



CITY OF SACRAMENTO

CITY MANAGER'S OFFICE  
**RECEIVED**  
JUN 4 1980

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

June 4, 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 ROBERT, LUPE & NANCY BARRAZA

Members in Session:

SUMMARY

Robert, Lupe, and Nancy Barraza have applied for leave to present a late claim. As will hereinafter be explained, we are of the opinion that the application falls within those circumstances under which relief should be granted, but only to the extent that the claim is based upon causes of action which accrued on or after May 28, 1979.

BACKGROUND

The Barrazas have applied for leave to present a late claim. The claim seeks damages based upon personal injuries allegedly suffered by Robert Barraza as a result of exposure to noxious gases and fumes from 1975 through October 26, 1979.

Government Code Section 911.2 provides that a claim for damages based upon personal injuries shall be presented within 100 days of accrual of the cause of action. There is disagreement in this case as to when applicants' causes of action accrued. Applicants filed a claim on February 1, 1980, claiming that the causes of action accrued on October 26, 1979, the date Robert Barraza collapsed into a coma allegedly as a result of exposure to noxious gases. The position of the City has been that the cause of action may well have accrued before that date, because Mr. Barraza was allegedly exposed to the noxious gases from 1975 onward. The late claim application was filed on May 28, 1980.

The application states that a claim was not timely filed with respect to events prior to October 23, 1979, (100 days prior to the filing on February 1, 1980), because applicants had no way of knowing the deleterious effects of the exposure until Mr. Barraza collapsed.

#### 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 from 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 it must appear that the applicant acted reasonably under the circumstances (Roberts vs. State (1974) 39 C.A.3d 844, Tsingaris vs. State (1979) 91 C.A.3d 312).

It appears to us that the standard of reasonable and excusable neglect has been met in this case, because applicants apparently had no way of knowing the deleterious effect of the noxious gases until Mr. Barraza collapsed. Therefore, we are of the opinion that the late claim application should be granted.

However, the law appears to limit the ability to apply for and grant late claim relief to the one year period proceeding presentation of the application (Government Code Section 911.4(b)). Hence, we are of the opinion that leave should be granted to file a late claim only insofar as the claim purports to be based upon causes of action which accrued on or after May 28, 1979.

#### RECOMMENDATION

For the foregoing reasons it is recommended that the application of Robert, Lupe, and Nancy Barraza for leave to present a late claim be granted to the extent that the claim is based upon causes of action which accrued on or after May 28, 1979.

Very truly yours,

JAMES P. JACKSON  
City Attorney

*Stephen Nocita*

STEPHEN B. NOCITA  
Deputy City Attorney

RECOMMENDATION APPROVED:

*Walter J. Slize*  
CITY MANAGER

Dear Mr. [Name],  
I have received your letter of the 10th and am sorry that I cannot  
reply to you more quickly. I am sure that you will understand  
the reasons for this delay.

I am sure that you will understand the reasons for this delay.  
I am sure that you will understand the reasons for this delay.

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RECEIVED  
CITY CLERKS OFFICE  
CITY OF SACRAMENTO

MAY 20 2 23 PM '80

1 W. MICHAEL LaROCHE  
2 JOSEPH COOPER  
3 Attorneys at Law  
4 901 "H" Street  
5 Suite 603  
6 Sacramento, California 95814  
7 Telephone: (916) 441-7645

8 Attorneys for Claimants

9  
10 In the matter of the claim of: )  
11 ROBERT P. BARRAZA, LUPE )  
12 BARRAZA, and NANCY BARRAZA, )  
13 Claimants, )  
14 vs. )  
15 REDEVELOPMENT AGENCY OF )  
16 SACRAMENTO, COUNTY OF )  
17 SACRAMENTO, CITY OF SACRAMENTO, )  
18 Public Entities. )

