Supreme Court Case No. S194501

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

HOPE DiCAMPLI-MINTZ

Plaintiff and Appellant,

v.

COUNTY OF SANTA CLARA et al.

Defendant and Respondent.

After a Decision by the Court of Appeal,
Sixth Appellate District, Court of Appeal No. H034160,
Santa Clara County Superior Court No. CV089159
Hon. William J. Elfving, Judge

REPLY BRIEF ON THE MERITS

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INTRODUCTION

Government Code section 915, subdivision (e)(1), provides that a claim against a local public entity substantially complies with the presentation requirement if, within the time prescribed for presentation of the claim, it is "actually received" by the clerk, secretary, auditor or board of the local public entity. The Sixth District's decision in *DiCampli-Mintz v. County of Santa Clara* (2011) 125 Cal.Rptr.3d 861, 863, would expand the Legislature's codification of the substantial-compliance doctrine in subdivision (e)(1) to include circumstances never contemplated by the Legislature, to wit: an untimely, misdirected claim that was never "actually received" by a statutorily-designated recipient.

The Sixth District's decision is contrary to the plain meaning of subdivision (e)(1) and the decision of four other appellate districts that have considered the statute in the context of the substantial-compliance doctrine. Each of those districts declined to apply the doctrine where claims were not presented to or actually received by a statutorily-designated recipient within the claim-presentation period as required by subdivision (e)(1).

The Sixth District's expansion of the substantial-compliance doctrine will lead to costly and unnecessary litigation. Claimants and public entities

will have to resort to litigation to determine whether claims were delivered to an employee whose duties include handling claims. If it is determined that such an employee received the claim, the parties will then have to further litigate when the public entity was required to act on claim that may have been re-routed to a number of different employees before being received by an employee whose duties include "handling claims."

This Court should reverse the Sixth District's decision and interpret Government Code section 915, subdivision (e)(1), in accordance with the statute's express language, which requires claims to be "actually received" by a statutorily-designated recipient. Such interpretation will fulfill the intent of the Government Claims Act to establish uniform procedures throughout California for presenting claims against local public entities. It will also avoid costly and time-consuming litigation between claimants and public entities.

II.

ANALYSIS

A. GOVERNMENT CODE SECTION 915(e)(1) REQUIRES CLAIMS TO BE "ACTUALLY RECEIVED" BY A STATUTORILY-DESIGNATED RECIPIENT WITHIN THE TIME PERIOD TO PRESENT A CLAIM

The Government Claims Act, Government Code sections 810, *et seq.*, abolished all common law or judicially devised forms of governmental

liability. Thus, in California, all government tort liability must be based on statute. (*Creason v. State Dept. Of Health Servs.* (1998) 18 Cal.4th 623, 630.) The cornerstone of the Act is Government Code section 815, which states that "[e]xcept as otherwise provided by statute [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (See *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 932 [referring to Section 815 as the Act's "policy cornerstone"].)

Government Code section 915 states the manner in which a claim must be presented to a local public entity. Subdivision (a) provides in relevant part that "[a] claim . . . shall be presented to a local public entity by either of the following means: (1) delivering it to the clerk, secretary or auditor thereof; [or] (2) mailing it to the clerk, secretary, auditor, or to the governing body at its principal office."

Subdivision (e)(1) sets forth the Legislature's determination of what constitutes substantial compliance with the statute's presentation requirement: "[a] claim . . . shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if, within the time prescribed for presentation thereof, . . . [i]t is actually received by the clerk, secretary, auditor or board

of the local public entity." (Emphasis added.)

Plaintiff Hope DiCampli-Mintz contends that the Court should liberally interpret Government Code section 915, subdivision (e)(1), and hold that it does not require actual receipt of a claim by a statutorily-designated recipient. (Answer Brief at p. 9.) Instead, she urges this Court to interpret subdivision (e)(1) as merely one non-exclusive way in which a claimant may satisfy the claim-presentation requirement through substantial compliance. (*Id.* at p. 10.) Plaintiff's interpretation of subdivision (e)(1) is inconsistent with the plain meaning of the statute and defies this Court's directive to avoid indulging in statutory construction when statutory language is clear and unambiguous. Plaintiff's interpretation also ignores the maxim *expressio unium est exclusio alterius*, "the expression of some things in a statute necessarily means the exclusion of other things not expressed." (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852.)

