S274147

Case No. S_____

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 for the 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

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

California Cases

Other Cases

Statutes

Rules

Other Authorities

PETITION FOR REVIEW

David Meinhardt is a public safety officer challenging a disciplinary decision by his department in administrative mandate proceedings. The trial court found against him. It subsequently entered a judgment that Officer Meinhardt "shall take nothing by this action." Officer Meinhardt filed a notice of appeal 30 days later. But the Court of Appeal found, after supplemental briefing, that the *real* final judgment was the trial court's order denying the writ petition, because the order was sufficiently final that it resolved the case, even without the entry of a formal judgment. Because the notice of appeal was taken more than 60 days after the service of that order, the Court of Appeal found that the appeal was untimely under rule 8.104(a)(1) of the Rules of Court. And the judgment the trial court entered? To the Court of Appeal, it was just a meaningless restatement of the prior order.

The Court of Appeal's ruling directly conflicts with a prior Court of Appeal decision that squarely holds that the time to appeal the denial of a petition for administrative mandate that concludes with the entry of a formal judgment is measured from the judgment, not a prior order denying the petition. (See *Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 368 n.2.) It is also logically irreconcilable with several other decisions of the Court of Appeal. And it conflicts with the rationale of this Court's decision in *Alan v. American Honda Motor Co.* (2007) 40 Cal.4th 894, 901 (*Alan*), which held that regardless of how final-seeming an order is, if a formal judgment is subsequently entered, an appeal is taken from the judgment, not the order.

But the Court of Appeal's decision is also bad policy. There is no good reason to invent a special jurisdictional rule for administrative mandate cases. Indeed, the rules about judgment should be uniform and clear. Trial courts should be encouraged to complete litigation with formal, separately entered judgments. That provides certainty to the litigants and provides bright-line jurisdictional deadlines for postjudgment motions and appeals. Under the logic of the court's ruling, the parties can no longer take the trial court at its word that it is entering a final judgment. Instead, they will need to remain vigilant to avoid some prior order being found to be sufficiently final as to start the appellate clock running. Ultimately the rule serves no salutary purpose, and indeed, it will likely encourage risk-averse lawyers to file unripe appeals and multiple postjudgment motions.

The right to appellate review must kept free of arbitrary distinctions that impede open and equal access to the Courts. Rules about appellate jurisdiction, in particular, should be uniform, clear, and construed for the benefit of deciding cases on the merits. The decision of the Court of Appeal in this case runs against these principles. The Court should grant review to secure uniformity of decision on an important question of appellate jurisdiction.

ISSUE PRESENTED FOR REVIEW

In *Alan*, this Court explained that when a superior court enters a statement of decision that constitutes its "final decision on the merits" of an action, but follows its order with a separate formal judgment, the relevant document for computing the time to appeal under Rule 8.104(a)(1) of the Rules of Court is the judgment, not the order. The Court has applied the same rule to other

types of orders that fully dispose of the merits of a case—the formal judgment, not the order, starts the clock to appeal. (*See, e.g.*, *Molien v. Kaiser Found. Hosps.* (1980) 27 Cal.3d 916, 920-21 (*Molien*) [demurrer]; *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 307 fn.10 (1997) (*Sullivan*) [summary judgment].) As the Court explained in *Alan*, "the desire to cut off a litigant's right to appeal cannot justify creating an exception to the general rule." (*Alan*, *supra*, 40 Cal.4th at p. 901.) Did the Court of Appeal in this case err by holding that a contrary rule applies to an order denying a petition for writ of administrative mandate when a judgment had been subsequently entered?

THE IMPORTANCE OF THE ISSUE

"Neither parties nor appellate courts should be required to speculate about jurisdictional time limits." (*Van Beurden Ins. Servs., Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 64 (*Van Buerden*).) For that reason, "[i]t is of great importance in litigation to know precisely what the judgment is and when it was entered." (11 Charles Wright, *et al, Federal Practice & Procedure* (2021 online ed.) § 2781, footnote omitted.) Because the Court of Appeal's ruling confounds these principles, this Court should grant review.

STATEMENT OF THE CASE

I.
Officer Meinhardt Unsuccessfully Challenges a Disciplinary Decision in a Petition for Administrative Mandate, and Appeals.

David Meinhardt was and is an officer in the Sunnyvale Department of Public Safety. (See AA000008.) Acting as a union official, he criticized decisions by the department Director, for which he was rewarded with a disciplinary suspension without pay. (AA000010-12.) He unsuccessfully challenged the suspension with the City of Sunnyvale's Personnel Board. (AA000011-12.)

On May 3, 2019, Officer Meinhardt filed a petition for administrative mandate. (AA000007.) The petition alleged that the suspension was retaliatory and in violation of his constitutional and statutory rights to free speech. (*Ibid*.) The superior court denied Officer Meinhardt's petition in a signed, file-stamped order on August 6, 2020, which the clerk served on both parties via mail the same day. (AA000111.) The Department served notice of entry of the order on August 14, 2020. (AA000117.)

On September 4, 2020, the parties jointly submitted a proposed final judgment, which the superior court signed on September 17, 2020. (AA00134.) Officer Meinhardt served a notice of entry of the judgment on September 22, 2020. (AA00131.) The superior court entered the judgment on its docket on September 25, 2020. (AA000144; see also AA000167 [register of actions].[1]) On October

[1] It may seem anomalous that Officer Meinhardt gave notice of entry of the judgment before it was entered on the docket. The explanation, however, is mundane. After the judgment was signed, but before it was filed, the superior court clerk provided Officer Meinhardt's trial counsel with a copy. Counsel promptly filed and served a Notice of Entry.

15, 2020—30 days after the entry of the judgment and 33 days after service of notice of entry—Officer Meinhardt filed a notice of appeal. (AA000155.)

II.
The Court of Appeal Dismisses Officer Meinhardt's Appeal as Untimely.

After the appeal was fully briefed, this Court ordered the appeal transferred from the Court of Appeal's Sixth District to the Fourth District, Division One. On October 28, 2021, the Court of Appeal requested supplemental briefing on the timeliness of the appeal, particularly in light of its recent decision in *City of Calexico v. Bergeson* (2021) 64 Cal.App.5th 180 (*City of Calexico*). After oral argument, the Court of Appeal dismissed the appeal as untimely in a published decision. (Slip Op. at p. 33.)

Relying primarily on *City of Calexico*, *supra*, 64 Cal.App.5th at p. 190, *Laraway v. Pasadena Unified School Dist.* (2002) 98 Cal.App.4th 579, 583 (*Laraway*), and this Court's decision in *Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, 1113 (*Dhillon*), the Court of Appeal held that an order denying a petition for writ of administrative mandate is itself a "final determination of the rights of the parties" and thus constituted a "judgment" under Code of Civil Procedure section 1064. (Slip op. at pp. 10-24.[2]) In reaching its result, the Court recognized a split of authority among the Courts of Appeal.

[2] A copy of the Court of Appeal's opinion is attached as Exhibit A. (Rules of Court, rule 8.504(b)(4).)

In *Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362 (*Protect Our Water*), a coalition of environmentalists filed a petition for writ of mandate challenging Merced County's approval of a mining project near the Merced River. (*Id.* at pp. 364-65.) The superior court denied the petition and the coalition appealed. (*Ibid.*) During briefing, the county separately moved to dismiss the appeal as untimely because the coalition filed its notice of appeal "more than 60 days after service of the order denying the writ of mandate." (*Id.* at p. 368 n.2.) The Court of Appeal disposed of the motion in a footnote (as many panels do) in a published opinion on the merits. (*Ibid.*) The Court denied the motion and concluded the coalition's appeal was timely because it "was filed within 60 days after entry of the judgment, and the judgment is appealable." (*Ibid.*)

The Court of Appeal here "respectfully decline[d] to follow" *Protect Our Water*. The court concluded that *Protect Our Water*'s reasoning was "cursory," located in a footnote, and did not account for *Laraway*. (Slip op. at pp. 28-29.) The Court of Appeal also recognized but tried to distinguish several other cases whose holdings were in tension with its ruling. (*Id.* at 29-30, discussing *MCM Constr., Inc. v. City and Cnty. of S.F.* (1998) 66 Cal.App.4th 359, 367, fn. 3 (*MCM*); *Catalina Inv., Inc. v. Jones* (2002) 98 Cal.App.4th 1, 5, fn. 3 (*Catalina*); and *Hadley v. Superior Court* (1972) 29 Cal.App.3d 389 (*Hadley*).)

The Court of Appeal reasoned that the signed August 6 Order was *itself* an appealable final judgment, which started the

clock under the Rules of Court, rule 8.104(a)(1)(B) to notice an appeal. (Slip op. at pp. 3, 22-23.) The judgment that was entered by the trial court "merely restated the prior judgment." (*Id*. at 4.) That being the case, Officer Meinhardt's notice of appeal was nine days too late. (*Id.* at pp. 33-34 & fn.26.) The appeal was dismissed. (*Ibid*.)

REASONS FOR GRANTING REVIEW

I.
The Court Should Grant Review to Ensure Uniform Jurisdictional Rules Apply to Appeals from Special Proceedings.

There is a significant statewide inconsistency among decisions of the Court of Appeal regarding the form and substance of judgments in mandamus cases. The Court should grant review to resolve it.

A.
Several Court of Appeal Decisions Hold that the Time to Notice an Appeal under Rule 8.104 Runs Is Based on the Service or Entry of Formal Judgment Denying a Writ Petition.

A number of Court of Appeal decisions are irreconcilable with the Court of Appeal's ruling here. These decisions stand for the same rule that applies in ordinary civil cases: The time to appeal runs from the entry or service of notice of entry of a formal judgment that finally resolves the action.

However "cursory" its reasoning, *Protect Our Water* undeniably stands for the proposition that an appeal of an administrative mandamus decision is timely if filed within "60 days after entry of the judgment," even though it was more than 60 days after the entry of an order that finally resolved issues in the case. (*Protect*

Our Water supra, 110 Cal.App.4th at p. 368 n.2.) As the Court of Appeal recognized in "declin[ing] to follow" it, (Slip Op. at p. 29), that holding is irreconcilable with the holding of the Court of Appeal in this case.

In *Catalina*, which is cited in *Protect Our Water*, the Court of Appeal held in a published opinion that the petitioner "filed a timely notice of appeal from *the judgment* denying its petition for writ of mandate" and held that "*[a] judgment* denying a petition for writ of mandate is appealable." (*Catalina*, *supra*, 98 Cal.App.4th at p. 5 n.3, emphasis added.)

The Court of Appeal here tried to distinguish *Catalina* because the Court did not "discuss[ ] the type of ruling that constitutes a judgment." (Slip op. at 29.) But the context of the opinion strongly suggests that a separate formal judgment had been entered. For one, the case *Catalina* cited for the proposition—*Kennedy v. South Coast Regional Com.* (1977) 68 Cal.App.3d 660, 665, entailed the entry of a formal judgment. And to the extent any unclarity remains, the superior court's actual judgment—a formal judgment that says "IT IS HEREBY ORDERED, ADJUDGED, AND DECREED"—is available in a research database. (See *Catalina Investments v. Jones*, No BS 067159 (L.A. Super. Mar. 16, 2001) Judgment Denying Peremptory Writ, 2001 WL 36010399.) The Court of Appeal's decision is irreconcilable with *Catalina.*

And in *MCM*, five years before *Catalina*, a losing construction bidder filed a petition for administrative mandate that was denied in "[a] final judgment and order of dismissal" on the same day." (*MCM*, *supra*, 66 Cal.App.4th at p. 367 n.3.) The contractor

appealed both the judgment and the order of dismissal, and the Court of Appeal held—also in a published opinion—that "[b]oth the order denying [the] writ petition and the final judgment are appealable orders where no issues remain to be determined." (*Ibid.*)

The Court of Appeal tried to distinguish *MCM* based on its reference to an appealable "order" instead of an appealable "judgment." (Slip Op. at p. 30.) Elsewhere, however, *MCM* also notes that it is affirming the judgment. (*MCM*, *supra*, 66 Cal.App.4th at p. 383.) The court's technical mistake in referring the final judgment as an appealable *order*, (Cf. Code Civ. Proc., § 904.1(a)(1)[3]), hardly makes it distinguishable. The Court of Appeal's decision is also irreconcilable with *MCM*.

