In the Supreme Court of the State of California

Saint Francis Memorial Hospital,

Plaintiff and Appellant,

v.

California Department of Public Health,

Defendant and Respondent.

Case No. S249132

First Appellate District, Division One, Case No. A150545
San Mateo County Superior Court, Case No. CIV537118
Honorable George A. Miram, Judge

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INTRODUCTION

For over 70 years, the Administrative Procedure Act has set the deadline for obtaining judicial review of state agency adjudicative decisions. With few exceptions, California courts have uniformly enforced Government Code section 11523's filing deadline.[1] The issue presented by this case is whether the Legislature has left room for equitable tolling of the APA's 30-day filing deadline and, if so, whether Appellant Saint Francis Memorial Hospital is entitled to such tolling. The answer to both these questions is "no."

The text, structure, and legislative history confirm that the APA's filing deadline—codified in section 11523—cannot be equitably tolled.[2] The Department is aware of no case equitably tolling this statute, and Saint Francis has cited none. This reflects that section 11523's filing deadline, as the Legislature intended, is a mandatory deadline that should not be judicially extended. Indeed, although judicial review is by writ, the Legislature enacted a special statute of limitations for the filing of administrative mandamus rather than allowing the common law to set the filing time. Further, the Legislature enacted the statute with one express statutory tolling provision, which it meant to be exclusive, and has actively set and adjusted the APA's filing deadlines—leaving no gaps to be filled by the courts. Tolling here would undermine the Legislature's interest in uniformity of procedures, and the finality of administrative adjudicative

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[1] As discussed in Part III, below, the Opening Brief on the Merits suggests that Saint Francis is also asserting equitable estoppel—a distinct doctrine. But Saint Francis did not include equitable estoppel in its petition for review or brief that alternative theory. Rather, Saint Francis made a strategic decision not to seek further review of its equitable estoppel claim, which, in any event, the court of appeal rightly rejected.

[2] All statutory references are to the Government Code unless otherwise noted.

decisions that protect the public. In any event, unlike an ordinary statute of limitation, enforcing section 11523's deadline does not bar a litigant from having its claim heard; it only bars further appellate review by a court.

Even if section 11523 could be equitably tolled, Saint Francis is not entitled to such relief. Saint Francis is a sophisticated institution that has been represented at all times by counsel. And it now concedes its counsel made a mistake in calculating the filing deadline, and that its reconsideration request was improper. According to Saint Francis, however, its "good faith" conduct entitles it to equitable tolling. But tolling is an extraordinary remedy. Saint Francis has not shown any injustice warranting application of the doctrine here, let alone that its conduct was reasonable under the circumstances, or the other necessary factors required by the tolling doctrine.

This Court should affirm.

LEGAL BACKGROUND

A. California's Administrative Procedure Act and Judicial Review of Agency Adjudicative Decisions

The Administrative Procedure Act sets uniform administrative adjudication procedures for most state agencies and the prerequisites for judicial review. The APA was enacted in 1945, after a concerted effort by the Legislature, the Judicial Council, and the bar to establish "a comprehensive and detailed plan" governing administrative adjudication and judicial review. (Tenth Biennial Report of Judicial Council (1944) (Report) [attached as Ex. D to Request for Judicial Notice (RJN)] at D4; Stats. 1945, ch. 867, § 1, p. 1626.) Before the APA, there was great uncertainty about the vehicle, procedures, and scope of judicial review for state agency administrative decisions. (See *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811-817 [summarizing pre-APA history, including

two failed constitutional amendments, and decisions from this Court abrogating use of certain common law writs].)

To address that concern, the Legislature directed the Judicial Council to "thorough[ly] study" judicial review of administrative decisions, "report its recommendations to the Legislature," and "formulate a comprehensive and detailed plan" that included draft legislation. (*Fukuda*, *supra*, 20 Cal.4th at pp. 814-815 [citing Stats. 1943, ch. 991, § 2, p. 2904, and Report].) The Judicial Council recommended, and the Legislature adopted "three major pieces of legislation: a statewide Department of Administrative Procedure; the Administrative Procedure Act; and . . . Code of Civil Procedure section 1094.5." (*Id.*, citations omitted.)

The APA initially applied only to agencies exercising licensing and disciplinary powers. (Report at D5.) Over the ensuing decades, the Legislature extended the APA to most state agencies, and the default rule is that its provisions apply unless an agency's statutory scheme provides otherwise. (See Gov. Code, § 11501.)

As relevant here, the APA establishes uniform procedures for formal, quasi-judicial hearings by state agencies, including pleadings, discovery, pretrial conferences, motions, and an evidentiary hearing. (Gov. Code, §§ 11500-11529.) These hearings are conducted by an administrative law judge (ALJ). ALJs are available from the Office of Administrative Hearings (OAH), and the APA also recognizes that the Legislature may authorize an agency to conduct adjudicative hearings itself or to contract with another agency. (See §§ 11370.3, 11501, 11517.)[3] Litigants are

[3] As further described at pp. 11-14, the Legislature authorized CDPH to select the appropriate administrative law judges to conduct adjudicative hearings on its behalf. (Health & Saf. Code, § 131071, subd. (j).) CDPH has contracted with the Department of Health Care Services's Office of Administrative Hearings and Appeals (OAHA) to conduct its hearings.

further protected by the Administrative Adjudication Bill of Rights, which includes the right to notice and a hearing, to present evidence, to an unbiased decision-maker, to the separation of agency staff involved in the adjudicative function from those involved in the investigative and prosecutorial functions, and to a written decision based on the factual record and legal authorities. (See §§ 11425.10-11425.60.)

Following a hearing, the ALJ issues a proposed decision in a form that may be adopted by the agency as its final decision, which the agency publicly files and serves on the parties. (Gov. Code, § 11517, subd. (c)(1).) Agencies have discretion to adopt, modify, or reverse the ALJ's proposed decision. (See, e.g., §§ 11440.10, 11517, subd. (c)(2).) The agency's final decision—which is rendered by a different part of the agency that is not involved in the investigation and prosecution of a charge—is publicly filed and served on the parties. (§ 11517, subd. (d).) By statute, the agency's final decision is effective thirty days after delivery or service on a respondent, unless the agency exercises its discretion to make it effective sooner. (§ 11519, subd. (a) ["The decision shall become effective 30 days after it is delivered or mailed to respondent unless: a reconsideration is ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted."]; see also *Eichman v. Escondido Union High School District* (1964) 61 Cal.2d 100, 102 [agency may "order[] that its decision be effective immediately upon service"]; cf. § 11519, subd. (g) [agency may take "immediate action to protect the public interest"]; Report at D6 [similar].)

Within 15 days of service but before the effective date of the decision, a party may "apply to the agency for correction of a mistake or clerical error." (Gov. Code, § 11518.5, subd. (a).) The section is designed to afford the agency an opportunity to correct "factual or legal errors in the decision." (Appendix at 2 [Cal. Law Revision Com. com., Deering's Ann.

Gov. Code, § 11518.5].) The application is generally deemed denied if not acted on within 15 days. (§ 11518.5.)

In addition, an agency may order reconsideration of its decision within a statutorily defined window of time:

> The power to order a reconsideration *shall* expire 30 days after the delivery or mailing of a decision to a respondent, *or on the date set by the agency itself as the effective date of the decision* if that date occurs prior to the expiration of the 30-day period or at the termination of a stay . . . .

(Gov. Code, § 11521, italics added.) If no action is taken within the time allowed for ordering reconsideration, the request "shall be deemed denied." (*Ibid.*) And where, as here, the agency makes its decision effective immediately, its power to order reconsideration expires on the date its decision becomes effective, meaning that there is no opportunity for reconsideration. (*Eichman*, *supra,* 61 Cal.2d at p. 102; *De Cordoba v. Governing Board* (1977) 71 Cal.App.3d 155, 159 ["The Legislature by enacting section 11521 expressly authorized the administrative agency to eliminate reconsideration[.]"].)

Section 11523 authorizes and provides the deadline for judicial review:

> Judicial review may be had by filing a petition for a writ of mandate . . . . Except as otherwise provided in *this section*, the petition *shall be filed within 30 days after the last day on which reconsideration can be ordered* . . . .

(Gov. Code, § 11523, italics added.) If the agency has made its order effective immediately, that "eliminate[es] the 30-day period for reconsideration and activat[es] the 30-day period for filing a petition for judicial review." (*De Cordoba*, *supra*, 71 Cal.App.3d at p. 158; *Eichman*, *supra,* 61 Cal.2d at p. 102.)

The Legislature created only one statutory tolling provision in section 11523, which relates to record preparation:

> On request of the petitioner for [the] record, [it] shall be prepared by [OAH] or the agency . . . . If the petitioner, within 10 days after the last day on which reconsideration can be ordered, requests . . . the record, the time within which a petition may be filed *shall* be extended until 30 days after its delivery . . . .

(Gov. Code, § 11523, italics added.)

