No. S230510

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

REPLY BRIEF ON THE MERITS

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INTRODUCTION

Respondent's Answering Brief on the Merits ("ABM") is as remarkable for what it *does not* say as for what it does. Whereas this appeal poses the significance and impact of the irreconcilable language contained in sections (b) and (c) of Government Code section 911.6, respondent does not even *acknowledge*, much less analyze, subdivision (b). Whereas Appellant's Opening Brief on the Merits ("OBM") devotes an entire section to the significance of the notice protection our Legislature wrote into the statutory system in Government Code section 911.8, respondent's ABM ignores it completely.

Instead, respondent offers wholly inconsistent ideas; on one hand respondent clings to the petition process and urges this Court to effectively *nullify* the application process our Legislature imposed to alleviate the burden on the courts. On the other hand, respondent urges this Court to apply principles of stare decisis to maintain *respondent's* idea of the status quo. In other words, respondent both embraces and eschews Legislative history and intent, depending on whether it supports or undermines respondent's specific arguments.

Wading through respondent's rhetoric, a simple undisputed fact remains: appellant J.M. fully satisfied *his* duty to the public entity under Government Code section 911.4 by filing a *timely* application to file a late claim concurrently with his proposed claim. There was no conceivable

legitimate basis for respondent to deny his application. Under subdivision (b) of Government Code section 911.6, respondent was required to grant appellant's application.

We are before this Court because respondent failed to do its job. Respondent passes the buck to the courts, relying upon and assuming the overburdened courts will fulfill respondent's duties. While the petition process under Government Code section 946.6 unquestionably provides *an* avenue for relief, respondent has not shown that it ever was, is, or should be, the *sole* avenue for relief where an applicant, such as J.M., finds himself trapped in the procedural snare that respondent has built.

LEGAL DISCUSSION[1]

I.

"GUIDING PRINCIPLES OF STATUTORY INTERPRETATION" DO NOT SUPPORT RESPONDENT'S INTERPRETATION OF GOVERNMENT CODE SECTION 911.6, SUBDIVISION (C).

Respondent recites standard principles of statutory interpretation. (ABM 2-3.) Respondent concedes that every statutory word is presumed to have been intended to have a meaning and perform a useful function, and that canons of statutory interpretation preclude judicial construction that renders part of the statute meaningless or inoperative. But respondent fails to apply the principle.

Specifically, nowhere in its brief, does respondent explain *how* to reconcile the language contained in subdivisions (b) and (c) of Government Code section 911.6. Under respondent's interpretation of subdivision (c), a public entity may, by inaction, nullify subdivision (b)(2). Respondent claims that the petition process, under Section 946.6, is triggered by the public entity's inaction under subdivision (c).

But as appellant explained, if subdivision (c) is inapplicable to cases (such as here) where the applicant indisputably satisfied the requirements

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[1] As is customary, this reply brief is confined to recent developments and matters addressed in respondent's brief on which appellant believes further discussion would be helpful to this Court. The absence of a point from this reply brief means only that it falls outside of these categories. No point made in the opening brief is withdrawn or abandoned unless it is done so explicitly.

under subdivision (b)(2) of Government Code section 911.6 and section 911.4, the petition process under Section 946.6 is *not* triggered, and therefore, an applicant need not petition for relief from the superior court. A straight-forward application of Code of Civil Procedure section 1859 achieves this result by reconciling the language of section 911.6, subdivisions (b)(2) and (c).

As discussed at page 17 of appellant's OBM, and ignored in respondent's ABM, Code of Civil Procedure section 1859's canon of statutory interpretation governs how to interpret inconsistent provisions where one is general and the other specific. It urges an interpretation that favors the specific, the particular interpretation, over an inconsistent general intent. (Code Civ. Proc. § 1859.) In other words, this Court should interpret Government Code section 911.6, subdivision (b), as delineating four distinct scenarios under which, when the predicate facts are satisfied, the public entity lacks discretion to deny (either explicitly or by default) a timely application to file a late claim. Such interpretation both substantiates the Legislature's use of the language "shall grant" in subdivision (b) and substantiates the Legislature's mandatory denial language in subdivision (c) for all other categories of applications.

