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 BRIEF ON THE MERITS

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I

INTRODUCTION

At issue in this appeal is the interpretation of *Government Code* section 915 (hereinafter "Section 915"), which was originally enacted as part of the *Government Claims Act* (*Government Code* sections 810 through 996.6) in 1963, and the application of the substantial compliance doctrine thereto.

As pointed out by the Sixth District Court of Appeal's opinion in *DiCampli-Mintz v. County of Santa Clara* (2011) 195 Cal.App.4th 1327, the substantial compliance doctrine has been applied in this state in the government claims context since at least as early as 1933 [see, *Uttley v. City of Santa Ana* (1933) 136 Cal.App. 23, 25]. (195 Cal.App.4th at 1337.) The doctrine has been applied by California courts to determine cases wherein the sufficiency of "claim content," as well as the sufficiency of "claim presentment," was at issue. [1] As will be discussed more fully below, this is true of cases decided both before and after the enactment of the *Government Claims Act*.

Given that the substantial compliance doctrine is entrenched within the body of case law in California, and has been now for nearly 80 years, Defendant County of Santa Clara's argument, that the Sixth District's application of the doctrine to the provisions of Section 915 in *DiCampli-Mintz* creates "uncertainty" and "confusion" for claimants and public

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[1] *Government Code* section 910 sets forth the required contents of all claims presented under the *Government Claims Act*. *Government Code* section 915 sets forth the requirements for presentment of such claims to a local public entity, to the state, to a judicial branch entity, and to the Trustees of the California State University.

entities, rings hollow. The holding of *DiCampli-Mintz* is well-reasoned and entirely appropriate to the facts and circumstances presented therein, which is exactly what is expected for the case by case analysis contemplated by the substantial compliance doctrine.

Just as the regular application of the substantial compliance doctrine to claim content cases has not caused an upheaval in the law, the doctrine's application to claim presentment cases has not either.

To the extent that the cases from other districts in California [*Life v. County of Los Angeles* (1991) 227 Cal.App.3d 894; *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761; *Munoz v. State of California* (1995) 33 Cal.App.4th 1767; *Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183] are interpreted to hold that there is to be strict compliance with the precise language of Section 915, precluding the application of the substantial compliance doctrine, they were wrongly decided. This position is buttressed by the plethora of California, as well as out of state, cases surveyed below.

This Court, as California's "court of last resort," independently reviews all decisions of the lower appellate courts without deference to the holdings or analyses of those courts, "in order to be free to further the uniform articulation and application of the law" within California. *Smiley v. Citibank* (1995) 11 Cal.4th 138, 146. Plaintiff Hope DiCampli-Mintz urges this Court to disapprove the lower court decisions holding that there must be strict compliance with Section 915, while affirming the decision of the Sixth District in her case.

II

SUMMARY OF DEFENDANT COUNTY OF SANTA CLARA'S ARGUMENTS

The County's Opening Brief arguments can be distilled into the following:

A. There must be strict compliance with the provisions of Section 915, in that the claim can only be presented to the designated recipients specified therein. In the case of a claim against a local public entity, such as the County of Santa Clara, it must be delivered to the "clerk, secretary or auditor thereof." [Section 915(a)(1) and (2)]

B. If the claim has not been presented to a designated recipient in strict compliance with Section 915, substantial compliance therewith can only be found if the claim is actually received by a designated recipient. [Section 915(e)(1)] Therefore, with respect to misdirected claims against the County of Santa Clara, the doctrine of substantial compliance applies only when the claim is actually received by the County's "clerk, secretary or auditor."

C. The Legislature intended Section 915 to establish "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." [Opening Brief on the Merits, p. 36]

D. By holding that the substantial compliance doctrine permits claimants to present their claims to persons/entities other than those designated in Section 915 under certain factual scenarios, the Sixth District's decision in *DiCampli-Mintz* creates confusion and uncertainty about how claims are to be presented and with regard to the timing of a public entity's response to those claims.

As will be shown below, each of these arguments is without merit.

III
DISCUSSION

A. Purposes of Government Claims Statutes

The primary function of California's *Government Claims Act* 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. So long as the purposes of the claims statutes are effectuated, its requirements should be given a liberal construction in order to permit full adjudication of the case on its merits. *Johnson v. San Diego Unified School District* (1990) 217 Cal.App.3d 692, 697.

