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In the Supreme Court of the State of California

J.M.
Plaintiff and Appellant,

vs.

Huntington Beach Union High School District, et al.,
Defendant and Respondent,

Court of Appeal, Fourth Appellate District, Division 3 No. G049773
Superior court of Orange County,
Hon. Kirk Nakamura Case No. 30-2013-00684104

PETITION FOR REVIEW

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ISSUES PRESENTED FOR REVIEW

(1) Did the Court of Appeal, in an issue of first impression, misconstrue the statutory language and Legislative intent behind Government Code section 911.6, subdivision (b) (which requires a public entity to *grant* relief to a *minor* who files a timely application for leave to file a late tort claim), by holding that subdivision (c)'s catch-all language permits an implicit denial of such application (by the entity's inaction)?

(2) Did the Court of Appeal, in an issue of first impression, misconstrue the statutory language and Legislative intent behind Government Code section 911.8 by concluding the Legislature intended to provide the warning of Section 946.6's six-month statutory period only to claimants whose applications were *explicitly* denied, but *not* to claimants whose applications were *implicitly* denied by the public entity's inaction?

(3) The Court of Appeal recognized that its interpretation of Government Code section 946.6, conflicted with that of the Second Appellate District, Division Three in *E.M. v. Los Angeles Unified School Dist.* (2011) 194 Cal.App.4th 736. Which, if either, Court of Appeal correctly interpreted section 946.6?

WHY REVIEW SHOULD BE GRANTED

The published decision of the Court of Appeal in this case, though attempting to clarify important provisions of the Government Tort Claims Act, obfuscated the law, diverging from a decision from the Second Appellate District, and settling upon an interpretation of the law that contradicts explicit statutory language as well as Legislative intent to treat minors with leniency. The Opinion raises more questions than it answers, and unfortunately, results in the very "traps for the unwary litigant" that the Tort Claims Act sought to avoid.

Review is necessary in this case for three important reasons: (1) to resolve the disparity between the court's opinion in this case and that of the Second Appellate District in construing Government Code section 946.6 as a condition precedent to filing a lawsuit; (2) to examine and settle the Legislature's intent in the interpretation of irreconcilable language of subsections (b) and (c) of Government Code section 911.6; and (3) to re-evaluate the applicability of Government Code section 911.8's notice provisions in light of the Court of Appeal's interpretation of section 911.6. (See California Rules of Court, Rule 8.500(b).)

Minors receive a unique status of leniency within the Tort Claims Act scheme; a status that the Court of Appeal's decision eviscerates for the provisions governing a minor's *timely* application to file a late claim. Subdivision (b) of section 911.6 requires a public entity to grant a minor

relief in such a circumstance – even if it causes prejudice to the public entity. Yet, the Court of Appeal inadvertently created a loophole in which a public entity may deliberately subvert subdivision (b)'s mandate, and accomplish by inaction what it cannot explicitly do.

Worse, the Court of Appeal's decision deprives such unlucky minors the benefit of written notice of the impending six-month limitations period (under Section 946.6) in which to seek relief from the superior court, despite the fact that such notice would have been mandatory had the public entity's denial been explicit rather than implicit. Such a situation disadvantages the minor two-fold, first by denying his application it was required to be accepted, and second, by depriving him of written notice of the short limitations period. It also *benefits* the public entity by permitting it to erect additional hurdles to prevent the unwary litigant from pursuing a claim in court. And, the control is entirely in the hands of the public entity, which chooses whether or not to act. This situation does not appear to have been foreseen, or intended, by the Legislature.

Finally, the Court of Appeal's decision has created a situation in which some lower courts will treat Government Code section 946.6 as a condition precedent for filing lawsuits *and* some lower courts will not. Litigants require clear guidance for bringing tort claims against public entities, and that guidance should not depend on the interpretation favored by the specific court in which the litigant appears. The result of an incorrect

interpretation of the law will be fatal for the claims of any litigant who follows the Fourth District's decision in this case, but not so for those who follow the Second District's decision in *E.M.*

By granting review, this Court would have the opportunity to determine whether the Legislature meant for Section 911.6 subdivision (c) to apply to minors who otherwise fall within and satisfy subdivision (b)'s requirements, a question that affects significant number of potential claimants. (Cal. Rules of Court, Rule 8.500(b)(1).) Additionally, this Court would have the opportunity to resolve the conflict between this case and that of the Second Appellate district before the conflict leads to further legal inconsistencies. (Cal. Rules of Court, Rule 8.500(b)(1).) After all, superior courts in California are not bound by the decision of any one appellate district, and if review is not granted, they may simply "pick and choose between conflicting lines of authority." (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456.)

STATEMENT OF SALIENT FACTS

On October 27, 2011, plaintiff, appellant, and petitioner, J.M., a 15-year-old student at Fountain Valley High School, suffered head trauma when he was tackled during a school-sponsored football game. (Typed Opn. p 3.) He continued to participate in the full-contact football practice, and began to experience headaches, dizziness, and nausea. (Typed Opn. p. 3.) His causes of action for personal injury against the District accrued no later than October 31, 2011, when a doctor diagnosed J.M. with double concussion syndrome. (Typed Opn. pp. 3-4.)

After the six-month period following the date of accrual of his causes of action, J.M. retained counsel and, on October 24, 2012, his counsel presented an application for leave to present a late claim pursuant to section 911.4 on the ground that J.M. was a minor for the entire six-month period following the accrual of his causes of action. (Typed Opn. at p. 4.) The District failed to act upon the application. (Typed Opn. at p. 4.)

On October 28, 2013, J.M. filed a petition under section 946.6 to the superior court for an order relieving him from the claim requirement. (Typed Opn. at p. 4.) The superior court denied his petition as untimely because it was filed more than six months after the date on which his application to present a late claim was deemed to have been denied by the District's inaction. (Typed Opn. at p. 4.) J.M. timely appealed. (Typed Opn. at p. 4.)

On September 30, 2015, the Court of Appeal filed its original Opinion in this case. (A true copy is attached hereto as Appendix A ("Typed Opn.") The Court of Appeal affirmed the trial court's order, because it concluded that, under subdivision (c) of Government Code section 911.6, J.M.'s timely application for leave to file a late claim was "deemed denied" on the 45th day after its submission, thus triggering Section 946.6's six-month limitations period in which to petition the superior court. (Typed Opn. at pp. 3, 9, 12-13.) Additionally, the Court of Appeal concluded that the written notice provision of Section 911.8 does not apply to applications "deemed denied" by operation of law under Section 911.6, subdivision (c). (Typed Opn. at p. 18-19.) The Court of Appeal additionally concluded that equitable relief was not applicable, and that, notwithstanding public policy, such policy could not warrant construing section 946.6 in favor of granting J.M. relief. (Typed Opn. at pp. 17-18, 19.)

J.M. filed a Petition for Rehearing, challenging inter alia, the implication of the court's decision, particularly regarding the inequitable application of Section 911.8's written notice provision. J.M. explained that the Legislature recognized that Section 946.6's six-month statute language was likely to create "snares" or traps for the unwary claimant (as it did in this case), and by including section 911.8, intentionally created redundancy to warn litigants and prevent depriving them of their day in court due to

these technicalities. In light of this provision, therefore, J.M. argued that the Legislature never intended to distinguish between claimants whose applications were explicitly denied versus those whose applications were implicitly denied (at no fault or control of their own).

In response to plaintiff's Petition for Rehearing, the Court of Appeal filed an Order Modifying Opinion and Denying Rehearing (with no change in judgment) on October 22, 2015. (See Appendix.) The Modified Opinion added a paragraph, explaining that Section 911.8, subdivision (a) reflects the Legislature's choice to require written notice only when the government entity acts on an application, and that the six-month period is easily determined from the date an application is "deemed denied." (See Appendix.)

LEGAL DISCUSSION

I.

REVIEW IS NEEDED TO RECONCILE THE INCONSISTENT SUBDIVISIONS (b) AND (c) OF GOVERNMENT CODE SECTION 911.6.

A. Overview of applicable statutes

Before a plaintiff may sue a public entity, the plaintiff must present the entity with a timely written claim for damages. (Gov. Code § 911.2.) The time for filing such claims is currently within six months after the cause of action accrues. (Gov. Code § 911.2.) In the absence of an exception, failure to timely file a claim bars a plaintiff's lawsuit. (*Shirk v. Vista Unified School District* (2007) 42 Cal.4th 201, 208-209.)

