



COUNTY OF HUMBOLDT
CLAIM FOR DAMAGES



PLEASE COMPLETE BOTH PAGES OF THIS FORM AND BE SURE IT IS DATED AND SIGNED.

This claim must be filed with the Clerk of the Board of Supervisors within six (6) months after the accident or event. Where space is insufficient, please use additional paper and identify information by paragraph number. When the claim is complete, bring or mail to: **Humboldt County Clerk of the Board, Courthouse, 825 5th Street, Room 111, Eureka, California 95501-1153.**

CLAIMANT

Name: Marcia Kitchen
Address: c/o Patrik Griego, Esq., JANNSEN MALLOY LLP
730 Fifth St, Eureka, CA 95501
Telephone: (707) 476.2286
SSN: _____
DOB: 8/27/1977

The undersigned respectfully submits the following claim and information:

1. Mailing address to which claimant desires notices to be sent, if other than above:
n/a
2. Date, time and place of occurrence or transaction which gives rise to this claim:
Date: July 12, 2016
Time: 9:15 p.m.
Place: According to TCR: .2 miles south of Kenmar Rd on Eel River Dr with milepost info (.6 miles north of 3G 170 0.88 and GPS coordinates of Lat. 40.57260 and Long. -124.14771
3. Specify the particular act/omission and circumstances which you believe caused the injury and/or damage:
Please see attachment.
4. Name(s) of employee(s) of County of Humboldt that you believe caused the injury/loss:
Claim under investigation.

5. Description of property damaged:
Claim under investigation.

6. Owner of property damaged:
Claim under investigation.

7. Description of personal injury (if no personal injury, please state "None"):
Please see attachment.

8. Name(s) of any other person(s) injured:
Please see attachment.

9. Names, addresses and telephone numbers of witnesses, doctors, hospitals, etc.:
 - a) Claim under investigation.

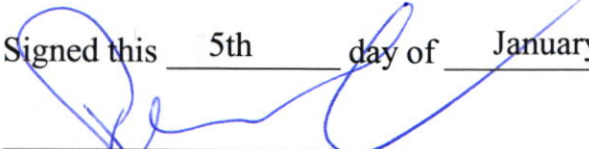
 - b) _____
 - c) _____
10. Amount of reimbursement claimed, with computation. Please attach any supporting bills, receipts, or estimates of cost:
Claim under investigation.

11. Any additional information which may be helpful in considering this claim:
Please see attachment.

WARNING! IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM (Penal Code Section 72; Insurance Code Section 556).

I have read the matters and statements made in the above claim and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Signed this 5th day of January, 2017.



CLAIMANT'S SIGNATURE

ATTACHMENT TO GOVERNMENT CLAIM FORM

KITCHEN, MARCIA

Claimant Marcia Kitchen, individually and as the surviving mother of decedent Kiya Kitchen, claims damages from the State of California, California Department of Transportation, County of Humboldt, and the City of Fortuna (Collectively "the Governmental Entities") as follows:

(A) Claimant's mailing address is: **c/o Patrik Griego, Esq., JANSSEN MALLOY LLP, P.O. Drawer 1288 Eureka, CA 95502**

(B) The mailing address to which Claimant desires notices to be sent is: **c/o Patrik Griego, Esq., JANSSEN MALLOY LLP, P.O. Drawer 1288 Eureka, CA 95502**

(C) This claim is based on the fatal injuries sustained by claimant's daughter, and the injuries attendant to the loss of Claimant's daughter.

On or about July 12, 2016, Claimant's daughter was struck and killed by a vehicle while riding a skate board on Eel River Drive, South of Kenmar in Fortuna, California. The location of the accident (ACCIDENT LOCATION), according to the traffic collision report is .2 miles south of Kenmar Road on Eel River drive with milepost information as follows: .6 miles North of 3G 170 0.88 and GPS coordinates of Latitude 40.57260 and Longitude of -124.14771.

The accident was caused by the Governmental Entities and/or its management, administrative, designers, planners, engineers, maintenance personnel, inspectors, contractors and other employees, staff, agents or contractors, acting within the course and scope of their duties and/or employment by reason of, among other things, the following acts and/or omissions:

The Governmental Entities negligently and carelessly designed, warned, failed to warn, constructed, created, maintained, repaired, owned, operated, controlled, signed, and regulated the aforementioned ACCIDENT LOCATION, thereby creating a dangerous condition. The Governmental Entities negligently and carelessly failed to properly install, maintain, repair, operate, monitor and/or control the roadway at the accident site and/or control the traffic and/or signs for motorists to perceive, react and avoid hitting pedestrians and for pedestrians to perceive, react and avoid being hit by motorists. Pedestrians traveling at the accident location would encounter vehicles traveling at high speeds from both directions and would not have adequate ability to avoid vehicles given the geometry of the roadway.

