



COUNTY OF LOS ANGELES  
OFFICE OF THE COUNTY COUNSEL


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June 29, 2016

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TO: LORI GLASGOW  
Executive Officer  
Board of Supervisors  
  
Attention: Agenda Preparation

FROM: ROGER H. GRANBO   
Senior Assistant County Counsel  
Executive Office

RE: **Item for the Board of Supervisors' Agenda**  
**County Claims Board Recommendation**  
**Francisco Carrillo, Jr. v. County of Los Angeles, et al.**  
**United States District Court Case No. CV 11-10310 SVW**

Attached is the Agenda entry for the Los Angeles County Claims Board's recommendation regarding the above-referenced matter. Also attached are the Case Summary and Summary Corrective Action Plan to be made available to the public.

It is requested that this recommendation, the Case Summary and the Summary Corrective Action Plan be placed on the Board of Supervisors' agenda.

RHG:scr

Attachments

Board Agenda

MISCELLANEOUS COMMUNICATIONS

Los Angeles County Claims Board's recommendation: Authorize settlement of the matter entitled Francisco Carrillo, Jr. v. County of Los Angeles, et al, United States District Court Case No. CV 11-10310 SVW in the amount of \$10,100,000 and instruct the Auditor-Controller to draw a warrant to implement this settlement from the Sheriff's Department's budget.

This lawsuit against the County of Los Angeles and the Sheriff's Department alleges federal civil rights violations for an arrest, conviction, and 20-year incarceration for a murder Plaintiff alleges he did not commit.

## CASE SUMMARY

### INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Francisco Carrillo, Jr. v. County of Los Angeles, et al.
CASE NUMBER	CV 11-10310 SVW
COURT	United States District Court
DATE FILED	December 14, 2011
COUNTY DEPARTMENT	Sheriff's Department
PROPOSED SETTLEMENT AMOUNT	\$ 10,100,000
ATTORNEY FOR PLAINTIFF	Ronald O. Kaye, Esq. Kaye, McLane, Bednarski & Litt, LLP
COUNTY COUNSEL ATTORNEY	Jonathan McCaverty Principal Deputy County Counsel
NATURE OF CASE	<p>This is a recommendation to settle for \$10,100,000, inclusive of attorneys' fees and costs, a federal civil rights lawsuit filed by Francisco Carrillo, Jr. arising out of his arrest and conviction for the murder of Donald Sarpy on January 18, 1991, and for which he was incarcerated for approximately 20 years.</p> <p>Due to the risks and uncertainties of litigation, a reasonable settlement at this time will avoid further litigation costs. Therefore, a full and final settlement of the case in the amount of \$10,100,000 is recommended.</p>
PAID ATTORNEY FEES, TO DATE	\$ 315,611
PAID COSTS, TO DATE	\$ 104,605

Case Name: Carrillo, Francisco, Jr. v. County of Los Angeles, et al.



## Summary Corrective Action Plan

The intent of this form is to assist departments in writing a corrective action plan summary for attachment to the settlement documents developed for the Board of Supervisors and/or the County of Los Angeles Claims Board. The summary should be a specific overview of the claims/lawsuits' identified root causes and corrective actions (status, time frame, and responsible party). This summary does not replace the Corrective Action Plan form. If there is a question related to confidentiality, please consult County Counsel.

Date of incident/event:	
Briefly provide a description of the incident/event:	<p><u>Carrillo, Francisco, Jr. v. County of Los Angeles, et al.</u></p> <p>On January 18, 1991, a fatal drive-by shooting occurred in the city of Lynwood. Standing in the vicinity were several witnesses, including the first witness. The shooting victim was provided with emergency medical treatment but died several hours later.</p> <p>The first witness, a gang member, immediately believed that the shooter was a rival gang member. He, along with other witnesses, were interviewed by the first deputy sheriff (an Operation Safe Streets investigator) at Lynwood Sheriff's Station following the shooting. The first witness reviewed a photograph book of gang members and picked out a photo he identified as the shooter, identified as the plaintiff. He was then shown a photographic array<sup>1</sup> and identified photo #1, again identifying the plaintiff.</p> <p>The photographic array used in this incident had been prepared and used in a separate shooting that occurred approximately three weeks earlier.</p> <p>Based on the first witness' identification of the plaintiff as the shooter, the plaintiff was arrested on January 24, 1991, and charged with the murder of the decedent and attempted murder of the nearby witnesses.</p> <p>The first witness was the only witness to testify at the preliminary hearing, along with the first deputy sheriff. Five other witnesses viewed the photographic array approximately six months later with a second deputy sheriff (Homicide Bureau investigator), and tentatively identified the plaintiff or the photograph in position #6.</p> <p>In the first trial, all six witnesses testified, identifying the plaintiff, but the jury could not reach a unanimous decision. During the second trial, five witnesses identified the plaintiff, but the first witness did not, recanting his identification. The plaintiff was convicted of murder and attempted murder and served approximately 20 years of a 25 years-to-life imprisonment sentence.</p> <p>In 2011, the plaintiff made new claims to his defense and requested a court proceeding to review:</p> <ul style="list-style-type: none"><li>• The lighting conditions at the time of the crime would have prevented an accurate suspect identification.</li><li>• The first deputy sheriff unduly influenced the first witness' identification of photographs in the gang book and photographic array.</li></ul>

<sup>1</sup> A photographic array has also been known as a "photographic line-up" or a "6-pack line-up."

