

CASE #: F088939

CASE No. _____

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA,
FIFTH APPELLATE DISTRICT**

FRIENDS OF CALWA, INC. and FRESNO BUILDING
HEALTHY COMMUNITIES,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA FOR THE
COUNTY OF FRESNO,

Respondent,

and

CALIFORNIA DEPARTMENT OF TRANSPORTATION,

Respondent and Real Party in Interest.

**PETITION FOR WRIT OF MANDATE, PROHIBITION, OR
OTHER APPROPRIATE WRIT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Appeal from the October 17, 2024 Order Granting Motion for
Summary Adjudication

Fresno County Superior Court, Case No. 23CECG04109

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Petitioners Friends of Calwa, Inc. and Fresno Building Healthy Communities are, and at all times throughout this litigation were, non-profit organizations. Petitioners know of no interested entities or persons that must be listed in this certificate under California Rules of Court, Rule 8.208, other than the parties to this Petition.

Dated: Nov. 14, 2024

Respectfully submitted,

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INTRODUCTION

This Petition concerns the rights of the South Fresno community to challenge the environmental review and approval of the South Fresno State Route 99 Corridor Project (“Project”), a major highway expansion project that would accelerate air pollution, industrial buildout, and heavy-duty truck traffic in already overburdened neighborhoods. These rights hang in the balance after the lower court contravened binding precedent to withhold equitable tolling of the statute of limitations, closing the courthouse doors on Petitioners even though they timely filed and diligently prosecuted their claims in federal and then state court. Declining to correct this error on writ review would result in irreparable harm to the South Fresno community if construction goes forward before Petitioners have the opportunity to appeal the summary adjudication decision after final judgment.

A joint undertaking of the Federal Highway Administration (“FHWA”) and California Department of Transportation (“Caltrans”), the Project would turn two small interchanges connecting the interstate highway with local South Fresno roadways into a spaghetti bowl of ramps, lanes, and overcrossings—increasing the number of interchange lanes eight-fold and paving the way for a 33 percent increase in capacity of the highway mainline. The Project’s environmental review disclosed neither the Project’s connection to thousands of acres of planned warehousing and industrial buildout in this already overburdened community nor the full extent of traffic and toxic air emissions the Project is expected to induce.

After Caltrans quietly certified the Project’s environmental review document in early 2023 without public hearing or inviting comment on the final environmental document, Petitioners—non-profit organizations that advocate for South Fresno residents—quickly brought suit in federal court against FHWA and Caltrans under the federal and state environmental laws that govern the agencies’ joint approvals. They timely filed within the short 30-day statute of limitations supplied for their claims under the California Environmental Quality Act, Public Resources Code section 21000 et seq. (“CEQA”). When Caltrans asserted a sovereign immunity defense to Petitioners’ CEQA and state civil rights claims months into the litigation, Petitioners promptly refiled the state law claims in Fresno County Superior Court (the “Trial Court”) while they were still pending in federal court.

In doing so, Petitioners acted in accordance with decades of precedent that “the limitations period of a second action” is equitably “tolled . . . during the pendency of a first action later found to be defective.” *Collier v. City of Pasadena*, 142 Cal.App.3d 917, 922 (1983). Courts created equitable tolling for precisely the circumstance presented here: “to prevent unjust and technical forfeitures of the right to a trial on the merits when the purpose of the statute of limitations—timely notice to the defendants of the plaintiff’s claims—has been satisfied.” *McDonald v. Antelope Valley Cmty. Coll. Dist.*, 45 Cal.4th 88, 99 (2008) (citation omitted). But rather than extend equitable tolling on these well-trodden grounds, the Trial Court contravened settled law and ignored the material facts to foreclose hearing on the merits of

Petitioners' CEQA claims.

For South Fresno residents, this story feels all too familiar. When State Route 99 was constructed along the southern edge of the City of Fresno in the 1950s and 60s, it erected a physical barrier between South Fresno communities of color and the whiter and wealthier neighborhoods of north Fresno. This was no accident. Beginning in the 1870s, racially restrictive covenants prohibited rental or sale of homes to residents outside South Fresno; in 1918, the City's first general plan designated its southern neighborhoods for polluting land uses; and in 1936, redlining maps labeled the same neighborhoods risky for financial investment based on racial composition and commercial zoning. In the decades since, heavy-duty truck traffic fueling more and more industrial buildout in South Fresno has compounded safety hazards for residents and choked the air with diesel particulate matter, a carcinogenic air toxin. Today, the State of California ranks South Fresno in the 100th percentile of census tracts for cumulative pollution burden statewide. South Fresno residents have been left to fill gaps from systematic local and state disinvestment, organizing to maintain parks and provide civic services for residents, who despite these many barriers, cherish and care for South Fresno as their home.

If the Project goes forward as conceived, it will upend the efforts of South Fresno residents to secure a healthier future for their community. By Caltrans' own conservative estimates, the Project would add nearly 1.5 million new truck trips per year to the expanded interchanges by 2026. Also by Caltrans' own

estimates, the Project would increase particulate matter pollution at its most impacted interchange to *971 percent* of no-build emissions. All this is without accounting for a new 3,000-acre industrial park next to the Project site that Caltrans planned the Project around but omitted from its environmental review. And yet Caltrans concluded that the Project presents no significant air quality impacts and no safety or health risks for residents. Indeed, Caltrans concluded that the Project area *has no residents*—erasing the presence of entire neighborhoods and sensitive receptors, including the 1,400-bed juvenile justice facility at the Project’s fenceline. When residents repeatedly showed up to tell Caltrans otherwise, their comments were brushed aside.

So, residents turned to the courts. But instead of allowing Petitioners to have their day in court—any court—on the merits, Caltrans fought jurisdiction in federal court and then invited the state Trial Court to toss out Petitioners’ refiled CEQA claims as time-barred on summary adjudication. The Trial Court accepted the invitation despite finding that Petitioners filed their state law claims timely, reasonably, and in good faith in federal court, and that Caltrans will face no prejudice in now defending against them in its preferred forum. These are all factors this Court has said warrant equitable tolling.

In granting summary adjudication for Caltrans, the Trial Court committed three fatal errors, each of which necessitate writ relief. First, the Trial Court cast aside binding precedent to cut the tolling period short. Decades of case law dictate that a

limitations period subject to equitable tolling remains tolled until the first-filed claims are dismissed—which in this case, happened weeks after Petitioners refiled in state court. The Trial Court broke with these authorities to craft a stringent new standard: The tolling period ended when Petitioners received “notice” that Caltrans was considering a sovereign immunity challenge. Not only is this rule without support, but it contravenes a core purpose of equitable tolling—to avoid the need for simultaneous litigation on the same claims in two fora.

Second, the Trial Court applied what it coined a “start/stop clock approach” to hold that if the limitations period resumed running on a depleted clock, refile after that point was necessarily untimely. But higher courts have already considered—and rejected—this approach to equitable tolling, a doctrine meant to be applied flexibly.

Third, the Trial Court flouted the standards for summary adjudication by ignoring the facts material to the reasonableness of Petitioners’ timeline for refile in state court. After Caltrans moved for dismissal on Eleventh Amendment grounds nearly six months into the litigation, Petitioners informed Caltrans that they would refile the claims in its preferred forum to avoid any dispute about jurisdiction and ensure a swift hearing on the merits. Caltrans agreed to stipulate to this voluntary dismissal but then steadfastly and inexplicably insisted that any stipulation must provide for dismissal of the state law claims *with prejudice*, barring their refile in any forum. After weeks of attempted negotiations at the district court’s direction to resolve

the issue without motions practice, Petitioners sought and received ex parte relief and refiled their state law claims the day their ex parte motion for dismissal without prejudice was noticed for hearing. The Trial Court's Order makes no mention of these material facts, instead mischaracterizing the negotiations as a protracted attempt by Petitioners to secure a tolling agreement rather than to simply obtain dismissal in a form that would allow them to refile their claims. Equitable tolling does not require a defendant's permission, and whether Caltrans would consent to it was not at issue in the parties' dispute.

All told, the Trial Court's unprecedented and unlawful approach to equitable tolling loses sight of the very reason the courts created the doctrine in the first place. Equitable tolling exists to "ensure fundamental practicality and fairness." *Saint Francis Mem'l Hosp. v. State Dept. of Pub. Health.*, 9 Cal.5th 710, 725 (2020) (citing *J.M. v. Huntington Beach Union High School Dist.*, 2 Cal.5th 648 (2017)). It is designed to remove "procedural traps for the unwary," not create new ones like those the Trial Court imposed here. *McDonald*, 45 Cal.4th at 102.

Code of Civil Procedure section 437c(m) invites this Court's intervention through a peremptory writ of mandate for all the reasons presented here. The Trial Court's legal errors, and the resulting impacts on South Fresno, risk becoming permanent without prompt writ relief. Petitioners' state civil rights claims pending before the Trial Court are still in written discovery and could be years away from resolution. Yet Caltrans continues to move forward with the Project: Its certified environmental

document anticipated starting construction in June 2024¹ and opening the new interchanges to car and truck traffic in January 2026. If Petitioners are forced to wait for final judgment on their civil rights claims before appealing the dismissal of their CEQA claims, Petitioners could be severely prejudiced if not irreparably injured.

Writ relief will also avoid substantial drain on judicial resources. Unlike the civil rights claims, Petitioners' CEQA claims are ready to be tried on their merits on an agreed-upon administrative record. Waiting to review the Trial Court's dismissal of the CEQA claims until final judgment risks profound delay and expense from potentially duplicative litigation. This risk is made all the more severe because reversal of summary adjudication on eventual appeal could also "require a second trial" on the civil rights claims, which "arise out of the same facts" as the CEQA claims and involve "overlap[ping] . . . issues." *Rehmani v. Superior Court*, 204 Cal.App.4th 945, 950 (2012). Prompt writ review will likewise clarify the rules of equitable tolling confused by the Trial Court and lay to rest any supposed conflict in appellate decisions on the doctrine.

Ultimately, Petitioners have no other "plain, speedy, and adequate remedy, in the ordinary course of law" to correct the Trial Court's errors in summarily adjudicating their CEQA claims. Code Civ. Proc. § 1086. They should not be required to wait any longer for their day in court.

¹ Caltrans later pushed this date back to October 2025. Pets. App. 13:33:3375.

**PETITION FOR WRIT OF MANDATE, PROHIBITION, OR
OTHER APPLICABLE WRIT**

1. Petitioners bring this verified Petition to seek a peremptory writ of mandate from this Court directing the Fresno County Superior Court (“Trial Court”) to vacate its order granting Caltrans’ Motion for Summary Adjudication (“Order”) in *Friends of Calwa, Inc. et al. v. California Department of Transportation et al.*, No. 23CECG04109 (Fresno County Superior Court) (“Underlying Action”). True and correct copies of all relevant pleadings and orders in the Underlying Action are included in Petitioners’ Appendix, which is submitted with this Petition and is incorporated herein, including all exhibits. Petitioners also incorporate herein by reference the attached Memorandum of Points and Authorities.

