

COMMISSION ON STATE MANDATES

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December 11, 2014

Mr. Keith B. Petersen
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Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Decision**
Collective Bargaining, 05-4425-I-11
Government Code Sections 3540-3549.9
Statutes 1975, Chapter 961
Fiscal Year 1995-1996
Gavilan Joint Community College District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

On December 5, 2014, the Commission on State Mandates adopted the decision on the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961

Fiscal Year 1995-1996

Gavilan Joint Community College District,
Claimant.

Case No.: 05-4425-I-11

Collective Bargaining

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5. ARTICLE 7

(Adopted December 5, 2014)

(Served December 11, 2014)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on December 5, 2014. Keith Petersen appeared on behalf of the claimant. Jim Spano and Jim Venneman appeared on behalf of the Controller.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the proposed decision to deny the IRC at the hearing by a vote of six to zero.

Summary of the Findings

This IRC was filed in response to two letters received by Gavilan Joint Community College District (claimant) from the State Controller's Office (Controller), notifying the claimant of an adjustment to the claimant's fiscal year 1995-1996 reimbursement claim; one on July 30, 1998, which notified the claimant that \$126,146 was due the state, and a second on July 10, 2002, notifying the claimant that \$60,597 was now due to the claimant as a result of the Controller's review of the claim and "prior collections."

The Commission finds that this IRC was not timely filed. The time for filing an IRC, in accordance with the Commission's regulations, is "no later than three (3) years following the date of the State Controller's remittance advice notifying the claimant of a reduction."¹ Government Code section 17558.5 requires the Controller's notice to the claimant of a reduction to identify the claim components adjusted and the reason(s) for adjustment.² Here, the claimant

¹ Code of Regulations, title 2, section 1185 (Register 1999, No. 38).

² Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

first received notice of the adjustment to its 1995-1996 reimbursement claim on July 30, 1998, and received a second notice dated July 10, 2002, and did not file this IRC until December 16, 2005. Though the parties dispute which notice triggers the running of the limitation, that issue need not be resolved here since this claim was filed beyond the limitation in either case. Therefore, the IRC is denied.

COMMISSION FINDINGS

I. Chronology

01/24/1996	Controller notified claimant of a \$275,000 payment toward estimated reimbursement for the 1995-1996 fiscal year. ³
11/25/1996	Claimant submitted its fiscal year 1995-1996 reimbursement claim for \$348,966. ⁴
01/30/1997	Controller notified claimant that it would remit an additional \$15,270 for a total payment of \$290,270 for fiscal year 1995-1996. ⁵
07/30/1998	Controller notified claimant of reduction to the fiscal year 1995-1996 reimbursement claim of \$184,842, resulting in \$126,146 due the state. ⁶
08/05/1998	Claimant notified Controller that it was appealing the reduction. ⁷
08/08/2001	Controller notified claimant that it was reducing payments for the <i>Open Meetings Act</i> mandate in partial satisfaction of the reduction for the 1995-1996 fiscal year reimbursement claim for the <i>Collective Bargaining</i> mandate. ⁸
07/10/2002	Controller notified claimant of its review of the 1995-1996 reimbursement claim for the <i>Collective Bargaining</i> mandate, and its findings that the claim was properly reduced by \$124,245, rather than \$184,842, and that \$60,597 was now due the claimant. ⁹
12/16/2005	Claimant filed this IRC. ¹⁰
12/27/2005	Commission staff notified claimant that the claim was not timely, and deemed it incomplete. ¹¹

³ Exhibit A, Incorrect Reduction Claim page 14.

⁴ Exhibit A, Incorrect Reduction Claim pages 4-5.

⁵ Exhibit A, Incorrect Reduction Claim page 5.

⁶ Exhibit A, Incorrect Reduction Claim pages 5; 15.

⁷ Exhibit A, Incorrect Reduction Claim pages 5; 21.

⁸ Exhibit A, Incorrect Reduction Claim pages 5; 17.

⁹ Exhibit A, Incorrect Reduction Claim pages 5-6; 18.

¹⁰ Exhibit A, Incorrect Reduction Claim page 1.

¹¹ See Exhibit B, Claimant Rebuttal Comments, page 1.

12/30/2005	Claimant submitted rebuttal comments seeking the full Commission's determination on the timeliness of the claim. ¹²
03/09/2006	Commission staff deemed the IRC complete and issued a request for comments.
03/23/2010	Controller submitted comments on the IRC. ¹³
09/25/2014	Commission staff issued the draft proposed decision. ¹⁴
10/03/2014	The Claimant filed comments on the draft proposed decision. ¹⁵

II. Background

On July 17, 1978, the Board of Control, predecessor to the Commission, found that Statutes 1975, chapter 961 imposed a reimbursable state mandate. On October 22, 1980, parameters and guidelines were adopted, which were amended several times.¹⁶ The reimbursement claim at issue in this IRC was filed for the 1995-1996 fiscal year, and at the time that claim was prepared and submitted, the parameters and guidelines effective on July 22, 1993 were applicable.¹⁷ The 1993 parameters and guidelines provided for reimbursement of costs incurred to comply with sections 3540 through 3549.1, and "regulations promulgated by the Public Employment Relations Board," including:

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;
- Elections and decertification elections of unit representatives are reimbursable in the even the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: Reimbursable functions include – receipt of exclusive representative's initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer's proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;

¹² Exhibit B, Claimant Rebuttal Comments.

¹³ Exhibit C, Controller's Comments.

¹⁴ Exhibit D, Draft Proposed Decision, issued September 25, 2014.

¹⁵ Exhibit E, Claimant's Comments on Draft Proposed Decision.

¹⁶ Exhibit A, Incorrect Reduction Claim, Exhibit C to the IRC, pp. 3-9. On March 26, 1998, the Commission adopted a second test claim decision on Statutes 1991, chapter 1213. Parameters and guidelines for the two programs were consolidated on August 20, 1998, and have since been amended again, on January 27, 2000. However, this later decision and the consolidated parameters and guidelines are not relevant to this IRC since the IRC addressed reductions in the 1995-1996 fiscal year.

¹⁷ Exhibit A, Incorrect Reduction Claim, Exhibit C to the IRC.

- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract;
- Unfair labor practice adjudication process and public notice complaints.¹⁸

III. Positions of the Parties

The issues raised in this IRC, and the comments filed in response and rebuttal, include the scope of the Controller’s audit authority; the notice owed to a claimant regarding both the sufficiency of supporting documentation and the reasons for reductions; and the audit standards applied. However, the threshold issue is whether the IRC filing is timely in the first instance, with respect to which the parties maintain opposing positions.

Gavilan Joint Community College District, Claimant

The claimant argues that the Controller’s reductions are not made in accordance with due process, in that the Controller “has not specified how the claim documentation was insufficient for purposes of adjudicating the claim.” The letters that claimant cites “merely stated that the District’s claim had ‘no supporting documentation.’”¹⁹ The claimant further argues that the adjustments made to the fiscal year 1995-1996 claim are “procedurally incorrect in that the Controller did not audit the records of the district...”²⁰ In addition, the claimant argues that “[t]he Controller does not assert that the claimed costs were excessive or unreasonable, which is the only mandated cost audit standard in statute.” The claimant asserts that “[i]f the Controller wishes to enforce other audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.”²¹

Addressing the statute of limitations issue, the claimant states that “the incorrect reduction claim asserts as a matter of fact that the Controller’s July 10, 2002 letter reports an amount payable to the claimant, which means a subsequent final payment action notice occurred or is pending from which the ultimate regulatory period of limitation is to be measured...” The claimant asserts that any “evidence regarding the date of last payment action, notice, or remittance advice, is in the possession of the Controller.”²²

In comments on the draft proposed decision, the claimant argues that “[w]ell after the incorrect reduction claim was filed, the District received a February 26, 2011, Controller’s notice of adjudication of the FY 1995-96 annual claim.” The claimant asserts that based on this later notice “the three year statute of limitations for the incorrect reduction claim would be moved forward to February 26, 2014, which is more than eight years after the incorrect reduction claim was filed.” The claimant states: “It would seem that the Commission is now required to address

¹⁸ Exhibit A, Incorrect Reduction Claim, Exhibit C to the IRC, pp. 3-9.

