

**S256665**

**IN THE  
SUPREME COURT OF CALIFORNIA**

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**LUIS SHALABI,**  
*Plaintiff and Appellant,*

*v.*

**CITY OF FONTANA et al.,**  
*Defendants and Respondents.*

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AFTER A DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO  
CASE NO. E069671

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**SUPPLEMENTAL AMICUS CURIAE BRIEF OF  
ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE  
COUNSEL IN SUPPORT OF RESPONDENTS**

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**SUPPLEMENTAL AMICUS CURIAE BRIEF OF  
ASSOCIATION OF SOUTHERN CALIFORNIA  
DEFENSE COUNSEL IN SUPPORT OF  
RESPONDENTS**

**INTRODUCTION**

A three-justice panel of this Court held in *Ganahl v. Soher* (1884) 2 Cal.Unrep. 415, 416 (*Ganahl I*) that the day after minority tolling ends (i.e., a plaintiff's 18th birthday) is included when determining the timeliness of a lawsuit. This Court then granted rehearing in bank and affirmed the judgment on a different ground. (See *Ganahl v. Soher* (1885) 68 Cal. 95, 97 (*Ganahl II*.) There is authority supporting the proposition that when a Supreme Court department decision was reheard in bank, the in bank decision, not the first decision, became the opinion of the Court. (See *In re Jessup* (1889) 81 Cal. 408, 470; *Federoff v. Birks Bros.* (1925) 75 Cal.App. 345, 347; *Weyer v. Weyer* (1919) 40 Cal.App. 765, 769–770; 9 Witkin, Cal. Procedure (5th ed. 2020) Appeal, § 487.) Nonetheless, this Court held in 1993 that *Ganahl I* retains precedential status. (*In re Harris* (1993) 5 Cal.4th 813, 847–850 & fn. 18 (*In re Harris*.) Other courts and commentators have likewise treated *Ganahl I* as authoritative.

This Court should now reaffirm that the rule articulated in *Ganahl I* is good law. Because courts (including this Court) have long followed *Ganahl I*, abandoning its rule would cause the disruptions that the doctrine of stare decisis is intended to guard against, whether or not *Ganahl I* is technically precedential. Regardless of its precedential status, *Ganahl I* is demonstrably

correct—it supplies the only rule that harmonizes every applicable statute. This Court should reaffirm that the rule articulated in *Ganahl I* remains good law.

## LEGAL ARGUMENT

### **I. This Court has already adopted *Ganahl I* as precedent.**

This case is not the first occasion in which this Court has considered the precedential status of *Ganahl I*. In *In re Harris*, *supra*, 5 Cal.4th at pages 847–850 and footnote 18, this Court analyzed *Ganahl I* and held that it carries full precedential authority. This Court relied on *Ganahl I*'s holding regarding when an individual attains the age of majority to support its decision, and this Court specifically held that *Ganahl I* has precedential value. (*Ibid.* [faulting the Attorney General for failing to recognize *Ganahl I* as a California Supreme Court opinion with precedential status: “Nor does the fact that [*Ganahl I*] is not an officially reported case detract from its status as precedent”].) This Court has thus already resolved any question regarding *Ganahl I*'s status as precedent—*In re Harris* itself is controlling precedent. Thus, regardless of whether *Ganahl I* was technically precedent after this Court decided *Ganahl II* in 1885, this Court adopted it as binding precedent in *In re Harris*.

