



# CITY OF SACRAMENTO

CITY MANAGER'S OFFICE  
**RECEIVED**  
JAN 30 1980

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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

January 30, 1980

Honorable City Council  
Council Chamber  
City Hall  
Sacramento, California 95814

RE: LATE CLAIM APPLICATION OF BRIAN WORKING

Members in Session:

## SUMMARY

Brian Working 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. Brian Working has applied for leave to present a late claim. His claim seeks money damages for personal injuries and losses allegedly incurred as a result of an automobile accident which he claims was caused by defective road design.

Government Code §911.2 provides that a claim based upon injury to person shall be presented within 100 days after accrual of the cause of action. Applicant's cause of action accrued on January 14, 1979, the date the automobile accident took place. The 100-day period for filing a claim expired on or about April 24, 1979. Applicant presented his claim and application for leave to present a late claim on January 15, 1980, more than 8 months late and a year plus one day after accrual of the cause of action.

## ANALYSIS

A person seeking to file a late claim must show both that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect and that the claim was presented "within a reasonable time not to exceed one year from the accrual of the cause of action" (Government Code §§911.4(b) and 911.6(b)(1)).

FEB 12 1980

2-12-80

January 30, 1980

In order to obtain relief it must appear that the applicant acted reasonably under the circumstances (Roberts v. State of California (1974) 39 Cal.App.3d 844). The application in the instant case fails to meet these standards.

Applicant has apparently been represented by a series of attorneys in this case. On January 8, 1980 the first consultation with one of these attorneys took place. This consultation led to the filing of this claim on January 15, 1980. It appears that the conduct on behalf of applicant subsequent to this consultation has been reasonably diligent.

However, the application fails to set forth facts which reasonably explain the delay up to January 8, 1980.

It appears that applicant did not consult with an attorney until long after the expiration of the 100-day filing period. In short, the application fails to set forth facts showing that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect and that applicant acted reasonably in pursuing his claim.

In addition, it does not appear that the claim was presented "within a reasonable time not to exceed one year from the accrual of the cause of action." As noted above, the application and claim herein were presented a year and one day after the accrual of the cause of action. Hence, the application appears to fail as a matter of law to meet a requirement essential to granting leave to present a late claim. Moreover, a delay of a shorter period of time has been held unreasonable (Tammen v. County of San Diego (1967) 66 Cal.2d 468; Martin v. Madera (1968) 265 Cal.App.2d 76; Roberts v. State (supra)).

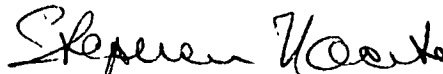
In conclusion, it appears to us that the application fails to make either of the two showings which must both be present under Government Code §911.4(b) for the granting of leave to present a late claim.

#### RECOMMENDATION

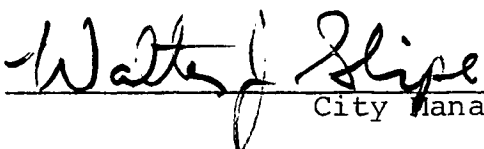
For the foregoing reasons it is recommended that the application of Brian Working for leave to present a late claim be denied.

Very truly yours,

JAMES P. JACKSON  
City Attorney

  
STEPHEN B. NOCITA  
Deputy City Attorney

RECOMMENDATION APPROVED:

  
City Manager



# CITY OF SACRAMENTO

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

SACRAMENTO CALIFORNIA 95811  
TELEPHONE (916) 449-5476

RECEIVED

JAN 15 1980

CITY ATTORNEY'S OFFICE

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

## MEMORANDUM

TO: CITY ATTORNEY

FROM: CITY CLERK

RE: Brian Working 1-14-79  
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 1-15-80.  
(date)

The enclosed document was served on the City as follows:

Personal service.

Received in mail.