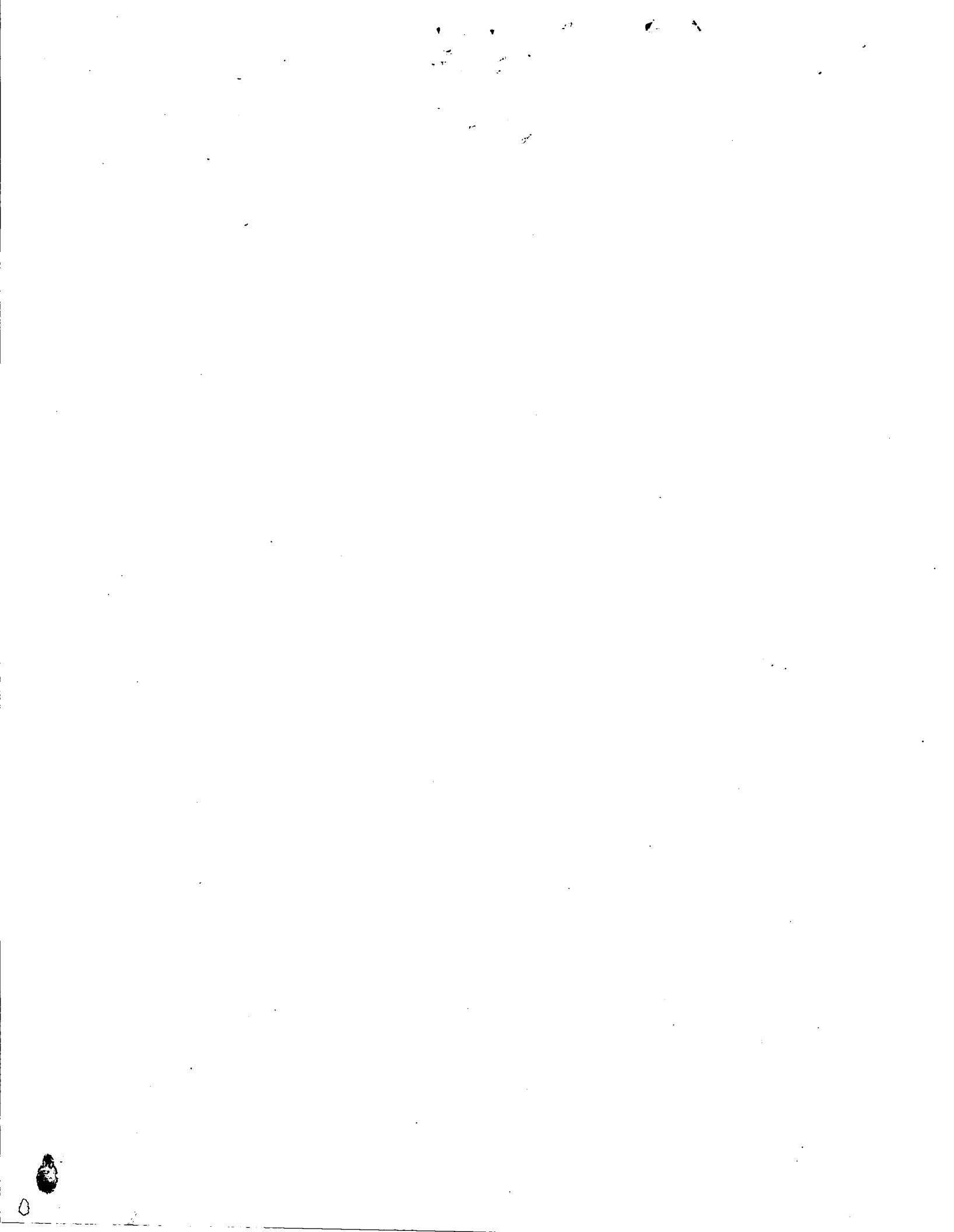
APPLICATION TO FILE LATE  
CLAIM AGAINST PUBLIC ENTITY  
(GOVERNMENT CODE §911.4)

18 I

19 Claimants hereby apply to the CITY OF SACRAMENTO, COUNTY  
20 OF SACRAMENTO, and REDEVELOPMENT AGENCY OF SACRAMENTO, for leave  
21 to present a claim against said public entities, and each of  
22 them, pursuant to Section 911.4 of the California Government  
23 Code.

24 II

25 Claimants heretofore presented a claim against said public  
26 entities on February 1, 1980 (See Exhibit "A" attached). Said  
27 claim was timely filed for the specific exposure to carbon  
28 monoxide on October 26, 1979, which caused severe and permanent



1 injuries and impairment to Claimant, ROBERT P. BARRAZA. This  
2 specific exposure claim was rejected by the public entities  
3 mentioned (See Exhibits "B", "C", "D" attached).

