Case No. S274147

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

David Meinhardt,
Petitioner and Appellant,

v.

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 Appellate 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

APPLICATION OF NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, AND PLANNING AND CONSERVATION LEAGUE TO FILE AS *AMICI CURIAE* AND PROPOSED BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONER AND APPELLANT

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*Kimberly E. Leefatt, SBN 325332
Natural Resources Defense Council
1314 Second Street
Santa Monica, CA 90401
Telephone: (310) 434-2357
Email: kleefatt@nrdc.org
Attorney for Natural Resources Defense Council and Sierra Club

Jaclyn H. Prange, SBN 270929
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, CA 94104
Telephone: (415) 875-6100
Email: jprange@nrdc.org
Attorney for Natural Resources Defense Council and Sierra Club

Additional counsel listed on following page

*Douglas P. Carstens, SBN 193439
Chatten-Brown, Carstens & Minteer LLP
2200 Pacific Coast Highway, Suite 318
Hermosa Beach, CA 90254
Phone: (310) 798-2400 x 1
Fax: (310) 798-2402
dpc@cbcearthlaw.com
Attorney for Planning and Conservation League

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APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to rule 8.520(f) of the California Rules of Court, Natural Resources Defense Council, Sierra Club, and Planning and Conservation League respectfully request leave to file the attached *amici curiae* brief in support of Petitioner and Appellant David Meinhardt.

HOW THIS BRIEF WILL ASSIST THE COURT

The Court of Appeal held in this case that a trial court's *order* resolving all issues—and not the separately entered *judgment* that severs jurisdiction—is the "judgment" that triggers the start of the period for filing a notice of appeal. (*Meinhardt v. City of Sunnyvale* (2022) 76 Cal.App.5th 43, 50–51, 70.) In this brief, proposed *amici* will show how this "*Meinhardt* Rule" is both contrary to the law and bad public policy. *Amici* regularly litigate administrative mandamus and traditional mandamus cases involving environmental issues—cases that are also implicated by the *Meinhardt* Rule. Based on that expertise, this brief will explain why there is no doctrinal or logical reason that mandamus cases should be treated differently than other civil cases for this purpose. This brief will then focus on the practical impacts of the *Meinhardt* Rule, which include missed appeal deadlines and the increased likelihood that appellants may be required to file "protective" notices of appeal before having a full understanding of how the court's order will take shape in the judgment and writ. The *Meinhardt* Rule also creates confusion about when and how parties litigate post-judgment

motions, such as motions for a new trial and motions for attorneys' fees. The brief will explain why, for all these reasons, the *Meinhardt* Rule is bad public policy and should be rejected by the Court.

STATEMENT OF INTEREST OF *AMICI CURIAE*

Natural Resources Defense Council (NRDC)

NRDC is a national nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. NRDC has hundreds of thousands of members nationwide, more than 50,000 of whom live in California. Founded in 1970, NRDC helped write some of America's bedrock environmental laws and is working to solve the most pressing environmental issues we face today, including environmental injustice and climate change.

NRDC frequently litigates in California state court, seeking writs of mandamus against government agencies to ensure better protections for the environment and public health. For instance, NRDC has filed writ actions challenging the adequacy of municipal stormwater sewer permits; the failure to timely promulgate drinking water standards for toxic contaminants; the failure to disclose records under the California Public Records Act; and violations of the California Environmental Quality Act (CEQA) for projects ranging from timber harvesting to port and railyard facilities near environmental justice communities. The uncertainty the *Meinhardt* Rule injects into the calculation of appeal times could affect NRDC's litigation in any of these areas. Clarity about the time to appeal in these cases is essential to

NRDC's ability to protect the environment and the Californians who depend upon that environment.

Sierra Club

The Sierra Club is a national nonprofit organization of over 830,000 members, roughly 180,000 of whom live in California. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and encouraging humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club's concerns encompass ensuring that the public and its members are informed about the public health risks associated with exposure to harmful chemicals and that the public, its members, and the environment are adequately protected from such risks. The Sierra Club frequently litigates in California state court, seeking writs of mandamus against government agencies to ensure better protections for the environment and public health under statutes including, but not limited to, CEQA and the Public Records Act.

Planning and Conservation League (PCL)

Since 1965, PCL has supported measures to preserve California's iconic forests, coastlines, mountains, and watersheds and promote open space, habitat, and healthy communities. PCL was instrumental in the drafting and passage of CEQA, which it sees as crucial to prevent air and water pollution that harms public health. PCL also recognizes CEQA as a vital tool, and

often the only tool, that communities have for participating in land-use decisions that affect their environment and health. PCL has been a petitioner in a number of cases over the years and has provided *amicus curiae* briefs to a number of appellate courts on important issues involving CEQA. PCL therefore has a strong interest in ensuring the law related to appeals in CEQA and other writ of mandamus cases is as clear as possible.

