

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

PETITION FOR REVIEW

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The County of Santa Clara petitions this Court for review of the Sixth Appellate District opinion, certified for publication and filed on May 26, 2011, in *DiCampli-Mintz v. County of Santa Clara* (2011 Cal.App. 6th Dist.) WL 2041825).

I.

ISSUE PRESENTED

Government Code section 915, subdivision (a), requires presentation of a government claim to a local public entity by delivering it to the clerk, secretary, or auditor or mailing it to one of these officials or the governing body. Government Code section 915, subdivision (e)(1), provides that a claim shall be deemed to have been presented in compliance with the Government Claims Act if it is actually received by the clerk, secretary, auditor, or board of a local public entity. Does the substantial-compliance doctrine apply where the Legislature has specifically declared to whom a claim must be delivered and, if so, does delivery of a claim to a public employee other than one of the specific statutorily-designated recipients of a claim constitute substantial compliance with the Government Claims Act where it is undisputed that the claim was never actually received by a statutorily-designated recipient?

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II.

REVIEW SHOULD BE GRANTED TO RESOLVE A SPLIT IN AUTHORITIES AND TO SETTLE AN IMPORTANT QUESTION OF LAW THAT IMPACTS ALL LOCAL PUBLIC ENTITIES IN CALIFORNIA

Rule 8.500 of the California Rules of Court provides that the Court may order review of a Court of Appeal decision “[w]hen necessary to secure uniformity of decision or to settle an important question of law.” This case meets both criteria.

The Government Claims Act (Government Code §§ 810-996.6) delineates specific requirements for the presentation of claims to public entities. Government Code section 915, subdivision (e)(1), provides that a claim is deemed to have been properly presented if, within the time to present a claim, “[it] is actually received by the clerk, secretary, auditor or board of the local public entity.” The Second, Third, Fourth, and Fifth Appellate Districts, relying on the plain language of Government Code section 915, subdivision (e)(1), hold that proper presentation requires that a claim be actually received by the clerk, secretary, auditor, or government body of a public entity within the time prescribed for presentation of the claim.

In contrast, the Sixth Appellate District concluded that Section 915(e)(1) does not require actual receipt by a designated official or

governing body if a misdirected claim or notice is received by a department or employee that handles claims. It also implies that receipt by a legal department or attorney for the entity constitutes substantial compliance with Section 915(e)(1). (*DiCampli-Mintz*, at pp. *7-8.) Thus, review is necessary to resolve a split in the districts and secure uniformity of decision.

Review of the Sixth Appellate District's opinion is also necessary to settle an important question of law. Under the Sixth Appellate District's analysis, a claimant may have substantially complied with Government Code section 915 if a local public entity's department or employee that handles claims receives a misdirected claim. Claimants and public entities will be forced to litigate the method of claim delivery by attempting to trace where, how, and when misdirected claims were delivered to a department or employee that handles claims. And courts will have to determine whether misdirected claims substantially complied with the claim-presentation requirements. Moreover, claimants and public entities will be forced to litigate, and courts will have to decide, when a public entity's time to respond to misdirected claims begins to run. Guidance from this Court is necessary to restore a clear rule that can be applied consistently to fulfill the Government Claims Act's intent to establish uniform procedures for claims against local public entities in California.

III.

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On April 4, 2006, two doctors performed a hysterectomy on Plaintiff Hope DiCampli-Mintz at the Santa Clara Valley Medical Center (“SCVMC”), a hospital owned and operated by the County. (*DiCampli-Mintz*, at p. *1.) In the recovery room Plaintiff complained of cramps in her left leg, which appeared bluish and cold to the touch. (*Ibid.*) That same day Plaintiff was returned to surgery to repair her left iliac artery and vein. (*Ibid.*)

In mid-2006 Plaintiff went to SCVMC’s Emergency Department because she was in pain. (*DiCampli-Mintz*, at p. *1.) An emergency room physician allegedly told Plaintiff that her blood vessels had been damaged in the first surgery on April 4, 2006, requiring a second surgery that same day. (*Ibid.*) On October 25, 2006, another SCVMC doctor allegedly expressed sympathy for Plaintiff’s condition and asked if she had consulted an attorney. (*Ibid.*; CT at p. 82.)

