

HORVITZ & LEVY

Business Arts Plaza
3601 W. Olive Ave., 8th Fl.
Burbank, CA 91505
818.995.0800

December 23, 2019

The Honorable Chief Justice Tani Cantil-Sakaue
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

Re: ***State Farm General Insurance Company v. Lara***
Case No. S259327
Amicus Curiae Letter in Support of Petition for Review

Dear Chief Justice Cantil-Sakaue and Associate Justices:

We submit this letter on behalf of Washington Legal Foundation (WLF) and Horvitz & Levy LLP in support of the petition for review filed by State Farm General Insurance Company (State Farm). State Farm's petition raises an important, unsettled, and recurring issue of appealability that merits this Court's attention.

INTERESTS OF AMICI CURIAE

WLF is a public-interest law firm and policy center, located in Washington, D.C., with supporters nationwide, including many in California. WLF promotes free enterprise, individual rights, and a limited and accountable government. It appears often in California's courts, as an amicus curiae, to promote these values. (See, e.g., *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955; *Martinez v. Regents of University of California* (2010) 50 Cal.4th 1277; *Monsanto Co. v. Office of Environmental Health Hazard Assessment* (2018) 22 Cal.App.5th 534.) Clear jurisdictional rules, WLF believes, are a key component of due process and the rule of law.

Horvitz & Levy LLP, a private California law firm, is the largest law firm in the nation specializing in appellate litigation. We have represented clients in cases involving the sort of pleading at issue here, a petition for writ of administrative mandate combined with a complaint for other relief. As a firm handling appeals on a daily basis, both we and our clients depend on rules of appealability and timeliness

of appeals that are clear and easy to apply. We believe State Farm’s petition raises an issue of appealability this Court should clarify, lest parties inadvertently lose their appellate rights.

No counsel for a party authored this letter in whole or in part. No person or entity other than WLF and Horvitz & Levy LLP made a monetary contribution intended to fund the submission of this letter.

WHY REVIEW SHOULD BE GRANTED

The Law: an order denying a standalone writ petition or denying a petition and resolving all other claims may be appealable as a “final judgment,” but an order denying a petition without resolving all claims is not appealable.

State Farm’s petition raises an important, unsettled, and recurring issue of appealability that merits this Court’s attention. The issue arises in cases where, as here, a party files a complaint for declaratory or other relief combined with a petition for writ of administrative mandate (writ petition). Combined pleadings of this sort are common. (See, e.g., *Christensen v. Lightbourne* (2019) 7 Cal.5th 761, 770 [“combined petition for writ of mandate and administrative mandamus [citations] as well as a complaint for declaratory relief”]; *Santa Monica Beach, Ltd. v. Superior Court* (1999) 19 Cal.4th 952, 959 [combined petition for writ of administrative mandate and complaint for inverse condemnation]; *Rudick v. State Bd. of Optometry* (2019) 41 Cal.App.5th 77, 80 [“combined verified petition for writ of mandate and complaint for declaratory and injunctive relief”]; *1041 20th Street, LLC v. Santa Monica Rent Control Bd.* (2019) 38 Cal.App.5th 27, 37 [“combined petition for writ of administrative mandamus and complaint for declaratory relief”].)

This Court and others have established rules for determining whether an order denying a writ petition is appealable. The rules function well enough when the intent of the lower court’s order—to resolve fully, or *not* to resolve fully, the parties’ dispute—is clear. But on the current state of the law, the parties are in legal limbo when the court’s intent is uncertain.

A petition for writ of administrative mandate is a special proceeding of a civil nature. (*Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, 1115.) When such a petition is *not* combined with a civil complaint seeking other relief, that is, when it is a “standalone” petition, an order granting or denying the petition constitutes a final

judgment in the special proceeding and is appealable; no further formal judgment is required to start the clock on the time to appeal. (See *Bernard v. City of Oakland* (2012) 202 Cal.App.4th 1553, 1558, fn. 3; *Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409; Code Civ. Proc., § 1064 [“A judgment in a special proceeding is the final determination of the rights of the parties”].)

