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CITY OF SACRAMENTO
CALIFORNIA

OFFICE OF THE
CITY MANAGER

July 21, 1980

CITY HALL
915 I STREET - 95814
(916) 449-5704

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Late Claim of Mathess Jack Kennedy

Attached is some material from the City Attorney relating to the late claim of Mathess Jack Kennedy for the City Council's information and review.

The Police Department is not submitting any additional information at this time but is ready to do so if the Council so desires.

Respectfully submitted,

William H. Edgar

William H. Edgar
Assistant City Manager

For City Council Information:

Walter J. Slipe

Walter J. Slipe, City Manager

FILED
By the City Council
Office of the City Clerk
Cont to 8-5-80
JUL 29 1980

FILED
By the City Council
Office of the City Clerk
AUG 5 1980

CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK
915 I STREET SACRAMENTO, CALIFORNIA 95814
CITY HALL ROOM 203 TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

April 23, 1980

KANTER, WILLIAMS, MERIN & DICKSTEIN
1014 - 9th Street
Sacramento, CA 95814

Gentlemen:

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF MR. MATHESS JACK KENNEDY,
DATE OF ALLEGED INCIDENT: JULY 21, 1979

You are hereby notified that your application for leave to present a late claim on behalf of Mr. Mathess Jack Kennedy was denied by the Sacramento City Council on April 22, 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
City Clerk

LM:HO'

cc: City Attorney
Finance Administration (2)

Item No. 14

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

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

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

April 11, 1980

Honorable City Council
Council Chamber
City Hall
Sacramento, CA 95814

RE: APPLICATION FOR LEAVE TO PRESENT LATE CLAIM OF MATHESS JACK KENNEDY

Members in Session:

SUMMARY

Mathess Jack Kennedy 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. Kennedy has applied for leave to present a late claim. The claim seeks money damages for alleged false arrest and imprisonment, assault and battery, intentional infliction of emotional distress, and injury to personal property.

Government Code section 911.2 provides that a claim based upon alleged injuries to person or personal property shall be presented within 100 days of the accrual of the cause of action. Viewing the present claim in a light most favorable to applicant, his causes of action accrued no later than July 22, 1979, the day he was released from the allegedly illegal restraint. The 100-day filing period expired on or about October 31, 1979. The present claim and application for leave to present a late claim were presented on March 6, 1980, more than four months late.

Applicant contends that a timely claim was not presented because he had been told by the Internal Investigations Section of the Police Department that they would not proceed, beyond filing his citizen's complaint against the involved officers, until resolution of the criminal proceedings against applicant (which arose out of the same incident).

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 (Government Code 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 under any of these grounds, however, it must appear that the applicant acted reasonably under the circumstances (Robert vs. State of California (1974) 39 Cal.App.3d 844).

A citizen's complaint to the Police Department, alleging unjustified or excessive force, does not satisfy the claim filing requirement (Tyus vs. City of Los Angeles (1977) 74 Cal.App.2d 667). The absence of any notice to the entity that a monetary claim for damages is at issue necessitates this result (id.).

There is nothing in the instant application to suggest the applicant presented anything other than a citizen's complaint to the Police Department, which did not suggest or claim monetary compensation. Thus, the discussions between applicant and the Police Department, indicating that said complaint would be held in abeyance pending resolution of the criminal charges, had no relation to or effect on applicant's claim for damages. Moreover, the police officer with whom applicant spoke has indicated that applicant was not told that he could not proceed with a claim for damages, and that he was told that he could sue the City for damages if he so chose. There is nothing submitted in support of the application to support the conclusion that applicant's failure to file a timely claim was due to the mistake, inadvertence, surprise, or excusable neglect of a reasonable person under the circumstances (Roberts vs. State, supra; Tyus vs. Los Angeles, supra).

In addition, it appears that a timely claim, based upon the same incident and stating substantially identical causes of action, was presented by an individual who was accompanying applicant at the time and date in question. This individual was able to file a claim in a timely manner - it therefore does not appear that the instant application and claim were presented "within a reasonable time" under the circumstances (Government Code section 911.6(b)(1)).

