



# County of Santa Cruz

## OFFICE OF THE COUNTY COUNSEL

701 OCEAN STREET, SUITE 505, SANTA CRUZ, CA 95060-4068  
(831) 454-2040 FAX: (831) 454-2115

DANA McRAE, COUNTY COUNSEL

CHIEF ASSISTANT  
RAHN GARCIA

Deborah Steen  
Harry A. Oberhelman III  
Marie Costa  
Jane M. Scott  
Tamyra Rice

Assistants  
Pamela Fyfe  
Kim Elizabeth Baskett  
Julia Hill  
Dwight L. Herr  
Shannon Sullivan

Sharon Carey- Stronck  
Margaret M. Burks  
David Kendig  
Miriam L. Stompler  
Ligi Coleen Yee

### GOVERNMENT TORT CLAIM

#### RECOMMENDED ACTION

Agenda June 25, 2002

To: Board of Supervisors

Re: Claim of Shannon Marie Rapp, No. 102-131

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 Shannon Marie Rapp, No. 102-131 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: Kate Canlis; District Attorney **RISK MANAGEMENT**

By Janet McKinley  
Janet McKinley, Risk Manager

**DANA McRAE, COUNTY COUNSEL**

By Kim Elizabeth Baskett  
Kim Elizabeth Baskett, Assistant County Counsel

CLAIM AGAINST THE COUNTY OF SANTA CRUZ  
(Pursuant to Section 910 et Seq., Govt. Code)

TO: BOARD OF SUPERVISORS  
COUNTY OF SANTA CRUZ  
ATTN: Clerk of the Board  
Governmental Center  
701 Ocean Street, Santa Cruz, CA 95060

Rapp 10/2/02  
NO. 916 0001  
0048  
JUN 2002  
RECEIVED  
BOARD OF SUPERVISORS  
COUNTY OF SANTA CRUZ  
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

1. claimant's Name: SHANNON MARIE RAPP  
Address: c/o Guy D. Calladine, CARLSON, CALLADINE & PETERSON LLP  
Two Embarcadero Center, 18th Floor, San Francisco, CA 94111  
Phone No: (415) 391-8140

P.O.Box to which notices are to be sent \_\_\_\_\_

2. Occurrence: False arrest/False imprisonment arising from improper warrant  
Date: 12/10-11/2001 Place: San Francisco Airport: San Mateo County Jail

3. Circumstances of occurrence or transaction giving rise to claim:  
See attached Exhibit A

4. General description of indebtedness, obligation, injury, damage or loss incurred so far as is now known:  
Physical injuries; emotional distress; financial losses. See attached Exhibit A

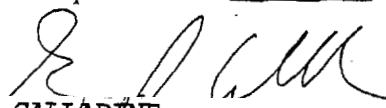
5. Name(s) of public employee(s) causing injury, damage or loss, if known: Including but not limited to  
Scotts Valley Police Officer Mike Dean

6. Amount claimed now In excess of minimum for unlimited jurisdiction: Superior Court  
Estimated amount of future loss, if known .....\$

TOTAL \$ \_\_\_\_\_

7. Basis for above computations: General and Special Damages

8. If the amount claimed is over \$10,000, indicate the court of jurisdiction:  
\_\_\_\_\_ Municipal Court Unlimited Jurisdiction Superior Court

CLAIMANT'S SIGNATURE:   
GUY D. CALLADINE  
Attorney for Claimant SHANNON MARIE RAPP

Note: Claim must be presented to Clerk, Board of Supervisors, within six (6) months after the act which occasioned the injury.  
Americans with Disabilities Act questions or requests for accommodations may be directed to the ADA Coordinator at 454-2962 (TDD 454-2123).

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2/6-07-02

**STATEMENT OF CLAIM**

On or about 8 p.m. on Monday, December 10, 2001, Ms. Shannon Marie Rapp was arrested at San Francisco International Airport while she was returning from a vacation in the Cayman Islands. Ms. Rapp was taken by airport police to a segregated location and detained there for approximately 3 hours. During the time she was detained, Ms. Rapp was denied the ability to contact her family or friends, and was questioned by the airport police and police officers from the City and County of San Francisco. During her detention at the airport, Ms. Rapp was handcuffed for the entire time and was subjected to several "patdown" searches of her person as well as multiple searches of her possessions. At no time was Ms. Rapp advised as to why she was being detained, despite her repeated requests for information.

