

ORIGINAL

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11 **CRAIG T. ROBINSON**

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN DIEGO

14 CRAIG T. ROBINSON,
15 Plaintiff,

16 v.

17 CITY OF SAN DIEGO and DOES 1-10,
18 Defendants.

CASE NO. **37-2014-00084733-CU-PO-CTL**
[Complaint Filed:]
[Trial Date: None set]

COMPLAINT FOR DAMAGES (Unlimited Civil Case)

19 Plaintiff CRAIG T. ROBINSON alleges the following based upon personal knowledge
20 as to his own actions, and on information and belief and to all other matters.

21 **GENERAL ALLEGATIONS**

22 1. At all times mentioned herein, Plaintiff CRAIG T. ROBINSON (hereinafter
23 "PLAINTIFF") was and still is an adult resident of the City of San Diego, in the County of San
24 Diego.

25 2. At all times mentioned herein, defendant CITY OF SAN DIEGO (hereinafter
26 "CITY") is and was a governmental public entity in the County of San Diego, State of
27 California.

28 3. PLAINTIFF brings forth his complaint for damages pursuant to the Tort Claims
Act under Government Code Section 835 for liability for dangerous condition of public
property.

4. On or about October 22, 2013, PLAINTIFF submitted a formal written claim to

FILED
CIVIL BUSINESS OFFICE 5
CENTRAL DIVISION

2014 JAN 23 P 4:00
14 JAN 23 PM 3:46

FILED
Clerk of the Superior Court

JAN 23 2014

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1 CITY pursuant to *Government Code* Section 910 and within six months of the accident
2 alleging the dangerous condition that is the subject of this Complaint. A true and correct copy
3 of PLAINTIFF's claim is attached hereto as Exhibit "A".

4 5. On November 27, 2013, PLAINTIFF received a letter from the CITY denying
5 PLAINTIFF's claim. Following that denial, PLAINTIFF now brings suit within the statutorily
6 prescribed time pursuant to *Government Code* Section 945.6. A true and correct copy of letter
7 from the CITY denying PLAINTIFF's claim is attached hereto as Exhibit "B".

8 6. The true names and capacities, whether individual, corporate, associate or
9 otherwise of Defendants DOES 1 through 10, inclusive, are unknown to PLAINTIFF who
10 therefore sues said Defendants by such fictitious names. PLAINTIFF is informed and believe
11 and thereon allege that each of the Defendants designated as a DOE is negligently responsible
12 in some manner, either by act or omission, negligence, negligence per se, res ispa loquitor,
13 respondeat superior, employment, agency, breach of statute, or otherwise, for the events and
14 occurrences and events here herein alleged, and that PLAINTIFF's injuries, loss, and damages
15 as herein alleged were legally and proximately caused by the conduct of said DOES 1-10.
16 Each reference to a "Defendant" or "Defendants" refers also to all Defendants sued under
17 fictitious names.

18 7. At all times mentioned herein, each of the Defendnats were the agents and
19 employees of each of the remaining Defendants and, in doing the things herein alleged, was at
20 all times acting with the purpose, course and scope of said agency or employment with the
21 knowledge, consent and permission of each of the other Defendants. When their true names
22 and capacities of the DOE defendants are ascertained, PLAINTIFF will amend this Complaint
23 by inserting their true names and capacities.

24 8. PLAINTIFF is informed and believes and thereon alleges, that at all time herein
25 mentioned, that the 15400 block of Carmel Valley Road and all public improvements in or
26 around that area in the City of San Diego, State of California were owned, operated,
27 controlled, repaired, supervised, managed by defendant CITY.

