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# CITY OF SACRAMENTO

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

CITY MANAGER'S OFFICE  
**RECEIVED**  
FEB 29 1980

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

February 29, 1980

**REJECTED**  
BY THE CITY COUNCIL  
OFFICE OF THE  
CITY CLERK

**REJECTED**  
BY THE CITY COUNCIL  
OFFICE OF THE  
CITY CLERK

Honorable City Council  
Council Chamber  
City Hall  
Sacramento, California 95814

RE: LATE CLAIM APPLICATION OF GUADALUPE ORTEGA GARZA

Members in Session:

MAR 1 1 1980

SUMMARY

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

BACKGROUND

Mr. Garza has applied for leave to present a late claim. The claim seeks damages for personal injuries and losses claimed to have been incurred as a result of an alleged false arrest and imprisonment. The arrest was made pursuant to a warrant issued by the County.

Government Code Section 911.2 provides that a claim for damages based upon personal injuries shall be presented within 100 days of the accrual of the cause of action. In this case applicant's alleged cause of action accrued on April 28, 1979, the date he was released from the alleged illegal restraint. The 100-day filing period expired on or about August 6, 1979. The claim and late claim application were filed on February 6, 1980, approximately 6 months late.

It appears from the application that the charges upon which the arrest was made were dropped on May 4, 1979, at which time the court informed Mr. Garza of his right to file a claim against the County for the arrest. The application states that Mr. Garza filed a timely claim with the County, believing this was all that was required. It is further stated that applicant is monolingual Spanish speaking, that he was not represented by counsel at any

MAR 11 1980

stage of the criminal proceedings, and that he first discussed this matter with his attorney in August 1979. Apparently due to language difficulties the attorney was led to believe that only the County was involved. It was not until the complaint against the County was being prepared that the attorney learned the the City had been the arresting entity.

#### 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 the accrual of the cause of action (Government Code §911.4(b); and 2) that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect (Government Code §911.6(b)(1)). In order to obtain relief on any such grounds it must appear that the applicant acted reasonably under the circumstances (Roberts vs. State of California (1974) 39 Cal. App.3d 844).

In our opinion the conduct of applicant prior to consulting with an attorney in August, 1979, was not unreasonable. However, the conduct of claimant and his attorney since that time, which resulted in a delay of more than five months in presenting the instant claim, does not appear to be the conduct of a reasonably prudent person under the circumstances, nor does the delay itself appear reasonable under the circumstances.

The only reason given for the failure to file a timely claim is the error on the part of applicant's attorney to ascertain the City's involvement. This information should be readily obtainable from the applicant himself. Moreover, it would certainly be revealed by the arrest report concerning applicant's incarceration. Although the initial error on the part of applicant's attorney may be excusable given the language problems he encountered in interviewing applicant, the failure to procure a copy of the arrest report while allowing five months to pass by does not appear to approach the conduct of a reasonable person pursuing a claim.

It seems elementary that a copy of a police report of an incident should be obtained if litigation concerning the incident is at all contemplated. When the litigation contemplated will concern an alleged false arrest and imprisonment, procurement of the police arrest report appears essential. The failure to take this minimal step, which by itself would have provided the information necessary to promptly pursue the claim against the appropriate parties, does not appear to be the conduct of a reasonably prudent person under the circumstances. Moreover, the delay of five months in ascertaining the identity of the arresting agency also does not appear to be reasonable under the circumstances. This conclusion follows the reasoning of Shaddox vs. Melcher (1969) 270 Cal.App.2d 598 and Black vs. County of Los Angeles (1970) 12 Cal.App.3d 670.

February 29, 1980

As stated by the court in Tammen vs. County of San Diego (1966) 66 Cal.2d 468, 478: "It is not the purpose of remedial statutes to grant relief from default which are the result of inexcusable neglect of parties or their attorneys in the performance of the latter's obligations to their clients."

In short, the application of Mr. Garza does not set forth facts showing that his claim has been pursued with reasonable diligence or presented within a reasonable time under the circumstances.

