

#G513821  
10-19-01 jh

REVIEW AND CONSENT  
PENAL CODE SECTION 4900  
AND EQUITY

Claim of FREDERICK R. DAYE - \$376,700.00

SUMMARY OF FACTS

- Claimant is requesting compensation pursuant to California Penal Code section 4900 in the total amount of \$376,700.00 as a result of his wrongful conviction and incarceration for crimes that he did not commit.
- On June 4, 1984, claimant was convicted of kidnapping to commit robbery, robbery, two counts of rape in concert, and unlawful taking of an automobile in the San Diego County Superior Court. The court sentenced claimant to life imprisonment for kidnapping to rob plus a consecutive 14 years and 8 months for the two rapes and auto theft. The sentence for the robbery conviction was stayed.
- Claimant served his sentence in the following state prisons: Old Folsom (June 1984 to 1986), Tehachapi (1986 to 1988), New Folsom (1988 to 1990), Old Folsom (1990 to 1992), and Solano (1992 to 1994).
- Deoxyribonucleic acid (DNA) testing has positively exonerated claimant as the perpetrator of the crimes for which he was wrongfully convicted (see Exhibits A-4 and A-5). Claimant's attorney contends that claimant "neither intentionally nor negligently contributed to his arrest and conviction" and that information was provided during the criminal trial which demonstrated that one Eddie Lee Smallwood was the perpetrator of the crimes for which claimant was wrongfully convicted. This information was reportedly provided to a detective of the San Diego Police Department and to the District Attorney prior to claimant's trial.
- On September 26, 1994, the Superior Court for the County of San Diego issued an Order Granting Petition for Habeas Corpus, Vacating Judgment and Discharging Prisoner. Claimant was released from prison on September 27, 1994. Claimant seeks \$376,700.00 for pain and suffering which he experienced as a result of his wrongful incarceration.

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Date: October 1, 2001

- On March 19, 2001 Mr. Daye filed his claim pursuant to California Penal code section 4900 and amended his claim on October 18, 2001.

### **SUMMARY OF CLAIM ISSUES**

- Should claimant receive compensation for wrongful conviction and imprisonment under Penal Code section 4900 because the court found through DNA evidence that he was excluded as a perpetrator of the crimes for which he was convicted or is his claim untimely?
- The Office of the Attorney General supports payment of the claim under Penal Code section 4900.

### **DEPARTMENT POSITION**

The OFFICE OF THE ATTORNEY GENERAL recommends that the claim be **ALLOWED** under Penal Code section 4900, stating "it appears that Mr. Daye is innocent of these crimes and did not, by any act or omission on his part, either intentionally or negligently, contribute to the bringing about of his arrest or conviction." The Attorney General's Office has provided a letter from the San Diego County Deputy District Attorney which confirms the determination that claimant did not commit the offenses for which he was convicted and was exonerated of those offenses through forensic DNA analysis which was unavailable at the time of his original conviction at jury trial. (See Exhibit B.) The Attorney General's office does not make recommendations as to the timeliness issue.

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### **STAFF RECOMMENDATION**

Staff recommends that the claim be **REJECTED** as a PC 4900 claim as untimely. The staff notes that the Board may consider the claim under the Tort Claims Act as an equity claim. Any amount allowed by the Board would be subject to Legislative approval under a claims bill.

#### **Statutory Limitations**

Penal Code section 4900 et seq. authorizes the Board to approve claims for injuries sustained through erroneous conviction and imprisonment under certain conditions. Section 4901 limits the Board's ability to consider these claims to those that have been properly and timely filed. Specifically, Penal Code Section 4901 states: Such claim, accompanied by a statement of the facts constituting the claim, verified in the manner provided for the verification of complaints in civil actions, must be presented by the claimant to the Board of Control within a period of six months after judgment of acquittal or discharge given, or after pardon granted, or after release from imprisonment, and at least four months prior to the next meeting of the Legislature of this State; and no claim not so presented shall be considered by the Board of Control." The Board cannot consider this claim under Penal Code section 4900 unless it was filed within the statutory time frame.

Mr. Daye's claim was filed March 19, 2001 and amended October 18, 2001. He was released from prison on September 27, 1994 after the Court vacated his judgment of conviction and sentence. So even though, Penal Code section 4904 states: "If the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, and that the claimant did not, by any act or omission either intentionally or negligently, contribute to the bringing about of his or her arrest or conviction, and that the claimant has sustained pecuniary injury through his or her erroneous conviction and imprisonment, the State Board of Control shall report the facts of the case and its conclusions to the next Legislature of this state, with a recommendation that an appropriation be made by the Legislature for the purpose of indemnifying the claimant for the pecuniary injury..." the Board under this Penal Code provision may consider only timely claims; Mr. Daye's claim is untimely.

STAFF RECOMMENDATION (Cont'd.)

However, if the Board wishes to consider Mr. Daye's claim, it does have the authority under the Tort Claims Act to allow the claim in equity under Government Code section 905.2.

The Board would not be bound to consider the amounts provided for in the Penal Code as Mr. Daye cannot be considered under that provision. However, a look at the various provisions that Mr. Daye would have been entitled to might prove instructive if the Board chooses to allow the claim in equity. The Penal code section in existence when Mr. Daye was released and which would have applied to him had he filed a timely claim contained a ten thousand dollar cap. (\$10,000). The amount he would have been entitled to if he had been recently released from prison and filed a timely claim would be "a sum equivalent to one hundred dollars (\$100) per day of incarceration served subsequent to the claimant's conviction..." (See Exhibit C-1.) In this case, Mr. Daye was erroneously incarcerated for 3,767 days, which totals \$376,700.