28 9. On April 28, 2013 at approximately 12:30 p.m., PLAINTIFF was riding his

1 bicycle eastbound on Carmel Valley Road from Black Mountain Road toward a trail accessible
2 from the north sidewalk of Carmel Valley Road. In order to access the trail, PLAINTIFF rode
3 along the northern sidewalk of the 15400 block Carmel Valley Road. When PLAINTIFF was
4 approximately 150 feet from the entrance of the trail, PLAINTIFF's bicycle hit a section of
5 sidewalk that was vertically displaced approximately 6.5 inches from the surrounding surfaces.
6 The raised section of sidewalk was located approximately 50 feet east of SDG&E Box #13 at
7 15444 Carmel Valley Road (hereinafter "Subject Sidewalk"). As the displaced section of
8 sidewalk spanned roughly 80% of the width of the sidewalk, PLAINTIFF was unable to avoid
9 striking Subject Sidewalk. Upon hitting Subject Sidewalk, PLAINTIFF was ejected from his
10 bicycle and thrown forward approximately 20 feet before landing on the concrete and
11 sustaining various injuries. A witness at the scene called 911 and emergency crews
12 transported PLAINTIFF to Scripps Memorial Hospital.

13 10. As a result of the crash, PLAINTIFF suffered the following serious injuries:
14 five (5) broken ribs along his right side; punctured and collapsed right lung; fractured right
15 scapula; fracture of right eye orbital; laceration above right eye; severe amnesia for two (2)
16 days. PLAINTIFF spent ten (10) days in the hospital while his lung reinflated.

17 11. PLAINTIFF's accident and subsequent injuries were the direct and proximate
18 result of CITY's negligence and their failure to ensure that public sidewalks are free of
19 hazardous conditions like the one described above and safe to members of the public,
20 including PLAINTIFF for all reasonably foreseeable uses, and that the sidewalk and related
21 structures were properly designed, built, constructed, and installed so as to be susceptible to
22 becoming dangerous to the public. As such, PLAINTIFF brings suit against Defendants as
23 plead herein below.

24 **FIRST CAUSE OF ACTION**

25 ***(Government Code Sec. 835 - Dangerous Condition of Public Property)***

26 12. PLAINTIFF alleges and incorporates herein by reference all preceding
27 paragraphs as though fully set forth herein.

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13. *Government Code* Section 835 provides in pertinent part that:

“Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either: (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.”

14. Defendant CITY, as a governmental public entity, owning, operating, maintaining and governing the Subject Sidewalk where PLAINTIFF was injured, owed a special duty of care to maintain the sidewalks in a reasonable and safe condition to prevent injury or harm to its citizens and the common public.

15. At the time of PLAINTIFF’s accident, the Subject Sidewalk contained a 6.5 inch vertical rise that spanned roughly 80% of the sidewalk. This vertical displacement in the Subject Sidewalk was indicative of a damaged and/or flawed condition and presented a dangerous condition to members of the public, including PLAINTIFF.

16. PLAINTIFF is informed and believes that CITY through its inspection and repair work on nearby areas had actual or constructive notice of the dangerous condition presented by the Subject Sidewalk in sufficient time prior to the injury to have corrected it but failed to take action to correct the dangerous condition.

17. The negligent or wrongful acts or omissions of Defendant CITY, its agent or employees within the purpose, scope or course of their employment, to maintain, fix or replace the Subject Sidewalk in an operable or safe condition without significant and sudden vertical displacements resulted in a breach of that duty and created a dangerous condition. This dangerous condition within a public thoroughfare, created a reasonably foreseeable risk of the kind of injury which PLAINTIFF suffered, and did suffer, because the vertical rise in the sidewalk was unexpected and difficult for any pedestrian or cyclist to navigate. In light of the location of the trailhead and street configuration including roadway barricades and landscaped median, PLAINTIFF’s use of the Subject Sidewalk to access the trail was reasonably

1 foreseeable.

2 18. In unreasonably failing to correct the dangerous condition presented by the
3 Subject Sidewalk, the CITY breached its duty to members of the public, including
4 PLAINTIFF.

5 19. As a direct and proximate result of the dangerous vertical rise in the Subject
6 Sidewalk, PLAINTIFF was launched from his bicycle and suffered serious injuries including:
7 five (5) broken ribs along his right side; punctured and collapsed right lung; fractured right
8 scapula; fracture of right eye orbital; laceration above right eye; severe amnesia for two (2)
9 days. PLAINTIFF spent ten (10) days in the hospital while his lung reinflated.

