "final judgment" in an action." (Civil Appeals and Writs, ¶ 2:21 [emphasis in original].)

orders as merely preliminary to an appealable final judgment would be flawed, first, 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, 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.

Indeed, although the "finality-plus-separate-entry" rule allows considerable delay simply by inaction for whatever reason, it also allows delay as a conscious tactic to prop the door open for appellate review – for months or years – by the artifice of the parties. If they can persuade the trial court to hold off from entering "judgment," the parties can create their own convenient window for seeking appellate review, even though innumerable California authorities such as *Dhillon* and California statute and court rules confirm that the case has concluded. The only body that would not have any say in this arrangement is the one upon whose jurisdiction the parties will seek to prevail – this Court of Appeal. Ultimately, this Court's jurisdiction will be involved as well.

Second, the rule described by the Court of Appeal here is clear and

consistent because orders granting or denying petitions for writs of mandate typically do not leave any doubt as to their finality. The fact that practitioners may at this time expect to see a separate judgment, as they would following a summary judgment motion ruling, does not constitute a sound basis for overturning statutory and decisional authority that supplies a different answer. This Court's published decision in this case will make this state's practitioners aware of the rule in petition for writ of mandate cases, if they were not already, so it does not entrap practitioners or litigants. In addition, this state's many respected practice guides will do the same. Superior Court local rules can provide admonishments as well. Indeed, unlike civil actions generally, petitions for writ of administrative mandate are classified as special proceedings and are often handled by those who specialize in those proceedings, including lawyers for various branches of government and those whose practice in public employment, open government, student discipline, environmental, or other regulatory practice leads them to learn administrative writ practice in detail. This also involves becoming familiar with when a notice of appeal is required.

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 and clear time periods in which for an appeal to begin. If a subsequent document simply titled "judgment," that repeats 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 or prolonged. 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, Meinhardt 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 basically a trap for the unwary. (E.g., Opening Brief at 26-27.) 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. Meinhardt cites no authority – not a single scholarly article or practitioner publication – that criticizes this particular California rule. (Opening Brief at 12, 23-25 [citing secondary authorities].) 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 mandate is a final judgment in seeking appellate review of such a ruling." (*Meinhardt, supra,* 76 Cal.App.5th at 51.) As described above, the publication of the *Meinhardt* decision by this Court 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].)

Fourth, Meinhardt's interpretations of the relevant laws would

apparently create an anomaly in civil procedure of an order that a party can appeal but without any particular time period in which the party needs to do so. Meinhardt does not dispute *Dhillon*'s acknowledgement that a final order on a petition for writ of mandate is appealable. (*Dhillon, supra,* 2 Cal. 5th at 1113–14 ["California cases have uniformly held that a trial court's complete denial of a petition for administrative mandamus is a final judgment that may be appealed by the petitioner. The cases have also held that a trial court's judgment granting administrative mandamus, and ordering the substantive relief sought by the petitioner, is a final judgment that may be appealed by the respondent agency."] [citations omitted].) Instead, Meinhardt elevates form over substance by contending that a subsequent document has to be entered formally concluding the case, such as a document titled "judgment." Otherwise, the order can apparently remain in limbo – ready to be appealed at any time – until the trial court enters such a document. This could take place long after entry of the order, which remains appealable for the duration.

Finally, the public policy argument that the Court should make the laws of appellate practice utterly simple 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," or when to file them, i.e., after an already dispositive order. Contrary to Meinhardt's arguments, such an expansion would not simplify the issues, among other reasons because it would contradict well-established law. Indeed, the Rutter treatise cited by Meinhardt in discussing this area of law accepts that it may seem complex

but that practitioners are guided by court decisions: "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 decision here.

