Case No. S274147

IN THE SUPREME COURT OF CALIFORNIA

DAVID MEINHARDT,

Petitioner and Appellant,

vs.

CITY OF SUNNYVALE, SUNNYVALE PERSONNEL BOARD,

Respondent,

SUNNYVALE DEPARTMENT OF PUBLIC SAFETY,

Real Party in Interest.

After a Decision by the Court of Appeal, Fourth District, Division One
Court of Appeal Case No. D079451
Dismissing an Appeal of a Judgment Entered in
the Superior Court of Santa Clara County
Superior Court Case No. 19CV346911
Hon. Peter Kirwan

APPELLANT'S REPLY BRIEF ON THE MERITS

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INTRODUCTION

Petitioner David Meinhardt is an officer in Real-Party-in-Interest City of Sunnyvale's Department of Public Safety. Officer Meinhardt also serves as a union official. He criticized a decision by the Department's director and was docked a week's pay. Officer Meinhardt sought relief in the trial court after he unsuccessfully challenged his suspension with the relevant administrative body. The trial court denied his administrative mandamus petition, Officer Meinhardt appealed, and the Court of Appeal dismissed Officer Meinhardt's appeal. This Court granted review to decide whether the Court of Appeal correctly dismissed Officer Meinhardt's appeal as untimely.

The statute that governs administrative mandate procedure—section 1094.5 of the California Code of Civil Procedure—commands that at the conclusion of the proceedings, "[t]he court *shall enter judgment* either commanding respondent to set aside the order or decision, or denying the writ. (§ 1094.5, subd. (f), emphasis added (§1094.5(f))[1].) The question, then, is what does the phrase "shall enter judgment" mean? The answer to that question resolves the timeliness of Officer Meinhardt's appeal.

The opening brief set out a straightforward, bright-line answer: the plain language of section 1094.5(f) requires the court to enter a separate document that finally adjudicates the entire action. A trial court's reasoned opinion is not enough. So the time to

[1] Further citations to "§" are to sections of the Code of Civil Procedure. Otherwise undesignated citations to "Rules" are to the Rules of Court.

notice an appeal under Rule 8.104 should be calculated from entry and service of that separate judgment. This "finality-plus-separate-entry" rule is consistent with case law, civil practice in the non-administrative space, and the good policies of encouraging predictable outcomes, conducting efficient post-judgment litigation, and deciding cases on the merits.

The only authority inconsistent with the rule proposed in the opening brief are the Court of Appeal's decision in this case and two sparse Court of Appeal decisions twenty years apart. The Court of Appeal here reasoned that Officer Meinhardt's appeal was untimely because the clock under Rule 8.104 here ran from the trial court's written opinion denying Officer Meinhardt's writ petition. It reached that decision, even though the trial court signed a jointly submitted proposed separate and final judgment a few weeks after it rendered its decision. And Officer Meinhardt—acting as ordinary civil litigants do—noticed his appeal within 60 days of the separate, final judgment.

The City's arguments in favor of the Court of Appeal's approach are unconvincing. The City's brief does not even acknowledge the text of section 1094.5(f). And its core argument is that the Court of Appeal should be affirmed because the rule it states is "well established." But other than the Court of Appeal's decision here, there are precisely two cases where an appeal was dismissed because it was taken more than 60 days after an order that fully resolved the merits of the action, even though the appeal would have been timely if taken from a judgment: *Laraway v. Pasadena Unified School Dist.* (2002) 98 Cal.App.4th 579, and *City of*

Calexico v. Bergeson (2021) 64 Cal.App.5th 180. That is hardly "well established." Indeed, were it otherwise, this Court would not have had occasion to grant review.

Nor are the remainder of the City's arguments persuasive. The City takes language from a number of this Court's cases out of context, in order to support its claim that a superior court's final order should constitute the judgment. But none of the cases the City cites actually decided that question.

The City also makes an inscrutable statutory argument that presumes its own conclusion—that a final order in an administrative mandate case *is* a "judgment." But its argument fails to grapple with the plain language of section 1094.5(f). It also fails to recognize that it would appear to apply to every civil appeal, when even the City admits other civil contexts require separate judgments.

Relatedly, the City also fails to answer a key question posed by the opening brief: *why* should there be a special and different rule for administrative mandate than the rule that applies in essentially every other civil case? Indeed, the City's principal policy argument fails for the same reason. The City claims that a separate entry requirement raises the prospect of an unlimited time to notice an appeal. But there is no indication that problem has arisen in the myriad of other civil contexts where separate entry is required by statute. The City certainly offers no evidence, for instance, of a plague of long-delayed summary judgment or demurrer appeals.

