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7 Ojai Valley Sanitary District

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

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

12 Petitioner,

13 v.

14 OJAI VALLEY SANITARY DISTRICT, a  
public agency,

15 Respondent.  
16

Case No.: 56-2022-000567385-CU-WM-VTA  
**REPLY IN SUPPORT OF DEMURRER TO  
VERIFIED PETITION FOR WRIT OF  
ADMINISTRATIVE MANDATE**

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

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

Action Filed: June 29, 2022

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 The Court’s Register of Actions shows the following entry on September 14, 2022:  
3 “Opposition (to the Demurrer to Petitioners Verified Petition for Writ of Administrative Mandate)  
4 filed by Richard H Vane Trustee of the Vane Family Trust on 09/14/2022” (ROA # 22) (the  
5 “Opposition”).

6 Respondent Ojai Valley Sanitary District (“OVSD”) has not been served with a copy of  
7 the Opposition. (Declaration of Mischa N. Barteau In Support of Reply to Opposition to Demurrer  
8 to Verified Petition for Writ of Administrative Mandate (“Barteau Decl.”) at ¶ 3.)

9 Respondent OVSD has not received a copy of the Opposition despite counsel for OVSD’s  
10 repeated requests to Nicholas D’Amico, counsel for Petitioner, to send a copy of the Opposition to  
11 counsel for OVSD. (*Id.* at ¶¶ 4-6.)

12 It is a fundamental tenet of civil procedure that pleadings must be both filed with the court  
13 and *served on the other party to the action*. (*See* Code Civ. Proc., § 1005 (*enacted in 1872*)).

14 Specifically, Code of Civil Procedure section 1005(b) requires “[a]ll papers opposing a  
15 motion ... be filed with the court and a copy served on each party at least nine court days ...  
16 before the hearing” and Code of Civil Procedure section 1005(c) requires:

17 [A]ll papers opposing a motion and all reply papers shall be  
18 served by personal delivery, facsimile transmission, express  
19 mail, or other means consistent with Sections 1010, 1011, 1012,  
20 and 1013, and reasonably calculated to ensure delivery to the  
other party or parties not later than the close of the next  
business day after the time the opposing papers or reply  
papers, as applicable, are filed.

21 (Emphasis added.) Petitioner not only failed to deliver a copy of the Opposition to OVSD by the  
22 close of the next business day after the Opposition as required by Code of Civil Procedure section  
23 1005(c), but Petitioner also failed to serve OVSD (or its counsel) a copy of the Opposition *at all*.

24 Petitioner’s failure to serve his Opposition means Petitioner’s Opposition should be treated  
25 by the Court as if it were never filed. (*See* Code Civ. Proc., § 1005.5; *Weinstein v. Blumberg* (2018)  
26 25 Cal.App.5th 316, 320 (“A motion is ‘made,’ according to section 1005.5, ‘upon the due service  
27 and filing of the notice of motion’”); California Rules of Court, Rule 3.1300 (“all moving and  
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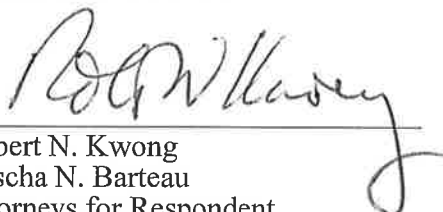
1 supporting papers must be served and filed in accordance with Code of Civil Procedure section  
2 1005”).

3           Therefore, the Court should exercise its discretion and not consider the unserved Opposition.  
4 (*Iverson v. Superior Court* (1985) 167 Cal.App.3d 544, 548.)

5  
6 Dated: September 20, 2022

Respectfully submitted,

7           ARNOLD LAROCHELLE MATHEWS  
8           VANCONAS & ZIRBEL LLP

9  
10 By:   
11           Robert N. Kwong  
12           Mischa N. Barteau  
13           Attorneys for Respondent  
14           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 **September 20, 2022**, I served the foregoing document described as **REPLY IN SUPPORT OF DEMURRER TO VERIFIED PETITION FOR WRIT OF ADMINISTRATIVE MANDATE** on interested parties in this action by placing  the original  a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

- 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 September 20, 2022, at Oxnard, California.

  
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Jacqueline Villarreal

**SERVICE LIST**

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Richard H. Vane, Trustee  
of the Vane Family Trust  
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