Notice and the Claim Presentation Requirements Under the California Government Claims Act: Recalibrating the Scales of Justice

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I. INTRODUCTION

A broken arm, face lacerations, minor brain damage, and paralysis below the waist. These are the injuries nineteen-year-old Jessica Brookes suffered when Joseph Stevens, a state worker driving a state-owned vehicle, slammed into Ms. Brookes' vehicle on the highway.[1] This was Mr. Stevens's second car accident in the course and scope of his employment.[2] Due to the injuries caused by Mr. Stevens's alleged negligence, Ms. Brookes

1. While Ms. Brookes' story is fictional, this type of situation commonly occurs where plaintiffs' suits are barred because they failed to present their government claims to the appropriate recipient designated under section 915 of the California Government Code. *See, e.g.*, Jefferson v. City of Fremont, No. C-12-0926 EMC, 2013 WL 1747917, at *10 (N.D. Cal. Apr. 23, 2013) (dismissing plaintiff's state law claim for failing to present his claim to the proper recipient under section 915); DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884, 889 (Cal. 2012) (barring plaintiff's claim for failing to present her claim to the designated recipient under section 915 of the California Government Code); Westcon Const. Corp. v. County of Sacramento, 61 Cal. Rptr. 3d 89, 103–04 (Ct. App. 2007) (barring plaintiff's claim for failing to serve it on the proper recipient under section 915).

2. "An employee acts within 'the scope of his employment' when he is engaged in work he was employed to perform or when an act is incident to his duty and was performed for the benefit of his employer and not to serve his own purpose." Fowler v. Howell, 50 Cal. Rptr. 2d 484, 487 (Ct. App. 1996) (citing Mazzola v. Feinstein, 201 Cal. Rptr. 148, 152–53 (Ct. App. 1984)).

filed a claim within the six-month statute of limitations with the California public entity that employed Mr. Stevens.[3]

Like many claimants, Ms. Brookes failed to realize that the California Government Claims Act required her to present her claim with the Victim Compensation and Government Claims Board (VCGCB), and not with the California public entity directly.[4] When Ms. Brookes did not receive any response from the public entity, she filed her lawsuit in state court within the statute of limitations.[5] The defendant public entity eventually filed a motion for summary judgment, alleging that Ms. Brookes failed to comply with the claim presentation requirements of the Government Claims Act (the Act).[6] Meanwhile, the period to file a late claim or to seek relief from the court's claim presentation requirements had expired.[7] The court granted the defendant's motion for summary judgment on the basis that the plaintiff

3. A "'[p]ublic entity' includes the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State." CAL. GOV'T CODE § 811.2 (West 2012). Section 945 of the California Government Code provides that "[a] public entity may sue and be sued." CAL. GOV'T CODE § 945 (West 2012).

4. In this hypothetical, section 915, subdivision (b) of the California Government Code was triggered because Ms. Brookes attempted to sue the state of California since Mr. Stevens, an employee of a California state department, was acting within the scope of his employment at the time the act resulting in injury to Ms. Brookes occurred. Under the Government Claims Act, state and local public entities may be held "liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment . . . ." *See* CAL. GOV'T CODE § 815.2 (West 2012). Since Ms. Brookes attempted to sue the state, she was required to present her claim to the Victim Compensation and Government Claims Board before filing suit in state court. *See* CAL. GOV'T CODE § 915(b) (West 2012). See *infra* Part II.C, for a further discussion of the Victim Compensation and Government Claims Board and its role in administering government claims against the state. "'State' means the State and any office, officer, department, division, bureau, board, commission or agency of the State claims against which are paid by warrants drawn by the Controller." CAL. GOV'T CODE § 940.6 (West 2012).

5. "Statute of limitations" refers to "a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered)." *Statute of Limitations*, BLACK'S LAW DICTIONARY (10th ed. 2014).

6. These claim presentation requirements are codified in sections 900–935.7 of the California Government Code. *See generally* CAL. GOV'T CODE §§ 900–935.7 (West 2012).

7. When a claim against the state is not properly presented within the designated statute of limitations period, claimants may apply to the VCGCB to file a late claim. *See* GOV'T § 911.4(a). The application to present a late claim against the state must be presented to the public entity, the VCGCB, "within a reasonable time not to exceed one year after the accrual of the cause of action . . . ." CAL. GOV'T CODE §§ 911.4(b), 915(b) (West 2012). *See infra* Part II.D, for a further discussion of presenting a late claim.

presented the claim to the incorrect recipient. Ms. Brookes was subsequently left with outrageous medical bills and emotional suffering for which she had no way to legally recover.

Ms. Brookes went from being a victim of a public entity's negligence to a victim of the legal system, all because of a minor procedural misstep.[8] In the process, the legal system's purpose—the search for truth and justice—was lost.[9] Ms. Brookes was afforded no closure, no day in court, and the scales of justice tipped heavily against fairness.[10] This story about Ms. Brookes represents the struggle that many individuals endure when trying to file a suit against a state entity that has injured them.

Although the Act's purported goal is to eliminate uncertainty in the claim presentation requirements, uncertainty remains—as evidenced by plaintiffs' and plaintiffs' attorneys' failure to comply with the strict procedural and hyper-technical requirements of the claim presentation sections of the Act.[11] The Act mandates compliance with various claim presentation requirements for claimants wishing to sue the state of California.[12] The legislative objective of these statutes is to provide the state entity with notice of the claim so it can potentially reduce unnecessary litigation and prevent future harm.[13] California Government Code section 915, subdivision

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8. *See* A. Benjamin Spencer, *The Restrictive Ethos in Civil Procedure*, 78 GEO. WASH. L. REV. 353 (2010), for a discussion of how strict procedural rules are inconsistent with the goals of the American judicial system in the context of federal civil procedure.

9. *See id.* at 353 ("The courts are established to administer justice, and you cannot have justice if justice is constantly being thwarted and turned aside or delayed by a labyrinth of technical entanglements." (citing *Rules of Civil Procedure for the District Courts of the United States: Hearing on H.R. 8892 Before the H. Comm. on the Judiciary*, 75th Cong. 2 (1938) (statement of Homer Cummings, Att'y Gen. of the United States))).

10. When depicted, the "scales of justice" are generally held by a woman in her left hand and are held evenly to "imply a just balance." *See* Michael E. Gehringer, *Questions and Answers*, 73 LAW LIBR. J. 740, 744 (1980); *see also Symbols of Law*, SUPREME COURT OF THE UNITED STATES (May 23, 2002), https://www.supremecourt.gov/about/symbolsoflaw.pdf [https://perma.cc/839U-KSD8] (explaining that the scales of justice symbolize "the impartial deliberation, or 'weighing,' of two sides in a legal dispute . . . .").

11. *See* DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884, 888 (Cal. 2012) ("A goal of the Government Claims Act is to eliminate confusion and uncertainty resulting from different claims procedures." (citing *Recommendation Relating to Sovereign Immunity, Claims, Actions and Judgments Against Public Entities and Public Employees*, 4 CAL. L. REVISION COMM'N REP. 1008 (1963), http://www.clrc.ca.gov/pub/Printed-Reports/Pub044.pdf [https://perma.cc/66VT-6F26])).

12. *See generally* GOV'T §§ 900–935.7 (providing various claim presentation requirements plaintiffs must comply with to bring suit against the state of California).

13. *See Recommendation Relating to Sovereign Immunity*, *supra* note 11, at 1007, 1008 ("Claims statutes have two principal purposes. First, they give the governmental entity an opportunity to settle just claims before suit is brought. Second, they permit the entity to make an early investigation of the facts on which a claim is based, thus enabling it to defend itself against unjust claims and to correct the conditions or practices which gave rise to the claim." (citing *Recommendation and Study Relating to the Presentation of*

(b), requires potential plaintiffs to file their government claims with the VCGCB as a prerequisite for filing a lawsuit against the state or its employees in a tort or contracts matter.[14] Under current case law, if a potential plaintiff submits a claim directly to the public entity instead of the VCGCB, that plaintiff may be barred from filing the lawsuit.[15]

As a result, there is a strong temptation for defense attorneys to rely on this technicality to get cases dismissed at an early stage by failing to notify the plaintiff that their claim was not properly presented.[16] This is an unfair windfall in the system given that the central purpose of the claim presentation statutes under the Act is to provide notice to the public entity.[17] When potential plaintiffs submit their claims directly to the entity instead of complying with the statute, the entity has in fact received notice of the claim. This technicality deprives potential plaintiffs, who may have meritorious claims, of their day in court.[18]

To recalibrate the scales of justice, this Comment advocates for a statutory amendment that encompasses two changes. First, the amendment would require plaintiffs to present their government claims against the state directly

Claims Against Public Entities, 2 CAL. L. REVISION COMM'N REP. A-1, A-1, A-7 (1959), http://www.clrc.ca.gov/pub/Printed-Reports/Pub019.pdf [https://perma.cc/3YPE-DQBU])).

14. See *infra* Part II.B, for the exact language of section 915, subdivision (b) of the California Government Code.

15. *See, e.g.*, *DiCampli-Mintz*, 289 P.3d at 888–92 (finding that plaintiff did not satisfy the Government Claims Act because she failed to present her malpractice claim to the statutorily designated recipient pursuant to section 915); Judicial Council v. Superior Court (Bean), 177 Cal. Rptr. 3d 602, 615 (Ct. App. 2014); Life v. County of Los Angeles, 278 Cal. Rptr. 196, 199–200 (Ct. App. 1991) (finding that plaintiff failed to comply with section 915 when he presented his malpractice claim to the medical center's legal department, instead of the statutorily designated recipient).

16. *See, e.g.*, *DiCampli-Mintz*, 289 P.3d at 887 (involving County defense attorney who did not notify plaintiff of her misdirected claim, and filed a motion for summary judgment to have plaintiff's case dismissed).

17. *See, e.g.*, City of Stockton v. Superior Court, 171 P.3d 20, 25 (Cal. 2007) (stating the purpose of the claim presentation statutes is "to provide the public entity [with] sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation" (quoting City of San Jose v. Superior Court, 525 P.2d 701, 706 (Cal. 1974))); *see also* Connelly v. County of Fresno, 52 Cal. Rptr. 3d 720, 726 (Ct. App. 2006) (stating the purpose of the claims statute is "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" (quoting Santee v. Santa Clara Cty. Office of Educ., 269 Cal. Rptr. 605, 611 (Ct. App. 1990))).

18. "Day in court" is "[t]he right and opportunity, in a judicial tribunal, to litigate a claim, seek relief, or defend one's rights." *Day in Court*, BLACK'S LAW DICTIONARY (10th ed. 2014).

to the public entity that allegedly caused the harm, instead of the VCGCB, thereby accomplishing the statute's objective of providing notice to the state entity. Second, instead of the VCGCB assessing claims against the state, each state agency would have its own government claims office (GCO) handle government claims for the respective individualized entity. This would promote efficiency in the government claims process by cutting out the "middleman," the VCGCB. Moreover, this amendment would ensure that plaintiffs avoid a fatal loss of substantive rights due to a minor procedural technicality, one that does not achieve the statute's legislative purpose of providing state entities with notice of potential lawsuits.

Part II of this Comment provides a brief history of the Act, an overview of the current process for filing government claims against the state of California, including the VCGCB's role in that process, and the consequences for failing to comply with the claim presentation statutes, specifically focusing on Government Code section 915, subdivision (b). Part III discusses the legislative intent underlying section 915's claim presentation requirements and examines how the requirements are inconsistent with the statute's purpose. Part IV discusses California courts' varying interpretations and applications of the strict claim presentation requirement under section 915, subdivision (b), specifically focusing on two California decisions: *Jamison v. State of California* (*Jamison*) and *DiCampli-Mintz v. County of Santa Clara* (*DiCampli-Mintz*). Part IV also discusses the doctrine of substantial compliance and analyzes how these two California decisions vary in their applications of the doctrine. Part V explains the need to reconcile the *Jamison* and *DiCampli-Mintz* decisions. Part VI discusses potential ways to reconcile these cases, and provides the statutory language and benefits of the superior solution. Finally, Part VII concludes by summarizing the consequences of California's current Government Code section 915, while highlighting the beneficial impact the proposed statutory amendment would have on the legal system.

II. AN OVERVIEW OF THE GOVERNMENT CLAIMS ACT

A. History & Function of the Act

On September 20, 1963, the California legislature enacted the Tort Claims Act.[19] Because the Act extends beyond tort claims, the name has since been changed to the Government Claims Act.[20] Before 1963, government

19. *See* Tubbs v. S. Cal. Rapid Transit Dist., 433 P.2d 169, 171 (Cal. 1967).

20. In 2007, the California Supreme Court dropped the title of Tort Claims Act and began referring to the claims statutes as the Government Claims Act. *See City of Stockton*, 171 P.3d at 27–28 (finding that the "Government Claims Act" is a more appropriate title than the "Tort Claims Act" since the statutory requirements apply not only to tort claims,

entities were generally immune from tort liability.[21] In 1959, the California Law Revision Commission (the Commission) reported inconsistencies with claim presentation requirements for public entities throughout the state.[22] In response to these findings, the Commission stressed the necessity of specific and uniform procedures for bringing claims against public entities to avoid confusion.[23] In 1961, the California Supreme Court abolished the common law rule of governmental immunity from tort liability, thereby permitting plaintiffs to sue the state for tortious acts.[24] In response to this decision, the Commission engaged in a comprehensive study on governmental tort liabilities and immunities.[25]

In 1963, the Commission presented its inclusive report and recommendation to the California legislature.[26] With the Commission's aid, the 1963 California legislature enacted the Government Claims Act, which applies to all public entities and their employees.[27] The Act provides a comprehensive statutory scheme laying out the law of governmental liability and immunity in California.[28] Under the Act, "a public entity is not liable for an injury whether such injury arises out of an act or omission of the public entity or a public employee," unless otherwise provided by statute.[29] Essentially,

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but also to breach of contract claims). This name change was later codified in the California Government Code. *See* CAL. GOV'T CODE § 810(b) (West 2012).

