

1 Robert N. Kwong (SBN 121839)
Mischa N. Barteau (SBN 274474)
2 ARNOLD LAROCHELLE MATHEWS
VANCONAS & ZIRBEL LLP
3 300 Esplanade Drive, Suite 2100
Oxnard, California 93036
4 Telephone: (805) 988-9886
Facsimile: (805) 988-1937

5 Attorneys for Respondent
6 Ojai Valley Sanitary District

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF VENTURA

10
11 RICHARD H. VANE, Trustee of the Vane
Family Trust,

12 Petitioner,

13 v.

14 OJAI VALLEY SANITARY DISTRICT, a
15 public agency,

16 Respondent.

Case No.: 56-2022-000567385-CU-WM-VTA

**NOTICE OF DEMURRER AND
DEMURRER TO VERIFIED PETITION
FOR WRIT OF ADMINISTRATIVE
MANDATE; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
DEMURRER**

[Exempt from filing fees pursuant to
Government Code § 6103]

17 Date: September 28, 2022
18 Time: 8:30 AM
19 Dept: 40
20 Judge: Hon. Mark Borrell
Reservation No.: 2670133

Action Filed: June 29, 2022

21 TO PETITIONER RICHARD H. VANE, TRUSTEE OF THE VANE FAMILY TRUST, AND HIS
22 ATTORNEYS OF RECORD:

23 NOTICE IS HEREBY GIVEN that on September 28 at 8:30 a.m., or as soon thereafter as the
24 matter may be heard in Department 40 of the above-entitled court, located at 800 South Victoria
25 Avenue, Ventura, California, Respondent Ojai Valley Sanitary District will demur to the Verified
26 Petition for Writ of Administrative Mandate filed by Petitioner Richard H. Vane, Trustee of the
27 Vane Family Trust.

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DEMURRER TO PETITION

Respondent Ojai Valley Sanitary District (“Respondent” or “OVSD”) hereby demurs to the Petition for Writ of Administrative Mandate (“Petition”) filed by Richard H. Vane, Trustee of the Vane Family Trust (“Petitioner”). The demurrer is made under section 430.10(e) of the California Code of Civil Procedure on the grounds that the Petition does not state facts sufficient to constitute a cause of action because the Petition is barred by the statute of limitations.

The demurrer will be based on this Notice, upon the pleadings, records and files in this action, upon the accompanying memorandum of points and authorities, and upon such oral argument presented at the hearing on the motion.

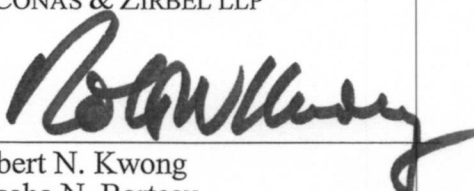
WHEREFORE, Respondent prays that the Court:

- 1. Sustain the demurrer without leave to amend;
- 2. Dismiss the Petition for Writ of Administrative Mandate;
- 3. Award costs to Respondent pursuant to Government Code section 6103.5; and
- 4. Award such other and further relief as the court deems just and proper.

Dated: August 25, 2022

Respectfully submitted,

ARNOLD LAROCHELLE MATHEWS
VANCONAS & ZIRBEL LLP

By: 

Robert N. Kwong
Mischa N. Barteau
Attorneys for Respondent
Ojai Valley Sanitary District

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On June 29, 2022, Petitioner filed his Verified Petition for Writ of Administrative Mandate pursuant to Code of Civil Procedure section 1094.5 (“Petition”). The Petition seeks to challenge Respondent’s decision to charge sanitary sewer connection and capacity fees for a standalone or free-standing Accessory Dwelling Unit (“ADU”) constructed on Petitioner’s property.

Petitioner argues that that Respondent erroneously determined that Petitioner owes fees for connecting his ADU to the OVSD sewer system and Respondent’s determination is contrary to Government Code section 65852.2. Respondent disagrees and contends that the Petition is barred by the statute of limitations and must be dismissed.

II. STATEMENT OF FACTS

Respondent OVSD is a public agency sanitary sewer district authorized and organized pursuant to Health & Safety Code section 6400 *et seq.* Petitioner is co-trustee for The Vane Family Trust, owner of the subject property located at 30 La Cumbra Street, Oak View, California. (Petition, Exhibit A (Letter dated March 21, 2022 from Jeff Palmer, General Manager of OVSD, to OVSD Board of Directors re “Continued Public Hearing for Administrative Appeal to the Board of Directors of OVSD Violation No. 2021-0410 Pursuant to OVSD Code of Regulations Section 917 *et seq.* from February 28, 2022”).)