Finally, in *Hadley v. Superior Court* a trial court entered a minute order denying a petition for writ of administrative mandate but refused to enter judgment. (*Hadley*, *supra*, 29 Cal.App.3d at p. 394.) The petitioner took a writ to the Court of Appeal, which granted a writ compelling the trial court to enter final judgment. (*Id.* at p. 395.) Two years later, the Court of Appeal concluded that a notice of appeal taken from that judgment was timely. (*Hadley v. City of Ontario* (1974) 43 Cal. App. 3d 121, 125.)

The Court of Appeal tried to distinguish *Hadley* on the ground that the supposedly "final" order in Hadley was a minute order, whereas the order in this case was signed. (Slip op. at p. 30.) But if the Court of Appeal is correct that it is "not the form of the

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[3] Further citations to undesignated statutory sections are to the Code of Civil Procedure and references to "Rules" are to the Rules of Court.

decree but the substance and effect of the adjudication which is determinative," (Slip. op. at 2, quoting *Dhillon*, *supra* 2 Cal.5th at p. 1115), the fact that an order meeting the appropriate measure of finality is in the form of a minute order should not matter. So *Hadley* too can't be reconciled with the Court of Appeal's decision.

B.
This Case and Others Hold that the Time to Notice an Appeal under Rule 8.104 Runs from the Entry or Service of Notice of Entry of an Order that Fully Denies a Writ Petition, Even when a Formal Judgment is Later Entered.

As noted, the Court of Appeal declined to follow *Protect Our Water* because it found two other cases—*Laraway* and *City of Calexico*—to be better reasoned. (Slip Op. at pp. 31-33.)

The petitioner in *Laraway* filed a public records request with the Pasadena School District, and petitioned for and other mandamus relief. (*Laraway*, *supra,* 98 Cal.App.4th at p. 583.) The trial court entered an order granting in part and denying in part the petition that "completely resolved all issues between all parties." (*Id.* at p. 582.)

The order was dated August 23, 2000. For reasons unknown, a signed version of the order was not served on the parties until January 12, 2001. (*Ibid.*) On January 29, 2001, the court entered a "judgment on petition" reiterating the result of the court's August 23 ruling and awarding costs. (*Ibid.*) Petitioner filed a notice of appeal on March 28, 2001 (58 days after the judgment but 217 days after the Court's order). (*Ibid.*)

The Court of Appeal concluded that, because no notice of entry had been served, "the last possible date on which the parties

could have filed a timely notice of appeal was 180 days after August 23, 2000. . . .” (*Id.* at p. 583.) According to the court, the August 23 order was an appealable order because “it contemplated no further action, such as the preparation of another order or judgment and disposed of all issues between all parties.” (*Ibid.*) (Citations omitted.) The Court concluded that the January 29 “judgement on petition” was merely “a repetition” of the August 23 order and was “nothing more than a postjudgment order determining respondent’s right to recover costs.” (*Id.* at p. 583 n.6.) It characterized the judgment as the parties’ effort to manufacture an appeal by “relabeling [] the trial court’s earlier decision and then entering such ‘judgment’ at a later date.” (*Ibid.*)

Twenty years later—in an opinion by the justice who authored this case—the Court of Appeal decided *City of Calexico*. A police officer was terminated, and a hearing officer upheld the termination but ordered Calexico to pay the officer back-pay 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. A superior court consolidated and denied both petitions in a written order on September 24, 2019 (*Ibid.*) The clerk mailed the order to each party the same day. (*Ibid.*)

The officer filed a notice of appeal on November 7—37 days after the order. (*Id.* at 183.) The officer’s notice of appeal “attached a file-stamped copy of the September 24 ruling.” (*Id.* at 186.) On November 21, the superior court entered a document styled as a “judgment” that incorporated its September 24 order. (*Id.* at 183.)

On January 21, Calexico filed a cross-notice of appeal from the November 21 judgment—60 days after the judgment, 74 days after the officer's notice of appeal, and 111 days after the September 24 order. (*Ibid.*)

Relying on *Laraway*, the Court of Appeal dismissed Calexico's cross-appeal as untimely. (*Ibid.*) The September 24 order, according to the court, "was a final judgment from which the City failed to timely appeal." (*Ibid.*), [citing *Laraway*, 98 Cal.App.4th at 582-83].) The Court so-concluded because the clerk simultaneously served a "file-endorsed copy of the September 24 ruling that included a declaration of mailing showing the date that the ruling was served. . . ." (*Id.* at 195.)

As in *Laraway*, the Court noted that the superior court "did not issue a notice of entry of judgment" but similarly suggested that the City was manufacturing an appeal. (*Id.* at p. 188.) The Court observed that Calexico "filed a proposed judgment with the superior court" months after the superior court's order denying Calexico's petition. (*Ibid.*) The Court emphasized that the officer filed *his* notice of appeal "prior to any notice of entry of judgment issued by the superior court or any party," and that the superior court "served the City with notification of" the officer's appeal on December 3—almost two months before the City filed its cross-notice of appeal. (*Id.* at p. 188.) As the court explained, that also rendered the City's notice of appeal untimely under Rule 8.108(g)(1) (*Id.* at p. 196 [requiring cross appeal within 20 days of first appeal].)

C.
The Court Should Grant Review to Resolve the

Conflicting Rules for Writ Appeals.

Granting review in this case is "necessary to secure uniformity of decision. . . ." (Rule 8.500(b)(1).) As noted, there are at least two—potentially three—different rules set out in published decisions of the Court of Appeal as to when, in an administrative mandate action, the time file a notice of appeal under Rule 8.104(a) begins to run.

1. Cases like *Protect Our Water*, *Catalina*, and *Hadley* apply the rule that applies in any civil action—the time to appeal runs from the entry or service of notice of entry of a final formal judgment.

2. On the other hand, cases like this one, *City of Calexico* and *Laraway*, apply a special rule for administrative mandate cases and hold that the time runs from the service or notice of entry of a written order that disposes of the whole action, even if a formal judgment is later entered.

3. Finally—depending on how broadly one reads the word "*and*"—*MCM* appears to authorize an appeal from *both*. (*MCM*, *supra*, 66 Cal.App.4th at p. 367 n.3. ["Both the order denying [the] writ petition and the final judgment are appealable orders where no issues remain to be determined."].)

As the Court has observed, "[n]either parties nor appellate courts should be required to speculate about jurisdictional time limits." (*Van Beurden*, *supra*, 15 Cal.4th at p. 64; *Alan*, *supra*, 40 Cal.4th at p. 905.) Having conflicting rules of jurisdictional significance is inimical to the principle that the path to resolving appeals on the merits "must be kept free of unreasoned distinctions that

can only impede open and equal access to the courts." (*March v. Municipal Court* (1972) 7 Cal.3d 422, 427, cleaned up.)

Indeed, clear instruction from this Court on the practice of entry of judgment in administrative mandate cases is also necessary to the efficient functioning of the trial courts that hear these matters and the parties who litigate them. 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." (Asimow, *et al.*, *California Practice Guide: Administrative Law* (2021 online ed.) § 21:22.1.) "[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.*)

Particularly given the rules for stare decisis in the event of divergent views within the Court of Appeal, (see *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456), the Court should grant review to ensure uniform and predictable statewide practice in writ cases. Having two or three different rules leaves the parties to guess: Should they wait for the trial court to enter a formal judgment, risking untimeliness? Or should they notice an appeal after any order that seems final enough, risking prematurity? The uncertainty will invariably result in many unnecessary notices of appeal. The disuniformity could also lead to jurisdictional chaos and inefficiency in trial court practice. Parties will need to sort out issues like whether the trial court retains jurisdiction (if the appeal

is premature) or has lost it (if the appeal is timely) or when postjudment motions are due.[4] A wrong guess on those questions can lead, as it did here, to a forfeiture of the right to a decision on the merits.

Indeed, if the rule here is correct, trial judges who enter formal judgments in writ cases are inadvertently deceiving the parties—lulling them into a sense they can rely on the actual entry of a formal document called "judgment" to compute the time to appeal. (See § 904.1, subd. (a)(1).) So too are superior courts whose rules on writ petitions specifically contemplate the entry of formal judgments. (See, e.g., L.A. Superior Ct. L.R. 3.231(n) ["After trial, the prevailing party will be ordered to prepare a proposed judgment and any writ of mandate, serve them on the opposing parties for approval as to form . . ."]; Sacramento Superior Court Guide to the Procedures for Prosecuting Petitions for Prerogative Writs p. 11 [providing procedures for entry of separate judgment]. If parties cannot take the trial judge at face value on jurisdictional questions or if they have their appeals dismissed as untimely because they followed court rules, public confidence in the fairness of judicial process will be undermined. (Accord *Bowles v. Russell* (2007) 551

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[4] As the Court has observed, various mandatory and jurisdictional deadlines and other confounding procedural rules have already made post-trial motion procedure into "a procedural minefield." (*Oakland Raiders v. National Football League* (2007) 41 Cal.4th 624, 635; see also *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 911 (dis. opn. of Kaus, J.).) Leaving the parties to guess which order counts as a judgment adds yet another mine to the field.

U.S. 205, 215 (dis. opn. of Souter, J.) ["It is intolerable for the judicial system to treat people this way, and there is not even a technical justification for condoning this bait and switch."].)

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For all the above reasons, the Court should grant review to ensure consistent application of jurisdictional rules in administrative writ cases.

II.
The Court Of Appeal's Decision Was Erroneous.

Ordinarily, a civil action ends with the entry of a separate formal decree that finally adjudicates the rights of the parties. That document is treated as the "judgment" for the purposes of § 904.1 and Rule 8.104. That is the case, even when some prior reasoned order effectively decides all the open issues. This Court has created exceptions to requirements for the entry of formal judgments when equitably necessary to preserve the right of appeal. But—contrary to the decision of the Court of Appeal—there is no justification to create a categorical exception in administrative mandate cases to cut off the right to appeal contrary to the expectation of the parties.

A.
The Court of Appeal's "Finality-Only" Standard for Judgements in Writ Cases Is Inconsistent with Ordinary Civil Practice.

The Code of Civil Procedure provides that a civil appeal may be taken from "any" of fourteen enumerated instruments. (§ 904.1.) The first such instrument, with exceptions not relevant here, is "a judgment, except an interlocutory judgement. . . ." (*Id.*, subd.

(a)(1).) In both civil actions and special proceedings like proceedings in mandate, a judgment is defined by statute as "the final determination of the rights of the parties in an action or proceeding." (§§ 577 [civil action]; 1064 [special proceeding].) "As a general rule, a litigant may appeal an adverse ruling only after the trial court renders a final judgment." (*Dhillon*, *supra*, 2 Cal.5th at p. 1112.)

Citing *Dhillon*, 2 Cal.5th at p. 1113, the Court of Appeal here 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, emphasis added.) The Court so-concluded because the superior court's order denying Officer Meinhart's writ petition "completely resolved all issues between all parties," (Slip op. at pp. 4, 18, citing *Laraway*, *supra*, 98 Cal.App.4th at pp. 582-583.)

But finality of a decision is not the *only* hallmark of a final judgment. In various civil contexts, courts issue orders that completely resolve all the issues in an action. Yet, in these contexts, it is the entry of a separate, final, formal, judgment that starts the clock to appeal, not the entry of the prior order, however final.

The Code of Civil Procedure itself distinguishes between a court's "judgment"—which is "entered"—and its "decision"—which is only "filed"—implying that they are separate documents. (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, immediately upon the filing of such decision."). Other statutory and rule provisions recognize a similar distinction between the rendering of a decision, however final, and the entry of a judgment.

(See §§ 581, subd. (f) [separate judgment of dismissal after demurrer or motion to strike granted]; 437c, subds. (k), (m)(1) [separate entry of final judgment after grant of summary judgment]; Rule 3.1590(h), (i), (j), (*l*) [separate entry of judgment after court decision in bench trial].)