21. *See, e.g.*, Talley v. N. San Diego Cty. Hosp. Dist., 257 P.2d 22, 27 (Cal. 1953) (finding that the doctrine of sovereign immunity applies to government entities and that counties are not liable for negligence of their employees), *overruled by* Muskopf v. Corning Hosp. Dist., 359 P.2d 457 (Cal. 1961).

22. *See* DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884, 889 (Cal. 2012).

23. *See Recommendation and Study Relating to The Presentation of Claims Against Public Entities*, *supra* note 13, at A-40, A-57 to A-62, A-122.

24. *See Muskopf*, 359 P.2d at 458 (concluding that "the rule of governmental immunity from tort liability . . . must be discarded as mistaken and unjust"). In that same year, the California Supreme Court also decided *Lipman v. Brisbane Elementary School District*, 359 P.2d 465 (Cal. 1961). "The combined effect of *Muskopf* and *Lipman* rendered public entities generally liable for torts, including those resulting from the discretionary acts and omissions of their employees." CAL. GOV'T TORT LIABILITY PRAC. § 1.39 (C.E.B. 4th ed. 2013).

25. *See Recommendation Relating to Sovereign Immunity*, *supra* note 11, at 803.

26. *See id*.

27. This legislation is codified in sections 810–996.6 of the California Government Code. CAL. GOV'T CODE §§ 810–996.6 (West 2012). See *supra* note 3, for the definition of "public entity." "'Public employee' means an employee of a public entity." GOV'T § 811.4.

28. *See* CAL. GOV'T CODE §§ 810–996.6 (West 2012).

29. GOV'T § 815(a). Under the Act, state and local public entities may be held "liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment." GOV'T § 815.2(a). Public entities may also

the Act eliminated all common law or judicially devised forms of governmental liability, and made it wholly statutory, except as provided by the state and federal constitutions.[30] A public entity's liability is also subject to a variety of statutory immunities within the Act.[31]

B. Process for Filing Government Claims Against the State

The Government Claims Act provides the process for filing claims against various types of entities, and the applicable requirements with which claimants must comply will vary depending on which entity the claimant is filing against.[32] This Comment, however, centers only on government claims against the *state* of California.[33] Government Code section 905.2 describes the kinds

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be liable under the Act for intentional torts of their elected officials when both the elected official and the public entity are co-defendants in the same action. *See* GOV'T § 815.3(a). Additionally, public entities may be "liable for injury caused by a dangerous condition of its property." GOV'T § 835.

30. *See* GOV'T § 815 note (Legislative Committee Comments) ("In the absence of a constitutional requirement, public entities may be held liable only if a statute . . . is found declaring them to be liable.").

31. *See* GOV'T § 815(b) ("The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person."). An immunity provision will generally prevail over the liability sections unless a statute indicates otherwise. *See* GOV'T § 815, note (Legislative Committee Comments) ("[T]he immunity provisions will as a general rule prevail over all sections imposing liability."). "Immunity" means "[a]ny exemption from a duty, liability, or service of process." *Immunity*, BLACK'S LAW DICTIONARY (10th ed. 2014). Some of the immunities in the California Government Code include the prisoner immunity for negligence, the natural conditions immunity, and the hazardous recreational activities immunity. *See* GOV'T §§ 844.6, 831.2, 831.7.

32. *See* GOV'T § 915(a) (claim presentation requirements for claims against local public entities); GOV'T § 915(b) (claim presentation requirements for claims against the state); GOV'T § 915(c) (claim presentation requirements for claims against judicial branch entities); GOV'T § 915(d) (claim presentation requirements for claims against a California State University); GOV'T § 940.4 ("'Local public entity' includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State, but does not include the State."); GOV'T § 940.3 ("A 'judicial branch entity' is a public entity and means any superior court, court of appeals, the Supreme Court, the Judicial Council, or the Administrative Office of the Courts.").

33. *See supra* note 4, for a description of who classifies as the "state." Although this Comment centers on government claims against the state and plaintiffs' failure to present these claims to the statutorily designated recipient, section 915 of the Government Code also designates specific recipients for claims against local government and judicial branch entities. *See* GOV'T § 915(a), (c). Hence, the issue of plaintiffs failing to present their claims to the correct recipient appear in these contexts as well. *See, e.g.*, DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884, 889 (Cal. 2012) (holding that plaintiff-patient's claim against the county was barred because she presented it to the risk management department of the county hospital instead of the county "clerk, secretary or auditor" as required by section 915); Judicial Council v. Superior Court, 177 Cal. Rptr. 3d 602, 615 (Ct. App. 2014) (holding that plaintiff failed to comply with the claim

of claims against the state, which require a claimant to present a formal written claim.[34] The "general rule is that 'all claims' for 'money or damages against the state . . . for an injury for which the state is liable' are subject to the Act, unless exempted by statute."[35]

A crucial aspect of the Act is complying with certain claim presentation requirements, which is a prerequisite to maintaining a suit against the state.[36] Potential plaintiffs must comply with these requirements to sue the state or its employees for "money or damages" in a tort or breach of contract action.[37] Accordingly, potential plaintiffs must read these sections carefully and comply with all of their requirements or risk their claims becoming barred.[38]

One requirement is that claimants present their government claims to a specific recipient before filing suit.[39] Under section 915, subdivision (b), the VCGCB is the appropriate recipient for government claims against the State of California.[40] This section reads as follows:

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presentation requirement of the Government Claims Act by presenting her claim against a judicial branch entity to the VCGCB instead of the secretariat, the designated recipient under section 915(c)(4)).

34. *See* CAL. GOV'T CODE § 905.2 (West 2012).

35. CAL. GOV'T TORT LIABILITY PRAC. § 5.21 (C.E.B. 4th ed. 2013) (citing CAL. GOV'T CODE § 905.1 (West 2012)).

36. *See* sources cited *supra* note 6; *see also* Nguyen v. L.A. Cty. Harbor/UCLA Med. Ctr., 10 Cal. Rptr. 2d 709, 711 (Ct. App. 1992). Note that there are some exceptions, such as claims against the Regents of the University of California. *See* CAL. GOV'T CODE § 905.6 note (Law Revision Commission Comments) (West 2012) (explaining that "neither the State nor the local public entity claims presentation procedures apply to claims against the University of California" (citing 4 CAL. L. REVISION COMM'N REP. 1001 (1963))). However, a claim must fall within an exemption, such as the University of California Regents exemption, otherwise a plaintiff's failure to submit the claim in accordance with the claim presentation requirements will preclude suit against the public entity. CAL. GOV'T TORT LIABILITY PRAC. § 5.42 (C.E.B. 4th ed. 2013).

37. *See* GOV'T § 905.2.

38. Many suits are disqualified at an early stage through motions to dismiss or motions for summary judgment. *See, e.g.*, *DiCampli-Mintz*, 289 P.3d at 887, 888–89 (involving a defense attorney who filed a motion for summary judgement after plaintiff presented her claim to the improper recipient). Law firms recognize the challenges these hyper-technical claim presentation requirements pose and warn potential plaintiffs accordingly. *See, e.g.*, *Government Claims in California*, HIDALGO L. FIRM, http://www.hidalgolawfirm.com/ [https://perma.cc/4CVX-SCBB] (follow "Rights & Responsibilities" hyperlink; then follow "Government Claims" hyperlink) (last visited Aug. 1, 2016) ("BEWARE: Government Claim laws of California . . . are highly technical laws, with requirements and exceptions that are not readily evident.").

39. *See* CAL. GOV'T CODE § 915 (West 2012).

40. *Id.* § 915(b).

(b) Except as provided in subdivisions (c)[41] and (d),[42] a claim, any amendment thereto, or an application for leave to file a late claim shall be presented to the state by either of the following means:

(1) Delivering it to an office of the Victim Compensation and Government Claims Board.
(2) Mailing it to the Victim Compensation and Government Claims Board at its principal office.[43]

The other pertinent subdivision is section 915, subdivision €.[44] This subdivision explains that even if the claim is not mailed or personally delivered to the VCGCB, as required by subdivision (b), the claim is sufficient so long as the VCGCB actually receives it.[45]

C. The Role of the VCGCB

The VCGCB, established in 1911 and formerly known as the Board of Control, administers the Government Claims Act on behalf of the State of California through the Government Claims Program (the GCP), and thus plays a crucial role in the government claims process.[46] The VCGCB has

41. Section 915, subdivision (c), of the California Government Code provides different presentation requirements for claims against a judicial branch entity. *See* GOV'T § 915(c). If a potential plaintiff wishes to sue a superior court or one of its judges, a court executive officer, or a trial court employee, the plaintiff must first present the claim to the court executive officer. GOV'T § 915(c)(1). If a potential plaintiff wishes to sue a court of appeals or one of its judges, the plaintiff must present the claim to the clerk or administrator of the court of appeals. GOV'T § 915(c)(2). If a potential plaintiff wishes to sue the Supreme Court or one of its judges, the claim must first be presented to the clerk of the Supreme Court. GOV'T § 915(c)(3). If a potential plaintiff wishes to sue the Judicial Council or the Administrative Office of the Courts, the claim must first be presented with the Secretariat of the Judicial Council. GOV'T § 915(c)(4).

42. Section 915, subdivision (d), of the California Government Code provides different presentation requirements for claims against California State Universities. GOV'T § 915(d). If a potential plaintiff wishes to sue a California State University, the claim must first be "presented to the Trustees of the California State University by delivering or mailing it to the Office of Risk Management at the Office of the Chancellor of the California State University." *Id.*

43. GOV'T § 915(b).

44. *See infra* Part VI.A.

45. CAL. GOV'T CODE § 915(e) (West 2012).

46. *About the Board*, CAL. VICTIM COMPENSATION & GOV'T CLAIMS BD., http://www.vcgcb.ca.gov/board/ [https://perma.cc/C7V4-EYEN] (last visited Aug. 1, 2016); *see also Annual Report 2013–2014*, CAL. VICTIM COMPENSATION & GOV'T CLAIMS BD. 15, http://www.vcgcb.ca.gov/docs/reports/AnnualReport-FY-13-14.pdf [https://perma.cc/XZ2F-RZP6] [hereinafter *2013–2014 Ann. Rep.*]. The GCP, created in 1965, was the nation's first Victim Compensation Program. *About the Government Claims Program*, CAL. VICTIM COMPENSATION & GOV'T CLAIMS BD., http://www.vcgcb.ca.gov/claims/about.aspx [https://perma.cc/UVX5-GKWZ] (last visited Aug. 1, 2016). The VCGCB became responsible for the program in 1967. *Id.* Each year, the VCGCB receives thousands of claims against

many other functions aside from administering the Government Claims Act, such as administering the Victim Compensation Program and Revenue Recovery Program, the California State Employees Charitable Campaign, the Good Samaritan Act, and the Missing Children Reward Program.[47] In addition, it handles matters such as bid protests and claims of erroneously convicted felons.[48]

If an individual wishes to sue the state, the Act requires that the individual, or someone acting on their behalf, deliver the claim to the VCGCB or mail it to an office of the VCGCB before filing suit in court.[49] Persons wishing to sue the state must also pay a twenty-five dollar filing fee upon submitting their claim to the VCGCB.[50] Individuals must file claims against the state for death or injury to a person, or damage of personal property, within six

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the state of California. *See 2013–2014 Ann. Rep.*, *supra*, at 16 (stating that 7033 government claims were received in fiscal year 2013–2014).

47. Although it has many other functions, the VCGCB's duties were expanded with the enactment of the Government Claims Act. *About the Board*, *supra* note 46. Prior to the enactment of the Government Claims Act, the VCGCB "duties included the adoptions of rules and regulations governing the presentation and audit of contract or tort claims." *Id.* Since 1963, the VCGCB has been responsible for administering the Act on behalf of the state. *Id.*

48. *Id.*

49. *See* CAL. GOV'T CODE § 915(b) (West 2012). The claim shall include: "the name and post office address of the claimant," "[t]he post office address to which the person presenting the claim desires notices to be sent," "[t]he date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted," "[a] general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim," "[t]he name or names of the public employee or employees causing the injury, damage, or loss, if known," "[t]he amount claimed if it totals less than ten thousand dollars ($10,000) as of the date of presentation of the claim . . . [but] [i]f the amount claimed exceeds ten thousand dollars ($10,000), no dollar amount shall be included in the claim." CAL. GOV'T CODE § 910 (West 2012). Additionally, the claimant or someone acting on his or her behalf must sign the claim. CAL. GOV'T CODE § 910.2 (West 2012).

50. *See* CAL. GOV'T CODE § 905.2(c) (West 2012). Note that certain persons with financial difficulties are exempt from paying this filing fee. *See* GOV'T § 905.2(c)(1)(A)–(C). For example, the fee shall not apply to persons whose monthly income is 125 percent or less of the current monthly poverty line, persons who are receiving benefits pursuant to the Supplemental Security Income and State Supplemental Payments programs, the California Work Opportunity and Responsibility to Kids Act program, or the Food Stamp program, or inmates who have a balance of $100 or less credited to their trust accounts ninety days prior to the date the claim is filed. *See id.*; *see also Government Claims Filing Fee and Fee Waiver*, CAL. VICTIM COMPENSATION & GOV'T CLAIMS BD., http://www.vcgcb.ca.gov/claims/fee.aspx [https://perma.cc/B5GL-M9VP] (last visited Aug. 1, 2016).

months of the incident that gave rise to the claim.[51] Individuals filing claims against the state for all other injuries must do so within one year of the incident that gave rise to the claim.[52] Generally, a claim is considered presented with the VCGCB on the date that the claimant submits the claim, either personally or by mail, and pays the mandatory twenty-five dollar filing fee.[53]

Claimants may not pursue their claims in court until the VCGCB has rejected or denied their claim.[54] When a claimant delivers a claim to the VCGCB, the VCGCB "shall grant or deny the application within forty-five days after it is presented."[55] During this forty-five day period, the GCP staff reviews the claim for "sufficiency, jurisdiction, and timeliness."[56] When assessing a claim against the state, the GCP staff contacts the public entity, notifies it of the claim, and works with that affected public entity to resolve the claim.[57] The GCP staff assesses possible early resolution opportunities, provides its recommendation to the entity, and gives the entity an opportunity to respond.[58] The public entity can accept the claim, reject the claim, or partially accept the claim.[59] If resolution is not successful, the GCP staff prepares a recommendation to the three-member Board regarding the

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51. *See* CAL. GOV'T CODE § 911.2(a) (West 2012). Claims against the state for damage against growing crops also must be presented within this six-month time period. *See id.*

52. *See id.*

53. *See* CAL. GOV'T CODE § 911.2(b)(1) (West 2012). If a claimant's fee waiver is granted, then the claimant's claim is considered presented to the VCGCB on the date that the claim was submitted with the affidavit requesting the fee waiver. *See* CAL. GOV'T CODE § 911.2(b)(2) (West 2012). If the claimant's fee waiver is denied, the claim is considered presented to the VCGCB on the date the claim was submitted with the affidavit requesting the fee waiver so long as "the filing fee is paid to the board within [ten] calendar days of the mailing of the notice of the denial of the fee waiver." CAL. GOV'T CODE § 911.2(b)(3) (West 2012).