The Tort Claims Act sets forth specific exceptions and relief under delineated circumstances, permitting certain categories of individuals to file late claims. Government Code sections 911.4 and 911.6 govern such procedure. Section 911.4, subdivision (a) permits a party who fails to present its claim within the required six-month period to submit a written application to the public entity for leave to present its claim. (Gov. Code z6 911.4(a).) Subdivision (b) requires this written application to be submitted "within a reasonable time not to exceed one year after the accrual of the cause of action." (Gov. Code § 911.4(b).)

Government Code section 911.6 governs how the public entity must handle the written applications for leave to file late claims. Subdivision (a) requires the Board to grant or deny the application within 45 days. It also provides a method by which the claimant and public entity may mutually extend such period.

Subdivision (b), at issue here, sets forth four categories of circumstances in which the public entity *must grant* the claimants application for leave to present its late claim: "The board *shall grant* the application where one or more of the following is applicable:...(2) The person who sustained the alleged injury, damage or loss was *a minor* during all of the time specified in Section 911.2 for the presentation of the claim." (Gov. Code § 911.6(b)(2), emphasis added.)

Subdivision (c) complicates the analysis, as this case exemplifies. Notwithstanding subdivision (b)'s requirement that the public entity *shall grant* a minor's timely application for leave to present its late claim, subdivision (c) provides an avenue by which the Board can seemingly subvert that mandate. Subdivision (c) states, "If the board fails or refuses to act on an application within the time prescribed by this section, the application shall be deemed to have been denied on the 45th day or, if the period within which the board is required to act is extended by agreement pursuant to this section, the last day of the period specified in the agreement." (Gov. Code § 911.6(c).)

Government Code section 945.4 bars a lawsuit for money or damages against a public entity until a written claim has first been presented to the public entity and has been acted upon by the entity, or has been deemed to have been rejected by the public entity. Government Code section 946.6 provides a procedure for petitioning the superior court for relief from the public entity's denial (explicit or "deemed") of an application for leave to present a late claim under Section 911.6. Subdivision (b) of Section 946.6 states, "The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6." (Gov. Code § 946.6(b).) Subdivision (c) requires the court to relieve the petitioner from the requirements of Section 945.4 under specified conditions (satisfied in this case).

B. Government Code section 911.6, subdivisions (b)(2) and (c) are irreconcilable concerning the board's ability to grant or deny a minor's application to file a late claim.

When construing any statute, the Court's task is to determine the Legislature's intent when it enacted the statute, "so that [it] may adopt the construction that best effectuates the purpose of the law." (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 625, quoting *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715.) The inquiry begins with the statute's words, which ordinarily are "the most reliable indicator of legislative intent." (*Hassan, supra,* 31 Cal.4th at 715.)

The words should be given their "ordinary and usual meaning and should be construed in their statutory context." (*Ibid.*) "These canons generally preclude judicial construction that renders part of the statute "meaningless or inoperative."" (*Id.* at 715-716, quoting *Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 274.) Additionally, words should be given the same meaning throughout a code unless the Legislature has indicated otherwise. (*Id.* at 716, citing *People v. Roberge* (2003) 29 Cal.4th 979, 987.)

Applying these principles to subdivisions (b)(2) and (c) of Government Code section 911.6, it is impossible to reconcile the language without rendering one or the other "meaningless or inoperative." (*Hassan, supra,* 31 Cal.4th at 715-716.) Subdivision (b)(2) requires the Board to grant a minor's application to present a late claim under the circumstances presented in this case, whereas Subdivision (c) considers the Board's inaction a denial of that application.

Both subdivisions use mandatory language "shall." For instance, Subdivision (b)(2) states, in pertinent part: "The board *shall grant* the application [to present a late claim] where...the following is applicable: ...(2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim." (Gov. Code § 911.6(b)(2), emphasis added.) In stark contrast, however, subdivision (c) mandates the precise opposite result: "If the board

fails or refuses to act on an application within the time prescribed by this section, the application *shall be deemed to have been denied* on the 45th day...." (Gov. Code § 911.6(c), emphasis added.)

Attempting to reconcile the two provisions results in an absurdity. To "deem" the Board's inaction on plaintiff's application a "denial" allows the Board to violate subdivision (b)(2)'s mandate (i.e., to grant the minor's application).

Another canon of interpretation may resolve the absurd result. Code of Civil Procedure section 1859 states, in pertinent part: "In the construction of a statute the intention of the Legislature, [...], is to be pursued, if possible; and when a general and particular provision are inconsistent, the *latter* is paramount to the former. So a *particular intent will control a general one* that is inconsistent with it." (Emphasis added.) Here, subdivision (b) is extremely specific, defining four unique scenarios in which the Board "shall grant" a timely application for leave to present a late claim. In contrast, subdivision (c) is broadly written, general, and acts as a default procedure that applies to all cases in which the Board fails to act on the application. Because subdivision (c) acts as a default, and its language is not as specific as subdivision (b)(2) (i.e., applying only to claimants who were minors during the time specified in Section 911.2 for the presentation of the claim), Subdivision (b)(2) should trump Subdivision (c).

However, even if this Court disagrees that this issue can be resolved based on the canons of statutory interpretation, the Legislative history and public policy mandate the identical result.

C. In the face of Section 911.6's irreconcilable language, Legislative History and public policy mandate an interpretation of Section 911.6 that does not permit subdivision (c) to render subdivision (b) a nullity.

1. The Tort Claims Act should be liberally construed.

Where statutory language may reasonably given more than one interpretation, "courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute." (*Shirk v. Vista Unified School District* (2007) 42 Cal.4th 201, 211.)

In *Viles v. State of California* (1967) 66 Cal.2d 24, the California Supreme Court discussed the evolution of the modern Government Tort Claims Act, including the legislature's overall goals for the 1963 enactment. Prior to the Act's enactment, public tort liability statutes "were not only inconsistent but []also provided a technical defense against the determination of liability on the merits." (66 Cal.2d at 30.) Although the 1963 Act shortened the time for presentation of claims against the state from two years to 100 days,[1] it also expanded the situations where relief might be granted to persons who failed to comply with the statutory period

[1] The 100-days was later amended to the current six-month period.

through mistake, inadvertence, surprise or excusable neglect, unless the public entity would be prejudiced. (*Ibid.*) The 1963 Act also added the provision for administrative relief, "whereby the public entity was authorized to permit a late claim to be presented upon the same grounds as the granting of a petition by the court, in the hope that the public entity itself would, in a proper case, grant relief so that a court proceeding would be unnecessary." (*Ibid.*)

The Court further discussed the legislative intent of the Government Tort Claims Act:

> The 1963 legislation is remedial and should be *liberally construed.* Both the courts and Legislature have recognized that the labyrinth of claims statutes previously scattered throughout our statutes were traps for the unwary. (Citations.) An attempt has been made by the Legislature to remove such snares. Courts should not rebuild them by a too narrow interpretation of the new enactments.

(*Viles v. State of California* (1967) 66 Cal.2d 24, 31, quoting *Hobbs v. Northeast Sacramento County Sanitation Dis.* (1966) 240 Cal.App.2d 552, emphasis added.)

2. The Legislature intentionally treats minors with more leniency than other claimants, and intends the Board to grant minors' applications for leave to file late claims.

Although the claim provisions (Gov. Code §§ 911.2, 945.4) apply to minors, the Supreme Court has opined "they apply with *greater liberality* to minors, since under the provisions of section 911.4 and section 911.6, an

application for leave to present a late claim made by a claimant who has been a minor throughout the entire [] claim presentation period Must be granted by the board." (*Whitfield v. Roth* (1974) 10 Cal.3d 874, 883-884, italics added, original capitalization.)

The contrast of the Legislature's liberal treatment of minors versus general population is highlighted by another subdivision of Section 911.6(b). Section 911.6, subdivision (b)(1) requires the Board to grant the application where "The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in its defense of the claim by the failure to present the claim within the time specified in Section 911.2." Subdivision (b)(2) (applying to minors), does *not* require the minor to show that its delay in filing a timely claim prejudiced the entity.