CERTIFICATE REGARDING AUTHORSHIP AND FUNDING

Pursuant to rule 8.520(f)(4) of the California Rules of Court, proposed *amici curiae* hereby certify that no party or counsel in the pending case authored the proposed *amici curiae* brief in whole or in part, or made any monetary contribution intended to fund the preparation or submission of the brief.

Dated: December 7, 2022

Respectfully submitted,

/s/ Jaclyn H. Prange
Jaclyn H. Prange
Attorney for Natural Resources Defense Council and Sierra Club

/s/ Kimberly E. Leefatt
Kimberly E. Leefatt
Attorney for Natural Resources Defense Council and Sierra Club

/s/ Douglas P. Carstens
Douglas P. Carstens
Attorney for Planning and Conservation League

BRIEF OF *AMICI CURIAE*

INTRODUCTION

This case presents a simple question: Did Petitioner and Appellant, David Meinhardt (Appellant or Meinhardt), timely file his notice of appeal?[1] The facts are straightforward, and the dates are undisputed. In May 2019, Meinhardt filed a petition for writ of administrative mandamus against the City of Sunnyvale (City) and the Sunnyvale Department of Public Safety. On August 6, 2020, the superior court denied the petition in a written court order. On September 22, Meinhardt served a notice of entry of judgment on all parties. Thereafter, on October 15, Meinhardt filed his notice of appeal from the judgment.

On the face of the docket, Meinhardt's notice of appeal was timely. Rule 8.104(a)(1) of the California Rules of Court[2] gives an appellant 60 days from the service of the notice of entry of judgment to file a notice of appeal. Meinhardt waited only 23 days. Yet, the Court of Appeal dismissed the appeal as untimely, concluding that the 60-day appeal period ran from the August 6, 2020, order. (*Meinhardt v. City of Sunnyvale* (2022) 76 Cal.App.5th 43, 50–51, 70.) Instead of relying on Rule 8.104(a)(1)'s plain language, the Court of Appeal dug deep into California precedent to rationalize beginning the appeal

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[1] *Amici* do not take a position on the merits of the underlying disciplinary action that prompted Meinhardt to file his petition for administrative mandamus. *Amici* have no interest in the underlying dispute whatsoever, and are concerned exclusively with the procedural question before the Court.

[2] Further citations to "Rules" are to the Rules of Court.

period from the court's order instead of the formal docket entry that signals the end of jurisdiction—creating the new "*Meinhardt* Rule" for determining timeliness of appeal. (*Meinhardt*, *supra*, 76 Cal.App.5th at pp. 51, 63.) Notably, the Court of Appeal provided no convincing reason for ignoring the existence of the judgment entered in the case. Nor did it render a decision that was consistent with preserving the right to appeal whenever possible, as this Court has steadfastly maintained courts should do. Instead, the Court of Appeal followed a minority line of cases that misapplied decisions about finality to this question about timeliness. (See *id.* at pp. 69–70.) One of those cases is not even an administrative mandamus case, undercutting the City's argument that this rule has been "well-established" in administrative law for over 20 years. (Responding Br. at pp. 4, 8 14.)

By creating a rule that starts the appeal period from the earliest decisional document resolving all issues, rather than the separately entered judgment, the Court of Appeal's opinion invites future courts to ignore the plain language of the Rules of Court in favor of an interpretive journey. The *Meinhardt* Rule thus creates confusion for practitioners and litigants regarding when an appeal is ripe and when the right to appeal is extinguished. Accordingly, the Court of Appeal's reasoning will further degrade judicial economy in several ways. Litigants, when faced with complicated court orders, will be encouraged to file protective appeals to combat jurisdictional uncertainty. Additionally, the *Meinhardt* Rule will necessarily impact the

timing of other important post-judgment motions, including those for attorneys' fees and for new trials. And finally, contrary to the City's insistence, the *Meinhardt* Rule, if applied as the Court of Appeal describes, implicates a broad swath of cases beyond administrative mandamus and will spread judicial inefficiency beyond special proceedings.

For the following reasons, *amici* respectfully urge this Court to reverse the Court of Appeal's decision and restore certainty for writ practitioners and litigants across the state.

ARGUMENT

I. The Court of Appeal's decision is contrary to the plain language of the relevant statutes

Rule 8.104(a)(1) governs the timeliness of notices of appeal. The rule provides, as relevant here, that an appellant must file a notice of appeal on or before 60 days from service of the "'Notice of Entry' of judgment" by the clerk or a party, or 180 days after the entry of "judgment," whichever occurs first. (Rule 8.104(a)(1)(A)–(C).) However, the Court of Appeal found, and the City now urges, that the "judgment" for purposes of this rule is a court's order resolving all issues rather than the separately entered judgment parties have long viewed as starting the appeal period. (See *Meinhardt*, *supra*, 76 Cal.App.5th at p. 63; Responding Br. at pp. 8, 12.)