RECOMMENDATION

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

Very truly yours,

JAMES P. JACKSON  
City Attorney

*Stephen B. Nocita*

STEPHEN B. NOCITA  
Deputy City Attorney

RECOMMENDATION APPROVED:

*Walter J. Slive*  
CITY MANAGER

SBN:mb

**PETER R. CABRERA**

ATTORNEY AT LAW

1007 SEVENTH STREET • FIFTH FLOOR • SACRAMENTO, CALIFORNIA 95814 • (916) 446-0717

February 5, 1980

CITY OF SACRAMENTO  
City Hall  
Sacramento, CA 95814

Attention: City Clerk

Re: Claim against the City of Sacramento

Dear Sir or Madam:

On April 28, 1979, MR. GUADALUPE ORTEGA GARZA was arrested by officers from the City of Sacramento pursuant to a warrant issued by the County of Sacramento for one Guadalupe Ortega Andrati. MR. ORTEGA GARZA produced valid identification to the arresting officer, but nonetheless was arrested pursuant to the purported authority of the warrant and falsely imprisoned.

MR. ORTEGA GARZA filed a claim with the County of Sacramento which was denied in August, 1979, mistakenly believing that this was all that was required. Pursuant to Government Code Section 911.4, MR. ORTEGA GARZA presents this late claim against the City of Sacramento and in compliance with Government Code Section 910 of the State of California, the following is submitted in support of this late claim on behalf of MR. ORTEGA GARZA:

1. CLAIMANT'S NAME: GUADALUPE ORTEGA GARZA
2. CLAIMANT'S ADDRESS: 4310 Attawa Avenue  
Sacramento, CA 95822
3. ADDRESS WHERE NOTICES ARE TO BE SENT:

PETER R. CABRERA  
Attorney at Law  
1007 Seventh Street, Fifth Floor  
Sacramento, California 95814

4. AMOUNT OF CLAIM: One thousand five hundred seventy dollars  
(\$1,570.00)
5. PLACE OF INCIDENT: City of Sacramento

RECEIVED  
CITY CLERKS OFFICE  
CITY OF SACRAMENTO  
FEB 6 11 53 PM '80

To: City of Sacramento, City Clerk  
From: Peter R. Cabrera  
Re: Claim against the City of Sacramento  
re Guadalupe Ortega Garza  
Date: February 5, 1980

Continue, page 2 . . . . .

6. CIRCUMSTANCES SURROUNDING INCIDENT:

On April 28, 1979, MR. GUADALUPE ORTEGA GARZA was driving eastbound on Interstate 880. At or near the El Camino exit, MR. ORTEGA GARZA was stopped for allegedly speeding. A Sacramento City Police officer ran a warrant check on MR. ORTEGA GARZA and discovered an outstanding warrant for one GUADALUPE ORTEGA ANDRATI.

Pursuant to the purported authority of the warrant, the City Police falsely arrested MR. ORTEGA GARZA for the violation of Health and Safety Code Section 11357. The arrest of MR. ORTEGA GARZA was done in a wilful, malicious, wanton, and oppressive manner. MR. ORTEGA GARZA was released later after posting a bail bond in the amount of two thousand dollars.

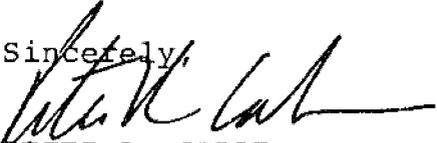
On May 4, 1979, all charges against MR. ORTEGA GARZA were dropped by the Municipal Court on the basis that MR. ORTEGA GARZA had been falsely arrested. The Court informed MR. ORTEGA GARZA of his right to file a claim against the County for the arrest. MR. ORTEGA GARZA following this advice filed a claim against the County of Sacramento, but mistakenly failed to file a claim against the City of Sacramento.

The City of Sacramento is not prejudiced by the filing of this late claim in that all information regarding the incident is readily available to the City and its agents.