The Court should read section 1094.5(f) to mean what it

plainly says: when an administrative mandate case is over, the trial court "shall enter judgment." That judgment should look just like the judgments entered in ordinary civil litigation: a separately entered document that decrees the final result of the litigation.

ARGUMENT

I.
The City's "Well-Established" Rule Has Been Applied in Only Three Published Cases over 20 Years.

This Court and the Court of Appeal have consistently recognized that the entry of separate final judgments that dispose of a case are important. They protect parties from accidentally forfeiting the right to appeal. They prevent wasteful litigation arising from premature or preemptive appeals. And they avoid wasteful litigation over jurisdiction. (*See* OB at 7 [collecting cases].) But here, the Court of Appeal concluded that "a trial court's complete denial of a petition for administrative mandamus is a final judgment that may be appealed by the petitioner." (Slip Op. at p. 2, citing *Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, 1113.) In so doing, the Court held that the clock for the time to appeal begins to run from the superior court's *order* denying an administrative mandamus petition where it "completely resolve[s] all issues between all parties[.]" (Slip Op. at pp. 4, 18, citing *Laraway*, *supra*, 98 Cal.App.4th at pp. 582–583.) That was the case even though the trial court signed a jointly submitted final judgment. The judgment, to the Court of Appeal, was simply "irrelevant." (*Id.* at p. 23.)

A.
City of Calexico and *Laraway* Misinterpreted an Exception To The Rule Requiring Separate Entry of Judgment; They Did Not Render It Irrelevant.

The City says *Laraway* held 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." (RB at p. 12.) The City's characterization is notable for what it omits: the trial court took *five months* until it both served a signed version of the order on the parties and entered a "judgment on petition" reiterating the result of the trial court's order. (*Laraway*, *supra*, 98 Cal.App.4th at p. 582.) The notice of appeal at issue was filed 58 days after the judgment and 217 days after the trial court's order. (*Ibid*.) The Court of Appeal concluded the notice was untimely and the parties sought to manufacture an appeal by "relabeling [] the trial court's earlier decision and then entering such 'judgment' at a later date." (*Id*. at p. 583.)

Relying on a line of writ cases that afford appellate courts discretion to treat or amend a final order as a judgment when a separate judgment has not been entered—thus saving otherwise premature appeals—*Laraway* turned that rule inside-out. (*Ibid*., citing among other cases, *Townsel v. San Diego Metropolitan Transit Development Bd.* (1998) 65 Cal.App.4th 940, 944, fn. 1 [treating an order as a judgment because "[t]he record does not show that judgment was entered on the order"].) According to *Laraway*, a separately entered judgment is *not* a judgment when a prior order is sufficiently final, thus dooming an appeal taken from

the judgment as untimely. This Court has never endorsed that approach. (*Cf. Alan v. American Honda Motor Co.* (2007) 40 Cal.4th 894, 901 (*Alan*) ["[A] statement of decision is not treated as appealable when a formal order or judgment does follow, as in this case[,]" and the right to appeal is "remedial" in nature, and courts ought to "accord[] that right in doubtful cases 'when such can be accomplished without doing violence to applicable rules.'"].)

Twenty years passed without a single published case dismissing an appeal taken from a separate final judgment because a prior order was sufficiently final. Then came *City of Calexico*. A police officer was terminated, and a hearing officer upheld the termination but ordered the City of Calexico to pay the officer backpay for lack of adequate pre-disciplinary notice. (*City of Calexico*, *supra*, 64 Cal.App.5th at p. 182.) The officer and Calexico filed *crossing* petitions for a writ of mandate, which the superior court denied in a single written order. The officer noticed an appeal from the order. Almost three months later, the superior court entered a separate document styled as a "judgment", and within 60 days of that, Calexico filed its cross-notice of appeal.

The City says that *City of Calexico* held that the trial court's order "was properly treated as a final judgment for purposes of the timing of a notice of appeal." (RB at p. 14.) But the Court of Appeal dismissed Calexico's cross-appeal as untimely under Rule 8.108(g)(1). (*City of Calexico*, *supra*, 64 Cal.App.5th at at p. 196 [requiring cross appeal within 20 days of first notice of appeal].) The superior court "served [Calexico] with notification of" the officer's appeal on December 3—almost two months before the cross-

notice of appeal. (*Id.* at p. 188.)

