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IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

COUNTY OF LOS ANGELES, a public entity, Petitioner, vs. SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES, Respondent. NAVELI LOPEZ, Real Party in Interest.	2nd Civ. No. B_____ Superior Court, Case No. PC 034251 (Honorable Howard J. Schwab, Judge)

PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES AND EXHIBITS IN SUPPORT THEREOF

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INTRODUCTION

A. Question Presented.

It is well settled that an action against a public entity is governed by the California Government Tort Claims Act – and when the Act requires presentation of a claim for damages as a prerequisite to filing suit, the case is governed by the statute of limitations in Government Code section 945.6. Section 945.6 applies regardless of the nature of the underlying action and regardless of the identity or age of the plaintiff.

The question raised by this petition is whether Code of Civil Procedure section 340.1 creates an exception to this general rule and whether, therefore, section 340.1, instead of Government Code section 945.6, applies to actions for injuries sustained as a result of childhood sexual abuse where the defendant is a public entity.

The trial court held that it did. As we now explain, this was plain error.

B. Nature of the Action.

The trial court denied a motion for summary judgment filed by the County of Los Angeles ("County") on statute of limitations grounds.

The facts of the case are undisputed. Plaintiff and real party in interest Naveli Lopez alleges she was sexually molested by a County employee at a juvenile camp in the summer of 2001, when she was 17 years old. On or about January 28, 2002, a claim for damages was presented to the County on plaintiff's behalf, pursuant to Government Code section 911.2, alleging injury resulting from the molestation. The County rejected the claim and mailed notice of rejection of the claim to plaintiff's attorney in accordance with Government Code section 913

on May 30, 2002. Under Government Code section 945.6, plaintiff had until November 30, 2002 – six months after May 30, 2002 – to commence this action against the County. However, plaintiff did not commence the action until December 2003 – over a year too late.

On these facts, the County is entitled to summary judgment as a matter of law. "The prescribed statutes of limitations for commencement of actions against governmental entities are *mandatory* and must be strictly complied with." (*Torres v. County of Los Angeles* (1989) 209 Cal.App.3d 325, 333, emphasis added.) Case law is uniform that Government Code section 945.6 is the proper statute of limitations in an action against a public entity regardless of what statute might otherwise apply if the defendant were a private party. (*Moore v. Twomey* (2004) 120 Cal.App.4th 910, 913 ["Suits against a public entity or public employees are governed by the specific statute of limitations provided in the Government Code, not the statute of limitations that applies to private defendants"]; *Martell v. Antelope Valley Hospital Medical Center* (1998) 67 Cal.App.4th 978, 982 [same].)

The trial court disagreed, finding that Code of Civil Procedure section 340.1 – the statute of limitations applicable to actions for injuries suffered as a result of childhood sexual molestation against private defendants – was the applicable statute of limitations and, therefore, plaintiff was not required to file her action within the six-month period of Government Code section 945.6. Accordingly, the court denied the County's motion.

C. Why Writ Review Is Necessary.

Writ review is warranted because the trial court had no discretion other than to grant summary judgment on the statute of limitations. The facts are undisputed and case law is clear that Government Code section 945.6 governs all actions against a public entity, including this one. (*Moore v. Twomey*, *supra*,

120 Cal.App.4th at p. 913; *Martell v. Antelope Valley Hospital Medical Center*, *supra*, 67 Cal.App.4th at p. 982.) Plaintiff's failure to file her lawsuit within six months after notice of rejection of the claim was mailed bars her action as a matter of law. Extraordinary writ relief is proper to compel the trial court to grant summary judgment in these circumstances. (*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 250; *City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740, 751; *Whitney's at the Beach v. Superior Court* (1970) 3 Cal.App.3d 258, 265.)

