



County of Santa Cruz

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GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

Agenda October 8, 2002

To: Board of Supervisors

Re: Claim of Evangelina Garcia, No. 203-023

Original document and associated materials are on file at the Clerk to the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

- 1. Reject the claim of Evangelina Garcia, No. 203-023 and refer to County Counsel.
- 2. Deny the application to file a late claim on behalf of _____ and refer to County Counsel.
- 3. Grant the application to file a late claim on behalf of _____ and refer to County Counsel.
- 4. Approve the claim of _____ in the amount of _____ and reject the balance, if any, and refer to County Counsel.
- 5. Reject the claim of _____ as insufficiently filed and refer to County Counsel.

cc: Mark Tracy, Sheriff-Coroner

RISK MANAGEMENT

By Janet McKinley
Janet McKinley, Risk Manager

DANA McRAE, COUNTY COUNSEL

By Kim Elizabeth Baskett
Kim Elizabeth Baskett, Assistant County Counsel

Law Offices OF
GEORGE J. GIGARJIAN
Attorney at Law

108 Locust Street, Suite 13
Santa Cruz, California 95060



Claim Form:
County of Santa Cruz
State of California

Pursuant to the provisions of California Government Code section 910 et seq., the undersigned submits the following information and claim:

Name of Claimant: Evangelina Garcia, DOB: 6/9/84

Address to which notices are to be sent: George J. Gigarjian
108 Locust Street, Suite 13
Santa Cruz, CA 95060

Date, Place and other circumstances of the occurrence or incident which give rise to the claim asserted:

On February 27, 2002, claimant Evangelina Garcia was arrested for being under the influence of a controlled substance. Ms. Garcia was not truthful regarding her age and informed the arresting officer that she was over the age of 18. As a result, she was taken to the Santa Cruz County Jail for processing. During the booking process, jail staff learned that Ms. Garcia was a minor. Deputy Stefan Fish, who was not the arresting officer, was assigned to transport Ms. Garcia from the county jail to the juvenile probation facility on Graham Hill Road in Felton, California.

During the transportation of Ms. Garcia to the juvenile facility, Deputy Fish was alone with Ms. Garcia. Deputy Fish repeatedly commented that he found Ms. Garcia attractive. Deputy Fish proposed to Ms. Garcia that he would try to help her avoid incarceration at the juvenile facility if she would perform oral sex on him.

Deputy Fish pulled his car into Henry Cowell State Park in a dark and secluded area, and stopped his patrol vehicle. Deputy Fish positioned himself just outside of the rear passenger seat where he kissed Ms. Garcia on the mouth. Thereafter, the deputy directed Ms. Garcia to orally copulate him. Fish used the instrumentalities of his position as a sheriff's deputy to effectuate his wrongful conduct.

Thereafter, Deputy Fish telephoned Ms. Garcia's father and repeatedly tried to convince him to allow Ms. Garcia to return home. Mr. Garcia declined to allow his daughter to come home, because he believed that the juvenile facility would be the best place for his daughter at that time. Being unsuccessful in his efforts with Mr. Garcia, Deputy Fish inquired with the juvenile facility staff whether he (Deputy Fish) had authority on his own to issue Ms. Garcia a citation and release her from custody. The juvenile staff informed the deputy that he could not release Ms. Garcia.

Evangelina Garcia
Claim Form
Page 2

Within a couple days, during a routine medical intake examination, Ms. Garcia asked the juvenile facility nurse if it was possible to contract a sexually transmitted disease from oral sex. When the nurse inquired why Ms. Garcia was asking about such information, Ms. Garcia related what had happened with Deputy Fish.

After this incident was reported, Santa Cruz County Sheriff's deputies and an investigator with the Santa Cruz District Attorney's Office, met with Ms. Garcia. Ms. Garcia offered to take a polygraph examination, but law enforcement refused to provide her with such examination. The District Attorney's Office has declined to file charges against Deputy Fish, but referred Ms. Garcia to the Victim Witness Program to help Ms. Garcia obtain counseling concerning her victimization by Deputy Fish.

Claimant is informed and believes that Deputy Fish has prior similar incidents and that this incident is part of a pattern and practice by Deputy Fish. Claimant is informed and believes that the Santa Cruz County Sheriffs Office knew or should have known about Deputy Fish's prior acts before this incident. The Santa Cruz County Sheriffs Office ratified Deputy Fish's behavior by allowing Deputy Fish to remain on duty throughout the investigation of this incident and prior incidents. Deputy Fish continued to transport minors after prior incidents and this incident were reported. The Santa Cruz County Sheriffs Office continues to employ Deputy Fish. Claimant alleges that Santa Cruz County and the Santa Cruz County Sheriffs Office negligently hired, trained, supervised and retained Deputy Fish. Further, Claimant alleges that the Santa Cruz Sheriffs Office negligently and improperly investigated this matter knowing that it had a direct conflict of interest as Deputy Fish is employed by such office.

On April 29, 2002, Evangelina Garcia was administered a polygraph examination by a private polygraph examiner at her attorneys' request. The polygraph examiner concluded that Ms. Garcia is being truthful when she related the above-described circumstances. The polygraph report is attached hereto.

Ms. Garcia has suffered extreme emotional distress, anxiety, and depression as a result of this incident.

Names or names of public employee(s) causing injury, damage, or loss: Deputy Stefan Fish and others not known at this time.