DATED: 1-15-80

LORRAINE MAGANA  
CITY CLERK

By: Javier Licon

RECEIVED  
CITY CLERKS OFFICE  
CITY OF SACRAMENTO

JAN 15 1 42 PM '80

1 PIODA, BRYAN & AMES  
Attorneys at Law  
2 44 W Alisal Street  
P O Box 2155  
3 Salinas, Ca. 93902  
Telephone: (408) 424 0844  
4 GAIL ROY FRAITES, ESQ.  
5 Attorneys for Claimant

6  
7  
8 CLAIM OF )  
9 BRIAN WORKING, )  
10 Claimant )  
11 vs. )  
12 CITY OF SACRAMENTO, STATE OF CALIFOR- )  
13 NIA; COUNTY OF SACRAMENTO, STATE OF )  
14 CALIFORNIA; STATE OF CALIFORNIA; BOARD )  
15 OF CONTROL OF THE STATE OF CALIFORNIA; )  
16 DIVISION OF HIGHWAYS, STATE OF CALIF- )  
17 ORNIA; CAL TRANS; FIRST DOE through )  
AND ONE HUNDREDTH DOE, inclusive; and BLACK )  
AND WHITE COMPANY, )  
Respondents. )

18  
19 PETITION FOR LEAVE TO PRESENT  
20 LATE CLAIM ON BEHALF OF CLAIMANT

21 TO RESPONDENTS ABOVE NAMED:

22 I

23 Application is hereby made for leave to present  
24 a Late Claim founded on a cause of action for personal injuries,  
25 medical expenses, loss of earnings, earning ability, mental  
26 and emotional distress, which accrued on or about January 14,

PETITION FOR LEAVE TO PRESENT LATE CLAIM ON BEHALF OF CLAIMANT

1 C. DATE, PLACE AND CIRCUMSTANCES OF THE OCCURRENCE:

2 On or about the 14th day of January, 1979, Claimant  
3 was a passenger in a motor vehicle operated by another person,  
4 on or about, at or near HIGHWAY 1 - 80 and 16th Street, in  
5 the City of Sacramento, County of Sacramento, State of California.

6 That at all times herein mentioned Respondents, and  
7 each of them, were in charge of and did plan, design, construct,  
8 create, inspect, maintain, operate, repair, and cause and  
9 allow a dangerous and defective condition to exist on, at or near  
10 HIGHWAY 1 - 80 and 16th Street, in the City of Sacramento, County  
11 of Sacramento, State of California, and each of them, including,  
12 but not limited to the off-ramp, road surfaces, traffic control,  
13 including signs and signals, rails and guards, and appurtenances,  
14 which were so planned, designed, constructed, maintained, created,  
15 inspected, maintained, operated, repaired so that among other  
16 things there existed a curve and slope on said roads, streets and  
17 off-ramps so that motorists exiting from the freeway were  
18 prevented from being able to observe the traffic signal at the  
19 end of the off-ramp, or to see vehicles stopped at said traffic  
20 signal until exiting vehicles approached within an unsafe dis-  
21 tance, even at lawful speeds, thereby creating an unreasonable  
22 risk of harm and risk to the users of the public highway, streets,  
23 roads, and/or off-ramps, all and each of which the Respondents  
24 knew, or in the exercise of reasonable care should have known  
25 existed at said place for a time prior to the accident which  
26 would have reasonably allowed the Respondents, and each of them



1 to repair and remove or otherwise control the dangerous and  
2 defective condition so as to prevent harm to the users of the  
3 said public highways, streets, roads and off-ramps, and as  
4 a result the vehicle in which Claimant was riding as a passenger  
5 stopped at the stop signal and was struck by an automobile  
6 owned and/or operated by EDWARD ENG, proximately causing the  
7 injuries and damages claimed by the Claimant. That in  
8 addition, the Respondents, and each of them, did each and all  
9 the above acts in a negligent and careless manner, each and  
10 all of which proximately resulted in the injuries and damages  
11 to Claimant as herein alleged.