10 20. As a further direct and proximate result of the dangerous vertical rise in the
11 Subject Sidewalk PLAINTIFF suffered physical pain, nervous suffering and mental anguish in
12 the days, weeks and months following the crash and attended dozens of physical therapy
13 sessions. PLAINTIFF continues to suffer from decreased range of motion in his right arm and
14 intermittent pain as a result of his injuries. PLAINTIFF further alleges that all of the injuries
15 will result in some future disability, all to PLAINTIFF's damage in an amount which will be
16 proven at the time of trial.

17 21. As a further direct and proximate result of the dangerous vertical rise in the
18 Subject Sidewalk, PLAINTIFF was required to and did employ physicians and other medical
19 personnel for the treatment and care of his injuries and thereby incurred, and will in the future
20 incur, medical expenses numbering in the thousands of dollars all to his damage in an amount
21 which will be proven at the time of trial.

22 SECOND CAUSE OF ACTION

23 (Negligence Against CITY and DOES 1-10)

24 22. PLAINTIFF alleges and incorporates herein by reference all preceding
25 paragraphs as though fully set forth herein

26 23. CITY and DOES 1-10, as the property owners of the subject sidewalk at the
27 time of PLAINTIFF's accident, had a duty to exercise reasonable care in the selection of the
28 contracting companies that constructed and installed the sidewalk at issue. They further had

1 oversight responsibilities over the construction and installation of the subject sidewalk. They
2 also owed a duty to maintain the subject premises and storm drain in a reasonably safe
3 condition, repair and dangerous conditions, warn PLAINTIFF and other members of the public
4 of dangerous conditions, and exercise due care in the management, operation, ownership
5 and/or control of the subject premises and sidewalk.

6 24. Despite such duties owed by defendants CITY and DOES 1-10, including those
7 owed to PLAINTIFF, defendants CITY and DOES 1-10 breached said duties by: (1) failing to
8 use reasonable care in the selection of the contracting companies that constructed the Subject
9 Sidewalk and its related components; (2) failing to properly oversee the construction and
10 installation of the Subject Sidewalk and all of its components; (3) failing to ensure that Subject
11 Sidewalk was free from hazardous conditions.

12 25. These breaches occurred despite the fact that defendants knew or in the exercise
13 of reasonable care should have known that the sidewalk and its related components posed an
14 unreasonable risk of harm to member of the public, including PLAINTIFF.

15 26. As a result of these breaches, defendants are the legal proximate cause of the
16 dangerous conditions encountered by PLAINTIFF and the injuries resulting from that
17 encounter.

18 27. PLAINTIFF is informed and believes and thereon alleges that all of the events,
19 which contributed to the injured and damages that PLAINTIFF has sustained occurred within
20 the venue of this Court and the relief sought through this Complaint is in excess of \$25,000.00
21 the jurisdictional minimum of this Court.

22 PRAYER

23 WHEREFORE, PLAINTIFF prays that after due proceedings, judgment be rendered in
24 his favor and against defendants CITY and DOES 1-10, as follows:

- 25 1. For general and special damages in an amount according to proof;
26 2. For medical and incidental expenses, including future expenses, according to proof;
27 3. For loss of earnings and other incidental expenses according to proof;
28 4. For all costs of suit incurred herein;

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- 5. For prejudgment interest at the rate allowed by law and in accordance with the provisions of Section 3291 of California Civil Code;
- 6. For such other further relief as the Court may deem just and proper.

DATED: January 23, 2014

BALESTRERI POTOCKI & HOLMES



By: _____
THOMAS A. BALESTRERI, JR.
JACKSON W. ISAACS
Attorneys for Plaintiff
CRAIG T. ROBINSON

BALESTRERI POTOCKI & HOLMES
A LAW CORPORATION

EXHIBIT "A"

{00232401}



CLAIM AGAINST THE CITY OF SAN DIEGO
(FOR DAMAGES TO PERSONS OR PERSONAL PROPERTY)

2013 OCT 23 PM 2:47
R.M.S.D.

Present claim by personal delivery or mail to the City of San Diego, Risk Management Dept.,
1200 Third Ave., Suite 1000, San Diego, CA 92101.