B. The Substantial Compliance Doctrine

1. Pre-Enactment of California's Government Claims Act

Prior to the enactment of the *Government Claims Act*, and within it Section 915, California courts were applying the substantial compliance doctrine to cases wherein the claim was filed with the wrong entity.

In *Milovich v. City of Los Angeles* (1941) 42 Cal.App.2d 364, plaintiff contractor argued that the filing of his claim with the city's chief

engineer, as provided for in the construction contract, was in sufficient compliance with the city's charter provisions, which specified that claims were to be presented to the Board of Water and Power Commissioners. The court stated that "the purpose of filing a claim, as provided in the charter, is to enable public officials to make proper investigation concerning the merits of the claim and, if in their opinion settlement of such claim be proper, to proceed to such disposition without the expense of a lawsuit." (42 Cal.App.2d at 372.) It held that "[v]iewed from any standpoint of fairness, equity and justice, the respondent herein complied substantially with the provisions of section 363 of the Los Angeles City Charter." (*Id.* at p. 371.) The court noted that when "there is no evident intention to mislead, but a *bona fide* attempt to comply with the law, the notice is sufficient in the absence of any evidence that it did in fact mislead." (*Id.* at p. 372.)

Similarly, this Court, in *Natural Soda Products Company v. City of Los Angeles* (1943) 23 Cal.2d 193, found substantial compliance with the presentment provisions of Section 363 of the Charter of Los Angeles even though the claim was not served on the Board of Water Commissioners. Instead, plaintiff presented his claim to the Department of Water and Power, which passed it along to the legal division. The deputy city attorney then sent it to the proper board. In finding substantial compliance, this Court held that "the requirement that a claim be presented to such a board is satisfied by presentation to a subordinate who represents the board for the recipient of such claims from the public." (23 Cal.2d at 202.)

Another one of this Court's pre-*Government Claims Act* cases applying the substantial compliance doctrine to a misdirected claim is *Peters v. City and County of San Francisco* (1953) 41 Cal.2d 419. It was held that, "while plaintiff should have filed the signed original of the claim

with the clerk of the board of supervisors [rather than with the city controller], her failure to do so does not defeat her right to recover. The purpose of requiring presentation of a written claim is to give the appropriate municipal body timely notice of the accident and an opportunity to investigate it." (41 Cal.2d at 426.)

Insolo v. Imperial Irrigation District (1956) 147 Cal.App.2d 172 was discussed by the Sixth District in *DiCampli-Mintz* and summarized therein:

> "This was an action arising from a nuisance, in which the trial court entered a nonsuit on the ground that the plaintiff had not complied with a claims statute requiring service on the secretary of the defendant water district. The plaintiff's attorney had mailed the claim to the district's headquarters, where a mail clerk opened it and signed a return receipt. (*Id.*at p. 174.) It was then given to the business manager, who later reported that he had given or sent it to the district secretary. (*Ibid.*) The district originally admitted that the plaintiff had complied with the claims requirement, but subsequently amended its answer to deny proper presentment. (*Ibid.*) The reviewing court held that the plaintiff's actions constituted substantial compliance. (*Id.* at p. 175.)

2. Government Code §915 and Substantial Compliance

Section 915, in pertinent part, provides:

> "(a) A claim, any amendment thereto, or an application to the public entity for leave to present a late 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.

(2) Mailing it to the clerk, secretary, auditor, or to the governing body at its principal office.

. . . . .

(e) A claim, amendment or application 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, any of the following apply:

(1) It is actually received by the clerk, secretary, auditor or board of the local public entity."

As recognized by the court in *DiCampli-Mintz* [citing *Jamison v. State of California* (1973) 31 Cal.App.3d 513, 516], "most extant decisions on the question of substantial compliance involve defects in 'the integrity of the claim itself – the *form* of the claim – as distinguished from the method of its presentment – the *filing*.'" (195 Cal.App.4th 1327 at p. 1337.) Cases uniformly hold, and the County does not dispute, that the substantial compliance doctrine applies to save claims that are defective in some manner as to form or content; i.e., not in compliance with *Government Code* section 910. Where the parties and the courts diverge is over the question of whether the substantial compliance doctrine is applicable to situations where the claim was not presented to one of the designated recipients specified in Section 915.