Judicial review of a state agency's final adjudicative decision is through a writ of administrative mandamus under Code of Civil Procedure section 1094.5. (*Fukuda, supra*, 20 Cal.4th at pp. 814-815.) Code of Civil Procedure section 1094.5 (which sets the applicable standard of review and other procedures for judicial review) does not itself specify a filing deadline because the Judicial Council and Legislature envisioned the writ would have broader applicability beyond review of state agency decisions. (See Report at D7.)[4] The Legislature set the applicable 30-day filing deadline in what was enacted as section 11523. (See *id.* at D9.)

B. The California Department of Public Health and Its Administrative Enforcement Process for Ensuring Health Facility Safety

The California Department of Public Health is charged with safeguarding the public health. The Legislature requires the Department to license and inspect health facilities, including hospitals, for compliance with state and federal law. (Health & Saf. Code, § 1254.) And it directed the Department to promulgate "regulations to implement" that duty. (*Ibid.*)

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[4] The Judicial Council's 1944 Report is a "'valuable aid in ascertaining the meaning of" the APA. That is because "the council drafted [it] at the request of the Legislature," and acted as "a special legislative committee." Accordingly, "[i]n the absence of compelling language" to the contrary, courts presume "that the Legislature adopted the [APA] with the intent and meaning expressed" in the Report. (*Fukuda, supra,* 20 Cal.4th at p. 816.)

The Department's regulations for the inspection and licensing of hospitals are in California Code of Regulations (CCR), title 22, section 70001, et seq.

If the Department learns of a deficiency in a hospital's compliance with the law, it must notify the hospital and negotiate a plan of correction. (Health & Saf. Code, § 1280.) If the deficiencies are not corrected, the Department may revoke or suspend a hospital's license. (*Id.*, § 1280, subds. (b), (c)(2).) The Department may impose substantial monetary penalties for situations involving "immediate jeopardy"—that is, where a hospital violates "one or more requirements of" its license and that violation "has caused, or is likely to cause, serious injury or death to the patient." (*Id.*, § 1280.1, subds. (c)-(d) [authorizing maximum $50,000 fine for first infraction, $75,000 for second infraction, and $100,000 for subsequent infractions].) The Department's final agency order is directly enforceable unless a hospital files a timely petition for administrative mandamus. (See *id.*, §§ 1294, subd. (a) [authorizing suspension], 1280.3, subd. (f) ["Penalties shall be paid when all appeals have been exhausted and the department's position has been upheld."].)

The Legislature expressly authorized the Department to select its ALJ of choice. The Department has done so by contracting with another state agency, the Department of Health Care Services, to conduct its adjudicative hearings. (Health & Saf. Code, § 131071, subd. (j).)[5] The Department's hearings are conducted by the Office of Administrative Hearings and Appeals (OAHA) of the Department of Health Care Services. (See CT

[5] CDPH was part of the Department of Health Services (which was subsequently renamed DHCS) until 2007. (See, e.g., Health & Saf. Code, § 131050, et seq.)

108-124.)[6] With some exceptions, the same APA procedures for adjudicative decisions apply to OAHA. (See Health & Saf. Code, § 131071, subds. (a)-(d).) Additionally, consistent with the APA, the Department separates legal staff who prosecute regulatory violations from those involved in rendering the Department's final adjudicative decision. (See Gov. Code, § 11425.10, subd. (a)(4) [requiring separation between "adjudicative" and "investigative, prosecutorial, and advocacy functions" within an agency]; see also *id.* § 11425.30 [similar].)

STATEMENT OF THE CASE

A. The Department's Enforcement Action Against Saint Francis and Its Adjudicative Decision

The Department brought an enforcement action against Saint Francis based on an October 2010 incident that took place when a surgical team performed back surgery on a patient. (CT 143.) That team included two members who were contract workers new to the hospital. (*Id.* at 144.) Approximately three months later, during a routine follow-up visit, the patient's surgeon discovered that a surgical sponge had been left inside of the patient's body. (*Ibid.*) The patient underwent a second surgery to remove it. (*Ibid.*) The 4x8-inch sponge was surrounded by Methicillin-Resistant Staphylococcus Aureus (MRSA). (*Ibid.*) MRSA is a dangerous bacterial infection that is resistant to many antibiotics and can be fatal, and its presence required the patient to undergo an aggressive, 28-day course of intravenous antibiotic injections shot straight into his aorta. (CT 144-145.)

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[6] See also California Department of Health Care Services, The Office of Administrative Hearings and Appeals (May 22, 2018), at <https://www.dhcs.ca.gov/formsandpubs/laws/Pages/The-Office-of-Administrative-Hearings-and-Appeals.aspx> [as of December 3, 2018].

Saint Francis reported the incident to the Department, as it was required to do. (CT 145.)

In 2012, after an investigation, the Department determined that, among other things, Saint Francis failed to develop, maintain, and implement written surgery policies as required by regulation (Cal. Code Reg., tit. 22, § 70223, subd. (b)(2)), and imposed a fine of $50,000. (CT 145-146.) Specifically, the Department found that Saint Francis "failed to develop and implement a [sponge] count procedure" and that it "failed to develop a policy and guidelines for the operating room that addressed the issue of travelling or registry personnel working together on a complicated case." (*Id.* at 150.)

Saint Francis appealed the fine, and a hearing was held before an ALJ from the Office of Administrative Hearings and Appeals. (CT 146.) The ALJ issued a proposed decision finding no basis for the fine because, in her view, Saint Francis had adequate policies and procedures. (*Id.* at 108-124.) After requesting written evidence and argument, the Department's final adjudicator subsequently exercised the Department's statutory authority to reject the ALJ's proposed decision. (*Id.* at 141-142.)

On December 15, 2015, the Department issued its final decision affirming the regulatory violation and monetary penalty. (CT 141-155.) The Department determined, among other things, that Saint Francis failed to implement an appropriate sponge-count policy, which could have prevented the harm. (*Id.* at 152.) On December 16, 2015, it served Saint Francis with its final decision by certified mail. (*Id.* at 156.) The decision expressly stated that it was "effective immediately." (*Id.* at 155.)[7] Saint Francis did not allege it requested the administrative record from OAHA or

[7] Thirty days from Wednesday, December 16, 2015, was Friday, January 15, 2016.

the Department within 10 days of the effective date of the agency decision. (See CT 102-103.)

On December 30, 2015, Saint Francis filed a "Request for Reconsideration," citing Government Code section 11518.5. (See RJN Ex. A; see also CT 82.) Saint Francis sent the request to litigation staff counsel and to the Department's counsel to the final adjudicator (*id.* at A8), both of whom are within the Department, but individuals who maintain a wall of separation pursuant to the APA. The request alleged, among other things, that the Department failed to meet its burden of proof. (*Id.* at A3.) On January 8, 2016, the Department's litigation staff attorney who handled the hearing submitted an answer responding on the merits to the request for reconsideration without addressing whether the Department had authority to consider it. (CT 76-81.)

On January 14, 2016, the Department's final adjudicator separately issued a letter informing counsel for Saint Francis that "[s]ince the Final Decision on this matter was issued on December 15, 2015, and was made effective immediately, we are unable to consider your Request for Reconsideration which is deemed denied . . . ." (RJN Ex. B; see also CT 102 [alleging letter not received until January 22].) As further detailed in Part I, below, on that same day, Saint Francis's counsel e-mailed the litigation staff attorney to inquire about the status of the request for reconsideration. Among other things, counsel noted that Saint Francis intended to file a petition for a writ of mandate if reconsideration was denied, and he asked for confirmation that if by January 19, 2016, the motion for reconsideration had not been acted on, it would be deemed denied. (CT 85.) On January 19, after the filing deadline expired, the Department's litigation staff attorney responded to Saint Francis counsel's e-mail. (*Id.*) That e-mail states in full:

I believe you are correct.

> I will not be handling the matter in Superior Court; rather it will be an attorney from the AG's office. A referral has yet to be made from our office, but when it takes place, I will notify you so that you can contact the assigned DAG.

(CT 85.)

B. Saint Francis's Petition for Administrative Mandamus

On January 26, 2016—42 days after the agency's decision became effective—Saint Francis filed a petition for writ of administrative mandamus under Code of Civil Procedure section 1094.5 seeking judicial review of the Department's final decision. (CT 1-5.) The Department demurred on the ground that the petition was barred by Government Code section 11523's 30-day filing deadline. (*Id.* at 56-65.) The superior court sustained the demurrer, but gave Saint Francis leave to amend to allege facts giving rise to equitable tolling. (*Id.* at 159.) Saint Francis filed a first amended petition (*id.* at 100-156), and the Department demurred again based on section 11523, arguing that the deadline should not be extended by equitable principles (*id.* at 161-180). The superior court sustained the Department's demurrer without leave to amend. (*Id.* at 209-210.)