The Court of Appeal could—and should—have stopped there.[2] But it further concluded that the superior court's written order "was a final judgment from which the City failed to timely appeal" within 60 days, even though, by the Court's own admission, the City's time to appeal had lapsed *earlier*, 20 days after the officer's first appeal. (*Id.* at p. 183.) As in *Laraway*, *City of Calexico* noted that the superior court "did not issue a notice of entry of judgment" (*Id.* at p. 188.) but suggested that the City was manufacturing an appeal and attempting to take advantage of the trial court's inadvertent failure to separately enter judgment—the precise exception that *Laraway* attempted to articulate.

The delays in *Laraway* and *City of Calexico* were regrettable. But the prevailing parties in the trial court had both means and motive to get an actual judgment entered by timely submitting a proposed judgment to the court and, if not timely entered, by calling it to the Court's attention. Given that, it makes no sense to adopt a rule that *rewards* the prevailing party with a procedural dismissal of an appeal due to delay the prevailing party could have avoided.

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[2] That is because "[t]he ripeness element of the doctrine of justiciability is intended to prevent courts from issuing purely advisory opinions . . . upon a particular or hypothetical state of facts." (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal. App. 4th 1559, 1573.)

B.
City of Calexico, *Laraway*, and the Court of Appeal's Decision in this Case Are Inconsistent with Decisions of this Court.

The Court of Appeal here made the same mistake as it did in *City of Calexico* and *Laraway*. When an underlying order is otherwise final, precedents from this Court afford discretion to apply an exception to the requirement of separate entry of judgment. That serves judicial economy. It preserves otherwise premature appeals from dismissal and avoids the need to return to the trial court to get a judgment noticed, only to return and raise the same exact issues on appeal.

As the opening brief explained, the exception is discussed in several of this Court's cases. The practice is (1) discretionary; (2) encourages litigation on the merits; (3) by "treating" or "amending" a sufficiently final order as a judgment, (4) even though no judgment had been entered. (*Griset v. Fair Pol. Pracs. Comm'n* (2001) 25 Cal.4th 688, 694 (*Griset*); *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 307–308 (*Sullivan*); see also *Alan*, *supra*, 40 Cal.4th at p. 901.)

The Court of Appeal here, however, misread that precedent and stood it on its head. It created a rule that is: (1) mandatory; (2) results in non-merits dismissals; (3) holds that a sufficiently final order *is* a judgment; (4) even when an actual final judgment has been entered. Again, other than *City of Calexico* and *Laraway*, there is no support for that proposition. Certainly not from this Court. Indeed, it is contrary to both the result and rationale of *Alan*. It is contrary to *Alan*'s result because the Court declined to treat a final ruling on the merits of an action as a judgment *because*

a separate and final judgment had been entered. (*Alan*, *supra*, 40 Cal.4th at p. 901.)

And it is contrary to *Alan*'s rationale, which recognized that starting the clock for time to appeal based on a pre-judgment ruling "would directly contravene the well-established policy, based on the remedial character of the right of appeal, of according that right in doubtful cases when such can be accomplished without doing violence to applicable rules." (*Ibid.*, quotations omitted.) Indeed, "the desire to cut off a litigant's right to appeal cannot justify creating an exception to the general rule." (*Ibid.*) But that is precisely the motivation and effect of the "well settled rule" that the City advances.

The City tries to distinguish or wave off this authority. But its explanations are unconvincing. The City's posits that *Alan* permits a superior court to issue an appealable "*formal order* or judgment." (RB at p. 24 [quoting *Alan*, 40 Cal.4th 894 at p. 901].) The City asserts that the superior court's August 6, 2020 order setting out the basis for the denial of Officer Meinhardt's petition satisfied *Alan* because it happened to be titled "order." But in *Alan,* the Court was distinguishing two things: a document setting out the court's factual and legal reasoning in fully deciding an action (there, a statement of decision) and a document that finally adjudicates an action by stating the final result (there, a judgment).[3]

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[3] Confusion regarding terminology stems from inconsistent usage in the Code of Civil Procedure. (See *Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1605 [explaining the inconsistencies].) A definition in the Code excludes judgments from the definition of order. (§ 1003 ["Every direction of a court or judge, made or entered in

The August 6, 2020 "order" here is clearly in the former category. (AA111–117.) The distinction is made clear by the fact both parties subsequently submitted, and the trial court signed, a separate document called a judgment announcing that, given the trial court's prior order "the Court hereby enters Judgment for Respondents City of Sunnyvale, et al., and against Petitioner David Meinhardt, who shall take nothing by this action." (AA145.[4])

The City also mischaracterizes the Court's decision in *Griset* as holding that a trial court's order "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]." (RB at p. 15, quoting *Griset*, *supra*, 25 Cal.4th at p. 698.) But the Court there specifically explained:

> When, as here, a trial court's order from which an appeal has been taken disposes of the entire action, the order "*may be amended so as to convert it into a judgment* encompassing actual determinations of all remaining issues by the trial court or, if determinable as a matter of law, by the appellate court, and the notice

