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IN THE SUPREME COURT OF CALIFORNIA

JATINDER DHILLON,
Plaintiff and Respondent,

v.

JOHN MUIR HEALTH et al.,
Defendants and Appellants.

AFTER A DECISION BY THE COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION THREE
CASE NO. A143195

PETITION FOR REVIEW

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PETITION FOR REVIEW

ISSUE PRESENTED

Whether the Court of Appeal erroneously dismissed an appeal as taken from a nonappealable superior court order and judgment, where the order and judgment finally determined a petition for administrative mandamus (so additional superior court proceedings were neither contemplated nor mandated) but required further administrative proceedings.

INTRODUCTION

John Muir Health and its board of directors (collectively, John Muir) operate medical centers in Walnut Creek and Concord. After John Muir's medical staffs took minor disciplinary action against

one of the staff physicians, Dr. Jatinder Dhillon, Dr. Dhillon filed a petition for administrative mandamus in the superior court to challenge the medical staffs' action. The superior court entered an order and a judgment granting the petition in part — it ordered John Muir to initiate a Judicial Review Committee (JRC) process to review the medical staffs' action — and denying the petition in all other respects.

Believing that the elaborate and burdensome JRC process was not required by statute or hospital bylaws and was particularly ill-suited for the minor disciplinary action taken against Dr. Dhillon, John Muir appealed from the superior court's order and judgment. Because case law is unclear whether the order and judgment are appealable, John Muir also filed a writ petition. The Court of Appeal summarily denied the writ petition and then dismissed the instant appeal as having been taken from a nonappealable order. This court should grant review and reverse the dismissal of the appeal.

The Court of Appeal concluded that "[t]he superior court's order remanding the matter to John Muir Health is not a final, appealable order," and it relied on a line of cases tracing back to *Board of Dental Examiners v. Superior Court* (1998) 66 Cal.App.4th 1424 (*Sedler*). (Appendix A.) Those cases hold that " '[a] remand order to an administrative body is not appealable.' " (*Gillis v. Dental Bd. of California* (2012) 206 Cal.App.4th 311, 318.)

However, the superior court's order and judgment finally determined Dr. Dhillon's administrative mandamus petition, leaving nothing more for the court to decide. Under those

circumstances, the general rule is that the order and judgment *are* appealable. (See, e.g., *Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409 ["an order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal"].)

Moreover, other opinions — in direct contrast to the *Sedler* line of cases — specifically hold to be appealable those judgments granting writs that remand matters for further administrative proceedings. (See, e.g., *Carson Gardens, L.L.C. v. City of Carson Mobilehome Park Rental Review Bd.* (2006) 135 Cal.App.4th 856, 866.) In fact, the opinions explain that an appeal *must* be taken in those situations, on pain of forfeiting any challenge to the superior court's ruling: "When the trial court issues its judgment granting a peremptory writ, the respondent has two choices: to appeal that judgment or to comply with it. If the respondent elects to comply with the writ, it waives its right to appeal from the judgment granting the writ petition." (*Los Angeles Internat. Charter High School v. Los Angeles Unified School Dist.* (2012) 209 Cal.App.4th 1348, 1354.)

In the present case, the Court of Appeal has eliminated John Muir's choice. Despite appealing the judgment requiring a JRC proceeding, John Muir will be forced to comply with that judgment without ever having it reviewed by an appellate court unless this court overturns the dismissal of the appeal. Once John Muir conducts the JRC proceeding, it will become moot whether John Muir should have been burdened with that proceeding.

The *Sedler* line of cases is incompatible with the general rule of appealability in administrative mandamus cases and with the specific decisions holding appealable those judgments that remand for further administrative proceedings. As explained below, the *Sedler* line is wrong. Review is necessary to disapprove this erroneous line of appellate authority. At the very least, even if this court declines to issue an opinion resolving the conflict in the case law, it should grant review and direct the Court of Appeal to decide the merits of John Muir's appeal.

STATEMENT OF THE CASE

A. The medical staffs at John Muir Medical Center require Dr. Dhillon to attend an anger management class. After he refuses to comply for more than a year, they suspend his clinical privileges for 14 days.