54. *See Government Claims Program*, CAL. VICTIM COMPENSATION & GOV'T CLAIMS BD., http://www.vcgcb.ca.gov/claims/ [https://perma.cc/4749-L6S3] (last visited Aug. 1, 2016) ("[A]nyone who wishes to file a lawsuit against the State or its employees for damages must first pursue an administrative remedy through the GCP claims process. Only if the claim is rejected or denied may the claim be pursued through the courts."); *see also* CAL. GOV'T CODE § 945.4 (West 2012).

55. *See* CAL. GOV'T CODE § 911.6(a) (West 2012). However, it is possible for the claimant and the board to extend this forty-five-day period by written agreement made before the expiration of the period. *See id.* A claimant may amend their claim within this forty-five-day period "or before final action thereon is taken by the board, whichever is later, if the claim as amended relates to the same transaction or occurrence which gave rise to the original claim." *See* CAL. GOV'T CODE § 910.6 (West 2012). The VCGCB shall act on the amended claim within forty-five days after the amended claim is presented. CAL. GOV'T CODE § 912.4(a) (West 2012).

56. *See How to File a Claim Against the State*, CAL. VICTIM COMPENSATION & GOV'T CLAIMS BD., http://www.vcgcb.ca.gov/claims/howtofile.aspx [https://perma.cc/N3FD-RVHG] (last visited Aug. 1, 2016).

57. *Id.*

58. *Id.*

59. 2013–2014 *Ann. Rep.*, *supra* note 46, at 15.

disposition of the claim, which is based on case facts and input from the public entity.[60] Within the forty-five day period, the VCGCB notifies the claimant and the public entity of the date of a public meeting during which it will take action on the claim.[61] During this public meeting, the parties are given an opportunity to comment.[62]

If the VCGCB is silent during the forty-five-day period and does not notify the claimant of the status of their claim, the claimant's application is deemed rejected.[63] Once the claim is rejected, either because of the VCGCB's silence or pursuant to the ruling of the public meeting, the claimant may file their lawsuit, but must do so within a specific timeframe.[64] If the claimant fails to do so, the suit may become barred.[65]

D. Presenting a Late Claim and Seeking Court Relief from the Claim Requirements

If a claimant fails to present their claim against the state to the VCGCB within the statute of limitations period, the claimant may present an application to file a late claim to the VCGCB.[66] To file a late claim, the claimant must generally establish that: (1) the claim was presented within

60. *Id.* For more information on the three-member board, see *Victim Compensation and Government Claims Board Members*, CAL. VICTIM COMPENSATION & GOV'T CLAIMS BD., http://www.vcgcb.ca.gov/board/members.aspx [https://perma.cc/9KAW-CWKM] (last visited Aug. 1, 2016).

61. *See id.* ("The three-member Board acts on the recommendation during a public meeting where those involved in the claim are given the opportunity to comment.").

62. *Id.*

63. *See* CAL. GOV'T CODE § 911.6(c) (West 2012) ("[I]f the board fails or refuses to act on an application within the time prescribed by this section, the application shall be deemed to have been denied on the [forty-fifth] day or, if the period within which the board is required to act is extended by agreement pursuant to this section, the last day of the period specified in the agreement.").

64. The claimant must file suit within six months after the VCGCB has provided notice of rejection to the claimant. *See* CAL. GOV'T CODE § 945.6(a)(1) (West 2012). If the VCGCB does not provide notice of rejection within the forty-five-day period (and is instead silent), the claimant may file suit within two years from the accrual of the cause of action. *See* CAL. GOV'T CODE § 945.2(a)(2) (West 2012).

65. *See, e.g.*, Chas. L. Harney, Inc. v. State, 31 Cal. Rptr. 524, 533 (Ct. App. 1963) (finding that plaintiff's cause of action was barred because no action was commenced within six months of the rejection of plaintiff's claim).

66. *See* CAL. GOV'T CODE § 911.4(b) (West 2012) ("The application [for a late claim] shall be presented to the public entity . . . within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application.").

one year of the date on which it accrued; (2) the claimant's untimely claim resulted from "mistake, inadvertence, surprise, or excusable neglect"; and (3) the public entity was not prejudiced by the claimant's failure to present the claim timely.[67] If the claimant can establish the aforementioned requirements, the burden then shifts to the public entity to show that it would be prejudiced in its defense of the claim should the claimant's application to file a late claim be granted.[68] The claimant can sue for malpractice if the claimant's late claim is the result of the attorney's negligence.[69]

Additionally, the Act includes notice-waiver provisions in which a claimant may also be excused from the claim presentation requirements under certain circumstances.[70] If a claimant's application to present a late claim is denied, the claimant can ask the court to grant a petition relieving the claimant from the claim presentation requirements.[71] If the court grants the claimant's petition, then the claimant may circumvent the claim presentation requirements and file suit.[72] If the court denies claimant's petition, the claim will be barred unless the claimant successfully appeals the court's decision to deny the petition.[73]

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67. *See* CAL. GOV'T CODE §§ 911.6(b)(1), 911.2 (West 2012). In addition to establishing that the claimant's untimely claim resulted from "mistake, inadvertence, surprise, or excusable neglect," there are other instances where the VCGCB will grant an application to present a late claim. *See Frequently Asked Questions About Filing Government Claims*, CAL. VICTIM COMPENSATION & GOV'T CLAIMS BD., http://www.vcgcb.ca.gov/claims/faq.aspx [https://perma.cc/LKU9-KSMH] (last visited Aug. 1, 2016) (providing that the VCGCB may allow a late claim if the "[c]laimant was a minor during all of the time allotted; [the] [i]njured claimant was physically or mentally incapacitated during all of the time allotted and for that reason failed to file in time; or [the] [i]njured person died before the expiration of the time allotted for filing the claim"); *see also* CAL. GOV'T CODE § 911.6(b)(2)–(4) (West 2012).

68. *See* Tammen v. San Diego County, 426 P.2d 753, 760 (Cal. 1967) ("The county was not required to sustain its burden of proof that it would be prejudiced by a late filing until [plaintiff] had satisfied the court that her failure was due to the causes she alleged.").

69. *See* Mitchell v. Cal. Dep't of Transp., 210 Cal. Rptr. 266, 269 (Ct. App. 1985) (explaining that a "client's redress for inexcusable neglect by counsel is . . . an action for malpractice").

70. *See* CAL. GOV'T CODE § 946.6 (West 2012).

71. *See id.* § 946.6(a). The petition asking the court to relieve the claimant from the claim presentation requirements shall be filed within six months after the claimant's application to present a late claim was denied or deemed to be denied by the VCGCB. *See* GOV'T §§ 946.6(b), 911.6.

72. *See* GOV'T § 946(c).

73. *See* Rivera v. City of Carson, 173 Cal. Rptr. 4, 6 n.2 (Ct. App. 1981) (finding that order denying petition for relief from claim presentation requirements was appealable). Although such a decision is appealable, the trial court's decision in denying a petition for relief "will not be disturbed on appeal except for an abuse of discretion." *See* Ebersol v. Cowan, 673 P.2d 271, 276 (Cal. 1983) (citing Viles v. State, 423 P.2d 818, 821 (Cal. 1967)).

III. THE NEED FOR EQUITABLE RELIEF: SECTION 915(B) FRUSTRATES LEGISLATIVE INTENT

A. Purpose of the Claim Presentation Requirements: Notice

The claim presentation statutes, including section 915, subdivision (b), function as notice requirements.[74] The requirements serve the goal of providing public entities with notice that someone is filing a claim or potential lawsuit against them.[75] According to the Law Revision Commission—a group that played a large role in the enactment of the Act—the claim presentation requirements serve two purposes. First, by providing an opportunity to settle claims, the requirements enable public entities to bypass expensive and burdensome litigation.[76] Second, the requirements permit the entity to investigate the facts surrounding the claim early, which, in turn, enables the entity to defend itself against unjust claims and to remedy any conditions or practices that gave rise to the claim.[77]

Additionally, underlying the claim presentation requirements is the concern for public safety. The claim presentation statutes permit public entities to audit their practices and inspect dangerous conditions, which, in turn, increases public safety.[78] If the public entities are given notice, they can avoid similar liabilities in the future by correcting deficient conditions or practices.[79] The statute's purpose and intended goals are important, but only to the extent that they are actually carried out. While

74. *See Recommendation Relating to Sovereign Immunity*, *supra* note 11, at 1008.

75. *Id.*

76. *Id.*; *see also* Phillip v. Desert Hosp. Dist., 780 P.2d 349, 353 (1989) (en banc) (citing City of San Jose v. Superior Court, 525 P.2d 701, 706 (Cal. 1974)).

77. *See Recommendation Relating to Sovereign Immunity*, *supra* note 11, at 1008; *see also* Crow v. State, 271 Cal. Rptr. 349, 354 (Ct. App. 1990) ("[T]he purpose . . . is to give the public entity the opportunity to evaluate the merit and extent of its liability and determine whether to grant the claim without the expenses of litigation." (citing Donohue v. State, 224 Cal. Rptr. 57, 62 (Ct. App. 1986))); Gatto v. County of Sonoma, 120 Cal. Rptr. 2d 550, 564 (Ct. App. 2002) ("The 'purpose of the [statutory requirements for presenting claims against the state or a local public entity] is to facilitate early investigation of disputes and settlement without trial if appropriate, as well as to enable the public entity to engage in fiscal planning for potential liabilities and to avoid similar liabilities in the future.'" (quoting Lewis C. Nelson & Sons, Inc. v. Clovis Unified Sch. Dist., 108 Cal. Rptr. 2d 715, 721 (Ct. App. 2001))).

78. *See Gatto*, 120 Cal. Rptr. 2d at 564 (citing Lewis C. Nelson & Sons, Inc., 108 Cal. Rptr. 2d at 721).

79. *See Recommendation Relating to Sovereign Immunity*, *supra* note 11, at 1008; *see also Lewis C. Nelson & Sons, Inc.*, 108 Cal. Rptr. 2d at 721 (citing Baines Pickwick Ltd. v. City of Los Angeles, 85 Cal. Rptr. 2d 74, 77 (Ct. App. 1999)).

the statute's intentions are worthy, there are flaws in the current statute that warrant change.

B. The Issue: Claims Submitted to the Public Entity Should Be Considered Properly Presented Because the Notice Objective of the Statute is Achieved

Despite the clear language of section 915, subdivision (b), which unambiguously states that a claim against the state must first be presented to the VCGCB, some claimants instead file their claims with the public entity that allegedly caused the harm.[80] Because of their noncompliance, these claimants are ultimately barred from filing their lawsuit against the state in court.

However, if notice is at the heart of section 915, subdivision (b), it does not logically follow that claims become barred when individuals present their claims to the public entity that allegedly caused the harm, thereby giving the entity direct notice of the claim, rather than to the VCGCB, a third party.[81] If a claimant submits a claim to the responsible public entity directly, the public entity indeed becomes aware of the potential lawsuit. The claimant has fulfilled the notice goal of the claim presentation requirement because the public entity now has the opportunity to resolve issues without the cost of litigation.[82] In fact, by providing direct notice of the claim to the responsible entity, and bypassing the VCGCB, the entity is potentially afforded an even earlier opportunity to resolve issues. When the claimant submits a claim to the public entity directly, the VCGCB is cut out and the public entity may be on notice of the claim up to forty-five days earlier because the VCGCB has forty-five days to reject the claim upon receiving it.[83]

There is no question that notice is crucial in many aspects of civil procedure.[84] There is also no question that the Legislature recognizes the

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80. *See, e.g.*, Arista v. Mule Creek State Prison, No. C068541, 2013 WL 5410469, at *1 (Cal. Ct. App. Sept. 27, 2013) (affirming the lower court's decision to dismiss plaintiff's suit for failing to present his claim to the VCGCB as required by the Government Claims Act); Lopez v. Cal. Dep't of Ins., No. B164686, 2003 WL 21696221, at *1 (Cal. Ct. App. July 22, 2003) (same).

81. The Fourth District of the California Court of Appeal raised this question in 1973. *See* Jamison v. State, 107 Cal. Rptr. 496, 497 (Ct. App. 1973), *disapproved of by* DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884, 892 (Cal. 2012). See *infra* Part IV.B.1, for further discussion.

82. *See Jamison*, 107 Cal. Rptr. at 499 (finding that the purpose of the statute had been satisfied since the public entity received timely notice).

83. *See* CAL. GOV'T CODE § 911.6(a) (West 2012) (providing that the VCGCB has forty-five days to accept or deny a claim against the state).

