

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.

Defendants and Respondents.

After a Decision by the Court of Appeal,
Sixth Appellate District, Case No. H034160
[Santa Clara County Superior Court, Case No. 1-07-CV-089159]

ANSWER TO PETITION FOR REVIEW

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SUPREME COURT
FILED

JUL 21 2011

Frederick K. Ohnrich Clerk

Deputy

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ANSWER TO PETITION FOR REVIEW

I

INTRODUCTION

California Rules of Court, Rule 8.500(b) sets forth four grounds for review of a Court of Appeal decision by the Supreme Court, only one of which is relied upon by Defendant and Respondent COUNTY OF SANTA CLARA (hereinafter “County”) in its Petition for Review: “When necessary to secure uniformity of decision or to settle an important question

of law.” *Rule 8.500(b)(1)*.

The County’s Petition for Review frames the issue as follows: “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?” (Petition for Review at p. 1)

As will be argued and supported below, County’s Petition for Review of the Sixth District Court of Appeal’s decision in *DiCampli-Mintz v. County of Santa Clara, et al.* (2011) 195 Cal.App.4th 1327 (hereinafter “*DiCampli-Mintz*”) is meritless for the following reason:

It is neither so inconsistent with the decisions of other Appellate Districts as to require the Supreme Court’s intervention to secure uniformity of decision, nor does it present an important question of law that is not already settled.

II

LEGAL DISCUSSION

A. THERE ARE INSUFFICIENT GROUNDS FOR SUPREME COURT REVIEW.

1. *DiCampli-Mintz* is Not Inconsistent with the Decisions of Other California Courts of Appeal In Holding that the Substantial Compliance

**Doctrine is Applicable to Defective Claim
Presentment Cases.**

The answer to the first portion of County's "issue" as framed, i.e., whether the substantial compliance doctrine applies where the Legislature has specifically declared to whom a claim must be delivered, is clear and well-established by California case law, as set forth by the Sixth District in *DiCampli-Mintz*. That answer is in the affirmative – the substantial compliance doctrine does indeed apply to cases involving defective claim presentment. This is also illustrated by the analyses afforded the issue in the cases cited by County as being inconsistent with *DiCampli-Mintz* [*Life v. County of Los Angeles* (1991) 227 Cal.App.3d 894, 899-900 (recognized applicability of substantial compliance doctrine, but found that there was none under its facts); *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1778-1780 (also recognized applicability of doctrine, but did not find substantial compliance, citing *Life*); *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 770 (impliedly recognized applicability of doctrine by citing the reasoning of *Life* approvingly); *Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183, 200-202 (recognized applicability of doctrine and engaged in extensive analysis of why plaintiff's presentment in that case did not substantially comply with *Government Code §915*)].

2. **The Sixth District's Decision in *DiCampli-Mintz* Is Not So Inconsistent With the Decisions of Other Appellate Districts as to Require the Supreme Court's Intervention to Secure Uniformity of Decision.**

County asserts in its Petition that review should be granted to resolve a “split among districts,” specifically the Sixth District from the Second, Third, Fourth and Fifth Appellate Districts. In this regard, County cites to four cases it claims are inconsistent with *DiCampli-Mintz: Life v. County of Los Angeles* (1991) 227 Cal.App.3d 894 (Second Appellate District); *Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183 (Third Appellate District); *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761 (Fourth Appellate District); and *Munoz v. State of California* (1995) 33 Cal.App.4th 1767 (Fifth Appellate District).

Each of those cases explicitly or impliedly acknowledged the purposes of the government claims statutes. The primary function of the California Government Tort Claims Act (Gov. Code, §900, et seq.) is two-fold: (1) to apprise a governmental entity of imminent legal action; and, (2) to provide it with sufficient information to enable it to investigate and timely evaluate the merits of a claim and, where appropriate, settle and avoid the expense of litigating meritorious claims. *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455.

The Sixth District held, in its well-reasoned and well-supported *DiCampli-Mintz* opinion, that “delivery of a presuit government claim to a department of the target entity charged with defending or managing claims against that entity may constitute substantial compliance with the claims requirement, so long as the purposes of the act are satisfied and no prejudice is suffered by the defendant.” *DiCampli-Mintz*, at 1330. It becomes apparent, after analyzing the reasoning behind the various cases and making factual distinctions, that the Sixth District is not so at odds with the Second, Third, Fourth and Fifth Districts as to require Supreme Court intervention to resolve any perceived conflicts or inconsistencies.