Staff finds Penal Code section 4900 et seq. would be violated if the Board allowed the claim under that statute. However, the Board has the authority under the Tort Claims Act in equity to consider the claim if it so chooses. There may be sufficient evidence to establish claimant's entitlement to equitable relief for some compensation. It has been adequately demonstrated that claimant is innocent of the crimes for which he was sentenced to state prison, did not contribute to the bringing about of his arrest or conviction, and has sustained injury through his erroneous conviction and imprisonment. Any award in equity would be subject to Legislative approval as part of a claims bill.

See Attachments.



**CALIFORNIA VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**  
**MEETING MINUTES**  
**OCTOBER 19, 2001**  
**9:00 A.M.**  
**630 K STREET**  
**FIRST FLOOR HEARING ROOM**  
**SACRAMENTO, CALIFORNIA**

The California Victim Compensation and Government Claims Board convened its regular session at the call of the Chairperson at 630 K Street, First Floor Hearing Room, Sacramento, California, on Friday, October 19, 2001, at 9:00 a.m. Present were Rosamond Bolden, Chief Deputy Director, Department of General Services, acting for and in the absence of Barry D. Keene, Director, Department of General Services, Chairperson; David Rosenberg, Senior Advisor to the Governor, the Governor's Office, Board Member; and Cindy Aronberg, Deputy State Controller, State Controller's Office, acting for and in the absence of Kathleen Connell, Controller, Board Member.

Board staff present were Kelly J. Brodie, Executive Officer; Janice Hill, Acting Chief Counsel; Richard Anderson, Chief Deputy Executive Officer; David Shaw, Deputy Executive Officer, Administration Division; Pete Williams, Deputy Executive Officer, Victims Compensation Program; Steve Hall, Manager, Government Claims Program; and Sandy Davidson, Legal Secretary.

**GOVERNMENT CLAIMS**

The Board convened into the Government Claims portion of the meeting at 9:01 a.m.

After discussion, the Board took action on the following claims for which the claimant(s) and/or their representative(s) made an appearance.

**Item 1** Claimant **Ben Harklerode (G515147)** appeared to present a late claim for monetary loss due to an alleged change in the Department of General Services Fleet Administration Auction policy, in the amount of \$2,110.00. Stan Pochop appeared on behalf of the Department of General Services. After review and discussion of the claim, the Board, on a motion by David Rosenberg, and seconded by Cindy Aronberg, with concurrence by Rosamond Bolden, voted to **approve** the late claim application and **reject** the claim.

**Item 2** Staff presented the claim of **John Thurston of Base Two Solution, LLC (G510878)** for reimbursement in the amount of \$173,805.24 plus interest for services provided by the Department of Motor Vehicles. The Board on a motion by David Rosenberg, seconded by Cindy Aronberg, with concurrence by Rosamond Bolden, moved to **continue** this matter to the next Sacramento hearing on December 14, 2001.

**Item 3** Claimants **Stuart A. Brody (G302344)** and **Daniel L. Brennan (G518144)** appeared to present their claims for interest and attorney's fees allegedly incurred as a result of their employment with the Military Department. Stuart Brody (G302344) requested \$12,281.97 and Daniel L. Brennan (G518144) requested \$8,629.99. After review and discussion of the claims, the Board, on a motion by David Rosenberg, and seconded by Rosamond Bolden, voted to **reject** both claims. Cindy Aronberg voted no.

**Item 4** Staff presented the claim of **Lori Hanson (G510614)** for reimbursement of out of class salary differential in the amount of \$30,074.00 and all step raises received during the time period of October 1, 1996, through September 30, 1999. Bruce Burton and Sandy Gonzalez appeared on behalf of the Department of Health Services. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by Rosamond Bolden, voted to adopt the staff recommendation dated September 13, 2001, to **reject** the claim.

**Item 5** Claimant **Stephen R. Magee (G501703)** presented his claim seeking Flex Elect Cash Option benefits in the amount of \$128.00. Jennifer Sandness appeared on behalf of the Department of Personnel Administration. After review and discussion of the claim, the Board, on a motion by David Rosenberg, seconded by Cindy Aronberg, with concurrence by Rosamond Bolden, voted to adopt the staff recommendation dated September 24, 2001, to **reject** the claim.

**Item 6** Claimant **Daniel Zuhlke (G510263)** appeared to present his claim requesting reimbursement of one night's lodging on two separate occasions for the amount of \$240.88. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, seconded by David Rosenberg, with concurrence by Rosamond Bolden, voted to adopt the staff recommendation dated August 16, 2001, to **reject** the claim.

**Item 7** Claimant **Keith Young (G505118)** requested to continue his claim. The Board on a motion by David Rosenberg, seconded by Cindy Aronberg, with concurrence by Rosamond Bolden, voted to **continue** the claim to the December 14, 2001, Board meeting.

**Item 8** Claimant **Joseph and June Boudreau (G515416)** accepted the staff recommendation and did not appear.

**Item 9** Staff presented the claim of **Frederick R. Daye (G513821)** and requested to continue his claim. The Board on a motion by Cindy Aronberg, seconded by David Rosenberg, with concurrence by Rosamond Bolden voted to **continue** the claim to the November 16, 2001, Board meeting.

**Item 10** Staff presented the claim of **Sandra L. Bassett (G505407)** for reimbursement of Vanpool retainer fees of \$173.84. After review and discussion of the claim, the Board, on a motion by David Rosenberg seconded by Cindy Aronberg, with concurrence by Rosamond Bolden, voted to adopt the staff recommendation dated October 3, 2001, to **allow** the claim in the amount of \$173.84 pursuant to Government Code section 965.

Item 11 Staff presented the claim of **Rebecca Monroe (G509354)** for reimbursement of the Flex Elect Cash Option Program in the amount of \$128.00. After review and discussion of the claim, the Board, on a motion by David Rosenberg, seconded by Cindy Aronberg, with concurrence by Rosamond Bolden, voted to adopt the staff recommendation dated September 21, 2001, to **reject** the claim.