The decisional law of this Court and the Court of Appeal reiterate the distinction.

For example, an order granting a demurrer to all causes of action without leave to amend meets the Court of Appeal's standard—it completely resolves all issues between all parties. Yet "such an order is neither appealable per se nor as a final judgment." (*Molien*, *supra*, 27 Cal.3d at p. 920; see also *Beazell v. Schrader* (1962) 205 Cal.App.2d 673, 674 [collecting cases].) "The normal method of resolving such issues in favor of a defendant is by ruling upon a demurrer and thereafter rendering a judgment based upon the ruling." (*Lavine v. Jessup* (1957) 48 Cal.2d 611, 614.) Any "appeal must be taken from the ensuing judgment." (*Ibid.*)

So too for summary judgment proceedings. An order granting summary judgment can resolve a whole case. Yet, "summary judgment is appealable, but an order granting summary judgment is not." (*Saben, Earlix & Assocs. v. Fillet* (2005) 134 Cal.App.4th 1024, 1030 (*Saben*); *Modica v. Merin* (1991) 234 Cal. App. 3d 1072, 1074 [appeal from order granting summary judgment dismissed].)

The same holds true for jury verdicts. *Sullivan,* supra, 15 Cal.4th at p. 307 n.10 ["Neither a verdict nor an order granting a motion for summary judgment is appealable"] [collecting cases].)

The same rule also accords for a statement of decision after a court trial, which as a "general rule" is "not appealable." (*Alan*, 40 Cal.4th at p. 901.) That is especially the case "when a formal order or judgment does follow. . . ." (*Id.* at p. 901.)

Thus, in civil litigation, the "one final judgment rule" generally requires both finality *and* the entry of a separate formal document adjudicating the final rights of the parties in the action.

The same should hold true in writ practice. The subdivision of the administrative mandate statute addressed to entry of judgment says, in relevant part: "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* . . . ." (§ 1094.5, subd. (f).) Thus, like § 644, the dual references to both an "opinion" and a "judgment" strongly suggest the Legislature contemplated the entry of a separate judgment in writ cases.

This Court implicitly understood that to be the case in *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499 (*Voices of the Wetlands*). The question presented was whether a trial court could order a limited interlocutory remand to the agency for additional fact finding. (*Id.* at p. 507.) After the remand, the trial court resolved all remaining issues in a statement of decision. (*Id.* at 514.) Roughly a month later, it entered a separate formal judgment. (*Ibid.*)

Among other things, the plaintiff argued that a limited remand was not authorized because it was not among the remedies

expressly set out in § 1094.5 subdivison (f). (*Id.* at 525.) But the Court rejected that argument. In so doing, the Court explained that "[o]n its face, subdivision (f) of section 1094.5 indicates the form of *final judgment* the court may issue in an administrative mandamus action." (*Id.* at 526.) "Unremarkably, subdivision (f) states that the last step the trial court shall take in the proceeding is either to command the agency to set aside its decision, or to deny the writ." (*Ibid.*) "The trial court here followed that mandate; *it issued a final judgment denying a writ of mandamus*." (*Ibid.*) (emphasis added.) The Court thus understood, at least implicitly, that the separate final judgment entered by the trial was in fact the "judgment" under appeal.[5]

B.
This Court Has Created Exceptions to the Requirement of the Entry of a Formal Judgment to Preserve the Right to Appeal.

There is nonetheless a "well-established policy, based upon the remedial character of the right of appeal, of according that

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[5] The Court also considered § 1094.5 subdivision (f) in *Dhillon* but the issue there was whether the substance of the trial court's decision afforded one of the categories of relief permitted therein. (*Dhillon*, *supra*, 2 Cal.5th at p. 1117, n.3.) For the purposes of that analysis, the court simply assumed "that subdivision (f) of Code of Civil Procedure section 1094.5 defines a 'judgment' for the purposes of determining whether an order in an administrative mandamus proceeding is an appealable final judgment[.]" (*Ibid.*) Although the Court of Appeal considered this language convincing, (Slip. Op. at 14-15), its only apparent significance is that it referred to the "order" as a judgment, an issue that is addressed, *infra* § II.C.

right in doubtful cases when such can be accomplished without doing violence to applicable rules." (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 674, cleaned up.) Based on that policy, the Court has carved out equitable exceptions to the requirement of a separate formal judgment. It has done so where a rigid adherence to the rule might otherwise result in dismissal of appeals as unperfected or waste time by sending the appellant back await final judgment to take the same appeal.

Certain prejudgment orders that are sufficiently final have thus been "treated" as judgments. (*Alan*, *supra*, 40 Cal. 4th at p. 901 ["Reviewing courts have discretion to treat statements of decision as appealable when they must, as when a statement of decision is signed and filed and does, in fact, constitute the court's final decision on the merits."].) Or final orders have been amended to be turned into judgments, in order to preserve the right to appeal. (*Griset v. Fair Pol. Pracs. Comm'n* (2001) 25 Cal. 4th 688, 700 (*Griset*) ["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. . . ." cleaned up]; see also *Sullivan*, *supra*, 15 Cal.4th at pp. 307-308; *Molien*, *supra*, 27 Cal.3d at p. 920.)

Exceptions are often applied in special proceedings falling outside of the typical civil action, where a trial court might neglect to issue a formal final judgment. (See, e.g., *Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 11 [order enforcing administrative subpoena against non-party was an appealable fi-

nal judgment].) And given the great deal of local variety in administrative mandate practice, their application in writ cases are not unusual. (See *J. Arthur Properties, II, LLC v. City of San Jose* (2018), 21 Cal.App.5th 480, 485, n.2 [writ of administrative mandate; exercising discretion to treat statement of decision denying petition as appealable; citing *Alan*].) But when a final, formal judgment has been entered, *that* is the appealable event and the exceptions are unnecessary and inapplicable. (*Alan*, *supra*, 40 Cal. 4th at p. 901 ["[A] statement of decision is not treated as appealable when a formal order or judgment does follow, as in this case."].)

These exceptions apply uniformly to *preserve* the right to appeal. Indeed, this Court has emphatically held that "the desire to *cut off* a litigant's right to appeal cannot justify creating an exception to the general rule." (*Ibid.*) For example, in *Molien*, the Court construed an order sustaining a demurrer to "incorporate a judgment of dismissal" to further "the interest of justice and to prevent further delay." (27 Cal.3d at p. 920.) And numerous courts have "chosen to treat an appeal from an order granting summary judgment as an appeal from a subsequently entered judgment, or even to deem the order itself to be a judgment, *in order to save the faulty appeal*." (*Saben, supra*, 134 Cal.App.4th at p. 1030 [collecting cases].) This avoids the procedural redundancy of remanding an otherwise meritorious appeal so it can be refiled again once a court enters judgment.

C.
There Is No Good Reason to Manufacture an Appellant-

Hostile Exception in Administrative Mandate Cases.

As noted, in most civil practice, an order that rules on the merits and completely resolves a case is followed by formal document called a "judgment" that is entered into the record, and which is the event from which an appeal is taken. (§ 904.1) As the Court recognized in *Alan*, there are equitable exceptions, but they do not apply when a final formal judgment is actually entered. (*Alan*, 40 Cal.4th at p. 901.)

The preference for the entry of a separate formal judgment creates a bright-line that recognizes the jurisdictional significance of the event. After all, once judgment is entered, the trial court loses aspects of its subject matter jurisdiction. "It may correct judicial error only through certain limited procedures such as motions for new trial and motions to vacate the judgment. (*Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1606.) Entry of judgment thus triggers "the statutory periods for making and determining posttrial motions. . . ." (*Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1280. It permits the prevailing party to begin enforcement. (§ 683.010.) And, of course, it starts the clock on the time to file a notice of appeal. (Rule 8.104(a).)[6]

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[6] There are also historical reasons calling for the entry of a separate document that simply lays out the decree in the case. Prior to the advent of modern docketing and recordkeeping, a judgment would be entered into a ""judgment book," by the clerk of the superior court. (See § 668.) "Originally the clerk laboriously entered judgments by copying them in longhand with pen and ink." (*Wilson v. Los Angeles County Emp. Ass'n* (1954) 127 Cal.App.2d 285, 291.) That labor was lessened by a judgment being a discrete document of minimal length.

Given the jurisdictional significance of the entry of a judgment, the rules surrounding it "should above all be clear." (*Budinich v. Becton Dickinson & Co.* (1988) 486 U.S. 196, 202.) "Clarity is to be desired in any statute, but in matters of jurisdiction it is especially important." (*United States v. Sisson* (1970) 399 U.S. 267, 307.) The court should not formulate rules that require litigants "to guess, at their peril" what "trigger[s] the duty to file a notice of appeal." (*Alan*, *supra*, 40 Cal.4th at p. 905).

These interests weigh against creating a complicated web of exceptions for different kinds of proceedings, as the Court of Appeal did here. For purposes of appeal, the requirements and timing rules should be uniform across civil practice. Indeed, this Court has previously suggested they are. (*Dhillon*, *supra*, 2 Cal.5th at p. 1115 ["In general, an adverse ruling in a judicial proceeding is appealable once the trial court renders a final judgment . . . [t]his general rule applies equally in administrative mandamus proceedings."].) That makes evident sense because the definitions of "judgment" in the Code of Civil Procedure for civil actions and special proceedings are essentially identical. (Compare § 577 [Civil Actions: "A judgment is the final determination of the rights of the parties in an action or proceeding."] with § 1064 ["A judgment in a special proceeding is the final determination of the rights of the parties therein."].)

Perhaps because the administrative mandate statute specifies that "[t]he court shall enter judgment," (§ 1094.5, subd. (f)), many courts have followed standard civil practice of issuing a separate judgment in administrative mandate cases. As noted, in

Voices of the Wetlands, this Court apparently believed that to be the case. (*Voices of the Wetlands*, *supra*, 52 Cal.4th at p. 526.) Indeed, were it otherwise, the Court likely lacked jurisdiction. As the Court's recitation of the procedural history sets out "On July 21, 2004, acting on the petition at issue here . . . the court issued a statement of decision resolving the postremand issues the parties had agreed remained open." (*Id.* at p. 514.) Then, "[o]n August 17, 2004, the court entered judgment denying a peremptory writ of mandate." (*Ibid.*) The notice of appeal in *Voices of the Wetlands* was not filed until October 12, 2004—well over 60 days after the trial court's July 21 order, but within 60 days of the entry of a separate judgment. (*Voices of the Wetlands v. State Water Resources Control Bd.*, No H028021, docket entry dated October 10, 2004, *available at https://tinyurl.com/5n92vrft*.) Yet, neither this Court nor the Court of Appeal raised any timeliness concerns.

The same is true for any number of recent decisions in the Court of Appeal. (See, e.g., *Tri-Counties Association for Developmentally Disabled, Inc. v. Ventura County Public Guardian* (2021) 63 Cal.App.5th 1129, 1137; *Martin v. California Coastal Com.* (2021) 66 Cal.App.5th 622, 632; *Natarajan v. Dignity Health* (2019) 42 Cal.App.5th 383, 385; *Doe v. Occidental College* (2019) 40 Cal.App.5th 208, 211; *City of Hesperia v. Lake Arrowhead Cmty. Servs. Dist.* (2019) 37 Cal.App.5th 734, 745-46.) The upshot is that if the Court of Appeal is correct in this case, there has apparently been a longstanding spree of extra-jurisdictional merits rulings in writ appeals.

The Court of Appeal determined to the contract—that a special rule applies in administrative mandate cases. According to the court, an order fully denying a writ is a "final determination of the rights of the parties" and thus constitutes a "judgment" under Code of Civil Procedure § 1064. (Slip op. at pp. 10-24.) Effectively, the court made finality the only criterion that matters in writ cases.

The Court of Appeal relied on language in this Court's decision in *Dhillon*, *supra*, 2 Cal.5th 1109, to carve out this separate rule. Admittedly, there is some language in *Dhillon* that suggests "the superior court's order partially granting Dr. Dhillon's writ petition *was* an appealable final judgment." (*Dhillon*, *supra*, 2 Cal.5th at 1116, emphasis added.) But the Court of Appeal put more weight on this language than it was meant to bear.