The court of appeal unanimously affirmed. It agreed the petition for writ of mandate was not filed within section 11523's deadline, and that Saint Francis's request for reconsideration could not extend it. (See Slip Opn. 3-4 ["Because the decision stated it was effective immediately, there was no period in which to file a request for reconsideration, and the 30-day period for filing a writ petition started to run on the day the decision was mailed, December 16."].) The court assumed, without deciding, that equitable principles could in theory toll or extend section 11523, but determined that under the facts of this case, Saint Francis did not meet the elements for equitable tolling or estoppel. (*Id.* at 5-8.) It observed, among

other things, that "dismissal of Saint Francis's petition" on this record "caused no . . . grave injustice . . . ." (*Id.* at 8.)

STANDARD OF REVIEW

This Court's review of a demurrer sustained without leave to amend is de novo. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) The question is "whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion" and the Court must affirm. (*Ibid.*, internal quotations, citations omitted.)

As set out below, the defect here cannot be cured by amendment. As a matter of law, equitable tolling cannot extend the deadline for seeking judicial review, and, even if such relief were available, as a matter of law, the undisputed facts establish only that Saint Francis's counsel made a mistake of law—circumstances that do not warrant such extraordinary relief.

SUMMARY OF ARGUMENT

After a formal, trial-like evidentiary hearing and an administrative appeal, the Department directed Saint Francis to pay a monetary fine and implement surgical sponge-count procedures to protect the public. The Department's order was effective immediately. Rather than filing a petition for administrative mandamus within 30 days, Saint Francis's counsel requested reconsideration—which the Department had no authority to consider under the APA because its decision was already effective. After the Department rejected its request as unauthorized, Saint Francis filed an untimely writ petition. Under these circumstances, Saint Francis is not entitled to equitable relief.

To be clear, this appeal does not implicate principles of equitable *estoppel*. (See *Ginns v. Savage* (1964) 61 Cal.2d 520.) That distinct

doctrine is not before this Court because Saint Francis did not raise it in its petition for review or Opening Brief—reasonably so, as Saint Francis could not establish the requisite elements of equitable estoppel, as the court of appeal held.

In any event, section 11523's filing deadline is not subject to equitable tolling under the principles this Court outlined in *McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88. First, as the Legislature intended, the APA is a mandatory statute that establishes the requirements for judicial review of agency adjudicative decisions, including a 30-day filing deadline for a petition for writ of administrative mandamus. The Legislature's adoption of a fixed statutory deadline was a significant departure from existing law for ordinary writs, which have no such deadline. Further, as set out in statute, except for a specific and narrow statutory exception for obtaining the administrative record, the APA's filing deadline cannot be extended. Second, the legislative history makes clear the Legislature intended that section 11523's deadline be strictly enforced; courts should not extend it using equitable tolling because doing so would contravene the Legislature's policy decisions. The Legislature's bright-line rule ensures that agency adjudicative decisions designed to protect the public are final and enforceable unless promptly challenged.

But even if this Court were to hold that section 11523 can in theory be equitably tolled, Saint Francis is not entitled to that relief. Saint Francis cannot meet the threshold requirements of showing an injustice or that it should be relieved of its legal mistake in calculating its filing deadline. Its assertions of "good faith" are not enough, especially as it has failed to show it acted reasonably under the circumstances.

ARGUMENT

I. EQUITABLE TOLLING CANNOT EXTEND THE DEADLINE TO SEEK JUDICIAL REVIEW OF STATE ADJUDICATIVE DECISIONS UNDER THE ADMINISTRATIVE PROCEDURE ACT

The text, structure, and purpose of the APA all demonstrate that equitable tolling is not available to extend the deadline for judicial review. Indeed, California courts routinely adhere to the APA's filing deadline, sometimes describing it as "jurisdictional." (See, e.g., *Eichman v. Escondido Union High School District* (1964) 61 Cal.2d 100, 102; *Elliott v. Contractors' State License Bd.* (1990) 224 Cal.App.3d 1048, 1052; see also Part II, below.) By this, a court generally means that the statute "constrain[s] the court to act only in a particular manner, or subject to certain limitations." (See *Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 339-340 [addressing courts' use of the term "jurisdictional"].) In other words, describing a statute as "jurisdictional" means that a court will hold a party to the strict language of a statute. (See *id.*; see also *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831, 837 [10-day filing deadline for judicial review of labor commissioner wage orders is jurisdictional].) While courts have not extensively explained why section 11523 is jurisdictional in this sense (see, e.g., *Eichman*, *supra*, 61 Cal.2d at pp. 101-102), as explained below, their strict adherence to the APA's filing deadline is correct and advances the legislative purposes behind the statute.

A. Equitable Tolling is Inconsistent with the Text and Structure of the APA

Although the Legislature did not include an express prohibition on equitable tolling of section 11523, such a prohibition may be inferred from its text, structure, and legislative history, and is supported by sound public policy.

Equitable tolling is a judicial doctrine that generally "operates independently of the literal wording of most statutes of limitations." *McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 105. But *McDonald* explained that equitable tolling "is not immune to the operation of such statutes," and that a statute can either expressly or implicitly preclude judicial tolling. (*Ibid.*) An example of express negation of tolling includes language such as, the statutory time period "'shall not be tolled or extended for any reason' except as specified." (See *Lantzy v. Centex Homes* (2003) 31 Cal.4th at p. 371 [quoting Code Civ. Proc., § 366.2] [collecting cases].)

Although the APA does not include such language, *McDonald* further recognized that "even in the absence of an explicit prohibition, a court may conclude that either *the text of a statute or a manifest legislative policy* underlying it cannot be reconciled with . . . equitable tolling." (*McDonald, supra,* 45 Cal.4th at p. 105, italics added; *Lantzy, supra,* 31 Cal.4th at p. 380 [similar].) Relevant considerations include the "structure and tone" of the text and statutory scheme, and whether any statutory "bases for extending the statute of limitations . . . indicate the list is exhaustive." (*McDonald, supra*, 45 Cal.4th at pp. 105, 107.) If equitably tolling a statute would "fundamentally compromise" the Legislature's intent, that consideration "outweigh[s] any . . . harm to the plaintiffs arising from" applying the statute of limitations as written. (*Id.* at p. 106.)

Lantzy, the source of *McDonald*'s analysis, is an example of the Legislature's implied preclusion of equitable tolling. That case held that the limitations period for latent construction defects in Code of Civil Procedure section 337.15 was not subject to equitable tolling because that would contravene "the Legislature's clear intent" as expressed in the text and the legislative history. (*Lantzy, supra,* 31 Cal.4th at p. 367.) It distinguished the text of that statute from "garden-variety . . . limitations

statutes" because it "declares, in stentorian terms, that '[n]o action [for latent construction defects] may be brought . . . more than 10–years after the substantial completion of the development or improvement.'" (31 Cal.4th at p. 367, quoting section 337.15, brackets original, italics omitted.) *Lantzy* noted the statute had "several clear exemptions" from the time limit, and reasoned that "the Legislature intended to omit other[s]." (*Ibid.*) It then traced the legislative history of the statute, which confirmed that the Legislature "carefully considered how to provide a fair time to discover construction defects, and to sue upon such defects" while "protecting a vital industry from . . . indefinite liability . . . ." (*Id.* at pp. 377, 374-376.) *Lantzy* concluded that the Legislature intended that the filing deadline in the statute there would "be firm and final," and that equitable tolling "would directly undermine th[is] statutory purpose." (*Id.* at pp. 377-378.)[8]

Similarly, section 11523's text confirms its filing deadline may not be equitably tolled. It sets a fixed 30-day deadline for filing a petition for writ of mandate challenging agency adjudication and, in mandatory language, specifies the lone statutory exception: "*Except as otherwise provided in this section*, the petition *shall* be filed within 30 days after the last day on which reconsideration can be ordered." (Gov. Code, § 11523, italics added.) The statute firmly establishes that deadline using "shall" and the sole statutory exception is "as otherwise provided in *this* section." (*Ibid.*, italics added.) It authorizes tolling only upon a timely request for the administrative record: "If the petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare

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[8] *Lantzy* also relied on the 10-year length of the limitations period in the statute at issue there, but it did not limit its principles or analysis to statutes with similar limitations periods. (See 31 Cal.4th at pp. 379-380.)

. . . the record, the time within which a petition may be filed *shall be extended* until 30 days after its delivery . . . ." (§ 11523, italics added.)

As this Court previously held, this statutory tolling provision is the "*only*" "extension" the Legislature authorized for section 11523. (See, e.g., *Eichman, supra,* 61 Cal.2d at pp. 101-102; *Moran v. State Bd. of Medical Examiners of Dept. of Professional and Vocational Standards of Cal.* (1948) 32 Cal.2d 301, 304 ["the time allowed petitioner to file this mandamus proceeding expired 30 days later *unless extended by other provisions of section 11523*," italics added].) In other words, "[t]he Legislature expressly disallowed tolling under any circumstances not stated in the statute." (See *Beal Bank, SSB v. Arter & Hadden, LLP* (2007) 42 Cal.4th 503, 512 [analyzing Code Civ. Proc., § 340.6]; *McDonald, supra,* 45 Cal.4th at p. 107 [equitable tolling precluded where statute "contain[s] exclusivity language" that "confin[es] tolling to specific listed bases"].)