On August 24, 2021, Respondent issued a Notice of Violation (“NOV”) to Petitioner for failure to pay sanitary sewer connection and capacity fees for a standalone or free-standing Accessory Dwelling Unit (“ADU”) that Petitioner constructed on the subject property, notifying Petitioner that capacity fees and sewer service charges were past due for the second single dwelling unit and the property was now in violation. (*Id.*)

On October 21, 2021, OVSD received a Request for Hearing on Notice of Violation from Petitioner requesting a hearing before the OVSD General Manager. (*Id.*) A notice of hearing letter was sent to Petitioner on November 8, 2021, and the hearing before the General Manager was held on November 22, 2021. (*Id.*) At the hearing on November 22, 2021, the General

1 Manager decided to uphold the NOV issued to Petitioner. (*Id.* (Letter dated March 30, 2022 from
2 Stephen L. Quilici, Chairman of OVSD Board of Directors to Richard Vane, Trustee, The Vane
3 Family Trust re “Notice of Determination; Appeal to the Board of Directors of Ojai Valley
4 Sanitary District (“OVSD”) Notice of Violation (“NOV”) No. 2021-0410; 30 La Cumbra Street,
5 Oak View, CA 93022 (APN 033-0-190-075); Richard Vane (“Appellant”).)

6 On December 8, 2021, OVSD received Petitioner’s Request for Reconsideration of Ruling on
7 Notice of Violation, appealing the General Manager’s ruling to the Board of Directors. (*Id.*
8 (Letter dated March 21, 2022, from Jeff Palmer, General Manager of OVSD, to OVSD Board of
9 Directors re “Continued Public Hearing for Administrative Appeal to the Board of Directors of
10 OVSD Violation No. 2021-0410 Pursuant to OVSD Code of Regulations Section 917 et seq. from
11 February 28, 2022).)

12 At a duly noticed public hearing on March 28, 2022, the OVSD Board of Directors held an
13 administrative appeal hearing of Petitioner’s December 8, 2021, appeal of the OVSD General
14 Manager’s November 22, 2021, decision to uphold the NOV issued to Petitioner for failure to pay
15 sanitary sewer connection and capacity fees for a standalone or free-standing Accessory Dwelling
16 Unit constructed on the subject property. (*Id.* (Letter dated March 30, 2022 from Stephen L.
17 Quilici, Chairman of OVSD Board of Directors to Richard Vane, Trustee, The Vane Family Trust
18 re Notice of Determination; Appeal to the Board of Directors of Ojai Valley Sanitary District
19 (“OVSD”) Notice of Violation (“NOV”) No. 2021-0410; 30 La Cumbra Street, Oak View, CA
20 93022 (APN 033-0-190-075); Richard Vane (“Appellant”).)

21 On March 30, 2022, OVSD’s final written decision was mailed to Petitioner via certified,
22 first-class mail. (*Id.*) The March 30, 2022, Notice of Determination contained the following
23 advisement:

24 Appellant is hereby notified that the Board’s ruling on this matter
25 is final in accordance with OVSD Code of Regulations §917.3.7.
26 And in accordance with OVSD Code of Regulations §917.6.1,
27 Appellant may seek judicial review of this Board decision as set
28 forth in California Code of Civil Procedure §1094.6.

(*Id.*)

1 Petitioner filed his Petition for Writ of Administrative Mandate on June 29, 2022, one day
2 after the statute of limitations had expired. (*See* CCP section § 1094.6.)

3 **III. ARGUMENT**

4 **A. A Petition for Writ of Administrative Mandate Is Subject to Demurrer**

5 Pursuant to Code of Civil Procedure section 1089, “the party upon whom the writ or notice
6 has been served may make a return by demurrer, verified answer or both.”

7 **B. The Petition Should Be Denied as Untimely**

8 Code of Civil Procedure section 1094.6 governs the statute of limitations for pursuing review
9 of OVSD’s decisions. It provides:

10 “Judicial review of any decision of a local agency ... may be had
11 pursuant to Section 1094.5 of this code only if the petition for writ
12 of mandate pursuant to such section is filed within the time limits
13 specified in this section. ... **Any such petition shall be filed not
14 later than the 90th day following the date on which the decision
15 becomes final.** ... If there is a provision for a written decision or
16 written findings, the decision is final for purposes of this section
17 upon the date it is mailed by first-class mail, postage prepaid,
18 including a copy of the affidavit or certificate of mailing, to the
19 party seeking the writ.”

20 (emphasis added.)