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writing, and not included in a judgment, is denominated an order."].) Yet, some formal documents that are commonly called "orders," are in fact final judgments. For instance, "a written order of dismissal is a judgment[.]" (*APRI Ins. Co. v. Superior Court* (1999) 76 Cal.App.4th 176, 181.) But those "orders" are not the same as a prior document setting out a court's final and dispositive opinion on issues of fact or law, which is not an appealable judgment. (See *I. J. Weinrot & Son, Inc. v. Jackson* (1985) 40 Cal.3d 327, 331 ["An order sustaining a demurrer without leave to amend is not an appealable order; only a judgment entered on such an order can be appealed."].)

[4] As noted in the opening brief, the attorney who signed and submitted the proposed judgment remains counsel for the City.

> of appeal may then be treated as a premature but valid appeal from the judgment."

(*Griset*, 25 Cal.4th at p. 700, emphasis added, quoting *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743.) It should suffice to say that an "order" would not need to be "amended to convert it into a judgment" were it a judgment already. (*See also Olson v. Cory* (1983) 35 Cal.3d 390 399) [recognizing that "[t]he trial court's order was not appealable; nonetheless, under the *unusual circumstances of this case* we reach the merits by treating the appeal as a petition for a writ of mandate."].) The City's only answer is to claim that 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." (RB at p. 28.) This makes little sense, because *Griset* emphasized that the right of appeal was not clear at all, because "allowing an appeal in that situation would be contrary to the '*one final judgment' rule*, a fundamental principle of appellate practice that prohibits review of intermediate rulings by appeal until final resolution of the case." (*Griset*, *supra*, 25 Cal.4th at p. 698 [emphasis added].)

The City similarly misunderstands the significance of *Molien v. Kaiser Foundation Hospitals* (1980) 27 Cal.3d 916 (*Molien*), claiming that it "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." (RB at p. 25.) But *Molien* didn't *need* to hold that. The Code of Civil Procedure specifically requires entry of an order of dismissal following the sustaining of a demurrer without leave to amend "in the form of a written order signed by the court and filed in the

action and those orders when so filed shall constitute judgments[.]" (§ 581d.) That order can be entered only "after a demurrer to the complaint is sustained without leave to amend[.]" (§ 581, subd. (f)(1).) That is, the Legislature has recognized that an order fully sustaining a demurrer, which fully resolves the action is nevertheless not an appealable judgment. An order of dismissal, which "is a judgment," (*APRI Ins. Co. v. Superior Court* (1999) 76 Cal.App.4th 176, 181), must be signed and separately entered to finally adjudicate the action. With that established, *Molien* is simply another example of this Court exercising its discretion to amend a judgment to meet the requisite formalities when practical finality has been achieved and judicial economy preserved by reaching the merits. (*Molien*, *supra*, 27 Cal.3d at p. 921.)

The City's effort to distinguish *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, is, like many of its arguments, essentially circular. (RB at p. 26.) The City says *Sullivan*'s explanation that summary judgment decisions are not separately appealable is not instructive because anything that isn't appealable isn't a judgment. (*Ibid.*) That is, a ruling isn't a judgement if it isn't appealable, and it isn't appealable if it isn't a judgment. That adds nothing meaningful about the key question in this case: what *is* a judgment? Indeed, the City misses the point entirely. The point is that a reasoned order granting summary judgment is not meaningfully different than the trial court's August 6, 2020 order denying Officer Meinhardt's petition: it decides all the issues and leaves nothing open to be decided. But as *Sullivan* shows, that is not enough to make it a *judgment.*

Finally, the City posits that the Court of Appeal's decision here "is mandated . . . [by] precedent like *Dhillon*[.]" (RB at p. 3.) But that too is wrong because the City has not offered any convincing basis for the Court to determine that stray remarks in *Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, 1113–1114 actually decided the question presented.

Dhillon held that a judgment remanding an administrative mandate petition to the agency for further proceedings is sufficiently final to be appealable. It was entirely to the issue of *finality*, not separate entry.[5] As the opening brief explained, a separate final judgment had been entered in *Dhillon* and the petitioner timely appealed from it. The language quoted by the City—"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"—is addressed to whether the superior court's ruling is *interlocutory*, as opposed to *final*. (*Dhillon*, *supra*, 2 Cal.5th 1109 at pp. 1113–

[5] That is so because in *Dhillon*, this Court reasoned that if the trial court's remand to the administrative body was not "final" enough to be appealable, the specific and subsequent action of the administrative body (conducting an evidentiary hearing) on remand would moot whether the trail court's remand was proper to begin with and prevent a future appeal altogether. (*Dhillon*, *supra*, 2 Cal.5th 1109 at p. 1118 ["[U]nless John Muir has a right of immediate appeal, the trial court's interpretation of its bylaws may effectively evade review."].)

