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August 6, 2025

The Honorable Chief Justice Patricia Guerrero
and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: ***Magna v. Magna***, S291338
Court of Appeal No. B342659 (2d Dist. Div. 2)
Letter supporting review

Honorable Justices:

Under rule 8.500(g) of the California Rules of Court, the California Academy of Appellate Lawyers submits this letter supporting review in *Magna v. Magna*, B342659 (2d Dist. Div. 2). The Court of Appeal in *Magna* simply and clearly erred in dismissing the *Magna* appeal as untimely. Rather than untimely, the appeal is premature because no final judgment has ever been entered. This makes a substantive difference: A tardy appeal is fatal, but a premature appeal may be salvaged.

Interest of the Academy

The Academy's members are more than 130 experienced appellate practitioners whose common goals include promoting and encouraging sound appellate procedures that ensure proper and effective representation of appellate litigants, efficient administration of justice at the appellate level, and improvements in the law affecting appellate litigation. The Academy has a deep and abiding interest in ensuring that doctrines of appealability are clear and correctly applied.

The Academy has no connection to the parties or lawyers involved in this matter and has no view on any merits issues. Instead, as a matter of procedure, the Academy is concerned that a viable appeal has been improperly dismissed on incorrect grounds that likely will have the effect of ending the litigation prematurely and improperly.

Document received by the CA Supreme Court.

Reasons for Review and Relief

The Court of Appeal's order dismissing Appellant's appeal as "untimely" is incorrect. If allowed to stand, it will deprive Appellant of the opportunity to appeal.

Appellant purported to appeal from a "judgment after an order granting a summary judgment motion." However, no judgment was ever entered. Instead, what was entered was a minute order granting a summary judgment motion. But such orders are not judgments and are not appealable. (*Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 Cal.App.5th 218, 223; *Wilkin v. Community Hospital of the Monterey Peninsula* (2021) 71 Cal.App.5th 806, 820; *Levy v. Skywalker Sound* (2003) 108 Cal.App.4th 753, 762, fn. 7; *Modica v. Merin* (1991) 234 Cal.App.3d 1072, 1074 & fn. 1; *H.N. & Frances C. Berger Foundation v. City of Escondido* (2005) 127 Cal.App.4th 1, 6, fn. 5.)

The distinction between an "order" and a "judgment" is critical in the summary judgment context. (*Kasparian v. AvalonBay Communities, Inc.* (2007) 156 Cal.App.4th 11, 14, fn. 1 ["An appeal lies from the judgment, not from an order granting a summary judgment motion."]; *Davis v. Superior Court* (2011) 196 Cal.App.4th 669, 672 ["a party seeking to appeal from a summary judgment must await the trial court's entry of judgment"].) An order granting summary judgment is a preliminary ruling rather than a final determination. (*Doran v. Magan* (1999) 76 Cal.App.4th 1287, 1293-1294 [an order granting summary judgment is preliminary, while a judgment is final]; *King v. State of Cal.* (1970) 11 Cal.App.3d 307, 310 & fn. 2 [noting an order granting summary judgment is preliminary and non-appealable]; *Champlin, supra*, 92 Cal.App.5th at p. 223 [a notice of appeal filed before entry of judgment is premature]; *Collins v. Sutter Memorial Hospital* (2011) 196 Cal.App.4th 1, 14 [an order rendering judgment is not a final judgment]; *Gardenswartz v. Equitable etc. Soc.* (1937) 23 Cal.App.2d Supp. 745, 754 ["The order for summary judgment cannot be regarded as itself a judgment It directs what the judgment shall be and amounts to the rendition of judgment, but it is not itself the judgment."].)