2. Petitioners Friends of Calwa, Inc. and Fresno Building Healthy Communities are the Petitioners/Plaintiffs in the Underlying Action. Petitioners initiated the Underlying Action by filing a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in Fresno County Superior Court on October 2, 2023. *See* Petitioners’ Appendix of Exhibits in Support of Petition for Writ of Mandate, Prohibition, or Other Appropriate Writ, Volume 1: Tab 8: 110 [hereinafter cited as “Pets. App. 1:8:110”].

3. Respondent to this Petition is the Superior Court of the State of California for the County of Fresno, which granted

the Motion for Summary Adjudication by Caltrans on October 17, 2024. Pets. App. 1:1:8-19.

4. Caltrans is Respondent to the CEQA claims in the Underlying Action and is Real Party in Interest to this Petition. Pets App. 1:8:110.

Timeliness of Petition

5. On October 17, 2024, Respondent, the Fresno County Superior Court, Judge Geoffrey Wilson presiding, issued the challenged Order granting Caltrans' Motion for Summary Adjudication on Petitioners' CEQA cause of action in the Underlying Action. Pets. App. 1:1:8-19. The Order was served by regular mail to counsel for Petitioners in New Haven, Connecticut that same day, as reflected in the Clerk's Certificate of Mailing dated October 17, 2024. Pets. App. 1:2:21 Pursuant to Code of Civil Procedure section 437c(m)(1), the deadline to petition the reviewing court for a peremptory writ was twenty days after service of a written notice of entry of order, increased by ten days for service outside the State of California but within the United States. Code Civ. Proc. § 437c(m)(1). This Petition was filed expeditiously prior to this deadline.

Chronology of Pertinent Events

6. The South Fresno State Route 99 Corridor Project is a highway expansion project jointly undertaken by Caltrans and the Federal Highway Administration and located at the border of the City of Fresno and unincorporated Fresno County—an area referred to by residents and herein as “South Fresno.” Pets. App. 1:8:111, 4:25:1066-67. The Project seeks to expand a section of the State Route 99 interstate between North and American Avenues

in South Fresno by adding two to four new ramps to each interchange, increasing the number of interchange lanes eight-fold, and adding new four-lane bridge overcrossings. Caltrans described the Project as part of an “ultimate route concept” to expand the highway mainline from six to eight lanes. Pets. App. 4:25:1083, 1089, 1140, 1143.

7. Tens of thousands of residents, the vast majority of whom are people of color, live near the Project. In particular, the communities of Calwa and Malaga, which pre-date establishment of the City of Fresno, are both located within a mile of the Project interchange sites—Calwa just to the north of the North Avenue interchange and Malaga between the North and American Avenue interchanges. Pets. App. 5:25:1334-37.

8. On October 14, 2021, Caltrans circulated a combined draft Environmental Impact Report (“EIR”) for the Project under CEQA and draft Environmental Assessment (“EA”) for the Project under the National Environmental Policy Act (“NEPA”). Pets. App. 1:8:111. The Draft EIR/EA drew significant pushback from South Fresno residents and non-profits, including for its conclusion that there are “no neighborhoods in or close to the project area” and its omission of planned industrial buildout linked to the Project. Pets. App. 5:25:1299-1364, *see* 1334-35. Caltrans certified the Final EIR/EA over objections and without public hearing in January 2023 and issued a Finding of No Significant Impact under NEPA. Pets. App. 1:8:111, 4:25:1060-64.

9. On February 6, 2023, Caltrans issued a Notice of Determination (“NOD”) of its approval of the Project under

CEQA. Pets. App. 1:8:106, 5:25:1373-75

10. On March 8, 2023, within thirty days after issuance of the NOD, Petitioners Friends of Calwa, Inc. and Fresno Building Healthy Communities filed their Verified Petition and Complaint for Declaratory Relief against Caltrans and FHWA in the U.S. District Court for the Eastern District of California (the “Federal Petition”). Pets. App. 1:8:112, 1:11:198-246.

11. The Federal Petition charged Caltrans and FHWA with violating NEPA in their review and approval of the Project and charged Caltrans with violating CEQA in relation to this same review and approval. Pets. App. 1:8:112, 1:11:199-201, 230-236. It invoked the federal court’s original and exclusive jurisdiction over the NEPA claims and supplemental jurisdiction over the CEQA claims pursuant to 28 U.S.C. section 1367(a) because the federal and state claims involve identical facts. Pets. App. 1:8:112, 1:11:201-203.

12. On May 5, 2023, during a meet-and-confer on the timeline for Petitioners’ intended amendment to plead additional claims, FHWA informed Petitioners that it would take the position that it was not a proper defendant to the NEPA claims because it had assigned responsibility for those claims to Caltrans through a May 27, 2022 memorandum between the agencies. Pets. App. 1:8:114, 4:16:941, 7:25:1765-1794. FHWA requested that Petitioners remove it as a defendant to the NEPA claims in Petitioners’ forthcoming amendment to avoid a motion to dismiss. Pets. App. 1:8:114, 4:16:940-41. Caltrans did not raise any jurisdictional concerns during this or ensuing meet-and-

confers. Pets. App. 1:8:114, 4:16:940-41.

13. On June 22, 2023, Petitioners filed their First Amended Complaint, removing FHWA as a defendant to the NEPA claims, adding claims against FHWA and the U.S. Department of Transportation (collectively, “Federal Defendants”) under the federal Clean Air Act, and adding state civil rights claims against Caltrans under Government Code sections 8899.50 and 11135. Pets. App. 1:8:115, 6:25:1476, 1520-1538.

14. In the ensuing weeks, the Parties met and conferred on several occasions regarding preparation of a joint administrative record to try the closely related CEQA, NEPA, and Clean Air Act claims. Pets. App. 1:8:115, 4:16:943-44. On July 5, 2023, the Parties entered a stipulation extending the time to lodge the administrative record for the CEQA claims to allow them to reach agreement on responsibility for preparation of a joint administrative record. Pets. App. 2:11:313-317, 4:16:944.

15. During a July 20, 2023 meet-and-confer on preparation of a joint case management statement, Caltrans informed Petitioners for the first time that it was considering seeking dismissal of the CEQA and civil rights claims (collectively, “state law claims”) on the basis that it is immune from suit in federal court on the claims under the Eleventh Amendment to the U.S. Constitution. Pets. App. 1:8:107, 4:16:945.

16. During a meet-and-confer on July 27, 2023, and by letter on July 28, 2023, Petitioners pointed out to Caltrans that

sovereign immunity is an affirmative defense subject to waiver and informed Caltrans of their position that the agency's sovereign immunity was waived by statute and litigation conduct inconsistent with immunity. Pets. App. 1:8:116, 2:11:332-34, 4:16:945-46. Petitioners recommended Caltrans confirm waiver of immunity defenses to avoid motions practice on the issue as well as delay, hardship, waste of judicial resources, and risk of conflicting results should Petitioners be required to refile the state law claims in state court. Pets. App. 1:8:116, 2:11:332-34, 4:16:945-46.

17. On August 10, 2023, Caltrans informed Petitioners it was "sympathetic" to concerns about parallel litigation and asked Petitioners to circulate a proposal for Caltrans' waiver of sovereign immunity defenses in the federal action. Pets. App. 1:8:117, 4:16:947-48. Petitioners provided Caltrans with the requested proposal on August 14 and a draft waiver agreement on August 15, 2023. Pets. App. 1:8:117, 2:11:361-63, 370-72, 4:16:948. Caltrans confirmed it was considering the waiver agreement in communications to Petitioners dated August 16 and 17, 2023. Pets. App. 1:8:117-18, 2:11:374-75, 378-79, 388-89, 4:16:948-49.

18. On August 21, 2023, Caltrans filed a Motion to Dismiss the NEPA and state law claims. Pets. App. 1:8:117-18, 2:11:391-92. On Federal Defendants' motion, the district court on December 21, 2023, remanded the Clean Air Act claims to FHWA for reconsideration of its Project approval. Pets. App. 3:11:881-82, 4:16:968-69.

19. On August 22, 2023, Petitioners emailed Caltrans to request a meeting on the state law claims in light of Caltrans' change of position. Pets. App. 1:8:118, 4:16:950. At the meet-and-confer on August 31, 2023, Petitioners informed Caltrans that, having assessed its motion and in light of Caltrans' refusal to consent to magistrate jurisdiction to have the motion quickly determined, Petitioners would voluntarily dismiss and refile their state law claims in state court in the interest of expeditious adjudication of the merits. Pets. App. 1:8:119, 4:16:951-52. Petitioners also informed Caltrans that because the agency had waited until well after Petitioners' deadline to amend as of right, Petitioners would require a court order to dismiss their state law claims from federal court so they could orderly pursue them in state court. Pets. App. 1:8:118, 4:16:951-52. Caltrans agreed and volunteered to circulate a proposed stipulation to this effect. Pets. App. 1:8:119, 4:16:951-52.

20. On September 2, 2023, Caltrans circulated a draft stipulation providing that dismissal of Petitioners' state law claims would be "with prejudice," which would bar their refileing in state court. Pets. App. 1:8:119, 2:11:456-59. Petitioners promptly responded reminding Caltrans of the Parties' prior agreement and returned edits reflecting that dismissal would be without prejudice. Pets. App. 1:8:119, 2:11:461-70, 4:16:953-55.

21. After receiving edits from defendants, Petitioners circulated a revised stipulation for dismissal without prejudice on September 12, 2023, and requested approvals. Pets. App. 1:8:121, 2:11:561, 571, 4:16:956. Federal Defendants responded on

September 15, 2023, confirming their approval of the stipulation. Pets. App. 1:8:121, 2:11:573, 584-85, 4:16:956-57.

22. On September 18, 2023, having received no response from Caltrans to the revised stipulation, Petitioners informed the Parties that, absent a response from Caltrans that day, they would move the federal court for dismissal without prejudice so they could promptly secure dismissal and refile in state court. Pets. App. 1:8:122, 2:11:582-583, 4:16:957-58. Caltrans responded the following day asserting that there was “still unnecessary and inaccurate language” in the stipulation but without identifying the language it found objectionable. Pets. App. 1:8:122, 3:11:613, 4:16:959. Caltrans also stated that its counsel would be unavailable to discuss for another week. Pets. App. 1:8:122, 3:11:613, 4:16:959.

