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**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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| HOPE DiCAMPLI-MINTZ,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>COUNTY OF SANTA CLARA et al.,<br><br>Defendants and Respondents. | H034160<br>(Santa Clara County<br>Super. Ct. No. CV089159) |

Plaintiff Hope DiCampli-Mintz brought this action alleging that she suffered injuries as a result of negligent medical treatment by two physicians working for the County of Santa Clara (County) at its Valley Medical Center (Valley Medical). County moved for summary judgment on the ground that plaintiff's delivery of a notice of claim to the Risk Management Department at Valley Medical did not comply with the requirements of Government Code section 915[1] and associated statutes. The trial court granted the motion. We will reverse, joining the courts of several other states in holding that delivery of a pre-suit 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. In reaching this conclusion we decline to

[1] Except as otherwise specified, all further statutory citations are to the Government Code.

follow recent authority effectively repudiating the long-standing doctrine of substantial compliance as applied in this context.

## BACKGROUND

On April 4, 2006, defendants Bao-Thuong Bui and Abraham Sklar performed a hysterectomy on plaintiff at Valley Medical, a hospital owned and operated by County. According to a later operative report, she complained in the recovery room of cramps in her left leg, which appeared bluish and cold to the touch. Emergency tomography disclosed that her "left iliac artery" was "completely interrupted." She was "urgently" returned to surgery, where it "immediately became apparent that the left external iliac artery was tied and divided, as was the left iliac vein."

Some months later, in mid-2006, plaintiff went to Valley Medical's emergency department because she "was in a great deal of pain." On this occasion an emergency room physician told her that blood vessels had been damaged in the first surgery, requiring a second surgery. On October 25, 2006, another doctor expressed sympathy for her condition and asked if she had consulted an attorney.

By April 2007, plaintiff had engaged an attorney. He prepared a letter for transmission to Valley Medical, Bui, and Sklar, giving "notice, in accordance with Section 364 of the Code of Civil Procedure, that Hope DiCampli-Mintz will file suit against you for damages resulting from the personal injury of Hope DiCampli-Mintz." The letter stated that defendants "negligently performed a laparoscopic assisted vaginal hysterectomy so as to lacerate the inferior epigastric artery which was clamped and tied off resulting in the stoppage of major blood flow to the left leg. Thereafter, rather than repairing the blood flow to the left leg, Dr. Sklar and Dr. Bui simply closed the incision which was part of the vaginal hysterectomy and returned Hope DiCampli-Mintz to the recovery room." The letter contained a request that the recipient "forward . . . [it] to your insurance carrier and have them contact the undersigned at their earliest convenience." County conceded for purposes of summary judgment that so far as content is concerned,

the letter satisfied the requirements of the government claims act and "constitute[d] a tort claim." (See *Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 701-702.)

Plaintiff's attorney delivered three copies of this letter on April 3, 2007, addressed to Bui, Sklar, and the Risk Management Department, to "Cynthia Lopez of the Medical Staffing Office in the Administration Building, 751 South Bascom Avenue, San Jose, California, on April 3, 2007, at 2:50 P.M., for delivery to each of the individually named parties." He sent three additional copies, similarly addressed, by certified mail; these were received by Valley Medical's "mail services department" on April 6, 2007. On that day, plaintiff's attorney received a recorded telephone message from David Schoendaler, who County concedes was "a liability claims adjustor working for the County Risk Management Department." On April 23, 2007, Schoendaler and plaintiff's attorney spoke by telephone. According to the latter, "Mr. S[c]hoendaler noted receipt of the Notice of Intention; verbally opined that service on Santa Clara Valley Medical required a tort claim which was late; verbally questioned whether a tort claim was required as to Dr. Sklar and Dr. Bui and indicated that he would look into that; stated that Ms. DiCampli-Mintz had an interesting case; made note of Plaintiff's obesity and said a theory of defense was that Plaintiff placed herself at risk with her obesity; and finally advised that Dave Rollo would be the attorney handling the defense for Santa Clara County. Mr. Schoendaler never mentioned that the Notice of Intention was presented to the wrong party." Plaintiff never received written notice that her claim was untimely or otherwise deficient.

Plaintiff initiated this action on July 7, 2007, by filing a complaint in which Bui, Sklar, and Valley Medical were named as defendants. The complaint acknowledged that "Plaintiff was required to comply with . . . [Government Claims Statutes]," but asserted that she was "excused" from doing so because defendants "failed to provide notice to Plaintiff as required by Government Code §§ 910.8, 911, 911.3, and therefore waived any

defenses they may have had to the sufficiency of Plaintiff's claim (Notice of Intention to Commence Action) as presented."

On August 29, 2007, county counsel filed an answer in the name of "Defendant, County of Santa Clara . . . , for itself and its Santa Clara Valley Medical Center."[2] It denied plaintiff's allegations and asserted 39 affirmative defenses, including that plaintiff "failed to comply with the provisions of the Califomia Tort Claims Act," and that her claims were "barred by the provisions of Government Code §§ 810 through 1000, inclusive." About a month later, defendant Sklar filed a separate but substantially identical answer. Plaintiff apparently experienced some difficulty serving process on defendant Bui. The parties eventually stipulated that both individual defendants would be dismissed and that they had acted at all relevant times "in the course and scope of their employment with the County."

On November 7, 2008, County filed a motion for summary judgment "based on Plaintiff's failure to present a timely Government Tort Claim to the County pursuant to Government Code section 915." County asserted that plaintiff's delivery and mailing of the claim to the Risk Management Department and the two doctors did not satisfy the requirements of the act. County also asserted that the claim was untimely, but as will appear below, this was not a logically independent ground for the motion.