Complicating any substantial compliance analysis in the claim presentment context is the reasoning and holding by the Second Appellate District (Division 3) in *Life v. County of Los Angeles* (1991) 227 Cal.App.3d 894, characterizing the provisions of Section 915(e) as "codifying" the substantial compliance doctrine within the meaning of that section. This erroneous supposition was followed by the Fifth Appellate

District in *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, as well as by the Fourth Appellate District (Division 2) in *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, which both cited the *Life* decision with approval.

Entering the fray, with a contrary and better reasoned analysis, is the Sixth Appellate District's decision in *DiCampli-Mintz v. County of Santa Clara* (2011) 195 Cal.App.4th 1327. The Sixth District opined that the *Life* court:

> ". . . . turned the doctrine of substantial compliance on its head by basing the scope of its application on a strict reading of the statute. That treatment is reflected in the court's references to 'the substantial compliance doctrine *as codified in section 915,* subdivision (d)' and to 'substantial compliance *under the statute.*' (*Life*, *supra.*227 Cal.App.3d at p. 901, italics added.) These constructions betray a basic misunderstanding of the doctrine of substantial compliance, which can only come into play when statutory requirements have *not* been strictly or fully satisfied. [citation, italics added] . . . .
>
> The gist of the substantial compliance doctrine is that in appropriate cases courts will look beyond the terms of a statute to consult its underlying purpose, particularly where strict adherence will result in the loss of important rights. By requiring a plaintiff to bring his or her compliance squarely within the terms of the governing statute, without regard to its purpose, the court in *Life* effectively held the doctrine of substantial compliance *inapplicable* to the presentment of government claims. By doing so, it repudiated not only *Jamison* but at least 80 years of California precedent . . ."
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> (*DiCampli-Mintz*, *supra.*, 195 Cal.App.4th at 1343-1344.)

Appellate courts review questions of statutory interpretation

"seeking, as always, to ascertain the Legislature's intent so as to give effect to the law's purpose." [citations omitted] . . . "If 'statutory text is susceptible of more than one reasonable interpretation, [the court] will consider a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.'" [citations omitted] "Ultimately [the court will] choose the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute." [citations omitted] *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471, 485-486.

The court in *Life*, *supra.*, held that Section 915(c) [now subsection (e)] "codified" the substantial compliance doctrine with respect to presentment of government claims. However, since nowhere in Section 915 did the Legislature use language that indicated an intent to make the provisions of subsection (e) the exclusive measure of substantial compliance with the statute, it is reasonable to interpret that subsection as not ruling out other factors and conditions under which substantial compliance can be found. Such a statutory construction, would allow more liberal application of the substantial compliance doctrine, and thereby better promote (rather than defeat, as with strict compliance) the clear purposes and primary function of the *Government Claims Act*; i.e., to apprise the governmental entity of imminent legal action and to provide it with sufficient information to enable it to investigate and evaluate claims, and to settle them when appropriate. *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455. The Sixth District, in *DiCampli-Mintz* aptly analyzed the statutory language of Section 915(e)(1) and *Life*'s treatment of it in this manner:

> "The supposed requirement of actual receipt, on which the [*Life*] court's entire analysis rests, is drawn from the statutory proviso that 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 the claim 'is actually received by the clerk, secretary, auditor or board of the local public entity. . . .' [citations] This provision does not by its terms *require* actual receipt. Rather it *permits* actual receipt to substitute for the prescribed modes of presentment. It is unquestionably remedial in character, its purpose being to ameliorate the harsh effects that would otherwise flow from those more specific prescriptions.
>
> As a remedial statute, the cited provision should be *broadly* construed. [citation] The *Life* court read this permissive provision as mandatory, and indeed applied it to *impose a procedural forfeiture*, even though statutes inflicting such a result are to be *narrowly* construed. [citation] . . . ."
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> (*DiCampli-Mintz, supra.*, 195 Cal.App.4th at p. 1343.)

