S270798

Case No. S_____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LAW FINANCE GROUP, LLC,
Plaintiff and Appellant,

vs.

SARAH PLOTT KEY,
Defendant and Respondent.

After a Published Decision by the Court of Appeal,
Second Appellate District, Division Two, Case No. B305790

From an Order Vacating an Arbitration Award
Los Angeles County Superior Court, Case No. 19STCP04251
Honorable Rafael A. Ongkeko

PETITION FOR REVIEW

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I.

ISSUES PRESENTED

1. May equitable tolling be applied to Code of Civil Procedure section 1288.2's 100-day deadline to serve and file a request to vacate an arbitration award in a response to a petition to confirm the award?

2. May equitable estoppel be applied to Code of Civil Procedure section 1288.2's 100-day deadline to serve and file a request to vacate an arbitration award in a response to a petition to confirm the award?

3. May a court confirm an arbitration award that on its face violates fundamental public policy and contravenes unwaivable statutory rights, regardless of compliance with Code of Civil Procedure section 1288.2's 100-day deadline to serve and file a request to vacate an arbitration award in a response to a petition to confirm the award?

4. Where a petition to confirm an arbitration award is filed within 100 days of service of the award, and a response requesting the award be vacated is timely filed pursuant to the 10-day time limit of Code of Civil Procedure section 1290.6, is the response timely regardless of whether it is filed more than 100 days after service of the award?

II.
INTRODUCTION

The Court of Appeal's published opinion ("Opinion") reversing the trial court's order vacating an arbitration award and ordering confirmation of an award that violates public policy, contravenes unwaivable statutory rights, and enforces an illegal contract, stands established law regarding statutory time limits on its head. It conflicts with numerous decisions of this Court and the Court of Appeal. The Opinion holds, for the first time, that the statutory time limit to file and serve a request to vacate an arbitration award in a response to a petition to confirm the award is a jurisdictional and absolute deadline that is not subject to equitable tolling or equitable estoppel, and compels confirmation of public-policy-violative arbitration awards.

In 1961, the Legislature adopted the recommendation of the California Law Revision Commission to repeal and reenact the California Arbitration Act. Of significance here are two statutory time limits applicable to requests to vacate arbitration awards. Parties to an arbitration may request a court vacate an award either by filing a petition to vacate or in response to the other parties' petition to confirm the award. A petition to vacate is to be filed within 100 days of the award's service. As to requests to vacate awards in responses to petitions to confirm, one statute requires responses to be filed within 100 days of the award's service (Code Civ. Proc., § 1288.2), while another statute requires responses to be filed within 10 days of the petition to confirm (Code Civ. Proc.,

§ 1290.6).[1] Over the ensuing decades, these two statutes have created much confusion.

This Court has never addressed the interplay of these time limits. As the Second District stated more than 10 years ago: "We believe the time may have come for our Supreme Court to provide definitive guidance on the time deadlines a party who seeks to vacate an arbitration award faces when the prevailing party in the arbitration has filed a petition to confirm the award." (*Oaktree Capital Management, L.P. v. Bernard* (2010) 182 Cal.App.4th 60, 67-68.) The parties did not petition for review of *Oaktree* in 2010; certainly, it is time for the Court to provide guidance now.

Equally important, the Opinion conflicts with this Court's recent authority requiring that courts presume statutory deadlines are subject to equitable tolling. (*Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710, 720.) The Opinion also conflicts with the Court's prior authority that statutory deadlines are generally subject to equitable estoppel even when the Legislature forecloses equitable tolling (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 383-384), as well as with numerous Court of Appeal decisions applying equitable estoppel to the 100-day time limits for requests to vacate an award.

Furthermore, by ordering confirmation of an award that on its face violates the public policy underlying the California

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[1] All further undesignated statutory references are to the Code of Civil Procedure.

Financing Law and contravenes unwaivable statutory rights, the Opinion enforces a void and illegal consumer loan agreement. Thus, the Opinion conflicts with the Court's authority that courts may not confirm arbitration awards enforcing void and illegal contracts (*Loving & Evans v. Blick* (1949) 33 Cal.2d 603, 607, 609, 611-612), and a Court of Appeal decision refusing to confirm an award enforcing an illegal contract. The Court should grant review to address these conflicts.

Finally, the Court should grant review to provide necessary guidance on the relationship between section 1288.2's 100-day time limit and section 1290.6's 10-day time limit. Specifically, the Court should determine that a response to a petition to confirm an arbitration award filed within 100 days of the award's service, timely requests the award's vacatur if filed within 10 days of the petition pursuant to section 1290.6, even when filed more than 100 days after the award's service.

The Court has never addressed these issues, the Opinion conflicts with this Court's decisions and decisions of the Court of Appeal, and the issues are of statewide importance impacting great numbers of arbitration litigants. For all of these reasons, the Court should grant review to guide the courts and litigants and resolve the conflicts.

III.

STATEMENT OF THE CASE

Defendant and Respondent Sarah Plott Key borrowed $2.4 million from Plaintiff and Appellant Law Finance Group, LLC ("LFG") to help finance her probate action establishing that her sister exercised undue influence over their mother in orchestrating an amendment to their parents' trust that effectively disinherited Key. (Opinion ("Opn.") 2, 4; 1 Appellant's Appendix ("AA") AA 107.) The loan was a consumer loan, but LFG illegally charged compound interest and servicing fees violating the California Financing Law (Fin. Code, § 22000 et seq.). (Opn. 4; 1 AA 113-116.) Key prevailed by invalidating the trust amendment, but the probate proceedings are ongoing. (Opn. 2.) Key repaid the $2.4 million she borrowed, but refused to pay the illegal interest and fees. (Opn. 2, 5.)

LFG demanded arbitration under its loan agreement. (Opn. 2, 5.) The arbitrators *agreed* with Key that the loan was a consumer loan and LFG had willfully charged compound interest and servicing fees in violation of the Financing Law. (Opn. 5; 9 AA 4286.) Under Financial Code section 22750, subdivision (a), the loan agreement was therefore void and completely unenforceable. Nevertheless, the arbitrators enforced the illegal and void loan agreement and awarded LFG simple interest, attorneys' fees and costs. (Opn. 2, 5.) This violated the statute. The arbitrators issued a modified award of more than $1.6 million against Key on September 18, 2019. (Opn. 2, 5.)

LFG filed a Petition to Confirm the award on October 1,

2019, less than two weeks after the award's service. (Opn. 5.) On October 10, 2019 (22 days after the award's service), counsel for the parties discussed and later confirmed in writing: (1) their mutual intent to disqualify the assigned trial judge, (2) Key's planned filing of a Petition to Vacate Arbitration Award, (3) Key's planned separate Response to LFG's Petition to Confirm, (4) coordination of the same hearing date for the competing petitions, (5) a briefing schedule based on the yet-to-be-obtained hearing date, and (6) Key's desire for a March or April 2020 hearing date. (Opn. 5-6; 9 AA 4249-4250, 4257.)

Key's counsel agreed to accept service of LFG's Petition to Confirm instead of requiring personal service on Key, and to file the disqualification motion (exhausting Key's one peremptory challenge). (Opn. 6; 9 AA 4250, 4257, 4259.) Counsel for both parties agreed they would determine the briefing schedule for the two petitions and responses from the same hearing date, they would utilize the general motion briefing schedule as the agreed schedule, and the agreed schedule would take the place of the arbitration deadlines. (Opn. 6; 9 AA 4249-4259, 4272-4276.) LFG agreed Key did not need to file her Petition to Vacate until a hearing date was set for LFG's Petition to Confirm. (9 AA 4251-4254, 4265-4267, 4274-4276.)

After two disqualification motions, a third judge was assigned. (9 AA 4275.) LFG proposed a February 20, 2020 hearing date, and on December 12, 2019, Key's counsel agreed. (9 AA 4251-4252.) The February 20, 2020 hearing date was obtained for both

petitions. (9 AA 4252-4254.) The parties' counsel agreed that Key's Petition to Vacate and the parties' responses to the petitions would be filed using general motion deadlines (under section 1005, subdivision (b)). (9 AA 4249-4250, 4257.)

In accordance with the agreement, Key filed her Petition to Vacate on January 27, 2020 (16 court days before February 20 (section 1005, subdivision (b)). (Opn. 6.) Key and LFG filed their responses on February 5, 2020 (nine court days before February 20 section 1005, subdivision (b)). (Opn. 6; 9 AA 4245.) Key's response requested the award be vacated for failing to void the loan. (Opn. 6-7.) In opposing Key's Petition to Vacate (only after the 100-day period had elapsed on December 27, 2019), LFG reneged on the agreement and asserted Key's Petition to Vacate was untimely. (9 AA 4254.) The parties filed replies on February 11, 2020 (five court days before February 20 (section 1005, subdivision (b)). (9 AA 4227-4276.) LFG claimed the trial court lacked jurisdiction to vacate the award because her Petition to Vacate was filed more than 100 days after the award's service. (9 AA 4228.) Key's reply was supported by declarations and documentary evidence concerning the agreement to extend statutory deadlines. (9 AA 4248-4276.)[2]

LFG benefitted from this agreement. First, LFG did not have to personally serve Key. (9 AA 4250, 4275.) Second, LFG

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[2] The evidence concerning counsel's agreement came from unrebutted and unobjected-to declarations from Key's counsel and counsel's emails. (8 AA 4021-4040; 9 AA 4227-4231, 4248-4276; RT 1-12.) LFG's counsel submitted no declaration.

disqualified a second assigned judge after Key disqualified the first. (9 AA 4250, 4275.) Third, an earlier, coordinated hearing date for both petitions was obtained. (9 AA 4249-4251, 4259-4262.) Finally, LFG obtained additional time to respond to Key's Petition to Vacate. (9 AA 4254.) Counsel's agreement was based largely on their disqualifications of two assigned judges and procedural issues outside of their control, including delays from the superior court's hearing reservation system. (9 AA 4249-4251.) This precluded Key from filing a Petition to Vacate until she had obtained a reservation date from the assigned courtroom. It is undisputed that the parties both acted in accordance with the agreement counsel had reached.

