



COUNTY OF LOS ANGELES
CLAIMS BOARD
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

MEMBERS OF THE BOARD

Arlene Barrera
Auditor-Controller
Steve Robles
Chief Executive Office
Roger H. Granbo
Office of the County Counsel

NOTICE OF MEETING

The County of Los Angeles Claims Board will hold a regular meeting on **Monday, October 16, 2017, at 9:30 a.m.**, in the Executive Conference Room, 648 Kenneth Hahn Hall of Administration, Los Angeles, California.

AGENDA

1. Call to Order.
2. Opportunity for members of the public to address the Claims Board on items of interest that are within the subject matter jurisdiction of the Claims Board.
3. Closed Session – Conference with Legal Counsel – Existing Litigation (Subdivision (a) of Government Code Section 54956.9).

- a. Frank O'Connell, et al. v. County of Los Angeles, et al.
United States District Court Case No. CV 13-01905

This lawsuit against the County of Los Angeles and the Sheriff's Department alleges federal civil rights violations for an arrest, conviction, and 27-year incarceration for a murder Plaintiff alleges he did not commit; settlement is recommended in the amount of \$15 million.

See Supporting Documents

- b. Haydee V. Trejo, et al. v. County of Los Angeles, et al.
Los Angeles Superior Court Case No. BC 620 965

This lawsuit arises from alleged injuries sustained in a vehicle accident involving a Fire Department's paramedic squad; settlement is recommended in the amount of \$32,500.

See Supporting Document

- c. Glen Smith v. County of Los Angeles, et al.
Los Angeles Superior Court Case No. BC 615 823

This lawsuit concerns allegations that an employee from the Fire Department was subjected to discrimination, racial harassment, retaliation, and that the Department violated the Fair Labor Standards Act by not compensating Plaintiff for overtime; settlement is recommended in the amount of \$70,000.

- d. Zuleima Portillo v. County of Los Angeles
Los Angeles Superior Court Case No. BC 603 378

This lawsuit alleges that an employee from the Probation Department was subjected to sexual harassment, discrimination based on sex and disability, and retaliation; settlement is recommended in the amount of \$50,000.

4. Report of actions taken in Closed Session.
5. Approval of the minutes of the October 2, 2017, regular meeting of the Claims Board.

See Supporting Document

6. Items not on the posted agenda, to be referred to staff or placed on the agenda for action at a further meeting of the Board, or matters requiring immediate action because of emergency situation or where the need to take immediate action came to the attention of the Board subsequent to the posting of the agenda.
7. Adjournment.

CASE SUMMARY

INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Frank O'Connell, et al. v. County of Los Angeles, et al.
CASE NUMBER	CV 13-01905 MWF
COURT	United States District Court
DATE FILED	April 23, 2013
COUNTY DEPARTMENT	Sheriff's Department
PROPOSED SETTLEMENT AMOUNT	\$ 15 million
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 \$15 million, to be paid over two fiscal years, inclusive of attorneys' fees and costs, a federal civil rights lawsuit filed by Frank O'Connell and his son, Nicholas O'Connell, arising out of Mr. O'Connell's arrest, conviction, and 27-year incarceration for a 1984 murder he alleges he did not commit.</p> <p>Given 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 \$15 million is recommended.</p>
PAID ATTORNEY FEES, TO DATE	\$ 245,907
PAID COSTS, TO DATE	\$ 63,699