23. On September 20, 2023, Petitioners informed defendants that they intended to file an ex parte request to dismiss their state law claims without prejudice given Caltrans’ refusal to stipulate. Pets. App. 1:8:123, 4:16:959-60. As required by the district court’s March 9, 2023 standing order, Pets. App. 6:25:1444, Petitioners contacted chambers to inform the court of their intent to move for ex parte relief. Pets. App. 1:8:123, 4:16:960. Chambers encouraged the Parties to make further efforts to resolve the matter without motions practice prior to filing ex parte. Pets. App. 1:8:123, 4:16:960.

24. After another week of attempted negotiations, Petitioners sent Caltrans an email on September 28, 2023, requesting express confirmation whether it would stipulate to

dismissal without prejudice and informed Caltrans that if it would not, Petitioners would proceed with their ex parte application to avoid delay in litigating the merits of the state law claims. Pets. App. 1:8:124, 3:11:674, 4:16:61-62. Caltrans confirmed that evening that it would oppose any stipulation providing for dismissal without prejudice. Pets. App. 1:8:124, 3:11:673, 4:16:962-63.

25. On September 29, 2023, Petitioners filed their Ex Parte Application for Dismissal of State Law Claims Without Prejudice, which was noticed for hearing on October 2, 2023. Pets. App. 1:8:110, 4:16:963, 8:25:2084-86.

26. On October 2, 2023, Petitioners filed their Verified Petition for Writ of Mandate and Complaint for Declaratory Relief in Fresno County Superior Court. Pets. App. 1:8:110, 124, 4:16:962, 15:54:3915-90.

27. On October 19, 2023, the district court entered an order dismissing the state law claims on Petitioners' ex parte request over Caltrans' objections. Pets. App. 1:8:126, 3:11:796, 4:16:965.

28. On November 27, 2023, Caltrans filed a demurrer to the CEQA claims in the Underlying Action on statute of limitations grounds. Pets. App. 14:49:3680-81. After hearing, the Trial Court entered an order on February 5, 2024, overruling the demurrer. Pets. App. 12:30:3072-80.

29. At a case management conference on March 8, 2024, Caltrans informed the Court that it intended to move for summary adjudication on the CEQA claims on the same grounds

rejected on demurrer. Pets. App. 12:29:3069. The Trial Court instructed Caltrans to promptly file and secure a date for hearing on summary adjudication. Pets. App. 12:29:3069.

30. Four months later, on June 26, 2024, Caltrans filed a Motion for Summary Adjudication of the CEQA claims on statute of limitations grounds, which it noticed for hearing on September 9, 2024. Pets. App. 4:22:1008-10. Petitioners filed their brief in opposition on August 26, Pets. App. 4:18:980-83, and the motion was heard on September 9, 2024, the Honorable Geoffrey Wilson presiding. Pets. App. 1:5:40.

31. On October 17, 2024, the Trial Court issued the challenged Order granting Caltrans' Motion for Summary Adjudication on Petitioners' CEQA cause of action. Pets. App. 1:1:8-19.

Grounds for Issuance of Peremptory Writ of Mandate

32. California Code of Civil Procedure section 437c(m)(1) authorizes review of an order granting summary adjudication by way of a petition for a writ of mandate, rather than requiring the aggrieved party to await final judgment to pursue an appeal. Code Civ. Proc. § 437c(m)(1); *see also Cal. Highway Patrol v. Superior Court*, 135 Cal.App.4th 488, 496 (2006). A writ will issue upon verified petition of a beneficially interested party who has no "plain, speedy, and adequate remedy, in the ordinary course of law." Code Civ. Proc. § 1086. In mandamus proceedings, it is well-established that "[w]here the facts are undisputed and the law establishes the right of a party to an order or to the relief which the court has refused, the writ will lie." *Whitney's at the Beach v. Superior Court*, 3 Cal.App.3d 258, 264 (1970) (citation

omitted); *see also Irvine Co. LLC v. Superior Ct. of Orange Cnty.*, 96 Cal. App. 5th 858, 869 (2023).

33. Writ review is uniquely necessary here because Petitioners, and residents that would be impacted by the Project, would be severely prejudiced if not irreparably harmed by a lengthy delay in hearing this appeal. *See Whitney's at the Beach*, 3 Cal.App.3d at 264. Caltrans is proceeding with preconstruction activities and could break ground on the Project before the CEQA claims could be heard if Petitioners were required to await final judgment to pursue this appeal. Pets. App. 13:33:3375 (citing to Caltrans' website that under operative Project schedule, right-of-way certification would begin in March 2025 and construction would begin in October 2025). Although the CEQA claims are ready to be tried on their merits on an agreed-upon administrative record, the civil rights claims are only in written discovery and months, if not years, away from trial. Pets. App. 4:20:994-95.

34. Writ relief is also called for because the Trial Court's Order "summarily dispose[s] of a large portion of [Petitioners'] case, while several causes of action remain for trial." *Noe v. Superior Ct.*, 237 Cal.App.4th 316, 324 (2015) (quoting *Rehmani*, 204 Cal.App.4th at 49-50). Waiting to review the Trial Court's dismissal of the CEQA claims until final judgment risks profound delay and expense from potentially unnecessary litigation. *Id.* This risk is made all the more severe because reversal of summary adjudication on eventual appeal could also "require a second trial" on the civil rights claims. *Rehmani*, 204 Cal.App.4th

at 950.

35. Writ relief is also warranted to correct the Trial Court's erroneous identification of a circuit split on equitable tolling and confusion of the doctrine that drove its dismissal. *See Brandt v. Superior Court*, 37 Cal.3d 813, 815 (1985) (granting writ relief to resolve conflicting statutory interpretations).

36. The Trial Court's Order breaks with a long line of heretofore unbroken precedent holding that an equitably tolled limitations period remains tolled until the first action is resolved. The Trial Court imported rules from the statutory tolling context into equitable tolling, conjuring a split in authorities and disregarding binding precedent from the Supreme Court and this Court to conclude that Petitioners refiled their state law claims too late. It also wholly ignored the material evidence of Petitioners' diligence in first seeking a negotiated resolution of the state law claims to accelerate their dismissal from federal court without prejudice, and second in obtaining ex parte relief to ensure the CEQA claims could be pursued in this forum. Each one of these errors necessitate reversal, and together they make it clear that writ relief is necessary.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court:

1. Either:

(a) Issue a Peremptory Writ of Mandate ordering Respondent Trial Court to vacate its Order in the Underlying Action and enter a new order in favor of Petitioners. Petitioners respectfully submit that, based on the briefing in the Underlying Action, such a Peremptory Writ of Mandate may be issued in the first instance, without prior issuance of an alternative writ and without oral argument. *See Kennedy/Jenks Consultants, Inc. v. Superior Court*, 80 Cal.App.4th 948, 965 (2000); *Carehouse Convalescent Hosp. v. Superior Court*, 143 Cal.App.4th 1558, 1566 (2006); or

(b) Issue an Alternative Writ of Mandate ordering respondent Trial Court:

- (i) to vacate its Order in the Underlying Action and enter a new order in favor of Petitioners; or
- (ii) to show cause in this Court why it should not be ordered to do so; and

2. Order such other relief as may be just and proper.

Dated: Nov. 14, 2024 Respectfully submitted,

ENVIRONMENTAL JUSTICE LAW &
ADVOCACY CLINIC

Jerome N. Frank Legal Services Organization

By: Taylor Wurts
Morgan Feldenkris, Certified Student Attorney
Danielle Hopkins, Certified Student Attorney
Taylor Wurts, Certified Student Attorney
Catherine Xu, Certified Student Attorney
Stephanie L. Safdi, Supervising Attorney

*Attorneys for Petitioners FRIENDS OF
CALWA, INC. and FRESNO BUILDING
HEALTHY COMMUNITIES*

VERIFICATION


I, Stephanie Safdi, declare as follows:

I have read the foregoing Petition and know its contents. I am one of the attorneys representing Petitioners before this Court and in the proceedings below. Because of my familiarity with the relevant facts pertaining to the trial court proceedings, I, rather than Petitioners, verify this Petition. The facts alleged in this Petition are within my own knowledge, the Petition is true of my own knowledge, and I know these facts to be true.

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

Executed on November 14, 2024, at Shingle Springs, California.

DATED: Nov. 14, 2024


Stephanie L. Safdi

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

I. State Route 99 Interchange Project and its Community Setting

The South Fresno State Route 99 Corridor Project is a joint undertaking of Caltrans and FHWA aimed at expanding the capacity of the State Route 99 interchange to facilitate flow of heavy-duty trucks into incorporated and unincorporated neighborhoods that comprise the community known to locals as “South Fresno.” Pets. App. 1:8:111.

The state and federal governments built State Route 99 in the 1950s and 60s as part of the development of the interstate highway system. Pets. App. 11:25:2853. The highway was sited to run through lower-income communities of color in South and West Fresno, separating communities from each other and cutting off much of South Fresno from the economic resources and growing affluence of whiter and wealthier downtown and North Fresno. *Id.* The construction of the highway—which a county supervisor later referred to as Fresno’s “Berlin Wall”—displaced twenty blocks of housing and has supercharged the concentration of traffic, industrial buildout, and resulting safety and health burdens in South Fresno ever since. Pets. App. 1:11:212.

The two interchanges that connect Route 99 with local South Fresno roadways at North and American Avenues are currently structured as half-interchanges, meaning that each contains only a one-directional, single-lane on- or off-ramp. The

limited capacity of these half interchanges functions as a natural limit for vehicle flow, particularly for heavy-duty trucks. Pets. App. 4:25:1083, 9:25:2232-33. The Project would deconstruct the half-interchanges and replace them with bidirectional full interchanges. Pets. App. 4:25:1083, 1089, 1140, 1143. In doing so, it would add two to four new ramps to each interchange, increase the total number of interchange lanes eight-fold, and construct new four-lane bridges over the highway. Pets. App. 4:25:1091, 1106-7. Caltrans describes the Project as a key part of its “ultimate route concept” to expand the State Route 99 mainline from six to eight lanes—a 33 percent increase in capacity. Pets. App. 4:25:1083.

Tens of thousands of residents live within the Project vicinity served by elementary schools, parks, recreation centers, places of worship, and community centers—all of which would be impacted by the Project. Pets. App. 4:25:1333-34. Calwa and Malaga, two South Fresno residential communities established in the 1880s, lie within a mile of the Project. *Id.* A long history of discriminatory land use practices—including redlining, racially exclusionary zoning, racial covenants, and other well-documented instruments of state-sponsored segregation—confined lower-income residents of color to South Fresno. At the same time, city and county governments since the inception of general planning in the 1910s have consistently encouraged the siting of polluting industry amidst South Fresno communities. Pets. App. 4:25:1119, 7:25:1850. Today, South Fresno residents live amongst a sea of warehouses, meat processing facilities, landfills, hazardous waste

sites, and other heavy-industrial uses. Pets. App. 1:11:176, 4:25:1339, 1343-50.