Received via:

- U.S. Mail
- Inter-Office Mail
- Over-the-Counter

TIME STAMP

FILE No. _____

TO THE HONORABLE MAYOR AND CITY COUNCIL, the City of San Diego, California

I, Jackson W. Isaacs, hereby make a claim against the City of San Diego and make the following statements in support of the claim:

1. CLAIMANT INFORMATION

- a. Claimant's Name: Craig Tweed Robinson
- b. Post Office Address of Claimant: 8546 Galway Place
San Diego, CA 92129
(CITY) (STATE) (ZIP)
- c. Claimant's Home Phone No.: (619) 453-9007
- d. Claimant's Business Phone No.: (619) 691-2126
- e. Post Office address to which the person presenting the claim desires notices to be sent, if different than above: _____
Balestreri Potocki & Holmes, 401 B St., Ste. 1470, San Diego, CA 92101
- f. Social Security No.: 524-78-7137
- g. Date of Birth: 4/19/1951
- h. Driver's License No.: C6597374

2. CIRCUMSTANCES GIVING RISE TO THE CLAIM

- a. Date of the occurrence or transaction which gave rise to the claim: April 28, 2013
- b. Time of the occurrence or transaction which gave rise to the claim: 12:30 p.m.
- c. Place of occurrence or transaction (please be specific): Manhole on North sidewalk of Carmel Valley Road, approx. .8 miles west of Black Mtn Road near SDG&E Box #13. Approx. GPS: 32.989921 N, -117.122498 W.

- d. Other circumstances of the occurrence or transaction giving rise to the claim: _____
Claimant was attempting to access a cycling trail from the north side of the street when
Claimant hit a 6-7 inch lift in the sidewalk that spans roughly 80% of the width of the sidewalk. (see photos)
Claimant was launched from his bicycle and suffered severe injuries and hospitalization.

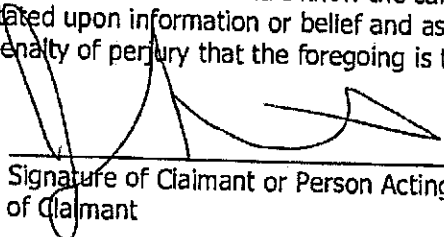
3. DESCRIPTION OF CLAIM

- a. General description of the indebtedness, obligation, injury, damage or loss incurred:
Claimant suffered the following injuries: 5 broken ribs, punctured and collapsed RT lung; fractured RT
scapula; fracture of his RT eye orbital; laceration above RT eye, 10 days in the hospital and 2 days of amnesia.
Claimant has incurred \$127,071.00 in medical expenses to date and has lost wages in an amount TBD.
- b. The name or names of the public employee or employees causing the claimant's injury, damage, or loss, if known, are: Claimant alleges that the City's Department of Public Works was on notice of
dangerous condition in the sidewalk because the condition was present for more than 1 year and
the City had performed repairs to other sidewalks in the area in the two years prior to the accident.
- c. Damages [please choose one]:
 The amount claimed is less than \$10,000.
 The amount of the claim as of the date of this claim is \$ _____. This figure is based on the following: _____
 The amount claimed is more than \$10,000.
 Please state if the claim would be a limited civil case¹. NO
- d. Please provide any additional information that might be helpful in considering your claim, including names of witnesses, treating physicians, and hospitals: _____
Claimant was hospitalized at Scripps Memorial Hospital and incurred in excess of \$115,998 in medical bills. Claimant also
is incurring charges for ongoing physical therapy, amount billed to date is \$11,073.
Orthopaedic physician: David R. Hackley. Witness: Richard Alexander Stropky.
- e. Please attach and/or provide any additional information that may be helpful in considering your claim including proof of damages such as invoices, receipts, and estimates.

WARNING: It is a criminal offense to file a false claim (Cal. Penal Code § 72).