At approximately 11 p.m. on December 10, 2001, Ms. Rapp was transported by the San Mateo County Sheriffs Department to the San Mateo County Jail, where she was booked, subjected to a full body strip search, handcuffed and placed in a holding cell. At that time, Ms. Rapp was advised that she had been arrested for violation of Penal Code §476, for the purported making/passing of a fictitious check pursuant to a warrant for her arrest issued by the Office of the District Attorney for the County of Santa Cruz. Ms. Rapp posted bail and was released at approximately 5:00 a.m. on December 11, 2001.

Thereafter, Ms. Rapp retained the law firm of Cahners & Samuels as her counsel to investigate the basis for the charges against her. Ms. Rapp and her counsel learned that the subject warrant for Ms. Rapp's arrest had been issued by the Office of the District Attorney for the County of Santa Cruz based on the investigation and recommendation of the Scotts Valley Police Department. Ms. Rapp further learned that on or about February 10, 2001, a woman in possession

of Ms. Rapp's stolen drivers' license and credit cards, and representing herself to be Shannon Rapp, had cashed a check drawn on the account of Sister of St. Dominic for \$1,000 payable to "Shannon Rapp," at the Wells Fargo Bank branch at 253 Mt. Hermon Road, Scotts Valley, California. The teller obtained a right thumb print from the woman since she did not have an account with the bank. The woman indicated that her "husband" would be in shortly to cash another check. Five minutes later, a similar check for \$1,000 drawn on the same Sister of St. Dominic account was cashed by a gentleman with a drivers' license for one George Nikoleav. The checks had been stolen and both signatures forged. The transaction involving the woman masquerading as Shannon Rapp was videotaped.

On the day of this criminal activity, Ms. Rapp was in San Francisco, unaware of the incident. Ms. Rapp's drivers' license and credit cards had been stolen from her car on or about January 2001. Ms. Rapp had promptly filed a report of the theft with the San Francisco Police Department, notified her credit card companies and the DMV of the theft, and secured a new drivers' license. At no time from February 10, 2001, the date of the criminal activity for which Ms. Rapp was charged, to the date of her arrest on December 10, 2001, was any effort made to contact Ms. Rapp, although her address and telephone number were readily ascertainable through the DMV or any other number of standard record sources available through even a cursory investigation.

After her release from jail, Ms. Rapp's attorneys filed a motion for finding of factual innocence and consequential record sealing based on mistaken identification. On or about December 26, 2001, the Santa Cruz Superior Court entered an order stating that the facts show that Ms. Rapp "is factually innocent of the offense(s) charged." (A true and correct copy of that order is attached hereto and incorporated in this claim.)

The videotape of the transaction in question confirms that the woman engaging in the

criminal activity is not Ms. Rapp. The fingerprint taken by the bank does not match that of Ms. Rapp. Substantial corroborating documents and witnesses confirm that Ms. Rapp was in San Francisco, not Scotts Valley, at the time of the incident. Ms. Rapp is informed and believes that at the time the subject warrant issued, the Scotts Valley Police Department and the Santa Cruz County District Attorney's office were investigating a series of credit card and check cashing fraudulent schemes that relied upon false identifies gathered from stolen mail, credit cards, drivers' licenses, and/or other identification. By means of a simple direct contact with the real George Nikoleav, the Scotts Valley Police Department investigating officer was able to quickly determine that the gentleman purporting to be Mr. Nikoleav who cashed the check immediately after the check was cashed by the woman masquerading as Ms. Rapp, was not in fact George Nikoleav. The real Mr. Nikoleav told the investigating officer that his wallet had been stolen in Capitola about a week earlier, but he had not reported it to the police department. No warrant was issued for the arrest of Mr. Nikoleav.