The trial court found the parties had agreed to extend the statutory time limits based on their communications, and thus Key's Response to LFG's Petition to Confirm was timely, or alternatively the trial court exercised its discretion to consider the response. (Opn. 7; 9 AA 4282 ["As far as timeliness of Key's response in opposition, the court has reviewed the evidence and chronology Key submits regarding the parties' various communications leading up to the hearing. Based on the evidence submitted, the court finds Key's response is timely under CCP § 1290.6 and should be considered on its merits. If there is a need to extend the time to the actual filing date to enable the court to decide the petition on its merits, the court finds good cause to grant such an extension."].)

The trial court vacated the award: "On the merits, the trial court found that 'the arbitrators exceeded their powers by issuing an award that violates a party's unwaivable statutory rights

or that contravenes an explicit legislative expression of public policy.'" (Opn. 7; 9 AA 4286 ["[T]he arbitrators found that LFG violated Financial Code sections 22309 (impermissible compound interest) and 22306 (impermissible service fee). (Award ¶¶ 36-37.) Key establishes the requirements of Finance Code section 22750(a) are satisfied because LFG willfully charged or contracted for an amount in excess of what is permitted by the [Financing Law]. Section 22750(a) renders the agreement void."].)

Division Two of the Second District reversed, and ordered confirmation of the public-policy-violative award in a published opinion on July 30, 2021 (Opn. 1, 20-22), and denied Key's petition for rehearing with modifications on August 19, 2021 (Modified Opinion 3 ("Mod.").

IV.
REASONS FOR GRANTING THE PETITION

The Opinion held that section 1288.2's 100-day time limit to file and serve a request to vacate an arbitration award in a response to a petition to confirm the award is "jurisdictional" like the deadline for filing an appeal. (Opn. 3, 17, citing the division's own decisions in *Santa Monica College Faculty Assn. v. Santa Monica Community College Dist.* (2015) 243 Cal.App.4th 538, 545 (*Santa Monica College*) and *Douglass v. Serenivision, Inc.* (2018) 20 Cal.App.5th 376, 385 (*Douglass*).)[3] This fundamental error of

[3] None of the parties sought review of these two decisions.

statewide importance underlies the Opinion's holdings that equitable tolling and equitable estoppel are not applicable to section 1288.2's response deadline. (Opn. 17-20, Mod. 2-3.)

Since its enactment in 1961, this Court has not addressed section 1288.2's deadline.[4] But recently, the Court applied equitable tolling to Government Code section 11523's similar deadline to file a petition for writ of administrative mandate. (*Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710, 723 (*Saint Francis*).)[5] And in *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 383-384 (*Lantzy*), the Court held that equitable estoppel may apply to statutory deadlines even when the Legislature has foreclosed equitable tolling. The Opinion thus conflicts with this Court's *Saint Francis* and *Lantzy* decisions and a number of Court of Appeal decisions.[6]

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[4] Section 1288.2, enacted in 1961 and never amended, provides: "A response requesting that an award be vacated or that an award be corrected shall be served and filed not later than 100 days after the date of service of a signed copy of the award."

[5] Government Code section 11523 provides in relevant part: "Except as otherwise provided in this section, [a] petition [for writ of administrative mandate] shall be filed within 30 days after the last day on which reconsideration can be ordered [by the administrative agency]."

[6] *Abers v. Rohrs* (2013) 217 Cal.App.4th 1199, 1208-1214 (*Abers*); *Coordinated Construction, Inc. v. Canoga Big "A," Inc.* (1965) 238 Cal.App.2d 313, 318-320 (*Coordinated*); *DeMello v. Souza* (1973) 36 Cal.App.3d 79, 84-85 (*DeMello*); *So. Cal. Pipe Trades Dist. Council No. 16 v. Merritt* (1981) 126 Cal.App.3d 530, 541 (*So. Cal. Pipe*); *Elden v. Superior Court* (1997) 53 Cal.App.4th 1497, 1512 (*Elden*); *Eternity Investments, Inc. v. Brown* (2007) 151 Cal.App.4th 739, 746

The Opinion's jurisdictional error also underlies its holding that a court must confirm an arbitration award that violates fundamental public policy and contravenes unwaivable statutory rights if a request to vacate the award is not made within 100 days of the award. (Mod. 2-3.) This holding conflicts with this Court's decision barring confirmation of void contracts in *Loving & Evans v. Blick* (1949) 33 Cal.2d 603, 607, 609, 611-612 (*Loving*) and the Court of Appeal's decision in *South Bay Radiology Medical Associates v. Asher* (1990) 220 Cal.App.3d 1074, 1080-1081 (*South Bay*).

Finally, the Opinion holds that where a Petition to Confirm is filed within 100 days of the award and a response seeking to vacate the award is timely filed under section 1290.6, the response is nevertheless untimely when filed more than 100 days after the award. (Opn. 8-15.) This holding conflicts with Court of Appeal decisions and the Court has never addressed the issue.

The Court should grant review to resolve these conflicts and decide these issues of statewide importance for the first time.

A. Review Is Warranted Because The Opinion Conflicts With This Court's Precedent On Equitable Tolling

As the California Arbitration Act provides, parties to arbitration awards may request a court to vacate arbitration awards

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(*Eternity Investments*); see also *Lovret v. Seyfarth* (1972) 22 Cal.App.3d 841, 856 (*Lovret*); *Trabuco Highlands Community Assn. v. Head* (2002) 96 Cal.App.4th 1183, 1192, fn. 10 (*Trabuco*); *Shepherd v. Greene* (1986) 185 Cal.App.3d 989, 993 (*Shepherd*); *Humes v. Margil Ventures, Inc.* (1985) 174 Cal.App.3d 486, 498-500 (*Humes*).

by a petition to vacate (§ 1288) or by requesting vacatur in response to a petition to confirm (§ 1285.2). Sections 1288 (petition to vacate) and 1288.2 (response requesting vacatur) provide 100-day time limits for such requests. Contrary to the Opinion (Opn. 17-20; Mod. 2-3), section 1288.2's 100-day time limit is not absolute or jurisdictional and is subject to equitable tolling.

1. Under This Court's Controlling Precedent, Statutory Time Limits Are Presumed Subject To Equitable Tolling

In *Saint Francis*, this Court held that equitable tolling generally applies to statutory time limits. (9 Cal.5th at pp. 717, 723, 730-731 [30-day time limit to petition for writ of administrative mandate subject to *equitable tolling for mistake in calculating deadline*].) Courts *presume* statutory time limits are subject to equitable tolling. (*Id*. at pp. 719-720.)

As this Court emphasized, the availability of equitable tolling underlies the Legislature's adoption of all limitation periods. (*Saint Francis*, *supra*, 9 Cal.5th at p. 721.) "Equitable tolling is a judicially created, nonstatutory doctrine that suspend[s] or extend[s] a statute of limitations as necessary to ensure fundamental practicality and fairness. The doctrine applies occasionally and in special situations to soften the harsh impact of technical rules which might otherwise prevent a good faith litigant from having a day in court. Courts draw authority to toll a filing deadline from their inherent equitable powers…." (*Id*. at p. 720, internal citations and quotation marks omitted.)

In determining whether a statutory time limit is subject to equitable tolling, the statute's deadline does not itself bar equitable relief. (*Saint Francis*, *supra*, 9 Cal.5th at p. 720.) A statutory deadline may reflect a goal for the time of filing without foreclosing equitable tolling. (*Id.* at p. 721.) Nor does the Legislature's provision of one type of statutory tolling foreclose general equitable tolling. (*Id.* at p. 722.)

Rather, in determining the applicability of equitable tolling, the courts look to any statutory prohibitions,[7] the length of the deadline, the statutory context, and any legislative intent to bar equitable relief. (*Saint Francis*, *supra*, 9 Cal.5th at pp. 719-724; see also *Ventura Coastal, LLC v. Occupational Safety and Health Appeals Bd.* (2020) 58 Cal.App.5th 1, 42 (*Ventura Coastal*) [30-day time limit to petition for writ of administrative mandate not jurisdictional and may be equitably tolled].) While the time to file a notice of appeal is jurisdictional, "an ordinary statute of limitations governing the time for filing a pleading initiating an action is subject to the equitable tolling doctrine." (*Ventura Coastal*, *supra*, 58 Cal.App.5th at p. 36.)

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[7] The Legislature may expressly preclude equitable tolling. (See, e.g., *Laird v. Blacker* (1992) 2 Cal.4th 606, 618 [equitable tolling prohibited in attorney malpractice limitations statute (§ 340.6) providing that limitations period shall "in no event" be tolled except as specified; *Battuello v. Battuello* (1998) 64 Cal.App.4th 842, 847, superseded by statute on other grounds (*Battuello*) [equitable tolling prohibited in one-year limitations statute (§ 366.2) for surviving action against deceased person, providing that period "shall not be tolled or extended for any reason" except as specified.) The Legislature has not done so for section 1288.2.

As this Court underscored in *Saint Francis*, "Statutes of limitations serve important purposes: They motivate plaintiffs to act diligently and protect defendants from having to defend against stale claims. But equitable tolling plays a vital role in our judicial system, too: It allows courts to exercise their inherent equitable powers to excuse parties' failure to comply with technical deadlines when justice so requires." (9 Cal.5th at p. 730.) To balance these two competing goals, the Court recognized "the Legislature's ability to forbid equitable tolling in certain statutes…. For the doctrine to fulfill its purpose, however, we *continue to presume that tolling is available in the absence of evidence to the contrary*, and allow courts to determine on a case-by-case basis whether tolling is warranted under the facts presented, with careful consideration of the policies underlying the doctrine." (*Ibid.*, emphasis added.)

Equitable tolling provides broad equitable relief where "technical forfeitures would unjustifiably prevent a trial on the merits." (*Saint Francis*, *supra*, 9 Cal.5th at pp. 724-725, internal quotation marks omitted.) To balance the injustice to a plaintiff arising from a statutory time limit, equitable tolling applies whenever there is (1) timely notice, (2) lack of prejudice to the defendant, and (3) reasonable and good faith conduct by the plaintiff. (*Id.* at p. 724.) It may apply to a reasonable and good faith mistake as to a statutory deadline. (*Id.* at pp. 726-730.)

The Court held equitable tolling applied to Government Code section 11523's 30-day deadline to file a petition for writ of administrative mandate, in the absence of any indicia otherwise.

(*Saint Francis*, *supra*, 9 Cal.5th at p. 723.)

