Supreme Court Case No. S194501

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

AUG 01 2011

Frederick K. Ohlrich Clerk

Deputy

HOPE DiCAMPLI-MINTZ

Plaintiff and Appellant,

v.

COUNTY OF SANTA CLARA et al.

Defendant and Respondent.

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

REPLY TO ANSWER TO PETITION FOR REVIEW

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COUNTY OF SANTA CLARA

I.

INTRODUCTION

The Sixth District's decision in *DiCampli-Mintz v. County of Santa Clara* (2011) 195 Cal.App.4th 1327, departs from well-established California precedent holding 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 decision is inconsistent with Government Code section 915, subdivision (e)(1), which provides that a tort 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 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. The decision is in conflict with other districts and creates confusion about how claims may

be presented and when public entities must respond to misdirected claims. Thus, review is necessary to resolve a split in the districts and to settle an important question of law.

II.

ANALYSIS

A. REVIEW SHOULD BE GRANTED TO RESOLVE A SPLIT IN THE DISTRICTS

Under the substantial-compliance doctrine, a tort claim may be valid if it substantially complies with all of the statutory requirements of the Government Claims Act 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 v. Superior Court* (1974) 12 Cal.3d 447, 455-457].) The County's petition for review pointed out that the Second, Third, Fourth, and Fifth Districts have held that a misdirected claim substantially complies with the Government Claims Act only if it is actually received by the clerk, secretary, auditor or board of the local public entity as required by Government Code section 915, subdivision (e)(1). (Petition for Review at pp. 15-20 [citing *Life v. County of Los Angeles* (1991) 227 Cal.App.3d 894, 901; *Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183, 201-202; *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 769; *Munoz v. State of*

California (1995) 33 Cal.App.4th 1767, 1776].)

Plaintiff contends that the Sixth District's decision "is not inconsistent with the decisions of other California Courts of Appeal in holding the substantial compliance doctrine is applicable to defective claim presentment cases." (Answer to Petition for Review at pp. 2-3.) Plaintiff contends that *Life*, *Westcon*, *Del Real*, and *Munoz* support her conclusion that the substantial-compliance doctrine "does indeed apply to cases involving defective claim presentment." (*Id.* at p. 3.) But each of those cases declined to apply the substantial-compliance doctrine because the claims at issue were not presented to or received by one of the recipients expressly designated by Government Code section 915.

Moreover, Plaintiff's assertion that courts apply the substantial-compliance doctrine where there is defective claim presentation (Answer to Petition for Review at p. 3) ignores an important factor: that courts have applied the doctrine only where timely claims were properly presented to statutorily-designated recipients but their content lacked 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].)

Further, Plaintiff's erroneously relies on *Elias v. San Bernardino County Flood Control District* (1977) 68 Cal.App.3d 70, to support her contention that the Sixth District's opinion is "not so inconsistent" with decisions from other districts. (Answer to Petition for Review at pp. 3, 5.) *Elias* stands 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. (*Elias*, 68 Cal.App.3d at p. 74.) *Elias* accordingly has no application here because in that case a proper designee – the governing board – actually received the claim.

Thus, the Sixth District's decision departs from well-established California precedent holding 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 Sixth 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.

B. REVIEW SHOULD BE GRANTED TO SETTLE AN IMPORTANT QUESTION OF LAW THAT IMPACTS ALL PUBLIC ENTITIES IN CALIFORNIA

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 recipients. The Sixth District's decision disregards the plain meaning of the statute 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.

Plaintiff dismisses the confusion the decision creates as a "parade of horribles that are exaggerated and unsupported by facts or law." (Answer to Petition at p. 8.) To the contrary, in *Life* the Second District held that Government Code section 915 requires claimants to file claims with a statutorily-designated official or board and that reliance on a public entity's

internal transmittal of a claim conflicted with the statute. (*Life*, 227 Cal.App.3d at p. 901.)[1]

Further, the Sixth District's departure from the precedent set in other districts will result in confusion both for claimants and public entities about which employees from various County departments and agencies would be considered persons charged with handling claims. Many different public employees are responsible for handling complaints that could be considered claims. For example, a sheriff's deputy who works in an internal affairs division, a hospital employee who works in a customer service department, and a public works employee who responds to disputes with contractors are all responsible for processing and responding to a variety of complaints, some of which could be similar to claims against public entities. It is unclear from the Sixth District's decision if these and other public employees who perform similar "risk management" functions would be considered proper recipients of claims.

Moreover, the Government Claims Act requires that public entities provide notice within 20 days to claimants who have presented insufficient

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[1] Additionally, Plaintiff's citation to *Costa v. Superior Court of Sacramento County* (2006) 37 Cal.4th 986, is unhelpful. That case involved a challenge to an order that prohibited an initiative from being placed on the ballot. It did not involve the Government Claims Act and therefore has no application to this action.

claims (Gov. Code § 910.8) and return untimely claims without action within 45 days (Gov. Code § 911.3(a).) Failure to provide timely notice of insufficiency or return without action results in the public entity's waiver of those defenses. (Gov. Code §§ 911, 911.3(b).) If claims may be presented to any number of public employees who might be perceived to have duties that include handling claims, it will be unclear when these time-sensitive periods expire.

This Court should grant review to address uncertainty that the Sixth Appellate District's decision has created, resolve the split among the appellate districts, and restore the clarity and the bright-line rule intended by the Legislature regarding where claims must be presented.

III.

CONCLUSION

The Sixth District's expansion of the substantial-compliance doctrine creates uncertainty for public entities, claimants, and courts throughout California. The decision will engender costly litigation about whether claims were presented to a proper department or employee and about the proper date from which the public entity's time to respond to misdirected claims begins to run. The County respectfully requests that review be

granted to restore uniformity of decision and to settle an important question of law.

Dated: August 1, 2011

Respectfully submitted,

MIGUEL MÁRQUEZ
County Counsel

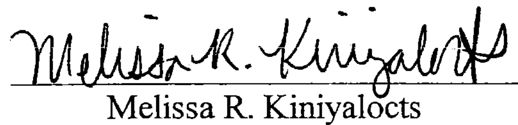
By:
MELISSA KINIYALOCTS
Deputy County Counsel

Attorneys for Defendant
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 1,450 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 August 1, 2011.



Melissa R. Kiniyalocts

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PROOF OF SERVICE BY MAIL

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

I, Mary Lou Gonzales, say:

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

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by placing said copy in an envelope addressed to:

Lisa Jeong Cummins, Esq.
Campbell, Warburton, Fitzsimmons,
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Plaintiff and Appellant

Court of Appeal
Sixth Appellate District
333 W. Santa Clara Street
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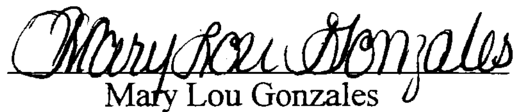
Superior Court of California
County of Santa Clara
191 N. First Street
San Jose, California 95113

which envelope was then sealed, with postage fully prepaid thereon, on **August 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 **August 1, 2011**, at San Jose, California.



Mary Lou Gonzales