RECOMMENDED ACTION AND JUSTIFICATION: Deny application for leave to present late claim of Dawnetta Soares and Melvin Johnson. Through their attorney, Ms. Soares and Mr. Johnson have filed a claim for alleged damages which they claim were caused by the County’s Building Director in 2006.

The Government Code requires that claims of this nature be filed within six months of the cause of action. The code also allows for the claimant to ask to apply for consideration of the claim if it is filed late. However, the code also specifies that a late claim must be filed within one year (G.C. Section 911.4(b)).

Since the claim is for damages which were allegedly caused in 2006 the application for leave to present late claim should be denied.

BACKGROUND AND HISTORY OF BOARD ACTIONS: We are not aware of a similar late claim application being submitted in the past.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION: If your Board does not deny the application to file a late claim and it is found that you are able to consider the claim, the Soares and Johnson claim will be brought to your Board for consideration.

Financial Impact? ( ) Yes ( ) No Current FY Cost: $ Annual Recurring Cost: $
Budgeted In Current FY? ( ) Yes ( ) No ( ) Partially Funded
Amount in Budget: $ Additional Funding Needed: $
Source: Internal Transfer
Unanticipated Revenue 4/5's vote
Transfer Between Funds 4/5's vote
Contingency 4/5's vote
( ) General ( ) Other

LEGISLATURE ONLY:
Res. No.: 2008-13 Ord. No. ______
Vote - Ayes: ______ Noes: ______
Absent: ______
( ) 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: ______
MARIPOSA COUNTY RESOLUTION No. 08-533

A RESOLUTION REGARDING THE REQUEST TO PRESENT A LATE CLAIM OF
DAWNETTA SOARES AND MELVIN JOHNSON

WHEREAS, Government Code Section 911.2 requires a claim against a government entity to be filed within six (6) months from the date wherein the cause of action against the government entity arises; and

WHEREAS, Government Code Section 911.4(b) requires a claimant to file an application to present a late claim within one (1) year of the accrual of a cause of action against a government entity; and

WHEREAS, a claim was filed on behalf of claimants Dawnetta Soares and Melvin Johnson against the County of Mariposa (Claim No. 08-5) on August 27, 2008; and

WHEREAS, the cause of action as described in the claim filed by the claimants accrued on June 9, 2006; and

WHEREAS, claimants’ claim was rejected as a late claim pursuant to Government Code Section 911.2 on September 3, 2008; and

WHEREAS, claimants’ application to present a late claim was filed on October 8, 2008.

NOW, THEREFORE, BE IT RESOLVED by the Mariposa County Board of Supervisors, a political subdivision of the State of California that the claimants’ claim was filed more than one (1) year after the accrual of the cause of action; and the Board of Supervisors hereby declares that pursuant to Government Code Section 911.4(b) that it lacks jurisdiction to approve the application to present a late claim.

PASSED AND ADOPTED by the Mariposa County Board of Supervisors this 10th day of November, 2008, by the following vote:

AYES: ABORN, TURPIN, BIBBY, FRITZ, PICKARD
NOES: NONE
ABSENT: NONE

[Signature]
Lyle Turpin, Chair
Mariposa County Board of Supervisors

ATTEST:

[Signature]
Margie Williams
Clerk of the Board

APPROVED AS TO FORM:

[Signature]
Jeffrey G. Green
Interim County Counsel
COUNTY of MARIPOSA
P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

LYLE TURPIN, CHAIR
DIANNE A. FRITZ, VICE CHAIR
BRAD ABORN
JANET BIBBY
BOB PICKARD

DISTRICT II
DISTRICT IV
DISTRICT I
DISTRICT III
DISTRICT V

MARIPOSA COUNTY BOARD OF SUPERVISORS
MINUTE ORDER

TO: RICHARD J. BENSON, CAO
FROM: MARGIE WILLIAMS, Clerk of the Board
SUBJECT: Deny Application for Leave to Present Late Claim of Dawnetta Soares and Melvin Johnson

RESOLUTION 08-533

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on November 10, 2008

ACTION AND VOTE:

Deny Application for Leave to Present Late Claim of Dawnetta Soares and Melvin Johnson (County Administrative Officer/Personnel/Risk Manager)

BOARD ACTION: Rick Benson advised of the request for submittal of a late claim; and he recommended that the Board adopt a resolution stating that the Board does not have jurisdiction to address this claim due to its lateness based on the recommendation of County Counsel. (M)Pickard, (S)Aborn, Res. 08-533 was adopted stating that the Board does not have jurisdiction to address this claim due to its lateness/Ayes: Unanimous.