21 Respondent issued its Decision on March 28, 2022. (*Id.* (Letter dated March 30, 2022, from
22 Stephen L. Quilici, Chairman of OVSD Board of Directors to Richard Vane, Trustee, The Vane
23 Family Trust re Notice of Determination; Appeal to the Board of Directors of Ojai Valley Sanitary
24 District (“OVSD”) Notice of Violation (“NOV”) No. 2021-0410; 30 La Cumbra Street, Oak View,
25 CA 93022 (APN 033-0-190-075); Richard Vane (“Appellant”).)

26 Pursuant to Code of Civil Procedure section 1094.6, the decision became “final” for purposes
27 of the statute of limitations on March 30, 2022, the date which the decision was mailed to Petitioner
28 by first-class mail, postage prepaid, including a certificate of mailing. (*Id.* (OVSD’s Certificate of
Mailing dated March 30, 2022).) In this case, the 90th day following the date on which the decision
became final was on June 28, 2022. Petitioner did not file his Petition for Writ of Administrative
Mandate until June 29, 2022, one day after the limitations period had expired. (*See* Petition, filed

1 6/29/2022.)

2 The statute of limitations set by Code of Civil Procedure section 1094.6 is strictly construed
3 by courts. (*See Blaich v. West Hollywood Rent Stabilization Dept.* (2011) 195 Cal.App.4th 1171,
4 1175 (in construing section 1094.6, the court is mindful that it is a procedural limitations provision
5 and, consequently, jurisdictional: “such technical defenses should be strictly construed to avoid the
6 forfeiture of a person’s rights”); *Tielsch v. City of Anaheim* (1984) 160 Cal.App.3d 576, 578
7 (petition for writ of mandate filed 93 days after agency’s decision was “too late” based on the 90-
8 day limitation period of CCP § 1094.6); *Liang v. San Francisco Residential Rent Stabilization &*
9 *Arbitration Bd.* (2004) 124 Cal.App.4th 775, 777–778 (“the established rule is that a trial court ‘**has**
10 **no jurisdiction to entertain section 1094.6 petitions unless they are filed on or before the 90th**
11 **day after the local agency’s decision.**’ Our research has discovered no authority relaxing the
12 jurisdictional deadline.”) (emphasis in original) (internal citation omitted).)

13 Based on the foregoing, the Petition is untimely and must be dismissed.

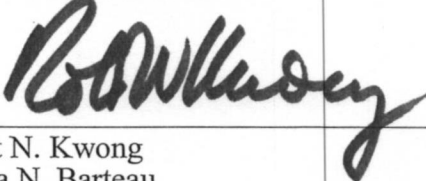
14 **IV. CONCLUSION**

15 Petitioner failed to meet his deadline for the timely filing of a petition for writ of
16 administrative mandate. This action is, therefore, barred by the statute of limitations. Respondent
17 respectfully requests the demurrer be granted without leave to amend and the petition be dismissed.
18

19 Dated: August 25, 2022

Respectfully submitted,

20 ARNOLD LAROCHELLE MATHEWS
21 VANCONAS & ZIRBEL LLP

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23 By: _____
24 Robert N. Kwong
25 Mischa N. Barteau
26 Attorneys for Respondent
27 Ojai Valley Sanitary District
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of 18 and am not a party to the within action; my business address is 300 Esplanade Drive, Suite 2100, Oxnard, CA.

On August 25, 2022, I served the foregoing document described as **Notice of Demurrer and Demurrer to Amended Verified Petition for Writ of Administrative Mandate; Memorandum of Points and Authorities in Support of Demurrer** on interested parties in this action by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

Richard H. Vane, Trustee of the Vane Family Trust
30 La Cumbra Street
Oak View, CA 93022

BY MAIL: As follows: 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 Oxnard, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY OVERNIGHT COURIER: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

BY FACSIMILE: I caused to be transmitted the document described herein via the fax number listed above. Upon completion of said facsimile transmission, the transmitting machine issued a transmission report showing the transmission was complete and without error.

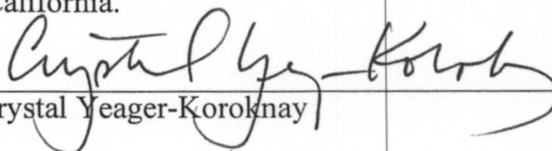
BY PERSONAL SERVICE: I delivered said document by hand to the addressee listed above.

BY E-MAIL: I caused the document to be sent to the person at the e-mail address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

(FEDERAL) I declare under the laws of the United States of America that I am employed in the office of a member of the Bar of this court at whose direction the service was made and that the foregoing is true and correct.

Executed on August 25, 2022, at Oxnard, California.


Crystal Yeager-Koroknay