4  
5 III

6 The public entities herein allege that Claimants filing  
7 on February 1, 1979 is untimely with respect to cumulative  
8 effects or exposures to carbon monoxide of exhaust fumes before  
9 October 23, 1979.

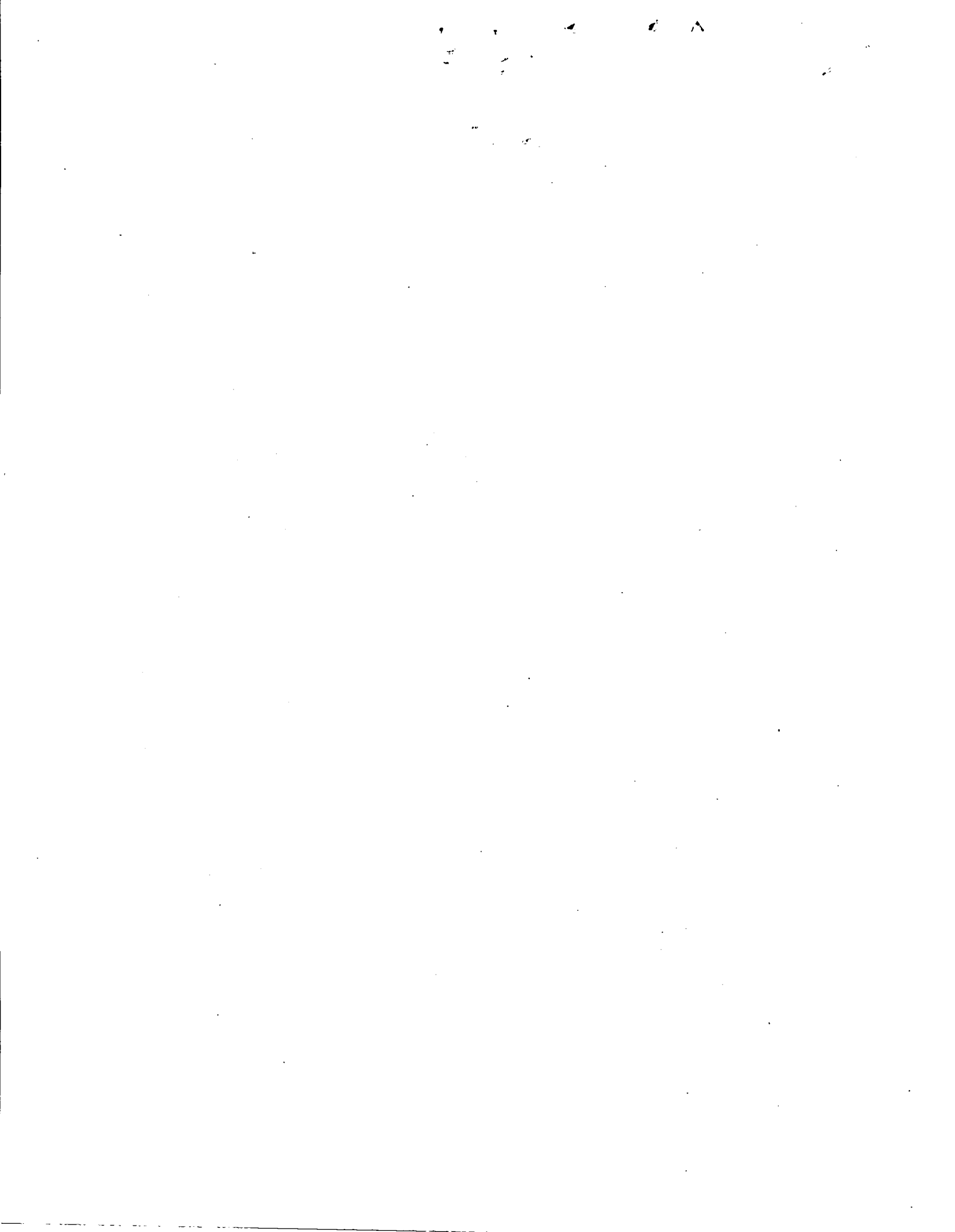
10 IV

11 Claimants' reasons for delay in presenting their claim for  
12 cumulative effects or exposure to carbon monoxide and exhaust  
13 fumes from 1975 through October 23, 1979 are as follows:

14 1. Claimants allege that their cause of action did not  
15 accrue until discovery of the detrimental effects of exposure  
16 to carbon monoxide and exhaust fumes. Said discovery was  
17 October 26, 1979 when ROBERT P. BARRAZA collapsed from the  
18 exposure.