1114.) It is not speaking to, and is entirely consistent with, a separate entry requirement.

The rest of the City's authorities are similarly distinguishable. (*See, e.g., Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 11 [concerning "finality analysis in the context of either legislative or administrative subpoenas"]; *Valero Ref. Co. - California v. Bay Area Air Quality Mgmt. Dist. Hearing Bd.* (2020) 49 Cal.App.5th 618, 633, fn. 10 [appeal was timely because, superior court mailed file-stamped copy of appealable judgment "to an incorrect address," excusing belated notice of appeal]; *Dunn v. Mun. Ct., Eureka Jud. Dist.* (1963) 220 Cal.App.2d 858, 863, fn. 1 [discussing appeal from order denying writ of mandamus to quash a search warrant].)

Again, other than *Laraway* and *City of Calexico*, there is no authority for the City's "well established rule."

II.
The City Offers No Statutory Justification For Its "Well-Established" Rule.

The City argues that "the Code of Civil Procedure and California Rules of Court answer the question of whether the August 6, 2020 order constituted a 'judgment[.]'" (RB at p. 9.) The City is incorrect. Tellingly, the City nowhere discusses or cites the subsection of the Code of Civil Procedure on which this appeal turns.

A.
The City Does Not Explain Section 1094.5(f).

The City's brief simply ignores section 1094.5(f), which says that the court "shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where

the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in light of the court's opinion and judgment[.]"

As the opening brief explained, by referring to "opinion and judgment", the Legislature appears to be referencing two different documents—an "opinion" that sets out the court's rationale and a "judgment" that must be "entered." Similar distinctions exist in the statute addressed to entry of judgment after court decisions in civil cases. (See § 664 ["If the trial has been had by the court, judgment must be entered by the clerk, in conformity to the decision of the court, in conformity to the decision of the court, immediately upon the filing of such decision."].) The City's brief does not even try to grapple with this argument. Indeed, the City's brief never so much as *cites* section 1094.5(f).

The significance of entry of judgment under section 1094.5(f) is further buttressed by the fact that section 1064 provides a generalized definition of judgment for *all* special proceedings, not just administrative mandate. The definition applies equally for instance, in unlawful detainer proceedings, to unlawful detainer proceedings, (§ 1161, et seq.), contempts, (§ 1209, et seq.), and to proceedings under the Eminent Domain Law, (§ 1230.010, et seq.). Yet all of these statutory schemes foresee entry of separate final judgments. (See §§ 1174, 1222, 1268.020, subd. (b).) It follows that, at the very least, that section 1064 cannot foreclose a construction that permits a "final determination" to be rendered by the separate entry of a formal final judgment. To the extent ambiguity in section 1064 might permit a final judgment *without* a separate entry,

in administrative mandate cases, the ultimate question can only be resolved by section 1094.5(f), for which the City provides no answer at all.

B.
Administrative Mandate Cases Should Not Deviate From Every Other Civil Litigation.

The City offers no explanation why, in the myriad civil contexts addressed in the opening brief, a separately entered judgment that merely states the result satisfies the virtually identical "final determination" definition for civil actions in § 577, but shouldn't for section 1064. (*See* OB at p. 9 [collecting cases].) Similar words in related statutes can (and should) carry a consistent meaning. This Court has long asked lower courts to, "where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions." (*State Dept. of Pub. Health v. Superior Court* (2015) 60 Cal.4th 940, 955.)

When it comes to section 577 and ordinary civil practice, practitioners and courts have long understood the requirement that there be a *separately entered* final judgment: that is true for demurrers, summary judgment motions, judgment on the pleadings, verdict following a jury or bench trial, and orders granting a new trial or judgment notwithstanding the verdict. This is so even though section 577 uses the same "final determination" definition of the word "judgment" as section 1064.

The City offers no cogent reason why some special definition should apply in writ cases. Buried deep in its policy discussion, the City suggests that orders resolving administrative mandamus

cases "do not take numerous forms . . . 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." (RB at 33.) This argument defies reason.