¹⁹ Exhibit A, Incorrect Reduction Claim, page 9.

²⁰ Exhibit A, Incorrect Reduction Claim, page 9.

²¹ Exhibit A, Incorrect Reduction Claim, page 10.

²² Exhibit B, Claimant’s Rebuttal Comments, page 2.

the first issue of what constitutes ‘notice of adjustment,’ that is, the Controller’s adjudication of an annual claim, for purposes of the statute of limitations for filing an incorrect reduction claim.”²³

State Controller’s Office

The Controller argues that it “is empowered to audit claims for mandated costs and to reduce those that are ‘excessive or unreasonable.’” The Controller continues: “If the claimant disputes the adjustments made by the Controller pursuant to that power, the burden is upon them to demonstrate that they are entitled to the full amount of the claim.”²⁴ The Controller notes that the claimant “asserts that a mere lack of documentation is an insufficient basis to reduce a claim...” but the Controller argues that “a claim that is unsupported by valid documentation is both excessive and unreasonable.”²⁵ The Controller further asserts that the claimant “sought reimbursement for activities that are outside the scope of reimbursable activities as defined in the Parameters and Guidelines,” including salary costs for expenses of school district officials.²⁶

Furthermore, the Controller argues that the IRC is not timely. The Controller notes that the statute of limitations pursuant to section 1185 of the Commission’s regulations is “no later than three years following the date of the Office of State Controller’s final audit report, letter, remittance advice[,] or other written notice of adjustment...”²⁷ The Controller argues that based on the first notice sent to the claimant on July 30, 1998, “the time to file a claim would have expired on July 30, 2001.”²⁸ Alternatively, “[e]ven if we accept the Claimant’s implied argument that a subsequent letter from the Controller’s Office dated July 10, 2002, started a new Statute of Limitations, the claim was still time barred.”²⁹ The Controller concludes that “that time period would have expired on July 10, 2005, five months before this claim was actually filed.”³⁰

And finally, the Controller argues: “Not satisfied with two bites at the apple, Claimant asserts that the period of the Statute of Limitations ‘will be measured from the date of the last payment action...’” and that there is no law to support that position.³¹

²³ Exhibit E, Claimant’s Comments on Draft Proposed Decision, page 2.

²⁴ Exhibit C, Controller’s Comments, page 1.

²⁵ Exhibit C, Controller’s Comments, pages 1-2.

²⁶ Exhibit C, Controller’s Comments, page 2.

²⁷ Exhibit C, Controller’s Comments, page 2 [citing California Code of Regulations, title 2, section 1185 (as amended, Register 2007, No. 19)].

²⁸ Exhibit C, Controller’s Comments, page 2.

²⁹ Exhibit C, Controller’s Comments, page 2.

³⁰ Exhibit C, Controller’s Comments, page 2.

³¹ Exhibit C, Controller’s Comments, page 2.

IV. Discussion

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.³² The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."³³

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This is similar to the standard used by the courts when reviewing an alleged abuse of discretion by a state agency.³⁴ Under this standard, the courts have found that:

When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "³⁵

³² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

³³ *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

³⁴ *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

³⁵ *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at 547-548.

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.³⁶ In addition, section 1185.2(c) of the Commission's regulations requires that any assertion of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.³⁷

This Incorrect Reduction Claim Was Not Timely Filed.

The general rule in applying and enforcing a statute of limitations is that a period of limitation for initiating an action begins to run when the last essential element of the cause of action or claim occurs. There are a number of recognized exceptions to the accrual rule, each of which is based in some way on the wronged party having notice of the wrong or the breach that gave rise to the action.

In the context of an IRC, the last essential element of the claim is the notice to the claimant of a reduction, as defined by the Government Code and the Commission's regulations, which begins the period of limitation; the same notice also defeats the application of any of the notice-based exceptions to the general rule.

Here, there is some question as to whether the reasons for the reduction were stated in the earliest notice, as required by section 17558.5 and the Commission's regulations. The evidence in the record indicates that the claimant had actual notice of the reduction and of the reason for the reduction ("no supporting documentation") as of July 30, 1998.³⁸ However, the July 10, 2002 letter more clearly states the Controller's reason for reduction.³⁹ Ultimately, whether measured from the date of the earlier notice, or the July 10, 2002 notice, the period for filing an IRC on this audit expired no later than July 10, 2005, a full seven months before the IRC was filed. The analysis herein also demonstrates that the period of limitation is not unconstitutionally retroactive, as applied to this IRC. The IRC is therefore untimely.

1. The period of limitation applicable to an IRC begins to run at the time an IRC can be filed, and none of the exceptions or special rules of accrual apply.

- a. *The general rule is that a statute of limitations attaches and begins to run at the time the cause of action accrues.*

The threshold issue in this IRC is when the right to file an IRC based on the Controller's reductions accrued, and consequently when the applicable period of limitation began to run against the claimant. The general rule, supported by a long line of cases, is that a statute of

³⁶ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

³⁷ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

³⁸ Exhibit A, IRC 05-44254-I-11, pages 5; 21.

³⁹ Exhibit A, IRC 05-4425-I-11, page 19.

limitations attaches when a cause of action arises; when the action can be maintained.⁴⁰ The California Supreme Court has described statutes of limitations as follows:

A statute of limitations strikes a balance among conflicting interests. If it is unfair to bar a plaintiff from recovering on a meritorious claim, it is also unfair to require a defendant to defend against possibly false allegations concerning long-forgotten events, when important evidence may no longer be available. Thus, statutes of limitations are not mere technical defenses, allowing wrongdoers to avoid accountability. Rather, they mark the point where, in the judgment of the legislature, the equities tip in favor of the defendant (who may be innocent of wrongdoing) and against the plaintiff (who failed to take prompt action): “[T]he period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.”⁴¹

The Court continued: “Critical to applying a statute of limitations is determining the point when the limitations period begins to run.”⁴² Generally, the Court noted, “a plaintiff must file suit within a designated period after the cause of action accrues.”⁴³ The cause of action accrues, the Court said, “when [it] is complete with all of its elements.”⁴⁴ Put another way, the courts have held that “[a] cause of action accrues ‘upon the occurrence of the last element essential to the cause of action.’”⁴⁵

Here, the “last element essential to the cause of action,” pursuant to Government Code section 17558.5 and former section 1185 (now 1185.1) of the Commission’s regulations, is a notice to the claimant of the adjustment, which includes the reason for the adjustment. Government Code section 17558.5(c) provides, in pertinent part:

The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment...⁴⁶

⁴⁰ See, e.g., *Osborn v. Hopkins* (1911) 160 Cal. 501, 506 [“[F]or it is elementary law that the statute of limitations begins to run upon the accrual of the right of action, that is, when a suit may be maintained, and not until that time.”]; *Dillon v. Board of Pension Commissioners* (1941) 18 Cal.2d 427, 430 [“A cause of action accrues when a suit may be maintained thereon, and the statute of limitations therefore begins to run at that time.”].

⁴¹ *Poosh v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, at p. 797.

⁴² *Ibid.*

⁴³ *Ibid* [citing Code of Civil Procedure section 312].

⁴⁴ *Ibid* [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

⁴⁵ *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133 [citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176].

⁴⁶ Government Code section 17558.5 (added, Stats. 1995, ch. 945 (SB 11)).

