



CITY OF SACRAMENTO

CITY MANAGER'S OFFICE
RECEIVED
MAR 26 1980

JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
DAVID BENJAMIN
SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

DEPARTMENT OF LAW
812 TENTH ST. SACRAMENTO, CALIF. 95814
SUITE 201 TELEPHONE (916) 449-5346

March 26, 1980

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

APPROVED
BY THE CITY COUNCIL
CLAIM DENIED
APR 8 1980

OFFICE OF THE
CITY CLERK

RE: THOMAS SPARACO LATE CLAIM APPLICATION

Members in Session:

SUMMARY

Thomas Sparaco has applied for leave to present a late claim. We are of the opinion that the application does not fall within those circumstances under which relief must be granted.

BACKGROUND

Mr. Sparaco has applied for leave to present a late claim. The claim seeks money damages for an alleged assault and battery.

Government Code section 911.2 provides that a claim based upon personal injuries shall be presented within 100 days of the accrual of the cause of action. In this case applicant's cause of action accrued on April 23, 1979, the date of the alleged incident. The 100-day filing period expired on or about August 1, 1979. The instant application and claim were presented on March 4, 1980, more than ten months after accrual of the cause of action and more than seven months late.

In support of the application it is stated that applicant did not consult his attorney regarding this matter until July, 1979. It is also stated that discovery of the potential claims for assault and battery did not occur until October, 1979.

ANALYSIS

A person seeking to file a late claim must show both: (1) that the application was presented within a reasonable time not to exceed one year after accrual of the cause of action (section 911.4(b)); and (2) that the failure to file a timely claim was

due to mistake, inadvertence, surprise, or excusable neglect. (Government Code section 911.6(b)(1)). In order to obtain relief on any of such grounds it must appear that the applicant acted reasonably under the circumstances (Roberts vs. State of California (1974) 39 C.A.3d 844).

Stating that applicant did not consult his attorney until July, 1979, the application does not explain why he did not do so earlier. Stating that the potential claim was not discovered until October, 1979, the application does not explain why they were not discovered at an earlier date. The application fails entirely to explain the delay from October, 1979, to March, 1980, when the application and claim were presented.

In short, the application does not set forth facts showing that the delay in filing the claim was due to mistake, inadvertence, surprise or excusable neglect within the meaning of Government Code section 911.6(b)(1). Moreover, it does not appear that, under the circumstances, the claim was presented within a reasonable time after accrual of the cause of action.

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Thomas Sparaco for leave to present a late claim be denied.

Very truly yours,

JAMES P. JACKSON
City Attorney

STEPHAN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:



City Manager

SBN:GD
attachment

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO

LAW OFFICES OF

VIRGA & LYONS

A PROFESSIONAL CORPORATION

MAR 28 1 29 PM '80

721 ELEVENTH STREET
SACRAMENTO, CALIFORNIA 95814

TELEPHONE
(916) 444-6595

JOHN E. VIRGA
WILLIAM M. LYONS

IN REPLY REFER TO: NO. 790313 [PI]

March 27, 1980

Lorraine Magana
Sacramento City Clerk
915 I Street, Room 203
Sacramento, California 95814

Re: Thomas Sparaco

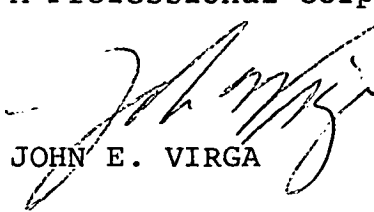
Dear Ms. Magana:

On March 4, 1980, you were served with an Application for Leave to Present Late Claim, Proposed Claim for Damages and Declaration of John E. Virga on behalf of the above referenced client. As of this date, there has been no communication from the City regarding this matter. We are asking that this claim be promptly acted upon so that we can proceed with Court action prior to the expiration of the statute of limitations date in April.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

VIRGA & LYONS
A Professional Corporation


JOHN E. VIRGA

/sh

COPY TO ATTNY 3-28-80



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

815 I STREET

CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

MURBERT F. ROGERS
CHIEF DEPUTY CITY CLERK

MEMORANDUM

TO: CITY ATTORNEY

FROM: CITY CLERK

RE: Thomas Sparaco 4-23-79
Name of applicant and date of accident

Enclosed is a copy of the late claim application which was received by the Sacramento City Clerk on 3-4-80 (date).