	<ul style="list-style-type: none"><li>• The other witnesses were aware that the first witness had identified the plaintiff in position #1 of the photographic array.</li><li>• The plaintiff presented evidence that three other individuals had committed the crimes.</li></ul> <p>Based on the first witness' recanted testimony, inconsistent testimony by the first deputy sheriff, and lighting evidence, the Los Angeles County District Attorney's Office decided not to refile the criminal charges against the plaintiff.</p> <p>The plaintiff has been released from custody.</p>
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1. Briefly describe the root cause(s) of the claim/lawsuit:

<p>A primary <b>Department</b> root cause in this incident was five of the witnesses were not shown a photographic array until just prior to the preliminary court proceedings by the second deputy sheriff. This occurred six months after the crime, as opposed to when the incident was fresh in the witnesses' memory.</p> <p>A secondary <b>Department</b> root cause in this incident was the inconsistent testimony during court proceedings and deposition by the first deputy sheriff, over the course of various events.</p> <p>An additional <b>Department</b> root cause in this incident was inadequate training and policies and procedures regarding suspect identification procedures and photographic arrays.</p>
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2. Briefly describe recommended corrective actions:  
(Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

<p>Due to the fact that both involved deputy sheriffs are no longer employees of the Department (for unrelated reasons), the incident was not investigated by representatives of the Los Angeles County Sheriff's Department's Internal Affairs Bureau.</p> <p>Although suspect identification and photographic array practices and procedures have been developed and refined, they had not been written into policy.</p> <p>On March 21, 2016, the Los Angeles County Sheriff's Department's Field Operations Support Services disseminated newly written Department policy related to suspect identifications, photographic arrays, and admonishment procedures.</p> <p>New Department policies were created to establish clear processes related to address:</p> <ul style="list-style-type: none"><li>• Suspect identification procedures.</li><li>• No undue influence on witnesses.</li><li>• Case notes or reports shall document the steps taken to uphold the integrity of the suspect identification procedures.</li><li>• Following admonishment procedures.</li><li>• Audio or video recording of the witness admonishment process, as well as written documentation.</li><li>• Random suspect positioning within an array on cases with multiple witnesses.</li><li>• Not confirming or denying a witness' photographic selection.</li><li>• Encouraging witnesses not to discuss the photographic array process.</li></ul>
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- Document witness' response to photographic array.
- Showing photographic arrays to one witness at a time.

Refer to Los Angeles County Sheriff's Department Manual of Policy and Procedures:  
5-09/530.00, *Suspect Identification Procedures*  
5-09/530.10, *Recording Admonishment to Witness and Arrays*, Section  
5-09/530.20, *Photo Arrays*.

In addition, on April 11, 2016, the Los Angeles County Sheriff's Department's Field Operations Support Services sent notification to all Department supervisors who oversee investigative units, causing those who are already working in an investigative assignment to be made thoroughly aware of the policy and procedures for administering a photographic array.

The normal course of training and investigative process is to show witnesses photographic arrays as soon as reasonably possible, when details and facts are still fresh in the witness' memory. This is an action that can be corrected with training. Training Bureau currently teaches this investigative technique to all deputy sheriffs during academy training (in Learning Domain 16), as well as to investigators during Basic Investigations training.

Lack of court preparation can cause difficulty with recalling events. This is the individual responsibility of each Department member. This is an action that can be corrected with mentoring and training.

The normal course of preparation for court testimony during any type of hearing, for all personnel, is to thoroughly review all documents and evidence prior to testifying or appearing in any legal proceeding.

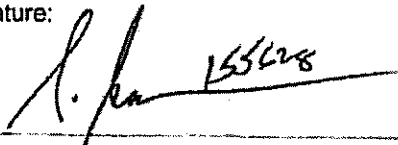
On or before June 30, 2016, the Los Angeles County Sheriff's Department's Training Division, Advanced Officer Training, will incorporate a training module to the Basic Investigator training course covering the new policies and procedures, as it relates to conducting photographic array identifications and admonishments.

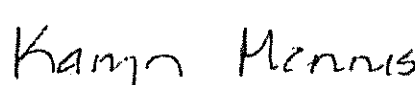
On February 10, 2016, the Los Angeles County Sheriff's Department's Field Operations Support Services published and disseminated a Department Newsletter titled "Photographic Lineups." The Newsletter addresses photographic array procedures to maximize identification reliability to solve crimes, convict criminals, establish reliable evidence, and conform to current legal requirements.

County of Los Angeles  
Summary Corrective Action Plan



3. Are the corrective actions addressing Department-wide system issues?
- Yes – The corrective actions address Department-wide system issues.
  - No – The corrective actions are only applicable to the affected parties.

Los Angeles County Sheriff's Department

Name: (Risk Management Coordinator)	
Scott E. Johnson, Captain Risk Management Bureau	
Signature: 	Date: 6-6-16

Name: (Department Head)	
Karyn Mannis, Chief Professional Standards Division	
Signature: 	Date: 06-09-16

<b>Chief Executive Office Risk Management Inspector General USE ONLY</b>
Are the corrective actions applicable to other departments within the County?
<input type="checkbox"/> Yes, the corrective actions potentially have County-wide applicability.
<input checked="" type="checkbox"/> No, the corrective actions are applicable only to this Department.

Name: (Risk Management Inspector General)	
	
Signature: 	Date: 6/13/2016