Notwithstanding this knowledge, and the fact that the woman masquerading as Ms. Rapp had indicated the purported Mr. Nikoleav was her "husband," the Scotts Valley Police Department and the Santa Cruz County District Attorney's office failed to undertake even the simplest of investigations based on information either actually in their possession or readily available, which investigation would have quickly confirmed that Ms. Shannon Rapp was not the person engaging in the criminal activity; rather, stolen identification from Ms. Rapp had been used by some other person to perpetuate the felony. A simple phone call to Ms. Rapp and/or an interview with her at her known address would have disclosed the fact that Ms. Rapp's identification and credit cards had previously been stolen and were thus being misused, and further, confirmed that Ms. Rapp was not in Scotts Valley at the time, nor was she the person in the bank videotape.

As a result of the gross negligence of the Scotts Valley Police Department and the Office of the District Attorney for the County of Santa Cruz in conducting an investigation and causing the issuance of a warrant for the arrest of Ms. Rapp without the slightest probable cause, Ms. Rapp was subjected to a false arrest and false imprisonment. As a result of the misconduct of the Scotts Valley Police Department and the Office of the District Attorney for the County of Santa Cruz, Ms. Rapp suffered physical injuries, severe emotional distress, **and** financial damages, including but not limited to, time and expenses associated with retaining counsel and responding to the unjustified warrant and ensuing false arrest and imprisonment. The injuries and harm sustained by Ms. Rapp, as far as known **as** of the date of presentation of this claim, consist of such general and special damages, presently estimated at a sum in excess of the jurisdictional minimum limits for **an** unlimited jurisdiction Superior Court action.

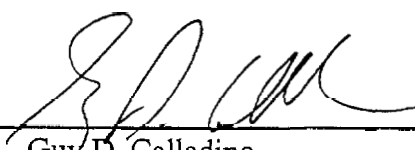
The name(s) of the public employee(s) causing claimant's injuries under the above-described circumstances include, but are not necessarily limited to, Scotts Valley Police Officer Mike Dean (9113).

All notices or other communications with regard to this claim should be sent to Guy D. Calladine, Carlson, Calladine & Peterson LLP, attorneys for claimant Shannon Marie Rapp, at Two Embarcadero Center, 18<sup>th</sup> Floor, San Francisco, CA 94111.

DATED: June 6, 2002.

CARLSON, CALLADINE & PETERSON LLP

By: \_\_\_\_\_

  
 Guy D. Calladine  
 Attorney for Claimant  
 SHANNON MARIE RAPP

1 JOHN D. CAHNERS  
 2 CAHNERS & SAMUELS  
 2600 EL CAMINO REAL, SUITE 506  
 3 PALO ALTO, CA 94306  
 (650) 493-3900  
 4 State Bar Number: 47542  
 Attorney for Defendant

FILED 12-26-01  
 Magistrate Patricia Cle  
*J. Rubalcava*

5  
 6 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 7 **IN AND FOR THE COUNTY OF SANTA CRUZ**

9	PEOPLE OF THE STATE OF CALIFORNIA,	)	No. F02573
10	Plaintiff	)	
11	vs.	)	MOTION FOR FACTUAL FINDING OF
12	SHANNON RAPP,	)	INNOCENCE AND RECORD
13	Defendant	)	CLEARANCE (PENAL CODE SECTION
14		)	851.85)

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 17 **NOTICE**

18 **Motion:** For a finding of factual innocence and consequential record sealing .

19 **Grounds:** Mistaken identification.

20 **Place:** Above entitled court.

21 **Date:** December 26,2001 at 8:30 a.m.

22 **Length:** 10 minutes.

23  
 24 **MEMORANDUM OF LAW**

25 I. PENAL CODE SECTION 851.85 PROVIDES FOR THE SEALING OF RECORDS WHEN  
 26 IT APPEARS TO THE JUDGE THAT THE DEFENDANT WAS FACTUALLY INNOCENT.  
 27 The facts in this case show that the defendant is factually innocent of the offense(s) charged-

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ORDER

IT IS HEREBY ORDERED THAT: The records in this case be sealed, including any record of arrest or detention. It is further ordered that the defendant may state that she was not arrested or this charge and that she was found innocent of such charge.

Dated: December 26, 2001



JUDGE OF THE SUPERIOR COURT