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

10 RICHARD H. VANE, Trustee of the VANE
11 FAMILY TRUST;

12 Petitioner,

13 vs.

14 OJAI VALLEY SANITARY DISTRICT;

15 Respondent.

CASE NO.: 56-2022-000567385-CU-WM-
VTA

**PETITIONER'S OPPOSITION TO THE
DEMURRER TO PETITIONERS
VERIFIED PETITION FOR WRIT OF
ADMINISTRATIVE MANDATE**

Date: September 28, 2022

Time: 8:30 AM

Dept: 40

Judge: Hon. Mark Borrell

Reservation No.: 2670133

Action Filed: June 29, 2022

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20 **TO THE HONORABLE COURT, RESPONDENT, AND THEIR ATTORNEYS OF**
21 **RECORD:**

22 Plaintiff RICHARD H. VANE, an individual ("Petitioner"), submits his opposition to the
23 demurrer of Defendants OJAI VALLEY SANITARY DISTRICT ("Respondent"), currently set
24 for hearing on September 28, 2022 at 8:30 a.m. in Department 40 of the Ventura County
25 Superior Court.

26 This Opposition is made on the Memorandum of Points and Authorities concurrently submitted
27 herewith, the pleadings and papers on file herein, and such other and further evidence and
28 arguments as may be presented at the hearing of this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL STANDARD OF REVIEW ON DEMURRER

"Generally, a demurrer may only be sustained on statute of limitations grounds if the complaint disclos[es] on its face that the limitations period has expired " (*Alexander v. Exxon Mobil* (2013) 219 Cal.App.4th 1236, 1262 [162 Cal.Rptr.3d 617], citation omitted.) "[A] demurrer on the ground that [a] cause of action [i]s barred by the statute of limitations [cannot] be sustained as it must affirmatively appear on the face of the complaint that it is barred and not merely that it may be barred." (*Moya v. Northrup* (1970) 10 Cal.App.3d 276, 282 [88 Cal.Rptr. 783], bracketed insertions and italics added, citation omitted; see also *Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403 [44 Cal.Rptr.2d 339].)

"[T]he allegations of the complaint must be liberally construed with a view to attaining substantial justice among the parties." (*King v. Central Bank* (1977) 18 Cal.3d 840, 843 [135 Cal.Rptr.771, 558 P.2d 857], citations omitted.) Additionally, "[t]or purposes of a general demurrer to a complaint, all material fact allegations must be taken as true. Whether the plaintiff will be able to prove the pleaded facts is irrelevant to ruling upon the demurrer." (*Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 609-10 [225 Cal. Rptr. 624], citation omitted.) The Court must "give the complaint a reasonable interpretation by reading it as a whole and all its parts in their context." (*Moore v. Regents of Univ. of California* (1990) 51 Cal.3d 120, 125 [271 Cal. Rptr. 146], citations omitted.) Thus, a demurrer may not be sustained unless it appears that the plaintiff is not entitled to any relief under the circumstances pleaded. (See, e.g., *Jack Heskett Lincoln-Mercury, Inc. v. Metcalf* (1984) 158 Cal.App.3d 38, 41 [204 Cal.Rptr. 355].)

In the event a demurrer is sustained, the plaintiff should be granted leave to amend, so long as she shows that there is a reasonable possibility that any defect identified by the defendants can be cured by amendment. Disallowing leave to amend under such circumstances is considered "an abuse of discretion." (*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995,1003 [84 Cal.Rptr.3d 642].)

II. ARGUMENT

A. **Petitioner's Action Is Not Time Barred Based on the Face of the Petition**

Respondent assert that Petitioner's action is time barred under Code Civ. Proc., § 1094.6 based purely on the face of the Petition. Respondent argues that the 90th day following the date

1 of the agency's final decision was on June 28, 2022 and that therefore Petitioner's Petition filed
2 on June 29, 2022 is untimely as being outside the 90-day statute of limitations period.