Dhillon did not address timeliness or whether an order adjudicating a writ petition took precedence over a later entered formal judgment. Indeed, the Court of Appeal docket in *Dhillon* reflects that the appellant timely took its appeal from *both* "(1) the superior court's order--filed on or about 08/06/14 granting in part petitioner Jatinder Dhillon's motion for peremptory administrative writ [and] (2) the superior court's judgment on writ of mandate, filed on or about 09/08/14." (*Dhillon v. John Muir Health et al.*, No. A143195, docket entry dated October 6, 2014, *available at* *https://tinyurl.com/e8mjz3eb*.)

Dhillon was about was *finality*, not the timing of entry to or the validity of a separately entered judgment. There, a surgeon pe-

titioned for writ of administrative mandate challenging the suspension of his clinical privileges. (*Dhillon*, *supra*, 2 Cal.5th at p. 1112.) The superior court granted the petition in part and remanded to the hospital to conduct a hearing on whether to suspend the surgeon's privileges, but otherwise denied relief. As noted, although not reflected in the opinion, a separate formal judgment was entered. The hospital appealed. (*Ibid.*) The Court of Appeal dismissed the appeal, holding that the remand order was insufficiently final to be appealable. (*Ibid.*) This Court granted review to address a split in the Court of Appeal on that question. (*Id.* at p. 1113.)

The Court reversed the dismissal of the hospital's appeal and held that "the superior court's order partially granting Dr. Dhillon's writ petition was an appealable final judgment." (*Id.* at p. 1116.) Unquestionably, the Court described the "order" as a "judgment" in the context of deciding whether the result was sufficiently final. (*Id.* at p. 1116, 1117 fn.3, 1118.) But what was never presented, much less decided, in *Dhillon*, was whether the order, not the formal judgment, started the clock to appeal under Rule 8.104(a). As noted, the appeal was taken and timely from *both* the order and the separate judgment. "It is axiomatic that cases are not authority for propositions not considered." (*In re Marriage of Cornejo* (1996) 13 Cal.4th 381, 388, cleaned up.) And other parts of *Dhillon* opinion suggest that the general appealability rules applicable in civil actions—such as *Alan*'s rule that when an order that disposes of an action is followed by the entry of a formal judgment, the judgment is the jurisdictionally significant event—apply

"equally in administrative mandamus proceedings." (*Dhillon*, *supra*, 2 Cal.5th at p. 1115.) Particularly given the contrary assumption in *Voices of the Wetlands*, there is good reason not to overread *Dhillon*'s choice of language as deciding a question that that was never presented. Indeed, resolving the tension between the Court's implicit assumptions in *Dhillon* and *Voices of the Wetlands* is yet another reason why review should be granted.

The Court of Appeal also relied on language *Dhillon* quoted from *Griset* that distinguishes a final judgment from an interlocutory one based "not the form of the decree but the substance and effect of the adjudication[.]" (*Griset*, *supra*, 25 Cal.4th at p. 698, cleaned up.) But again, like *Dhillon*, *Griset* was examining finality, not timeliness. *Griset* was also applying an exception, because in *Griset*, the "trial court's rulings were not formally entered as a judgment." (*Id.* at p. 694.) So the Court ordered an *amendment* of a sufficiently final order to turn it into a judgment. (*Id.* at p. 700.) That would have been completely unnecessary if—as the Court of Appeal held here—any order that meets the test of finality, however denominated *is* the final judgment.

Finally, the Court of Appeal read a series of Court of Appeal cases to state the rule that an order fully denying a petition for writ of administrative mandate is *always* a final judgment. (Slip Op. at 15-16.) But most of the cases cited for that proposition entail situations where no formal judgment was entered. These cases recognize, either expressly or implicitly, that they are applying an exception that applies in the absence of a formal judgment. Indeed, in *Nelson Sons, Inc., v. Lynx* (2009) 167 Cal. App. 4th 67, 75, the

Court of Appeal cited *Griset* for the proposition that "[t]he trial court neglected to enter a formal judgment. However, since the order disposed of the entire action, we *amend* it to include a judgment and *deem* such judgment to have been filed." (*Ibid.*) (citing *Griset*, *supra*, 25 Cal.4th at p. 700, emphasis added.) The other cited cases largely reflect the same recognition.[7]

There is thus no authority requiring an exception to the general rule of treating entry of a separate final judgment as the appealable event in administrative mandate cases. Nor is there any good *reason* for such a rule. Nothing about writ practice makes it any harder or less efficient for a trial court to enter a final judgment in a writ case than in an ordinary civil action. The Court should thus grant review to ensure a uniform statewide rule that in all cases, civil actions and special proceedings alike, a final judgment is treated as a final judgment.

D.
The Court of Appeal's Special Rule for Writ Cases Causes More Problems than It Solves.

Finally, the Court of Appeal's rule will lead to jurisdictional confusion without any countervailing benefit. The volume of decisions of this Court regarding questions of finality shows it is not

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[7] (See *Sandlin v. McLaughlin* (2020) 50 Cal.App.5th 805, 820 ["Although the trial court never entered a formal judgment on the petition for writ of mandate, its order denying the petition in its entirety constitutes a final judgment for purposes of an appeal," quotations omitted]; *Molloy v. Vu* (2019) 42 Cal.App.5th 746, 753 [same]; *Tomra Pacific, Inc. v. Chiang* (2011) 199 Cal.App.4th 463, 481-482[same]; *Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409 [same].)

always an easy one to answer. And while the Court of Appeal's decision here is in an administrative mandate case, its logic—that anything that looks final enough *is* a judgment—is not so limited. Careful litigants will worry that their case could be the one where a court extends the rule some other aspect of civil practice. Particularly given the exceptions that save unripe appeals from non-appealable orders risk averse lawyers will have every incentive to notice an appeal whenever the question is close. These protective appeals will strain the dockets of the Court of Appeal, which has on several occasions over the years, expressed its frustration that "attempts to appeal from nonappealable orders" "continue unabated in substantial numbers." (*Modica*, *supra,* 234 Cal. App. at p. 1074; see also *Shpiller v. Harry C's Redlands* (1993) 13 Cal.App.4th 1177, 1179; *Jordan v. Malone* (1992) 5 Cal.App.4th 18, 21; *Cohen v. Equitable Life Assurance Soc'y* (1987) 196 Cal. App. 3d 669, 671.)

What's more, the Court of Appeal's decision will encourage wasteful litigation over jurisdiction. Strategic appellees will press motions to dismiss appeals on timeliness grounds for a shot at windfall results divorced the merits. Such "[u]ncertainty regarding the question of jurisdiction is particularly undesirable, and collateral litigation on the point particularly wasteful." (*Grupo Dataflux v. Atlas Global Group, L.P.* (2004) 541 U.S. 567, 582.)

Without doubt, cases like *Laraway* present the courts with a different problem: long out of time, the parties sought to manufacture appeals by arranging the entry of judgments months after the trial court had taken its last meaningful action. (*Laraway*, *supra*,

98 Cal. App. 4th at p. 583.) But those practices can be avoided by prevailing parties seeking the expeditious entry of a final appealable judgment, (see § 664) and giving notice of its entry, (see § 664.5, Rule 8.104(a)(1)). If the trial courts fail in their obligation, there is relief in the Court of Appeal. (See *Hadley*, *supra*, 29 Cal.App.3d at p. 395.)

And to the extent there is tension between a rule that, on one hand, dismisses otherwise timely appeals, and fosters premature appeals from nonappealable orders and litigation over jurisdiction, and, on the other hand, a rule that occasionally permits a delayed appeal because of a failure to timely enter judgment, the choice has long been clear. "It is a well-established policy that, since the right of appeal is remedial in character, our law favors hearings on the merits when such can be accomplished without doing violence to applicable rules. Accordingly in doubtful cases the right to appeal should be granted." (*Slawinski v. Mocettini* (1965) 63 Cal.2d 70, 72; see also *Alan*, *supra*, 40 Cal.4th at p. 901.)

* * *

The Court should grant review.

CERTIFICATE OF WORD COUNT

I, Michael J. Shipley, counsel for Petition and Appellant, hereby certify that the text of this brief contains 8,269 words as counted by the Microsoft Word word-processing program used to generate this Petition for Review.

Dated: April 18, 2022

By: */s/ Michael J. Shipley*
Michael J. Shipley
KIRKLAND & ELLIS LLP

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2022, I electronically filed the foregoing document titled PETITION FOR REVIEW through the Court's electronic filing system.

Furthermore a copy of the PETITION FOR REVIEW was mailed to the interested parties below:

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OPINION

Filed March 9, 2022

Filed 3/9/22

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DAVID MEINHARDT, Plaintiff and Appellant, v. CITY OF SUNNYVALE, Defendant and Respondent; SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, Real Party in Interest and Respondent.	D079451 (Super. Ct. No. 19CV346911)

APPEAL from a judgment of the Superior Court of Santa Clara County, Peter H. Kirwan, Judge. Appeal dismissed.

Messing Adam & Jasmine and Gregg McLean Adam for Plaintiff and Appellant.

Liebert Cassidy Whitmore, Suzanne Solomon and David A. Urban for Defendant and Respondent.

No appearance for Real Party in Interest and Respondent.

I.

INTRODUCTION

"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." (*Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, 1113 (*Dhillon*).) And, as the Supreme Court in *Dhillon* explained, a ruling nominally *denominated* as an "order" on a petition for writ of administrative mandate[1] may, in fact, constitute a "final judgment" when such order has the *effect* of a final judgment. (*Id.* at p. 1115.) That is because it is " ' "not the form of the decree but the substance and effect of the adjudication which is determinative." ' " (*Ibid.*)

In addressing whether a ruling has sufficient finality to constitute a judgment, the *Dhillon* court stated, " ' "As a general test, which must be adapted to the particular circumstances of the individual case, it may be said that where no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory." ' " (*Dhillon, supra*, 2 Cal.5th at p. 1115.) The *Dhillon* court applied this test in concluding that the trial court's "order" on the plaintiff's petition for writ of administrative mandate in that case "was an appealable final judgment." (*Id.* a p. 1116.)

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1 "[A] writ of mandamus may be denominated a writ of mandate." (Code Civ. Proc., § 1084.) We use the term writ of administrative mandate throughout this opinion, except for quotations.

All subsequent statutory references are to the Code of Civil Procedure, unless otherwise specified.

Dhillon is consistent with numerous published cases that have concluded that an order denying a petition for writ of mandate is a final judgment for purposes of an appeal. (See, e.g., *Sandlin v. McLaughlin* (2020) 50 Cal.App.5th 805, 820 (*Sandlin*) ["Although the trial court never entered a formal judgment on the petition for writ of mandate, its order denying the petition in its entirety 'constitutes a final judgment for purposes of an appeal' "]; *Molloy v. Vu* (2019) 42 Cal.App.5th 746, 753 (*Molloy*) [" '[A]n order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal, even if the order is not accompanied by a separate formal judgment,' " quoting *Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409 (*Public Defenders' Organization*)]; *Tomra Pacific, Inc. v. Chiang* (2011) 199 Cal.App.4th 463, 481–482 (*Tomra Pacific, Inc.*) ["We note that the order denying the petitions for a writ of mandate is not termed a judgment and does not explicitly address the declaratory relief causes of action. Nevertheless, we are satisfied that the order before us constitutes an appealable final judgment as it left no issue for further consideration"].)

