Case Number S139237

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE CITY OF STOCKTON,
THE REDEVELOPMENT AGENCY OF THE CITY OF STOCKTON
Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SACRAMENTO
Respondent,

CIVIC PARTNERS STOCKTON, LLC,
Real Party in Interest.

The Court of Appeal of the State of California, Third District, No. C048162
Superior Court of the State of California, County of Sacramento, No. 03AS00193

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND PROPOSED *AMICI CURIAE* BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF PETITIONERS THE CITY OF STOCKTON AND THE REDEVELOPMENT AGENCY OF THE CITY OF STOCKTON

Jennifer B. Henning (SBN 193915)
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941
Telephone: (916) 327-7534
Facsimile: (916) 443-8867
Electronic Mail: jhenning@counties.org

Attorney for *Amici Curiae*
California State Association of Counties and
League of California Cities

I.
INTRODUCTION

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to Rule 29.1, subdivision (f), of the California Rules of Court, the California State Association of Counties ("CSAC") and the League of California Cities ("League") submit this application to file an *Amici Curiae* brief in support of the City of Stockton and the City of Stockton Redevelopment Agency, Petitioners in this case.

II.
NATURE OF CSAC'S INTEREST

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League of California Cities is an association of 478 California cities united in promoting the general welfare of cities and their citizens. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys representing all 16 divisions of the League from all parts of the state.

The committee monitors appellate litigation affecting municipalities and identifies those that are of statewide significance.

Amici have a significant interest in the outcome of this case. *Amici's* member cities and counties are responsible for providing countless services for the public benefit. In order to carry out these responsibilities, cities and counties enter into thousands of contracts each year. An inevitable consequence of administering a large volume of contracts is that some will result in a dispute over performance, payment, or other issues. Litigating these claims without first giving the governing body of a city or county the opportunity to resolve the issue or propose a settlement would unnecessarily consume limited public resources. As such, CSAC and the League have a substantial interest in obtaining a clear statement from this Court that the Government Claims Act (Cal. Gov't Code §§ 810-996.6) applies to breach of contract claims.

III.
ISSUE ON WHICH CSAC WISHES TO MAKE A FURTHER PRESENTATION

One of the issues currently before this Court is whether a claim for breach of contract must be filed with a public entity under the claims presentment requirement of the Government Claims Act. This issue has a very direct impact on cities and counties. Applicants' counsel is familiar with the issues in this case and the scope of their presentation, and believes further argument, in the form of a *Brief of Amici Curiae*, would be helpful to the Court.

Specifically, CSAC and the League believe this brief is necessary to address the significant statewide policy implications of Civic Partners Stockton's position that contract claims are not subject to the claims presentment requirement of the Government Claims Act. The proposed *Brief of Amici Curiae* details the various public policies that are served by the claims presentment requirement and provides the Court with information about how contract claims are actually handled by cities and counties. This information will help this Court understand the practical significance of the claims presentment requirement.

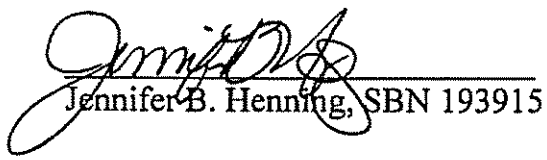
The proposed *Brief of Amici Curiae* provides a perspective for the Court's consideration that is not presented in the other briefs submitted in this case, and includes analyses and a discussion of legal principles that have not already been fully addressed.

CONCLUSION

For the foregoing reasons, the California State Association of Counties and League of California Cities respectfully request that the Court grant this application and order the accompanying *Brief of Amici Curiae* filed.

Dated: July 21, 2006

Respectfully Submitted,



Jennifer B. Henning, SBN 193915

Counsel for *Amici Curiae*
California State Association of Counties
and League of California Cities

Case Number S139237

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE CITY OF STOCKTON,
THE REDEVELOPMENT AGENCY OF THE CITY OF STOCKTON
Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SACRAMENTO
Respondent,

CIVIC PARTNERS STOCKTON, LLC,
Real Party in Interest.