In short, applicant has failed to make either of the showings necessary to obtaining permission to file a late claim.

RECOMMENDATION

For the foregoing reasons, it is recommended that the application of Mathess Jack Kennedy for leave to present a late claim be denied.

Very truly yours,

JAMES P. JACKSON
City Attorney

Stephen Nocita

STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:

_____
City Manager

SBN:mb

APPLICATION TO FILE LATE CLAIM AGAINST PUBLIC ENTITY,

In the Matter of the Application for Permission to File Late Claim of

Mathess Jack Kennedy, Claimant,

vs.

City of Sacramento, Officer Dale Lee, Does I through XV.

1. Mathess Jack Kennedy hereby applies to the City of Sacramento for leave to present a claim against said City pursuant to §911.4 of the California Government Code.

2. The cause of action of Mathess Jack Kennedy as set forth in his proposed claim attached hereto, accrued on July 21, 1979, a period within one year from the filing of this application.

3. Mathess Jack Kennedy's reason for the delay in presenting his claim against the City of Sacramento is as follows:

On several occasions following the events of July 21, 1979, fully described in the attached CLAIM AGAINST PUBLIC ENTITY, and within the 100 day statute of limitations, Claimant went to the Sacramento police station in order to complain about the conduct of Officer Lee and Does I - XV, and to gather information about filing a claim. On each such occasion, Sgt. Mike Shaw and others affirmatively misled Claimant into believing that Claimant

could initiate no action until after criminal charges against him arising out of the same incident had been resolved. By the time charges against Claimant were dropped the statutory period had elapsed. Claimant's reliance on misrepresentation by Sgt. Shaw and others representative of the City and City Police resulted in his failing to file a timely claim and constitues excusable neglect, mistake and inadvertance under §911.6(b)(1).

KANTER, WILLIAMS, MERIN & DICKSTEIN

By: _____
MARK E. MERIN
Attorney for Claimant

CLAIM AGAINST PUBLIC ENTITY

In the Matter of the Claim of

Mathess Jack Kennedy, Claimant,

vs.

City of Sacramento, Officer Dale Lee, Does I through XV.

Mathess Jack Kennedy hereby presents this claim to the City of Sacramento pursuant to §910 of the California Government Code.

1. The name and post office address of claimant is as follows:

Mathess Jack Kennedy

509 Morrison Ave.

Sacramento, CA 95838.

2. The post office address to which claimant desires notice of this claim to be sent is as follows:

KANTER, WILLIAMS, MERIN & DICKSTEIN

1014 9th Street

Sacramento, CA 95814

3. On or about July 21, 1979, at the Food City Market parking lot located at 4604 Franklin Blvd., Sacramento, CA, Sacramento police officers Dale Lee and Does I-V approached claimant, who was seated in the driver's seat of his (claimant's) car peaceably conversing with a friend standing nearby. Officers Dale Lee and Does I-V thereupon and without provocation hit claimant 3 times

on the shoulder to attract his attention, and tried to initiate a verbal confrontation, an attempt which included threatening claimant's life. Upon their failure to provoke a confrontation, Officers Dale Lee and Does I-V slammed open claimant's car door, chipping it and denting an adjacent vehicle. Claimant at this point produced his ID upon request, and walked to a nearby telephone. Officer Lee reluctantly provided his badge number to claimant's friend only after repeated and persistant requests.

Officers Lee and Does I-V thereupon went to the passenger side of claimant's vehicle, and without any grounds, demanded ID from claimant's female cousin who was sitting peaceably in the front passenger seat.

While waiting for her to comply, Officer Lee shouted loudly and repeatedly over the top of claimant's vehicle to claimant's friend who was still standing on the opposite side of the car that if claimant's friend caused Officer Lee any problems, Officer Lee would kill him.