The Legislature's 30-day deadline for judicial review expressly rejected an equitable "laches" deadline (cf. Report at D14), and should also be deemed as rejecting equitable tolling of that deadline given section 11523's specificity and exclusivity. In particular, the Legislature's use of a fixed statutory deadline for administrative mandamus was a significant departure from existing law. Ordinary mandamus writs do not have a specific filing deadline. (See *W.R. Grace & Co. v. California Employment Commission* (1944) 24 Cal.2d 720, 729; *In re Twighla T.* (1992) 4 Cal.App.4th 799, 803 ["there is no fixed time limit for an appellate court to consider a petition for writ of mandate"; applying laches]; Report at D14 ["reasonable time"].) Rather than adopting pre-existing law, the Judicial Council proposed and the Legislature enacted section 11523's 30-day filing deadline. (Report at D7-9; *id.* at D15 [surveying existing deadlines for review of administrative decisions and noting "vari[ations] from 15 days to 4 months, with the average being 30 days"].) And this Court has

acknowledged the significance of such statutory modifications to ordinary mandamus procedure: "[t]he full panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, *except where modified by statute.*" (See *Woods v. Superior Court* (1981) 28 Cal.3d 668, 673, italics added; 8 Witkin, Cal. Proc. 5th Writs § 263 (2008) [collecting cases].)

Saint Francis cannot overcome these textual statutory arguments. First, Saint Francis contends that there is no express prohibition against tolling in section 11523. (See OBM 15-16.) But that proscription is implied in the text of the statute itself, the structure of the APA, and (as demonstrated at Part I.B, below) its legislative history. Saint Francis is also incorrect that "nothing in the language . . . suggest[s] the legislature intended to negate" equitable tolling. (OBM 16.) Section 11523 has a single statutory tolling provision—implying that all other tolling is rejected. (*Moran, supra,* 32 Cal.2d 301, 304; *Lantzy, supra,* 31 Cal.4th at p. 373.)

Saint Francis also misunderstands how section 11523 operates. In its view, there is room for judicial expansion of the filing period because section 11523 purportedly "does not set forth a single, rigid limitations period" and instead has "a variable limitation period" depending on the availability of reconsideration and the request for the record. (OBM at 16.) But the 30-day *limitations period* itself is fixed. The factors that Saint Francis cites do not expand the limitations period but instead merely determine when that 30-day period begins to accrue. (See *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 910 [explaining difference between tolling and accrual of statute of limitations].)

To be sure, several additional statutes affect the finality of a formal administrative decision, but these all merely establish when the limitation period begins to run. For example, the "[e]ffective date of a decision" for purposes of section 11523 is contained in section 11519, which makes a

decision effective: "[1.] 30 days after it is delivered or mailed to respondent unless: [2.] a reconsideration is ordered within that time, or [3.] the agency itself orders that the decision shall become effective sooner, or [4.] a stay . . . is granted." (Gov. Code, § 11519, subd. (a).) These different time periods for determining when the statute of limitation starts running are not "tolling" provisions at all. Similarly, section 11521 authorizes agency reconsideration and further provides that:

> The power to order a reconsideration shall expire [1.] 30 days after the delivery or mailing of a decision . . . , or [2.] on the date set by the agency itself as the effective date of the decision . . . or [3.] at the termination of a [30-day] stay . . . the agency may grant for the purpose of filing an application for reconsideration.

(§ 11521, subd. (a).) The statute makes clear that reconsideration can only be granted *before* a decision is effective. (See *id.*; see also § 11519, subd. (a).) In other words, section 11521 does not toll section 11523's filing deadline for judicial review because, where it applies, that deadline has not yet accrued.[9]

In any event, even if this Court agreed with Saint Francis that these statutes demonstrate "a variable limitation period" (OMB at 16) set by the Legislature, that does not mean that section 11523 may be *judicially* expanded through equitable tolling. *Lantzy* recognized that the fact that the Legislature itself embedded "several exemptions" from the filing period in a statute itself does not mean the limitations period is also subject to

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[9] The same is true for section 11521's authorization for an agency to stay temporarily the three time periods described above: "If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition." (§ 11521, subd. (a).) Because the agency decision is not yet final, such a stay does not toll the limitations period but merely delays the decision's effective date.

equitable tolling by the courts. (See 31 Cal.4th at p. 373; cf. *Beal Bank, supra,* 42 Cal.4th at p. 511 ["[t]he statute includes four tolling provisions" because "the Legislature determined that in each specified circumstance, countervailing policies justified extension of the liability period"].)

This Court should also reject Saint Francis's argument that the Legislature should have drafted the statute to expressly "foreclose equitable defenses." (OBM 16.) *Lantzy* and *McDonald* both confirmed that the Legislature's intent to preclude equitable tolling can be implied from the text, structure, and legislative history of a statute. Saint Francis counters that "when the statute was enacted" the Legislature "presumably was aware" of the following language from *Bollinger v. National Fire Ins. Co.* (1944) 25 Cal.2d 399, 411: "It is established that the running of the statute of limitations may be suspended by causes not mentioned in the statute itself." (OBM 16.) This Court made a similar point in *Lantzy*, but still held that tolling was inappropriate after applying the requisite analysis. (31 Cal.4th at pp. 370, 371-383.) Saint Francis would require the Legislature to predict and direct how courts might construe statutory language. But it is the courts' duty to discern and implement legislative intent, rather than the Legislature's duty to predict court rulings and draft around them.

B. Equitable Tolling is Inconsistent with the APA's Legislative History

Section 11523's legislative history confirms that the 30-day statutory filing period is not subject to equitable tolling. The Legislature has amended section 11523 several times since its enactment, but it has not extended the 30-day deadline to file a writ petition, nor has it added any additional statutory tolling provisions. (See Appendix at 9-10 [Historical and Statutory Notes, Deering's Ann. Gov. Code, § 11523].) More broadly, the legislative history confirms that when the Legislature believed that the

statutory time periods in section 11523 needed expanding, it expressly provided for that expansion itself.

The only amendments extending time relate to the original statutory exemption for obtaining the administrative record. The Legislature first amended section 11523 in 1947, when it "[s]ubstituted '30 days' for '20 days' in the fourth sentence" (Appendix at 9 [1947 Amendment]), giving the government additional time to provide the administrative record to plaintiff. Indeed, it was proposed by OAH's predecessor, the Division of Administrative Procedure, in its First Biennial Report of January 1, 1947, as part of its "[s]uggestions for clarifying any ambiguities in the act and for improving the administration thereof." (See RJN Ex. E at E2.) It recommended the additional time because, "[e]xperience has shown that 20 days for the preparation of a record in many cases is too restrictive." (*Id.* at E3.) The Legislature subsequently amended section 11523 in 1994 by adding that this time for the government to prepare the record could be extended "for good cause." (Stats. 1994, ch. 1206 (S.B. 1775), § 29; see also Appendix at 9 [1994 Amendment].) Neither of these amendments extended *plaintiff's* filing deadline.

The Legislature amended the statute once to give plaintiffs additional filing time, in 1971. Originally, plaintiffs only had five days to file their petition for writ of administrative mandamus after they received the administrative record from the government (assuming their record request was timely).[10] (See Stats. 1945, ch. 867, § 1, p. 1635; Report at D13.) But the Legislature amended section 11523 to expand that time to 30 days.

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[10] Where the agency has made its decision effective immediately, and thus no time for reconsideration exists, the courts have reasonably construed section 11523 as allowing petitioner to request the administrative record within 10 days of the effective date of the decision. (See *Eichman, supra,* 61 Cal.2d at p. 102.)

(See Appendix at 9 [1971 Amendment: Legislature "[s]ubstituted '30' for 'five' in the sixth sentence"].) The legislative history indicates that this amendment was motivated, at least in part, by the potential complexities in determining the time to file a writ petition. But rather than extending the statute's 30-day filing deadline, the Legislature instead reasonably tethered the extension to the delivery of the administrative record. (See Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2067 (1971 Reg. Sess.), May 17, 1971 [due to "the difficulty" in "assessing" the limitations period, "Section 11523 provides that if the party makes a timely demand for . . . [the] record, the time to file . . . is extended until five days after delivery of the record. [¶] But, is five days sufficient . . . ? [¶] AB 2067 proposes that the five days . . . be extended [to] thirty days . . . .", emphasis omitted] [attached as RJN Ex. C]; see also OBM 14 [raising complexity of determining filing deadline].)[11]

The Legislature has not enacted any subsequent amendments to section 11523's filing deadline for almost 50 years, leaving no room for additional extensions using equitable principles. As in *Lantzy*, "[t]he implication arises that except as stated . . . the Legislature meant the [statutory time] period . . . to be firm and final." (31 Cal.4th at p. 377.)