In opposition to the motion, plaintiff argued that she had substantially complied with the act by delivering the claim to the Risk Management Department, which was the county department most directly involved with the processing and defense of tort claims against County. Plaintiff requested judicial notice of four web pages in County's own

[2] Although the complaint has never been amended to name County as the proper party defendant, both parties have treated it as such. In effect they have treated plaintiff's original designation of Valley Medical as a misnomer and have tacitly substituted County in its place. We will honor this de facto substitution. (See 4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, §§ 477, p. 605-606; 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 1219, p. 654.)

web domain describing the function of the Risk Management Department and its staff. One of these indicated that the department comprised four divisions, including "Insurance/Claims," which "is responsible for preventing, eliminating, reducing, or transferring the County risks where ever possible and for properly funding remaining risks through Insurance or self-funding, except for personnel benefits and workers' compensation." The other pages were job descriptions for "Claims Manager," "Liability Claims Adjuster III," and "Liability Claims Adjuster II." The "Definition" section of the Claims Manager page read, "Under general direction, to administer the General Services Agency Liability and Property Claims Adjusting Program for the County and Transit District and the Valley Medical Center Subrogation Program and to implement County policy regarding claims and litigation and to advise and participate in liability determination in the more complex, sensitive or major claim settlements." All three descriptions discussed the power and duty of the incumbent to investigate and settle, or recommend settlement of, claims against the county.

The trial court granted summary judgment by a written order stating that (1) the county made a sufficient showing of noncompliance with the claims statute, and (2) plaintiff's proofs in opposition were ineffectual to avoid summary judgment because they "d[id] not raise a reasonable inference that her claim was actually received by the clerk, secretary, auditor or board of the local public entity within the time prescribed for presentation thereof," and were "insufficient to establish waiver and/or equitable estoppel." A judgment duly followed, from which plaintiff took this timely appeal.

## DISCUSSION

### I. *Question Presented*

Summary judgment is appropriate when "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) Because this test raises only questions of law, we review the trial court's ruling on summary judgment

independently, without the deference that would be accorded to factual determinations on conflicting evidence. (*Denevi v. LGCC* (2004) 121 Cal.App.4th 1211, 1217; see *Carlino v. Los Angeles County Flood Control Dist.* (1992) 10 Cal.App.4th 1526, 1533, fn. 6 [whether actions of plaintiff's attorney amounted to filing of a claim was "an ultimate legal issue in this matter, and not a factual one"].)

Here County sought to establish that there was no material triable issue of fact on its affirmative defense of noncompliance with the government claims act; that the defense was conclusively established in its favor; and that therefore it was entitled to judgment as a matter of law. It contended that there was no triable issue of fact because the evidence concerning plaintiff's communication of the claim to County was uncontroverted, and that under the governing law, the evidence established plaintiff's failure to comply with the act.

The first premise appears to be correct; there was no triable issue of fact concerning plaintiff's compliance *vel non* with the government claims act. Her efforts to comply were established without contradiction and the only question was their legal sufficiency to satisfy the statutory requirements. However the County injected a degree of confusion by repeatedly asserting that plaintiff failed to present a claim "within six months after Plaintiff's cause of action accrued." Plaintiff seized upon these statements to assert that there was a triable issue concerning "when Plaintiff s cause of action accrued." We assume that this is true. However, despite the County's repeated assertions on this point, its motion was not premised on, and made no attempt to establish, that plaintiff's attempt to comply was too late. Rather the theory of the motion was that plaintiff had *never* complied with the tort claims act. Indeed, defendant *conceded* for purposes of the motion that plaintiff's cause of action might have accrued "as late as October 25, 2006," when a doctor "allegedly asked Plaintiff if she had sought an attorney regarding the VMC Surgery." If that is true, then plaintiff's attempted presentation of her claim, on April 3, 2007, came within six months of accrual.

Therefore the sole *material* question is whether this attempt was sufficient to satisfy the statute. If not, then it was certainly true that plaintiff had not complied with the act "within six months," for she had *never* complied with the act. But if her attempt to comply was sufficient, then she certainly *had* complied with the act, and in a timely fashion, under the facts conceded by defendant. Nor has County ever claimed that it was entitled to judgment on the ground that plaintiff's cause of action had accrued more than six months prior to April 3, 2007.

Plaintiff also failed to identify a triable issue of fact by positing the question "whether the Santa Clara County Risk Management Department (which has duties involving review, investigation, adjustment, evaluation and settlement of liability claims against Santa Clara County) waived any defenses based on insufficiencies of content, timeliness or issues of presentment of Plaintiff's claim where that Department timely received Plaintiff's tort claim . . . but never gave . . . notice to Plaintiff of any insufficiencies as to content, timeliness or service on the wrong party." This is not a "question of fact," as plaintiff would have it, but a question of law, i.e., whether service of a claim on a county's risk management department satisfies, or should be deemed under the doctrine of substantial compliance to satisfy, the claim requirements of the act, when the risk management department acknowledges receipt, informs the claimant that the matter has been assigned to a named attorney, and alludes to substantive and procedural defenses to the claim without mentioning any defect in its presentment.