When a writ petition is combined with a complaint seeking other relief, whether an order disposing of the petition is appealable depends on whether the order resolves the entire dispute between the parties or resolves only the writ petition, leaving other claims unresolved.

If the order leaves other claims unresolved, then no appeal from the order will lie. Under the “one final judgment” rule, an appeal will lie only from the later-entered judgment that finally resolves all claims. (See *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 697 (*Griset*) [“When an order denying a petition for writ of administrative mandate does not dispose of all causes of action between the parties, allowing an appeal from the denial order would defeat the purpose of the one final judgment rule by permitting the very piecemeal dispositions and multiple appeals the rule is designed to prevent”]; *Lawrence v. Superior Court* (2018) 21 Cal.App.5th 513, 519-520 [“The trial court’s order denied petitioner’s petition for writ of mandate without prejudice, but it left open for resolution in the interpleader action his causes of action for declaratory and injunctive relief. Consequently, the court’s order did not dispose of all of his causes of action, and some remain pending. [¶] . . . Because the trial court’s order did not resolve all of petitioner’s causes of action, it was not a final determination of the rights of the parties and is thus not an appealable order.”]; *Woody’s Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1020 [order denying petition for writ of administrative mandate not appealable where accompanying cause of action for damages had not been dismissed, “a fact noted by the trial judge at the hearing on the administrative mandate”]; *Nerhan v. Stinson Beach County Water Dist.* (1994) 27 Cal.App.4th 536, 540 [“the denial of a petition for writ of mandate is not appealable if other causes of action remain pending between the parties”]; see also *Haight v. City of San Diego* (1991) 228 Cal.App.3d 413, 416 (*Haight*) [noting prior appeal from denial of writ petition was dismissed as premature; subsequent appeal was proper because appealing party had by then dismissed unresolved claims].)

On the appeal from the final judgment, the appellant may challenge the interlocutory order denying the writ petition. (See Code Civ. Proc., § 906.)

Conversely, an order disposing of a writ petition amounts to a final judgment and is appealable if it also clearly resolves all the claims between the parties, leaving nothing more to be decided. (*Griset, supra*, 25 Cal.4th at p. 699 [order denying petition for writ of mandate was an appealable judgment because it “disposed of all causes of action framed by the pleadings, leaving no substantive issue for future determination]; *Consaul v. City of San Diego* (1992) 6 Cal.App.4th 1781, 1792, fn. 6 [“The order denying the petition for writ of mandate and overruling the city’s demurrer was a final determination of the entire action. As such we construe the order to be an appealable final judgment.”].)

The Problem: uncertainty whether an order disposing of a writ petition without mentioning the plaintiff’s other causes of action “effectively disposes” of those causes of action.

Problems arise when a case falls in the middle—when the order denying the writ petition does not mention the other pending causes of action and the court does not make clear, either in its oral remarks or in the order itself, whether it intended to leave the other causes of action for later resolution or to resolve them by the order. That is what happened in this case.

The trial court’s order denying State Farm’s writ petition did not expressly resolve or even mention State Farm’s accompanying complaint for declaratory relief. And the parties disagreed whether the order *effectively* disposed of the complaint. (See PFR 12-13.)

To resolve that disagreement, State Farm requested a status conference, reminding the court that State Farm’s pleading included both a complaint for declaratory relief and a petition for a writ of administrative mandate, that the former sought relief different from and broader than the latter, and that the court’s previous order denied only the writ petition; it did not purport to resolve the complaint for declaratory relief. (State Farm’s Oct. 10, 2019 letter to Court of Appeal (State Farm Letter), exh. D, pp. 1-2.)

The court responded by convening a status conference, at which it recognized “it need[ed] to make a determination of whether the matter was fully and completely resolved or not” and “whether there should be some further setting on the declaratory relief cause of action.” (PFR 13.)

More than four months later, after the time to appeal from the order denying the writ petition had expired, the court entered a formal “Judgment Denying Petition for Writ of Mandate (Phase 2).” (PFR 13-14; State Farm Letter, *supra*, exh. J.) Like the earlier order denying the writ petition, the judgment did not mention State Farm’s complaint for declaratory relief. But unlike the order, the judgment did reflect the court’s intention to resolve the case “‘in full.’” (PFR 14.)

