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FEBRUARY 7-10, 2023

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Demystifying the California Tort Claims Act

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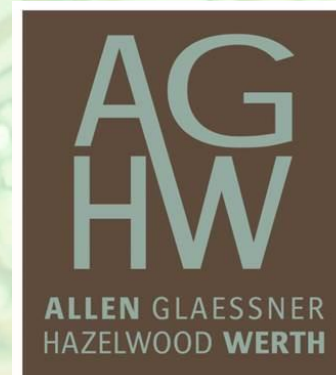
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The Purpose of the Tort Claims Act

- “The intent of the Tort Claims Act is **not to expand the rights of plaintiffs against governmental entities**. Rather, the intent of the act is to **confine potential governmental liability to rigidly delineated circumstances.**” *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.
- The claim presentation requirement serves several purposes: (1) it gives the public entity prompt notice of a claim so it can investigate the strengths and weaknesses of the claim while the evidence is still fresh and the witnesses are available; (2) it affords opportunity for amicable adjustment, thereby avoiding expenditure of public funds in needless litigation; and (3) it informs the public entity of potential liability so it can better prepare for the upcoming fiscal year. *Munoz*, 33 Cal.App.4th at 1776.
- The claim filing requirements are directly related to the doctrine of government immunity and exist for the benefit of the state. *Bozaich v. State* (1973) 32 Cal.App.3d 688, 698.
- **BUT**: The Tort Claims Act is not intended to be “a trap for the unwary.” *Munoz*, 33 Cal.App.4th at 1778.

Why is it Important to Understand the Tort Claim Requirements?

Failure to comply with or demonstrate excuse from the claim presentation requirements can bar a lawsuit.

- **Government Code § 945.4**: No suit for money or damages may be brought against a public entity until a claim has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board.
- When a party pursues an action against a public entity, the party must allege facts demonstrating or excusing compliance with the claim presentation requirements. Failure to demonstrate either subjects a complaint to a demurrer for failure to state a claim upon which relief can be granted. *State v. Superior Court* (2004) 32 Cal.4th 1234, 1243.
- An untimely claim presentation will subject a complaint to a general demurrer. *K.J. v. Arcadia Unified School Dist.* (2009) 172 Cal.App.4th 1229, 1238.



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Why is it Important to Understand the Tort Claim Requirements?

A public entity can be estopped from asserting noncompliance with the Tort Claims Act when a claimant has been misled as to the procedural and time requirements of the claim statute.

- An estoppel argument is available in situations where a claimant has been misled by a public entity's agents or employees with respect to the procedural and time requirements of the claim statute. *J.J. v. County of San Diego* (2014) 223 Cal.App.4th 1214, 1227; *Ortega v. Pajaro Valley Unified School District* (1998) 64 Cal.App.4th 1023, 1044; *John R. v. Oakland Unified Sch. Dist.* (1989) 48 Cal.3d 438, 335; *Fredrichsen v. City of Lakewood* (1971) 6 Cal.3d 353, 357.

What Circumstances Require a Claim?

- **Government Code § 905**: all claims for money or damages against local public entities **except** any of the following
 - Examples:
 - (c) Claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances
 - (d) Claims for which the worker's compensation authorized by Division 4 . . . of the Labor Code is the exclusive remedy
 - (i) Claims by the state or by a state department or agency or by another local public entity or by a judicial branch entity
 - (m) Claims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual assault
- **Government Code § 905.1**: No claim is required for an action for inverse condemnation



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When Does A Claim Need to be Presented?

GOVERNMENT CODE § 911.2:

- **Claims relating to a cause of action for death or for injury to person or to personal property or growing crops** → Not later than **six months** after the accrual of the cause of action.
- **Claims relating to all other causes of action** → Not later than **one year** after the accrual of the cause of action.

APPLICABLE DEFINITIONS:

- **Definition of “date of the accrual of the cause of action”**
 - **Government Code § 901**: The date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable.
- **Definition of “six months”**
 - Six calendar months or 182 days, whichever is later. *Gonzales v. County of Los Angeles* (1988) 199 Cal.App.3d 602, 603-604.



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When Does A Claim Need to be Presented?

EXCEPTIONS:

- Claims for Full or Partial Indemnity
 - **Government Code § 901**: Date of accrual is the date upon which a defendant is served with the complaint giving rise to the defendant's claim for equitable indemnity or partial equitable indemnity against the public entity
- Delayed Discovery
 - In certain cases, such as sexual molestation or medical malpractice, delayed discovery may extend the time to present a claim.
- COVID-19 Extension
 - **Executive Order N-08-21**: For claims that accrue before June 30, 2021, the time to present a claim is extended by 120 days.