We see no other suggestion by either party of any triable issue of material fact. It is conceded and acknowledged that the only notices served by plaintiff prior to suit were those her attorney delivered to the Risk Management Department at Valley Medical. It is conceded and acknowledged that these notices were not received by, and that plaintiff did not request their forwarding to, any officer or staff member of the County or its board of supervisors. However it is also conceded and acknowledged that the Risk Management Department, to which the notice was delivered, is the county agency directly responsible

for the investigation, management, and settlement (or recommendation of settlement) of claims. It is conceded that no written notice was given to plaintiff of any deficiencies in the claims. The question is whether, on these undisputed facts, defendant was entitled to judgment as a matter of law.

**II. *Substantial Compliance***

Government Code sections 810 through 996.6 comprehensively govern the civil liability of state public entities.[3] Section 905 requires that, with certain exceptions not relevant here, "all claims for money or damages against local public entities" must be "presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910)" of the code. " 'Local public entity' " includes, for these purposes, "a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State." (§ 900.4.) Section 915 provides that a claim against a local public entity is presented in accordance with the act if it is (1) delivered to the local entity's clerk, secretary or auditor; (2) mailed to the entity's clerk, secretary, auditor, or to its governing body at its principal office; or (3) actually received by the entity's clerk, secretary, auditor or board.[4]

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[3] Although courts have traditionally referred to the statutes involved here as "the Tort Claims Act" (see *Munoz v. State of California* (1995) 33 Cal.App.4th 1767 (*Munoz*), 1776; *Williams v. Horvath* (1976) 16 Cal.3d 834, 838), that is a singularly inapt label. It is underinclusive because the statutes are only partly concerned with tort claims, and overinclusive because they are concerned only with a minority of tort claims, i.e., those against state government entities. The statutes are "more accurately described as a government claims act." (*Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 304.) We will so refer to them.

[4] Section 915, as pertinent here, 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.

The purpose of requiring advance notice of the claim is " 'to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation.' " (*Stockett v. Association of California Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 446, quoting *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455.) Additional purposes include "inform[ing] the public entity of potential liability so it can better prepare for the upcoming fiscal year" (*Munoz, supra*, 33 Cal.App.4th 1767, 1776) and "provid[ing] an opportunity to the public entity to quickly rectify a dangerous condition" (*San Diego Unified Port Dist. v. Superior Court* (1988) 197 Cal.App.3d 843, 847).

The claim requirement is *not* designed to "eliminate meritorious actions" (*Stockett v. Association of California Water Agencies Joint Powers Ins. Authority*, *supra*, 34 Cal.4th 441, 446, citing *Blair v. Superior Court* (1990) 218 Cal.App.3d 221, 225), and " 'should not be applied to snare the unwary where its purpose has been satisfied' " (*ibid*., quoting *Elias v. San Bernardino County Flood Control Dist.* (1977) 68 Cal.App.3d 70, 74 (*Elias*)). Consistent with these principles, California courts have, for nearly 80 years, applied a rule of substantial compliance to determine whether a plaintiff has satisfied the requirements of the act, its predecessors, or similar requirements in local charters or codes.[5] Under that rule, a claim may be deemed sufficient "if it substantially complies

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"[¶] . . . [¶]

"(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."

[5] The earliest reference we have found to substantial compliance in the context of a government claim requirement appears in *Uttley v. City of Santa Ana* (1933) 136 Cal.App. 23, 25, where the court wrote, "The general rule with respect to this sort of notice of claim is that a substantial compliance with the provisions of the statute is sufficient." The deficiency there was that the statute required the plaintiff to provide her

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.) "The doctrine is based on the premise that substantial compliance fulfills the purpose of the claims statutes, namely, to give the public entity timely notice of the nature of the claim so that it may investigate and settle those having merit without litigation." (*Ibid.*; see *City of San Jose v. Superior Court, supra,* 12 Cal.3d 447, 455-457; *Phillips v. Desert Hospital Dist., supra*, 49 Cal.3d 699, 707.) The basic principle is that if a claim is sufficient to fulfill the statute's purposes, and its deficiencies inflict no harm on the defendant, the statute will not be applied to impose a forfeiture of the plaintiff's cause of action. (See *Carlino v. Los Angeles County Flood Control Dist., supra*, 10 Cal.App.4th 1526, 1534 ["If a claim satisfies the purposes of the claims statutes without prejudice to the government, substantial compliance will be found."].)

The defect here, which formed the basis for the order granting summary judgment, was that plaintiff failed to deliver her notice of claim to one of the persons designated in section 915, i.e., the "clerk, secretary, auditor" of the county, or to mail the notice to one of these designated recipients or to the county's "governing body at its principal office." (§ 915, subd. (a)(2).) Nor, according to the county, was her claim "actually received" by any of the specified recipients. (§ 915, subd. (e)(1).) Instead plaintiff delivered her claim to the Risk Management Department at Valley Medical, where it was manifestly received by a claims adjuster, who contacted plaintiff's counsel, acknowledged receipt of the claim, named a deputy city attorney to whom the case had been assigned, and ruminated about potential defenses to the claim.

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address, but her claim instead gave her attorney's. The court held this defect not fatal, because the information provided was sufficient to accomplish the purpose of the statute. (*Ibid.*) The claim was therefore sufficient "[i]n the absence of any showing that the [city] was misled or prejudiced." (*Id.* at p. 26.)