On its face, Rule 8.104(a)(1) suggests that the "'Notice of Entry' of judgment" or "entry of judgment" is separate from the court's opinion. True, the Rules of Court define a "judgment" somewhat unhelpfully as "any judgment or order that may be

appealed" (Rule 8.10(4)), but that merely refers this definitional question to the applicable statutes. And those statutes, like Rule 8.104 itself, presume a separately entered judgment. The Code of Civil Procedure section that governs special proceedings, including mandamus cases, states that the "judgment in a special proceeding is the *final* determination of the rights of the parties therein." (Code Civ. Proc., § 1064, italics added.) Likewise, section 1094.5, which specifically applies to administrative mandamus cases, states that "[w]here the judgment commands that the order or decision be set aside, it may order the reconsideration" of the issues under review "in light of the court's opinion *and* judgment . . . ." (*Id.* § 1094.5, subd. (f), italics added.) This further indicates that a separately entered judgment (and writ, discussed *infra*) serves specific purposes distinct from the court's opinion.

Code of Civil Procedure section 904.1 further bolsters the procedural significance of the separately entered judgment. That section states that a party may generally take an appeal from "a judgment," with certain exceptions for interlocutory judgments not relevant here. (Code Civ. Proc., § 904.1, subd. (a)(1).) By contrast, that section calls out specific exceptions to this general rule for "orders" that are also appealable, such as "an order made after a judgment," an order for a new trial, and an order granting an injunction. (See *id.* § 904.1, subd. (a).)

Taken together these sections make clear that a separately entered judgment is a necessary procedural step ushering the civil process forward by declaring the final rights of the parties (see Code Civ. Proc., § 1064) and triggering the right to appeal

(see *id.*. § 904.1, subd. (a)(1)). The City's arguments do "violence" to these provisions (see *Alan v. American Honda Motor Co.* (2007) 40 Cal.4th 894, 901, citations omitted) by rendering their references to "orders" and "judgments" meaningless. (See *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 270 ["Statutes are to be construed to give meaningful effect to all of their provisions, and to avoid rendering any language superfluous."].) Accordingly, this Court should clarify that these legislative directives require, absent exceptions not applicable here, a separately entered "judgment" to trigger the period to appeal.

II. The Court of Appeal incorrectly applied *Dhillon*

Despite the plain language of the Rules of Court and Code of Civil Procedure, the Court of Appeal nonetheless found that the trial court's order, not its judgment, triggered the time within which to file a notice of appeal. (See *Meinhardt*, *supra*, 76 Cal.App.5th at p. 63.) In so doing, the Court of Appeal heavily relied on this Court's reasoning in *Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, as a basis for ignoring the judgment, insisting that it is "not the form of the decree but the substance and effect of the adjudication which is determinative." (*Meinhardt*, *supra*, 76 Cal.App.5th at p. 63, quoting *Dhillon*, *supra*, 2 Cal.5th at p. 1115.) The Court of Appeal's reliance on *Dhillon* is misplaced because *Dhillon* (1) did not answer the question that this Court seeks to answer, and (2) never intended to create the broad policy change this Court of Appeal has announced.

Dhillon involved a petition for a writ of administrative mandamus challenging disciplinary actions imposed without a hearing. (*Dhillon*, *supra*, 2 Cal.5th at pp. 1112–1113.) Petitioner sought a writ ordering respondent to conduct the hearing to which he believed he was entitled. (*Id.* at p. 1113) The trial court granted the petition in part, and subsequently issued a peremptory writ, directing respondent to conduct the hearing and *remanding* for further proceedings before the proper administrative body. (*Ibid.*) Respondent appealed. The Court of Appeal dismissed the appeal because the order did not explicitly resolve the underlying merits of the disciplinary action in question. (*Ibid.*) This Court reversed, determining that the writ ordering remand was sufficiently final to allow the appeal to proceed. (*Id.* at pp. 1115–1117 [analyzing the administrative mandamus statute requirements for a writ].)

Dhillon did not involve timeliness of an appeal, which is the question before the Court today. It narrowly settled a divide among California courts "over whether . . . a trial court's order *that does not grant substantive relief*, but instead *remands* the cause for further proceedings" is sufficiently final as to trigger the right to appeal. (*Dhillon*, *supra*, 2 Cal.5th at p. 1114, italics added.) Therefore, when this Court analyzed the "effect" of the order in *Dhillon*, it was merely dismissing arguments that "remand" was not specifically enumerated as a remedy in the mandamus statute. (See *id.* at pp. 1115–1117.) For the Court of Appeal to glean a rule regarding which document takes precedent over another from *Dhillon* is an improper extrapolation of an

otherwise narrow decision. (See *id.* at 1116, citing *Sullivan v. Finkelstein* (1990) 496 U.S. 617, 623 [explaining that the court was not undertaking to answer "the broad question whether remands to administrative agencies are *always* immediately appealable" (italics added)].)