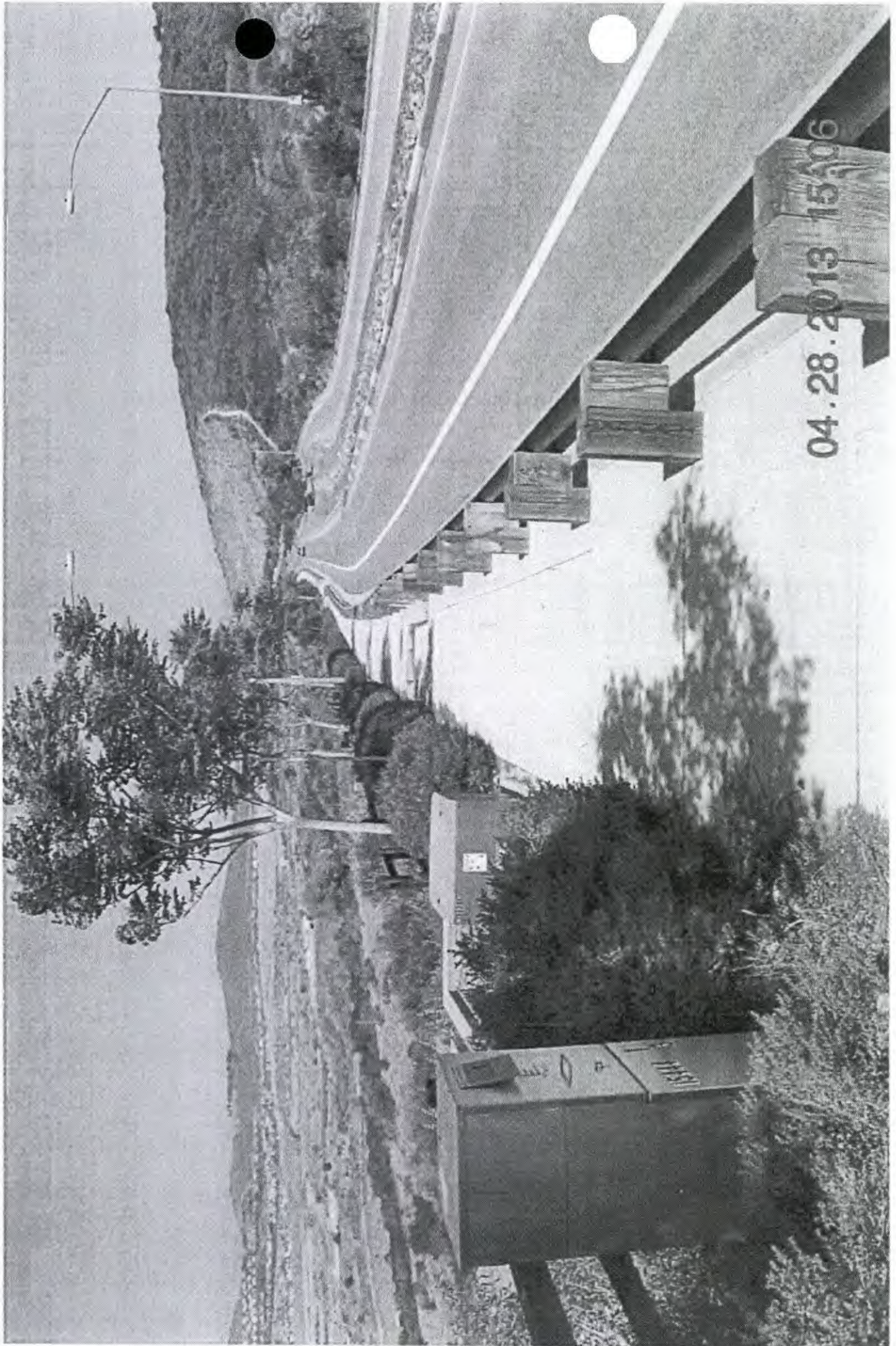
I have read the matters and statements made in the above claim and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Dated: October 22, 2013



 Signature of Claimant or Person Acting On Behalf of Claimant

¹ Limited civil cases are discussed in California Code of Civil Procedure § 85.