12  
13 D. NAME OF EMPLOYEE CAUSING INJURY OR DAMAGES: UNKNOWN  
14

15 E. GENERAL DESCRIPTION OF INJURY, DAMAGE OR LOSS INCURRED,  
16 SO FAR AS KNOWN AT TIME OF PRESENTATION OF CLAIM:

17 (a) Personal injuries, including, but not limited  
18 to cervical and back injury, mental and emotional  
19 distress;

20 (b) Loss of earning ability and capacity;

21 (c) Loss of earnings to date in the sum of approximately  
22 \$10,000 and continuing;

23 (d) Claimant has incurred medical expenses to date  
24 in the sum of approximately \$2,000.00 and continuing; and expects  
25 to incur in the future expenses for hospital, medical, dental,  
26 x-ray, prescription and related drug care and treatment;

(e) Claimant alleges that his injuries and  
damages are or may be permanent in nature;

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F. AMOUNT CLAIMED AS OF DATE OF PRESENTATION,  
SO FAR AS KNOWN AT THE TIME OF PRESENTATION  
OF THE CLAIM:

Based upon the personal injuries, mental and  
emotion distress, medical, hospital and related care and  
treatment, loss of earnings, earning ability and capacity,  
claim is made in the sum of not less than \$100,000.00.

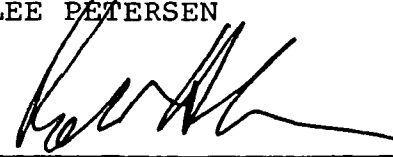
All notices and other communications with respect  
to this Claim should be sent to the Claimant at the office  
of his Attorneys:

A. LEE PETERSEN, ESQ. Attorney at Law 720 M Street, Suite #7 Anchorage, Alaska 99501	PIODA, BRYAN & AMES Attorneys at Law 44 W Alisal Street P O Box 2155 Salinas, Ca. 93902
---	---

DATED: January 13, 1980.

BRIAN WORKING, CLAIMANT

By: PIODA, BRYAN & AMES  
GAIL ROY FRAITES  
A. LEE PETERSEN

By   
For and on Behalf of  
Said Claimant



1 PIODA, BRYAN & AMES  
Attorneys at Law  
2 44 W Alisal Street  
P O Box 2155  
3 Salinas, Ca. 93902  
Telephone: (408) 424 0844  
4 GAIL ROY FRAITES, ESQ.

5 Attorneys for Claimant

6  
7 CLAIM OF )  
8 BRIAN WORKING, )  
9 Claimant )  
10 vs. )  
11 CITY OF SACRAMENTO, STATE OF CALIFORNIA; )  
12 COUNTY OF SACRAMENTO, STATE OF CALIFORNIA; )  
13 STATE OF CALIFORNIA; BOARD OF CONTROL OF THE )  
14 STATE OF CALIFORNIA; DIVISION OF HIGHWAYS, )  
through ONE HUNDREDTH DOE, inclusive; and )  
15 BLACK AND WHITE COMPANY, )  
Respondents. )  
16

17 DECLARATION OF ROBERT H. AMES IN  
18 SUPPORT OF PETITION FOR LEAVE TO  
19 PRESENT LATE CLAIM ON BEHALF OF  
20 CLAIMANT

21 I, the undersigned, ROBERT H. AMES, hereby declare:

22 1. That I am an Attorney licensed to practice before  
23 all Courts of the State of California;

24 2. That my offices are located at 44 W. Alisal Street,  
25 Salinas, California 93901;

26 3. That GAIL ROY FRAITES is an Attorney who I know  
to have been and I now believe to be licensed to practice in

DECLARATION OF ROBERT H. AMES, etc.