The Second Appellate District, in *Life*, cited *Elias v. San Bernardino*

County Flood Control District (1977) 68 Cal.App.3d 70, with approval. The court went on to analyze and use *Elias* as an illustration of the application of the substantial compliance doctrine in the context of *Gov't Code §915*'s claim presentment requirements. Citing *Elias* at pp. 75-77, the *Life* court observed that:

“The *Elias* court found substantial compliance and reversed. While the district was a legal entity separate and apart from the county, the board’s duties included the evaluation of claims against the district. Thus, although addressed to the county, the claim *actually had been presented to the officials who bore responsibility for evaluating it, and the purposes of the claims statute therefore had been satisfied*. [citation]

Here, *Life*'s presentation of a claim to the Medical Center's legal department would have constituted substantial compliance with Section 915 only if the misdirected claim were “*actually received by the clerk, secretary, auditor or board of the local public entity, . . . , within the time prescribed by presentation thereof*.” [citation] Unlike the claim in *Elias*, there is no evidence to show that *Life*'s claim actually reached the appropriate officials or board. Thus, as a matter of law, there was no substantial compliance with the claims statute.”

[italics in original; underscore emphasis added]

Thus, it is clear that the *Life* court would have found substantial compliance if it had been presented with facts akin to those set forth in *Elias*; i.e., the claim having been actually received by the “appropriate officials” who “bore responsibility for evaluating it,” thereby satisfying the purposes of the government claims statute. Since this was precisely the holding of the Sixth District in *DiCampli-Mintz*, there is no inconsistency between these two cases.

A similar analysis of the Third Appellate District's decision in *Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183 reveals that its rationale also is not in conflict with *DiCampli-Mintz*. In that case, the claim package was sent to a civil engineer working for the County on the project. The court held that "[n]otice to a subordinate employee of the public entity may not serve" the purposes of the claim-filing requirement of the Government Claims Act (i.e., to provide the public entity with sufficient information to make a thorough investigation of the matter, to facilitate settlement of meritorious claims, etc.). *Id.* at 200 [emphasis added].

The *Westcon* court pointed out that, "[a]s is often the case, the individual known to the claimant may be the very person who committed the wrongdoing that is the subject of the claim" and "[t]his may be the last person who would want to pass a claim on to his or her employer." *Id.* at 200-201. The factual circumstances with which the *Westcon* court expressed concern is in stark contrast to the situation at issue herein. Here, service of the claim upon the County's Risk Management Department amply served the purposes of the Government Claims Act's claim-filing and presentment requirements. Further, there are no allegations by Plaintiff/Appellant that the Risk Management Department committed any wrongdoing against her.

An additional point made in *Westcon* is applicable herein. The court, distinguished *Jamison v. State of California* (1973) 31 Cal.App.3d 513 and *Elias v. San Bernardino County Flood Control Dist.* (1977) 68 Cal.App.3d 70, which were cited by *Westcon* to support its contention that "the claim-filing requirement is met if the circumstances are such that the claim *should have been* received by the proper board." 152 Cal.App.4th at 201.

In contrasting the cases, the court stated that “[t]he present matter is readily distinguishable from the foregoing cases. In those cases, the claim was served on the proper officer of the wrong agency, but an agency nevertheless closely related to the correct agency. Hence, notice of the claim to the proper party was assured, and the purpose of the claim-filing requirement was met. Here, however, there is no reason to believe a claim submitted to Maddux [the County’s engineer] would reach the County board of supervisors.” *Id.* at 202 [emphasis added]. Again, the facts in *DiCampli-Mintz* are more akin to *Jamison* and *Elias* – the Risk Management Department upon whom Plaintiff’s claim was served is a department of the County, which is obviously “closely related” to the County Board of Supervisors as well as charged with evaluating and handling the claim.

The Fourth Appellate District, in *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, relied upon and cited *Life* with approval. The factual circumstances in *Del Real*, similar to those in *Life*, did not suggest that the claim was actually received by anyone who had responsibility for investigating, evaluating and handling the claim. In *Del Real*, the letter from Del Real’s attorney was sent to the police officer who was involved in the accident and then was subsequently received by the office of the city attorney.

It is a reasonable supposition to make that, since the *Del Real* court relied on *Life* (wherein the court intimated that, had there been evidence that the claim actually reached the “appropriate officials or the board” such that

the public entity was provided with sufficient information to enable it to adequately investigate the claim, there would have been substantial compliance), had the Fourth District been faced with similar facts to *Elias*, there would have been a result consistent with that case. By extension, since the facts of *Elias*, as presented in *Life* (with the claim actually being received by the officials who bore responsibility for evaluating it), are analogous to those in *DiCampli-Mintz*, the *Del Real* decision is not in fact inconsistent with *DiCampli-Mintz*.

The same analysis can be done with the Fifth Appellate District's decision in *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, which also relied on *Life*. *Munoz* can be distinguished on its facts, which did not involve delivery to or actual receipt by any official with responsibility for investigation, evaluation or handling of the claim.

**3. The Sixth District's Decision in *DiCampli-Mintz*
Does Not Present an Important Question of Law
With Respect to the Substantial Compliance
Doctrine That is Not Already Settled.**

County alleges a "parade of horrors" that are exaggerated and unsupported by facts or law, in arguing that the precise letter of *Gov't Code* §915 should not be compromised by application of the substantial compliance doctrine as done by the Sixth District in *DiCampli-Mintz*.

Instead, county asserts, the “bright-line” rule provided for by *Section 915* is necessary for the protection and benefit of predictability to public entities and to claimants alike.