In *Jamison v. State of California* (1973) 31 Cal.App.3d 513 (*Jamison*), the court held that a plaintiff substantially complied with the statute by delivering a claim to the state department whose employee was alleged to have negligently injured the plaintiff. The trial court had granted judgment on the pleadings because the notice should have been served on the State Board of Control (now the Victim Compensation and Government Claims Board, see Stats. 2000, ch. 1016). The Court of Appeal reversed, holding that service upon "any responsible official" of the defendant entity "is sufficient if the party served has the duty to notify the statutory agent." (*Jamison, supra*, 31 Cal.App.3d at p. 517.) The notice there had been served on "an officer or employee of the exact state agency which allegedly was responsible for the tort." (*Id.* at p. 518.) Under those circumstances, the court opined, "it was incumbent upon the officer or employee served to forward the claim immediately" to the proper body, and "the party served had a duty to do so." (*Ibid*.) Although the record was silent as to "actual receipt" of the notice, the court concluded, "it should have been" received. (*Ibid*.)

The *Jamison* court acknowledged that most extant decisions on the question of substantial compliance involved defects in "the integrity of the claim itself—the *form* of the claim—as distinguished from the method of its presentment—the *filing*." (*Jamison, supra*, 31 Cal.App.3d at p. 516.) The court also acknowledged two cases in which presentment to a person not designated in the statute was held not to comply with the claim requirement. (*Ibid*., citing *Redwood v. State of California* (1960) 177 Cal.App.2d 501, 504, and *Jackson v. Board of Education* (1967) 250 Cal.App.2d 856, 858-860.)[6]

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[6] In *Jackson* the court held that filing a notice of claim with a municipal clerk did not satisfy the requirement of presentation to a board of education where the clerk was not a subordinate officer of the board and the notice contained no indication that the board was charged with liability. This is an unremarkable holding, since the notice could not be expected to fulfill the purposes of the claim requirement.

The *Redwood* decision is more troubling. There a claim was held fatally deficient for failure to "file[]" it "with . . . the Governor," as the statute then required. (*Id.* at

However the court cited two other cases in which defects in presentment were held not to bar a finding of substantial compliance. In *Peters v. City and County of San Francisco* (1953) 41 Cal.2d 419, the plaintiff's attorney delivered a signed but unverified copy of her claim to the municipal clerk, who endorsed and returned it while retaining an unsigned and unverified copy. The attorney delivered the signed and verified original to the city controller. The governing statute required that a verified claim be presented to the clerk. The court held that although the plaintiff "should have filed the signed original of the claim with the clerk," her failure to do so did not "defeat her right to recover." (*Id.* at p. 426.) The court "assumed" for purposes of its analysis "that filing the claim with the city controller did not of itself" meet the statutory purpose and thus constitute substantial compliance. It did not decide the question, however, because it found substantial compliance in filing the unsigned copy with the clerk while notifying him that the original had been filed with the controller. (*Id.* at p. 426.) The court found it

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p. 502, citing former § 1981 (repealed by Stats. 1959, ch. 1715, § 1.) The plaintiff had "served" the claim on two alleged individual tortfeasors and the State Board of Control. (*Id.* at p. 502.) The court acknowledged the potential application of the substantial compliance rule but manifestly rejected its application even if, as the plaintiff argued, "the filing of the claim with the Governor could serve no useful purpose." (*Id.* at p. 504.) It effectively adopted a rule of strict compliance insofar as the statute identified the person to whom the claim must be presented. It cited cases for the proposition that "where the claims statute provides for the person upon whom the claim is to be served, that service upon another is insufficient." (*Id.* at pp. 503-504, citing *Continental Insurance Co. v. City of Los Angeles* (1928) 92 Cal.App. 585; *Douglass v. City of Los Angeles* (1936) 5 Cal.2d 123 ; *Wilkes v. City and County of San Francisco* (1931) 44 Cal.App.2d 393.) The last of these makes explicit what was implicit in the other two: they rest upon the proposition that the provisions of the claims act "are mandatory and *are to be strictly construed*." (*Wilkes v. City and County of San Francisco*, *supra*, at p. 397, italics added.) Few if any recent decisions advert to that proposition. At least one case of comparable vintage adopted the opposite view. (See *Los Angeles Brick & Clay Products Co. v. City of Los Angeles* (1943) 60 Cal.App.2d 478, 486 [charter requirement that claim be presented to city prior to suit was "in derogation of common right" and therefore had to be "strictly construed" in favor of plaintiff].)

significant that "both the original and the copy reached the city attorney's office within the time prescribed by the statute for filing claims." (*Ibid*., italics added.)

The *Jamison* court found a second example of substantially compliant presentment in *Insolo v. Imperial Irr. Dist.* (1956) 147 Cal.App.2d 172. That 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.)

Courts in other jurisdictions have found substantial compliance with claims statutes, despite defective presentment, where the recipient is directly involved in the handling or defense of claims against the defendant entity. Two of these decisions were cited in *Jamison*, *supra*, 31 Cal.App.3d at p. 517. In *Galbreath v. City of Indianapolis* (1970) 255 N.E.2d 225 [253 Ind. 472], the plaintiff had failed to serve a notice on the city mayor or clerk, as the statute required, but instead gave it to the city's legal department, with whom her husband thereafter exchanged a series of communications. The Indiana Supreme Court rejected a proposed distinction, for substantial compliance purposes, "between compliance with the statute as it relates to the form and content of the notice itself and compliance as it relates to notice to the proper officials." (*Id.* at pp. 228-229.) The court noted that the duties of the city attorney included managing all litigation and reporting to the mayor. (*Id.* at p. 229.) He was thus "the mayor's agent under the notice statute." (*Id.* at p. 229.) Similarly, in *Stone v. District of Columbia* (1956) 237 F.2d 28, 29-30 [99 U.S.App.D.C. 32], the court concluded that notice to the District of Columbia's

corporate counsel substantially complied with a statute requiring notice to the district's commissioners: " 'To insist that the notice must be addressed to the Commissioners, and to rule out as insufficient a notice addressed to their Counsel, to whom Congress has delegated the responsibility for defending the District against suit, seems to us most unreasonable. Congress could hardly have intended that failure to observe such an idle formality should cause a claimant to be denied his day in court. . . .' "