John Muir Health runs John Muir Medical Center. There are two medical centers, or campuses, one at Walnut Creek and one at Concord. (See, e.g., 1 AA 37; 2 AA 194, 304.) Each campus has its own medical staff and medical staff leadership, the Medical Executive Committee (MEC). Each medical staff also has its own bylaws, but both bylaws are the same as relevant here. (See 2 AA 186, 296.)

At the request of medical staff member Dr. Jatinder Dhillon, an ad hoc committee of physician members from both campuses comprehensively investigated a complaint filed against Dr. Dhillon

by another physician, who claimed Dr. Dhillon had acted in a verbally abusive and physically aggressive manner toward her during a physicians' administrative meeting. (3 AA 466-467, 487, 543-565, 568, 599-600, 601-602, 606, 617, 620-621.) The committee concluded in a written report that her complaint had merit, that Dr. Dhillon's behavior at the meeting "was not an isolated incident," and that Dr. Dhillon had in fact violated a medical staff code of conduct. (3 AA 568, 599, 601.)

Based on the committee's investigation and report, both campuses' MEC's unanimously determined the complaint against Dr. Dhillon was valid and they required him to attend an anger management program for healthcare professionals at the University of California San Diego. (3 AA 568, 572, 602, 606, 617, 620-621.) Additionally, after he completed the program, Dr. Dhillon would be required for one year to "follow up with the Physician Well Being Committee." (3 AA 568, 572, 602.)

The MEC's initially gave Dr. Dhillon eight months to complete the anger management class. (3 AA 568, 602, 606, 617, 620-621.) Dr. Dhillon repeatedly refused, even after the compliance period was extended by six months. (3 AA 577, 579, 588, 607, 615, 620-621.)

The chiefs of staff warned Dr. Dhillon that failing to complete the anger management class would lead to a limited suspension — "just under 14 full days" — of his clinical privileges. (3 AA 589.) A lawyer for Dr. Dhillon and also Dr. Dhillon himself demanded a hearing before a Judicial Review Committee (JRC) at the medical

centers. (3 AA 592, 594.) The chiefs of staff explained that no additional hearing was available. (3 AA 595.)

When the extended period for compliance expired, Dr. Dhillon had still not attended the required anger management class. (3 AA 620-621.) Because of this noncompliance, the MEC's suspended his clinical privileges at the Medical Centers for 14 days. (3 AA 596, 620-621, 701.)

The MEC's reported to the medical centers' single governing body that, because of the limited length of the suspension, the suspension was not reportable to the Medical Board of California and it did not give Dr. Dhillon any hearing rights under the medical staff bylaws. (3 AA 620-621.)

B. Dr. Dhillon takes the matter to court, petitioning for a writ of administrative mandamus.

On the same day that his 14-day suspension began, Dr. Dhillon filed in superior court a petition for a writ of administrative mandamus. (1 AA 1.) A month later, he filed an amended petition. (1 AA 7.) In the petition, Dr. Dhillon claimed that the ad hoc committee investigation (which John Muir had conducted at Dr. Dhillon's behest) "was a sham, from start to finish" (1 AA 11) and that "[t]he grossly excessive penalties imposed on [him] were a manifest abuse of discretion" (1 AA 18). The superior court would later reject these allegations.

Dr. Dhillon's amended petition requested a variety of remedies, including (1) vacating the (already concluded) 14-day

suspension of his clinical privileges, (2) requiring a JRC hearing on the underlying complaint against him and on the limited (already concluded) suspension, (3) a finding that the ad hoc committee's conclusions were not supported by the evidence, (4) an order restraining the medical centers from communicating to anyone that Dr. Dhillon has had " 'communication/professional conduct' " issues, and (5) an order allowing Dr. Dhillon to proceed with "an immediate tort suit for damages." (1 AA 19.)

C. The superior court grants Dr. Dhillon's petition in part and denies it in part, ordering John Muir to conduct a judicial review hearing both on the underlying complaint against Dr. Dhillon and on the subsequent (already completed) 14-day suspension.

Dr. Dhillon moved the superior court to grant the relief requested in his petition. (1 AA 52.) After a hearing (RT 1-16), the superior court granted Dr. Dhillon's motion in part and denied it in part (4 AA 776-779). The court entered an order on August 6, 2014, and then a judgment on September 8. (4 AA 782, 797.)