C. PETITIONER'S PROPOSED "FINALITY-PLUS-SEPARATE-ENTRY" RULE LACKS SUPPORT IN STATUTE, CASE LAW, OR SOUND POLICY

Meinhardt's primary argument on appeal is that this Court should impose an across-the-board "finality-plus-separate-entry" rule that mandates when the time limit for a notice of appeal begins to run. (See Opening Brief at 9.) As Meinhardt articulates it, "[t]here are . . . two fundamental aspects of an appealable final judgment in a civil case in California: It must be both: (1) final; and (2) separately entered." (*Id.* at 6.) Meinhardt argues that "[t]here is nothing about [] administrative mandate procedure that merits a departure from the longstanding practice requiring entry of a separate judgment" for the time limit for an appeal to begin. *(Ibid.*) In support for this rule, the Opening Brief cites other contexts in which an appeal is supposedly properly taken from a judgment entered after a decision on the merits, including following a statement of decision, a demurrer, and a motion for summary judgment. (*Id.* at 1.) (See *Alan v. American Honda Motor Co.* (2007) 40 Cal.4th 894, 901 [discussing practice regarding a class certification decision]; *Molien v. Kaiser Foundation Hospitals* (1980) 27 Cal.3d 916, 920–21 [demurrer]; *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 307 fn.10 (1997) [summary judgment].) (See also Opening Brief at 8 (["But the finality of a decision is

not and cannot be the only hallmark of a final judgment. In myriad civil contexts, courts issue orders that completely resolve all the issues in an action. But it is invariably the entry of a separate final and formal judgment that starts the clock to appeal, not the entry of some prior order, however dispositive it may be."].)

This is the crux of Meinhardt's legal argument to this Court – that because a post-decision document styled as a "judgment" supposedly triggers the time limit to appeal in other civil actions, it must do so in a special proceeding involving a petition for writ of administrative mandate. This argument lacks merit based on reference, first, to the California Rules of Court, which flatly contradict it. Petitions for writ of administrative mandate are "special proceedings" governed by Part 3 of the Code. For "special proceedings," California Rule of Court 8.10(4) defines a "judgment" as follows: "'Judgment' includes any judgment or order that may be appealed." This includes a final ruling on an administrative mandate petition. *Dhillon, supra,* 2 Cal. 5th at 1113–14. Under California Rule of Court 8.104(a)(1), then, prescribed service of a file-stamped copy or "Notice of Entry" of this "judgment" starts the 60-day time period.

D. PETITIONER'S RELIANCE ON CASE LAW IS UNFOUNDED BECAUSE NONE OF IT SUPPORTS THE "FINALITY-PLUS-SEPARATE ENTRY" RULE PETITIONER ADVANCES

1. Neither the Factual Analysis Nor Holding of *Alan v. American Honda Motor Co.* Supports Petitioner's Position

Meinhardt relies heavily on this Court's decision in *Alan,* 40 Cal.4th 894, to support his contention that an across-the-board rule of "finality-

plus-separate-entry" should apply to all areas of appellate procedure, including this one. The case in fact supports the City's position, because it supports that an "order" alone is appealable and starts the time clock, in that case an order on class certification. (*Id.* at 905.) The Court in *Alan* considered the "idiosyncratic manner" in which the trial court issued notice of decision in connection with its ruling denying a motion for class certification. (*Id.* at 898.) Under California Rule of Court 8.104 (a)(1)(A), mailing of either a filed-stamped copy of a judgment or order or a document titled "Notice of Entry" of the judgment or order will start the appellate time clock. The trial court mailed two documents, a statement of decision and a minute order, in a single envelope, neither of which was titled a "Notice of Entry" and only one of which was filed-stamped, the statement of decision. (*Id.* at 898.) The Court held that the trial court's mailing did not start the appellate time clock under Rule 8.104(a)(1)(A), because neither document was titled "Notice of Entry," and also because only one document, the statement of decision, was file-stamped. (*Id.* at 901-02.) This Court considered the other document, the order, to be the appealable "order or judgment," but it lacked a file-stamp and thus could not satisfy Rule 8.104(a)(1)(A) (*Ibid.*)

The portion of *Alan* on which Meinhardt relies is its initial consideration of "which document—the statement of decision or the minute order—is the appealable order in this case." (*Id.* at 901.) The opinion explained that "[t]he general rule is that a statement or memorandum of decision is not appealable," and that "a statement of decision is not treated as appealable when a formal order or judgment does follow, as in this case." (*Ibid.*) By its plain terms, the discussion supports the City's position here. The August 6, 2020 ruling at issue here was an "order" (AA 0111-

0118) and not a "statement of decision." It thus had all the formality of the order in *Alan* considered by the parties and this Court to be appealable. Indeed, *Alan* found that ultimately a "Notice of Entry" served by the defendant enclosing the order started the appellate time clock, just as the August 14, 2020 Notice of Entry would have in this case. (AA 01190.) (The filed-stamped copy of the August 6, 2022 order served by the trial court was what started the time-clock in this case.)