These holdings have been followed in the jurisdictions where they were rendered. (See *Shehyn v. District of Columbia* (D.C.App. 1978) 392 A.2d 1008 [notice requirement satisfied by letter copied to assistant district counsel, together with other communications with affected public officials]; *Coghill v. Badger* (Ind.App. 1981) 418 N.E.2d 1201, 1206, fn. 3 [but for fatal defects in substance, notice served on agency's claims adjuster would presumably have constituted substantial compliance; adjuster "appear[ed] to qualify as an agent" of the agency].) Meanwhile courts in at least two other jurisdictions have reached similar results. In *Webb v. Highway Div. of Oregon State Dept. of Transp.* (1982) 652 P.2d 783, 784 [293 Or. 645], the Oregon Supreme Court held that the plaintiff substantially complied with a requirement of notice to the state attorney general by sending notice to an employee of the state department of justice who had "authority to investigate tort claims and make settlements." In *Hawkeye Bank v State* (Iowa 1994) 515 N.W.2d 348, 350, a notice of claim submitted in part to an assistant attorney general handling the defense of the case was held sufficient.[7]

[7] In some states the precise issue before us cannot arise because the governing statute *requires* that notice of a claim against a public entity be served on the state's, or entity's, risk management department. (See, e.g., Ga. Code Ann., § 50-21-26(a)(2); Wash. Rev. Code, § 4.92.210(1).) Indeed this is essentially the case in California with claims against the *state*, which must be presented to the Victim Compensation and Government Claims Board (§ 915, subd. (b)), the agency charged with the investigation, supervision of defense, and approval or settlement, of claims against the state. (See Cal. Admin. Code, tit. 2, §§ 630-632.11.)

Nor does Jamison stand alone among modern California cases in finding substantial compliance despite a defect in the presentment of a claim. In *Elias, supra,* 68 Cal.App.3d 70, the plaintiff was injured by an allegedly dangerous condition on what he thought was a county road. He duly served notice on the county, but the road turned out to be owned by a local flood control district. The court reasoned that although the district was a separate entity from the county, the county board of supervisors and all county officers were "ex officio the board of supervisors and officers of the District and as such [we]re empowered to perform the same duties for the District as they perform for the county." (*Id.* at p. 75.) The board also had the duty to "review and act upon all claims whether they be addressed to the county or to the District." (*Ibid.*) Therefore the claim was "deemed to have been presented to the board of supervisors as the governing body of the District." (*Ibid.*) To similar effect is *Carlino v. Los Angeles County Flood Control Dist., supra,* 10 Cal.App.4th 1526, 1533-1535, which held that the plaintiff stated a prima facie case of substantial compliance by alleging that the county board of supervisors, on which a notice of claim was served, was the proper body for delivery of claim against a flood control district.[8]

We believe these cases stand for a sound principle, which is that a claim may substantially comply with the act, notwithstanding failure to deliver or mail it to one of the specified recipients, if it is given to a person or department whose functions include

[8] The outcome of these cases may seem unremarkable, but in fact was hardly foreordained. "Where a public officer is declared by law by virtue of his office—ex officio—to be also the incumbent of another public office, the two offices are as distinct as though occupied by different persons." (*Union Bank & Trust Co. of Los Angeles v. Los Angeles County* (1934) 2 Cal.App.2d 600, 608-609, disapproved on another point in *Minsky v. City of Los Angeles* (1974) 11 Cal.3d 113, 123, fn .15.) Service on a county clerk *qua* county clerk may constitute service on the county clerk in another capacity, and notice to a county board may be deemed notice in another capacity, *if the recipient is in fact acting in a dual capacity*. (See *Los Angeles County v. Superior Court in and for Los Angeles County* (1941) 17 Cal.2d 707, 715.) In effect the *Elias* court held that the clerk and board in such a situation would be *deemed* to be acting in a dual capacity.

the management or defense of claims against the defendant entity. Here the notice was served on the Risk Management Department, which—according to evidence presented by plaintiff without objection—is "responsible for preventing, eliminating, reducing, or transferring the County risks where ever possible and for properly funding remaining risks through insurance or self-funding, except for personnel benefits and workers' compensation." Employees of that department are charged with the overall management of claims against the county, its transit district, and Valley Medical Center.

Further militating in plaintiff's favor is the fact that her claim was promptly communicated to the office of County Counsel. As previously noted, the court in *Peters v. City and County of San Francisco*, *supra*, 41 Cal.2d 419, found it significant that the plaintiff's claim documents "reached the city attorney's office within the time prescribed by the statute for filing claims." (*Id*. at p. 426.) Such a view is consistent with the duties and functions of the county attorney's office, which include to "defend or prosecute all civil actions and proceedings in which the county or any of its officers is concerned or is a party in his or her official capacity," and generally to defend "any action or proceeding brought against an officer, employee, or servant of the county." (§ 26529, subd. (a).)