On April 3, 2007, Plaintiff’s attorney delivered to the Medical Staffing Office at SCVMC’s Administrative Building three copies of a letter addressed to the two doctors who performed the April 4, 2006 surgery

on Plaintiff and to the SCVMC Risk Management Department. (*DiCampli-Mintz*, at p. *1; Clerk's Transcript ("CT") at pp. 109; 176; 217-25.) The letter indicated that Plaintiff was providing notice in accordance with Code of Civil Procedure section 364 that she would file suit for damages stemming from the April 4, 2006 surgery. (*DiCampli-Mintz*, at p. *1.) The letter included a request that the recipients forward the letter to their insurance carrier. (*Ibid.*)

On April 6, 2007, Plaintiff's attorney received a telephone message from a liability claims adjuster from the County's Employee Services Agency ("ESA") Risk Management Department. (*DiCampli-Mintz*, at p. *2; CT at pp. 158-59; 176.) On April 23, 2007, Plaintiff's attorney and the claims adjuster spoke by telephone. (*DiCampli-Mintz*, at p. *2.) The claims adjuster noted receipt of the notice; opined that service on SCVMC required a tort claim, which was late; questioned whether a tort claim was required as to the two doctors and indicated that he would look into that; stated that Plaintiff had an interesting case; said a theory of defense was that Plaintiff placed herself at risk with her obesity; and finally, advised that an attorney from the Office of the County Counsel would handle the County's defense. (*Ibid.*)

On July 7, 2007, Plaintiff filed an action in the Superior Court of

California, County of Santa Clara, naming the two doctors and SCVMC as defendants. (*DiCampli-Mintz*, at p. *2.) The complaint alleged that SCVMC was a hospital owned and operated by the County and that the two doctors were employees of the County. (CT at p. 5.) The complaint acknowledged that Plaintiff was required to comply with the Government Claims Act but alleged that she was excused from doing so because defendants had failed to provide notice that her notice was untimely or otherwise defective as required by the Government Claims Act. (*DiCampli-Mintz*, at p. *2.)

The County filed a motion for summary judgment on the ground that Plaintiff failed to present a timely claim to the County pursuant to Government Code section 915. (*DiCampli-Mintz*, at p. *2.) The trial court granted the motion on the grounds that the County made a sufficient showing of Plaintiff's noncompliance with the claims statute; that Plaintiff did not raise a reasonable inference that her claim was actually received by the designated official within the time prescribed for presentation of the claim; and that Plaintiff did not establish waiver and/or estoppel. (*Id.* at p. *3.) Plaintiff appealed. (*Ibid.*)

B. THE SIXTH APPELLATE DISTRICT'S DECISION

The Sixth Appellate District's published decision reversed the trial

court and held that a claim may substantially comply with the Government Claims Act, notwithstanding a claimant's failure to deliver or mail it to one of the statutorily-designated recipients, if it is given to a person or department whose functions include the management or defense of claims against the entity. (*DiCampli-Mintz*, at p. *1.)

The Sixth Appellate District held that a misdirected government claim substantially complied with the claim-presentation requirements because a County liability claims adjuster received it. In reaching its holding, the Sixth Appellate District: (a) did not follow Government Code section 915, which requires that specific statutorily-designated officials or the governing body receive claims; (b) declined to follow precedent in four other districts holding that the substantial-compliance doctrine does not apply in the absence of evidence that a claim was actually received by the statutorily-designated official or governing body as required by Government Code section 915; (c) followed a 1973 case that was repudiated by the same district that issued it; and (d) relied on out-of-state cases that held that claims served on a public entity's legal department complied with claim-presentation requirements in those jurisdictions.

The Sixth Appellate District's decision does not follow the plain language of Government Code section 915, departs from other appellate

districts that have applied the statute in similar situations, broadens the substantial-compliance doctrine in a manner that lacks clarity, and creates confusion for claimants and public entities about where a claim may be appropriately directed and when the time for a public entity to respond to a misdirected claim begins to run. Review should be granted to resolve the split in authorities and to settle an important question of law that impacts all local public entities in California.

IV.