This distinction was deliberate. The Law Revision Commission (Recommendation Relating to Sovereign Immunity 1009-1010) articulated the Commission's intent to grant minors flexibility in filing late claims, *even at the Board's detriment*: "In cases where the claimant failed to file his claim within the 100-day period because he was a minor, [...], the statute should permit the claim to be presented within one year after the cause of action accrued even though the public entity may be prejudiced by the late filing of the claim." (See 24 Cal. Government Tort Liability

(Cont.Ed.Bar 1964) § 8.31, pps. 390-392].) The Commission explained why:

> Although as a general principle the public entity should be entitled to prompt notice in order to have an opportunity to investigate the claim and correct or remedy the condition that gave rise to it, the Commission has concluded that, in these rare cases where it ordinarily would not be reasonable to expect the claimant to file a claim, the interest in requiring prompt notice should not be permitted to deprive the claimant or his personal representative of the cause of action, even though the entity might be prejudiced by the late filing. (Recommendation on Sovereign Immunity [4 Cal.L.Revision Comm'n Reports (1963) p. 1010]]; see also 24 Cal. Government Tort Liability (Cont.Ed.Bar 1964) § 8.31, pps. 390-392].).)

3. Public policy supports liberal treatment of minors who file timely applications to file a late claim over technical traps for the unwary.

The consequences of an individual's failure to timely file a petition for an order pursuant to Government Code section 946.6 are fatal to the claim. However, California has a strong public policy favoring trial on the merits, over "technical rules that otherwise provide a trap for the unwary claimant." (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 275-276, quoting *Viles, supra,* 66 Cal.2d at pp. 32-33.) "The policy favoring trial on the merits is *the* primary policy underlying section 946.6." (*Bettencourt, supra,* 42 Cal.3d at 276, emphasis added.)

Here, trial court's application of Section 911.6, subdivision (c)'s "deemed denial" language over subdivision (b)(2)'s "shall grant" language,

triggered the six-month clock for filing a petition under Section 946.6. Section 946.6 would have no applicability if the court determined the Board's inaction on plaintiff's timely application was a de facto delay or extension of time, in which to fulfill its duty to grant the application and, thus could not be "deemed denied."

This alternative reconciliation between Section 911.6(b), Section 911.6(c), and Section 946.6, comports with the underlying Legislative purpose of Section 911.6(c)'s "deemed denial" language. The "deemed denied" language of Subdivision (c) is automatically triggered after 45 days to *protect* the claimant's ability to sue – not thwart it. The Commission recommended 45-days, and the ability to expand that time, to "provide the parties with a flexible time limit within which to negotiate or settle claims, *yet the claimant will not be unduly delayed in the commencement of his action* if litigation becomes necessary." (Recommendation on Sovereign Immunity [4 Cal.L.Revision Comm'n Reports (1963) p. 1011]], emphasis added.) Thus, the 45-day limit that commences Section 946.6's six-month statutory period is to benefit the plaintiff, not the unresponsive public entity.

Here, the court's ruling favored an interpretation that effectively resolved plaintiff's claims on a technicality rather than the merits. This interpretation violated public policy.

D. The Court of Appeal's interpretation of Section 911.6 nullifies subdivision (b).

The Court of Appeal concluded there is no conflict between subdivisions (b) and (c) of Section 911.6 because the section "anticipates that a board may act on an application by granting or denying it, or that a board may do nothing at all." (Typed Opn. at p. 9.) The court correctly recognizes that, if the board acts, it shall grant the minor's application. (Typed Opn. at p. 9.) However, the court incorrectly concludes that if the board fails to act on a minor's timely application, section 911.6(c) controls and the application is deemed denied. (Typed Opn. at p. 9.) The court reasons that Section 911.6(c) makes no exception for the circumstances presented in subdivision (b). (Typed Opn. at p. 9.)

However, subdivision (b) *is* the limited exception to subdivision (c). Under those specific conditions, the board has no discretion to deny a claim, either explicitly or implicitly by inaction. The Court of Appeal notes, under such an interpretation, this places a plaintiff's application into limbo. (Typed Opn. at p. 12.) Not so. Pursuant to subdivision (b), the application could be "deemed granted" under such a scenario.[2]

The appellate court also concluded *Kendrick v. City of La Mirada* (1969) 272 Cal.App.2d 325, 329 resolved the issue and supports the

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[2] Contrary to the court's implication, a petitioner such as appellant, should not be penalized for pursuing relief from the superior court, in an abundance of caution, under such circumstances, so long as the petitioner files the petition within the statute of limitations for the underlying tort.

proposition that an application for leave to present a late claim may be denied by operation of law notwithstanding the language of section 911.6(b). (Typed Opn. at pp. 10-12.) However, even if *Kendrick* applied the statute in the manner analyzed by the Court of Appeal in this case, the *Kendrick* opinion did not purport to address or resolve the inconsistent language of subdivisions (b) and (c). But even if it did, "Court-made error should not be shielded from correction." (*People v. King* (1993) 5 Cal.4th 59, 78.) *Kendrick*, *supra*, does not bind this Court (see *Auto Equity Sales, supra,* 57 Cal.2d at 455) and in fact, *Kendrick* exemplifies why, in absence of this Court's intervention, lower courts will continue to apply an interpretation that nullifies the effect of subdivision (b) of the statute.

II.

REVIEW IS NEEDED TO RESOLVE WHETHER THE LEGISLATURE INTENDED TO CREATE A DISTINCTION IN THE CATEGORY OF APPLICANTS ENTITLED TO RECEIVE WRITTEN NOTIFICATION UNDER GOVERNMENT CODE SECTION 911.8 OF THE SHORT LIMITATIONS PERIOD.

Government Code section 911.8, subdivision (a) provides that "[w]ritten notice of the board's action upon the application" must be given in the prescribed manner. "If the application is denied," the notice must include a warning substantially in the form set forth in section 911.8, subdivision (b) (i.e., using bold language to warn the claimant that Government Code section 946.6's six-month statute of limitations has been triggered). (§ 911.8(b).) The Court of Appeal concluded that this language means the board is required to give written notice *only* when *explicitly denying* a claimant's application, but, if the board's inaction is "deemed" a denial of the claimant's application (i.e., by failing to act within the time set forth in section 911.6(c)), the board is *not* required to provide such notice. (Typed Opn. at pp. 7, 18-19.)

The Court of Appeal reasoned the word "action" in subdivision (a) of section 911.8 means that respondent was "not required under the statutory framework to give written notice of its *inaction* upon [appellant's] application." (Typed Opn. p. 18.) Thus, under the Court of Appeal's interpretation and analysis, appellant was not required to receive notice

under section 911.8 because the board denied his claim as a matter of law, by inaction.

Such interpretation rewards and incentivizes governmental shirking of its statutorily mandated responsibilities. There is no dispute that, under Section 911.6, subdivision (b), had the board "acted" on appellant's application, the board was required to *grant* appellant's application. (*Whitfield v. Roth* (1974) 10 Cal.3d 874, 883-884.) And, had the board improperly denied the application, explicitly or implicitly, section 946.6 offers claimants the opportunity to *correct* the board's mistaken denial.

But it only does so if the applicant *timely* petitions the superior court. The innocent claimant whose application the board simply ignores, is materially disadvantaged in his ability to timely petition the superior court, as compared to the innocent claimant upon whose application the board takes action. The latter receives section 911.8's protection; the former does not. And the distinction is entirely up to the board, not the claimant.

It is *no answer* that both litigants may equally read section 946.6 and learn of the six-month statute of limitations. The statutory provisions of the Tort Claims Act must be read together, and if the notice afforded by section 946.6's language had been deemed adequate by the Legislature, the Legislature would have never passed section 911.8. In other words, if the notice section 946.6 affords is adequate, why did the Legislature feel the need to offer *any* litigants notice that their six-month statute of limitations

has commenced? Technically speaking, section 911.8 is redundant of the statute of limitations portion of section 946.6.

The answer is not, as the Court of Appeal suggests at page 18 of its opinion, based on whether the claimant has attorney representation. If that were the case, Section 911.8 would only apply to unrepresented claimants. But the section applies to *all* claimants – represented and pro per – whose applications have been explicitly denied by the board.

The answer must be that the Legislature recognized that the Section 946.6's six-month statute language was likely to create "snares" or traps for the unwary claimant (as it did in this case), and by including section 911.8, intentionally created redundancy to warn litigants and prevent depriving them of their day in court due to these technicalities. (See e.g., *Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 275-276; *Viles v. State of California* (1967) 66 Cal.2d 24, 31.)

