No. S270798

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

LAW FINANCE GROUP, LLC,

Plaintiff and Appellant,

v.

SARAH PLOTT KEY,

Defendant and Respondent.

California Court of Appeal, Second District, Div. Two
Case No. B305790
Appeal from Los Angeles Superior Court
Case No. 19STCP04251
Honorable Rafael A. Ongkeko

ANSWER TO PETITION FOR REVIEW

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Supreme Court Case No.: S270798
Court of Appeal Case No.: B305790

Case Name: *Law Finance Group, LLC v. Sarah Plott Key*

[ ] There are no interested entities or parties to list in this Certificate per California Rules of Court, Rule 8.208.

[X] Interested entities or parties are listed below:

Name of Interested Entity or Person	Nature of Interest
1. Law Finance Group Holdings LP	Owner of Law Finance Group LLC
2. AL Zimmerman Capital LP	Partial owner of Law Finance Group Holdings LP
3. HAAS Holdings LLC	Partial owner of Law Finance Group Holdings LP
4. Southgate Holdings LLC	Partial owner of Law Finance Group Holdings LP
5. Kevin J. McCaffrey	Partial owner of Law Finance Group Holdings LP
6. LFG Special Investor Group Series 2013A LLC	Assignee of contract at issue in the underlying case

s/ Alana H. Rotter
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INTRODUCTION

Key has not come anywhere near identifying a review-worthy issue in the Court of Appeal's Opinion.

The Opinion applied Code of Civil Procedure section 1288.2's plain language to find that Key's request to vacate an arbitration award was untimely. The Opinion rejected equitable estoppel on case-specific factual grounds, "[e]ven assuming (without deciding)" estoppel can apply to the section 1288.2 deadline. (Opinion 16.) And, the order modifying the Opinion and denying rehearing succinctly disposed of the new arguments Key raised on rehearing and that reappear in her petition for review.

None of this creates any conflict or unsettled issue in the law on an important issue warranting this Court's attention. The petition should be denied.

WHY REVIEW SHOULD BE DENIED

I. There Is No Review-Worthy Issue Regarding The Interaction Of Code Of Civil Procedure Sections 1288.2 And 1290.6.

Code of Civil Procedure section 1288.2 requires that a request to vacate an arbitration award, filed in response to a petition to confirm the award, "*shall be served and filed not later than 100 days after the date of service of a signed copy of the award*" upon the respondent. (Code Civ. Proc., § 1288.2, italics added.)

It is undisputed that Key did not file her response seeking vacatur within the 100-day deadline. (Opinion 6.) The Opinion therefore held that the response was untimely. (Opinion 8-15.)

This holding is not controversial. It is a straightforward and obvious application of section 1288.2's plain language to the undisputed circumstances of this case.

Nonetheless, Key contends that review is necessary because, in her view, section 1288.2 does not apply where the petition to *confirm* was filed within 100 days of service of the award. (Petition 11, 18, 37-39.) In that situation, she argues, section 1288.2 drops out of the picture entirely, and the response seeking vacatur need only be timely under section 1290.6, which requires generally that a response to any arbitration-related petition be filed within 10 days of the petition. (*Ibid.*)

There is no important issue of unsettled law here. The Opinion applied section 1288.2 as written, in a way that gives effect to *both* section 1288.2 *and* section 1290.6. (Opinion 12.) By contrast, Key's position "contradicts the plain language of section 1288.2" and would create "an exception that does not exist in the statutory language." (Opinion 10.) Key's advocating a statutory interpretation contrary to the plain language of the statute does not create an issue warranting this Court's review.

Nor, contrary to Key's contention (Petition 37-39), is there confusion or conflict in the case law regarding section 1288.2. The decisions that she cites do *not* hold that section 1290.6's 10-day deadline excuses the need to comply with section 1288.2

if a petition to confirm was filed within 100 days of service of the award. None of her cited decisions squarely considered this issue. At most, some of the cited decisions hold that where section 1290.6's 10-day deadline is *earlier* than section 1288.2's 100-day deadline, the respondent must comply with that earlier deadline—a rule which results in the response being filed within *both* section 1290.6's deadline *and* section 1288.2's deadline. (E.g., *Coordinated Construction, Inc. v. Canoga Big 'A,' Inc.* (1965) 238 Cal.App.2d 313, 317.)

