

97-123

MARIPOSA COUNTY
BOARD OF SUPERVISORS

AGENDA
ACTION FORM

DATE: April 15, 1997
AGENDA ITEM NO.: CA-2

DEPARTMENT: County Counsel BY: Jeffrey G. Green PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes___ No X)

Authorize the Chairman to sign an order of the Board to reject Claim No. C97-5, which was filed with this Board on March 6, 1997, for an undetermined amount. Claimant contends that he was assaulted and battered by other students on a school bus. This claim does not impact any County services as the bus is operated by the Mariposa County Unified School District and is a separate entity from the County of Mariposa. A letter to the claimant's attorney relative to denial of the claim is included in this package. The County does not have any liability in this matter.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

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

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Claim would automatically be denied if no action was taken.

COSTS: (X) Not Applicable

A. Budgeted current FY \$ _____

B. Total anticipated costs \$ _____

C. Required additional funding \$ _____

D. Internal transfers \$ _____

SOURCE: () 4/5ths Vote Required

A. Unanticipated revenues \$ _____

B. Reserve for contingencies \$ _____

C. Source description: _____

Balance in Reserve for Contingencies, if approved: \$ _____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:

Claim No. C97-5.
Letter to Attorney Wallace dated April 1, 1997.
Notice of Rejection of Claim.

CLERK'S USE ONLY:

Res. No.: 97-123 Ord. No. _____

Vote - Ayes: 5 Noes: _____

Approved _____ Abstained: _____

() 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

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:

Recommended

Not Recommended

For Policy Determination

Submitted with Comment

Returned for Further Action

Comment: _____

A.O. Initials: Jh

1 JEFFREY G. GREEN
County Counsel
2 P. O. Box 189
3 5100 Bullion St.
Mariposa, CA 95338

4 BEFORE THE BOARD OF SUPERVISORS

5 OF

6 MARIPOSA COUNTY, STATE OF CALIFORNIA

7
8 In the Matter of:)
9 CLAIM FOR DAMAGES PURSUANT) CLAIM NO. C97-5
10 TO GOVERNMENT CODE § 911.6)
11)

12 Mitchell Andrew Welker c/o Canelo, Hansen, Wilson, Wallace & Padron
13 P.O. Box 2165
Merced, CA 95344-0165


14 having filed with this Board on March 6, 1997, a claim for damages for an undetermined
15 amount.

16 NOW, THEREFORE, it is ordered by the Board of Supervisors that the claim is hereby
17 REJECTED.

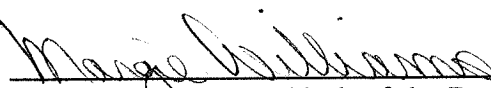
18 The foregoing order was passed by the following vote of the Board:

19 AYES: REILLY, BALMAIN, STEWART, PARKER, PICKARD
20 NOES: NONE
21 ABSENT: NONE
22 ABSTAINED: NONE

23 Dated this 15th day of April, 1997.

24 
25 ROBERT C. STEWART, Chairman
26 Board of Supervisors

27 ATTEST:

28 
MARGIE WILLIAMS, Clerk of the Board

TO: Mitchell Andrew Welker c/o Canelo, Hansen, Wilson, Wallace & Padron
P.O. Box 2165
Merced, CA 95344-0165

RE: CLAIM FOR DAMAGES (Claim No. C97-5) AMOUNT OF CLAIM: Undetermined
NOTICE OF REJECTION

NOTICE IS HEREBY GIVEN that the claim, which you presented to the Board of Supervisors of Mariposa County on March 6, 1997 was rejected by action of the Board on April 15, 1997.

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.)

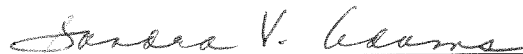
STATE OF CALIFORNIA, COUNTY OF MARIPOSA:

I am a citizen of the United States 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 May 5, 1997, I served the within Notice of Rejection of Claim No. C97-4 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:

Mitchell Andrew Welker c/o Canelo, Hansen, Wilson, Wallace & Padron
P.O. Box 2165
Merced, CA 95344-0165

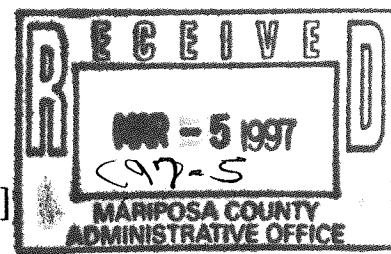
I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on May 5, 1997 at Mariposa, California.



Sandra V. Adams

CLAIM AGAINST PUBLIC ENTITY
[Government Code Sections 905, 905.2, 910, 910.2]



TO THE COUNTY OF MARIPOSA, THE MARIPOSA COUNTY UNIFIED SCHOOL DISTRICT; THE COUNTY OF MARIPOSA SCHOOL DISTRICT DEPARTMENT OF TRANSPORTATION,

Mitchell Andrew Welker hereby makes claim against the County of Mariposa, the Mariposa County Unified School District, and the Mariposa County School District Department of Transportation, and makes the following statements in support of the claim:

1. Claimant's address is 4477 S. Hwy 49, Mariposa CA 95338.
2. Notices concerning this claim should be sent to Mitchell Andrew Welker, c/o Andrew Welker, c/o CANELO, HANSEN, WILSON, WALLACE & PADRON, Professional Corporation, P.O. Box 2165, Merced, California, 95344-0165.
3. The date and place of the occurrence giving rise to this claim are on or about January 3, 1997, and January 9, 1997, in a vehicle belonging to the above-named public entities, while situated and operated in the County of Mariposa, California.
4. The circumstances giving rise to this claim are as follows:

At all times mentioned herein, Karen Hibphsim, was a school bus driver, employee, and agent of the County of Mariposa, The County of Mariposa School District, and the County of Mariposa School District Department of Transportation, and all of the acts complained of herein were committed during the course and scope of said agency and employment. At all times mentioned herein, claimant, a minor, was a student of, and entrusted to the care, custody, and control of the above-named public entities, and their employees and agents, including Karen Hibphsim. On or about January 3, 1997, Karen Hibphsim, permitted, allowed, and failed to control students on a school bus owned and operated by the above-named public entities, and further permitted, allowed, encouraged, and failed to control said students to the point of allowing one of the students to assault and batter claimant, physically ejecting him from the vehicle. Thereafter, Karen Hibphsim, did nothing to control, punish, or otherwise prevent further instances of violence against claimant by other students on the school bus, which students were also in the care, custody, and control of the above-named public entities and Ms. Hibphsim. On or about January 9, 1997, Ms. Hibphsim, again permitted, encouraged, and failed to stop students in her custody and control from assaulting and battering claimant. In fact, on or about January 9, 1997, Ms. Hibphsim gave a student duct tape for the specific purpose of having said student tape the face, head, and mouth of claimant. At all times mentioned herein, Karen Hibphsim was an active participant in the above-described acts, acting in concert with the other actors as described herein.

As a direct result of the acts of the aforesaid employees and agents of the County of Mariposa, Mariposa County School District, and the Mariposa County School District Department of Transportation, claimant suffered physical injuries to his face, and suffered severe emotional trauma, fear, embarrassment, and humiliation. Claimants claim will be based on vicarious liability, intentional tort, negligence, and

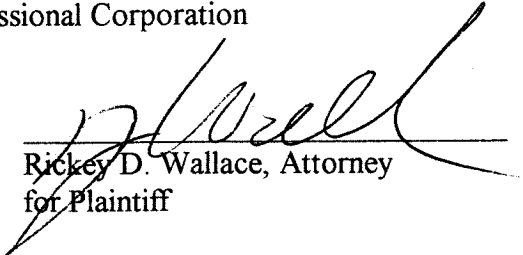
intentional and negligent infliction of emotional distress.

5. Claimant suffered severe embarrassment, humiliation, and emotional distress, injury to his reputation, loss of his liberty and freedom, and loss of his civil rights.
6. This claim, as of the date of this claim, is in an amount that would place it within the jurisdiction of the Superior Court. The claim is based on injuries to Claimant's person, and psyche, loss of claimant's liberty and freedom, loss and injury to Claimant's civil rights, punitive damages and general damage in an amount to be proven later.

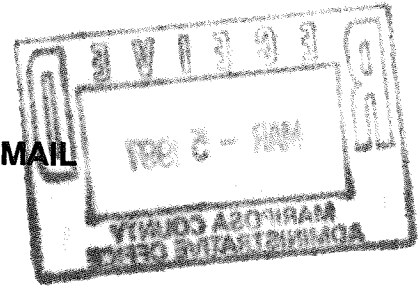
DATED: February 27, 1997

CANELO, HANSEN, WILSON,
WALLACE & PADRON
Professional Corporation

By:


Rickey D. Wallace, Attorney
for Plaintiff

PROOF OF SERVICE BY CERTIFIED AND REGULAR MAIL
(Section 1013a, 2015.5 CCP)



COUNTY OF MERCED)
STATE OF CALIFORNIA) ss.

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is: 548 West 21st Street, Merced, California. I served the within:

CLAIM AGAINST PUBLIC ENTITY
[Government Code §§905, 905.2, 910, 910.2]

on each person named below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. Date of Deposit: March 4, 1997. Place of Deposit (city/state): Merced, California.

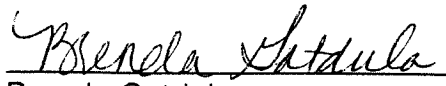
Mariposa County Board of Supervisors
Post Office Box 784
Mariposa, California 95338

Mariposa County Unified School District
Post Office Box 8
Mariposa, California 95338

Mariposa County School District
Department of Transportation
Post Office Box 8
Mariposa, California 95338

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

Date: March 4, 1997


Brenda Gatdula

OFFICE OF



JEFFREY G. GREEN
County Counsel
(209) 966-3222

P. O. Box 189
Mariposa, CA 95338
FAX (209) 966-5147

The County Counsel
MARIPOSA COUNTY
April 1, 1997

Ricky D. Wallace, Esq.
Canelo, Hansen, Wilson, Wallace & Padron
P.O. Box 2165
Merced, CA 95344-0165

Re: Mariposa County Claim No. C97-5
Claimant: Mitchell Andrew Welker

Dear Mr. Wallace:

Please be advised that I have checked with all of the offices in the County that deal with transit services provided by Mariposa County. This is to advise you that the claim which you filed is in no way related to any County services. Mariposa County Unified School District is a separate legal entity from Mariposa County and the County of Mariposa has no relationship with the School District relative to the operation of their buses or any other venture of the School District.

This is to place you on notice that the County has no involvement or exposure relative to the claim which you filed in the above matter. Therefore, should you pursue this matter in terms of litigation against the County, we will move to dismiss the action and vigorously seek attorney's fees for having to defend the action after you have been placed on notice that the County is not in any way involved in this matter.

Should you have any questions regarding this matter, please feel free to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeff Green". The signature is written in a cursive, flowing style.

Jeffrey G. Green
County Counsel