Contrary to the City's insistence, *Dhillon* did not settle whether a trial court's order resolving all issues or a separately entered judgment triggers the appeal period under Rule 8.104(a). To be sure, the opinion states that the "question before us is therefore whether the trial court's order in this case was a final judgment." (*Dhillon*, *supra*, 2 Cal.5th at p. 1115.) But that language should be read in the context of the rest of the case, in which the issue of timeliness and the definition of a "judgment" for the purposes of Rule 8.104 simply were not at issue. Indeed, the Court also recognized that, "[i]n general, an adverse ruling in a judicial proceeding is appealable once the trial court renders a final judgment. This general rule applies equally in administrative mandamus proceedings." (*Ibid.*, citations omitted.) That is consistent with this Court's other pronouncements on this issue.

Further, as Meinhardt explains, exceptions regarding the appealability of a court order have largely been applied to preserve the right to appeal, not to extinguish it. (Opening Br. at pp. 10–12.) In cases where the finality test has been applied, it was used as an equitable tool to mark the end of jurisdiction to *allow* an appeal to proceed. As those cases demonstrate, the final judgment is necessary for signaling the formal end of jurisdiction,

but in its absence, the substance of the court order is analyzed instead. Even in *Griset v. Fair Political Practices Commission* (2001) 25 Cal.4th 668, which the City purports is consistent with the Court of Appeal's decision (see Responding Br. at pp. 28–29; cf. *Meinhardt*, 76 Cal.App.5th at pp. 66–67), the finality test was applied because the court failed to enter the "judgment." (*Griset*, *supra*, 25 Cal.4th at p. 700.) In applying the finality test, the court treated the notice of appeal from an order as a "*premature* but valid appeal from the judgment." (*Ibid.*, italics added.)

Here, the Court of Appeal's decision misses the mark because it applied the finality test where it was not needed and with inequitable results. The Court of Appeal primarily relied on *Laraway v. Pasadena Unified School District* (2002) 98 Cal.App.4th 579 and *City of Calexico v. Bergeson* (2021) 64 Cal.App.5th 180, in formulating the *Meinhardt* Rule. In both cases, the courts refused to consider properly noticed entries of judgment and applied the finality test with the inequitable result of dismissing several appeals. (See *Laraway*, *supra*, 98 Cal.App.4th at p. 581 [dismissing cross appeals]; *City of Calexico*, 64 Cal.App.5th at pp. 182–183 [relying on *Laraway*].)[3]

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[3] *Laraway* purported to rely on *Davis v. Taliaferro* (1963) 218 Cal.App.2d 120 and *Townsel v. San Diego Metropolitan Transit Development Board* (1998) 65 Cal.App.4th 940, yet those cases addressed different circumstances. Specifically, in both cases, the courts had to determine whether the court orders issuing the decisions could be treated as "judgments" because the formal judgments were never issued. (See *Davis*, *supra*, 218 Cal.App.2d at pp. 122–123; *Townsel*, *supra*, 65 Cal.App.4th at p. 944, fn. 1.)

Alan, *supra*, 40 Cal.4th. 894, is more instructive on the issue in this appeal, as the court there dealt specifically with timeliness. In that case, the Court of Appeal had several court documents before it and had to determine which one properly signaled that the appeal period had begun. (See *id*. at pp. 903–905 [stating that "[n]o document entitled 'Notice of Entry' exist[ed]"].) This Court pointed out that "the rule does not require litigants . . . to guess, at their peril" what combination of documents sets off the appeal period, and "[n]either parties nor appellate courts should be required to speculate about jurisdictional time limits." (*Id*. at p. 905, citations omitted.) With this reasoning as a guidepost, the Court underscored the need to interpret the Rules of Court to preserve litigants' right to appeal when possible, and ultimately reversed the Court of Appeal's failure to do so. (See *id*. at p. 901 [stating that "[c]ertainly the desire to cut off a litigant's right to appeal cannot justify creating an exception to the general rule" and reiterating that California has recognized a "'well-established policy, based upon the remedial character of the right of appeal, of according that right in doubtful cases . . . ." (citation omitted)].)

The *Meinhardt* Rule was established by misconstruing this Court's precedent in *Dhillon* and by relying on cases that similarly turned a blind eye toward this Court's policy of preserving the right to appeal whenever possible.

III. This Court should not adopt a minority rule that treats administrative mandamus cases differently without any logical reason

Not only is the *Meinhardt* Rule contrary to the plain language of the relevant statutes and this Court's precedent, it rests on the unsupported premise that administrative mandamus cases should be—and long have been—treated differently than other civil cases in this respect.