These discriminatory land use practices continue to this day. As recently as March 2022, the California Attorney General put the County of Fresno on notice that the continued practice of targeting Malaga and Calwa for industrial buildout “in light of the known pollution burdens, health risks and population demographics raises civil rights and environmental justice concerns.” Pets. App. 1:11:176. Nevertheless, the County is proceeding with a 2,940-acre industrial park in Malaga. Pets. App. 11:25:2864. In planning since 2004, the County Board of Supervisors voted unanimously on August 24, 2021, to approve a location for the industrial park bounded by North Avenue and the American Avenue Project interchange site. Pets. App. 1:11:186-87. According to the County, the industrial park will hold upwards of 19 million square feet of commercial and industrial space. *Id.* Less than a mile north of the planned industrial park, the City’s proposed South Central Specific Plan, which straddles the North Avenue interchange, would add another 19.6 million new square feet of industrial and commercial development to the Project area. Pets. App. 9:25:2328-29.

Caltrans circulated a combined Draft EIR/EA on the Project for a 51-day public comment period on October 14, 2021. Pets. App. 9:25:2499. Caltrans concluded in the EIR/EA that the Project would not significantly impact traffic or air pollution even as it acknowledged that the Project would bring 3,000 new car and truck trips every day to the American Avenue interchange

alone and cause particulate matter (PM10) emissions to increase to 971% of emissions without the Project. Pets. App. 4:25:1141, 1176. The agency also wholly omitted discussion of related industrial buildout, asserting that the Project “will be built to serve the already established commercial and retail industry.” Pets. App. 9:25:2255. Indeed, the EIR/EA never mentioned the industrial park planned in Malaga. And while the EIR/EA referenced the South Central Specific Plan, it did not account for the plan in its cumulative impact analysis or traffic projections—even as the EIR/EA acknowledged that the American and North Avenue interchanges targeted by the Project would serve as “primary points of access for the existing and developing industrial and commercial business in [the plan] area.” Pets. App. 9:25:2329.

The EIR/EA drew significant pushback for these and other omissions. Petitioners hosted community meetings in April and August 2022, during which residents and staff expressed concerns that the Project would induce further industrial development, increase truck traffic, and worsen air quality in South Fresno. Pets. App. 7:25:1845, 1923. Petitioners and residents also submitted lengthy public comments pointing out that, among its many flaws, the EIR/EA falsely concluded that there are “no neighborhoods in or close to the project area” and no sensitive land uses nearby. Pets. App. 4:25:1083, 1119, 5:25:1334-35, 9:25:2319. As their comments identified, this was directly contradicted by the lived experience of thousands of residents who call the Project area home and the youth who stay at a

1,400-bed Juvenile Justice Campus immediately next to the American Avenue interchange. *Id.*

Caltrans certified the Final EIR/EA in January 2023 over these objections, issued a Finding of No Significant Impact for the Project under NEPA, and issued a Notice of Determination (“NOD”) of its approval of the Project on February 6, 2023. Pets. App. 1:8:106, 111, 4:25:1060-64, 5:25:1373-5.

II. Procedural History of the Federal and State Actions

A. Federal Court Action

On March 8, 2023, Petitioners timely filed their Verified Petition and Complaint for Declaratory Relief (“Federal Petition”) in the U.S. District Court for the Eastern District of California within CEQA’s 30-day statute of limitations. Pets. App. 1:8:112, 1:11:198-239. The Federal Petition challenged Caltrans’ and FHWA’s failure to comply with NEPA and CEQA in their environmental review and approvals of the Project, invoking the federal court’s original and exclusive jurisdiction over the NEPA claims and supplemental jurisdiction over the CEQA claims. *See* Pets. App. 1:11:203-4, 230-36; 23 U.S.C. § 327(d)(1).

For nearly six weeks after filing, Petitioners tried through multiple means to reach Caltrans’ counsel to discuss the lawsuit but did not receive a response. Pets. App. 1:8:110. On April 18, 2023—two days before Caltrans’ statutory deadline to file a responsive pleading to avoid entry of default judgment—counsel for Caltrans contacted Petitioners to request a stipulated extension of its response deadline. Pets. App. 1:8:113. Petitioners agreed and informed Caltrans of their plans to amend the

complaint by adding additional federal and state claims. Pets. App. 1:8:113.

The parties met and conferred on May 5, 2023, to discuss jurisdiction. Pets. App. 1:8:114. At this meeting, counsel for FHWA notified the Parties of its position that it was not a proper defendant to the NEPA claims. *Id.* Caltrans, by contrast, did not raise any issues regarding sovereign immunity or other jurisdictional concerns. *Id.* Over the course of four meet-and-confers between April 18 and July 20, 2023, Caltrans never informed Petitioners of any intention to raise a sovereign immunity defense. Pets. App. 1:8:114, 4:16:938-45. To the contrary, it represented on each occasion its openness to preparing a joint administrative record to litigate the CEQA and NEPA claims given their substantial overlap. Pets. App. 1:8:115, 4:16:935-40, 43.

On June 22, 2023, Petitioners filed their First Amended Complaint, adding claims against FHWA and the U.S. Department of Transportation for violating the Clean Air Act in their Project approval. Pets. App. 1:8:106, 15, 4:16:943, 6:25:476-1538. Petitioners also added claims against Caltrans for violating California's anti-discrimination statute, Government Code section 11135, and its Affirmatively Furthering Fair Housing Law, Government Code section 8899.50 (collectively, "civil rights claims"). Pets. App. 1:8:115, 4:16:945, 6:25:1493-94, 1531-36. Petitioners removed FHWA as a defendant to the NEPA claims pursuant to the prior meet-and-confers with FHWA. Pets. App. 1:8:115.

On July 20, 2023, Caltrans informed Petitioners for the first time that it was considering moving for dismissal of the state law claims on the ground that it was immune from suit to those claims in federal court under the Eleventh Amendment to the U.S. Constitution. Pets. App. 1:8:107, 116, 4:16:945. During a meet-and-confer on the issues on July 27, 2023, Petitioners advised Caltrans that sovereign immunity is an affirmative defense subject to waiver and pointed to statutory provisions showing legislative intent to waive Caltrans' immunity for the claims pled. Pets. App. 1:8:116, 4:16:945-46. Petitioners also suggested that Caltrans confirm waiver of sovereign immunity to avoid delay, hardship, waste of party and judicial resources, and risk of conflicting results by proceeding in two separate courts on closely related claims against the same defendants. *Id.* The next day Petitioners sent Caltrans a letter reiterating waiver of immunity by legislation and litigation conduct and underscoring the reasons to litigate the closely related claims together in federal court. Pets. App. 1:8:116, 2:11:332-34.

Caltrans requested a meeting with Petitioners on the issue on August 10, 2023, during which its counsel informed Petitioners that Caltrans was "sympathetic" to Petitioners' positions on the hardship of dual litigation and was considering waiving Eleventh Amendment defenses. Pets. App. 1:8:117. Caltrans asked Petitioners to circulate a proposal as to how Caltrans could confirm a waiver of immunity; Petitioners circulated the agreement as requested on August 15, 2023. Pets. App. 1:8:117, 2:11:361-62, 370-72. Caltrans confirmed on three

subsequent occasions that it was continuing to consider waiver. Pets. App. 1:8:117-18, 2:11:376-389.

On August 21, 2023, Caltrans filed a Motion to Dismiss the NEPA and state law causes of action and sent Petitioners a letter stating that it had decided not to consent to federal jurisdiction over the state claims. Pets. App. 1:8:117-18, 2:11:391-92. The following day, Petitioners emailed Caltrans to request a meet-and-confer on the state law claims in light of Caltrans' change of position. Pets. App. 1:8:118, 2:11:403-404. At the district court's urging, Pets. App. 2:11:394-95, Petitioners emailed Caltrans on August 28, 2023, renewing their request for Caltrans to consent to magistrate jurisdiction to allow timely hearing of the motion to dismiss. Pets. App. 2:11:399-400, 4:16:951. Caltrans declined. Pets. App. 2:11:398, 4:16:950-51.

At the meet-and-confer on August 31, 2023, Petitioners informed Caltrans that, having assessed its motion and in the interest of expediency, they would voluntarily dismiss—and refile—their state law claims in state court. Pets. App. 1:8:119, 4:16:951-52. By letter the following day, Petitioners reiterated that Caltrans' refusal to consent to magistrate jurisdiction meant that it would likely be “six or more months until the motion(s) in this matter is resolved” and the federal court's jurisdiction over the state law claims conclusively determined. Pets. App. 2:11:449-50. Petitioners stated that they would thus dismiss and refile the state law claims in state court to ensure expeditious hearing on the merits “in light of Caltrans' statements that the agency is proceeding to take steps to prepare the Project for

construction,” “even if it means moving forward in two forums.”
Id.

Caltrans agreed a stipulation would be the most expedient method to effectuate the dismissal and volunteered to send Petitioners a draft. Pets. App. 1:8:119, 2:11:449-50 (noting appreciation that Caltrans is “amenable to such a stipulation” and confirming that Petitioners will review Caltrans’ draft as soon as it is received); *see also* Pets. App. 4:16:951-52. On August 31, the Parties filed a joint status report confirming that Petitioners had informed Caltrans of their desire to pursue voluntary dismissal of their state law claims to refile in state court and that Caltrans had informed Petitioners it would be amenable to entering into a stipulation agreeing thereto. Pets. App. 1:8:119, 2:11:427-28.

Caltrans circulated a draft stipulation on September 2, 2023; contrary to the Parties’ prior discussion, the stipulation specified that dismissal of the claims would be “with prejudice.” Pets. App. 1:8:119, 2:11:456-57. Petitioners recirculated a draft stipulation on September 6 confirming that dismissal would be “without prejudice,” would not constitute a final decision on the merits, and that the statute of limitations on the CEQA claims would be tolled until the claims were refiled in state court. Pets. App. 1:8:119, 2:11:466-70.

On September 7, 2023, Caltrans responded to Petitioners objecting as a general matter to the scope of revisions but without providing edits. Pets. App. 1:8:120, 2:11:473. After Petitioners reaffirmed that dismissal must be without prejudice and requested specific edits or approval, Caltrans responded on

September 8 objecting to the tolling provision and certain recitals characterizing Petitioners' claims and meet-and-confer efforts. *Id.* Petitioners responded that day confirming they would recirculate the stipulation with the requested changes as soon as they filed their response to Caltrans' motion to dismiss. *Id.* Federal Defendants assented, and Petitioners advised the Court in their opposition to the motion to dismiss, filed the same day, that "the parties are continuing to confer on a mutually agreeable mechanism to dismiss Plaintiffs' state law claims without prejudice." Pets. App. 1:8:109, 120-21, 2:11:537, 7:25:1991.

