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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
JUN 3 1980

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

June 2, 1980

APPROVED
BY THE CITY COUNCIL

JUN 10 1980

OFFICE OF THE
CITY CLERK

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

RE: LATE CLAIM APPLICATION OF HERBERT BROWN

Members in Session:

SUMMARY

Herbert Brown 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 can be granted.

BACKGROUND

Mr. Brown 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.

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 cause of action accrued on December 21, 1979, the date of the alleged incident. The 100-day filing period expired on or about March 30, 1980. The claim and late claim application were submitted on May 22, 1980, approximately seven weeks late.

The application states that a timely claim was not filed because applicant did not know that the arresting officers were from the City Police Department. It is stated that a timely claim was submitted to the County on the mistaken belief that the arresting officers were members of the County Sheriff's Office.

ANALYSIS

A person seeking to file a late claim must show 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 these grounds it must appear that the applicant acted reasonably under the circumstances (Roberts vs. State (1974) 39 Cal.App.3d 844; Tsingaris vs. State (1979) 91 Cal.App.3d 312). It appears to us that this standard has not been met in this case.


The police officers involved in the arrest were in uniform, clearly identified as City police officers. Applicant was transported in a marked police vehicle, clearly identified as a City police vehicle. Under these circumstances a mistaken impression that the arresting officers were members of the County Sheriff's Office does not appear to be a reasonable mistake of a person using ordinary prudence (Roberts, supra; Tsingaris, supra).

RECOMMENDATION

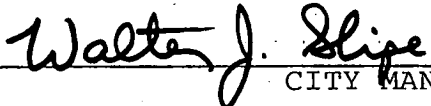
For the foregoing reasons it is recommended that the application of Herbert Brown for leave to file a late claim be denied.