Moreover, the "general" rule cited in *Alan* does not support that every case involving an appealable order must have two separate documents to start the appellate time clock. Under that reasoning, if a trial court issues a document containing all its reasoning and analysis and concludes that the document sets forth an "order," then a separate formal document, perhaps also titled "order," is required to commence the time period for an appeal. This type of requirement does not flow from the opinion in *Alan*. (Also, the *Alan* opinion's discussion referenced above in any event constituted an alternative holding, as the opinion acknowledged. (*Alan, supra*, 40 Cal.4th at 902.))

2 <u>The Other Case Authorities Petitioner Cites Do Not Support, And In Some Cases Actually Contradict, Petitioner's Position</u>

The other cases Meinhardt cites for a comprehensive rule of "finality-plus-separate-entry" also do not provide support. In *Molien v. Kaiser Foundation Hospitals* (1980) 27 Cal.3d 916, this Court did not hold that a demurrer ruling that left nothing further to be determined in the case required a separate document, e.g., a judgment, for the appellate time period to run. Instead, this Court held that where the trial court, apparently by an inadvertent omission, did not finally adjudicate a cause of action

without leave to amend and enter a dismissal, this Court would in the interests of justice deem the order in question to be one of dismissal, so that the final judgment rule did not preclude an appeal. (*Id.* at 920–21.)

Similarly, in *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, the opinion merely states in a footnote that neither a verdict nor a ruling on a motion for summary judgment is separately appealable. (*Id.* at 307 fn.10.) This does not help Petitioner's position, because if the verdict/order is not separately appealable, then under the Code of Civil Procedure, it is not a "judgment" for purposes of appellate principles, and the time-limit for a notice of appeal does not begin to run for that reason. (Cf. Cal. Rules of Court, rule 8.10(4) ["'Judgment' includes any judgment or order that may be appealed."]; Cal. Rules of Court, rule 8.104 (a)(1) [prescribed service of a "judgment" starts the 60-day time period].) By contrast, the law is settled that a final decision on a petition for writ of mandate is separately appealable, as confirmed in *Dhillon, supra,* 2 Cal.5th at 1116-17, and accordingly it starts the appellate time clock. (Cal. Rules of Court, rules 8.10(4), 8.104(a)(1)

Meinhardt argues that this Court's opinion in *Dhillon* is distinguishable because the Court in that case "did not address the question presented here—whether a sufficiently final *order* counts as a *judgment* in an administrative mandate case when formal judgment is subsequently entered." (Opening Brief at 4 [emphasis in original].) Instead, Petitioner argues, the Court in *Dhillon* considered whether a grant of administrative mandate and remand back to the administrative body was appealable. (*Ibid.*) The argument lacks merit, first, because the trial court's entering a separate document after the dispositive minute order, perhaps a separate document titled "judgment," would not have made any difference to this

Court's extensive reasoning in *Dhillon* regarding what type of order by a trial court considering a section 1094.5 writ petition constitutes a final, appealable judgment. (See *Dhillon, supra,* 2 Cal.5th at 1115 ["As a general test, which must be adapted to the particular circumstances of the individual case, it may be said that where 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.'"] [quoting authority].) Second, the argument does not refute *Dhillon*'s acknowledgement, dispositive here, that a trial court's final order on a petition for writ of mandate under section 1094.5 is appealable. (*Id.* at 1113 ["California cases have uniformly held that a trial court's complete denial of a petition for administrative mandamus is a final judgment that may be appealed by the petitioner."].) Once the order is appealable, the time limit for an appeal commences. (Cal. Rules of Court, rules 8.10(4), 8.104(a)(1).)

