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7 Ojai Valley Sanitary District

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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

**SUPPLEMENTAL REPLY IN SUPPORT
OF DEMURRER TO VERIFIED PETITION
FOR WRIT OF ADMINISTRATIVE
MANDATE**

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

Date: November 1, 2022
Time: 8:20 AM
Dept: 40
Judge: Hon. Mark Borrell
Reservation No.: 2670133

Action Filed: June 29, 2022

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Respondent Ojai Valley Sanitary District (“OVSD”) submits this Supplemental Reply in
3 support of its Demurrer to petitioner Richard H. Vane’s (“Petitioner”) Verified Petition for Writ of
4 Administrative Mandate (“Petition”) and his Opposition to the Demurrer, which was never properly
5 served on OVSD.

6 **I. INTRODUCTION**

7 The Petition was filed on June 29, 2022, one day after the expiration of the applicable statute
8 of limitations. The Petition was not filed within the 90-day period required by Code of Civil Procedure
9 section 1094.6, subdivision (b). The Petition is untimely.

10 Petitioner did not request a complete record of the proceedings pursuant to Code of Civil
11 Procedure section 1094.6, subdivision (c), and, thus, Petitioner cannot rely on the extension of time
12 provided by Code of Civil Procedure section 1094.6, subdivision (d) (extending time “if the petitioner
13 files a request for the record as specified in subdivision (c) within 10 days after the date the decision
14 becomes final as provided in subdivision (b)”).

15 Petitioner cannot cure this defect by amendment because there is no legal or equitable doctrine
16 that excuses his failure to timely file the Petition. The Petition is time-barred. Accordingly, OVSD
17 requests that its Demurrer be sustained without leave to amend and the Petition be dismissed.

18 **II. LEGAL STANDARD**

19 A demurrer may be filed in response to a petition for writ of administrative mandate. (Code
20 Civ. Proc., § 1089; *Ventura Coastal, LLC v. Occupational Safety and Health Appeals Board* (2020)
21 58 Cal. App. 5th 1, 13.) A demurrer to a petition for writ of administrative mandate is properly
22 sustained when the face of the pleading reveals that the petition was not timely filed. (*Id.* at 32.)

23 “Face of the pleading” includes matters shown in exhibits attached to the petition and
24 incorporated by reference. (*Cobb v. O’Connell* (2005) 134 Cal. App. 4th 91, 95 (exhibits and
25 attachments are part of complaint); *Nealy v. County of Orange* (2020) 54 Cal. App. 5th 594, 596–597
26 (“we rely on and accept as true the contents of the exhibits and treat as surplusage the pleader’s
27 allegations as to the legal effect of the exhibits”).)

1 In determining whether to sustain a demurrer, the court considers whether the allegations of
2 the complaint are sufficient to state a cause of action, as well as whether they disclose a defense such
3 as statute of limitations that would bar recovery. (*In re Estate of Moss* (2012) 204 Cal. App. 4th 521,
4 535; *Alexander v. Exxon Mobil* (2013) 219 Cal. App. 4th 1236, 1250.)

5 **III. THE FACE OF THE PETITION SHOWS THAT THE PETITION IS COMPLETELY**
6 **TIME-BARRED**

7 Given this legal standard, judicial review of the Petition may only be had if the Petition had
8 been filed within the time limits set forth in Code of Civil Procedure section 1094.6. Here, the face
9 of the Petition shows that the Petition is completely time-barred under Code of Civil Procedure section
10 1094.6, subdivision (b) and subdivision (d). And because there is no “reasonable possibility that the
11 defect can be cured by amendment,” OVSD’s Demurrer should be sustained without leave to amend.
12 (*Vaca v. Wachovia Mortgage Corp.* (2011) 198 Cal.App.4th 737, 743.)

13 Petitioner filed his Petition pursuant to Code of Civil Procedure 1094.5. Code of Civil
14 Procedure 1094.6, subdivision (a), states that judicial review of a petition filed pursuant to section
15 1094.5 may *only* be had if the petition is filed “within the time limits specified in this section.”