Petitioners promptly circulated a revised stipulation incorporating Caltrans' requested changes, and Federal Defendants confirmed their approval on September 15, 2023. Pets. App. 1:8:121, 2:11:573-74, 584-85, 4:16:956-57. Having received no response from Caltrans to the revised stipulation, Petitioners informed the Parties on September 18 that they would proceed to move the court for dismissal without prejudice and asked for positions. Pets. App. 1:8:122, 4:16:957-58. The following day, Caltrans stated that there was "still unnecessary and inaccurate language" in the stipulation but did not provide requested changes nor respond to Petitioners' request for its position on a motion for dismissal without prejudice. Pets. App. 1:8:122, 3:11:613.

On September 20, 2023, Petitioners informed defendants that they intended to file an *ex parte* application to dismiss their state claims without prejudice as, after three weeks of negotiations, it was clear the Parties would not agree on a

stipulation. Pets. App. 1:8:123, 4:16:959-60. Petitioners notified chambers of their intent to seek ex parte relief as required by the district court's March 9, 2023 standing order. Pets. App. 1:8:123, 4:16:960, 6:25:1444-46 (standing order). Chambers encouraged the Parties to resolve the matter by stipulation and gave instructions on proceeding ex parte if agreement could not be reached. Pets. App. 1:8:123, 4:16:960.

Following another week of unsuccessful negotiations at the district court's direction, Petitioners informed Caltrans on September 28, 2023, that if it would not agree to include language providing for dismissal without prejudice, Petitioners would proceed with their ex parte application. Pets. App. 1:8:124, 3:11:674, 4:16:961-62. Caltrans responded that evening confirming that the agency opposed such a term. Pets. App. 1:8:124, 3:11:673.

The following day, Petitioners filed their Ex Parte Application for Dismissal of State Law Claims Without Prejudice. Pets. App. 1:8:110, 3:11:677-79. On October 2, 2023, the day the Ex Parte Application was noticed for hearing, Petitioners filed their Verified Petition for Writ of Mandate and Complaint for Declaratory Relief in Fresno Superior Court ("State Petition"). Pets. App. 1:8:110, 15:54:3915-90. On October 19, 2023, following show cause briefing on Caltrans' opposition to the ex parte request, the district court entered an order dismissing the state law claims. Pets. App. 1:8:126, 3:11:796.

B. State Court Action

On November 27, 2023, Caltrans filed a demurrer to the

CEQA claims on the grounds that they were time-barred because they were refiled in state court outside the 30-day statute of limitations. Pets. App. 14:49:3680. Following hearing, the Trial Court entered an order on February 5, 2024, overruling the demurrer and holding that Petitioners had pled facts sufficient to show they had initially pursued their claims in federal court reasonably and in good faith and that CEQA's statute of limitations was therefore equitably tolled while the claims were pending in federal court. Pets. App. 12:30:3072-80. In a February 28, 2024, Case Management Statement, Caltrans stated that it intended to move for summary adjudication on the same basis, and the Court invited it to promptly reserve a date for the motion. Pets. App. 12:29:3069-70.

Four months later, on June 26, 2024, Caltrans filed a Motion for Summary Adjudication which closely tracked its demurrer. Pets. App. 4:22:1009-10. The Trial Court heard oral argument on the motion on September 9, 2024, and returned the challenged Order granting Caltrans' motion and dismissing the CEQA claims on October 17, 2024. Pets. App. 1:1:8-19.

STANDARD OF REVIEW

The Court of Appeal reviews orders granting summary adjudication de novo, without deference to the Trial Court's decision. *Butte Fire Cases*, 24 Cal.App.5th 1150, 1157 (2018). That is, the Court "is not bound by the trial court's stated reasons, if any, supporting its ruling; [the Court] review[s] the ruling, not its rationale." *Id.* (citation omitted). This is because on summary adjudication "the trial court has no discretion to

exercise:” if “the trial court errs, it has made an error of law, which automatically constitutes an abuse of discretion.”

Fisherman’s Wharf Bay Cruise Corp. v. Superior Court, 114 Cal.App.4th 309, 320 (2003).

The Court’s review of a summary adjudication motion is subject to the same rules and procedures as summary judgment. *Butte Fire Cases*, 24 Cal.App.5th at 1157. To succeed on summary adjudication, Caltrans must show that: (1) there are no disputed issues of material fact relating to its statute of limitations defense, and (2) it is entitled to judgment on the CEQA claims as a matter of law. Code Civ. Proc. § 437c(c). Caltrans bears the burden of persuasion on both prongs. *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826, 849 (2001).

“Equitable tolling is a fact-intensive issue and it is determined based upon evidence.” *Marcario v. County of Orange*, 155 Cal.App.4th 397, 408 (2007) (citation omitted). In deciding whether the evidence presents a material fact for trial, the court must “consider *all the evidence* set forth in the papers” as well as “inferences reasonably deducible from the evidence.” *Butte Fire Cases*, 24 Cal.App.5th at 1158 (citation omitted) (emphasis added). “Evidence presented in opposition to summary adjudication is liberally construed, with any doubts about the evidence resolved in favor of the party opposing the motion.” *Irvine Co. v. Superior Court*, 96 Cal.App.5th 858, 869 (2023). Summary adjudication “may not be granted unless the evidence is incapable of supporting a judgment” for Petitioners. *Cal.-Am. Water Co. v. Marina Coast Water Dist.*, 86 Cal.App.5th 1272,

ARGUMENT

I. **Writ Relief is Necessary to Prevent Profound Prejudice to South Fresno Residents and Preserve Judicial Economy.**

The Trial Court’s Order summarily disposed of all CEQA claims challenging Caltrans’ review and approval of the Project. In doing so, it broke not only with clear standards governing equitable tolling, but also with the Legislature’s mandate that the court review “all of the evidence set forth in the papers” to identify a triable issue of fact and construe the evidence liberally in favor of the non-moving party. Code Civ. Proc. § 437c(c); *see also Aguilar*, 25 Cal.4th at 843.

Whether on this Petition or after final judgment, these clear errors require reversal. But waiting until the civil rights claims pending in this case have been resolved could delay correction by years²—subjecting Petitioners and South Fresno residents to irreparable harm if construction proceeds before the Order is corrected on appeal. *See Whitney’s at the Beach*, 3 Cal.App.3d at 264 (granting writ where delaying review until final judgment would “operate to make that remedy inadequate”). Caltrans stated in its Final EIR/EA that the Project “schedule begins construction in June 2024, with opening day anticipated in January 2026.” Pets. App. 4:25:1079. More recently, Caltrans told the district court that right-of-way certification would start

² The civil rights claims remain in written discovery and no trial date has been set. Pets. App. 4:20:994-95.

in March 2025 and construction in October 2025.³ Pets. App. 13:33:3375. Deferring review of the Trial Court’s threshold error until final judgment would make it harder, if not impossible, to unwind the Project’s flawed approval. This not only risks profound prejudice to Petitioners’ CEQA claims and the South Fresno community, but it undermines the purpose of CEQA: to ensure agency decisions are based on sound and thorough environmental review.⁴ Pub. Res. Code § 21061.

The interests of judicial economy also strongly favor writ review. *See Noe*, 237 Cal.App.4th at 324 (“[W]rit review is appropriate to ‘obviate a duplicative expenditure of resources by the courts and the parties.’” (quoting *Rehmani*, 204 Cal.App.4th at 950)); *see also id.* at 324 (writ review proper where trial court summarily disposes of a large portion of a case while other causes of action remain for trial). As noted above, the civil rights claims remain in written discovery and are months, if not years, away from trial. Pets. App. 4:20:994-5. By contrast, Caltrans has completed its preparation of the draft administrative record on which the CEQA claims will be tried. Pets. App. 1:3:25-6. Indeed, the Trial Court had ordered the record to be lodged within five days of denial of summary adjudication, at which point the CEQA

³ Caltrans provided the district court with a link to its Project website with anticipated pre-construction and construction timelines. Pets. App. 13:33:3375 (linking to Project website at <https://dot.ca.gov/caltrans-near-me/district-6/district-6-projects/06-0h240>).

⁴ In a similar vein, writ review realizes the Legislature’s directive that CEQA claims be “quickly heard and determined in the lower courts.” Pub. Res. Code § 21167.1(b).

claims would be ready for merits briefing and dispositive hearing. *Id.*

Reaching the CEQA claims first may significantly narrow if not obviate the need for further litigation. Indeed, the Parties already agreed in the related federal action that the CEQA and related environmental claims were to be heard before the civil rights claims to ensure an orderly and efficient resolution. *See* Pets. App. 7:25:1972. Conversely, deferring correction of the Order until appeal from final judgment could “require a second trial” on the civil rights claims. *Rehmani*, 204 Cal.App.4th at 950. Section 437c(m)(1) was adopted to avoid precisely this result. *Id.*

This Petition is also well-suited for writ review because the issues presented in the Order “are questions of law, making their immediate resolution on a petition for writ of mandate appropriate.” *Fisherman’s Wharf*, 114 Cal.App.4th at 319. “[A] ruling granting summary adjudication” necessarily involves a “pure question of law.” *Certain Underwriters at Lloyd’s of London v. Superior Court*, 24 Cal.4th 945, 971 (2001). And the dispute at issue presents legal questions regarding the running of a statute of limitations subject to equitable tolling. *See* Pets. App. 1:1:17-19; *Pugliese v. Superior Court*, 146 Cal.App.4th 1444, 1448 (2007) (granting writ to address application of statute of limitations). Writ relief would both vindicate the rights of Petitioners and clarify the rules governing equitable tolling for future litigants by correcting the Trial Court’s erroneous identification of a split in authorities and its misapplication of equitable tolling doctrine. *See Brandt*, 37 Cal.3d at 816 (granting writ to resolve contradictory appellate interpretations).

II. The Trial Court's Order Contravenes the Doctrine of Equitable Tolling and Must Be Vacated.

In barring Petitioners' CEQA claims, the Trial Court commits a series of legal errors, each of which demonstrates its fundamental misunderstanding of equitable tolling doctrine. Equitable tolling is a judge-made doctrine "designed to prevent unjust and technical forfeitures of the right to trial on the merits." *Hopkins v. Kedzierski*, 225 Cal.App.4th 736, 746 (2014). The doctrine "suspend[s] or extend[s] a statute of limitations as necessary to ensure fundamental practicality and fairness" when a litigant timely files and diligently pursues their claims in an improper forum. *Saint Francis*, 9 Cal.5th at 719; see also *Addison v. State of California*, 21 Cal.3d 313, 318-19 (1978) (explaining that the Court "has shown itself ready to adapt rules of procedure to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits" (quoting *Bollinger v. Nat. Fires Ins. Co.*, 25 Cal.2d 399, 410 (1944))). In such instances, it is firmly established that a plaintiff's claims "should not be barred by a statute of limitations unless the defendant would be unfairly prejudiced if the plaintiff were allowed to proceed." *Aguilera v. Heiman*, 174 Cal.App.4th 590, 598 (2009).