Item 12 Staff presented the claim of **Andrea Zeller (G347040)** for compensation of rental expenses and per diem for the amount of \$1,332.00. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, seconded by David Rosenberg, with concurrence by Rosamond Bolden, voted to adopt the staff recommendation dated October 3, 2001, to **reject** the claim.

Item 13 Staff presented the claim of **Jo Weber (G514078)** for reimbursement of one night's lodging that she did not use for the amount of \$166.03. After review and discussion of the claim, the Board, on a motion by David Rosenberg, seconded by Cindy Aronberg, with concurrence by Rosamond Bolden, voted to adopt the staff recommendation dated September 26, 2001, to **reject** the claim.

Item 14 Staff presented the claim of **Gordon E. and Betty I. Moore (G507825)** for a refund in the amount of \$201,734.97 for personal income taxes and interest assessed by the Franchise Tax Board. After review and discussion of the claim, the Board, on a motion by David Rosenberg, seconded by Cindy Aronberg, with concurrence by Rosamond Bolden, voted to adopt the staff recommendation dated September 27, 2001, to **partially allow** the claim for \$68,331.76 pursuant to Government Code section 13928.

### OTHER BUSINESS

On a motion by David Rosenberg, seconded by Cindy Aronberg, with concurrence by Rosamond Bolden, the Board voted to adopt the staff recommendations on the claims listed on the Government Claims Program consent revised agenda dated October 19, 2001, with the following changes:

Item 37 **CLAIMANT: BRAD SUTTON TRUCKING INC.** **(G508975)**  
The Board on a motion by David Rosenberg, seconded by Cindy Aronberg, with concurrence by Rosamond Bolden voted to **continue** the claim.

Item 566 **CLAIMANT: DOUGLAS WELLS** **(G518079)**  
The Board on a motion by David Rosenberg, and seconded by Cindy Aronberg voted to **continue** the claim for additional information.

A.	Total claims awarded on consent	106	
	To be paid under GC § 965	36 For	\$140,493.96
	To be paid under claims bill	70 For	\$119,611.50
B.	Claims rejected on consent	590	

The Government Claims hearing was adjourned at 10:24 a.m.

### EXECUTIVE OFFICER REPORT

Kelly J. Brodie, Executive Officer, gave the following reports:

- Ms. Brodie discussed the Board staffs' involvement in the state's "Day of Remembrance" program.
- Ms. Brodie, discussed the "Executive Officer's Report", dated September 28, 2001, and distributed and discussed the Executive Officer's Report", dated October 19, 2001.
- Ms. Brodie discussed the Federal Compensation Program which was recently amended to provide state victim compensation programs with a 60 percent match instead of a 40 percent match. The 40 percent match now applies to the state victim assistance programs. Also, the Federal Compensation Program is the "primary payer" for victims of the September 11, 2001, attack, but unfortunately federal payments to victims will probably not be made until the summer. States are investigating whether they can pay these victims and still be reimbursed by the federal government program.
- Ms. Brodie discussed and distributed the "Legislative Summary" of bills that affected the Victim Compensation Program, and a press release that highlights AB1017 which is the administrative bill regarding the Victims Compensation Program.
- Ms. Brodie discussed the contracts report dated October 19, 2001, for contracts over \$100,000 executed by the Executive Officer July 1, 2001, through September 30, 2001.
- Ms. Brodie discussed and distributed the first page of the Funeral/Burial Policy that the Board adopted at the September 28, 2001, Board meeting, and noted that at the last meeting the Board adopted the policy for Funeral and Burial Expenses. Since that time the events of September 11, 2001, have caused several of the Board members to ask whether the Board will pay for expenses for memorial services where there is no body to bury. The program has long paid these expenses as funeral expenses and will continue to do so.
- Ms. Brodie reported that the Board legal staff will be contacting the Board members to update the ethics training. Government Code section 11146 requires you to attend an approved ethics training class every two years. The legal staff will notify you of your date to complete that training and explain your options.

### VICTIMS COMPENSATION PROGRAM

The Board convened the Victims of Crime portion of the meeting at 10:25 a.m.

## REQUESTS FOR RECONSIDERATIONS

On a motion by Cindy Aronberg, seconded by David Rosenberg, with concurrence by Rosamond Bolden, the Board voted to adopt the staff recommendations on the requests for reconsideration for denied only as follows:

- HELEN H. DAI 588736V  
□ GUILLERMO HERNANDEZ 592838V  
The requests for reconsideration on these claims were **denied** based on the staff recommendation dated August 1, 2001.
- ORVIN K. ELKINS 608897V  
The request for reconsideration on this claim was **denied** based on the staff recommendation dated August 2, 2001.
- TESFA AWOKE 576878V  
The request for reconsideration on this claim was **denied** based on the staff recommendation dated August 10, 2001.
- DENINA WASHINGTON 607038V  
The request for reconsideration on this claim was **denied** based on the staff recommendation dated August 13, 2001.
- CLAIMANT 584563V  
The request for reconsideration on this claim was **denied** based on the staff recommendation dated August 22, 2001.
- ANGELO ASPILLAGA 615683V  
The request for reconsideration on this claim was **denied** based on the staff recommendation dated August 27, 2001.
- HEIDI AMBRIZ 639167V  
The request for reconsideration on this claim was **denied** based on the staff recommendation dated September 5, 2001.
- LAWRENCE TAYLOR 595810V  
The request for reconsideration on this claim was **denied** based on the staff recommendation dated September 7, 2001.
- ASKARI SMITH 592911V  
□ VERONICA ARGUETA 594813V  
The requests for reconsideration on these claims were **denied** based on the staff recommendation dated September 13, 2001.