The Court of Appeal of the State of California, Third District, No. C048162
Superior Court of the State of California, County of Sacramento, No. 03AS00193

AMICI CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF PETITIONERS THE CITY OF STOCKTON AND THE REDEVELOPMENT AGENCY OF THE CITY OF STOCKTON

Jennifer B. Henning (SBN 193915)
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941
Telephone: (916) 327-7534
Facsimile: (916) 443-8867
Electronic Mail: jhenning@counties.org

Attorney for *Amici Curiae*
California State Association of Counties and
League of California Cities

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

I. INTRODUCTION 1

II. INTEREST OF AMICI CURIAE 2

III. ARGUMENT 3

A. The Claims Presentment Requirement Serves Important Public Policy Considerations That Apply To All Claims For Monetary Damages, Whether Sounding In Contract Or Tort 3

1. Established Case Law Supports Application Of The Claims Presentment Requirement to Contract Claims 4

2. Civic's Policy Arguments To The Contrary Are Not Supported By The Actual Practices Of Cities and Counties 5

B. The Claims Presentment Requirement Promotes Efficient Use Of Limited Public Revenues And Judicial Resources 10

C. Claimants Are Only Minimally Burdened By The Claims Presentment Requirements 11

D. The Government Claims Act Cannot Be Avoided By Re-Labeling A Claim For Money Or Damages 13

IV. CONCLUSION 15

CERTIFICATE OF COMPLIANCE WITH RULE 14(c) 16

TABLE OF AUTHORITIES

CASES

Alliance Financial v. City and County of San Francisco (1998) 64 Cal.App.4th 635 5

Baines Pickwick Ltd. v. City of Los Angeles (1999) 72 Cal.App.4th 298 5

City of San Jose v. Superior Court (1974) 12 Cal.3d 447 ..... 10, 12

Davis v. City of Santa Ana (1952) 108 Cal.App.2d 669 6

Hart v. County of Alameda (1999) 76 Cal.App.4th 766 ..... 1, 4

Holt v. Kelly (1978) 20 Cal.3d 560 ..... 13, 14

John R. v. Oakland Unified School Dist. (1989) 48 Cal.3d 438 12

Johnson v. San Diego Unified School Dist. (1990) 217 Cal.App.3d 692 10

Lewis C. Nelson & Sons, Inc. v. Clovis Unified School Dist. (2001) 90 Cal.App.4th 64 4

Life v. County of Los Angeles (1991) 227 Cal.App.3d 894 4

Loehr v. Ventura County Community College Dist. (1983) 147 Cal.App.3d 1071 ..... 4, 12, 15