It is entirely reasonable to assume, that the Legislature, when enacting Section 915, would have chosen appropriate and precise language if it had intended subdivision (e) to codify and constitute the sole means by which the substantial compliance doctrine can be satisfied in the claim presentment context. However, the terminology used in Section 915(e) and several other code sections within its statutory scheme belie such an interpretation.

Subdivision (e) of Section 915 provides that a claim "shall be deemed" to have been presented "in compliance" with this section if actually received by one of the designated recipients. Compare the language used in *Government Code* section 910.8, pertaining to the requirement that notification of a claim's insufficiency be provided by the

public entity: "If, in the opinion of the board or the person designated by it, a claim as presented fails to *comply substantially* with the requirements of Sections 910 and 910.2 . . ." [italics added]

Given the fact that in 1963 when the *Government Claims Act* was enacted, the substantial compliance doctrine was already firmly rooted in California's common law, the Legislature's choice of words to use in Section 910.8 ("comply substantially") versus those used in Section 915(e) ("deemed to have been presented in compliance") speaks volumes. Had the Legislature intended for subsection (e) of Section 915 to occupy the entire universe of "substantial compliance" in the claim presentment context, it could have said so by using the word "substantial" to modify the word "compliance" as it did with Section 910.8. This was not done.

The word "deem" is defined as "to come to think or judge: consider" (http://www.merriam-webster.com/dictionary/deem). Therefore, the reasonable interpretation of Section 915(e) is that, in addition to delivering the claim directly to the designated recipient, the presentment requirement may also be satisfied (deemed compliant or considered the equivalent of compliance) if the designated recipient actually receives the claim.

To the extent that the court in *Life* adopted a strict interpretation of Section 915, Plaintiff urges this Court to reject its holding, as did the Sixth District, as being inconsistent and antithetical to the oft stated purposes and intent behind the government claims statutes. Further, the *Life* court's holding that Section 915(c) [now subsection (e)] "codified" the substantial compliance doctrine with respect to presentment of a government claim is not consistent with cases such as *Elias v. San Bernardino County Flood*

Control District (1977) 68 Cal.App.3d 70, since those cases did not limit their finding of substantial compliance to "actual receipt" by the entities listed in Section 915(e)(1). The unyielding interpretation advocated by Defendant County herein flies in the face of the substantial compliance test, which requires the court to ask whether sufficient information is disclosed on the face of the filed claims to reasonably enable the public entity to make an adequate investigation of the merits of the claim and to settle it without the expense of a lawsuit (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1083) and mandates that, in appropriate cases, where the public entity has suffered no prejudice, substantial compliance will be found. (*Donohue v. State of California* (1986) 178 Cal.App.3d 795, 804).

3. *Life*, *Munoz*, *Del Real*, and *Westcon*

Plaintiff agrees with the Sixth District's analysis of each of these cases in *DiCampli-Mintz* and therefore will defer to that Court's treatment therein, but will add the following supplemental arguments.

The fact that the substantial compliance doctrine is applicable to cases involving defective claim presentment is 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* section 915)]. Therefore, while there may still be inconsistencies in the ultimate holdings of these cases (i.e., substantial compliance can only be found in a Section 915 claim presentment case where the misdirected claim is actually received by the designated recipient) with that of the Sixth District, the analytical process utilized in each case appeared to be consistent.

Each of those cases also explicitly or impliedly acknowledged the purposes of the government claims statutes: (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. 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* section 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."
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> [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.

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 can be harmonized 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 analysis employed by the court in *Del Real* is one of substantial compliance in the traditional sense.

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 or the claim.

Plaintiff urges this Court not to follow *Life*, which is not in line with, and does not advance, the purposes of the government claims statutes, and instead to uphold the Sixth District's *DiCampli-Mintz* decision, along with other well-reasoned and fairly decided cases such as *Elias*. Whether the claim or the presentment thereof satisfies the purposes of the tort claims act is the overwhelming consideration in a substantial compliance analysis. In the case herein, the distinguishing factor is that, regardless of a duty put upon the incorrect recipient of the claim to forward it to the proper entity, the proper persons responsible for evaluating and handling the claim **did in fact receive** Plaintiff's Section 364 Notice claim in such time to adequately assess and evaluate it.