The City first argues that the *Meinhardt* Rule is "well-established" and has been the law of land in *administrative* mandamus cases "for at least twenty years," primarily relying on *Laraway*, a 2002 case that dismissed an appeal as untimely under the same logic as the *Meinhardt* Rule. (Responding Br. at pp. 12–14, 33.) But the City's argument makes no sense because *Laraway* is not an administrative mandamus case. Rather, *Laraway* is a Public Records Act case (98 Cal.App.4th at p. 581 & fn. 2), and under that law, a person who has been denied access to records can file a complaint for "injunctive or declaratory relief" or a traditional "writ of mandate" under Code of Civil Procedure section 1085.[4] (Gov. Code, § 6258; see also Asimow, *et al.*, *Cal. Practice Guide: Administrative Law* (The Rutter Group 2022 online ed.) ¶ 29:1002 [clarifying that the "writ of mandate" referenced in the statute is a traditional writ under Code of Civil Procedure section 1085].) While the exact form of the action in

[4] California law recognizes two types of mandamus proceedings against public agencies: "traditional" (also called "ordinary") under Code of Civil Procedure section 1085 and "administrative" under Code of Civil Procedure section 1094.5. (*Bunnett v. Regents of Univ. of Cal.* (1995) 35 Cal.App.4th 843, 848.)

Laraway is not clear from the opinion, it *is* clear that the petitioner did not seek a writ of *administrative* mandamus under Code of Civil Procedure section 1094.5. (98 Cal.App.4th at p. 581 & fn. 2; cf. *Cal. Practice Guide: Administrative Law*, *supra*, ¶ 29:1075 ["There will have been no hearing before the agency and no administrative record of the [Public Records Act] determination being challenged."].)

So, if it were true that *Laraway* established a rule that has applied for decades, that rule would *not* have been limited to administrative mandamus cases. It would have applied, at the very least, to all mandamus cases, both traditional and administrative, and possibly to all civil cases. However, courts after *Laraway* never applied this reasoning to dismiss appeals in general civil cases, for which even the City does not dispute that separately entered judgments are necessary to trigger the appeal period (see Responding Br. at pp. 22–23), or even to all mandamus cases. Indeed, *no* published decision applied the reasoning in *Laraway* to dismiss an appeal as untimely until 2021, when the *City of Calexico* court cited it to dismiss a cross-appeal in an administrative mandamus case. (*City of Calexico*, *supra*, 64 Cal.App.5th at pp. 183, 186, 190–192; Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* (Cont.Ed.Bar 2022 online ed.) ¶ 23.141 [noting the *Laraway* case as an outlier].) But as in *Laraway*, the court in *City of Calexico* did not explain whether its rule was limited to certain types of mandamus cases. (See *City of Calexico*, *supra*, 64 Cal.App.5th at p. 195–196). Considering the *Meinhardt* court's silence regarding

the reach of its decision, the *Meinhardt* Rule could apply equally to all civil cases (general and mandamus), contrary to the City's denial.

Accordingly, in light of the City's explanation and court precedent, it is unclear how broadly the *Meinhardt* Rule strikes. Does it apply just to administrative mandamus cases? To traditional mandamus cases as well? To all special proceedings?[5] To all civil cases? The City does not say, and in fact, muddles the point on multiple occasions. (See Responding Br. at p. 19 [referring alternatively to "writ of mandate" and "writ of administrative mandate"]; *id.* at p. 23 [referring to "special proceedings"]; *id.* at p. 33 [stating incorrectly that "the rule from *Laraway*" applies "by its own terms to trial court decisions on administrative mandate petitions"].) Nor does the City explain whether the *Meinhardt* Rule would apply in administrative mandamus cases even when those cases are resolved by demurrers, summary judgment, other motions, or statements of decision, even though there appears to be no dispute that in other types of civil cases, a separately entered judgment is necessary in those instances. (See *id.* at pp. 22–23.)

This confusion only serves to highlight the key point here: there is no reason for this Court to apply a different rule for determining the beginning of an appeal period for administrative mandamus cases than it applies to other civil cases. The reality is that, at least as relevant here, administrative mandamus cases

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[5] For example, other special proceedings include writs of prohibition, eminent domain, enforcement of liens, and arbitration. (See generally Code Civ. Proc., §§ 1063–1822.60.)

are no different than other types of civil cases. The requirement of having a separately entered judgment to start the period within which to appeal (absent any exceptions) serves the same purpose in administrative mandamus cases as it does in any other civil case—clarity and consistency. (See Opening Br. at pp. 19–25; Reply Br. at pp. 19–24.)

In short, there is no "well-established" rule that the time to appeal in administrative mandamus cases runs from an order deciding all claims rather than from the separately issued judgment. (Contra Responding Br. at pp. 12–14.) The City fails to explain why this Court should now adopt a rule that could potentially extinguish a litigant's right to appeal, and treats administrative mandamus cases differently than other types of civil cases for these purposes.

IV. The *Meinhardt* Rule is bad public policy because it creates confusion among litigants and wastes judicial resources

As organizations that regularly litigate administrative mandamus cases, *amici* disagree strongly with the City's contention that the *Meinhardt* Rule is good public policy and will not create mass confusion. (See Responding Br. at pp. 30–35.) The City argues that "chaos has clearly *not* ensued" since the 2002 *Laraway* decision (*id*. at p. 33), but that is merely because the vast majority of writ practitioners have been unaware of any such "rule" in mandamus cases—precisely because there *was* no such rule. (See discussion, *supra*, section III.) Rather, as explained below, the Court of Appeal's 2022 decision in *this* case

has led to confusion, and there will continue to be confusion unless this Court reverses the decision.

