



County of Santa Cruz

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. GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

Agenda June 27, 2000

To: Board of Supervisors

Re: Claim of Charles Bruscino, No. 900-151

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:

- X 1. Reject the claim of Charles Bruscino, NO. 900-151 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
Rama Khalsa, Administrator
Health Services Agency

RISK MANAGEMENT

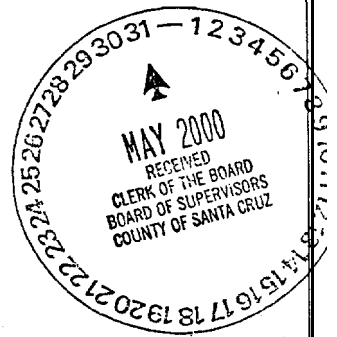
By Janet McKinley

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Attorney for Claimant CHARLES BRUSCINO

Claim of CHARLES BRUSCINO

CHARLES BRUSCINO

v.

COUNTY OF SANTA CRUZ

CLAIM FOR PERSONAL INJURIES,
 DEPRIVATION OF CIVIL RIGHTS,
 FALSE ARREST/IMPRISONMENT,
 NEGLIGENCE, FAILURE TO
 PROVIDE MEDICAL CARE FOR
 PRISONER IN CUSTODY DESPITE
 KNOWLEDGE OF THE NEED FOR
 MEDICAL CARE (GOVT. CODE §
 845.6), AND NEGLIGENT AND
 INTENTIONAL INFLICTION OF
 EMOTIONAL DISTRESS

To the Board of Supervisors of the County of Santa Cruz:

You are hereby notified that CHARLES BRUSCINO, whose address is 4305 Portola Dr., Santa Cruz, CA 95062 claims damages from the County of Santa Cruz ("the County"), and the individual agents and/or employees of the County causing his injuries. All notices or other communications with regard to this claim should be sent to Claimant's attorney, Douglas C. Kane, at the following address: Douglas C. Kane, Law Offices of Douglas Kane, 121 Jewell Street, Santa Cruz, CA 95060.

This claim is based upon personal injuries, deprivation of civil rights, false arrest/imprisonment, negligence, failure to provide a detained individual medical care despite knowledge of the need for medical care (Govt. Code § 845.6) and negligent and intentional infliction of emotional distress sustained by Claimant on or about December 11, 2000, in the vicinity of 4305 Portola Dr., Santa Cruz California, and the Santa Cruz County Jail, under the following circumstances:

1 Claimant is a 47-year-old disabled white male. His disability, which consists of
2 bilateral leg and knee pain, blitaleral plantar fascitis and heel pain, and chronic lower and
3 mid to upper back and neck pain, has rendered him unable to work since June 15, 1997,
4 as adjudicated by the Social Security Administration. Claimant's disabled status is
5 obvious to a layperson upon observation for a short period of time.

6 Claimant has had problems with the barking of the dog of his neighbor, Mark Estess
7 ("Estess") since approximately July 7, 1994; numerous complaints have been made to the
8 Santa Cruz SPCA - Department of Animal Control Services by Claimant and other
9 neighbors that the dog barks incessantly at everyone and everything. On at least three
10 occasions, the SPCA has contacted Estess about controlling the dog. On one occasion
11 on September 5, 1995, Santa Cruz County deputy sheriffs responded to a call, apparently
12 by Estess, and suggested the dog be kept in the house. On this occasion Estess, who
13 is, and at all times herein relevant was, a director of the County's Opal Cliff Recreation
14 District, told Claimant that he was an elected official and that if he (Claimant) ever came
15 near his property he would have him arrested.

16 On December 11, 1999, Claimant went to Estess' house to complain once again
17 about the barking dog, and to offer his assistance in controlling the dog's behavior. No
18 one was home, but Estess drove up to the house with a friend named Susan Settles
19 ("Settles") as Claimant was turning to leave. Claimant attempted to discuss the barking
20 dog situation but Estess refused to discuss the situation and demanded that Claimant
21 leave his property. Not wishing to allow the situation to further escalate, Claimant
22 immediately left.

23 After leaving Estess' house, Claimant briefly spoke to another neighbor in the street
24 across from Estess' house. He then went to his own residence and phoned the Santa
25 Cruz County Sheriff's office to obtain advice as to how to deal with the escalating
26 situation. While he was on the phone with the sheriff's office, he was put on hold, and
27 then told that Estess had also called and that a deputy was on the way. Claimant
28 requested that the deputy contact him and he was assured that the deputy would do so.

1 Deputies Gary McConnell and Steve Beck responded to the call. While they were
2 en route, they were informed by the dispatcher that both Estess and Claimant had called
3 to report the incident. They also were informed that Claimant had specifically requested
4 that they contact him and that there was no recent incident reports about Claimant.

5 The deputies contacted Estess first. He told them that when he pulled up to his
6 home he saw Claimant running from the south corner of his home towards the street. He
7 further told them that Claimant had been caught jumping fences into other neighbor's
8 yards. Settles told Deputy Beck that she saw Claimant near the southeast corner of
9 Estess' home. Estess told the deputies that he wanted to place Claimant under arrest for
10 trespassing and prowling.

11 The deputies then contacted Jodie Blum ("Blum"), who rents a rear residence from
12 Estess. Blum specifically told the deputies that Claimant "had not been there."

