

City of Calistoga

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Staff Report

TO: Honorable Mayor and City Council Members
FROM: Richard Spitler, City Manager
DATE: June 16, 2015
SUBJECT: Consideration of a Resolution rejecting the Claim of Brian John Deutsch and Jennifer Deutsch for an Undetermined Amount.

APPROVAL FOR FORWARDING:


Richard D. Spitler, City Manager

1 **ISSUE:** Consideration of a Resolution rejecting the Claim of Brian John Deutsch
2 and Jennifer Deutsch for an undetermined amount.
3

4 **RECOMMENDATION:** Adopt Resolution rejecting damages claim and forward
5 to the City's liability insurance carrier.
6

7 **BACKGROUND / DISCUSSION:** On June 1, 2015, a claim was filed against the
8 City of Calistoga related to a traffic accident on December 4, 2015. On June 3,
9 2015, the claimants filed a "First Amended" claim against the City of Calistoga
10 related to a traffic accident on December 4, 2014, (see Attachment 2) with City
11 employee Michael Perreault. The claimants are:

12 Brian John Deutsch

13 Jennifer Deutsch

14 They are represented by attorney Michael Watters. They claim damages in
15 excess of \$10,000. The claim states the City of Calistoga has responsibility due
16 to an unknown specific supervisor allowing the employee to work excessive
17 hours and then allowing him to drive home. Staff believes there is no factual
18 basis to justify this claim.
19

20 **ATTACHMENTS:**

- 21 1. Resolution
22 2. First Amended Claim for Damages: Brian John Deutsch and Jennifer
23 Deutsch

RESOLUTION 2015- XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA, REJECTING THE CLAIM OF
BRIAN JOHN DEUTSCH AND JENNIFER DEUTSCH FILED AGAINST THE
CITY OF CALISTOGA FOR AN UNDETERMINED AMOUNT

BE IT RESOLVED by the City Council of the City of Calistoga that the Claim for
alleged damages dated June 3, 2015 is hereby rejected.

DULY AND REGULARLY ADOPTED this 16th day of June 2015, by the
following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

CHRIS CANNING, Mayor

ATTEST:

KATHY FLAMSON, City Clerk

CLAIM NO. 2015-01

CITY CLERK

FIRST AMENDED

CLAIM AGAINST PUBLIC ENTITY:

JUN - 3 2015

(City Use Only)

Date Received: June 3, 2015

By: Kathy Flamm
City Clerk

Claim Number: 2015-01

CITY OF CALISTOGA

RECEIVED

THE UNDERSIGNED HEREBY PRESENTS THE FOLLOWING CLAIM AGAINST THE CITY OF CALISTOGA IN ACCORDANCE WITH THE PROVISIONS OF GOVERNMENT CODE SECTION 910.

1. Name of Claimant: Brian John Deutsch and Jennifer Deutsch Date of Birth: [REDACTED]

Address of Claimant: [REDACTED]
Street City, State, Zip

Social Security Number: [REDACTED]

Telephone Number: Work: Home: [REDACTED]

2. The address to which notices from the City are to be directed (if different than above):
c/o Michael G. Watters/O'Brien Watters & Davis, LLP, Attorneys at Law
P.O. Box 3759, Santa Rosa, CA 95402-3759

3. Date of Incident: 12/4/2014 Time of Incident: 6:18 a.m.

4. Location of Incident: SR 29; .2 mile south of Old Lawley Toll Road, unincorporated Napa County

5. Description of Incident or Accident, including your reason for believing the City is liable for your damages: See attachment.

CLAIM AGAINST PUBLIC ENTITY:

CITY OF CALISTOGA

6. Description of all damages you believe you have incurred as a result of the incident: _____
Severe head injury - in a coma for several weeks, head laceration, brain bleed,
_____ spine injury, permanent need for life care. Brian Deutsch's wife, Jennifer Deutsch has
_____ suffered loss of consortium.

7. Name(s) of any public employee(s) causing the injury, damage or loss you are claiming:
Michael Perreault was driver, unknown specific supervisors responsible for allowing him to work
_____ excessive hours and then allowing him to drive home.