Key relies on loose language in decisions that did not consider whether section 1288.2 permits a response to be filed *more than* 100 days after the award is served, as long as it is within section 1290.6's deadline of 10 days after the petition to confirm is filed. (See Opinion 8-15 & fn. 5.) None of those decisions adopts the rule she advocates.

Indeed, the Opinion explained that one of the decisions that Key relies on—a decision signed by two of the same justices as the Opinion—does not mean what Key claims it means:

> 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""]).

(Opinion 15, discussing *Santa Monica College Faculty Assn. v. Santa Monica Community College Dist.* (2015) 243 Cal.App.4th 538.)

The Opinion also made clear that another case Key relies on, *Oaktree Capital Management, L.P. v. Bernard* (2010) 182 Cal.App.4th 60, does not stand for the proposition Key claims. (Opinion 13, fn. 5.) The Opinion does not mince words: "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." (*Ibid*.)

The Opinion goes on to explain in detail why Key's construction of *Oaktree Capital* is incorrect and why instead, *Oaktree Capital* is "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." (*Ibid*., original italics.)

The Court of Appeal's explanations of the case law—including case law authored by the same justices that decided the instant appeal—belie Key's assertion of a conflict in the case law. There is no conflict. Prior case law is entirely consistent with the rule espoused in the Opinion.

II. There Is No Review-Worthy Issue As To Equitable Tolling Or Equitable Estoppel.

Key also seeks review on whether equitable tolling or estoppel may be applied to section 1288.2's clear statutory deadline. (Petition 8, 16-32.) Again, the Opinion presents no issue meeting the review criteria.

A. Key's Premise Is Flawed: The Opinion Finds Equitable Relief Unavailable *On The Specific Record Here*, Not As A Broad Legal Proposition.

Key's pitch fails at the outset, because the Opinion does not present the issues she proposes. Her premise is that the Opinion categorically holds that equitable tolling and equitable estoppel cannot excuse missing section 1288.2's deadline—and that this supposed holding conflicts with existing case law. (Petition 16-17, 29.) But the Opinion does not contain the broad legal holding that Key claims. Just the opposite: *The Opinion assumes that equitable relief may be available as to section 1288.2.* (Opinion 16; Order Modifying Opinion And Denying Rehearing 2.) The Opinion recited: "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." (Opinion 16.) The Opinion found that relief was unavailable *on the specific record here*. (*Ibid.*)

An opinion that assumes that equitable relief may be available as to section 1288.2, and that finds that a party has failed to establish a basis for relief on the specific record at hand, presents no basis or need to review whether equitable tolling or equitable estoppel can ever excuse missing section 1288.2's deadline. That issue simply isn't presented.

B. Key's Equitable Tolling Argument Is Both Forfeited And Without Merit.

Equitable tolling does not present a review-worthy issue for other reasons, too. Among other things:

First, Key forfeited the issue by failing to timely raise it. She raised equitable tolling based on *Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710 (*Saint Francis*) for the first time in her petition for rehearing. (Order Modifying Opinion And Denying Rehearing 2.) She did not establish any good cause for failing to include it in her respondent's brief.

Issues raised for the first time in a rehearing petition "are not properly before" this Court. (*Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1012-1013.) That observation is in line with the rule that, "As a policy matter, on petition for review the Supreme Court normally will not consider an issue that the

petitioner failed to timely raise in the Court of Appeal." (Cal. Rules of Court, rule 8.500(c)(1).) Here, Key did not timely raise equitable tolling based on *Saint Francis*. This Court therefore should not consider it. (*Conservatorship of Susan T., supra*, 8 Cal.4th at p. 1013 ["on petition for review we normally will not consider any issue that could have been but was not timely raised in the briefs filed in the Court of Appeal"].)

Second, as the Opinion emphasized, under *Saint Francis*, equitable tolling applies "only occasionally and in special situations," and requires "reasonable and good faith conduct on the part of the plaintiff." (Order Modifying Opinion And Denying Rehearing 3, quotation marks omitted.) The Opinion concluded that "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." (*Ibid.*) That case-specific conclusion depends on the reasonableness of Key's claimed reliance, not on any legal conclusion that courts can never provide equitable relief relating to section 1288.2. As the Opinion made clear, its conclusion that Key's claimed reliance was unreasonable "is unrelated to the court's authority to provide equitable relief." (*Ibid.*) There is no conflict with *Saint Francis*.