This Court has held that "[w]hen . . . statutory language is clear and unambiguous, "there is no need for construction, and courts should not indulge in it." (*California Fed. Sav. & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349.) When interpreting a statute, courts must "begin with the fundamental principle that the objective of statutory construction is to determine the intent of the enacting body so that the law

may receive the interpretation that best effectuates that intent." (*Compulink Management Center, Inc. v. St. Paul Fire and Marine Ins.* (2008) 169 Cal.App.4th 289, 296.)

To ascertain the Legislature's intent, courts "turn first to the words of the statute, giving them their usual and ordinary meaning." (*Compulink supra,* 169 Cal.App.4th at p. 296.) The statute's every word and clause should be given effect "so that no part or provision is rendered meaningless or inoperative." (*Ibid.*) If the statutory language is unambiguous, courts presume the Legislature meant what it said, and the plain meaning of the statute governs. (*Ibid.*) Where the statute is clear, "courts will not interpret away clear language in favor of an ambiguity that does not exist." (*Ibid.*)

A court's task is to construe statutes; not amend them. (*California Fed. Sav. & Loan, supra,* 11 Cal.4th at p. 349.) Courts may not, "under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used." (*Ibid.*) Further, courts must assume that the Legislature knew how to create an exception if it wished to do so. (*Ibid.*)

The language of Government Code section 915, subdivision (e)(1), clearly states how a claimant such as Plaintiff may substantially comply with the claim-presentation requirement. It reflects the Legislature's intent

to precisely enumerate the proper recipients who may receive claims on behalf of local public entities. Subdivision (e)(1) also reflects the Legislature's intent that misdirected claims will be in substantial compliance with the presentation requirement if they are "actually received" by statutorily-designated recipients.

Notably, the designees listed in subdivision (e)(1) are exactly the same as those listed in subdivision (a). Thus, the Legislature's consistent use of the phrase "the clerk, secretary, auditor or board of the local public entity" reflects an intent in subdivision (e)(1) to codify application of the substantial-compliance doctrine in limited circumstances. In particular, in circumstances where one of the statutorily-designated recipients "actually receives" a claim within the statutory time period to present a claim.

Plaintiff's contention that the Legislature did not intend to exclude other means of presenting claims when it stated that claims must be "actually received by the clerk, secretary, auditor or board of the local public entity" is contrary to the plain meaning of the statute. The Legislature's designation of "the clerk, secretary, auditor or board of the local public entity" necessarily means the exclusion of other recipients not designated in the statute. To hold, as Plaintiff contends, that the recipients designated in subdivision (e)(1) do not represent an exclusive list would

render the statute a nullity.

As Plaintiff points out, the substantial-compliance doctrine has been applied by California courts for over 80 years. (Answer Brief at p. 1.) If the Legislature had intended to include claims handlers among the statutorily-designated recipients then it would have included such a provision in Government Code section 915. Likewise, if the Legislature had intended the receipt of claims by claims handlers to constitute substantial compliance with the claim-presentation requirement then it would have included them in subdivision (e)(1).

Further, subdivision (e)(1) requires that claims be "actually received" by a statutorily-designated recipient within the statutory time to present a claim. Plaintiff's answering brief ignores this statutory requirement. Plaintiff did not present a claim within six months of her injury.[1] As such,

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[1] Plaintiff had notice of her medical-malpractice claim on April 4, 2006, after her first surgery, when she complained of cramps in her left leg and was returned to surgery that same day to repair her left iliac artery and vein. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 863.) Plaintiff's notice of her medical-malpractice claim was confirmed in June 2006, when she went to the County hospital's emergency department, and a physician told her that her blood vessels had been damaged in the first April 4, 2006 surgery. (*Ibid.*) Notwithstanding these facts, Plaintiff alleges that she did not discover that she had a medical-malpractice claim until October 25, 2006, when a physician expressed sympathy for her condition and asked if she had consulted an attorney. (*Ibid.*) It was not until April 3, 2007, almost a year after her surgery, that Plaintiff's attorney delivered a letter to clerical employees at the County's hospital that stated that Plaintiff intended to file suit for damages stemming from the first April 4, 2006 surgery. (*Id.* at p. 864.)

her contention that her untimely, misdirected claim to the County's hospital substantially complied with Government Code section 915 is inconsistent with the express language of subdivision (e)(1) that claims must be presented "within the time prescribed for presentation thereof" in order to substantially comply with the statute.

Government Code section 915, subdivision (e)(1) is clear and unambiguous. It represents the Legislature's codification of the substantial-compliance doctrine in circumstances where a claim is not delivered or mailed to a statutorily-designated recipient but is "actually received" by one within the claim-presentation period. The Sixth District's interpretation of subdivision (e)(1) strips the statutory language of its ordinary meaning and replaces the clear language with ambiguity.