3 However, Respondent's analysis of the Petition depends on an unduly limited application
4 of the entire language of section 1094.6. Respondent only references the portion of the statute
5 requiring that "Any such petition shall be filed not later than the 90th day following the date on
6 which the decision becomes final..." (Code Civ. Proc., § 1094.6(b)). At the same time,
7 Respondent altogether ignores other directly applicable language in the same statute upon which
8 it relies. Indeed, subdivision (a) of the statute states as follows:

8 (a) Judicial review of any decision of a local agency, other than school district, as the
9 term local agency is defined in Section 54951 of the Government Code, or of any
10 commission, board, officer or agent thereof, may be had pursuant to Section 1094.5 of
11 this code only if the petition for writ of mandate pursuant to such section is filed within
12 the time limits specified in this section." (Ibid., emphasis added.)

13 First, and most importantly, in arguing that Mr. Vane's Petition is supposedly facially
14 defective, Respondents fail to mention that section 1094.6 extends the deadline for petitioners to
15 file their petition if they timely request preparation of the administrative record within 10 days
16 after the decision becomes final. (CCP 1094.6(d)). Second, as emphasized in bold above, subd.
17 (a) of section 1094.6 uses the phrases "time limits" in a plural sense, meaning there are multiple
18 potential timeframes contemplated by the statute.

19 Petitioner's allegation that the Decision was received by him on March 30, 2022 does
20 nothing to preclude a finding of timeliness under the additional time period provided for under
21 section 1094.6(d). As a result, Respondent's argument that the Petition is subject to demurrer due
22 to its being facially defective is insufficient to cause this Court to grant its demurrer.

23 **B. Equitable Tolling**

24 The doctrine of equitable tolling is applicable under the particular circumstances of this
25 case. "The equitable tolling of statutes of limitations is a judicially created, nonstatutory
26 doctrine." (*McDonald v. Antelope Valley Community College Dist* (2008) 45 Cal.4th 88, 99 [841
27 Cal.Rptr.3d 734, 194 P.3d 1026].) It operates to suspend the relevant statute of limitations as
28 necessary to "ensure fundamental practicality and fairness." (*McDonald*, supra, 45 Cal.4th at p.
3 99, citation omitted.) "Though the doctrine operates independently of the language of . . . 4
5 codified sources of statutes of limitations ... its legitimacy is unquestioned ... it is a creature of 5
6 the judiciary's inherent power 'to formulate rules of procedure where justice demands it.'" (Ibid., 6

1 citations omitted.) Even where a statute of limitations has been found to be mandatory, equitable
2 tolling can be invoked "to soften the harsh impact of technical rules which might otherwise
3 prevent a good faith litigant from having a day in court." (Addison v. State of California (1978)
4 21 Cal.3d 313, 316 [146 Cal.Rptr. 224, 578 P.2d 941].) The doctrine allows a court to "adapt
5 rules of procedure to serve the ends of justice where technical forfeitures would unjustifiably
6 prevent a trial on the merits." (McDonald, supra, 45 Cal.4th at p. 102, quoting Addison, supra,
7 31 Cal.3d at pp, 318-319.) It applies where an injured person has multiple courses of action for
8 pursuing a legal remedy and "reasonably and in good faith, pursues one." (McDonald, supra, 45
9 Cal.4th at p. 100, citations omitted.) Equitable tolling includes three elements: timely notice; lack
10 of prejudice to the defendant; and good faith conduct by the plaintiff. (Addison, supra, 31 Cal.3d
11 at p. 319; McDonald, supra, 45 Cal.4th at p. 102.) Here, these elements, and the doctrine's
12 purpose, are readily satisfied. Respondent has been notified of the factual and legal issues
13 contained in the underlying Petition and reason for Mr Vane's requests for the complete
14 administrative record. Respondent will not be prejudiced because they have been well aware of
15 the proceedings, underlying facts, and legal issues that underlie Mrs. Vane's Petition. They have
16 had ample opportunity to prepare, and continue to prepare, defenses to Mr. Vane's claims. By
17 contrast, if the tolling doctrine were not applied, "[Mr. Vane] would be denied a hearing [in this
18 Court] on the merits of [his] claim." (Addison, supra, 31 Cal.3d at p. 321.)