This Court should attempt to reconcile and interpret Section 911.6's inherent inconsistencies without re-writing the statute. (See ABM at 3-4.) But respondent's interpretation of subdivision (c) requires this Court to

effectively do just that by nullifying subdivision (b)'s language "shall grant." If, as respondent assumes, Section 911.6, subdivision (b)(2) were permissive rather than mandatory,[2] this Court would be overturning at least fifty years of this Court's own decisions interpreting the language as mandatory. (See OBM at 14, citing *Hernandez v. County of Los Angeles* (1986) 42 Cal.3d 1020, 1028-1031, discussing *Tammen v. County of San Diego* (1967) 66 Cal.2d 468, 479-480 and *Williams v. Mariposa County Unified Sch. Dist.* (1978) 82 Cal.App.3d 843, 849, 851-852.) And it would "eliminate the special solicitude for late-claim applications on behalf of injured minors that is reflected in sections 911.6, subdivision (b)(2) and 946.6, subdivision (c)(2)." (*Hernandez, supra,* 42 Cal.3d at 1030.)

Respondent attempts to distinguish *Hernandez, supra,* based on procedure; there, the minor timely petitioned the superior court under section 946.6, whereas here, appellant's petition was delayed. (ABM 28.) However, *Hernandez*'s significance is not confined to its procedural posture. Appellant's OBM discusses *Hernandez, supra*, at length, so this reply brief will not repeat the Court's in-depth public policy discussion regarding the Tort Claims Act's lenient treatment of minors, especially in the face of delays by adults (including attorneys) over which the minor lacks control.

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[2] Ironically, respondent seeks to treat Section 911.6, subdivision (b)(2)'s mandatory language "shall" as permissive while simultaneously treating Section 946.6's permissive language "may" as mandatory. (ABM 15-19.)

However, this Court should examine the implication of *Hernandez*'s holding, particularly in light of its distinct procedural posture. The Court held that because: (1) plaintiff's late-claim application was filed within one year of the accrual of his cause of action, (2) plaintiff was a minor for the entire claim period, and (3) any delay in filing the late-claim application was clearly not attributable to any lack of diligence on the part of the minor himself, "the county *was under an obligation to accept the late claim* under section 911.6." (*Hernandez, supra,* 42 Cal.3d 1031, emphasis added.) That was not all. This Court also found "the trial court erred in refusing to enter an order pursuant to section 946.6, relieving plaintiff from the provisions of section 945.4." (*Ibid.*) In other words, the minor plaintiff was *entitled* to relief under section 911.6 and under section 946.6. The fact that *Hernandez* required the public entity to grant the application shows this Court did not envision denial by action (or inaction) to be a legitimate option for the public entity, under section 911.6, subdivision (c).

Hernandez also shows that there is only one permissible result from a court petition where a minor applicant satisfies section 911.4's application provision – relief from section 945.5's claim presentation requirement. The application process was created to alleviate the burden on the courts and to permit the public entity to act for itself on claims and applications; requiring an applicant to petition the court for relief to which

he is *entitled* from the outset not only undermines Legislative intent but also is a complete waste of judicial resources and time.

II.

THE HISTORY OF THE TORT CLAIMS ACT DOES NOT LEAD TO RESPONDENT'S CONCLUSION THAT A PETITION IS ALWAYS REQUIRED.

Respondent discusses the prior iterations of Government Code sections 912, 911.6 and 946.6, and concludes that the application process delineated in sections 911.4 through 911.8 has historically been discretionary, whereas the petition under section 946.6 has historically been mandatory. (ABM 4-10.) However, respondent's analysis is incomplete and thus, flawed.

A. The application process may be optional, but once pursued, the public entity's discretion is limited.

Respondent correctly notes that historically, a court proceeding (Petition) was necessary in every case before a late claim could be presented to a public entity. (ABM 8.) But respondent incorrectly states, "The court would grant an Application if the plaintiff was a minor, incapacitated, or died during the claims period." (ABM 7.) Wrong. Section 946.6's predecessor, section 716, required the court to determine whether the entity against which the claim was made would be *prejudiced* by a minor's late claim. In other words, if an applicant was a minor during the claims period and filed his application within a year of the accrual of the action, the court not only was *not required* to grant the application, it was

not permitted to grant the application unless it first determined that the minor's delay did not prejudice the public entity.