19 2. Prior to October 26, 1979, the public entities named  
20 herein were fully aware of the carbon monoxide levels and adverse  
21 air quality within City parking lots and specifically Lot "K".  
22 This information was not made known to Claimants until after  
23 October 26, 1979.

24 3. Prior to his actual injury, Claimant, ROBERT P.  
25 BARRAZA, had no way of knowing or discovering the deleterious,  
26 noxious and injurious effects of the exhaust fumes and  
27 specifically carbon monoxide, which is colorless, odorless, and  
28 tasteless. Exposure to exhaust fumes of carbon monoxide occurred  
from the first day of employment in 1975 through his last day of




1 employment on October 26, 1979.

2 v

3 If it is found that Claimants' cause of action accrued  
4 before his discovery of his potential claim which would be a  
5 most harsh and inequitable result, then Claimants hereby make  
6 application to file a late claim against the aforementioned  
7 public entities for the period of first employment in 1975  
8 through the last date worked - October 26, 1979.

9 DATED: May 28, 1980

10  
11   
12 W. MICHAEL LAROCHE  
13 Attorney for Claimants

14 ///  
15 PERSONAL PROOF OF  
16 SERVICE

17 I am a citizen of the United States and a resident of  
18 Sacramento County, California; I am over the age of eighteen (18)  
19 years. I served the within Application to File Late Claim  
20 Against Public Entity (Government Code §911.4) in this action  
21 by personally delivering to and leaving with the following  
22 persons in the County of Sacramento, State of California, on the  
23 date set opposite their respective names, a true copy thereof,  
24 to wit:

25 NAME: \_\_\_\_\_

26 TITLE: \_\_\_\_\_

27 ADDRESS: \_\_\_\_\_

28 SACRAMENTO HOUSING AND REDEVELOP-  
AGENCY, 630 "I" Street,  
Sacramento, California 95814



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DATE: 5/28/80

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: Board of Supervisors, County  
of Sacramento, 700 "H" Street,  
Suite 2450, Sacramento,  
California 95814

DATE: 5/28/80

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: City of Sacramento, Office of  
the City Clerk, 915 "I" Street,  
Suite 203, Sacramento,  
California 95814

