

**CASE No. F088939**

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

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**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.*

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**REPLY TO OPPOSITION OF CALTRANS TO PETITION  
FOR WRIT OF MANDATE, PROHIBITION, OR OTHER  
APPROPRIATE WRIT**

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

Fresno County Superior Court, Case No. 23CECG04109

Honorable Daniel J. Brickey, Dept. 97E, Tel: (559) 457-6364

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Morgan Feldenkris, Certified Student Attorney (PTLS No.  
714208)

Taylor Wurts, Certified Student Attorney (PTLS No. 713855)

Catherine Xu, Certified Student Attorney (PTLS No. 712445)

Stephanie L. Safdi, Supervising Attorney (CA Bar No. 310517)

**ENVIRONMENTAL JUSTICE LAW AND ADVOCACY CLINIC**

Jerome N. Frank Legal Services Organization

127 Wall Street

New Haven, CT 06511  
Tel: (203) 432-4800  
Fax: (203) 432-1426  
[stephanie.safdi@ylsclinics.org](mailto:stephanie.safdi@ylsclinics.org)

Phoebe S. Seaton (CA Bar No. 238273)  
Michael Claiborne (CA Bar No. 281308)  
LEADERSHIP COUNSEL FOR JUSTICE AND  
ACCOUNTABILITY  
2210 San Joaquin Street  
Fresno, CA 93721  
Tel: (559) 369-2780  
[pseaton@leadershipcounsel.org](mailto:pseaton@leadershipcounsel.org)

Melody Osuna (CA Bar No. 302163)  
Michael Rawson (CA Bar No. 95868)  
PUBLIC INTEREST LAW PROJECT  
449 15th Street, Suite 301  
Oakland, CA 94612  
Tel: (510) 891-9794  
[mosuna@pilpca.org](mailto:mosuna@pilpca.org)

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

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## INTRODUCTION

This writ turns on a simple question: whether the trial court misapplied equitable tolling doctrine in cutting off the tolling period for Petitioners' claims under the California Environmental Quality Act ("CEQA") while they were still pending in federal district court.<sup>1</sup> The trial court's decision to dismiss Petitioners' refiled CEQA claims as time-barred on summary adjudication distorts the doctrine of equitable tolling, contravenes settled law, and ignores material facts to foreclose hearing on the merits. The trial court did so despite finding that Petitioners filed their CEQA 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 state court forum. These are all factors this Court has said warrant equitable tolling. In nonetheless granting summary adjudication for Real Party in Interest California Department of Transportation ("Caltrans"), the trial court reached a conclusion that contravenes its own analysis and governing legal standards. In doing so, it risks irreparable injury to Petitioners and the South Fresno community that will have to live with the consequences of Caltrans' flawed environmental review on this major highway expansion project.

This Court's January 13, 2025 Order appropriately identifies two errors of law that underlay the trial court's summary adjudication decision, each of which requires reversal. First, the

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<sup>1</sup> Counsel acknowledge Jerome N. Frank Legal Services Organization student interns Ananya Agustin Malhotra and Maria Michalos for their contributions to this brief.

trial court erred in prematurely cutting off the tolling period while the first-filed CEQA claims were still pending in federal court. In doing so, the court cast aside decades of unbroken precedent firmly establishing that a statute of limitations equitably tolled by the filing of an initial action remains tolled during the pendency of that action. Instead, the trial court read a confusing new rule into equitable tolling doctrine that would suspend the tolling period at the point the plaintiff had “notice” that its first-filed claims could be subject to dismissal. This poorly formulated “notice” rule, invented by the trial court out of whole cloth, is without any support in the case law. It also contravenes the policy underlying equitable tolling precedent to avoid duplicative proceedings on the same claims and provide for the orderly resolution of actions. Caltrans in its informal response brief does not even attempt to distinguish the cases in this long line of precedent, nor does it offer any authority in support of the trial court’s “notice” rule—because no such rule exists. The correct result here is clear: Because Petitioners refiled in state court while their first-filed claims were still pending in federal court, the CEQA statute of limitations remained tolled.

Second, the trial court erred in failing to consider evidence of the circumstances of Petitioners’ refiling of their state law claims in state court after Caltrans moved to dismiss them from federal court, as both equitable tolling doctrine and summary adjudication standards require. The trial court entirely ignored material facts regarding active litigation in federal court over dismissal of Petitioners’ CEQA claims until and even after

Petitioners refiled them in state court. These facts include Caltrans' repeated insistence that the claims could only be dismissed with prejudice, which would preclude refiling in any forum—a Catch 22. Caltrans too omits from its informal response brief two dozen material and undisputed facts documenting Petitioners' diligent but ultimately unsuccessful efforts at the direction of the federal court to negotiate a stipulation to avoid motions practice on dismissal of the state law claims. The parties' dispute was only resolved when Petitioners sought and obtained expedited *ex parte* relief from the district court, dismissing their CEQA claims without prejudice *after* they had already been refiled in state court. The trial court's Order wholly ignored, and Caltrans' response brief curiously glosses over, the parties' dispute about whether dismissal would be with or without prejudice, instead predicating its decision on immaterial facts such as whether Caltrans would enter into a tolling agreement.

All told, the trial court's unprecedented approach to equitable tolling conflicts with applicable law and loses sight of the very reason the courts created the doctrine in the first place—to “ensure fundamental practicality and fairness.” *Saint Francis Mem'l Hosp. v. State Dept. of Pub. Health*, 9 Cal.5th 710, 725 (2020) (citation omitted). Instead, the trial court's Order undercuts the doctrine's objective of allowing hearing on the merits where, as here, the statute of limitations' purpose has been met by an initial timely filing and the defendant has suffered no prejudice in its ability to defend against the refiled claims. Should the trial court's decision stand, it would

improperly foreclose the community's right to obtain judicial review of the environmental documents on which Caltrans based its decision to approve this major highway expansion project through the heart of South Fresno. In doing so, it would prevent the community from vindicating the foundational public rights that CEQA guarantees: sound environmental review and informed decision-making. Even more so, it would upend the efforts of South Fresno residents to secure a healthier future for their children and community by closing the courthouse doors on deserving litigants.

## **ARGUMENT**

### **I. The Trial Court's Misapplications of Equitable Tolling Doctrine and Summary Adjudication Standards Are Reviewed De Novo**

As an initial matter, Caltrans argues that this Court should review the trial court's decision under an abuse of discretion standard. Respondent and Real Party in Interest's Informal Response ("Response Brief" or "Resp. Br.") at 20-21. Caltrans is wrong. The case law is clear that on summary adjudication, a trial court's application of equitable tolling doctrine is reviewed de novo. And even if the proper standard of review was abuse of discretion, the distinction here would be one without a difference. The issues noticed by the Court are questions of law subject to its independent review, without deference to the trial court's decision or reasoning.

The Supreme Court has endorsed de novo review of the trial court's application of equitable tolling on summary

adjudication. In *McDonald v. Antelope Valley Community College District*, the Supreme Court noted approvingly that the Court of Appeal “review[ed] the summary judgment record de novo” and “identified evidence in the record providing a basis for equitable tolling.” 45 Cal.4th 88, 114 (2008). The Court of Appeal recently applied de novo review to the trial court’s application of equitable tolling doctrine on summary judgment in *State Compensation Insurance Fund v. Department of Insurance*, 96 Cal.App.4th 227, 234 (2023).

Caltrans relies on two Court of Appeal cases to argue for a more deferential standard of review on this appeal, but both were decided before the Supreme Court’s decision in *McDonald*, and neither applies here. First, Caltrans cites *Centennial Insurance Co. v. United States Fire Insurance Co.*, 88 Cal.App.4th 105 (2001), for the general proposition that abuse of discretion applies when the Court reviews a trial court’s exercise of judicial discretion in making equitable determinations. Resp. Br. at 21. But *Centennial* did not involve equitable tolling at all, nor did it present questions going, as here, to the correct application of settled doctrine. Rather, the court in *Centennial* was reviewing a trial court’s determination of the most equitable way of apportioning costs among insurance carriers. 88 Cal.App.4th at 108–10. While the decision how to equitably allocate insurance payments is fully committed to a trial court’s discretion, whether to adhere to settled law on equitable tolling is not. *See McDonald*, 45 Cal.4th at 114.