Accordingly, former section 1185 of the Commission’s regulations provides that incorrect reduction claims shall be filed not later than three years following the notice of adjustment, and that the filing must include a detailed narrative describing the alleged reductions and a copy of any “written notice of adjustment from the Office of the State Controller that explains the reason(s) for the reduction or disallowance.”⁴⁷ Therefore, the Commission finds that the last essential element of an IRC is the issuance by the Controller of a notice of adjustment that includes the reason for the adjustment.

b. *More recent cases have relaxed the general accrual rule or recognized exceptions to the general rule based on a plaintiff’s notice of facts constituting the cause of action.*

Historically, the courts have interpreted the application of statutes of limitation very strictly: in a 1951 opinion, the Second District Court of Appeal declared that “[t]he courts in California have held that statutes of limitation are to be strictly construed and that if there is no express exception in a statute providing for the tolling of the time within which an action can be filed, the court cannot create one.”⁴⁸ That opinion in turn cited the California Supreme Court in *Lambert v. McKenzie* (1901), in which the Court reasoned that a cause of action for negligence did not arise “upon the date of the discovery of the negligence,” but rather “[i]t is the date of the act and fact which fixes the time for the running of the statute.”⁴⁹ The Court continued:

Cases of hardship may arise, and do arise, under this rule, as they arise under every statute of limitations; but this, of course, presents no reason for the modification of a principle and policy which upon the whole have been found to make largely for good... And so throughout the law, except in cases of fraud, it is the time of the act, and not the time of the discovery, which sets the statute in operation.⁵⁰

Accordingly, the rule of *Lambert v. McKenzie* has been restated simply: “Generally, the statute of limitations begins to run against a claimant at the time the act giving rise to the injury occurs rather than at the time of discovery of the damage.”⁵¹ This historically-strict interpretation of statutes of limitation accords with the plain language of the Code of Civil Procedure, section 312, which states that “[c]ivil actions, *without exception*, can only be commenced within the period prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute.”⁵²

However, more recently, courts have applied a more relaxed rule in appropriate circumstances, finding that a cause of action accrues when the plaintiff has knowledge of sufficient facts to

⁴⁷ Code of Regulations, title 2, section 1185 (Register 99, No. 38).

⁴⁸ *Marshall v. Packard-Bell Co.* (1951) 106 Cal.App.2d 770, 774.

⁴⁹ (1901) 135 Cal. 100, 103 [overruled on other grounds, *Wennerholm v. Stanford University School of Medicine* (1942) 20 Cal.2d 713, 718].

⁵⁰ *Ibid.*

⁵¹ *Solis v. Contra Costa County* (1967) 251 Cal.App.2d 844, 846 [citing *Lambert v. McKenzie*, 135 Cal. 100, 103].

⁵² Enacted, 1872; Amended, Statutes 1897, chapter 21 [emphasis added].

make out a cause of action: “there appears to be a definite trend toward the discovery rule and away from the strict rule in respect of the time for the accrual of the cause of action...”⁵³ For example, in *Neel v. Magana, Olney, Levy, Cathcart & Gelfand*, the court presumed “the inability of the layman to detect” an attorney’s negligence or misfeasance, and therefore held that “in an action for professional malpractice against an attorney, the cause of action does not accrue until the plaintiff knows, or should know, all material facts essential to show the elements of that cause of action.”⁵⁴ Similarly, in *Seelenfreund v. Terminix of Northern California, Inc.*, the court held that where the cause of action arises from a negligent termite inspection and report: “appellant, in light of the specialized knowledge required [to perform structural pest control], could, with justification, be ignorant of his right to sue at the time the termite inspection was negligently made and reported...”⁵⁵

Also finding justification for delayed accrual in an attorney malpractice context, but on different grounds, is *Budd v. Nixen*, in which the court framed the issue as a factual question of when actual or appreciable harm occurred: “mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm - not yet realized - does not suffice to create a cause of action for negligence.”⁵⁶ Accordingly, in *Allred v. Bekins Wide World Van Services*, it was held that the statute of limitations applicable to a cause of action for the negligent packing and shipping of property should be “tolled until the Allreds sustained damage, and discovered or should have discovered, their cause of action against Bekins.”⁵⁷

These cases demonstrate that the plaintiff’s *knowledge* of sufficient facts to make out a claim is sometimes treated as the last essential element of the cause of action. Or, alternatively, actual damage must be sustained, and knowledge of the damage, before the statute begins to run.

Here, a delayed discovery rule is inconsistent with the plain language of the Commission’s regulations and of section 17558.5, and illogical in the context of an IRC filing, but notice of the reduction and the reason for it constitute the last essential element of the claim. Former section 1185 of the Commission’s regulations provides for a period of limitation of three years following the date of a document from the Controller “notifying the claimant of a reduction.”⁵⁸ Likewise, Government Code section 17558.5 requires the controller to notify the claimant in writing and specifies that the notice must provide “the claim components adjusted, the amounts

⁵³ *Warrington v. Charles Pfizer & Co.*, (1969) 274 Cal.App.2d 564, 567 [citing delayed accrual based on discovery rule for medical, insurance broker, stock broker, legal, and certified accountant malpractice and misfeasance cases].

⁵⁴ 6 Cal.3d at p. 190.

⁵⁵ (1978) 84 Cal.App.3d 133, 138.

⁵⁶ *Budd v. Nixen* (1971) 6 Cal.3d 195, 200-201 [superseded in part by statute, Code of Civil Procedure section 340.6 (added, Stats. 1977, ch. 863) which provides for tolling the statute of limitations if the plaintiff has not sustained actual injury].

⁵⁷ (1975) 45 Cal.App.3d 984, 991 [Relying on *Neel v. Magana, Olney, Levy, Cathcart & Gelfand*, *supra*, 6 Cal.3d at p. 190; *Budd v. Nixen*, *supra*, 6 Cal.3d at pp. 200-201].

⁵⁸ Code of Regulations, title 2, section 1185 (Register 1999, No. 38).

adjusted...and the reason for the adjustment.”⁵⁹ Moreover, an IRC is based on the reduction of a claimant’s reimbursement during a fiscal year, and the claim could not reasonably be filed before the claimant was aware that the underlying reduction had been made. Therefore, the delayed discovery rules developed by the courts are not applicable to an IRC, because by definition, once it is possible to file the IRC, the claimant has sufficient notice of the facts constituting the claim.

c. *Other recent cases have applied the statute of limitations based on the later accrual of a distinct injury or wrongful conduct.*

Another line of legal reasoning, which rests not on delayed accrual of a cause of action, but on a new injury that begins a new cause of action and limitation period, is represented by cases alleging more than one legally or qualitatively distinct injury arising at a different time, or more than one injury arising on a recurring basis.

In *Poosh v. Philip Morris USA, Inc.*, the Court held that applying the general rule of accrual “becomes rather complex when...a plaintiff is aware of both an injury and its wrongful cause but is uncertain as to how serious the resulting damages will be or whether *additional injuries* will later become manifest.”⁶⁰ In *Poosh*, the plaintiff was diagnosed with successive smoking-related illnesses between 1989 and 2003. When diagnosed with lung cancer in 2003 she sued Phillip Morris USA, and the defendant asserted a statute of limitations defense based on the initial smoking-related injury having occurred in 1989. The Ninth Circuit Court of Appeals, hearing a motion for summary judgment, certified a question to the California Supreme Court whether the later injury (assuming for purposes of the summary judgment motion that the lung cancer diagnosis was indeed a separate injury) triggered a new statute of limitations, despite being caused by the same conduct. The Court held that for statute of limitations purposes, a later physical injury “can, in some circumstances, be considered ‘qualitatively different...’”⁶¹ Relying in part on its earlier decision in *Grisham v. Philip Morris*,⁶² in which a physical injury and an economic injury related to smoking addiction were treated as having separate statutes of limitation, the Court held in *Poosh*:

As already discussed...we emphasized in *Grisham* that it made little sense to require a plaintiff whose only known injury is economic to sue for personal injury damages based on the speculative possibility that a then latent physical injury might later become apparent. (*Grisham, supra*, 40 Cal.4th at pp. 644–645.) Likewise, here, no good reason appears to require plaintiff, who years ago suffered a smoking-related disease that is not lung cancer, to sue at that time for lung cancer damages based on the speculative possibility that lung cancer might later arise.⁶³

⁵⁹ Government Code section 17558.5 (added, Stats. 1995, ch. 945 (SB 11)).