Published authority also reveals an important consequence that follows from this case law. In a case in which a court has entered a ruling on a writ petition that constitutes a final judgment, any party seeking appellate review of that ruling must timely appeal from *that* final judgment—and the time to file a notice of appeal is not restarted by the trial court's subsequent entry of a document styled as a "judgment" that merely reiterates the prior final judgment. (See *City of Calexico v. Bergeson* (2021) 64 Cal.App.5th 180, 182–183 (*City* of *Calexico*) [dismissing cross-appeal where party failed to timely appeal from September 24 ruling denying two petitions for writ of mandate that constituted a final judgment and stating, "[t]he mere fact that the trial

court entered a subsequent judgment after issuing the September 24 ruling is irrelevant, because the September 24 ruling was itself a final judgment" (*id.* at p. 192)]; *Laraway v. Pasadena Unified School Dist.* (2002) 98 Cal.App.4th 579, 582–583 (*Laraway*) [concluding that an order that "completely resolved all issues between all parties" on petitioner's writ petition was a final judgment from which no timely appeal was taken and stating that the "[r]ules of [c]ourt do not provide, once a judgment . . . has been entered, . . . the time to appeal can be restarted or extended by the filing of a subsequent judgment . . . making the same decision"]; accord *Valero Refining Co.—California v. Bay Area Air Quality Management Dist. Hearing Bd.* (2020) 49 Cal.App.5th 618, 633, fn. 10 (*Valero*) ["Contrary to the suggestion by the [defendants], the appealable judgment was the court's order granting a writ of mandate, not a 'judgment' that it subsequently entered"].)

In this case, plaintiff Officer David Meinhardt failed to timely appeal from a trial court ruling that denied his petition for writ of administrative mandate in its entirety, completely resolved all of the issues in the matter, and contemplated no further judicial action. Although the ruling was denominated an "order," (boldface & capitalization omitted) it was, under the case law outlined above, a final judgment. Instead, Meinhardt filed a notice of appeal from a document that the trial court subsequently entered, which was styled as a "judgment," but merely restated the prior judgment.

In light of the case law described above, we solicited supplemental briefing from the parties on the timeliness of Officer Meinhardt's appeal. In his supplemental brief, Meinhardt contends that to dismiss his appeal would contravene applicable statutory language, conflict with certain case law, and be "patently inequitable." (Boldface & italics omitted.) He further contends

that *City of Calexico* is distinguishable and that this court "should resist the impulse to extend *Laraway's* questionable logic further."

While we have carefully considered Officer Meinhardt's arguments, *Laraway* and *City of Calexico* are directly on point and mandate dismissal of his appeal. We publish our opinion to explain how *Dhillon* supports the conclusion that *Laraway* and *City of Calexico* were correctly decided, and to reiterate the critical importance of determining whether a ruling on a petition for writ of mandate is a final judgment in seeking appellate review of such a ruling.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Officer Meinhardt's petition for writ of administrative mandate*

In May 2019, Officer Meinhardt filed a petition for writ of administrative mandate pursuant to section 1094.5,[2] naming the City of Sunnyvale, Sunnyvale Personnel Board (Board) as a defendant and the Sunnyvale Department of Public Safety as the real party in interest.

In his petition, Officer Meinhardt sought "to rectify the . . . Board's abuse of discretion and misapplication of law in upholding a forty-four (44) hour suspension against [him] for engaging in speech that was critical of policies implemented by the new Department Chief . . . ."

After the Board filed an answer to the petition and lodged the administrative record, the parties filed briefs on the petition.

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2 We discuss section 1094.5 in section III.A.2.a, *post*.

B. *The trial court's August 6, 2020 ruling denying Officer Meinhardt's writ petition and the clerk's service of that ruling*

In May 2020, the trial court held a telephonic hearing on Officer Meinhardt's writ petition.[3] On August 6, 2020, the trial court issued a signed ruling titled "**ORDER**" denying Meinhardt's petition for writ of administrative mandate in its entirety.

At the outset of the ruling, the trial court described the telephonic hearing on the petition and stated, "After consideration of the pleadings, the exhibits (including the administrative record), the authorities cited by counsel in their briefs and the arguments made by counsel at the hearing, and no party having requested a statement of decision, the Court issues the following order." The court proceeded to address the merits of the petition for several pages, and concluded its ruling by stating, "Accordingly, the Petition for Writ of Administrative Mandamus is DENIED."

That same day, the clerk of court served the August 6 ruling denying the petition for writ of mandate on the parties by mail. The clerk's service of the ruling is memorialized in the record by a proof of service.[4]

---

[3] The record does not contain a reporter's transcript of the hearing.

[4] The proof of service document lists the case name and number and states, "**re: Order Denying Petition for Writ of Administrative Mandamus** was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below." The declaration states:

> "**DECLARATION OF SERVICE BY MAIL**: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on August 06, 2020. CLERK OF THE COURT, by [clerk's name], Deputy."

C. *The Board's August 14 notice of entry*

On August 14, the Board electronically served Officer Meinhardt with a document titled "Notice of Entry of Judgment or Order," together with a file-stamped copy of the August 6 order.

D. *The September 25 "judgment"*

On September 25, 2020, the clerk filed a document signed by the trial court on September 17 titled "**JUDGMENT**," that states:

> "On August 6, 2020, the Court issued an Order Denying Petitioner David Meinhardt's Petition for Writ of Administrative Mandamus pursuant to California Code of Civil Procedure 1094.5, which is attached hereto as Exhibit A. For the reasons set forth in the 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.
>
> "IT IS SO ORDERED, ADJUDGED AND DECREED."

The August 6 ruling denying Officer Meinhardt's petition for writ of administrative mandate was attached to the September 25 "judgment."[5]

Following the declaration are the names of the parties' counsel and their addresses.

5 Officer Meinhardt served a notice of entry of this judgment on September 22. In his supplemental brief, Officer Meinhardt states that he "attach[ed] [the] signed Judgment found online, though [the] court file-stamp[ed] Judgment [was] not entered until [September] 25."

E. *Officer Meinhardt's appeal*

On October 15, 2020, Officer Meinhardt filed a notice of appeal that stated that he was appealing from the September 17, 2020[6] "judgment" denying his petition for writ of administrative mandate.

F. *The parties' supplemental briefs*

While this appeal was pending, this court sent the parties a letter soliciting supplemental briefing. The letter stated in relevant part:

> "The parties are directed to file simultaneous supplemental letter briefs, no longer than five single-spaced pages, answering the following question:
>
> "Was [Officer Meinhardt's] October 15, 2020 notice of appeal timely filed in this case?
>
> "In answering this question, the parties are directed to discuss [*City of Calexico, supra*,] 64 Cal.App.5th 180. (See *id.* at pp. 185–195 [explaining that "[a]n order granting or denying a petition for writ of mandate that disposes of all of the claims between the parties is an immediately appealable final judgment," (*id.* at p. 190) and concluding that a clerk's service of a file-endorsed ruling denying petitions for writ of mandate and an accompanying dated declaration of service triggered the 60-day period to appeal set forth in California Rules of Court, rule 8.104(a)(1)].)"

Officer Meinhardt and the Board each filed a supplemental brief responsive to our request.

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6 As noted in part II.D, *ante*, the trial court signed a document titled "judgment" on September 17, 2020, and the clerk filed this document on September 25, 2020.

III.

DISCUSSION

Officer Meinhardt's appeal is untimely and must be dismissed

We must consider, sua sponte, whether we have appellate jurisdiction over Officer Meinhardt's appeal. (E.g., *Drum v. Superior Court* (2006) 139 Cal.App.4th 845, 849 ["because the timeliness of an appeal poses a jurisdictional issue, we must raise the point sua sponte"].)

A. *Governing law*

1. *The time within which a party must file a notice of appeal*

California Rules of Court, rule 8.104(a)[7] specifies the time within which a party must file a notice of appeal and provides in relevant part:

> "(a) Normal time
>
> "(1) . . . [A] notice of appeal must be filed on or before the earliest of:
>
> > "(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, showing the date either was served;
> >
> > "(B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service;"

Rule 8.104(b) specifies that a court may not extend the deadline for filing a notice of appeal and must dismiss any late-filed appeal, providing in relevant part:

> ". . . [N]o court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal."

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7 All subsequent rule references are to the California Rules of Court.

2. *Determining the existence of a final judgment in the context of a petition for writ of mandate*

a. *The statutory scheme*

An application for a writ of mandate is a "special proceeding[ ] of a civil nature" (capitalization omitted) governed by the provisions of part 3 of the Code of Civil Procedure. (§ 1063 et seq.)

Section 1064 defines "judgment" for purposes of such special proceedings, and provides in relevant part:

> "A judgment in a special proceeding is the final determination of the rights of the parties therein."

Chapter 2 of title 1 of part 3 of the Code of Civil Procedure governs writs of mandate. "The administrative mandamus statute, . . . section 1094.5, authorizes judicial review of final administrative decisions resulting from hearings that are required by law. In determining whether to grant a writ of administrative mandamus, the trial court is instructed to consider 'whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion.' ([§ 1094.5], subd. (b).)" (*Dhillon, supra*, 2 Cal.5th at p. 1115.)[8]

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8 "[A]n administrative decision that does *not* require a hearing or a response to public input is generally not reviewable under Code of Civil Procedure section 1094.5 but by traditional mandamus pursuant to Code of Civil Procedure section 1085 . . . ." (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 521, italics added.)

Section 1085, subdivision (a) provides, "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is

Section 1094.5, subdivision (f) specifies how a trial court shall enter judgment on a petition for writ of administrative mandate and provides:

> "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 and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent."

In outlining the law governing the issuance of stays of administrative orders in the context of administrative mandate, section 1094.5, subdivision (g) refers to a "notice of appeal from the judgment." The statute provides in relevant part:

> "(g) . . . [T]he court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first."

Section 1110 specifies that the rules of the Code of Civil Procedure that apply to an appeal in a civil action also are ordinarily applicable to an appeal in a special proceeding of a civil nature. The statute provides:

> "The provisions of Part II of this Code relative to new trials and appeals, except in so far as they are inconsistent with the provisions of this Title, apply to the proceedings mentioned in this Title."

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entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person."

Among the provisions of "Part II" of the Code of Civil Procedure are sections 901 and 904.1. Section 901 provides in relevant part:

> "A judgment . . . in a civil action or proceeding may be reviewed as prescribed in this title."

Section 904.1 in turn provides in relevant part:

> "(a) An appeal . . . is to the court of appeal. An appeal . . . may be taken from any of the following:
>
> "(1) From a judgment, except an interlocutory judgment . . . ."

Thus, as the *Dhillon* court succinctly summarized, "A final judgment in a special proceeding is appealable . . . ." (*Dhillon, supra*, 2 Cal.5th at p. 1115.)

b. *Dhillon*

In *Dhillon*, the Supreme Court considered whether a trial court's order granting, in part, a surgeon's petition for writ of administrative mandate and remanding the matter for further administrative proceedings was an appealable final judgment. (*Dhillon, supra*, 2 Cal.5th at p. 1116.) *Dhillon* involved a surgeon who filed a petition for writ of administrative mandate related to the suspension of his clinical privileges by the owner of the hospitals at which he practiced. (*Id.* at pp. 1112–1113.) The trial court granted the surgeon's writ petition in part. (*Id.* at p. 1113.) Specifically, the trial court determined that the surgeon was entitled to an administrative hearing prior to the suspension of his clinical privileges and ordered the hospital owner to conduct such a hearing. (*Ibid.*) The hospital owner appealed the ruling. The Court of Appeal dismissed the appeal, stating, " 'The superior court's order remanding the matter to [the hospital owner] is not a final, appealable order.' " (*Ibid.*)

The *Dhillon* court granted review and noted the division of authority with respect to whether such an order was an appealable final judgment:

> "The Court of Appeal's dismissal order deepened a long-standing conflict concerning the appealability of a trial court's order, on a petition for writ of administrative mandamus, remanding the matter for further proceedings before the administrative body. 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. [Citations.] The cases have also held that a trial court's judgment granting administrative mandamus, and ordering the substantive relief sought by the petitioner, is a final judgment that may be appealed by the respondent agency. [Citations.] In each of these situations, it is clear that " 'no issue is left for future consideration except the fact of compliance or noncompliance with the terms of' " the court's decree. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 698 (*Griset*), quoting *Lyon v. Goss* (1942) 19 Cal.2d 659, 670.) California courts have, however, divided over whether the same is true of a trial court's order that does not grant substantive relief, but instead remands the cause for further proceedings before the administrative agency." (*Dhillon, supra*, 2 Cal.5th at pp. 1113–1114.)

