Government Claims Form

California Victim Compensation and Government Claims Board
P.O. Box 3035
Sacramento, CA 95812-3035

1-800-955-0045 • www.governmentclaims.ca.gov

State of California

For Office Use Only
Claim No.:

Is your claim complete?

☑	***New!*** **Include a check or money order for $25 payable to the State of California.**
☑	Complete all sections relating to this claim and sign the form. Please print or type all information.
☑	Attach receipts, bills, estimates or other documents that back up your claim.
☑	Include two copies of this form and all the attached documents with the original.

Claimant Information

1	COUNTY OF ORANGE *Last name* *First Name* *MI*	2	Tel: 714 834 3300
		3	Email:
4	P.O. BOX 1379 *Mailing Address*		Santa Ana *City* · CA *State* · 92702 *Zip*
5	Best time and way to reach you: 8-5, M-F		
6	Is the claimant under 18? ☐ Yes ☑ No		If YES, give date of birth: *MM* *DD* *YYYY*

Attorney or Representative Information

7	Steiner, Harriet *Last name* *First Name* *MI*	8	Tel: 916 325 4000
		9	Email: harriet.steiner@bbklaw.com
10	400 Capitol Mall *Mailing Address*		Sacramento *City* · CA *State* · 95814 *Zip*
11	Relationship to claimant: Attorney (Best, Best & Krieger)		

Claim Information

12	Is your claim for a stale-dated warrant (uncashed check) or unredeemed bond? ☐ Yes ☑ No
	State agency that issued the warrant: If NO, continue to Step 13.
	Dollar amount of warrant: Date of issue: *MM* *DD* *YYYY*
	Proceed to Step 22.
13	Date of Incident: Fiscal year ending June 30, 2011
	Was the incident more than six months ago? ☑ Yes ☐ No
	If YES, did you attach a separate sheet with an explanation for the late filing? N/A ☐ Yes ☐ No
14	State agencies or employees against whom this claim is filed: California Department of Finance
15	Dollar amount of claim: $23,075,736.00
	If the amount is more than $10,000, indicate the type of civil case: ☐ Limited civil case ($25,000 or less) ☑ Non-limited civil case (over $25,000)
	Explain how you calculated the amount: See attached narrative.

16	Location of the incident: Sacramento, CA and Santa Ana, CA
17	Describe the specific damage or injury: See attached narrative.
18	Explain the circumstances that led to the damage or injury: See attached narrative.
19	Explain why you believe the state is responsible for the damage or injury: See attached narrative.
20	Does the claim involve a state vehicle? ☐ Yes ☑ No
	If YES, provide the vehicle license number, if known:

Auto Insurance Information

21	N/A			
	Name of Insurance Carrier			
	Mailing Address	City	State	Zip
	Policy Number:	Tel:		
	Are you the registered owner of the vehicle?	☐ Yes	☐ No	
	If NO, state name of owner:			
	Has a claim been filed with your insurance carrier, or will it be filed?	☐ Yes	☐ No	
	Have you received any payment for this damage or injury?	☐ Yes	☐ No	
	If yes, what amount did you receive?			
	Amount of deductible, if any:			
	Claimant's Drivers License Number:	Vehicle License Number:		
	Make of Vehicle:	Model:	Year:	
	Vehicle ID Number:			

Notice and Signature

22	I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to $10,000 (Penal Code section 72).

Daniel Stern — 5/9/2012

Signature of Claimant or Representative — Date

23	Mail the original and two copies of this form and all attachments with the $25 filing fee or the "Filing Fee Waiver Request" to: Government Claims Program, P.O. Box 3035, Sacramento, CA, 95812-3035. Forms can also be delivered to the Victim Compensation and Government Claims Board, 400 R St., 5th flr, Sacramento.

For State Agency Use Only

24		
	Name of State Agency	Fund or Budget Act Appropriation No.
	Name of Agency Budget Officer or Representative	Title
	Signature	Date

When Orange County went through its bankruptcy in the mid-1990s, it pledged a portion of its Vehicle License Fee revenues ("VLF") to the bondholders who financed its emergence. By 2004, the amount of VLF necessary to service the bankruptcy debt was roughly $54 million per year. On June 19, 2003, under then existing law, the California State Controller and Director of Finance made findings of insufficient revenues and the effective VLF rate went from 0.65% to 2%. The new rate went into effect for taxpayers with October 2003 registrations. However, in 2004, following the recall of Governor Davis, the State reduced the effective VLF rate back down to 0.65%. Initially, the State backfilled this loss in VLF revenues to local governments from the State General Fund.