Case Name: Frank O'Connell 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:	January 5, 1984
Briefly provide a description of the incident/event:	<p><u>Frank O'Connell v. County of Los Angeles, et al.</u> Summary Corrective Action Plan 2017-021</p> <p><u>MURDER INVESTIGATION</u></p> <p>On January 5, 1984, a male (later referred to as victim) was murdered when he was shot two times while in the parking lot of his apartment complex in South Pasadena, California, where he resided with his wife. The victim was pronounced dead at the scene.</p> <p>The victim's wife informed detectives that the victim had been engaged in a long-standing disputed custody battle over a son he had in common with his ex-wife.</p> <p>Sheriff's Department homicide detectives located a sole witness to the parking lot murder who had an unobstructed view of the shooter from only 20 feet away. The witness told detectives that the shooter was a tall white male between 6'0" to 6'3", in his mid-30's with brown hair.</p> <p>The witness told detectives that after the victim was shot and the suspect had fled the scene, he heard the victim state that the shooter was the "guy in the yellow Pinto." The witness said the last words the victim stated before he died were, "[t]his had something to do with (ex-wife's first name, name omitted)."</p> <p>During the homicide investigation, the detectives also spoke with a security guard that lived across the street from the ex-wife and her new husband (who had no connection to the victim or plaintiff). The security guard informed the detectives that the plaintiff asked him to jump start a yellow Pinto on multiple occasions. The security guard further informed the detectives that he had seen the plaintiff romantically hug and kiss the ex-wife in her front yard during the daytime, when her new husband was at work.</p> <p>During the course of the investigation, the ex-wife was interviewed and the detectives learned that the plaintiff had moved in with her and had an affair with her during the prior summer. The detectives also learned that the ex-wife had told friends that she wanted the victim killed in order to gain custody of her son.</p> <p>When detectives presented the witness with a six-photo photographic array¹, including a picture of the plaintiff, the witness identified the plaintiff as the person that had shot and killed the victim.</p>

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

	<p><u>CRIMINAL TRIAL</u></p> <p>The plaintiff was arrested and elected to have a bench trial, rather than a jury trial.</p> <p>At both the preliminary hearing and bench trial, the witness testified that nothing obstructed his view of the murder and he positively identified the plaintiff as the shooter.</p> <p>Neither the weapon used in the murder nor the vehicle were recovered. The critical element in the criminal trial was the positive identification of the plaintiff by witnesses.</p> <p>On April 6, 1985, the plaintiff was convicted of the victim's murder and he was sentenced to 25 years to life in prison.</p> <p><u>CENTURION MINISTRIES INVESTIGATION</u></p> <p>While in prison, the plaintiff came in contact with representatives from Centurion Ministries, an investigative organization that considers cases of factual innocence. Centurion Ministries investigated the plaintiff's case and began their investigation into witness identification and testimony, the criminal investigation, criminal trial proceedings, and evidence that was not disclosed.</p> <p><u>EXCULPATORY INFORMATION NOT DISCLOSED DURING TRIAL</u></p> <p>Centurion Ministries identified the following issues in the murder investigation that were not disclosed² to the plaintiff's criminal defense counsel prior to or during the plaintiff's murder trial:</p> <ul style="list-style-type: none">• An internal South Pasadena Police Department memorandum was not turned over to the plaintiff's criminal defense counsel during the murder trial. The memorandum addressed an anonymous phone call that was received in 1984. The phone call information was then forwarded from South Pasadena Police Department to a sergeant with the Altadena Sheriff's Station. A male who claimed that the victim's ex-wife had paid to have him killed after she learned that the victim had been awarded custody of their son. The caller indicated that the ex-wife had paid a male in Oregon \$7,000, who in turn paid a man (name omitted) \$5,000 to do the job (along with accomplices). The caller provided a Pasadena address for the possible suspect. Documents generated during the underlying murder investigation indicate that the lead was investigated and presumably determined to be a dead end.• The detectives' notes indicating that the security guard was actually hesitant to identify the plaintiff as having driven a yellow Pinto.• During the homicide investigation, the victim's wife advised the homicide detectives that the victim's ex-wife and another man had
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² The plaintiff's counsel contended that withholding information regarding the victim's wife report of the prior attempt murder against the victim was a violation of *Brady* (*Brady v. Maryland* [1963] – Established that the prosecution must turn over all evidence that might exonerate the defendant to the defense. The failure to do so was determined to be contrary to the Due Process Clause of the 14th Amendment to the United States Constitution).

made a prior attempt to kill the victim approximately five years earlier. The previous attempt murder occurred shortly after the victim had received full custody of the son they had in common.

During the previous attempted murder, the victim was riding home from work on his motorcycle when he was confronted on the road by a vehicle driven by a man, with his ex-wife being the passenger. The vehicle drove erratically and dangerously close to the victim and attempted to cause the victim to drive off the road and/or crash.