It must be presumed that the Legislature meant what it said when it enacted subdivision (e)(1) and that it intended the substantial-compliance doctrine to apply only when claims are "actually received" by statutorily-designated recipients within the claim-presentation period. Accordingly, the Court should reverse *DiCampli* and hold that a claim that is not "actually received" by one of the recipients designated in Government Code section 915, subdivision (e)(1), does not satisfy the presentation requirements of the statute.

B. THE SUBSTANTIAL-COMPLIANCE DOCTRINE SHOULD NOT APPLY TO AN UNTIMELY, MISDIRECTED CLAIM THAT IS NEVER "ACTUALLY RECEIVED" BY A STATUTORILY-DESIGNATED RECIPIENT

1. Courts have applied the substantial-compliance doctrine in narrow circumstances to forgive technical defects in the content of claims that were timely presented to a statutorily-designated recipient but not to untimely, misdirected claims.

Under the doctrine of substantial compliance, a court may conclude a claim is valid if it substantially complies with all the statutory requirements for a valid claim even though its content is technically deficient in one or more particulars. (*Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 713 [citing *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455-57].) This doctrine is based on the premise that substantial compliance fulfills the purpose of the claims statutes – to give the public entity timely notice of the nature of the claim so that it may investigate and settle claims that have merit without the need for costly litigation. (*Santee, supra,* 220 Cal.App.3d at p. 413.)

The substantial-compliance doctrine "contemplates that there is at least some compliance with all of the statutory requirements." (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 769.) The substantial-compliance doctrine "cannot cure total omission of an essential element from the claim or remedy a plaintiff's failure to comply meaningfully with

the statute." (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1083.)

Thus, courts have applied the doctrine in situations where claims were timely presented to statutorily-designated recipients but did not contain certain required content. (See e.g., *Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 39 [timely claim served on the clerk of the board that failed to state extent of claimant's injuries and damages was a valid claim]; *Foster v. McFadden* (1973) 30 Cal.App.3d 943, 945 [letter received by a sanitation district within statutory time for claim presentation that stated only claimant's name and date and place of accident was a valid claim]; *Rowan v. City and County of San Francisco* (1966) 244 Cal.App.2d 308, 312 [timely claim presented to the entity that misstated incident location was valid because it provided sufficient information for entity to investigate].)

Here, Plaintiff contends that the County misconstrues the analysis for the substantial-compliance doctrine because the County focuses on Plaintiff's failure to follow the letter of Section 915 whereas the focus should be on whether the purposes of the Government Claims Act have been satisfied. (Answer Brief at p. 18.)

Plaintiff's interpretation of the substantial-compliance doctrine

overlooks the plain language of Section 915(e)(1). Plaintiff also attempts to distinguish precedent in four appellate districts that have held that misdirected claims substantially comply with Government Code section 915 only if they were actually received by a statutorily-designated recipient within the time prescribed for presentation of a claim. (*Life v. County of Los Angeles* (1991) 227 Cal.App.3d 894, 901; *Westcon Construction Corp. v. County of Sacramento* (2007)152 Cal.App.4th 183, 201-201; *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 770; *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.)

2. The cases cited by Plaintiff that were decided before enactment of Government Code section 915 are inapposite.

Plaintiff relies on cases decided before the enactment of the Government Claims Act to support her contention that the substantial-compliance doctrine should apply to her untimely, misdirected claim. (Answer Brief at pp. 4-6 [citing *Milovich v. City of Los Angeles* (1941) 42 Cal.App.2d 364; *Natural Soda Products Co. v. City of Los Angeles* (1943) 23 Cal.2d 193; *Peters v. City and County of San Francisco* (1953) 41 Cal.2d 419; and *Insolo v. Imperial Irrigation District* (1956) 147 Cal.App.2d 172].) These cases are inapposite to the present action because they predate Government Code section 915 and involve factual circumstances that are distinguishable from the present action. Thus, these

cases do not support expanding the substantial-compliance doctrine beyond the plain meaning of its codification in Government Code section 915, subdivision (e)(1).