A. The *Meinhardt* Rule will cause many litigants to misunderstand and miss their appeal deadlines

First, and most important, potential appellants—including public-interest and environmental groups similar to *amici*—will almost certainly miss the deadline to appeal under the *Meinhardt* Rule in at least some cases. To be sure, a Supreme Court opinion reiterating the rule would reduce the likelihood of that happening often. But given the plain language of Rule 8.104(a)(1) referring to the "judgment"—and the different principle that would apparently still apply in other civil cases (not to mention federal cases)—it would be easy for litigants to miss the deadline to appeal on the paradoxically mistaken belief that the Rule 8.104(a)(1) "judgment" means an actual "judgment" in some situations but could mean "order" in others. That could have serious consequences for public interest advocacy organizations throughout the state, as well as all Californians who rely on those organizations to vindicate important environmental, public health, social, and civil rights. It is critical to have a bright-line rule when something as important as a party's ability to meet a jurisdictional deadline is at stake.

B. The *Meinhardt* Rule will clutter the court dockets and ignores a key function of writ practice—drafting the remedy

Even if lack of awareness about the rule were not an issue, the *Meinhardt* Rule still causes problems for litigants and the

courts. One issue is that appellants—wary of losing their right to appeal—will file premature notices of appeal when in doubt about whether a particular court order triggers the deadline to appeal. (See *Alan*, *supra*, 40 Cal.4th at p. 905 [stating that litigants should not need to "to guess, at their peril" what "trigger[s] the duty to file a notice of appeal"].) The City assumes it will be simple to determine whether an order "disposes" of all the issues between the parties, but that determination is often far from simple. (See, e.g., *Cal. Practice Guide: Administrative Law*, *supra*, ¶¶ 21:22, 21:22.1 [citing the Court of Appeal's decision below and emphasizing that the "appealability of orders adjudicating writs of mandate can present difficult problems, even for experienced writ practitioners"].) The *Meinhardt* Rule will undoubtedly increase the number of premature notices of appeal that appellants will file to ensure their right to appeal is protected—appeals that will further clutter the Court of Appeal's busy docket. (See Opening Br. at pp. 25–26 [collecting cases expressing frustrations at the substantial number of attempts to appeal from non-appealable orders].)

Further, the *Meinhardt* Rule will force some parties to decide whether to appeal without having first seen the writ effectuating the court's order, and thus without critical information about the final result in the case. The handful of cases that support the *Meinhardt* Rule refer to judgments that are "simply a repetition of" or a "relabeling of" the trial court's earlier order. (See, e.g., *Laraway*, *supra*, 98 Cal.App.4th at p. 583.) But more often, the entry of a judgment and writ in

mandamus cases is not a perfunctory chore, as the City assumes. Rather, the judgment and writ in these cases often contain important details about what the agency will and will not be required to do to comply with the court's order. (See Abbott *et al.*, *Cal. Administrative Mandamus* (Cont.Ed.Bar 2022 online ed.) ¶ 14.42 [stating that the judgment in administrative mandamus cases will also explain whether the petition for writ of mandate is granted, and if so, specify the terms of that writ].) The writ, which is issued concurrently with the judgment or shortly thereafter (*id.* ¶ 14.43), can be quite detailed, for example, as in CEQA cases. (See Pub. Resources Code, § 21168.9, subd. (a) [stating that a CEQA writ of mandate may (1) void, in whole or in part, the agency's decision, (2) suspend any or all project activities if certain conditions exist, and/or (3) order the agency to take specific action necessary to achieve compliance with CEQA].)[6]

In *amici's* experience, the process of drafting and entering the judgment and writ in administrative mandamus cases can take some time, precisely because the content of the documents is so important. After the trial court issues its decision on the merits, it will often direct the prevailing party to draft a proposed

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[6] The City may argue that in these cases, it will be clear that the order does not dispose of all the issues in the case and thus does not start the appeal clock running. Yet it is often not obvious at the time the court issues its order whether the forthcoming judgment and writ will be short documents summarizing the order or whether there will be materially new details in those documents. Many times, the order appears to be conclusive, but disputes about the judgment and writ arise once all parties see the proposed versions.

judgment and a proposed writ (if the writ is granted), and then give the opposing party 15 days to respond. (*Cal. Practice Guide: Administrative Law*, *supra*, ¶¶ 20:300, 20:375.) Some courts will invite additional briefing, and even hold hearings. (See, e.g., *Baxter v. State Teachers' Retirement System* (2017) 18 Cal.App.5th 340, 377 [reviewing briefing and holding hearing on proposed judgment]; *Concerned Citizens of La Habra v. City of La Habra* (2005) 131 Cal.App.4th 329, 333 [same].) The upshot is that in many cases, the judgment and—more importantly—the writ that accompanies the judgment will not have been finalized before the deadline to appeal runs under the *Meinhardt* Rule. Potential appellants in that situation will be forced to decide whether to appeal without crucial details about how the agency may be commanded to act. And because many decisions in administrative mandamus cases are split (i.e., partially granting the petition and partially denying it), both the petitioner and the respondent agency could be in the position of wanting to know more information before deciding whether to appeal.