The court's August 6 order, and its September 8 judgment, stated that John Muir "must provide [Dr. Dhillon] with Judicial Committee Review and appellate rights" under the medical staff bylaws. (4 AA 783, 797.) The court found that Dr. Dhillon was entitled to a JRC hearing "on both the initial and underlying complaint as well as the subsequent suspension." (*Ibid.*) It also found that Dr. Dhillon "was deprived of a due process when [the

medical centers] suspended his clinical privileges for less than 13 days [*sic*] without providing him a [JRC] hearing." (4 AA 783, 797-798.)

The superior court denied all other relief asked for by Dr. Dhillon, including his request for a finding that the ad hoc committee's findings were not supported by substantial evidence. (4 AA 782-783.) The court's order and judgment were final adjudications that resolved all disputes between the parties, leaving nothing more for the court to decide.

D. John Muir files this appeal and also a writ petition, because case law is unclear whether the superior court's judgment and order are appealable. The Court of Appeal summarily denies the writ petition and then dismisses the instant appeal as not having been taken from an appealable judgment or order.

John Muir filed both a notice of appeal (4 AA 799) and a writ petition (*John Muir Health v. Superior Court*, Court of Appeal case number A143256) to challenge the superior court's order and its judgment. John Muir explained it was doing both because there is conflicting case law about whether the superior court's order and its judgment are appealable or reviewable only by writ petition. (Petition for Writ of Mandate 1-2, 17-18.) John Muir's notice of appeal broadly stated that "[r]espondents John Muir Health and Board of Directors of John Muir Health appeal from the final judgment and all orders that are separately appealable, including

but not limited to: (1) the superior court's order — filed on or about August 6, 2014 — granting in part petitioner Jatinder Dhillon's motion for peremptory administrative writ, and (2) the superior court's judgment on writ of mandate, filed on or about September 8, 2014." (4 AA 799-800.)

Dr. Dhillon opposed John Muir's writ petition on the ground the superior court's order was appealable. (Return to Petition for Peremptory Writ of Mandate 26-27, 43-44 [*John Muir Health v. Superior Court*, Court of Appeal case number A143256].) The Court of Appeal summarily denied John Muir's writ petition.[1] At the same time, in this appeal, the court ordered briefing "solely addressing the issue of whether the appeal should be dismissed because the Contra Costa County Superior Court order . . . is or is not an appealable order." (12/11/14 Order.)

John Muir explained in its brief that the superior court's judgment and order were both appealable, either as a final judgment and order or as a final determination of a collateral matter. In his brief, Dr. Dhillon did an unabashed about-face. After having told the Court of Appeal that John Muir's writ petition should be denied because the superior court's order was appealable, Dr. Dhillon argued the appeal should be dismissed as having been taken from a nonappealable order.

The Court of Appeal dismissed John Muir's appeal. (Appendix A.) The court stated, "The superior court's order

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[1] John Muir petitioned this court for review of the summary denial. (*John Muir Health v. Superior Court*, S223382.) The petition was denied.

remanding the matter to John Muir Health is not a final, appealable order. (See *Board of Dental Examiners v. Superior Court* (1998) 66 Cal.App.4th 1424; see also *Gillis v. Dental Board of California* (2012) 206 Cal.App.4th 311, 318.) Furthermore, the order and judgment at issue here are not appealable as a final determination of a collateral matter." (Appendix A.)

LEGAL ARGUMENT

I. THE COURT OF APPEAL'S DISMISSAL OF THE APPEAL WAS WRONG. REVIEW IS NECESSARY BECAUSE THE SUPERIOR COURT'S ORDER AND JUDGMENT ARE APPEALABLE, AND BECAUSE THIS COURT SHOULD RESOLVE A CONFLICT IN THE CASE LAW ON THE ISSUE.

A. A grant and transfer, or a grant and an opinion, is needed to remedy the improper dismissal of the appeal.

When a Court of Appeal improperly dismisses an appeal as taken from a nonappealable order or judgment, this court has granted review and transferred the matter to the Court of Appeal with directions to vacate the dismissal and to hear the appeal on its merits. (See, e.g., *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 8 (*California Assn. of Psychology Providers*).) Indeed, a specific ground for review is "[f]or the purpose of

transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order." (Cal. Rules of Court, rule 8.500(b)(4).) Review is necessary here for that reason.