In *Milovich*, the plaintiff did not comply with a City of Los Angeles charter provision that required presentation of claims to the board of water commissioners. (*Milovich, supra,* 42 Cal.App.2d at p. 368.) Instead, the plaintiff sent a claim for damages to the city's chief engineer, who rejected the claim. (*Ibid.*) The court found that the plaintiff substantially complied with the charter provision because a construction contract between plaintiff and the city required claims for damages to be submitted in writing to the chief engineer. (*Ibid.*)

In *Natural Soda Products,* the plaintiff presented a claim by mailing it to the city's department of water and power. (*Natural Soda Products, supra,* 23 Cal.2d at p. 202.) A mailing clerk at the department gave the claim to the chief clerk of the legal division, who forwarded it to the deputy city attorney in charge of water matters, who then forwarded it to the board of water commissioners. (*Ibid.*) The city alleged that the plaintiff did not comply with the city charter provision that required claims to be presented to the board of water commissioners. (*Ibid.*) The court held that the claim was properly served because the board of water commissioners ultimately

received it. (*Ibid.*)

In *Peters*, the claimant's attorney delivered a signed and verified copy of the claim to the controller's office and a signed but unverified copy of the claim to the clerk of the board, who endorsed a copy and retained a carbon copy. (*Peters*, *supra,* 41 Cal.2d at p. 426.) The city alleged that the claimant did not comply with the governing claim-presentation statute, which required filing a verified claim with the clerk of the board. (*Ibid.*) The court, however, held that there had been substantial compliance with the statute because the claimant filed a carbon copy of the claim with the clerk of the board. (*Ibid.*)

And in *Insolo*, the claims statute at issue required service of a claim on the secretary of an irrigation district. (*Insolo, supra,* 147 Cal.App.2d at p. 173.) The district alleged that the claimant failed to comply with the statute because the claim was not served on the secretary. (*Id.* at p. 174.) But the court held that the claimant substantially complied with the statute because she sent the claim by registered mail to the district's headquarters, where a clerk in the mailing department forwarded it to the district's business manager, who forwarded it to the district's secretary. (*Id.* at pp. 173-75.) Thus, the claim was actually received by the appropriate official.

None of the cases cited by Plaintiff that were decided before

enactment of the Government Claims Act support Plaintiff's argument to expand the substantial-compliance doctrine. *Milovich* is distinguishable because it involved a claim for breach of contract, and the claimant sent the claim to the individual designated in the contract to receive such claims. And *Natural Soda Products*, *Peters*, and *Insolo* are distinguishable because in those cases a statutorily-designated official actually received the claim.

Further, none of these cases involved misdirected claims that were served after the expiration of the time to present a claim. Rather, claimants in *Milovich*, *Natural Soda Products*, *Peters*, and *Insolo*, served their claims within the claim-presentation period. Here, however, Plaintiff made no attempt to present a claim until long after the six-month deadline to present a timely claim had expired.

3. The courts in *Life*, *Westcon*, *Del Real*, and *Munoz* gave the words of Government Code section 915(e)(1) their usual and ordinary meaning.

Plaintiff contends that the courts in *Life*, *Westcon*, *Del Real*, and *Munoz* would have found that the substantial-compliance doctrine applied had the misdirected claims in those cases been received by officials who bore responsibility for handling claims. (Answer Brief at pp. 14-17.) This speculative conclusion is inconsistent with the courts' interpretation of Government Code section 915(e)(1) in those decisions.

In *Life*, the court held that claimant's service of a claim on a hospital's legal department would have constituted substantial compliance with Government Code section 915 "only if the misdirected claim were 'actually received by the clerk, secretary, auditor or board of the local public entity.'" (*Life, supra,* 227 Cal.App.3d at p. 900 [emphasis in original].)

Plaintiff contends that the court in *Life* would have found substantial compliance if it had been presented with facts similar to those in *Elias v. San Bernardino County Flood Control District* (1977) 68 Cal.App.3d 70. (Answer Brief at p. 14.) In *Elias*, the plaintiff presented a timely claim to a county board of supervisors for injuries sustained on property that belonged to a flood control district. (*Elias, supra,* 68 Cal.App.3d at p. 72.) The board of supervisors was *ex officio* the board of the flood control district and was empowered to perform the same duties for the district as for the county. (*Id.* at p. 75.)

Thus, in *Elias* a statutorily-designated recipient actually received the claim. Consequently, Plaintiff's circular reasoning that the court in *Life* would have found substantial compliance if the facts were similar to *Elias* fails to support expansion of the substantial-compliance doctrine to circumstances when an untimely, misdirected claim is never received by a

statutorily-designed recipient.

In *Westcon*, the court held that the claimant's service of a claim on a county engineer failed to comply with Section 915 even though the engineer was in charge of the construction project. (*Westcon, supra,* 152 Cal.App.4th at pp. 188, 202.) Plaintiff contends that the facts in *Weston* are in "stark contrast" to the facts in the instant action because there was no reason to believe that the claim submitted to the engineer would reach the board of supervisors. (Answer Brief at pp. 15-16.) But there is no reason to believe that Plaintiff's untimely, misdirected claim delivered to a clerical employee at the County's hospital would reach the Clerk of the Board of Supervisors or one of the other statutorily-designated recipients for claims.