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How and To Whom Does A Claim Need to be Presented?

- Government Code § 915:
 - Delivering it to the clerk, secretary, or auditor of the public entity
 - Mailing it to the clerk, secretary, auditor, or to the governing body at its principal office
 - If expressly authorized by an ordinance or resolution of the public entity, submitting it electronically to the public entity in the manner specified in the ordinance or resolution
- “If an appropriate public employee or board never receives the claim, an undelivered or misdirected claim fails to comply with the statute. This straightforward construction honors the statutory language and is consistent with the purpose of the claims statutes.”
DiCampli Mintz v. County of Santa Clara (2012) 55 Cal.4th 983, 991-994.



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When Is a Claim Deemed Presented?

- **Government Code § 915**: If delivered, deemed presented at the time of delivery.
- **Government Code § 915.2(a)**: If presented by mail, deemed presented at the time of deposit in the mail.
- **Government Code § 915(e)**: If not delivered or mailed, deemed presented if it is actually received by the clerk, secretary, auditor, or board of the local public entity by the claim presentation deadline.



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What Information Needs to be Included in the Claim?

THE CLAIM DOES NOT NEED TO BE ON A FORM.

Government Code § 910: A claim shall be presented by the claimant or by a person acting on his or her behalf and shall show all of the following:

- The name and post office address of the claimant.
- The post office address to which the person presenting the claim desires notices to be sent.
- The 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.
- The name or names of the public employee or employees causing the injury, damage, or loss, if known.
- The amount claimed if less than \$10,000. If more than \$10,000, no dollar amount required but shall indicate if claim would be a limited civil case.

Government Code 910.2:

- Claim shall be signed by the claimant or by some person on his behalf.

A claim is presented by a person acting on the claimant's behalf if "the claimant knowingly and intentionally authorized the third person to present it, or alternatively, if the claimant knowingly and intentionally ratified the claim *after* it was presented to the public entity." *Cavey v. Tualla* (2021) 69 Cal.App.5th 310.



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What Information Needs to be Included in the Claim?

DOCTRINE OF SUBSTANTIAL COMPLIANCE

- Substantial compliance is available when there is some compliance with *all* the statutory requirements such that the public entity is on notice and can adequately investigate the merits of the claim.
- The claim must “fairly describe what the entity is alleged to have done.” *Stockett v. Assoc. of Cal. Water Agencies Joint Power Ins. Authority* (2004) 34 Cal.4th 441, 446.
- When the claim contains information necessary for a proper investigation, it is substantially compliant with the statute; if it does not, the claim is insufficient. *Johnson v. City of Oakland* (1961) 188 Cal.App.2d 181, 183.
- A public entity’s actual knowledge of the circumstances surrounding a claim *does not* constitute substantial compliance. *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455; *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363.
- **BUT: Substantial compliance cannot be predicated on noncompliance.** *Hall v. City of Los Angeles* (1941) 19 Cal.2d 198, 202; *Johnson v. City of Oakland* (1961) 188 Cal.App.2d 181, 183
- **A Court will decide whether a tort substantially complies through a demurrer.**



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What Should Be Done After a Claim is Received?

DETERMINE WHETHER THE CLAIM IS TIMELY AND SUFFICIENT WITHIN 20 DAYS OF PRESENTATION

- **If the claim is untimely → Send written notice of untimely claim and return without action**
 - Government Code § 911.3(a) sets forth the required language for the notice.
 - Government Code § 911.3(b): Send within 45 days of the claim being presented.
 - Government Code § 911.3(b): Defense is **WAIVED** if notice is not given.
- **If the claim is insufficient → Send a notice of insufficiency**
 - Government Code § 910.8: Must state with particularity the defects or omissions, but no required language for the notice is set forth in a statute.
 - Government Code § 910.8: Send within 20 days of the claim being presented.
 - Government Code § 911: Defense is **WAIVED** if notice is not given.
 - Government Code § 910.8: Board cannot take action on the claim for 15 days after the notice is given.
- **Government Code § 915.4**: These notices can be given via: (1) Personal delivery, (2) Mail, (3) Electronically if the claim was presented electronically.
 - No notice required if the claim does not include an address.