In also defies the actual diversity of practice that occurs in administrative mandate cases. After all, the Code of Civil Procedure specifically adopts the Code provisions regarding civil actions as "applicable to and constitut[ing] the rules of practice in" writ cases. (§ 1109.) It is thus unsurprising that this Court recently addressed an administrative mandate case resolved by a demurrer. (*Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710, 719; see also *Saint Francis Memorial Hospital v. State Dept. of Public Health* (2021) 59 Cal.App.5th 965, 973 [decision on remand with extensive discussion of demurrer procedure in administrative mandate cases].) Similarly, it "is appropriate to use [a summary judgment] motion in mandamus practice where there is a fact outside the record that can dispose of the case as a matter of law." (Asimow, California Practice Guide: Administrative Law (2022 online ed.) § 20:182 [collecting case examples].) And in some administrative mandate cases—where the trial court has an obligation to independently weigh the evidence, as opposed to merely assess its sufficiency—a court hearing a writ petition is engaged in "trial of a question of fact," which implicates the statement of decision requirement of § 632. (*See Angelier v. State Board of Pharmacy* (1997) 58 Cal.App.4th 592, 598, fn. 5.)

All of these procedures expressly contemplate the preparation and entry of a separate judgment. (§ 581d; § 437c, subd. (k); Rule 3.1590(f), (h)–(*l*).) According to the City's "well-settled rule," however, such a judgment would be nullity in a writ case. (Cf. Civ. Code, § 3532 ["The law neither does nor requires idle acts."].)

C.

The City's Plain Language Argument is Circular.

The City's plain language argument makes no sense. So far as Officer Meinhardt understands it, the City says an appellant gets 60 days to notice an appeal from service of a Notice of Entry of Judgement. (RB at p. 2, citing Rules of Court, rule 8.108.) In a civil case, "[a] judgment is the final determination of the rights of the parties in an action or proceeding." (*Id*. at 9, citing § 577.) Similarly in a special proceeding like a writ case, a judgment is "the final determination of the rights of the parties therein." (*Ibid*., citing § 1064.) Appeals are taken in the same way in both civil and special proceedings. (*Ibid*., citing § 901.) An appeal is taken from a judgment. (*Ibid*., citing § 904.1, subd. (a)(1).) And a "judgment" for the sake of the Rules of Court governing time to appeal, includes "an appealable order." (*Id.* at pp. 9–10, citing Rule 8.104(e). Apparently, "[t]his Court's analysis need proceed no further than this point" because "[t]he straightforward conclusion above flows directly from application of California statutory law. (*Id.* at p. 10.)

Why the City believes that to be the case is puzzling. First off, the argument largely boils down to tautological nonsense: the loser needs to timely appeal a judgment, which is a judgment because a judgment is appealable, because an appeal must be taken from a judgment. If anything, the whole statutory argument is just

trappings over a claim that a final order that disposes of all the claims literally satisfies the definition of "judgment" in § 1064. But that argument too is circular because, as discussed above, a separately entered judgment also satisfies the definition. And indeed, if a separate judgment is entered, a reasoned order that grants or denies a writ petition ceases to be "the *final* determination of the rights of the parties[.]" (§ 1064.) So again, the City's answer assumes itself and sheds no light on the question.

Finally, the City's effort to justify the appealability of the court's order denying Officer Meinhardt's petition because rule 8.104(e) of the Rules of Court also sets the time to appeal to an "appealable order" is just wrong. (RB at p. 10.) Notably, it is irreconcilable with the City's argument that the order *is* the judgment. Appealable orders are *not* judgments. They are, instead, the other non-judgment orders that the Legislature has determined are appealable by listing them in § 904.1, subdivisions (a)(2) through (14). (See generally *Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 19.) An order denying a petition for administrative mandate is not one of them. So the reference to an "appealable order" in Rule 8.104(e) says nothing of significance to this case.

III.
A Finality-Plus-Separate-Entry Rule in Administrative Mandamus Proceedings Is Good Judicial Policy.

At bottom, everyone in the courtroom has an interest in a separately entered, final judgement and would benefit from this Court reversing the Court of Appeal.

The City's first argument is that it is bad policy to "disregard

statutory and common law rules that ineluctably mandate a different result," (RB at p. 30–31), yet again, a tautology that hardly merits an answer. The foregoing discussion demonstrates that a finality-plus-separate-entry rule is both supported by precedent and a plain language reading of the Code of Civil Procedure. None of City's other policy arguments merit a departure from that construction.

A.
The Prevailing Party Benefits.

The prevailing party has every incentive to start the appeal clock running as quickly as possible and would benefit from a finality-plus-separate-entry rule in administrative mandamus cases. The City complains that a finality-plus-separate-entry rule could prejudice the prevailing party when the superior court, "for whatever reason" fails to "enter any document titled 'judgment,' thereby delaying any appellate review of the trial court's decision." (RB at p. 18.) But the prevailing party can seek relief in the Court of Appeal. (*Hadley v. Superior Court* (1972) 29 Cal.App.3d 389.) Short of taking a petition to the Court of Appeal, the prevailing party can also seek the entry of a final appealable judgment (see § 664), including on an *ex parte* basis, and give notice of its entry. (See § 664.5, subds. (a), (b); Rule 8.104(a)(1); accord Fed. Rule Civ. Proc. 58(d) [permitting parties to request entry of judgment as a separate document].)