Very truly yours,

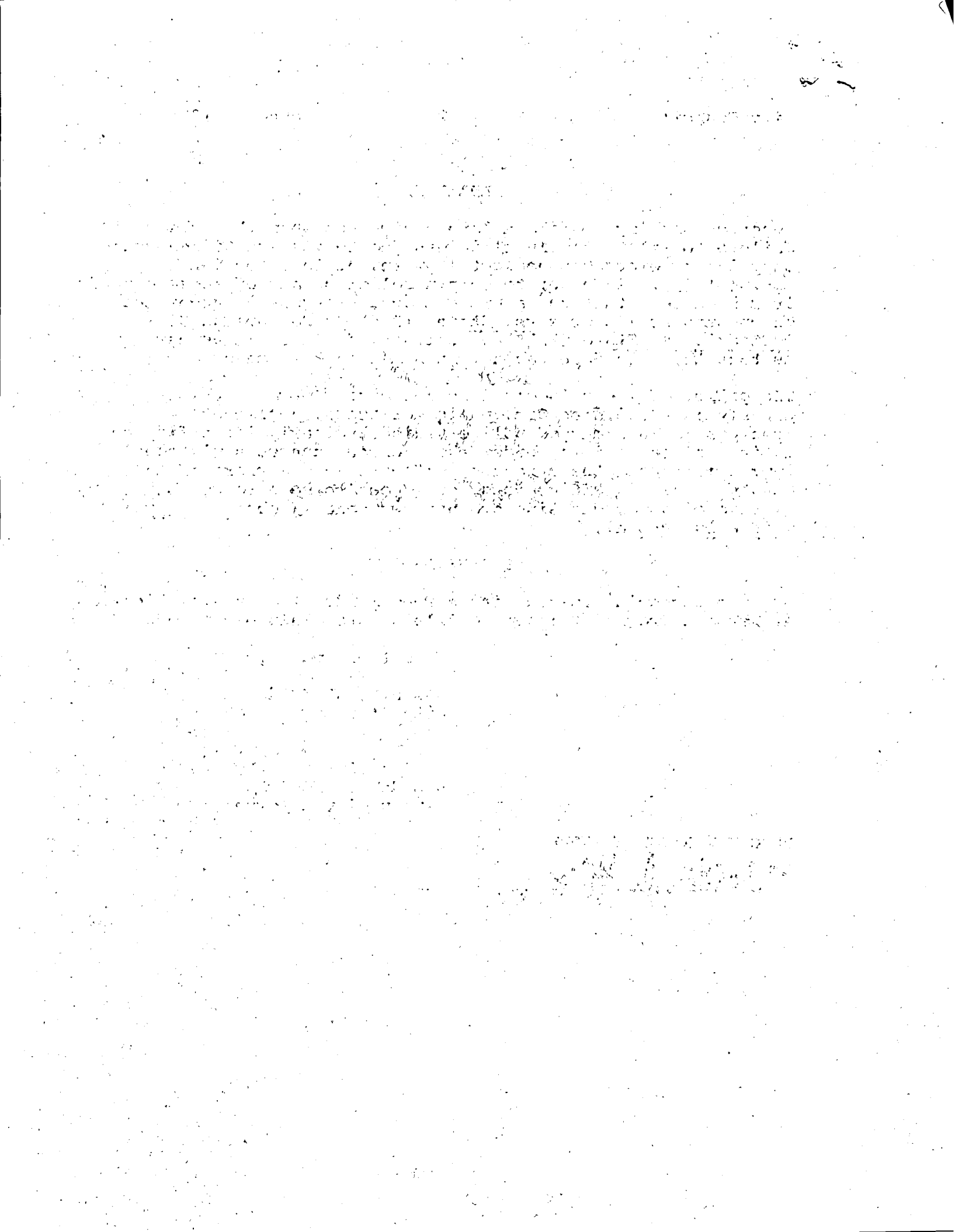
JAMES P. JACKSON
City Attorney


STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

SBN:GD



THE LAW OFFICES
OF

Daniel J. Sullivan

A PROFESSIONAL CORPORATION
2318 K STREET
SACRAMENTO, CALIFORNIA 95816
(916) 444-9922

DANIEL J. SULLIVAN

JOHN C. MCKINNEY
J. DENNIS SULLIVAN

SAN MATEO OFFICE:
815 N. HUMBOLDT, SUITE 406
SAN MATEO, CA 94401
(415) 344-9977

May 20, 1980

City Clerk
City of Sacramento
City Hall
Sacramento, California 95814

Re: Herbert Brown vs. City of Sacramento

Gentlemen:

Enclosed please find the following:

1. Application for Permission to File a Late Claim;
and
2. Claim for Damages.

We are submitting these to you on behalf of our client,
Herbert Brown. Please return a stamped copy to me.

Very truly yours,

Daniel J. Sullivan
DANIEL J. SULLIVAN

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Enclosures

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CITY OF SACRAMENTO
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DANIEL J. SULLIVAN
A Professional Corporation
2318 K Street
Sacramento, CA 95816
(916) 444-9922

Attorney for Claimant

HERBERT BROWN,

Claimant,

vs.

CITY OF SACRAMENTO,

Defendant.

APPLICATION FOR PER-
MISSION TO FILE A LATE
CLAIM

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
MAY 22 10 44 AM '80

TO: CITY OF SACRAMENTO:

I

HERBERT BROWN, Claimant, hereby applies to the City of Sacramento for a leave to present a claim against said City pursuant to Government Code §911.4.

II

Claimant's cause of action as set forth in his proposed claim attached hereto occurred on December 21, 1979, a period within one year from the filing of this application.

III

Claimant's reason for the delay in presenting his claim against the City of Sacramento is as follows:

A claim for damages pursuant to Government Code §910

1.

1 was made within 100 days against the County of Sacramento. At
2 that time it was believed that the arresting officers in the under-
3 lying claim were County Sheriffs. On April 3, 1980, the County of
4 Sacramento denied the claim without stating the reason therefor.
5 While preparing a court action against the County of Sacramento
6 for rejecting the claim, further investigation was conducted.
7 On April 9, 1980, a letter was written to the County Sheriff's
8 Department requesting information concerning the warrants and
9 arrest reports in the Brown case. On April 21, 1980, we were
10 notified by the County Sheriff's Department that they were unable
11 to release any information, and that we would have to contact
12 the District Attorney to obtain any information we may need.
13 On April 23, 1980, we wrote a letter to the District Attorney
14 requesting the same information. On April 28, 1980, I discussed
15 the case with Assistant District Attorney Harry Columbo. He told
16 me at that time that he could find nothing in the record to
17 indicate Mr. Brown's arrest, but that he would check with the
18 Department of Motor Vehicles. On May 2, 1980, Mr. Columbo
19 informed me that he had discovered that the arrest was made by
20 the City of Sacramento Police. On May 6, 1980, we contacted the
21 City Police by letter requesting information concerning the
22 arrest. On May 16, 1980, we received a letter from the Sacramento
23 City Police Department that we had to contact the District
24 Attorney's office for any records that we may need involving the
25 case.

26 We have since prepared this Claim for Damages against
27 the City of Sacramento, and hereby submit it to the City of
28 -----

1 Sacramento, along with this request to file a late claim.

2 Dated: May 20, 1980.

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DANIEL J. SULLIVAN

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DANIEL J. SULLIVAN
Attorney for Claimant

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

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the within above-entitled action; my business address is ~~XXXX~~ K Street, ~~XXXXXXXXXX~~, Sacramento, California 958146.
2318

On May 20, 19 80, I served the within

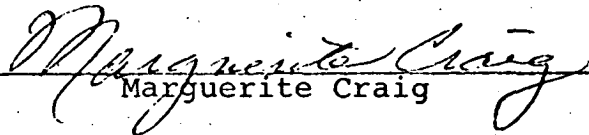
APPLICATION FOR PERMISSION TO FILE A LATE CLAIM

on the parties 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 Sacramento, California addressed as follows:

City Clerk
City of Sacramento
City Hall
Sacramento, CA 95814

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

Executed on May 20, 19 80, at Sacramento, California.