Second, Caltrans turns to *Mills v. Forestex Co.*, 108 Cal.App.4th 625 (2003). Resp. Br. at 20-21. But *Mills* simply cited *Centennial* for the general proposition that a trial court's decision "in the exercise of its equitable powers" should be reviewed under abuse of discretion. *Mills*, 108 Cal.App.4th at 639-40 (citing *Centennial*, 88 Cal.App.4th at 11). Although equitable tolling was at issue in *Mills*, the appeal involved multiple issues of equity, and the Court of Appeal did not clarify the standard of review that it applied to the trial court's equitable tolling analysis. In practice, the Court of Appeal appears to have reviewed the record independently in considering equitable tolling. Indeed, the Court of Appeal affirmed the trial court's denial of equitable tolling not because the trial court had appropriately exercised its discretion but because the Court of Appeal could not identify anything in the record that could have raised a question of fact as to whether the litigant timely filed its initial claim. The record facts all showed that it had not and that the first equitable tolling prong had thus not been established. *Id.* at 650-51. Five years later, the Supreme Court in *McDonald* confirmed that the appellate court properly reviews the evidentiary record independently, without deference to the trial court, when considering application of equitable tolling on summary judgment. *See McDonald*, 45 Cal.4th at 114.

In any event, this Court reviews the trial court's misapplication of equitable tolling doctrine independently even under an abuse of discretion standard. "Any exercise of discretion must rest on correct legal premises." *Minick v. City of Petaluma*,

3 Cal.App.5th 15, 25 (2016). Thus, as the Court of Appeal wrote in *Adams*, a “trial court abuses its discretion when it applies the wrong legal standards applicable to the issue at hand.” *Adams v. Aerojet-Gen. Corp.*, 86 Cal.App.4th 1324, 1341 (2001) (citation omitted). Since the trial court in *Adams* “employed the wrong test, an abuse of discretion [was] shown.” *Id.* Because the issue at hand involves whether the trial court misunderstood and therefore wrongly applied equitable tolling doctrine, the Court of Appeal here does not defer to the trial court’s outcome on summary adjudication. *See Hopkins v. Kedzierski*, 225 Cal.App.4th 736, 748 (2014).

The de novo standard of review also responds to the “fact-intensive” nature of equitable tolling issues. *Marcario v. County of Orange*, 155 Cal.App.4th 397, 409 (2007). The appellate court reviews the evidentiary record on summary adjudication de novo, “consider[ing] all of the evidence and all of the inferences reasonably drawn therefrom” and “view[ing] such evidence and such inferences in the light most favorable to the opposing party.” *Michaels v. Greenberg Traurig, LLP*, 62 Cal.App.5th 512, 521 (2021) (citing *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826, 843 (2001)). If the court identifies “evidence or inferences [that] raise a triable issue of material fact, it must conclude its consideration and deny the defendants’ motion.” *Aguilar*, 25 Cal.4th at 867.

## **II. The Trial Court Invented Legal Rules Cabining Equitable Tolling That Are Contrary to the Case Law and Purpose of the Doctrine**

The trial court's refusal to extend equitable tolling to Petitioners' CEQA claims turned on its interpretation of when the tolling period stops and the statute of limitations resumes running. The trial court decided that the statute of limitations on Petitioners' CEQA claims had already resumed running when they refiled their claims in state court on October 2, 2023, even though the same claims were still pending in federal court. The trial court committed two fatal legal errors in reaching this holding, neither of which Caltrans is able to defend in its Response Brief.

First, the court read a new rule into equitable tolling doctrine that would suspend the tolling period at the first point the plaintiff had constructive "notice" that its first-filed CEQA claims could be subject to dismissal. This notice rule is without any support in the case law and difficult, if not impossible, to administer. Moreover, it contravenes decades of unbroken precedent firmly establishing that a statute of limitations equitably tolled by the filing of an initial action remains tolled during the pendency of that action. Second, the trial court inexplicably ported into equitable tolling doctrine a limitation derived from a tolling statute governing medical negligence actions. The courts have already considered and rejected appeals to read harsh rules—such as this one, making medical negligence claims time-barred if the limitations period resumes running on a

depleted clock—into equitable tolling, a doctrine meant to be applied flexibly.

The trial court’s inventions undercut the purpose of equitable tolling doctrine by creating new and confusing “procedural traps for the unwary,” which the doctrine is intended to alleviate. *McDonald*, 45 Cal.4th at 102 (citation omitted). The correct result here is a simple one: Because Petitioners refiled in state court while their first-filed claims were still pending in federal court, the CEQA statute of limitations remained tolled and Petitioners should be allowed their day in state court on the merits of their CEQA claims.

**A. The statute of limitations remains tolled while the first-filed claims are pending.**

The trial court erred as a matter of law by inventing and applying a confusing new limitation to equitable tolling doctrine, which cuts off tolling when a litigant has “notice” that there could be a jurisdictional defect. Neither Caltrans nor the trial court locate any authority to support this rule. In inventing it, the trial court contravenes precedent and the purpose of equitable tolling doctrine. This effort should be rejected.

It is well settled that when a statute of limitations is equitably tolled, it remains tolled while the first-filed claims are pending. *See, e.g., Collier v. City of Pasadena*, 142 Cal.App.3d 917, 923 (1983) (“limitation period of a second action” is “tolled . . . during the pendency of a first action later found to be defective” (citations omitted)); *Addison v. State of California*, 21 Cal.3d 313, 321 (1978) (“the limitations period is tolled during the

pendency of a timely filed federal suit subsequently dismissed for lack of jurisdiction”); *Elkins v. Derby*, 12 Cal.3d 410, 412 (1974) (“the pertinent authorities” support “a rule that the statute is tolled during the pendency of compensation proceedings”); *Aguilera v. Heiman*, 174 Cal.App.4th 590, 600 (2009) (“statute . . . tolled until the plaintiff obtained a final determination of his workers’ compensation claim” (citation omitted)); *see also* Petition for Writ of Mandate and Memorandum of Points and Authorities (“Pet.”) at 50 (listing cases).

There are sound reasons for this principle. First, it is consistent with one of the core functions of equitable tolling doctrine—to avoid duplicative proceedings on the same claims. As the Supreme Court explained in *Addison*, there is “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.’” 21 Cal.3d at 319 (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.”). Second, tolling the limitations period while the first-filed claims are pending allows courts to fully adjudicate issues relating to these first claims before they are filed in the second forum. *See McDonald*, 45 Cal.4th at 100 (“Tolling eases the pressure on parties concurrently to seek redress in two separate forums with the

attendant danger of conflicting decisions on the same issue.”  
(citations omitted)).

Application of this well-established principle should be dispositive of this writ proceeding and requires reversal of the trial court’s summary adjudication Order. The undisputed facts before the trial court demonstrated that Petitioners refiled their CEQA claims in state court while the identical claims were still pending in federal court. Specifically, Petitioners refiled their CEQA and other state law claims in Fresno County Superior Court on October 2, 2023. Petitioners’ Appendix of Exhibits in Support of Writ of Mandate, Volume 1: Tab 8: 110, 124-25 [hereinafter Pets. App. 1:8:110, 124-25]. This was 17 days prior to the federal district court’s order dismissing the CEQA and other state law claims on October 19, 2023. Pets. App. 1:8:110, 126. Because Petitioners’ CEQA claims were still pending in federal court when refiled in state court, the statute of limitations on the CEQA claims remained tolled. Under the precedent, this is the beginning and end of the matter.

Instead of following the law, the trial court and Caltrans complicate and distort the doctrine by instead looking for when Petitioners could be said to have effective notice that their first-filed claims could be subject to dismissal. That is, the trial court wrongly identified the “dispositive question” underlying the duration of the tolling period as when Petitioners were “put on notice” that there could be a defect in jurisdiction. Pets. App. 1:1:15. There is nothing in the case law that supports this novel rule as a factor, much less a “dispositive” one, in guiding

application of equitable tolling. Neither the trial court’s Order, nor Caltrans’ informal response, cite authority for this “notice” rule. *See* Pets. App. 1:1:15; Resp. Br. at 25-27 (urging this Court to “adopt the notice standard”). This is because none exists.