The County's arguments misconstrue the analysis for the substantial compliance doctrine. The County focuses on the failure to meet the specific letter of Section 915, whereas the analysis should really focus on whether the purposes of the *Government Claims Statutes* have been satisfied. Even the *Life* court went through the exercise of conducting a factual analysis consistent with application of the substantial compliance doctrine before ultimately holding that the facts of that case did not amount to substantial compliance.

Despite the ultimate strict compliance holdings of *Life*, *Munoz* and *Del Real*, there are still courts that apply the "substantial compliance" doctrine in cases where there is an alleged failure to comply with the strict provisions of Section 915. *Jamison v. State of California* (1973) 31 Cal.App.3d 513, which has been criticized for the portion of its holding that purported to impose an affirmative duty upon public employees to forward misdirected claims to the proper entity, is still good law in some districts. California courts have not been disinclined to utilize the "substantial compliance" aspect of *Jamison* and to apply the doctrine in their case analyses. [See, *Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183, 201-202; *Golden Drugs Co., Inc. v. Maxwell-Jolly* (2009) 179 Cal.App.4th 1455, 1470-1471; *Garber, et al. v. City of Clovis* (2010 E.D. Cal.) 698 F.Supp.2d 1204.]

It appears from those cases that, whether there has been substantial compliance with the *Government Claims Act*, including the service of the claim upon the proper person or entity, is to be determined on a case by case basis taking into account a factual analysis and application to the intent

and purpose of the *Government Claims Act*.

Substantial compliance refers to the extent of compliance with the essential matters necessary to assure every reasonable objective of the statutes -- in this case, the purposes of the *Government Claims Act* as a whole – without prejudice to the government. See, *Carlino v. Los Angeles County Flood Control District* (1992) 10 Cal.App.4th 1526, 1534.

C. Survey of Out-of-State Cases

It is obvious, from the cases cited by the County in its Opening Brief on the Merits and from the cases to be discussed in this section of Plaintiff's Answer Brief on the Merits, that there are splits among the various non-California jurisdictions with regard to the application of the substantial compliance doctrine in the claim presentment context, just as there is a split among the California appellate districts.

Plaintiff DiCampli-Mintz asserts that the positions taken by the Sixth District in her case, as well as the out-of-state cases surveyed below, are the better reasoned ones and more in line with the Legislative intent to fulfill the purposes of California's *Government Claims Act* (i.e., early notice to the public entity so as to afford it normal statutes of limitation provided for by the *Code of Civil Procedure* within which plaintiffs may file suit, as well as impose procedural hurdles (many "traps for the unwary") in the claims process. Governmental entities, in turn reap all of the benefits, from the opportunities for early notice and investigation to the technical defenses available in the event of litigation.

Strict statutory interpretation of the provisions of the *Government*

Claims Act, rather than application of the more liberal substantial compliance doctrine, serves to give governmental entities a double advantage over victims of governmental negligence or wrongdoing. This could not have been the result sanctioned or intended by the Legislature in enacting the *Government Claims Act*. The substantial compliance doctrine serves to ameliorate the harsh effects of strict compliance with the claims statutes where the purposes of the *Government Claims Act* have been met.

1. Jurisdictions Favoring Substantial Compliance in Claim Presentment Context

In addition to the out-of-state cases cited by the Sixth District in *DiCampli-Mintz* [2], the following jurisdictions have produced cases in line with the Sixth District's analysis and holding.

a. <u>South Dakota</u>

The Supreme Court of South Dakota, in *Mount v. City of Vermillion* (1977) 250 N.W.2d 686, reversed summary judgment for the city based upon plaintiff's non-compliance with the notice requirement of SDCL 9-24-2, which required written notice of a claim for personal injuries to be

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2 Including *Galbreath v. City of Indianapolis* (1970) 255 N.E.2d 225 [Indiana Supreme Court] and *Stone v. District of Columbia* (1956) 237 F.2d 28 [U.S. Ct. of Appeals, D.C. Cir.]. Of note in *Stone*, the court observed that, even though the notice was to be given to the commissioners but given to the corporation counsel instead, "notice to the Commissioners is normally transmitted as a matter of course to the Corporation Counsel." The court held that notice to counsel was sufficient to comply with the notice statute and that to hold otherwise would be "most unreasonable" and an "idle formality." (237 F.2d at 29-30.)

given to the auditor or clerk for the municipality. The court held that plaintiff should not be nonsuited because he failed to give written notice to the auditor, if he could establish that the city received written notice of the accident within 60 days thereof, either through notice to the city manager, who is charged by statute with managing the affairs of the city, or an agent of the city's liability insurance carrier. (250 N.W.2d at 689.)