C. The Opinion Does Not Create Any Conflict As To Equitable Estoppel.

Key's proposed estoppel issue fares no better. Her only argument that the equitable estoppel issue meets the criteria for

review focuses on whether relief is conceptually available—an issue that the Opinion did not reach, but instead assumed in Key's favor. (See Section II.A., *ante*.)

The Opinion's only *actual* estoppel ruling is that Key cannot establish the necessary reasonable reliance, because she and her attorney are charged with knowledge that parties cannot waive or extend section 1288.2's deadline. (Opinion 16-20.) Key has not developed an argument that the Opinion's reasonable-reliance finding meets the review criteria—i.e., that the issue is unsettled or recurs frequently enough to warrant this Court's attention. She may not do so for the first time in reply.

Key's sole argument as to the Opinion's *actual* estoppel ruling is a claim of factual error: She contends that the parties undisputedly agreed to "extend the statutory deadlines" and that she reasonably relied on that agreement, whereas the Opinion found that "[t]he evidence of such an agreement is, at best, ambiguous" and that in any event, she could not have reasonably believed that parties can stipulate to extend section 1288.2's deadline. (Petition 32; Opinion 16-20 & fn. 7.)

Error correction is no basis for review. But even putting that aside, the record refutes Key's claim that the parties agreed to extend the section 1288.2 deadline. The parties' emails, and the declaration by Key's counsel who talked to respondent's counsel, only reference extending *section 1290.6*'s 10-day deadline, which section 1290.6 expressly allows. (9 AA 4249-4276.) There is no evidence counsel ever discussed section 1288.2

which, unlike section 1290.6, does *not* say its deadline can be extended by agreement of the parties. (*Ibid*.; Opinion 14.)[1] Thus, as a factual matter, too, this case is not an appropriate vehicle for reviewing the issue that Key claims merits this Court's attention.

III. There Is No Review-Worthy Issue Regarding Decisions Prohibiting Confirmation Of Arbitration Awards Violating Public Policy Or Contravening Unwaivable Statutory Rights.

Finally, Key seeks review on whether a trial court can vacate an arbitration award that violates public policy and that contravenes statutory rights, where the party seeking vacatur failed to comply with Code of Civil Procedure section 1288 and 1288.2's jurisdictional deadline to seek vacatur. (Petition 8, 10-11, 32-37.) Again, there is no basis for review here.

First, as with equitable tolling, Key has forfeited this issue by failing to timely raise it: It surfaced for the first time in her petition for rehearing, after the Court of Appeal decided the case. (Order Modifying Opinion and Denying Rehearing 2.) Key did

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[1] The record belies Key's assertion that "[t]he trial court found the parties had agreed to extend the statutory time limits . . . ." (Petition 15.) In fact, the trial court found only that "Key's response is timely under *CCP § 1290.6*"; it made no finding as to any agreement to extend the section 1288.2 deadline, and it expressly found that Key's petition to vacate was jurisdictionally barred because it was not filed within 100 days of service of the award, as required by Code of Civil Procedure section 1288. (9 AA 4281-4282, italics added.)

not identify any good cause for failing to raise it earlier. "It is much too late to raise an issue for the first time in a petition for rehearing." (*Midland Pacific Building Corp. v. King* (2007) 157 Cal.App.4th 264, 276; see also *Conservatorship of Susan T., supra*, 8 Cal.4th at pp. 1012-1013 [arguments raised in the Court of Appeal for the first time in a rehearing petition "are not properly before us"; "on petition for review we normally will not consider any issue that could have been but was not timely raised in the briefs filed in the Court of Appeal"].) This Court therefore should not consider it.

Second, despite Key's protestations, there is no conflict between the Opinion and *Loving & Evans v. Blick* (1949) 33 Cal.2d 603 (*Loving*). *Loving* considered whether a claim that an entire transaction was illegal triggers an exception to the general rule that arbitration awards are not subject to judicial review. (*Id.* at pp. 609-615.) *Loving* did not address whether a vacatur request based on illegality must be asserted within the deadlines established by sections 1288 and 1288.2. *Loving* therefore is not authority for the rule Key urges, nor does it conflict with the Opinion. (*Silverbrand, supra*, 46 Cal.4th at p. 127.)[2]

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[2] There likewise is no conflict with *United Firefighters of Los Angeles v. City of Los Angeles* (1991) 231 Cal.App.3d 1576 or *Berg v. Traylor* (2007) 148 Cal.App.4th 809. (Petition 36, fn. 10.) *United Firefighters* held that the appellants' failure to file a timely petition or response seeking vacatur prevented them from arguing for vacatur based on the substance of the award. (231 Cal.App.3d at p. 1581.) It—and *Berg*—allowed a challenge

Moreover, *Loving* involved a claim of "illegality of the *entire* transaction." (33 Cal.2d at p. 609, italics added.) Here, the trial court found that, "Key has *not* shown that the arbitrator has enforced an entire contact or transaction that is illegal." (9 AA 4284, italics added.)

