Supreme Court Case No. S194501

**IN THE SUPREME COURT**

**OF THE STATE OF CALIFORNIA**

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**HOPE DiCAMPLI-MINTZ**

Plaintiff and Appellant,

v.

**COUNTY OF SANTA CLARA et al.**

Defendant and Respondent.

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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

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# OPENING BRIEF ON THE MERITS

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## 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. May a claimant deliver a claim to a public employee who is not one of the statutorily-designated recipients but is someone who "manages claims," or is strict compliance with Section 915 as enacted by the Legislature required?

## II.

## INTRODUCTION

The Government Claims Act (Government Code §§ 810-996.6) delineates specific requirements for the presentation of claims to public entities. One of the goals of the Government Claims Act is to eliminate confusion and uncertainty resulting from different claims procedures among public entities throughout California.

Government Code section 915, subdivision (a) requires the

presentation of a claim to certain specified individuals. But even if a claim is not presented to one of these individuals, subdivision (e)(1), provides that a claim is "deemed to have been presented in compliance" with the statute if, within the time to present a claim, "[it] is actually received by the clerk, secretary, auditor or board of the local public entity." California's Second, Third, Fourth, and Fifth Appellate Districts have held that the plain language of Government Code section 915, subdivision (e)(1), requires that a claim must be actually received by the clerk, secretary, auditor, or board of a local public entity within the time prescribed.

In contrast, the Sixth Appellate District concluded that Government Code section 915(e)(1) does not require actual receipt by a designated official or governing body if a department or employee who handles claims receives a claim. (*DiCampli-Mintz v. County of Santa Clara* (2011) 125 Cal.Rptr.3d 861, 863.) The decision also implied that receipt by a legal department or attorney for the public entity constitutes substantial compliance with Section 915(e)(1). (*Id.* at p. 870.)

Under the Sixth Appellate District's analysis, substantial compliance with the requirements of Government Code section 915 will suffice; e.g., a claimant may have substantially complied with the statute if a local public entity's department or employee who handles claims – but not one of the

public officials identified by the Legislature – receives a misdirected claim. This analysis contradicts the plain meaning of the statute, which delineates specific officials as proper recipients of claims.

Moreover, the Sixth Appellate District's decision creates uncertainty for claimants and public entities about where a claim must be delivered, as public entities routinely reorganize responsibilities among departments, divisions, and officers in response to budget cuts, lay offs, and for other reasons. This uncertainty will lead to costly litigation to determine whether claims were delivered to a department or employee who handles claims. Further, for claims that were not initially delivered to a department or employee deemed to be responsible for claims, public entities will be forced to litigate, and courts will have to decide, when a public entity's time begins to run to respond to misdirected claims that wend their way to these potentially responsible departments and employees.

This Court should interpret Government Code section 915(e)(1) in accordance with the statute's express language, which requires claims to be actually received by a statutorily-designated official or board. Such interpretation will fulfill the intent of the Government Claims Act to establish uniform procedures throughout California for presenting claims against local public entities. It will also fulfill the intent of Government

Code section 915(3)(1) requiring that claims must be delivered to a statutorily-designated official or board to avoid costly and time-consuming litigation between claimants and local public entities.

## III.

## STATEMENT OF THE CASE

### A. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On April 4, 2006, two doctors performed a hysterectomy on Hope DiCampli-Mintz (Plaintiff) at the Santa Clara Valley Medical Center (SCVMC), a hospital owned and operated by the County. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 863.) In the recovery room Plaintiff complained of cramps in her left leg, which appeared bluish and cold to the touch. (*Ibid.*) Imaging studies showed that Plaintiff's left iliac artery was "completely interrupted." (*Ibid.*) That same day Plaintiff was returned to surgery to repair her left iliac artery and vein. (*Ibid.*)

In June 2006 Plaintiff went to SCVMC's Emergency Department because she was in pain. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 863; Clerk's Transcript (CT) at p. 73.) An emergency room physician told Plaintiff that her blood vessels had been damaged during the first surgery on April 4, 2006, which required the second surgery. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 863.) On October 25, 2006, another SCVMC doctor

expressed sympathy for Plaintiff's condition and asked if she had consulted an attorney. (*Ibid.*; CT at p. 82.)