1 the State of California;

2 4. That on the 8th day of January, 1980, said GAIL ROY  
3 FRAITES contacted the declarant and requested that we prepare  
4 a Complaint for Personal Injuries and Damages on behalf of the  
5 Claimant BRIAN WORKING against EDWARD N. ENG; VOLKSWAGON OF  
6 AMERICA, INC.; VOLKSWAGENBERK AKTIENGESEHRFT; and Respondents  
7 herein;

8 5. That on the 8th day of January, 1980 in the conversa-  
9 tion with GAIL ROY FRAITES he stated that he did not have the  
10 full details of the accident or the circumstances under which the  
11 accident occurred; that he had recently been contacted by an  
12 Attorney in Alaska and that Attorney, MR. A. LEE PETERSEN, would  
13 contact our office and dictate the circumstances as MR. PETERSEN  
14 knew them and would dictate a Complaint for filing in the State  
15 of California on or before January 14, 1980;

16 6. To the best of my knowledge MR. FRAITES has not  
17 practiced law in the State of California for a number of years,  
18 and Attorney A. LEE PETERSEN is not licensed to practice in the  
19 State of California;

20 7. On the 9th day of January, 1980, I was away from  
21 my office in the City of Oakland, interviewing and preparing an  
22 expert witness in preparation for a Trial to commence in Monterey  
23 County, California on January 14, 1980; I did not return to my  
24 office until after 5:00 o'clock p. m. on January 9, 1980 and  
25 therefore did not have a personal conversation with nor learn of  
26 the circumstances of the accident herein referred to until the

1 evening of January 9, 1980;

2 8. Subsequent to January 9, 1980, and prior to  
3 January 12, 1980, I learned in a telephone conversation with  
4 MR. PETERSEN that the father, representing the Plaintiff and  
5 Claimant herein, had contacted MR. PETERSEN in Alaska within  
6 the last two weeks and had requested MR. PETERSEN to contact  
7 California attorneys and commence a lawsuit against the  
8 Defendants EDWARD N. ENG; VOLKSWAGON OF AMERICA, INC.; VOLKSWAGEN-  
9 BERK AKTIENGESCHAFT and Respondents herein, and again related the  
10 circumstances of the accident and requested the filing of the  
11 Complaint on or before January 14, 1980. It was not until  
12 December 26, 1979, that Claimant's father became aware of  
13 the possible defect in the road design, and Claimant BRIAN  
14 WORKING, at 20 years of age was not aware that any Governmental  
15 Agency could be liable or responsible for such condition or  
16 the accident;

17 9. As a result of the conversations between MR.  
18 PETERSEN and MR. FRAITES, MR. FRAITES called the declarant on  
19 January 8, 1980;

20 10. MR. FRAITES and MR. PETERSEN, as a result of  
21 their discussions and MR. PETERSEN'S information concerning  
22 the accident, decided that a cause of action could be stated  
23 against Respondents on the basis of negligence, dangerous and  
24 defective condition, negligent and improper design, planning,  
25 construction, maintenance of the highway, street, roads, off-ramp  
26 and signals at the place of the accident;

1           11. In the telephone conversation with MR. FRAITES and  
2 MR. PETERSEN I advised them that a Claim against a Governmental  
3 Agency required the filing of a Claim within 100 days as provided  
4 by California Law and they stated that the Plaintiff was unaware  
5 of that requirement and that he in fact had not come to contact  
6 them until long after the 100-Day statutory period had expired.  
7 In addition, MR. PETERSEN advises that the Plaintiff was not  
8 fully aware of the seriousness or consequences of his injuries  
9 until long after the 100-Day period had expired; that the Claim-  
10 ant believed that his injuries were such that they would not be  
11 of long, continuing, permanent or serious nature, and that it was  
12 after the 100-Day period had expired and within the last two weeks  
13 that the Claimant's father came to MR. PETERSEN as a representative  
14 of Claimant, requesting his help and advice;

15           12. Thereafter, MR. PETERSEN, MR. FRAITES and declarant  
16 have undertaken within a reasonable time to present this Petition  
17 and Claim to the Respondents;