16 **1. The Petition Is Time-Barred Under Code of Civil Procedure 1094.6(b)**

17 Code of Civil Procedure section 1094.6, subdivision (b), provides, in relevant part:

18 Any such petition shall be filed not later than the 90th day following
19 the date on which the decision becomes final. [...] If there is a
20 provision for a written decision or written findings, the decision is
21 final for purposes of this section upon the date it is mailed by first-
22 class mail, postage prepaid, including a copy of the affidavit or
certificate of mailing, to the party seeking the writ. Subdivision (a)
of Section 1013 does not apply to extend the time, following deposit
in the mail of the decision or findings, within which a petition shall
be filed.

23 OVSD’s decision on the Petitioner’s administrative appeal was final on March 30, 2022, the
24 date the written decision was mailed to Petitioner. (Petition, Exhibit L (Letter dated March 30, 2022,
25 via Certified, First-Class Mail, Return Receipt Requested, from OVSD to Richard Vane re “Notice of
26 Determination”).)

27 The 90th day following the date the decision became final was June 28, 2022. The Petition
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1 was not filed until June 29, 2022, **91 days** after the decision became final.

2 Because the Petition was not filed within the 90-day statute of limitations, the court lacks
3 jurisdiction to hear the Petition and the Petition must be dismissed. (*See Liang v. San Francisco*
4 *Residential Rent Stabilization & Arbitration Bd.* (2004) 124 Cal.App.4th 775, 777–778 (“a trial court
5 ‘has no jurisdiction to entertain section 1094.6 petitions unless they are filed on or before the
6 90th day after the local agency’s decision.’”) (emphasis in original) (internal citation omitted).)

7 **2. The Petition Is Time-Barred Under Code of Civil Procedure 1094.6(d)**

8 Petitioner attempts to argue that the Petition falls within the provisions of Code of Civil
9 Procedure section 1094.6, subdivision (d) (Opposition to Demurrer to Petition for Writ of Mandate
10 (“Opposition”) at p. 3, lines 12-20), which provides that if the complete record of the proceedings is
11 requested pursuant to Code of Civil Procedure section 1094.6, subdivision (c), within 10 days after
12 the date the decision becomes final as provided in section 1094.6, subdivision (b), there may be an
13 extension of time for filing of a petition pursuant to section 1094.5.

14 But **Petitioner never requested a complete record of the proceedings pursuant to section**
15 **1094.6, subdivision (c).** In order for judicial review to be had under Code of Civil Procedure section
16 1094.6, subdivision (d), Petitioner must have requested the complete record of the proceedings to be
17 prepared by OVSD within 10 days after March 30, 2022. To date, Petitioner has not requested a
18 complete record of the proceedings pursuant to Code of Civil Procedure section 1094.6, subdivision
19 (c). Indeed, this allegation is not present in the Petition because it never happened. Nothing argued in
20 the Opposition papers can cure this absence of facts on a request for a complete record of the
21 administrative proceedings. Accordingly, the extension of time allowed by section 1094.6,
22 subdivision (d), does not apply in the instant case.

23 **3. The Petition Shows that the Action Is Barred by the Statute of Limitations**

24 Where the dates alleged in the petition show the cause of action is barred by the statute of
25 limitations, a general demurrer is properly sustained. (*See Saliter v. Pierce Brothers Mortuaries*
26 (1978) 81 Cal.App.3d 292, 299, fn. 2; *Mohlmann v. City of Burbank* (1986) 179 Cal.App.3d 1037,
27 1045; *Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 995; *Vaca v.*

1 *Wachovia Mortgage Corp.* (2011) 198 Cal.App.4th 737, 746.)

2 It is Petitioner’s burden to plead facts which show the action has been filed within the
3 applicable statute of limitations. (*Saliter v. Pierce Brothers Mortuaries* (1978) 81 Cal.App.3d 292,
4 299; *E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1319.) Petitioner pleads
5 facts showing that the decision upon which the Petition is based became final for purposes of the 90-
6 day statute of limitations on March 30, 2022. (Petition, ¶ 4, Section VI. (“Statement of Facts”), Exhibit
7 L (Letter dated March 30, 2022, via Certified, First-Class Mail, Return Receipt Requested, from
8 OVSD to Richard Vane re “Notice of Determination”).)