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NOTICE OF UNTIMELY CLAIM LANGUAGE FROM GOVT. CODE § 911.3

The claim you presented to the [insert title of board or officer] on [indicate date] is being returned because it was not presented within six months after the event or occurrence as required by law. See Sections 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim. Your only recourse at this time is to apply without delay to [name of public entity] for leave to present a late claim. See Sections 911.4 to 912.2, inclusive, and Section 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See Section 911.6 of the Government Code.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.



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NOTICE OF INSUFFICIENCY SAMPLE LANGUAGE

On or about [indicate date], the [indicate public entity] received a tort claim dated [indicate date], which was presented on behalf of [indicate claimant]. The tort claim fails to comply substantially with the requirements of California Government Code sections 910, 910.2, or 910.4 or is otherwise insufficient for the reason(s) set forth below or will not be accepted for the reason(s) set forth below and, therefore, will not be considered on its merits.

[State, with particularity, the defects or omissions using Government Code section 910 as a guide.]

WARNING

The [indicate public entity] will not take action on your claim for 15 days from the date of this letter. You may amend your claim and present it to the [indicate public entity] at any time before the expiration of the period designated in California Government Code section 911.2 or before final action on your claim is taken by the [indicate public entity], whichever is later. For information concerning the presentation and filing of claims against public entities, you may wish to consult the California Government Code, including but not limited to sections 910, 910.2, 910.6, 910.8, and 911.2. Due to specific time requirements for correcting the identified deficiencies, you should do so promptly.

You may seek the advice of any attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.



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What Should Be Done After a Claim is Received?

If the claim is timely and sufficient, determine how to act on the claim within 45 days of presentation (Government Code § 912.4(a).)

- Allow or Reject (in part or entirely) (Government Code § 912.6)
- Government Code § 913(a): Must give written notice of the action taken (acceptance or rejection)
- Government Code § 913(a) sets forth the required language for the notice
 - If the claim is rejected in whole or in part, must contain the “WARNING.”

If the Board fails or refuses to act on a claim within 45 days of presentation, the claim is rejected by operation of law on the last day it could act. (Government Code § 912.4(c).)

- Government Code § 913(a): Must given written notice of rejection by operation of law
- Government Code § 913(a) sets forth the required language for the notice
 - The date that the claim is rejected by operation of law is the last day the Board could take action regardless of when the notice of rejection is sent.
 - Must contain the “WARNING.”

Government Code § 915.4: These notices can be given via: (1) Personal delivery, (2) Mail, (3) Electronically if the claim was presented electronically, but no notice required if the claim does not include an address.

The claimant and the Board can extend the period to act on the claim by written agreement (Government Code § 912.4(b).)



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NOTICE OF ACTION/INACTION LANGUAGE FROM GOVT. CODE 913(a)

Notice is hereby given that the claim that you presented to the [insert title of board or officer] on [indicate date] was [indicate whether rejected, allowed, allowed in the amount of \$____ and rejected as to the balance, rejected by operation of law, or other appropriate language, whichever is applicable] on [indicate date of action or rejection by operation of law].

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

This notice must include the language to consult an attorney or the notice will be considered invalid. *Andrews v. Metropolitan Transit System I* (2022) 74 Cal.App.5th 597.



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How Can an Insufficient Tort Claim be Cured?

The claimant can present an amended claim. (Government Code § 910.6.)

- **Deadline**: Before expiration of the claim presentation period or before final action is taken, whichever is later.
- The amendment shall be considered a part of the original claim.
- The Board has 45 days to act. (Government Code § 912.4(a).)

How Can an Untimely Tort Claim be Cured?

The claimant can present an application to present a late claim. (Government Code § 911.4.)

- Applies only to those claims with a six-months claim presentation period.
- **Deadline**: Reasonable time not to exceed one year after the accrual of the cause of action.
 - Government Code § 911.4(c) outlines the time not to be counted for the purposes of calculating the one-year time period.
- The application shall state the reason for delay for presenting the claim and attach a proposed claim.

What Should Be Done After an Application is Received?

The Board shall grant or deny the application within 45 days after it is presented to the Board. (Government Code § 911.6.)

- The Board **shall** grant the application if one or more of the following is applicable (Government Code § 911.6(b)):
 - The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect and the public entity was not prejudiced in its defense by the failure to present a timely claim.
 - The claimant was a minor during all of the claim presentation period.
 - The claimant was physically or mentally incapacitated during the claim presentation period and the disability is the reason for failing to present a timely claim.
 - The claimant died before the expiration of the claim presentation period.
- The parties can extend the time for the Board to take action on the application. (Government Code § 911.6(a).)
- If the Board fails or refuses to act, the application is deemed to have been denied on the last day it could act. (Government Code § 911.6(c).)