On April 3, 2007 – a year after Plaintiff's surgery – Plaintiff's attorney delivered to a clerical employee at 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 and to a clerical employee at the SCVMC Risk Management Department. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 864; 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 an action for damages stemming from the April 4, 2006 surgery. (*Ibid.*) 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, supra,* 125 Cal.Rptr.3d at p. 864; CT at pp. 158-59; 176.) On April 23, 2007, Plaintiff's attorney and the claims adjuster spoke by telephone. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 864.) 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 naming the two doctors and SCVMC as defendants. (*DiCampli-Mintz, supra,* 125 Cal.Rptr. 3d at p. 864.) 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 notify her in writing that her notice was untimely or otherwise defective as required by the Government Claims Act. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 864.)

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, supra,* 125 Cal.Rptr.3d at p. 865.) The trial court granted the motion on the grounds that the County made a sufficient showing of Plaintiff's noncompliance with the

Government Claims Act; that Plaintiff did not raise a reasonable inference that her claim was actually received by the statutorily-designated official within the time prescribed for presentation of the claim; and that Plaintiff did not establish waiver and/or estoppel. (*Ibid.*) 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 department or person whose functions include the management or defense of claims against the entity, "so long as the purposes of the act are satisfied and no prejudice is suffered by the defendant." (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 863.) This decision should be reversed for several reasons.

First, the Sixth Appellate District held that a misdirected government claim substantially complied with the claim-presentation requirements even though a statutorily-designated official or body never actually received the misdirected claim. The court reasoned that because a County liability claims adjuster received the misdirected claim, Plaintiff was excused from complying with the claim-presentation requirements. (*DiCampli-Mintz,*

*supra,* 125 Cal.Rptr.3d at p. 876.) This conclusion is inconsistent with the plain language of Government Code section 915.

Second, the Sixth Appellate District declined to follow the rule established in four other districts 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. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at pp. 872-76.) The Sixth Appellate District's decision also conflicts with longstanding precedent that holds that the substantial-compliance doctrine applies only in situations where all of the statutory requirements for a valid claim are met but the claim is technically deficient in some manner.

Third, the Sixth Appellate District followed *Jamison v. State of California* (1973) 31 Cal.App.3d 513, a case that had already been repudiated by the same district that issued it. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at pp. 868-70.) Notably, the district that issued and later repudiated *Jamison* is one of the districts that has held that the substantial-compliance doctrine did not apply when there was no actual receipt by a statutorily-designated recipient under Government Code section 915. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 770.)

Fourth, the Sixth Appellate District relied on out-of-state cases

holding that claims served on a public entity's legal department complied with claim-presentation requirements in those jurisdictions. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at pp. 870-71.) But all other California courts that have considered whether service of claims on a public entity's legal department excused compliance with Government Code section 915 have held that claims had to be actually received by a statutorily-designated recipient; not a public entity's legal department. Moreover, courts in other jurisdictions have held that claims must be presented to statutorily-designated recipients to be effective.

The Sixth Appellate District's decision broadens the substantial-compliance doctrine in a manner that is contrary to the plain language of Government Code section 915 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. The decision should be reversed.

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## IV.

## ANALYSIS

### A. THE SIXTH APPELLATE DISTRICT'S DECISION IS INCONSISTENT WITH THE PLAIN MEANING OF GOVERNMENT CODE SECTION 915

#### 1. The Government Claims Act sets forth specific requirements for proper presentation of claims and time periods for public entities to respond to claims.

This Court has adopted the practice of referring to California's claims statutes as the Government Claims Act. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 743.) 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.)

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, supra,* 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].)

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 the claimant's injury; the name or names of the public

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[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.) Thus, Plaintiff had notice of medical-malpractice cause of action on April 4, 2006, after her first surgery, when she complained of cramps in her left leg and was returned to surgery that same day to repair her left iliac artery and vein. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 863.) Plaintiff's notice of her medical-malpractice cause of action was confirmed in June 2006, when she went to SCVMC's Emergency Department and a physician told her that her blood vessels had been damaged in the first April 4, 2006 surgery. (*Ibid.*) But Plaintiff disingenuously alleges that she did not discover that she had a medical-malpractice cause of action until October 25, 2006, when a SCVMC physician expressed sympathy for her condition and asked if she had consulted an attorney. (*Ibid.*) But it was not until April 3, 2007, that Plaintiff's attorney delivered a letter to clerical employees at SCVMC that indicated that Plaintiff intended to file suit for damages stemming from the first April 4, 2006 surgery. (*Id.* at p. 864.)

employee or employees who caused the injury; and if the amount claimed exceeds $10,000, whether the claim would be a limited civil case. (Gov. Code § 910.) A claim must be signed by the claimant or someone acting on the claimant's behalf. (Gov. Code § 910.2.)