84. *Notice*, WEST'S ENCYCLOPEDIA OF AMERICAN LAW (2nd ed. 2008) ("The concept of notice is critical to the integrity of legal proceedings . . . [and] [d]ue process requires that legal action cannot be taken against anyone unless the requirements of notice and an

importance of notice with respect to government claims against the state.[85] Accordingly, the Legislature should amend section 915, subdivision (b) of the Government Code to reflect this. One way to accomplish this may be through the doctrine of substantial compliance.

IV. HOW CALIFORNIA COURTS ADDRESS THE ISSUE

A. An Overview of the Substantial Compliance Doctrine

The doctrine of substantial compliance originated in case law and applies to technical shortcomings of the claim presentation requirements.[86] In short, the doctrine prevents the dismissal of claims when the court determines that a claimant has substantially complied with the claim-filing statute.[87] To determine whether there has been substantial compliance with a claim-filing statute, "courts must determine if the purpose of the statute has been satisfied, if there has been a bona fide attempt to comply, and whether any

opportunity to be heard are observed."). The judicial system has also recognized the important of notice in the civil procedure context. For example, Federal Rule of Appellate Procedure 4 lays out the process for filing a notice of appeal. *See* FED. R. APP. P. 4. The rule specifically states that notices of appeal for civil and criminal cases must be filed with the clerk of the *district* court. *See* FED. R. APP. P. 4(a)(1)(A); (b)(1)(A). An issue arose, however, where individuals failed to comply with this procedural presentment requirement because they were mistakenly—yet logically—filing their notices of appeal with the *appellate* court. At the heart of this requirement to present notices of appeal to the district court is notice. Specifically, the intention for the rule was to ensure that the appellate court would have notice of potential appeals. However, if an individual presents their notice of appeal to the appellate court, and not the district court, the appellate court still receives notice of the potential appeal. To preserve fairness and the notice purpose underlying this requirement, the rule now provides a safety-net subdivision that protects appellants if they accidentally file their notices of appeal with the appellate court instead of with the district court. *See* FED. R. APP. P. 4(d) ("If a notice of appeal . . . is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.").

85. *See* Phillips v. Desert Hosp. Dist., 780 P.2d 349, 353 (Cal. 1989) ("The Legislature has . . . provided a comprehensive scheme which requires a claimant to notify the appropriate public entity of a claim.").

86. *See* JUSTICE LEE SMALLEY EDMON ET AL., CAL. PRAC. GUIDE CIV. PRO. BEFORE TRIAL Ch. 1-C (Rutter Group 2015) ("Technical defects will not invalidate a claim so long as there has been 'substantial compliance' with the claims filing requirement." (citing *Phillips*, 780 P.2d at 353)).

87. *See id.*

prejudice to the governmental entity appears."[88] In effect, the doctrine of substantial compliance prevents meritorious claims from being thrown out. The doctrine is sometimes written into state statute provisions, but in the context of satisfying section 915's claim presentation requirements, it is more often applied judicially.

B. Judicial Application of the Doctrine in California

Many California courts have recognized the importance of upholding the purpose of the claim presentation requirements.[89] These courts recognize the stringent nature of the claim presentation requirements and "have held that where the purpose of the Government Claims Act is satisfied, it must not be used as a trap for the unwary."[90]

Recognizing the potential trap, some courts have applied the doctrine of "substantial compliance" as opposed to "strict compliance" to determine whether a claimant has satisfied the Act's claim presentment requirements.[91] As one court stated:

> [w]here there has been an attempt to comply [with the claim presentation requirements] but the compliance is defective, the test of substantial compliance controls. Under this test, the court must 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."[92]

While California courts have stressed the importance of the goals underlying the claim presentation statute, they have also stressed, and almost uniformly

88. Jamison v. State, 107 Cal. Rptr. 496, 497 (Ct. App. 1973) (citing Insolo v. Imperial Irr. Dist., 305 P.2d 176, 178 (Cal. 1956)), *disapproved of by* DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884 (Cal. 2012).

89. *See, e.g.*, *DiCampli-Mintz*, 289 P.3d at 889 (A statute "must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers . . . ." (citing City of Poway v. City of San Diego, 280 Cal. Rptr. 368, 374 (Ct. App. 1991))).

90. MICHAEL PAUL THOMAS, ET AL., CAL. CIV. PRAC. TORTS § 30:7 (2016) (citing Johnson v. San Diego Unified Sch. Dist., 266 Cal. Rptr. 187, 190 (Ct. App. 1990)); *see also Johnson*, 266 Cal. Rptr. At 190 ("[T]he claims statutes which are designed to . . . provide an opportunity for timely investigation and encourage settling meritorious claims should not be used as traps for the unwary when their underlying purposes have been satisfied." (citing *Jamison*, 107 Cal. Rptr. at 499)).

91. *See, e.g.*, *Johnson v. San Diego*, 266 Cal. Rptr. at 190 (noting that some courts apply the doctrine of substantial compliance rather than strict compliance); City of San Jose v. Superior Court, 525 P.2d 701, 707 (Cal. 1974) ("[T]o gauge the sufficiency of a particular claim, *two* tests shall be applied: Is there *some* compliance with *all* of the statutory requirements; and, if so, is this compliance sufficient to constitute *substantial* compliance?").

92. *See* Loehr v. Ventura Cty. Cmty. Coll. Dist., 195 Cal. Rptr. 576, 583 (Ct. App. 1983) (quoting *City of San Jose*, 525 P.2d at 707).

held, that the doctrine of substantial compliance is inapplicable when a claimant presents a claim to the incorrect recipient.[93] California courts are more willing to apply the substantial compliance doctrine when there are defects with respect to the *contents* of claims than when there are defects in the *presentment* of claims.[94] Accordingly, in California, if claimants submit their claims against the state directly to the responsible public entity instead of the VCGCB, the doctrine of substantial compliance will not save claimants and their suits will be barred.[95]

The lack of willingness of California courts to apply substantial compliance to this particular claim presentation requirement is surprising, given that California courts have stated that when "the purposes of the claims statute are effectuated, its requirements should be given a liberal construction in order to permit full adjudication of the case on its merits."[96] Following this logic, courts should recognize that by presenting the claim directly to the responsible entity, the purpose of the claims statute—notice—is effectuated. Therefore, courts should acknowledge the claimant's substantial compliance and permit full adjudication on the claim, despite it being presented to the public entity instead of the VCGCB.

Two cases demonstrate different approaches taken by California courts with respect to whether substantial compliance applies when claimants

93. *See, e.g.*, *DiCampli-Mintz*, 289 P.3d at 885 (refusing to apply the doctrine of substantial compliance where plaintiff presented her claim to the improper entity).

94. *See Jamison*, 107 Cal. Rptr. at 497 ("Most claim statute cases discussing the doctrine of substantial compliance relate to the integrity of the claim itself—the *form* of the claim—as distinguished from the method of its presentment—the *filing*."). California courts are more willing to apply the doctrine of substantial compliance to mistakes within the claim itself, and not to the presentment of it. *See, e.g.*, Johnson v. County of Los Angeles, 285 P.2d 713, 716 (Cal. 1955) (finding that plaintiff substantially complied with claim presentation requirements of the Government Code despite her claim stating the accident occurred on *southeast* corner instead of *southwest* corner of intersection); Rowan v. City and County of San Francisco, 53 Cal. Rptr. 88, 91 (Ct. App. 1966) (finding that plaintiff substantially complied with claim presentation requirements of the Government Code despite having described the place of accident as "3350 Scott St." instead of "3358-3360 Scott St.").

95. *See, e.g.*, Munoz v. State, 39 Cal. Rptr. 2d 860, 866–70 (Ct. App. 1995) (finding plaintiff failed to substantially comply with claim filing provisions by erroneously presenting his application to file a late claim to the California Correctional Institution instead of the former Board of Control); *Johnson v. San Diego*, 266 Cal. Rptr. at 189 (holding plaintiff did not substantially comply with claim filing provisions by presenting his claim to former Board of Control instead of the school district).

96. *See* Dilts v. Cantua Elementary Sch. Dist., 234 Cal. Rptr. 612, 615 (Ct. App. 1987) (citing Minsky v. City of Los Angeles, 520 P.2d 726, 734 (Cal. 1974)), *disapproved of by* State v. Superior Court, 130 Cal. Rptr. 2d 94 (Ct. App. 2003).

present their claims to the improper recipient. The first case, *Jamison v. State of California* (*Jamison*), decided in 1973, adopted a more liberal approach to the doctrine and applied it to a situation where the claimant presented his claim to the incorrect entity.[97] Recently, however, the California Supreme Court, in *DiCampli-Mintz v. County of Santa Clara* (*DiCampli-Mintz*), reaffirmed the prevalent stricter approach and held that the doctrine of substantial compliance does not apply when claimants file their claims with the wrong entity, thereby overruling *Jamison*.[98]

1. Jamison v. State of California *(1973): An Attempt to Expand the Doctrine*

In January 1971, Mr. Jamison was injured when a truck owned by the state of California Department of Water Resources and driven by one of the Department's employees collided with his vehicle.[99] Forty-three days after the accident, Mr. Jamison's attorney filed a claim with the Department of Water Resources and filed suit against the Department for Mr. Jamison's injuries.[100] In February 1972, over a year after the accident, the State of California filed a motion for judgment on the pleadings, seeking dismissal of the action on the ground that Mr. Jamison filed his claim with the wrong governmental agency.[101] Specifically, the state argued that Mr. Jamison improperly filed his claim with the Department of Water Resources instead of the State Board of Control (formerly the VCGCB), as required by section 915 of the California Government Code.[102] The court granted defendant's motion and dismissed Mr. Jamison's suit.[103]

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97. *See Jamison*, 107 Cal. Rptr. at 499 (finding that plaintiff substantially complied with the claim presentation requirements despite plaintiff failing to present her claim to the statutorily-designated recipient), *disapproved of by* DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884 (Cal. 2012) *see also infra* Part IV.B.1.

98. *See DiCampli-Mintz*, 289 P.3d at 884; *see also infra* Part IV.B.2.

99. *Jamison*, 107 Cal. Rptr. at 497. Note that the California Government Code is triggered because, like Ms. Brookes in Part I of this Comment, the employee that allegedly caused Mr. Jamison injury was a state employee and driving a state-owned vehicle when he collided into Mr. Jamison. *See supra* note 4 and accompanying text.

100. *Jamison*, 107 Cal. Rptr. at 497. The Department of Water Resources is a state department that "manag[es] and protect[s] California's water resources." CAL. DEP'T OF WATER RESOURCES, http://www.water.ca.gov [https://perma.cc/2S8B-HEDP] (last visited Aug. 1, 2016).

101. *Jamison*, 107 Cal. Rptr. at 497. A motion for judgment on the pleadings is "[a] party's request that the court rule in its favor based on the pleadings on file, without accepting evidence, as when the outcome of the case rests on the court's interpretation of the law." *Motion for Judgment on the Pleadings*, BLACK'S LAW DICTIONARY (10th ed. 2014).

102. *Jamison*, 107 Cal. Rptr. at 497. Because plaintiff improperly filed his claim with the wrong entity, the defendant argued that plaintiff's complaint was invalid on its face. *Id.*

103. *Id.*

Mr. Jamison appealed to the Fourth District of the California Court of Appeal.[104] The Court of Appeal addressed the issue of "whether the plaintiff substantially complied with the claims statute in presenting the claim to the Department of Water Resources rather than the State Board of Control as required by section 915 of the Government Code."[105] The court found that to determine if there has been substantial compliance with the claim presentation requirements, the court should take into consideration the purpose of the claims statute.[106] The court stressed that the claim presentation statute, which requires a potential plaintiff to file a "notice of claim," was "designed to protect government agencies from stale and fraudulent claims, provide an opportunity for timely investigation, and permit settlement of claims without the expense of needless litigation."[107] The court concluded that "[t]here is no need to endorse a policy which renders the statute a trap for the unwary" when the above-mentioned purposes of the statute have been satisfied.[108] The court held that because the presentation of the claim was timely and made in good faith "to an officer or employee of the exact state agency which allegedly was responsible for the tort," Mr. Jamison substantially complied with section 915 of the Government Code.[109] The court went a step further and concluded that the Department of Water Resources had a duty "to forward the claim immediately to the State Board of Control."[110] The court justified this mandatory duty by noting that "any reasonable officer or employee of a major state agency knows, or should know, that if a substantial claim for damages is presented that it should be forwarded to the Board of Control."[111]

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104. *Id*.
105. *Id*.
106. *Id*. at 499. Courts have determined that substantial compliance suffices where the purpose of the statute has been satisfied in contexts other than claim presentation requirements. *See, e.g.*, People v. Carroll, 167 Cal. Rptr. 3d 60, 62 (Ct. App. 2014) (finding that the release agreement appellant signed substantially complied with section 1318 of the California Penal Code because the statute's objectives of ensuring the accused's future appearance in court and protecting public safety were satisfied); Freeman v. Vista de Santa Barbara Assocs., LP, 144 Cal. Rptr. 3d 42, 44 (Ct. App. 2012) (determining that whether appellant substantially complied with section 798 of the California Civil Code is dependent on the meaning and purpose of the statute).
107. *Jamison*, 107 Cal. Rptr. at 498–99 (citing Myers v. County of Orange, 86 Cal. Rptr. 198, 204 (Ct. App. 1970)). In coming to its ultimate decision, the court looked at these legislative purposes and applied them to the facts of the case. *See id.*
108. *Id*. (citing Galbreath v. City of Indianapolis, 255 N.E.2d 225, 229 (Ind. 1970)).
109. *Id*. at 499.
110. *Id*.
111. *Id*.

In short, *Jamison* stands for the following propositions: (1) the purpose of the claims statute—notice to the state agency so it may settle, investigate, and protect itself from fraudulent claims—should be taken into consideration; (2) claimants fulfill the notice purpose when they present their government claims directly to the allegedly responsible state agency, rather than the Board of Control (former VCGCB); (3) the presentment of a claim to the state agency constitutes substantial compliance with the statute's presentation requirements; and (4) the improper state agency has a duty to forward the claim to the Board of Control (or VCGCB) upon receipt.[112]

2. DiCampli-Mintz v. County of Santa Clara *(2012): Limiting the Doctrine*

Roughly forty years later, the California Supreme Court in *DiCampli-Mintz v. County of Santa Clara* rejected *Jamison's* application of substantial compliance and reaffirmed the stricter compliance approach to section 915's claim presentation requirements.[113] While *DiCampli-Mintz* involves claims against the County— the local government—under a different subsection of section 915, it addresses the same issue of whether filing a claim with the incorrect recipient is fatal to a plaintiff's lawsuit.[114]

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112. *See generally id.*, *disapproved of by* DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884 (Cal. 2012).