Meinhardt argues that the Court of Appeal in this case, and in the line of cases including *Calexico* and *Laraway*, has taken a definition of "finality" essentially used to facilitate *appealability* and litigants' access to appellate courts, and applied it to the separate issue of *timeliness* of an appeal, thereby unfairly *limiting* access to appellate courts. (Opening Brief at 10.) The argument lacks merit because once the order in question meets the standard for appealability, the time limit for a notice of appeal a fortiori must begin to run. (Cal. Rules of Court, rules 8.10(4), 8.104(a)(1).) Indeed, otherwise, when would it begin? Meinhardt's interpretation would offer litigants a span of appealability that would, if the trial court chose not to enter judgment, extend indefinitely. The argument also lacks merit

because this Court's opinion based its *Dhillon* holding squarely on principles of appellate jurisdiction and not primarily on equity or fairness. (*Dhillon, supra*, 2 Cal.5th at 1115-18.) Accordingly, the principles of appellate jurisdiction that led to *Dhillon*'s holding, i.e., what determines finality of judgment, do not disappear or even diminish when considering the related question of when the time limit for appeal begins. [3]

Meinhardt invokes this Court's opinion in *Griset v. Fair Pol. Pracs. Comm'n* (2001) 25 Cal. 4th 688, 698, as an example of this Court supposedly exercising discretion to find an order sufficiently final so that it can be appealed, and again argues this discretion to rule liberally to support an appeal should not be turned on its head to restrict appeals, by creating a hard-and-fast rule that starts the appellate time clock. The argument lacks merit because *Griset*'s holding extending a right to appeal in that case is not necessary to confer appealability in this case; rather, this case resides in that part of *Griset*'s discussion in which the Court confirmed that a right of appeal already clearly existed under applicable law. (*See id.* at 698 ["As a general test, which must be adapted to the particular circumstances of the individual case, it may be said that where no issue is left for future consideration except the fact of compliance or noncompliance with the

[3] Meinhardt may respond to this reasoning by suggesting that those cases like *Dhillon* applying a finality rule in the context of finding appealability did so by exercising discretion under the circumstances, not by creating a holding that final orders on a writ of administrative mandate petition are per se appealable. (Opening Brief at 15.) But this Court in *Dhillon* did not state it was exercising discretion to allow appealability, or that the court of appeal was. Instead, the order in *Dhillon* was appealable based on the facts of the particular case. (*Dhillon, supra,* 2 Cal.5th at 1116.)

terms of the first decree, that decree is final . . . ."] [quoting *Lyons v. Goss* (1942) 19 Cal.2d 659, 670].) *Griset* instead had to consider a case in which the order at issue on its face did not decide all the petitioner's causes of action. *Griset* held that the court of appeal had correctly decided to treat the order as final because as a practical matter it resolved all the case's issues. (*Id.* at 696-701.) Here, by contrast, the order in question resolved all case issues as well as all causes of action. (AA 0111-0118.) Indeed, stepping back, *Griset* directly contradicts Petitioner's argument that a decision plus separate document rule should apply. There was apparently no post-decision document such as one titled "judgment" in *Griset*. Instead, there was instead apparently a timely appeal from the order in question. This Court in *Griset* never observed that the trial court needed to enter a separate "judgment" in order to create an appealable order.

Meinhardt tries to rely on this Court's decision in *Voices of the Wetlands v. State Water Resources Control Board* (2011) 52 Cal.4th 499, to support its position. Meinhardt argues that it appears that the notice of appeal in that case was filed more than 60 days after the order on the petition for writ of mandate, and within 60 days of the subsequently entered judgment. (Opening Brief at 16-17.) Reliance of *Voices of the Wetlands* is inapposite, however, even if the Opening Brief accurately discerns the background procedural history. This is because the opinion does not address the issue of timeliness of an appeal. It is well-established that an opinion is not authority for an issue not discussed in it. (*Gen. Motors*

Acceptance Corp. v. Kyle (1960) 54 Cal. 2d 101, 114.)[4]

E. PETITIONER'S PUBLIC POLICY ARGUMENTS LACK MERIT BECAUSE THEY DO NOT SHOW THAT THE STRAIGHTFORWARD RULE DESCRIBED BY THE COURT OF APPEAL CREATES CONFUSION OR HARM, OR REFUTE THAT ITS CLARITY AND SOUND BASIS IN PRINCIPLES OF APPELLATE LAW PROVIDES A BENEFIT