9 **4. Equitable Tolling Does Not Apply To This Case**

10 Equitable tolling also does not apply here simply because Petitioner thinks it would be
11 “inequitable” to apply the statute of limitations (Opposition at p. 3, lines 21-28, p. 4, lines 1-15).
12 (“Timing of Judicial Review—When Judicial Review Is Too Late,” California Practice Guide:
13 Administrative Law Ch. 16-D, The Rutter Group (November 2021) (“[T]he statute of limitations is
14 not tolled simply because its application would produce an unfair or inequitable result by precluding
15 judicial review of agency action.”) (citing *Cockshott v. Department of Forestry & Fire Protection*
16 (2004) 125 Cal.App.4th 235, 240 (face of the mandate petition showed it was untimely and no
17 equitable tolling when petitioner missed deadline for filing writ petition before administrative record
18 had been prepared); *Kupka v. Board of Administration* (1981) 122 Cal.App.3d 791, 794 (statutory
19 period to file writ petition is not extended on the basis of mistake or excusable neglect).)

20 Petitioner states in his Opposition that equitable tolling “applies where an injured person has
21 multiple courses of action for pursuing a legal remedy and ‘reasonably and in good faith, pursues
22 one.’” (Opposition at p. 7, lines 6-7) (citing *McDonald v. Antelope Valley Community College Dist.*
23 (2008) 45 Cal.4th 88, 100.) In *McDonald*, the California Supreme Court explained that equitable
24 tolling “may apply where one action stands to lessen the harm that is the subject of a potential second
25 action; where administrative remedies must be exhausted before a second action can proceed; or where
26 a first action, embarked upon in good faith, is found to be defective for some reason.” (*McDonald*, 45
27 Cal.4th at 100.) “Tolling eases the pressure on parties ‘concurrently to seek redress in two separate
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1 forums with the attendant danger of conflicting decisions on the same issue.” (*Id.*)

2 By contrast, Petitioner’s action is not one in which there were multiple courses of action in
3 separate forums to pursue his legal remedy. Petitioner pursued his remedies with OVSD, and then
4 filed for judicial review of OVSD’s decision pursuant to Code of Civil Procedure section 1094.5.
5 Petitioner had one course of action to pursue his legal remedy, and he failed to act within the time
6 limit to do so. Equitable tolling does not apply to this case. And Petitioner cannot escape his failure
7 to abide by the applicable 90-day statute of limitations.

8 **IV. CONCLUSION**

9 The Petition is barred by the statute of limitations, and there is no legal or equitable basis to
10 extend the statute of limitations. OVSD respectfully requests that its Demurrer be sustained without
11 leave to amend and the Petition be dismissed with prejudice.

12
13 Respectfully submitted,

14 Dated: October 13, 2022

ARNOLD LAROCHELLE MATHEWS
VANCONAS & ZIRBEL LLP

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17 By: 

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

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF VENTURA

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

5 On **October 13, 2022**, I served the foregoing document described as **SUPPLEMENTAL**
6 **REPLY IN SUPPORT OF DEMURRER TO VERIFIED PETITION FOR WRIT OF**
7 **ADMINISTRATIVE MANDATE** on interested parties in this action by placing the original
8 a true copy thereof enclosed in sealed envelopes addressed as follows:

9 SEE ATTACHED SERVICE LIST

10 BY MAIL: As follows: I am "readily familiar" with the firm's practice of collection and
11 processing correspondence for mailing. Under that practice it would be deposited with the
12 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.

13 BY OVERNIGHT COURIER: I enclosed the documents in an envelope or package
14 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.

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

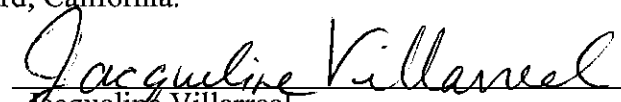
18 BY PERSONAL SERVICE: I delivered said document by hand to the addressee listed
above.

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

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

23 **(FEDERAL)** I declare under the laws of the United States of America that I am employed
24 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.

25 Executed on October 13, 2022, at Oxnard, California.

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27 Jacqueline Villarreal
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SERVICE LIST

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