In 1963, section 716 was repealed, and sections 911.4 through 911.8 were added at that time. (ABM 7.) Respondent cites the Law Revision Commission's language that: "Sections 911.4 to 911.8 are new. These sections permit *public entities* to grant leave to present a late claim under certain circumstances." (ABM 7, citing Gov. Code § 911.4, citing 4 Cal.L.Rev.Comm. Reports 1001 (1963), respondent's emphasis.) Because of the Law Revision Commission's characterization of the statutes *permitting* the public entity to grant the application, respondent extrapolates that the statutory language of section 911.6 is permissive, not mandatory.

But respondent conflates the actual legislative changes – the statutory language itself – with the Law Revision Commission's summary explanation of the changes, deferring to the Law Revision Commission's language over the statutory language. Respondent's approach is backwards. The words of the statute (i.e., not the Commission's summary) are "the most reliable indicator of legislative intent." (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715.) As previously discussed in this brief, in appellant's OBM, and all of appellant's briefing in the appellate court, Section 911.6, subdivision (b)(2)'s language is mandatory, not permissive.

Respondent further claims that, "The Commission also noted that because the grant of the Application was discretionary, the Application could be denied (or deemed denied) and then the Petition process, which predates section 911.4, would be necessary." (ABM 7-8.) This crucial piece of respondent's analysis conveniently lacks any citation. To the extent it is intended to be respondent's summary of the Commission's language at 4 Cal.L.Rev.Comm. Reports 1001 (1963), it is a generous overstatement. The grant of the application was discretionary, but *not* in the circumstances delineated in subdivision (b).

Section 716 was replaced with section 912 (later replaced by Section 946.6), the petition procedure following the public entity's denial of an application to file a late claim. (See ABM at 8-9.) That procedure initially required the court to grant leave to present a claim (section 912), and now requires the court to grant relief from section 945.4 (section 946.6). Respondent claims that section 946.6 confirms the public entity had the discretion to deny or ignore an application. (ABM 10.) The entity certainly does have such discretion for *most* applications. Just not for those that satisfy Government Code sections 911.4 and 911.6, subdivision (b)(2).

Why then, would section 946.6 repeat section 911.6's language had the Legislature not envisioned the public entity having discretion to deny by inaction applications such as appellant? One possibility is because section 946.6 does not require the applicant to allege the identical basis for

relief as he sought before the public entity. By mirroring section 911.6's mandatory grounds for relief, section 946.6 guarantees complete and consistent application of the law, even for applicants who assert varied grounds for relief (e.g., alleging excusable mistake before the public entity but minority or incapacity before the court).

Respondent argues the evolution from pseudo-writ (enabling the litigant to file a late claim) to petition (enabling the litigant to circumvent the claim presentation process), signifies the importance of expediting late claim proceedings, and the subordination of the application procedure to court intervention. (ABM 9-10.) Ironically, court intervention in cases like this, delays, not expedites, late claim proceedings, particularly because the court lacks discretion to deny relief where, as here, the minor filed a timely application to file a late claim. (*Hernandez, supra,* 42 Cal.3d 1031.) The public entity was required, under subdivisions (a) and (b)(2), of Government Code section 911.6, to grant appellant's application within 45 days.

B. A petition has not "always been" required; courts have equitable powers to excuse the petition.

Respondent claims a court petition is, and always has been, required. (ABM 4.) Not true. Compliance with section 946.6 has been historically excused on the basis of equitable estoppel. (*McLaughlin v. Superior Court*

(1972) 29 Cal.App.3d 35, 38; *Kendrick v. City of La Mirada* (1969) 272 Cal.App.2d 325, 328.)

Equitable estoppel applies in this case, and arguably, in cases like these where the public entity fails to due its job (i.e., grant the application) *and* affirmatively misleads the applicant by failing to follow the requirements of Government Code section 911.8 (i.e., to notify the applicant of the denial of the application and commencement of the six-month statutory period in which to file the section 946.6 petition). (See analysis at OBM 25-29, 39-45.)