ANALYSIS

A. REVIEW SHOULD BE GRANTED TO RESOLVE WHETHER GOVERNMENT CODE SECTION 915 REQUIRES A STATUTORILY-DESIGNATED OFFICIAL OR BODY TO ACTUALLY RECEIVE A CLAIM

1. The Government Claims Act sets forth specific requirements for presentation of claims.

In *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 743, this Court adopted the practice of referring to the claims statutes as the Government Claims Act. One of the stated goals of the Government Claims Act, enacted in 1963, was to eliminate confusion and uncertainty resulting from different claims procedures. (4 Cal. L. Revision Comm. Rep. (1963) at p. 1008.)

Government Code section 905 requires the presentation of “all

claims for money or damages against local public entities,” subject to certain exceptions not relevant here. Claims for personal injury must be presented within six months after accrual.¹ (Gov. Code § 911.2.) The burden of ensuring that a claim is presented to the appropriate public entity is on the claimant – not the public entity presented with the claim. (*Life v. County of Los Angeles* (1991) 227 Cal.App.3d 894, 901.)

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 claimant’s injury; the name or names of the public employee or employees that 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.)

If a claim fails to comply substantially with Government Code section 910 and 910.2, the board or person designated by it may give written notice of its insufficiency within 20 days of presentation of the claim. (Gov. Code § 910.8.) A public entity waives any defense as to the insufficiency of a claim if it does not give such notice. (Gov. Code § 911.)

¹ A medical malpractice cause of action accrues on claimants’ actual or constructive discovery of the malpractice. (*Martinez v. County of Los Angeles* (1978) 78 Cal.App.3d 242, 245.)

If a claim that is required to be presented within six months of accrual of the cause of action is not presented within that time frame, the board or person designated by it has 45 days after the claim is presented to give written notice to the claimant that the claim was untimely and that it is being returned without further action. (Gov. Code § 911.3(a).) A public entity that fails to provide such notice waives any defense that the claim was untimely. (Gov. Code § 911.3(b).)

“[N]o 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 . . . until a written claim therefor has been presented to the public entity and has been acted upon . . . or has deemed to have been rejected” (Gov. Code § 945.4.) Under the Government Claims Act, “failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity.” (*City of Stockton*, 42 Cal.4th at p. 738 [quoting *State of California v. Superior Court (Bodde)* (2004) 32 Cal.4th 1243, 1239].)

If an injured party fails to file a timely claim, a written application may be made to the public entity for leave to present a late claim within one year of accrual of the cause of action. (Gov. Code § 911.4.) If the public entity denies the application, Government Code section 946.6 authorizes the

injured party to petition the court for relief from the claim-presentation requirements.

The purpose of the claim-presentation requirements is not to prevent surprise but to provide a public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation. (*City of Stockton*, 42 Cal.4th at p. 738.) Moreover, the intent of the Government Claims Act “is not to expand the rights of plaintiffs against government entities. Rather, the intent of the act is to confine potential governmental liability to rigidly delineated circumstances.” (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776 [citing *Williams v. Horvath* (1976) 16 Cal.3d 834, 838].)

This Court has recognized that “[i]t is well-settled that 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*, 42 Cal.4th at p. 738; [citing *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455].) A public entity’s “knowledge of a claim – standing alone – constitutes neither substantial compliance nor basis for estoppel.” (*Pacific Tel. & Tel. Co. v. County of Riverside* (1980) 106 Cal.App.3d 183, 191.)

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2. Government Code section 915 requires that a claim be actually received by the statutorily-designated official or body.

Government Code section 915, 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) of the statute states the Legislature’s determination of what constitutes substantial compliance with this 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.)

Government Code section 25100.5 states that a county board of supervisors may provide by ordinance for the appointment of a clerk of the board. In such counties the clerk of the board of supervisors shall perform those duties prescribed by law for the county clerk as ex officio clerk of the board of supervisors and such additional duties as the board of supervisors shall prescribe by ordinance. (Gov. Code § 25100.5.)

In the County of Santa Clara, the Board of Supervisors is the governing body and the Clerk of the Board is responsible for receiving and

filing on behalf of the Board any and all petitions, applications, and requests for consideration of the Board. (Gov. Code §§ 25100.5 and 25101; County Charter, Art. II § 200 [“The Board of Supervisors shall . . . (c) Appoint . . . the . . . Clerk of the Board of Supervisors”]; and County Ordinance Code, Title A, Ch. II, § A5-18.)

3. The Sixth Appellate District’s conclusion that receipt of a claim by a public entity department or employee whose functions include handling claims is inconsistent with the plain meaning of Government Code section 915.