2. Section 1288.2's Statutory Time Limit To Request Vacatur In A Response To A Petition To Confirm Includes No Language Suggesting The Legislature Intended It To Be Jurisdictional

As the Opinion notes, section 1288.2 is part of an article entitled "Limitations of Time." (Opn. 8.) Although this statute includes a deadline, no language indicates that failing to comply with that time limit deprives the trial court of jurisdiction or prevents it from granting equitable relief. (§ 1288.2.) In addition to the presumption that equitable tolling applies, statutes and rules setting *jurisdictional* time limits generally use language requiring that conclusion.

For example, the time limits for filing a notice of appeal are expressly jurisdictional. (*Hollister Convalescent Hospital, Inc. v. Rico* (1975) 15 Cal.3d 660, 666-674; *Estate of Hanley* (1943) 23 Cal.2d 120, 122-124 [jurisdiction may not be conferred on appellate court by consent, stipulation, estoppel, waiver or equitable tolling].) "Unless a statute or [California Rules of Court,] rules 8.108, 8.702, or 8.712 provide otherwise, a notice of appeal must be filed on or before the earliest of [specified time limits].… *[N]o court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal*." (Cal. Rules of Court, rule 8.104(a) & (b), emphasis added.) California Rules of Court, rule 8.60(d) confirms the notice of appeal deadline is jurisdictional: "For good cause, a reviewing court may relieve a party from default for any failure to comply with these rules *except the failure to file a*

timely notice of appeal…." And the statute allowing additional days for filing for service by mail or other ways is expressly inapplicable to notices of appeal. (§ 1013, subds. (a), (c) & (e) ["the extension [for other than personal service] shall not apply to extend the time for filing … notice of appeal"].)

Similarly, the time limits for filing a notice of intent to move for new trial are expressly jurisdictional. (*Radford v. Crown City Lumber & Mill Co.* (1958) 165 Cal.App.2d 18, 20-21.) The time for filing a notice of intent to move for new trial "shall not be extended by order or stipulation or by those provisions of Section 1013 that extend the time for exercising a right or doing an act where service is by mail." (§ 659; see also § 1013, subds. (a), (c) & (e).)

In contrast, section 1288.2's 100-day time limit is a statutory time limit, not a jurisdictional bar. (*Humes*, *supra*, 174 Cal.App.3d at pp. 498-500 [relief from section 1288.2's 100-day "statute of limitations" allowable for equitable mistake]; *DeMello*, *supra*, 36 Cal.App.3d at pp. 83, 85 [equitable relief from section 1288.2's "statute of limitation" requires satisfactory excuse and showing of diligence]; *Trabuco*, *supra*, 96 Cal.App.4th at p. 1192, fn. 10 [failure to raise "limitations period" of section 1288.2 in trial court forfeits issue on appeal].)[8]

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8 Applying the same reasoning as this Court in *St. Francis*, the Ninth Circuit held that the Federal Arbitration Act's 90-day time limit for filing a motion to vacate an arbitration award is subject to equitable tolling. (*Move, Inc. v. Citigroup Global Markets, Inc.* (9th Cir. 2016) 840 F.3d 1152, 1156-1158 [timely motion to vacate filed more than four years after award issued].)

Unlike the notice of appeal rules and new trial statutes, section 1288.2 includes *no* language prohibiting a court from extending the time limit (§1288.2), and the deadline to request vacatur of an arbitration award is also not excluded from section 1013 (subds. (a), (c) & (e)). (See *Oaktree Capital Management, L.P. v. Bernard* (2010) 182 Cal.App.4th 60, 66 (*Oaktree*).)

Additionally, the legislative history indicates the deadline's purpose is to give the parties prompt notice of attacks on the award and to promptly settle the status of a challenged award. (Recommendation Cal. L. Rev. Comm. Relating to Arbitration (Jan. 9, 1961) 3 Cal. Law Revision Com. ¶¶ 2, 4.) Nothing in the legislative history indicates the deadline is jurisdictional. (See *Coordinated*, *supra*, 238 Cal.App.2d at p. 317.)

Further, like petitions for writ of administrative mandate following *nonjudicial* administrative decisions, requests for vacatur follow a *nonjudicial* arbitration award. (*Ventura Coastal*, *supra*, 58 Cal.App.5th at pp. 35-36.) Also, like petitions for writ of administrative mandate, confirmation and vacatur proceedings are not appeals of arbitration awards, but instead commence a superior court action after an arbitration is complete. (See *id*. at p. 40.) Indeed, unlike a petition for writ of administrative mandate, section 1288.2's time limit does not apply to the *initial* pleading that commences a court action following an arbitration award; it is merely a time limit for a *response* to a petition to confirm, making it even less likely to be jurisdictional. (§ 1288.2.) That a different statute expressly allows extension of the 10-day response time limit, does not

foreclose equitable tolling for the 100-day time limit. (See *Saint Francis*, *supra*, 9 Cal.5th at pp. 721-722.) The 100-day limitations period is not exceptionally long. (See *id*. at p. 720.) And no legislative history evidences clear legislative intent to foreclose equitable relief. (See *id*. at pp. 722-723.)

Just as Government Code section 11523's 30-day deadline to file a petition for writ of administrative mandate is subject to equitable tolling for mistake in calculating the deadline (*Saint Francis*, *supra*, 9 Cal.5th at p. 723, 726), so too should section 1288.2's 100-day deadline to respond seeking vacatur be subject to equitable tolling.

3. The Undisputed Evidence Establishes Key's Response To LFG's Petition To Confirm Was Timely, Taking Into Account Equitable Tolling

Key's counsel gave LFG notice in October 2019 (well within 100 days of the award's service) that Key intended to file a petition to vacate and also request vacatur in response to LFG's petition to confirm. (See *Saint Francis*, *supra*, 9 Cal.5th at p. 727; Opn. 5-6.) LFG was not prejudiced by the filings as it agreed to the coordinated briefing schedule and filing dates, which likely accelerated rather than delayed the trial court's ruling on both petitions. (See *id*. at p. 731.) The trial court found good cause to extend the deadline (Opn. 7) and neither LFG nor the Court of Appeal suggested Key's counsel had not acted in good faith (Opn. 16-17).

Key's counsel acted subjectively reasonably in agreeing

with LFG to extend the deadlines and filing date for Key's response to LFG's petition to confirm. As *Oaktree* explained, "[f]or several decades, various Courts of Appeal have wrestled with squaring the 10[-]day deadline for filing a response and the 100[-]day deadline for filing a petition to vacate. The consensus is the 10[-]day deadline applies if the other side files a petition…." (182 Cal.App.4th at p. 67.) Despite this longstanding case law upon which Key's counsel reasonably relied, the Opinion states, "[t]hus, in light of the clear language of sections 1288 and 1288.2 and the cases interpreting them, Key could not have reasonably believed that LFG had the authority to waive the 100-day deadline." (Opn. 20.) Not only is the "consensus" to the contrary, but the cases do not clearly so hold.[9]

Moreover, Key raised the issue immediately once she learned LFG had reneged on the agreement. (9 AA 4254; see *Saint Francis*, *supra*, 9 Cal.5th at p. 726.) Key's petition to vacate was filed only 130 days after she was served with the award, and her response was filed after only 139 days. (Opn. 2-3; 9 AA 4279-4282.) The trial court found the response timely based on the parties' agreement extending the statutory time limits or the trial court's extension of those deadlines for good cause. (9 AA 4281-4282.)

Equitable tolling is an issue of statewide importance impacting scores of arbitration litigants that this Court has not yet decided. The Court should grant review to resolve the conflict.

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9 The reasonableness of Key's counsel's belief is further demonstrated by the trial court ruling finding Key's response timely. (9 AA 4282.)

B. Review Is Warranted Because The Opinion Conflicts With This Court's Precedents And Court Of Appeal Decisions On Equitable Estoppel

1. Under This Court's Controlling Precedents, A Party May Be Equitably Estopped From Asserting A Statutory Time Limit Even Where Equitable Tolling Does Not Apply

A statute of limitations is subject to equitable principles, including equitable estoppel. (*Atwater Elementary School Dist. v. Cal. Dept. of General Services* (2007) 41 Cal.4th 227, 231-232 (*Atwater*).) "Equitable estoppel ... comes into play only after the limitations period has run and addresses ... the circumstances in which a party will be estopped from asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period." (*Lantzy*, *supra*, 31 Cal.4th at p. 383, internal quotation marks omitted.) "To create an equitable estoppel, it is enough if the party has been induced to refrain from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss.... Where the delay in commencing action is induced by the conduct of the defendant it cannot be availed of by him as a defense." (*Atwater*, *supra*, 41 Cal.4th at p. 233, internal quotation marks omitted.)

Where the Legislature intends to foreclose equitable estoppel, it may so state. (*Atwater*, *supra*, 41 Cal.4th at p. 234.) If the Legislature has not abrogated equitable estoppel, the statutory time limit is not absolute. (*Id.* at pp. 234-235.) "[E]quitable estoppel is available even where the limitations statute at issue expressly

precludes equitable tolling." (*Lantzy*, *supra*, 31 Cal.4th at pp. 383-384; see also *McMackin v. Ehrheart* (2011) 194 Cal.App.4th 128, 139-142 [equitable estoppel applicable to statute of limitations for decedent's promise, stating period "shall not be tolled or extended for any reason"]; *Battuello*, *supra*, 64 Cal.App.4th at pp. 847-848 [same language]; *Leasequip, Inc. v. Dapeer* (2002) 103 Cal.App.4th 394, 405-407 [same where legal malpractice statute of limitations provides "in no event shall the time" exceed four years].)

As this Court explained in *Lantzy*, "Equitable tolling and equitable estoppel are distinct doctrines. Tolling, strictly speaking, is concerned with the point at which the limitations period begins to run and with the circumstances in which the running of the limitations period may be suspended...." (31 Cal.4th at p. 383; see also Evid. Code, § 623.) "Equitable estoppel, however, ... comes into play only after the limitations period has run and addresses ... the circumstances in which a party will be estopped from asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period." (*Ibid.*) Equitable estoppel "is wholly independent of the limitations period itself and takes its life ... from the equitable principle that no man [may] profit from his own wrongdoing in a court of justice." (*Ibid.*)

In *Lantzy*, this Court set forth the equitable estoppel elements: "An estoppel may arise although there was no designed fraud on the part of the person sought to be estopped. To create an equitable estoppel, it is enough if the party has been induced to

refrain from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss...." (31 Cal.4th at p. 384.) Thus, "[w]here the delay in commencing action is induced by the conduct of the defendant it cannot be availed of by him as a defense." (*Ibid.*) Equitable estoppel is established where a plaintiff actually and reasonably relies on the defendant's conduct. (*Id.* at p. 385.)