There should be appellate jurisdiction in this case. The superior court issued a final order and a judgment resolving all disputes in the litigation and disposing of the entire case, John Muir filed a timely notice of appeal from both the order and the judgment, and the Legislature has not expressly limited to a writ petition the method for seeking review in the Court of Appeal of that type of order or judgment.

The only reason there is any doubt about appellate jurisdiction here is because of one case — *Board of Dental Examiners v. Superior Court* (1998) 66 Cal.App.4th 1424, 1430 (*Sedler*) — and several cases that rely on it without analysis. As explained below, however, the *Sedler* line of cases, which the Court of Appeal followed here, should not interfere with the exercise of appellate jurisdiction. A grant and transfer order is thus warranted.

But, instead of transferring the case, it would also be appropriate for this court to retain the matter for decision. As further explained below, the *Sedler* line of cases is incompatible with other case law on appealability, and this case presents a fundamental, threshold issue regarding appellate jurisdiction after a superior court rules on an administrative mandamus petition. Review is thus justified as "necessary to secure uniformity of decision [and] to settle an important question of law." (Cal. Rules of

Court, rule 8.500(b)(1); see *Teal v. Superior Court* (2014) 60 Cal.4th 595, 598 [review granted solely to decide an appealability issue].)

B. The order and judgment are appealable because they leave nothing further for the superior court to decide.

The general rule is that an order or judgment is appealable if it finally resolves all issues in a case. (See *California Assn. of Psychology Providers, supra,* 51 Cal.3d at p. 9 ["A judgment that leaves no issue to be determined except the fact of compliance with its terms is appealable"].) That rule has been applied specifically in cases like the present where the superior court is determining a petition for writ of administrative mandamus.

Thus, the Court of Appeal in *Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409, held that "an order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal, even if the order is not accompanied by a separate formal judgment." (See also *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 699 [finding appealable the denial of a petition for writ of mandate because the ruling "disposed of all issues in the action"]; *People v. Karriker* (2007) 149 Cal.App.4th 763, 773 ["A judgment granting a petition for writ of mandate is a final judgment appealable under Code of Civil Procedure section 904.1, subdivision (a)(1)"]; *U.D. Registry, Inc. v. Municipal Court* (1996) 50 Cal.App.4th 671, 673 [same]; *Bollengier v. Doctors Medical Center* (1990) 222 Cal.App.3d 1115, 1122 (*Bollengier*) ["the superior court's denial

of [the] writ petition is an appealable order"]; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 148, p. 223 ["A petition in the superior court for an extraordinary writ of certiorari, mandamus, or prohibition is a special proceeding [citations], and a judgment in a special proceeding is appealable [citation]. Hence, a superior court order either granting or denying the petition is appealable . . . ."].)

Under this unremarkable case law, the superior court's order and judgment here should be appealable. The superior court made a final ruling on Dr. Dhillon's administrative mandamus petition, granting the petition in part and denying it in all other respects. (4 AA 782 [order], 797 [judgment].) Both the order and the judgment finally disposed of all the issues raised by Dr. Dhillon's writ petition. Nothing remains for the superior court to rule on. Moreover, the order and judgment must be reviewed now or never; the order and judgment mandate a JRC hearing process, which, once held, cannot be undone.

Under some cases, however, the superior court's order is not appealable because, in partially granting Dr. Dhillon's writ petition, the court ordered John Muir to conduct further proceedings, specifically, to initiate the JRC hearing process. Those cases conclude that " '[a] remand order to an administrative body is not appealable,' " but is reviewable by writ only. (*Gillis v. Dental Bd. of California* (2012) 206 Cal.App.4th 311, 318 (*Gillis*), quoting *Village Trailer Park, Inc. v. Santa Monica Rent Control Bd.* (2002) 101 Cal.App.4th 1133, 1139-1140 (*Village Trailer Park*) and citing *Sedler, supra*, 66 Cal.App.4th at p. 1430; see also *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 501-502

(*Bolsa Chica*).) The Court of Appeal here cited *Sedler* and *Gillis* in dismissing John Muir's appeal.