The Sixth Appellate District held that a claim may substantially comply with the Government Claims Act, notwithstanding the fact that it was never received by one of the statutorily-designated recipients in Government Code section 915, if it is received by a department or employee whose functions include defending or managing claims. (*DiCampli-Mintz*, at p. *8.) This decision is inconsistent with the plain meaning of Section 915, which provides a bright-line rule that claims must be delivered to the clerk, secretary, or auditor or mailed to one of these officials or the governing body or actually be received by one of these recipients. The statute does not permit presentation of claims to public entity departments or employees.

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B. REVIEW SHOULD BE GRANTED TO RESOLVE THE SPLIT AMONG DISTRICTS REGARDING WHETHER THE SUBSTANTIAL COMPLIANCE DOCTRINE MAY APPLY WHEN A CLAIM IS NOT PRESENTED TO A STATUTORILY-DESIGNATED OFFICIAL OR BODY

1. A claim that complies with all statutory requirements but is technically deficient may be valid under the substantial-compliance doctrine.

Under the doctrine of substantial compliance, a court may conclude a claim is valid if it substantially complies with all of the statutory requirements for a valid claim even though it 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*, 12 Cal.3d at pp. 455-457].) 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*, 220 Cal.App.3d at p. 413.)

Thus, courts have applied the substantial-compliance doctrine in situations where claims were timely presented to statutorily-designated recipients but did not contain certain required information. (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 addressed to sanitation district employee and a copy mailed to the sanitation district 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 misstated location where incident occurred was valid because it provided sufficient information for entity to investigate].) The substantial-compliance doctrine, however, "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.)

2. The Second, Third, Fourth, and Fifth Appellate Districts have held that a misdirected claim constitutes substantial compliance with Government Code section 915 only if it is actually received by the designated official or entity within the time prescribed for presentation of the claim.

In contrast, the Sixth Appellate District applied the substantial-compliance doctrine to hold that Plaintiff complied with the claim-presentation requirements because her claim happened to be forwarded to a County department that handles claims but not one of the specifically enumerated statutorily-designated recipients. (*DiCampli-Mintz*, at pp. *5-9.) In doing so, the Sixth Appellate District departed from four other districts that have declined to apply the substantial-compliance doctrine

where the claim was not presented to or received by one of the recipients expressly designated by Government Code section 915.

a. The Second Appellate District's decision in *Life*

In *Life*, claimant's attorney sent a claim to a county hospital's legal department within six months of the hospital's alleged negligence. (*Life*, 227 Cal.App.3d at p. 897.) Four months later, the claimant retained new counsel who filed a claim with the board of supervisors, which was the proper recipient. (*Ibid.*) The county denied the claim as untimely, and the court denied claimant's application for leave to present a late claim. (*Ibid.*) The claimant sued, but the county filed a motion for summary judgment on the ground that claimant had not presented a timely claim to the board of supervisors. (*Id.* at p. 897-98.) The trial court granted summary judgment in favor of the county, and claimant appealed. (*Id.* at p. 898.)

The Second Appellate District in *Life* affirmed and held that claimant's presentation of a claim to the county hospital's legal department was insufficient. (*Life*, 227 Cal.App.3d at p. 900.) It held that substantial compliance with Government Code section 915 would only have occurred if the misdirected claim were actually received by the clerk, secretary, auditor, or board of the local public entity. (*Ibid.*) In so holding, the court declined to follow *Jamison v. State of California* (1973) 31 Cal.App.3d 513,

which held that a claim submitted to the wrong department substantially complied with the claims statutes because it was incumbent on the employee at the department who received the claim to forward it to the proper department or to seek advice from the Office of the Attorney General as to the proper department to forward the claim. (*Life*, 227 Cal.App.3d at pp. 900-901.) *Life* found that Section 915 required the claim to be actually received by the appropriate person or board and that “*Jamison*’s reliance on a public entity’s internal transmittal of a claim conflicts with section 915, which requires the claimant to file with the appropriate official or board.” (*Id.* at p. 901 [emphasis in original].)