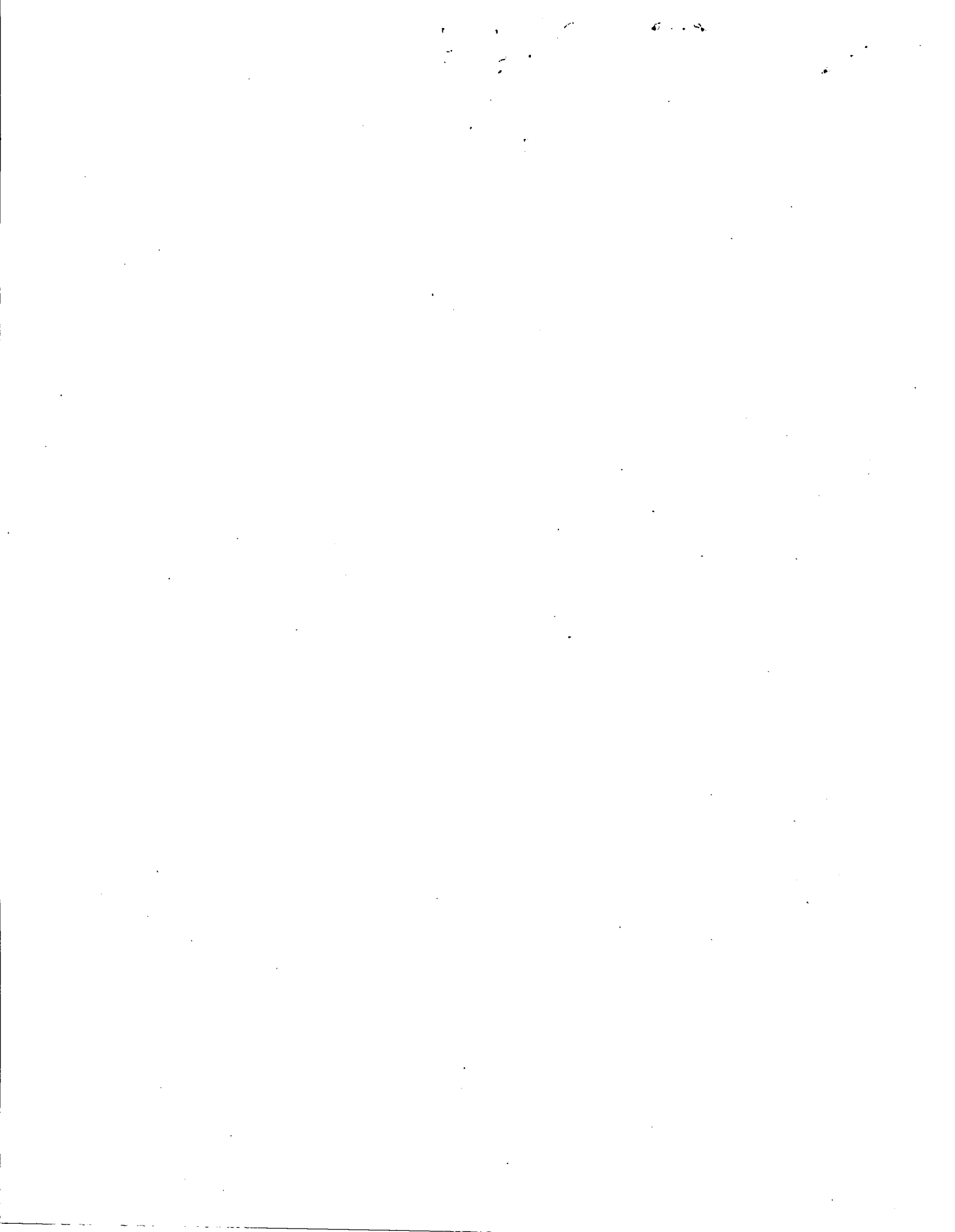
DATE: 5/28/80

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

Executed on this 28th day of May, 1980, at Sacramento, California.

///

\_\_\_\_\_  
DAVID G.W. BELDEN



RECEIVED  
CITY CLERKS OFFICE  
CITY OF SACRAMENTO

FEB 1 4 09 PM '60

1 W. MICHAEL LaROCHE  
JOSEPH COOPER  
2 Attorneys for Plaintiff  
901 "H" Street  
3 Suite 603  
Sacramento, California 95814  
4 Telephone: (916) 441-7645

5  
6  
7  
8  
9 In the matter of the claim of: )  
10 ROBERT P. BARRAZA, LUPE BARRAZA, )  
and NANCY BARRAZA, )  
11 Claimants, )  
12 vs. ) CLAIM AGAINST PUBLIC  
13 REDEVELOPMENT AGENCY OF ) ENTITY  
14 SACRAMENTO, COUNTY OF SACRAMENTO, )  
15 CITY OF SACRAMENTO, )  
16 Public Entities. )

17 Claimants' attorneys hereby present this claim to the  
18 public entities named above pursuant to Section 910 of the  
19 California Government Code.

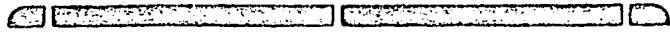
20 1. The post office address of ROBERT P. BARRAZA,  
21 LUPE BARRAZA, and NANCY BARRAZA is as follows:

22 1445 Oregon Drive  
23 Sacramento, California 95822

24 2. The post office address to which notices regarding  
25 this claim are to be sent is as follows:

26 W. MICHAEL LaROCHE  
27 Attorney at Law  
901 "H" Street, Suite 603  
28 Sacramento, California 95814

///



1           3. On October 26, 1979 and for a cumulative period from  
2 1975 through October 26, 1979, Claimants received personal  
3 injuries under the following circumstances:

4           During the aforementioned dates Claimant, ROBERT  
5 BARAZZA, was exposed to high concentrations of carbon monoxide  
6 and other noxious gases and fumes while working for the CITY  
7 OF SACRAMENTO as a parking lot attendant at numerous locations  
8 around the City, including, specifically, the parking lot bounded  
9 by 5th and 7th Streets and Capitol and "I" Streets, and others.