If a claim fails to comply substantially with Government Code sections 910 and 910.2, the board or person designated by it may give written notice of the 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.)

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).)

If an injured party fails to file a timely claim, the party may make a written application 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.

No 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 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, supra,* 42 Cal.4th at p. 738 [quoting *State of California v. Superior Court (Bodde)* (2004) 32 Cal.4th 1243, 1239].)

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, supra,* 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 and does not allow for service on other public employees.

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 presentation requirement: "[a] claim . . . shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if, within the time prescribed for presentation thereof, . . . [i]t is actually received by the clerk, secretary, auditor or board of the local public entity." (Emphasis added.)

The Legislative history of Section 915 recognizes that much unnecessary litigation has been devoted to resolution of technical issues relating to allegedly improper presentation of claims. (Request for Judicial Notice, Cal. Law Rev. Comm. Recommendation and Study Relating to the Presentation of Claims Against Public Entities, Jan. 1959, Exhibit A at p. A-122.) The Legislature intended that this statute would prevent disputes about whether presentation to the wrong official satisfied the statute. (*Ibid.*)

To achieve this purpose, the Legislature provided clear identification of the officer to whom claims are required to be presented. (*Ibid.*)

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. The clerk of the board of supervisors performs 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 prescribes by ordinance. (Gov. Code § 25100.5.) These duties include receiving claims. (Gov. Code § 25101(d).)

In the County of Santa Clara, the Board of Supervisors is the governing body and designated the Clerk of the Board as the official 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.)

Here, the Sixth Appellate District held that a claim substantially complied with the Government Claims Act, notwithstanding the fact that it was presented more than six months after the date of injury and was never actually received by one of the statutorily-designated recipients in

Government Code section 915, because the claim was received by a department or employee whose functions include defending or managing claims. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at pp. 871-72.) This decision is inconsistent with the plain meaning of Section 915, which provides a bright-line rule that claims must be delivered or mailed to the clerk, secretary, or auditor, or the governing body or actually be received by one of these recipients. The statute does not permit presentation of claims to other public entity departments or employees.

## B. THE SIXTH APPELLATE DISTRICT'S OPINION CREATES A 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 is timely presented to a statutorily-designated recipient but is technically deficient in its content 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, supra,* 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, supra,* 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 received by a sanitation district within statutory time for claim presentation that stated only claimant's name and date and place of accident was a valid claim]; *Rowan v. City and County of San Francisco* (1966) 244 Cal.App.2d 308, 312 [timely claim presented to the entity that misstated incident location was valid because it provided sufficient information for entity to investigate].)

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.) As such, the Sixth Appellate District's decision expands the application of the substantial-compliance doctrine to claims that do not comply with the

requirement under Government Code section 915 that claims be actually received by a statutorily-designated recipient.

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

The Sixth Appellate District applied the substantial-compliance doctrine to hold that Plaintiff complied with the claim-presentation requirements because her untimely claim happened to be forwarded to a County department that handles claims, even though that department was not one of the statutorily-designated recipients. (*DiCampli-Mintz*, *supra,* 125 Cal.Rptr.3d at pp. 867-72.) 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 actually received by one of the recipients expressly designated by Government Code section 915.

**a. The Second Appellate District's decision in *Life* rejected receipt of a claim by a public entity's legal department**

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, supra,* 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.*) After the claimant sued, the county filed a motion for summary judgment on the ground that the 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, supra,* 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 expressly declined to follow *Jamison, supra,* 31 Cal.App.3d 513. (*Ibid.*) *Jamison* 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. (*Ibid.*) *Life* held that Government Code section 915 required the claim to actually have been

received by the appropriate person or board: "*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* rejected service of a claim on a County engineer**

The Third Appellate District in *Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183, 201-202, declined to apply the substantial-compliance doctrine when a claim was not actually received by a statutorily-designated official. The *Westcon* court held that the substantial-compliance doctrine did not apply where 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 *Westcon* court further noted that a public employee known to a claimant might be the very person who committed the wrongdoing that was the subject of the claim but might be "the last person who would want to pass a claim on to his or her employer." (*Id.* at p. 201.)