Those cases conflict not only with the authorities discussed above that generally hold final orders and judgments in administrative mandamus proceedings are appealable, but also with opinions that specifically find appealable superior court mandamus rulings remanding for further administrative proceedings. *Carson Gardens, L.L.C. v. City of Carson Mobilehome Park Rental Review Bd.* (2006) 135 Cal.App.4th 856 (*Carson Gardens*) is a good example.

In *Carson Gardens*, the superior court had issued a writ that remanded the matter to a rent control board for further administrative proceedings. (*Carson Gardens*, *supra*, 135 Cal.App.4th at p. 862.) The board held a new hearing and then appealed when the superior court ruled the board had not complied with the writ. The Court of Appeal held the board could no longer challenge the superior court's writ because the board could have, but had not, appealed from the writ judgment that remanded the matter for further proceedings. (*Id.* at p. 866.)

Cases consistent with *Carson Gardens* include *Quintanar v. County of Riverside* (2014) 230 Cal.App.4th 1226, 1232 (judgment granting writ of mandate that remanded matter to hearing officer was appealable), *City of Carmel-by-the-Sea v. Board of Supervisors* (1982) 137 Cal.App.3d 964, 970-971 (*City of Carmel*) (judgment ordering writ that remanded proceedings was appealable), and *Carroll v. Civil Service Commission* (1970) 11 Cal.App.3d 727, 730, 733 (judgment issuing writ remanding matter for redetermination

of penalty was appealable). (See also *Bollengier*, *supra*, 222 Cal.App.3d at pp. 1122-1123, 1125 [denial of physician's writ petition appealable even though there was no final administrative decision].)

In *Los Angeles Internat. Charter High School v. Los Angeles Unified School Dist.* (2012) 209 Cal.App.4th 1348, the Court of Appeal said, "When the trial court issues its judgment granting a peremptory writ, the respondent has two choices: to appeal that judgment or to comply with it. If the respondent elects to comply with the writ, it waives its right to appeal from the judgment granting the writ petition." (*Id.* at p. 1354; accord, *City of Carmel*, *supra*, 137 Cal.App.3d at p. 970.) The Court of Appeal's dismissal order here — based on the *Sedler* line of cases — takes away that choice.

Without the choice to appeal, the superior court's order and judgment are unreviewable, except possibly if John Muir refused to comply with the writ, suffered a contempt order, and then appealed from that order (see Code Civ. Proc., § 1097; *Carson Gardens*, *supra*, 135 Cal.App.4th at pp. 867-868). The order and judgment mandate that John Muir conduct a JRC process that is time-consuming and expensive (see *Mileikowsky v. West Hills Hospital & Medical Center* (2009) 45 Cal.4th 1259, 1272 [recognizing "the burdens the hearing process imposes on busy practitioners who voluntarily serve on a reviewing panel"]), and (as John Muir would explain on appeal) required by neither statute nor hospital bylaws and inappropriate for the minor action taken against Dr. Dhillon by John Muir's medical staffs.

This appeal is thus about process, not the result of the process. Once the administrative proceedings have occurred, it will be a moot question whether they should have occurred. Moreover, an appeal following completion of the administrative proceedings is an illusory remedy. The administrative process's result would be determined by John Muir, and it is highly unlikely that John Muir would appeal a decision that John Muir itself makes. Stated otherwise, if the superior court's order and judgment mandating a JRC procedure is not reviewed now, it never will be.

The line of cases on which the Court of Appeal here relied should not be followed. *Sedler* is the seminal opinion in that line, but its reasoning is faulty and all the cases following it did so without any examination of the reasoning or any mention at all of the conflicting authority.[2]

Sedler concerned a superior court mandamus proceeding to review a license revocation by the Board of Dental Examiners. When the superior court ordered the Board to conduct a new hearing, the Board appealed. The Court of Appeal concluded the superior court's order was not appealable. It stated that "a remand order is not appealable," citing just one case and giving no further explanation of its holding. (*Sedler*, *supra*, 66 Cal.App.4th at p. 1430.) However, the case *Sedler* cited did not involve a remand to

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[2] An additional opinion arguably consistent with the *Sedler* line of cases — but not mentioning *Sedler* — is *Connell v. Superior Court* (1997) 59 Cal.App.4th 382 (writ determining that water districts had right to reimbursement, but requiring Controller to determine amounts due, was unappealable interlocutory judgment).