b. The Third Appellate District’s decision in *Westcon*

The Third Appellate District in *Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183, 201-202, held that the substantial-compliance doctrine did not apply because a claim served on a county engineer failed to comply with Section 915 and there was no evidence that the proper statutory designee for service of claims received actual notice. (*Id.* at p. 202.) The court further noted that a public employee known to a claimant may be the very person who committed the wrongdoing that is the subject of the claim but may be “the last person who would want to pass a claim on to his or her employer.” (*Id.* at p. 201.)

c. **In *Del Real* the Fourth Appellate District followed *Life* and repudiated its earlier *Jamison* decision**

In *Del Real*, the Fourth Appellate District followed *Life* and repudiated its earlier *Jamison* decision. (*Del Real*, 95 Cal.App.4th at p. 770.) The claimant in *Del Real* had been involved in a car accident with a police officer. (*Id.* at p. 764.) The claimant's attorney sent a letter to that police officer seeking an account of the accident and information about witnesses. (*Ibid.*) The letter also requested that the police officer forward the letter to his insurance company. (*Ibid.*) The city attorney's office responded that the police officer was represented by that office, that all further communication should be directed through the city attorney's office, and that the police officer would not be providing any statement concerning the accident. (*Ibid.*) More than six months after the accident, claimant served the city with an application for leave to present a late claim, which the city denied. (*Ibid.*) The claimant filed an action. (*Ibid.*) The trial court granted summary judgment in favor of the city and police officer because the claimant had not complied with the Government Claims Act. (*Ibid.*)

The claimant appealed, alleging that her letter to the police officer substantially complied with the claim-presentation requirements. (*Del Real*, 95 Cal.app.4th at p. 769.) But the Fourth Appellate District held that “[s]ubstantial compliance contemplates that there is at least some

compliance with all of the statutory requirements.” (*Ibid.*) It held that the letter to the police officer did not comply with Government Code section 915 because it was not delivered to, mailed to, or actually received by the clerk, secretary, auditor, or governing body of the city within six months of the car accident. (*Id.* at p. 770.) In reaching its holding, the Fourth Appellate District reconsidered and repudiated its decision in *Jamison*, finding it at odds with Section 915. (*Ibid.* [citing *Life*, 227 Cal.App.3d at pp. 900-901].)

d. The Fifth Appellate District’s decision in *Munoz*

Finally, in *Munoz*, claimant alleged that a state prison failed to treat her father’s lung cancer. (*Munoz*, 33 Cal.App.4th at p. 1772.) She submitted a wrongful death claim to the prison. (*Ibid.*) She also submitted a claim and an application for leave to present a late claim to the State Board of Control. (*Ibid.*) The State Board of Control responded that it had no jurisdiction because claimant’s application was filed more than a year from the date of the incident that was the basis of the claim. (*Ibid.*) The court then denied claimant’s petition for an order permitting the filing of a late claim. (*Id.* at p. 1774.)

Affirming the trial court’s decision, the Fifth Appellate District rejected claimant’s contention that mailing her application to present a late

claim to the State Board of Control before the one-year anniversary of her father's death constituted substantial compliance with the claim-presentation requirements. (*Munoz*, 33 Cal.App.4th at p. 1780.) The Fifth Appellate District concluded that the State Board of Control actually received the application beyond the one-year application period. (*Ibid.*) Citing *Life*, the court held that there was no substantial compliance under Government Code section 915 because the application for leave to file a late claim was not received by the statutorily-designated recipient in a timely fashion. (*Ibid.* [citing *Life*, 227 Cal.App.3d at pp. 900-901].)

3. The Sixth Appellate District's decision broadens the substantial-compliance doctrine by allowing its application when a claim is never actually received by the clerk, secretary auditor, or board of a local public entity.

Courts have applied the substantial-compliance doctrine in narrow circumstances to forgive technical defects in the content of claims when those claims were timely presented to a statutorily-designated recipient. The Sixth Appellate District's decision broadens the doctrine to apply when claims are never presented to or actually received by a statutorily-designated recipient. As such, the decision cannot be reconciled with the plain language of Government Code section 915 or with other appellate districts that have applied the statute in similar circumstances.

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- a. **The Sixth Appellate District’s decision departed from other districts and instead relied on the repudiated *Jamison* opinion and inapposite California cases.**

The Sixth Appellate District determined that it was “unable to adhere to [the] reasoning” adopted by other appellate districts in *Life*, *Westcon*, *Del Real*, and *Munoz* and instead relied on the Fourth Appellate District’s repudiated *Jamison* opinion to conclude that Plaintiff had substantially complied with Government Code section 915(e)(1). (*DiCampli-Mintz*, at pp. *6; 9-13.)