8. As of the date of the presentation of this claim, please indicate the following:

a) The dollar amount of my claim is less than \$10,000 and I am claiming a total of
\$ _____.

The dollar amount of my claim is more than \$10,000. The court that has jurisdiction over this
claim is.

Municipal Court

Superior Court
Unlimited Civil

9. If this is a claim for indemnity, on what date were you served with the underlying lawsuit?

n/a

O'Brien Watters & Davis, LLP by Michael G. Watters

Type or Print Signature of Claimant or Representative



Signature of Claimant or Representative

June 3, 2015

Date

Attachment to Government Code Amended Claim Form

Item 5:

City of Calistoga Police Officer Michael Perreault was on duty and had worked two or more consecutive shifts and had worked more than the maximum hours allowed in the 48 hours authorized by contract/agreement or law as of 06:18 a.m. on 12-4-14.

The Chief of Police of the City of Calistoga, and/or his designated representative worked Officer Michael Perreault beyond the normal limits of human endurance. He, she or they knew or should have known that Officer Michael Perreault resided in Hidden Valley, CA, and that he commuted back and forth to his home on SR 29, a steep, windy, narrow and potentially treacherous two-lane road. He, she or they knew or should have known it was foreseeable that Officer Michael Perreault, on the day in question, would not be as sharp or focused as he should have been that day on the drive home and that it was foreseeable, if not likely, he would lose control of his vehicle and/or fall asleep at the wheel causing a collision. It is well known that a person who is driving without adequate sleep is as poor at driving as a driver under the influence of alcohol.

The City of Calistoga Police Department negligently over-worked Officer Michael Perreault and thereafter negligently allowed him to drive home on 12-4-14. That day, after completing his assignment, Officer Perreault, drove in excess of a speed that was safe for the conditions, apparently dozed off and/or fell asleep, losing control of his car, crossed over the double yellow center line into the oncoming lane and crashed head on into plaintiff Brian John Deutsch who suffered a severe brain injury.

Claimants allege that Officer Perreault, while commuting on 12-4-14 was running an errand or was on a special mission for the City of Calistoga. In addition, the City of Calistoga incidentally benefited from Officer Perreault's commute. Further, the City of Calistoga required Officer Perreault to drive to and from his place of duty so that his vehicle was available for City of Calistoga business. Moreover, the City of Calistoga required Officer Perreault to wear his uniform and render emergency assistance while driving to and from work. The City of Calistoga compensated him for travel time to and from work. As alleged above, Officer Perreault's activities at work were a substantial factor in causing the accident which is the subject of this claim. The foregoing are all recognized exceptions to the so called "going and coming" rule.

The City of Calistoga benefited from Office Michael Perrault's services prior to 06:18 on 12-4-14 and now the City of Calistoga should be responsible for the consequences of same because of its understaffing the City of Calistoga Police Department.

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PROOF OF SERVICE

Code of Civil Procedure Section 1013a(3), 2015.5

I declare that:

I am over the age of eighteen years, and am not a party to this action. My business address is Fountaingrove Corporate Centre I, 3510 Unocal Place, Suite 200, Santa Rosa, CA 95403, which is located in the county where this mailing described below took place.

On June 3, 2015, at my place of business at Fountaingrove Corporate Centre I, 3510 Unocal Place, Suite 200, Santa Rosa, CA 95403, I served the attached:

DOCUMENTS: FIRST AMENDED CLAIM AGAINST PUBLIC ENTITY: CITY OF CALISTOGA

ADDRESSED TO:

Richard Spittler, City Manager
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Kathy Flamson, City Clerk
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

(BY CERTIFIED MAIL) I placed each such sealed envelope, with postage thereon fully prepaid, on the date of execution of this declaration, with our office outgoing mail following ordinary business practices. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

(BY PERSONAL SERVICE) I caused each such envelope to be delivered by hand to the addressee(s) noted above.

(BY FACSIMILE) I caused the said document to be transmitted to Facsimile machine to the number indicated above.

(BY OVERNIGHT MAIL SERVICE) I caused each such envelope to be delivered by FedEx service to the addressee(s) noted above.

(BY E-MAIL) I e-mailed said document to the e-mail address(es) indicated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 3, 2015.


Elena Herrera