Faced with these uncertainties, potential appellants will almost certainly decide to file a notice of appeal within the deadline set by the *Meinhardt* Rule rather than wait to see how the judgment and writ shake out. This will clutter appellate court dockets with appeals that may not prove necessary if the complaining party is ultimately satisfied—or at least can live with—the final writ, or, on the other hand, with multiple appeals if a party feels it must file a second notice of appeal to capture deficiencies in the writ. The *Meinhardt* Rule consequently cuts off

proceedings in the trial court in a way that harms litigants and burdens the Court of Appeal.

C. The *Meinhardt* Rule will necessarily impact the timing of other post-judgment actions

Uncertainty as to when the appeal period begins could have ripple effects for other motions that are litigated after the court's decision on the merits. For instance, a successful party that seeks attorneys' fees and costs pursuant to Rule 3.1702(b)(1), must file such a motion within the time for filing a notice of appeal under Rule 8.104. Parties that miscalculate the appeal period under Rule 8.104 because they are unaware of the *Meinhardt* Rule may find themselves out of time to recover fees and costs. And even if parties are aware of the *Meinhardt* Rule when filing a motion for attorneys' fees and thus file a timely motion, they will often need to file that motion long before the judgment and writ are entered, and therefore may either be forced to file a *second* motion for fees or else forgo fees for any time later spent litigating over the judgment and writ.

Likewise, under Code of Civil Procedure section 659, subdivision (a), a notice of intent to move for a new trial may be filed either after a decision is rendered but before entry of judgment, or within a certain timeframe after entry of judgment.[7]

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[7] A motion for a new trial under Code of Civil Procedure sections 656 through 662 is available in writ of mandamus proceedings. (See Code of Civ. Proc., § 1110; *Ryan v. Cal. Interscholastic Federation* (2001) 94 Cal.App.4th 1033, 1039, 1041–1042 [discussing new trial motion after petition for writ of administrative mandamus granted].)

In other words, the deadline to file a motion for a new trial depends on what constitutes the "judgment." To the extent the *Meinhardt* Rule applies, unsuccessful parties may find themselves not only too late to appeal but also too late to move for a new trial. Further, an unsuccessful motion for new trial will never shorten the time for filing a notice of appeal and will usually extend it. (See Rule 8.108(b).) But to extend the deadline, the new trial motion must be "valid" (*ibid.*), which is dependent on timeliness that the *Meinhardt* Rule obfuscates.

All of these serious problems are further compounded by the fact that it is unclear whether the City's proposed rule is limited to administrative mandamus cases. On its face, the City's argument also applies to writs of traditional mandamus under Code of Civil Procedure section 1085, which encompasses an even larger swath of *amici's* practice in California, including Public Records Act cases. (See discussion, *supra*, at section III.) And nothing in the City's or the Court of Appeal's reasoning would necessarily prevent the rule from being extended to *all* civil cases. (See discussion, *supra*, at section III.) The implications of applying the *Meinhardt* Rule to all civil litigants across California are hard to overstate.

D. The City overstates the extent of court delays

On the flip side, the only policy argument the City makes in support of its proposed rule is that requiring a separately entered judgment to start the appeal period could lead to delays if the trial court neglects to enter judgment in a timely manner. (Responding Br. at pp. 17–18.) To be sure, trial courts can

sometimes be dilatory in entering judgment, but as Meinhardt points out, there are incentives for parties to prompt the court in that instance, as well as procedural mechanisms to do so. (Reply Br. at p. 20; see also *Laraway*, 98 Cal.App.4th at p. 581 [noting the parties "*caused* the trial court to enter a judgment" (italics added) and providing no explanation for ignoring the properly noticed entry of judgment from which both parties appealed].) In *amici's* experience, a simple call to the clerk or the filing of a short request can prompt the trial court to enter judgment, if necessary. But it is also the case that such steps are often not necessary, simply because of how administrative mandamus practice works. (See discussion, *supra*, at section IV(B) [describing the procedure for the prevailing party to draft the proposed judgment and, if applicable, proposed writ].)

Indeed, the City cites no evidence for its suggestion that trial courts *routinely* fail to enter judgments at the conclusion of administrative mandamus cases, such that delay would be a major concern outweighing the confusion the *Meinhardt* Rule would create. For example, the delays in entering judgment in *Laraway*, *City of Calexico*, and this case were of five months, two months, and roughly a month and a half, respectively. (*Laraway*, *supra*, 98 Cal.App.4th at pp. 581–582; *City of Calexico*, *supra*, 64 Cal.App.5th at pp. 185–186; Opening Br. at p. 2.) While Meinhardt characterizes those delays as "regrettable" (Reply Br. at p.7), they are well within the typical delays that parties face in all types of litigation due to busy court dockets. And in fact, some delay is necessary in administrative mandate cases to

accommodate the procedures for drafting and objecting to the proposed judgment and writ. (See discussion, *supra*, at section IV(B).) There is no evidence that these delays in entering judgment in administrative mandamus cases are materially different from either (1) general litigation delays in other stages of mandamus cases, or (2) delays in entering judgment in other types of civil cases. The City's only policy justification thus falls flat.