Minsky v. City of Los Angeles (1974) 11 Cal.3d 113 ..... 13, 14

Mohlmann v. City of Burbank (1986) 179 Cal.App.3d 1037 4

Munoz v. State of Calif. (1995) 33 Cal.App.4th 1767 4

State of Calif. v. Superior Court (Bodde) 2004 32 Cal.4th 1234 10

Trafficschoolonline, Inc. v. Clarke (2003) 112 Cal.App.4th 736; 15

Wood v. Riverside General Hosp. (1994) 25 Cal.App.4th 1113 10

STATUTES

Cal. Gov't Code section 810 1

Cal. Gov't Code section 910 12

Cal. Gov't Code section 910.6 12

Cal. Gov't Code section 910.8 12

Cal. Gov't Code section 911 12

Cal. Gov't Code section 911.6 12

Cal. Gov't Code section 25500 6

Cal. Gov't Code section 25502.5 6

Cal. Gov't Code section 31000 6

Cal. Gov't Code section 31000.9 6

Cal. Gov't Code section 54202 6

Cal. Gov't Code section 54203 6

LOCAL CHARTERS, ORDINANCES AND POLICIES

Codified Ordinances of the County of Orange § 1-4-13 7

Los Angeles City Charter, Vol. I, Art. III § 370 7

Los Angeles County Code § 2.81.010 6

Los Angeles County Policy #04.160 ..... 7, 9

Los Angeles County Policy #04.240 7

Sacramento County Purchasing Code §§ 2.56.010 7

San Francisco Administrative Code § 6.3 7

I. INTRODUCTION

Among the issues presented in this case is whether a claim for breach of contract must be filed under the Government Claims Act (Cal. Gov't Code §§ 810-996.6)[1] before suit may be filed against a public entity. Based on precedent, legislative history, and significant public policy considerations, *Amici Curiae* the California State Association of Counties ("CSAC") and the League of California Cities ("League") contend this question can only be answered in the affirmative. To hold otherwise would not only conflict with the plain meaning of the Act and 20 years of established precedent on this issue, but would also result in unnecessary hardship on public agencies and an increase in court filings in cases that could have been resolved without litigation.

Equally important is the understanding that a plaintiff cannot avoid the claims presentment process by simply labeling a claim as something other than a claim for monetary damages, or by merely asserting that claims for money or damages are ancillary to equitable claims. The public policies supporting the Government Claims Act are not well served by creating a

---

[1] As the Fourth Appellate District has noted, the term "California Tort Claims Act" that has sometimes been used to describe this statute is misleading. *Amici Curiae* will therefore use the "more accurate Government Claims Act identification." (*Hart v. County of Alameda* (1999) 76 Cal.App.4th 766, 774 fn. 2.)

significant loophole that allows plaintiffs to avoid the claims presentment requirements through creative pleading.

The claims presentment process in the Government Claims Act is more than a mere procedural requirement. Instead, it serves significant policy and practical considerations that are equally applicable to tort and contract claims. As such, CSAC and the League respectfully request that this Court affirm the Third District Court of Appeal's decision that the Government Claims Act applies to breach of contract claims.

II. INTEREST OF AMICI CURIAE

CSAC and the League concur with the arguments submitted by the City of Stockton and the Redevelopment Agency of the City of Stockton ("Stockton"), specifically as to the application of the Government Claims Act to Civic Partners Stockton's ("Civic") breach of contract claims. (Answer Brief, pgs 12-25.) *Amici Curiae* agree that under the proper statutory construction and relevant case law,[2] Civic was obligated to submit a claim to Stockton before initiating this litigation. *Amici Curiae* write separately, however, to emphasize the important public policy issues at stake in this case, and to demonstrate to the Court the practical application of the Government Claims Act in issues arising out of contracts.

---

[2] *See* Answer Brief, pg. 14, fn. 5 for the list of Court of Appeal decisions that have held that breach of contract claims are subject to the claims presentment requirement.

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League of California Cities is an association of 478 California cities united in promoting the general welfare of cities and their citizens. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys representing all 16 divisions of the League from all parts of the state. The committee monitors appellate litigation affecting municipalities and identifies those that are of statewide significance.

III. ARGUMENT

A. The Claims Presentment Requirement Serves Important Public Policy Considerations That Apply To All Claims For Monetary Damages, Whether Sounding In Contract Or Tort.

The claims presentment requirement serves several very important functions. First, it provides the public entity with prompt notice of the

events leading up to the claim so that an investigation can take place while the evidence and witnesses are fresh. Second, it allows ample opportunity for the possibility of settlement, thereby avoiding expenditure of public funds in needless litigation. Third, it allows the public entity to be informed in advance as to possible liability and indebtedness. Finally, it provides the public entity with an opportunity to avoid similar liabilities in the future. (*Lewis C. Nelson & Sons, Inc. v. Clovis Unified School Dist.* (2001) 90 Cal.App.4th 64; *Munoz v. State of Calif.* (1995) 33 Cal.App.4th 1767; *Life v. County of Los Angeles* (1991) 227 Cal.App.3d 894; *Mohlmann v. City of Burbank* (1986) 179 Cal.App.3d 1037; *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071.)