In *Del Real*, the claimant's attorney sent a letter to a police officer involved in a car accident with the claimant and requested that the officer forward the claim to the officer's insurance company. (*Del Real, supra,* 95 Cal.App.4th at pp. 764.) The court held that the claimant failed to comply with Section 915 even though the city attorney responded to the claim. (*Id.* at p. 770.) The facts are strikingly similar to the instant action, in which Plaintiff's attorney sent a letter to a clerical employee at the County's hospital that included a request to forward the letter to the recipient's insurance carrier. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 864;

Clerk's Transcript at pp. 109, 176, 217-25.) In both *Del Real* and the present action a statutorily-designated recipient never "actually received" the claims.

And in *Munoz*, the court found that the claimant's service of the claim on a statutorily-designated recipient did not constitute substantial compliance with Section 915 because it was not received within the statutory time period to present a claim. (*Munoz, supra,* 33 Cal.App.4th at p. 1780.) The *Munoz* court held that the claimant did not diligently pursue her claim: "[t]he claimant must, at a minimum, make a diligent effort to obtain legal counsel within six months after the accrual of the cause of action. Once retained, it is the responsibility of legal counsel to diligently pursue the pertinent facts of the cause of action to identify possible defendants." (*Id.* at p. 1779.) Because the claimant did not present a timely claim there was no substantial compliance with Section 915. (*Id.* at p. 1780.) Similarly, here, Plaintiff's misdirected claim to a clerical employee at the County's hospital did not substantially comply with Section 915.

Thus, the courts in *Life*, *Westcon*, *Del Real*, and *Munoz* interpreted Government Code section 915(e)(1) in the context of the substantial-compliance doctrine and declined to apply the doctrine where claims were not presented to or actually received by a statutorily-designated recipient

within the claim-presentation period. Plaintiff speculates that these courts would have applied the substantial-compliance doctrine if an untimely, misdirected claim was received by an employee whose duties include handling claims. Such speculation is inconsistent with both the reasoned analyses in those decisions and the express language of Government Code section 915, subdivision (e)(1).

4. The out-of-state cases cited by Plaintiff do not support expansion of the substantial-compliance doctrine in California.

Plaintiff cites cases from other states to support her contention that the substantial-compliance doctrine should be expanded in California to apply to circumstances where a claimant fails to present a timely claim to a statutorily-designated recipient. The Court should not consider these cases because none of them involved a statute similar to Government Code section 915, subdivision (e)(1), in which the Legislature codified the substantial-compliance doctrine in limited circumstances.

a. The out-of-state cases cited by Plaintiff applied the substantial-compliance doctrine only when public entities had timely notice of a claim

This Court has recognized that it is well-settled that California claims statutes must be satisfied even in the face of the public entity's actual knowledge of the circumstances surrounding the claim. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 738.) Most of the out-of-

state cases cited by Plaintiff, however, involved the application of the substantial-compliance doctrine in circumstances where a public entity or its designee had timely and actual notice of a claim.

For example, Plaintiff cited *Mount v. City of Vermillion* (S.D. 1977) 250 N.W.2d 686, 689, in which the Supreme Court of South Dakota found that the plaintiff substantially complied with the claim-presentation statute. There, however, even though the claimant served an untimely notice on a statutorily-designated official, the city had actual notice of the claim within the statutory notice period. (*Ibid.*)

Also, in *Hansen v. City of Laurel* (Md. Ct. Spec. App. 2010) 996 A.2d 882, 891, a Maryland court held that the substantial-compliance doctrine would apply when, with respect to the handling of claims, there was a close relationship between the person or entity actually notified and the person or entity that the statute required be notified. Notably, other Maryland courts have held that "substantial compliance exists when timely notice has been given in a manner that, although not technically correct, nevertheless has afforded actual notice of the tort claim or claims to the local government." (*Ransom v. Leopold* (Md. App. 2008) 962 A.2d 1025, 1033 [emphasis added]; citing *White v. Prince George's County* (2005) 877 A.2d 1129 and *Wilbon v. Hunsicker* (2006) 913 A.2d 678].)