Furthermore, petitioner has no plain, speedy, adequate remedy at law other than the relief sought in this petition. A failure to correct the trial court's error at this point will require the parties to go through a trial, and any judgment in plaintiff's favor will necessarily be infected with reversible error. The County should not have to incur the unnecessary costs of a full-blown trial – costs ultimately paid by the taxpayers. (*City of Ontario v. Superior Court* (1993) 12 Cal.App.4th 894, 897-898 ["If the City's position is correct, the entire case will be disposed of without the expense and delay of trial. In the circumstances, the availability of an eventual remedy by appeal from an unfavorable judgment is not adequate"]; *City of Oakland v. Superior Court*, *supra*, 45 Cal.App.4th at p. 750 ["If the court permits [the case] to go to trial based on erroneous rulings of law, substantial trial expenses will be needlessly imposed on the city and the public"].) For these reasons, this court should intervene at this time and require the trial court to grant the County's motion for summary judgment.

PETITION

By this verified petition, the County of Los Angeles alleges:

1. Petitioner County of Los Angeles is a public entity.

2. In January 2002, a claim for damages was presented to the County on behalf of real party in interest Naveli Lopez, alleging injury suffered as a result of sexual molestation in the summer of 2001. The County denied the claim and mailed notice of rejection of the claim to plaintiff's attorney on May 30, 2002. (Exhibit C, pp. 18-19.)[1/]

3. On December 31, 2003, real party filed her lawsuit against the County, alleging injury as a result of sexual molestation. (Exhibit A.) The complaint further alleged plaintiff was required to and did comply with the Tort Claims Act. (Exhibit A, p. 2.)

4. The County filed an answer (Exhibit B) and on June 22, 2004, filed a motion for summary judgment on the ground that plaintiff's action was barred by the six-month statute of limitations of Government Code section 945.6 (Exhibits C, D).

5. Real party opposed the motion. (Exhibit E.) She did not deny that the complaint was filed more than six months after notice of rejection was mailed by the County, but argued that Code of Civil Procedure section 340.1 was the proper statute of limitations. (Exhibit E, p. 30.)

6. The County filed a reply, pointing out that Government Code section 945.6 trumps all other statutes of limitations where the plaintiff seeks to sue a public entity on an action for which a claim for damages is required. (Exhibit F, p. 44.)

1/ The exhibits attached to this petition are true and correct copies of what they purport to be and are incorporated by reference herein.

7. The motion was heard on September 14, 2004. (Exhibit I, p. 67.) The trial court found that Code of Civil Procedure section 340.1 was the applicable statute of limitations and denied the County's motion on this ground. (Exhibits G, H, I.)

PRAYER

Wherefore, petitioner prays that this court:

1. Issue in the first instance a peremptory writ of mandate, prohibition or other such appropriate relief as is warranted by the facts, directing respondent court (a) to set aside and vacate its order of September 14, 2004, denying petitioner's motion for summary judgment and (b) to enter a new order granting the motion;

2. In the alternative, issue an alternative writ of mandate, prohibition or such other appropriate relief as is warranted by the facts, directing respondent court (a) to set aside and vacate its order of September 14, 2004, denying petitioner's motion for summary judgment, and to enter a new order granting the motion; or (b) to show cause before this court why it has not done so; and

3. Award petitioner its costs of suit herein;

4. Grant such other and further relief as may be just and proper.

Dated: October 15, 2004

Respectfully submitted,

LAW OFFICES OF MICHAEL H. MANNING & ASSOCIATES
GREINES, MARTIN, STEIN & RICHLAND LLP

By _____
Carolyn Øill

Attorneys for Petitioner County of Los Angeles

VERIFICATION

State of California)
) SS
County of Los Angeles)

I, Carolyn Oill, am an associate with the law firm of Greines, Martin, Stein & Richland LLP, who, together with the Law Offices of Michael H. Manning & Associates, represents petitioner County of Los Angeles in the instant writ proceedings. I have personally reviewed and am familiar with the records and files described in and the subject of this petition, and based on this review know the facts set forth in the petition to be true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 15, 2004, at Los Angeles, California.

Carolyn Oill

LEGAL DISCUSSION

A WRIT SHOULD ISSUE BECAUSE PLAINTIFF'S ACTION IS CLEARLY TIME-BARRED.

A. This Action Against The County, A Public Entity, Is Governed By Government Code Section 945.6, Pursuant To Which Plaintiff's Action Is Untimely.