04.28.2013 15:06



04.28.2013 15:00

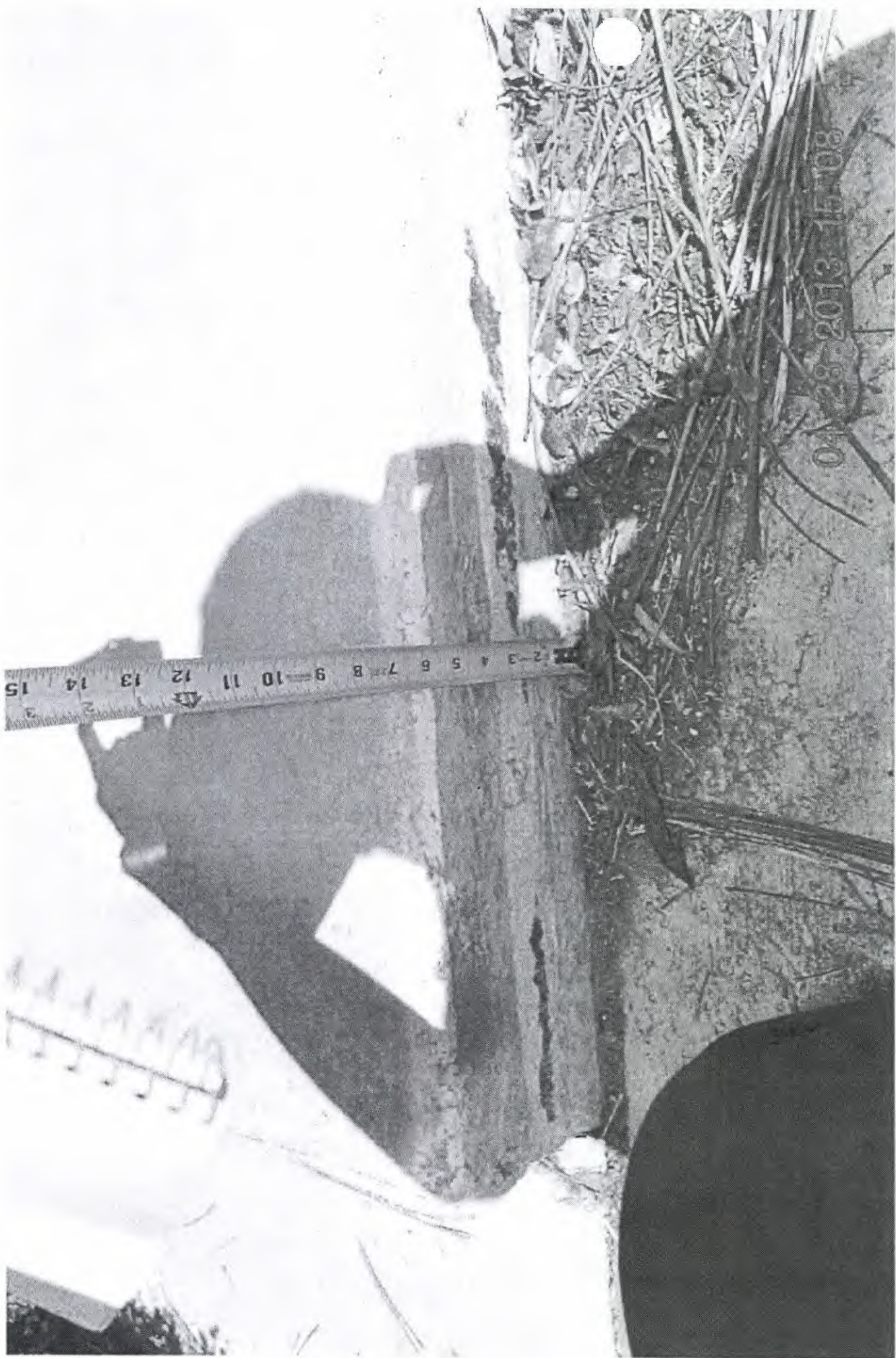