⁶⁰ *Poosh v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797 [emphasis added].

⁶¹ *Id.*, at p. 792.

⁶² (2007) 40 Cal.4th 623.

⁶³ *Poosh, supra*, at p. 802.

However, the Court cautioned: “We limit our holding to latent disease cases, without deciding whether the same rule should apply in other contexts.”⁶⁴ No published cases in California have sought to extend that holding. In effect, the *Poosh* holding is not an exception to the rule of accrual of a cause of action, but a recognition that in certain limited circumstances (such as latent diseases) a new cause of action, with a new statute of limitations, can arise from the same underlying facts, such as smoking addiction or other exposure caused by a defendant.

A second, and in some ways similar exception to the general accrual rule, can occur in the context of a continuing or recurring injury or wrongful conduct, such as a nuisance or trespass. Where a nuisance or trespass is considered permanent, such as physical damage to property or a hindrance to access, the limitation period runs from the time the injury first occurs; but if the conduct is of a character that may be discontinued and repeated, each successive wrong gives rise to a new action, and begins a new limitation period.⁶⁵ The latter rule is similar to the latent physical injury cases described above, in that a continuing or recurring nuisance or trespass could have the same or similar cause but the cause of action is not stale because the injury is later-incurred or later-discovered. However, in the case of a continuing nuisance or trespass, the statute of limitations does not bar the action completely, but limits the remedy to only those injuries incurred within the statutory period; a limitation that would not be applicable to these facts, because the subsequent notice does not constitute a new injury, as explained below.

In *Phillips v. City of Pasadena*,⁶⁶ the plaintiff brought a nuisance action against the City for blocking a road leading to the plaintiff’s property, which conduct was alleged to have destroyed his resort business. The period of limitation applicable to a nuisance claim against the City was six months, and the trial court dismissed the action because the road had first been blocked nine months before the claim was filed. On appeal, the court treated the obstruction as a continuing nuisance, and thus allowed the action, but limited the recovery to damages occurring six months prior to the commencement of the action, while any damages prior to that were time-barred.⁶⁷ In other words, to the extent that the city’s roadblock caused injury to the plaintiff’s business, Phillips was only permitted to claim monetary damages incurred during the statutory period preceding the initiation of the action.

Here, there is no indication that the “injury” suffered by the claimant is of a type that could be analogized to *Poosh* or *Phillips*. Although the first notice of adjustment in the record of this IRC is vague as to the reasons for reduction,⁶⁸ and the Controller did alter the reduction (i.e.,

⁶⁴ *Id.*, at p. 792.

⁶⁵ See *Phillips v. City of Pasadena* (1945) 27 Cal.2d 104 [“Where a nuisance is of such a character that it will presumably continue indefinitely it is considered permanent, and the limitations period runs from the time the nuisance is created.”]; *McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 84 [“When a nuisance is continuing, the injured party is entitled to bring a series of successive actions, each seeking damages for new injuries occurring within three years of the filing of the action...”].

⁶⁶ (1945) 27 Cal.2d 104.

⁶⁷ *Id.*, at pp. 107-108.

⁶⁸ Exhibit A, IRC 05-4425-I-11, page 15.

reduced the reduction) in a later notice letter,⁶⁹ there is no indication that the injury to the claimant is qualitatively different, as was the case in *Pooshs*. Moreover, the later letter in the record in fact provides for a *lesser* reduction, rather than an increased or additional reduction, which would be recoverable under the reasoning of *Phillips*. It could be argued that the Controller has the authority to mitigate or retract its reduction at any time, only to impose a new or increased reduction, but no such facts emerge on this record. Moreover, in cases that apply a continuing or recurring harm theory, only the incremental or increased harm that occurred during the statutory period is recoverable, as in *Phillips*. Here, as explained above, the later notice of reduction (July 10, 2002) indicates a smaller reduction than the earlier, and therefore no incremental increase in harm can be identified during the period of limitation (i.e., three years prior to the filing date of the IRC, December 19, 2005).

d. The general rule still places the burden on the plaintiff to initiate an action even if the full extent or legal significance of the claim is not known.

Even as “[t]he strict rule...is, in various cases, relaxed for a variety of reasons, such as implicit or express representation; fraudulent concealment, fiduciary relationship, continuing tort, continuing duty, and progressive and accumulated injury, all of them excusing plaintiff’s unawareness of what caused his injuries...”,⁷⁰ the courts have continued to resist broadening the discovery rule to excuse a dilatory plaintiff⁷¹ when sufficient facts to make out a claim or cause of action are apparent.⁷² And, the courts have held that the statute may commence to run before *all* of the facts are available, or before the legal significance of the facts is fully understood. For example, in *Jolly v. Eli Lilly & Co.*, the Court explained that “[u]nder the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something to her.”⁷³ The Court continued:

A plaintiff need not be aware of the specific “facts” necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide

⁶⁹ Exhibit A, IRC 05-4425-I-11, pages 18-19.

⁷⁰ *Warrington v. Charles Pfizer & Co.*, (1969) 274 Cal.App.2d 564, 567.

⁷¹ *Regents of the University of California v. Superior Court* 20 Cal.4th 509, 533 [Declining to apply doctrine of fraudulent concealment to toll or extend the time to commence an action alleging violation of Bagley-Keene Open Meetings Act].

⁷² *Scafidi v. Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 566 [“Our courts have repeatedly affirmed that mere ignorance, not induced by fraud, of the existence of the facts constituting a cause of action on the part of a plaintiff does not prevent the running of the statute of limitations.”]. See also, *Royal Thrift and Loan Co v. County Escrow, Inc.* (2004) 123 Cal.App.4th 24, 43 [“Generally, statutes of limitation are triggered on the date of injury, and the plaintiff’s ignorance of the injury does not toll the statute... [However,] California courts have long applied the delayed discovery rule to claims involving *difficult-to-detect injuries* or the breach of a fiduciary relationship.” (Emphasis added, internal citations and quotations omitted)].

⁷³ (1988) 44 Cal.3d 1103, 1110.

whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her.⁷⁴

Accordingly, in *Goldrich v. Natural Y Surgical Specialties, Inc.*, the court held that the statute of limitations applicable to the plaintiff's injuries for negligence and strict products liability had run, where "...Mrs. Goldrich must have suspected or certainly should have suspected that she had been harmed, and she must have suspected or certainly should have suspected that her harm was caused by the implants."⁷⁵ Therefore, even though in some contexts the statute of limitations is tolled until discovery, or in others the last element essential to the cause of action is interpreted to include notice or awareness of the facts constituting the claim, *Jolly, supra*, and *Goldrich, supra*, demonstrate that the courts have been hesitant to stray too far from the general accrual rule.⁷⁶

Accordingly, here, the claimant argues that "[t]he Controller has not specified how the claim documentation was insufficient for purposes of adjudicating the claim..." and the Controller provides "no notice for the basis of its actions..." However, the history of California jurisprudence interpreting and applying statutes of limitation does not indicate that the claimant's lack of understanding of the "basis of [the Controller's] actions" is a sufficient reason to delay the accrual of an action and the commencement of the period of limitation. In accordance with the plain language of Government Code section 17558.5, the Controller is required to specify the claim components adjusted and the reasons for the reduction; and, former section 1185 of the Commission's regulations requires an IRC filing to include a detailed narrative and a copy of any written notice from the Controller explaining the reasons for the reduction.⁷⁷ As long as the claimant has notice of the reason for the adjustment, the underlying factual bases are not necessary for an IRC to lie. Indeed, as discussed above, the courts have held that as a general rule, a plaintiff's ignorance of the person causing the harm, or the harm itself, or the legal significance of the harm, "does not prevent the running of the statute of limitations."⁷⁸ Based on the foregoing, the claimant is not required to have knowledge of the "basis of [the Controller's] actions" for the period of limitation to run, as long as a *reason* for the reduction is stated.

e. Where the cause of action is to enforce an obligation or obtain an entitlement, the claim accrues when the party has the right to enforce the obligation.