As part of the 2004 Budget Act, the California State Legislature passed Senate Bill 1096 that allowed the State to take away and keep for the State's own purposes the VLF revenues of counties throughout the State. In exchange, the State enacted a statutory scheme that gave counties additional property tax revenue from the Educational Revenue Augmentation Fund ("ERAF") that would otherwise go to California's schools. The State's substitution of property taxes from ERAF to replace the counties' VLF revenues was and is generally referred to as the "VLF Swap." The State implemented the VLF Swap in part by enacting Revenue & Taxation Code section 97.70 ("Section 97.70"). Section 97.70 created the Vehicle License Fee Adjustment Amount ("VLFAA"), which required county auditor controllers to allocate additional property taxes to their counties to be paid from ERAF in lieu of VLF. One clear goal of the VLF Swap as reflected in legislative history was to ensure that counties would not be prejudiced by the State's reallocation of VLF to its own purposes.

However, the VLF Swap meant that school districts throughout the State stood to suffer a significant reduction in their own property tax revenues due to the diversion of ERAF property tax funds to the counties' VLFAA – if not for the existence of Prop 98. Prop 98 requires the State to provide a minimum annual funding level for K-12 schools and community colleges and to automatically backfill property tax shortfalls experienced by local K-12 school districts, such as the reduction of ERAF caused by the State's enactment of the VLF Swap.

A few months later in 2004, after the State had enacted the VLF Swap through SB 1096, the legislature passed Assembly Bill 2115, which amended SB 1096. Both SB 1096 and AB 2115 recognized that the State could not legally interfere with Orange County's contractual arrangements with bankruptcy creditors and, therefore, should not compel Orange County to swap the bankruptcy-debt-securing portion of its VLF revenues for property tax revenues. Thus, under AB 2115, Revenue & Taxation Code section 11005(b)(1) ("Section 11005") preserved Orange County's right to continue receiving the VLF revenues that had been given as security for bankruptcy debt.

The State Controller prepared an October 2005 memorandum to county officials, which showed that every county, except Orange County, had swapped all of their VLF revenues for VLFAA. Orange County's 2004-2005 baseline VLFAA allocation was reduced by the $54 million amount in VLF revenues (the "VLF set-aside") that Orange County continued to receive. This baseline reduction was then carried over in subsequent fiscal years to reduce the County's VLFAA (property taxes in lieu of VLF), because the County continued to receive the VLF set-aside through the 2010-2011 fiscal year. While the exact amount of VLF received by Orange County varied during those years in accordance with statewide VLF revenues, by fiscal year 2010-2011, Orange County's VLF revenue had decreased to around $48 million per year.

This history shows that Orange County's total revenues were not increased at all by the County's VLF set-aside implemented by Section 11005. In fact, as explained below, Orange

County received significantly less in total revenues due to its ongoing receipt of VLF than it should have received in VLFAA had the calculation of VLFAA not been reduced by the VLF offset.

The clear legislative intent of SB 1096 and AB 2115 was to treat Orange County fairly and uniformly in comparison to all other counties and to be revenue neutral as to Orange County. Such uniform treatment is required by the California Constitution, Article IV §16 ["All laws of a general nature have uniform operation. A local or special statute is invalid in any case if a general statute can be made applicable."].

In 2005, the County refinanced its bankruptcy debt and removed the pledge of VLF revenues as specific security for this debt. Instead, the debt was secured and paid with the county's general funds. For the next six years, despite the fact that the set-aside was no longer necessary, the County continued to receive the set-aside VLF revenues rather having its VLFAA calculated in the same way as all other county auditor controllers were calculating VLFAA for their counties. Thus, the County's calculation of VLFAA continued to be discounted in comparison to other counties.