The unanswered question for this Court is *why did the Legislature distinguish between claimants whose applications were explicitly or implicitly denied (at no fault or control of their own)?*

This Court's opinion raises additional unanswered questions:

- What motivation would the public entity ever have to take any "action" on an application, especially when the public entity's inaction excuses it from providing notice of the short limitations period?

It is the *consumer,* not the public entity, which benefits from such notice, and the *public entity* that benefits from the consumer's lack thereof (because when the consumer fails to timely file the section 946.6 petition, the public entity never has to pay on the underlying claim).

- Moreover, why is a *minor claimant* (who has special standing under the government claim statutory scheme) and whose claim was improperly denied (since the statute is clear that the entity MUST grant the late application of a minor), have any fewer rights to notice of an improperly denied late claim when the entity does not act on the claim as opposed to acting on the claim?

The statutory scheme, as interpreted by the Court of Appeal, lacks consistency because the public entity has power to control which minor does and which minor does not obtain explicit notice of an improperly rejected late claim. Unless this Court's reverses the lower court's opinion, would not all public entities counsel their employees to NEVER explicitly act on a minor's claim? That is the only logical conclusion, and perhaps unforeseen practical result, arising from the court's decision, even as modified.

III.

REVIEW IS NEEDED TO RESOLVE THE DISTRICT SPLIT IN INTERPRETING GOVERNMENT CODE SECTION 946.6, AND SPECIFICALLY, WHETHER SUBDIVISION (b) OPERATES AS AN INFLEXIBLE STATUTE OF LIMTIATIONS.

A. Introduction

The Court of Appeal concluded compliance with Government Code section 946.6, subdivision (b), is a prerequisite to filing suit. (Typed Opn. at p. 15.) That subdivision requires a claimant challenging the denial of an application to file a petition in the superior court "within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6." (Gov. Code § 946.6(b).) The court further concluded that Section 946.6 operates as a statute of limitations, and its six-month limitations period is mandatory, not discretionary. (Typed Opn. at p. 15.) The court acknowledged, however, that its "reading of section 946.6 appears to be contrary to *E.M. v. Los Angeles Unified School Dist.* (2011) 194 Cal.App.4th 736 ("*E.M.*"). Review is necessary by this Court to resolve the split of interpretation among the Second and Fourth Appellate Districts. (Cal. Rules of Court, Rule 8.500(b) ["The Supreme Court may order review of a Court of Appeal decision: (1) When necessary to secure uniformity of decision or to settle an important question of law"].)

B. The Second Appellate District found, under certain exceptions, section 946.6 is not a condition precedent for bringing a lawsuit.

In *E.M., supra*, 194 Cal.App.4th at 740, the plaintiff presented a timely application for leave to present a late claim on the ground that she was a minor at all relevant times. Notwithstanding Government Code section 911.6(b)(2), the public entity expressly rejected the minor's application for leave to present a late claim. (*Ibid.*; Typed Opn. at p. 16.) Five months later, the minor filed a lawsuit. (*Id.* at p. 741; Typed Opn. at p. 16.) Two months after filing the lawsuit, and *seven months after the entity's denial of her application to file a late claim*, the minor petitioned the superior court under Government Code section 946.6, seeking relief from the claim requirement under section 945.4. (*Ibid.*; Typed Opn. at p. 16.) The superior court denied the petition as untimely as not having been filed within Section 946.6(b)'s six-month period, and the lawsuit was dismissed. (*Ibid.*; Typed Opn. at p. 16.)

The Court of Appeal, Second Appellate District, Division Three, reversed and reinstated the plaintiff's lawsuit. (*E.M., supra,* 194 Cal.App.4th at 749; Typed Opn. at p. 16.) That court determined the plaintiff satisfied the claim requirement of section 945.4 simply by presenting an application for leave to present a late claim. (*E.M., supra,* at p. 748; Typed Opn. at pp. 16-17.) The court reasoned the application for leave to present a late claim satisfied the statutory purpose of providing notice of the claim to the public

entity. (*Ibid.*, Typed Opn. at p. 17.) Thus, the plaintiff's petition in the superior court under Section 946.6 was unnecessary prior to bringing the lawsuit. (*Id.* at 747; Typed Opn. at p. 17.)

C. The Fourth Appellate District, Division Three, in this case, disagreed that section 945.4's claim requirement may be satisfied by presenting an application for leave to present a late claim under section 911.6(b)(2).

In this case, the Court of Appeal disagreed with *E.M.* "to the extent it stands for the proposition that a plaintiff who was a minor at the time the injuries were suffered satisfies the claim requirement of section 945.4 simply by presenting an application for leave to present a late claim under section 911.6(b)(2)." (Typed Opn. at p. 17.) The court further noted confusion has arisen from *E.M.*, regarding the procedure minor plaintiffs must follow before filing suit. (Typed Opn at p. 17, citing Van Alstyne et al., Cal. Government Tort Liability Practice (Cont.Ed.Bar 2015) § 7.60 ["The holding in *E.M.* would appear to render the filing of a petition under Govt C §946.6 superfluous, at least when the basis for late claim relief is the claimant's minority"].) Accordingly, the Court of Appeal concluded that *E.M.* "overlooks the plain language of sections 911.4, 911.6, 945.4, and 946.6," and "[b]y holding that an application for leave to present a late claim itself satisfies the claim requirement, even if the application is denied, *E.M.* nullifies the requirements of filing a petition under section

946.6 and obtaining court permission to be relieved of the claim procedure." (Typed Opn. at p. 17.)

D. Review is needed both to secure uniformity of decision and to settle this important issue of law concerning whether satisfaction of section 946.6 is, without exception, always a condition precedent to bringing a lawsuit.

"[W]here there is more than one appellate court decision, and such appellate decisions are in conflict... the court exercising inferior jurisdiction can and must make a choice between the conflicting decisions." (*Auto Equity Sales, Inc., supra,* 57 Cal.2d at p. 456.) Such conflicting decisions are especially confusing – and crucial – for litigants to correctly decipher in Tort Claims Act cases because if the litigant incorrectly assumes *E.M.* applies in his case, but the superior court in which the litigant appears chooses to apply *J.M.*, then the litigant loses his right to a trial. The Tort Claims Act intended to remove "traps for the unwary" litigants, and the inconsistency between *E.M.* and *J.M.* has erected a new snare for such litigants. (*Viles v. State of California* (1967) 66 Cal.2d 24, 31, quoting *Hobbs v. Northeast Sacramento County Sanitation Dis.* (1966) 240 Cal.App.2d 552.)

E.M.'s reasoning is logical and should not be easily dismissed by lower courts facing similar situations. The opinion implicitly recognizes the Legislative intent to treat minors with added leniency, and the fact that a denial of a properly submitted application for leave to file a late claim

(whether explicit or implicitly made) is not within the control of the litigant. (*E.M., supra,* 194 Cal.App.4th at 747-748.) The purpose of the claims provisions is to provide timely notice to the public entity, with sufficient information to enable the entity to investigate the claim, and to settle it, if appropriate, without the expense of litigation. (*Id.* at p. 748.) Whether the public entity chooses to act on the application is neither within the applicant's control, nor relevant as to whether the entity received timely notice of the claim.

Section 946.6 incorporates the language of Subdivision (c) of Section 911.6, but *E.M.* presents a clear example of where the rigid application of those statutes would subvert Legislative intent and public policy. This issue is important, unsettled, and needs to be resolved by this Court.

CONCLUSION

For all of the foregoing reasons, we respectfully urge that this petition for review be granted.

Dated: November 9, 2015

Respectfully submitted,

RUSSELL & LAZARUS APC
Christopher E. Russell, Esq.

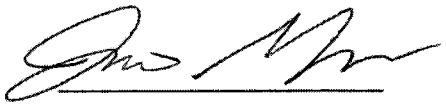
GUSDORFF LAW, P.C.
Janet R. Gusdorff, Esq.

By: _____
Janet R. Gusdorff
Attorneys for Appellant, J.M.

CERTIFICATE OF WORD COUNT
(California Rule of Court 8.504(d)(1).)

Pursuant to California Rules of Court, Rule 8.504(d)(1), the text of this Petition for Review, generated using Microsoft Word for Mac 2011, contains 6,104 words, including footnotes.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 9th day of November, 2015, at Westlake Village, California.



Janet R. Gusdorff

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 am not a party to the within action; my business address is 4607 Lakeview Canyon Road, Suite 375, Westlake Village, California 91361.