More pertinent, and more easily analogized to the context of an IRC, are those cases in which an action is brought to enforce or resolve a claim or entitlement that is in dispute, including one administered by a governmental agency. In those cases, the applicable period of limitation attaches and begins to run when the party's right to enforce the obligation accrues.

⁷⁴ *Id.*, at p. 1111.

⁷⁵ (1994) 25 Cal.App.4th 772, 780.

⁷⁶ See *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 321 ["The general rule is that the applicable statute...begins to run when the cause of action accrues even though the plaintiff is ignorant of the cause of action or of the identity of the wrongdoer."];

⁷⁷ Government Code section 17558.5 (added, Stats. 1995, ch. 945 (SB 11)). Code of Regulations, title 2, section 1185 (Register 99, No. 38).

⁷⁸ *Scafidi v. Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 566.

For example, in cases involving claims against insurance companies, the courts have held that the one-year period of limitation begins to run at the “inception of the loss,” defined to mean when the insured *knew or should have known* that appreciable damage had occurred and a reasonable person would be aware of his duty under the policy to notify the insurer.⁷⁹ This line of cases does not require that the *total extent of the damage*, or the *legal significance* of the damage, is known at the time the statute commences to run.⁸⁰ Rather, the courts generally hold that where the plaintiff knows or has reason to know that damage has occurred, and a reasonable person would be aware of the duty to notify his or her insurer, the statute commences to run at that time.⁸¹ This line of reasoning is not inconsistent with *Pooshs, Grisham, and Phillips v. City of Pasadena*, discussed above, because in each of those cases the court found (or at least presumed) a recurring injury, which was legally, qualitatively, or incrementally distinct from the earlier injury and thus gave rise to a renewed cause of action.⁸²

An alternative line of cases addresses the accrual of claims for benefits or compensation from a government agency, which provides a nearer analogy to the context of an IRC. In *Dillon v. Board of Pension Commissioners of the City of Los Angeles*, the Court held that a police officer’s widow failed to bring a timely action against the Board because her claim to her late husband’s pension accrued at the time of his death: “At any time following the death she could demand a pension from the board and upon refusal could maintain a suit to enforce such action.”⁸³ Later, *Phillips v. County of Fresno* clarified that “[a]lthough the cause of action accrues in pension cases when the employee first has the power to demand a pension, the limitations period is tolled or suspended during the period of time in which the claim is under consideration by the pension board.”⁸⁴ In accord is *Longshore v. County of Ventura*, in which the Court declared that “claims for compensation due from a public employer may be said to accrue only when payment thereof can be legally compelled.”⁸⁵ And similarly, in *California Teacher’s Association v. Governing Board*, the court held that “unlike the salary which teachers were entitled to have as they earned

⁷⁹ See *Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal.3d 674, 685; *Campanelli v. Allstate Life Insurance Co.* (9th Cir. 2003) 322 F.3d 1086, 1094.

⁸⁰ *Campanelli v. Allstate Life Insurance Co.* (9th Cir. 2003) 322 F.3d 1086, 1094 [Fraudulent engineering reports concealing the extent of damage did not toll the statute of limitations, nor provide equitable estoppel defense to the statute of limitations]; *Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 534 [Absentee landlord’s belated discovery of that his homeowner’s policy might cover damage caused by subsidence was not sufficient reason to toll the statute]. See also *McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 804 [“It is the occurrence of some ... cognizable event rather than knowledge of its legal significance that starts the running of the statute of limitations.”].

⁸¹ *Ibid.*

⁸² *Pooshs v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788; *Grisham, supra*, 40 Cal.4th at pp. 644–645; *Phillips v. City of Pasadena* (1945) 27 Cal.2d 104.

⁸³ *Dillon v. Board of Pension Commissioners* (1941) 18 Cal.2d 427, 430.

⁸⁴ (1990) 225 Cal.App.3d 1240, 1251.

⁸⁵ (1979) 25 Cal.3d 14, 30-31.

it...their right to use of sick leave depended on their being sick or injured.”⁸⁶ Therefore, because they “could not legally compel payment for sick leave to the extent that teachers were not sick, their claims for sick leave did not accrue.”⁸⁷ This line of cases holds that a statute of limitations to compel payment begins to run when the plaintiff is entitled to demand, or legally compel, payment on a claim or obligation, but the limitation period is tolled while the agency considers that demand.

Here, an IRC cannot lie until there has been a reduction, which the claimant learns of by a notice of adjustment, and the IRC cannot reasonably be filed under the Commission’s regulations until at least some reason for the adjustment can be detailed.⁸⁸ The claimant’s reimbursement claim has already at that point been considered and rejected (to some extent) by the Controller. There is no analogy to the tolling of the statute, as discussed above; the period of limitation begins when the claim is reduced, by written notice, and the claimant is therefore entitled to demand payment through the IRC process.

f. Where the cause of action arises from a breach of a statutory duty, the cause of action accrues at the time of the breach.

Yet another line of cases addresses the accrual of an action on a breach of statutory duty, which is closer still to the contextual background of an IRC. In *County of Los Angeles v. State Department of Public Health*, the County brought actions for mandate and declaratory relief to compel the State to pay full subsidies to the County for the treatment of tuberculosis patients under the Tuberculosis Subsidy Law, enacted in 1915.⁸⁹ In 1946 the department adopted a regulation that required the subsidy to a county hospital to be reduced for any patients who were able to pay toward their own care and support, but the County ignored the regulation and continued to claim the full subsidy.⁹⁰ Between October 1952 and July 1953 the Controller audited the County’s claims, and discovered the County’s “failure to report on part-pay patients in the manner contemplated by regulation No. 5198...”⁹¹ Accordingly, the department reduced the County’s semiannual claims between July 1951 and December 1953.⁹² When the County brought an action to compel repayment, the court agreed that the regulation requiring reduction for patients able to pay in part for their care was inconsistent with the governing statutes, and therefore invalid;⁹³ but the court was also required to consider whether the County’s claim was time-barred, based on the effective date of the regulation. The court determined that the date of the *reduction*, not the effective date of the regulation, triggered the statute of limitations to run:

⁸⁶ (1985) 169 Cal.App.3d 35, 45-46.

⁸⁷ *Ibid.*

⁸⁸ Government Code section 17558.5 (added, Stats. 1995, ch. 945 (SB 11)); Code of Regulations, title 2, section 1185 (Register 99, No. 38).

⁸⁹ (1958) 158 Cal.App.2d 425, 430.

⁹⁰ *Id.*, at p. 432.

⁹¹ *Id.*, at p. 433.

⁹² *Ibid.*

⁹³ *Id.*, at p. 441.