It is thus apparent that plaintiff's notice of claim immediately reached the county departments to which it would inevitably have been referred had plaintiff strictly complied with the letter of the statute. Given this fact it is difficult to imagine how her failure to do so could have had any tendency to defeat the statutory purpose. It is of course theoretically possible, if difficult to imagine, that presentment to an entity's claims department might somehow interfere with the entity's investigation, settlement, or defense of a claim. But that is no reason to categorically deny relief based on an absence of strict compliance. It is always open to the defendant entity to show that it has in fact been prejudiced by a departure from the terms of the act, and upon such a showing a claim of substantial compliance must fail. (See *Carlino v. Los Angeles County Flood Control Dist.*, *supra*, 10 Cal.App.4th at p. 1534.) No such showing was made or

attempted here. Accordingly, plaintiff's delivery and mailing of her claim to the county's Risk Management Department constituted substantial compliance with the government claims act.

**III. *Competing Authorities***

County cites several cases giving a narrow application to the doctrine of substantial compliance with respect to the presentment of government claims. County particularly emphasizes *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 770 (*Del Real*), because in that decision *Jamison* was repudiated by a later panel of the same court that rendered it. To the extent these cases are apposite, however, we find ourselves unable to adhere to their reasoning.

In *Del Real* the plaintiff alleged that she had been injured in a collision with a car operated by a police officer employed by the defendant city. Four months after the collision her attorney wrote to the officer requesting information about the accident and any insurance that might cover it. Nine days later the city attorney replied, stating that the officer "was represented by that office" and that all further communication with him should take place through that office. (*Del Real, supra,* 95 Cal.App.4th at p. 764.) Two days before the anniversary of the collision, the plaintiff filed suit against the city. The trial court granted summary judgment based on noncompliance with the claims statute. As pertinent here, the plaintiff's argument on appeal was that her letter to the police officer constituted substantial compliance with the claims requirement. In rejecting this contention the court had "little doubt that the letter failed to substantially comply with the claims filing requirements." (*Id.* at p. 769.) Throughout the opinion the court emphasized the letter's grave deficiencies in content. (See *id.* at p. 769 [letter bore "little or no resemblance to a government tort claim"]; *id.* at p. 770 [letter was "not reasonably interpreted to communicate that Del Real was attempting to file a valid claim," but merely indicated that her attorney was "evaluating the matter"]; *ibid*. ["questionable" whether letter "was identifiable as a claim"].)

Arguably these deficiencies alone would have sustained the judgment. But the court also found the claim fatally deficient because (1) it "was not directed to the public entity but to [the officer] personally" and (2) there was "no evidence . . . that the letter was actually received by the City clerk, secretary, auditor or governing body . . . ." (*Del Real, supra,* 95 Cal.App.4th at p. 770.) The plaintiff cited *Jamison, supra,* 31 Cal.App.3d 513, for a contrary result, but the court disposed of that case in two cryptic sentences: "[W]e have reconsidered our earlier decision in *Jamison* and, as did the court in *Life v. County of Los Angeles* [(1991)]227 Cal.App.3d [894,] 900–901 [(*Life*)], we find that it is at odds with section 915, subdivision (c) [see now § 915, subd. (e)(1)]. We therefore decline to follow it." (*Ibid*.)

The *Del Real* court did not explain its repudiation of *Jamison* other than to cite *Life, supra,* 227 Cal.App.3d 894. The court there held that service of a claim on a county's legal department did not constitute substantial compliance in the absence of evidence that the claim was " '*actually received* by the clerk, secretary, auditor or board of the local public entity, . . . , within the time prescribed for presentation thereof.' " (*Id.* at p. 900, quoting former § 915, subd. (c); see now § 915, subd. (e)(1); original italics.) The legal premise for this view was that "substantial compliance under the statute demands that the misdirected claim be 'actually received' by the appropriate person or board." (*Id.* at p. 901.) The court did not explain exactly what it took this supposed requirement to mean. However it held the plaintiff's claim fatally defective because there was "no evidence to show that [his] claim actually reached the appropriate officials or board." (*Id.* at p. 900.)

We find this approach unsound for three interrelated reasons: (1) Without explanation or analysis, it treats a remedial, permissive provision of the statute as a mandatory limitation on the right granted; (2) it mistakes the fundamental nature of the substantial compliance doctrine and, in defiance of some 80 years of precedent,

effectively precludes its operation in the government claims setting; and (3) it posits a plain statutory meaning which proves illusory under scrutiny.

The supposed requirement of actual receipt, on which the 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 . . . ." (§ 915, subd. (e) & (e)(1); see *Life, supra*, 227 Cal.App.3d at p. 899, quoting former § 915, subd. (c).) 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. (*Standard Microsystems v. Winbond Electronics Corp.* (2009) 179 Cal.App.4th 868, 894-895.) 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. (*Id.* at pp. 889, 894.) The court thus turned the cited provision on its head in several different respects.

The court also 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 (c)" 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. (See *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal. App. 3d 1071, 1083, italics added ["Where there has been an attempt to comply but *the compliance is defective*, the

test of substantial compliance controls."]; *Santee v. Santa Clara County Office of Education*, *supra*, 220 Cal.App.3d 702, 713 [under doctrine, claim may be valid "even though it is technically deficient in one or more particulars"]; Am.Jur.2d (2011) Municipal Corporations, § 608, p. 727, italics added, fn. omitted ["Substantial compliance means that the notice has been given in a way that, *although technically defective*, substantially satisfies the purposes for which notices of claim are required."], paraphrasing *Lebron v. Sanchez* (2009) 970 A.2d 399, 406 [407 N.J.Super. 204]; 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, not to mention the sister-state authorities discussed above.