To the contrary, applying the trial court’s made-up “notice” rule would have foreclosed tolling in a host of appellate and Supreme Court decisions that extended equitable tolling. For instance, in the Supreme Court’s decision in *Addison*, plaintiffs had “notice” of a jurisdictional defect through defendant’s motion to dismiss for 75 days *before* they refiled their state law claims in state court. 21 Cal.3d at 317. By contrast, Petitioners here refiled their state law claims in half that time—38 days after Caltrans filed its motion to dismiss. Pets. App. 1:1:15-16. The trial court’s conclusion below that this timeline “cannot be said to be prompt in its ordinary meaning,” Pets. App. 1:1:18, is impossible to square with the Supreme Court’s conclusion in *Addison* that the plaintiffs “promptly [re]asserted” their claims in state court two and a half months after defendant’s motion to dismiss was filed. 21 Cal.3d at 319. This is because, as the Supreme Court explained, promptness of refileing—to the extent it is a consideration in application of equitable tolling at all<sup>2</sup>—considers

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<sup>2</sup> In *Addison*, the Supreme Court did not view the timing of Petitioners’ refileing as having any bearing at all on the reasonableness and good faith prong of equitable tolling. Rather, the Supreme Court considered whether the timing of the plaintiffs’ refileing in state court caused any prejudice to the defendants in their ability to put on its defense. 21 Cal.3d at 319 (“No prejudice to defendants is shown, for plaintiffs’ state court action was filed within one week of the dismissal of the federal

not when the plaintiff became aware of a possible jurisdictional defect, but when the “federal court, without prejudice, declined to assert jurisdiction over [the] timely filed state law cause of action.” *Id.*

Likewise in *Tarkington v. Cal. Unemployment Ins. Appeals Bd.*, 172 Cal.App.4th 1494 (2009), the Court of Appeal held that equitable tolling applies where the plaintiffs refiled 260 days after the defendant demurred for misjoinder in the first action, as well as 52 days after the trial court sustained the demurrer and 13 days after it denied reconsideration of dismissal. *Id.* at 1505. In reaching this conclusion, the Court of Appeal reasoned that the plaintiffs’ refileing was sufficiently “prompt,” where promptness considered only the 13 days between final dismissal and refileing and took no account at all of the date the demurrer was filed or even when it was sustained. *Id.* at 1507-08.; *see also*, e.g., *Mojica v. 4311 Wilshire, LLC*, 131 Cal.App.4th 1069, 1072 (2005) (holding that plaintiff was “entitled to catch the windfall of any liberalization of the statute of limitations,” a one year extension in this case, “[w]hile her federal complaints were pending[.]”).

In addition to conflicting with settled law, the trial court’s invented “notice” rule is challenging to understand and even

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suit.”). Caltrans here concedes that it has not been prejudiced in its ability to put on its defense to Petitioners’ CEQA claims. And again, Petitioners refiled in federal court in significantly less time than the plaintiffs in *Addison*—17 days before the district court dismissed Petitioners’ federal claims on their *ex parte* application for an expedited ruling on Caltrans’ motion to dismiss.

more challenging to administer. The trial court variably suggests that “notice” turns on the point in time that: (1) Caltrans notified Petitioners of its intent to move to dismiss the CEQA claims, Pets. App. 1:1:14, (2) Caltrans notified Petitioners after filing its motion to dismiss that it would not stipulate to a tolling agreement, Pets. App. 1:1:15, and (3) Petitioners were “put on notice of the lack of jurisdiction,” Pets. App. 1:1:17. Not only is the trial court’s construction of “notice” impossible to locate in these varying touchpoints, but there are factual disputes in the evidentiary record that should have precluded summary adjudication under any version of this “notice” rule. Most notably, the parties dispute when, if ever, Petitioners had “notice” of a jurisdictional defect. *See* Pets. App. 1:8:107-110 (Petitioners’ Statement of Undisputed Material Facts nos. 7-14) [hereinafter Pets. SUMF]. For instance, Petitioners’ Separate Statement identifies facts showing that Petitioners informed Caltrans during meet-and-confers and by letter on July 27, 2023 that “Eleventh Amendment immunity is an affirmative defense rather than a jurisdictional bar” and “pointed to statutory provisions showing legislative intent to waive Caltrans’ immunity for the claims pled.” Pets. App. 1:8:116 (Pets. SUMF no. 26). Petitioners’ Separate Statement and proffered exhibits also confirm that Petitioners informed Caltrans on August 31, 2023, that they would voluntarily refile in state court not because they agreed the federal court lacked jurisdiction but to avoid a protracted dispute on forum and enable the most expeditious hearing on the merits in Caltrans’ preferred forum. Pets. App. 1:8:119 (Pets.

SUMF no. 36); Pets. App. 2:11:449 (explaining that Petitioners’ “decision to move their claims to state court also takes into account Caltrans’ unwillingness to consent to magistrate jurisdiction for resolution of its motion to dismiss on sovereign immunity grounds despite the Court’s admonition in its August 28, 2023 Minute Order that it would otherwise be six months or more before the motion is heard”).

These factual disputes highlight just how misguided the trial court was in substituting a fuzzy “notice” inquiry for the clear and consistent standard that courts apply in equitable tolling cases. If this Court were to sanction this substitution, it would cause problems beyond contravening binding Supreme Court precedent. The Court would also need to clarify what is meant by “notice” and then remand for trial to resolve factual disputes about when effective “notice” arose. The better and simpler result, and the one that avoids conflict with binding precedent, is to reverse the trial court and follow the unbroken line of equitable tolling authorities. Application of this precedent here would allow Petitioners their day in court on the merits of their CEQA claims since Petitioners timely and reasonably filed them in federal court and then refiled in state court before the claims were dismissed from the federal forum.

**B. The Trial Court erred in reading a so-called “stop/start clock” rule into equitable tolling doctrine.**

The undisputed fact that Petitioners refiled during the pendency of the first action is dispositive of the questions before this Court. CEQA’s 30-day statute of limitations could not have

resumed running when Petitioners refiled their CEQA claims, because Petitioners' first action remained pending at that time. Accordingly, the Court need not reach the trial court's additional holding imputing a "stop/start clock" rule from a statutory tolling decision into equitable tolling doctrine. *Id.* This "stop/start clock" approach analogizes equitable tolling to "a clock that is stopped and then restarted" so that once the tolling period ends (which here it had not), the plaintiff only has whatever time remained unspent on the statute of limitations to refile before her claims are forfeit. Pets. App. 1:1:15 (quoting *Woods v. Young*, 53 Cal.3d 315, 325 n.3 (1991)). Because Caltrans defends the trial court's imputation of this new rule despite its express rejection by the courts and its irrelevance to this dispute, Resp. Br. at 27-29, Petitioners address this additional error here.

The single case on which the trial court relied for this "stop/start clock" approach—*Woods v. Young*—was not, as Petitioners explained in their Petition, an equitable tolling case at all, nor does its interpretation of a specific tolling statute have any bearing on equitable tolling doctrine. Pet. at 54. *Woods* instead involved interpretation of specific provisions of a statute, the 1975 Medical Injury Compensation Reform Act (MICRA), which govern the running of the limitations period for medical negligence actions in the context of rapidly increasing premiums for medical malpractice insurance. 53 Cal.3d at 320 (construing Code of Civil Procedure sections 364 and 365). In *Woods*, the Court construed the statutory terms to resolve incongruities

MICRA created for plaintiffs who served notice within the last 90 days of the limitations period.<sup>3</sup> *Id.* at 319.

The “stop/start clock” language on which the trial court relied appears only in a footnote in *Woods*, in which the Court reasoned that section 364(d) excluded the day of service of notice from the time for commencement of the action to avoid the anomaly of a depleted statutory clock. *Id.* at 325 n.3. The Court’s description of a “stopped clock” in footnote 3 of *Woods* was specific to this statutory context. Indeed, the plaintiff never raised an equitable tolling claim, relying only on a plain reading of the statutory text. *Id.* at 328. Nor could the reasoning in *Woods* have any bearing by analogy. Equitable tolling is not governed by statute. Courts draw their authority to toll a limitations period from “their inherent equitable powers—not from what the Legislature has declared in any particular statute.” *Saint Francis*, 9 Cal.5th at 720.