As Officer Lee was apparantly dissatisfied with the ID claimant's cousin produced, Officers Lee and Does I-V yanked open the passenger door of claimant's vehicle, and forceably and roughly removed claimant's cousin from claimant's vehicle.

At this point, claimant returned to the passenger side of his car from the telephone booth where he had

observed the actions of the officer and said to Officer Lee that such force was not necessary. Just then, Officers Does VI-X arrived at the scene. Officer Lee, without provocation, punched claimant, who is seriously medically disabled, in the chest. Officers Does VI-X grabbed claimant while Officer Lee pummeled him, and they, in turn, struck claimant. As claimant tried to shield himself, Officer Lee beat his head against the trunk of claimant's car, threw him on the ground and beat his head against the ground. As claimant stumbled away from Officer Lee, Officers Lee and Does VI-X threw claimant against a brick wall, again injuring claimant's head. Eventually, claimant, who at no time put up any resistance, was kicked in the back, felled, and further beaten by Officers Lee and Does VI-X.

Officer Lee then placed a choke hold on claimant, who was no longer moving. As claimant used one free arm to try to loosen Officer Lee's hold so that claimant could breathe, Officers Does VI-X had to physically restrain Officer Lee from inflicting further violence and injury on claimant.

Claimant was then placed in a police car and taken to the Sacramento Police station. At no time was he informed that he was under arrest or told of his rights. Claimant was placed in a chair, dizzy and feverish. Officers Lee and Does XI-XV asked him questions and laughed at him. During this time, claimant was in great fright and anxiety due to his medical disability and the injuries

inflicted by the police officers, a combination which could produce death if not treated promptly.

A nurse finally checked claimant's vital signs and insisted that someone take claimant to the hospital at once.

Officer Lee was assigned to drive claimant to Sacramento Medical Center. Officer Lee drove without siren or flashing lights, and in such a manner as to throw claimant, who was in the back passenger seat, from side to side, further injuring him.

Claimant was brought into the hospital on a stretcher. Officer Lee, within claimant's hearing, informed several hospital staff members, including a doctor, that claimant was "faking" and that claimant had only been "thumped" in the chest. Officer Lee also informed the hospital staff that claimant was a "dangerous criminal", who might try to escape, and that if claimant remained in the hospital, the hospital would be totally responsible for claimant.

Because of the representations of Officer Lee to the hospital staff, claimant was unable to receive necessary medical attention. Instead, he was returned to the custody of Officer Lee, who returned claimant to jail, where he spent the night before being released.

Upon being released the following morning, claimant went to Community Hospital, where he received treatment and medication for his injuries.

Criminal charges against claimant stemming from the incident had been dropped.

Claimant on numerous occasions attempted to initiate an administrative action against Officer Lee and those responsible for his injuries with regard to this incident, but on each occasion was affirmatively and intentionally misled by Officer Shaw and others into delaying until the statute of limitations had run.

4. Officer Lee, and Does I-XV inflicted the above-discussed personal injuries on claimant, including, but not limited to, assualt, battery, false arrest, false imprisonment, intentional infliction of emotional distress, and damage to claimant's personal property.

5. In all these actions, Officers Dale Lee and Does I-XV acted willfully, intentionally, and maliciously.

6. For damages suffered, and to compensate claimant for expenses incurred, claimant damands $15,000.

KANTER, WILLIAMS, MERIN & DICKSTEIN

By: _____
MARK E. MERIN
Attorney for Claimant

PROOF OF SERVICE BY HAND DELIVERY

I am employed in the county of Sacramento. I am over the age of 18 years and not a party to the within action; my business address is 1014 9th Street, Sacramento, California, 95814. On March 6, 1980, I served the following documents by hand on City Clerk, (name) City Hall, at 915 I Street (address) Sacramento, CA 95814.

APPLICATION TO FILE LATE CLAIM AGAINST PUBLIC ENTITY; CLAIM AGAINST PUBLIC ENTITY.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 6th day of March, 1980 in Sacramento, California.

Ramona Carlos

RAMONA CARLOS