The City responds that appellate courts should not have to rely on "diligence" of the parties to maintain their jurisdiction. (RB at p. 31.) This misses the mark for three reasons. First, that is

what courts do every day: they cannot *sua sponte* call cases on appeal, and instead rely on aggrieved litigants to bring appeals in the first place. Indeed, the Code and the Rules of Court specifically anticipate that a party will start the appellate clock by serving a Notice of Entry. (§ 664.5; Rule 8.104(a)(1)(B).) Second, the City has no good reason why a prevailing party would *not* want the trial court to enter judgment as expeditiously as possible. There isn't one. Third, a finality-plus-separate-entry rule will resolve what the City construes as an "unlimited span" of time to appeal, created by "gap in time between when the trial court decides a petition and then later enters judgment." (RB at 31.) That describes the status quo, as some trial courts enter final judgment, and some do not. A world in which each trial court must enter a separate, final judgment following a final order on a mandamus petition will not create any more undue delay than the trial court taking an indeterminate amount of time to decide the mandamus petition itself.

B.
The Losing Party Benefits.

The losing party would also benefit from a finality-plus-separate-entry rule, to pursue appeal as quickly as possible and be confident that the appeal is procedurally proper. But the Court of Appeal's decision leaves losing parties in limbo. Risk-averse losers will file appeals as quickly as possible, with little care as to whether the order appealed from is sufficiently "final." (*MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 367, fn. 3 ["Two appeals were apparently taken in an abundance of caution."].) And strategic appellees will argue those appeals are untimely for some reason, which will quickly fill

the Courts of Appeal with jurisdictional litigation over arguably premature appeals, that they have long sought to discourage. (*See* OB at p. 25 [collecting cases].) Perhaps the practice will even bleed into other aspects of civil litigation, where prevailing parties will seek to score a win and extend the Court of Appeal's "exception turned rule" even further.

The City argues that the Court of Appeal's rule is the only way to prevent the loser from taking advantage of "a subsequently entered judgment, that could be entered months or even years later" and "arbitrarily re-starting the 60-day time limit for filing a notice of appeal." (RB at 3–4.) But these cases present rare exceptions and often involve crafty parties, who the courts are well-equipped to deal with. (*City of Calexico*, *supra*, 64 Cal.App.5th at p. 182; *Laraway*, *supra*, 98 Cal.App.4th at p. 582.)

C.
Courts Benefit.

Superior courts, along with prevailing and losing parties, have an equal interest in a finality-plus-separate-entry rule. Especially those who are already required to do so by their own local rules.[6] The City has no answer for the quandary that the Court of Appeal's decision here will create for these several large superior courts, raising the specter that litigants who follow local rules and

[6] The City, ignoring these local rules, makes the uncharitable claim that "no California statute . . . requires "[e]very judgment and amended judgment must be set out in a separate document." (RB at 34, quoting Fed. R. Civ. P. 58(a).) While perhaps technically true, the effect of the City's statement is the same and illustrates the confusion the Court of Appeal's decision will cause among the superior courts.

appeal separate judgments in those jurisdictions may have their appeals challenged and dismissed as untimely.

What is more, once judgment is entered, the trial court loses parts of its subject matter jurisdiction, the period for post-trial motions begins, and the prevailing party may begin enforcing (and charging interest on) the judgment. (See *Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1605.) A finality-plus-separate-entry rule creates an important bright line that disincentivizes both litigants and the courts "to guess, at their peril" when these events should take place (*Alan*, *supra*, 40 Cal.4th at p. 905.)