an administrative body at all, but an appeal from a partial judgment notwithstanding the verdict that left further issues to be resolved *in the trial court.* (*Cobb v. University of So. California* (1995) 32 Cal.App.4th 798, 803-804.) In the present case, nothing remains to be adjudicated in the superior court. (Cf. *City of Los Angeles v. Superior Court* (Feb. 10, 2015, B250805) __ Cal.App.4th __ [2015 WL 535657, at p. *3] (*City of Los Angeles*) [judgment not appealable where superior court " 'held in abeyance' " application for administrative writ and ordered new hearing]; *Ng v. State Personnel Bd.* (1977) 68 Cal.App.3d 600, 604 [remand order not appealable where superior court had continuing jurisdiction during remand].)

The *Sedler* court also said that, in another case, it had, "without articulating the reason, treated a non-appealable remand order as a petition for writ of mandamus." (*Sedler, supra,* 66 Cal.App.4th at p. 1430.) But, there was no suggestion in that earlier case that the court was treating an appeal as a writ petition; instead, the court simply decided the merits of an appeal from an order resolving an administrative mandamus petition. (*Green v. Board of Dental Examiners* (1996) 47 Cal.App.4th 786.) Likely because appellate jurisdiction is clear under such circumstances, other cases similarly have, without discussing appealability, reached the merits of appeals from trial court orders issuing writs that remanded matters for further proceedings. (*Bode v. Los Angeles Metropolitan Medical Center* (2009) 174 Cal.App.4th 1224, 1232; *Hackethal v. Loma Linda Community Hosp. Corp.* (1979) 91 Cal.App.3d 59, 64.)

There are a limited number of final orders and judgments that cannot be appealed and that are reviewable only by writ petition. (See, e.g., *Leone v. Medical Board* (2000) 22 Cal.4th 660 (*Leone*); *Powers v. City of Richmond* (1995) 10 Cal.4th 85.) However, as far as we can tell, all those orders and judgments are made nonappealable by the *Legislature*. The *Sedler* line of cases might present the only situation where a *court* has designated a final order or judgment as nonappealable. But courts can't do that.

The Legislature has the power to require that appellate review of certain final orders or judgments be by writ. (See *Leone*, *supra*, 22 Cal.4th at p. 668 [state constitution "is properly construed as generally permitting the Legislature to enact laws . . . specifying that an extraordinary writ petition shall be the method for obtaining appellate review of a superior court judgment in an administrative mandate proceeding"].)[3]

However, there is no authority allowing a *court* to so limit appellate review of a final order or judgment that is generally appealable under Code of Civil Procedure section 904.1, subdivision (a)(1). Such a limitation would violate the "appellate jurisdiction" provision of the state Constitution (Cal. Const., art. VI, § 11 ["courts of appeal have appellate jurisdiction when superior courts have

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[3] The administrative mandate proceeding in *Leone* that the Legislature made reviewable only by writ petition is one following action by the Medical Board of California to revoke, suspend, or restrict a physician's license. (See Bus. & Prof. Code, § 2337.) That type of proceeding is obviously different than the one in the present case. There is no comparable legislative limitation on appellate review here.

original jurisdiction"]): "A reviewing court's obligation to exercise the appellate jurisdiction with which it is vested, once that jurisdiction has been properly invoked, is established and not open to question." (*Leone, supra*, 22 Cal.4th at p. 669; see also *In re Aaron R.* (2005) 130 Cal.App.4th 697, 704 ["the Judicial Council does not have power to restrict the statutory right of appeal in promulgating rules of court"].)

"[T]he right of appeal is entirely statutory." (*Leone, supra*, 22 Cal.4th at p. 668.) Because no statute permits a reviewing court to treat a final judgment or order as nonappealable if it requires an administrative hearing, the Court of Appeal should "exercise the appellate jurisdiction with which it is vested" and hear John Muir's appeal on its merits.

C. The order and judgment are appealable as final determinations of a collateral matter.

" ' "A necessary exception to the one final judgment rule is recognized where there is a final determination of some collateral matter distinct and severable from the general subject of the litigation. If, e.g., this determination requires the aggrieved party immediately to pay money or perform some other act, he is entitled to appeal even though litigation of the main issues continues. The determination is substantially the same as a final judgment in an independent proceeding." ' " (*Muller v. Fresno Community Hospital & Medical Center* (2009) 172 Cal.App.4th 887, 898.)