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In sum, this Court should reverse the Court of Appeal and ensure that the *Meinhardt* Rule and its threatening confusion is put to rest forever. For all the reasons explained above, the interests of litigants and the courts overwhelmingly favor a bright-line rule that the time to appeal runs from a separately entered judgment in administrative mandamus cases, just as it does in all other civil cases.

CONCLUSION

For the foregoing reasons, the Court should reverse the Court of Appeal's decision.

Dated: December 7, 2022

Respectfully submitted,

/s/ Kimberly E. Leefatt
Kimberly E. Leefatt
Jaclyn H. Prange
Attorneys for Natural Resources Defense Council and Sierra Club

/s/ Douglas P. Carstens
Douglas P. Carstens
Attorney for Planning and Conservation League

CERTIFICATE OF WORD COUNT

The undersigned counsel hereby certifies pursuant to Rule 8.520(c) of the California Rules of Court that the enclosed brief contains 5,475 words, fewer than the total allowed by the rules.

Dated: December 7, 2022

Respectfully submitted,

/s/ Kimberly E. Leefatt

Kimberly E. Leefatt

CERTIFICATE OF SERVICE

Meinhardt v. City of Sunnyvale
Supreme Court Case No. S274147; Court of Appeal Case No. D079451

I, Kimberly E. Leefatt, declare:

I am 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 1314 Second Street, Santa Monica, CA 90401 and my email address is kleefatt@nrdc.org.

On December 7, 2022, I caused true copies of the foregoing **Application of Natural Resources Defense Council, Sierra Club, and Planning and Conservation League to File as *Amici Curiae* and Proposed Brief of *Amici Curiae* in Support of Petitioner and Appellant** to be served on each of the persons named below at the addresses shown, in the manner described below:

Gregg McLean Messing Adam & Jasmine LLP 235 Montgomery Street Suite 828 San Francisco, CA 94104 gregg@majlabor.com	*Attorney for Petitioner and Appellant David Meinhardt*
Michael John Shipley Nathaniel Haas Kirkland & Ellis LLP 555 South Flower Street Suite 3700 Los Angeles, CA 90071 mshipley@kirkland.com nathaniel.haas@kirkland.com	*Attorneys for Petitioner and Appellant David Meinhardt*
David Arthur Urban Liebert Cassidy Whitmore 401 West A Street Suite 1675 San Diego, CA 92101	*Attorney for Respondent City of Sunnyvale*

durban@lcwlegal.com

Suzanne Solomon
Liebert Cassidy Whitmore
135 Main Street
Floor 7
San Francisco, CA 94105
ssolomon@lcwlegal.com

Attorney for Respondent
City of Sunnyvale

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Executed on December 7, 2022, at Los Angeles, California.

/s/ Kimberly E. Leefatt
Kimberly E. Leefatt

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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Sabrina Venskus Venskus & Associates, A.P.C. 219153	rkimball@lawsv.com	e-Serve	12/7/2022 4:40:27 PM
Pro Per Attorney Nationwide Legal, LLC 300155	sfcourt@nationwideasap.com	e-Serve	12/7/2022 4:40:27 PM
Kelly Perigoe KING & SPALDING LLP 268872	kperigoe@kslaw.com	e-Serve	12/7/2022 4:40:27 PM
Janet Walker Kirkland and Ellis LLP	jwalker@kirkland.com	e-Serve	12/7/2022 4:40:27 PM
Suzanne Solomon Liebert Cassidy Whitmore 169005	ssolomon@lcwlegal.com	e-Serve	12/7/2022 4:40:27 PM
Michael Shipley Kirkland & Ellis LLP 233674	mshipley@kirkland.com	e-Serve	12/7/2022 4:40:27 PM
Beverly T. Prater Liebert Cassidy Whitmore	bprater@lcwlegal.com	e-Serve	12/7/2022 4:40:27 PM
Julia Forgie NRDC	jforgie@nrdc.org	e-Serve	12/7/2022 4:40:27 PM

304701			
David Urban Liebert Cassidy Whitmore 159633	durban@lcwlegal.com	e-Serve	12/7/2022 4:40:27 PM
Kimberly Leefatt 325335	kleefatt@nrdc.org	e-Serve	12/7/2022 4:40:27 PM

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Date

/s/Kimberly Leefatt

Signature

Leefatt, Kimberly (325335)

Last Name, First Name (PNum)

Natural Resources Defense Council

Law Firm