This location lacked appropriate visual cues, signage and/or warnings to warn drivers or pedestrians of the danger. The geometry of the roadway, surrounding sight barriers, curvature of the roadway, inadequate signs and inability to avoid oncoming vehicles were physical features of the location that made it dangerous. This location created a trap for motorists and for pedestrians. There was a special need of signals and signs, appropriate sight distances, shoulders, and barriers in order to reduce the risk of injury to pedestrians. There was a high volume of vehicular traffic such that the Governmental Entities knew or should have known that this was a dangerous condition of public property. In addition to the aforementioned dangerous conditions, the Governmental Entities created a dangerous condition due to:

ATTACHMENT TO GOVERNMENT CLAIM FORM

KITCHEN, MARCIA, p.2

- failure to warn of, and/or prevent and/or correct a “dangerous condition” (a condition of property that creates a substantial [as distinguished from a minor, trivial or insignificant] risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used) on, or immediately adjacent to, public property;
- failure to provide and/or maintain adequate signs, signals, devices, channelization, pavement, and striping to allow the safe movement of vehicles, pedestrians and bicyclists through the ACCIDENT LOCATION;
- failure to provide adequate sight distances for drivers and other users of the ACCIDENT LOCATION;
- setting an improper and unsafe speed limit on roadways at the ACCIDENT LOCATION
- failure to follow guidelines for design of roadway shoulders and paving and setting up a dangerous geometry at the ACCIDENT LOCATION;
- inadequate lighting;
- failure to provide and/or maintain an adequate and safe temporary or permanent median barrier at or near the ACCIDENT LOCATION;
- failure to warn of the absence of an inadequate median barrier at or near the ACCIDENT LOCATION;
- failure to provide and/or maintain adequate signs, signals, devices, dividers, pavement grooving, rumble strips, botts dots, channelization, pavement, shoulders, superlevation, guardrails, and striping at or near the ACCIDENT LOCATION;
- failure to provide and/or construct and/or maintain an adequate shoulder along both lanes of the traveled way at or near the ACCIDENT LOCATION;
- failure to provide and/or construct and/or maintain a safe surface(s) on the roadway, shoulder, median, and adjacent areas at or near the ACCIDENT LOCATION;
- improper and unsafe dumping of gravel, ground up asphalt, and other materials into the area at or near the ACCIDENT LOCATION;
- failure to warn drivers of the dangerous condition they would face when driving at the ACCIDENT LOCATION upon entry;
- failure to safely direct pedestrians at the ACCIDENT LOCATION to assist in avoiding the dangerous condition at that location;

ATTACHMENT TO GOVERNMENT CLAIM FORM

KITCHEN, MARCIA, p.3

- failure to provide a safe place for pedestrians to travel at the ACCIDENT LOCATION;
- failure to remove gravel, dirt, ground-up asphalt and other foreign materials from the median, shoulders, roadway and adjacent areas, at or near the ACCIDENT LOCATION;
- placement of and/or failure to remove vegetation in the areas of and adjacent to the ACCIDENT LOCATION which reduced recovery area and prevented drivers from perceiving oncoming pedestrians;
- creation and maintenance of a dangerous roadway;
- creation and maintenance of an unsafe location for driving given the geometry of the roadway and available sight distances based on the geometry of the area, including, but not limited to, speed of oncoming traffic in each direction;
- failure to provide and/or construct and/or maintain a safe median area, specifically the median contained materials (such as gravel, dirt, ground-up asphalt, vegetation) that reduced the coefficient of friction for cars entering the median;
- failure to prevent and/or correct and/or warn of an unsafe and dangerous drop-out between the edge of the roadway and the unpaved shoulder and between the paved roadway and the unpaved shoulder and between the paved roadway and the unpaved median at or near the ACCIDENT LOCATION;
- failure to adequately warn of the dangerous and unsafe conditions set forth above;
- failure to adequately respond to complaints about the dangerous condition of the ACCIDENT LOCATION;
- failure to adequately report complaints about the dangerous condition of the ACCIDENT LOCATION;
- failure to timely provide, amend, or revise construction at the ACCIDENT LOCATION;
- The Governmental Entities failed to reconstruct Eel River Drive properly to an overall width of thirty-six feet with six foot wide paved shoulders and twelve foot traffic lanes.
- On information and belief, the money for the reconstruction project was furnished by the Caltrans District 01 District Local Assistance Engineer under the State Transportation Improvement Program, or STIP. On information and belief, Caltrans failed to review the construction plans to ensure those plans adhered to the mandatory design standards required of the governmental entity doing the reconstruction to receive the funding for the project.

