



# CITY OF SACRAMENTO

DEPARTMENT OF LAW  
812 TENTH STREET  
SUITE 201  
SACRAMENTO, CA 95814  
TELEPHONE (916) 449-5346

CITY MANAGER'S OFFICE  
**RECEIVED**  
JAN 5 1982

JAMES P. JACKSON  
CITY ATTORNEY  
THEODORE H. KOBEY, JR.  
ASSISTANT CITY ATTORNEY  
LELIAND J. SAVAGE  
SAMUEL L. JACKSON  
WILLIAM P. CARNAZZO  
STEPHEN B. NOCITA  
DIANE B. BALTER  
CHRISTINA PRIM  
DEPUTY CITY ATTORNEYS

December 28, 1981

Honorable City Council  
Council Chamber  
City Hall  
Sacramento, Ca. 95814

RECEIVED  
BY [illegible]  
CITY CLERK

RE: LATE CLAIM APPLICATION OF BETTY PULTZ

Members in Session:

JAN 2 1981

## SUMMARY

Betty Pultz 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

Ms. Pultz has applied for leave to present a late claim. The claim seeks damages for injuries allegedly suffered as a result of a fall which she claims was caused by a dangerous condition on public property.

Government Code §911.2 provides that a claim based upon personal injuries or property damage shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on December 16, 1980. The claim and late claim application were presented on December 16, 1981, one year after accrual of the cause of action.

The application states that applicant did not realize that she had a potential cause of action against the City.

## 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 §911.2 (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 of these grounds it must appear that the applicant acted with reasonable diligence

under the circumstances (Roberts vs. State (1971) 39 Cal.3d 844; El Dorado Irr. Dist. vs. Superior Court (1979) 98 Cal.App.3d 57). It does not appear to us that this standard has been met in the instant case.

The failure to discover the alleged basis of a cause of action does not excuse the failure to file a timely claim (Tsingaris vs. State, (1979) 91 C.A.3d 312; Black vs. County of Los Angeles (1970) 12 C.A. 3d 760). The application contains no information suggesting the cause of action against the City could not have been discovered in a timely fashion. In short, it does not appear that the failure to file a timely claim was due to the mistake, inadvertence, surprise or excusable neglect of a reasonably diligent person.

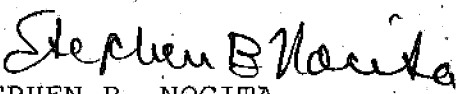
In addition, the application was presented a full year after accrual of the cause of action. A delay of a shorter period has been held unreasonable (Martin vs. Madera (1968) 265 C.A.2d 76). It does not appear that the application was presented within a reasonable time under the circumstances.

#### RECOMMENDATION

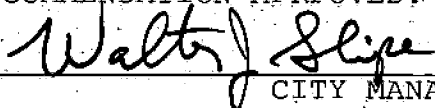
For the foregoing reasons it is recommended that the application of Betty Pultz for leave to present a late claim be denied.

Very truly yours,

JAMES P. JACKSON  
City Attorney

  
STEPHEN B. NOCITA  
Deputy City Attorney

RECOMMENDATION APPROVED:

  
CITY MANAGER

SBN:GD  
attachment

JOHN R. HOLSTEDT;

LAW OFFICES OF DAVID P. MASTAGNI  
A PROFESSIONAL CORPORATION  
1912 I STREET, SUITE 102  
SACRAMENTO, CALIFORNIA 95814  
TELEPHONE: (916) 446-4692

RECEIVED  
CITY CLERKS OFFICE  
CITY OF SACRAMENTO

DEC 16 4 47 PM '81

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

ATTORNEYS FOR: Applicant

In the matter of:

BETTY PULTZ,

Applicant,

vs.

CITY OF SACRAMENTO,

Defendants.

APPLICATION FOR LEAVE  
TO PRESENT LATE CLAIM  
GOVERNMENT CODE §911.4

1. Application is hereby made for leave to present a late claim under Section 911.4 of the Government Code. The claim is made under the cause of action for negligence resulting in personal injury which accrued on December 16, 1980, 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 hereto as Exhibit "B" and made a part hereof.

2. The reason for the delay in presenting this claim is mistake, inadvertence, surprise and excusable neglect of the



1 claimant as more particularly shown in the Declaration of  
2 John R. Holstedt attached hereto. The State of California was  
3 not prejudiced by the failure to timely file the Claim as shown  
4 by the Declaration of John R. Holstedt, attached hereto as  
5 Exhibit "A" and made a part hereof.

6 3. This application is presented within a reasonable  
7 time after the accrual of the cause of action as shown by the  
8 Declaration of John R. Holstedt, attached hereto as Exhibit "A"  
9 and made a part hereof.

10 WHEREFORE, it is respectfully requested that this  
11 Application be granted and the attached Claim be received and  
12 acted upon in accordance with §912.4-912.8 of the Government  
13 Code.

14 DATED: December 16, 1981

15 LAW OFFICES OF DAVID P. MASTAGNI,

16 

17 JOHN R. HOLSTEDT,  
18 Attorney for Applicant

JOHN R. HOLSTEDT

1 LAW OFFICES OF DAVID P. MASTAGNI  
A PROFESSIONAL CORPORATION  
1912 I STREET, SUITE 102  
2 SACRAMENTO, CALIFORNIA 95814  
TELEPHONE: (916) 446-4692

3  
4

5 ATTORNEYS FOR: Applicant

6  
7

8 In the matter of: DECLARATION OF JOHN R.  
HOLSTEDT  
9 BETTY PULTZ,  
10 Applicant,  
11 vs.  
12 CITY OF SACRAMENTO,  
13 Defendants.