Courts accordingly toll a statute of limitations in the interest of equity when the facts support three elements: "(1) timely notice, (2) lack of prejudice, to the defendant, and (3) reasonable and good faith conduct on the part of the plaintiff." *Saint Francis*, 9 Cal.5th at 724 (quoting *Addison*, 21 Cal.3d at 319). A plaintiff acts in subjective good faith if she makes an "honest mistake" of venue. *Id.* at 729. A plaintiff "motivated by a

dishonest purpose,” *id.*, or who “trifl[es] with the courts or the other party” to gain an unfair advantage, does not. *Mojica v. 4311 Wilshire, LLC*, 131 Cal.App.4th 1069, 1074 (2005). A plaintiff’s actions are “reasonable” for purposes of the third element when objectively “fair, proper, and sensible in light of the circumstances.” *Saint Francis*, 9 Cal.5th at 729.

Here, it is uncontested that the first two elements are satisfied: Caltrans received timely notice when Petitioners filed their CEQA claims in federal court on March 8, 2023, within CEQA’s 30-day statute of limitations. Pets. App. 1:8:106, 112; *see Saint Francis*, 9 Cal.5th at 726 (timely notice element satisfied where “party’s actions caused the defendant to be ‘fully notified within the [statute of limitations] of plaintiffs’ claims and their intent to litigate” (quoting *Addison*, 21 Cal.3d at 321)). And Caltrans suffers no conceivable prejudice to its ability to defend against the CEQA claims in its preferred state court forum, as the claims at issue here are identical to those Petitioners originally filed in federal court. *Collier*, 142 Cal.App.3d at 925; *see Saint Francis*, 9 Cal.5th at 728 (“core focus” of second element is “whether application of equitable tolling would prevent the defendant from defending a claim on the merits”); Pets. App. 1:8:112, 125. As discussed in Section III below, the Trial Court also appropriately rejected Caltrans’ argument that Petitioners acted in bad faith or unreasonably in initially filing their state law claims together with their related federal claims in federal district court, where all the claims could be heard and resolved in the same action. Pets. App. 1:1:13-14. In such circumstances,

courts “liberally apply tolling rules” to allow claims to proceed to trial on the merits, “as to do otherwise would both create procedural traps for the unwary and encourage duplicative filings, with attendant burdens on plaintiffs, defendants, and the court system.” *McDonald*, 45 Cal.4th at 102.

Yet this is just what the Trial Court did in concluding that Petitioners refiled their state law claims in state court after the CEQA statute of limitations resumed running. Pets. App. 1:1:18. The Trial Court committed three clear errors of law to reach this holding. First, it cut short the equitable tolling period by reasoning that tolling ended when Petitioners first received “notice” of Caltrans’ position that the state law claims were in the improper forum. Pets. App. 1:1:16-18. Supreme Court precedent—which confirms that a limitations period is tolled during the pendency of the first-filed action irrespective of notice—is not in accord. Second, the Trial Court applied a strict “stop/start clock approach” that higher courts have already deemed inapplicable to equitable tolling, a doctrine meant to be applied flexibly. Pets. App. 1:1:15-18. Third, it ignored the material facts showing *why* Petitioners refiled the claims in state court on October 2, 2023—as soon as negotiated resolution of the terms of dismissal had failed and Petitioners’ request for ex parte request for dismissal of the state law claims was noticed for hearing. In each of these respects, the Trial Court reached beyond the law and ignored the factual record to deny Petitioners their day in court.

A. Petitioners refiled their CEQA claims in state

court while they were still pending in federal court and the limitations period was still tolled.

The law of equitable tolling is clear: “the limitation period of a second action” is “tolled . . . during the pendency of a first action later found to be defective.” *Collier*, 142 Cal.App.3d at 923. An unbroken line of authorities supports this application of equitable tolling doctrine. *See, e.g., Addison*, 21 Cal.3d at 321 (“the limitations period is tolled during the pendency of a timely filed federal suit subsequently dismissed for lack of jurisdiction”); *Collier*, 142 Cal.App.3d at 931-32 (holding that the plaintiff “acted most reasonably” because he filed his second claim prior to settlement of his first-filed claim and thus “while the statute was still tolled”); *Elkins v. Derby*, 12 Cal.3d 410, 411 (1974) (“the pertinent authorities” support “a rule that the statute is tolled during the pendency of compensation proceedings”); *Valdez v. Himmelfarb*, 144 Cal.App.4th 1261, 1270 (2006) (statute of limitations was “tolled until the plaintiff obtained a ‘final determination’ of his workers’ compensation claim”).

This rule resolves any question about the duration of the tolling period here. Petitioners refiled their CEQA and other state law claims in state court on October 2, 2023. Pets. App. 1:8:110, 124-5. But the district court did not dismiss the state law claims until October 19 upon Petitioners’ ex parte application for dismissal without prejudice. Pets. App. 1:8:110, 126. Because Petitioners’ state law claims were still pending in federal court when refiled in state court on October 2, the statute of limitations on the CEQA claims remained tolled.

The Supreme Court’s decision in *Addison v. State of*

California is directly on point. In *Addison*, the plaintiffs timely filed state and federal claims in federal court. 21 Cal.3d at 315. The defendants moved to dismiss the claims for lack of jurisdiction, and 75 days later, the plaintiffs refiled in state court. *Id.* at 315-16. Shortly thereafter, the federal court granted defendants' motion and dismissed the federal suit "without prejudice to the prosecution of the superior court proceeding." *Id.* at 316. The Supreme Court had no difficulty holding that the plaintiffs received equitable tolling, because the limitations period had been "suspended during the period in which plaintiffs' claims were pending in the federal tribunal." *Id.* To hold otherwise would incentivize duplicative proceedings on identical claims, which equitable tolling doctrine is intended to alleviate. *Id.* ("We discern no reason of policy which would require plaintiffs to file simultaneously two separate actions based upon the same facts in both state and federal courts since 'duplicative proceedings are surely inefficient, awkward and laborious.'" (quoting *Elkins*, 12 Cal.3d at 420)); *see also Elkins*, 12 Cal.3d at 412 ("[A]n awkward duplication of procedures is not necessary to serve the fundamental purpose of the limitations statute, which is to insure timely notice to an adverse party so that he can assemble a defense when the facts are still fresh."); *Marcario*, 155 Cal.App.4th at 409 (argument that plaintiff should have initiated her lawsuit while administrative grievance was still pending "is simply contrary to what *Elkins* holds").

Instead of following this controlling precedent, the Trial Court came up with a new and unsupported rule: The "dispositive

question” on duration of the tolling period is when Petitioners “were put *on notice*” that there could be a defect in jurisdiction. Pets. App. 1:1:15, 18 (emphasis added). Because Caltrans first notified Petitioners that it might seek dismissal of the state law claims on sovereign immunity grounds on July 20, 2023, and moved to dismiss on these grounds on August 25, 2023, the Trial Court concluded that Petitioners were dilatory in refileing on October 2, even though the state law claims were still pending and unresolved at that time. Pets. App. 1:1:15-16, 18.

“Notice,” however, is not a relevant consideration under case law, let alone the “dispositive” one. The Trial Court’s Order cites no authority for this “notice” standard. Pets. App. 1:1:18. None exists. Rather, courts do not even begin to assess whether a petitioner timely refiled until the first-filed claims are fully and finally resolved. In *Tarkington v. California Unemployment Insurance Appeals Board*, for example, the court assessed the timeliness of Petitioners’ refileing in relation to the first forum’s denial of reconsideration of its order dismissing the first-filed claims—not the demurrer that provided notice of the defect 260 days before plaintiffs refiled and not even the trial court’s order granting the demurrer 52 days before plaintiffs refiled. 172 Cal.App.4th 1494, 1508 (2009). As discussed in Section II.B below, the court also held that the plaintiffs were reasonably “prompt” in filing thirteen days *after* denial of reconsideration. *Id.* Similarly, in *Friends of Mammoth v. Board of Supervisors*, the Supreme Court held that the CEQA statute of limitations was tolled until petitioners “refil[ed] promptly in the superior court”

several days after the “denial without prejudice” of their CEQA claims. 8 Cal.3d 247, 269 (1972).

Indeed, it is impossible to square the Trial Court’s “notice” standard with the Supreme Court’s decision in *Addison*. In *Addison*, the plaintiffs refiled their state claims in state court 75 days after defendants’ motion to dismiss for lack of jurisdiction—the latest point in which plaintiffs had “notice” of a jurisdictional defect under the Trial Court’s Reasoning. 21 Cal.3d 313 at 319. By contrast, Petitioners here refiled their state law claims 38 days after Caltrans filed its motion to dismiss. Pets. App. 1:1:18. The Trial Court’s conclusion that this timeline “cannot be said to be prompt in its ordinary meaning,” *id.*, directly conflicts with the Supreme Court’s conclusion in *Addison* that the plaintiffs “promptly [re]asserted” their claims in state court in twice that time. 21 Cal.3d at 319. This is because, as the Supreme Court explained, the timeliness of refileing considers not when the plaintiff became aware of a jurisdictional defect, but rather when the “federal court, without prejudice, declined to assert jurisdiction over [the] timely filed state law cause of action.” *Id.*

In substituting the consistent standard set forth by the case law for one of its own invention, the Trial Court improperly denied Petitioners the relief afforded by equitable tolling doctrine. In doing so, it muddled clear standards that guide the conduct of litigants, as they did Petitioners here.

B. The Trial Court’s Order distorts equitable tolling by imposing a strict clock on a flexible doctrine.

The undisputed fact that Petitioners refiled their state law

claims in state court while they were still pending in federal court is sufficient to dispose of Caltrans' summary adjudication motion. The Trial Court, however, compounded its errors by not only restarting the limitations clock earlier than the case law allows, but also by subjecting it to a technical straitjacket that does not apply to equitable tolling.

The Trial Court's Order erroneously characterizes equitable tolling as "a clock that is stopped and then restarted," giving the plaintiff only whatever "time that remained when the clock is stopped" before the statute of limitations expires and her claims are forfeit. Pets. App. 1:1:15 (quoting *Woods v. Young*, 53 Cal.3d 315, 325 n.3 (1991)). This is clear error. The Court drew this rule from *Woods v. Young*. But *Woods* did not involve equitable tolling. Rather, the court was interpreting a statute that governs the running of a limitations period in certain medical negligence actions. 53 Cal.3d at 320 (construing Code of Civil Procedure sections 364 and 365). Equitable tolling, by contrast, is a "judicially created, *nonstatutory* doctrine" that "suspend[s] or extend[s] a statute of limitations as necessary to ensure fundamental practicality and fairness." *McDonald*, 45 Cal.4th at 99 (emphasis added).