Nothing in respondent's brief attempts to address or challenge appellant's argument concerning section 911.8, or explain why the public entity's failure to notify the applicant of its denial of his claim does not equitably excuse appellant from the six-month period contained in section 946.6.

Thus, one possible simple resolution of the issue in this case is as follows: where (1) a minor files a timely application to file a late claim under section 911.4, *and* (2) the public entity fails to act on the application, *and* (3) the public entity fails to provide notice under section 911.8, the minor is excused (under equitable estoppel) from section 946.6's petition requirement.

Respondent briefly addresses equitable tolling, but focuses its discussion on whether minority tolls the statute of limitations (i.e., Code of

Civ. Proc. Section 352), and does not address whether minority may toll the distinct six-month petition period under Government Code section 946.6. (ABM 29-30.) Appellant has never contended that his minority tolled the statute of limitations. Instead, having satisfied *his* duty under the Government Code by submitting a timely application to file a late claim within the period prescribed by section 911.4 (See *Hom v. Chico Unified Sch. Dist.* (1967) 254 Cal.App.2d 335, 337-38; *Tammen, supra,* 66 Cal.2d at 479-480), the public entity's inaction (and failure to provide notice) effectively tolled section 946.6's six-month period.

Todd v. Los Angeles County (1977) 74 Cal.App.3d 661, does not stand for the broad proposition for which respondent cites it at ABM 30, namely that "time limitations within *Government Code* § 946.6 are not tolled for minority." Rather, *Todd* dealt with a specific provision of section 946.6 that is irrelevant to this case, i.e., the 30-day filing period after the court *grants* a section 946.6 petition.

C. Stare decisis does not mandate this Court impose the petition process on applicants who have fulfilled their statutory duties under section 911.4 and for whom relief from the claims presentation process is mandatory.

Respondent claims that this Court "reiterated that a section 946.6 Petition is necessary" in its 2004 decision in *State v. Superior Court (Bodde)* 32 Cal.4th 1234, 1245. (ABM 10.) To the contrary, this Court discussed various ways in which a plaintiff need not allege strict

compliance with the statutory claim presentation requirement. For instance, this Court cited to sections 911.4, 911.6, 911.8[3] and 946.6, which "contain a detailed scheme permitting litigants to petition the public entity and the court for leave to present a late claim." (*Bodde, supra,* 32 Cal.4th at 1245, emphasis added.) This Court explicitly noted, "a plaintiff need not allege strict compliance with the statutory claim presentation requirement. Courts have long recognized that '[a] claim that fails to substantially comply with sections 910 and 910.2, may still be considered a 'claim as presented' if it puts the public entity on notice both that the claimant is attempting to file a valid claim and that litigation will result if the matter is not resolved.'" (*Ibid.*, citation omitted.) "Finally, a plaintiff may arguably be able to satisfy the claim presentation requirement by alleging an appropriate excuse, such as equitable estoppel." (*Ibid.*, citation omitted.)

Contrary to respondent's assertion that appellant "requests that this court not only abolish the Government Claims Act statutory scheme, but also requests this court to overturn its own precedent," appellant requests neither. Other than *Bodde*, which does not hold what respondent says it holds, there is no California Supreme Court precedent that respondent claims is entitled to stare decisis. (ABM 10-11.) In any event, stare decisis does not bind this Court to the decisions of lower courts in this state, nor

[3] Note section 911.8's inclusion in the "scheme permitting litigants to petition the public entity." (*Bodde, supra,* 32 Cal.4th at 1245.)

even to its own prior rulings. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455; *People v. King* (1993) 5 Cal.4th 59, 78.)

Appellant is not attempting to overturn the entire Tort Claims Act, or even any part of it. Rather, appellant is attempting to *enforce* it, whether through statutory interpretation or through this Court's equitable powers, by requiring the public entity to perform its *obligations* under Government Code section 911.6(b)(2) and Government Code section 911.8.

III.