- CLAIMANT 400084V  
 The request for reconsideration on this claim was **denied** based on the staff recommendation dated September 14, 2001.
- ELSA ACUNA 601214V  
 The request for reconsideration on this claim was **denied** based on the staff recommendation dated September 27, 2001.
- JACQUES HARPST 586943V  
 The request for reconsideration on this claim was **denied** based on the staff recommendation dated September 28, 2001.
- CLAIMANT 599205V  
 The request for reconsideration on this claim was **denied** based on the staff recommendation dated September 30, 2001.

**PRECEDENT DECISIONS**

Janice Hill, Acting Chief Counsel, presented the "Designation of Decisions as Precedent in the matter of the applications of Jeremy Knittel, No. 608328, Jennifer Ory, No. 522194, Han Joon Park, No. 638987, and Raasan Walton, No. 582643. After review and discussion of the items, the Board, on a motion by David Rosenberg, seconded by Cindy Aronberg, with concurrence by Rosamond Bolden, voted to **adopt** the attached resolution designating the decisions as precedent.

Sherri Gauger, Assistant Deputy Executive Officer, Administration Division presented the "Draft Victim Compensation Program Medical and Income Loss Policies". After review and discussion of the item, the Board, on a motion by David Rosenberg, seconded by Cindy Aronberg, with concurrence by Rosamond Bolden, voted to **adopt** the attached resolution.

**CLOSED EXECUTIVE SESSION (GC § 11126(c)(3))**

Pursuant to Government Code section 11126(c)(3), the Board members adjourned into a closed Executive Session with the Board's Acting Chief Counsel at 10:50 a.m. to deliberate on the proposed decisions that were taken under submission during the meeting. Those present during the deliberations were Kelly J. Brodie, Executive Officer; Richard Anderson, Chief Deputy Executive Officer; and David Shaw, Deputy Executive Officer.

The Board reconvened into an open session at 11:40 a.m.

**PROPOSED PRECEDENT DECISION**

- Item 2 CLAIMANT 634818V  
 The Board on a motion by Cindy Aronberg, seconded by David Rosenberg, with concurrence by Rosamond Bolden adopted the proposed decision and voted to bring this decision back as a proposed precedent decision at the next Board meeting.

**PROPOSED DECISIONS**

Item 17 **CLAIMANTS** **635005V & 635014V**

On a motion by Rosamond Bolden, seconded by Cindy Aronberg, the Board determined that a threat did occur and the proposed decision shall be modified to grant mental health counseling. David Rosenberg voted no.

Item 18 **CLAIMANT: THOMAS YODER** **634193V**

On a motion by Cindy Aronberg, and seconded by David Rosenberg, with concurrence by Rosamond Bolden, the Board partially allowed the claim based on involvement and limiting recovery to medical expenses only.

Item 20 **CLAIMANT: JAY FRALLICCIARDI** **529286V**

On a motion by Cindy Aronberg, and seconded by David Rosenberg, with concurrence by Rosamond Bolden, the Board determined that a lump sum payment of \$12,000.00 would compensate for the loss of the wage claim, and directs the proposed decision to reflect that.

Item 21 **CLAIMANT: TIMOTHY HERMAN** **608457V**

On a motion by Cindy Aronberg, and seconded by David Rosenberg, with concurrence by Rosamond Bolden, the Board partially denied the claim due to involvement and limited recovery to medical expenses only.

Item 24 **CLAIMANT** **603500V**

On a motion by David Rosenberg, and seconded by Rosamond Bolden, the Board voted to adopt the proposed decision. Cindy Aronberg voted no.

Item 6 **CLAIMANT** **551924V**

On a motion by David Rosenberg, seconded by Rosamond Bolden, the Board voted to adopt the claim. Cindy Aronberg abstained, due to not having had to review.

On a motion by David Rosenberg, seconded by Cindy Aronberg, with concurrence by Rosamond Bolden the Board voted to adopt the proposed decisions as follows.

Item 1 **CLAIMANT: MICHAEL GULDNER** **599721V**

The Board voted to adopt the proposed decision.

Item 3 **CLAIMANT: JOSHUA REED** **613556V**

The Board voted to adopt the proposed decision.

Item 4 **CLAIMANT** **577807V**

The Board voted to adopt the proposed decision.

Item 5 **CLAIMANT** **561718V**

The Board voted to adopt the proposed decision.

- Item 7 CLAIMANT 420903V  
The Board voted to adopt the proposed decision.
- Item 8 CLAIMANT 615096V  
The Board voted to adopt the proposed decision.
- Item 9 CLAIMANT: EUGENE RODRIQUEZ 634616V  
The Board voted to adopt the proposed decision.
- Item 10 CLAIMANT: VILMA RICHARDSON 612437V  
The Board voted to adopt the proposed decision.
- Item 11 CLAIMANT 606855V  
The Board voted to adopt the proposed decision.
- Item 12 CLAIMANT: LUISA SAEZ 569840V  
The Board voted to adopt the proposed decision.
- Item 13 CLAIMANT: RUDY QUINTANAR 627960V  
The Board voted to adopt the proposed decision.
- Item 14 CLAIMANT: BRENDA PREUITT WILSON 593821V  
The Board voted to adopt the proposed decision.
- Item 15 CLAIMANT 555559V  
The Board voted to adopt the proposed decision.
- Item 16 CLAIMANT: GABRIEL MATAS 623611V  
The Board voted to adopt the proposed decision.
- Item 19 CLAIMANT 611631V  
The Board voted to adopt the proposed decision.
- Item 22 CLAIMANT: ALFRED STERLING 535253V  
The Board voted to adopt the proposed decision.
- Item 23 CLAIMANT 589920V  
The Board voted to adopt the proposed decision.
- \*\*\*Item 19 CLAIMANT 611631V  
On a motion by David Rosenberg, seconded by Rosamond Bolden, the Board voted to reconsider this claim. On a motion by David Rosenberg, seconded by Rosamond Bolden, the Board voted to adopt the proposed decision. Cindy Aronberg voted no.