The South Dakota Supreme Court revisited this issue in *Myears v. Charles Mix County, South Dakota* (1997) 566 N.W.2d 470. The court framed the issue to be decided: "Before suing a public entity, written notice must be given to certain officials within 180 days of injury. [Plaintiff] failed to advise the requisite public officers before he sued [defendant]. Nonetheless, within the mandatory period, [plaintiff] notified the county engineer, who in turn informed other county officials, and a claims adjuster investigated. Will substantial compliance satisfy statutory notice requirements? We answer yes and reverse summary judgment for the county, finding these circumstances adequate to establish reasonable compliance." In its analysis, the court noted that "[i]f our Legislature wanted a strict construction of this enactment, it could have so stated. On the contrary, the South Dakota code and 'the subjects to which it relates and its provisions and all proceedings under it are to be liberally construed with a view to effect its objects and to promote justice.'" (566 N.W.2d at 473.)

The *Myears* court went on to cite "[o]ther courts [that] have held substantial compliance with public entity notice statutes sufficient." Cases from California, Indiana, Iowa, Maryland, Massachusetts, Minnesota, and Nebraska. Interestingly, one of the California cases cited was *Life v. County of Los Angeles, supra.* (the others were *Johnson v. San Diego Unified School District, supra.* and *Elias, supra.*). (566 N.W.2d at 473-474.)

The court provided the following definition: "Substantial compliance" with a statute means actual compliance in respect to the substance essential to every reasonable objective of the statute. It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which it was adopted. Substantial compliance with a statute is not shown unless it is made to appear that the purpose of the statute is shown to have been served. What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case. (566 N.W.2d at 474.)

There were seven objectives for notice to public entities identified by the court: (1) To investigate evidence while fresh; (2) to prepare a defense in case litigation appears necessary; (3) to evaluate claims, allowing early settlement of meritorious ones; (4) to protect against unreasonable or nuisance claims; (5) to facilitate prompt repairs, avoiding future injuries; (6) to allow the [public entity] to budget for payment of claims; and (7) to insure that officials responsible for the above tasks are aware of their duty to act. (566 N.W.2d at 474.)

After analyzing the facts therein, the *Myears* court made the determination that all seven of the objectives were accomplished by plaintiff's notification to the county engineer, who in turn informed other county officials, who requested a claims adjuster to investigate.

The court went on the observe that "[w]e must be mindful of the consequences of a construction that would impose a standard of absolute compliance on a claimant who has been injured by a public entity. A rule of absolute compliance would require the dismissal of a claim when a claimant, within 180 days after the discovery of an injury, makes a good faith effort to satisfy the notice requirements but inadvertently omits a minor detail, or makes an error with respect to such detail, notwithstanding

the fact that the omission or error cannot prejudice the public entity in the least. . . To be sure, the notice requirements . . . serve to enhance a public entity's ability to remedy a dangerous condition and to plan for and defend against any potential liability on a claim. These interests, however, are not the only public interests implicated by the notice requirements. We believe that permitting injured claimants to seek redress for injuries caused by a public entity also serves a public interest. These multiple public interests, in our view, would not be served by . . . a standard of strict compliance . . . " (566 N.W.2d at p. 475.)

b. Mississippi

In *Ferrrer v. Jackson County Board of Supervisors* (1999) 741 So.2d 216, the Supreme Court of Mississippi held that substantial compliance with the Mississippi Tort Claims Act ("MTCA") is sufficient and that the determination of substantial compliance is a legal as well as fact sensitive inquiry which must be decided on a case-by-case basis. The MTCA required notice to be presented to the chief executive officer of Jackson County. Ferrer communicated his claim to the Board of Supervisors. The court held that this equated to substantial compliance. (741 So.2d at 218.)