The enclosed document was served on the City as follows:

() Personal service.

() Received in mail.

DATED: 3-4-80

LORRAINE MAGANA
CITY CLERK

By: Jamie Lison



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET

CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

HUBERT F. ROGERS
CHIEF DEPUTY CITY CLERK

October 26, 1979

John E. Virga
Attorney at Law
721 11th Street
Sacramento, CA 95814

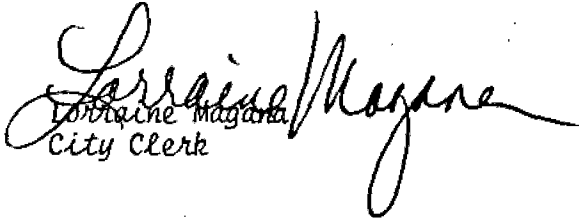
Dear Sir:

We are returning the claim you filed against the City of Sacramento on behalf of Thomas Sparaco which was received in this office October 25, 1979.

California State law requires claims against a public entity be filed within one hundred days from the date of action giving rise to the claim. Therefore, your claim was not timely filed.

If you wish to refile this claim, you must also submit an application for leave to present a late claim stating why your claim was not timely filed.

Sincerely,


Lorraine Magana
City Clerk

LM:rm

Enclosure

cc: City Attorney



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK
815 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK
HUBERT F. ROGERS
CHIEF DEPUTY CITY CLERK

RECEIVED
OCT 25 1979
CITY ATTORNEY'S OFFICE

MEMORANDUM

TO: CITY ATTORNEY

FROM: CITY CLERK

RE: Thomas Sparaco April 23, 1979
Name of applicant and date of accident

Enclosed is a copy of the late claim application which was received by the Sacramento City Clerk on Oct 25, 1979
(date)

The enclosed document was served on the City as follows:

- Personal service.
- Received in mail.

DATED: Oct. 25, 1979

LORRAINE MAGANA
CITY CLERK

By: Rose McKee

VIRGA & LYONS

ATTORNEYS AT LAW
721 - 11th STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 444-6595

Attorneys for Claimant, THOMAS SPARACO

SACRAMENTO CITY COUNCIL

CITY AND COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

RECEIVED
CITY OF SACRAMENTO
OCT 25 4 26 PM '70

In the Matter of the Claim of

NO. _____

THOMAS SPARACO,

Claimant,

CLAIM FOR DAMAGES
AGAINST PUBLIC ENTITY

vs.

THE CITY OF SACRAMENTO,

[GOVT C §§ 905, 905.2,
910, 910.2].

Public Entity.

TO: THE CITY OF SACRAMENTO, AND THE SACRAMENTO CITY
COUNCIL:

THOMAS SPARACO hereby makes claim against the City
of Sacramento for the sum of Two Hundred Fifty Thousand Dollars
(\$250,000.00), and makes the following statements in support of
his claim:

I

NAME AND POST OFFICE ADDRESS OF CLAIMANT

Thomas Sparaco, 1501 Belt Way, Sacramento, CA.

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II

POST OFFICE ADDRESS WHERE NOTICES ARE TO BE SENT

John E. Virga, Esq.
Attorney at Law
VIRGA & LYONS
721 11th Street
Sacramento, CA. 95814
(916) 444-6595

III

DATE AND PLACE OF OCCURRENCE OR TRANSACTION

The date and place of the occurrence and/or transaction giving rise to this claim for damages are April 23, 1979, in the City of Sacramento, County of Sacramento, State of California.