- 7. DESCRIPTION OF INJURY AND DAMAGE: False imprisonment.
- 8. NAME OF PUBLIC EMPLOYEE(S) CAUSING INJURY AND/OR DAMAGE: Unknown at this time.
- 9. ITEMS OF CLAIM:

Bail Bond Premium	\$200.00
Ludwig Drum Set	500.00
Lost wages thru June 21.	<u>870.00</u>
TOTAL:	\$1570.00

Sincerely,

  
PETER R. CABRERA,  
Attorney for Claimant GUADALUPE ORTEGA GARZA

PETER R. CABRERA

ATTORNEY AT LAW

1007 SEVENTH STREET - FIFTH FLOOR - SACRAMENTO, CALIFORNIA 95814 - (916) 446-0717

RECEIVED  
CITY CLERKS OFFICE  
CITY OF SACRAMENTO

FEB 11 3 31 PM '80

February 8, 1980

CITY OF SACRAMENTO  
City Hall  
Sacramento, CA 95814

ATTN: City Clerk

RE: Supplemental Information relating to  
GUADALUPE ORTEGA GARZA v. City of Sacramento

Dear Sir or Madam:

Mr. Ortega Garza first contacted my office on an unrelated matter in late August, 1979. Until that time he had not been represented by counsel, either at the arraignment, or at the time he filed the claim against the County of Sacramento.

Mr. Ortega Garza is monolingual in Spanish. At the time I interviewed Mr. Ortega Garza in late August, the information I received from him led me to believe only the County of Sacramento had been involved. This primarily was a result of interviewing Mr. Ortega Garza in Spanish and his interchanging of the word sheriff and police. He indicated to me that as a result of the directions he received from the judge at the arraignment, he filed a claim against the County of Sacramento which was ultimately denied.

However, in preparing to file suit against the County of Sacramento, I again interviewed Mr. Ortega Garza regarding the incident. I reviewed the proposed complaint, and at that time he corrected me by informing me it was the city police that had actually arrested him. He had not filed against the City because he assumed, partly as a result of the Municipal Court judge's recommendation that he file a claim against the County, that since the County had issued the warrant the claim lay only against the County. He never realized the necessity of filing against the arresting agency as well.

This claim is now filed against the City of Sacramento as a result of the information I received from my client, that the City of Sacramento Police Department had been the arresting agency. I believe Mr. Ortega Garza, who was not represented by counsel at either the arraignment or at the time of filing the claim against the County of Sacramento, should be allowed to file this late claim.

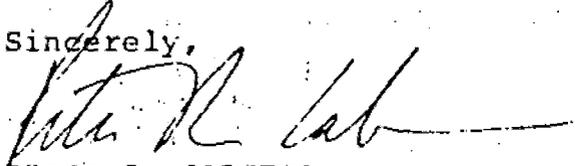
The mistake made by Mr. Ortega Garza falls clearly into the category of excusable mistake. The City suffers no prejudice by allowing the claim to stand. The Police records should indicate which officers

February 8, 1980

Late Claim of Guadalupe Ortega Garza v. City of Sacramento,  
Supplemental Information  
page 2.

were involved, on what authority the officer arrested Mr. Ortega Garza,  
the warrant number, if any, to which the purported authority to arrest  
came from, etc.

Sincerely,



PETER R. CABRERA

Attorney for Claimant, Guadalupe Ortega Garza

PRC:tbn



# 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

March 12, 1980

Peter R. Cabrera  
Attorney at Law  
1007 Seventh Street, Fifth Floor  
Sacramento, CA 95814

Dear Mr. Cabrera:

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF MR. GUADALUPE ORTEGA GARZA,  
DATE OF ALLEGED INCIDENT: APRIL 28, 1979

You are hereby notified that your application for leave to present a late claim on behalf of Mr. Guadalupe Ortega Garza was denied by the City Council on March 11, 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.

Very truly yours,

  
Jaci Pappas  
Acting City Clerk  
JP:ED

cc: City Attorney  
Finance Administration (2)

Item No. 19

### 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 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.