c. Colorado

The Colorado Supreme Court, in *Finnie v. Jefferson County School District* (2003) 79 P.3d 1253, found substantial compliance in a misdirected claim situation. Plaintiff filed his notice with the public entity's Risk Management Department and defendant claimed that the requirements of the Governmental Immunity Act (GIA) were not complied with because the GIA required that notice be sent to the School Board or its attorney. The court held that determinations of compliance must consider principles of

agency and equity, as well as the intent and purpose of the statute. Any reasoning requiring a strict compliance standard was rejected. "[S]ubstantial compliance is attained when the plaintiff makes a 'good faith effort to satisfy the notice requirements' and when any errors or omissions do not prejudice the public entity." "No prejudice occurs if the 'error does not prevent the public entity from investigating and remedying any dangerous conditions, making adequate fiscal arrangements to meet any potential liability, or preparing a defense to the claim." "[I]n some circumstances, service on the statutorily designated entity is not necessary and . . . principles of agency and equity apply." (79 P.3d at 1257.)

The *Finnie* court also opined on its earlier case of *Jefferson County Health Services Ass'n v. Feeney* (1998) 974 P.2d 1001, which was cited by Defendant County of Santa Clara in its Opening Brief on the Merits herein. The court, in its treatment of the *Jefferson* case, did appear to back track somewhat from any interpretation of their opinion as advocating a strict compliance standard. (79 P.3d at 1257.)

d. Maine

In *Robinson v. Washington County* (1987) 529 A.2d 1357, the Maine Supreme Judicial Court held that plaintiff's letter to the Sheriff substantially complied with the notice requirements of the applicable statute, even though the statutorily designated recipient did not receive the notice. The court noted that "plaintiff's letter clearly does not comply with the literal requirement of M.R. Civ. P. 4(d)(4), requiring delivery of the claim to one of the county commissioners or their clerk or the county treasurer." The court held that "plaintiff's failure to notify the governmental entities listed in Rule 4(d)(4) is not so fundamental as to require that the notice be held invalid. In this case, the written notice was

delivered directly to one of the litigants . . . the chief law enforcement officer for Washington County. [citation] No prejudice to any of the defendants has been demonstrated at this stage of the proceedings. We therefore conclude that without such a showing of prejudice the plaintiff's letter adequately complies with the notice provision of the Tort Claims Act." (529 A.2d at 1360.)

e. Maryland

Even though the court in *Hansen v. City of Laurel* (2010) 996 A.2d 882 ultimately found no substantial compliance under the facts of the case (hence, the reason why the case was cited by the County of Santa Clara in its Opening Brief on the Merits), it contains helpful language for DiCampli's case herein.

The court held that "[s]ubstantial compliance with the LGTCA notice statute will be recognized when 'the relationship between the person or entity in fact notified and the person or entity that the statute requires be notified was so close, with respect to the handling of tort claims, that notice to one effectively constituted notice to the other." (996 A.2d at 891.)

f. Missouri

In *Kirkpatrick v. City of Glendale* (2003) 99 S.W.3d 57, the court held that "[t]he notice requirement is in derogation of the common law of torts and, as such, must be construed strictly against the municipality and liberally in favor of a plaintiff with the result that substantial compliance is sufficient." (99 S.W.3d at 60.) The court found sufficient evidence to establish that the City Manager was the Mayor's (designated recipient) agent for receipt of notice where the city had a long established custom and usage or "matter of practice" whereby the City Manager "would likely

receive all notices," even though the Mayor did not expressly authorize the City Manager to accept service on his behalf. (99 S.W.3d at 59.)

g. Minnesota

The court in *Kelly v. City of Rochester* (1975) 231 N.W.2d 275 declared that "functions and departments of city government cannot be considered wholly independent from one another, but must be viewed as sharing information vital to the concerns of each." (231 N.W.2d at 277.) The court held that, in the absence of a showing of prejudice, actual notice on the part of the municipality or its responsible officials of sufficient facts to reasonably put the governing body of the municipality on notice of a possible claim will be in compliance with the notice requirements of the applicable statute. In this case, even though the statutorily designated recipient was not the one to receive the notice, the court held that it was a fair and reasonable assumption that the responsible official who did receive the notice transmitted it to the city clerk or council (the designated recipient).