## OTHER BUSINESS

On a motion by David Rosenberg, seconded by Cindy Aronberg, with concurrence by Rosamond Bolden, the Board voted to adopt the Victims Compensation Program unconfirmed agenda dated October 19, 2001.

The meeting was adjourned at 11:53 a.m.

The Board convened in closed session at 12:15 p.m. The Board reconvened in open session at 1:00 p.m. at the Office of Administrative Hearing, 560 "J" Street, Sacramento, California, 3<sup>rd</sup> Floor. Those present and participating in the hearing were Cindy Aronberg, Deputy Controller, on behalf of Kathleen Connell, State Controller, Board Member; Rosamond Bolden, Chief Deputy Director, on behalf of Barry D. Keene, Director, Department of General Services, Chairperson; and David Rosenberg, Senior Advisor to the Governor, the Governor's Office, and Board Member. Jaime Rene Roman, Administrative Law Judge, Office of Administrative Hearings, presided as Hearing Officer.

Also in attendance and participating in the hearing as claimants were: Claimant, California Power Exchange Corporation, represented by Kaye Scholer, LLP, Attorneys at Law, by George T. Caplan, Esq. Claimant, Pacific Gas & Electric Company, represented by Cooley Godward, LLP, Attorneys at Law, by Linda F. Callison, Esq., and Stephen L. Schirle, Esq. Claimant Reliant Energy, represented by McCutchen, Doyle, Brown & Enersen, LLP, by Geoffrey T. Holtz, Esq., and John C. Morrissey, Esq. Claimant, Duke Energy Trading and Marketing, represented by Dickstein, Shapiro, Morin & Oshinsky, Attorneys at Law, by Geoffrey Bestor, Esq.; and Simpson, Thacher & Bartlett, Attorneys at Law, by Seth A. Ribner, Esq. Claimant, Williams Energy, represented by Jones & Day, Attorneys at Law, by Mira Hasmail, Esq.

Interested parties in attendance were: Morris Beatus, Senior Assistant Attorney General, and Bernice L. Louie Yew, Deputy Attorney General, Office of the Attorney General, representing the State of California.

The claimants and interested parties presented their oral arguments before the Board until 2:00 p.m. at which time the Board reconvened into closed session pursuant to Government Code section 11126(c)(3) to deliberate on the issue before it. At 3:00 p.m. the Board adjourned into open session and decided that it needed more time to study the issues before it. The Board hearing was adjourned to Thursday, October 25, 2001, at 9:30 a.m. At that time the Board convened for the purpose of continuing the closed session noticed for Friday, October 19, 2001.

The Board reconvened into open session on October 25, 2001, and by a 2-1 vote, determined that it will find the value of the commandeered property and not reject the claims as complex. To provide additional time and opportunity for the parties to engage in discovery that will provide sufficient evidence for the Board to determine value, the Board agreed to another hearing, at 9:30 a.m., on February 27, 2001, at the Office of Administrative Hearings, 560 "J" Street, Suite 300. The Board hearing was adjourned at 11:00 a.m.

Written notice of adjournment will be provided and posted as required by Government Code sections 11128.5 and 11129.

KELLY J. BRODIE  
Executive Officer

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I certify that the California Victim Compensation and Government Claims Board adopted these minutes at its meeting of \_\_\_\_\_ at \_\_\_\_\_, California.

Date: \_\_\_\_\_

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

Sally L. Gill  
Board Liaison

*(Affix seal here)*

**CALIFORNIA VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**  
**OPEN MEETING MINUTES**  
**MARCH 22, 2002**  
**9:30 A.M.**  
**630 "K" STREET**  
**FIRST FLOOR HEARING ROOM**  
**SACRAMENTO, CALIFORNIA**

The California Victim Compensation and Government Claims Board convened its regular session at the call of the Chairperson at the First Floor Hearing Room, 630 "K" Street, Sacramento, California, on Friday, March 22, 2002, at 9:30 a.m. Present were Barry D. Keene, Director, Department of General Services, Chairperson; David Rosenberg, Senior Advisor to the Governor, the Governor's Office, Board Member; and Cindy Aronberg, Deputy State Controller, State Controller's Office, acting for and in the absence of Kathleen Connell, Controller, Board Member.

Mr. Keene introduced himself and made a motion and seconded by Cindy Aronberg, to have David Rosenberg act as Chairperson for the March 22, 2002, meeting.

Board staff present were Kelly J. Brodie, Executive Officer; Catherine Close, Chief Counsel; Steve Hall, Manager, Government Claims Program; and Sally Gill, Board Liaison.

**GOVERNMENT CLAIMS PROGRAM**

The Board commenced the Government Claims portion of the meeting at 9:35 a.m.

After discussion, the Board took action on the following claims for which the claimant(s) and/or their representative(s) made an appearance.

Item 2 Claimant **Roland Peek (G519773)** appeared by teleconference and requested replacement value of personal property for the amount of \$1,324.14 that was allegedly stolen from his vehicle while providing state services. Bruce Crane, attorney, appeared on behalf of the California Department of Forestry and Fire Protection. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, seconded by Barry Keene, with concurrence by David Rosenberg, voted to adopt the staff recommendation dated March 5, 2002, to **reject** the claim.

Item 11 Claimant **Jane Pearson (G516985)** requested reimbursement of \$388.11 that she expended as a result of traveling on state business in the course of her employment with the Department of Corrections. After review and discussion of the claim, the Board, on a motion by Barry Keene, seconded by Cindy Aronberg, with concurrence by David Rosenberg, voted to adopt the staff recommendation dated March 6, 2002, to **allow** the claim pursuant to Government Code section 965.

Barry Keene left the meeting at 9:45 a.m.

Item 3 Claimant **Ronald Hancock (G513764)** appeared by teleconference and requested reimbursement of \$4,555.16 for damage to his vehicle allegedly caused by MCM Construction Company Inc., a California Department of Transportation contractor. Chris Rojas appeared by teleconference on behalf of the California Department of Transportation. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated March 5, 2002, to **reject** the claim.