State Farm appealed from the judgment, only to be told by the Court of Appeal that it had, in effect, guessed wrong. Though the trial court itself had been unsure whether its order denying the writ petition had resolved all outstanding claims, and the court had entered a final “judgment” to resolve that uncertainty, the Court of Appeal did not share the trial court’s uncertainty: “The January 14, 2019 order denying [the] petition for writ of mandate *effectively disposed* of each of [State Farm’s] causes of action and was therefore final and appealable.” (PFR Appen. A, emphasis added.)

The Court of Appeal cited one case in its dismissal order: *Bettencourt v. City and County of San Francisco* (2007) 146 Cal.App.4th 1090, 1097-1098. In *Bettencourt*, the Court of Appeal found an initial order denying a writ petition was appealable in order to save the appeal from dismissal, explaining that the order *effectively disposed* of all claims—and that the parties who appealed from the order recognized as much when they filed their notice of appeal. (*Ibid.*) Specifically, the trial court’s order denying writ relief and injunctive relief expressly adjudicated a legal issue dispositive of the remaining two causes of action, which were not mentioned in the order. (*Id.* at pp. 1096-1098 [“The trial court resolved the statute of limitations issue essential to all four alleged causes of action such that the officers cannot prevail on any of them. *In these circumstances*, we treat the trial court’s order denying issuance of a writ of mandate as the equivalent of a final judgment on all of these causes of action. [Citing *Griset, supra.*] As the appeal from this order was timely filed, we have jurisdiction to consider the merits of the issues that Bettencourt raises.” (emphasis added)].)

Here, the Court of Appeal invoked the “effective disposition” rule based on a hindsight analysis of the trial court’s order, finding in essence that both the trial court and State Farm guessed wrong in thinking that the order did not necessarily resolve all claims, and that a judgment doing so was needed. As this case illustrates, the consequence of guessing wrong can be drastic—loss of the right to appellate review. And yet, State Farm had every reason to believe that, had it appealed earlier, its appeal would have been dismissed as premature under authority from the same

appellate division that dismissed the appeal in this case. (*Haight, supra*, 228 Cal.App.3d at p. 416.)

Jurisdictional rules in particular should be clear and leave nothing to chance or guesswork. (PFR 9.) Few would dispute that parties should not be put to the challenge of having to guess whether a trial court order is or is not appealable, or how the Court of Appeal may later construe a facially uncertain order on which appellate jurisdiction depends. (See PFR 16-19 [explaining the critical importance of resolving the jurisdictional issue presented].) That is why, normally, no appeal will lie absent a formal judgment or one of the other appealable orders listed in Code of Civil Procedure section 904.1. The protection and certainty afforded by that formal requirement is lacking under the approach taken by the Court of Appeal here.

If the parties spot the problem in time and cooperate, they may be able to circumvent it—provided the courts also cooperate. For example, in *Page Mill Management, LLC v. City of East Palo Alto* (Aug. 31, 2009, A121631) 2009 WL 2742795 [nonpub. opn.], the trial court entered an order granting a writ petition without resolving an accompanying cause of action for declaratory relief. (*Id.* at p. *2, fn. 10.)¹ After the defendant appealed from the order, the parties *stipulated* that “the statement of decision and order resolved all the issues raised by all causes of action, and that the writ of mandate ‘provided the same relief and [has] the same force and effect as that which could be obtained by a declaratory judgment.’ In accordance with the stipulation, the trial court entered a final judgment in favor of [plaintiffs], reflecting that the statement of decision and order resolved the declaratory relief cause of action.” (*Ibid.*) Taking judicial notice of the stipulation and the final judgment, the Court of Appeal determined the order granting the writ petition “*effectively disposed* of the declaratory relief cause of action” and was therefore appealable. (*Ibid.*, emphasis added.)

The need for that sort of procedural improvisation demonstrates that the law as it currently stands spawns undue uncertainty and disputes over whether an appeal is too early or too late—because the parties cannot always be certain or agree whether an order that denies a writ petition without mentioning plaintiff’s other

¹ We do not rely on this unpublished opinion as legal authority or precedent (see Cal. Rules of Court, rule 8.1115(a)) but simply to illustrate how the legal uncertainty in this area poses problems for parties and courts.

claims nevertheless effectively disposes of those claims. Below, we propose a solution to bring clarity to this muddled area of law.