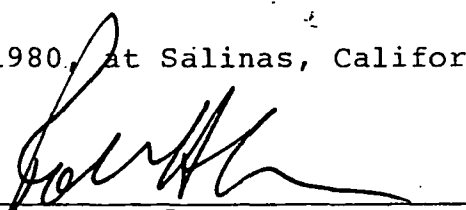
18           13. MR. PETERSEN and the declarant believe that there  
19 is no prejudice to the Respondents for the reason, including,  
20 but not limited to, the circumstances that there has been no  
21 change or no substantial change in the factual and physical cir-  
22 cumstances at the scene of the accident, including the highway,  
23 roadway, off-ramp, street, and signals with their appurtenance,  
24 and that therefore any investigation of the accident and accident  
25 scene are without substantial change presently as compared to  
26 the time of the accident.

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WHEREFORE, it is respectfully requested that the  
Petition for Leave to Present Late Claim be granted to, for and  
on behalf of the Claimant.

I declare under penalty of perjury that the foregoing  
is true and correct;

Executed on January 13, 1980, at Salinas, California.

  
\_\_\_\_\_  
ROBERT H. AMES



1 PIODA, BRYAN & AMES  
Attorneys at Law  
2 44 W Alisal Street  
P O Box 2155  
3 Salinas, Ca. 93902  
Telephone: (408) 424 0844  
4 GAIL ROY FRAITES, ESQ.

5 Attorneys for Claimant

6 CLAIM OF )  
7 BRIAN WORKING, )  
8 Claimant, )  
9 vs. )  
10 CITY OF SACRAMENTO, STATE OF CALIFORNIA;) )  
11 COUNTY OF SACRAMENTO, STATE OF CALIF- )  
ORNIA; STATE OF CALIFORNIA; BOARD OF )  
12 CONTROL OF THE STATE OF CALIFORNIA; )  
DIVISION OF HIGHWAYS, STATE OF CALIF- )  
13 ORNIA; CAL TRANS; FIRST DOE through )  
ONE HUNDREDTH DOE, inclusive; and BLACK )  
14 AND WHITE COMPANY, )  
15 Respondents. )

16  
17 CLAIM FOR PERSONAL INJURIES AND MEDICALS  
(Section 910 California Govern-  
18 ment Code)

19 TO RESPONDENTS ABOVE NAMED:

20 A. NAME AND ADDRESS OF THE CLAIMANT:

21 BRIAN WORKING  
22 7520 La Sandia Way  
Sacramento, Ca 95820

23 B. POSTOFFICE ADDRESS TO WHICH CLAIMANT DESIRES  
24 NOTICES TO BE SENT:

25 A. LEE PETERSEN, ESQ.  
Attorney at Law  
26 720 M Street, Suite #7  
Anchorage, Alaska 99501

PIODA, BRYAN & AMES  
Attorneys at Law  
44 W Alisal Street  
P O Box 2155  
Salinas, Ca. 93902

PIODA, BRYAN & AMES  
ATTORNEYS AT LAW  
44 WEST ALISAL STREET  
SALINAS, CALIF. 93901  
PHONE  
(408) 424-0844  
P. O. BOX 2155  
SALINAS, CALIF. 93902

CLAIM FOR PERSONAL INJURIES AND MEDICALS  
(Section 910 California Government Code)

1 1979, and for which a claim was not presented within the 100-  
2 Day period provided by Section 911.2 of the Government Code.  
3 For additional circumstances relating to the cause of action,  
4 reference is made to the proposed Claim attached to this  
5 Petition.

6 II

7 The failure to present this Claim within the 100-Day  
8 period specified by Section 911.2 of the Government Code was  
9 the result of those circumstances set forth in Government Code  
10 Section 911.6, including, but not limited to, mistake, inadvert-  
11 ence, surprise and excusable neglect, and the Respondents were  
12 not prejudiced by this failure, all as more particularly shown  
13 by the attached Declaration of Robert H. Ames, and which  
14 may be further shown by the Declaration of A. Lee Petersen, an  
15 Attorney licensed to practice in Alaska, U.S.A., and/or the  
16 Declaration of the Claimant, and/or such other Declarations,  
17 Amendments to this Petition, and/or such oral and documentary  
18 evidence which may be presented prior to action of the Respond-  
19 ent or Respondents.