Key argued, and the trial court agreed, that the award violated *public policy*, by which Key meant simply that instead of imposing a statutory penalty of voiding the entire loan agreement, the arbitrators modified the agreement's terms to remove the terms they found problematic. But the modified terms that the arbitrators included in the award are not themselves unlawful, nor is the award unjust.

Indeed, Key borrowed $2.4 million to fund litigation. (Opinion 4.) She prevailed in the litigation, winning a share of her parents' estate worth approximately $20 million. (*Id.* at 5.) She repaid the loan principal, but refused to pay any of the service fees or interest on the principal amount, as the loan agreement required. (*Ibid.*) After a multi-day evidentiary hearing, the arbitrators rejected virtually all of Key's attacks on the loan agreement. (1 AA 111-112.) The arbitrators found that

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to the award only based on the arbitrators' *lack of jurisdiction to decide the controversy* in the first place. (*United Firefighters*, *supra*, 231 Cal.App.3d at pp. 1581-1582; *Berg, supra*, 148 Cal.App.4th at pp. 817-822.) Key has not challenged the arbitrators' jurisdiction over her. (See *Santa Monica, supra*, 243 Cal.App.4th at pp. 545-546 [distinguishing *United Firefighters* on this ground].)

Key was actively involved in negotiating the agreement. (*Ibid.*) They found that she discussed it with her personal counsel and that she understood its terms before she signed it. (*Ibid.*) They found that the agreement was neither unconscionable nor illusory. (*Ibid.*) The only issue they found was that the agreement's compound interest and service fee provisions violated the Finance Code, but they addressed those concerns by striking the fee provisions and replacing compound interest with simple interest. (1 AA 115-116.)

In other words, the arbitrators modified the agreement's terms to create the utterly inoffensive result of Key having to pay simple interest on the loan she used to garner a major trial victory that gave her an entitlement to around $20 million. Nothing about this result warrants this Court's intervention. Nothing warrants throwing aside section 1288 and 1288.2's jurisdictional 100-day deadlines for seeking vacatur. Nothing warrants disregarding the strong presumption in favor of arbitral finality. (See *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 32.)

Third, the Opinion, as modified on denial of rehearing, cogently addresses Key's reliance on *South Bay Radiology Medical Associates v. Asher* (1990) 220 Cal.App.3d 1074 (*South Bay*). As the Opinion explains, *Santa Monica, supra*, 243 Cal.App.4th at p. 546, already "rejected the argument that [under *South Bay*] 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.'" (Order Modifying Opinion and Denying Rehearing 2.) The Opinion further explains that to construe *South Bay* that way "'would create an exception that would swallow the general rule hinging jurisdiction on the timeliness of the challenge.'" (*Ibid.*) And indeed, Key has not identified any cases applying *South Bay* for the proposition she urges—or, for that matter, any post-*Santa Monica* appellate decisions disagreeing with *Santa Monica's* handling of *South Bay*. She therefore has not demonstrated that there is any unsettled issue here necessitating this Court's review.

CONCLUSION

The Opinion is simply an uncontroversial application of settled law to the undisputed facts. It presents no possible basis for review. The Court should deny Key's petition.

Date: September 17, 2021

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this **Answer To Petition For Review** contains **3,089** words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: September 17, 2021 s/ Alana H. Rotter

PROOF OF SERVICE

State Of California, County Of Los Angeles

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On September 17, 2021, I served the foregoing document described as: **Answer To Petition For Review** on the parties in this action by serving:

SEE ATTACHED SERVICE LIST

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By Mail: By placing a true copy thereof enclosed in sealed envelopes addressed as above and placing the envelopes for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Executed on September 17, 2021, at Los Angeles, California.

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

s/ Rebecca E. Nieto

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