These failures, acts and omissions were inherently dangerous and created a peculiar risk and nuisance. The safe and normal function of the roadways were suspended and the Governmental Entities should have properly informed drivers and pedestrians of what to expect at a roadway with limited visibility and insufficient pavement and room for traveling and the other dangerous conditions that existed at the ACCIDENT LOCATION.

ATTACHMENT TO GOVERNMENT CLAIM FORM

KITCHEN, MARCIA, p.4

The Governmental Entities and/or its management, administrative, designers, planners, engineers, maintenance personnel, inspectors and/or other employees, staff, agents or contractors, acting within the course and scope of their duties and through negligent or wrongful acts or omissions created, or allowed to be created, a dangerous condition under Gov. Code § 835. The installation, maintenance, repair, operation, monitoring and/or control of the ACCIDENT LOCATION was done negligently, inadequately and improperly and, together with and independent of the absence of a shoulder or traffic control signals and/or sign warning motorists that there existed the dangerous condition, created a hazard, trap and dangerous condition under Gov. Code § 835. It also created a peculiar risk and trap based on, but not limited to, things listed above, creating a dangerous condition not reasonably apparent to pedestrians and motorists.

As a result of this dangerous condition Claimant's daughter was killed.

Sufficient time passed from the moment the dangerous conditions were created such that the Governmental Entities knew or should have known a dangerous condition was created and such that it had sufficient time to have remedied or warned against the dangerous condition.

The collision was foreseeable to the Governmental Entities and, yet, each of the agencies failed to warn pedestrians and drivers or remedy the dangerous condition. It is believed that notice was actually provided to the Governmental Entities such that the Governmental Entities had sufficient time to take action to remedy the dangerous conditions.

The Governmental Entities and/or its management, administrative, designers, planners, engineers, maintenance personnel, inspectors and/or other employees, staff, agents or contractors, acting within the course and scope of their duties and/or employment negligently, unreasonably and improperly owned, operated, designed, planned, engineered, maintained, inspected, repaired, failed to repair, and controlled the roadways; thereby creating dangerous conditions and exposing pedestrians and drivers to dangerous conditions. The governmental departments and agencies referred to as the Governmental Entities undertook to control the subject area, invited reliance on the subject area and are liable as it created a dangerous condition in doing so.

The aforementioned acts and omissions of the Governmental Entities created and caused dangerous conditions in that said conditions created a substantial risk of the type of injury hereinafter alleged when the Governmental Entities' property was used in a foreseeable manner.

The Governmental Entities had actual and/or constructing notice of the defective and substantially dangerous conditions a sufficient time prior to the incident to have taken measures to protect against the dangerous condition. The actual notice existed because the Governmental Entities and/or its employees and agents had actual knowledge of the existence of the condition and knew, or should have known, of its dangerous character since the Governmental Entities and/or its employees and agents owned, constructed, maintained and created by direction said condition. Constructive notice existed because the condition had existed for such a period of time and was of such an obvious nature that the

ATTACHMENT TO GOVERNMENT CLAIM FORM

KITCHEN, MARCIA, p.5

Governmental Entities, in the exercise of due care, should have discovered the condition and its dangerous character. The existence of the condition and its dangerous character would have been discovered by an inspection system that was reasonably adequate to inform the Governmental Entities whether the property was safe for the use or uses for which the Governmental Entities used or intended others to use the public property and for uses that the Governmental Entities actually knew others were making of the public property, including, but not limited to, visual inspections of the ACCIDENT LOCATION in use. During the course of any such reasonably adequate inspection, the Governmental Entities would have discovered the conditions, and their dangerous character, as listed above.

In light of the notice to the Governmental Entities and its agents and employees, the Governmental Entities' failure to adequately sign, remedy, or otherwise warn of the dangerous condition of the roadway caused a trap to exist for motorists and pedestrians approaching and proceeding on the ACCIDENT LOCATION.