C. Equitable Tolling is Inconsistent with Legislative Policy

The APA implemented several broad and significant legislative policies—including uniformity of procedures and finality of agency

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[11] The Legislature has also amended section 11521, which sets the time for agency reconsideration, but the only expansion of any deadline was in 1953 to give the government additional time to consider requests for reconsideration. (Stats. 1953, ch. 964, § 1, p. 2340; see Appendix at 6-7 [Historical and Statutory Notes, Deering's Ann. Gov. Code, § 11521].) As to section 11519, there have been no material amendments impacting section 11523's court filing deadline. (See Appendix at 4 [Historical and Statutory Notes, Deering's Ann. Gov. Code, § 11519].)

decisions to protect the public. These policies are also incompatible with equitable tolling. (See *McDonald, supra,* 45 Cal.4th at p. 105 [tolling rejected where "manifest legislative policy . . . cannot be reconciled with permitting equitable tolling"]; *Lantzy, supra,* 31 Cal.4th at p. 380 ["tolling [cannot] contravene the legislative purpose"].) The APA is the product of the Legislature's request for, and the Judicial Council's preparation and drafting of, "a *comprehensive* and *detailed* plan . . . suitable to the needs of this State." (Report at D3, italics added.) As noted above, the Legislature wanted an overarching solution to the issue of judicial review of state agency decisions, and over time it has made the APA's procedures applicable to a large number of the State's administrative bodies. (See pp. 10-11, above.) The default rule is that the APA and its procedures and timelines apply *unless* the Legislature has created separate procedures in the statutory scheme for a particular agency. (*Ibid.*) Grafting amorphous equitable tolling exceptions on to the APA's bright-line deadlines would undermine the legislative policy favoring uniformity of procedures for state agency review.

Similarly, the Legislature's interest in protecting the public through a clear finality rule weighs against tolling. Section 11523 and the APA set expeditious deadlines for seeking judicial review. This is not because the Legislature decided that agencies should be shielded from judicial review (the entire APA suggests otherwise). Rather, it is because the Legislature believed in the importance of finality, particularly when agency orders prospectively protect the public from harm or, as here, impose fines directed at improving compliance with the law. The APA itself "reflected a balancing of the interests" (*Beal Bank, supra,* 42 Cal.4th at p. 511), that should be undisturbed by equitable tolling. Applying equitable tolling would "fundamentally compromise" legislative intent. (*McDonald, supra,* 45 Cal.4th at p. 106; *Beal Bank, supra,* 42 Cal.4th at p. 512 ["The courts

may not shift that balance by devising expedients that extend or toll the limitations period."].)

Saint Francis's arguments do not advance, let alone overcome, these public policy concerns. Instead, it attempts to factually distinguish section 11523 from the statute at issue in *Lantzy*. (OBM at 17.) But this Court has never required the Legislature to insert specific, talismanic language to preclude equitable tolling. And as discussed above, given the legislative and policy interests that section 11523 serves, equitable tolling of the APA is unwarranted. So while it is true that *Lantzy* declined equitable tolling of a ten-year statute of limitation, this Court has also rejected tolling of substantially shorter deadlines. (See, e.g., *J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 657-658 [no equitable tolling of 6-month deadline to file claim under Gov. Code, § 911.2].) Moreover, the APA's deadlines are measured in days rather than years, but California courts have still strictly enforced them.

According to Saint Francis, section 11523 should be equitably tolled to protect plaintiffs from "the enourmous power wielded by [state] agencies, and the often complex regulatory schemes they develop for themselves" which, in its view, makes "this area of the law [] a fertile ground for inadvertent mistakes." (OBM 14.) But it is the Legislature, rather than the Department or its internal regulations, that set the 30-day filing deadline in this case. And, as noted above, the Legislature considered the complexity of determining the filing deadline in the APA, and its solution was to give petitioners additional time to file in court but *only* when they timely requested the administrative record—an exception Saint Francis does not invoke. Further, the APA's filing deadline has been in place for almost 70 years and "[i]f oversight of such plain rules justified equitable relief, the structure of the [APA] would be substantially undermined." (See *J.M.*, *supra*, 2 Cal.5th at pp. 657-658.)

II. EVEN IF EQUITABLE TOLLING WERE AVAILABLE, SAINT FRANCIS WOULD NOT BE EXCUSED FROM ITS LEGAL ERROR

This Court should confirm that equitable tolling is categorically unavailable to extend the deadline for filing a petition for judicial review of agency adjudicatory action. But, should this Court hold otherwise, equitable tolling should not be applied in the circumstances of this case.[12] Saint Francis did not reasonably and timely pursue an alternate remedy, nor can it establish there is any "injustice" in enforcing the statute of limitations that would outweigh the policy interests favoring section 11523's 30-day deadline. Instead, Saint Francis merely seeks to be excused from its own legal mistake in failing to comply with the statutory deadline—which is not a ground for relief.[13]

A. Saint Francis Did Not Face a Dilemma Requiring It to Choose Among Multiple Remedies, but Instead Merely Made a Mistake in Ascertaining Its Deadline

This case involves no facts warranting the extraordinary remedy of equitable tolling. Saint Francis did not face the dilemma of having to choose between alternate remedies or any other injustice. Instead, it simply made a mistake in ascertaining the single remedy available to it and the applicable filing deadline. (OBM 5-6, 17-18, 23.)

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[12] Saint Francis is not entitled to an evidentiary hearing on equitable tolling. (OBM 29-30.) It concedes "the factual issues in this case are undisputed," that a "ruling as a matter of law" is appropriate, and does not explain what factual issues need to be resolved. (OBM 30.) *Hopkins v. Kedzierski* (2014) 225 Cal.App.4th 736, 743 does not help Saint Francis because—unlike this case—there were factual disputes that needed resolution by the court as trier of fact. Under the circumstances here an evidentiary hearing would be futile. (Civ. Code, § 3532.)

[13] While Saint Francis argued below that its petition was timely (Slip Opn. 3-4), it now concedes it was not timely filed (OBM 5-6, 17-18).

Equitable tolling is a judicially created doctrine that was developed to ensure fairness in situations where a plaintiff faces a dilemma of having to choose among multiple remedies. (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 100 ["Broadly speaking, the doctrine applies '"when an injured person has several legal remedies and, reasonably and in good faith, pursues one"'"].) In such circumstances, equitable tolling may be necessary to "relieve [plaintiffs] of the unduly harsh consequences of [a] dilemma which was *not entirely of their own making*." (*California Standardbred Sires Stakes Com., Inc. v. California Horse Racing Bd.* (1991) 231 Cal.App.3d 751, 759, italics added.)

While this Court recently observed that "pursuit of an alternate remedy is not *always* required for equitable tolling," the Court emphasized that the doctrine exists to "'ensure fundamental practicality and fairness.'" (*J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 658.) Thus, to the extent that the doctrine applies outside the alternate remedy context, it should do so only where the plaintiff, as a threshold matter, can establish some type of "injustice" if the limitations period were enforced. (*Id.* at p. 658 [no equitable tolling where plaintiff "fails to establish an injustice"]; see also *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 370 [doctrine applies only in "carefully considered situations to prevent the *unjust* technical forfeiture of causes of action," italics added].) Further, application of the doctrine "requires a balancing of the injustice to the plaintiff occasioned by the bar of his claim against the effect upon the important public interest or policy expressed by the . . . limitations statute." (*J.M.*, *supra*, 2 Cal.5th at p. 658.)

Here, Saint Francis did not face a dilemma of having to choose between alternate remedies or any other injustice that would justify equitable tolling. Instead, Saint Francis had a single remedy—a petition for writ of mandate—but failed to timely pursue it due to its own mistake in

ascertaining the deadline. These circumstances do not justify equitable tolling.

California Standardbred is on point and persuasive. There, the plaintiff filed a petition for administrative mandate after the expiration of the 30-day deadline under Business and Professions Code section 19463, based on plaintiff's mistaken belief it could wait until after the administrative record had been prepared. (*California Standardbred, supra*, 231 Cal.App.3d at pp. 754, 759.) The court of appeal held that equitable tolling could not relieve the plaintiff of that mistake, noting that the "plaintiff had but one remedy, the procedures to perfect . . . are relatively simple and straightforward," and "there is nothing inherent in these circumstances requiring the interposition of equity to spare plaintiff from harsh consequences beyond its power to control." (*Id.* at p. 759.)

Saint Francis asserts that it is entitled to equitable tolling because it filed its reconsideration request as an "initial remedy" before it filed its petition for writ of mandate. (OBM 17-18.) That is incorrect. As Saint Francis concedes (*id.* at 17), reconsideration was not an available remedy. Because the Department's final decision was effective immediately, there was no reconsideration period and the request was therefore invalid—indeed, the Department lacked jurisdiction to consider it. (Gov. Code, § 11521, subd. (a); *Eichman v. Escondido Union High School District* (1964) 61 Cal.2d 100, 102; *De Cordoba v. Governing Board* (1977) 71 Cal.App.3d 155, 158-159.) Further, because section 11521 makes clear that Saint Francis could not submit a request for reconsideration after the effective date of the decision, its submission of this request was not reasonable. (§ 11521, subd. (a); see *J.M., supra*, 2 Cal.5th at pp. 657-658 [it is not "reasonable" to fail to comply with a clear statutory requirement].)