Items 4 & 5 Staff presented the claims of **Drexell Equipment Co. (G518516)** and claimant **Shirley Lowery, Total Equipment Rental (G521182)**. Drexell Mohammad was absent, and Shirley Lowery appeared via teleconference. Drexell Mohammad, (G518516) requested payment of invoices for the amount of \$11,375.09 for services rendered to the California Department of Transportation. Shirley Lowery, (G521182) requested payment of invoices totaling \$11,949.59 for equipment provided to a contractor for the California Department of Transportation. Kapiolani Lyman, and Paul Giammichele, representatives, appeared on behalf of the California Department of Transportation. The Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated March 5, 2002, to **partially allow** claim number (G518516) in the amount of \$843.34, and voted to adopt the staff recommendation dated March 12, 2002, to **allow** claim number (G521182) in the amount of \$11,949.59 pursuant to Government Code section 965.

Item 8 Staff presented the claim of **Frederick R. Daye (G513821)** and requested compensation in the amount of \$376,700 pursuant to California Penal Code section 4900 as a result of a wrongful conviction and incarceration for crimes that the claimant did not commit. Dwight Ritter, attorney, appeared on behalf of the absent claimant. Janice F. Hill, Staff Counsel, appeared on behalf of the California Victim Compensation and Government Claims Board. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to amend and **allow** the claim for the total amount of time spent incarcerated for 10 years and 260 days or from January 25, 1984, to September 7, 1994, which totals 3,860 days in the amount of \$386,000 in equity, pursuant to Government Code section 13928. The Board directed staff to verify the amended amount.

Item 9 Claimant **Ronald P. Flores (G515831)** represented himself and **Samuel Marshall (G515852)** via teleconference for payment for overtime hours, which they allegedly worked while employed by the California Science Center. Bob Campbell, Former Deputy Director, Administration, California Science Center, appeared on behalf of the claimants by teleconference. Ronald Flores (G515831) requested overtime compensation for 480 hours of CTO earned from June 9, 1992, to January 4, 1999, for the amount of \$14,323.20 plus treble damages. Samuel Marshall (G515852) requested overtime compensation for 800 hours of CTO earned from June 9, 1992, through January 4, 1999, for the amount of \$26,175.00 plus treble damages. Cheryl Tateishi, representative, appeared on behalf of the California Science Center. Clarice Pace, representative, appeared on behalf of the Department of Personnel Administration. After review and discussion of the claims, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated March 13, 2002, to **reject** the claims.

Item 12 Claimant **Michael J. Petrich (G504629)** appeared by teleconference and requested reimbursement for three months of dental benefit premiums amounting to \$198.57 which were allegedly taken from his paycheck without his permission, in addition to 12 months of Flex Elect benefits amounting to \$1,680.00 which he did not receive. Kris Manley and Judy Preston appeared on behalf on the California Highway Patrol. Jennifer Sandness and William Page appeared on behalf of the Department of Personnel Administration. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated February 27, 2002, to **reject** the claim.

Item 10 Claimant **Robert Meyers, MD (G509343)** appeared by teleconference and requested compensation in the amount of \$5,200.00 for the loss of recruitment and retention pay. Joanne Stewart and Glenda Smith appeared by teleconference on behalf of the Department of Corrections. Susan Tune, Jerry Judd and Leslie Ferguson appeared on behalf of the Department of Personnel Administration. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated March 5, 2002, to **allow** the claim for the amount of \$5,200.00 pursuant to Government Code section 13928.

Item 14 Claimant **Robert W. Silva (G510725)** requested reimbursement for Flex Elect totaling \$700.00. Bobbie Flanders and Alice Harris, representatives, appeared on behalf of the Department of General Services. Jennifer Sandness, representative, appeared on behalf of the Department of Personnel Administration. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to **allow** the claim for the amount of \$700.00 pursuant to Government Code section 13928.

Item 16 Claimant **Robert Roth, National Home Warranty, Inc (G513963)** appeared by teleconference and requested reimbursement to substantiate his claim that the Department of Insurance did not provide an audit nor was there travel to his business in the amount of \$2,467.59. Charles DePalma, appeared by teleconference on behalf of the Department of Insurance. Darrel Woo, appeared on behalf of the Department of Insurance. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated March 11, 2002, to **reject** the claim.

Stephan Mayberg, PH.D., Director, appeared on behalf of the Department of Mental Health Services to speak in support of the **"Proposal to Set Reimbursement Rate for Clinical Nurse Specialist (CNS) and Psychiatric Mental Health Nurse (PMHN) pursuant to AB 1017 (Jackson), Stats. 2001, c 712, which amended Government Code section 13960"**.

Item 1 Claimant **Cynthia M. Ayres (G521325)** presented her claim for a monetary loss sustained by an error from the California Highway Patrol in the amount of \$1,500.00. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, **granted** the late application and **continued** the claim to obtain a recommendation from the California Highway Patrol.

Item 7 Claimant **Jurgen M. Belt (G342892)** presented his claim for reimbursement of \$2,000.00 for attorney fees, plus 504 hours of sick leave credits used during the period of July 18, 1997, through October 17, 1997. Bertha Mojica, appeared on behalf of the Department of Corrections. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated March 8, 2002, to **reject** the claim.

Item 15 Claimant **Susan Mullin, President of Feather Ridge Estates Water Corp (G515617)** requested a rehearing of the claim for the reimbursement for the replacement of a 20,000 gallon water tank for the amount of \$50,000. Mike Madden, representative, appeared on behalf of the Butte County Office of Emergency Services. Bruce Crane, attorney, and William Bradley, appeared on behalf of the Department of Forestry, and Fire Protection. After review and discussion of the claim, the Board, on a motion by David Rosenberg, and seconded by Cindy Aronberg, stated that the Government Code section 850.4 provides that the state is absolutely immune from damages caused during fire fighting and that the Board is bound by that statute, therefore, voted to adopt the staff recommendation dated March 13, 2002, to **reject** the claim. The Board has requested a copy of the written order and ruling from this hearing.