Notes in the detectives' files indicate that the known driver involved in the previous attempt murder on the victim could not be tied to the murder of the victim due to:

- The man was released from jail in Oregon state, the day before the murder.
- The man's description with a height of 5'9" with a full beard did not match the witness' description of the shooter of 6'0" - 6'3", with brown hair.

Note: When the homicide detectives showed the witness the photographic array including the plaintiff's photo, they did not include a picture of the man involved in the prior murder attempt.

Note: Although there was a claim that the homicide detectives did not provide exculpatory evidence to the plaintiff's criminal defense counsel, during civil deposition the plaintiff's criminal defense counsel admitted to having notes in his own handwriting with the name of the known driver involved in the previous attempt murder on the victim and knowledge of his status as being in custody in Oregon state. The plaintiff's criminal defense counsel also stated there was a request for an investigation into travel plans between Oregon and Los Angeles to see if travel was feasible. The outcome of the inquiry was solely to determine the possibility of travelling between Oregon and Los Angeles to commit the murder. It is unknown what outcome was reached by the investigation by the defense counsel.

HABEAS CORPUS PROCEEDINGS

Approximately 20 to 25 years after the criminal investigation, the witness was contacted by a civilian investigator from Centurion Ministries who had been investigating the validity of the plaintiff's conviction. Although the witness had stood firm about his identification of the plaintiff throughout the trial, after being contacted by Centurion Ministries in 2008, the witness recanted his testimony regarding identifying the plaintiff as the shooter.

Based on the results of the Centurion Ministries investigation, the plaintiff's attorneys filed a *writ of habeas corpus*.

During the *habeas corpus* proceedings in 2011, the witness advised the court that although the homicide detectives were professional "at all times," he felt pressured to make an identification when presented with the photographic array. The witness thought the detectives would not leave unless he picked someone out. The witness made no indication that the detectives engaged in any coercive or intimidating tactics to identify a specific photograph in the photographic array.

	<p>The witness testified at the <i>habeas corpus</i> proceedings that the only reason he testified that he was certain in his identification of the plaintiff during the murder trial was that during the showing of the photographic array to him, he pointed to the plaintiff's photo and asked the detectives "Is this him?" After which, the detectives told him that he picked "the right guy" and told him about a love affair the plaintiff had with the victim's ex-wife. The witness also testified that in his presence, one of the detectives called and advised another Department member that the witness picked "the right guy." If not for the detective's statements, the witness claims he was uncertain in his identification of the plaintiff in the photographic array.</p> <p>On March 29, 2012, a state court granted the plaintiff's petition for writ of <i>habeas corpus</i>, holding: (a) suggestive identification procedures may have influenced the identifications; and (b) the previously undisclosed detectives' notes regarding the prior attempt on the victim's life rose to the level of constitutional violations.</p> <p>After the Los Angeles County District Attorney's Office declined to re-prosecute the plaintiff, he was released after having spent over 27 years in prison.</p>
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1. Briefly describe the root cause(s) of the claim/lawsuit:

<p>A Department root cause in this incident was that when the homicide detectives presented the witness with the photographic array they did not audio or video record the interaction.</p> <p>A Department root cause in this incident was the absence of documentation to show that potentially exculpatory evidence (detectives' notes) had been disclosed to counsel by detectives.</p> <p>An additional Department root cause in this incident was inadequate training and policies and procedures regarding suspect identification procedures and photographic arrays.</p>

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 homicide detectives are retired, with one of them being deceased, and they are no longer employees of the Department, the incident was not investigated by representatives of the Los Angeles County Sheriff's Department's Internal Affairs Bureau.</p> <p>At the time of this incident, although suspect identification and photographic array practices and procedures had 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. New Department policies were created to establish clear processes related to address:</p> <ul style="list-style-type: none">• Suspect identification procedures.• No undue influence on witnesses.• Case notes or reports shall document the steps taken to uphold the integrity of the suspect identification procedures.
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- Follow admonishment procedures.
- Audio or video recording of the witness admonishment process, as well as written documentation.
- Random suspect positioning within an array on cases with multiple witnesses.
- Not confirming or denying a witness' photographic selection.
- Encouraging witnesses not to discuss the photographic array process.
- Document a witness' response to photographic array.
- Showing photographic arrays to one witness at a time.