On November 9, 2015, I caused the foregoing documents described as: **PETITION FOR REVIEW**, to be served on the following entities or individuals:

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Hon. Kirk Nakamura, Dept. C15
Orange County Superior Court
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Santa Ana, CA 92701
Trial court judge

Clerk, California Court of Appeal
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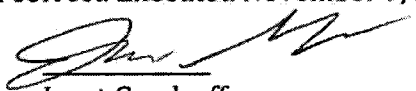
XX Mail by placing the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business procedures. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is 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.

Clerk, California Supreme Court
Clerk, California Court of Appeal, Foruth Appellate District, Division Three

XX Electronic Service by using the Supreme Court's e-submission form on its website.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed November 9, 2015 at Westlake Village, California.



Janet Gusdorff

ATTACHMENT A

(Court of Appeal Modification of Opinion, Filed 10/22/15 & Court of Appeal Opinion, Filed 9/30/15)

Filed 10/22/15 (unmodified opn. attached)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

J.M., a Minor, etc., Plaintiff and Appellant, v. HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT, Defendant and Respondent.	G049773 (Super. Ct. No. 30-2013-00684104) ORDER MODIFYING OPINION AND DENYING PETITION FOR REHEARING; NO CHANGE IN JUDGMENT

It is ordered that the opinion filed herein on September 30, 2015, be modified as follows:

After the fourth paragraph, which starts on page 18 and continues to page 19, beginning "Section 911.8, subdivision (a) requires a board," add the following new paragraph:

> In a petition for rehearing, J.M. argues our conclusion "rewards and incentivizes" government entities for not acting on applications for leave to present a late claim. Section 911.8, subdivision (a) reflects the Legislature's choice to require written notice only when the government entity acts on an application for leave to present a late

claim and affirmatively denies it. An application for leave to present a late claim is deemed denied by inaction 45 days after the application is presented to the governing board. (§ 911.6(c).) That date can be determined easily. If, within that timeframe, the claimant receives no notice of a board's action, then the claimant can conclude the application was denied by operation of law and can calculate the last day for filing a petition to the superior court under section 946.6.

This modification does not effect a change in judgment. The petition for rehearing is DENIED.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.

Filed 9/30/15 (unmodified version)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

J.M., a Minor, etc., Plaintiff and Appellant, v. HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT, Defendant and Respondent.	G049773 (Super. Ct. No. 30-2013-00684104) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Kirk H. Nakamura, Judge. Affirmed. Request for judicial notice. Granted.

Gusdorff Law, Janet R. Gusdorff; Russell & Lazarus and Christopher E. Russell for Plaintiff and Appellant.

McCune & Harber, Stephen M. Harber and Dominic A. Quiller for Defendant and Respondent.

INTRODUCTION

The Government Claims Act, found at section 810 et seq. of the Government Code,[1] sets forth procedures and requirements that must be satisfied before filing suit against a public entity for tort relief. Compliance with the Government Claims Act is mandatory, and failure to present a claim "'is fatal to a cause of action.'" (*McMartin v. County of Los Angeles* (1988) 202 Cal.App.3d 848, 858.) Those who seek relief against a public entity are well advised to heed the warning of Justice Oliver Wendell Holmes: "Men must turn square corners when they deal with the Government. If it attaches even purely formal conditions to its consent to be sued those conditions must be complied with." (*Rock Island &c. R. R. v. United States* (1920) 254 U.S. 141, 143.)

In this case, J.M. did not comply with the conditions of the Government Claims Act. He did not present a claim with the board of the Huntington Beach Union High School District (the District) within six months of the date on which his causes of action accrued, as required by sections 945.4 and 911.2. He retained counsel, who timely presented an application under section 911.4 to present a late claim on the ground J.M. was a minor. The District did not act on the application, and, as a consequence, under the express language of section 911.6, subdivision (c) (section 911.6(c)), his application was deemed denied by operation of law.

J.M., still represented by counsel, filed a petition in the superior court under section 946.6 for relief from the claim requirement. The superior court denied his petition as untimely because it was not filed within six months of the date on which his

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[1] Title 1, division 3.6, parts 1 through 7 of the Government Code (Gov. Code, § 810 et seq.) is referred to as the Government Claims Act. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 742.) Further code references are to the Government Code unless otherwise noted.

application to present a late claim was deemed denied by operation of law. J.M. appeals from the superior court's order denying his petition for relief under section 946.6. Such an order is appealable. (*Ebersol v. Cowan* (1983) 35 Cal.3d 427, 435, fn. 8.)

The plain, unambiguous language of sections 911.6 and 946.6 compels us to affirm. J.M.'s application to present a late claim was made under section 911.6, subdivision (b)(2) on the ground that he was a minor at the time he was required to present a claim. Because the District did not act, under the plain language of section 911.6(c), J.M.'s application was deemed denied by operation of law on the 45th day after it was presented. Section 911.6(c) states: "If the board fails or refuses to act on an application within the time prescribed by this section, the application shall be deemed to have been denied on the 45th day . . . ."

When an application is denied by operation of law under section 911.6(c), a claimant can challenge that denial only by petition to the superior court under section 946.6 for relief from the claim requirement. Section 946.6, subdivision (b) (section 946.6(b)) states in unambiguous terms: "The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6." J.M. filed his petition to the superior court more than six months after his application to present a late claim was deemed denied by operation of law. J.M.'s petition therefore was untimely, and the superior court did not err by denying it.

FACTS AND PROCEDURAL HISTORY

On October 27, 2011, J.M., a 15-year-old student at Fountain Valley High School, suffered head trauma when he was tackled during a school-sponsored football game. He continued to participate in full-contact football practice, and began to experience headaches, dizziness, and nausea.

J.M.'s causes of action for personal injury against the District accrued no later than October 31, 2011, when a doctor diagnosed J.M. with double concussion

syndrome. (§ 901.) J.M. did not present a claim to the District within six months of the date of accrual of his causes of action, as required by the Government Claims Act. He retained counsel and, on October 24, 2012, his counsel presented an application for leave to present a late claim pursuant to section 911.4 on the ground that J.M. was a minor for the entire six-month period following the accrual of his causes of action. The District did not act upon the application.

On October 28, 2013, J.M., still represented by counsel, filed a petition under section 946.6 to the superior court for an order relieving him from the claim requirement. The superior court denied J.M.'s petition as untimely because it was filed more than six months after the date on which his application to present a late claim was deemed to have been denied by the District's inaction. J.M. timely appealed.

DISCUSSION

I.

Standard of Review and Principles of Statutory Interpretation

We review the denial of a petition for relief from the claim requirement under the abuse of discretion standard. (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 275; *Ebersol v. Cowan, supra*, 35 Cal.3d at p. 435.) That discretion is not "unfettered" and "must be exercised in conformity with the spirit of the law." (*Department of Water & Power v. Superior Court* (2000) 82 Cal.App.4th 1288, 1293.)

We review issues of statutory interpretation de novo. (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916 (*Kavanaugh*).) The fundamental task of statutory interpretation is to ascertain the Legislature's intent to effectuate the statute's purpose. (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83.) In ascertaining the Legislature's intent, we first consider the language of the statute itself,

giving the words used their ordinary meaning. (*Ibid.*) If the statutory language is unambiguous, the plain meaning controls and consideration of extrinsic sources to determine the Legislature's intent is unnecessary. (*Kavanaugh, supra*, 29 Cal.4th at p. 919.) We read the statute as a whole to harmonize and give effect to all parts. (*Ste. Marie v. Riverside County Regional Park & Open-Space Dist.* (2009) 46 Cal.4th 282, 289.)

II.

Relevant Provisions of the Government Claims Act

"The [Government Claims] Act establishes a uniform claims procedure, making the filing of a claim within a brief period of the injury a prerequisite to maintaining a suit for damages." (*Renteria v. Juvenile Justice, Department of Corrections & Rehabilitation* (2006) 135 Cal.App.4th 903, 908.) The Government Claims Act is comprised of "a comprehensive format specifying the parameters of governmental liability, including . . . a detailed procedure for the advance filing of a claim as a prerequisite to filing suit" and deadlines for "both the filing of claims and the commencement of litigation." (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal.App.4th 23, 28, fn. omitted.)

Part 3 of division 3.6 of title 1 of the Government Code (§§ 900-935.9) sets forth procedures for presenting claims against public entities. Part 4 of the same title and division (§ 940 et seq.) sets forth procedures for actions against public entities and public employees.