2. Section 1288.2's 100-Day Time Limit Is Subject To Equitable Estoppel

Until the Opinion, no case has held that a court was foreclosed from exercising its inherent power to afford equitable relief from section 1288.2's 100-day time limit. (Opn. 20.) And this Court has never decided the issue. Although two Court of Appeal decisions have loosely used the word "jurisdictional" when referring to sections 1288 and 1288.2 (Opn. 17, citing *Santa Monica College*, *supra*, 243 Cal.App.4th at pp. 544-545; *Abers*, *supra*, 217 Cal.App.4th at p. 1203, 1211), *Santa Monica College* is by the same division and did not address equitable relief. And *Abers* considered equitable relief on the merits, although it determined the trial court had not abused its discretion in denying relief based on case-specific facts. (217 Cal.App.4th at pp. 1208-1210.)

Indeed, in addition to *Abers*, every Court of Appeal confronted with the question has decided equitable relief from the 100-day time limit on the merits. (*Coordinated*, *supra*, 238 Cal.App.2d at pp. 318-320 [court has discretion to order equitable relief from section 1288.2 but did not abuse discretion in denying

relief]; *DeMello*, *supra*, 36 Cal.App.3d at pp. 84-85 [court may grant relief from section 1288.2 under section 473 or inherent equitable power to afford relief for extrinsic fraud or mistake]; *So. Cal. Pipe*, *supra*, 126 Cal.App.3d at p. 541 [applied equity to prevent unfairness and provide relief from section 1288.2]; *Elden*, *supra*, 53 Cal.App.4th at p. 1512 [section 473 could provide relief from 100-day rule but section 473 motion itself was untimely]; *Eternity Investments*, *supra*, 151 Cal.App.4th at p. 746, internal citations omitted ["Of course, a party with a reasonable excuse for failing to comply with the 100-day time limit may obtain relief in a trial court under section 473, subdivision (b)…. [and] a trial court may exercise its equitable power to grant relief if the deadline expires due to extrinsic mistake or fraud."]; see also *Lovret*, *supra*, 22 Cal.App.3d at pp. 855-856 [section 1288.2's provisions waivable]; *Trabuco*, *supra*, 96 Cal.App.4th at p. 1192, fn. 10 [section 1288.2 may be forfeited on appeal by failure to raise in trial court]; *Shepherd*, *supra*, 185 Cal.App.3d at p. 993 [100-day time limit tolled by trial de novo provisions of mandatory-fee-arbitration rules].)

This Court should grant review to determine whether section 1288.2 is subject to equitable estoppel. No statutory language prohibits equitable estoppel from applying to section 1288.2's time limit. Section 1288.2 states only that a response requesting an arbitration award be vacated "shall be filed and served not later than 100 days after the date of service of a signed copy of the award."

Additionally, section 1288.2 was enacted in 1961 (Stats.

1961, Ch. 461) and has not been amended, despite numerous appellate decisions indicating equitable relief from the 100-day time limit is available. (*Coordinated*, *supra*, 238 Cal.App.2d at pp. 318-320; *DeMello*, *supra*, 36 Cal.App.3d at pp. 84-85; *So. Cal. Pipe*, *supra*, 126 Cal.App.3d at p. 541; *Elden*, *supra*, 53 Cal.App.4th at p. 1512; *Eternity Investments, supra*, 151 Cal.App.4th at p. 746; *Lovret*, *supra*, 22 Cal.App.3d at p. 856; *Trabuco*, *supra*, 96 Cal.App.4th at p. 1192, fn. 10; *Shepherd*, *supra*, 185 Cal.App.3d at p. 993; see also *Saint Francis*, *supra*, 9 Cal.5th at p. 723.)

A court, therefore, retains inherent power to relieve a party from requesting an arbitration award be vacated after 100 days. (*Humes*, *supra*, 174 Cal.App.3d at p. 500.) Thus, noncompliance with section 1288.2's 100-day time limit is subject to equitable relief. (*Id*. at pp. 499-500.)

3. Under The Undisputed Facts, LFG Is Equitably Estopped From Asserting Section 1288.2's Time Limit

Here, the equitable estoppel facts are undisputed. After LFG filed its Petition to Confirm, Key's counsel informed LFG's counsel he intended to file a Petition to Vacate and request vacatur in Key's response. (Opn. 5-6; 9 AA 4249-4250.) Counsel agreed in writing they would obtain the same hearing date for LFG's Petition to Confirm and Key's Petition to Vacate. (Opn. 6.) Counsel also agreed in writing they would set the briefing schedule for the two petitions from the same hearing date, they would utilize the general motion briefing schedule as the agreed schedule, and the agreed schedule would take the place of the arbitration deadlines. (Opn. 6; 9

AA 4249-4259, 4272-4276.) LFG agreed that Key did not need to file her Petition to Vacate until a hearing date was set for LFG's Petition to Confirm. (9 AA 4251-4254, 4265-4267, 4275-4276.)

Key's counsel was induced to refrain from filing Key's Petition to Vacate and response to LFG's Petition to Confirm within 100 days of the award by LFG's conduct in agreeing (1) to concurrent hearing dates for the two petitions, (2) to a briefing schedule for the Petition to Vacate, responses to the petitions, and replies based on that hearing date, (3) to extend the statutory deadlines, and (4) to select the February 20 hearing date. As such, delay in filing Key's response was induced by LFG. LFG could not then avail itself of the 100-day time limit as a defense. (See *Lantzy*, *supra*, 31 Cal.4th at p. 384.) Key actually and reasonably relied on LFG's conduct and LFG is equitably estopped from asserting the 100-day time limit. (*Id*. at p. 385.)

The Court should grant review to resolve the conflicts and confirm equitable estoppel's applicability to section 1288.2.

C. Review Is Warranted Because The Opinion Conflicts With This Court's Precedents And Court Of Appeal Decisions Prohibiting Confirmation Of Arbitration Awards Violating Public Policy Or Contravening Unwaivable Statutory Rights

The arbitration award on its face violates the express public policy of the Financing Law "to protect borrowers against unfair practices by some lenders" (Fin. Code, § 22001, subd. (a)(4)), and contravenes Key's unwaivable statutory rights to a loan compliant with the statute (*Brack v. Omni Loan, Co. Ltd.* (2008) 164

Cal.App.4th 1312, 1327). The arbitrators found LFG's loan to Key was a consumer loan that included compound interest and servicing fees prohibited by the Financing Law. (1 AA 113, 115-116; see Fin. Code, § 22309 [impermissible compound interest], § 22306 [impermissible service fees].) Where a lender wrongfully charges compound interest or servicing fees, the Financing Law imposes mandatory "Consumer Loan Penalties" (Fin. Code, § 22750 et seq.) that *cannot* be waived.

Loan agreements violating the Financing Law are void, precluding compensation to the lender. (Fin. Code, § 22750, subd. (a) ["If any amount other than, or in excess of, the charges permitted by this division is willfully charged, contracted for, or received, the contract of loan is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction."].) Not only is such a loan agreement void, it could subject a lender to other criminal and civil penalties and loss of its license. (Fin. Code, §§ 22713-22714, 22753.)

Because the Loan Agreement is void under Financial Code section 22750, subdivision (a), as violating public policy and contravening Key's unwaivable statutory rights, it is an unenforceable illegal contract and the award enforcing it must be vacated. (*Brown v. TGS Management Co., LLC* (2020) 57 Cal.App.5th 303, 318-319; see also *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 31-32; *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 106-107; *Pearson Dental Supplies, Inc. v. Superior Court* (2010) 48 Cal.4th 665, 676;

Cable Connection, Inc. v. DIRECTV, Inc. (2008) 44 Cal.4th 1334, 1353, fn.14.)

Here, the Opinion held the award enforcing LFG's void and illegal loan agreement must be confirmed because Key missed section 1288.2's purportedly jurisdictional deadline. (Mod. 2.) In so holding, the Opinion conflicts with this Court's decision in *Loving*, *supra*, 33 Cal.2d at pp. 607, 609, 611-612, and with the Court of Appeal's decision in *South Bay*, *supra*, 220 Cal.App.3d at pp. 1080-1081 [illegality of award may be raised although response to petition to confirm requesting vacatur not filed within 100 days].

Decades ago, this Court unequivocally held that void and illegal contracts are not enforceable in court: "[I]t has been repeatedly declared in this state that 'a contract made contrary to the terms of a law designed for the protection of the public and prescribing a penalty for violation thereof is illegal and void, and no action may be brought to enforce such contract.'" (*Loving*, *supra*, 33 Cal.2d at pp. 607, 609, 611-612 [reversing order confirming award enforcing void contract in violation of Bus. & Prof. Code, § 7031].)

The same rule applies to requests to confirm arbitration awards where a party seeks to use court processes to obtain confirmation of an award enforcing an illegal contract: "A claim that cannot be made the basis of a suit cannot be made the basis of arbitration. The mere submission of an illegal matter to arbitrators and reducing it to an award does not purge it of its illegality.'" (*Loving*, *supra*, 33 Cal.2d at pp. 610-611.) "It seems clear that the power of the arbitrator to determine the rights of the parties is

dependent upon the existence of a valid contract under which rights might arise." (*Id*. at p. 610.) If a party seeks to confirm an illegal contract, the court should deny confirmation and vacate the award. (*Id*. at pp. 610-611.)

In other words, arbitration does not transform enforcement of an illegal contract into an arbitrator's mere legal error confirmable by a court. "'The laws in support of a general public policy and in enforcement of public morality cannot be set aside by arbitration, and neither will persons with a claim forbidden by the laws be permitted to enforce it through the transforming process of arbitration.' To hold otherwise would be tantamount to giving judicial approval to acts which are declared unlawful by statute." (*Loving*, *supra*, 33 Cal.2d at pp. 611-612, internal citations omitted.) "If this were not the rule, courts would be compelled to stultify themselves by lending their aid to enforcement of contracts which have been declared by statute to be illegal and void." (*Id*. at p. 614.)