113. *DiCampli-Mintz*, 289 P.3d at 885 (rejecting the Court of Appeal's expansion of the statutory requirements and affirming "that a claim must satisfy the express delivery provisions language of the statute."). In the years leading up to *DiCampli-Mintz,* other state courts criticized the *Jamison* decision. *See, e.g.*, Del Real v. City of Riverside, 115 Cal. Rptr. 2d 705, 712 (Ct. App. 2002) (declining to follow the *Jamison* decision because it is at odds with section 915); Life v. County of Los Angeles, 278 Cal. Rptr. 196, 200 (Ct. App. 1991) (finding *Jamison's* analysis unpersuasive and at odds with section 915). It is important to note that it took roughly forty years for the California Supreme Court to overrule the *Jamison* decision, despite backlash from other courts. *See DiCampli-Mintz*, 289 P.3d 884. This may be because these claims—claims submitted to the improper agency—are dismissed at an early stage for failing to comply with the claim presentation requirements and claimants fail to appeal the decision. Additionally, it may have taken so long because the California Supreme Court issues opinions for very few cases each year. *See, e.g.*, *2015 Court Statistics Report*, JUD. COUNCIL OF CAL. xiii–xiv (2015), http://www.courts.ca.gov/documents/2015-Court-Statistics-Report.pdf [https://perma.cc/Z5TV-XVWE] (providing statistics that for fiscal year 2013–2014, filings with the California Supreme Court totaled 7907 and the Court only issued 85 written opinions); *2011 Court Statistics Report*, JUD. COUNCIL OF CAL. xiii (2011), http://www.courts.ca.gov/documents/2011CourtStatisticsReport.pdf [https://perma.cc/CR3V-VKR9] (providing statistics that for fiscal year 2009–2010, 9652 matters were filed with the Supreme Court and the Court issued 96 written opinions).

114. Note that this case involves section 915, subdivision (a), of the California Government Code, which provides the presentation requirements for claims against local public entities (such as the County) as opposed to section 915, subdivision (b), which provides the presentation requirements for a claim against the state of California. *See generally*

In April 2006, Ms. DiCampli-Mintz underwent surgery at a hospital owned and operated by the County of Santa Clara.[115] Immediately following the surgery, Ms. DiCampli-Mintz informed the doctors that she was experiencing pain in her left leg.[116] The doctors determined that her "'left iliac artery' was 'completely interrupted.'"[117] Ms. DiCampli-Mintz returned to surgery and was subsequently discharged.[118] Later that year, Ms. DiCampli-Mintz went to the emergency department of the same hospital, complaining of severe pain in her left leg.[119] A doctor informed Ms. DiCampli-Mintz that she needed another procedure "because blood vessels had been damaged in the first surgery."[120]

On April 3, 2007, Ms. DiCampli-Mintz's attorney delivered letters to an employee of the medical staffing office located in the hospital's administration building.[121] The letters, which were addressed to the hospital's Risk Management Department, notified the department of Ms. DiCampli-Mintz's suit alleging that the doctors negligently performed her surgery.[122] On April 6, 2007, the Santa Clara County Risk Management Department received the letter.[123] On April 23, 2007, Ms. DiCampli-Mintz's attorney spoke with an employee of the County's Risk Management Department.[124] This employee allegedly confirmed receipt of the letter and gave Ms. DiCampli-Mintz's counsel the name of the attorney handling the County's defense, but did

DiCampli-Mintz, 289 P.3d 884. Both sections provide the proper recipients for their respective types of claims. *See* CAL. GOV'T CODE §§ 915(a), (b) (West 2012).

115. *DiCampli-Mintz*, 289 P.3d at 885. Note that the Government Claims Act is triggered because the hospital, which allegedly caused the injury to plaintiff, is a public entity owned and operated by the County of Santa Clara. *See* GOV'T § 915(a).

116. *DiCampli-Mintz*, 289 P.3d at 885.

117. *Id.* "Complete interruption" of the left iliac artery refers to the stoppage of major blood flow to the left leg. *See* DiCampli-Mintz v. County of Santa Clara, 125 Cal. Rptr. 3d 861, 863 (Ct. App. 2011), *review granted and opinion superseded*, 257 P.3d 1130 (Cal. 2011), *and rev'd*, 289 P.3d 884 (Cal. 2012).

118. *DiCampli-Mintz*, 289 P.3d at 886. During this subsequent surgery, it "'immediately became apparent [to the doctors] that [Ms. DiCampli-Mintz's] left external iliac artery was tied and divided, as was the left iliac vein.'" *See id.*

119. *Id*. at 885–86.

120. *Id*. at 886.

121. *Id*.

122. *Id.* The letters were addressed to the Risk Management Department at the hospital, as well as to Dr. Bui, and Dr. Sklar, the doctors who had performed Ms. DiCampli-Mintz's first surgery. *Id.* In the letter, plaintiff requested that the letter "be forwarded to the recipient's insurance carrier, [but] it did not request that it be forwarded to any of the statutorily designated recipients denoted in section 915" of the Government Code. *Id*.

123. *Id*. at 886.

124. *Id*.

not inform counsel that the letter failed to satisfy section 915's claim delivery requirements.[125]

On July 2, 2007, Ms. DiCampli-Mintz filed a lawsuit in state court against the county-owned hospital and the two doctors who performed her surgery.[126] The County subsequently filed a motion for summary judgment alleging that Ms. DiCampli-Mintz failed to comply with section 915 of the Government Code's requirement to present her claim to the correct recipient.[127] Under the Government Code, the County was the proper recipient for this County-owned and operated public entity hospital.[128] Ms. DiCampli-Mintz argued that her letter to the hospital's Risk Management Department, informing them of her intent to sue, constituted substantial compliance with the Government Claims Act.[129] Because the letter was ultimately received by the Santa Clara County Risk Management Department, which was "the county department most directly involved with the processing and defense of tort claims against the County[,]" Ms. DiCampli-Mintz argued that section 915 was satisfied.[130] The trial court rejected this argument and granted the County's motion for summary judgment.[131]

Ms. DiCampli-Mintz appealed and the Court of Appeal reversed the trial court's decision.[132] Relying in part on *Jamison*, the appellate court held 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 the management or defense of claims against the defendant entity."[133] In finding that Ms. DiCampli-Mintz substantially complied with the claim presentation statute, the court looked

125. *Id.* It is undisputed that the county clerk never actually received the letter, which is one of the statutorily-designated recipients for claims against the county. *Id.*; *see also infra* note 129.

126. *DiCampli-Mintz*, 289 P.3d at 886.

127. *Id*. at 887.

128. Section 915, subdivision (a), stipulates the proper recipient for a claim against the county. *See* CAL. GOV'T CODE § 915(a) (West 2012). Specifically, it provides that "[a] claim . . . shall be presented to a local public entity by either of the following means: (1) Delivering it to the clerk, secretary or auditor thereof. (2) Mailing it to the clerk, secretary, auditor, or to the governing body at its principal office." *Id.*

129. *DiCampli-Mintz*, 289 P.3d at 887.

130. *Id*.

131. *Id*. Specifically, the trial court held that plaintiff could not escape summary judgment because she failed "to '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 she also failed to 'establish waiver and/or equitable estoppel.'" *Id*. (quoting trial court order).

132. *Id.* In making its decision in choosing to apply the doctrine of substantial compliance to Ms. DiCampli-Mintz's procedural shortcoming, the court "rejected other Court of Appeal cases holding that compliance is deemed satisfied only by actual receipt by the statutorily designated persons, under section 915(e)(1)." *Id.*

133. *Id.* at 885.

beyond the statute's language to its underlying purpose and found that the notice purpose had been satisfied, and that in such a case, strict adherence to the statute's language would inequitably result in a loss of substantial rights to Ms. DiCampli-Mintz.[134]

The Supreme Court of California reversed the appellate court and concluded that a claim against a public entity must satisfy the express language within the claim presentment provisions of the Government Code.[135] The Court determined that, by applying the doctrine of substantial compliance to a situation in which a plaintiff misdirected her claim, the appellate court "fail[ed] to adhere to the plain language of section 915" and "rewrote the statute to read as the court believed it should provide."[136] The Court also addressed the *Jamison* decision and found its arguments unpersuasive:[137]

> In addition to contravening section 915's plain language, the *Jamison* rule creates uncertainty about how and where claims must be delivered. Misdirected claims may be received by various departments or employees and forwarded to multiple people and places, making it difficult to determine whether the claims were actually delivered to, or received by, a department or employee charged with the overall management of claims against the county.[138]

The Court argued that this outcome "is contrary to the Government Claims Act's goal of eliminating uncertainty in the claims presentation requirements."[139]

The *DiCampli-Mintz* decision resulted in the following rule: to satisfy the presentation requirements of the Act, claimants must under section 915(a), present their claims to (1) the statutorily designated public entity under section 915(a); or (2) claims must actually be received by the statutorily

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134. DiCampli-Mintz v. County of Santa Clara, 125 Cal. Rptr. 3d 861, 874–76 (Ct. App. 2011), *review granted and opinion superseded*, 257 P.3d 1130 (Cal. 2011), *and rev'd*, 289 P.3d 884 (Cal. 2012) ("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.").

135. *See DiCampli-Mintz*, 289 P.3d at 885.

136. *See id*. at 889.

137. *See id*. at 890–92 (concluding that "*Jamison* proves too slender a reed to support the weight of the Court of Appeal's expansion."). The Court stressed that

> *Jamison* is unpersuasive because it fails to follow the statutory language specifically identifying who must actually receive a claim. Finding compliance when any agency employee is served exponentially expands the scope of the statute. By placing a duty on a public employee who receives a misdirected claim to forward it to the proper agency, *Jamison* improperly shifted the responsibility for presenting a claim from the claimant to the public entity.

Id. at 892.

138. *Id*.

139. *Id.*

designated public entity pursuant to section 915(e).[140] If neither option is satisfied, the claimant's suit will be barred.[141] The California Supreme Court appeared to focus more on compliance with the plain language of the statute to ensure uniformity, and less on the notice purpose underlying it, even though uniformity and notice were both purported goals of the statute.[142]

V. THE NEED TO RECONCILE *DICAMPLI-MINTZ* AND *JAMISON*

It is important to recognize *Jamison's* focus on legislative intent—given that the purpose of the claims presentation requirements is notice—but it is also important to recognize *DiCampli-Mintz's* emphasis on the clear and unambiguous language of the statute in light of the Act's goal to create uniform easy-to-follow requirements.

In *DiCampli-Mintz*, the California Supreme Court correctly determined that the language of section 915, subdivision (b) is clear and unambiguous; the language clearly states that a claimant must present a claim against the state to the VCGCB.[143] Despite this clear and unambiguous language, noncompliance persists, and claimants continue to misdirect their claims and present to the public entity itself, rather than to the VCGCB.[144] Perhaps noncompliance with this requirement continues because pro se plaintiffs are unaware of the claim presentation requirements or do not understand them.[145] Perhaps it continues because of indolent attorneys failing to research the necessary law. Regardless, it is well-settled in our judicial

140. Year-in-Review, 40 W. ST. U. L. REV. 235, 237 (2013). In other words, after *DiCampli-Mintz*, "there must [either] be strict compliance with § 915(a) or the only way to 'substantially comply' with § 915(a) is if there is actual receipt of the misdirected claim by one of the statutorily designated recipients (i.e., § 915(e))." Jefferson v. City of Fremont, No. C-12-0926 EMC, 2013 WL 1747917, at *9 (N.D. Cal. Apr. 23, 2013). So, if applying this same reasoning in the context of claims against the *state*, there must either be strict compliance with § 915(b) or substantial compliance by satisfying § 915(e), that is, actual receipt by the designated recipient, the VCGCB.

141. *See, e.g.*, *DiCampli-Mintz*, 289 P.3d at 889 (affirming lower court's decision to dismiss plaintiff's claim against the county after noncompliance with section 915(a) and 915(c) of the Government Code).

142. *See id.* at 889 (overruling the Court of Appeal because it failed to adhere to the plain language of section 915). *But see supra* Part III.A (explaining that the goal of the claim presentation requirements is to give notice to the affected public entity).

143. *See DiCampli-Mintz*, 289 P.3d at 889; *see also* CAL. GOV'T CODE § 915(b) (West 2012).

144. *See supra* note 80 and accompanying text.

145. "Even those pro se litigants who are prepared for court lack the legal knowledge and expertise to deal with even the most basic court proceedings." Brenda Star Adams, *Unbundled Legal Services: A Solution to the Problems Caused by Pro Se Litigation in Massachusetts's Civil Courts*, 40 NEW ENG. L. REV. 303, 309 (2005).

system that ignorance of the law is no excuse.[146] Pro se plaintiffs are generally held to the same standard as those represented by counsel, and attorneys have an obligation to research the relevant law in order to zealously advocate for their client.[147] Accordingly, any statutory change should not reward those who fail to comply with the clear language of the statute; rather, change is necessary because our judicial system also recognizes the importance of fundamental fairness and the preservation of legislative intent.[148] Change is warranted because the purpose of the statute—notice—is being disregarded, and potential plaintiffs are losing their fundamental right to have their day in court.[149]

By relying heavily on the unambiguous language of the statute, the California Supreme Court in *DiCampli-Mintz* overlooked the statute's underlying intent of providing notice.[150] The Court stressed that the express language of the statute is dispositive and there is no need to look to legislative

146. *See, e.g.*, Felder v. Johnson, 204 F.3d 168, 172 (5th Cir. 2000) ("'[I]gnorance of the law, even for an incarcerated pro se petitioner, generally does not excuse prompt filing.'" (quoting Fisher v. Johnson, 174 F.3d 710, 714 (5th Cir. 1999))); People v. Marschalk, 23 Cal. Rptr. 743, 746 (Ct. App. 1962) ("It is the general rule that ignorance of the law is no excuse."); *In re* Hein's Estate, 90 P.2d 100, 102–03 (Cal. Ct. App. 1939) ("In neither a criminal nor civil cause, in any circumstance, can one justify his act by the naked showing that he did not know of the existence of the law. Ignorance of the law is no excuse is a rule in our jurisprudence.").