17 **III. LEAVE TO AMEND**

18 Requests to amend a pleading that has been attacked by demurrer are routinely granted.
19 The Courts are liberal in permitting amendments, not only where a complaint is defective in
20 form, but also where substantial defects are apparent. Great liberality should be exercised in
21 permitting a plaintiff to amend. *Angie M. v. Sup. Ct.*, (1995) 37 Cal. App. 4th 1217,1227; *Stevens*
22 *v. Sup. Ct.*, (1999) 75 Cal. App. 4th 594, 601. It has been held to be an abuse of discretion for the
23 courts to deny leave to amend where there is any reasonable possibility that plaintiff can state a
24 meritorious cause of action. *Goodman v. Kennedy*, (1976) 18 Cal.3d 335, 349; *Okun v. Sup. Ct.*,
25 (1981) 29 Cal.3d 442. Unless an original complaint shows on its face that it is incapable of
26 amendment, denial of leave to amend constitutes an abuse of discretion, irrespective of whether
27 leave to amend is requested. *King v. Mortimer*, (1948) 83 Cal. App.2d 153,158. If leave to
28 amend is granted, Petitioner can amend his verified petition to reflect the facts going to his
timely compliance with the provisions of Code Civ. Proc., § 1094.6.

1 **III. CONCLUSION**

2 For all the foregoing reasons, Petitioner respectfully requests that Respondent's
3 demurrer be overruled in its entirety. Alternatively, if for any reason the Court sustains the
4 demurrer, it should be with leave to amend.

5 Dated: September 14, 2022

6 By: Nicholas L. D'Amico

7 Nicholas L. D'Amico, Esq.
8 Attorney for Petitioner

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PROOF OF SERVICE:
(California Code of Civil Procedure § 1013A(3))

1 I am employed in the County of Los Angeles, State of California. I am over the age of 18 years
2 and not a party to the within action; my business address is 4500 Park Granada, Suite 202,
3 California 91302.

4 On September 14, 2022, I served the foregoing document described as:

5 PETITIONER'S OPPOSITION TO RESPONDENT'S DEMURRER TO VERIFIED PETITION
6 FOR WRIT OF ADMINISTRATIVE MANDATE

7 on the parties to this action by placing a true copy thereof in a sealed envelope or package
8 addressed to the person(s) at the address(es) as set forth below and caused said envelope or
9 package to be served in the following manner:

10 SEE SERVICE LIST BELOW

11 X (By Mail) I caused such envelope or package with postage thereon fully prepaid to be
12 placed in the United States mail at Long Beach, California. I am readily familiar with this firm's
13 practice of collecting and processing correspondence for mailing. It is deposited with the U.S.
14 Postal Service on that same day in the ordinary course of business. I am aware that on motion of
15 the party served, service is presumed invalid if postal cancellation date or postage meter date is
16 more than one day after date of deposit for the mailing in affidavit.

17 x (By Electronic Mail) Based on a local rules requiring mandatory e-filing and e-service or
18 an agreement of the parties to accept service by e-mail or electronic transmission, I caused the
19 document(s) to be sent from e-mail address (nicholas@nldamicolaw.com) to the person(s) at the
20 e-mail address(es) listed below. I did not receive, within a reasonable time after the transmission,
21 any electronic message or other indication that the transmission was unsuccessful.

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

24 (Federal) I declare that I am employed in the office of a member of the bar of this court at
25 whose direction this service was made.

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

28 Executed on September 14, 2022 at Calabasas, California

Nicholas L. D'Amico

Nicholas L. D'Amico

SERVICE LIST:

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