Recognizing this problem, Caltrans now argues that the Supreme Court’s 1990 decision in *Prudential-LMI Com. v. Superior Court*, 51 Cal.3d 674 (1990) applied a similar “stop/start clock” analogy to equitable tolling doctrine. Resp. Br. at 28. It did not. At issue in *Prudential* was the one-year statute of limitations

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<sup>3</sup> Specifically, under section 364(d) of MICRA, if a plaintiff filed suit on the last day of the 90-day extension, the plaintiff would violate the 90-day waiting requirement. And if the plaintiff filed one day after the extended period, the action would be barred by the one-year statute of limitations. 53 Cal.3d at 321. The Court construed section 364(d) to provide that the one-year “statute of limitations is tolled for 90 days when the plaintiff gives the notice of intent to sue in the last 90 days of the limitations period.” *Id.* at 319.

in the plaintiffs' property loss insurance policy, which required an additional "written notice" to the insurer "within 60 days after the loss." 51 Cal.3d at 692. In November 1985, plaintiffs discovered an "extensive crack in the foundation and floor slab" of their apartment building and filed a claim with Prudential the next month. *Id.* at 680. Before receiving formal written notice denying coverage under the exception for damage due to "earth movement," plaintiffs sued Prudential in August 1987, alleging breach of contract. *Id.* The Court recognized that the statutory scheme presented an "anomaly" by requiring the insured to file a lawsuit to meet the statute of limitations before the insurer had completed its investigation. *Id.* at 693. The Court held that applying equitable tolling to suspend the running of the limitations period while the insurer investigated the claim would effectuate the purpose of the statute and "eliminat[e] the unfair results that often occur in progressive property damage cases." *Id.* at 692.

Caltrans' attempt to read into this language a general "stop/start clock" rule for equitable tolling doctrine fails for a number of reasons. First, the Court in *Prudential* used the language relied on by Caltrans in *dicta*. Resp. Br. at 28 (quoting *Prudential*, 51 Cal.3d at 692). At issue in *Prudential* was *not* when equitable tolling ends, but merely whether equitable tolling should apply to avoid the unfair operation of the statutory scheme. Regardless, both the *Prudential* court and the New Jersey Supreme Court decision it cited in the *dicta* that Caltrans points to were explicit that as a matter of law, equitable tolling

would only end when the first-filed insurance claims was formally denied. 51 Cal.3d at 693 (“[P]roper resolution of the foregoing anomaly is to . . . toll it from the time an insured gives notice of the damage to his insurer . . . *until coverage is denied.*” (emphasis added)); *Peloso v. Hartford Fire Ins. Co.*, 267 A.2d 498, 501 (N.J. 1970) (“[T]he fair resolution of the statutory incongruity is to allow the period of limitation to run from the date of the casualty but to toll it from the time an insured gives notice until liability is *formally declined.*” (emphasis added)). Second, the Court “emphasize[d]” that its “holding is limited in application to the first party progressive property loss cases in the context of a homeowner’s insurance policy,” since the Court’s decision was directed at resolving a bespoke incongruity particular to that context. *Prudential*, 51 Cal.3d at 679 (“intimat[ing] no view as to the application of [its] decision” in other contexts).

Although *Prudential* does not support application of a “stop/start clock” rule to equitable tolling, it does align with the many other decisions that affirm that the equitable tolling period extends through the pendency of the timely filed first action.<sup>4</sup> Doing so vindicates the requirement for timely notice supplied by the one-year limitations rule while enabling the claim process “to function effectively” by allowing the insured to wait until all issues in the first proceeding were resolved before filing suit. *Id.* at 692.

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<sup>4</sup> Caltrans states that it is “curious[]” that “Petitioners do not reference the *Prudential* case in the Petition.” Resp. Br. at 28. Petitioners did not reference *Prudential* because the decision is inapposite to the “stopped clock” issue.

The Court in *Prudential* did not explicitly address application of a “stop/start clock” analogy to equitable tolling, but the Court of Appeal in its 2009 decision in *Tarkington v. California Unemployment Insurance Appeals Board* expressly considered—and rejected—it. 172 Cal.App.4th at 1507. As discussed above, the plaintiffs in *Tarkington* filed their lawsuit on the last day of a six-month statute of limitations. 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. 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.<sup>5</sup> *Id.* at 1507.

The *Tarkington* court disagreed. According to the Court of Appeal, what matters for application of equitable tolling is simply that the first claim is filed within the statutory limitations period, and that the subsequent refiling occurs within a reasonable period *after final resolution* of the first-filed claims. *Id.* at 1507-08; *see also id.* at 1506 (“[W]hether [Plaintiffs] waited until the last possible hour to file the joint petition, i.e. the *first*

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<sup>5</sup> Here, the trial court is advancing a much harsher rule, which would restart the clock before initial claims are dismissed.

claim, is beside the point. . . . What matters is whether the first claim was filed in a timely fashion.”).

In rejecting the defendants’ “stop/start clock” argument, the *Tarkington* court relied on the fact that reading a “stop/start clock” standard into equitable tolling would directly contravene the Supreme Court’s application of equitable tolling to CEQA in *Friends of Mammoth v. Board of Supervisors*, 8 Cal.3d 247 (1972). *Tarkington*, 172 Cal.Ap.4th at 1507. 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 the plaintiffs’ first petition was denied—which would have, under the trial court’s theory, barred application of equitable tolling. 8 Cal.3d at 268. The Supreme Court rightly rejected the defendants’ argument that the refiling was untimely. *Id.* at 269. Reasoning that plaintiffs 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.* If this Court endorses the trial court’s imputation of a “stop/start clock” analogy, it will both create a split between the districts where none exists and contravene binding precedent from *Friends of Mammoth*.

Caltrans’ efforts to distinguish *Tarkington* and *Friends of Mammoth* fail. Both *Tarkington* and *Friends of Mammoth* directly rejected the “stop/start clock” approach to avoid defeating

the purpose of equitable tolling. That *Woods* and *Prudential* post-date *Mammoth*, as Caltrans emphasizes, Resp. Br. at 28, is inapposite, as neither directly addressed this “stop/start clock” issue in the context of equitable tolling. *Tarkington*, which came after both *Woods* and *Prudential*, did. Caltrans also tries to distinguish *Tarkington* and *Friends of Mammoth* on their facts, arguing that Petitioners in this case were not “actively pursuing their claims in the first action until the very end.” Resp. Br. at 33. The facts show otherwise. As discussed below, the parties were actively litigating a dispute in federal court as to dismissal of Petitioners’ CEQA claims until, and even after, Petitioners refiled those claims in state court. *See* Section III.A, *infra*.

### **III. The Trial Court Violated Summary Adjudication Standards by Ignoring Evidence of the Circumstances of Petitioners’ Refiling in State Court**

In the proceedings below, the trial court correctly determined that Petitioners acted in good faith in initially filing their state and federal claims together in federal court, Pets. App. 1:1:14, and when refiled their second action in state court, Pets. App. 1:1:16. And the trial court properly held that Petitioners were reasonable in initially filing in federal court. Pets. App. 1:1:14. But the trial court erred as a matter of law in holding on summary adjudication that Petitioners did not act reasonably in the timing of their refiled in state court. Pets. App. 1:1:18.

As already discussed, the caselaw on this point is unambiguous: A party acts reasonably when it refiles during the tolling period. *See* Pet. at 50 (compiling cases); *Collier*, 142

Cal.App.3d at 931-32 (plaintiff “acted most reasonably” because he filed his second claim prior to the settlement of his first-filed claim and thus “while the statute was still tolling”); Section II.A, *supra*. And here, it is undisputed that Petitioners refiled while the statute of limitations on their state law claims remained tolled. *See* Pets. App. 1:8:110 (Defs. SUMF nos. 16-17). Neither the trial court nor Caltrans identifies a single case where a party was found to have acted unreasonably where it refiled claims within the tolling period. Nor could they, because such a case does not exist. Caltrans even concedes that a party acts reasonably when it refiles during the tolling period. Resp. Br. at 23 (describing *Addison* as holding that a “[p]laintiff who refiled state law claims in state court before the federal court dismissed claims for lack of jurisdiction,” and therefore during the tolling period, “shows reasonable and good faith conduct”). This alone is dispositive on the question of objective reasonableness.

Because the answer to the first question noticed by this Court is both unambiguous and sufficient to issue the writ, this Court need not reach the second question in its briefing Order. Order on Petition for Writ of Mandate (Jan. 13, 2025). If it does, the Court should hold that the trial court’s flawed analysis as to whether Petitioners acted reasonably—the undisputed timing of their filing notwithstanding—provides an independent basis for reversal because it flouted standards governing summary adjudication.