147. *See* 7A C.J.S. *Attorney & Client* § 247 (2015) ("Generally, one who undertakes presentation of one's own case has no greater right than other litigants but must expect and receive the same treatment and consideration as if represented by an attorney and must be prepared to accept the consequences of one's own incompetence, mistakes, and errors. A party appearing pro se is to be treated as any other party and can expect no special treatment nor be afforded any special consideration. Basically, pro se litigants are held to the same standards as those represented by an attorney. Pro se litigants are presumed to have full knowledge of applicable court rules and procedures, including procedural deadlines with respect to filing motions, even if they lack understanding of those rules or correct procedures or are unfamiliar with them.").

148. *See, e.g.*, Freedland v. Greco, 289 P.2d 463, 466 (Cal. 1955) ("Taking into consideration the policies and purposes of the act, the applicable rule of statutory construction is that the purpose sought to be achieved and evils to be eliminated has an important place in ascertaining the legislative intent." (citing Wotton v. Bush, 261 P.2d 256, 260 (Cal. 1953))); People v. Centr-O-Mart, 214 P.2d 378, 379 (Cal. 1950) ("Words of a statute must be given such interpretation as will promote rather than defeat the general purpose and policy of the law." (citing Dep't of Motor Vehicles v. Indus. Accident Comm'n, 93 P.2d 131, 134 (Cal. 1939))).

149. *In re* Oliver, 333 U.S. 257, 273 (1948) ("[A]n opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence . . . .").

150. *See generally* DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884 (Cal. 2012).

intent when the language is clear and unambiguous.[151] Nevertheless, the Court still looked to the legislative intent of the statute and stated that "[s]ection 915(a)(1) reflects the Legislature's intent to precisely identify those who may receive claims on behalf of a local public entity" and "reflects the Legislature's intent that a misdirected claim will satisfy the presentation requirement if the claim is 'actually received' by a statutorily designated recipient."[152] The Court thus concluded that "compliance with section 915(e)(1) requires actual receipt of the misdirected claim by one of the designated recipients."[153] What the Court failed to recognize or address, however, is that plaintiffs' misdirected claims rarely make their way to the correct entity because public entities and their defense attorneys are not required to forward the claim to the correct recipient, the VCGCB. The County's Risk Management Department employee indicated to Ms. DiCampli-Mintz's counsel that the County had a defense attorney handling the case.[154] Instead of notifying the plaintiff of her mistake or forwarding the claim to the correct recipient, the defense attorney waited and filed a motion for summary judgment to have the case dismissed.[155] It is accurate that section 915(e)(1) saves the claimant who presents a claim to the wrong entity, *but only if the proper entity eventually receives the claim within the statutory period.*[156] This is unlikely to occur if there is no requirement for the public entity or defense attorneys to inform the claimant of their mistake.

In short, the Court of Appeal in *Jamison* justifiably incorporated the statute's purpose of notice in its analysis to determine whether the plaintiff substantially complied with the claim presentation requirements under section 915.[157]

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151. *See id*. at 889 ("If the language [of a statute] is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature[.]" (quoting S.B. Beach Properties v. Berti, 138 P.3d 713, 716 (Cal. 2006))).

152. *Id.* Section 915(a) of the California Government Code provides: "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 [or] (2) Mailing it to the clerk, secretary, auditor, or to the governing body at its principal office." CAL. GOV'T CODE § 915(a)(1)–(2) (West 2012). Section 915(e)(1) states: "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 . . . (1) It is actually received by the clerk, secretary, auditor or board of the local public entity." CAL. GOV'T CODE § 915(e)(1) (West 2012).

153. *DiCampli-Mintz*, 289 P.3d at 889. *See infra* Part VI.A, for a further discussion of section 915, subdivision (e) of the California Government Code.

154. *DiCampli-Mintz*, 289 P.3d at 886.

155. *See id*. at 887.

156. Substantial compliance under section 915(e) "demands that the misdirected claim be 'actually received' by the appropriate person or board." Life v. County of Los Angeles, 278 Cal. Rptr. 196, 200 (Ct. App. 1991).

157. The *Jamison* court was correct in doing so since it is important to consider the underlying purpose of a statute when interpreting and applying it. *See* Dep't of Motor Vehicles

Although the California Supreme Court in *DiCampli-Mintz* justifiably stressed the need for clear and unambiguous language to ensure uniformity with respect to filing government claims against the state,[158] noncompliance continues to be an issue despite the clear and unambiguous language of the statute.[159] Claimants continue to misdirect their claims and present to the public entity itself, rather than the VCGCB.[160]

The solution is to reconcile the concerns of *DiCampli-Mintz* and *Jamison*. California needs to maintain the clear and unambiguous language of the statute, but also needs to support the legislative intent of both uniformity and providing notice. Both courts were correct in different ways; however, the California Supreme Court in *DiCampli-Mintz* justifiably noted that the change must come from the Legislature.[161] Therefore, the Legislature should amend section 915 to reflect the statute's legislative intent of notice, while maintaining the unambiguous language that the California Supreme Court stressed.

VI. SOLUTIONS

Fairness and fulfillment of the Act's legislative intent require changes to the current section 915, subdivision (b), of the Government Code. This section will discuss three potential solutions, but will ultimately advocate for the third option as the superior solution.

A. Substantial Compliance Doctrine Written into the Statute

Given that California courts have been unwilling to apply the doctrine of substantial compliance when claimants present their claim to the public entity instead of the statutorily designated recipient, such as the VCGCB, one possible solution is to codify and expand the substantial compliance doctrine.[162]

The current section 915 contains a subpart that attempts to relax the claim presentation requirements for claims against the state.[163] Without including the term "substantial compliance," the subpart provides one circumstance under

v. Indus. Accident Comm'n, 93 P.2d 131, 134 (1939) ("[I]t is a cardinal rule of construction that words must be given such interpretation as will promote rather than defeat the general purpose and policy of the law.").

158. *See DiCampli-Mintz*, 289 P.3d at 892.

159. *See supra* note 80 and accompanying text.

160. *Id*.

161. *See DiCampli-Mintz*, 289 P.3d at 890.

162. Some states, such as Washington, have the doctrine of substantial compliance incorporated into their government claims statutes. *See infra* pp. 731–32.

163. *See* CAL. GOV'T CODE § 915(e) (West 2012).

which claimants are deemed to have substantially complied with the claim presentation requirements, even if the claim against the state is not *first* presented to the VCGCB.[164] Section 915, subdivision (e) reads as follows:

> 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 . . . [i]t is actually received at an office of the Victim Compensation and Government Claims Board.[165]

This subpart means that claimants with misdirected claims can comply with section 915 so long as the VCGCB ultimately receives the claim within the statutory time period.[166]

This "actual notice" exception is common among other states' government claims statutes as well.[167] For example, Minnesota's government tort claims statute provides that "[a]ctual notice of sufficient facts to reasonably put the state or its insurer on notice of a possible claim complies with the notice requirements of this section."[168] It is questionable, however, if this "actual notice" exception actually makes a difference. Claims presented directly to public entities, and not to the VCGCB, rarely make their way to the VCGCB unless claimants themselves notice their mistake.[169] Defense attorneys for the state are in no hurry to inform claimants of their mistake in failing to present their claim to the VCGCB, given that this mistake warrants dismissing claimants' cause of action entirely.[170]

One option is to add a subpart to section 915, subdivision (b) requiring liberal construction of the claim presentation requirements, thereby *statutorily* requiring substantial compliance. For example, a substantial compliance subpart was added to Washington's claim presentation requirements statute, which reads: "[w]ith respect to the content of claims under this section and *all procedural requirements* in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory."[171]

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164. *Id.*

165. *Id.*

166. This is the result when one reads section 915, subdivision (b), and section 915, subdivision (e), together.

167. *See* MASS. GEN. LAWS ANN. ch. 258, § 4 (West 2015) ("[a]ctual notice" exception written into Massachusetts government claims statute); *see also* MINN. STAT. ANN. § 3.736 (West 2015) ("[a]ctual notice" exception written into Minnesota's government claims statute); N.M. STAT. ANN. § 41-4-16 (West 2015) ("[a]ctual notice" exception written into New Mexico's government claims statute).

168. MINN. STAT. ANN. § 3.736(5).

169. *See, e.g.*, Jamison v. State, 107 Cal. Rptr. 496, 499 (Ct. App. 1973) (noting that "normally, the internal handling of the claim will be known only to the entity"), *disapproved of by* DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884 (Cal. 2012).

170. *See* CAL. GOV'T CODE § 950.2 (West 2012).

171. *See* WASH. REV. CODE ANN. § 4.92.100(3) (West 2015) (emphasis added). The purpose underlying Washington's claim presentation statute is also to provide notice so

However, despite its inclusive language—"all procedural requirements"—Washington courts have nevertheless stated that they will only liberally construe the *contents* of the claim against the state and permit substantial compliance with the content requirements for the claim.[172] The Washington courts maintain that they will apply "strict compliance" to the requirements for filing a claim, just as California courts currently do.[173]

To avoid Washington's inconsistency with regard to its application of the substantial compliance doctrine, the statutory amendment would have to specifically emphasize that "when a claimant timely presents a claim directly to the state entity that is responsible for the alleged harm, and not the VCGCB, that claimant has substantially complied with the statute's claim presentation requirements." However, despite expressly limiting the doctrine of substantial compliance to this specific circumstance, the amendment could still foster confusion and noncompliance. Given that the goal of the statute is to provide state entities notice of potential lawsuits, the claimant would have to present the claim to an appropriate person—someone who will know what to do with the claim and ensure that the state entity actually receives notice, thereby enabling the agency to commence its investigation.[174] Statutorily designating the appropriate recipients within each state entity would be cumbersome and would deviate from the Act's goal of uniformity. Inversely, stating generally that the claim must be presented to "an agent authorized to accept the claim" is too vague and would result in confusion for claimants.[175]

A possible way to prevent this confusion is to relax the burden on claimants to present a claim to the proper agent within the state entity, and shift the burden partially onto the state entity itself by requiring that the entity

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that the public entity can engage in early investigation of the claim. *See* Renner v. City of Marysville, 230 P.3d 569, 571 (Wash. 2010) ("The claim filing statute is intended to provide local governments with notice of potential tort claims, the identity of the claimant, and general information about the claim.").

172. *See, e.g.*, Schoonover v. State, 64 P.3d 677, 681 (Wash. Ct. App. 2003) (first citing Shannon v. State, 40 P.3d 1200, 1202 (Wash. Ct. App. 2002); and then Levy v. State, 957 P.2d 1272, 1276 (Wash. Ct. App. 1998)).

173. *See, e.g.*, *id.* The *Shannon* court even acknowledges that this seems "harsh and technical." *Shannon*, 40 P.3d at 1202 ("While the filing requirements are not so rigid as to demand unjust results, compliance is mandatory even if the requirements seem 'harsh and technical.'" (quoting *Levy*, 957 P.2d at 1276)).

174. The *DiCampli-Mintz* Court raised these concerns. *See supra* note 137 and accompanying text.

175. *See id.* (raising concerns about confusion regarding who an appropriate person is to receive a claim within an entity).

forward the claim to the VCGCB upon receipt. After all, attorneys representing public entities are far more accustomed to the Act's stringent claim presentation requirements than claimants, and would know that the proper recipient of claims against the state is the VCGCB.[176]

B. Mandatory Duty to Forward the Claim to the VCGCB Upon Receipt

If a claimant presents a claim to the public entity responsible for the alleged harm, the public entity has received notice of the claim directly in accordance with the statute's purpose.[177] Under this proposed statutory amendment, the fact that a claimant submitted a claim to the public entity directly, instead of the VCGCB, would be enough to constitute substantial compliance with the statute because the notice purpose has been satisfied. Because of the VCGCB's important function in the government claims process, claims would still need to reach the VCGCB in a timely manner.[178] Accordingly, this statutory amendment would impose a mandatory duty on defense attorneys to forward the misdirected claim to the VCGCB. This would ensure that the public entity and the VCGCB receive notice. As a result, the public entity can begin investigating the claim and the VCGCB can assist in its possible resolution.

While this statutory amendment preserves the statute's legislative intent, certain concerns cast doubt as to whether this is the best possible solution. One issue is the justification for placing this burden on the defense to forward the claim to the VCGCB.[179] One potential justification for placing this duty on defense attorneys is that the attorneys representing the state entities are well-versed in the Government Claims Act and are familiar with the strict claim presentation requirements, whereas plaintiffs, especially

176. *See* Jamison v. State, 107 Cal. Rptr. 496, 499 (Ct. App. 1973) (noting that "any reasonable officer or employee of a major state agency knows, or should know, that if a substantial claim for damages is presented that it should be forwarded to the Board of Control."), *disapproved of by* DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884 (Cal. 2012).

177. *See, e.g.*, Connelly v. County of Fresno, 52 Cal. Rptr. 3d 720, 727 (Ct. App. 2006) (stating the purpose of the claims statute is "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." (quoting Santee v. Santa Clara Cty. Office of Educ., 269 Cal. Rptr. 605, 611 (Ct. App. 1990))).

178. The VCGCB must eventually receive the claim so that it can help process the claim, and begin working with the state entity to reach possible early resolution of the case. *See How to File a Claim Against the State*, *supra* note 56.