1. Established Case Law Supports Application Of The Claims Presentment Requirement To Contract Claims.

The policy considerations set for above apply equally to contract or tort claims. As the Second Appellate District has noted, "[t]he purposes served by the act clearly apply whether an underlying action sounds in tort or contract." (*Loehr, supra*, 147 Cal.App.3d at 1079.) Indeed, the primary purposes of the claims presentment requirement are served by its application beyond tort actions. (*Hart v. County of Alameda* (1999) 76 Cal.App.4th 766, 781.)

There is very little disagreement on this point. For example, the First District Court of Appeal has found that "there can be no doubt but that the Legislature intended the claims presentation statutes to apply not only to tort claims, but also to claims for breach of contract and claims for money due under a contract. In short, unless specifically exempted, any action for money or damages, whether sounding in tort, contract or some other theory, may not be maintained until a claim has been filed with the relevant public entity and either the public entity acts on it or it is deemed to have been denied by operation of law." (*Alliance Financial v. City and County of San Francisco* (1998) 64 Cal.App.4th 635, 642.) Similarly, the Second District Court of Appeal has determined that "[e]ven a cursory review of the statutory scheme makes it obvious the Legislature did not intend to exempt contract claims from the claims presentation requirements." (*Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 304.)

2. Civic's Policy Arguments To The Contrary Are Not Supported By The Actual Practices Of Cities And Counties

Despite the legislative history and case law to the contrary, Civic nevertheless asserts that the policy arguments supporting the claims presentment requirement do not apply to contract claims. It argues instead that presenting a claim in advance is not required since a public entity is

reasonably expected to know what contract it made, to have made its contracts in writing and with Board approval, to administer contracts in an organized way, and to know how much it owes on them. (Opening Brief, pg. 19.) This assertion, however, does not take into account the significant variety of contracts that cities and counties administer, or the relative complexity of the structure of city and county governments.

It is simply not true that every contract to which a city or county is a party is executed by its governing board. Cities and counties are required to adopt policies and procedures governing purchases of supplies and equipment. (Cal. Gov't Code §§ 54202, 54203.) Cities have considerable freedom to tailor purchasing ordinances or regulations to meet local needs. (*Davis v. City of Santa Ana* (1952) 108 Cal.App.2d 669.) County Boards of Supervisors have specific authority under State law to authorize purchasing agents to purchase goods and enter into contracts up to specified dollar amounts. (Cal. Gov't Code §§ 25500-25509, 31000, 31000.9.)

Indeed, many cities and counties around the State have enacted ordinances and policies delegating various contracting authority to specific officers or employees rather than the City Council or Board of Supervisors. For example, in the County of Los Angeles, the Internal Services Department is the purchasing agent for the county, and its director can execute contracts for commodities and services up to $100,000. (Los Angeles County Code § 2.81.010 et seq.; Cal. Gov't Code § 25502.5.) The

County Administrative Officer can execute contracts for financial, economic, accounting and administrative services. (Los Angeles County Policy #04.160, adopted July 15, 1987.) And the Executive Director of the Community Development Commission is authorized to purchase real property and execute documents necessary to complete those transactions. (Los Angeles County Policy #04.240, adopted September 8, 1987.)

Similarly, in the City and County of San Francisco, contracts can be awarded by the Mayor, Board of Supervisors, or department head depending on the nature and dollar amount of the contract. (*See* San Francisco Administrative Code § 6.3.) The County of Sacramento uses a county purchasing agent to enter into contracts on behalf of the county for certain transactions. (Sacramento County Purchasing Code §§ 2.56.010 – 2.56.310.) The County of Orange similarly uses a purchasing agent for necessary goods and supplies, renting property for the county, negotiating and executing service contracts and lease purchase agreements, and generally entering into certain other contracts. (Codified Ordinances of the County of Orange § 1-4-13.) And under the City of Los Angeles' Charter, contracts can be signed by the mayor, a city officer, or an employee of the city depending on the nature of the contract. (Los Angeles City Charter, Vol. I, Art. III § 370.) The list of examples in this vein could go on.