This continuation of the VLF set-aside and the corresponding reduction of the County's share of VLFAA significantly damaged the County and its residents relative to other counties and their residents throughout the State. During that six-year period, as noted above, VLF revenues statewide declined (as they are tied to automobile sales) and Orange County's VLF revenues declined from $54 million to about $48 million per year. During the same period, assessed property values across the State and resulting property tax revenues, which fund VLFAA, increased dramatically.

As a result of that divergence in the trends of the two revenue streams, Orange County received significantly less in combined VLF and VLFAA than it would and should have received in VLFAA alone had it been placed back on par with other counties by having its VLFAA calculated in the same way as all other counties once it refinanced its bankruptcy debt and no longer needed the special VLF set-aside. If the VLF offset to the calculation of Orange County's VLFAA had been eliminated in 2005 (when the VLF revenues were no longer needed as security for the County's bankruptcy debt) the County's VLFAA would have increased by $73.5 million per year as of the 2010-2011 fiscal year, or about $23 million more than the County was receiving in combined VLF and VLFAA. Meanwhile, other counties' VLFAA increased significantly during that period of time.

Orange County has been damaged by its under-receipt of VLFAA and corresponding overpayment of ERAF from the 2005-2006 fiscal year through the 2010-2011 fiscal year. Orange County residents have been deprived by the disparate treatment of Orange County under Section 97.70 from enjoying the benefits of the significantly increased property taxes in lieu of VLF that other counties have enjoyed. The shortfall in the County's VLFAA resulted in a corresponding windfall to the State due to the reduction of its Prop 98 backfill obligations owed to local Orange County school districts that would have resulted had Orange County received its fair share of VLFAA from ERAF. This windfall did not benefit Orange County school districts, because it only changed the composition of their funding, rather than increasing their total funding, which is guaranteed by Prop 98. The amount of the State's unjust enrichment and windfall, at Orange County's expense and in violation of the constitutional requirement for uniform treatment, reached $23,075,736 for fiscal year 2010-2011, which is the applicable period for this Claim. That amount represents the difference between what the County received in VLF during that fiscal year and the amount that it should have received in additional VLFAA during that year.

Effective July 1, 2011, the State enacted Senate Bill 89 (SB 89), which terminated the County's receipt of VLF revenues under Section 11005. Because SB 89 took away Orange County's VLF revenues, without expressly confirming that this meant Orange County's VLFAA would no longer be subject to any offset for the County's prior VLF revenues, the County Board of Supervisors requested Orange County Auditor-Controller, David Sundstrom, to examine how the County's VLFAA should be calculated in light of the elimination of the VLF set-aside. Mr. Sundstrom properly determined that, once the VLF set-aside had been eliminated, the only appropriate method to calculate VLFAA for the County was to adjust the baseline amount of VLFAA to be allocated to the County without regard to the original offset established in 2004-2005 for the County's VLF. Now that SB89 has repealed Section 11005(b)(1), there no longer exists any provision of California tax law that requires that the County be treated differently than any other county for purposes of calculating and allocating VLF and VLFAA revenues. No county now receives VLF. All counties are entitled to receive their full allotment of VLFAA per the terms of the VLF Swap. Thus, by properly calculating Orange County's VLFAA under Section 97.70 in the same way it is applied to all other counties – i.e., by taking out the original 2005 reduction for the County's VLF revenues, which no longer has any place or application in the calculation of what the County's present VLFAA amount should be – the Auditor-Controller determined that the proper amount of the allocation of VLFAA to Orange County for fiscal year 2011-2012 was and is approximately $73.5 million.

The Orange County Auditor-Controller's calculation of how much Orange County should now be receiving in VLFAA led to a realization that the County, as described above, had been significantly shortchanged in past years as a result of its receipt of VLF revenues that were much less than what it should have been receiving in additional VLFAA. It is the State that received the benefit of the County's money, by virtue of the reduction of its Prop 98 backfill obligations owed to Orange County schools. The State received these funds in violation of the constitutional requirement that counties must receive uniform treatment unless there is a factual basis to justify the disparate treatment. The only factual basis (use of the funds to secure the bankruptcy debt) terminated in 2005. Therefore, the County claims that the State must pay $23,075,736, representing the shortfall in VLFAA revenues received by Orange County during the 2010-2011 fiscal year.