179. The *DiCampli-Mintz* Court recognized this issue. *See DiCampli-Mintz*, 289 P.3d at 892 ("By placing a duty on a public employee who receives a misdirected claim to forward it to the proper agency, *Jamison* improperly shifted the responsibility for presenting a claim from the claimant to the public entity.").

those proceeding pro se, are not.[180] Nevertheless, ignorance of the law is no excuse, and pro se litigants are supposed to be held to the same standards as lawyers.[181]

Concerns may also arise as to whether this mandatory duty violates attorneys' duties to their clients if they are helping plaintiffs to properly file claims with the VCGCB.[182] After all, it is not the fault of defense attorneys or the public entity that claims are filed incorrectly. However, if there were a statute requiring the public entity's counsel to forward the claim, there would no longer be an issue of malpractice because the attorneys must follow the law.[183]

Another issue is predicting whether imposing this mandatory duty would even make a difference. Would defense attorneys actually forward the claim to the VCGCB or would they deny having received the claim? This may result in claimants having the burden of proving that the public entity actually received and had notice of the claim.[184] This would be a difficult burden for the claimant to overcome and could potentially result in the same problem of the claimant's suit becoming barred.[185] Moreover, there is the risk that attorneys will not forward the claim until after the statute of limitations has run. Another issue is the difficulty in enforcing this type

180. This is the view that the *Jamison* court took. *See supra* note 176. "Pro se" is Latin for "[f[or oneself" or "on one's own behalf" and typically describes a litigant proceeding without an attorney. *Pro Se*, BLACK'S LAW DICTIONARY (10th ed. 2014).

181. *See* Doran v. Dreyer, 299 P.2d 661, 662 (Cal. Ct. App. 1956) ("A litigant has a right to act as his own attorney but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts; otherwise, ignorance is unjustly rewarded." (internal quotations and citations omitted)).

182. A basic principle underlying the Model Rules of Professional Conduct is a "lawyer's obligation to zealously protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system." *Model Rules of Professional Conduct: Preamble & Scope*, AM BAR ASS'N (1983), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope.html [https://perma.cc/5ZJQ-EEKM].

183. *See id.* ("[I]t is . . . a lawyer's duty to uphold legal process").

184. *See, e.g.*, Westcon Const. Corp. v. County of Sacramento, 61 Cal. Rptr. 3d 89, 102 (Ct. App. 2007) (finding that the plaintiff had the burden of proving the county had actual notice of his claim).

185. *See* Garber v. City of Clovis, 698 F. Supp. 2d 1204, 1215 (E.D. Cal. 2010) (citing Jamison v. State, 107 Cal. Rptr. 496, 499 (Ct. App. 1973), *disapproved of by* DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884 (Cal. 2012)) (stating claimant has the burden of proving actual notice). The *Jamison* court also noted that this "burden is a difficult one." *Jamison*, 107 Cal. Rptr. at 499.

of mandatory duty and establishing appropriate punishment for attorney noncompliance.[186]

An alternative solution is to impose a mandatory duty on the public entity, rather than the defense attorney, to forward the claim to the VCGCB.[187] Generally, government claims do not reach defense counsel until the lawsuit has been filed and served.[188] Before a claim reaches the attorney representing the public entity, it reaches the public entity itself.[189] Perhaps the best solution is to resolve the issue of misdirected claims before the defective claim even gets into the defense attorney's hands. However, concerns arise here as well because claimants may present their claims to an improper person within the entity—a person who does not know what to do with the claim—and therefore does not know he or she is supposed to forward it to the VCGCB.[190] Additionally, this would result in claimants bearing the heavy burden of proving that they delivered their claim to someone within the entity, as well as the risk that the statute of limitations will have run by the time the entity actually forwards the claim.[191]

C. The Best Solution: A Complete Re-Construction of the Statute & VCGCB

Given the concerns surrounding the statutory amendments proposed thus far, the best solution is to create an expansive yet sensible reconstruction

186. This efficacy issue been raised in the context of mandatory reporting statutes. *See, e.g.*, Carolyn L. Dessin, *Should Attorneys Have A Duty to Report Financial Abuse of the Elderly?*, 38 AKRON L. REV. 707, 708–09 (2005) (noting that some believe mandatory reporting statutes are ineffective because failure to report is rarely prosecuted). The issue has also been discussed in the context of attorneys' duty to report professional misconduct. *See* Nikki A. Ott & Heather F. Newton, *A Current Look at Model Rule 8.3: How Is It Used and What Are Courts Doing About It?*, 16 GEO. J. LEGAL ETHICS 747, 756–57 (2003) (explaining the ineffectiveness of the duty imposed by Rule 8.3 of the Model Rules of Professional Conduct, which requires lawyers to report other lawyers or judges who have engaged in unethical behavior, due to lack of enforcement).

187. The *Jamison* court advocated for this type of mandatory duty. *See Jamison*, 107 Cal. Rptr. at 499 (finding that the employee that was served had a duty to forward the claim immediately to the State Board of Control).

188. *See supra* note 169 and accompanying text.

189. *Id*. The VCGCB notifies the state department that is being sued, not necessarily the attorney representing the department. *See How to File a Claim Against the State*, *supra* note 56 ("Often, the [VCGCB] works closely with the affected department in an effort to resolve the matter.").

190. This is the same concern that the *DiCampli-Mintz* Court addressed. *See* DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884, 892 (Cal. 2012) (concluding that "[t]he question of when a claim is actually received and whether a specific department or employee managed claims against a public entity would also be fodder for litigation" and finding that this would be "contrary to the Government Claims Act's goal of eliminating uncertainty in the claims presentation requirements").

191. *See supra* note 185.

of section 915, subdivision (b) and improve the method for processing claims. This amendment considers the notice purpose of the statute—which enables entities to investigate, settle, and avoid fraudulent claims—that was stressed in *Jamison*, and the need for clear and unambiguous language stressed in *DiCampli-Mintz*, but would eliminate many of the concerns that the aforementioned "statutory imposed substantial compliance" or "mandatory duty" amendment would potentially pose. In constructing this statutory amendment, it is important to look to other states' government claims statutes for guidance.

1. Other States' Designated Recipients for Claims Against the State

There is considerable variation among the states when it comes to presentation requirements for claims against the state and its employees, specifically regarding the proper recipient of these claims. Some states have an administrative office or board analogous to California's VCGCB.[192] Many states require claimants to file their government claims with the Office or Division of Risk Management.[193] However, the majority of states require that claimants first file their claims with either the state's Attorney General (AG) or the public entity that allegedly caused the harm to the claimant.[194]

192. *See, e.g.*, ARK. CODE ANN. § 19-10-208 (2015) (requiring government claims against the State of Arkansas be filed with the Arkansas State Claims Commission); KY. REV. STAT. ANN. § 44.110 (West 2016) (requiring government claims against the State of Kentucky be filed with the Board of Claims).

193. *See, e.g.*, OKLA. STAT. tit. 51 § 156 (West 2016) (providing procedural requirements to bring forth government claims against state of Oklahoma); VA. CODE ANN. § 8.01-195.6 (2016) (setting procedural requirements to bring forth government claims against state of Virginia); WASH. REV. CODE ANN. § 4.92.100 (LexisNexis 2016) (setting forth procedural requirements to file government claim against state of Washington).

194. *See, e.g.*, ARIZ. REV. STAT. ANN. § 12-821.01 (2016) (requiring that claims against the state of Arizona be presented to the AG); COLO. REV. STAT. ANN. § 24-10-109 (West 2016) (requiring that claims against the state of Colorado be presented to the AG); IND. CODE ANN. § 34-13-3-6 (West 2016) (requiring that claims against the state of Indiana be presented to the AG or state agency); ME. REV. STAT. ANN. tit. 14, § 8107 (West 2016) (requiring that claims against the state of Maine be presented with the allegedly responsible public entity *and* the AG); MASS. GEN. LAWS ANN. Ch. 258, § 4 (West 2016) (requiring that claims against the state of Massachusetts be presented to the executive officer of the allegedly responsible public employer); MINN. STAT. ANN. § 3.736 (West 2016) (requiring that claims against the state of Minnesota be presented to the AG *and* State Employee); NEV. REV. STAT. ANN. § 41.036 (West 2015) (requiring that claims against the state of Nevada be presented to AG); N.Y. CT. CL. ACT § 10 (McKinney 2015), https://www.nycourts.gov/COURTS/nyscourtofclaims/claimsact.shtml#Section10 [https://perma.cc/L8D5-8M9L] (requiring that claims against the state of New York be presented to the AG).

Some states require that claims be presented to both the AG and the allegedly responsible public entity, while others require that the claimant present the claim to only one of them.[195] Some states even require that claims be presented to the state employee that allegedly caused their harm.[196]

It is important to note that relatively few states require that claims against the state first be presented to an agency comparable to California's VCGCB, while those that do, allow presentation to either that designated agency *or* the AG.[197] A majority of states find that presenting government claims to the AG or the public entity sufficiently provides the public entity with adequate notice and time to investigate the claim.[198] After all, there is likely no better way to give notice to the public entity than by directly notifying the public entity or the AG, who is generally the statutory attorney for these public entities.[199]

2. Necessary Changes to Reach the Best Solution

a. Change #1: Claims Should Be Presented to the Public Entity, Not the VCGCB

The purposes underlying most, if not all, states' claims statutes, are the same as California's.[200] States continually assert that the claims statutes were created to: (1) provide state entities with the opportunity to investigate potential plaintiffs' claims; (2) provide opportunities to settle cases and thus avoid costly litigation; (3) avoid similar injury and future claims; and (4) institute an organized and uniform procedure for handling government claims.[201] Despite having the same purported goals behind the claim presentation statutes, other states' statutes differ from California's when it comes to the proper

195. *See supra* note 194.

196. *See, e.g.*, MINN. STAT. ANN. § 3.736 (West 2016) (requiring that claims against the state of Minnesota be presented to both the AG and State Employee).

197. *See* VA. CODE ANN. § 8.01-195.6 (West 2016) (stating that claims against the state of Virginia "shall be filed with the Director of the Division of Risk Management or the Attorney General . . . .").

198. *See supra* note 194.

199. *About the Office of the Attorney General*, OFFICE OF THE ATTORNEY GEN., https://oag.ca.gov/office [https://perma.cc/CCM3-JS36] (last visited Aug. 1, 2016) ("The Attorney General . . . serves as legal counsel to state officers and, with few exceptions, to state agencies, boards and commissions."). For exceptions, see CAL. GOV'T CODE § 1041 (West 2012).

200. *See, e.g.*, State v. Brooks, 534 P.2d 271, 274 (Ariz. 1975) (stating the goals behind Arizona's claims statutes); Rodriguez v. Cambridge Hous. Auth., 795 N.E.2d 1, 6 (Mass. App. Ct. 2003) (stating the goals behind Massachusetts's government claims act (citing Martin v. Commonwealth, 760 N.E.2d 313, 316 (Mass. App. Ct. 2002))), *aff'd*, 823 N.E.2d 1249 (Mass. 2005).

201. *See Rodriguez*, 795 N.E.2d at 6.

recipient for claims against the state.[202] As mentioned above, a majority of the states require that claimants present their claims to the AG or the state entity whose act or omission is said to have caused the injury.[203] Given that the purposes of other states' claim statutes center on notice, these states must find that presenting government claims to the AG or the allegedly responsible state entity accomplishes the notice purpose of the statute.

The best solution to ensure that claimants get just results when filing claims against the state is to mirror these other states' laws on the proper recipient of the claim, but with a minor difference. Claims against the state should be presented directly to the public entity to respect the notice purpose of the presentation requirement.[204] However, concerns could arise if the statute designates the responsible entity as the proper recipient generally, because the claim would need to be presented to an appropriate person within that state entity. Accordingly, the amendment should require that the claim be presented to the allegedly responsible public entity, but should also *clearly* designate to whom within that entity the claim should be presented to eliminate confusion and maintain uniformity.[205]

b. Change #2: Create Individualized Government Claims Offices Within Each Public Entity to Process Claims, Instead of the VCGCB

In addition to amending the statute to require that claims against the state be presented to the responsible public entity, the second necessary change is to withdraw the VCGCB's role in administering the Government Claims Act. It is irrefutable that the VCGCB plays a vital role in the filing process for government claims.[206] The VCGCB processes potential plaintiffs' claims against the state and assesses their legal viability.[207] The VCGCB also assists

202. *See supra* notes 192–94 and accompanying text.

203. *See, e.g.*, IND. CODE ANN. § 34-13-3-6 (West 2016) (stating that claims against the state of Indiana will be "barred unless notice is filed with the attorney general or the state agency involved . . . ."); ME. REV. STAT. ANN. tit. 14, § 8107(3)(A) (West 2016) (stating that claims against the state of Maine shall be filed with the "state department, board, agency, commission, or authority whose act or omissions is said to have caused the injury and the Attorney General.").

204. *See supra* Part III.A.

205. *See supra* notes 174–75 and accompanying text.

206. *See Annual Report 09–10*, CAL. VICTIM COMPENSATION & GOV'T CLAIMS BD. 28 (2011), http://vcgcb.ca.gov/docs/reports/AnnualReport-FY-0910.pdf [https://perma.cc/R3ZY-RNZS] ("The program staff play an important role by processing claims in a timely manner as required by statute.").

207. *See supra* note 56 and accompanying text.

in reaching early resolution of claims against state government employees and agencies.[208] These functions are of extreme importance because without them, individuals and state agencies would be deprived of the administrative opportunity to potentially resolve tort and contract claims before costly litigation is incurred.[209] These functions must remain, but a body within the public entity itself should effectuate them.[210]

Instead of the VCGCB administering the Act, each state agency should have its own government claims office (GCO) handle government claims for the respective individualized entity. For example, the Department of Water Resources would have its own GCO handle claims specifically against the Department of Water Resources. The sole purpose of these claims offices would be to process government claims against the respective department or state agency. These individualized offices would serve the same function as the VCGCB, as they would provide individuals and state agencies the administrative opportunity to process and resolve claims before costly litigation.[211]

It would be more effective for these GCOs, which would be a part of their respective public entities, to handle government claims for two reasons. First, potential plaintiffs are aware that the public entity exists because it is the one that has allegedly caused the plaintiff harm. However, potential plaintiffs may not be aware that the VCGCB exists, which may be why—despite the clear language of section 915(b)—plaintiffs erroneously present their claims directly to the public entity. Second, it is more effective for these GCOs to handle government claims because it would reduce the number of agencies that have to be involved in the claim presentment process.[212] Naturally, the state agency has to be involved because the claim is against the state

208. *See supra* note 58 and accompanying text.