These examples illustrate the fact that, contrary to Civic's assertion, the governing board of a public entity is <u>not</u> always aware of all of the

contractual liabilities of the city or county. Many contracts are executed at other administrative levels and do not rise to the attention of the City Council or Board of Supervisors under ordinary circumstances. As such, it belies reality to suggest that all contracts are made with the knowledge of the governing board, or that the governing board knows how much is owed on the contracts.

Civic's argument also assumes that the party responsible for approving a contract has knowledge of how the contract is being administered and of any problems that may arise in the implementation of the contract. In an organization such as a city or county government, however, that is not generally the case. To the contrary, executing a contract does not put the governing board on notice of how the contract may be interpreted in its application, or of potential conflicts regarding payment or completion. A governing board might approve a public works contract, for example, but the board members would not be in the field monitoring progress on the project and ascertaining whether it is being properly constructed. The governing board would not participate in the day-to-day discussions between the staff and the contractors on the numerous issues that arise in applying the contract.

The claims presentment requirement, therefore, serves the very important function of alerting the governing board or the entity charged

with making decisions on claims[3] of potential liability. When a claim is submitted, the controversy moves beyond the staff level and is reviewed by a separate set of decision-makers within the government structure. The public entity is thereby provided the opportunity to resolve outstanding issues. Such resolution may include offering a settlement and/or directing staff to take a different course of action in administering the contract. Allowing grievances to be aired at the governing board level often resolves differences before expensive and time-consuming litigation is filed.

In addition, most jurisdictions have established a process for investigating the claims to determine their validity.[4] This is important because the agency staff responsible for administering the contract are not necessarily trained in the legal issues surrounding liability. Giving the liability professionals an opportunity to review the claim allows the agency to become familiar with the facts, weigh the costs and benefits of settlement versus litigation, and take appropriate measures to limit damages. Indeed,

---

[3] In some jurisdictions, the authority to review and act upon claims has been delegated by the governing board to a separate body. For example, in the County of Los Angeles, a County Claims Board has been established to review and decide claims, with final action reserved to the Board of Supervisors where the settlement exceeds $100,000. (Los Angeles County Policy #04.160, adopted July 15, 1987.) The Claims Board consists of representatives from the Auditor's Office, the Chief Administrative Office, and the County Counsel's Office.

[4] For example, in the City and County of San Francisco, claims investigation is undertaken by the Claims Division of the Office of the City Attorney. Similarly, in the County of San Diego, the Claims and Investigation Division of the Office of County Counsel reviews all claims and administers the County's self-insured program for public liability.

these are the very policy issues that support the claims presentment requirement in tort actions. (*See Johnson v. San Diego Unified School Dist.* (1990) 217 Cal.App.3d 692, 696-697; *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 454.) The policy considerations apply equally to contract claims.

In sum, even in circumstances where the governing board is aware of the existence of the contract, the purposes of the claims presentment requirement are different. Rather than focusing on the mere knowledge of a contract, the claims presentment requirement is designed to put the governing body on notice of a potential lawsuit, and provides an opportunity to investigate the allegations and attempt to resolve the conflict.

B. The Claims Presentment Requirement Promotes Efficient Use Of Limited Public Revenues And Judicial Resources

It is without question that the claims presentment requirement is more than a mere procedural element of a claim; it is an essential element to a cause of action. (*State of Calif. v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234; *Wood v. Riverside General Hosp.* (1994) 25 Cal.App.4th 1113.) A failure to allege compliance with the claims presentment statute constitutes a failure to state a cause of action, and is subject to a general demurrer. (*Bodde, supra*, 32 Cal.4th at 1243.)

Indeed, there are good reasons for this. The claims presentment requirement is not just an empty process, or an additional hoop for the would-be plaintiff to jump through. In fact, to the contrary, it is the experience of *Amici Curiae's* member agencies that a significant percentage of claims submitted to public entities are resolved without litigation. This can occur through settlement of the claim or by a denial of a claim where the claimant determines not to go forward with litigation, perhaps based on information generated by the public agency during its investigation of the claim.