The Court of Appeal in *Tarkington v. California Unemployment Insurance Appeals Board* already considered—and rejected—the defendant's invitation to import this "stop/start clock" approach into equitable tolling. In *Tarkington*, the plaintiffs had filed their lawsuit on the last day of a six-month

statute of limitations.⁵ 172 Cal.App.4th at 1505. Five months later, in May 2006, the defendants demurred for misjoinder. *Id.* The court granted the demurrer months later, on December 11, 2006, and denied plaintiffs’ motion for reconsideration on January 19, 2007. *Id.* Thirteen days after denial of reconsideration, the plaintiffs refiled “an identical petition” to cure the defect in their initial filing. *Id.* at 1505, 1508. Similar to the position Caltrans advanced and the Trial Court adopted here, the defendants argued that the statutory “clock” resumed running at very latest when plaintiffs were denied reconsideration of dismissal on January 19 and had therefore expired at least thirteen days before plaintiffs refiled. *Id.* at 1507.

The *Tarkington* court disagreed. According to the court, what matters for application of equitable tolling is simply that the first claim is filed within the statutory limitations period, and that the subsequent refile occurs within a reasonable period after final resolution of the first-filed claims. *See id.* at 1507-08; *cf. Collier*, 142 Cal.App.3d at 931 (“One possible indicia of reasonableness and good faith is whether the plaintiff filed the second claim within a reasonable time *after the period of tolling concluded*”) (emphasis added). Considering “the protracted history of the underlying litigation,” the court held that refileing

⁵ As did Caltrans below, the defendants in *Tarkington* argued that plaintiffs had acted “unreasonably and in bad faith because they waited” until the final day of the six-month limitations period to file. 172 Cal.App.4th at 1506. But whether the plaintiff waits “until the last possible hour to file” the first claim “is beside the point.” *Id.* “What matters is whether the first claim was filed in a timely fashion.” *Id.* Petitioners’ claims were here.

thirteen days after denial of reconsideration was sufficiently “prompt” to satisfy the reasonableness standard for equitable tolling. *Tarkington*, 172 Cal.App.4th at 1508.

In rejecting the stop/start clock approach in favor of a more flexible reasonableness standard, the *Tarkington* court relied on the Supreme Court’s controlling precedent in *Friends of Mammoth v. Board of Supervisors*. 8 Cal.3d 247. In *Friends of Mammoth*, the plaintiffs filed CEQA claims two days before the end of the 30-day statute of limitations, then refiled their claims four days after they were denied—which would have, under the Trial Court’s theory, barred application of equitable tolling. *Id.* at 269. The Supreme Court held otherwise. Reasoning that Petitioners should not be “denied a hearing on the merits by a myopic reading of the abbreviated statute of limitations,” the Court rejected the defendants’ statute of limitation defense because defendants were timely “put on notice of the litigation” and suffered no prejudice from the denial of the original claims and “*subsequent* prompt refiling” in the proper forum. *Id.* (emphasis added); *see also Tarkington*, 172 Cal.App.4th at 1507 (reasoning that the Supreme Court in *Friends of Mammoth* “implicitly rejected” strict application of tolling clock).

The Trial Court’s imposition of a stop/start clock directly contradicts the holdings in *Tarkington* and *Friends of Mammoth*. It also undercuts the very purpose of the equitable tolling doctrine, “which is to soften the harsh impact of technical rules which might otherwise prevent a good faith litigant from having a day in court.” *Addison*, 21 Cal.3d at 319.

The Trial Court tried to get around the holdings in *Tarkington* and *Friends of Mammoth* by asserting that the *Tarkington* court itself identified “a line of cases” that affirm “the stop/start clock method.” Pets. App. 1:1:18. But this is not what the *Tarkington* court said. Rather, the court considered—and rejected—the *defendant’s* reliance on a series of inapposite authorities.⁶ *Tarkington*, 172 Cal.App.4th at 1506-1507. It explained that “[w]hile it is true that in each case cited by [the defendant] the plaintiff filed the second claim while there was still time on the statutory ‘clock,’ that fact alone was not dispositive for any court’s analysis.” *Id.* at 1507 n.8. Indeed, the question whether a stop/start clock should be strictly applied to equitable tolling never arose in the cited cases since, as the court in *Tarkington* explained, it was undisputed that the “the plaintiff[s] had time remaining on the statutory ‘clock’” when they refiled “after the conclusion of the first action.” *Id.* at 1506-

⁶ The defendant in *Tarkington* had cited the decisions in *Collier*, 142 Cal.App.3d at 931-32; *Elkins*, 12 Cal.3d at 413 n.1; *Addison*, 21 Cal.3d at 318; and *Appalachian Ins. Co. v. McDonnell Douglas Corp.*, 214 Cal.App.3d 1, 36 (1989). 172 Cal.App.4th at 1507. As discussed in Section II.A above, *Collier*, *Elkins*, and *Addison* are all explicit that the statute of limitations remains tolled “during the pendency” of the first-filed action. *Collier*, 142 Cal.App.3d at 924. So too did the court in *Appalachian*, which held that the limitations period remained equitably tolled when the “second complaint was filed immediately *following* its voluntary dismissal.” 214 Cal.App.3d at 41 (emphasis added); *see also id.* at 42 (rejecting proposition that equitable tolling does not apply where the first-filed action is voluntarily dismissed because to hold otherwise “would result in the kind of technical and unjust forfeiture of a trial on the merits that the equitable tolling doctrine was designed to avoid”).

07. Any doubt was laid to rest by the Supreme Court’s controlling decision in *Friends of Mammoth*, which—unlike those cases—*did* consider a situation in which a plaintiff refiled following dismissal without prejudice and without any time left on the statutory clock, and found equitable tolling to apply nonetheless. *Id.* at 1507-08.

In light of the controlling authorities, the Trial Court’s identification of a split in authority is plainly erroneous. The Trial Court therefore had no choice of law and was required to follow the rule laid down in *Tarkington*. See *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal.2d 450, 456-57 (1962). This Court should too, consistent with *Friends of Mammoth* and the purpose of equitable tolling doctrine.

C. The material facts demonstrate that Petitioners reasonably and promptly refiled their state law claims in state court.

Compounding these errors, the Trial Court failed the Supreme Court’s directive to consider the timing of Petitioners’ refileing “in light of the circumstances”—the standard for reasonableness under the three-part equitable tolling standard. *Saint Francis*, 9 Cal.5th at 729. The application of equitable tolling is a fact-intensive inquiry. *Marcario*, 155 Cal.App.4th at 408. Yet the Trial Court ignored the facts material to the timing of Petitioners’ refileing of the state law claims, instead premising its decision on immaterial ones that were irrelevant to equitable tolling. In so doing, it flouted its obligation to “consider all of the evidence” and inferences drawn therefrom. Code Civ. Proc. § 437c(c). And it failed to construe such evidence “in the light

most favorable to the nonmoving party”—Petitioners. *Aguilar*, 25 Cal.4th at 843. As a result, the Trial Court reached a legal conclusion unsupported by the record on summary adjudication, an error that this Court may review de novo. *McDonald*, 45 Cal.4th at 114.

The undisputed facts in the record are plain: As soon as Caltrans confirmed it would neither consent to proceed in federal court nor to magistrate jurisdiction to swiftly resolve its motion to dismiss on sovereign immunity grounds, Petitioners diligently pursued the most expedient form of dismissal that would allow them to refile their state law claims in Caltrans’ preferred forum. Pets. App. 1:8:118-124. Petitioners reached out to Caltrans the day after it filed its motion to dismiss to request a conference. Pets. App. 1:8:118. In the August 31, 2023 meeting, Caltrans volunteered to circulate a stipulation that would dismiss Petitioners’ state law claims in federal court so they could refile in state court. Pets. App. 1:8:118-19. Despite this understanding, Caltrans circulated a stipulation days later that purported to require dismissal of Petitioners’ state law claims “with prejudice,” barring their refiling *in any forum*. Pets. App. 1:8:119, 4:16:951-2. Petitioners promptly reiterated that they could only agree to dismissal if it was *without* prejudice and agreed for the sake of expediency to strike any term Caltrans objected to except this essential feature. Pets. App. 1:8:119. Petitioners informed the district court of these ongoing negotiations in their September 9, 2023 opposition to Caltrans’ motion to dismiss, which confirmed that “the parties are continuing to confer on a mutually agreeable

mechanism to dismiss Plaintiffs' state law claims without prejudice." Pets. App. 1:8:109, 120-21, 2:11:537.

For several weeks after, Caltrans declined to respond to Petitioners' requests that it approve the stipulation, asserting that there was there was "still unnecessary and inaccurate language" but without identifying what it found objectionable. Pets. App. 1:8:122, 3:11:613. It continued to do so well after Federal Defendants confirmed their approval of the stipulation. Pets. App. 1:8:121-22. Indeed, it was not until September 28, 2023 that Caltrans provided Petitioners with a clear response confirming that the agency unequivocally refused to enter a stipulation that would provide for dismissal of the state law claims without prejudice. Pets. App. 1:8:124, 3:11:673.

The very next day, September 29, 2023, Petitioners moved the court for ex parte dismissal of their own state claims without prejudice to expeditiously resolve the issue in dispute and ensure the claims could be refiled and pursued in state court. Pets. App. 1:8:110, 8:25:2084-86. Out of an abundance of caution, Petitioners refiled their claims in state court on October 2, 2023, the day the ex parte was noticed for hearing, anticipating that the claims could be dismissed that day. Pets. App. 1:8:110. Seventeen days later, the district court granted Petitioners the requested dismissal over Caltrans' objections. Pets. App. 1:8:126, 3:11:796.

These facts demonstrate that Petitioners were far from dilatory, instead working at all turns to have their CEQA claims heard as quickly as possible on the merits. As *Tarkington* instructs, Petitioners' diligence in pursuing final resolution of the

first-filed claims—going so far as to seek resolution on an ex parte basis—and in refileing them in state court the day the ex parte was noticed shows that Petitioners acted reasonably and prudently under the circumstances, particularly relative to “the protracted history of the underlying litigation.” 172 Cal.App.4th at 1507-08.