The courts in the following cases from other jurisdictions also found substantial compliance with the applicable notice statutes, despite the claim being misdirected: *Meredith v. City of Melvindale* (1969) 165 N.W.2d 7 (Michigan); *Vermeer v. Sneller* (1971) 190 N.W.2d 389 (Iowa); *Miller v. City of Charlotte* (1975) 219 N.E.2d 62 (North Carolina); *Smith v. Kennedy* (1999) 985 P.2d 715 (Kansas); *First Transit, Inc. v. City of Racine* (2005) 359 F.Supp.2d 782 (U.S. Dist. Ct., E.D. Wisconsin).

D. Bright-Line Rule

The County advocates for a bright-line rule of strict compliance with the plain language of Section 915. As discussed above in the section on substantial compliance, bright-line rules are unworkable in the framework of a substantial compliance analysis. In making this argument, the County ignores the fact that the substantial compliance doctrine is utilized in cases where the contents of a claim are strictly compliant with the provisions of *Government Code* section 910. Similar types of problems to the ones that the County complains about (confusion, unpredictability, uncertainty) will occur in the claim presentment context also can happen in the claim content context. Yet, there is no argument that a bright-line rule of strict compliance should also be applied with regard to the requirements of Section 910. It could also be argued that some amount of confusion can arise when the provisions of Section 910 are not adhered to.

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 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.

VI

CONCLUSION

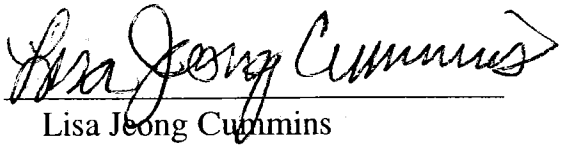
The intended purposes of the Government Tort Claims Act are clear. The provisions are to be liberally construed in order to further the purposes

of timely notice to the public entity of a claim and the opportunity to investigate and settle it if appropriate. The doctrine of substantial compliance was created by the courts to apply to those cases where compliance with the strict requirements of the claims statutes is lacking, but where the purposes of the Act are still served and especially where the public entity has not been prejudiced by the deficiency. It is clear that such circumstances exist in this case. Defendant should not be able to shortchange Plaintiff's right to a trial on her meritorious claim on the basis of a nonprejudicial technicality. The Sixth District Court of Appeal, in *DiCampli-Mintz v. County of Santa* Clara issued an opinion that brings California in line with a substantial number of other states in holding that the substantial compliance doctrine is to be applied in the claim presentment context in order to save otherwise valid claims in appropriate circumstances. Based on the strength of the foregoing points and authorities, this Court should AFFIRM the Sixth District's opinion.

Dated: October 11, 2011

Respectfully submitted,

CAMPBELL, WARBURTON,
FITZSIMMONS, SMITH, MENDELL
& PASTORE

By: 

Lisa Jeong Cummins
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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 7,592 words as counted by the Microsoft Office Word 2010 word processing program used to prepare the document.

Dated: October 11, 2011

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

PROOF OF SERVICE (Supreme Court)

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

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

ANSWER BRIEF ON THE MERITS

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

SEE ATTACHED LIST

☑ **U.S. MAIL [C.C.P. §1013(a)(b)]:** I am readily familiar with my employer's normal business practice for collection and processing of mail for mailing with the United States Postal Service, and that practice is that all mail is deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business. I caused such documents, with postage thereon fully prepaid, to be placed in the United States Mail at San Jose, California.

☐ **FACSIMILE TRANSMISSION [C.C.P. §1013(e)(f)]:** I caused such documents to be transmitted to the facsimile numbers of all parties.

☐ **CERTIFIED MAIL - RETURN RECEIPT REQUESTED [C.C.P. §1020]:** I caused such documents, with postage thereon fully prepaid, to be placed in the United States Mail at San Jose, California.

☐ **PERSONAL SERVICE/HAND DELIVERY [C.C.P. §1011]:** I caused such documents to be personally delivered.

☐ **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 October 11, 2011, at San Jose, California.

Connie Hammad

SERVICE LIST

Case Name: **DiCAMPLI-MINTZ v. COUNTY OF SANTA CLARA**
Supreme Court Case No.: **S194501**
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