**c. The Fourth Appellate District in *Del Real* 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, supra,* 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 the 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, supra,* 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, supra,* 227 Cal.App.3d at pp. 900-901].)

**d. The Fifth Appellate District's decision in *Munoz* rejected service of a claim on a state prison**

Finally, in *Munoz*, claimant alleged that a state prison failed to treat her father's lung cancer. (*Munoz, supra,* 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 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, supra,* 33 Cal.App.4th at p. 1780.) Instead, it concluded that the State Board of Control received the application beyond the one-year application period. (*Ibid.*) Citing *Life*, the court held that there was not substantial compliance with 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, supra,* 227 Cal.App.3d at pp. 900-901].)

Thus, the appellate districts that have considered the substantial-compliance doctrine in the context of Government Code section 915 have declined to apply the doctrine where claims were not presented to or actually received by a statutorily-designated recipient.

## C. THE SIXTH APPELLATE DISTRICT'S DECISION IMPERMISSIBLY BROADENS THE SUBSTANTIAL-COMPLIANCE DOCTRINE TO INCLUDE CIRCUMSTANCES WHEN AN UNTIMELY CLAIM IS NEVER RECEIVED BY THE CLERK, SECRETARY, AUDITOR, OR BOARD OF A LOCAL PUBLIC ENTITY

### 1. The Sixth Appellate District's decision departed from four other districts and instead relied on the repudiated *Jamison* opinion and inapposite California cases.

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 statutorily-designated recipients. The Sixth Appellate District's decision impermissibly broadens the doctrine to

apply when claims are untimely and never presented to or 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 correctly applied the statute in similar circumstances.

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*, *supra,* 125 Cal.Rptr.3d at p. 872.)

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*, *supra,* 125 Cal.Rptr.3d at p. 869.) In one of those cases, *Jackson v. Board of Education* (1967) 250 Cal.App2d 856, 860, service of a claim on a city was held 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, was held to have rendered 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, supra,* 125 Cal.Rptr.3d at p. 870, fn. 6.) The court did not explain, however, how the failure to provide notice to a statutorily-designated recipient fulfills the purpose of the claim-presentation requirement under Government Code section 915.

The Sixth Appellate District also 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." (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 870, fn. 6.) Calling *Redwood*'s decision "troubling," the Sixth Appellate District recognized that the case adopted a rule of strict compliance with a statute that identified the person to whom a claim must be presented. (*Ibid.*) But the court did not explain why *Redwood*'s conclusion that the claim-presentation requirements must be strictly construed did not apply to this action.

Instead, the Sixth Appellate District relied on *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. (*Ibid.*)

The Sixth Appellate District also relied on two other California cases that predate the 1963 Government Claims Act: *Peters v. City and County of San Francisco* (1953) 41 Cal.2d 419 and *Insolo v. Imperial Irrigation Dist.* (1956) 147 Cal.App.2d 172. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 870.)

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

And in *Insolo*, the claims statute at issue required service of a claim on the secretary of an irrigation district. (*Insolo, supra,* 147 Cal.App.2d at p. 173.) The district alleged that the claimant failed to comply with the

statute because the claim was not served on the secretary. (*Id.* at p. 174.) But the court held that the claimant substantially complied with the statute because she sent the claim by registered mail to the district's headquarters, where a clerk in the mailing department forwarded it to the district's business manager, who forwarded it to the district's secretary. (*Id.* at pp. 173-75.) Thus, the claim was actually received by the appropriate official.

Both *Peters* and *Insolo* are distinguishable from the instant action in that the claims in those cases were actually received by an appropriate official that, had Government Code section 915 been in effect, was a statutorily-designated official. As such, the substantial-compliance doctrine analyses in *Peters* and *Insolo* have no application here.

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, supra,* 125 Cal.Rptr.3d at p. 871 [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. As such, neither *Elias* nor *Carlino* have any application here.