10           As a direct result of said exposure Claimant, ROBERT  
11 BARAZZA, suffered intracranial hemorrhage with prolonged coma.

12           Claimants, LUPE BARRAZA and NANCY BARRAZA, suffered  
13 emotional and economic damages as a result of injuries to ROBERT  
14 BARRAZA, in that he was husband, father, and sole financial  
15 supporter of LUPE BARRAZA and NANCY BARRAZA.

16           4. Said injuries and damages were directly and  
17 proximately caused by and the result of the carelessness,  
18 negligence, willful and intentional disregard by the public  
19 entities hereinabove mentioned as follows:

20           (a) Recommendations were made to the public  
21 entities to correct exhaust fume problems in parking  
22 lots mentioned and in the parking attendant's  
23 booths as early as January of 1979.

24           (b) Testing of noxious gas and fume levels were  
25 performed as early as January and April of 1979,  
26 showing dangerous levels of carbon monoxide in the  
27 parking attendant's booths on the first floor of the  
28 5th and "J" Street parking lot. In April of 1979,

1 recommendations were made to properly ventilate the  
2 booths.

3 (c) No action was taken by the public entities  
4 until after ROBERT BARRAZA'S collapse from carbon  
5 monoxide exposure which caused his intracranial  
6 hemorrhage and coma.

7 (d) On or about October of 1979, the public  
8 entities allowed an increase in monthly parkers in the  
9 parking facility bounded by 5th, 6th, "J" and "L"  
10 Streets, at which location ROBERT BARRAZA was a parking  
11 attendant. This increase in monthly parkers caused  
12 the carbon monoxide to rise to dangerous levels and  
13 there was inadequate ventilation for the protection  
14 of ROBERT BARRAZA, who, as a result, suffered  
15 injuries herein alleged.

16 (d) The public entities were aware of General  
17 Industrial Safety Orders 5141, 5142, 5143 and others  
18 applicable to harmful exposures of toxic materials,  
19 fumes, and gases.

20 (f) The public entities failed, either negligently  
21 or intentionally, to maintain in a reasonably safe  
22 condition the parking lot premises herein described,  
23 which was either owned, leased, or controlled with  
24 the knowledge it would be used by the general public.  
25 The public entities breached their duty to see that  
26 this parking lot was safe for the purpose intended  
27 and did not exercise reasonable care to inspect and  
28 repair it to prevent risk and injury to members of

1 the general public, including Claimant, ROBERT BARRAZA,  
2 who may enter said parking lot.

3 5. So far as it is known to Claimants and their  
4 attorneys, at the date of filing this claim, ROBERT BARRAZA has  
5 incurred damages as follows:

6 Special Damages: (Incomplete)  
7 Sacramento Medical Center - in excess of: \$50,000.00  
8 Kaiser Hospital - in excess of: \$50,000.00  
9 Mercy Convalescent Hospital - in excess of: \$15,000.00  
10 Loss of Wages - approximately \$12,000.00  
11 per year from October 26, 1979


12 Special damages continue to be incurred

13 General Damages:

14 Robert Barraza: \$10,000,000.00  
15 Lupe Barraza: \$ 1,000,000.00  
16 Nancy Barraza: \$ 1,000,000.00

17 Said Special and General Damages are based on current  
18 information and will be adjusted according to proof.

19 DATED: February 1, 1980

20  
21   
22 W. MICHAEL LARCHE  
Attorney for Claimants

23 ///

24 PERSONAL PROOF OF SERVICE

25 I am a citizen of the United States and a resident of  
26 Sacramento County, California; I am over the age of eighteen (18)  
27 years. I served the within Claim Against Public Entity in this  
28 action by personally delivering to and leaving with the following

1 persons in the County of Sacramento, State of California, on the  
2 date set opposite their respective names, a true copy thereof, to  
3 wit:

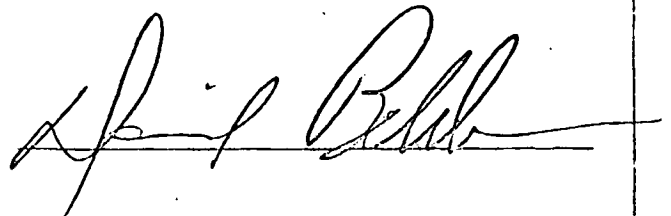
4 NAME: BRENTON A. BLEIER  
5 TITLE: CHIEF COUNSEL (Redevelopment Agency of  
6 Sacramento)  
7 ADDRESS: 630 "I" Street  
8 Sacramento, California 95814  
9 DATE: 2/1/80

10 NAME: Diane Grant  
11 TITLE: Deputy Clerk Board of Supervisors  
12 (County of Sacramento)  
13 ADDRESS: 700 "H" Street # 2450  
14 Sacramento, California 95814  
15 DATE: 2/1/80

16 NAME: HARRY O'HAGIN  
17 TITLE: Deputy City Clerk (City of Sacramento)  
18 ADDRESS: ~~812 10th Street~~ 915 "I" St.  
19 Sacramento, California 95814  
20 DATE: 2/1/80

21 I declare under penalty of perjury that the foregoing is  
22 true and correct.

23 Executed on this 1st day of February, 1980 at Sacramento,  
24 California.

25  
26   
27  
28

///



# SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

March 14, 1980

RECEIVED  
MAR 17 1980  
La Roche & Petersen

W. Michael LaRoche  
Attorney at Law  
901 H Street, Suite 603  
Sacramento, CA 95814

Re: Claim of Robert P. Barraza, et al

CITY GOVERNING BOARD  
PHILLIP L. ISENBERG, MAYOR  
LLOYD CONNELLY  
BLAINE H. FISHER  
THOMAS R. HOEBER  
DOUGLAS N. POPE  
JOHN ROBERTS  
LYNN ROBIE  
ANNE RUDIN  
DANIEL E. THOMPSON

Dear Mr. LaRoche:

This is to notify you that the above claim which you presented on February 4, 1980, against the Redevelopment Agency of the City of Sacramento, is hereby:

COUNTY GOVERNING BOARD  
ILLA COLLIN  
C. TOBIAS (TOBY) JOHNSON  
JOSEPH E. (TED) SHEEDY  
SANDRA R. SMOLEY  
FRED G. WADE

(a) rejected as not timely presented, as to those portions of the claim for which a cause of action arose more than 100 days prior to the presentment of the claim; and

EXECUTIVE DIRECTOR  
WILLIAM G. SELINE

(b) rejected and referred to our insurance carrier, Firemen's Fund Insurance Company, P.O. Box 15065, Sacramento, CA 95813, telephone 927-3411, as to those portions of the claim for which a cause of action arose within 100 days prior to the presentment of the claim.

P.O. Box 1834  
SACRAMENTO, CA 95809  
630 I STREET  
SACRAMENTO, CA 95814  
(916) 444-9210

Please note the warnings set forth below.

Very truly yours,

WILLIAM G. SELINE  
Executive Director

WGS:mpj

### WARNINGS:

(a) When a claim that is required by Government Code §911.2 to be presented not later than the 100th day after the accrual of the cause of action is not presented within such time, a written application may be made to the public entity for leave to present such claim. See Government Code §911.4.

(b) Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code, §945.6.





# CITY OF SACRAMENTO

## OFFICE OF THE CITY CLERK

LORRAINE MAGANA  
CITY CLERK

915 I STREET  
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814  
TELEPHONE (916) 440-5428

April 2, 1980

W. Michael LaRoche  
Attorney at Law  
901 H Street, Suite 603  
Sacramento, CA 95814

Dear Mr. LaRoche:

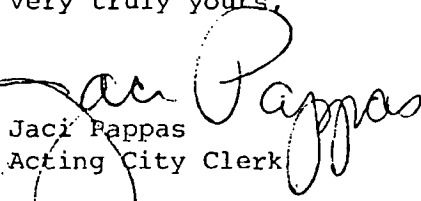
Notice is hereby given that the claim described below, which you submitted on February 1, 1980 was rejected by the City Council on April 1, 1980. The City of Sacramento's Claims Representative, Brown Brothers Adjusters, investigated the claim and with the advice of the City Attorney's Office determined that the claim should be denied because of the basis of continued investigation.