Under the law, a court is not authorized to confirm an arbitration award enforcing an illegal contract. "[C]ourts may, indeed must, vacate an arbitrator's award when it violates a party's statutory rights or otherwise violates a well-defined public policy." (*Dept. of Personnel Admin. v. Cal. Correctional Peace Officers Assn.* (2007) 152 Cal.App.4th 1193, 1200; *Bd. of Ed. v. Round Valley Teachers Assn.* (1996) 13 Cal.4th 269, 272; *Jordan v. Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 443; *City of Palo Alto v. Service Employees Internat. Union* (1999) 77 Cal.App.4th 327, 330.) "[I]t

would violate public policy to allow a party to do through arbitration what it cannot do through litigation." (*Lindenstadt v. Staff Builders, Inc.* (1997) 55 Cal.App.4th 882, 892.)

A court may not confirm an arbitration award in violation of public policy regardless of whether all procedural requirements to request vacatur are satisfied. If the contract upon which an award is based is void, it "cannot be ratified either by right, by conduct or by stipulated judgment." (*South Bay*, *supra*, 220 Cal.App.3d at p. 1080.) "Where a contract is void as against public policy, no rights 'can arise and no power can be conferred upon the arbitrator to determine such nonexistent rights.'" (*Ibid.*) "In sum, the illegality [appellant] has raised, were it to be established, would constitute a defect in the arbitrator's award which would not be waived by failure to petition to vacate the award within 100 days as required by Code of Civil Procedure section 1288. Rather, under *Loving & Evans v. Blick*, [appellant] was free to raise the alleged violation of [the statute] in response to [respondent's] petition to confirm." (*Id.* at p. 1081.)[10]

Confirming an award enforcing an illegal contract solely because of non-compliance with section 1288.2's 100-day time limit causes the confirmation hearing to proceed as an uncontested matter

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10 See also *United Firefighters of Los Angeles v. City of Los Angeles* (1991) 231 Cal.App.3d 1576, 1581-1582 [appellant may challenge arbitrator's jurisdiction to make award despite failure to timely request vacatur in trial court]; *Berg v. Traylor* (2007) 148 Cal.App.4th 809, 817 [minor entitled to disaffirm arbitration award after deadline to seek vacatur].)

and requires enforcement of the illegal contract by default judgment. (*Humes*, *supra*, 174 Cal.App.3d at p. 498.) This the courts cannot permit. Such a default judgment would be unjust, and must be supplanted by equity. (*Olivera v. Grace* (1942) 19 Cal.2d 570, 578-579.) And if Key's statutory rights are unwaivable under the Financing Law, they certainly cannot be waived by any technical failure to comply with section 1288.2's 100-day time limit. Rather, the Opinion provides lenders with incentives to violate the Financing Law.

This Court should grant review to resolve these conflicts and re-affirm its holding in *Loving*, that a court may not confirm an arbitration award that violates fundamental public policy or contravenes unwaivable statutory rights.

D. The Court Should Grant Review To Determine A Response To A Petition To Confirm An Arbitration Award Requesting The Award Be Vacated, In Compliance With Section 1290.6, Is Timely Regardless Of Whether It Is Filed More Than 100 Days After Service Of The Award

The Court also should grant review to determine whether section 1288.2's 100-day time limit has any applicability where a petition to confirm is filed within 100 days of service of the award, and a response requesting vacatur is timely filed under section 1290.6. No prior case has so held. (*Douglass*, *supra*, 20 Cal.App.5th at p. 383 [petition to confirm filed more than 100 days after award and response filed more than 10 days after petition]; *Eternity Investments*, *supra*, 151 Cal.App.4th at p. 746 [petition to confirm not

filed within 100 days]; *Soni v. Simplesayers, Inc.* (2019) 42 Cal.App.5th 1071, 1081-1082 [response not filed within 10 days of petition to confirm]; *Rivera v. Shivers* (2020) 54 Cal.App.5th 82, 94 [response not filed within 10 days of petition to confirm].)

In fact, two cases contemplate such a response being timely. (*South Bay*, *supra*, 220 Cal.App.3d at pp. 1078-1084 [rejecting untimeliness where response to petition to confirm filed more than 100 days after award]; *Santa Monica College*, *supra*, 243 Cal.App.4th at p. 544 [party seeking vacatur of award must (1) serve and file petition to vacate within 100 days of the award or (2) serve and file response to petition to confirm within 10 days of filing the petition].)

Other cases have stated that section 1290.6's time limit replaces the 100-day time limit if the petition to confirm is filed within 100 days. "If a party requests confirmation, within the 100 days specified in section 1288, a response may be filed seeking vacation of the award. *Any such response must, however, be filed within 10 days of the date the petition to confirm is served.* (Code Civ. Proc., § 1290.6.) Because appellant filed his response within '10 days' … appellant's response was timely *irrespective of the 100[-]day deadline, which case law establishes did not apply here*." (*Oaktree*, *supra,* 182 Cal.App.4th at p. 66, emphasis added.)

In other words, "while a petition to confirm an award may be served and filed within four years, the petition to vacate or correct an award must be served and filed within 100 days after the service of the award on the petitioner. The same 100-day limitation

applies when vacation or correction of the award is sought by response…." (*DeMello*, *supra*, 36 Cal.App.3d at p. 83.) "To this latter rule there is only one exception. When the party petitions the court to confirm the award before the expiration of the 100-day period, respondent may seek vacation or correction of the award by way of response only if he serves and files his response within 10 days after the service of the petition (§ 1290.6)." (*Ibid.*; see also *Lovret*, *supra*, 22 Cal.App.3d at p. 856 ["where a petition for confirmation has been filed and the requisite notice of hearing served and filed, the time for filing a response is governed by section 1290.6 and not section 1288.2"]; *Coordinated*, *supra*, 238 Cal.App.2d at pp. 316-317 ["Thus, section 1290.6 limits the 100-day provision found in section 1288.2.… [T]he 100-day limit applies only when the other party to the arbitration does not file a petition to confirm the award."].)

The Court should grant review to determine whether a response requesting vacatur of an arbitration award is timely if the other party files a petition to confirm within 100 days of the award's service and the party requesting vacatur responds timely pursuant to section 1290.6.

V.

CONCLUSION

For these reasons, the Court should grant review.

DATED: September 8, 2021 GRIGNON LAW FIRM LLP

By /s/ Margaret M. Grignon
Margaret M. Grignon
Anne M. Grignon
Attorneys for Defendant,
Respondent and Petitioner
Sarah Plott Key

CERTIFICATE OF WORD COUNT
CRC Rule 8.504(d)(1)

On behalf of Sarah Plott Key, I, Margaret M. Grignon, certify that in compliance with California Rules of Court, rule 8.504(d)(1), the above brief is comprised of 8,097 words. To verify this number, I employed the word count feature made part of the Microsoft Word processing program used by my firm's offices.

DATED: September 8, 2021 /s/ Margaret M. Grignon
Margaret M. Grignon

EXHIBIT A

(Order Modifying Opinion and Denying Rehearing with Unmodified Opinion attached)

Filed 8/19/21 (unmodified opn. attached)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

LAW FINANCE GROUP, LLC, Plaintiff and Appellant, v. SARAH PLOTT KEY, Defendant and Respondent.	B305790 (Los Angeles County Super. Ct. No. 19STCP04251) ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on July 30, 2021, and reported in the Official Reports (___ Cal.App.5th ___ [2021 Cal.App. Lexis 625]) be modified in the following particulars:

1. On page *17, first full paragraph, after the quoted phrase "cannot be relied upon to excuse a party's failure to comply with a jurisdictional statute of limitations," add as footnote 8 the following footnote, which will require renumbering the subsequent footnote:

8 Our opinion in *Santa Monica* also forecloses another argument presented for the first time in Key's petition for rehearing. Key argues that she could raise her challenges to the arbitrators' ruling in response to LFG's petition to confirm whether or not she filed a timely request to vacate because the Loan Agreement was an illegal contract that the courts may not enforce. Of course, the alleged illegality of the Loan Agreement under the governing statutes was an issue in the arbitration, the results of which Key sought to challenge in court. In *Santa Monica*, we rejected the argument that a trial court is empowered "to entertain a challenge to an arbitration award based on the award's illegality, even when the challenging party missed the 100-day filing and service deadline." (*Santa Monica*, *supra*, 243 Cal.App.4th at p. 546.) Specifically, we declined to construe the holding in *South Bay Radiology Medical Associates v. Asher* (1990) 220 Cal.App.3d 1074 as "authorizing judicial review of untimely challenges to arbitration awards whenever those challengers assert that the award contravenes a statute." (*Santa Monica*, at p. 546.) We explained that "to do so would create an exception that would swallow the general rule hinging jurisdiction on the timeliness of the challenge." (*Ibid*.) That same reasoning applies here.

2. On page *21, at the end of the last paragraph of part 2 of the Discussion, add as footnote 10 the following two-paragraph footnote:

10 In light of this analysis, Key's reliance on *Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710 (*Saint Francis*) is misplaced. In that case, which Key cited for the first time in her petition for rehearing, our Supreme Court held that, absent statutory language or a "manifest policy" to the contrary, "we presume that statutory deadlines are subject to equitable tolling." (*Id.* at p. 720.) Nothing in *Saint Francis* undermines our conclusion that equitable relief is unavailable to Key here, even assuming (again, without deciding), that such relief is not foreclosed by the statutory scheme.

In *Saint Francis,* the court explained that, where equitable tolling is available under a statute, it is a "narrow remedy that applies to toll statutes of limitations only 'occasionally and in special situations.' " (*Saint Francis, supra,* 9 Cal.5th at p. 724, quoting *Addison v. State* (1978) 21 Cal.3d 313, 316.) The remedy applies only when three elements are present: (1) timely notice; (2) lack of prejudice to the defendant; and (3) reasonable and good faith conduct on the part of the plaintiff. (*Saint Francis,* at p. 724.) The third element has both a subjective and an objective component: "A plaintiff's conduct must be objectively reasonable *and* subjectively in good faith." (*Id.* at p. 729, italics added.) For the reasons discussed above, Key's claimed reliance on LFG's purported agreement to extend the 100-day deadline was not objectively reasonable because LFG did not have the authority to extend that deadline. This conclusion is unrelated to the court's authority to provide equitable relief. Nothing in *Saint Francis* suggests that a court's authority to excuse late filings in appropriate circumstances under the doctrine of equitable tolling means that parties may simply agree to extend jurisdictional deadlines.