B. Saint Francis's Own Mistake in Ascertaining Its Deadline Is Not an Injustice Warranting Equitable Tolling

While the definition of "injustice" is necessarily flexible, this Court has made clear that a plaintiff's own mistake in ascertaining filing deadlines does not justify equitable tolling. (*J.M.*, *supra*, 2 Cal.5th at p. 658 [denying equitable relief where the plaintiff "simply failed to comply with the claims statutes"].) The rule that a plaintiff's own mistake does not justify equitable tolling accords with settled case law establishing that equitable tolling generally requires a dilemma or unfair circumstances plaintiff did not create. (*Ibid.* [equitable tolling requires an injustice that outweighs the policy interests in enforcing the statute of limitations]; *McDonald*, *supra*, 45 Cal.4th at p. 100 [doctrine generally applies where plaintiff is forced to choose between multiple remedies]; *California Standardbred*, *supra*, 231 Cal.App.3d at p. 759 [doctrine is intended to "relieve [plaintiffs] of the unduly harsh consequences of [a] dilemma which was not entirely of their own making," and does not apply where plaintiff "had but one remedy" and simply failed to perfect it].)

Case law in related contexts reinforces the rule that plaintiff's mistake in complying with the statute of limitations does not warrant equitable intervention. For example, this Court has held that Code of Civil Procedure section 473, subdivision (b)'s provision allowing for relief based on mistake, inadvertence, surprise, or neglect does not generally apply to dismissals for failure to comply with the statute of limitations. (*Maynard v. Brandon* (2005) 36 Cal.4th 364, 372 [noting that this rule applies to all limitations dismissals, "whether by complaint . . . or by writ petition"].) Additionally, *Pressler* applied this rule where plaintiff failed to meet the 10-day deadline to file an appeal from a decision of the Labor

Commissioner in an administrative proceeding to recover wages. (*Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831, 837.)

In both *Maynard* and *Pressler*, this Court approvingly cited *Kupka v. Board of Administration* (1981) 122 Cal.App.3d 791, 794-795, where the court of appeal held that a petitioner cannot obtain relief from failure to comply with the limitations period under section 11523 due to mistake or neglect. As *Kupka* explained, a "*plaintiff's innocent mistake . . . has never been permitted to excuse late filing.*" (122 Cal.App.3d at pp. 795-796, italics added.) "Statutes of limitation are, of necessity, adamant rather than flexible in nature, and are upheld and enforced regardless of personal hardship," and thus allowing relief from the statute of limitations under section 11523 based on mistake or neglect "would work a profound change in our system of procedure and would run counter to the reasoning of our courts in many related areas." (*Id.* at p. 794, citations and internal quotations omitted; see also *Hansen v. Board of Registered Nursing* (2012) 208 Cal.App.4th 664, 671 [§ 11523 filing deadline cannot be extended for "good cause"].)

Similar principles also preclude the application of equitable estoppel based on the aggrieved party's mistake of law. A party seeking equitable estoppel, especially one represented by legal counsel, is "'charge[d] with a knowledge of the law," and thus cannot "'say that he was *deceived* by any contention of [the other party], as to the *law* governing'" the issue in question. (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1315, original italics, citations omitted.) This further confirms that there is no injustice in enforcing the statute of limitations where a plaintiff simply made a mistake, however innocent, in ascertaining its filing deadline.

Here, Saint Francis cannot establish that there is any injustice in enforcing section 11523's limitations period. As Saint Francis concedes, it simply made a mistake in ascertaining its filing deadline (OBM 5-6, 17-18,

23), and Saint Francis does not argue in its Opening Brief that its mistake was caused or induced by the Department.[14] Saint Francis's filing deadline was ascertainable from the face of the governing statutes (Gov. Code, §§ 11521, subd. (a), 11523), is confirmed in a number of published decisions and practice guides, and has been in place for more than 70 years. (See, e.g., *Eichman*, *supra*, 61 Cal.2d at p. 102; *De Cordoba*, *supra*, 71 Cal.App.3d at p. 158; *Koons v. Placer Hills Union School Dist.* (1976) 61 Cal.App.3d 484, 490; Turner & Banke, Cal. Prac. Guide: Civ. Pro. Before Tr., Stat. of Limitations, Ch. 4-J, § 4:1730; 3 Witkin, Cal. Proc. 5th, Actions § 684 (2008); Stats. 1945, ch. 867, § 1.) As this Court has recognized, there is no injustice in dismissing a lawsuit when a plaintiff "simply failed to comply with the [statute of limitations], missing an easily ascertainable deadline that has been in place for over 50 years." (*J.M.*, *supra*, 2 Cal.5th at p. 658.)

Finally, Saint Francis's interest in continuing to litigate the validity of the Department's sponge-count directive, administrative penalty, and $50,000 fine does not outweigh the important policy interests in enforcing section 11523's limitations period. Saint Francis's argument appears to be that the limitations bar is harsh because it was attempting in good faith to comply with the statute of limitations and made a mistake in ascertaining its deadline. (OBM 27.) But the Legislature made the policy judgment to impose a strict and mandatory 30-day limitations period, stating that "[e]xcept as otherwise provided in this section, the petition *shall* be filed

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[14] As discussed in Part III, below, Saint Francis does not argue that the Department made any affirmative misrepresentations that caused Saint Francis to miss its filing deadline, but instead asserts only that the Department was silent and failed to catch and correct Saint Francis's erroneous understanding of the law.

within 30 days after the last day on which reconsideration can be ordered." (Gov. Code, § 11523, italics added; see also Part I.A-C, above.)

Strict limitations deadlines promote a number of important public policy objectives, including "protect[ing] settled expectations, promot[ing] diligence, encourag[ing] the prompt enforcement of substantive law, and reduc[ing] the volume of litigation." (*Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 499.) For these reasons, "[s]tatutes of limitation are, of necessity, adamant rather than flexible in nature, and are upheld and enforced regardless of personal hardship." (*Kupka*, *supra*, 122 Cal.App.3d at p. 794, citations and internal quotations omitted.) The underlying policy concerns of stability, finality, and repose are heightened where, as here, the parties have already had an opportunity to litigate their claims. (See pp. 16-19, above [recounting lengthy proceedings including administrative appeal].)

C. Saint Francis Cannot Establish the Other Elements of Equitable Tolling

Saint Francis cannot establish the remaining "three elements" necessary for equitable tolling: reasonable and good faith conduct on the part of the plaintiff, timely notice, and lack of prejudice to the defendant. (See *McDonald*, *supra*, 45 Cal.4th at p. 102 [proponent has burden of establishing all elements].)

First, Saint Francis cannot show that its conduct in filing an unauthorized request for reconsideration (under the wrong statute) and missing its deadline to file a petition for writ of mandate was reasonable. Indeed, Saint Francis does not directly contend that its conduct was reasonable, but instead asserts only that it was undertaken in "good faith." (OBM 17-18, 27.) But to invoke equitable tolling, a plaintiff must demonstrate both "reasonable *and* good faith conduct," among other requirements. (*McDonald*, *supra*, 45 Cal.4th at p. 102, italics added.)

Here, Saint Francis concedes that its counsel simply made a mistake in calculating its deadline under section 11523. (OBM 5-6, 17-18, 23.) As noted above, Saint Francis's deadline was ascertainable from the face of the governing statutes, is set forth in a number of published decisions and practice guides, and has been in place for more than 70 years. (Part II.B, above.) A plaintiff's conduct is not reasonable, and equitable tolling is not available, when a plaintiff "simply failed to comply" with a statute of limitations that has been in place for decades. (*J.M.*, *supra*, 2 Cal.5th at p. 658; *La Canada Flintridge Development Corp. v. Dep't of Transportation* (1985) 166 Cal.App.3d 206, 222 ["[r]eliance . . . based on an erroneous interpretation of the law is not reasonable"].)

Second, Saint Francis cannot satisfy the timely notice requirement. (See *McDonald*, *supra*, 45 Cal.4th at p. 102, fn. 2.) Here, Saint Francis asserts (OBM 27) that it provided the Department timely notice of its petition for writ of mandate both by filing an unauthorized request for reconsideration (RJN Ex. A), and by sending an e-mail to the Department's staff counsel on January 14, 2016, stating that "we intend to petition for a writ of mandate with the Superior Court if the request for reconsideration is denied" (CT 85). But the request for reconsideration was void ab initio because the Department's decision was final immediately. (Gov. Code, § 11521, subd. (a); CT 155.)

Similarly, the e-mail from Saint Francis's counsel does not constitute formal and timely notice of the petition for judicial review. It is not a formal document and was not served upon the Department as would generally be required to initiate a superior court case against the Department (Code Civ. Proc., §§ 415.10 et seq., 416.50, subd. (a)), but instead was merely sent to an individual staff counsel at the Department. Further, it did not apprise the Department of the grounds for the petition,

but merely conveyed that Saint Francis intended to file a petition on unspecified grounds at some unknown point in the future. (CT 85.)