The Court recognized that *Jamison* cited two cases in which presentment of a claim to a person not designated in the statute was held not to comply with the claim-presentation requirements. (*DiCampli-Mintz*, at p. *6.) In one of those cases, *Jackson v. Board of Education* (1967) 250 Cal.App2d 856, 860, service of a claim on a city was insufficient where service was not made on the correct public entity – the board of education. In the other case, *Redwood v. State of California* (1960) 177 Cal.App.2d 501, 504, failure to present the claim to the Governor as then required made the claim fatally defective.

The Sixth Appellate District concluded that *Jackson* was “unremarkable” because the notice to the wrong entity “could not be expected to fulfill the purposes of the claim requirement.” (*DiCampli-*

Mintz, at p. *15, fn. 6.) And it rejected *Redwood*'s holding that "where the claims statute provides for the person upon whom the claim is to be served, that service upon another is insufficient." (*Ibid.*) Instead, it cited *Los Angeles Brick & Clay Products Co. v. City of Los Angeles* (1943) 60 Cal.App.2d 478, 486, a case decided 20 years before enactment of the Government Claims Act, which held that failure to comply with a charter requirement that a claim be presented to the city before filing an action did not bar a nuisance action. (*Id.* at p. 15, fn. 6.)

The Sixth Appellate District relied on two other California cases that predated the 1963 Government Claims Act, *Peters v. City and County of San Francisco* (1953) 41 Cal.2d 419² and *Insolo v. Imperial Irrigation Dist.* (1956) 147 Cal.App.2d 172.³ (*DiCampli-Mintz*, at pp. *6-7.) Both *Peters*

² In *Peters*, claimant's attorney delivered a signed and verified copy of her claim to the controller's office and a signed but unverified copy of her claim to the clerk of the board, who endorsed a copy and retained a carbon copy. (*Peters*, 41 Cal.2d at p. 426.) The city alleged that 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 claimant filed a carbon copy of the claim with the clerk of the board. (*Ibid.*)

³ In *Insolo*, the claims statute at issue required service of a claim on the secretary of an irrigation district. (*Insolo*, 31 Cal.App.3d at p. 173.) The district alleged that a claimant failed to comply with the statute because it had not been 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.

and *Insolo* are distinguishable from the instant action in that the claims in those cases were actually received by an appropriate official.

The Sixth Appellate District also relied on inapposite cases that stand for the proposition that where the governing body of one public entity is also the governing body of another public entity, a claim against one of the public entities delivered to the governing body of both entities constitutes substantial compliance with the claims statute. (*DiCampli-Mintz*, at p. *8 [citing *Elias v. San Bernardino County Flood Control District* (1977) 68 Cal.app.3d 70, 75 and *Carlino v. Los Angeles County Flood Control Dist.* (1992) 10 Cal.App.4th 1526, 1533].) In those cases, a proper designee – the governing board – actually received the claims; thus, they have no application here.

b. The Sixth Appellate District’s decision relied on out-of-state cases that permitted claims to be served on a public entity’s legal department.

The Sixth Appellate District also relied on out-of state cases, two of which were cited in *Jamison*, which held that letters sent to an entity’s legal department satisfied claim-presentation requirements in those jurisdictions. (*DiCampli-Mintz*, at p. *7.) In *Galbreath v. City of Indianapolis* (1970) 255 N.E.2d 225, 229, an Indiana statute required a notice of claim to be filed with the mayor or clerk of the city. Claimant’s husband wrote letters to the

city legal department, without sending a notice of claim to either official named in the statute. (*Ibid.*) The high court of Indiana deemed the city legal department an agent of the mayor and held that the city attorney had the authority to accept notice on behalf of the mayor. (*Ibid.*)

In *Stone v. District of Columbia* (1956) 237 F.2d 28, 29 *certiorari denied* 352 U.S. 934, the applicable statute required service of a claim on the commissioners of the District of Columbia. The claimant sent a letter to the District's counsel rather than the Commissioners. (*Ibid.*) The court held that notice to the District's counsel, if otherwise adequate, was equivalent to notice to the Commissioners for the purposes of the District of Columbia statute. (*Id.* at p. 30.)