The Sixth District was careful to narrowly craft its holding in *DiCampli-Mintz* to apply to the particular facts on a case by case basis. Indeed, the doctrine of substantial compliance requires such an analysis. The decision is based on a sound recitation and analysis of California and out-of-state case law over the course of close to 80 years. This is not a case wherein established case law has been “dramatically changed” so as to merit Supreme Court review.

This Court, in *Costa v. Superior Court of Sacramento County* (2006) 37 Cal.4th 986, addressed the concept of substantial compliance in association with “bright-line” rules. There, the Attorney General urged the this Court to “adopt a “bright-line” rule under which *any* difference in meaning between the version of an initiative measure submitted to the Attorney General and the version circulated for signature would invalidate the circulated petition, without regard to the significance or insignificance of the particular discrepancy in meaning . . .” Such a rule would have admittedly generated “harsh” results. This Court rejected this argument and recognized instead that California cases have consistently “applied a ‘substantial compliance’ rule in this context, realistically evaluating whether

the particular defect in question frustrates the purposes of the applicable . . . requirement.” 37 Cal.4th at 1026-1027.

Similarly, herein, this Court should reject County’s argument that the “bright-line” rule of strict compliance with the precise letter of *Section 915* should take precedence over the longstanding and well-established doctrine of substantial compliance.

III

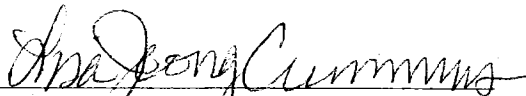
CONCLUSION

The Sixth District correctly decided *DiCampli-Mintz*. County’s Petition for Review is meritless and should be DENIED.

Dated: July 21, 2011

Respectfully submitted,

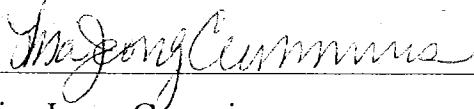
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By: 
Lisa Jeong Cummins
Attorneys for Plaintiff and Appellant,
HOPE DiCAMPLI-MINTZ

CERTIFICATE OF WORD COUNT
[Cal. Rules of Court, Rule 8.504(d)(1)]

I hereby certify that the text of this document, excluding those items listed in Rule 8.504(d)(3), consists of 2,198 words as counted by the Microsoft Office Word 2007 word processing program used to prepare the document.

Dated: July 21, 2011

A handwritten signature in cursive script, reading "Lisa Jeong Cummins", is written over a horizontal line.

Lisa Jeong Cummins
Attorney for Plaintiff and Appellant,
HOPE DiCAMPLI-MINTZ

1 **PROOF OF SERVICE (Supreme Court)**

2 **Case Name:** DiCAMPLI-MINTZ v. COUNTY OF SANTA CLARA
3 **Supreme Court Case No.:** S194501
4 **Court of Appeal Case No.:** H034160
5 **Superior Court Case No.:** 1-07-CV-089159

6 I am a citizen of the United States. My business address is 64 West Santa Clara
7 Street, San Jose, California 95113. I am employed in the County of Santa Clara where
8 this service occurs. I am over the age of eighteen years and not a party to the within
9 action or cause. On the date set forth below, following ordinary business practice, I
10 served the following documents described as:

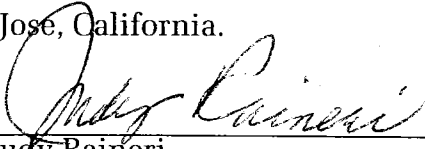
11 **ANSWER TO PETITION FOR REVIEW**

12 in the manner indicated below, by enclosing a true copy thereof on the following parties
13 in a sealed envelope in the ordinary course of business, as follows:

14 **SEE ATTACHED LIST**

- 15 **U.S. MAIL [C.C.P. §1013(a)(b)]:** I am readily familiar with my employer's normal
16 business practice for collection and processing of mail for mailing with the
17 United States Postal Service, and that practice is that all mail is deposited with
18 the United States Postal Service the same day as the day of collection in the
19 ordinary course of business. I caused such documents, with postage thereon fully
20 prepaid, to be placed in the United States Mail at San Jose, California.
- 21 **FACSIMILE TRANSMISSION [C.C.P. §1013(e)(f)]:** I caused such documents to
22 be transmitted to the facsimile numbers of all parties.
- 23 **CERTIFIED MAIL - RETURN RECEIPT REQUESTED [C.C.P. §1020]:** I caused
24 such documents, with postage thereon fully prepaid, to be placed in the United
25 States Mail at San Jose, California.
- 26 **PERSONAL SERVICE/HAND DELIVERY [C.C.P. §1011]:** I caused such documents
27 to be personally delivered.
- 28 **EXPRESS SERVICE [C.C.P. §1013(c)(d)]:** I caused such documents to be
deposited with an Express Service Carrier or Express Mail in accordance with
carrier's designated practice.
- STATE:** I declare under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

Executed on July 21, 2011, at San Jose, California.



Judy Raineri

SERVICE LIST

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