IV

CIRCUMSTANCES GIVING RISE TO CLAIM

On or about April 23, 1979, Thomas Sparaco was arrested by officers of the Sacramento Police Department, and in the course of that arrest excessive force was used against his person. Mr. Sparaco suffered serious injuries, including but not limited to a broken left wrist, broken fingers of the right hand, dislocated left knee, and kidney problems resulting in bleeding of his kidneys.

V

NATURE OF THE INJURY

The total extent of the injuries as described in paragraph IV above are not now known. Claimant's criminal case is still pending and is not yet resolved.

VI

NAME OR NAMES OF THE PUBLIC EMPLOYEE OR EMPLOYEES

The name or names of the public employees causing the claimant's injuries are: C. TANGHETTI, Badge No. 0548; and

1 J. LISTER, Badge No. 0399.

2 VII

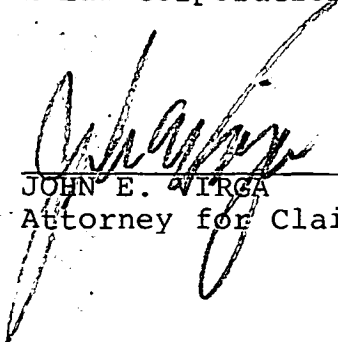
3 COMPUTATION OF CLAIM

4 The basis of computation of the above amount is as
5 follows:

6 GENERAL DAMAGES	<u>\$250,000.00</u>
7 TOTAL AMOUNT OF CLAIM	<u>\$250,000.00</u>

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9 Dated: October 24, 1979

VIRGA & LYONS
A Law Corporation

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13 JOHN E. VIRGA
14 Attorney for Claimant
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VIRGA & LYONS
ATTORNEYS AT LAW
721 - 11th STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 444-6595

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
MAR 4 4 37 PM '80

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Attorneys for Claimant

CLAIM AGAINST THE CITY OF SACRAMENTO

In the matter of the Claim of
THOMAS SPARACO
Against the City of Sacramento

PROPOSED CLAIM
FOR DAMAGES

TO THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

1. I, John E. Virga, attorney for Thomas Sparaco, present this claim on his behalf.
2. Claimant's post office address is 1501 Belt Way, Sacramento, California 95832.
3. Notices concerning this claim should be sent to John E. Virga, Virga & Lyons, 721 Eleventh Street, Sacramento, California 95814.
4. The date and place of the occurrence giving rise to this claim are April 23, 1979, at Sacramento, California.
5. The circumstances giving rise to this claim are as follows: On or about April 23, 1979, Thomas Sparaco attempted to have a prescription for Ritalin filled at the Payless Drug Store located at 4020 Florin Road, Sacramento, California. The

1 pharmacist suspected that the prescription was forged and summoned
2 the police. Responding officers, during the course of the arrest
3 of claimant, acted negligently and intentionally and used extreme
4 and unreasonable force, beating claimant in a willful, wanton,
5 malicious and oppressive manner.

6 6. Claimant sustained the following injuries as a
7 result of his beating by police officers: a broken left wrist,
8 a broken little finger on his right hand, a dislocated left knee,
9 internal injuries, extreme and severe mental anguish and physical
10 pain, and severe emotional trauma.

11 7. The names of the public employees causing claimant's
12 injuries are Sacramento City Police Officers Jim Lister, C.
13 Tanghetti and other parties whose names are unknown to claimant
14 at the present time.

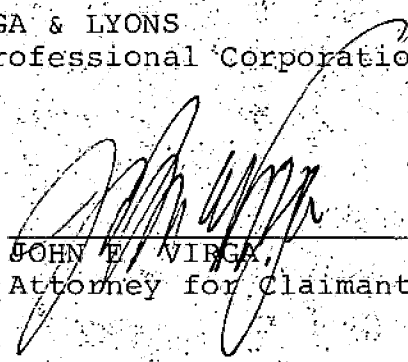
15 8. The claim as of the date of this claim is for an
16 amount in excess of \$500,000.00.