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What Should Be Done After an Application is Received?

The Board must give written notice of its action upon the application. (Government Code § 911.8.)

- If the application is **GRANTED**, the claim is deemed to have been present upon the date the leave to present is granted.
- If the application is **DENIED**, the following “WARNING” must be included in substantial form (Government Code § 911.8(b)):

WARNING

If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.4 (claims presentation requirement). See Government Code Section 946.6. Such petition must be filed with the court within six (6) months from the date your application for leave to present a late claim was denied.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Government Code § 915.4: These notices can be given via: (1) Personal delivery, (2) Mail, (3) Electronically if the claim was presented electronically, but no notice required if the claim does not include an address.

TIP: Send a notice of return with no action if the application is untimely and include the “WARNING.”



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What Can A Claimant Do After an Application Has Been Denied?

The claimant can file a petition for relief from the claim presentation requirements. (Government Code § 946.6.)

- **Deadline**: Six months after the application for leave to present a late claim is denied or deemed denied. (Government Code § 946.6(b).)
- **Where to file**: The court that would be a proper court for the trial of an action on the cause of action to which the claim relates. (Government Code § 946.6(a).)
- **Government Code § 946.6(b)**: The petition must show:
 - The application was made and denied or deemed denied;
 - The reason for the failure to present a timely claim; and
 - The reason offered must be the same as the reason in the late claim application. *Lincoln Unified School. Dist. v. Superior Court* (2020) 45 Cal.App.5th 1079, 1094.
 - The information required to be included in the tort claim. (Government Code § 910.)

What Does the Court Consider to Determine a Petition?

Government Code § 946.6(c): The Court shall relieve the petitioner from the claim presentation requirements if it finds:

- The late claim application was made within a reasonable time not to exceed one year;
- The late claim application was denied or deemed denied; and
- One of the following:
 - The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect and the public entity was not prejudiced in its defense by the failure to present a timely claim.
 - The claimant was a minor during all of the claim presentation period.
 - The claimant was physically or mentally incapacitated during the claim presentation period and the disability is the reason for failing to present a timely claim.
 - The claimant died before the expiration of the claim presentation period.
- The burden is on the petitioner to show the above by a preponderance of the evidence.
- The Court can consider petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition. (Government Code § 946.6(e).)

What Does the Court Consider to Determine a Petition?

If there is no timely application for leave to present a late claim, the Court must deny the petition.

- When a petitioner cannot demonstrate that an application for late claim was presented within one year, **the court has no jurisdiction to grant relief**. *Greyhound Lines, Inc. v. County of Santa Clara* (1986) 187 Cal.App.3d 480, 488.
- Filing a late-claim application within one year after the accrual of a cause of action is a **jurisdictional prerequisite** to a claim-relief petition. *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1779.
- The court, however, lacks jurisdiction to grant relief if the application to file a late claim was filed more than one year after the cause of action accrued. *Brandon G. v. Gray* (2003) 111 Cal.App.4th 28, 34.



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What Does the Court Consider to Determine a Petition?

MISTAKE, INADVERTENCE, SURPRISE, OR EXCUSABLE NEGLIGENCE

- Excusable neglect is the neglect that might have been the act or omission of a reasonably prudent person under the same or similar circumstances. *Ebersol v. Cowan* (1983) 35 Cal. 3d 427, 435.
- Mere ignorance of the time limitation for filing against a public entity is not sufficient grounds for allowing a late claim. *Tammen v. San Diego County* (1967) 66 Cal.2d 468, 476.
- The pivotal issue is the diligence shown during the six-month claim presentation period. *People ex rel. Dept. of Transp. v. Superior Court* (2003) 105 Cal.App.4th 39, 44.
- A claimant must at least try to seek legal counsel within the six months after the accrual of the cause of action. *Ebersol*, 35 Cal.3d at 439; *People*, 15 Cal.App.4th at 45.
- Once counsel is retained, the Court will look to whether counsel was diligent in investigating and pursuing the claim. *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1783-84.
- Excusable neglect can be established through disability only when there is a showing that “physical and/or mental disability so limited the claimant’s ability to function and seek out counsel such that the failure to seek counsel could itself be considered the act of a reasonably prudent person under the same or similar circumstances.” *Barragan v. Cnty. of Los Angeles* (2010) 184 Cal.App.4th 1373, 1385.