First, the trial court failed to take notice of material facts pertaining to the circumstances of Petitioners’ initiation of the

state court litigation and their reasonableness in filing that lawsuit the day their *ex parte* request for dismissal without prejudice was noticed for hearing in the federal court. On summary adjudication, the court must “consider *all of the evidence* set forth in the papers,” *Butte Fire Cases*, 24 Cal.App.5th 1150, 1157-58 (2018) (emphasis added), to determine whether there is any disputed issue of material fact, Code Civ. Proc. § 437c(c). And in evaluating reasonableness for purposes of equitable tolling, the court must assess a party’s conduct “in light of the circumstances.” *Saint Francis*, 9 Cal.5th at 729. The trial court here did neither. Caltrans’ unsuccessful efforts to rescue the trial court’s insufficient analysis similarly ignore the circumstances at refiling. Second, even in the limited instances where the trial court did take notice of facts concerning refiling, the court still contravened its obligations on summary adjudication by failing to weigh the evidence in the light most favorable to the opposing party. *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826, 843 (2001); Code Civ. Proc. § 437c(c).

**A. The trial court and Caltrans ignore material facts establishing Petitioners’ reasonableness in the timing of their state court filing.**

The trial court erred as a matter of law by failing to take notice of dozens of material facts concerning the *circumstances* of refiling and therefore Petitioners’ reasonableness. *See Saint Francis*, 9 Cal.5th at 729 (confirming that the “analysis of reasonableness” considers whether the “party’s actions were fair, proper, and sensible *in light of the circumstances*” (emphasis

added)). These facts showed that Petitioners acted diligently and expediently to secure dismissal of their state law claims without prejudice so they could be litigated in Caltrans' preferred forum. A subset of the material facts ignored by the trial court follow:<sup>6</sup>

- During a “meet-and-confer on August 31, 2023, Petitioners informed Caltrans that, having assessed its Motion, they would voluntarily move their state claims to state court.” Pets. App. 1:8:119 (Pets. SUMF no. 36). The Parties' Joint Status Conference Report specified that “Caltrans informed Plaintiffs that it would be amenable to entering into a stipulation agreeing” to the voluntary dismissal of Petitioners' state law claims. *Id.* Counsel for Caltrans “stated that she would circulate a proposed stipulation effecting the partial dismissal.” *Id.*
- “On September 2, 2023, Caltrans circulated a draft stipulation, which stated that dismissal of Petitioners' state claims would be ‘with prejudice.’” *Id.* (Pets. SUMF no. 38).
- “On September 6, 2023, Petitioners returned a revised stipulation clarifying that Caltrans' draft was inconsistent with the parties' discussion and that dismissal of the state claims must be without prejudice as it would not constitute a final decision on the merits.” *Id.* (Pets. SUMF no. 39).

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<sup>6</sup> As indicated in Caltrans' Response to Petitioners' Separate Statement of Undisputed Material Facts, the vast majority of these facts are not just material but also undisputed. *See* Pets. App. 1:8:111-28.

- “Caltrans responded to Petitioners’ proposed revisions to the stipulation on September 7, 2023, objecting as a general matter to the scope of revisions but without providing edits.” Pets. App. 1:8:120 (Pets. SUMF no. 40).
- “Petitioners sent [Counsel for Caltrans] an email on September 8, 2023, explaining again that dismissal must be without prejudice and requesting specific edits or approvals to the proposed stipulation.” *Id.* (Pets. SUMF no. 41).
- “By email the afternoon of September 8, 2023, Caltrans objected to a tolling provision Petitioners proposed to add to the stipulation and proposed recitals characterizing Petitioners’ claims and meet-and-confer efforts.” *Id.* (Pets. SUMF no. 42).
- “Petitioners responded confirming they would recirculate a stipulation with the requested changes and asked defendants to confirm they would not oppose a motion requesting dismissal without prejudice if a stipulation could not be reached.” *Id.* (Pets. SUMF no. 43). “Counsel for FHWA confirmed FHWA would not oppose Petitioners’ motion requesting dismissal of the state claims without prejudice. Caltrans did not respond.” *Id.* (Pets. SUMF no. 44).

- “On September 12, 2023, Petitioners circulated a revised stipulation removing the tolling language and revising the recitals as requested. Pets. App. 1:8:121 (Pets. SUMF no. 46). On September 14 and 15, 2023, having received no response, Petitioners left voicemails and reminder emails with [Caltrans].” *Id.* (Pets. SUMF no. 47).
- “Having received no response from Caltrans to the September 12 draft stipulation, Petitioners emailed the parties on September 18, 2023 to inform defendants [that] Petitioners would move the federal court for dismissal without prejudice absent a response from Caltrans by the end of the day.” Pets. App. 1:8:122 (Pets. SUMF no. 51).
- Caltrans “responded the evening of September 18, 2023, objecting to revised recital language characterizing Petitioners’ claims.” *Id.* (Pets. SUMF no. 53).
- “Petitioners responded on September 18, 2023, confirming that for expediency they would simply strike the recital at issue entirely and requested that Caltrans confirm it approved the stipulation. Petitioners also circulated a proposed stipulation that evening that struck the recital Caltrans had objected to.” *Id.* (Pets. SUMF no. 54).

- “[Counsel for Caltrans] sent Petitioners an email on September 19, 2023, stating there was ‘still unnecessary and inaccurate language’ in the stipulation but without identifying what Caltrans found objectionable. [Counsel for Caltrans] also stated that she would be unavailable to meet- and-confer until Monday September 25, 2023.” *Id.* (Pets. SUMF no. 55).
- “On September 20, 2023, Petitioners informed defendants by email that they intended to file an ex parte application to dismiss their state claims without prejudice as, after three weeks of negotiations, it had become clear the Parties would not agree on a stipulation.” Pets. App. 1:8:123 (Pets. SUMF no. 56).
- “Petitioners also called to notify the judge’s chambers on September 20, 2023, of their intent to seek ex parte relief. Chambers encouraged the Parties to try to resolve the matter by stipulation but otherwise gave instructions on how to proceed with the ex parte application if agreement could not be reached.” *Id.* (Pets. SUMF no. 57).
- On September 25, 2023, and at Caltrans’ “express request,” Petitioners circulated a stipulation to “amend their complaint to delete the state law claims without prejudice to refile in state court.” Pets. App. 3:11:660-61; *see also* Pets. App. 1:8:123 (Pets. SUMF no. 59).

- “On September 27, 2023, [counsel for Caltrans] circulated edits to Petitioners’ proposed stipulation for leave to amend that, among other things, struck any reference to Petitioners’ notice of intent to refile the claims in state court and to amendment being without prejudice to refiling the state law claims in a competent court.” Pets. App. 1:8:124 (Pets. SUMF no. 60).
- Petitioners sent Caltrans an email on September 28, 2023, providing notice of Petitioners’ “intention to file an ex parte application,” *id.* (Pets. SUMF no. 61), if Caltrans would not “agree to including language in the stipulation making explicit that dismissal is without prejudice to refiling the claims in state court,” Pets. App. 3:11:666.
- Caltrans “responded the evening of September 28, 2023, confirming that Caltrans continued to oppose ‘the specific language flagged in the draft stipulation’ providing that dismissal or amendment would be without prejudice.” Pets. App. 1:8:124 (Pets. SUMF no. 62).
- “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.” *Id.* (Pets. SUMF no. 63).

- “Anticipating the district court would grant their ex parte application the day it was noticed for hearing, Petitioners filed their instant Verified Petition for Writ of Mandate and Complaint for Declaratory Relief on October 2, 2023.” *Id.* (Pets. SUMF no. 64).
- “Caltrans filed an opposition to the ex parte application on October 10, 2023, asserting that ‘any urgency . . . was entirely attributable to Plaintiffs [sic] months and months of delay.’” Pets. App. 1:8:125 (SUMF no. 68).
- “On October 19, 2023, the district court entered an order granting Caltrans’ motion to dismiss as to the state claims as requested by Petitioners in their ex parte application.” Pets App. 1:8:126 (Pets. SUMF no. 71).

The doctrine of equitable tolling, *Saint Francis*, 9 Cal.5th at 729, and the law of summary adjudication, *Butte Fire Cases*, 24 Cal.App.5th at 1158, required the trial court to consider these material facts about the circumstances surrounding Petitioners’ refileing. Had the trial court done so, it could not have found that Petitioners acted unreasonably.