### **II. The key considerations of stare decisis are met in this case because courts and commentators have long treated *Ganahl I* as precedent.**

“It is a familiar axiom that ‘[s]tare decisis is the preferred course because it promotes the evenhanded, predictable, and

consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.’” (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 879; see *People v. Lopez* (2019) 8 Cal.5th 353, 380.) “ ‘Adhering to precedent “is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right.” ’ ” (*Ibid.*)

Regardless of whether *Ganahl I* carries precedential authority as a technical matter, this Court should follow it because the key policies animating the stare decisis doctrine are implicated here. Courts (including this Court) and commentators have long treated *Ganahl I* as precedential. (See *In re Harris, supra*, 5 Cal.4th at 849, fn. 18 [holding that *Ganahl I* carries precedential authority]; *Johnson v. Superior Court* (1989) 208 Cal.App.3d 1093, 1097 [following *Ganahl I* as “binding precedent”]; *Cabrera v. City of Huntington Park* (9th Cir. 1998) 159 F.3d 374, 378–379 [recognizing *Ganahl I* as binding precedent and explaining that “the *Ganahl [I]* holding is still good law”]; Annot., Inclusion or exclusion of first and last day for purposes of statute of limitations (1952) 20 A.L.R.2d 1249, § 4, citing *Ganahl I, supra*, 2 Cal.Unrep. 415; Haning et al., Cal. Practice Guide: Personal Injury (The Rutter Group 2019) ¶ 5:145a, p. 5-127, citing *Ganahl I*, at p. 416.) Indeed, neither Shalabi nor the Court of Appeal below advocated departing from *Ganahl I* on the ground that it lacks precedential status in light of *Ganahl II*. (See ABOM 9–11; *Shalabi v. City of Fontana* (2019)

35 Cal.App.5th 639, 643–644, review granted Aug. 14, 2019, S256665.)

Abandoning *Ganahl I* now would upset settled expectations whether or not *Ganahl I* is precedential as a technical matter. This Court should reaffirm *Ganahl I* to avoid causing unwarranted disruption in settled practice.

**III. Regardless of *Ganahl I*'s precedential status, its holding is demonstrably correct and this Court should follow it.**

Even if *Ganahl I* lacks precedential value, this Court should follow it as persuasive authority. (See *Smith v. Great Lakes Airlines, Inc.* (1966) 242 Cal.App.2d 23, 29–30 [agreeing with nonprecedential authority]; *Banken v. State Bd. of Equalization* (1947) 79 Cal.App.2d 572, 575–576 [citing initial in bank Supreme Court opinion as persuasive authority after rehearing was granted]; *Blatz Brewing Co. v. Collins* (1945) 69 Cal.App.2d 639, 650 [following nonprecedential authority because it was “logical, persuasive and correct”].) The rule articulated in *Ganahl I*—that the day after minority tolling ends (i.e., a plaintiff’s 18th birthday) is included in the limitations period—is the only rule that harmonizes all applicable statutes. (See OBOM 22–30; ACB 12–21.) *Ganahl I*'s holding is therefore correct, and this Court should follow it regardless of *Ganahl I*'s precedential status.




## CONCLUSION

For the foregoing reasons, this Court should reaffirm the rule articulated in *Ganahl I*—that the day of a plaintiff’s 18th birthday is included when determining whether an action is timely. This Court should therefore reverse the Court of Appeal’s decision.

April 7, 2021

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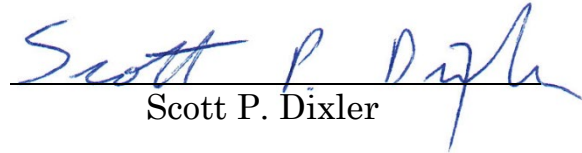
  
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**CERTIFICATE OF WORD COUNT  
(Cal. Rules of Court, rule 8.520(d)(2).)**

The text of this brief consists of 984 words as counted by the program used to generate the brief.

Dated: April 7, 2021

  
Scott P. Dixler

**PROOF OF SERVICE**

***Shalabi v. City of Fontana et al.***  
**Court of Appeal Case No. E069671**  
**Supreme Court Case No. S256665**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On April 7, 2021, I served true copies of the following document(s) described as **SUPPLEMENTAL AMICUS CURIAE BRIEF OF ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL IN SUPPORT OF RESPONDENTS** on the interested parties in this action 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.

Executed on April 7, 2021, at Valley Village, California.

  
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Serena L. Steiner

**SERVICE LIST**  
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**Court of Appeal Case No. E069671**  
**Supreme Court Case No. S256665**

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