Actions against public entities and public employees are governed by the California Tort Claims Act, which requires a person wishing to sue a public entity or public employee first to present a claim for damages to the public entity within six months after his cause of action accrues. (Gov. Code, § 911.2, 945.4.) The public entity has 45 days within which to act on the claim as presented. (Gov. Code, § 912.4.) If the public entity denies the claim, the claimant may then proceed with a lawsuit; but he has only a limited time to do so. Government Code section 945.6 requires that the lawsuit be filed: (1) within six months after the public entity deposits in the mail a written notice of rejection of the claim; or (2) if no written notice is sent, within two years after the cause of action accrued. If the public entity deposits written notice of rejection in the mail, the six-month period applies, even if the notice is never actually received by the addressee. (*Dowell v. County of Contra Costa* (1985) 173 Cal.App.3d 896, 901.) A claimant is charged with knowledge of the six-month period and must make inquiry if he or she does not receive a written rejection notice within a reasonable time after the public entity's time to act on the claim has passed. (*Ibid.*)

"Suits against a public entity or public employees are governed by the specific statute of limitations provided in the Government Code, not the statute of

limitations that applies to private defendants." (*Moore v. Twomey*, *supra*, 120 Cal.App.4th at p. 913; *Martell v. Antelope Valley Hospital Medical Center*, *supra*, 67 Cal.App.4th at p. 982.) Indeed, Government Code section 945.6 was enacted for the specific purpose of providing a *uniform* statute of limitations for all actions against public entities, regardless of the nature of the claim. As explained in *Martell v. Antelope Valley Hospital Medical Center*, *supra*, 67 Cal.App.4th at pp. 981-982:

> As the Law Revision Commission explained when it proposed the Act's enactment, "In order to avoid troublesome problems as to the interrelationship between the statutes of limitations and the claims statute, a special period of limitations applicable to actions based on claims should also be provided. This period should commence to run from the time the claim is acted upon or is deemed to have been rejected. In order to promote uniformity and avoid undue delay in a suit against a public entity, a relatively short period should be allowed for commencing suit regardless of the nature of the claim. The six-month period now provided in the State claims statute is recommended. *The general statutes of limitation would thus have no application to actions against public entities* upon causes of action for which claims are required to be filed."

(Emphasis in original.)

Because Government Code section 945.6 was intended to encompass *all* claims against a public entity regardless of the nature of the claim, the six-month period applies to minors as well as adults, even if the minor would have a significantly longer period of time to sue a private defendant for the same tortious conduct. In *Martell v. Antelope Valley Hospital Medical Center*, *supra*, 67 Cal.App.4th 978, for example, the court of appeal held that Government Code section 945.6 trumped Code of Civil Procedure section 340.5 (the statute of limitations for medical malpractice), even though section 340.5 would have given the minor plaintiff a longer statute of limitations. As the court explained, "the

public policy disfavoring application of statutes of limitation to minors does not extend to complaints against public entities." (67 Cal.App.4th at p. 983.)

The Legislature's intention in this regard is strongly evidenced in its amendment to Code of Civil Procedure section 352, which provides for tolling of a minor's claim during his minority, *except* in cases where the plaintiff must comply with the Tort Claims Act. (*Martell v. Antelope Valley Hospital Medical Center*, *supra*, 67 Cal.App.4th at pp. 983-984.) Thus, Government Code section 945.6 is *the* statute of limitations applicable to actions against a public entity when a claim for damages is required, regardless of the nature of the claim and regardless of the age of the plaintiff.

