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Via TrueFiling

December 15, 2021

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Charter Communications, et al. v. Superior Court of the County of Los Angeles*, Supreme Court Case No. S271800
Amicus Letter Supporting Petition for Review

Honorable Justices:

The California Academy of Appellate Lawyers writes, pursuant to California Rules of Court, rule 8.500(g) to urge the Court to grant review in this matter. As set forth below, the Academy believes this case presents a significant issue of appellate procedure that warrants this Court's review.

1. Interest of the Academy

The Academy's members are more than 100 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. This case offers an opportunity to make such an improvement.

2. The Problem of Uncertainty in Writ Petition Filing Deadlines

The purpose of the Petition for Review is to settle a long-standing conflict among Court of Appeal decisions about calculating the deadlines for writ petitions. Generally, except where statutes governing particular writs specify otherwise, writ Court, rule 8.104. That means that they are to be filed 180 days from entry of the judgment or order from which review is sought, unless either the clerk or a party serves a document entitled

“Notice of Entry,” or file-stamped copy of the judgment or order, in which case it is 60 days (unless a statute sets another time). These deadlines are jurisdictional if set by statute, but as to common law writs they state the normal expectations as to filing, and appellate courts may in their discretion deny petitions which do not meet them. (*Labor & Workforce Development Agency v. Superior Court* (2018) 19 Cal.App.5th 12, 24; *Volkswagen of America v. Superior Court* (2001) 94 Cal.App.4th 695, 701.)

The question is, however, whether the requirements for service of notice of entry of the judgment or order at issue should be read strictly, so that deadlines are as certain as possible, or more broadly, allowing for varying interpretations.

The modern trend, supported by this Court’s decision in *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 904–905, is to read the requirements of California Rules of Court, rule 8.104 and the relevant statutes strictly, in accordance with their plain language. The point is that parties filing notices of appeal or writ petitions should not be required “to guess, at their peril,” or “speculate” about when the time to file begins and will end. In this area of law, “bright lines are essential” to guide litigants. *In re Baycol Cases* (2011) 51 Cal.4th 751, 761.

However, a body of earlier precedent takes a different approach. These decisions focus on what they take to be the policy behind the time limits — to prevent losing parties from delaying cases unduly by compelling them “to seek extraordinary relief upon their being *made aware* of the trial court’s ruling.” *Sturm v. Superior Court* (1985) 164 Cal.App.3d 579, 582 (emphasis added); *Schmidt v. Superior Court* (1989) 207 Cal.App.3d 56, 60; *Eldridge v. Superior Court* (1989) 208 Cal.App.3d 1350, 1352–1355 [collecting cases.] They take the view that any written notice which makes the losing party “aware” of the order at issue may start the clock running for notices of appeal and writ petitions. “Although no court has so held, these cases might be cited as support for the proposition that the filing deadline should commence to run when petitioner becomes aware of the ruling *by any written means ...*” (Eisenberg, et al., Cal. Practice Guide: Civil Appeals & Writs (The Rutter Group 2020) ¶ 15:113.1. (emphasis added) (Petition, p. 8).)

The Academy joins Petitioners in urging this Court to resolve this conflict, and to resolve it in favor of a strict reading of the rules and statutes

which specify the notice which starts the clock. To do so will ensure that litigants can learn with certainty whether a particular form of notice triggers the time limit for filing or not, reducing the chance of errors leading to untimely filings. Just as certainty about the time to file notice of appeal serves “the strong public policy favoring the hearing of appeals on the merits,” *K.J. v. Los Angeles Unified School Dist.* (2020) 8 Cal.5th 875, 882, so will certainty as to the time to file writ petitions help ensure that appellate courts decide whether to take up writ petitions based on their intrinsic importance, not on the basis of a deadline of which petitioners were unaware.

This Court can further promote certainty about filing deadlines by granting review on the additional issue Petitioners raise, and resolving uncertainties that remain as to just what is required to satisfy the rules and statutes triggering the deadlines. (Petition, pp. 15–17).

The policy of reducing delay is important, justifying the strict enforcement of deadlines. It cannot, however, justify taking litigants unawares with unexpected applications of imprecise rules.

By granting review here, this Court can enhance the likelihood that writ petitions will be disposed of on their substantive value rather than the vagaries of timing.

Sincerely,

Robert S. Gerstein (No. 35941)
for

CALIFORNIA ACADEMY OF
APPELLATE LAWYERS
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PROOF OF SERVICE

*Charter Communications, et al. v. Superior Court of the
County of Los Angeles*

Supreme Court Case No. S271800

Second Appellant District Case No. B316909

Los Angeles County Superior Court Case No. 19STCV15747

I, Ashley A. Lloyd, declare:

I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091. On December 15, 2021, I served the document(s) described as **AMICUS LETTER SUPPORTING PETITION FOR REVIEW** on the interested parties in this action addressed as follows:

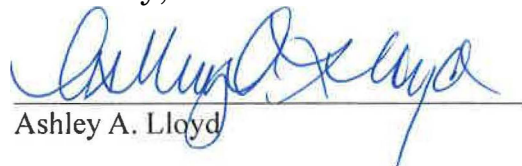
SEE ATTACHED LIST FOR METHOD OF SERVICE

XX **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Grass Valley, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

XX **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, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on **December 15, 2021 from the court authorized e-filing service at TrueFiling.com** No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Executed on December 15, 2021, at Grass Valley, California.


Ashley A. Lloyd

SERVICE LIST

*Charter Communications, et al. v. Superior Court of the
County of Los Angeles*

Supreme Court Case No. S271800

Second Appellant District Case No. B316909

Los Angeles County Superior Court Case No. 19STCV15747

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Trial Court Judge

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*New Trial Court Judge
recently assigned*

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