Section 945.4 requires a party to present a written claim to the public entity before the claimant may bring a lawsuit against that public entity. Except as provided in sections 946.4 and 946.6, a timely claim must be acted upon or deemed rejected by the board[2] of the public entity before the claimant may file a lawsuit. (§ 945.4.)

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[2] Section 900.2, subdivision (a) defines "'Board'" as the governing body of a local public entity.

"'Compliance with the claims statute [(§ 945.4)] is mandatory and failure to file a claim is fatal to a cause of action.'" (*McMartin v. County of Los Angeles*, *supra*, 202 Cal.App.3d at p. 858). Section 945.6 provides that, once the claim requirement is satisfied, any lawsuit by the claimant must be commenced within six months of receiving written notice or, if no written notice is given, within two years from the accrual of the cause of action. (§ 945.6, subd. (a)(1), (2).)

Section 911.2 sets forth the procedure for presenting a personal injury claim against a public entity. The claimant must present a claim to the board of the public entity within six months of the accrual of the cause of action. (§ 911.2, subd. (a).) A cause of action accrues for purposes of the Government Claims Act at the same time as a similar action against a nonpublic entity accrues for purposes of applying the relevant statute of limitations.[3] (§ 901; *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1078.) Timely claim presentation is "'"'a condition precedent to plaintiff's maintaining an action against defendant.'"'" (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 209.)

When a claim required by section 911.2 is untimely, the injured party may present a written application to the board for leave to present a late claim. (§ 911.4, subd. (a).) The application for leave to present a late claim, including a copy of the proposed claim, must be presented to the board within a reasonable time not to exceed one year after the accrual of the cause of action and must state the reason for the delay in presenting the claim. (§ 911.4, subd. (b).)

Section 911.6 recognizes that the board may grant, deny, or fail or refuse to act on, an application for leave to present a late claim. Subdivision (a) of section 911.6

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[3] A personal injury cause of action caused by negligence accrues on the date of injury, unless the discovery rule delays accrual, in which case the cause of action accrues when the plaintiff suspects or should suspect wrongdoing. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1109-1111.)

provides: "The board shall grant or deny the application within 45 days after it is presented to the board. . . ."[4] Section 911.6, subdivision (b) (section 911.6(b)) identifies four circumstances in which the application to present a late claim "shall [be] grant[ed]" by the board.[5] Relevant here is the second circumstance: "The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 . . . ." (§ 911.6(b)(2).)

Section 911.6(c) states: "If the board fails or refuses to act on an application within the time prescribed by this section, the application shall be deemed to have been denied on the 45th day . . . ."

Section 911.8, subdivision (a) provides that "[w]ritten notice of the board's action upon the application" must be given in the prescribed manner. If the board denies the application, the notice must include a warning substantially in the form set forth in section 911.8, subdivision (b). Section 911.8 does not require notice when the board fails or refuses to act on an application.

If the board denies a timely application for leave to present a late claim, or if the application is deemed denied under section 911.6(c), the injured party may petition the superior court for an order relieving him or her from the claim requirement of

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[4] The claimant and the board may agree to extend the period in which the board is required to act. (§ 911.6, subd. (a).)

[5] The four circumstances are "(1) [t]he failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in its defense of the claim by the failure to present the claim within the time specified in Section 911.2[,] [¶] (2) [t]he person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim[,] [¶] (3) [t]he person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim . . . ," or "(4) [t]he person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim." (§ 911.6(b)(1)-(4).)

section 945.4. (§ 946.6, subds. (a) & (b).)[6] The injured party must file the petition in the superior court "within six months after the application to the board is denied *or deemed to be denied* pursuant to Section 911.6." (§ 946.6(b), italics added.) Failure to comply with time limitations set forth in section 946.6 bars an action on the government claim. (See *Lineaweaver v. Southern California Rapid Transit Dist.* (1983) 139 Cal.App.3d 738, 741 (*Lineaweaver*) [holding the six-month limitation period during which a person may petition the superior court after the board's denial of an application to present a late claim is mandatory]; *Todd v. County of Los Angeles* (1977) 74 Cal.App.3d 661, 665 [minor's action was time-barred when the complaint failed to comply with section 946.6, subdivision (f) because it was filed more than 30 days after the superior court granted minor's petition for relief].)

Section 946.6, subdivision (c) (section 946(c)) provides that the superior court "shall relieve the petitioner from the requirements of Section 945.4" if the application for leave to present a late claim "was made within a reasonable time not to exceed that specified in subdivision (b) of Section 911.4," the application was denied or deemed denied under section 911.6, and at least one of four circumstances is applicable.

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[6] Section 946.6, subdivision (a) states: "If an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from Section 945.4. The proper court for filing the petition is a superior court that would be a proper court for the trial of an action on the cause of action to which the claim relates. If the petition is filed in a court which is not a proper court for the determination of the matter, the court, on motion of any party, shall transfer the proceeding to a proper court. If an action on the cause of action to which the claim relates would be a limited civil case, a proceeding pursuant to this section is a limited civil case."

Section 946.6(b) states: "The petition shall show each of the following: [¶] (1) That application was made to the board under Section 911.4 and was denied or deemed denied. [¶] (2) The reason for failure to present the claim within the time limit specified in Section 911.2. [¶] (3) The information required by Section 910. [¶] The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6."

The four circumstances listed in section 946.6(c) are nearly identical to those listed in section 911.6(b). If the superior court grants the petition, the injured party has 30 days in which to file a lawsuit. (§ 946.6, subd. (f).)

III.

J.M.'s Application for Leave to Present a Late Claim Was Deemed Denied by Operation of Law When the District Did Not Act Within 45 Days.

A. *Section 911.6(b)(2) and Section 911.6(c)*

J.M. contends section 911.6(b)(2) and section 911.6(c) contradict each other and are irreconcilable because section 911.6(b)(2) states the board "shall grant the application" when the applicant was a minor, while section 911.6(c) states the application "shall be deemed to have been denied" if the board fails to act within the prescribed time period. According to J.M., the contradiction should be resolved by concluding section 911.6(b)(2) controls so that his timely application to present a late claim was never deemed to have been denied under section 911.6(c).

There is no conflict or contradiction between section 911.6(b)(2) and section 911.6(c). Section 911.6 anticipates that a board may act on an application by granting or denying it, or that a board may do nothing at all. Section 911.6, subdivision (a) states the board "shall grant or deny" an application for leave to present a late claim within 45 days after it is presented to the board. Section 911.6(b)(2) states "[t]he board shall grant the application" when the claimant was a minor during the claim period, which is the situation here. If the board fails or refuses to act within the 45-day period, then section 911.6(c) controls and the application is deemed denied by operation of law. Section 911.6(c) makes no exception when the application presents any of the circumstances listed in section 911.6(b). In this case, because the District did not act on J.M.'s application to present a late claim, section 911.6(c) controls, and the application is deemed denied by operation of law.

J.M. focuses on the words "shall grant" in section 911.6(b)(2) as establishing that a board's failure to act on an application within 45 days means, contrary to section 911.6(c), that the application is not deemed denied by operation of law. Although use of the word "shall" indicates a mandatory act (*Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538, 542), it is possible that a board may, albeit incorrectly, deny outright an application brought under section 911.6(b)(2). (§ 911.6, subd. (a); see, e.g., *Hernandez v. County of Los Angeles* (1986) 42 Cal.3d 1020, 1022-1023 [defendant public entity denied a minor's application to present a late claim, "informing plaintiff that if he wished to challenge the denial he was required to file a petition in court pursuant to section 946.6 within six months"]; *Tammen v. County of San Diego* (1967) 66 Cal.2d 468, 473 [minor plaintiff's application for leave to present a late claim was denied by the public entity and plaintiff thereafter challenged the denial by petitioning the superior court].) When the board takes action and expressly denies an application brought under section 911.6(b)(2), the injured party must bring a petition under section 946.6 to challenge the board's decision.

In either case—express denial under section 911.6, subdivision (a) or denial by operation of law under section 911.6(c)—the claimant's recourse is to bring a petition under section 946.6 to challenge the denial of the application for leave to present a late claim. The language of section 911.6(c) therefore anticipates the board may mistakenly or consciously disregard the mandatory provisions set forth in section 911.6, subdivisions (a) and (b). If the board's denial, either by action or inaction, is inconsistent with the statutory provisions, it is incumbent upon the claimant to challenge that denial by petition to the superior court under section 946.6.