The *Dhillon* court explained that it had granted review to resolve this division of authority. (*Dhillon, supra*, 2 Cal.5th at p. 1114.) In order to do so, the *Dhillon* court stated that it was required to determine "whether the trial court's order in this case was a final judgment." (*Id.* at p. 1115.) The *Dhillon* court recounted the following general principles for determining whether a ruling of the trial court constitutes a final judgment:

> "We have previously recognized that a judgment is final, and therefore appealable, ' " 'when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined.' " ' [Citations.] ' "It is not the form of the decree but the substance and effect of the adjudication

> which is determinative. As a general test, which must be adapted to the particular circumstances of the individual case, it may be said that where no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory." ' [Citations.] 'We long have recognized a "well-established policy, based upon 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.*)

Applying these principles, the *Dhillon* court concluded that the trial court's order was an appealable final judgment because it granted or denied each of the surgeon's claims and "did not reserve jurisdiction to consider any issues." (*Dhillon, supra*, 2 Cal.5th at pp. 1116–1117.) The *Dhillon* court reasoned, "once the trial court issued the writ, nothing remained to be done in that court; no issue was then left for the court's ' "future consideration except the fact of compliance or noncompliance with the terms of the first decree." ' " (*Id.* at p. 1117, quoting *Griset, supra*, 25 Cal.4th at p. 698.)

In reaching this conclusion, the *Dhillon* court considered the surgeon's contention that "the trial court's order . . . was not a final judgment because it was not a 'judgment' as that term is defined by subdivision (f) . . . section 1094.5." (*Dhillon, supra*, 2 Cal.5th at p. 1117, fn. 3.) Specifically, the surgeon contended that under section 1094.5, subdivision (f), "a court adjudicating an administrative mandamus petition may issue only three kinds of judgments: (1) it may command the respondent to set aside the order or decision; (2) it may deny the writ, or (3) it may command the respondent to set aside the order or decision and reconsider the case, taking

further action as required."[9] (*Dhillon, supra*, at p. 1117, fn. 3.) According to the surgeon, "the trial court's order fell into none of these categories." (*Ibid.*) The *Dhillon* court rejected this argument, reasoning:

> "Assuming that subdivision (f) of Code of Civil Procedure section 1094.5 defines a 'judgment' for the purposes of determining whether an order in an administrative mandamus proceeding is an appealable final judgment, [the surgeon's] argument nevertheless lacks merit. Although the order did not explicitly set aside the discipline imposed on [the surgeon], that consequence was implicit in the trial court's determination that [the surgeon] was entitled to further administrative proceedings before he could be disciplined. By commanding [the hospital owner] to conduct those proceedings, the trial court necessarily set aside [the hospital owner's] order imposing the discipline. (See *Griset, supra*, 25 Cal.4th at p. 698 [' "It is not the form of the decree but the substance and effect of the adjudication which is determinative" '].)" (*Ibid.*)

c. *Case law in which courts have concluded that a ruling granting or denying a petition for writ of mandate is a judgment*

As stated in part I, *ante*, *Dhillon* is consistent with numerous cases in which courts have stated that a ruling granting or denying a petition for a writ of mandate is in "effect" a final judgment (*Griset, supra*, 25 Cal.4th at

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9 As noted in part III.A.2.a, *ante*, section 1094.5, subdivision (f) provides:

> "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 and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent."

p. 698) because the ruling finally determines the rights of the parties, and is therefore appealable, even if it is in the "form" of an order. (*Ibid.*; see, e.g., *Sandlin, supra*, 50 Cal.App.5th at p. 820; *Molloy, supra*, 42 Cal.App.5th at p. 753; *Tomra Pacific, Inc., supra*, 199 Cal.App.4th at pp. 481–482; *Public Defenders' Organization, supra*, 106 Cal.App.4th at p. 1409; *Townsel v. San Diego Metropolitan Transit Development Bd.* (1998) 65 Cal.App.4th 940, 944, fn. 1 (*Townsel*); *Haight v. City of San Diego* (1991) 228 Cal.App.3d 413, 416, fn. 3 (*Haight*).)

In *Public Defenders' Organization*, the trial court granted an organization's petition for writ of mandate directing an employer "to recognize the organization as the majority representative of certain employees and to conduct an election to determine whether those employees wished to designate the organization as their exclusive representative." (*Public Defenders' Organization, supra*, 106 Cal.App.4th at p. 1405.) The employer appealed. (*Id.* at p. 1409.) On appeal, the organization "argue[d] that the order granting the petition for writ of mandate is not final, and thus not appealable, because it does not finally determine the rights of the parties." (*Ibid.*) The *Public Defenders' Organization* court rejected this argument, reasoning:

> "Generally, only judgments may be appealed. [Citation.] 'A judgment is the final determination of the rights of the parties in an action or proceeding.' [Citation.] Petitions for extraordinary writs, such as petitions for writs of mandate, are special proceedings. [Citation.] Accordingly, an order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal, even if the order is not accompanied by a separate formal judgment. [Citations.]" (*Ibid.*)[10]

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10 In both *Sandlin, supra*, 50 Cal.App.5th 805 and *Molloy, supra*, 42 Cal.App.5th 746, the Court of Appeal relied on *Public Defenders'*

Similarly, in *Tomra Pacific, Inc., supra*, 199 Cal.App.4th 463, two plaintiffs filed notices of appeal from an "*order* denying petitions for a writ of mandate" (*id.* at p. 469, italics added) that sought to compel repayment of certain loans between state funds. The *Tomra Pacific, Inc.* court stated that the order was in fact an appealable final judgment:

> "We note that the order denying the petitions for a writ of mandate is not termed a judgment and does not explicitly address the declaratory relief causes of action. Nevertheless, we are satisfied that the order before us constitutes an appealable final judgment as it left no issue for further consideration." (*Id.* at pp. 481–482.)

Similarly, in *Townsel, supra*, 65 Cal.App.4th 940, the petitioner appealed the denial of his petition for a writ of mandate requesting that an entity vacate its decision upholding the termination of his employment. The *Townsel* court concluded that the trial court's order denying the petition was properly treated as a final judgment, reasoning in relevant part:

> "The record does not show that judgment was entered on the order. However, even if a separate formal judgment has not been entered on an order denying a petition for writ of mandate, the order is properly treated as a final judgment in a special proceeding for purposes of appeal. (*Haight,* [*supra*, 228 Cal.App.3d at p. 416, fn. 3].)" (*Id.* at p. 944, fn. 1.)

In *Haight, supra*, 228 Cal.App.3d 413, this court concluded that an "order denying [a] petition for writ of mandate" was "properly treated as a

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Organization in concluding that an order denying a petition for writ of mandate in its entirety " 'constitutes a final judgment for purposes of an appeal.' " (*Sandlin, supra*, 50 Cal.App.5th at p. 820; *Molloy, supra*, 42 Cal.App.5th at p. 753, fn. 6 [both quoting *Public Defenders' Organization, supra*, 106 Cal.App.4th at p. 1409].)

final judgment in a special proceeding for purposes of appeal." (*Id.* at p. 416, fn. 3.)

d. Laraway *and its progeny*

In *Laraway*, the petitioner "sought certain public records" from a school district. (*Laraway, supra*, 98 Cal.App.4th at p. 580.) The petitioner filed a petition for a writ of mandate and prohibition and sought injunctive and declaratory relief from the school district and several of its employees (collectively "District"). (*Id.* at pp. 580–581.) On August 23, 2000, the trial court entered an " '*order* regarding petitioner's motion for writ of mandamus, prohibition, injunctive and declaratory relief.' " (*Id.* at p. 581, italics added in *Laraway*.) The August 2000 order "completely resolved all issues between all parties" and did not "contemplate nor direct the preparation of any further order or judgment." (*Id.* at p. 582.)

On January 29, 2001, the trial court in *Laraway* filed a "judgment" that "simply reiterated that the court had 'ruled by Order dated August 23, 2000' on the petition, set forth the same rulings as contained in the order denying the petition, added a provision that judgment was entered in favor of respondent and against petitioner, and awarded respondent $0 in costs against petitioner." (*Laraway, supra*, 98 Cal.App.4th at p. 582.)

In late March or early April 2001,[11] the petitioner filed a notice of appeal from the January 2001 "judgment." (*Laraway, supra*, 98 Cal.App.4th at p. 582.) On April 19, 2001, the District filed a cross-appeal from the January 2001 "judgment." (*Ibid.*)

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11 The *Laraway* court noted that the notice of appeal contained in the record was not file stamped, but was dated March 28. (*Laraway, supra*, 98 Cal.App.4th at p. 582, fn. 4.)

On appeal, the *Laraway* court "sua sponte raise[d] the jurisdictional and dispositive issue of whether the prerequisite to appellate jurisdiction, a timely notice of appeal, was ever filed in this case." (*Laraway, supra*, 98 Cal.App.4th at p. 582.) In considering this issue, the *Laraway* court noted that the August 23, 2000 order "contemplated no further action, such as the preparation of another order or judgment [citation], and disposed of all issues between all parties." (*Id.* at p. 583.) The *Laraway* court concluded that the August 2000 order "was properly treated as a final judgment." (*Ibid.*, citing *Townsel, supra*, 65 Cal.App.4th at p. 944, fn. 1; *Haight, supra*, 228 Cal.App.3d at p. 416, fn. 3.)

The *Laraway* court added that "the subsequent judgment entered on January 29, 2001 was simply a repetition of the August 23, 2000 order." (*Laraway, supra*, 98 Cal.App.4th at p. 583.) The *Laraway* court concluded that the Court of Appeal lacked jurisdiction over the appeal and the cross-appeal from the January 2001 "subsequent judgment" (*ibid.*), reasoning:

> "Once a final, appealable order or judgment has been entered, the time to appeal begins to run. The [r]ules of [c]ourt do not provide, once a judgment or appealable order has been entered, that the time to appeal can be restarted or extended by the filing of a subsequent judgment or appealable order making the same decision. Thus, once the August 23, 2000 order was entered, the time within which to file a notice of appeal therefrom began to run, and could not be restarted by the relabeling of the trial court's earlier decision and then entering such 'judgment' at a later date.
>
> "Because the parties failed to file timely notice of appeal from the August 23, 2000 order, the petitioner's appeal and respondent's cross-appeal, filed more than 180 days after entry of the August 23, 2000 order, were untimely, and both such appeals must be dismissed." (*Ibid.*)

In *City of Calexico, supra*, 64 Cal.App.5th 180, this court relied on *Laraway*[12] in concluding that a party had failed to timely file a cross-appeal from a September 24 ruling denying two petitions for writ of administrative mandate because the ruling was a final judgment.[13] (*City of Calexico, supra*, at p. 183.) The *City of Calexico* court reasoned in part:

> "In the September 24 ruling, the trial court denied all of the parties' claims for relief in their entirety, and did not contemplate any further action in the case. Thus, as in *Laraway*, the September 24 ruling is 'properly treated as a final judgment' because it 'contemplated no further action, such as the preparation of another order or judgment [citation], and disposed of all issues between all parties.' (*Laraway, supra*, 98 Cal.App.4th at p. 583.)
>
> "While the City correctly notes in its letter brief that 'the City filed a proposed judgment with the superior court, which the superior court signed on November 21, 2019,' as in *Laraway*, this second judgment 'simply reiterated' that the court had ruled on the petition and 'set forth the same rulings as contained in the order denying the petition.'

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12 The *City of Calexico* court also stated that "*Laraway* is in accord with well-established law." (*City of Calexico, supra*, 64 Cal.App.5th at p. 191, citing *Breslin v. City and County of San Francisco* (2007) 146 Cal.App.4th 1064, 1073–1074; *Nerhan v. Stinson Beach County Water Dist.* (1994) 27 Cal.App.4th 536, 539; and *Griset, supra*, 25 Cal.4th at p. 699.) The *City of Calexico* court also noted that commentators have cited *Laraway* for the proposition that " 'even a seemingly nonappealable "order" may be an appealable final judgment,' " if the order is " 'a final judgment in legal effect.' " (*City of Calexico, supra*, at p. 192, quoting Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2020) ("Civil Appeals and Writs") ¶ 2:38 [citing, inter alia, *Laraway, supra*, 98 Cal.App.4th at p. 583].)