Here, there is no dispute that the County mailed notice of rejection of plaintiff's claim on May 30, 2002, and that plaintiff's action was not filed until December 2003 – more than six months later. (Exhibit A, p. 1; Exhibit C, p. 18.) Accordingly, the trial court should have granted the County's motion for summary judgment on statute of limitations grounds.[2/]

2/ In her opposition papers, plaintiff mentioned, almost in passing and without elaboration, that she never received the County's notice of rejection. However, actual receipt of the notice is not necessary; the six-month period is triggered by the deposit in the mail of the notice of rejection. (*Dowell v. County of Contra Costa*, *supra*, 173 Cal.App.3d at p. 901.) It is the claimant's responsibility to follow-up on the claim and to discover whether a notice was mailed and when. (*Ibid.*) Since plaintiff introduced no evidence to refute the County's evidence that the letter was *mailed* in May 2002 (contrast *Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1133 [conflicting evidence on whether the letter was actually *mailed*]), that fact was – and is – undisputed.

B. Code Of Civil Procedure Section 340.1 Is A Statute Of Limitations That Applies To Private Party Defendants, Not To Public Entities Like The County Of Los Angeles.

Only one statute of limitations ultimately applies to any given action, even if more than one *could* apply. The courts must routinely choose between or among statutes of limitations. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 23-24; *Hedlund v. Superior Court* (1983) 34 Cal.3d 695, 704; *Guess, Inc. v. Superior Court* (1986) 176 Cal.App.3d 473, 478; *Jefferson v. J.E. French Co.* (1960) 54 Cal.2d 717, 718.) Here, initially, both Code of Civil Procedure section 340.1 and Government Code section 945.6 appear to apply to this case: Section 340.1 applies to "an action for recovery of damages suffered as a result of childhood sexual abuse" and section 945.6 applies to actions against a public entity.

Plaintiff argued that, as between the two sections, section 340.1 is more specific and, therefore, should apply. (Exhibit E, p. 32.) The trial court agreed. (Exhibit I, p. 68.) But neither statute is "more specific." First of all, the rule that a specific provision prevails over a general one only applies when the two statutes are on the *same* subject. (*Estate of Castiglioni* (1995) 40 Cal.App.4th 367, 373; *County of Humboldt v. Workers' Comp. Appeals Bd.* (1983) 147 Cal.App.3d 595, 601.) The two statutes in this case are *not* on the same subject. Section 340.1 applies to actions for injury resulting from childhood molestation. Section 945.6 applies to actions against public entities or public employees. To say these statutes are on the same subject is to compare apples and oranges: Each is specific in its own way. Neither is "more" specific when compared to the other. Thus, the rule that specific statutes control over general statutes will not resolve which statute applies to this case.

The trial court also focused on the word "entity" in section 340.1, stating that the appearance of the term "entity" in section 340.1 was the "fly in the

ointment" – the reason section 340.1 prevailed over section 945.6 in this case. (Exhibit I, p. 69.)[3/] This view is completely puzzling, unless the court was reading the term "entity" as "*public* entity" – a reading of the statute that is way too narrow. Black's Law Dictionary defines "entity" as an "organization (such as a business or a governmental unit) that has a legal identity apart from its members." (Black's Law Dict. (7th ed. 1999) p. 553.) Thus, an entity is any unit that is not an individual person. (See, e.g., *Diamond View Limited v. Herz* (1986) 180 Cal.App.3d 612, 618.) A public entity is one kind of entity, but not the only kind: The cases refer to many kinds of entities, including business entities (*County of Nevada v. MacMillen* (1974) 11 Cal.3d 662, 670), commercial entities (*Copesky v. Superior Court* (1991) 229 Cal.App.3d 678, 691) and legal entities (*Pacific Scene, Inc. v. Penasquitos, Inc.* (1988) 46 Cal.3d 407, 410). Section 340.1 does not mention *public* entities and, therefore, its reference to "entity" cannot be limited to public entities. Accordingly, the trial court's conclusion that section 340.1 was the proper statute of limitations because the term "entity" appears in the statute is simply wrong.

When the defendant is a *public* entity or public employee, and the matter requires compliance with the Tort Claims Act, Government Code section 945.6 is the correct statute of limitations and it trumps any and all other statutes of limitations that would otherwise apply if the defendant was not a public entity or public employee. (See *Anson v. County of Merced* (1988) 202 Cal.App.3d 1195, 1202 [prevails over Code Civ. Proc., § 340.5]; *Schmidt v. Southern Cal. Rapid*

3/ Section 340.1 states that it applies to actions "for liability against any person *or entity* who owed a duty of care to the plaintiff, where a wrongful or negligent act by that person *or entity* was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff" and "for liability against any person *or entity* where an intentional act by that person *or entity* was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff." (Emphasis added.) Presumably, the trial court was referring to this language.