The facts demonstrate that Petitioners worked diligently under the circumstances to resolve the parties’ ongoing forum dispute and expedite hearing of the CEQA claims on the merits. This was despite the challenges posed by a mercurial and often unresponsive defendant. *Compare, e.g.*, Pets. App. 1:8:119 (Pets. SUMF no. 36) (“On August 31, 2023, . . . Caltrans informed

Plaintiffs that it would be amenable to entering into a stipulation” for the voluntary dismissal of Petitioners’ state law claims and agreeing to “provide Plaintiffs a draft stipulation for their consideration”); *with, e.g., id.* (Pets. SUMF no. 38) (“On September 2, 2023, Caltrans circulated a draft stipulation, which stated that dismissal of Petitioners’ state law claims would be ‘with prejudice.’”). In the face of Caltrans’ shifting litigating positions, Petitioners reasonably sought clarity from the district court on the availability of dismissal without prejudice prior to refiling in the state forum.<sup>7</sup> And they pursued all available avenues to expedite resolution of the parties’ dispute, first seeking a stipulation and then expediting resolution of Caltrans’ motion to dismiss by the district court. Petitioners went so far as to obtain *ex parte* relief rather than wait for the district court to resolve the dispute on the regular noticing schedule, Pets. App.

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<sup>7</sup> Because Caltrans waited to assert an immunity defense until well after Petitioners had already amended their federal complaint as of right, Petitioners could only dismiss their state law claims without prejudice by stipulation or court order. *See* Pets. App. 1:8:115 (Pets. SUMF no. 19) (“On June 22, 2023, Petitioners filed their First Amended Complaint.”); Pets. App. 1:8:116 (Pets. SUMF no. 24) (“[d]uring the Parties’ July 20 meeting, [counsel for Caltrans] informed Petitioners for the first time that Caltrans intended to move to dismiss the state claims pled against it” on sovereign immunity grounds); Fed. R. Civ. P. 15(a) (permitting a party to amend a pleading once as a matter of course, and afterwards, “only with the opposing party’s written consent or the court’s leave”). Had Caltrans promptly raised the issue at the inception of litigation, as federal defendants did in stating the nature of their defenses, Pets. App. 1:8:114 (Pets. SUMF nos. 15-16), this dispute could have been avoided in its entirety.

1:8:124 (Pets. SUMF no. 63)—which the district court had advised would take six or more months. Pet. App. 2:11:394. So too, Petitioners refiled their state law claims well before they were dismissed in the federal forum out of an abundance of caution. *See* Pets. App. 1:8:124 (Pets. SUMF no. 64); Pets. App. 1:8:125 (Pets. SUMF no. 68).

Caltrans still offers no explanation for either its refusal to stipulate to dismissal or its insistence that Petitioners' state law claims could only be dismissed with prejudice. Resp. Br. at 30. Instead, Caltrans now argues that negotiations over language in a dismissal agreement were a "red herring" because "Petitioners were never at risk of their state law claims being precluded from state court under *res judicata*." *Id.* This is false. Like the trial court, Caltrans omits dozens of material and undisputed facts documenting Petitioners' diligent but ultimately unsuccessful efforts, at the direction of the federal court, Pets. App. 1:8:123 (Pets. SUMF no. 57), to negotiate a stipulation to dismiss their state law claims. During this period, Caltrans vehemently opposed dismissal "without prejudice," Pets. App. 1:8:124 (Pets. SUMF nos. 60, 62), and instead insisted that any stipulation contain terms dismissing Petitioners' state law claims "with prejudice" so they could not be litigated in state court, Pets. App. 1:8:119 (Pets. SUMF no. 38). "[F]or purposes of applying the doctrine of *res judicata*, . . . a dismissal with prejudice is the equivalent of a final judgment on the merits, barring the entire cause of action." *Boeken v. Phillip Morris USA, Inc.*, 48 Cal.4th 788, 809 (2010). In "light of [these] circumstances," *Saint Francis*,

9 Cal.5th at 729, it was reasonable and proper for Petitioners to first try to obtain a stipulation that would not categorically bar the refiling of their claims in state court, and then to refile in state court on the same day their request for *ex parte* relief was noticed for hearing when negotiations failed. Pet. at 61.

In now arguing that “Petitioners unreasonably and inexplicably delayed refiling” during this period, Caltrans concedes that its insistence that Petitioners’ claims could only be dismissed with prejudice was baseless. Resp. Br. at 29. Yet this is not the position that Caltrans took during the parties’ extensive exchanges over language in the stipulation, and it is certainly not the position that Caltrans took when it opposed Petitioners’ *ex parte* request to dismiss *their own claims* without prejudice. Pet. at 61. Caltrans’ transparent attempt to now cast Petitioners as the unreasonable party is plainly contradicted by the record evidence.

By this same token, Caltrans’ assertion that all requisite issues for refiling Petitioners’ CEQA claims in state court were resolved no later than the parties’ August 31, 2023 meet-and-confer is belied by the record facts. Resp. Br. at 33. Petitioners made clear during the August 31, 2023 meet-and-confer that their willingness to stipulate to dismissal of their state law claims from the federal forum was contingent on their ability to refile in state court. *See* Pets. App. 1:8:119 (Pets. SUMF no. 36); Pets. App. 1:8:121 (Pets. SUMF no. 45). At the time, Caltrans assented and “stated that [it] would circulate a proposed stipulation effecting the partial dismissal following the meet-and-

confer.” *Id.* When Caltrans circulated a proposed stipulation several days later, it inexplicably reversed course and insisted that dismissal be with prejudice. *Id.* (Pets. SUMF no. 38). As the record facts show, Petitioners diligently sought to resolve this ongoing dispute which continued until, and even after, they refiled their state law claims in state court. *See, e.g.*, Pets. App. 1:8:124 (Pets. SUMF no. 64) (Petitioners refiled state claims on October 2, 2023); Pets. App. 1:8:125 (Pets. SUMF no. 68) (Caltrans filed an opposition to Petitioners’ *ex parte* application on October 10, 2023). At no point in this period do the facts establish that “Petitioners [had] conceded [that their] CEQA claim was defective and no longer viable in federal court.” Resp. Br. at 33. Rather, Petitioners’ decision to voluntarily dismiss and refile their state law claims in state court was in the interest of expeditious adjudication of the merits given Caltrans’ refusal to consent to magistrate jurisdiction over the parties’ forum dispute. Pets. App. 1:18:119; 4:16:951-52.

The trial court’s myopic reading of the facts also ignores the broader “protracted history of the underlying litigation” and Caltrans’ own role in drawing it out, which forecloses any finding that Petitioners’ were dilatory in refiled in state court 17 days before dismissal of the CEQA claims from federal court. *Tarkington*, 172 Cal.App.4th at 1508. For instance, just two days before Caltrans’ statutory deadline to file a responsive pleading to avoid entry of default judgment, counsel for Caltrans contacted Petitioners to request an extension of its response deadline. Pets. App. 1:8:113 (Pets. SUMF no. 11). Petitioners granted this

request. Pets. App. 1:8:114 (Pets. SUMF no. 18). Caltrans waited another three months to even hint at a sovereign immunity defense, suggesting it for the first time 134 days after Petitioners timely filed in federal court. Pets. App. 1:8:116 (Pets. SUMF no. 24). Caltrans also repeatedly refused to consent to magistrate jurisdiction at both Petitioners' and the district court's urging to expedite resolution of its affirmative defenses. Pets. App. 1:8:115 (Pets. SUMF no. 23); Pets. App. 2:11:398; Pets App. 4:16:951-52. Even when Petitioners filed an *ex parte* application to dismiss their own state law claims without prejudice, Pets. App. 1:8:124 (Pets. SUMF no. 62), Caltrans opposed dismissal, Pets. App. 1:8:125 (Pets. SUMF no. 68). Nor have Caltrans' delays of court proceedings stopped since Petitioners moved their state law claims to state court.<sup>8</sup>

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<sup>8</sup> Caltrans, for instance, secured six extensions to its original December 5, 2023 deadline to certify and lodge the CEQA administrative record. Pets. App. 1:8:127 (Pets. SUMF no. 72). In doing so, Caltrans extended the lodging date by approximately nine months. *Id.* In the interim, Caltrans repeatedly refused Petitioners' requests to schedule a hearing on the merits of its CEQA claims on the grounds that it had not yet prepared the administrative record. Pets. App. 1:8:127 (Pets. SUMF nos. 75-76). It waited nearly five months after the trial court overruled its demurrer on statute of limitations ground to move for summary adjudication on the same basis. *See* Pets. App. 12:30:3073 (trial court order overruling Caltrans' demurrer issued February 5, 2024); Pets. App. 4:22:1009 (Notice of Motion in Support of Caltrans' Motion for Summary Adjudication on First Cause of Action filed June 26, 2024). And here, Caltrans failed to file its response brief within the thirty days ordered by this Court. Order on Petition for Writ of Mandate at 1 (Jan. 13, 2025) (directing Caltrans to "file an informal response to the

Caltrans now tries to rewrite this history by arguing in its informal response brief that it “consistently refused to waive sovereign immunity.”<sup>9</sup> The facts are not in accord. Caltrans neglects to reference facts showing that it failed to “raise any issues with its status as a defendant or regarding sovereign immunity or other jurisdictional concerns” during multiple meet-and-confers in the months after Petitioners timely filed their federal action, including a May 5, 2023 meet-and-confer during which defendant Federal Highway Administration (“FHWA”) notified the parties of “its position that it was not a proper defendant to the [National Environmental Policy Act (“NEPA”)] claims.” Pets. App. 1:8:114 (Pets. SUMF no. 16). It omits that, over the course of four-meet-and-confers between April 18 and July 20, 2023, Caltrans repeatedly represented its openness to preparing a joint administrative record to litigate the CEQA and NEPA claims together in the federal case. Pet. at 36; Pets. App.