20 III

21 This Petition is being presented within a reasonable  
22 time after the accrual of this cause of action, as more particu-  
23 larly shown by the said Declaration and/or Declarations and  
24 such other evidence, oral or documentary as may be presented.  
25

26 WHEREFORE, IT IS RESPECTFULLY REQUESTED that this





1 application be granted and the attached Claim be received  
2 and acted upon in accordance with the appropriate Sections  
3 of the Government Code, including Sections 911.2 through and  
4 including 912.2 of the Government Code, and such other  
5 rules, regulations or law as may be applicable or appropriate.

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DATED: January 13, 1980.

BRIAN WORKING, CLAIMANT

By PIODA, BRYAN & AMES  
GAIL ROY FRAITES

By 

For and on Behalf of  
Said Claimant



(PROOF OF SERVICE BY MAIL)  
(1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA )  
( SS.  
COUNTY OF MONTEREY )

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 44 West Alisal Street, Salinas, California. On

January 13, 1980, I served the within PETITION FOR LEAVE TO PRESENT LATE CLAIM ON BEHALF OF CLAIMANT, with CLAIM FOR PERSONAL INJURIES AND MEDICALS (Section 910 California Government Code) and DECLARATION OF ROBERT H. AMES IN SUPPORT THEREOF

on the Respondents set forth below in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at Salinas, California, addressed as follows:

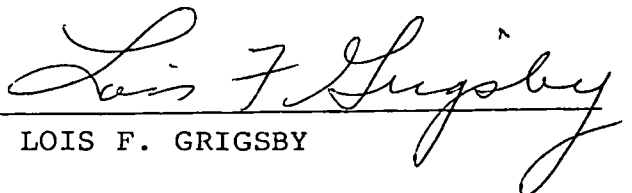
STATE OF CALIFORNIA; BOARD OF CONTROL OF THE STATE OF CALIFORNIA; DIVISION OF HIGHWAYS, STATE OF CALIFORNIA; CAL TRANS; by serving: Eugene F. Veglia, Executive Secretary, State Board of Control, 926 J Street, Suite 300, Sacramento, Ca. 95814

CITY OF SACRAMENTO, STATE OF CALIFORNIA, by serving: City Attorney, City Hall; 812 - 10th Street, Sacramento, Ca. 95814 City Clerk, City Hall, 812 - 10th Street, Sacramento, Ca. 95814

COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, by serving: James A. Simpson, County Clerk, Sacramento County Courthouse 720 9th Street, Sacramento, Ca. 95814 Clerk of the Board of Supervisors, 827 7th Street, Sacramento, Ca. 95814

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on January 13, 1980, at Salinas, California.

  
LOIS F. GRIGSBY





# 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

February 13, 1980

A. Lee Petersen, Esq.  
Attorney at Law  
720 M Street, Suite #7  
Anchorage, Alaska 99501

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF BRIAN WORKING,  
DATE OF ALLEGED INCIDENT: JANUARY 14, 1979

Dear Mr. Petersen:

You are hereby notified that your application for leave to present a late claim on behalf of Brian Working was denied by the Sacramento City Council on February 12, 1980.

The application was reviewed and duly considered. The reasons given for the failure to file a claim within the time period provided by the California Government Code were determined to be insufficient, and did not meet the requirements of the Code for relief from the claim filing requirements.

Accordingly, I must inform you that your application is rejected.

Sincerely,

Lorraine Magana  
City Clerk

LM:l

cc: City Attorney  
Finance Administration (2)  
Pioda, Bryan & Ames

20

### 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 945.5 (claims presentation requirement). See Government Code Section 946.6. Such a petition must be filed with the court within six (6) months of the date of 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.