At least two appellate districts in California, however, have held that service of letters or claims on attorneys for public entities does not constitute substantial compliance with the claim-presentation requirements. In *Dilts v. Cantua Elementary School Dist.* (1987) 189 Cal.App.3d 27 (overruled on other grounds in *State of California v. Superior Court* (2003) 105 Cal.App.4th 1008, 1011, fn. 2), attorneys for claimant and a school district exchanged a series of letters. The claimant alleged that the letters provided notice of his claim to the school district and, thus, substantially complied with the Government Claims Act. (*Ibid.*) The court disagreed,

reasoning that “[t]he established procedure for the filing of claims pursuant to the Tort Claims Act would become totally unworkable if this court were to hold that a series of writings could collectively be considered a claim.”

(*Id.* at pp. 35-36.)

And in *Del Real*, discussed above, claimant’s attorney sent a letter to a police officer with whom claimant was involved in a car accident. (*Del Real*, 95 Cal.App.4th at p. 764.) The letter, which was sent before claimant’s six-month deadline to present a timely claim to the city, sought the police officer’s account of the accident and included a request that the letter be forwarded to the police officer’s insurance company. (*Ibid.*) The city attorney’s office responded to the letter but did not advise claimant’s counsel that the letter/claim was not properly presented. (*Ibid.*) The court held that the letter, even if it fulfilled the requirements of a claim, was not directed to the proper official and, therefore, did not comply with Government Code section 915. (*Id.* at p. 770.) The fact that the police officer’s attorney received and responded to the letter did not change the analysis because “[t]here [was] no evidence in the record demonstrating that the letter was actually received by the city clerk, secretary, auditor or governing body within six months of the accident.”⁴ (*Ibid.*)

⁴ Notably, after *Jamison* but before *Del Real*, the Fourth Appellate District held that letters to a hospital district’s board of directors and its attorney constituted a

Thus, the Sixth Appellate District's decision departs from well-established California precedent that holds that a public employee does not have a duty to forward a misdirected claim to the appropriate statutory official. The decision also departs from well-established California precedent that holds that the substantial-compliance doctrine is reserved for claims that are timely presented to a statutorily-designated recipient but are technically deficient in some respect. The doctrine does not apply, however, when a claim is not presented to or received by a statutorily-designated recipient.

C. REVIEW SHOULD BE GRANTED TO RESOLVE WHAT CONSTITUTES PROPER PRESENTATION OF A CLAIM AND WHEN A PUBLIC ENTITY'S TIME TO RESPOND TO A MISDIRECTED CLAIM BEGINS TO RUN

Government Code section 915 provides a bright-line rule that claims must be delivered to the clerk, secretary, or auditor or mailed to one of these officials or the governing body or actually received by one of these

valid claim. (*Wilson v. Tri-City Hospital Dist.* (1990) 221 Cal.App.3d 441, 449.) *Wilson* is distinguishable from this action because in that case the hospital district's board of directors received claimant's letter. Moreover, the First Appellate District has held that letters to a public entity's attorney may constitute a claim. (*Alliance Financial v. City and County of San Francisco* (1998) 64 Cal.App.4th 635, 646-49 [holding that a contractor's notice to the department of recreation and parks requesting payment of invoices for janitorial services was not a claim but subsequent letters from the contractor's attorney to the city attorney's office satisfied the claim-presentation requirements].) *Alliance Financial*, however, did not address the fact that the letters did not comply with Government Code section 915.

recipients. The Sixth Appellate District's decision blurs this Legislatively-established line by holding that claims presented to or received by departments or employees that manage claims may constitute substantial compliance with the statutory claim-presentation requirements. The decision creates confusion about where and how claims must be delivered; when the 20-day clock starts to tick for public entities to give written notice of insufficiency of claims; and when the 45-day clock starts to tick for public entities to respond to claims.