Cc: Sandi Laird, Personnel
File
October 8, 2008

Board of Supervisors
Mariposa County
Post Office Box 784
Mariposa, CA 95338

Re: John E. Davis
4815 Ridgetop Road, Mariposa

Dear Board of Supervisors,

Please consider this letter a request in accordance with Government Code § 911 et sec. Please review my enclosed letter dated August 13, 2008 and my enclosed letter dated September 9, 2008 as well as my clients Melvin Johnson and Dawnetta Soares’s claim pursuant to Government Code §910.

I ask that the Board grant this application for leave to present claim for the reasons set forth in my attached correspondence and reliance on Government Code §911.6(b)(1).

Thank you in advance for your prompt consideration.

Respectfully,

PASCUZZI, MOORE & STOKER

Harry Pascuzzi

HP/kd
Enclosures
cc: Dawnetta Soares
    Melvin Johnson
September 9, 2008

Richard J. Benson
County Administrative Officer
Post Office Box 784
Mariposa, CA 95338

Dear Mr. Benson,

Thank you for your letter dated September 3, 2008. Please be advised that this matter has already been submitted to the county. My clients, immediately upon learning the facts set forth in my letter dated August 13, 2008 submitted claims to the district attorney’s office and the sheriff’s office. Both the district attorney and the sheriff are County officials. Neither office advised my client that they should submit a form to your department and my clients worked with the departments and diligently waited for their results. Now that the investigations have concluded I chose to formalize their complaint in accordance with Government Code section 910.

Once again I ask you to accept the claim and process it in an orderly fashion.

All the questions required of a claimant in Government Code section 910 were answered by my clients to the district attorney and sheriffs office. If you have any questions please do not hesitate to contact me.

Respectfully,

Pascuzzi, Moore & Stoker

Harry Pascuzzi

HP/kd
Enclosures
cc: Dawnetta Soares
    Melvin Johnson
COUNTY OF MARIPOSA CLAIM FORM

CLAIM OF Melvin Johnson & Dawn Soares
(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: Melvin Johnson/Dawn Soares

Whose address is: 141 Buttonwood Dr./Post Office Box #614

City and State: Jackson, TN/ Mariposa, CA Zip: 38305/95338

claims damages from the COUNTY OF MARIPOSA in the amount, computed as of
the date of presentation of this claim, of $85,000.00.

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

< > Property Damage < > Other (LIST)
< > Personal injury $85,000.00
< > Contract

which occurred on June 9, 2006, in the vicinity of:

4815 Ridgetop Road

(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.)

SEE ATTACHED LETTER

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

John E. Davis
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)
SEE ATTACHED LETTER

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 & PROVIDE 3 REPAIR ESTIMATES)**

Loss of property value

$85,000.00

Other damages (ITEMIZE)

$__________

$__________

**TOTAL DAMAGES INCURRED TO DATE:**

$85,000.00

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:**

$__________

All notices or other communications with regard to this claim should be sent to claimant at:

Harry Pascuzzi
2377 W. Shaw Avenue, Suite #201, Fresno, CA 93711

(Address to which notices are to be sent)

Dated: 8-27-2008  Signed:

(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.
VIA U.S. MAIL

Thomas Guarino, County Counsel  
County of Mariposa  
PO Box 189  
Mariposa, CA 95338

John E. Davis & Dolores M. Davis  
4773 Ridgetop Road  
PO Box 1669  
Mariposa, CA 95338

Dear Mr. Guarino, Mr. & Mrs. Davis, Mr. & Mrs. Casner:

My firm has been retained by Melvin Johnson and Dawn Soares, prior owners of 4815 Ridgetop Road in Mariposa, California. The purpose of this letter is to comply with Government Code §910 and set forth a claim on the behalf of my clients for compensation as described herein.