If breach of contract claims are not required to be submitted to a public entity prior to the initiation of litigation, the opportunity to resolve the issues in a timely and efficient manner would be lost. This would certainly increase costs to taxpayers and add to the burden of the courts.

C. Claimants Are Only Minimally Burdened By The Claims Presentment Requirement

The impacts described above should be weighed against the burden on claimants, which is relatively minor. Civic has not suggested one reason to this Court why it could not have submitted a claim to Stockton in this instance, or why, as a general matter, the claims presentment requirement constitutes a significant burden in contract claims. In fact, the claims presentment requirement is a straightforward process, requiring claimants

to submit only minimal information about their claim. (Cal. Gov't Code § 910.) Courts have been fairly lenient in interpreting what constitutes a valid claim under the Government Claims Act, finding that a claim is valid so long as it "reasonably enable[s] the public entity to make an adequate investigation of the merits of the claim and to settle it without the expense of a lawsuit." (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1083, *citing City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 456.)

Claims may also be amended after they are submitted to the public agency. (Cal. Gov't Code § 910.6.) If the public agency believes the claim is insufficient in some regard, it must either provide notice and an opportunity to amend the claim or waive the argument in future litigation that the claim is insufficient. (Cal. Gov't Code §§ 910.8, 911.) Further, the claims presentment requirement only delays the claimant's ability to file litigation by a maximum of 45 days. (Cal. Gov't Code § 911.6.) In addition, courts have been willing to apply other doctrines to allow a case to move forward under limited circumstances without a claim having been filed. (*See John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 445 (permitting a cause of action to move forward on the grounds of equitable estoppel despite failure to file a claim under the Government Claims Act).)

With all of the protections provided to claimants, it seems a relatively small matter to comply with the Act's requirement. Had Civic done so here, it would have either received an acceptable settlement offer from Stockton, or been permitted 45 days later to file this action. There is no reason, given the benefits provided to the public and the minimal intrusion on claimants, to interpret the Claims Act requirements to exclude contract claims.

D. The Government Claims Act Cannot Be Avoided By Re-Labeling A Claim For Money Or Damages

Amici Curiae have established that the claims presentment requirement applies to all claims for money or damages, whether sounding in tort or contract. It is important to note as well that this conclusion cannot be avoided by labeling a claim as "implied contract" or "restitution." Whether the Government Claims Act applies is not a matter of how the claim is titled, but whether a particular claim seeks money or damages. For example, a claim for restitution may or may not seek money or damages. If it does, then compliance with the claims statute is mandatory. If it does not, then no claim need be presented as a prerequisite to suit. (*Holt v. Kelly* (1978) 20 Cal.3d 560; *Minsky v. City of Los Angeles* (1974) 11 Cal.3d

113.)[5] In sum, the label placed on the cause of action is not determinative. What does matter is the kind of relief sought – does it seek money damages, or not.

In order to accomplish the significant public policy goals of the Government Claims Act, this Court should also reject the suggestion that the claims presentation rules may not apply to a claim for money that is "ancillary" to equitable relief. (*See Holt v. Kelly* (1978) 20 Cal.3d 560, 565, fn. 5.) To do so would permit a plaintiff to avoid the claims presentment requirement by simply asserting that the money or damages the plaintiff seeks is "ancillary relief" or "incidental damages" on the equitable claim. Creating such a large loophole in the Act is not justified by the text of the statute or the public policy that supports it. Instead, this Court should make clear that where an action primarily seeks money or damages, the plaintiff cannot avoid the claims presentment requirement by