The decision in *Life* was followed, and its misconceptions echoed, in *Munoz v. State of California*, *supra*, 33 Cal.App.4th 1767, 1776, where an application to present a late claim was mailed to a correctional institution rather than the State Board of Control. The claim was ultimately received by the Board of Control, but beyond the deadline for presentation. The court held it fatally defective, stating, "Substantial compliance *under Government Code section 915*, subdivision (c) demands the misdirected claim be 'actually received' by the appropriate person or board within the time prescribed for presentation thereof." (*Id.* at p. 1780, citing *Life*, *supra*, 227 Cal.App.3d at pp. 900–901; italics added.) The court made no attempt to reconcile this reasoning with its statement earlier in the opinion that "[t]he old doctrine of strict and literal compliance, with its attendant harsh and unfair results, has disappeared from California law." (*Id.* at p. 1778,

citing *Cruise v. City & County of San Francisco* (1951) 101 Cal.App.2d 558, 562-563.) In fact it appears that *Munoz*, *Life*, and *Del Real* represent an attempt to resurrect that old doctrine.

Defendant also cites *Westcon Const. Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183 (*Westcon*), in which a contractor was held not to have substantially complied with the statute by giving materials, later cited as a claim, to a city engineer. But the court there did not purport to rely on a rigid reading of the statute. Instead it found "no evidence" to support the contractor's assertions that the engineer had notified the board of supervisors of the claim, or that he was a "responsible officer of the County" such that he could be expected to do so. (*Id.* at pp. 201-202.) The court did not repudiate *Jamison*, but distinguished it and *Elias* on the ground that the claims in those cases had been "served on the proper officer of the wrong agency, but an agency nevertheless closely related to the correct agency." (*Ibid*.) The court rejected the idea that simply presenting a claim to the government employee with whom the plaintiff was most directly involved would be sufficient: "As 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. This may be the last person who would want to pass a claim on to his or her employer. Thus, giving notice to a subordinate employee may not assure that the public entity has an opportunity to review the claim before suit is filed." (*Id.* at pp. 200-201.) The evidence there did not show that the responsible agency had received actual notice. (*Id.* at p. 201.) The court also emphasized that the claim sounded in contract, observing that "those who do business with public entities must know the ground rules," and that "[t]he contractor may not sit on its rights until memories become stale or witnesses disappear." (*Id.* at p. 203.) The claimant there had not only failed to adhere to the requirements of the claims act but had failed to act appropriately until "long after the dust had settled," by which time it was "simply too late to reopen the matter." (*Ibid*.)

The *Westcon* decision states a valid criticism of the holding in *Jamison*—without, however, repudiating the basic principle the *Jamison* court sought to apply. The *Jamison* decision invites an interpretation under which the presentment of a claim to any public servant associated with the underlying subject matter is enough to substantially comply with the statute. But as noted in *Westcon*, such a worker may well be "the last person who would want to pass a claim on to his or her employer," since he or his coworkers may be expressly or implicitly charged with fault in the matter. For this reason we have little doubt that if plaintiff had only communicated his claims to the two individual defendants here, it could not be viewed as substantial compliance without evidence that they actually and in fact communicated those claims, within the statutory period, to the statutory designees or, perhaps, to the Risk Management Department. But here plaintiff herself presented the claims to that department—the very agency within the county responsible for responding to claims. In contrast to *Jamison*, this was a mode of notice that could be reasonably relied upon to, and that did in fact, impart actual knowledge of the claims to the persons responsible for addressing them. That it actually had this effect is established by the actual communications from a county claims adjuster discussing the merits of the claim and indicating that it had been relayed to county counsel.

Thus, while *Jamison* may indeed be open to criticism, none of the reasons for that criticism are present here. Equally if not more open to criticism is the categorical treatment adopted in *Life*, *Munoz*, and *Del Real*, which tortures statutory language into an unrecognizable form and effectively reads the settled doctrine of substantial compliance out of California law, at least as applied in the present setting. If *Jamison* stated too broad a rule by suggesting that notice to any employee associated with an actionable incident constitutes notice sufficient to satisfy the act, so too did *Del Real*, *Life*, and *Munoz* go too far by suggesting that the claim must in every case be placed in the hands of one of the designated recipients. Here, the claim was placed in the hands of an employee and department whose very function was to evaluate and manage claims

brought against County. Plaintiff's departure from the prescribed procedure merely eliminated the preliminary step of placing the claim in the hands of a higher level county functionary. To accept County's argument would mark an unmistakable return to "[t]he old doctrine of strict and literal compliance, with its attendant harsh and unfair results." (*Munoz, supra*, 33 Cal.App.4th at p. 1778.) We will not willingly contribute to such a return.

**IV. *The Illusory Bright-Line Rule***

As noted above we have a third objection to the analysis in *Life*, on which *Del Real* and *Munoz* also rest: It depends on the demonstrably false supposition that the language of section 915, subdivision (e)(1) has a plain meaning and clear application. If that were true it might at least support an inference that the Legislature intended it as the complete and exclusive expression of its will, since a strictly literal approach would then have the virtue of simplicity and predictability, whatever injustice it might inflict. But in fact the supposed requirement enforced so rigidly by the court—that the claim be "actually received by the clerk, secretary, auditor or board" of the responsible local government body (§ 915, subd. (e)(1))—is fraught with latent ambiguities and uncertainties of application.