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Petition on or before 30 days from [January 13, 2025],” which is February 12, 2025); Resp. Br. at 41 (filing response on February 13, 2025).

<sup>9</sup> Caltrans argues that it “put[] the Petitioners on notice of the jurisdictional issue” when the parties signed a stipulation which stated that “[n]othing in this stipulation is intended to be a consent to the Court’s jurisdiction over the parties or this matter.” Resp. Br. at 13-14, 31. Boilerplate references to jurisdiction do not suffice as notice of intent to assert sovereign immunity—which is an affirmative defense subject to waiver or forfeiture and thus only “quasi-jurisdictional” in nature. *Pistor v. Garcia*, 791 F.3d 1104, 1110-11 (9th Cir. 2015); *cf. Walden v. Nevada*, 945 F.3d 1088, 1095 (9th Cir. 2019) (holding that statement in state defendant’s answer that “Defendant is immune from liability as a matter of law” was not sufficient to prevent waiver of their sovereign immunity defense).

1:8:115 (Pets. SUMF nos. 20-23). And Caltrans leaves out facts showing that even after raising the possibility of bringing this affirmative defense on July 20, 2023, Caltrans informed Petitioners it was “sympathetic” to concerns about parallel litigation, asked Petitioners to circulate a proposal for Caltrans’ waiver of sovereign immunity defenses in the federal action, and repeatedly confirmed that it was considering waiver in communications with Petitioners, including just days prior to filing its motion to dismiss. Pet. at 21; Pets. App. 1:8:117-18 (Pets. SUMF nos. 28-32). Caltrans’ repeated attempts to cherry-pick facts to create the appearance of unreasonableness should be rejected outright. Rather, this Court should notice the material facts bearing on the circumstances of this litigation, as summary adjudication standards and equitable tolling doctrine require, and correct the trial court’s legal error in failing to do so below.

**B. The trial court mischaracterized the nature of the parties’ dispute prior to Petitioners’ refiling in state court.**

The trial court compounded its failure to consider all material facts with a second legal error: It misrepresented the nature of the parties’ dispute before Petitioners refiled in state court. As the trial court identified, on summary adjudication the court must view the facts “in the light most favorable to the plaintiff.” Pets. App. 1:1:18 (citing *Nazir v. United Airlines, Inc.*, 178 Cal.App.4th 243, 254 (2009)). The trial court failed to do so in assessing the facts concerning this dispute and, in the process,

reached an entirely implausible interpretation of what was at stake.

The trial court inexplicably concluded that the parties' dispute centered not on dismissal with or without prejudice, but instead on whether Caltrans would agree to language in a stipulation tolling the statute of limitations on the CEQA claims. Pet. at 62; Pets. App. 1:1:16 ("A reasonable party in Petitioners' circumstances would not assume that a defending party who has repeatedly expressed their refusal to toll the statute of limitations, would be amenable to a tolling agreement."). As Petitioners explained in their Petition and at argument, this was wrong. Pet. at 62; Pets. App. 1:6:56-58. Early in the parties' discussions about dismissal and refiling of the state law claims in state court, Petitioners suggested including a tolling provision in a stipulation to avoid later motions practice and preserve judicial economy. Pets. App. 1:8:120 (Pets. SUMF no. 42). At Caltrans' request, Petitioners struck the provision, Pets. App. 1:8:121 (Pets. SUMF no. 46), as equitable tolling does not require a defendant's agreement, *see e.g., Tarkington*, 172 Cal.App.4th at 1507-08. Yet Caltrans still refused to stipulate to dismissal of Petitioners' claims without a term that would do so with prejudice. *See* Pets. App. 1:8:119 (Pets. SUMF no. 38); Pets. App. 1:8:120 (Pets. SUMF no. 44); Pets. App. 1:8:124 (Pets. SUMF no. 60); Pets. App. 1:8:124 (Pets. SUMF no. 62). Such a term would have categorically barred refiling in any forum. *See Boeken*, 48 Cal.4th at 809. The trial court's contorted understanding of the parties' dispute obscures Petitioners' diligent conduct, is wholly

unsupported by facts in the record, and cannot stand on summary adjudication.

**C. The trial court correctly determined that Petitioners reasonably filed their CEQA claims in federal court and pursued them in good faith throughout the proceedings.**

The trial court already correctly determined that there were no facts, disputed or otherwise, suggesting that Petitioners acted in anything but good faith. This is the case for both Petitioners' refiling in state court, Pets. App. 1:1:16, and their initial choice of federal forum, Pets. App. 1:1:14; *see also* Pet. at 63-65.

Whether a party seeking equitable tolling acted in bad faith turns on its subjective intentions. *Saint Francis*, Cal.5th at 729. A party who is "motivated by a dishonest purpose," *id.* at 729, or who "trifl[es] with the courts or the other party" to gain an unfair advantage acts in bad faith. *Mojica*, 131 Cal.App.4th at 1074.

Here, the trial court correctly found that there was no evidence that Petitioners acted in anything but good faith in refiling in state court. Pets. App. 1:1:16. Caltrans does not, and cannot, seriously argue otherwise. Indeed, Caltrans does not allege that Petitioners engaged in any of the gamesmanship that is necessary to find that a party acted in bad faith. Nor does Caltrans allude to any "trifling," *Mojica*, 131 Cal.App.4th at 1074, or "dishonest purpose," *Saint Francis*, 9 Cal.5th at 729, that could have motivated Petitioners' actions in refiling in state court when negotiations failed to render them a "bad faith" actor.

The only suggestion of bad faith that Caltrans raises in its informal response brief is that Petitioners intentionally “pursued [a] risky litigation strategy” in first filing in federal court. Resp. Br. at 7; Pets. App. 1:7:92. But as the trial court held, this allegation is both baseless and “nonsensical.” Pets. App. 1:1:14. As the trial court explained, “a plaintiff stands to gain nothing from purposefully filing a state claim in an improper forum while knowing that the defendant will not consent to jurisdiction in the improper forum.” *Id.*

In a similar vein, the trial court properly held that Petitioners acted reasonably in initially filing in federal court. Pets. App. 1:1:16. 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, Pet. at 64-65 (collecting cases), Petitioners reasonably filed their closely related claims in a single action in federal court where they could be tried together under the federal court’s supplemental jurisdiction. Pet. at 64. All told, the trial court readily concluded that Caltrans failed to “establish[] that [Petitioners’] initial filing was unreasonable and in bad faith.” Pets. App. 1:1:14. Caltrans does not meaningfully challenge this holding in its Response Brief, and it should be upheld on review here.

#### **IV. The Trial Court’s Errors Undercut the Purpose of Equitable Tolling Doctrine and Wrongly Prevent the South Fresno Community from Having Their Day in Court**

The trial court’s errors do not just revise equitable tolling doctrine and flout summary adjudication standards. They also

undermine the very purpose of equitable tolling. In doing so, the trial court wrongly keeps the South Fresno community, and the flawed environmental review document Petitioners seek to challenge, out of court.

Precedent is clear that timely notice and lack of prejudice are the core of the equitable tolling inquiry. As the Supreme Court explained in *Elkins*, “courts as well as legislatures . . . liberally appl[y] tolling rules or their functional equivalents in situations in which the plaintiff has satisfied the notification purpose of a limitations statute.” 12 Cal.3d at 418. Equitable tolling is designed to allow claims to proceed to hearing on the merits if a defendant has timely notice of those claims and has not been impaired in its ability to mount a defense. *See McDonald*, 45 Cal.4th at 99 (describing the purpose of equitable tolling as “prevent[ing] 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”).