Kendrick v. City of La Mirada (1969) 272 Cal.App.2d 325, 329 (*Kendrick*) supports the proposition that an application for leave to present a late claim may be denied by operation of law notwithstanding the language of section 911.6(b). In *Kendrick*, *supra*, 272 Cal.App.2d at pages 326-327, the public entity denied the plaintiff's

otherwise valid claim as untimely. The plaintiff brought an application for leave to present a late claim under section 911.6(b)(1) on the ground of mistake, inadvertence, surprise, or excusable neglect. (*Kendrick, supra*, at pp. 327-328.) The application was denied by operation of law when the public entity failed to act within the required statutory time period. (*Id.* at p. 327.) The plaintiff did not petition the superior court for relief from the claim requirement and instead filed a lawsuit. (*Ibid.*) The Court of Appeal upheld the trial court's judgment to dismiss the plaintiff's lawsuit. (*Id.* at pp. 327, 330.) The Court of Appeal concluded the plaintiff was required by the Government Claims Act to file a petition in the superior court for relief from the claim requirement[7] before filing a lawsuit. (*Kendrick, supra*, at pp. 327-328.)

In *Kendrick, supra*, 272 Cal.App.2d at pages 327-329, the plaintiff's application to present a late claim was deemed denied by operation of law, notwithstanding the fact the plaintiff had a valid claim under section 911.6(b)(1) based on mistake, inadvertence, surprise, or excusable neglect. The Court of Appeal concluded the plaintiff had to obtain relief in the superior court before filing a lawsuit. (*Kendrick, supra*, at pp. 327, 329.)

Although *Kendrick* dealt with section 911.6(b)(1) rather than section 911.6(b)(2), its reasoning would apply to all subparts under section 911.6(b). Section 911.6(b) states a board "shall grant" an application based on any of the four circumstances in subparts (1) through (4) and makes no distinction in treatment among them. Here, J.M.'s application to present a late claim was deemed denied by operation of law, notwithstanding the fact he brought his application under section 911.6(b)(2). J.M., like the plaintiff in *Kendrick*, had to obtain relief in the superior court under section 946.6. J.M. did not obtain relief in the superior court because his petition was untimely filed.

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[7] *Kendrick* was decided under former section 912, which had been repealed in 1965 in favor of section 946.6. (*Kendrick, supra*, 272 Cal.App.2d at p. 326, fn. 1.)

J.M. argues the mention by the *Kendrick* court of the "'deemed denial' principle" was not necessary to the decision. We disagree. The *Kendrick* court concluded that the plaintiff was required by the Government Claims Act to file a petition in the superior court for relief from the claim requirement before filing a lawsuit. In *Kendrick*, the board of the public entity did not act on the plaintiff's application.[8] (*Kendrick, supra*, 272 Cal.App.2d at p. 326.) Thus, for the *Kendrick* court to have reached the issue whether the plaintiff needed to obtain relief in the superior court before filing a lawsuit, the court would have had to determine the plaintiff's application was deemed denied by operation of law.

J.M. also contends *Kendrick* is distinguishable because the plaintiff in that case never filed a petition for relief in the superior court, let alone an untimely one. The important point in *Kendrick*, which is fully applicable here, is that a plaintiff must *obtain* relief from the superior court before filing a lawsuit. (*Kendrick, supra*, 272 Cal.App.2d at pp. 329-330.) J.M. did not obtain relief from the superior court.

J.M. does not explain what the status of his application for leave to present a late claim would be if it were not denied by operation of law under section 911.6(c). The application cannot be said to have been granted because the District did not act on it. Inasmuch as J.M. filed a petition under section 946.6, he does not take that position. Yet, J.M. argues his application was not denied by operation of law. J.M. suggests his application exists in a Government Claims Act limbo, neither granted nor denied, awaiting some future action by the District to save it. Section 911.6 does not permit that situation: When a board fails to act on an application brought under section 911.6(b)(2)

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[8] At the time *Kendrick* was decided, section 911.6, former subdivision (a) read: "'The board shall grant or deny the application within 35 days after it is presented to the board. If the board does not act upon the application within 35 days after the application is presented, the application shall be deemed to have been denied on the 35th day.'" (*Kendrick, supra*, 272 Cal.App.2d at p. 328, fn. 4.)

within 45 days, then the application is deemed denied by operation of law under section 911.6(c).

B. *The Language of Section 946.6 Supports Our Interpretation.*

J.M.'s interpretation of section 911.6 ignores and would nullify the procedure set forth in section 946.6 when a board fails to act on an application brought under section 911.6(b). "An interpretation that renders related provisions nugatory must be avoided [citation]; each sentence must be read not in isolation but in the light of the statutory scheme [citation]; and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

Section 946.6(c) requires the superior court to grant a petition for relief if the application presented under section 911.6 was timely, denied or deemed denied, and at least one of four circumstances is met. The four circumstances set forth in section 946.6(c) are nearly identical to those in which an application to present a late claim *must be granted* by the board under section 911.6(b). Section 946.6(c)(2) is identical to section 911.6(b)(2)—"[*t*]*he person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim.*" (§ 946.6(c)(2), italics added; see § 911.6(b)(2).) Section 946.6(c) thus recognizes a board might deny, either expressly or by operation of law, an application to present a late claim brought on a ground set forth in section 911.6(b) even though section 911.6(b) states such application shall be granted.

Section 946.6(c) requires the superior court to grant a timely section 946.6 petition when an application for leave to present a late claim filed by a minor meets the requirements of section 911.6(b)(2) and the application is deemed denied by operation of law under section 911.6(c). If, as J.M. contends, an application under section 911.6(b)(2)

could not be deemed denied by operation of law when a board fails to act, then section 946.6(c) would serve no purpose.

C. *Request for Judicial Notice*

J.M. has requested we take judicial notice of documents comprising the legislative history of section 911.6. Judicial notice of these materials is appropriate. (Evid. Code, § 452, subds. (a) & (c); *Ennabe v. Manosa* (2014) 58 Cal.4th 697, 709, fn. 9; *El-Attar v. Hollywood Presbyterian Medical Center* (2013) 56 Cal.4th 976, 992.) We grant the request for judicial notice; however, consideration of extrinsic sources to determine the Legislature's intent is unnecessary because the Legislature expressed its purpose in the unambiguous language of section 911.6 itself. (See *Smith v. Superior Court*, *supra*, 39 Cal.4th at p. 83; *Kavanaugh*, *supra*, 29 Cal.4th at p. 919.)

We observe that the legislative history of section 911.6, if considered, is consistent with our reading of section 911.6. J.M. emphasizes two points from the legislative history. First, the Government Claims Act should be liberally construed. (See *Viles v. State of California* (1967) 66 Cal.2d 24, 31.) Construction of section 911.6, no matter how liberal, cannot remove the plain language of section 911.6(c) that an application to present a late claim is deemed denied if the board does not act within 45 days.

Second, J.M. emphasizes, the Legislature intended to treat minors with more leniency than other claimants. Such intent to treat minors with more leniency is built into both section 911.6(b)(2) and section 946.6(c)(2). As J.M. argues, section 911.6(b)(2) does not require a minor to show that the public entity would be prejudiced by a late claim. (See Recommendation Relating to Sovereign Immunity (Jan. 1963) 4 Cal. Law Revision Com. Rep. (1963) p. 1010.) The Legislature also showed leniency to minors when amending the Government Claims Act in 1963 by giving them one year, instead of 100 days, in which to present an application to present a late claim.

(Recommendation Relating to Sovereign Immunity, *supra*, 4 Cal. Law Revision Com. Rep. at p. 1010.) The Legislature did not otherwise exempt minors from the requirements and time limits of the Government Claims Act. J.M. has identified nothing in the legislative history materials that suggests the Legislature did not intend for section 911.6(c) to apply to applications brought under section 911.6(b)(2).

IV.

J.M.'s Petition Is Time-barred Because It Was Not Filed Within the Six-month Limitations Period Set Forth in Section 946.6.

A. *Compliance with Section 946.6(b) Is a Prerequisite to Filing Suit.*

To challenge the denial of an application to present a late claim, a claimant must file a petition in the superior court "within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6." (§ 946.6(b).) A claimant may file a lawsuit only once the superior court grants a section 946.6 petition for relief from the claim requirement. (§ 946.6, subd. (f).)