Transit Dist. (1993) 14 Cal.App.4th 23, 30 [prevails over Code Civ. Proc., § 340].) Moreover, inasmuch as Government Code section 945.6 existed when section 340.1 was enacted, the Legislature is presumed to have been aware of the requirements of Government Code section 945.6 and its interpretation by the courts. (*Martell v. Antelope Valley Hospital Medical Center*, *supra*, 67 Cal.App.4th at p. 983.) If the Legislature intended section 340.1 to apply to actions against public entities, it needed to say so in section 340.1 – but it did not. The Legislature's failure to include such a provision in section 340.1 evinces its intent that even minors who were victims of childhood sexual molestation must comply with the Tort Claims Act if the defendant is a public entity or public employee. (*Ibid.*; *Anson v. County of Merced*, *supra*, 202 Cal.App.3d at p. 1202.) Again, this is entirely consistent with the position the Legislature has taken to date. (See Code Civ. Proc., § 352 [no tolling for minority in action against public entity].)

This does not mean that a claimant who was a victim of childhood molestation is denied the protection of Code of Civil Procedure section 340.1. In determining when the cause of action accrued for purposes of the Tort Claims Act, the courts would look to the statute that would apply if the defendant were not a public entity – in this case, section 340.1. (Gov. Code, § 901; *Jefferson v. County of Kern* (2002) 98 Cal.App.4th 606, 610; *Wozniak v. Peninsula Hospital* (1969) 1 Cal.App.3d 716, 722.) Thus, the court would look to section 340.1 to determine when plaintiff's cause of action accrued to determine: (1) whether plaintiff's claim was timely presented (Gov. Code, § 911.2) and (2) whether the complaint was timely filed within two years after the date of accrual of the cause of action *if* the public entity failed to send written notice of rejection of the claim (Gov. Code, § 945.6). Once the cause of action accrued, there was nothing unreasonable about subjecting plaintiff "to the same limitation period as other plaintiffs" who are suing public entities. (*Stanley v. City and County of San Francisco* (1975)

48 Cal.App.3d 575, 583 [plausible reason for tolling statute of limitations for a minor is to preserve the claim until the minor's representative can act on his behalf or until the minor reaches majority and can protect his own rights; when a claim is filed on behalf of the minor, his rights are protected and "it is reasonable to legislate that the minor's cause of action shall be subject to the same limitation period as other plaintiffs"].)

In this case, of course, the timeliness of plaintiff's claim is not an issue because the County rejected it on the merits and the two-year period of Government Code section 945.6 does not apply because the County *did* mail notice of rejection of the claim to plaintiff, triggering the six-month statute. Thus, the date of accrual of plaintiff's action is irrelevant.

In sum, the trial court erred in determining that section 340.1 applied to plaintiff's lawsuit.

C. If The Claim Was Not Valid, The Action Is Barred By Plaintiff's Failure To Comply With The Requirements Of The Tort Claims Act.

In an attempt to get around the claim statutes in another way, plaintiff argued in the trial court that the claim was not valid because it was presented to the County at her mother's behest, without plaintiff's knowledge or consent; that her mother did not have authority to act on her behalf once plaintiff reached the age of majority; and that plaintiff's attorney had no authority to present a claim on her behalf because he had never met or spoken to her at that time. (Exhibit E, p. 32.) These assertions must be rejected.

First, a claim does not have to be presented by the claimant personally; anyone can present a claim on another's behalf, and it doesn't matter how old or young the claimant is or was. (Gov. Code, § 910 ["A claim shall be presented by

the claimant or by a person acting on his or her behalf"]; *Lacy v. City of Monrovia* (1974) 44 Cal.App.3d 152, 155.) Thus, the fact that plaintiff had reached the age of majority has no effect on her mother's ability to present a claim on her behalf to preserve her legal rights.