A SECTION 946.6 PETITION IS NOT NECESSARY TO "SAVE" A MINOR WHO TIMELY FILES AN APPLICATION TO PRESENT A LATE CLAIM, WHERE THE PUBLIC ENTITY FAILS TO PROVIDE NOTICE UNDER SECTION 911.8.

Respondent contends that a section 946.6 petition is necessary to save a litigant who fails to file a timely written claim, an alleged prerequisite to suit against a public entity. (ARB 12.) That is not true, as a timely application to file a late claim under section 911.4 may obviate the need for a petition, assuming the application is granted.

Although appellant fundamentally disagrees with respondent that respondent has the discretion to deny a minor's timely application to file a late claim under Government Code section 911.6, subdivision (b)(2), even if we assume, arguendo, that respondent had leeway to deny the application, respondent was required to provide appellant Section 911.8 notice of respondent's action (or inaction). By ignoring Section 911.8's mandate, respondent seeks to nullify a crucial step of the petition process.

As detailed in appellant's OBM, section 911.8 requires written notice of the board's action upon the application to be given in the manner prescribed by Section 915.4. (Gov. Code § 911.8(a).) It further requires a specific warning, set forth in subdivision (b), "If the application is denied." (Gov. Code § 911.8(b).) *D.C. v. Oakdale Joint Unified School Dist.* (2012) 203 Cal.App.4th 1572, 1579, 1581, concluded that in appropriate

circumstances, a public entity's violation of section 911.8's notice requirement might estop a public entity from relying on Section 946.6, subdivision (b)'s six-month limitation. Respondent did not respond to this argument in appellant's OBM; accordingly the issue will be deemed submitted on appellant's brief. (*California Ins. Guarantee Ass'n v. Workers' Comp. Appeals Bd.* (2005) 128 Cal.App.4th 307, 316, fn. 2.)

In any event, this Court has acknowledged section 911.8 is part of a "detailed scheme permitting litigants to Petition the public entity and the court for leave to present a late claim." (*Bodde, supra*, 32 Cal.4th at 1245.) "[I]t is clear from the statutory scheme that the only 'action' the board can take on an application for leave to file a late claim is to grant that application or deny it." (*D.C., supra,* 203 Cal.App.4th at 1580.) Under respondent's theory, and section 911.6, subdivision (c), a denial of an application may be express or implied. Section 911.8 does not distinguish between applications that are denied explicitly or denied implicitly by inaction.

Accordingly, assuming, arguendo, a public entity may properly deny a minor applicant's timely application to file a late claim (it cannot), where a public entity fails to provide *any* written notice of the denial under section 911.8, the entity should be estopped from requiring compliance with Section 946.6's six-month statutory period.

Respondent treats section 946.6 as absolute, without any exceptions or judicial power to excuse non-compliance. Specifically, respondent claims that if this court repeals section 946.6, it would also have to repeal sections 945.4 and 911.4. (ABM 14.) But this Court does not need to repeal section 946.6 at all – it just should conclude that the public entity may be estopped from requiring strict compliance with that statute in cases like this one, where the applicant (a) was a minor during the claims period, (b) filed a timely application to file a late claim, (c) the application was ignored by the public entity, and (d) the public entity failed to satisfy its obligations under section 911.8. Nothing in section 945.4, upon which respondent relies, prohibits such a result.

IV.

RESPONDENT MISAPPREHENDS THE LEGISLATURE'S INTENTIONS TOWARDS MINORS

At pages 17 through 19 of its ABM, respondent argues the Legislature has the power to prescribe statutes of limitations and require pre-lawsuit filings relative to minors, and that failure to comply with section 946.6 bars suit. Respondent repeatedly asserts that the Tort Claims Act does not toll limitations periods for minors, and that section 911.2's six-month limitations period may not be tolled for minority. (ABM 17-18.) We agree. But that issue is irrelevant to the issue before this Court.