Further reference is made to the communication from the City Attorney dated March 14, 1980 with respect to the so-called cumulative effects of exposures which took place prior to October 23, 1979 that cannot be received because the claim is untimely.

The Claim submitted by you on behalf of Robert P. Barraza, et al, alleged injuries and damages, exposure to high concentrations of carbon monoxide and other noxious gases and fumes while working for City as parking lot attendant, vicinity parking lot bounded by 5th, 7th, Capitol and I Streets, which was in the amount of \$12,115,000.00, and allegedly occurring for a cumulative period from 1975 through October 26, 1979.

Please note the "Warning" set forth below. This "Warning" is required by State law to be included as part of this notice.

Very truly yours,

  
Jaci Pappas  
Acting City Clerk

JB:HO'

cc: Finance Administration (2)

Item No. 19

### WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

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.

RECEIVED

EXHIBIT "C"



# COUNTY OF SACRAMENTO THE COUNTY COUNSEL

700 H STREET, SUITE 2650  
SACRAMENTO, CALIFORNIA 95814  
PHONE (916) 440-5544

DEPUTY COUNTY COUNSELLS

L. B. ELAM  
County Counsel

FRED G. WILLIAMS  
Assistant County Counsel

THOMAS A. DARLING  
ROBERT S. WILLETT  
ROBERT L. PLEINES  
Supervising Deputy  
County Counsels

February 20, 1980

ALFRED J. GUETLING  
CLEMENT J. DOUGHERTY, JR.  
RYAN M. POLSTRA  
MONTE L. FULLER  
RICHARD D. MAYER  
WILLIAM H. FOWLER  
JOSEPH M. TAILLEFER  
J. STEVEN BURRIS  
LAWRENCE A. JONES  
ELAINE P. DIPIETRO  
MELVYN W. PRICE  
MANUEL E. LOPES  
LILLY C. FRAWLEY  
FRANK M. GARCIA  
MARGARET L. HAGERTY  
H. DESMOND MCINTOSH  
JOEL K. UHER

• W. Michael LaRoche  
Joseph Cooper  
Attorneys at Law  
901 H Street, Suite 603  
Sacramento, CA 95814

Re: Claim of: BARRAZA, Robert, Lupe and Nancy  
Date of Loss: October 26, 1979

Dear Sir:

Notice is hereby given that the claim which you presented to the Clerk of the Board of Supervisors of the County of Sacramento on February 1, 1980 was rejected on February 20, 1980.

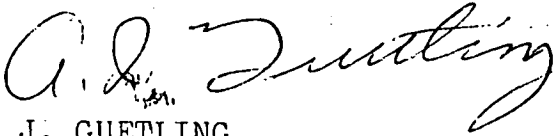
"WARNING"

"Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim." See Government Code Section 945.6.

Very truly yours,

L. B. ELAM  
County Counsel

By

  
A. J. GUETLING  
Deputy County Counsel

AJG:nm

EXHIBIT "D"



# 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 11, 1980

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Mr. W. Michael LaRoche  
Attorney at Law  
901 H Street, Suite 603  
Sacramento, CA 95814

Dear Mr. LaRoche:

Notice is hereby given that the following application for leave to present a late claim was allowed on June 10, 1980, but only to the extent that the claim is based upon causes of action which accrued on or after May 28, 1979. Upon allowance of the late filing the City Council thereupon referred said claim to the City's Claims Adjuster, Brown Brothers Adjusters, 1451 River Park Drive, Suite 251, Sacramento, CA; 95815, telephone number (916) 920-4392, for review and recommendations. You will be advised of the claims disposition within 45 days.

Claim submitted by you (on behalf of Robert, Lupe and Nancy Barraza) in the amount of \$139,000,000 for alleged injuries suffered by Robert Barraza as a result of exposure to noxious gases and fumes, and allegedly occurring from 1975 through October 26, 1979.

Sincerely,

*Lorraine Magana*

Lorraine Magana  
City Clerk

LM:sj

cc: City Attorney  
Finance Administration (2)

Item No. 33