209. Without the VCGCB, there would be no board or comparable agency to administer the Government Claims Act on behalf of the state. *See About the Board*, *supra* note 46 (explaining that the VCGCB is the entity that administers government claims on behalf the state).

210. This Comment is not advocating for the elimination of the VCGCB altogether. It is important to keep the VCGCB for its many other vital functions and responsibilities. *See supra* notes 47–48 and accompanying text. This Comment only advocates the withdrawal of the VCGCB's role in enforcing the Government Claims Act.

211. *See supra* Part II.C.

212. It is important to note that transferring this responsibility to the GCO within each agency would not waste the agency's resources. The VCGCB's role in assessing government claims is to make sure they comply *procedurally*; the VCGCB does not assess the merits of the claim. *See supra* note 56 and accompanying text. The people within the GCO at each agency would be familiar with these procedural requirements and how to assess the adequacy of claims, and, therefore, the process would not be burdensome.

agency.[213] By having GCOs within each stage agency, there is no longer a need for a third party to be involved, and the delay that results from having a third party process the claim will therefore be eliminated. If the goal is earlier resolution, it is more effective to have the two parties—the potential plaintiff and the state agency—communicate directly because back-and-forth communication with the third party and hearings with the third party to discuss the claims would be eliminated.

Furthermore, early resolution benefits not only the public entities, but the claimants as well. Having a GCO within each department will allow the department to address valid claims more efficiently, thereby prompting settlement before the claimant has incurred litigation costs.[214] Moreover, if the claim is not meritorious, the claimant will receive rejection of the claim quicker via the GCO, thereby allowing the claimant to seek judicial intervention without delay.[215] Additionally, because these GCOs would be in-house, they would have ready access to witnesses and documentary evidence and thus would be in the best position to assess the validity of the claim.[216]

3. Proposed Statutory Amendment and its Benefits

The statutory solution that this Comment recommends would amend section 915, subdivision (b) to read as follows:

> (b) A claim, any amendment thereto, or an application for leave to file a late claim shall be presented to the state by either of the following means:
>
> (1) Personally delivering it to the Government Claims Office within the specific state entity whose act or omission is said to have caused the injury.

213. Because the VCGCB currently works closely with the affected public entity and the public entity is a potential defendant to a lawsuit, the public entity, naturally, must be involved in the claims process. *See supra* note 189 and accompanying text.

214. *See* Court Statistics Project, *Caseload Highlights: Estimating the Cost of Civil Litigation*, Nat'l Ctr. for St. Cts. 5–6 (Jan. 2013), http://www.courtstatistics.org/~/media/microsites/files/csp/data%20pdf/csph_online2.ashx [https://perma.cc/QB9C-VT7J] (showing that the cost of litigation rises as a lawsuit moves past the settlement phase).

215. Because the claim would be presented directly to the GCO within the affected public entity, the need for a public hearing and the time delay associated with that would be eliminated. *See supra* note 61 and accompanying text.

216. This follows logically because the GCOs would be within the affected public agency and could readily contact those involved with the act or omission that gave rise to the suit.

(2) Mailing it by certified mail with return receipt requested to the Government Claims Office within the specific state entity whose act or omission is said to have caused the injury.[217]

One concern with this proposed solution is that changing the statutorily designated recipient from the VCGCB to the GCOs within each state department would still result in noncompliance. The proposed statute is clear when it designates the GCO as the proper recipient for government claims against the state. However, the current statute, designating the VCGCB, is just as clear. Although this is a logical argument, the elimination of *all* noncompliance is unrealistic. There will inevitably be those claimants or attorneys that fail to read the language of the claim presentation statutes carefully. But this statutory change would limit one of, if not the most, common error: presentation to the wrong entity.

The most obvious benefit of this statutory amendment, as alluded to throughout this Comment, is the restoration of victims' rights. With this amendment, potential plaintiffs will no longer be left in the dark about their misdirected claim. They will no longer be punished for a mere procedural misstep, even though they have satisfied the legislative intent of giving notice to the state entity. And they will no longer be deprived of their day in court as a result thereof.

Noncompliance with the claims presentation statutes may be expected more from a pro se plaintiff, but plaintiffs' attorneys, perhaps those that are unfamiliar with the Act, also make mistakes when it comes to abiding by the stringent claim presentation requirements currently in place under the Act.[218] When these attorneys fail to comply with the requirements and present their clients' claims to the wrong entity, their clients may sue them for legal malpractice if their claim gets dismissed.[219] It is understandable that plaintiffs and plaintiffs' attorneys would mistakenly believe that their claims should be presented to the public entity directly because, after all, the public entity or its employees are the ones who allegedly caused the acts or omissions that gave rise to the suit.[220] If the proposed statutory amendment is adopted, clients will not need to sue their attorneys for

217. This proposed statutory language is modeled after the current section 915, subdivision (b), of the California Government Code. The only change in the proposed language is the designated recipient of the claim. *See* CAL. GOV'T CODE § 915(b) (West 2012).

218. *See* Lopez v. California Dep't of Ins., No. B164686, 2003 WL 21696221, at *6 (Cal. Ct. App. July 22, 2003) (involving plaintiff who argued "she was entitled to relief because her counsel's failure to file a claim with the Board constituted excusable mistake or neglect.").

219. *See supra* note 69.

220. Perhaps this is why so many other states require that claimants present their claims against the state directly to the public entity or the employee that caused the injury. *See supra* notes 194–96 and accompanying text.

presenting their claim to the logical party—the party that allegedly caused the harm.

Courts are consistently concerned with judicial efficiency.[221] This statutory amendment would benefit not only plaintiffs and plaintiffs' attorneys, but would also benefit the court system in general. The change will prevent the filing of motions such as late claim motions or motions to be relieved from the government claim requirements, thereby increasing judicial efficiency.[222] Currently, plaintiffs' suits against the state create empty costs for the court system.[223] Cases are dismissed at the summary judgment stage because of noncompliance with the claims presentation requirement, which causes courts to invest time and expense in cases that will never go to trial because of a mere procedural technicality.[224]

As mentioned, one of the main purposes of the claims presentation requirements is to allow for early resolution of cases.[225] Not only will this statutory amendment help fulfill that purpose, but it may actually expedite it. Currently, the VCGCB has forty-five days to act upon the presented claim.[226] If claimants must present their claims against the state to the public entity directly, then the public entity is made aware of the claim immediately and can begin settlement discussions earlier. Because the VCGCB's processing period would be eliminated, the entity would receive notice of the suit up to forty-five days earlier. This would also result in more money in plaintiffs' pockets because less money would be expended in attorneys' fees and costs.[227] A plaintiff will receive more money if the state entity

221. *See, e.g.*, *In re* MacIntyre, 181 B.R. 420, 422 (B.A.P. 9th Cir. 1995) (recognizing the importance of page limits for judicial efficiency and imposing sanctions on appellants for failing to comply with said limits), *aff'd*, 77 F.3d 489 (9th Cir. 1996), *aff'd*, 79 F.3d 1153 (9th Cir. 1996).

222. *See supra* Part II.D.

223. This is a reality because suits get dismissed at the summary judgment phase. *See, e.g.*, DiCampli-Mintz v. County of Santa Clara, 289 P.3d 884 (Cal. 2012) (granting defendant's motion for summary judgment based on deficient notice of claim).

224. *See id.*

225. *See supra* note 13 and accompanying text.

226. *See supra* note 55 and accompanying text.

227. Early resolution of claims is very attractive for all parties involved. The court system recognizes the many benefits of resolving a case at the earliest stage possible. Courts offer many processes to help people resolve disputes without going to trial. *Alternative Dispute Resolution (ADR)*, CAL. COURTS, http://www.courts.ca.gov/programs-adr.htm [https://perma.cc/5LS7-JHR2] (last visited Aug. 1, 2016). Such processes include "mediation, settlement conferences, neutral evaluation, and arbitration." *ADR Types & Benefits*, CAL. COURTS, http://www.courts.ca.gov/3074.htm [https://perma.cc/9E66-9TQ4] (last visited Aug. 1, 2016). The American Bar Association also encourages earlier resolution. "In 2011, the American

spends $50,000 during pre-litigation settlement proceedings rather than if the plaintiff wins $50,000 after litigation. The latter is reduced by attorney's fees and costs that the plaintiff must pay to their attorney, while the former places more money in the victim's pocket because the plaintiff's attorney will not have expended as much time at the settlement phase.[228]

The public entity also benefits from earlier resolution because the amount of attorneys' fees and costs increase exponentially for the entity as a case moves forward in the litigation process.[229] Trying to settle cases later can therefore be much costlier for the public entity. A case valued at $50,000 rapidly becomes $100,000, if not more, once attorney's fees and costs are factored in as a case proceeds.[230]

Additionally, by permitting plaintiffs to submit their claims directly to the public entity, the entity receives notice of unsafe conditions or improper practices and can thus resolve such dangers earlier. The public entity can address these conditions or practices and limit or eliminate future harm.[231] This has obvious benefits for public safety in general, but also benefits the entity because it may avoid future claims that would otherwise arise from that same harm or improper condition, which ultimately results in the entity saving money.[232]

VII. CONCLUSION

Potential plaintiffs, like Ms. Brookes, should not be deprived of their day in court if they provide notice to the public entity, even if they fail to

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Bar Association Section of Dispute Resolution appointed the Planned Early Dispute Resolution Task Force to promote planned early dispute resolution by lawyers and clients." John Lande et al., *User Guide: Planned Early Dispute Resolution*, AM. BAR ASS'N 1, http://www.americanbar.org/content/dam/aba/events/dispute_resolution/committees/PEDR/abadr_pedr_guide.authcheckdam.pdf [https://perma.cc/T32B-WR3X] (last visited Aug. 1, 2016). This task force was created "to satisfy parties' interests, reduce litigation risks, and save time and money." *Id.*

228. *See* Court Statistics Project, *supra* note 214, at 5–7 (estimating the cost of civil litigation in automobile torts cases and providing attorneys' fees for each phase of litigation).

229. This is why one of the goals of the claim presentation requirements is to give notice to the public entity so that it can begin investigations and settle without the cost of litigation. *See supra* note 13, 75, 76 and accompanying text.

230. *See* Court Statistics Project, *supra* note 214, at 6 (estimating the amount of hours an attorney expends at each phase of litigation and showing that the hours spent, and therefore the attorney's fees, increase exponentially as a case moves from settlement to pretrial to trial to post-trial).

231. *See supra* notes 78–79 and accompanying text.

232. *See* Baines Pickwick Ltd. v. City of Los Angeles, 85 Cal. Rptr. 2d 74, 77 (Ct. App. 1999) (citing Phillips v. Desert Hosp. Dist., 780 P.2d 349, 356 (Cal. 1989)); Loehr v. Ventura Cty. Cmty. Coll. Dist., 195 Cal. Rptr. 576, 581 (Ct. App. 1983) ("The purpose of the claims presentation requirement is . . . to enable the public entity to engage in fiscal planning for potential liabilities and to avoid similar liabilities in the future.").

file their claim with the VCGCB. The ideas of notice to parties in a lawsuit and of upholding legislative intent are notions that thrive in civil procedure. Far too often, however, potential plaintiffs in California are deprived of their day in court with respect to claims against the state. There is a clear need to change the current claims presentation requirement under section 915, subdivision (b).[233] Due to a procedural technicality that is inconsistent with the statute's legislative intent, plaintiffs' legitimate claims are becoming barred. Possible solutions include adding a substantial compliance clause to section 915, subdivision (b), or adding a clause that would specifically require public entities to forward misdirected claims to the VCGCB upon erroneous receipt.[234] The best solution, however, is to create individualized claims offices—GCOs—within each state entity, and to amend section 915, subdivision (b) to require potential plaintiffs to present their claims to the GCO within the state entity that allegedly caused the harm.[235] This proposed solution would recalibrate the scales of justice when it comes to filing a government claim against the state by protecting plaintiffs' rights, while still respecting the statute's legislative intent of notice.[236]

233. *See supra* Part III.

234. *See supra* Parts VI.A, VI.B.

235. *See supra* Part VI.C.

236. In July 2016, shortly after this Comment was selected for publication, section 915, subdivision (b) was amended. The statute now requires that claims against the state first be presented to the California Department of General Services (DGS), instead of the VCGCB. *Government Claims Program*, CAL. DEP'T OF GEN. SERVS., http://www.dgs.ca.gov/orim/Programs/GovernmentClaims.aspx [https://perma.cc/TUV3-56LT] (last visited Aug. 1, 2016); *see also* CAL. GOV'T CODE § 915(b). However, this statutory amendment does not affect this Comment's analysis. The same issues and concerns outlined above remain relevant because this amendment simply designates a new "middleman" to process claims against the state. Now, instead of the VCGCB processing these claims, a different third party agency, the DGS does so. However, noncompliance with the statute is likely to remain since claimants will continue to present their claims to the allegedly responsible public entity, instead of the "middleman" agency, whether that "middleman" is the VCGCB or the DGS. Accordingly, this amendment has no affect on this Comment's proposed solutions. The superior solution, even with this amendment, still involves (1) amending the current statute to require that claimants present their claims against the state directly to the state agency that allegedly caused the harm, instead of the DGS, thereby accomplishing the statute's legislative intent of proving notice to the allegedly responsible state agency, and (2) creating GCOs and having these GCOs within each state agency process the claims against that respective agency, instead of the DGS processing all claims against the state.