Here, appellant indisputably satisfied the sole statutory exception to section 911.2's six-month limitations period, i.e., the application procedure set forth in section 911.4. Respondent concedes appellant satisfied this statutory exception, and that his application was timely filed within section 911.4's extended period. Accordingly, "relief is mandatory." (*Hom, supra,* 254 Cal.App.2d at 337-338; *Tammen, supra,* 66 Cal.2d at 479-480.) *Hom* further details the Legislature's intention to treat minors more leniently following the application process. (*Hom, supra,* 254 Cal.App.2d at 337-338 ["From that point onward, the minor receives more favored statutory treatment"].)

Respondent, not appellant, seeks to delay or obstruct that relief by claiming section 946.6 is a mandatory hurdle that appellant must clear before obtaining the very relief to which the California Supreme Court acknowledges he was entitled since he filed his timely application. (See *Tammen, supra*, 66 Cal.2d at 479-480.)

Although respondent generously quotes *Hom, supra,* respondent incorrectly infers from the case that failure to comply with section 946.6 bars suit. (ABM 18-19.) *Hom* involved a plaintiff who, unlike appellant, did *not* present a timely application under section 911.4. (*Hom, supra,* 254 Cal.App.2d at 338-339.) That being the case, relief was *not* mandatory, and the petition process of section 946.6 was not even triggered, much less required. (*Id.* at 339.) Here, in contrast, appellant did not require the tolling provisions of section 911.4 because his application *was* timely.

V.

REPONDENT MISCONSTRUES *E.M.*

Respondent offers a variety of attacks upon the Second Appellate District's opinion in *E.M. v. Los Angeles Unified Sch. Dist.* (2011) 194 Cal.App.4th 736. (ABM 19-24.) These attacks, however, demonstrate respondent's flawed understanding of the facts of that case, as well as the court's analysis. Moreover, respondent's issues with *E.M.* are all derivative of the fundamental underlying dispute in our case – whether subdivision (c) of Government Code section 911.6 allows the public entity to subvert its obligations under subdivision (b)(2), or, whether subdivision (c) does not govern scenarios involving *timely* applications by minors. Respondent simply *assumes* subdivision (c) controls and bases its analysis of *E.M.* upon that assumption.

E.M. did not explicitly analyze and reconcile the inconsistent language between subdivisions (b)(2) and (c) of Government Code section 911.6. However, its analysis and holding show that *E.M.* implicitly interpreted subdivision (b)(2) as mandatory and subdivision (c)'s default language to be inapplicable, where a minor filed a timely application to file a late claim under section 911.4. (See ABM 21.) Because relief was mandatory (and because the claim itself accompanied the application as statutorily required), the court correctly concluded the plaintiff satisfied the

claims requirement. (*E.M.*, *supra,* 194 Cal.App.4th at 747-748; see also Gov. Code § 911.4(b).)

E.M. recognizes that a minor, who *satisfies* the provision of Section 911.4 to file a *timely* application to present a late claim, has thus fulfilled *his* obligation under Section 945.4. Section 911.6, subdivision (b)(2) required the public entity to grant the minor's application. Where the public entity grants a minor's application under Section 911.6, Section 912.2 deems the claim to have been presented to the public entity on the day the application is granted. (Gov. Code § 912.2.) But if the public entity fails to perform its obligations under section 911.6, subdivisions (a) and (b)(2), why should that render the applicant non-compliant with the Section 945.4? It should not.

Section 945.4 states:

> Except as provided in Sections 946.4 and 946.6, no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division *until a written claim therefor has been presented to the public entity* and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division. (Gov. Code § 945.4, emphasis added.)

A minor who has filed a timely application to present a late claim under section 911.4 *has* presented a written claim to the public

entity (along with the application), and the public entity must *grant* the application and deem the claim accepted on the same day. (Gov. Code §§ 911.6(b)(2), 912.2.)

Nevertheless, respondent claims that "[w]hat *E.M.* essentially held here is that simply filing a claim, [attached to the request to file a late claim] **no matter how late**, is sufficient to comply with the Tort Act." (ABM 21, bold font added.) Not so. The court discussed the accrual date of the underlying cause of action, and further discussed and relied upon the fact that the plaintiff's application (which under section 911.4(b) included a copy of the proposed claim), *was timely* under section 911.4(a),(b) because it was made within one year of the accrual of the cause of action. (*E.M.*, *supra*, 194 Cal.App.4th at 747.) Conversely, of course, where a minor submits an application under Section 911.4 that is *not* timely, the public entity would not be required to grant the application under Government Code section 911.6, subdivision (b)(2), and thus subdivision (c) of Government Code section 911.6 (and the petition process under section 946.6) would control.