Thus, in this case, Appellant appealed from a non-appealable *order*. In such cases, the Court of Appeal has two choices:

(1) dismiss the appeal as being taken from a nonappealable order, thereby allowing the would-be appellant to obtain a judgment and then appeal again, this time properly (e.g., *Modica, supra*, 234 Cal.App.3d at p. 1075; *Blauser v.*

Dublin (2024) 106 Cal.App.5th 918, 920-923 [dismissing appeal from an unsigned minute order as premature]); or

(2) save the improper appeal by treating the appeal from the nonappealable order as an appeal from a judgment (i.e., transmute the nonappealable order into an appealable judgment) (e.g., *Swain v. California Cas. Ins. Co.* (2002) 99 Cal.App.4th 1, 5-6 [construing the trial court's order as a judgment to preserve the right to appeal]; *Holt v. Booth* (1991) 1 Cal.App.4th 1074, 1081; *Tsarnas v. Bailey* (1960) 179 Cal.App.2d 332, 337 ["[T]he [appellate] court may, in its discretion, where the intention of the trial court was clear, order judgment rather than send the case back for the performance of that act."].)

This second option is in line with this Court's recent precedent in *Meinhardt v. City of Sunnyvale* (2024) 16 Cal.5th 643— i.e., treating "orders" as "judgments" to allow appeals to proceed. This approach, grounded in the interests of justice, preserves the right to appellate review despite procedural missteps. (*Id.*, 16 Cal.5th at p. 657, 662; *Davis, supra*, 196 Cal.App.4th at p. 674; *Swain, supra*, 99 Cal.App.4th at p. 6; *Levy, supra*, 108 Cal.App.4th at p. 762 & fn. 7; *Dang v. Maruichi Am. Corp.* (2016) 3 Cal.App.5th 604, 608 & fn. 1; *H.N. & Frances C. Berger Found., supra*, 127 Cal.App.4th at p. 6, fn. 5; *Flores v. Dep't of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 204; *Zavala v. Arce* (1997) 58 Cal.App.4th 915, 925 & fn. 7; *Arendell v. Auto Parts Club, Inc.* (1994) 29 Cal.App.4th 1261, 1264, fn. 1.)

What the Court of Appeal cannot and should not do is to deem a nonappealable order to be an appealable judgment for purposes of finding the purported appeal *untimely*. (*Meinhardt, supra*, 16 Cal.5th at pp. 655-656 [declining to construe an order as a judgment for the purpose of barring appeal]; *Davis, supra*, 196 Cal.App.4th at p. 674 [declining to construe an order as a judgment where it would extinguish the right to appeal].) As stated in *Davis*, destroying appellate rights "require[s] more than an 'order' ... dressed up to masquerade as a 'judgment.'" (*Davis, supra*, 196 Cal.App.4th at p. 674.)

Also, it does not matter that a Judicial Council form "notice of entry of judgment or order" was served here, attaching the minute order granting summary judgment. That "notice" cannot transform a nonappealable order into a judgment (i.e., merely asserting that a judgment exists does not make it so). (*Donohue v. State of Cal.* (1986) 178 Cal.App.3d 795, 800; *Collins, supra*, 196 Cal.App.4th at p. 13.) Similarly, it does not matter that the Appellant's notice of appeal indicates that she is appealing a "judgment,"

because, again, there is no actual judgment. An appellant cannot appeal a judgment that does not exist, nor can any party conjure up a judgment from thin air.

The Court of Appeal's error here is clear. It is also significant to Appellant, who will, without this Court's intervention, lose the right to appeal. This Court could grant review to clarify these points and to reemphasize the dictate of *Meinhardt* that construing orders to be judgments is a one-way procedure to be used only to save (not destroy) appeals. Alternatively, and more simply, this Court should order that the Court of Appeal dismiss Appellant's appeal as premature, and thereby allow Appellant to obtain a judgment and properly appeal.

Respectively submitted,

s/Benjamin G. Shatz (Bar No. 160229)

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cc: See attached Proof of Service

PROOF OF SERVICE

Magna v. Magna, No. S291338 (B342659)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2049 Century Park East, Suite 1700, Los Angeles, CA 90067.

On **August 6, 2025**, I served true copies of the following document described as **Letter supporting review** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

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

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

Executed on **August 6, 2025**, at Los Angeles, California.

s/Bess Hubbard

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SERVICE LIST

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<p>Clerk of the Court California Court of Appeal Second Appellate District, Division Two 300 South Spring Street 2nd Floor, North Tower Los Angeles, CA 90013</p>	<p><i>Via TrueFiling</i></p>

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