There is no change in the judgment.

Key's petition for rehearing is denied.

CERTIFIED FOR PUBLICATION.

LUI, P. J. ASHMANN-GERST, J. HOFFSTADT, J.

Filed 7/30/21 (unmodified opinion)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

LAW FINANCE GROUP, LLC, Plaintiff and Appellant, v. SARAH PLOTT KEY, Defendant and Respondent.	B305790 (Los Angeles County Super. Ct. No. 19STCP04251)

APPEAL from an order of the Superior Court of Los Angeles County. Rafael A. Ongkeko, Judge. Reversed and remanded with directions.

Eisner, Christopher L. Frost, Taylor S. Simeone; Greines, Martin, Stein & Richland, Cynthia E. Tobisman and Alana H. Rotter for Plaintiff and Appellant.

Grignon Law Firm, Margaret M. Grignon and Anne M. Grignon for Defendant and Respondent.

Law Finance Group (LFG) appeals from an order of the superior court denying its motion to confirm an arbitration award against respondent Sarah Plott Key. Key borrowed $2.4 million from LFG to help finance a probate action alleging that Key's sister, Elizabeth Plott Tyler, exercised undue influence over their mother in orchestrating changes to a trust (the Probate Action). Key ultimately prevailed in that action, winning the right to a third of the parents' estate. This court previously affirmed the order of the probate court awarding that relief. (See *Key v. Tyler* (June 27, 2016, B258055) [nonpub. opn.] [2016 Cal.App.Unpub.LEXIS 4757].)[1]

Although Key repaid the principal that she borrowed from LFG, she refused to pay any interest, claiming that the terms of the note violated the California Financing Law (Fin. Code, § 22000 et seq.). LFG demanded binding arbitration under the loan agreement.

A panel of three arbitrators found that some of the loan terms were invalid but otherwise enforced the loan agreement, awarding LFG $778,351 in simple interest along with attorney fees and costs. The panel issued a modified award on September 18, 2019.

Less than two weeks later, on October 1, 2019, LFG filed a petition in superior court to confirm the award. Nearly four months after that, and 130 days after service of the modified

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[1] Litigation among the sisters continues. In *Key v. Tyler* (2019) 34 Cal.App.5th 505, we considered an anti-SLAPP motion filed in a probate proceeding to enforce a no contest clause in the parents' trust instrument. Another currently pending appeal (B298739) concerns issues arising from a petition by Key alleging that Tyler breached her duties as trustee of the trust.

arbitration award, Key filed a motion to vacate the award. Her motion claimed that the arbitrators exceeded their authority by finding that the loan from LFG was a consumer loan but nevertheless enforcing some of the terms of the loan agreement rather than finding it void. Nine days later, Key filed a response to LFG's petition raising the same arguments.

The superior court agreed with Key and vacated the arbitration award.

On appeal, LFG argues that the trial court should have independently considered the evidence underlying the arbitrators' conclusion that the litigation loan it made to Key was a consumer loan rather than a commercial loan. LFG also argues that Key's requests to vacate the arbitration award were untimely. We do not reach the substantive issue because we agree with LFG that Key did not timely request that the arbitration award be vacated.

Code of Civil Procedure section 1288 requires that a petition to vacate an arbitration award must be filed and served not later than 100 days after service of the award.[2] Section 1288.2 imposes the same deadline on a response to a petition to confirm an arbitration award when the response requests that the award be vacated. These deadlines are jurisdictional. (*Santa Monica College Faculty Assn. v. Santa Monica Community College Dist.* (2015) 243 Cal.App.4th 538, 544–545 (*Santa Monica*); *Douglass v. Serenivision, Inc.* (2018) 20 Cal.App.5th 376, 384–385 (*Douglass*).) Neither Key's petition to vacate the arbitration award nor her request to vacate the award in her

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[2] Subsequent undesignated statutory references are to the Code of Civil Procedure.

response to LFG's petition to confirm were filed within the 100-day limit. Thus, the trial court lacked jurisdiction to consider Key's request to vacate, and the arbitration award must be confirmed.

BACKGROUND

1. The Loan Agreement

In 2013, Key needed money to pay her ongoing legal fees in the Probate Action. Her counsel in that action referred her to LFG.

Key borrowed approximately $2.4 million from LFG pursuant to a Loan and Security Agreement (Loan Agreement) that permitted her to borrow up to a maximum of $3 million. In addition to repayment of the principal, the Loan Agreement required Key to pay interest at a rate of 1.53 percent per month, compounded monthly, along with an origination fee (calculated as 2 percent of the maximum loan availability), a due diligence fee, and a servicing fee (calculated as 0.25 percent of the total amount that Key owed at the end of each month). Absent a default, LFG's right to repayment was limited to Key's recovery in the Probate Action and her interest in the trust that was the subject of that action.

The Loan Agreement contained an arbitration provision. That provision required that "any dispute between the Parties arising out of the transaction provided for in this Agreement" would be decided by a three-member arbitration panel under the Commercial Arbitration Rules of the American Arbitration Association. The provision also entitled the prevailing party to attorney fees.

2. The Arbitration

Key prevailed in the Probate Action, winning the right to a third of her parents' estate which, at the time, was equivalent to about $20 million. She repaid the principal amount of the $2.4 million loan from LFG, but did not pay any interest or other fees.

LFG demanded arbitration, seeking about $1.45 million that it claimed Key still owed under the Loan Agreement. In defense, Key argued that the Loan Agreement was unconscionable and that the various fees in the agreement violated provisions of the California Financing Law applicable to consumer loans.

On August 6, 2019, the three-arbitrator panel served its final arbitration award. At the request of the parties, the arbitrators later modified the award to reduce the amount of costs awarded to LFG. The modification was served on September 19, 2019.

The arbitrators found that the Loan Agreement was binding and enforceable. However, the arbitrators also found that the loan from LFG was a consumer loan and that the provisions for compounded interest and servicing fees were therefore unlawful under the California Financing Law. The arbitrators disregarded those provisions and awarded damages consisting of simple interest in the amount of $778,351. The arbitrators awarded LFG costs and attorney fees in the amount of $838,864 as the prevailing party.

3. LFG's Petition to Confirm the Arbitration Award and Key's Requests to Vacate

LFG filed a petition to confirm the arbitration award on October 1, 2019, less than two weeks after the modified arbitration award was served. The parties then communicated

about coordinating the timing for the hearing on LFG's petition and for the petition to vacate that Key intended to file.

Key's counsel agreed to accept service of LFG's petition and to file a challenge under section 170.6 to the assigned judge. The parties further agreed that "the 10 day time period for filing a Petition to Vacate will not apply and that once the new judge is appointed, and we can find out when a hearing can be set pursuant to that judge's calendar, we will work backwards to come up with a briefing schedule for the Petition to Confirm and the Petition to Vacate that we will be filing." Key's counsel confirmed this agreement by e-mail on October 10, 2019.

Over the next few months, the parties discussed setting a hearing date, and finally agreed on a hearing date of February 20, 2020. On December 12, 2019, counsel for LFG sent an e-mail to Key's counsel asking, "Do you know when your substantive petition is due? I know we talked conceptually about timelines way back. I just don't know with the hearing date set for 2/20 whether we need to revisit that or, just go according to standard timing." Key apparently did not respond to that e-mail.

The parties then communicated further about the details of filing and service. They agreed to accept electronic service, and Key's counsel informed LFG's counsel that Key intended to serve her petition to vacate on January 27, 2020.

As promised, Key filed her petition to vacate with supporting documents on January 27, 2020 (130 days after service of the modified arbitration award). On February 5, 2020, Key filed her response to LFG's petition to confirm. Key's response also requested that the arbitration award be vacated.

Both Key's petition to vacate and her response to LFG's petition to confirm argued that the arbitrators exceeded their

powers by finding that the loan from LFG was a consumer loan while failing to void the loan (or at least cancel all interest and other charges) under Financial Code sections 22750–22752.

4. The Trial Court's Ruling

In a written order, the trial court ruled that Key's petition to vacate was untimely under the 100-day deadline of section 1288, which the court concluded was jurisdictional. However, the court also ruled that Key's request to vacate in her opposition to LFG's petition was timely because it complied with the time period to respond to petitions to confirm specified in section 1290.6. The court further found that, "[i]f there is a need to extend the time to the actual filing date to enable the court to decide the petition on its merits, the court finds good cause to grant such an extension." The trial court's order did not mention section 1288.2.

On the merits, the trial court found that "the arbitrators exceeded their powers by issuing an award that violates a party's unwaivable statutory rights or that contravenes an explicit legislative expression of public policy." The court cited Financial Code section 22750, subdivision (a), which provides that, "[i]f any amount other than, or in excess of, the charges permitted by this division is willfully charged, contracted for, or received, the contract of loan is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction."

DISCUSSION

1. The Governing Statutes Require that a Request to Vacate an Arbitration Award Be Served and Filed Within 100 Days of Service of the Award

Section 1288 governs the timing of both petitions to confirm and petitions to vacate arbitration awards. That section provides that a party seeking to confirm an award may file a petition any time within four years after service of the award. However, a party who wishes to vacate an award must act much more quickly. "A petition to vacate an award or to correct an award shall be served and filed not later than 100 days after the date of service of a signed copy of the award on the petitioner." (§ 1288.)

A request to vacate an arbitration award may be included in a party's response to a petition to confirm. (§ 1285.2.) However, such a request is also subject to the 100-day rule. Under section 1288.2, "[a] response requesting that an award be vacated or that an award be corrected shall be served and filed not later than 100 days after the date of service of a signed copy of the award."

Sections 1288 and 1288.2 appear in title 9 of the Code of Civil Procedure (which governs arbitration) under an article entitled, "Limitations of Time." Together, the sections establish a clear and certain 100-day deadline for any request to vacate an arbitration award.

Title 9 also contains a separate chapter entitled, "General Provisions Relating to Judicial Proceedings," which, among other things, addresses the procedures applicable to petitions and responses. Section 1290.6 in that chapter provides that a response to a petition must be served and filed "within 10 days after service of the petition" (or within 30 days if the petition is

served by mail outside the state). It also provides that the "time provided in this section for serving and filing a response may be extended by an agreement in writing between the parties to the court proceeding or, for good cause, by order of the court."