A rule allowing such informal notice would invite manipulation and abuse, and could lead to protracted factual and legal disputes concerning the adequacy of the notice. It also would threaten to undermine the core purpose of timely notice, which is to ensure that the defendant is sufficiently apprised of the claim to begin preparing its defense in a timely fashion. (*McDonald, supra*, 45 Cal.4th at p. 102, fn. 2.)

Third, and finally, Saint Francis cannot show a lack of prejudice to the Department because the Department is entitled to rely on legislative rules establishing the finality of its adjudicative decisions in order to execute its statutory charge of safeguarding the public health. (See Part I.B-C & II.B, above.)

III. EQUITABLE ESTOPPEL IS NOT AT ISSUE IN THIS APPEAL

Saint Francis has elected to pursue only its equitable tolling theory; *equitable estoppel is not before this Court.*[15] The Department addresses equitable estoppel briefly for the reference and convenience of the Court, and to make clear that Saint Francis has not preserved the claim and cannot raise it for the first time in its reply.

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[15] Saint Francis did not use the words "equitable estoppel" in its petition for review, which focused solely on equitable tolling; nor is equitable estoppel fairly included within the petition. (Pet. at 4; Rule of Court 8.516(b)(1); *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 383 ["Equitable tolling and equitable estoppel are distinct doctrines"].) Saint Francis's choice of language was not inadvertent. Before the court of appeal, it made separate arguments under each theory, its briefing reflecting that it understood the distinction. (Court of Appeal OB 25-32; Court of Appeal Reply 10-13; see also Slip Opn. 7-8 [addressing equitable tolling and equitable estopped separately].) And Saint Francis has not raised any equitable estoppel issues in its Opening Brief, and generally relies on equitable tolling cases. (See OBM, generally.)

Equitable estoppel is not available in the circumstances of this case, where there is a sophisticated, represented party, no government inducement, and no serious and unjust result. "The doctrine of equitable estoppel is founded on concepts of equity and fair dealing. It provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment." (*Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725 [outlining four mandatory equitable estoppel elements].) Further, "[t]he doctrine 'ordinarily will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy.'" (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1315.)

In briefest summary, neither the Department nor its agents made any affirmative misleading representations that caused Saint Francis to file an untimely petition. (*J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 657 ["[e]quitable estoppel generally requires an *affirmative* representation or act by the public entity," original italics].) Saint Francis cannot point to the fact that it filed a request for reconsideration—or that litigation staff counsel for the Department filed an answer—as some type of affirmative agency representation, as the answer did not address any issues concerning the timeliness of the request for reconsideration or the Department's jurisdiction to consider it. (CT 76-79.)[16] And the decision itself was clear that it was effective immediately,

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[16] The agency had no authority to grant reconsideration because its decision was effective immediately. (CT 155; Gov. Code, §§ 11519, 11521.) Further, an action beyond an agency's authority may not form the basis for estoppel. (See *City of Santa Cruz v. Pacific Gas & Elec. Co.* (2000) 82 Cal.App.4th 1167, 1177; *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 306.)

which should have put Saint Francis's counsel on notice that the 30-day clock for filing a petition for judicial review was running.

Further, the Department's staff counsel sent her e-mail response on January 19, 2016—four days *after* expiration of the deadline to file a writ petition—and thus her statements could not have induced Saint Francis to miss its deadline. (CT 85.) And staff counsel's e-mail response to Saint Francis's counsel's various e-mail questions was equivocal and non-committal. (*Ibid.*; see also *Steinhart, supra*, 47 Cal.4th at p. 1318 [for purposes of estoppel, representation must be plain and not doubtful or questionable].) Any reliance by Saint Francis on the Department's asserted failure to catch and immediately correct Saint Francis's legal error was not reasonable. It was Saint Francis's attorney's obligation to know the law. (See *La Canada Flintridge Development Corp. v. Department of Transportation* (1985) 166 Cal.App.3d 206, 222; see also *Steinhart, supra*, 47 Cal.4th at p. 1318.)

The court of appeal correctly held that "[t]he dismissal of Saint Francis's [writ] petition . . . caused no . . . grave injustice" and that estopping the Department would "defeat the oft-repeated public policy" favoring strict construction of the filing period to ensure finality. (See Slip Opn. 8.) Saint Francis's decision not to seek further review on a theory of equitable estoppel makes sense.

CONCLUSION

The Court should affirm the judgment sustaining the demurrer and hold that section 11523's filing deadline is not subject to equitable tolling or, alternatively, that petitioner is not entitled to equitable tolling under the circumstances of this case.

Dated: December 5, 2018

Respectfully submitted,

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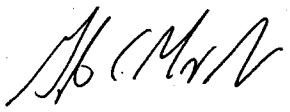

GONZALO C. MARTINEZ
Deputy Solicitor General
Attorneys for Defendant and Respondent
California Department of Public Health

CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWERING BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 10,667 words.

Dated: December 5, 2018

XAVIER BECERRA
Attorney General of California

GONZALO C. MARTINEZ
Deputy Solicitor General
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California Department of Public Health

APPENDIX

LexisNexis

Cal Gov Code § 11518.5

Deering's California Codes are current through all 1016 chapters of the 2018 Regular Session and the November 6, 2018 Ballot Measures.

Deering's California Codes Annotated > GOVERNMENT CODE > Title 2 Government of the State of California > Division 3 Executive Department > Part 1 State Departments and Agencies > Chapter 5 Administrative Adjudication: Formal Hearing

§ 11518.5. Application to correct mistake or error in decision; Modification; Service of correction

(a) Within 15 days after service of a copy of the decision on a party, but not later than the effective date of the decision, the party may apply to the agency for correction of a mistake or clerical error in the decision, stating the specific ground on which the application is made. Notice of the application shall be given to the other parties to the proceeding. The application is not a prerequisite for seeking judicial review.

(b) The agency may refer the application to the administrative law judge who formulated the proposed decision or may delegate its authority under this section to one or more persons.

(c) The agency may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings. The application is considered denied if the agency does not dispose of it within 15 days after it is made or a longer time that the agency provides by regulation.

(d) Nothing in this section precludes the agency, on its own motion or on motion of the administrative law judge, from modifying the decision to correct a mistake or clerical error. A modification under this subdivision shall be made within 15 days after issuance of the decision.

(e) The agency shall, within 15 days after correction of a mistake or clerical error in the decision, serve a copy of the correction on each party on which a copy of the decision was previously served.

History

Added Stats 1995 ch 938 § 44 (SB 523), operative July 1, 1997.

Annotations

Notes

Editor's Notes—

For operation of act, see the 1995 Note following Gov C § 11511.

Commentary

Appendix 1

Law Revision Commission Comments:

1995—

Section 11518.5 is drawn from 1981 Model State APA 4–218. "Party" includes the agency that is a party to the proceedings. Section 11500(b) ("party" defined).

The section is intended to provide parties a limited right to remedy mistakes in the decision without the need for judicial review. Instances where this procedure is intended to apply include correction of factual or legal errors in the decision. This supplements the authority in 11517 of the agency head to adopt a proposed decision with technical or other minor changes.

Research References & Practice Aids

Treatises:

Cal. Forms Pleading & Practice (Matthew Bender) ch 473G "Agency Adjudication Decisions".

Cal. Legal Forms, (Matthew Bender) § 6H.205.

Cal. Legal Forms, (Matthew Bender) § 6H.220.

Cal. Legal Forms, (Matthew Bender) § 88.13.

Hierarchy Notes:

Cal Gov Code Tit. 2, Div. 3, Pt. 1, Ch. 5

End of Document

LexisNexis

Cal Gov Code § 11519

Deering's California Codes are current through Chapters 1-109 and 111-157 of the 2018 Regular Session and all urgency legislation through Chapter 181 of the 2018 Regular Session.

Deering's California Codes Annotated > GOVERNMENT CODE > Title 2 Government of the State of California > Division 3 Executive Department > Part 1 State Departments and Agencies > Chapter 5 Administrative Adjudication: Formal Hearing

§ 11519. Effective date of decision; Stay of execution; Notice of suspension or revocation; Restitution; Actual knowledge as condition of enforcement

(a) The decision shall become effective 30 days after it is delivered or mailed to respondent unless: a reconsideration is ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted.

(b) A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.

(c) If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to the officer after the decision has become effective.

(d) As used in subdivision (b), specified terms of probation may include an order of restitution. Where restitution is ordered and paid pursuant to the provisions of this subdivision, the amount paid shall be credited to any subsequent judgment in a civil action.

(e) The person to which the agency action is directed may not be required to comply with a decision unless the person has been served with the decision in the manner provided in *Section 11505* or has actual knowledge of the decision.

(f) A nonparty may not be required to comply with a decision unless the agency has made the decision available for public inspection and copying or the nonparty has actual knowledge of the decision.