At page 22 of its ABM, respondent cites *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455, arguing that the public entity's actual notice of the *circumstances surrounding the claim* is insufficient to excuse compliance with the claims statutes. Of course. But here, as in *E.M.*, *supra*, the minor did not simply allege that the public entity had knowledge of the

circumstances surrounding the claim – rather, the public entity had the actual claim itself (i.e., because it was attached, as required, to the section 911.4 application).

Respondent also claims that *E.M.* is inconsistent with an earlier case *City of Los Angeles v. Superior Court* (1993) 14 Cal.App.4th 621, 627-628. Even if *E.M.* were inconsistent, panels of the California Court of Appeal are not bound by prior appellate decisions, even within the same district. (*Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409.) But it is not inconsistent because *City of Los Angeles* did not involve an application filed by a *minor*. Therefore, unlike the public entity in *E.M.*, or in our case, the City of Los Angeles was not mandated by statute to grant the application in the first instance.

Nor is respondent's reliance on *Dominguez v. Butte Cty.* (1966) 241 Cal.App.2d 164, 167-168 helpful. (See ABM 23-24.) That case concluded the limitation in (now revoked) section 912 was jurisdictional. (*Dominguez, supra,* 241 Cal.App.2d at 167-168.) Subsequent cases, including *Bodde, supra,* 32 Cal.4th 1234, 1239, fn. 7, have established the contrary:

> Although a Court of Appeal has suggested that failure to comply with the claim presentation requirement divests the court of jurisdiction over a cause of action against a public entity (see *Kim v. Walker* (1989) 208 Cal.App.3d 375, 384, 256 Cal.Rptr. 223), we have long held to the contrary. As we noted in *County of Santa Clara v. Superior Court* (1971) 4 Cal.3d 545, 550, 94 Cal.Rptr. 158, 483 P.2d 774, "as of 1963, court decisions had clearly settled that a court which erroneously entertained an action against a governmental

> entity, despite noncompliance with claims requirements, committed only an error of law; if did not act in excess of jurisdiction." Thus, we concluded that noncompliance does not divest the trial court of subject matter jurisdiction over causes of action against public entities. (*Id.* at p. 551, 94 Cal.Rptr. 158, 483 P.2d 774.) We therefore reject defendants' contention that failure to allege compliance establishes a jurisdictional defect.

Moreover, *Dominguez, supra,* 241 Cal.App.2d 164, like *City of Los Angeles, supra,* did not involve a minor, or a minor's timely application to file a late claim. As such, it is neither "notable" nor "odd" that *E.M.* did not rely on either case. (See ABM 24.)

VI.

REPONDENT CATASTROPHIZES A NON-EXISTENT PROBLEM.

Respondent asserts appellant is "advocating for the abolition of section 911.6 (c)." (ABM 24.) Wrong. Appellant is advocating for the straight-forward application of subdivision (b) in cases like this one, where a minor fulfills his obligations to file a timely application to present a late claim under section 911.4. Section 911.6, subdivision (c) has a time and place, and should remain applicable in the vast majority of cases. But not in cases where, as this Court recognized years ago, the public entity has no discretion to deny the minor's *timely* application. (See *Tammen, supra*, 66 Cal.2d at 479-480; *Hernandez, supra,* 42 Cal.3d at 1028-1031.) Or, where as here, completing the petition process would mandate excusing the claims presentation requirement of section 945.4. (*Hernandez, supra,* 42 Cal.3d at 1031.)