2. 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*, holding that letters sent to an entity's legal department satisfied claim-presentation requirements in those jurisdictions. (*DiCampli-Mintz, supra,* 125 Cal.Rptr.3d at p. 870.) 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. The high court of Indiana deemed the city's legal department an agent of the mayor and held that the city attorney had the authority to accept notice on behalf of the mayor for purposes of the Indiana statute. (*Ibid.*) Claimant's husband wrote letters to the city's legal department, without sending a notice of the claim to either official named in the statute. (*Ibid.*)

After the *Galbreath* case was decided, Indiana enacted a statute explicitly providing that claims against political subdivisions may be filed with either the governing body of that political subdivision or the Indiana political subdivision risk management commission. (Ind. Code § 34-13-3-8.) Thus, Indiana precedent is not applicable to this case.

And in the other out-of-state case cited in *Jamison*, *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.)

The Sixth District's reliance on *Galbreath* and *Stone* ignored more recent Indiana and District of Columbia cases that hold that claimants must actually serve claims on officials designated by statute to satisfy notice requirements. For example, in *Hasty v. Floyd Memorial Hospital* (Ct. App. Ind. 1993) 612 N.E.2d 119, 121, plaintiff injured herself when she slipped and fell in a county hospital. Plaintiff sent a letter to the hospital's insurer advising of the hospital's alleged negligence. (*Ibid.*) The Indiana appellate court, which did not cite *Galbreath*, held the contact with the hospital's insurance carrier was insufficient to establish proper notice to the hospital in accordance with the applicable statute, which required that notice of claims be filed with the governing body or the risk management commission. (*Id.* at p. 123.)

Similarly, in *Brown v. District of Columbia* (U.S. Dist. D.C. 2003)

251 F.Supp.2d 152, 154, a police department employee sued her employer alleging constitutional and tort claims. The applicable claim statute required written notice of a claim to be delivered to the mayor. (*Id.* at p. 165.) Plaintiff conceded that she did not provide written notice to the mayor but alleged that she sent a letter to the police chief and counsel for the police department instead. (*Ibid.*) The court did not rely on or cite *Stone* and held that plaintiff failed to comply with the statutory claim-presentation requirement because the letter was not delivered to the mayor. (*Ibid.*)

Notably, appellate courts in the District of Columbia have held that while the contents of a claim are to be interpreted liberally, the statute requiring claims to be delivered to the mayor must be strictly construed. (*Chidel v. Hubbard* (D.C. Ct. App. 2004) 840 A.2d 689, 695;[2] *Hardy v.*

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[2] The *Chidel* court distinguished another District of Columbia case cited by the Sixth Appellate District, *Shehyn v. District of Columbia* (D.C. Ct. App. 1978) 392 A.2d 1008. (*DiCampli, supra,* 125 Cal.Rptr.3d at p. 870.) The *Chidel* court concluded that although *Shehyn* did not require strict compliance with the claim-presentation statute, that case involved a claim that the District breached its contractual duty to restore a leased property to its original condition and the District had notice of the breach and injury because it "took possession of the premises in the condition to which they were to have been restored." (*Chidel, supra,* 840 A.2d at p. 695.) The *Shehyn* court distinguished claims arising from the negligence of District employees, explaining that in such cases, the District, as a corporate entity, would not necessarily be on notice of the breach or of the resulting injury when it occurred. (*Ibid.*) *Chidel* involved contribution claims that arose

*District of Columbia* (D.C. Ct. App. 1992) 616 A.2d 338, 340.) This is similar to California cases holding that the substantial-compliance doctrine applies only when claims are timely presented to statutorily-designated recipients but lack certain required content.

The Sixth Appellate District also relied on *Webb v. Highway Div. of Oregon State Dept. of Transp.* (1982) 652 P.2d 783, 784, which is inapposite because the applicable Oregon claim-presentation statute explicitly provides that any communication regarding the circumstances giving rise to a claim to any person responsible for administering tort claims on behalf of the public body constitutes actual notice of the claim. (O.R.S. § 30.275(6).) The California Legislature has made an express policy decision not to take that approach and instead requires claims to be presented to or actually received by statutorily-designated recipients.

In contrast to the out-of-state cases upon which the Sixth Appellate District relied and the applicable claim-presentation statutes in those jurisdictions, the language of Government Code section 915 is clear and unambiguous. Indeed, courts in jurisdictions that have statutes similar to

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from a medical-malpractice action. (*Id.* at p. 691.) The *Chidel* court held that *Shehyn* did not apply because there was no indication that the District was aware of the breach of the standard of care at the time it occurred. (*Id.* at p. 695.)