Appellants invoke the statute of limitations, relying on Code of Civil Procedure § 343, the four-year statute. Counsel argue [*sic*] that rule 5198 was adopted in August, 1946, and the County's suit not brought within four years and hence is barred. Respondent aptly replies: "In this case the appellants duly processed and paid all of the County's subsidy claims through the claim for the period of ending [*sic*] June 30, 1951... The first time that Section 5198 was asserted against Los Angeles County was when its subsidy claim for the period July 1, 1951, to December 31, 1951, was reduced by application of this rule of July 2, 1952... This action being for the purpose of enforcing a liability created by statute is governed by the three-year Statute of Limitations provided in Code of Civil Procedure Section 338.1. Since this action was filed May 4, 1954, it was filed well within the three-year statutory period, which commenced July 2, 1952." We agree. Neither action was barred by limitation.⁹⁴

Similarly, in *Snyder v. California Insurance Guarantee Association (CIGA)*,⁹⁵ the accrual of an action to compel payment under the Guarantee Act was interpreted to require first the rejection of a viable claim. CIGA is the state association statutorily empowered and obligated to "protect policyholders in the event of an insurer's insolvency."⁹⁶ Based on statutory standards, "CIGA pays insurance claims of insolvent insurance companies from assessments against other insurance companies... [and] '[i]n this way the insolvency of one insurer does not impact a small segment of insurance consumers, but is spread throughout the insurance consuming public...'"⁹⁷ "[I]f CIGA improperly denies coverage or refuses to defend an insured on a 'covered claim' arising under an insolvent insurer's policy, it breaches its statutory duties under the Guarantee Act."⁹⁸ Therefore, "[i]t follows that in such a case a cause of action *accrues* against CIGA when CIGA denies coverage on a submitted claim."⁹⁹ Thus, in *Snyder*, the last essential element of the action was the denial of a "covered claim" by CIGA, which is defined in statute to include obligations of an insolvent insurer that "remain unpaid despite presentation of a timely claim in the insurer's liquidation proceeding." And, the definition in the code excludes a claim "to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured."¹⁰⁰ Therefore a claimant is required to pursue "any other insurance" before filing a claim with CIGA, and CIGA must reject that claim, thus breaching its statutory duties, before the limitation period begins to run.

Here, an IRC may be filed once a claimant has notice that the Controller has made a determination that the claim must be reduced, and notice of the reason(s) for the reduction.

⁹⁴ *Id.*, at pp. 445-446.

⁹⁵ (2014) 229 Cal.App.4th 1196.

⁹⁶ *Id.*, at p. 1203, Fn. 2.

⁹⁷ *Ibid.*

⁹⁸ *Id.*, at p. 1209 [quoting *Berger v. California Insurance Guarantee Association* (2005) 128 Cal.App.4th 989, 1000].

⁹⁹ *Id.*, at p. 1209 [emphasis added].

¹⁰⁰ *Ibid* [citing Insurance Code §1063.1].

Government Code section 17551 provides that the Commission “shall hear and decide upon” a local government’s claim that the Controller incorrectly reduced payments pursuant to section 17561(d)(2), which in turn describes the Controller’s audit authority.¹⁰¹ Moreover, section 1185.1 (formerly section 1185) of the Commission’s regulations states that “[t]o obtain a determination that the Office of State Controller incorrectly reduced a reimbursement claim, a claimant shall file an ‘incorrect reduction claim’ with the commission.”¹⁰² And, section 1185.1 further requires that an IRC filing include “[a] written detailed narrative that describes the alleged incorrect reduction(s),” including “a comprehensive description of the reduced or disallowed area(s) of cost(s).” And in addition, the filing must include “[a] copy of any final state audit report, letter, remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.”¹⁰³ Therefore, the Controller’s reduction of a local government’s reimbursement claim is the underlying cause of an IRC, and the notice to the claimant of the reduction and the reason for the reduction is the “last element essential to the cause of action,”¹⁰⁴ similar to *County of Los Angeles v. State Department of Public Health*, and *Snyder v. California Insurance Guarantee Association*, discussed above.

2. As applied to this IRC, the three year period of limitation attached either to the July 30, 1998 notice of adjustment or the July 10, 2002 notice of adjustment, and therefore the IRC filed December 16, 2005 was not timely.

As discussed above, the general rule of accrual of a cause of action is that the period of limitations attaches and begins to run when the claim accrues, or in other words upon the occurrence of the last element essential to the cause of action. The above analysis demonstrates that the general rule, applied consistently with Government Code section 17558.5 and Code of Regulations, title 2, section 1185.1 (formerly 1185) means that an IRC accrues and may be filed when the claimant receives notice of a reduction and the reason(s) for the reduction. And, as discussed above, none of the established exceptions to the general accrual rule apply as a matter of law to IRCs generally. However, the claimant has here argued that later letters or notices of payment action in the record control the time “from which the ultimate regulatory period of limitation is to be measured...” The Commission finds that the claimant’s argument is unsupported.

- a. *The general accrual rule must be applied consistently with Government Code section 17558.5(c).*

¹⁰¹ Government Code section 17551 (Stats. 1985, ch. 179; Stats. 1986, ch. 879; Stats 2002, ch. 1124 (AB 3000); Stats. 2004, ch. 890 (AB 2856); Stats. 2007, ch. 329 (AB 1222)); 17561(d)(2) (Stats. 1986, ch. 879; Stats. 1988, ch. 1179; Stats. 1989, ch. 589; Stats. 1996, ch. 45 (SB 19); Stats. 1999, ch. 643 (AB 1679); Stats. 2002, ch. 1124 (AB 3000); Stats. 2004, ch. 313 (AB 2224); Stats 2004, ch. 890 (AB 2856); Stats. 2006, ch. 78 (AB 1805); Stats. 2007, ch. 179 (SB 86); Stats. 2007, ch. 329 (AB 1222); Stats. 2009, ch. 4 (SBX3 8)).

¹⁰² Code of Regulations, title 2, section 1185.1(a) (Register 2014, No. 21).

¹⁰³ Code of Regulations, title 2, section 1185.1(f) (Register 2014, No. 21).

¹⁰⁴ *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133 [citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176].

As noted above, the period of limitation for filing an IRC was added to the Commission's regulations effective September 13, 1999. As amended by Register 99, No. 38, section 1185(b) provided:

All incorrect reduction claims shall be submitted to the commission no later than three (3) years following the date of the State Controller's remittance advice *notifying the claimant of a reduction.*¹⁰⁵

Based on the plain language of the provision, the Commission's regulation on point is consistent with the general rule that the period of limitation to file an IRC begins to run when the claimant receives notice of a reduction.

However, Government Code section 17558.5, as explained above, provides that the Controller must issue written notice of an adjustment, which includes the claim components adjusted and the reasons for adjustment. And, accordingly, section 1185.1 (formerly 1185) requires an IRC filing to include a detailed narrative which identifies the alleged incorrect reductions, and any copies of written notices specifying the reasons for reduction.

Therefore, a written notice identifying the reason or reasons for adjustment is required to trigger the period of limitation. Here, there is some question whether the July 30, 1998 notice provided sufficient notice of the reason for the reduction. The claimant states in its IRC that the claim was "reduced by the amount of \$184,842 due to 'no supporting documentation.'"¹⁰⁶ In addition, the claimant provided a letter addressed to the audit manager at the Controller's Office from the District, stating that "Gavilan College has all supporting documentation to validate our claim..." and "[i]t is possible you need additional information..."¹⁰⁷ However, the notice of adjustment included in the record, issued on July 30, 1998, does not indicate a reason for the adjustment.¹⁰⁸

The July 10, 2002 letter, however, does more clearly state the reason for adjustment, as "no supporting documentation."¹⁰⁹ And again, the claimant states in its IRC that the later letter reduced the claim "by the amount of \$124,245 due to 'no supporting documentation.'"¹¹⁰

The issue, then, is whether the claimant had actual notice as early as July 30, 1998 of the adjustment and the reason for the adjustment, or whether the Controller's failure to clearly state the reason means the period of limitation instead commenced to run on July 10, 2002. The case law described above would seem to weigh in favor of applying the period of limitation to the earlier notice of adjustment, even if the reason for the adjustment was not known at that time.¹¹¹ Additionally, the evidence in the record indicates that the claimant may have had *actual* notice of

¹⁰⁵ Code of Regulations, title 2, section 1185(b) (Register 1999, No. 38) [emphasis added].