Neither the trial court nor Caltrans dispute that these core elements are met here. Instead, they bloat the reasonableness inquiry into a searching review of every step in this protracted litigation. But this turns the reasonableness inquiry into an outsized barrier for good faith litigants that is at odds with the precedent and purpose of equitable tolling. Tellingly, Caltrans is unable to identify a single case in which a court refused to apply equitable tolling based on the good faith and reasonableness

prong, let alone merely based on reasonableness as is the case here. This alone should be dispositive.

The few cases in which a court declined to apply equitable tolling based on reasonableness—none of which are cited by Caltrans—show just how far afield the trial court’s application of this prong was. The Court of Appeal’s recent decision in *Feliz v. County of Orange*, 91 Cal.App.5th 927 (2023) is instructive. There, the plaintiff filed federal and supplemental state law claims in federal court. *Id.* at 930. After the Ninth Circuit affirmed the district court’s dismissal of the plaintiff’s claims in federal court, the plaintiff spent two years trying to vacate the judgment. *Id.* The plaintiff only finally refiled in state court—well after the running of the statute of limitations—when the Ninth Circuit affirmed the district court’s denial of the plaintiff’s motion to vacate. *Id.* Though the plaintiff argued that “her claims were timely under the equitable tolling doctrine,” they plainly were not. *Id.* As the court noted, the sole evidence the plaintiff offered to demonstrate her objective reasonableness was her unsupported assertion that, “[i]n the 5th Circuit the rule is all claims around in the Federal Court for a while, say six months or more, are not remanded to the State Courts.” *Id.* at 939. The court also highlighted that the plaintiff entirely failed on appeal to “challenge the district court’s decision to decline supplemental jurisdiction.” *Id.* Taken together, the court concluded that the plaintiff’s “lack of diligence in arguing that her state law claims should remain in federal court” was not “objectively reasonable,” and equitable tolling was therefore not appropriate. *Id.*

The differences with this case are stark. For one, the plaintiff in *Feliz* did not refile during the pendency of their first filed action and therefore while the statute of limitations would have remained tolled. Again, this fact alone makes Petitioners actions reasonable here. But even beyond differences in the time of refiling, the *Feliz* court’s focus on the plaintiff’s “lack of diligence” is revealing. *Id.* Indeed, the court did not define reasonableness through a mechanical calculation completed at each discrete moment in the litigation. Rather, the court merely looked to whether the plaintiff had made a diligent effort “in initiating and prosecuting” her claims across the entirety of the litigation. *Id.* Though the plaintiff in *Feliz* failed to meet this bar, Petitioners here exceed it. And where the plaintiff in *Feliz* offered a single, unsupported assertion to demonstrate as much, Petitioners here offer over seventy undisputed material facts. *See* Pets. App. 1:8:111-28.

Lacking support in the caselaw, Caltrans conjures a parade of horrors that would result if this Court allowed Petitioners’ CEQA claims to be heard on their merits. For instance, Caltrans argues that holding for Petitioners “would incentivize any party seeking to delay a federally funded State project to file all CEQA challenges in federal court.” Resp. Br. at 7. In Caltrans’ words, this would “result[] in multi-year litigations and indefinitely put[] critical safety projects on hold.” *Id.* at 8. But as the trial court explained and as already discussed, this theory is “nonsensical.” Pets. App. 1:1:14. A party would “stand[] to gain nothing from purposefully filing a state claim in an improper forum while

knowing that the defendant will not consent to jurisdiction in the improper forum.” *Id.* Nor is there any evidence of this being the case despite fifty years of application of equitable tolling precedent since CEQA was first enacted.<sup>10</sup>

Regardless, the third prong of equitable tolling exists precisely to prevent the specter of gamesmanship which Caltrans raises here. *See, e.g., Mojica*, 131 Cal.App.4th at 1074 (finding that a plaintiff who “trifl[es] with the courts or the other party” to gain an unfair advantage acts in bad faith and therefore does not benefit from equitable tolling). There is no evidence of such bad faith here. *See* Section III.C, *supra*. On the contrary, Petitioners reasonably, diligently, and in good faith sought the most expeditious hearing on the merits of their claims.

Caltrans also argues that “applying the doctrine of equitable tolling to these facts . . . would completely undermine the purpose behind CEQA’s entire statutory scheme to ensure timely resolution of CEQA matters.” Resp. Br. at 7-8. The reality is precisely the opposite. For one, courts have stressed that equitable tolling is especially appropriate for statutes with a short statute of limitations. This is because “the brevity of the

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<sup>10</sup> Even here, Caltrans’ argument that allowing equitable tolling will lead to widespread delays is specious. Resp. Br. at 34-35. What has put this project on hold is not any delay in reaching the merits of the CEQA litigation, but rather, the fact that the federal court has already remanded FHWA’s flawed approval of the project for reconsideration. *See* Pets. App. 3:11:881-82 (federal district court order granting FHWA’s motion for voluntary remand of the agency’s transportation conformity determination). Caltrans cannot proceed with the Project absent federal approval.

literal limitations period would otherwise . . . cause[] forfeiture of a cause of action . . . despite the plaintiff’s diligent efforts to pursue his claim in a correct and orderly way.” *Lantzy v. Centex Homes*, 31 Cal.4th 363, 379 (2003); *see also Saint Francis*, 9 Cal.5th at 720 (explaining that the 30-day statute of limitations “carries with it no . . . inference” of a “legislative purpose to forbid the availability of equitable tolling”). And, as Petitioners explained in their initial filing, courts *have* applied equitable tolling to CEQA claims, including in the Supreme Court’s very first CEQA decision in *Friends of Mammoth*. Pet. at 63 (citing *Friends of Mammoth*, 8 Cal.3d at 269). To the extent that Caltrans seeks to relitigate whether CEQA is amenable to equitable tolling at all—an issue which this Court did not notice and which the trial court already rejected, Pets. App. 1:1:12—this effort should again be rejected.

In any event, Caltrans misstates the purpose of CEQA. The purpose of the Act is not to shuttle claims through courts as expediently as possible, as Caltrans implies. Rather, CEQA exists to ensure that agency decisions are based on sound and thorough environmental review. Pub. Res. Code § 21061. In doing so, the Act is “designed to provide long-term protection to the environment.” *Napa Citizens for Honest Gov’t v. Napa Cnty. Bd. of Supervisors*, 91 Cal.App.4th 342, 355 (2001). Courts have therefore stressed that CEQA should be interpreted in a manner that gives the fullest possible protection to the environment within the statute’s scope. *Citizens of Goleta Valley v. Bd. of Supervisors*, 52 Cal.3d 553, 563-64 (1990). Applying equitable

tolling doctrine here to finally allow judicial review of Caltrans' flawed environmental document is fully consistent with these aims.

At the end of the day, Caltrans seeks to deny Petitioners a hearing on the merits based on a quibble over several weeks of negotiations when it waited nearly half a year to assert sovereign immunity in the first instance. *Pets. App. 1:8:116 (Pets. SUMF no. 24)*. Caltrans does so despite admittedly facing no prejudice in now defending against Petitioners' claims in its preferred forum. And Caltrans continues this effort despite having repeatedly flouted court rules and delayed proceedings such that the parties are yet to move beyond threshold issues in the case even two years after initial filing.

More than equitable tolling doctrine is at stake in the interim. Indeed, absent this Court's intervention, a community in the 100th percentile of census tracts for cumulative pollution burdens statewide would be deprived of residents' ability to challenge a deeply flawed environmental review document. *Pet. at 11*. Among other flaws, this document 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 that the Project is expected to induce. *Pet. at 32-34*. This Court should now follow the caselaw as well as the undisputed material facts to finally give Petitioners their day in court.

## CONCLUSION

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

Dated: March 5, 2025

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

By: Taylor Wurts

Morgan Feldenkris, 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*

## 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 Reply to Opposition of Caltrans to Petition for Writ of Mandate, Prohibition, or Other Appropriate Writ consists of **11,706** words, not including tables of contents and authorities, signature blocks, the Proof of Service, and this certificate of word count as determined by Microsoft Word, the software used to prepare this brief.

Dated: March 5, 2025

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

By: *Morgan Feldenkris*

Morgan Feldenkris, 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*