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.

Training Bureau currently teaches suspect identification procedures and photographic array procedures to all deputy sheriffs during academy training, as well as to detectives during Basic Investigations training.

On or before June 30, 2016, the Los Angeles County Sheriff's Department's Training Division, Advanced Officer Training, incorporated 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.

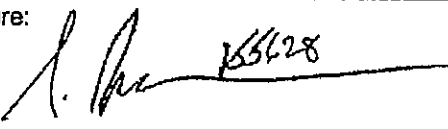
On February 10, 2016, the Los Angeles County Sheriff's Department's Field Operations Support Services published and disseminated a Department Newsletter titled "Photographic Lineups." The Newsletter addresses photographic array procedures to maximize identification reliability to solve crimes, convict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

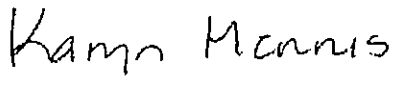
Detective Division has developed a Discovery Check-Off form which detectives will utilize to list discoverable items that they turn over to counsel. The form will have a signature line for the handling deputy district attorney to acknowledge the items turned over in order to counter defense claims that potentially exculpatory evidence was not disclosed. The new form is in the final stages of approval by Department executives.

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: 8-22-17

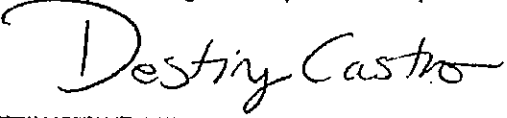
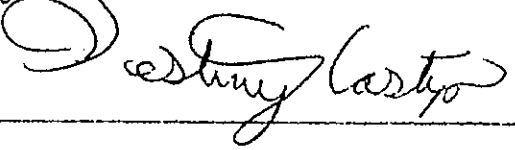
Name: (Department Head)	
Karyn Mannis, Chief Professional Standards and Training Division	
Signature: 	Date: 08-26-17

Chief Executive Office Risk Management Inspector General USE ONLY

Are the corrective actions applicable to other departments within the County?

Yes, the corrective actions partially have County-wide applicability.

No, the corrective actions are applicable only to this Department.

Name: (Risk Management Inspector General)	
	
Signature: 	Date: 8/28/2017

CASE SUMMARY

INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Haydee V. Trejo, et al. v. County of Los Angeles, et al.
CASE NUMBER	BC620965
COURT	Los Angeles Superior Court
DATE FILED	May 19, 2016
COUNTY DEPARTMENT	Fire Department
PROPOSED SETTLEMENT AMOUNT	\$ 32,500
ATTORNEY FOR PLAINTIFF	Gilbert Perez, III Law Offices of Mauro Fiore Jr., APC
COUNTY COUNSEL ATTORNEY	Kelsey Nau Senior Associate County Counsel
NATURE OF CASE	<p>This lawsuit arises from a vehicle accident that occurred on September 17, 2015, when a paramedic squad driven by a Fire Department employee collided with the vehicle driven by Plaintiff Haydee V. Trejo. Plaintiffs seek compensation for their alleged injuries from the accident.</p> <p>Due to the risks and uncertainties of litigation, a full and final settlement of the case in the amount of \$32,500 is warranted.</p>
PAID ATTORNEY FEES, TO DATE	\$ \$17,607
PAID COSTS, TO DATE	\$ \$8,565

COUNTY OF LOS ANGELES CLAIMS BOARD

MINUTES OF REGULAR MEETING

October 2, 2017

1. **Call to Order.**

This meeting of the County of Los Angeles Claims Board was called to order at 9:30 a.m. The meeting was held in the Executive Conference Room, 648 Kenneth Hahn Hall of Administration, Los Angeles, California.

Claims Board Members present at the meeting were: Chair Steve Robles, Arlene Barrera, and Roger Granbo.