Moreover, Plaintiff cited *Robinson v. Washington County* (Me. 1987) 529 A.2d 1357, 1360, where the plaintiff sent a letter to the sheriff instead of a statutorily-designated recipient in which she stated her intent to bring a civil action against the county and its employees and officers. The plaintiff sent the letter within the statutory time period to present a claim but did not send it to a statutorily-designated recipient. (*Ibid.*) The applicable notice statute, however, provided that a claim would not be held invalid unless the governmental entity demonstrated prejudice. (*Ibid.*) Because the county had not demonstrated prejudice, the Supreme Court of Maine held that the plaintiff's letter to the sheriff substantially complied with claim-presentation requirement.

The Supreme Court of Maine, however, has declined to extend *Robinson* beyond cases where the notice otherwise complies with all other requirements of the applicable statute. (*Pepperman v. Barrett* (Me. 1995) 661 A.2d 1124, 1126 [letter to the town attorney failed to satisfy the claim-presentation statute that required notice be served on the town clerk, selectmen, or assessor]; *Hall v. Town of Kittery* (Me. 1989) 556 A.2d 662, 664 [written statement to the town's insurance carrier did not satisfy the claim-presentation statute].)

Plaintiff also cited *Kelly v. City of Rochester* (Minn. 1975) 231

N.W.2d 275, 276, in which the court held that actual notice on the part of the municipality or its responsible officials of sufficient facts to reasonably put the governing body on notice of a possible claim would be in compliance with the notice statute. Significantly, the court held that this liberal construction of the statute applied only to "areas other than timeliness." (*Id.* at p. 330.) In *Kelly*, the incident report that the court held served as a claim was prepared within the statutory period. (*Ibid.*)

Further, Plaintiff cited *Kirkpatrick v. City of Gendale* (2003) 99 S.W.3d 57, 59, in which the applicable claim-presentation statute required claims to be served on the mayor of the city. The plaintiff told the city manager about the incident giving rise to his injuries. (*Id.* at p. 58.) Thereafter, a paramedic for the city fire department prepared a written report, which the city manager reviewed within the statutory period to present a claim. (*Ibid.*) The court held that the city manager was the mayor's agent for receipt of notice of claims because the city manager was a full-time employee while the mayor was a part-time employee. (*Id.* at p. 59.) Moreover, the court pointed out that the city manager testified that as a matter of practice he received all legal notices for the mayor and received the paramedic's written report within the statutory period to present a claim. (*Ibid.*)

Thus, these out-of-state cases do not support expanding the substantial-compliance doctrine in California to include untimely, misdirected claims that are never "actually received" by a statutorily-designated recipient as required by Government Code section 915, subdivision (e)(1).

b. The out-of-state cases cited by Plaintiff applied the substantial-compliance doctrine in circumstances where California courts would have applied the equitable-estoppel doctrine

Plaintiff cited several out-of-state cases that applied the substantial-compliance doctrine in circumstances where California courts would have applied the equitable-estoppel doctrine. This Court affirmed the equitable-estoppel doctrine in *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 445: "a public entity may be estopped from asserting the limitations of the claims statute where its agents or employees have prevented or deterred the filing of a timely claim by some affirmative act."[2] The equitable-estoppel doctrine has no application to the instant action, however, because there is no evidence that any County employee prevented

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[2] The required elements for application of the equitable-estoppel doctrine are: (1) the parties to be estopped must be apprised of the facts; (2) they must intend that their conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) the other party must rely upon the conduct to his or her injury. (*Santee, supra,* 220 Cal.App.3d at pp. 715-16.)

or deterred Plaintiff from presenting a timely claim.

For example, Plaintiff cited *Ferrer v. Jackson County Board of Supervisors* (Miss. 1999) 741 So.2d 216, 217, in which the plaintiff entered into settlement negotiations with the county shortly after a motor-vehicle accident caused by a sheriff's deputy. The board of supervisors authorized payment for the plaintiff's property damages but settlement negotiations dissolved before the parties settled the personal-injury claims. (*Id.* at p. 218.) In the subsequent action, the trial court granted the county's motion for summary judgment on the ground that plaintiff failed to provide notice of his claim to a statutorily-designated official. (*Ibid.*)

The Mississippi Supreme Court reversed, finding that communications between the plaintiff and the board and its agents was "prolonged, continuous, and extensive." (*Ferrer*, 741 So.2d at p. 219.) As such, the plaintiff substantially complied with the notice requirement and the board's payment of his property-damage claim estopped the county from raising deficiencies in the notice of the claim. (*Ibid.*)

Moreover, Plaintiff contends that *Myears v. Charles Mix County* (S.D. 1997) 566 N.W.2d 470, is in line with the Sixth District's analysis. (Answer Brief at pp. 20-23.) In *Myears*, the plaintiff presented a claim within the claim-presentation period to a county engineer, who was not a

statutorily-designated recipient. The engineer forwarded the claim to a statutorily-designated recipient. (*Id.* a p. 471.) The statutorily-designated recipient forwarded the claim to the county commission, which rejected the claim in a resolution. (*Ibid.*) The Supreme Court of South Dakota held that the plaintiff substantially complied with the notice statute because he presented a claim within the statutory period and the county commission took official action on it by rejecting it in a resolution. (*Id.* at p. 475.)