(g) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with Article 13 (commencing with *Section 11460.10*) of Chapter 4.5.

History

Added Stats 1945 ch 867 § 1. Amended Stats 1949 ch 314 § 2; Stats 1976 ch 476 § 1; Stats 1977 ch 680 § 1; *Stats 1995 ch 938 § 45 (SB 523)*, operative July 1, 1997.

Annotations

Appendix 3

Notes

Editor's Notes—

Amendments:

Editor's Notes—

For operation of act, see the 1995 Note following Gov C § *11511*.

Amendments:

1949 Amendment:

Added (1) "(a)" at the beginning of the section; (2) "(b)" at the beginning of the second sentence; (3) the third sentence; and (4) "(c)" at the beginning of the last paragraph.

1976 Amendment:

Deleted "Where an agency has the power to make a probationary or conditional order" at the beginning of the second sentence of subd(b).

1977 Amendment:

Added subd (d).

1995 Amendment:

(1) Substituted "the" for "such" after "shall be sent to" in subd (c); (2) amended subd (d) by (a) deleting "which requires the party or parties to a contract against whom the decision is rendered to compensate the other party or parties to a contract damaged as a result of a breach of contract by the party against whom the decision is rendered. In such case, the decision shall include findings that a breach of contract has occurred and shall specify the amount of actual damages sustained as a result of such breach"; (b) substituting "the" for "such" after "of this subdivision" in the second sentence; and (c) deleting "based on the same breach of contract" at the end; and (3) added subds (e) through (g).

Commentary

Law Revision Commission Comments:

1995—

Subdivision (d) of Section 11519 is amended to simplify and broaden the application of the restitution provisions.

Subdivisions (e)–(g) are drawn from 1981 Model State APA 4–220(c)–(d). They distinguish between the effective date of a decision and the time when it can be enforced.

The requirement of "actual knowledge" in subdivisions (e) and (f) is intended to include not only knowledge that a decision has been issued, but also knowledge of the general contents of the decision insofar as it pertains to the person who is required to comply with it. If a question arises whether a

particular person had actual knowledge of a decision, this must be resolved in the same manner as other fact questions.

The binding effect of a decision on nonparties who have actual knowledge may be illustrated by a state law that prohibits wholesalers from delivering alcoholic beverages to liquor dealers unless the dealers hold valid licenses from the state beverage agency. If the agency issues a decision revoking the license of a particular dealer, this decision is binding on any wholesaler who has actual knowledge of it, even before the decision is made available for public inspection and copying; the decision binds all wholesalers, including those without actual knowledge, after it has been made available for public inspection and copying.

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LexisNexis

Cal Gov Code § 11521

Deering's California Codes are current through Chapters 1-109 and 111-157 of the 2018 Regular Session and all urgency legislation through Chapter 181 of the 2018 Regular Session.

Deering's California Codes Annotated > GOVERNMENT CODE > Title 2 Government of the State of California > Division 3 Executive Department > Part 1 State Departments and Agencies > Chapter 5 Administrative Adjudication: Formal Hearing

§ 11521. Reconsideration

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in *Section 11517*. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

History

Added Stats 1945 ch 867 § 1. Amended Stats 1953 ch 964 § 1; Stats 1985 ch 324 § 22; *Stats 1987 ch 305 § 1*; *Stats 2004 ch 865 § 34 (SB 1914)*.

Annotations

Notes

Amendments:

1953 Amendment:

1953 Amendment:

Added "or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration" in subd (a).

1985 Amendment:

(1) Substituted "that" for "such" after "the decision if" in the second sentence of subd (a); and (2) amended subd (b) by (a) substituting "an administrative law judge" for "a hearing officer" wherever it appears; and (b) adding the comma after "agency itself" and "or she" after "unless he" in the last sentence.

1987 Amendment:

Added the third sentence to subd (a).

2004 Amendment:

Amended subd (a) by (1) adding the second sentence; and (2) adding "a" before "respondent" in the third sentence.

End of Document

LexisNexis®

Cal Gov Code § 11523

Deering's California Codes are current through Chapters 1-109 and 111-157 of the 2018 Regular Session and all urgency legislation through Chapter 181 of the 2018 Regular Session.

Deering's California Codes Annotated > GOVERNMENT CODE > Title 2 Government of the State of California > Division 3 Executive Department > Part 1 State Departments and Agencies > Chapter 5 Administrative Adjudication: Formal Hearing

§ 11523. Judicial review

Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to the petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the cost for the preparation of the transcript, the cost for preparation of other portions of the record and for certification thereof. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. If the petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record, the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. If the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

History

Added Stats 1945 ch 867 § 1. Amended Stats 1947 ch 491 § 9; Stats 1953 ch 962 § 1; Stats 1955 ch 246 § 1; Stats 1965 ch 1458 § 10; Stats 1971 ch 984 § 1; Stats 1985 ch 324 § 23, Stats 1985 ch 973 § 1; Stats 1986 ch 597 § 3; *Stats 1994 ch 1206 § 29 (SB 1775)*; *Stats 1995 ch 938 § 47 (SB 523)*, operative July 1, 1997; *Stats 2005 ch 674 § 23 (SB 231)*, effective January 1, 2006.

Annotations

Appendix 8

Notes

Editor's Notes—

Amendments:

Editor's Notes—

For operation of act, see the 1995 Note following Gov C § *11520*.

Amendments:

1947 Amendment:

Substituted "30 days" for "20 days" in the fourth sentence.

1953 Amendment:

Substituted "of the fee specified in Section 274 of the Code of Civil Procedure as now or hereinafter amended for the transcript, the cost of preparation of other portions of the record and for certification thereof" for "of the expense of preparation and certification thereof" in the fourth sentence.

1955 Amendment:

Substituted "Section 69950 of the Government Code" for "Section 274 of the Code of Civil Procedure" in the fourth sentence.

1965 Amendment:

Added ", subject, however, to the statutes relating to the particular agency" at the end of the first sentence.

1971 Amendment:

Substituted "30" for "five" in the sixth sentence.

1985 Amendment:

(1) Deleted "of the Government Code" after "Section 69950" in the fourth sentence; and (2) added the fifth, sixth, and last sentences. (As amended Stats 1985 ch 973, compared to the section as it read prior to 1985. This section was also amended by an earlier chapter, ch 324. See Gov C § 9605.)

1986 Amendment:

(1) Added the comma after "in this section" in the second sentence; (2) added "or her" after "therefor by him" in the fourth sentence and at the end of the eighth sentence; and (3) substituted "an administrative law judge" for "a hearing officer" after "proposed decision by" in the seventh sentence.

1994 Amendment:

(1) Substituted "the" for "any such" after "in this section," in the second sentence; (2) amended the fourth sentence by (a) substituting "the" for "such" after "the proceedings, or"; and (b) adding "the Office of Administrative Hearings or" after "be prepared by" and (c) adding ", which time shall be extended for good cause shown,".

1995 Amendment:

Amended the fourth sentence by (1) adding "On request of the petitioner for a record of the proceedings,"; (2) adding "in the request"; (3) adding "after the request"; and (4) deleting "as now or hereinafter amended" after "within 30 days".

2005 Amendment:

(1) Amended the fourth sentence by (a) adding "the" after "shall be delivered to"; and (b) substituting "cost for the preparation of the transcript, the cost for" for "fee specified in Section 69950 for the transcript, the cost of"; (2) deleted the former fifth and sixth sentences which read: "Thereafter, the remaining balance of any costs or charges for the preparation of the record shall be assessed against the petitioner whenever the agency prevails on judicial review following trial of the cause. These costs or charges constitute a debt of the petitioner which is collectible by the agency in the same manner as in the case of an obligation under a contract, and no license shall be renewed or reinstated where the petitioner has failed to pay all of these costs or charges."; (3) amended the current sixth sentence by (a) substituting "If the" for "Where" at the beginning of sentence; and (b) adding the comma after "part of the record"; and (4) substituted "If" for "In the event that" at the beginning of the last sentence.

Commentary

Law Revision Commission Comments:

1995—

Section 11523 is amended to clarify how long the agency must wait for the petitioner to designate a part of the record before it may proceed on the assumption that the complete record is required. This revision is intended to reduce confusion and delay encountered in the appeal process.

Hierarchy Notes:

Cal Gov Code Tit. 2, Div. 3, Pt. 1, Ch. 5

End of Document

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Saint Francis Memorial Hospital v. California Department of Public Health**
Case No.: **S249132**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 5, 2018, I served the attached **ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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Sheuerman, Martini, Tabari, Zenere & Garvin
1033 Willow Street
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Attorneys for Plaintiff and Appellant

Clerk of Court
California Court of Appeal
First District
350 McAllister Street
San Francisco, CA 94102
Case No. A150545

Clerk of Court
San Mateo Superior Court
c/o Hon. George A. Miram
400 County Center
Redwood City, CA 94063
Case No. CIV537118

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 5, 2018, at San Francisco, California.

M. Campos
Declarant

M. Campos
Signature

SA2018302482
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