Meinhardt argues that "a rule preferring the entry of a separate formal judgment [for the notice of appeal time limit to run] creates a bright-line that recognizes the jurisdictional significance of the event." (Opening Brief at 19.) Meinhardt points out that "once judgment is entered, the trial court loses aspects of its subject matter jurisdiction," including its ability to correct judicial error, and the event also serves as a starting point for post-trial motions and enforcement of the judgment. (*Id.* at 20 [citing *inter alia* Code Civ. Proc., §§ 683.010, 685.020, subd. (b) The argument lacks merit because even if the rule Petitioner advances affords a type of convenience and symmetry, that does not constitute a good reason to disregard statutory

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[4] The City does not object to Petitioner's request that this Court take judicial notice of legislative history documents for Code of Civil Procedure section 1094.5, but this Court's consideration of the legislative history is unnecessary because the plain language of applicable statutes and rules support the City's position here. In addition, in any event, Petitioner does not point to anything in the legislative history that supports his position, only that nothing supposedly contradicts imposing the separate document requirement Petitioner requests. (See Petitioner's Request for Judicial Notice, filed August 30, 2022 at 2.)

and common law rules that ineluctably mandate a different result; it would ignore, based on a fleeting sense of convenience, the logic and sound policy rationales long embedded in those rules. (E.g., *Dhillon, supra,* 2 Cal.5th at 1115.) Meinhardt argues that policy concerns such as those about delay "are avoidable through the diligent efforts of trial courts or prevailing parties, and, in any event, fail to outweigh the fundamental principle that cases should get resolved on their merits." (Opening Brief at 20-21.) The argument relying on diligent efforts reduces to the proposition that problems such allowing essentially unlimited span for an appeal in some cases – created by the gap in time between when the trial court decides a petition and then later enters judgment – are supposedly resolved by the fact that someone, either the losing party or the trial court itself, for example, will be impelled to enter the judgment that will start the appellate time clock. In other words, a wide-open door to appellate jurisdiction that no one intended will rarely exist, Petitioner contends. The argument lacks merit because the appellate courts should not have to rely on this supposed "diligence" to maintain their jurisdiction, and ultimately, workload and need to resolve cases promptly not just for the benefit of the parties but for the administration of justice. Also, if the parties and trial courts have a standard of diligence on which an appellate court can rely, they have the capacity to comply with the rule of appellate procedure the Court of Appeal described in this case, based on precedent like *Laraway* and *Calexico*.

Meinhardt argues that this Court has the authority to establish a bright-line rule in this context to avoid confusion for litigants, as it did in *Van Beurden Insurance Services, Inc. v. Customized Worldwide Weather Insurance Agency, Inc.* (1997) 15 Cal.4th 51, 64, in which this Court created a bright-line rule to resolve an unclear statutory provision on when

notice of entry of judgment is effectively made. (Opening Brief at 21-22.) Reliance on *Van Beurden* is inapposite, first, because the statutory and rule of court provisions and case authority in this case are not unclear, and support the Court of Appeal's decision. (*Dhillon, supra,* 2 Cal.5th at 1113–14 ["California cases have uniformly held that a trial court's complete denial of a petition for administrative mandamus is a final judgment that may be appealed by the petitioner."]; Cal. Rules of Court, rule 8.10(4) ["'Judgment' includes any judgment or order that may be appealed."]; Cal. Rules of Court, rule 8.104(a)(1) ["Notice of Entry" of a "judgment" starts the 60-day time period].) Reliance on *Van Beurden* is inapposite, second, because it involved lack of clarity in a single statute that required interpretation, Code of Civil Procedure section 664.5, whereas, here to enact the bright-line rule Petitioner advances, this Court would have to contradict the plain language of applicable statutes and Rules of Court, and overturn clear precedent.

Meinhardt's Opening Brief dedicates a section to narrating how federal procedure, at one time in the midst of the 20th century, did not have a rule that in standard civil cases an appeal has to be taken from a separate final judgment, which judgment in turn began the clock running for an appeal. (Opening Brief at 24-25.) The Opening Brief describes that in 1958, the U.S. Supreme Court decided to resolve the issue in *United States v. F.&M. Schaefer Brewing Co.* (1958) 356 U.S. 227, 230-31, that entry of a separate judgment was not required, and instead the final order in the case will suffice if it "embodies the essential elements of a judgment for money and clearly evidences the judge's intention that it shall be his final act in the case." (*Ibid.*) The Opening Brief contends this rule for civil cases is analogous to the 21st century rule from *Laraway*, *Calexico*, and this case.