Marguerite Craig

1 DANIEL J. SULLIVAN
2 A Professional Corporation
3 2318 K Street
4 Sacramento, CA 95816
5 (916) 444-9922

6 Attorney for Claimant

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
MAY 22 10 44 AM '80

7
8 In the Matter of the Claim of
9 HERBERT BROWN,

10 Claimant,

11 vs.

CLAIM FOR DAMAGES

(Govt. Code §910)

12 THE CITY OF SACRAMENTO, and
13 several Sacramento City Police
14 Department Deputies,

15 Defendants.

16 TO THE CITY OF SACRAMENTO:

17 You are hereby notified that HERBERT BROWN, whose
18 address is 10343 Doyle, Rancho Cordova, California 95670, claims
19 damages from the CITY OF SACRAMENTO in the amount, computed as
20 of the date of presentation of this claim, of \$20,830.00.

21 This claim is based on the following facts: In 1977,
22 Herbert Brown received a citation for reckless driving. On
23 November 16, 1979, he appeared in the Municipal Court of Sacra-
24 mento, Department B, and pled guilty to the old reckless driving
25 charge, and received a \$90.00 fine for which he was making pay-
26 ments through the Office of Revenue Reimbursements. He made his
27 first payment in December, 1979. Claimant was employed at Sears
28 located at Arden Fair, Sacramento, California. On December 21,

1 1979, while he was working at Sears, he was called to the
2 Security Office and found several deputies from the Sacramento
3 City Police Department waiting for him. They said they had a
4 warrant for his arrest for reckless driving. This warrant was for
5 the same charge for which he had pled guilty on November 16, 1979.
6 He was arrested, causing him embarrassment and humiliation as the
7 deputies of the Sacramento City Police Department escorted him
8 through the Sears store. They then took him to the Sacramento
9 County Jail where he was incarcerated for three or four hours
10 until he was able to obtain his release on bond. Bail had been
11 set for \$300.00. He tried to tell the police officers that he
12 had already appeared in court on the reckless driving charges;
13 that he had been fined by the court, and that he was in the pro-
14 cess of paying off that fine, but they refused to listen to him
15 or to check it out prior to arresting him.

16 When Herbert Brown returned to his job at Sears the
17 following day, he suffered a great deal of embarrassment and
18 humiliation because of the attitudes of his fellow employees and
19 the gossip that had been spread throughout the store concerning
20 his having been arrested the day before.

21 The injuries sustained by claimant, as far as known, as
22 of the date of presentation of this claim, consists of humiliation
23 embarrassment, unlawful incarceration, emotional distress, costs
24 and attorney's fees of \$750.00.

25 The amounts claimed, as of the date of presentation of
26 this claim, are computed as follows:

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Humiliation:	\$ 5,000.00
Embarrassment:	\$ 5,000.00
Unlawful Incarceration:	\$ 5,000.00
Emotional Distress:	\$ 5,000.00
Costs:	\$ 80.00
Attorney's fees:	<u>\$ 750.00</u>
Total:	\$20,830.00

All notices or other communications with regard to this claim should be sent to claimant at the law offices of DANIEL J. SULLIVAN, 2318 K Street, Sacramento, California 95816.

Dated: May 20, 1980.

DANIEL J. SULLIVAN

DANIEL J. SULLIVAN
Attorney for Claimant

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I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the within above-entitled action; my business address is ~~717~~ K Street, ~~XXXXXX~~, Sacramento, California 958146
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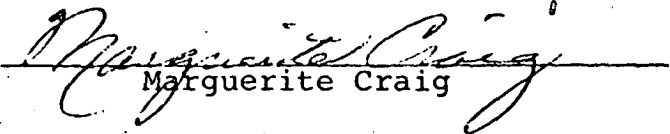
CLAIM FOR DAMAGES

on the parties 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 Sacramento, California, addressed as follows:

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City of Sacramento
City Hall
Sacramento, CA 95814

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

Executed on May 20, 19 80, at Sacramento, California


Marguerite Craig



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

June 17, 1980

Mr. Daniel J. Sullivan
Attorney at Law
2318 K Street
Sacramento, CA 95816

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF HERBERT BROWN, DATE
OF ALLEGED INCIDENT, DECEMBER 21, 1979

DEAR SIR:

You are hereby notified that your application for leave to present a late claim on behalf of Mr. Herbert Brown was denied by the Sacramento City Council on June 10, 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,

Lorraine Magana

Lorraine Magana
City Clerk

LM:sj

cc: City Attorney
Finance Administration (2)

Item No. 34

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.