14 \_\_\_\_\_

15

16 I, JOHN R. HOLSTEDT, hereby declare under penalty  
17 of perjury:

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

20 2. On December 11, 1981, Betty Pultz contacted the  
21 Law Offices of David P. Mastagni for purposes of representing  
22 her with respect to her workers' compensation case.

23 3. On December 11, 1981 the Law Offices of David P.  
24 Mastagni determined that there was a cause of action available  
25 to Betty Pultz against the City of Sacramento due to their  
26 negligence in maintaining the sidewalk at 3301 C Street,  
Sacramento, California.

1           4. That Betty Pultz was unaware until the before  
2 mentioned time that she had a cause of action against the City  
3 of Sacramento for injuries incurred as a result of her fall on  
4 December 16, 1980.

5           5. That the Law Offices of David P. Mastagni on  
6 December 16, 1981 made an Application for Leave to Present  
7 a Late Claim pursuant to Government Code §911.4 and filed a  
8 Complaint for Damages in civil court against the owner of the  
9 building located at 3301 C Street and also the City of Sacramento.

10           6. Since this Application was made within one year  
11 from the date of injury the City of Sacramento will not be  
12 prejudiced and the Application is presented within a reasonable  
13 time after the accrual of said cause of action.

14           Executed at Sacramento, California on December 16,  
15 1981.

16           LAW OFFICES OF DAVID P. MASTAGNI,

17 

18           JOHN R. HOLSTEDT,  
19           Attorney for Applicant.

20           On December 16, 1981, Betty Pultz advised  
21           that she had been injured on December 16, 1980, when she  
22           fell from a sidewalk at 3301 C Street, Sacramento, California.  
23           On December 16, 1981, the Law Offices of David P. Mastagni  
24           represented her and filed a Complaint for Damages in civil court  
25           against the owner of the building located at 3301 C Street,  
26           Sacramento, California, and also the City of Sacramento.

JOHN R. HOLSTEDT

1 LAW OFFICES OF DAVID P. MASTAGNI  
A PROFESSIONAL CORPORATION  
1912 I STREET, SUITE 102  
2 SACRAMENTO, CALIFORNIA 95814  
TELEPHONE: (916) 446-4692

3

4

5 ATTORNEYS FOR: Applicant

6

7

8 In the matter of CLAIM AGAINST A  
PUBLIC ENTITY

9 BETTY PULTZ,  
10 Applicant,

11 vs.

12 CITY OF SACRAMENTO,  
13 Defendants.

14

15 TO: The City of Sacramento:

16 Betty Pultz hereby makes claim against the CITY OF SACRAMENTO  
17 for the sum of \$250,000.00 and makes the following statements  
18 in support of the claim:

- 19 1. Claimant's post office address is 6331 McMahon  
20 Drive, Sacramento, California 95824.  
21 2. Notice concerning the Claim should be sent to the  
22 Law Offices of David P. Mastagni, 1912 I Street, Suite 102,  
23 Sacramento, California 95814.  
24 3. The date and place of the action giving rise to  
25 this claim are December 16, 1980 at 3301 C Street, Sacramento,  
26 California.

1                   4. The circumstances giving rise to this claim are  
2 as follows:

3                   Betty Pultz at the above time and place was walking  
4 on the sidewalk which was in a dangerous condition due to the  
5 City of Sacramento's failure to maintain said sidewalk in a  
6 level and even condition, and due to the dangerous condition,  
7 Applicant slipped and fell causing her serious injuries.

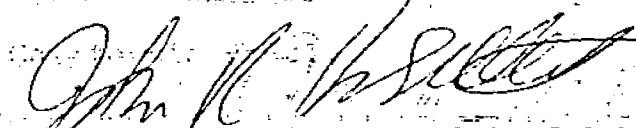
8                   5. Claimant's injuries are to her right arm, neck  
9 and left shoulder among others.

10                  6. The names of the public employees causing the  
11 Applicant's injuries are unknown.

12                  7. Claimant's claim as of the date of this claim  
13 is \$250,000.00.

14                  8. The basis of computation of the above amount is  
15 forty (40) days of disability, causing wage loss at the rate  
16 of \$1,259.00 per month in addition to medical expenses incurred  
17 and presumed to be necessary in the future and for general  
18 damages.

19                  DATED: December 16, 1981

20  
21   
22 JOHN R. HOLSTEDT,  
23 Attorney for Applicant  
24  
25  
26





# CITY OF SACRAMENTO

*file*

## OFFICE OF THE CITY CLERK

815 I STREET  
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814  
TELEPHONE (916) 449-5426

LORRAINE MAGANA  
CITY CLERK

January 13, 1982

John R. Holsted  
Attorney at Law  
1912 "I" Street, Room 102  
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF BETTY PULTZ. DATE OF ALLEGED INCIDENT:  
DECEMBER 16, 1980

Dear Mr. Holsted:

You are hereby notified that your application for Leave to Present a Late Claim on behalf of the above named claimant was denied by the Sacramento City Council on January 12, 1982.

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 your application is rejected.

Sincerely,

  
Lorraine Magana  
City Clerk

LM/mm/08

cc: City Attorney  
Risk Management (2)

### 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 any attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.