¹⁰⁶ Exhibit A, IRC 05-4425-I-11, page 5.

¹⁰⁷ Exhibit A, IRC 05-4425-I-11, page 21.

¹⁰⁸ Exhibit A, IRC 05-4425-I-11, page 15.

¹⁰⁹ Exhibit A, IRC 05-4425-I-11, page 19.

¹¹⁰ Exhibit A, IRC 05-4425-I-11, pages 5-6.

¹¹¹ See *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 321 ["The general rule is that the applicable statute...begins to run when the cause of action accrues even though the plaintiff is ignorant of the cause of action or of the identity of the wrongdoer."]

the reason for the reduction, even if the Controller's letter dated July 30, 1998 does not clearly state the reason.¹¹² However, section 17558.5 requires the Controller to specify the reasons for reduction in its notice, and section 1185.1 of the regulations requires a claimant to include a copy of any such notice in its IRC filing.

Ultimately, the Commission is not required to resolve this question here, because the period of limitation attaches *no later than* the July 10, 2002 notice, which does contain a statement of the reason for the reduction. And, pursuant to the case law discussed above, even if the reason stated is cursory or vague, the period of limitation would commence to run where the claimant knows or has reason to know that it has a claim.¹¹³

b. None of the exceptions to the general accrual rule apply, and therefore the later notices of adjustment in the record do not control the period of limitation.

As discussed at length above, a cause of action is generally held to accrue at the time an action may be maintained, and the applicable statute of limitations attaches at that time.¹¹⁴ Here, claimant argues that the applicable period of limitation should instead attach to the *last* notice of adjustment in the record: "the incorrect reduction claim asserts as a matter of fact that the Controller's July 10, 2002 letter reports an amount payable to the claimant, which means a subsequent final payment action notice occurred or is pending from which the ultimate regulatory period of limitation is to be measured, which the claimant has so alleged."¹¹⁵ In its comments on the draft, the claimant identifies a new "notice of adjustment" received by the claimant on February 26, 2011,¹¹⁶ which the claimant argues "now becomes the last Controller's adjudication notice letter," and sets the applicable period of limitation.¹¹⁷

There is no support in law for the claimant's position. As discussed above, statutes of limitation attach when a claim is "complete with all its elements."¹¹⁸ Exceptions have been carved out when a plaintiff is justifiably unaware of facts essential to the claim,¹¹⁹ but even those exceptions are limited, and do not apply when the plaintiff has sufficient facts to be on inquiry or

¹¹² Exhibit A, IRC 05-4425-I-11, pages 5-6; 15; 21.

¹¹³ See, e.g., *Allred v. Bekins Wide World Van Services* (1975) 45 Cal.App.3d 984, 991 [Relying on *Neel v. Magana, Olney, Levy, Cathcart & Gelfand, supra*, 6 Cal.3d at p. 190; *Budd v. Nixen, supra*, 6 Cal.3d at pp. 200-201].

¹¹⁴ *Lambert v. McKenzie, supra*, (1901) 135 Cal. 100, 103.

¹¹⁵ Exhibit B, Claimant Comments, page 2.

¹¹⁶ The notice in the record is dated February 26, 2011 but stamped received by the District on March 14, 2011.

¹¹⁷ Exhibit E, Claimant Comments on Draft Proposed Decision, page 2.

¹¹⁸ *Poosh v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797 [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

¹¹⁹ *Allred v. Bekins Wide World Van Services*, (1975) 45 Cal.App.3d 984, 991 [Relying on *Neel v. Magana, Olney, Levy, Cathcart & Gelfand, supra*, 6 Cal.3d at p. 190; *Budd v. Nixen, supra*, 6 Cal.3d at pp. 200-201].

constructive notice that a wrong has occurred and that he or she has been injured.¹²⁰ The courts do not accommodate a plaintiff merely because the full extent of the claim, or its legal significance, or even the identity of a defendant, may not be yet known at the time the cause of action accrues.¹²¹ Accordingly, the claimant cannot allege that the earliest notice did not provide sufficient information to initiate an IRC, and the later adjustment notices that the claimant proffers do not toll or suspend the operation of the period of limitation.

The discussion above also explains that in certain circumstances a new statute of limitations is commenced where a new injury results, even from the same or similar conduct, and in such circumstances a plaintiff may be able to recover for the later injury even when the earlier injury is time-barred.¹²² Here, the later letters in the record do not constitute either a new or a cumulative injury. The first notice stated a reduction of the claim “by the amount of \$184,842...” and stated that “\$126,146 was due to the State.”¹²³ The later letters notified the claimant that funds were being offset from other programs,¹²⁴ but did not state any new reductions. And the notice dated July 10, 2002 stated that the Controller had further reviewed the claim, and now \$60,597 was due the claimant, which represented a reduction of the earlier adjustment amount.¹²⁵ The letter that the claimant received on March 14, 2011,¹²⁶ states no new reductions, or new reasoning for existing reductions, with respect to the 1995-1996 annual

¹²⁰ *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110 [belief that a cause of action for injury from DES could not be maintained against multiple manufacturers when exact identity of defendant was unknown did not toll the statute]; *Goldrich v. Natural Y Surgical Specialties, Inc.* (1994) 25 Cal.App.4th 772, 780 [belief that patient’s body, and not medical devices implanted it it, was to blame for injuries did not toll the statute]; *Campanelli v. Allstate Life Insurance Co.* (9th Cir. 2003) 322 F.3d 1086, 1094 [Fraudulent engineering reports concealing the extent of damage did not toll the statute of limitations, nor provide equitable estoppel defense to the statute of limitations]; *Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 534 [Absentee landlord’s belated discovery of that his homeowner’s policy might cover damage caused by subsidence was not sufficient reason to toll the statute]. See also *McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 804 [“It is the occurrence of some ... cognizable event rather than knowledge of its legal significance that starts the running of the statute of limitations.”].

¹²¹ *Scafidi v. Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 566 [“Our courts have repeatedly affirmed that mere ignorance, not induced by fraud, of the existence of the facts constituting a cause of action on the part of a plaintiff does not prevent the running of the statute of limitations.”]. See also, *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 321 [“The general rule is that the applicable statute...begins to run when the cause of action accrues even though the plaintiff is ignorant of the cause of action or of the identity of the wrongdoer.”].

¹²² *Poosh v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788; *Phillips v. City of Pasadena* (1945) 27 Cal.2d 104.

¹²³ Exhibit A, IRC 05-4425-I-11, pages 5; 15.

¹²⁴ Exhibit A, IRC 05-4425-I-11, pages 5; 16-17.

¹²⁵ Exhibit A, IRC 05-4425-I-11, pages 5; 18.

¹²⁶ The claimant refers to this in Exhibit E as a February 26, 2011 letter, but the letter is stamped received by the District on March 14, 2011.

claims for the *Collective Bargaining* program; it provides exactly as the notice dated July 10, 2002: that \$60,597 is due the claimant for the program.¹²⁷

Based on the foregoing, the Commission finds none of the exceptions to the commencement or running of the period of limitation apply here to toll or renew the limitation period.

- c. *The three year period of limitation found in former Section 1185 of the Commission's regulations is applicable to this incorrect reduction claim, and does not constitute an unconstitutional retroactive application of the law.*

Former section 1185¹²⁸ of the Commission's regulations, pertaining to IRCs, contained no applicable period of limitation as of July 30, 1998.¹²⁹ Neither is there any statute of limitations for IRC filings found in the Government Code.¹³⁰ Moreover, the California Supreme Court has held that "the statutes of limitations set forth in the Code of Civil Procedure...do not apply to administrative proceedings."¹³¹ Therefore, at the time that the claimant in this IRC first received notice from the Controller of a reduction of its reimbursement claim, there was no applicable period of limitation articulated in the statute or the regulations.¹³²

However, in 1999, the following was added to section 1185(b) of the Commission's regulations:

¹²⁷ Compare Exhibit A, IRC 05-4425-I-11, pages 5; 18, with Exhibit E, Claimant Comments on Draft Proposed Decision, page 4.