A Proposed Solution.

One simple solution to the problem presented by this case would be to hold that, when a petition for writ of administrative mandate is combined with a complaint for other relief, an order denying the petition is not appealable *unless* the order expressly recites that it resolves all pending claims in the case. The recital would put the parties on notice that the order will function as the final judgment in the case, from which any aggrieved party may appeal. On the other hand, if the order *omits* that recital, the parties can confidently await resolution of the other claims and entry of a final judgment before filing a notice of appeal to obtain review of the interlocutory order denying the writ petition.

Such a rule would not be novel in California. Indeed, this Court adopted a similar rule for a similar purpose in *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51 (*Van Beurden*).

Van Beurden involved Code of Civil Procedure section 660, under which the trial court's deadline to rule on a motion for new trial, and consequently the deadline for filing a notice of appeal from the judgment, depended on whether the trial court clerk had served notice of entry of the judgment "pursuant to [Code of Civil Procedure] section 664.5." (*Van Beurden, supra*, 15 Cal.4th at p. 56, emphasis omitted.) Section 664.5, in turn, provided in relevant part that "[u]pon order of the court in any action or special proceeding, the clerk shall mail notice of entry of any judgment or ruling, whether or not appealable." (*Id.* at p. 57, emphasis added.) This Court's task was to decide "what constitutes evidence sufficient to establish that the clerk of the court mailed a 'notice of entry' of judgment '[u]pon order of the court.'" (*Id.* at p. 61.)

This Court stressed that, because the statutes at issue involved jurisdictional deadlines, the courts and the parties should not have to guess whether a clerk was acting "upon order of the court" when the clerk served notice of entry of judgment: "[I]n a matter involving jurisdictional restrictions on the right to appeal, we should not engage in 'guesswork' concerning whether the trial court actually ordered the clerk to mail notice of entry of judgment. Nor should parties operate under uncertainty about when they must file an appeal." (*Van Beurden, supra*, 15 Cal.4th at pp. 62-63.)

“To avoid uncertainty,” this Court adopted the following rule: “[W]hen the clerk of the court mails a file-stamped copy of the judgment, it will shorten the time for ruling on the motion for a new trial *only when the order itself indicates that the court directed the clerk to mail ‘notice of entry’ of judgment.* [¶] Neither parties nor appellate courts should be required to speculate about jurisdictional time limits.” (*Van Beurden, supra*, 15 Cal.4th at p. 64, emphasis added; see *id.* [“to qualify as a notice of entry of judgment under Code of Civil Procedure section 664.5, the clerk’s mailed notice must affirmatively state that it was given ‘upon order by the court’ or ‘under section 664.5’ ”].)

The rule this Court announced—that the clerk’s service of notice of entry of judgment does not start the clock on jurisdictional deadlines unless the notice itself includes an express confirmation that the jurisdictionally significant event had occurred—removed the potential for uncertainty and eliminated the need for guesswork.

For another example of a rule designed to eliminate the guesswork in determining a jurisdictional deadline, consider rule 8.264(c)(2) of the California Rules of Court. To eliminate uncertainty over the finality date of a Court of Appeal opinion, and thus to fix with certainty the date on which a petition for review of that opinion must be filed, the rule requires that any order modifying the opinion *expressly state* whether the modification changes the appellate judgment. The rule thus spares the parties from having to guess whether the modification changes the judgment and consequently restarts the finality period and the time for filing a petition for review. (See Cal. Rules of Court, rules 8.264(c)(2), 8.500(e)(1).)

The rule amici propose above, that an order disposing of a writ petition is not appealable unless it expressly states that it resolves all claims between the parties, would likewise spare the parties from having to guess whether the order “effectively disposes” of all pending claims. The rule would eliminate uncertainty about appealability and the need “to speculate about jurisdictional time limits.” (*Van Beurden, supra*, 15 Cal.4th at p. 64.)