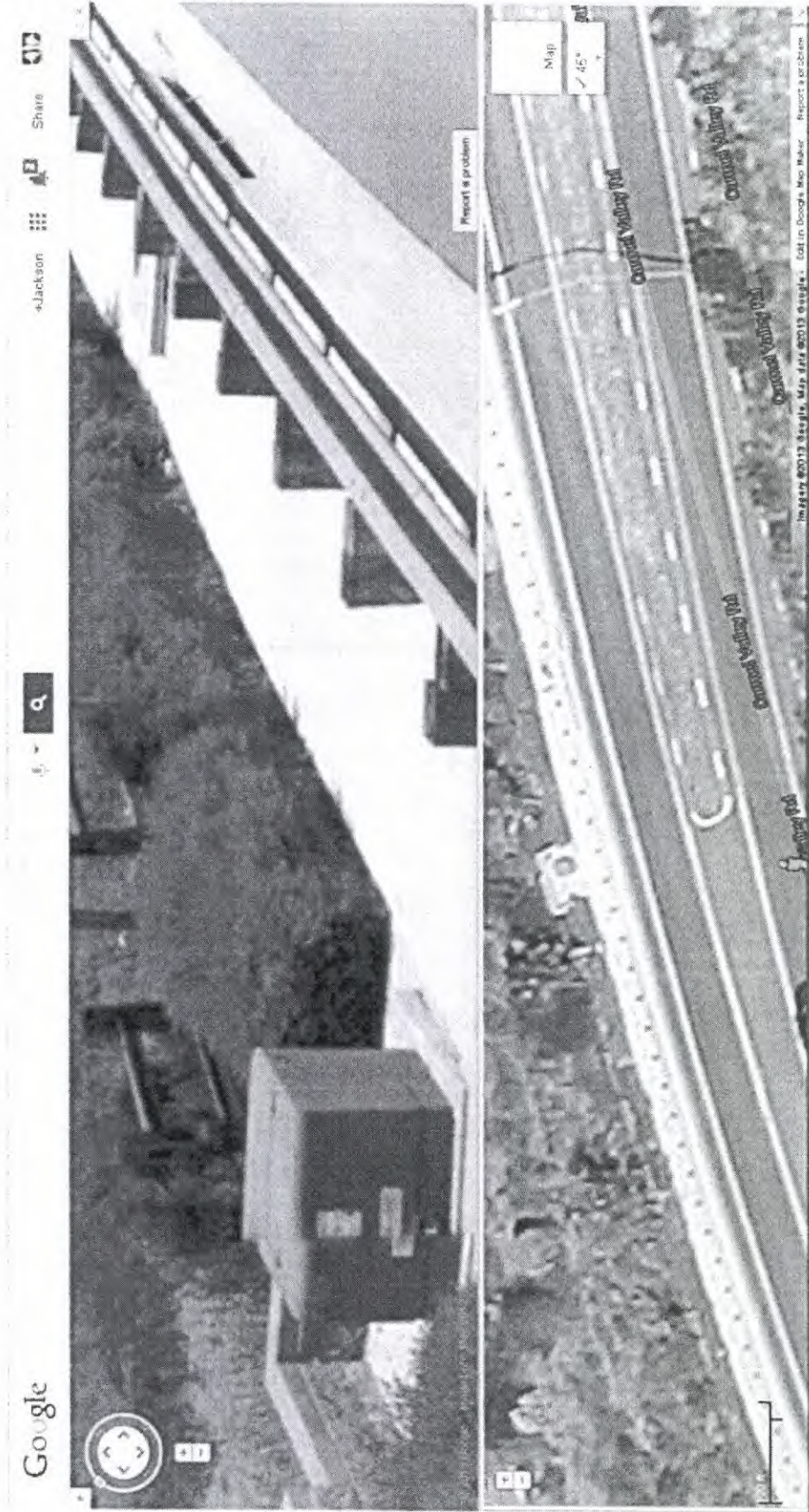