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What Does the Court Consider to Determine a Petition?

PHYSICAL OR MENTAL INCAPACITY

Barragan v. Cnty. of Los Angeles (2010) 184 Cal.App.4th 1373

- The analysis is focused on the claimant. The claimant must show they were “physically and mentally incapacitated during all of the [six-month period] for the presentation of the claim and by reason of that disability failed to present a claim during that time.”
- The type of disability which justifies relief from the claim presentation requirements is an “all-encompassing disability which prevents the claimant from even authorizing another to file a claim for the claimant.”
- If the claimant’s condition allowed her to authorize another to file a claim on her behalf, the claimant is not incapacitated from filing the claim.



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What Happens After the Court Determines the Petition?

If the Court **GRANTS** the Petition → A lawsuit can be filed within 30 days after the order.

- The claimant has been excused from complying with the claim presentation requirements.
- Claim presentation-based defenses are no longer available.

If the Court **DENIES** the Petition → Any lawsuit based on a cause of action related to the claim is barred.

- The claimant will not be able to demonstrate compliance with or excuse from the claim presentation requirements, which must be alleged to pursue an action against a public entity. *State v. Superior Court* (2004) 32 Cal.4th 1234, 1243.
- **BUT:** The claimant can still pursue causes of actions that do not require the presentation of a claim, such as federal causes of action and inverse condemnation. See Government Code § 905.



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What Happens After a Claim Has Been Rejected or Deemed Rejected?

If the claim is rejected and written notice is given → Claimant has six months after the notice was personally delivered or deposited in the mail to file a lawsuit.

If the claim is rejected and written notice is not given → Claimant has two years from the accrual of the cause of action to file a lawsuit.



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How Can Claim Presentation Arise in Litigation?

ARGUMENTS

- Failure to plead compliance with or excuse from the claim requirements (easily cured)
- Substantial Compliance
- Variance between complaint and the tort claim
 - When a timely claim is rejected and the plaintiff ultimately files a complaint against the public entity, each cause of action in the complaint must have been fairly reflected in a timely claim. *Stockett v. Assoc. of Cal. Water Agencies Joint Power Ins. Authority* (2004) 34 Cal.4th 441, 445-47

HOW TO RAISE THE ARGUMENT

- Answer (affirmative defense)
- Demurrer (no outside evidence allowed)
- Motion for Judgment on the Pleadings (no outside evidence allowed)
- Motion for Summary Judgment (outside evidence allowed)
- Trial (outside evidence allowed)



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Best Practices

- Document any conversations with claimant/claimant's counsel in writing.
 - Send on the same day
 - Include the date of the correspondence
 - Be factual and clear
 - Request that any corrections be brought to your attention immediately
- When in doubt, consult the Government Code and follow it.
- When sending notices, **NO CREATIVE WRITING**. Follow the Government Code.
- If still in doubt, consult an attorney or retain counsel to help with analyzing/responding to a claim.



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What Has Worked Well for Us

- Remove claim form from website because of dangerous condition claims.
 - Promotes dialogue.
- Send “Sample” Rejection with Claim Form.
- Remove W9 from claim packet.
- Denial letters explaining the reasons.
 - Most rejections for dangerous condition tree and sidewalks are rendered by citing Government Code 835 notice requirements.
- TPA County (Govt. Code § 31000.8) v. Municipality/School/Special District rejection authority
- Small Claims - Metcalf vs. San Joaquin (Anchor Number)



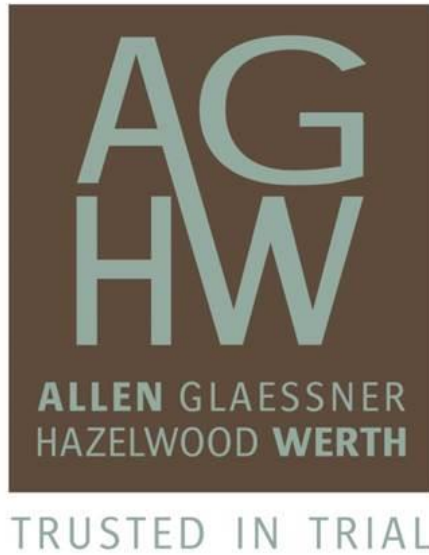
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Questions?



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