17 9. The basis for computation of the above amount is
18 as follows:

19	Medical expenses	unknown
20	General damages	\$250,000.00
21	Punitive damages	<u>250,000.00</u>
22	TOTAL in excess of	\$500,000.00

23
24 Dated: March 4, 1980

VIRGA & LYONS
A Professional Corporation

25
26
27 By: 
28 JOHN E. VIRGA,
Attorney for Claimant

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VIRGA & LYONS
ATTORNEYS AT LAW
721 - 11th STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 444-6595

Attorneys for Claimant

CLAIM AGAINST THE CITY OF SACRAMENTO

In the matter of the Claim of
THOMAS SPARACO,
Against the City of Sacramento

APPLICATION FOR LEAVE
TO PRESENT LATE CLAIM
GOV'T CODE §911.4

TO THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

I

Application is hereby made for leave to present a late claim under Section 911.4 of the Government Code. The claim is founded on a cause of action for assault and battery, which accrued on April 23, 1979, and for which a claim was not timely presented. For additional circumstances relating to the cause of action reference is made to the proposed claim attached as Exhibit "A."

II

The reason for the delay in presenting this claim is mistake, inadvertence, surprise and excusable neglect of the Claimant and John E. Virga, attorney for claimant, as shown in the declaration of John E. Virga, attached as Exhibit "B."

EXHIBIT "A"

1 The City of Sacramento is not prejudiced by the failure to timely
2 file the claim as shown by the declaration of John E. Virga,
3 Exhibit "B."

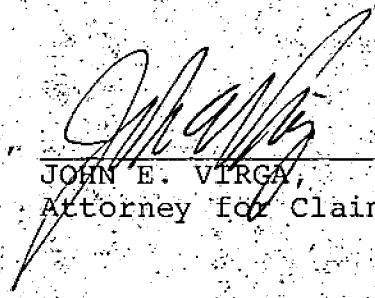
4 III

5 This application is presented within a reasonable
6 time after the accrual of the cause of action as shown by the
7 declaration of John E. Virga, attached as Exhibit "B."

8 WHEREFORE, it is respectfully requested that this
9 application be granted and that the attached claim be received
10 and acted upon in accordance with Sections 912.4 - 912.8 of the
11 Government Code.

12 Dated: February 13, 1980

VIRGA & LYONS
A Professional Corporation

13
14
15 By, 
16 JOHN E. VIRGA,
17 Attorney for Claimant

VIRGA & LYONS

ATTORNEYS AT LAW
721 - 11th STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 444-6595

Attorneys for Claimant

CLAIM AGAINST THE CITY OF SACRAMENTO

In the matter of the Claim of
THOMAS SPARACO
Against the City of Sacramento

DECLARATION OF
JOHN E. VIRGA

I, JOHN E. VIRGA, declare:

1. That I am an attorney licensed to practice law in the State of California.

2. That I am the attorney of record for the claimant herein, THOMAS SPARACO, and that I am familiar with the facts of this application and proposed claim submitted to the City of Sacramento related to this matter.

3. That on or about April 23, 1979, Sacramento City Police Officers Jim Lister and C. Tanghetti, in the course and scope of employment with the City of Sacramento Police Department, assaulted and battered THOMAS SPARACO by using unreasonable force in arresting him.


4. That I was not employed as THOMAS SPARACO'S attorney until July of 1979, and discovery of these potential

EXHIBIT "B"

1 claims for assault and battery did not occur until October of
2 1979.

3 5. That due to the delay in Claimant seeking employ-
4 ment of an attorney and the delay in the discovery of the claims,
5 said claims for damages are mistakenly, inadvertently and through
6 excusable neglect filed late.

7 I declare under penalty of perjury that the
8 foregoing is true and correct and was executed at Sacramento,
9 California, on February 13, 1980.

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12 _____
13 JOHN E. VIRGA
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