Key argues that when, as here, a petition to confirm an arbitration award is filed within 100 days of service of the award, the time limit for filing a response to the petition requesting that the award be vacated is governed by section 1290.6 rather than by section 1288.2. Thus, according to Key, if a petition to confirm is filed within 100 days of service of the arbitration award, a request to vacate the award is timely if it complies with the 10-day requirement of section 1290.6 (as modified by any extensions), even if the request to vacate is filed more than 100 days after service of the arbitration award.

This argument requires us to interpret the governing statutes. We therefore review the issue de novo. (*Apple, Inc. v. Superior Court* (2013) 56 Cal.4th 128, 135 (*Apple*); *Santa Monica, supra,* 243 Cal.App.4th at p. 544.)

In analyzing the statutes, we are guided by well-known principles. Our analysis starts with the language of the statutes, giving the words their usual and ordinary meaning. (*Apple, supra,* 56 Cal.4th at p. 135.) If statutory language is not ambiguous, "we presume the lawmakers meant what they said, and the plain meaning of the language governs." (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) The words of a statute are "construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) "It is a basic canon of statutory construction that statutes in pari materia should be construed together so that all parts of the statutory scheme are

given effect." (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1090–1091.)

Key's interpretation of the governing statutes founders on these principles.

Key's claim that a request to vacate an arbitration award may be filed more than 100 days after service of the award contradicts the plain language of section 1288.2. That section states categorically that a response requesting that an award be vacated "*shall be*" filed and served "not later than 100 days" after service of the award. (§ 1288.2, italics added.) Key's interpretation would require reading an exception into this rule that applies when a petition to confirm is filed within 100 days after service of the arbitration award. We decline to create such an exception that does not exist in the statutory language.

In *Douglass,* this court rejected the argument that a response requesting vacation of an arbitration award filed after the 100-day period has expired is nevertheless timely if it complies with the time period for filing a response to a petition. Citing the plain language of section 1288.2, we held that a response containing a request to vacate is timely only if it is served and filed not later than 100 days after service of the award. (*Douglass, supra,* 20 Cal.App.5th at p. 385.) We explained that, "[i]f the rule were otherwise, a party who missed the initial 100-day deadline would be able to resurrect any otherwise time-barred challenge by filing a timely response to a petition to confirm." (*Ibid.*) In light of the four-year time period to file such a petition, such a rule would "effectively turn the statute's 100-day deadline into a 1,560-day deadline." (*Ibid.*) We further explained that " '[i]t is not for us to rewrite . . .

statute[s].' " (*Ibid.*, quoting *J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 657, fn.7.)[3]

The same reasoning applies here. Key's interpretation of section 1288.2 would theoretically limit the outside range of timely responses by permitting a request to vacate after the 100-day period only if the request responds to a petition to confirm that was filed within 100 days.[4] But nothing in the language of the section supports such a specific exception. Rather, sections

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[3] The court in *Eternity Investments, Inc. v. Brown* (2007) 151 Cal.App.4th 739 (*Eternity Investments*) explained the reason for the disparity between the four-year deadline for a petition to confirm and the 100-day deadline for a petition to vacate. A petition to vacate or correct an arbitration award typically requires factual determinations. "Consequently, a challenge must be made soon after the award is served—within 100 days—while the evidence is fresh and witnesses are available. But absent a challenge, there may be no need for judicial intervention. The award is treated as a contract (§ 1287.6), and the prevailing party has a substantially longer period—up to four years (similar to the four-year statute of limitations for breach of contract (§ 337, subd. 1)—to obtain satisfaction of the award before resorting to the courts. In the event of satisfaction, judicial relief will not be necessary, conserving court resources. If, however, the award is not satisfied, the prevailing party may convert it into an enforceable judgment by way of a petition to confirm. (§§ 1287.4, 1288.) And confirmation will be a simple process absent a prompt, timely challenge to the award." (*Eternity Investments*, at p. 746.)

[4] However, as explained below, the outside limit of timely responses would nevertheless be uncertain and beyond the court's control because of the provision in section 1290.6 permitting parties to extend the response date by agreement.

1288.2 and 1288 together establish a clear deadline of 100 days after which a request to vacate is untimely.

Key's interpretation is also inconsistent with the broader statutory scheme. Section 1288.2 establishes a time limitation for filing a response to a petition to confirm that includes a request to vacate. Section 1290.6 is one of a number of sections in a separate chapter that governs the procedure for adjudicating petitions relating to arbitration awards. There is nothing in the statutory scheme suggesting that the Legislature intended the procedural rule in section 1290.6 governing all responses to take precedence over the firm time limitation in section 1288.2 applicable to requests to vacate.

Moreover, we must give effect to both statutes if possible. (§ 1858; *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 986.) The two sections may easily be read together to provide that, when a petition to confirm an arbitration award is filed, a response requesting that the award be vacated must be filed within 10 days of the petition (plus any extensions), and in any event no later than 100 days after service of the award. A response that fails to comply with either deadline is untimely.

Courts have consistently applied the two statutes in this manner. As discussed above, this court and others have held that a request to vacate is untimely if filed beyond 100 days even if it responds to a petition to confirm. (See *Douglass, supra,* 20 Cal.App.5th at p. 385; *Soni v. Simplelayers, Inc.* (2019) 42 Cal.App.5th 1071, 1093; *Eternity Investments, supra,* 151 Cal.App.4th at pp. 743, 745–746.) And courts have held that a response requesting vacation that is filed within the 100-day deadline is nevertheless untimely if it fails to comply with the 10-day filing deadline of section 1290.6. (See *Rivera v. Shivers*

(2020) 54 Cal.App.5th 82, 93–94; *Coordinated Constr., Inc. v. Canoga Big "A", Inc.* (1965) 238 Cal.App.2d 313, 317 ["section 1290.6 limits the 100-day provision found in section 1288.2"]; *Oaktree Capital Management, L.P. v. Bernard* (2010) 182 Cal.App.4th 60, 66–68 (*Oaktree Capital*).)[5]

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[5] Key cites *Oaktree Capital* for the proposition that, when a petition to confirm is filed within 100 days of service of an arbitration award, "the 10-day rule trumps the 100-day limitations period." The opinion does not support such a broad reading.

In *Oaktree Capital,* the appellant argued that his request to vacate was timely because it was filed within 100 days of the arbitration award, even though there was a dispute about whether he had complied with the 10-day deadline under section 1290.6. (*Oaktree Capital, supra,* 182 Cal.App.4th at p. 66.) The court held that the appellant's response was timely because it was filed within 10 days of the arbitration award, "when one allows for the extra days for overnight mail and his temporary removal to federal court." (*Ibid.*) The court added that the response was therefore timely "irrespective of the 100-day deadline, which case law establishes did not apply here." (*Ibid.*) Because the appellant's petition in *Oaktree Capital* was filed within the 100-day deadline, the only deadline at issue was the 10-day deadline under section 1290.6. Fairly read in light of these facts, the court's statement that the 100-day deadline "did not apply" meant that the appellant's request was not timely simply because it was filed within 100 days of the arbitration award; rather, the relevant issue was whether the appellant had complied with the 10-day rule in section 1290.6. *Oaktree Capital* is therefore consistent with the rule that, when a party requests vacation of an arbitration award in response to a petition to confirm the award, the party's response must comply with *both* the 10-day deadline in section 1290.6 and the 100-day deadline in section 1288.2.

In contrast, Key's interpretation fails to give effect to the firm 100-day deadline in section 1288.2. Under Key's interpretation, a petition to confirm an arbitration award filed on day 99 would permit a timely response requesting vacation of the award on day 109. Further, by giving precedence to the time limits of section 1290.6 over section 1288.2 when a petition to confirm is filed within 100 days of the award, Key's interpretation would permit the parties to delay *indefinitely* a request to vacate simply by agreeing to do so.

Section 1290.6 permits the parties to extend the time for filing and serving a response to a petition by making an agreement in writing. Section 1288.2, which was enacted at the same time, contains no such extension provision. We presume that this omission was intentional. (*Walt Disney Parks & Resorts U.S., Inc. v. Superior Court* (2018) 21 Cal.App.5th 872, 879 [where a phrase is included in one provision of a statutory scheme but omitted from another provision, "we presume that the Legislature did not intend the language included in the first to be read into the second"]; *Hennigan v. United Pacific Ins. Co.* (1975) 53 Cal.App.3d 1, 8 ["The fact that a provision of a statute on a given subject is omitted from other statutes relating to a similar subject is indicative of a different legislative intent for each of the statutes"].) Key's interpretation therefore undermines the legislative scheme by permitting the parties to alter a deadline that the statutory language treats as firm.[6]

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[6] That is of course precisely what Key urges here. Although LFG filed its petition to confirm the arbitration award within weeks after it was served, Key did not file her response for months, well after the 100-day deadline had passed. She excuses

Our prior decision in *Santa Monica, supra*, 243 Cal.App.4th 538, is not to the contrary. Although in that case we stated that, "[a]s a general matter, a party seeking to vacate an arbitration award must *either* (1) file and serve a petition to vacate that award 'not later than 100 days after the date of service of a signed copy of the award' [citations], *or* (2) file and serve a timely response (that is, within 10 days) to the other party's petition to confirm that award, which seeks to vacate that award [citations]" (*id.* at p. 544, italics added), our use of the word "or" was not a holding that a response to a petition that also seeks to vacate an arbitration award is jurisdictionally proper as long as it is a timely response and irrespective of the 100-day deadline. That is because (1) the petition to vacate filed in *Santa Monica* was an affirmative petition (not a response) that was served more than 100 days after the award was served (*id*. at p. 454) and (2) the applicability of section 1288.2 was not at issue (and, indeed, section 1288.2 was never cited *at all*) (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 127 [" ' "cases are not authority for propositions not considered" ' "]).

2. Key's Late Filing Cannot Be Excused Under the Doctrines of Estoppel or Waiver

Key argues that LFG "expressly agreed in writing that the parties would not adhere to the statutory timeframes for arbitration proceedings, but instead would obtain a simultaneous hearing date for the competing petitions." She further claims that LFG knew that Key intended to file a timely petition to vacate and that she delayed doing so because of the parties'

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the delay on the ground that the parties agreed to a different deadline.

agreement. Key argues that, based on this conduct, LFG is equitably estopped from relying on the statutory 100-day filing deadline. Alternatively, she argues that LFG waived the right to assert that deadline.