If the superior court's order and judgment are not appealable as a final judgment (although we believe they are, as explained above), they should be appealable as a final determination of a collateral matter. The order and judgment finally determine the issue whether John Muir must conduct a JRC hearing and, by resolving the issue in the affirmative, the court has required John Muir to "perform [the] act" of providing a hearing.

II. IT WOULD BE UNPRECEDENTED TO NOT ADDRESS THE MERITS IN A WRITTEN OPINION.

The superior court's order and judgment are appealable, as explained above. However, if they are not, the Court of Appeal still should have decided the merits of John Muir's appeal in a written opinion. Not to do so would be unprecedented.

Even the *Sedler* line of cases issued written opinions deciding the merits of the matters before them. Although concluding that the superior court orders before them were not appealable, the Courts of Appeal nonetheless all treated the appeals as writ petitions. (*Gillis*, *supra*, 206 Cal.App.4th at p. 318; *Village Trailer Park*, *supra*, 101 Cal.App.4th at p. 1140; *Bolsa Chica*, *supra*, 71 Cal.App.4th at p. 502; *Sedler*, *supra*, 66 Cal.App.4th at p. 1425; see also *City of Los Angeles*, *supra*, __ Cal.App.4th __ [2015 WL 535657, at p. *3].) A refusal to determine in a written opinion the merits of a challenge to the type of superior court order and judgment here is unsupported by any authority.

CONCLUSION

For the reasons stated, this court should grant review and — either with or without an opinion — transfer the case to the Court of Appeal with directions to vacate the dismissal of the appeal and to hear the appeal on its merits.

February 17, 2015

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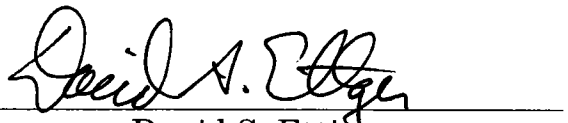
By: 
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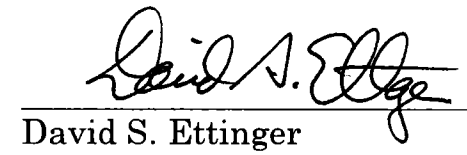
CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.504(d)(1).)

The text of this petition consists of 4,842 words as counted by the Microsoft Word version 2010 word processing program used to generate the petition.

Dated: February 17, 2015



David S. Ettinger

Exhibit A

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

JATINDER DHILLON,
Plaintiff and Respondent,
v.
JOHN MUIR HEALTH et al.,
Defendants and Appellants.

A143195

(Contra Costa County
Super. Ct. No. MSN-13-1353)

THE COURT:*

On December 11, 2014 the court requested that the parties brief "the issue of whether the appeal should be dismissed because the Contra Costa County Superior Court order, filed on August 6, 2014. . . is or is not an appealable order." Having reviewed the parties' briefs, on its own motion, the court now dismisses the appeal. The superior court's order remanding the matter to John Muir Health is not a final, appealable order. (See *Board of Dental Examiners v. Superior Court* (1998) 66 Cal.App.4th 1424; see also *Gillis v. Dental Board of California* (2012) 206 Cal.App.4th 311, 318.) Furthermore, the order and judgment at issue here are not appealable as a final determination of a collateral matter.

Dated: JAN - 9 2015

McGuiness, P.J. P.J.

* McGuiness, P.J., Pollak, J., & Jenkins, J.

PROOF OF SERVICE

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 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

On February 17, 2015, I served true copies of the following document(s) described as **PETITION FOR REVIEW** on the interested parties in this action as follows:

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Hon. Laurel S. Brady
Contra Costa County Superior Court
725 Court Street, Dept. 31
Martinez, CA 94553-1233

Case No. MSN13-1353

Office of the Clerk
Court of Appeal
First Appellate District
Division Three
350 McAllister Street
San Francisco, CA 94102

Case No. A143256

(Service copy Via TrueFiling)

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

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

Executed on February 17, 2015, at Encino, California.

Victoria Beebe

Victoria Beebe