The Opening Brief describes with some artful drama that after the U.S. Supreme Court's decision in 1958 "Chaos ensued." (Opening Brief at 23.) The Opening Brief contends that confusion generated by the rule from *F.&M. Schaefer* led to the amendment of the Federal Rules of Civil Procedure, so that Rule 58 required "every judgment and amended judgment to be set forth on a separate document," which would then start the time limit for an appeal. (See Opening Brief 24.) This revision, the Opening Brief goes on to argue, advanced sound policy.

The flaw in Meinhardt's reliance on this narrative, however, is that in the circumstances here - since the 2002 decision in *Laraway* - chaos has clearly *not* ensued, despite *Laraway* having set forth its rule for two decades. Meinhardt cites effectively no criticism of the rule from either California case authority or from this state's commentators on civil procedure. Indeed, one reason for this may be that the rule from *Laraway*, *Calexico,* and this case applies by its own terms to trial court decisions on administrative mandate petitions, and orders resolving all the issues in them do not take numerous forms. This is in contrast to ordinary civil actions, in which resolution of cases can range from motion to dismiss, to summary judgment, to trial by judge or jury, and in which numerous types of monetary and non-monetary remedies can be imposed. For many reasons, the rule from *Laraway* has worked well for decades (and authority supports existence of the rule from even before *Laraway*).

The Opening Brief's narration of the federal experience with *F.&M. Schaefer* in fact introduces themes that dramatically undercut the Opening Brief's legal position. First, it shows that the U.S. Supreme Court in *F.&M. Schaefer* thought that applicable principles of civil procedure and finality of judgments required it to impose the rule it did – a rule Meinhardt argues is

similar to *Laraway*'s. Why should not the same result apply here, given that no California statute, like Rule 58 (a), requires "[e]very judgment and amended judgment must be set out in a separate document . . . ."? Second, the narration of the federal experience shows that it was for the Legislature, not the U.S. Supreme Court, to impose a bright-line rule resolving the situation in a way that practitioners (and ultimately voters) would supposedly have it. The same principle applies here – straightforward rules of the common law and statutory interpretation support *Laraway*'s rule, and not just that Court but the Courts in *Calexico* and this case have painstakingly worked through the applicable analysis to show how it does.

Meinhardt argues that practitioners will be concerned about ripple-effects from this Court's affirmance of the Court of Appeal's decision here: "Careful litigants will worry that their case could be the one where a court extends the rule to some other aspect of civil practice" and have "every incentive to file a notice of appeal when the question is close." (Opening Brief at 25.) But Meinhardt does not refer to any other areas, outside the context of petitions for writ of administrative mandate, to which this Court's decision would extend. Indeed, Meinhardt argues that in other actions, the rules clearly provide that the time for a notice of appeal runs from entry of a traditional judgment, including rulings on demurrers and motions for summary judgment, for example. (Opening Brief at 1, 8-9.)

Meinhardt argues that some courts have local rules requiring preparation of a separate judgment following a ruling on the merits, and that these local rules will create confusion among practitioners about when the case concludes for appeal purposes. (Opening Brief at 26 [citing Los Angeles and Sacramento counties].) The argument lacks merit, first, because this Court's construction of California law should not depend on

how trial courts choose to write their local rules at the present time. Rather, those rules should accommodate the applicable laws as this Court construes them. Second, and related to the first point, trial courts can avoid the issue by specifying to litigants when they should file notices of appeal in petition for writ of mandate proceedings.

IV. CONCLUSION

For all the foregoing reasons, the City of Sunnyvale respectfully requests that this Court affirm the decision of the Court of Appeal.

Dated: October 17, 2022 LIEBERT CASSIDY WHITMORE

By: */s/ David A. Urban*
Brian P. Walter
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 10,022 words, including footnotes.

Dated: October 17, 2022 LIEBERT CASSIDY WHITMORE

By: */s/ David A. Urban*

Brian P. Walter
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 **October 17, 2022**, I served the foregoing document(s) described as **RESPONDING BRIEF** in the manner checked below on all interested parties in this action addressed as follows:

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

/s/ Beverly Prater
Beverly T. Prater

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**

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

10/17/2022

Date

/s/Beverly T. Prater

Signature

Prater, Beverly T. (Other)

Last Name, First Name (PNum)

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