Further, Plaintiff contends that *Finnie v. Jefferson County School District* (Colo. 2003) 79 P.3d 1253, 1254, applied the substantial-compliance doctrine in a situation involving a misdirected claim. (Answer Brief at p. 23.) In *Finnie*, within the statutory time period to present a claim, the plaintiff's attorney spoke with an employee of a school district's risk- management department to inquire where to serve notice of a claim. The employee told the attorney that the risk-management department was authorized to receive statutory notice for the school board. (*Ibid.*) The attorney relied on this information and sent a notice of claim to the school district's risk-management department instead of the school board as required by the applicable claim-presentation statute. (*Ibid.*) The court found that the filing with the risk-management department substantially complied with the statute because the risk-management department

represented that such filing was proper. (*Id.* at p. 1258.)

Thus, *Ferrer*, *Myears*, and *Finnie* are inapposite to the instant action and in fact applied what would amount to the equitable-estoppel in California. In those cases the claimants presented timely claims to the wrong official but the public entities either responded to the claims by taking official action or prevented or deterred the claimants from presenting a claim to a statutorily-designated recipient. Here, there is no allegation that the County or its employees prevented or deterred Plaintiff from presenting a timely claim to a statutorily-designated recipient.

Government Code section 915, subdivision (e)(1), is the Legislature's codification of the substantial-compliance doctrine. The out-of-state cases cited by Plaintiff did not interpret this statute or any similar statute. Accordingly, those cases offer no persuasive authority for the expansion of the substantial-compliance doctrine in California.

C. THE BRIGHT-LINE RULE CODIFIED IN GOVERNMENT CODE SECTION 915(e)(1) PROVIDES CERTAINTY FOR CLAIMANTS, PUBLIC ENTITIES, AND COURTS

Plaintiff dismisses the confusion and uncertainty that would result if the substantial-compliance doctrine applies to untimely claims that are never "actually received" by a statutorily-designated recipient but are instead routed to risk-management departments or employees whose duties

include handling claims. (Answer Brief at p. 27.) Plaintiff contends that because there is no bright-line rule of strict compliance regarding the contents of a claim, there should be no bright-line rule of strict compliance regarding the presentation of a claim. (*Ibid.*) Plaintiff ignores the express language of Government Code section 915, subdivision (e)(1) and California case law interpreting the statute. Plaintiff also ignores the significant difference between the application of the substantial-compliance doctrine when the content of a claim is deficient compared to when a claim is never presented to a statutorily-designated recipient.

The Government Code provides that a claim must provide the name and address of the claimant; the date, place, and circumstances of the occurrence that gave rise to the claim; a description of the claimant's injury; the name or names of the public employee or employees who caused the injury; and if the amount claimed exceeds $10,000, whether the claim would be a limited civil case. (Gov. Code § 910.) A claim must be signed by the claimant or someone acting on the claimant's behalf. (Gov. Code § 910.2.)

The Government Claims Act contemplates that some claims will not satisfy all of these requirements and accordingly provides public entities with a mechanism to inform claimants of insufficiencies in claims. If a

claim fails to substantially comply with these requirements, a public entity may give written notice of the insufficiency within 20 days of presentation of the claim. (Gov. Code § 910.8.)

Moreover, the Government Claims Act gives claimants the opportunity to provide additional information before the public entity can take action by precluding a public entity from taking any action on an insufficient claim for a period of 15 days after serving a notice of insufficiency. (*Ibid.*) A public entity waives any defense as to the insufficiency of a claim if it does not give such notice. (Gov. Code § 911.)

Further, Government Code section 915 states the procedure for presenting claims. Subdivision (a) requires claims to be delivered or mailed to statutorily-designated recipients. And subdivision (e)(1) codifies the substantial-compliance doctrine by requiring claims that are not mailed or delivered to a statutorily-designated recipient to be "actually received" by one.

There are sound public policy reasons to apply the substantial-compliance doctrine only when there are deficiencies in the content of claims and not when claims fail to comply with Section 915, subdivision (e)(1). A claim that is timely received by a statutorily-designated recipient can be investigated, evaluated, and responded to within the strict time

limitations set forth in the Government Claims Act – even if the claim is missing certain pieces of information required by the content statute.