¹²⁸ Section 1185 was amended and renumbered 1185.1 effective July 1, 2014. However, former section 1185, effective at the time the IRC was filed, is the provision applicable to this IRC.

¹²⁹ Code of Regulations, title 2, section 1185 (Register 1996, No. 30).

¹³⁰ See Government Code section 17500 et seq.

¹³¹ *Coachella Valley Mosquito and Vector Control District v. Public Employees' Retirement System* (2005) 35 Cal.4th 1072, 1088 [citing *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29; *Robert F. Kennedy Medical Center v. Department of Health Services* (1998) 61 Cal.App.4th 1357, 1361-1362 (finding that Code of Civil Procedure sections 337 and 338 were not applicable to an administrative action to recover overpayments made to a Medi-Cal provider); *Little Co. of Mary Hospital v. Belshe* (1997) 53 Cal.App.4th 325, 328-329 (finding that the three year audit requirement of hospital records is not a statute of limitations, and that the statutes of limitations found in the Code of Civil Procedure apply to the commencement of civil actions and civil special proceedings, "which this was not"); *Bernd v. Eu, supra* (finding statutes of limitations inapplicable to administrative agency disciplinary proceedings)].

¹³² *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 45 [The court held that PERS' duties to its members override the general procedural interest in limiting claims to three or four years: "[t]here is no requirement that a particular type of claim have a statute of limitation."]. See also *Bernd v. Eu* (1979) 100 Cal.App.3d 511, 516 ["There is no specific time limitation statute pertaining to the revocation or suspension of a notary's commission."].

All incorrect reduction claims shall be submitted to the commission no later than three (3) years following the date of the State Controller's remittance advice notifying the claimant of a reduction.¹³³

The courts have held that “[i]t is settled that the Legislature may enact a statute of limitations ‘applicable to existing causes of action or shorten a former limitation period if the time allowed to commence the action is reasonable.’”¹³⁴ A limitation period is “within the jurisdictional power of the legislature of a state,” and therefore may be altered or amended at the Legislature’s prerogative.¹³⁵ The Commission’s regulatory authority must be interpreted similarly.¹³⁶ However, “[t]here is, of course, one important qualification to the rule: where the change in remedy, as, for example, the shortening of a time limit provision, is made retroactive, there must be a reasonable time permitted for the party affected to avail himself of his remedy before the statute takes effect.”¹³⁷

The California Supreme Court has explained that “[a] party does not have a vested right in the time for the commencement of an action.”¹³⁸ And neither “does he have a vested right in the running of the statute of limitations prior to its expiration.”¹³⁹ If a statute “operates immediately to cut off the existing remedy, or within so short a time as to give the party no reasonable opportunity to exercise his remedy, then the retroactive application of it is unconstitutional as to such party.”¹⁴⁰ In other words, a party has no more vested right to the time remaining on a statute of limitation than the opposing party has to the swift expiration of the statute, but if a statute is newly imposed or shortened, due process demands that a party must be granted a reasonable time to vindicate an existing claim before it is barred. The California Supreme Court has held that approximately one year is more than sufficient, but has cited to decisions in other jurisdictions providing as little as thirty days.¹⁴¹

¹³³ Code of Regulations, title 2, section 1185 (Register 1999, No. 38).

¹³⁴ *Scheas v. Robertson* (1951) 38 Cal.2d 119, 126 [citing *Mercury Herald v. Moore* (1943) 22 Cal.2d 269, 275; *Security-First National Bank v. Sartori* (1939) 34 Cal.App.2d 408, 414].

¹³⁵ *Scheas*, *supra*, at p. 126 [citing *Saranac Land & Timber Co v. Comptroller of New York*, 177 U.S. 318, 324].

¹³⁶ *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 10 [Regulations of an agency that has quasi-legislative power to make law are treated with equal dignity as to statutes]; *Butts v. Board of Trustees of the California State University* (2014) 225 Cal.App.4th 825, 835 [“The rules of statutory construction also govern our interpretation of regulations promulgated by administrative agencies.”].

¹³⁷ *Rosefield Packing Company v. Superior Court of the City and County of San Francisco* (1935) 4 Cal.2d 120, 122.

¹³⁸ *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 773 [citing *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80].

¹³⁹ *Liptak*, *supra*, at p. 773 [citing *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468].

¹⁴⁰ *Rosefield Packing Co.*, *supra*, at pp. 122-123.

¹⁴¹ See *Rosefield Packing Co.*, *supra*, at p. 123 [“The plaintiff, therefore, had practically an entire year to bring his case to trial...”]; *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead*

Here, the regulation imposing a period of limitation was adopted and became effective on September 13, 1999.¹⁴² As stated above, the section requires that an IRC be filed no later than three years following the date of the Controller's notice to the claimant of an adjustment. The courts have generally held that the date of accrual of the claim itself is excluded from computing time, "[e]specially where the provisions of the statute are, as in our statute, that the time shall be computed *after* the cause of action shall have accrued."¹⁴³ Here, the applicable period of limitation states that an IRC must be filed "no later than three (3) years *following* the date..."¹⁴⁴ The word "following" should be interpreted similarly to the word "after," and "as fractions of a day are not considered, it has been sometimes declared in the decisions that no moment of time can be said to be after a given day until that day has expired."¹⁴⁵ Therefore, applying the three year period of limitation to the July 30, 1998 initial notice of adjustment means the limitation period would have expired on July 31, 2001, twenty-two and one-half months after the limitation was first imposed by the regulation. In addition, if the 2002 notice is considered to be the first notice that provides a reason for the reduction, thus triggering the limitation, then the limitation is not retroactive at all. Based on the cases cited above, and those relied upon by the California Supreme Court in its reasoning, that period is more than sufficient to satisfy any due process concerns with respect to application of section 1185 of the Commission's regulations to this IRC.

Based on the foregoing, the Commission finds that the regulatory period of limitation applies from the date that it became effective, and based on the evidence in this record that application does not violate the claimant's due process rights.

V. Conclusion

Based on the foregoing, the Commission finds that this IRC is not timely filed, and is therefore denied.

(1890) 85 Cal. 80 [thirty days to file a lien on real property]. See also *Kozisek v. Brigham* (Minn. 1926) 169 Minn. 57, 61 [three months].

¹⁴² Code of Regulations, title 2, section 1185 (Register 99, No. 38).

¹⁴³ *First National Bank of Long Beach v. Ziegler* (1914) 24 Cal.App. 503, 503-504 [Emphasis Added].

¹⁴⁴ Code of Regulations, title 2, section 1185 (Register 99, No. 38).

¹⁴⁵ *First National Bank of Long Beach v. Ziegler* (1914) 24 Cal.App., at pp. 503-504 [Emphasis Added].

COMMISSION ON STATE MANDATES

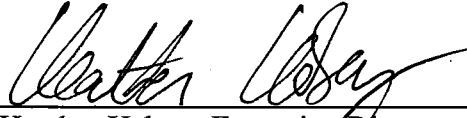
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RE: Decision

Collective Bargaining, 05-4425-I-11
Government Code Sections 3540-3549.9
Statutes 1975, Chapter 961
Fiscal Year 1995-1996
Gavilan Joint Community College District, Claimant

On December 5, 2014, the foregoing decision of the Commission on State Mandates was adopted in the above-entitled matter.



Heather Halsey, Executive Director

Dated: December 11, 2014

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 11, 2014, I served the:

Decision

Collective Bargaining, 05-4425-I-11

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961

Fiscal Year 1995-1996

Gavilan Joint Community College District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 11, 2014 at Sacramento, California.



Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/19/14

Claim Number: 05-4425-I-11

Matter: Collective Bargaining

Claimant: Gavilan Joint Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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