Second, the County is aware of no cases (and certainly plaintiff did not cite any in the trial court) holding that an otherwise valid claim can be invalidated on the ground that the claimant did not specifically "authorize" it. Section 911.2 allows a claim to be filed by a claimant or anyone acting on the claimant's behalf; it doesn't say anything about the claim also having to be *authorized* by the claimant. In this case, the claim *on its face* was presented on plaintiff's behalf. There was simply no way for the County to glean from the face of the claim that either the attorney, or someone not named in the claim (e.g., the claimant's mother) was not "authorized" to make the claim on the claimant's behalf; accordingly, the County should be entitled to rely on the claim as presented.[4/]

Furthermore – and more important, perhaps – if, in fact, the claim was not valid, plaintiff's action is still barred because plaintiff has not complied with the Tort Claims Act. She *never* presented another claim to the County (Gov. Code, § 911.2), sought leave to present a late claim (Gov. Code, § 911.4), or obtained relief from the claim-presentation requirements (Gov. Code, § 945.6). Moreover, the time to do so has passed: An application for leave to present a late claim must be filed within one year after the cause of action accrues (Gov. Code, § 911.4), and relief from the claim-presentation requirements (if the late-claim application is denied) cannot be granted unless the claimant also demonstrates that the late-claim application was presented within a reasonable time, not to exceed one year (Gov.

4/ This is particularly true where, as here, the attorney who presented the claim on plaintiff's behalf ultimately is the same attorney who filed the lawsuit and pursued the litigation on her behalf. What she is saying is that he didn't have authority to take specific action, rather than that he didn't represent her interests.

Code, § 945.6). Plaintiff's cause of action accrued either when she reached the age of majority or when she discovered the injury and its negligent cause.[5/] She reached the age of majority on October 12, 2001; and plaintiff had certainly discovered the injury and its negligent cause by that time: She has not contended that she did not know she was molested when it happened (she was 17 years old) or that she was not injured at the time. Thus, plaintiff's time to comply with the claim statutes has passed. Even if she does not rely on the claim presented by her attorney, her action at law is barred.

In the trial court, plaintiff argued that she still has time to present a claim to the County because, under section 340.1, she would have eight years after reaching majority to do so. (Exhibit E, p. 32.) Wrong. The courts would look to section 340.1 only for purposes of determining when the cause of action *accrued*; once that date is settled, the party has only six months – not eight years – under Government Code section 911.2 to present a claim to the public entity. (See *Torres v. County of Los Angeles*, *supra*, 209 Cal.App.3d at p. 335.) Thus, it is too late now for plaintiff to comply with the claim-presentation requirements.

5/ In pertinent part, section 340.1 provides "the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse." Although the courts have not specifically had an opportunity to address in a published opinion the issue of when a cause of action under this section would accrue for purposes of the Tort Claims Act, we believe the courts would ultimately conclude that the cause of action accrues when the plaintiff discovers the injury and its negligent cause. That is precisely how the court resolved a similar issue in in *Torres v. County of Los Angeles*, *supra*, 209 Cal.App.3d 325: Code of Civil Procedure section 340.5 gives a minor plaintiff three years after the date of injury to file a lawsuit for medical malpractice; but for purposes of the Tort Claims Act, his cause of action accrues when his parents first suspect his injury was caused by medical negligence. (At p. 335.)

CONCLUSION

Government Code section 945.6 – and not Code of Civil Procedure section 340.1 – is the statute of limitations applicable to this action. That section required plaintiff to file her lawsuit within six months after the County mailed its notice of rejection of her claim for damages. Since the notice was mailed on May 30, 2002, the lawsuit filed on December 31, 2003, is clearly time-barred. The trial court erred in concluding otherwise and in denying the County's motion for summary judgment on the statute of limitations. A writ should issue to correct this error.

Dated: October 15, 2004

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 14(c)(1))

Pursuant to California Rules of Court, rule 14(c)(1), I certify that this petition contains 4,623 words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Dated: October 15, 2004

Carolyn Oill