"[T]he public entity can delay granting the Application if there is no time limit, identified in subdivision (c)," respondent argues. (ABM 25.) But the time limit is identified in subdivision (a) – not in subdivision (c). (Gov. Code § 911.6(a) ["The board shall grant or deny the application within 45 days after it is presented to the board"].) Contrary to respondent's theory, the public entity cannot wait until the applicable Code of Civil Procedure statute of limitations to grant the application, because the public entity must

act within 45 days. (Gov. Code § 911.6(a).) That the entity did not do so in this case is an aberration, not the rule, and whether this Court concludes that equity or law guides this Court's analysis, appellant's application (and attached claim) were either legally timely filed (under Gov. Code § 912.2), or, the public entity should be equitably estopped from raising a compliance challenge.

Respondent claims "plaintiff is also requesting that minors essentially have a one-year statute of limitations while everyone else has only a six-month statute of limitations. If the legislature wanted to provide this additional time, it would have." (ABM 28.) **It did.**

> In effect, Government Code sections 911.6 and 946.6 grant minors a period of claim filing consisting of 100 days plus a reasonable time, not exceeding one year, for filing an application for relief. If, within the extended period fixed by section 911.4, the minor files an application, relief is mandatory. (*Tammen v. County of San Diego,* 66 Cal.2d 468, 479-480 [58 Cal.Rptr. 249, 426 P.2d 753].) Thus the Legislature has established a classification supplying more lenient claim filing conditions for minors and compensating for the disadvantages which sometimes - but not always - characterize minority status. (See *Tammen v. County of San Diego, supra,* at pp. 479-480; *Frost v. State of California,* 247 Cal.App.2d 378, 387 [55 Cal.Rptr. 652].)
> (*Hom, supra,* 254 Cal.App.2d at 339.)

Respondent half-heartedly asserts, "subdivision (c) does not present a procedural trap" because it has been in existence for a while. (ABM 25.) But respondent has no response for the fact that its interpretation of subdivision (c) allows a plaintiff who is *entitled* to relief, to jump through

additional procedural hoops to simply obtain the relief to which he was entitled from the outset, without the benefit of notice afforded to other similarly situated litigants, and, at peril of missing a deadline that, under respondent's interpretation, prohibits his lawsuit on a procedural technicality.

Respondent further asserts that "nullifying the petition process would open the floodgates of litigation" by extending the application and statute of limitations for the claim to two-years. (ABM 30.) Again, respondent mistakes the 45-day period set forth in subdivision (c) of Government Code section 911.6 with the 45-day period set forth in subdivision (a) of that section. It is the latter that requires the public entity to act, not the former. The statute of limitations, of course, is the ultimate time limit for bringing the lawsuit. But it is irrelevant because the issue here involves a minor who is fully compliant with the time set forth within the Claims Act for presenting a late claim. (Gov. Code § 911.4.) The public entity has timely notice not only of appellant's application, but also of his claim, within the specific time frame that the Legislature set forth. We are not here because appellant missed multiple statutory time limits. (ABM 31.) Appellant *fully complied* with the statutory time limit set forth in section 911.4. We are here because respondent assumed the courts would step in to do its job.

The real risk here, if this Court sanctions respondent's inaction, is the undermining of our Legislature's application process under sections 911.4 through 911.8 as applied to minor claimants, for whom lenient treatment was intended.

CONCLUSION

For all of the foregoing reasons, as well as those set forth in the Opening Brief on the Merits, we respectfully urge this Court to reverse the trial court's and Court of Appeal's judgments.

Dated: June 14, 2016

Respectfully submitted,

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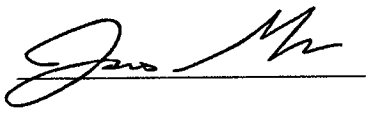
CERTIFICATE OF WORD COUNT
(California Rule of Court 8.520(c)(1).)

Pursuant to California Rules of Court, Rule 8.520(c)(1), the text of this Reply Brief on the Merits, generated using Microsoft Word for Mac 2011, contains 5,676 words, including footnotes.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 14th day of June, 2016, 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 June 15, 2016, I caused the foregoing documents described as: **REPLY BRIEF ON THE MERITS**, to be served on the following entities or individuals:

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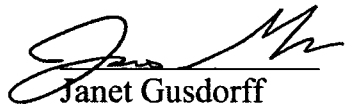
I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed June 14, 2016 at Westlake Village, California.



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