The dangerous conditions created a reasonably foreseeable risk of the kind of injuries which were incurred, and (a) were created by a negligent or wrongful act or omission of an employee of the Governmental Entities; and/or (b) the Governmental Entities had actual or constructive notice of the dangerous conditions a sufficient time prior to the injury to have taken measures to protect against the dangerous conditions.

These dangerous conditions and these acts and omissions of the Governmental Entities (and its management, administrative, designers, planners, engineers, maintenance personnel, inspectors and/or other employees, staff, agents or contractors, acting within the course and scope of their duties) proximately caused the Claimant's injuries, including, but not limited to, those injuries related to the death of her daughter.

Further, these dangerous conditions were directly attributable wholly or in substantial part to a negligent or wrongful act of these employees of the Governmental Entities and these employees had the authority and the funds and other means immediately available to take alternative action which would not have created the dangerous condition; and/or these employees had the authority and it was his/her/their responsibility to take adequate measures to protect against the dangerous condition at the expense of the public entity and the funds and other means for doing so were immediately available to him/her/them, and he/she/they had actual or constructive notice of the dangerous condition a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

Further, signs, warnings, shoulders, or other devices were necessary to warn of these dangerous conditions which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care.

Further, the Governmental Entities and its employees acting within the scope of their employment undertook, gratuitously or for consideration, to avoid, remedy and/or abate these dangerous conditions. These undertakings and promises were the kind that they recognized as necessary for the protection of third persons. These entities and their employees acting within the scope of their employment failed to exercise reasonable care in the performance of these undertakings and promises, the failure to exercise

ATTACHMENT TO GOVERNMENT CLAIM FORM

KITCHEN, MARCIA, p.6

reasonable care resulted in physical harm to the third persons; and either (a) their carelessness increased the risk of such harm, or (b) the undertaking or promises were to perform a duty that the other owed to the third persons, or (c) the harm was suffered because either the other or the third persons relied on the undertaking.

Due to these acts and failures to act and dangerous conditions, the Governmental Entities and its employees are liable for Claimant's injuries under the Government Code §§, including, but not limited to, 815.2(a), 820(a), 830.8, 835 and 840.2.

(D) As far as is known at the time of the presentation of this claim, Claimant's claim damages for medical costs, and the loss of the care, comfort, and companionship of the decedent, loss of household services, as well as property loss and/or damage and other damages arising therefrom.

(E) The name and or names of the public employees or employees causing the injury, damage or loss is unknown.

(F) The amount claimed exceeds ten thousand dollars (\$10,000) as of the date of the presentation of this claim.

The jurisdiction over the claim would rest in the Superior Court. This claim would not be a limited civil case.

**INSTRUCTIONS FOR FILING A CLAIM
WITH THE COUNTY OF HUMBOLDT**

1. All Claim for Damages forms must be completed in their entirety, giving a precise description of the date, location and circumstances giving rise to the claim. All information requested on the claim form must be provided, if available. Written estimates (2), or bills, if available, should also be attached to the claim form.
2. While it is not necessary to use the Claim for Damages form, all requested information must be provided in order for your claim to be considered. The claim form with an original signature must be filed with the Humboldt County Clerk of the Board of Supervisors, 825 Fifth Street, Room 111, Eureka, California 95501.
3. A claim relating to a cause of action for death or injury to a person or to personal property or to growing crops shall be presented not later than six (6) months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented not later than one year after the accrual of the cause of the action.
4. The claim must be signed by the claimant or person acting on claimant's behalf (i.e. attorney) and the date of such signing.
5. Claims will be deemed filed on the date of actual receipt at the Humboldt County Clerk of the Board of Supervisors' Office, or the date deposited in the United States mail in a sealed envelope, properly addressed with postage paid.

WARNING: CLAIMS NOT FILED IN ACCORDANCE WITH THESE INSTRUCTIONS MAY BE DEEMED TO BE INSUFFICIENT AND MAY BE REJECTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 910.

Claims properly filed in accordance with these procedures will be acted upon, and notice of the action will be sent to the person designated in the claim to receive notices.

SUBJECT TO CERTAIN EXCEPTIONS, YOU HAVE ONLY SIX (6) MONTHS FROM THE DATE THAT NOTICE OF REJECTION IS DEPOSITED IN THE MAIL OR PERSONALLY DELIVERED, TO FILE A COURT ACTION ON YOUR CLAIM (See California Government Code Section 945.6).

You may wish to seek the advice of an attorney of your choice in connection with any action on your claim. If you desire to consult an attorney, you should do so immediately.