13 The *City of Calexico* court noted that the trial court in that case had indicated that the petitions for writ of mandate had been filed pursuant to section 1094.5, the administrative mandate statute. (*City of Calexico, supra*, 64 Cal.App.5th at p. 186.)

> (*Laraway, supra*, 98 Cal.App.4th at p. 582.) There is nothing in the September 24 ruling itself, nor anything else in the record, demonstrating that the trial court contemplated that the court or the parties would take further action in the case such that the September 24 ruling was not final and therefore, appealable. The mere fact that the trial court entered a subsequent judgment after issuing the September 24 ruling is irrelevant, because the September 24 ruling was itself a final judgment. (See *Laraway, supra*, at p. 583.)"[14] (*City of Calexico*, at p. 192.)

In *Valero, supra*, 49 Cal.App.5th 618, the plaintiff filed a petition for writ of mandate pursuant to section 1094.5. (*Valero, supra*, at p. 632.) The trial court "issued a writ of mandate," vacated an administrative decision, and remanded for further administrative proceedings. (*Ibid.*) The

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[14] Officer Meinhardt contends that *City of Calexico* can be distinguished because, according to Meinhardt, the *City of Calexico* court's holding rested on the City's failure to timely file a cross-appeal, within the time limits of rule 8.108(g). *City of Calexico* cannot be so distinguished.

The *City of Calexico* court expressly concluded that the City's appeal was not filed within the " 'normal time' " (*City of Calexico, supra*, 64 Cal.App.5th at p. 195) for the City to appeal under rule 8.104(a) which expired on November 25, 2019, *or* before December 23, 2019, the latest time within which the City could have filed its cross-appeal under the extension provided in rule 8.108(g)(1). (*City of Calexico, supra*, at pp. 195–196.) The *City of Calexico* court also noted that rule 8.108(a) provides, "This rule operates only to extend the time to appeal otherwise prescribed in rule 8.104(a); it does not shorten the time to appeal. If the normal time to appeal stated in rule 8.104(a) is longer than the time provided in this rule, the time to appeal stated in rule 8.104(a) governs." (*City of Calexico*, at p. 190.) Thus, the *City of Calexico* court expressly concluded, as required under the applicable rules of court in order to conclude that the City's appeal was untimely, that the City's notice of appeal was not timely filed under *either* the normal time for filing an appeal under rule 8.104(a) *or* under the extended time for filing a cross-appeal under rule 8.108(g)(1). We therefore reject Officer Meinhardt's contention that "the holding in *City of Calexico* does not apply to this case because [r]ule . . . 8.108(g) is not implicated here."

defendants, referred to by the *Valero* court as the "air district parties" (*ibid.*), filed an appeal. (*Id.* at p. 633.)

The *Valero* court considered whether it had appellate jurisdiction over the matter, explaining, "In this case, the air district parties filed their notice of appeal more than 60 days after the superior court clerk mailed the parties a file-stamped copy of the appealable judgment accompanied by a proof of service, and so we requested supplemental briefing concerning the appeal's timeliness." (*Valero, supra*, 49 Cal.App.5th at p. 633.) In a footnote immediately following this statement, the *Valero* court stated, "Contrary to the suggestion by the air district parties, the appealable judgment was the court's order granting a writ of mandate, not a 'judgment' that it subsequently entered. (See *Molloy*[*, supra*, 42 Cal.App.5th at p.] 753, fn. 6.)" (*Id.* at p. 633, fn. 10.) Notwithstanding that the air district parties' notice of appeal was filed more than 60 days after the filing of the appealable judgment (i.e., the court's order granting a writ of mandate), the *Valero* court concluded that it had jurisdiction over the appeal because the superior court clerk's service was improper[15] and thus did not commence the time to file a notice of appeal under rule 8.104. (*Valero, supra*, at p. 633.)

B. *The August 6 ruling is a final judgment*

The trial court's August 6 ruling denied Officer Meinhardt's petition for writ of administrative mandate in its entirety and did not contemplate any further action in the case. (See pt. II.B, *ante*.) Although the August 6 ruling is denominated an "Order," the law is well established in this context that, " ' "[i]t is not the form of the decree but the substance and effect of the

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15 The *Valero* court explained that "supplemental briefing disclosed that the superior court clerk's mailing was sent to an incorrect address." (*Valero, supra*, 49 Cal.App.5th at p. 633.)

adjudication which is determinative.' " (*Dhillon, supra*, 2 Cal.5th at p. 1115, quoting *Griset, supra*, 25 Cal.4th at p. 698.)

Applying that test here, and consistent with *Laraway* and *City of Calexico* as well as the cases cited in part III.A.2.c, *ante*, the August 6 ruling is " 'properly treated as a final judgment' because it 'contemplated no further action, such as the preparation of another order or judgment [citation], and disposed of all issues between all parties.' " (*City of Calexico, supra*, 64 Cal.App.5th at p. 192, quoting *Laraway, supra*, 98 Cal.App.4th at p. 583.)

Further, the fact that the trial court entered a document denominated as a "judgment" on September 25 (see pt. II.D, *ante*) after having issued the August 6 ruling is irrelevant, because the August 6 ruling was itself a final judgment. Thus, Officer Meinhardt's period within which to appeal was not restarted by the trial court's filing of the September 25 document styled as a "judgment" that merely reiterated the rulings contained in the court's August 6 ruling. (See *Laraway, supra*, 98 Cal.App.4th at p. 583; *City of Calexico, supra*, 64 Cal.App.5th at p. 195; accord *Valero, supra*, 49 Cal.App.5th at p. 633, fn. 10.)

C. *Officer Meinhardt's arguments to the contrary are ultimately unpersuasive*

Officer Meinhardt's supplemental letter brief on appealability contends that the August 6 ruling was not a final judgment. Although he makes several arguments that are worthy of consideration, for the reasons described below, we conclude that none is persuasive.

1. *A ruling on a petition for writ of administrative mandate that is denominated an "order" constitutes a judgment when such order has the effect of a final judgment*

Officer Meinhardt properly notes that "[t]he right to appeal is 'entirely statutory and subject to complete legislative control.' ([Quoting,] *Trede v.*

Superior Court (1943) 21 Cal.2d 630, 634.)" He further notes that section 1094.5, subdivision (f) provides that the " 'court ***shall*** enter judgment,' " (italics added by Officer Meinhardt) and that section 1094.5, subdivision (g) refers to the taking of a notice of appeal, " 'from the judgment.' " Thus, he contends "[e]ntering judgment is not optional; the court ***must*** do so before an appeal can proceed."

This argument is ultimately unpersuasive because, as stated in part III.A.2.a, *ante*, section 1064 defines a judgment as "the final determination of the rights of the parties therein," and case law is clear that a ruling issued in the *form* of an order constitutes a judgment if it is a judgment in *effect*. Indeed, in *Dhillon*, our Supreme Court relied on this principle in rejecting a party's argument that "the trial court's *order* here was not a final judgment because it was not a 'judgment' as that term is defined by subdivision (f) of Code of Civil Procedure section 1094.5." (*Dhillon, supra*, 2 Cal.5th at p. 1117, fn. 3, italics added.)[16]

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16 In his supplemental brief, Officer Meinhardt also contends that the requirement that a document denominated as a judgment be filed is supported by the "procedures issued by the Sacramento County Superior Court for the conduct of writ proceedings," which he contends is "the only superior court that issues clearly defined writ procedures." He maintains that such rules provide in relevant part: " '[I]f the court denies the writ petition, the party designated by the court shall . . . prepare, serve on all parties, and present to the court a judgment denying the petition.' " (Emphasis omitted.)

We question the relevance of the Sacramento County Superior Court rules to this matter arising in Santa Clara County. However, even assuming the potential relevance of such rules, the fact that the only "superior court that issues clearly defined writ procedures," provides for the entry of a "judgment," does not establish that the August 6 ruling in this case is not a judgment. Again, " ' "[i]t is not the form of the decree but the substance and effect of the adjudication which is determinative." ' " (*Dhillon, supra*, 2 Cal.5th at p. 1115.)

2. *Officer Meinhardt's "premature" appeal theory is unpersuasive*

Officer Meinhardt argues that an order granting or denying a writ petition is *not* a judgment, but that it may be *deemed* a judgment in order to permit a "premature" appeal from such an order to proceed. He contends that the "***equitable*** sentiments" that underlie "*Griset* and other cases[17]" is "to *preserve*, not deny, parties' appeal rights by preventing premature appeals from being kicked out for the technicality that no judgment was entered." In support of this contention, he cites to cases in which courts have deemed a *nonappealable* order to be a "premature but valid [notice of] appeal from the subsequently entered judgment," (italics omitted) in other contexts. (Citing, inter alia, *In re Social Services Payment Cases* (2008) 166 Cal.App.4th 1249, 1262 ["Although the appeal was taken from the nonappealable order sustaining the demurrer, we treat the notice of appeal as a premature but valid notice of appeal from the subsequently entered judgment," citing former rule 8.104(e)(2), current rule 8.104(d)(2)].)[18]

According to Officer Meinhardt, he was not *required* to appeal from the purportedly nonappealable August 6 ruling denying his petition for writ of mandate. He argues, "[t]he takeaway is that because appellant correctly filed

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17 Although Officer Meinhardt does not refer to the cases by name, we understand his argument to be an attempt to distinguish the vast number of cases, several of which are discussed in part III.A.2.c, *ante*, in which courts have determined that an order granting or denying a petition for writ of mandate was a final judgment.

18 Former rule 8.104(e)(2) provided, "The reviewing court may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment." This provision is currently contained in rule 8.104(d)(2).

his appeal within 60 days after notice of entry of judgment[19] he required neither application of the safe harbor rule nor [r]ule 8.104(d) [pertaining to premature appeals] to make his appeal valid." (Boldface omitted.)

We acknowledge that there is language in some case law that is arguably consistent with such a theory. For example, the *Public Defenders' Organization* court stated, "[A]n order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal, *even if the order is not accompanied by a separate formal judgment*," thereby potentially suggesting the legal relevance of a "separate formal judgment." (*Public Defenders' Organization, supra*, 106 Cal.App.4th at p. 1409.) We reject this argument for several reasons.

To begin with, unlike in *In re Social Services Payment Cases, supra*, 166 Cal.App.4th 1249, in none of the cases cited in part III.A.2.c, *ante*, did the reviewing court state that an order granting or denying a petition for an extraordinary writ is *nonappealable*. Nor did any of these cases cite to the rule of court pertaining to *premature* appeals.[20]

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19 Officer Meinhardt intends to refer here to the "judgment" signed on September 17 and filed on September 25.

20 We are not aware of any commentators that have viewed these cases as involving a premature appeal. One treatise refers to several types of such orders in its discussion of premature appeals from nonappealable orders, but does *not* list an appeal from an order granting or denying a petition for writ of mandamus. (See Civil Appeals and Writs, *supra*, ¶ 2:262 ["[S]ome appeals erroneously taken from a nonappealable order may be 'saved' by the court of appeal if the defect is really only one in formality. Usually, this 'saving' power is invoked only where the appeal is mistakenly taken from an order preliminary to rendition of a final judgment (e.g., *sustaining a demurrer, granting summary judgment, or granting judgment on the pleadings*) when it should have been taken from the subsequent judgment on such order" (italics altered)].)

Further, orders such as those sustaining a demurrer, granting summary judgment, or granting judgment on the pleadings do not necessarily completely resolve all of the causes of action in a case. For example, in the summary judgment context, "[t]here are two steps: an order granting the motion (nonappealable preliminary order), and a judgment entered thereunder (final judgment, appealable as in other cases)." (9 Witkin, Cal. Proc. 5th Appeal § 145 (2020); see § 437c, subd. (m) [distinguishing between a "summary judgment" that is an "appealable judgment," and a "order pursuant to this section"].) The summary judgment statute makes clear that an order granting summary judgment does *not* conclusively resolve the action. (See § 437c, subd. (k) ["Unless a separate judgment may properly be awarded in the action, a final judgment shall not be entered on a motion for summary judgment before the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding provided for in this section"].)

