

DEPARTMENT: County Counsel

BY: Jeffrey G. Green

PHONE: 966-3222

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RECOMMENDED ACTION AND JUSTIFICATION:

Authorize Chair to sign an Order of the Board to reject Claim No. C03-6 for an amount of \$14,003.00. Claimant alleges that she sustained a loss of \$14,003.00 as a result of her medicinal marijuana plants being confiscated by the Sheriff's Department and ultimately turned over to the Drug Enforcement Agency in Fresno after the District Attorney dismissed Claimant's case. Counsel is requesting denial of this claim as there is no evidence of County negligence in this matter.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board usually follows Counsel's recommendation in matters of this nature.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

- Reject claim as recommended.
- Take no action; claim will automatically be denied if no action is taken.

Financial Impact? () Yes (X) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$		List Attachments, number pages consecutively
Additional Funding Needed: \$		Claim
Source:		Memo from District Attorney
Internal Transfer		Resolution
Unanticipated Revenue	4/5's vote	
Transfer Between Funds	4/5's vote	
Contingency	4/5's vote	
() General () Other		

CLERK'S USE ONLY:

Res. No.: 03-313 Ord. No. _____
 Vote - Ayes: 4 Noes: _____
 Absent: _____ Abstained: Statson
 Approved
 Minute Order Attached No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____
 Attest: MARGIE WILLIAMS, Clerk of the Board
 County of Mariposa, State of California

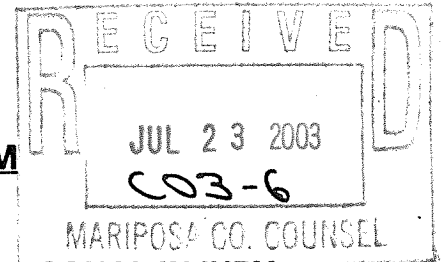
By: _____
 Deputy

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
 No Opinion
 Comments:

CAO: RAH

COUNTY OF MARIPOSA CLAIM FORM



CLAIM OF Carter Morrow)
(Claimant))
v.)
COUNTY OF MARIPOSA)

**CLAIM FOR PERSONAL INJURY
AND/OR PROPERTY DAMAGE
(Government Code § 910)**

TO THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY:

YOU ARE HEREBY NOTIFIED that: (PLEASE TYPE OR PRINT)

Claimant: CARTER MORROW

Whose address is: 4166 SULLIVAN RD.

City and State: MARIPOSA, CALIF. Zip: 95338

claims damages from the **COUNTY OF MARIPOSA** in the amount, computed as of the date of presentation of this claim, of \$14,003.00.

This claim is based on: (CHECK APPROPRIATE BOX OR BOXES)

Property Damage Other (LIST)

Personal Injury CALIF PEPAL CODE 1540

Contract CALIF STATE HEALTH & SAFETY CODE SECTION 11473.5

which occurred on 8-29-02, 2002, in the vicinity of:
(MONTH/DAY)

4166 SULLIVAN RD. MARIPOSA, CA 95338
(PLACE WHERE INCIDENT OCCURRED)

Describe generally the facts and circumstances that give rise to the claim:
(PLEASE USE BACK OF THIS PAGE IF MORE SPACE IS NEEDED.)

7 MEDICAL MARIJUANA PLANTS AFTER PRESCRIPTION WAS
ACKNOWLEDGED. SMALL QUANTITY OF MEDICINAL MARIJUANA
(QUANTITY IN POLICE REPORT)

The name(s) of the public employee(s) causing claimant's injuries or damages under the above-described circumstances is/are:

ROBERT H BROWN DISTRICT ATTORNEY

The injuries sustained by claimant, as far as known, as of the date of presentation of this claim consist of: (DESCRIBE GENERALLY CLAIMANT'S INJURIES OR DAMAGES)

NAUSEA, ANOREXIA, PAIN AND SUFFERING, STRESS

The amount claimed, as of the date of presentation of this claim is computed as follows:

Damages incurred to date:

Expenses for medical and hospital care \$ _____

Loss of earnings \$ _____

Specific damages (ITEMIZE)

COST OF PROPERTY NOT RETURNED \$ 14,003.00

_____ \$ _____

Other damages (ITEMIZE)

REPLACEMENT PRESCRIPTION \$ _____

_____ \$ _____

TOTAL DAMAGES INCURRED TO DATE: \$ 14,003.00

Estimated future damages as far as known from this incident:

Total estimated prospective damages: \$ _____

TOTAL AMOUNT CLAIMED AS OF DATE

OF PRESENTATION OF THIS CLAIM: \$ 14,003.00

All notices or other communications with regard to this claim should be sent to claimant at: 4166 SULLIVAN RD. MARIPOSA, CA 95338

(ADDRESS TO WHICH NOTICES ARE TO BE SENT)

Dated: 7-23-03

Signed: [Signature]

(CLAIMANT/AGENT FOR CLAIMANT)

Government Code § 911.2. Time of or presentation of claims

A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with § 915) of this chapter not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with § 915) of this chapter not later than one year after the accrual of the cause of action.



OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA

ROBERT H. BROWN, District Attorney

Kimberly A. Fletcher
Deputy District Attorney

Shaun Quinn
Deputy District Attorney

MEMORANDUM

Date: August 5, 2003
To: JEFF GREEN, County Counsel
From: ROBERT H. BROWN, District Attorney
Re: Mariposa County Claim No. C03-6
Carter Morrow

Our office received an incident report on September 16, 2002, from the Mariposa County Sheriff's Office, with respect to Carter Morrow for violation of California Health and Safety Code Section 11358 - cultivation of marijuana. On October 7, 2002, our office filed criminal charges for this offense. Ms. Morrow subsequently provided information that she came within provisions of California Health and Safety Code Section 11362.5. Once our office was in receipt of all relevant information and was satisfied that Ms. Morrow, in fact, had an affirmative defense within the meaning of California Health and Safety Code Section 11362.5, our office dismissed the case.

The recent 2002 case, of *People vs. Fisher* (96 Cal. App. 4th 1147) (enclosure) clearly pointed out that this code section, as to the offense of marijuana cultivation, "simply gives those arrested a defense in court, if they can prove they used marijuana with a doctor's approval." The Court further stated that this "exception constitutes an affirmative defense to be proven by the defendant at trial."

It is clear to me that a person who has a valid medical prescription/certification for possession and/or cultivation of medical marijuana and, in fact, does possess and/or cultivates marijuana is not immune from search, seizure, arrest and prosecution for those crimes, which are prescribed in Health and Safety Code Sections 11357 and 11358. That person simply has an affirmative defense that may be raised by him or her at trial.

Jeff Green
August 5, 2003
Page Two

Following the dismissal of charges against Ms. Morrow, and in accordance with our office policy we sent an evidence release to the Mariposa County Sheriff's Office indicating that all evidence that is not contraband may be returned to the owner.

Subsequently Ms. Morrow came to this office and requested that I agree to the return of her marijuana. I explained that the District Attorney's Office has never been in possession of her marijuana nor did I have any authority to order the return of it. I further explained that I had exercised my discretion to dismiss the case and had accepted her defense, now, as a practical matter, rather than have her prove it at trial.

I explained that while California law provided her with a defense at trial, to possess and/or cultivate marijuana, the Federal law did not. This office would not assist in her recovery of the seized marijuana since, in my view, to provide such aid would be a violation of Federal law.

RHB/bh

Enclosure

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JEFFREY G. GREEN
County Counsel
P.O. Box 189
5100 Bullion Street
Mariposa, CA 95338

BEFORE THE BOARD OF SUPERVISORS
OF
MARIPOSA COUNTY, STATE OF CALIFORNIA

In the Matter of:)
) CLAIM NO. 03-6
CLAIM FOR DAMAGES PURSUANT)
TO GOVERNMENT CODE § 911.6)
_____)

CARTER MORROW, 4166 Sullivan Road, Mariposa, California, having filed with this Board on July 23, 2003, a claim for damages in an amount of \$14,003.00.

NOW, THEREFORE, IT IS ORDERED by the Board of Supervisors that the claim is hereby rejected.

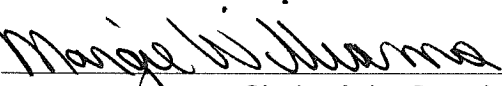
The foregoing order was passed by the following vote of the Board:

- AYES: BALMAIN, BIBBY, PARKER, PICKARD
- NOES: NONE
- ABSENT: NONE
- ABSTAINED: STETSON

Dated this 26th day of August, 2003.



BOB PICKARD, Chair
Board of Supervisors

ATTEST:


MARGIE WILLIAMS, Clerk of the Board

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TO: Carter Morrow
4166 Sullivan Road
Mariposa, CA 95338

RE: CLAIM FOR DAMAGES (CARTER MORROW - CLAIM NO. C03-6)
AMOUNT OF CLAIM: \$14,003.00
NOTICE OF REJECTION

NOTICE IS HEREBY GIVEN that the claim, which you presented to the Board of Supervisors of Mariposa County on July 23, 2003 was rejected by action of the Board on August 26, 2003.

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 § 945.6)

"NOTE: This six-month filing period applies only to State Court actions. If your action is based on federal law and/or you intend to file it in Federal Court, a shorter or longer period within which to file the action may apply."

"You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately."

JEFFREY G. GREEN
Mariposa County Counsel

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA, COUNTY OF MARIPOSA:

I am a citizen of the United State and a resident of the County aforesaid. I am over the age of eighteen years and not a party to the within entitled action; my business address is 5100 Bullion Street (P.O. Box 189), Mariposa, CA 95338. On September 16 2003, I served the within Notice of Rejection of Claim on the claimant in said action by placing a true copy in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing a copy into an inter-office delivery receptacle located in Counsel's office:

Carter Morrow
4166 Sullivan Road
Mariposa, CA 95338

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on September 16, 2003 at Mariposa, California.


Rhonda Scherf