Section 915 require claims to be presented to statutorily-designated officials and hold that service on other public employees is ineffective. (See e.g., *Batty v. Glendale Union High Sch. Dist.* (Az. Ct. App. 2009) 212 P.3d 930, 934 [delivery of a claim to a school superintendent was insufficient to comply with a statute requiring service on the chief executive officer, secretary, clerk, or recording officer of government subdivision]; *Jefferson County Health Services Assoc., Inc. v. Feeney* (Colo. 1998) 974 P.2d 1001, 1002 [delivery of a claim to a board of county commissioners instead of the board of health was insufficient because the claim was not delivered to the governing body of the public entity or its attorney as required by statute]; *Bellman v. Town of West Hartford* (Conn. App. Ct. 2006) 900 A.2d 82, 91 [email to a town employee failed to satisfy the statutory notice requirement that a claim has to be delivered to the municipality]; *Hansen v. City of Laurel* (Md. Ct. Spec. App. 2010) 996 A.2d 882, 980 [claim sent to the city administrator did not satisfy the statutory notice requirement that claims have to be submitted to a county commissioner, county council, or corporate authority of a local government]; *Shunk v. Utah* (Utah 1996) 924 P.2d 879, 881 [service of a claim on the state office of education and the attorney general did not satisfy the statutory requirement that notice be served on the governing body of the school district].)

Further, jurisdictions with statutes requirng claims to be served on specific officials have held that claims that are ultimately received by departments or employees that handle claims do not excuse compliance with the claim-presentation statutes. (See e.g., *Estate of McElwee v. Omaha Transit Auth.* (Neb. 2003) 664 N.W.2d 461, 468 ["while a subordinate employee may ultimately be directed to oversee the administration of the claim, it is still necessary that the claim be filed in the official records and made known to the governing body"]; *Foster v. Kootenai Medical Center* (Idaho Ct. App. 2006) 146 P.3d 691, 696 [letter advising state board of medicine of medical-malpractice claim that was eventually forwarded to public hospital did not satisfy claim-presentation requirement]; and *Willis v. City of Lincoln* (Neb. 1989) 441 N.W.2d 846, 850 [letter from plaintiff's lawyer to city transportation system did not substantially comply with statute that required service of claims on the clerk, secretary, or other official whose duties included maintaining official records; it did not matter that the risk manager for the city had notice of the accident through a city driver's report].)

And in jurisdictions with statutes requiring claims to be served on specific officials, service of claims on attorneys for public entities is defective. (See e.g., *Zeferjohn v. Shawnee County Sheriff's Dept.* (Kan. Ct.

App. 1999) 988 P.2d 263, 266 [service of a claim on the county attorney did not satisfy claim-presentation statute, which required service on the county clerk]; *Pepperman v. Barrett* (Me. 1995) 661 A.2d 1124, 1126 [letter to the town attorney failed to satisfy the claim-presentation requirement that notice be served on the town clerk, selectmen, or assessor); and *Brinkley v. City University of New York* (N.Y. App. Div. 1983) 92 A.D.2d 805, 806 [service of claim on university's attorney was not service on the university as required by statute].)

Similar to *Zeferjohn*, *Pepperman*, and *Brinkley*, at least two appellate districts in California have held that service of letters or claims on attorneys for public entities does not constitute substantial compliance with the claim-presentation requirements. For instance, 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 a claimant and a school district exchanged a series of letters. The claimant later 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, the claimant's attorney sent a letter to a police officer with whom the claimant was involved in a car accident. (*Del Real, supra,* 95 Cal.App.4th at p. 764.) The letter, which was sent before the 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.) That the police officer's attorney received and responded to the letter was irrelevant 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." (*Ibid.*)

Thus, the Sixth Appellate District's decision departs from well-established California precedent holding that the substantial-compliance doctrine is reserved for only those claims that are timely presented to or

received by a statutorily-designated recipient but are technically deficient in some respect. The decision also departs from precedent in many other jurisdictions that have claim-presentation statutes that – similar to Government Code section 915 – require claims to be presented to statutorily-designated officials. In those jurisdictions, the courts have held that service on public employees that are not statutory designees is ineffective.