PHOTO OF LOCATION OF CRAIG ROBINSON BIKE CRASH

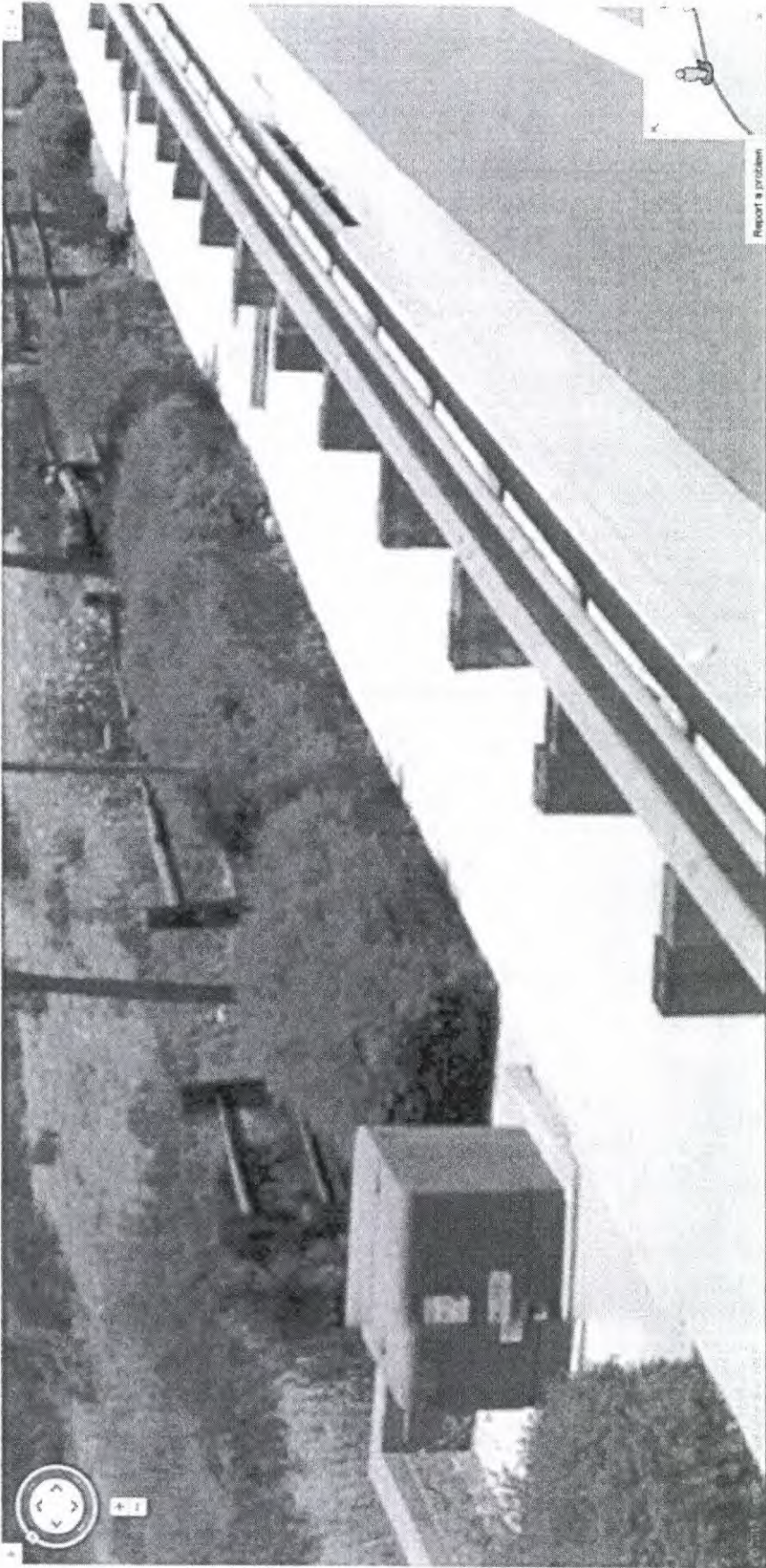
LOCATION: N sidewalk of CARMEL VALLEY ROAD approximately .8 miles east of BLACK MOUNTAIN ROAD



Google



Share



{00444926}

EXHIBIT "B"

{00232401}



DEC 02 2013

THE CITY OF SAN DIEGO

November 27, 2013

Craig Tweed Robinson
c/o Balestreri Potocki & Holmes
401 B St Ste 1470
San Diego CA 92101

Reference: City File #: 8686
Date of Incident: 04/28/2013
Claimant: Robinson, Craig Tweed

Dear Mr. Robinson:

Claims against the City of San Diego are referred to this office for investigation, and with the advice of the office of the City Attorney a determination of legal liability.

As you may know, the liability of a municipality to persons who claim damages is strictly limited by the legislature of the State of California governing municipal operations. We must review the circumstances of your claim within the terms of those laws. We regret that investigation and legal opinion oblige us to conclude that the City must deny your claim.

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 Section 945.6.

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.

Sincerely,

A handwritten signature in black ink that reads "Cory Walton".

Cory Walton
Claims Representative

#20