---

[5] In *Minsky*, this Court stated without further discussion that in bailee cases, "[n]one of [the purposes of the claims statute] apply to the government entity owning an affirmative statutory duty to hold private property for eventual return to the lawful owner." (*Minksy, supra* 11 Cal.3d at 123-124.) *Amici* contend, however, that the same policy objectives do in fact apply in the bailee context. In *Minsky*, the Los Angeles Police Department was alleged to have wrongfully refused to return a specific sum of money it had seized from an arrestee. If a claim *had* been submitted in that case, the city council (or other persons acting on its behalf) would have been afforded the opportunity to investigate the plaintiff's claim, to avoid litigation by directing the police department to return the property to its owner, and to take corrective action as needed to prevent a reoccurrence of any wrongful conduct. This would have vindicated several important policies underlying the claims statute – to allow the legislative body to investigate disputed matters, settle valid claims, and to correct reoccurrence of any wrongful conduct.

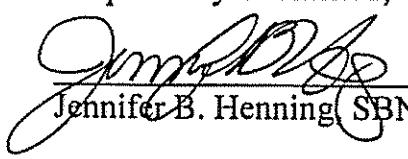
adding an ancillary equitable claim to its complaint. (*See Trafficschoolonline, Inc. v. Clarke* (2003) 112 Cal.App.4th 736; *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071.)

IV. CONCLUSION

Civic has not made a good case for interpreting the Government Claims Act to exclude breach of contract claims. In the face of the persuasive statutory interpretation arguments in Stockton's brief, the appellate court decisions holding to the contrary, and the significant public policy served by its application, Civic nevertheless insists it should not be required to bear the relatively small burden of first submitting a claim to the public agency before moving ahead with a claim for breach of contract in Superior Court. This Court should reject Civic's argument and affirm the lower court's decision that the Government Claims Act's claims presentment requirement applies to breach of contract claims.

Dated: July 21, 2006

Respectfully Submitted,



Jennifer B. Henning, SBN 193915

Counsel for *Amici Curiae*
California State Association of Counties
and League of California Cities

CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 14(c)

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word software, this brief contains 3,706 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21 day of July, 2006 in Sacramento, California.

Jennifer B. Henning, SBN 193915

Counsel for Amici Curiae
California State Association of Counties
and League of California Cities

Proof of Service by Mail

City of Stockton v. Superior Court

Case No. S139237

I, Sharlene B. Miller, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within APPLICATION FOR LEAVE TO FILE AMICUS BRIEF AND PROPOSED AMICUS BRIEF OF CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Proof of Service List

Malcolm A. Misuraca, Esq. Mailed to: 1118 Ferdinand Street Coral Gables, FL 33134 And 3961 MacArthur Blvd., Suite 212 Newport Beach, CA 92660	Attorney for Plaintiff Civic Partners Stockton, LLC
Ren Nosky, Esq. Michael T. Rishwain, Esq. Office of the City Attorney 425 N. El Dorado Street Stockton, CA 95202-1997	Attorneys for Petitioners the City of Stockton and the Redevelopment Agency of the City of Stockton
Charles W. Reese, Esq. Wulfsberg Reese Colvig & Firstman Kaiser Center 300 Lakeside Drive, 24th Floor Oakland, CA 94612	Attorneys for Petitioners the City of Stockton and the Redevelopment Agency of the City of Stockton

Lee C. Rosenthal, Esq.
Goldfarb & Lipman
City Center Plaza
1300 Clay Street, 9th Floor
Oakland, CA 94612

Attorneys for Petitioners the City of Stockton and the Redevelopment Agency of the City of Stockton

Ryan W. Baldino, Esq.
Orbach, Huff & Suarez LLP
1901 Avenue of the Stars, Suite 575
Los Angeles, CA 90067

Attorneys for Amicus Curiae Los Angeles Unified School District

Superior Court of California
County of Sacramento, Dept. 53
800 Ninth Street
Sacramento, CA 95814

Court of Appeal of the State of California
Third Appellate District
900 N Street, Room #400
Sacramento, CA 95814-4869

and by placing the envelopes for collection and mailing following our ordinary business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 21, 2006, at Sacramento, California.

SHARLENE B. MILLER