If anything, the facts here present a far easier case for equitable tolling. Unlike in *Tarkington*, Petitioners here were met with unmitigated delay, silence, and obfuscation by Caltrans—not only during the period in which Petitioners sought to refile their state law claims, but throughout both the federal lawsuit and the refiled state court lawsuit. Caltrans waited nearly six months into the federal litigation to challenge the federal court’s jurisdiction. Pets. App. 1:8:118. It agreed to voluntarily dismissal of the state law claims by stipulation so Petitioners could pursue their claims in state court, before then insisting on a stipulation that would categorically bar the refileing and drawing out negotiations over this term for over a month. Pets. App. 1:8:119-124. It even opposed Petitioners’ ex parte request to dismiss *their own claims* without prejudice, only to then contend that Petitioners had unduly delayed in refileing their claims. Pets. App. 1:8:125, 3:11:732-44.⁷ Petitioners’ diligence, good faith, and reasonableness are especially apparent when

⁷ In the instant litigation too, Caltrans sought and obtained six extensions, totally nearly a year, to prepare the administrative record to try the CEQA claims. Pets. App. Vol. 4:19:986. And it waited almost four months after the Trial Court instructed it to reserve a hearing date for summary adjudication to notice its motion. Pets. App. 12:29:3069; *see* 4:22:P1009.

viewed against these uniquely challenging circumstances.

Despite correctly acknowledging that, on summary adjudication, the court must view the evidence “in the light most favorable to the plaintiff,” Pets. App. 1:1:18, the Order fails entirely to consider the evidence of the circumstances that drove Petitioners to file on October 2. Indeed, it never mentions the material facts surrounding Petitioners’ refiling decision—avoiding dismissal of their CEQA claims with prejudice. Instead, the Trial Court apparently believed that Petitioners were focused on securing a stipulated tolling agreement prior to refiling. Pets. App. Vol. 1:1:16 (“Petitioners’ reliance upon this stipulation to further toll the statute of limitations was unreasonable.”). They were not. Petitioners did suggest including a tolling provision in the Parties’ stipulation to avoid later motions practice and preserve judicial economy, but they struck the provision at Caltrans’ request, Pets. App. Vol. 1:8:120-21, as equitable tolling has never required a defendant’s agreement. *See e.g., Tarkington*, 172 Cal.App.4th at 1507-08. And yet Caltrans still would not approve the stipulation, persisting in its insistence that dismissal could only be *with prejudice* such that Petitioners would be categorically barred from refiling. Pets. App. Vol. 1:8:119.

Had Caltrans either stipulated to dismissal without prejudice or clarified its refusal so that Petitioners could move the district court earlier for ex parte relief, there would have been no question about the timeliness of refiling. Under the circumstances, it was undoubtedly reasonable for Petitioners to have pursued a negotiated agreement to the Parties’ dispute, as

the district court instructed, and applied ex parte for dismissal without prejudice before refile in state court. On independent review, this Court should reach the result dictated by a fair reading of the facts before it.

III. Caltrans' Additional Arguments Below Were Specious

Caltrans' other arguments below against application of equitable tolling were readily rejected by the Trial Court and should be rejected on this Court's de novo review as well.

First, Caltrans argued below that equitable tolling, as a general matter, does not apply to CEQA claims in consideration of the Legislature's interest in prompt adjudication of CEQA disputes. Pets. App. 4:23:1026-29. Not so. The Supreme Court's very first CEQA decision in 1972, *Friends of Mammoth*, applied the doctrine to toll the 30-day statute of limitations that applied to the CEQA claims in that case. 8 Cal.3d at 269. In rejecting a "myopic reading of the abbreviated statute of limitations," the Court affirmed that equitable tolling applies just as much to CEQA as it does to other statutes. *Id.* More recently, the Supreme Court clarified that a short "30-day limitations period," like that which CEQA provides, is particularly amenable to equitable tolling, as a longer limitations period may "indicate[] the Legislature's efforts to provide, within the strict statutory period itself, a reasonable time to file suit." *Saint Francis*, 9 Cal.5th at 720 (citation omitted).

Second, Caltrans argued below that Petitioners acted unreasonably and in bad faith by initially pursuing their claims

in federal court in light of Caltrans' affirmative sovereign immunity defenses. Pets. App. 4:23:1030-1039. But allowing a good-faith litigant who "seasonably filed a cause of action, to try it upon its merits, notwithstanding . . . *mistake in the tribunal invoked*" is precisely what the doctrine of equitable tolling is for. *Friends of Mammoth*, 8 Cal.3d at 269; *see also Addison*, 21 Cal.3d at 321 (applying equitable tolling where plaintiff's timely-filed federal suit was "subsequently dismissed for lack of jurisdiction").

In any event, the circumstances of this case show that Petitioners acted reasonably in initiating litigation in federal court to challenge the Project's joint state-federal review and approvals, which were subject to CEQA, NEPA, and the federal Clean Air Act. The NEPA and Clean Air Act claims are subject to exclusive federal jurisdiction, and Federal Defendants could only be sued in federal court. Pets. App. 7:25:1741; 23 U.S.C. § 327(d)(1); *Quantification Settlement Agreement Cases*, 201 Cal.App.4th 758, 834-35 (2011). Petitioners reasonably and in good faith believed that it was appropriate to file their closely related claims in a single action in federal court where they could be tried together. Pets. App. 1:8:112.

In doing so, Petitioners were guided by a long line of cases in which federal courts have adjudicated CEQA claims together with NEPA claims, including in actions involving Caltrans itself. *See, e.g., City of Carmel-By-The-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142 (9th Cir. 1997); *Crenshaw Subway Coal. v. L.A. Cnty. Metro. Transp. Auth.*, No. CV 11-9603 FMO (JCx), 2015 WL 6150847 (C.D. Cal. Sept. 23, 2015); *AquAlliance v. U.S. Bureau of*

Reclamation, 287 F.Supp.3d 969, 988 n.7 (E.D. Cal. 2018) (explaining that federal court has supplemental jurisdiction over CEQA claims when they are “so related to claims in the action within such original jurisdiction that they form part of the same case or controversy”); *City of South Pasadena v. Volpe*, 418 F.Supp. 854 (C.D. Cal. 1976); *Keith v. Volpe*, 352 F.Supp. 1324 (C.D. Cal. 1972).

If there were any doubt about the reasonableness of Petitioners’ initial filing decision, Caltrans’ litigation conduct lays it to rest. Caltrans not only waited nearly five months to even suggest a sovereign immunity defense, but it went so far as to request that Petitioners draft an agreement recording its consent to federal jurisdiction over the state law claim in the case. Pet. App. 1:8:116-17. Caltrans did not dispute these facts. *Id.*

IV. The Interests of Justice Are Served by Allowing Petitioners’ Challenges to the Flawed CEQA Document to Be Heard on Their Merits

The consequences of failing to extend equitable tolling in this case and foreclosing hearing on the CEQA merits would be profound. The Project’s environmental review erased the presence of any residents or sensitive receptors “in the vicinity of the project,” 14 Cal. Code Regs. § 15125(a), producing a description of the existing physical setting that was so “inaccurate, incomplete and misleading” that it violated CEQA as a matter of law. *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus*, 27 Cal.App.4th 713, 730 (1994). It unlawfully segmented environmental review by omitting any mention of the 3,000 acre industrial park planned next to the

Project, thereby “avoid[ing] [Caltrans’] responsibility [for] considering the environmental impact of the project as a whole.” *Orinda Ass’n v. Bd. of Supervisors*, 182 Cal.App.3d 1145, 1171 (1986). Caltrans omitted this and other “notable industrial and commercial development” in South Fresno from its cumulative impacts analysis, drawing a sharp rebuke from the California Air Resources Board that “it is unclear whether Caltrans conducted a cumulative impacts analysis in its draft EIR and FEIR” at all. *Pets. App. 1:11:187*. And, it gave no consideration to the significant heavy-duty truck and car traffic the Project will foreseeably induce. *Id.*; *cf.* 14 Cal. Code Regs. § 15064.3(a) (“Generally, vehicle miles traveled is the most appropriate measure of transportation impacts.”).

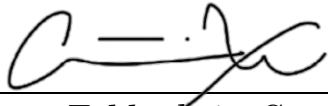
The Trial Court’s Order threatens to permanently close the door on these and other CEQA claims and allow this major transportation project to proceed on a deeply flawed environmental review. Equitable tolling is designed to guard against such an unjust result so that “potentially meritorious claims” pursued by good faith litigants can be “resol[ved] on the merits.” *McDonald*, 45 Cal.4th at 108 (citation omitted).

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court issue the requested writ.

Dated: Nov. 14, 2024

ENVIRONMENTAL JUSTICE LAW &
ADVOCACY CLINIC
Jerome N. Frank Legal Services Organization

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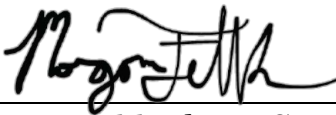
CERTIFICATE OF COMPLIANCE

(Cal. Rules of Court, Rules 8.204(c))

Pursuant to California Rules of Court, Rule 8.204, I hereby certify that the text of this Petition for Writ of Mandate, Prohibition, or Other Appropriate Writ; Memorandum of Points and Authorities in Support Thereof consists of **13,499** words, not including tables of contents and authorities, signature blocks, the Certificate of Interested Entities or Persons, the Proof of Service, and this certificate of word count as determined by Microsoft Word, the software used to prepare this brief.

Dated: Nov. 14, 2024

ENVIRONMENTAL JUSTICE LAW &
ADVOCACY CLINIC
Jerome N. Frank Legal Services Organization

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COMMUNITIES*

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PROOF OF SERVICE

Friends of Calwa, Inc. et al. v. Fresno Superior Court
Court Of Appeal Of The State Of California, Fifth Appellate District

I, Kaylon Hammond, declare as follows: I am employed with LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY. My business address is 2210 San Joaquin Street, Fresno, California 93721. I am over the age of 18 years of age, and am not a party to this action.

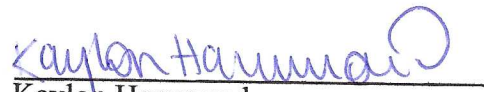
On November 14, 2024, I served the document entitled:

**PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER APPROPRIATE WRIT;
MEMORANDUM OF POINTS AND AUTHORITIES**

on Respondent Superior Court of California for the County of Fresno at the following address: 1130 O Street, Fresno, CA 93721-2220.

BY U.S. Mail: By Enclosing them in an envelope and placed the envelope for collection and mailing, following our ordinary business practices 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. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 14, 2024, in Sacramento, California.



Kaylon Hammond

PROOF OF SERVICE

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 New Haven, State of Connecticut. My business address is Jerome N. Frank Legal Services Organization, 127 Wall Street, New Haven, Connecticut 06511.

On November 14, 2024 I served true copies of the following document(s) described as **PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER APPROPRIATE WRIT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to TrueFiling 3.0, through the user interface at <https://tf3.truefiling.com/>.

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

Executed on November 14, 2024, at Shingle Springs, California.

s/ Stephanie Safdi
Stephanie Safdi

SERVICE LIST

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Real Party in Interest and Respondent