Other persons in attendance at the meeting were: Office of the County Counsel: Jessica Rivas, Michael Gordon, and Narbeh Bagdasarian; Sheriff's Department: Patrick Nelson, Joseph Fender, Kevin Percy, and Dominic Dannan; Department of Mental Health: Damien Parker; Department of Health Services: Kimmalo Wright, Arun Patel, and Lan Soeur.

2. **Opportunity for members of the public to address the Claims Board on items of interest within the subject matter jurisdiction of the Claims Board.**

No members of the public addressed the Claims Board.

3. **Closed Session – Conference with Legal Counsel – Existing Litigation (Subdivision (a) of Government Code section 54956.9)**

At 9:32 a.m., the Chairperson adjourned the meeting into Closed Session to discuss the items listed as 4(a) through 4(e) below.

4. **Report of actions taken in Closed Session.**

At 10:34 a.m., the Claims Board reconvened in open session and reported the actions taken in Closed Session as follows:

a. **Rosa Parada de Turcios v. County of Los Angeles, et al.
Lancaster Superior Court Case No. MC 025 275**

This lawsuit arises from alleged injuries sustained in a vehicle accident involving a Sheriff's Department employee.

Action Taken:

The Claims Board recommended to the Board of Supervisors the settlement of this matter in the amount of \$175,000.

Vote: Ayes: 3 – Steve Robles, Arlene Barrera, and Roger Granbo

b. **Cynthia Rodriguez v. Todd Anderson, et al.**
Los Angeles Superior Court Case No. BC 569 760

This lawsuit arises from alleged injuries sustained in a vehicle accident involving a Sheriff's Department employee.

Action Taken:

The Claims Board approved the settlement of this matter in the amount of \$45,000.

Vote: Ayes: 3 – Steve Robles, Arlene Barrera, and Roger Granbo

c. **Amalia Guardado v. County of Los Angeles, et al.**
Los Angeles Superior Court Case No. BC 610 810

This lawsuit arises from alleged injuries sustained in a vehicle accident involving a Mental Health employee and a pedestrian.

Action Taken:

The Claims Board recommended to the Board of Supervisors the settlement of this matter in the amount of \$190,670.

Vote: Ayes: 3 – Steve Robles, Arlene Barrera, and Roger Granbo

d. **Betty McDonald v. County of Los Angeles, et al.**
Los Angeles Superior Court Case No. BC 597 665

This lawsuit alleges medical malpractice against the Department of Health Services for injuries suffered while Plaintiff was a patient at Rancho Los Amigos National Rehabilitation Center.

Action Taken:

The Claims Board recommended to the Board of Supervisors the settlement of this matter in the amount of \$175,000 (plus the assumption of the Medi-Cal lien in the approximate amount of \$40,000).

Vote: Ayes: 3 – Steve Robles, Arlene Barrera, and Roger Granbo

e. **David Gomez v. County of Los Angeles, et al.**
Los Angeles Superior Court Case No. BC 535 242

This lawsuit alleges medical malpractice against the Department of Health Services for injuries suffered while Plaintiff was a patient at Harbor-UCLA Medical Center.

Action Taken:

The Claims Board recommended to the Board of Supervisors the settlement of this matter in the amount of \$595,000 (plus the assumption of the Medi-Cal lien in the approximate amount of \$425,000).

Vote: Ayes: 3 – Steve Robles, Arlene Barrera, and Roger Granbo

5. **Approval of the minutes of the September 18, 2017, regular meeting of the Claims Board.**

Action Taken:

The Claims Board approved the minutes.

Vote: Ayes: 3 – Steve Robles, Arlene Barrera, and Roger Granbo

6. **Items not on the posted agenda, to be referred to staff or placed on the agenda for action at a further meeting of the Board, or matters requiring immediate action because of emergency situation or where the need to take immediate action came to the attention of the Board subsequent to the posting of the agenda.**

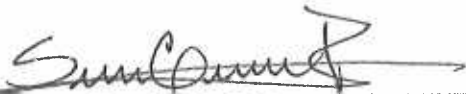
No such matters were discussed.

7. **Adjournment.**

The meeting was adjourned at 10:35 a.m.

COUNTY OF LOS ANGELES CLAIMS BOARD

By



Sandra C. Ruiz