County records indicate on June 9, 2006, David P. and Marian A. Casner acquired from my client’s, Melvin Douglas Johnson and Dawnetta Sue Soares, the property located at 4815 Ridgetop Road, by document number 2063406, for purchase price of $150,000. On December 29, 2006, David P. and Marian A. Casner transferred the same property to John E. Davis and Dolores M. Davis, by document 2067601, for the same purchase price of $150,000. County records also indicate several other business transactions and property transactions between Mr. & Mrs. Davis and Mr. & Mrs. Casner.

During all relevant times, before, during and after the process of selling the property, Mr. Davis was Acting Director of the Mariposa County Building Department. Beginning with a letter dated March 3, 2006 from Jack Winters, Building Official in Mr. Davis’ department, a series of violations were cited resulting in a 13-item correction notice signed by Mr. Winters dated March 30, 2006, based on an inspection conducted by John Davis and Jack Winters.

Due to the volume of correspondence and discussions with the County of Mariposa’s Building Department, my client’s were under siege to immediately take corrective action which, in their mind totaled from $75,000 to upwards of $200,000 to take care of all County alleged grievances.
August 13, 2008
Page 2

Coincidentally, during the siege, on April 3, 2006, an offer in the amount of $130,000 was received from the Casner's to purchase the property under the guise that the property was purchased "as-is" and that the Buyer would take responsibility for all County violations. Additionally, Eileen Collins of the Mariposa Building Department advised my client's that they would have to deal with the State of California and that it would be an absolute nightmare for them. Not having the financial strength to deal with the issues raised by the County, my client's succumbed to the pressure and agreed to sell the property and did close escrow, for a price of $150,000 well below the listed price of $235,000.

It only takes pulling aside a thin veil to reveal that Mr. Casner and Mr. Davis acted in concert, and in conspiracy, to acquire the Soares/Johnson property for far less than fair market value. After making modest repairs and improvements to the property, Mr. Davis put the property up for sale for $275,000 with Kim Cole of Cole Real Estate.

To evidence the conspiracy, the Deed from the Casner's to the Davis' was signed on September 8, 2006, but not recorded until December 29, 2006. In the interim, Mr. Casner signed for permits on September 22, 2006 and then processes County approvals in his name, rather than Mr. Davis' name. Further evidence of the conspiracy is based on the fact Mr. Davis acquired no title insurance when acquiring the property and acquired it for the same price the Casner's purchased it for. Further Mr. Davis announced his retirement from the County effective March 28, 2008 but continues to serve as paid consultant. On September 22, 2007, after the case was referred to the Mariposa County District Attorney’s office, the file disappeared and later the Building Department file was sealed.

My client's seek the difference between the listed price of $235,000 and the $150,000 purchase price paid by the Casner's plus, if litigation is necessary, punitive damages, attorneys fees and costs pursuant to the purchase agreement. My client's prefer to resolve this matter without litigation, but will resort to litigation if necessary. My client’s contact information is, but, we require all communication be through my firm, Dawn Soares, 4796 Ridgetop Road, Mariposa, California 95338 and Melvin Johnson, 141 Buttonwood Drive, Jackson, Tennessee 38305. All Notices shall be sent to: Harry Pascuzzi, Attorney at Law, Pascuzzi, Moore & Stoker, 2377 W. Shaw, Ste. 201, Fresno, CA 93711. We ask for your response on or before Friday, August 22, 2008.

Respectfully,

PASCUZZI, MOORE & STOKER
ATTORNEYS AT LAW, APC

Harry Pascuzzi

HP:ym
cc: Jacob Weisberg, Esq.: Melvin Johnson; Dawn Soares