We reject both arguments. Even assuming (without deciding) that there could be situations in which a party's failure to comply with the 100-day rule may be excused on equitable grounds, this is not one of them.

Key's estoppel and waiver arguments both depend upon the assumption that the parties could alter the 100-day deadline by agreement. But neither section 1288 nor section 1288.2 permits extension of the 100-day deadline through agreement of the parties. And, as discussed above, the provision in section 1290.6 permitting extension of the *10-day* response deadline cannot be read into the 100-day limitation in sections 1288 and 1288.2. Thus, even if Key believed that LFG had agreed to alter the 100-day deadline, she could not reasonably have relied on such an agreement in filing her response.[7]

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[7] The evidence of such an agreement is, at best, ambiguous. The record of the parties' correspondence shows that LFG *expressly* agreed on October 10, 2019, only to alter the *10-day* period to respond to LFG's petition to confirm, which was governed by section 1290.6. (While the confirming e-mail referred to the "10 day time period for filing a Petition to Vacate," that apparently meant a request to vacate in response to LFG's petition.) The parties communicated about coordinating a hearing date for both petitions, but a fixed hearing date did not preclude Key from *filing* a timely petition to vacate well in advance of the hearing. Based upon the correspondence record, it is certainly possible that LFG intended to assert the 100-day

Moreover, numerous cases treat the 100-day deadline as jurisdictional. For example, in *Santa Monica,* this court held that the trial court did not have the authority under section 473, subdivision (b) to excuse a late-filed petition to vacate because that section "cannot be relied upon to excuse a party's failure to comply with a jurisdictional statute of limitations." (*Santa Monica, supra,* 243 Cal.App.4th at p. 545; see also *Abers v. Rohrs* (2013) 217 Cal.App.4th 1199, 1203 (*Abers*) [the 100-day deadline "operates in the same manner as the deadline for filing an appeal, and the court loses jurisdiction to vacate the award if the petition is not timely served and filed"].)[8] Like section 1288,

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deadline all along while waiting to see if Key would miss it. However, that does not necessarily mean that LFG agreed to extend the 100-day deadline or intended to mislead Key about the existence of such an agreement. Indeed, LFG itself raised the issue of the due date for Key's petition to vacate well before the deadline had passed. When LFG's counsel asked Key's counsel by e-mail on December 12, 2019, "Do you know when your substantive petition is due," and suggested that the parties might need to "revisit" their agreement about "timelines," over two weeks remained to file a timely petition to vacate (100 days from September 19, 2019, was Saturday, December 28). As far as the record shows, after receiving that e-mail Key did not attempt to confirm any agreement concerning the 100-day deadline.

[8] A few cases suggest that relief may be granted under section 473 for late-filed petitions to vacate. (See *Eternity Investments, supra,* 151 Cal.App.4th at p. 746; *De Mello v. Souza* (1973) 36 Cal.App.3d 79, 84; *Elden v. Superior Court* (1997) 53 Cal.App.4th 1497, 1512.) However, none of those cases actually granted relief under section 473, and their statements are therefore arguably dicta. Moreover, as the court noted in *Abers,*

section 1288.2 imposes a strict 100-day deadline to file and serve a request to vacate. It is similarly jurisdictional.

The rule is firmly established that parties may not confer jurisdiction by agreement. (See *Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd.* (2020) 9 Cal.5th 125, 138–139 (*Rockefeller*) [" '[w]here the jurisdiction of the Court as to the *subject-matter* has been limited by the Constitution or the statute, the consent of the parties cannot confer jurisdiction' "], quoting *Gray v. Hawes* (1857) 8 Cal. 562, 568; *People v. Burhop* (2021) 65 Cal.App.5th 808, 813 [trial court loses jurisdiction over the subject matter of an appealed order, and "even the consent of the parties has been held ineffective to reinvest the trial court with jurisdiction" until the remittitur issues], quoting *In re Lukasik* (1951) 108 Cal.App.2d 438, 443; *Land v. Johnston* (1909) 156 Cal. 253, 254–255 ["the time within which a notice of appeal may be filed is fixed by law and cannot be enlarged by stipulation of the parties"].) Thus, parties may not simply waive the jurisdictional deadline in sections 1288 and 1288.2 by stipulation.

Key argues that the 100-day rule is not jurisdictional, but is like other filing deadlines that parties may expressly or impliedly waive. The cases she cites in support of that argument either do not stand for that proposition or are unpersuasive.

For example, Key cites *Abers* and *Southern Cal. Pipe Trades Dist. Council No. 16 v. Merritt* (1981) 126 Cal.App.3d 530

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the cases are not persuasive "for the simple reason that none of them makes any effort to persuade." (*Abers, supra,* 217 Cal.App.4th at p. 1212.) In any event, none of those cases suggests that the 100-day deadline can be changed by agreement.

(*So. Cal. Pipe Trades*) for the principle that a party may be equitably estopped from asserting the 100-day limitations period. But those cases both concerned questions of proper *service*, not a purported agreement to extend the 100-day deadline. In *So. Cal. Pipe Trades,* the court ruled that an individual was not a party to the arbitration and that it would therefore be "fundamentally unfair" to conclude that service on him on behalf of a corporation was adequate. (126 Cal.App.3d at p. 541.) And in *Abers,* the court rejected the argument that a party was estopped from contesting whether a petition was properly served, finding that there was "no basis in equity to estop the [party] from demanding compliance with legal requirements for service of process." (*Abers, supra,* 217 Cal.App.4th at p. 1209.)

Parties may generally agree to *personal* jurisdiction by accepting service of process or appearing in an action. (See *Rockefeller, supra,* 9 Cal.5th at pp. 138–139 ["Cases have recognized that one may waive both personal jurisdiction and notice aspects of service"].) In contrast, as discussed above, parties may not circumvent statutory jurisdictional deadlines. (*Ibid.*) *Abers* and *So. Cal. Pipe Trades* therefore do not support the conclusion that Key and LFG could just agree to extend the jurisdictional deadline in sections 1288 and 1288.2.

Key also cites *Trabuco Highlands Community Assn. v. Head* (2002) 96 Cal.App.4th 1183, which suggested in a footnote that the "failure to raise the limitations period under sections 1288 and 1288.2 in the trial court forfeits the issue on appeal." The court did not actually decide that issue, as it was raised for the first time at oral argument. (At p. 1192, fn. 10.) In any event, to the extent the court in *Trabuco* intended to suggest that the 100-day rule is not jurisdictional, we disagree in light of the

explicit statutory language and the clear precedent to the contrary.

Whatever else they might stand for, none of the cases that Key cites holds that parties are free to extend the 100-day deadline in sections 1288 and 1288.2 by stipulation. Thus, in light of the clear language of sections 1288 and 1288.2 and the cases interpreting them, Key could not have reasonably believed that LFG had the authority to waive the 100-day deadline.

In sum, Key might have been misled about LFG's *intention* to waive the 100-day deadline, but Key could not have reasonably believed that LFG had the legal *authority* to do so. Key was represented by counsel. For purposes of estoppel claims, " 'attorneys are "charged with knowledge of the law in California." ' " (*Abers, supra,* 217 Cal.App.4th at p. 1210, quoting *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1316.) Key was therefore charged with the knowledge that the 100-day deadline is jurisdictional and could not be waived or extended by agreement. Thus, LFG could not waive the deadline and was not estopped from asserting it as a ground for disregarding Key's untimely request to vacate.

3. LFG's Petition to Confirm Must Be Granted

Section 1286 states that, if a petition to confirm is duly served and filed, "the court *shall* confirm the award as made," unless the award is corrected or vacated or the proceeding is dismissed. (§ 1286, italics added.) "The Legislature's use of the word 'shall' renders this provision mandatory." (*Law Offices of David S. Karton v. Segreto* (2009) 176 Cal.App.4th 1, 8 (*Law Offices*).) Thus, confirmation of an arbitration award "is the mandatory outcome absent the correction or vacatur of the award

or the dismissal of the petition." (*Eternity Investments, supra,* 151 Cal.App.4th at p. 745, citing § 1286.)

Key's request to vacate was untimely, and she did not request any correction (which, in any event, would also have been untimely under sections 1288 and 1288.2). Key has not identified any grounds for dismissal of LFG's petition. The petition was timely and in proper form and Key was a party to the arbitration. (See §§ 1285.4, 1287.2.) The award must therefore be confirmed. (See *Law Offices, supra,* 176 Cal.App.4th at p. 3 [remanding for trial court to confirm an arbitration award as "the only proper resolution of this case" after the trial court correctly denied a petition to correct the award].)

DISPOSITION

The trial court's order is reversed. On remand, the trial court shall enter an order confirming the arbitration award. Appellant Law Finance Group is entitled to its costs on appeal.

CERTIFIED FOR PUBLICATION.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Tiffany Singer, declare that I am, and was at the time of service of the papers herein referred to, over the age of 18 and not a party to the within action or proceedings. My business address is 6621 E. Pacific Coast Highway, Suite 200, Long Beach, California 90803, which is located in the county in which the within-mentioned mailing occurred.

On September 8, 2021, I served: **PETITION FOR REVIEW** in the manner specified below on the interested parties listed on the SERVICE LIST.

[X] BY ELECTRONIC TRANSMISSION: The above-referenced document listed above was posted directly on the TrueFiling website at https://www.truefiling.com via electronic transmission for service on counsel at the electronic-email addresses indicated in the attached Service List

[X] BY U.S. MAIL: I enclosed the document in a sealed envelope addressed to the person at the address listed in the attached service list. I deposited the sealed envelope with the United States Postal Service, with the 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 September 8, 2021, at Long Beach, California.

/s/ *Tiffany Singer*
Tiffany Singer

SERVICE LIST

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Law Finance Group, LLC v. Sarah Plott Key**
Case Number: **TEMP-PZ887RRZ**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **mgrignon@grignonlawfirm.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW	Key's Petition for Review
REQUEST FOR JUDICIAL NOTICE	Key Motion for Judicial Notice

Service Recipients:

Person Served	Email Address	Type	Date / Time
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

9/8/2021

Date

/s/Margaret Grignon

Signature

Grignon, Margaret (76621)

Last Name, First Name (PNum)

Grignon Law Firm LLP

Law Firm