Item 13 Staff presented the claim of **Susan E. Rushing (G516513)** and requested compensation totaling \$4,460.00 for out-of-class work, which she allegedly performed while employed by the Department of General Services. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated March 12, 2002, to **partially allow** the claim for the amount of salary differential for the period July 1, 2001, through October 8, 2001, pursuant to Government Code section 13928.

Item 17 Staff presented the claim of **Bruce Hiell (G509630)** and requested reimbursement of his insurance deductible in the amount of \$50.00. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated March 8, 2002, to **reject** the claim.

Item 18 Staff presented the claim of **Core Business Technologies (G518092)** and requested reimbursement for services provided to the Department of Motor Vehicles for the amount of \$74,658.60. Frank Coates, attorney, appeared on behalf of the Department of Motor Vehicles. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated March 5, 2002, to **allow** the claim for the amount of \$68,250.00 pursuant to Government Code section 965.

Item 19 Staff presented the claim of **Lancaster Community Hospital (G519134)** and requested reimbursement for medical services provided to an inmate with the Department of Corrections. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation to **allow** the claim for the amount of \$86,412.20 pursuant to Government Code section 13928.

Item 20 Staff presented the claim of **Jeff and Elaine Thomson (G514912)** and requested an abatement of interest incurred on final income tax adjustments for the tax year 1992 in the excess of the amount of \$177,229.80. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated March 20, 2002, to **allow** the claim for the revised amount of \$367.64 for payment to the claimants, and \$217,497.56 to the Franchise Tax Board pursuant to Government Code section 13928.

Item 21 Staff presented the claim of **Esther H. Henry (G521287)** and requested re-issuance of a tax refund check in the amount of \$158,257.00. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated February 27, 2002, to **allow** the claim for the amount of \$158,257.00 pursuant to Government Code section 13928.

Barry Keene returned to the Board meeting at 12:30 p.m.

Item 22 Staff presented the claim of **CSE Insurance Group (G519128)** and requested reimbursement for overpayments made to the Department of Insurance in the amount of \$59,363.00. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg, and seconded by David Rosenberg, voted to adopt the staff recommendation dated February 15, 2002, to **allow** the claim in the amount of \$59,363.00 pursuant to Government Code section 13928.

Item 23 Staff presented the "**Final Action in the Matters of California Power Exchange Corporation Government Claim No. G513305 and Pacific Gas & Electric Company Government Claim No. G513644**". After review and discuss of the claims, the Board on a motion by Barry Keene, and seconded by David Rosenberg, voted to adopt the staff recommendation dated March 6, 2002, to **reject** the claims. Ms. Aronberg abstained.

Item 6 Staff presented the claim of **Tom M. Suhr dba HJ Recycling (G511033)**. The Department of Conservation revised its recommendation and supported payment of the claim for \$1,226.57. Claimant accepted the staff recommendation and did not attend the meeting. After review and discussion of the claim, the Board, on a motion by Cindy Aronberg and seconded by Barry Keene, voted to adopt the staff recommendation dated March 14, 2002, to **allow** the claim in the amount of \$1,226.57 pursuant to Government Code section 13928.

**OTHER BUSINESS**

On a motion by Barry Keene, seconded by Cindy Aronberg, with concurrence by David Rosenberg, the Board voted to adopt the staff recommendations on the claims listed on the Government Claims Program consent agenda dated March 12, 2002, with the following change:

Item 460 **CLAIMANTS: De Las Pulido (G522271)**

The Board on a motion by Barry, Keene, and seconded by Cindy Aronberg, voted to **continue** the claim.

A.	Total claims awarded on consent	269	
	To be paid under GC § 965	28 For	\$72,987.83
	To be paid under claims bill	241 For	\$426,099.21
B.	Claims rejected on consent	464	

The Government Claims hearing was adjourned at 12:35 a.m.

**OTHER BUSINESS**

Sharon Vigil, Manager, Policy and Procedures Section, presented the **“Proposal to Set Reimbursement Rate for Clinical Nurse Specialist (CNS) and Psychiatric Mental Health Nurse (PMHN) pursuant to AB 1017 (Jackson), Stats. 2001, c 712, which amended Government Code section 13960”**.

Kevin McGirr, President, appeared on behalf of the California Association of Psychiatric Nurses in Advanced Practice. Lydia Bourne, Legislative Analyst, appeared on behalf of American Nurses of California. After review and discussion of the item, the Board on a motion by Cindy Aronberg, seconded by Barry Keene, with concurrence by David Rosenberg, voted to **adopt** the attached resolution.

**EXECUTIVE OFFICER REPORT**

Kelly J. Brodie, Executive Officer, gave the following reports:

Ms. Brodie distributed the “Executive Officer’s Report”, dated, February, 2002.

Ms. Brodie discussed the contracts report dated February, 2002.

**VICTIMS COMPENSATION PROGRAM**

The Board commenced the Victims Compensation Program portion of the meeting at 1:00 p.m.

**CLOSED EXECUTIVE SESSION (GC § 11126(c))**

Pursuant to Government Code section 11126(c) the Board members adjourned into a closed Executive Session with the Board’s Chief Counsel at 1:00 p.m. to deliberate on the proposed decisions that were taken under submission during the meeting. Kelly J. Brodie, Executive Officer, was also present during the closed session.

The Board reconvened into an open session at 1:25 p.m.

**PROPOSED DECISIONS**

The Board on a motion by Barry Keene, seconded by Cindy Aronberg, with concurrence by David Rosenberg, adopted the following decisions:

Item 1 **CLAIMANT** **576740V**

The Board voted to modify the claim to **deny** all medical expenses.