Defendant's motion for summary judgment illustrates one of the difficulties in advocating that the statute be applied with credulous literalism. To establish that plaintiff had not complied with either the prescribed forms of presentment or with section 915, subdivision (e)(1), the county asserted the following undisputed facts: "10. The Notice of Intention does not request that it be forwarded to the *Clerk of the Santa Clara County Board of Supervisors* (the 'Board'). [¶] 11. Neither Plaintiff nor Plaintiffs counsel ever personally served, personally presented, or mailed the Notice of Intention to the *Clerk of the Board*. [¶] . . . [¶] 13. The *Clerk of the Board* does not have any records of Plaintiff (or anyone else) ever presenting a Notice of Intention, a tort claim, or an application for leave to present a late claim to *its office*." (Italics added.) In support of the motion,

County submitted a declaration from Sharyn Schwab in which she described herself as County's custodian of records, with responsibility for "receiving, processing and filing claims, applications, permits, petitions, and appeals delivered to the County of Santa Clara." She declared that no claims concerning plaintiff had been "delivered or mailed to, or received by, the *Clerk of the Santa Clara County Board of Supervisors*." (Italics added.)

The problem with this showing is that the government claims act says nothing about presenting a claim to the "clerk *of the board*." It authorizes presentment by three and only three means: (1) delivery "to the clerk, secretary or auditor" of a local public entity (§ 915, subd. (a)(1)); (2) mailing "to the clerk, secretary, auditor, or to the governing body at its principal office" (§ 915, subd. (a)(2)); or (3) actual receipt "by the clerk, secretary, auditor or board of the local public entity" (§ 915, subd. (e)(1)). These provisions on their face distinguish between the "local public entity" and its "governing body," meaning here, between the county and its board of supervisors. Yet no attempt has been made by County to show that the "Clerk of the Santa Clara County Board of Supervisors" is, in fact or law, the "clerk . . . of the local public entity," which is to say, the clerk of the county or, more familiarly, the county clerk. Indeed the contrary appears as a matter of law and fact.

A board of supervisors is conceptually and legally distinct from the county it governs. (See Cal.Const., art. 11, § 1, subd. (b) ["The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county."]; *id*., art. 11, § 4, subd. (e) [county charter is to provide for "[t]he powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein"]; Gov. Code, §§ 23004, subd. (a) [enumerating powers of county, including to "[s]ue and be sued"], 23011 ["The name of a county designated in this chapter is its corporate name, and it shall be designated thereby in any

action or proceeding touching its corporate rights, property, and duties."]; cf. § 25203 [county board of supervisors "shall direct and control the conduct of litigation in which the county, or any public entity of which the board is the governing body, is a party"].) It follows that a reference to the "Clerk of the Board" is not necessarily, or even apparently, a reference to "the clerk . . . of the local public entity." (§ 915, subd. (e)(1).)

Moreover it affirmatively appears that in Santa Clara County, the clerk of the board is not in fact the clerk of the county, since the county has another officer designated "County Clerk-Recorder." (See <http://www.sccgov.org/portal/site/rec/> (as of May 25, 2011).) The title of this office more nearly conforms to the claims act's description of the designated recipient than does "clerk of the board of supervisors." It is true that, in Santa Clara county, the county clerk does not exercise the function of receiving claims like plaintiff's; rather it is the clerk of the board who is described in public documents as "receiv[ing] and process[ing] . . . Claims against the County." (Santa Clara County Executive Office of Budget and Analysis, County of Santa Clara, FY 2009 County Government Handbook (Jan. 2009) (County Government Handbook), p. 40; cf. *id.* at p. 100-101 [duties of County Clerk-Recorder].)[9] But this local allocation of functions cannot change the meaning of the statute, particularly under the bright-line rule tacitly posited by the *Life*, *Del Real*, and *Munoz* courts. Under that rule delivery to the office designated by the county for these purposes—the officer whose holder submitted the declaration on which County's motion depended—*would not comply*, substantially or otherwise, with the presentment requirement. The clerk of the board simply is not "the clerk . . . of the local public entity" under any plain-meaning reading of section 915, subdivision (e)(1). It thus appears that County itself has taken liberties with

[9] The cited document is available at <http://www.sccgov.org/SCC/ docs_County Executive, Office of the (DEP)_attachments_TransitionDocument_010209V1.pdf> (as of May 25, 2011).

the language of the statute by treating the "clerk of the board" as if she were the county clerk. No attempt is made to explain or justify those liberties.

We conclude that on the undisputed facts before the trial court plaintiff substantially complied with the presentment requirements of the government claims act. It follows that County had to notify her in writing of the untimeliness of her claim within 45 days, and of any other deficiencies in her claim within 20 days, or the objections were forfeited. (See §§ 910.8, 911, 911.3, 915.4.) In the absence of such notification the claim must be deemed to have been seasonably presented and denied by operation of law, so as to pose no impediment to the maintenance of this action.

**DISPOSITION**

The judgment is reversed.

_____
RUSHING, P.J.

WE CONCUR:

_____
PREMO, J.

_____
ELIA, J.

| | |
|---|---|
| Trial Court: | Santa Clara County Superior Court<br>Superior Court Nos.: CV089159 |
| Trial Judge: | The Honorable<br>William J. Elfving |
| Attorneys for Plaintiff and Appellant Hope DiCampli-Mintz: | Campbell, Warburton, Fitzsimmons, Smith, Mendell & Pastore<br><br>J. Michael Fitzsimmons<br>Lisa Jeong Cummins |
| Attorneys for Defendants and Respondents County of Santa Clara et al.: | Office of the County Counsel<br><br>Miguel Marquez,<br>County Counsel<br><br>Marcy L. Berman,<br>Deputy County Counsel |

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