Dilts, which rejected the contention that letters to a public entity's attorney constituted proper presentation of a claim, highlighted the untenable consequences of loosening statutory claim-presentation requirements. (*Dilts*, 189 Cal.App.3d at p. 36.) *Dilts* pointed out that if a series of letters to a public entity's attorney satisfied the claim-presentation requirements, it would be impossible to ascertain whether a claim had been timely presented. (*Ibid.*) And if a public entity was unable to determine whether a claim had been filed – or when the claim had been filed – it would be equally difficult for courts to determine which statute of limitation applied or when the statute of limitation began to run. (*Ibid.*)

Similarly, if claims served on public entity departments and employees substantially comply with the requirements of Government Code

section 915, regardless of whether a statutorily-designated official or governing body actually receives those claims, it will be impossible to determine if a claim or late-claim application was properly presented. Claims (and letters and notices that might be deemed claims) may be received by departments, or employees, and forwarded to multiple other departments or employees and it may be unclear whether claims were ever forwarded to a department or employee that manages claims.

Further, under the new rule created by the Sixth Appellate District, it is unclear when the 20-day period begins to run for public entities to give written notice that misdirected claims are insufficient and when the 45-day period begins to run for public entities to respond to misdirected claims. The clock could start ticking when a claimant presents a claim to a department of the public entity that manages claims, an employee that manages claims, an attorney for the public entity, or one of the statutorily-designated officials in Government Code section 915. Or the clock could start ticking when one of these individuals actually receives the claim. Without clear guidance from this Court on when the time to respond to misdirected claims begins to run, claimants and public entities will have to resort to costly litigation, which is exactly what the Government Claims Act is meant to avoid.

Moreover, it is unclear whether claimants or public entities have the burden to prove that misdirected claims were delivered or received by a department or employee that manages claims and when the public entities' time to respond to misdirected claims began to run. Although *Life* held that the burden of ensuring a claim was presented to or received by the statutorily-designated recipient belongs to the claimant (*Life*, 227 Cal.App.3d at p. 901), the Sixth Appellate District's decision appears to shift the burden to public entities to establish that misdirected claims were never received by a department or employee who manages claims. (*DiCampli-Mintz*, at p. *1.)

With these uncertainties, claimants – particularly those who have missed the six-month deadline to present timely claims like Plaintiff in this case – will have an incentive to misdirect their claims or late-claim applications with the hope that they will be shuffled around and not acted upon in a timely fashion. In the end, such claimants who comply with the plain language of Government Code section 915 and present their claims to statutorily-designated recipients may be worse off than those who misdirect their claims, as public entities will more likely timely respond to a late claim if a statutorily-designated recipient actually receives it.

Given the split in the districts created by the Sixth Appellate

District's decision, claimants and public entities will have no choice but to resort to litigation to determine whether the substantial-compliance doctrine may apply to a misdirected claim. And courts that decide these disputes no longer have a statutory bright-line rule to follow.

This Court should grant review to address uncertainty that the Sixth Appellate District's decision has created with regard to the presentation of claims against local public entities, resolve the split among the appellate districts, and restore the clarity and bright-line rule intended by the Legislature regarding where claims must be presented. Such guidance from this Court will benefit claimants, public entities, and the courts alike.

V.

CONCLUSION

With the exception of the Sixth Appellate District, every district in California that has examined Government Code section 915 has held that it provides a bright-line rule that claims must be actually received by an official designated by statute to receive claims. The Sixth Appellate District's opinion stands alone in holding that claims substantially comply with the claim-presentation requirements if they are given to a department or employee whose functions include handling claims against the entity.

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The Sixth Appellate District's opinion will create confusion and engender costly litigation about whether claims were presented to a proper department or employee, and about the proper date from which the entity's time to respond to misdirected claims begins to run. The County respectfully requests that review be granted to resolve this split in authorities, restore uniformity of decision, and to settle this important issue that affects all local public entities in California and all claimants who seek to file suit against them.

Dated: July 1, 2011

Respectfully submitted,

MIGUEL MÁRQUEZ
County Counsel


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Deputy County Counsel

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and Respondent
COUNTY OF SANTA CLARA

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 6,752 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 July 1, 2011.



Melissa R. Kinyalocis

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

PROOF OF SERVICE BY MAIL

Hope DiCampli-Mintz v. County of Santa Clara

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

PETITION FOR REVIEW

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

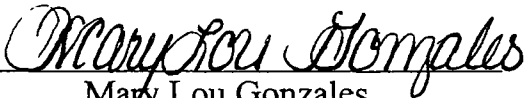
Court of Appeal
Sixth Appellate District
333 W. Santa Clara Street
San Jose, California 95113

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 **July 1, 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 **July 1, 2011**, at San Jose, California.


Mary Lou Gonzales