

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

NOTICE OF ERRATA RE: PAGE 17 OF RESPONDING BRIEF

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**TO THE CLERK OF THE COURT, APPELLANT, AND
HIS COUNSEL OF RECORD:**

Respondent City of Sunnyvale respectfully submits this Notice of Errata in order to provide a clear copy of the page containing footnote 2 in its Responding Brief filed on October 17, 2022. The formatting in the footnote in that document caused its text to cut off part of the wording, which makes it unclear. A corrected copy of page 17 of the Responding Brief with footnote 2 is attached as Exhibit A. No changes have been made except to clarify the footnote text.

Dated: October 19, 2022

LIEBERT CASSIDY WHITMORE

By: */s/ David A. Urban*

Brian P. Walter
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EXHIBIT A

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

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].)

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 19, 2022**, I served the foregoing document(s) described as **NOTICE OF ERRATA RE: PAGE 17 OF RESPONDING BRIEF** in the manner checked below on all interested parties in this action addressed as follows:

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VIA ELECTRONIC SERVICE PROVIDER. I am readily familiar with the firm's practice for filing electronically. By filing the above-referenced document with TrueFiling, the Court's electronic service provider, participants in the case who are registered TrueFiling users will be electronically served to the email address(es) registered with the Court this day in the ordinary course of business following ordinary business practices. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

Executed on **October 19, 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/ June Steer
June Steer

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S274147**

Lower Court Case Number: **D079451**

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Date

/s/June Steer

Signature

Prater, Beverly T. (Other)

Last Name, First Name (PNum)

Liebert Cassidy Whitmore

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