## D. THE SIXTH APPELLATE DISTRICT'S DECISION IGNORES THE PLAIN LANGUAGE OF SECTION 915 AND CREATES CONFUSION FOR CLAIMANTS, PUBLIC ENTITIES, AND COURTS ABOUT 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 requiring claims to 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 statutorily-designated recipients. The Legislature deliberately established this bright-line rule to prevent litigation over improper presentation of claims.

The Sixth Appellate District's decision is contrary to 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 uncertainty about where and how claims must be delivered, when the 20-day period starts running for public entities to give written notice of insufficiency of claims, and when the 45-day period starts running for public entities to respond to claims.

*Dilts*, which rejected the contention that letters to a public entity's attorney constitute proper presentation of a claim, highlights the untenable consequences of broadening statutory claim-presentation requirements. (*Dilts, supra,* 189 Cal.App.3d at p. 36.) *Dilts* noted that if a series of letters to a public entity's attorney could satisfy 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 substantially comply with Government Code section 915 if they wend their way to public entity departments and employees even when a statutorily-designated official or governing body never receives a claim, 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 the claims were ever forwarded to a department or employee that manages claims.

Moreover, under the Sixth Appellate District's decision, it is unclear whether claimants or public entities have the burden to prove that misdirected claims were delivered to or received by a department or employee that manages claims and when the public entities' time to respond to misdirected claims begins to run. Indeed, the question of whether a department or specific employee "manages claims" would also be ripe for litigation. The decision also places the burden on public entities to prove that they have been prejudiced by a claimant's failure to present a claim to a statutorily-designated recipient.

Notably, the Sixth Appellate District's decision provides an incentive for claimants – particularly those, like Plaintiff in this action, who have missed the six-month deadline to present timely claims – to misdirect their claims. Public entities are more likely to give notice of an untimely claim and return it without further action if a statutorily-designated recipient actually receives it. If a public entity does not act on a misdirected claim within 45 days, it waives any defense that the claim was untimely. Thus,

the Sixth Appellate District's decision encourages gamesmanship because claimants who have missed the six-month deadline may benefit from misdirecting an untimely claim if the public entity does not give notice that it is untimely within 45 days.

If the Court allows the Sixth Appellate District's decision to stand, claimants and public entities will have to resort to costly litigation to determine when the time to respond to misdirected claims begins to run. This is exactly what the Government Claims Act, and Section 915 in particular, was meant to avoid. This result could not have been intended by the Legislature when it enacted the Government Claims Act and identified the specific individuals who must be presented with or receive claims; indeed, such a result is contrary to the Act's goal to eliminate uncertainty in the claims-presentation requirements.

## V.

## CONCLUSION

In enacting Government Code section 915, the Legislature specifically provided who must receive a claim to satisfy California's claim-presentation requirements. With the exception of the Sixth Appellate District, every district in California that has examined Government Code section 915 has held that it provided a bright-line rule that claims had to

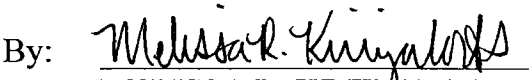
have been actually received by an official designated by statute to receive claims. The Sixth Appellate District's opinion stands alone in holding that untimely claims substantially comply with the claim-presentation requirements if they are given to a department or employee whose functions include handling claims against the entity.

This Court should confirm the Legislature's bright-line rule in Government Code section 915 and require that claims be actually received by a statutorily-designated official. This will fulfill the Legislature's intent in enacting the statute and will avoid confusion and costly litigation about whether claims were presented to a proper department or employee and what the proper date is from which the entity's time to respond to misdirected claims begins to run. The Sixth Appellate District's decision should be reversed.

Dated: September 9, 2011

Respectfully submitted,

MIGUEL MÁRQUEZ
County Counsel

By: 
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Deputy County Counsel

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

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.504 or 8.204 of the California Rules of Court, I certify that the foregoing Petition is proportionately spaced, uses a thirteen point Times New Roman font, and contains 8,642 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 September 9, 2011.

Melissa R. Kiniyalocts

460835.wpd

**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

**OPENING BRIEF ON THE MERITS**

by placing said copy in an envelope addressed to:

Lisa Jeong Cummins, Esq.
Campbell, Warburton, Fitzsimmons,
Smith, Mendell & Pastore
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which envelope was then sealed, with postage fully prepaid thereon, on **September 9, 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 **September 9, 2011**, at San Jose, California.

Mary Lou Gonzales

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