13 The deputies then drove to Claimant's address with Estess, who remained in one
14 of the patrol cars across the street. Deputy McConnell then contacted Claimant who was
15 waiting for the deputies in front of his residence, expecting them to assist him in dealing
16 with the increasingly tense situation, much as the deputies who had responded to Estess'
17 previous call to the Sheriffs Department over four years earlier had successfully done.
18 Claimant had in his hands documents including SPCA records about the barking dog and
19 the sheriffs report from the September 5, 1995, incident. However, Deputy McConnell
20 failed to look at any of the paper work. Despite the denial of both Claimant and Blum that
21 Claimant had been near Blum's residence, despite knowledge of the fact that Claimant
22 himself had contacted the sheriff's office for help with dealing with the situation, and
2 3 despite the fact that it was apparent upon observation for any period of time that Claimant
24 was disabled and unable to run or jump over fences, Deputy McConnell concluded that
25 "It is evident that a trespass/prowling took place and [Claimant] should be prosecuted for
26 the same" and "It is very likely that [Claimant] was looking into [Blum's] window watching
27 her. [Claimant] then ran to the front when he heard [Estess] and [Settles] arrive home."
28 Deputy McConnell further stated in his report that in arresting Claimant he was

1 "accepting" Estess' citizen's arrest of Claimant, despite the fact that there is no indication
2 that Estess in any way detained or attempted to detain Claimant, other than by contacting
3 the Sheriffs department.

4 When it was apparent that the Deputies were going to arrest him rather than listen
5 to his side of the story, Claimant reminded the deputies that he was disabled and that he
6 needed to take his prescription pain medication. The deputies refused to allow him to get
7 his medication, telling Claimant that he would be given his medication at the jail.

8 Claimant was then handcuffed and brought to the Santa Cruz County Jail. After
9 about 10-20 minutes an unidentified individual contacted Claimant and asked about his
10 pain medication. This individual then left and Claimant was placed in a holding cell, No
11 medication was ever produced.

12 After 2 or 3 more hours had passed, Claimant, who without his pain medication was
13 experiencing extreme pain and discomfort, attempted to contact several individuals in the
14 county jail, in order to get some relief. When it was apparent that no pain medication was
15 forthcoming, he attempted to get the attention of jail personnel to request that he be given
16 some ice to help relieve his pain and discomfort. These attempts were also ignored.
17 Claimant spent a total of approximately 8 hours in the holding cell, in increasing pain and
18 discomfort. Despite his repeated requests for medical attention, no medical assistance
19 was given to him.

20 On December 29, 1999, a criminal complaint was filed against Claimant alleging a
21 violation of Penal Code 602(N) (Criminal Trespass). However, on March 24, 2000, the
22 charge was dismissed, on the grounds of both "In the Interests of Justice" and "Insufficient
23 Evidence."

24 The detention and incarceration of Claimant despite the complete lack of evidence
25 that there was probable cause to arrest him violated Claimant's rights under both the
26 California and United States constitutions not to be deprived of liberty without due
27 process. This conduct also give rise to common law claims for false arrest/imprisonment,
28 negligence, and intentional and/or negligent infliction of emotional distress. His unlawful

1 detention caused him significant embarrassment, mental anguish, physical pain and
2 emotional distress.

3 The failure to provide Claimant with medical assistance despite the knowledge that
4 such assistance was necessary violated Claimant's rights protected by the California and
5 United States constitutions, including the right not to be deprived of his liberty without due
6 process, the right to be free from cruel and unusual punishment, and the right to equal
7 protection under the law. It also violated the provisions of California Government Code
8 section 845.6, the California Unruh Civil Rights Act, and the federal Americans With
9 Disabilities Act. This failure to provide Claimant with necessary medical assistance or to
10 accommodate his disability in any way caused Claimant significant additional physical
11 pain, mental anguish and emotional distress.


12 The names of the public employees causing Claimant's injuries under the described
13 circumstances are Deputies Gary McConnell and Steve Beck, the unidentified individuals
14 at the Santa Cruz County jail who refused to give Claimant the medical assistance he
15 required, Sheriff Mark Tracy and other unidentified individuals who negligently failed to
16 properly train Deputies McConnell and Beck as to the proper standard for determining
17 whether there was probable cause to arrest Claimant, and/or negligently failed to properly
18 train the deputies and the individuals at the Santa Cruz County Jail who refused to give
19 Claimant medical assistance regarding providing necessary medical attention to prisoners
20 and detainees. These individuals were all acting within the course and scope of their
21 employment at all times and were acting in concert, each the agent of the other and the
22 County of Santa Cruz. They acted together under color of state law to deprive Claimant
23 of his civil rights and to discriminate against Claimant on the basis of his disability, which
24 they failed to reasonably accommodate.

25 The injuries sustained by Claimant, as far as known, as of the date of presentation
26 of this claim, consist of emotional distress, pain and suffering, legal expenses for
27 contesting the criminal charges against him, and other general and special damages all
28 flowing from the wrongful conduct of the County and its agents and employees under the

1 circumstances described. Claimant also claims entitlement to punitive damages. In
2 addition, he seeks injunctive relief requiring the County and its law enforcement personnel
3 to reasonably accommodate disabled individuals, and declarative relief clarifying the
4 extent of the duty of the County and its law enforcement personnel to reasonably
5 accommodate disabled individuals.

6 The amount claimed, as of the date of presentation of this claim, is an amount within
7 the jurisdiction of the Superior Court. This matter does not constitute a limited civil case.

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9 Dated: May 31, 2000

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11 DOUGLAS C. KANE
12 Attorney for Claimant
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