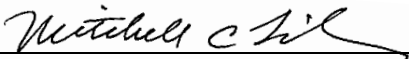
The Honorable Chief Justice Tani Cantil-Sakauye
and Associate Justices
December 23, 2019
Page 9

CONCLUSION

Amici curiae urge this Court to grant State Farm's petition for review and consider adopting the rule proposed above or any other rule to bring much-needed clarity to the law governing the appealability of orders denying petitions for writ of administrative mandate in cases where the petition is combined with a civil complaint seeking additional relief.

Very truly yours,

HORVITZ & LEVY LLP
LISA PERROCHET
MITCHELL C. TILNER

By: 

Mitchell C. Tilner

Attorneys for Amici Curiae
**Washington Legal Foundation and
Horvitz & Levy LLP**

PROOF OF SERVICE

**State Farm General Insurance Company v. Lara
Case No. S259327**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On December 23, 2019, I served true copies of the following document(s) described as **Amicus Curiae Letter in Support of Petition for Review** on the interested parties in this action as follows:


SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 23, 2019, at Burbank, California.



Caryn Shields

Document received by the CA Supreme Court.

SERVICE LIST
State Farm General Insurance Company v. Lara
Case No. S259327

Xavier Becerra, Attorney General of Calif.
Cara M. Porter, Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Tel.: (415) 510-3508
Fax: (415) 703-5480
Email: cara.porter@doj.ca.gov

Attorneys for Respondent
Ricardo Lara, in his official
capacity as the Insurance
Commissioner of the State
of California

Via TrueFiling

Harvey Rosenfield
Pamela Pressley
Consumer Watchdog
6330 San Vicente Blvd., Suite 250
Los Angeles, CA 90048
Tel. (310) 392-0522
Fax: (310) 392-8874
Email: harvey@consumerwatchdog.org
Email: pam@consumerwatchdog.org

Attorneys for Respondent
Consumer Watchdog

Via TrueFiling

Michael J. Strumwasser
Bryce A. Gee
Strumwasser & Woocher LLP
10940 Wilshire Boulevard, Suite 2000
Los Angeles, CA 90024
Tel.: (310) 576-1233
Fax: (310) 319-0156
Email: mstrumwasser@strumwooch.com
Email: bgee@strumwooch.com

Attorneys for Respondent
Consumer Watchdog

Via TrueFiling

Vanessa O. Wells
Hogan Lovells US LLP
4085 Campbell Ave., Suite 100
Menlo Park, CA 94025
Tel.: (650) 463-4000
Fax: (650) 463-4199
Email: vanessa.wells@hoganlovells.com

Attorneys for Petitioner
State Farm General
Insurance Company

Via TrueFiling

Daniel M. Kolkey
Theodore J. Boutrous Jr.
Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
Tel.: (415) 393-8200
Fax: (415) 393-8306
Email: dkolkey@gibsondunn.com
Email: tboutrous@gibsondunn.com

Attorneys for Petitioner
State Farm General
Insurance Company

Via TrueFiling

Neal Kumar Katyal
Erin R. Chapman
Hogan Lovells US LLP
555 Thirteenth St., NW
Washington, DC 20004
Tel.: (202) 637-5600
Fax: (202) 637-5910
Email: neal.katyal@hoganlovells.com
Email: erin.chapman@hoganlovells.com

Attorneys for Petitioner
State Farm General
Insurance Company

Via TrueFiling

Michael Levy, Deputy General Counsel
Daniel Goodell, Assistant Chief Counsel
Nikki McKennedy
Cecilia Padua
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Tel. (415) 538-4117
Fax: (415) 904-5490
Email: michael.levy@insurance.ca.gov
Email: daniel.goodell@insurance.ca.gov
Email: nikki.mckennedy@insurance.ca.gov
Email: cecilia.padua@insurance.ca.gov

Courtesy Copy

Via TrueFiling

California Court of Appeal
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, CA 92101

Case No. D076434

Via TrueFiling

Superior Court of California
County of San Diego
Hall of Justice
330 W Broadway, Dept. 69
San Diego, CA 92101

Case No. 37-2016-00041750-CU-MC-CTL

Via U.S. Mail

Document received by the CA Supreme Court.