But untimely and misdirected claims may be routed through a number of departments and employees before they are given to an employee whose duties include handling claims. The 20-day period for public entities to give written notice of insufficiency of claims and the 45-day period for public entities to respond to claims may expire by the time an employee whose duties include handling claims receives the claim. Moreover, it may be unclear whether or when a misdirected claim was received by an employee whose duties include handling claims. This will result in disputes between public entities and claimants that would have to be resolved through costly and time-consuming litigation.

Further, expansion of the substantial-compliance doctrine beyond the express language of Government Code section 915(e)(1) would provide an incentive for claimants who have missed the six-month deadline to present timely claims (like Plaintiff in this action) to misdirect their claims. Public entities will generally give notice of an untimely claim and return it without further action if a statutorily-designated recipient actually receives it. But misdirected claims may not be acted upon with the 45-day period without any fault of the public entity. Thus, claimants with untimely claims might

be able circumvent their failure to comply with the claim-presentation requirements by intentionally misdirecting their claims to preserve their right to litigate whether they have served a valid claim. This would result in claimants who intentionally misdirect their claims gaining an advantage over claimants who properly serve their claims.

The bright-line rule established by the Legislature in Government Code section 915, subdivision (e)(1), provides certainty for claimants, public entities, and courts. An expansion of the substantial-compliance doctrine beyond what the Legislature codified in subdivision (e)(1) will result in confusion and uncertainty for claimants and public entities and costly litigation. To avoid this result the Sixth District's decision should be reversed.

III.

CONCLUSION

In enacting Government Code section 915, subdivision (e)(1), the Legislature codified the substantial-compliance doctrine. With the exception of the Sixth District, every district in California that has examined the substantial-compliance doctrine in the context of subdivision (e)(1) has held that it provides a bright-line rule that claims must be "actually received" by a statutorily-designated recipient.

The Sixth District's opinion stands alone in holding that untimely claims substantially comply with the claim-presentation requirement if they are given to a risk-management department or employee whose functions include handling claims against the entity. This conclusion disregards the express language of the statute and the intent of the Government Claims Act to provide uniform procedures throughout California to avoid costly litigation. Accordingly, the County of Santa Clara respectfully requests that the Court reverse the Sixth District's decision.

Dated: October 31, 2011

Respectfully submitted,

MIGUEL MÁRQUEZ
County Counsel

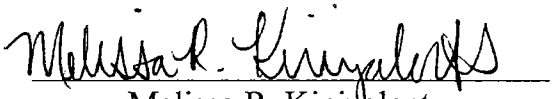
By: 
MELISSA R. KINIYALOCTS
Deputy County Counsel

Attorneys for Defendant and Respondent
COUNTY OF SANTA CLARA
and its SANTA CLARA
VALLEY MEDICAL CENTER

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.504 or 8.204 of the California Rules of Court, I certify that the foregoing Petition is proportionately spaced, uses a thirteen point Times New Roman font, and contains 6,374 words according to the "Word Count" feature in my WordPerfect 12 for Windows software.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on October 31, 2011.



Melissa R. Kiniyalocts

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PROOF OF SERVICE BY MAIL

Hope DiCampli-Mintz v. County of Santa Clara No. S194501

I, Mary Lou Gonzales, say:

I am now and at all times herein mentioned have been over the age of eighteen years, employed in Santa Clara County, California, and not a party to the within action or cause; that my business address is 70 West Hedding, East Wing, 9th Floor, San Jose, California 95110-1770. I am readily familiar with the County's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I served a copy of the

REPLY BRIEF

by placing said copy in an envelope addressed to:

Lisa Jeong Cummins, Esq.
Campbell, Warburton, Fitzsimmons,
Smith, Mendell & Pastore
64 W. Santa Clara Street
San Jose, California 95113-1806

Attorneys for
Plaintiff and Appellant

Court of Appeal
Sixth Appellate District
333 W. Santa Clara Street
San Jose, California 95113

Superior Court of California
County of Santa Clara
191 N. First Street
San Jose, California 95113

which envelope was then sealed, with postage fully prepaid thereon, on **October 31, 2011,** and placed for collection and mailing at my place of business following ordinary business practices. Said correspondence will be deposited with the United States Postal Service at San Jose, California, on the above-referenced date in the ordinary course of business; there is delivery Service by United States mail at the place so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **October 31, 2011**, at San Jose, California.

Mary Lou Gonzales

Mary Lou Gonzales

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