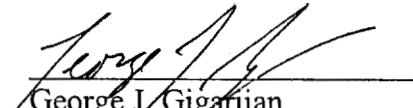
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Evangelina Garcia
Claim Form
Page 3

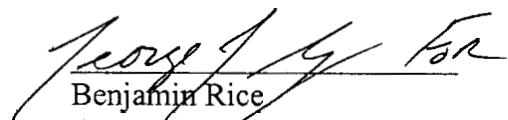
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Amount Claimed As Of This Date: Claimant requests an amount as yet unascertained but in excess of the limited jurisdictional amount (\$25,000.00) for the Superior Court of the State of California. Claimant seeks general damages, special damages, punitive damages, exemplary or deterrent damages, attorney's fees and costs.

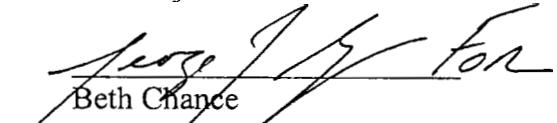
Dated: 8/26/02


George J. Gigarjian
Attorney at Law

Dated: 8/26/02


Benjamin Rice
Attorney at Law

Dated: 8/26/02


Beth Chance
Attorney at Law

FRANCIS M. CONNOLLY
Certified Polygraph Examiner
Connolly-Hilley Polygraph Associates
Post Office Box 971
Half Moon Bay, CA 94019
PH. (650) 726-1086
FAX (650) 726-4470

CONFIDENTIAL

POLYGRAPH EXAMINATION REPORT

Date: May 2,2002

To: Benjamin Rice
Attorney at Law
331 Soquel Drive
Suite 203
Santa Cruz, CA 95062

From: Francis M. Connolly
Certified Polygraphist

Re: Evangelina Marie Garcia

Pursuant to your request, I met with client on April 29,2002, at Santa Cruz County Juvenile Hall where she is in custody. I administered a polygraph examination for the purpose of determining if she is being truthful when reporting that she had performed oral sex on Santa Cruz County Sheriffs Deputy Fish on the night of February 28th this year under the circumstances she revealed to authorities in the Juvenile Probation Department and the Sheriffs Department during interviews. She told me that Deputy Fish transported her from the Main Jail to Juvenile Hall in a marked police car and en route stopped at Henry Cowell State Park where the act of oral copulation took place.

10

The following relevant questions were interspersed with comparison questions **in a** standard Zone Comparison (Control Question Test) examination:

Q. On the night of February 28th this year, did you do oral sex on Sheriff's Deputy Fish at his request?

A. Yes.

Q. On the night of February 28th this year, did you do oral sex **on Sheriffs Deputy Fish at his request while in his car at Henry Cowell State Park?**

A. Yes.

POLYGRAPH CHART ANALYSIS AND SCORING

The analysis of the polygraph charts in this case included the use of a standard numerical scoring formula applied to the psychophysiological tracings appearing on the three charts collected. The cardiovascular, respiratory and galvanic skin responses **to the two** relevant questions were compared to the responses to the three comparison questions for each **of** the three components, i.e. respiratory patterns, galvanic skin response and cardiovascular activity. Inasmuch as **two** relevant questions responses were compared to the responses at the comparison questions used, there were six comparisons made **on** one chart. The examination was administered three times, **so** there was a total of eighteen comparisons available on the three charts. For each comparison, a **7** point scale was employed, with values on a continuum from **+1** to **-1**. The positive or **+** end **of** the scale indicates truthfulness, **0** denotes no decision, and the negative or **-** end indicates deception. The ultimate decision is made by totaling the scores.

Deception in the Zone Comparison Test format is determined if there is a score of **-3** or greater in either "spot" (total of scores from comparing one relevant question to a nearby comparison question on all three charts). A total score of **-4** or greater for **both** spots would also be considered deceptive.

To make a determination that the subject **is** being truthful to the relevant questions, there must be a showing of **+** in **both** "spots", as well as a grand total **of +4 or** greater overall. Any evaluation between deceptive and not deceptive is characterized as "Inconclusive".

The numerical formula was applied to the charts in this case. Client's charts show a score of **+6** for the first spot (first relevant question) and **+5** for the second spot (the second relevant question reported) for a total score of **+11**. This leads to my finding of **NO DECEPTION INDICATED**. It is my conclusion client is truthful when she states she performed oral sex on Deputy Fish at his request.

The polygraph charts in this case were "blind scored" **on May 1, 2002**, by Ronald W. Hilley, retired **FBI** Special Agent Polygraph Examiner, **now** in private practice. He scored the first spot as **+6** and the second spot as **+7**, for a total score of **+13**. He concluded client was not attempting deception when answering relevant questions.

Theory of the Comparison Question Polygraph Examination

Concepts of polygraph testing include what is referred to in the literature as "Psychological Set". A person's fears, anxieties and apprehensions are channeled toward the situation which holds the greatest immediate threat to his or her self preservation or general well being.

In the comparison (control) question test, a structured format is followed, with all test questions being reviewed with the examinee prior to his **or** her being attached to the polygraph instrument via the three components, which are designed to monitor and record on the charts the person's respiratory patterns, cardiovascular activity and galvanic skin response.

Proper relevant questions in the polygraph test are designed to pose a threat to the security **of** the lying or guilty examinee and to force him or her to focus attention upon the relevant questions. Comparison or control questions are designed to pose a threat to the security of the truth teller or innocent examinee and force him **or** her to focus attention on the comparison questions. The theory behind the comparison questions is not revealed to the examinee; however, he or she is informed as to the importance **of** their use in the test.

Only the relevant and comparison questions are evaluated to allow the examiner **to** reach a conclusion as to whether the examinee's psychophysiological responses indicate deception **or** do not indicate deception. The evaluation is made **by** comparing the responses seen at the com'parison questions with the responses observed at the nearby relevant questions. Greater response to the relevant questions indicates deception; whereas, greater response to the comparison questions is indicative of no deception.