The Courts of Appeal will also benefit because a finality-plus-separate-entry rule will clear up a jurisdictional ambiguity. The City claims that "orders granting or denying petitions for writs of mandate typically do not leave any doubt as to their finality," (RB at p. 19) but ignores the Court of Appeals' concern with attempts to appeal nonappealable orders, which "continue unabated in substantial numbers." (*Modica v. Merin* (1991) 234 Cal.App.3d 1072, 1074–75; OB at p. 25–26 [collecting cases].) Even the City admits there are numerous cases where the "finality" of the order was hotly disputed—not to mention *this* case. (*Dhillon*, supra, 2 Cal.5th at p. 1115; *Griset*, *supra*, 25 Cal.4th at p. 698; *Hadley*, *supra*, 29 Cal.App.3d at p. 389; *Haight v. City of San Diego* (1991) 228 Cal.App.3d 413, 416.) Clarity in jurisdictional rules will ease the burden on the Court of Appeal and this Court in wasteful litigation over jurisdictional issues. (Accord N*avarro Sav. Ass'n v. Lee* (1980) 446 U.S. 458, 464 fn. 13 ["Jurisdiction should be as self-regulated as breathing; . . . litigation over whether the case is in the

right court is essentially a waste of time and resources," quoting Currie, *The Federal Courts and the American Law Institute, Part I* (1968) 36 U.Chi.L.Rev. 1].)

Finally, the City argues that the Opening Brief is incorrect to rely on the parallel course correction in federal procedure that took place after the Supreme Court decided *United States v. F.&M. Schaefer Brewing Co.*, (1958) 356 U.S. 227, 230–31 and culminated in the adopting of Federal Rule of Civil Procedure 58 (requiring separate entry of final judgment). The City's first rejoinder is that since *Laraway*, "chaos has clearly not ensued," and that Officer Meinhardt fails to adduce any criticism from "this state's commentators on civil procedure." The City ought to review Officer Meinhardt's Petition for Review. (PFR at p. 14 ["As commentators recognize, under the current state of affairs, determining '[t]he appealability of orders adjudicating writs of mandate is particularly difficult, even for experienced writ practitioners.'" [quoting Asimow, et al., California Practice Guide: Administrative Law (2021 online ed.) § 21:22.1.][7].) The City's second rejoinder is that *Schaefer* merely supports the Court of Appeal's decision here because "no California statute, like Rule 58 (a), requires '[e]very judgment and amended judgment must be set out in a separate document.'" (RB at p. 34.) That argument is irreconcilable with the plain language of section 1094.5(f).

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[7] "[T]he far less developed procedures in the Code of Civil Procedure and Rules of Court for civil writs than for civil litigation generally, and the writ judges' relative experience with writs often results in differing processes depending upon the court, and even the judge." (*Ibid.*)

D.
The Court Has Inherent Authority to Fashion the Rule.

The City briefly argues that Officer Meinhardt's reliance on *Van Beurden Insurance Services, Inc. v. Customized Worldwide Weather Insurance Agency, Inc.* (1997) 15 Cal.4th 51, 64 is "inapposite" because the precedent and laws in this case are "not unclear." (RB at p. 31–32.) The City is correct, provided the Court agrees with Officer Meinhardt's construction of section 1094.5(f) as requiring entry of a separate judgment in a writ case.

But if there is any latent ambiguity in section 1094.5, *Van Beurden* is instructive. As the City explains, *Van Beurden* "involved lack of clarity in a single statute that required interpretation." (RB at p. 32.) So too here if section 1094.5(f) is ambiguous. The City contends, however, that unlike *Van Beurden*, adopting a separate entry requirement would require the Court to "contradict" applicable statutes and "overturn clear precedent." (RB at p. 32.) Of course, the City's brief does not even cite section 1094.5(f), and it points to no statute that *prohibits* a separate entry rule. And this Court's resolving a split in authority between the Court of Appeal's decisions in *Laraway* and *City of Calexico* and the contradictory Court of Appeal cases cited in Officer Meinhardt's petition for review is hardly a reversal of this Court's longstanding precedent that would implicate stare decisis concerns. Indeed, *Van Beurden* itself disapproved of prior Court of Appeal decisions that were inconsistent with its bright-line rule. (*Van Beurden*, supra 15 Cal.4th at p. 62 ["we also disapprove *Younesi* to the extent it holds

that appellate courts must 'presume' that any notice of entry of judgment mailed by a clerk of the court was ordered by the court 'pursuant to section 664.5.'"].)

* * *

This confusion serves nobody's interest—but neither will resolving it as the City suggests. For these reasons, the Court should reverse the Court of Appeal's judgment and hold that Officer Meinhardt's notice of appeal was timely taken from a separately entered, final judgment. The Court of Appeal should have reached the merits of his appeal.

Dated: November 7, 2022

Respectfully Submitted,

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CERTIFICATE OF WORD COUNT

I, Michael J. Shipley, counsel for Petitioner and Appellant, hereby certify that the text of this brief contains 6,898 words as counted by the Microsoft Word word-processing program used to generate this Reply Brief on the Merits.

Dated: November 7, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2022, I electronically filed the foregoing document titled **APPELLANTS REPLY BRIEF ON THE MERITS** through the Court's electronic filing system.

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Lower Court Case Number: **D079451**

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