In contrast, an order granting or denying a petition for writ of mandate in its entirety, when such order contemplates the taking of no further action in the case, concludes the special proceeding of a civil nature. As such, it is properly considered a final judgment. (See *Dhillon, supra*, 2 Cal.5th at

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Rather, the treatise characterizes an order granting or denying a writ petition as an example of a "[f]inal [j]udgment[ ]." (Civil Appeals and Writs, *supra*, heading before ¶ 2:21; see *id.* at p. ¶ 2:111 ["A petition to the superior court for a writ of certiorari, mandamus or prohibition initiates a 'special proceeding' [citation]. As such, a judgment or order granting or denying the petition is generally appealable. (Citing cases, inter alia, *Public Defenders' Organization, supra*, 106 Cal.App.4th at p. 1409 and quoting *Valero, supra*, 49 Cal.App.5th at p. 633, fn. 10 [" 'the appealable judgment was the court's order granting a writ of mandate, not a "judgment" that it subsequently entered' "].)

p. 1115.) Thus, *Dhillon* supports the principle that an order that finally resolves a petition for writ of mandate *is* itself a final judgment, rather than the theory that such order may be *deemed* a final judgment if an appeal is taken therefrom.

Griset, which Officer Meinhardt properly notes did refer to a " 'premature but valid appeal from the judgment,' " (*Griset, supra*, 25 Cal.4th at p. 700, quoting *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 740 (*Moreheart*))[21] is distinguishable because the order at issue in *Griset* disposed of *both* a petition for writ of mandate and several *other* causes of action. (*Id.* at pp. 699–700.) It was in this context that the Supreme Court stated, "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 of appeal may then be treated as a premature but valid appeal from the judgment.' " (*Id.* at p. 700.)

3. *None of the case law that Officer Meinhardt cites demonstrates that his appeal was timely filed*

Officer Meinhardt also cites two cases in support of his contention that his appeal was timely filed. He notes that in *Protect Our Water v. County of*

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21 In *Morehart*, the California Supreme Court referred to the premature appeal doctrine as a "judicially created exception[ ]" to the one final judgment rule. (*Morehart, supra,* 7 Cal.4th at p. 740.) The *Morehart* court concluded that the doctrine provided an *insufficient* justification for a court of appeal's decision that a judgment disposing of fewer than all of the causes of action in a matter was appealable. (See *id*. at p. 741, discussing *Schonfeld v. City of Vallejo* (1975) 50 Cal.App.3d 401, 418.) *Morehart* offers no support for Officer Meinhardt's contention that an order granting or denying a petition for writ of mandate in its entirety is appealable pursuant to the premature appeal doctrine.

Merced (2003) 110 Cal.App.4th 362 (*Protect Our Water*), in an appeal from a judgment denying a petition for writ of mandate, the Court of Appeal stated the following in a footnote:

> "[Respondent] filed a motion to dismiss the appeal as untimely, arguing the appeal was filed more than 60 days after service of the order denying the writ of mandate. However, the appeal was filed within 60 days after entry of the judgment, and the judgment is appealable. (See *Catalina Investments, Inc. v. Jones* (2002) 98 Cal.App.4th 1, 5, fn. 3; *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 367, fn. 3.)"

We respectfully decline to follow this footnote of *Protect Our Water* to the extent that it may be read to suggest that an order that fully resolves a petition for writ of mandate and contemplates no further action in this case is not a judgment.[22] The court's analysis is cursory, and fails to address *Laraway, supra*, 98 Cal.App.4th 579 or discuss the cases on which it relies. Further, the two cases that the *Protect Our Water* court cites do not, in our view, persuasively support the *Protect Our Water* court's denial of the motion to dismiss. *Catalina Investments, Inc. v. Jones, supra*, 98 Cal.App.4th 1, states merely that "a judgment denying a petition for writ of mandate is appealable," without discussing the type of ruling that constitutes a judgment. (*Id.* at p. 5, fn. 3.) In *MCM Construction, Inc.*, the court stated, "both the order denying its writ petition and the final judgment are appealable orders where no issues remain to be determined." (*MCM Construction, Inc. v. City and County of San Francisco, supra*, 66 Cal.App.4th at p. 367, fn. 3.) However, in our view, neither an order denying a writ

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22 The *Protect our Water* court did not discuss whether the order in that case completely resolved all of the issues in the case and contemplated no further action in the matter.

petition, nor a final judgment, is an "appealable *order*[ ]." (*Ibid.*, italics added.)[23] For the reasons set forth in this opinion, an order that finally resolves a petition for writ of mandate *is* a final *judgment*, and there can be only one judgment in any given special proceeding or action. (See, e.g., *Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1605–1606 [discussing the distinction between an order and a judgment and stating "while there may be numerous orders made throughout a proceeding, there is only one judgment" (*id.* at p. 1605)].)

Officer Meinhardt also cites *Hadley v. Superior Court* (1972) 29 Cal.App.3d 389 (*Hadley*). In *Hadley*, a court clerk entered a minute order denying a petition for writ of mandate. (*Id.* at p. 392.) Contending that no final judgment had been entered, the petitioner subsequently filed a motion for entry of judgment. (*Ibid.*) After the trial court denied the motion, the petitioner filed an application for writ of mandate in the Court of Appeal directing the trial court "to render and enter judgment in [the action] pending in respondent court . . . ." (*Id.* at p. 391.) The *Hadley* court issued a peremptory writ requiring respondent court to enter judgment. (*Id.* at p. 396.) The *Hadley* court reasoned that "a minute order *signed by the clerk* and entered in the minutes," does not constitute a "final judgment in a proceeding for administrative mandamus after the issuance of an alternative writ and trial on the merits." (*Id.* at p. 393, italics altered.)

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23 No case of which we are aware has identified a *statute* making an order granting or denying a petition for writ of mandate an appealable *order*. Because all orders are nonappealable unless identified by statute (see, e.g., *Draus v. Alfred M. Lewis, Inc.* (1968) 261 Cal.App.2d 485, 489), an order granting or denying a petition for writ of mandate is not an appealable *order*. Although, as stated throughout this opinion, an order granting or denying a petition for writ of mandate that is a final judgment in effect is a final *judgment*.

It is well established that a minute order dismissing a case that is *not* signed by a judge is not a judgment. (See *Katzenstein v. Chabad of Poway* (2015) 237 Cal.App.4th 759, 765; see § 581d.) Thus, we agree with the *Hadley* court to the extent that it concluded that an *unsigned* minute order denying a petition for writ of mandate is not a judgment.[24] However, to the extent that *Hadley* may be read to suggest that a formal document titled "judgment" must be filed in order for there to be a final judgment on a petition for writ of mandate, we decline to follow such reasoning, which we consider to be inconsistent with that espoused in *Dhillon* and the case law discussed in part III.A.2.c, *ante*. (See also Cal. Civil Writ Practice (Cont.Ed.Bar) § 11.8 No Formal Judgment Necessary [stating that *Hadley* "has not been followed and seems to be an anomaly based on the [C]ourt of [A]ppeal's determination that formal entry of judgment was contemplated"]; 9 Witkin, Cal. Proc. 6th Appeal § 165 (Order Granting or Denying Writ) ["a superior court order either granting or denying the petition [for writ of mandate] is appealable, and this rule applies even if the order is not accompanied by a separate, formal judgment"].)

4. *We continue to follow* Laraway

Finally, Officer Meinhardt offers "seven reasons," why this court should not follow *Laraway*. While the bulk of these arguments are addressed by our analysis above, in the interests of fairness and completeness, we discuss each contention here. We also note that Officer Meinhardt does not contend that any cases have questioned the reasoning of *Laraway* since its publication in 2002, and we are not aware of any such cases.

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24 In this case, as noted in part II.B, *ante*, the August 6 order is a formal order signed by a judge.

First, Officer Meinhardt notes that *Laraway* was not brought pursuant to section 1094.5, and contends that the trial court in that case "was not obligated to 'enter judgment' as [section 1094.5, subdivision (f)] requires in an administrative mandamus action." Yet, as explained in pt. III.A.2.b, *ante*, under *Dhillon*, an order on a petition for writ of administrative mandate brought pursuant to section 1094.5 *is* a judgment if "no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree." (*Dhillon, supra*, 2 Cal.5th at p. 1115.)

Second, Officer Meinhardt states that *Laraway* "appears to be the only published case in California that has dismissed an appeal as untimely," for failure to timely appeal in this context. The *Laraway* and the *City of Calexico* courts both dismissed appeals in this context, and, for the reasons stated in this opinion, we find the reasons for these dismissals to be persuasive. Thus, we also reject Officer Meinhardt's third argument that *Laraway* takes "laudable efforts to ***preserve*** appellate rights and transforms them into a mandate to ***extinguish*** appellate rights," his fourth argument that *City of Calexico* should not be "applied retroactively to appellant," and his fifth argument that *Laraway* and *City of Calexico* fail to "account" for the fact that an appeal from an order denying a petition for writ of mandate is, according to Officer Meinhardt, a "premature" appeal.

We also reject Officer Meinhardt's sixth argument that application of the holdings in the *Laraway* / *City of Calexico* line of cases is undesirable because it would force "litigants to appeal every conceivable final order." The law is well established that, as the *Dhillon* court stated, a judgment is determined by its "effect" rather than its "form." (*Dhillon, supra*, 2 Cal.5th at p. 1115.) Consequently, litigants seeking appellate review of a ruling that is, in effect, a judgment are required to timely appeal from such judgment.

Finally, Officer Meinhardt argues that there "is an overwhelming fairness and equity issue," (boldface omitted) and contends that the "rules are clear and appellant followed them." In our view, Officer Meinhardt's "fairness" argument is unpersuasive given that *Laraway* has been the law for nearly 20 years and has recently been applied by this court in *City of Calexico*, *and* numerous courts have repeatedly held that "an order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal . . . ." (*Public Defenders' Organization, supra*, 106 Cal.App.4th at p. 1409; see cases cited in pt. III.A.2.c*, ante*.)

D. *Officer Meinhardt's appeal must be dismissed*

We concluded in part III.B, *ante*, that the August 6, 2020 ruling is a final appealable judgment. That same day, the clerk of court served the parties with the August 6 ruling and filed a proof of service showing the date that the ruling was served. (See pt. II.B, *ante*.) Pursuant to rule 8.104(a)(1)(A), the 60-day period for filing a notice of appeal began August 6, 2020 and ended on October 5, 2020. Thus, Officer Meinhardt's October 15 notice of appeal, even if liberally construed as seeking to appeal the August 6 ruling,[25] was not timely filed and his appeal must be dismissed.[26] (*Laraway,*

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25 As noted in pt. II.E, *ante*, Officer Meinhardt's notice of appeal indicated that he was appealing from the September 17, 2020 "judgment."

26 In addition, the Board served notice of entry of the August 6, 2020 judgment on August 14, 2020 (see pt. II.C, *ante*), thereby triggering the 60-day period under rule 8.104(a)(1)(B). Because 60 days from August 14, 2020 was October 13, 2020, Officer Meinhardt's October 15, 2020 notice of appeal also is not timely filed under rule 8.104(a)(1)(B).

The sole argument that Officer Meinhardt offers in his supplemental brief on appeal is that the August 6 ruling is *not* a final judgment. Officer Meinhardt presents no argument that his appeal was timely filed, assuming that the August 6 ruling *is* a final judgment.

supra, 98 Cal.App.4th at p. 582; *City of Calexico, supra*, 64 Cal.App.5th at p. 196; rule 8.104(b).)

IV.

DISPOSITION

The appeal is dismissed. Officer Meinhardt is to bear costs on appeal.

AARON, Acting P. J.

WE CONCUR:

IRION, J.

GUERRERO, J.