Item 2 **CLAIMANT: Kim Swartz** **641254V & 644446V**

The Board voted to adopt the proposed decision to **allow** the claims.

Item 3 **CLAIMANT** **631443V**

The Board voted to adopt the proposed decision to **allow** the claim.

Item 4 **CLAIMANT** **613682V**

The Board voted to adopt the proposed decision to only **allow** the application as a victim of the qualified crime of domestic violence and any verified, covered pecuniary losses resulting from that crime.

Item 5 **CLAIMANT** **607024V**

The Board remanded the proposed decision to the Hearing Officer. The Board stated that the Board finds that the minor is a victim of a serious hate crime and is in need of mental health counseling. The Board is concerned that the minor is in need of more than \$5,000 for mental health counseling. However, like the Hearing Officer, the Board does not find that the applicant has submitted sufficient documentation to support his request for reimbursement. The applicant has not submitted documentation to establish what amounts he paid for mental health counseling nor whether, to what extent or by whom mental health counseling was provided to the minor. Therefore, the Board **remanded** the case to the Hearing Officer to allow the applicant an additional opportunity to submit the additional documentation required.

Item 6 **CLAIMANT: Mabel Sue Sun** **293390V**

The Board voted to adopt the proposed decision to **deny** the claim.

Item 7 **CLAIMANT: Richard Dwyer** **235147V**

The Board voted to adopt the proposed decision to **deny** the claim.

Item 8 **CLAIMANT** **623136V, 623134V, 628123V & 623102V**

The Board voted to adopt the proposed decision to only **allow** claim numbers 623136V, 623134V and 623102V.

Item 9 **CLAIMANT: Eva Cisneros** **602401V**

The Board voted to adopt the proposed decision to **deny** the claim.

Item 10 **CLAIMANT** **653689V**

The Board voted to adopt the proposed decision to **allow** the claim.

Item 11 **CLAIMANT: Irene Meeker** **584347V**

The Board voted to adopt the proposed decision to **deny** the claim.

Item 12 **CLAIMANT**

**645198V**

The Board voted to adopt the proposed decision to **deny** the claim.

**REQUESTS FOR RECONSIDERATIONS**

On a motion by Barry Keene, seconded by Cindy Aronberg, with concurrence by David Rosenberg, the Board voted to adopt the staff recommendations on the requests for reconsiderations for denied only as follows:

**CLAIMANT: Sarah N. Sumahit** **635743V**

**CLAIMANT: Lenard Barela Sr.** **647329V**

**CLAIMANT: Fayleen A. Chwalek** **464746V**

**CLAIMANT** **507670V**

The requests for reconsideration on these claims were denied based on the staff recommendation dated December 13, 2001.

**CLAIMANT: Joe Hinojos** **609441V**

The request for reconsideration on this claim was denied based on the staff recommendation dated January 3, 2002.

**CLAIMANT: Judith Slonksnis** **612790V**

The request for reconsideration on this claim was denied based on the staff recommendation dated January 9, 2002.

**CLAIMANT: Ricardo Nelson** **652488V**

**CLAIMANT: Avery F. Brown** **653795V**

The requests for reconsideration on these claims were denied based on the staff recommendation dated January 14, 2002.

**CLAIMANT** **450495V**

**CLAIMANT: NANCY J. BOWMAN** **659964V**

The requests for reconsideration on these claims were denied based on the staff recommendation dated January 15, 2002.

**CLAIMANT: Teresa M. Lesko** **512015V**

The request for reconsideration on this claim was denied based on the staff recommendation dated January 17, 2002.

**CLAIMANT: Seneca Dewayne** **595713V**

The request for reconsideration on this claim was denied based on the staff recommendation dated January 23, 2002.

**CLAIMANT** **613699V**

The request for reconsideration on this claim was denied based on the staff recommendation dated January 24, 2002.

**CLAIMANT** **610556V**

The request for reconsideration on this claim was denied based on the staff recommendation dated February 1, 2002.

**CLAIMANTS'**

**643679V & 643680V**

The request for reconsideration on this claim was denied based on the staff recommendation dated February 8, 2002.

<b>CLAIMANT: Jason Robinson</b>	<b>618939V</b>
<b>CLAIMANT</b>	<b>561718V</b>
<b>CLAIMANT: Susan Aguilar</b>	<b>609796V</b>
<b>CLAIMANT</b>	<b>614790V</b>

The requests for reconsideration on these claims were denied based on the staff recommendation dated February 12, 2002.

<b>CLAIMANT</b>	<b>645424V</b>
<b>CLAIMANT: Rosa A. Magana</b>	<b>625060V</b>

The requests for reconsideration on these claims were denied based on the staff recommendation dated February 13, 2002.

<b>CLAIMANT</b>	<b>615096V</b>
<b>CLAIMANT: Tahmoures Behnam</b>	<b>475365V</b>
<b>CLAIMANT: Anton Boktor</b>	<b>008405V</b>
<b>CLAIMANTS': Latanya Smith</b>	<b>652204V &amp; 654668V</b>
<b>CLAIMANT: Raasan Walton</b>	<b>582643V</b>

The requests for reconsideration on these claims were denied based on the staff recommendation dated March 3, 2002.

The Board on a motion by Cindy Aronberg, seconded by Barry Keene, with concurrence by David Rosenberg, **allowed** the claims for which appeals were withdrawn or deemed to be withdrawn and action on claims for which a hearing was denied under regulation section 647.20.1 for February and March, 2002.

The meeting was adjourned at 1:35 p.m.

KELLY J. BRODIE  
Executive Officer

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I certify that the California Victim Compensation and Government Claims Board adopted these minutes at its meeting of \_\_\_\_\_ at \_\_\_\_\_, California.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Sally L. Gill  
Board Liaison

*(Affix seal here)*