Section 946.6(b) operates as a statute of limitations, and its six-month limitations period "is mandatory, not discretionary." (*D.C. v. Oakdale Joint Unified School Dist.* (2012) 203 Cal.App.4th 1572, 1582, citing *Lineaweaver*, *supra*, 139 Cal.App.3d at p. 739.) In *Lineaweaver*, the plaintiff failed to present a timely claim and instead presented an application for leave to present a late claim, which was deemed denied by operation of law when the public entity did not act within 45 days. (*Lineaweaver*, *supra*, at pp. 739-740.) The plaintiff later filed a complaint and two amended complaints, the last of which the trial court deemed to be a petition for relief from the claims requirement under section 946.6. (*Lineaweaver*, *supra*, at p. 740.) The trial court denied the plaintiff's section 946.6 petition as untimely because it was not filed within six months of the date on which the plaintiff's application to present a late claim

was denied or deemed denied. (*Ibid.*) The Court of Appeal affirmed the trial court's denial of the petition as untimely and emphasized the six-month limitations period of section 946.6(b) acts as a statute of limitations. (*Lineaweaver, supra*, at pp. 740-741.)

The District did not act on J.M.'s application for leave to present a late claim; therefore, it was deemed denied on December 8, 2012, the 45th day after it was presented. J.M.'s counsel filed a petition under section 946.6 on October 28, 2013. The petition under section 946.6 was untimely because it was filed more than six months after the application to present a late claim was deemed denied by operation of law. The superior court did not err by denying J.M.'s petition on the ground it was untimely under the applicable six-month statute of limitations of section 946.6(b).

Our reading of section 946.6 appears to be contrary to *E.M. v. Los Angeles Unified School Dist.* (2011) 194 Cal.App.4th 736 (*E.M.*). In that case, the plaintiff presented a timely application for leave to present a late claim on the ground that she was a minor at all relevant times. (*Id.* at p. 740.) Despite section 911.6(b)(2), the public entity expressly rejected the minor's application for leave to present a late claim. (*E.M., supra*, at p. 740.) Five months after the public entity rejected the application, the minor filed a lawsuit. (*Id.* at p. 741.) Two months after filing the lawsuit and seven months after her application to present a late claim was denied, the minor filed a section 946.6 petition with the superior court, seeking relief from the claim requirement of section 945.4. (*E.M., supra*, at p. 741.) The superior court denied the plaintiff's section 946.6 petition as untimely because it was not filed within six months of the public entity's denial of her application to present a late claim. (*Ibid.*) The lawsuit was dismissed. (*Ibid.*)

A panel of the Court of Appeal, Second Appellate District, Division Three, reversed and reinstated the plaintiff's lawsuit. (*E.M., supra*, 194 Cal.App.4th at p. 749.) The Court of Appeal concluded the plaintiff satisfied the claim requirement of section 945.4 simply by presenting an application for leave to present a late claim. (*E.M.*,

supra, at p. 748.) The court reasoned the application for leave to present a late claim satisfied the statutory purpose of providing notice of the claim to the public entity. (*Ibid.*) Because the plaintiff satisfied the claim requirement, the Court of Appeal believed it was unnecessary for the plaintiff to bring a petition in the superior court under section 946.6 before filing a lawsuit. (*E.M.*, *supra*, at p. 747.) Even though the superior court had not granted the petition under section 946.6, the Court of Appeal concluded the plaintiff's lawsuit was timely under section 945.6, subdivision (a)(1) because the lawsuit was filed within six months of the board's denial of her application for leave to present a late claim. (*E.M.*, *supra*, at p. 748.)

We disagree with *E.M.* to the extent it stands for the proposition that a plaintiff who was a minor at the time the injuries were suffered satisfies the claim requirement of section 945.4 simply by presenting an application for leave to present a late claim under section 911.6(b)(2). A treatise has recognized that *E.M.* creates confusion regarding the procedure minor plaintiffs must follow before filing suit: "The holding in *E.M.* would appear to render the filing of a petition under Govt C §946.6 superfluous, at least when the basis for late claim relief is the claimant's minority." (Van Alstyne et al., Cal. Government Tort Liability Practice (Cont.Ed.Bar 2015) § 7.60.) We agree. We believe the *E.M.* opinion overlooks the plain language of sections 911.4, 911.6, 945.4, and 946.6. By holding that an application for leave to present a late claim itself satisfies the claim requirement, even if the application is denied, *E.M.* nullifies the requirements of filing a petition under section 946.6 and obtaining court permission to be relieved of the claim procedure.

B. *The Doctrine of Equitable Tolling Does Not Apply.*

J.M. argues the doctrine of equitable tolling should apply when a minor's application for leave to present a late claim is denied by operation of law in contravention of section 911.6(b)(2). This argument is without merit.

Equitable tolling of statutes of limitations is a judicially created doctrine designed to suspend or extend a statute of limitations "'as necessary to ensure fundamental practicality and fairness.'" (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 99.) Equitable tolling applies when a claimant has several legal remedies and chooses to pursue one reasonably and in good faith. (*Id.* at p. 100.) "Thus, it may apply where one action stands to lessen the harm that is the subject of a potential second action; where administrative remedies must be exhausted before a second action can proceed; or where a first action, embarked upon in good faith, is found to be defective for some reason." (*Ibid.*)

J.M. did not pursue an alternative remedy, such as an administrative remedy or an action in a different forum. It is undisputed the only remedy J.M. sought was by petition to the superior court pursuant to section 946.6. He therefore cannot invoke equitable tolling.

C. *The Board Was Not Required to Provide Written Notice Under Section 911.8.*

J.M. asserts the District failed to give him written notice of the denial of his application for leave to present a late claim under section 911.8. Had the District provided notice, J.M. argues, "any prejudice from plaintiff's brief delay petitioning the court would have been eliminated." He also suggests the failure to give notice operated as an estoppel because he was "lulled into the belief that the Board would, eventually, grant his application, and permit him to file his late claim."

Section 911.8, subdivision (a) requires a board to give written notice only of "the board's action upon the application." The District was not required under the statutory framework to give written notice of its *inaction* upon his application. J.M. was represented by counsel who could determine the application to present a late claim had been denied by operation of law under section 911.6(c). J.M. identifies no "calculated conduct," representation, or concealment of facts on the part of the District or its agents

supporting an estoppel to invoke the time limitations of the Government Claims Act. (*Ortega v. Pajaro Valley Unified School Dist.* (1998) 64 Cal.App.4th 1023, 1044-1045.)

D. *Public Policy*

J.M. urges us to look beyond the language of sections 911.6 and 946.6 and consider public policy favoring trial on the merits. The primary purpose of the Government Claims Act is to provide the public entity with notice of a claim to facilitate investigation and settlement without trial, if appropriate. (*City of Stockton v. Superior Court, supra*, 42 Cal.4th at pp. 744-745; *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455.) The Legislature effectuated and expressed that purpose in the plain language of the Government Claims Act, which includes a detailed procedure for "the advance filing of a claim as a prerequisite to filing suit" and deadlines for "both the filing of claims and the commencement of litigation." (*Schmidt v. Southern Cal. Rapid Transit Dist., supra*, 14 Cal.App.4th at p. 28.)

Although, as J.M. argues, section 946.6 is a remedial statute, it is to be construed in favor of relief only when that is possible. (*Bettencourt v. Los Rios Community College Dist., supra*, 42 Cal.3d at pp. 275-276, citing *Viles v. State of California, supra*, 66 Cal.2d at pp. 32-33.) The language of section 946.6 is plain and unambiguous; it cannot be construed in favor of granting J.M. relief. By virtue of the District's inaction, J.M.'s application for leave to present a late claim was deemed denied by operation of law on December 8, 2012, the 45th day after J.M. presented the application to the District. Consequently, J.M. had six months from December 8, 2012, to petition the superior court for relief from the claim requirement under section 946.6. (§ 946.6(b).) J.M. did not meet that deadline. "The general policy favoring trial on the merits cannot be applied indiscriminately so as to render ineffective the statutory time limits." (*Department of Water & Power v. Superior Court, supra*, 82 Cal.App.4th at p. 1293.)

DISPOSITION

The order denying J.M.'s petition under section 946.6 is affirmed. In the interest of justice, no party may recover costs incurred on appeal.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.