



## REPORT TO CITY COUNCIL

**Approved by:**

Wendy Silva  
Wendy Silva, Director of Human Resources

Arnoldo Rodriguez  
Arnoldo Rodriguez, City Manager

**Council Meeting of:** March 6, 2019

**Agenda Number:** B-5

**SUBJECT:**

Consideration of a Minute Order Rejecting a Claim Filed by Robert Wilson

**RECOMMENDATION:**

It is recommended Council reject the claim filed by Mr. Wilson.

**SUMMARY:**

Robert Wilson, through his attorney Barry Bennett, has filed a claim against the City alleging breach of oral contract.

**DISCUSSION:**

Mr. Wilson's claim alleges that he carried out additional work duties of the Successor Agency to the former Madera Redevelopment Agency under an oral promise for additional compensation. He further alleges that the City Council, in not offering him additional compensation, committed a breach of oral contract, as well as a breach of covenant of good faith and fair dealing. He is seeking unlimited civil damages.

The City has obtained outside legal counsel for representation on this matter through Jesse Maddox of Liebert Cassidy Whitmore. The claim does not have coverage through the Central San Joaquin Valley Risk Management Authority because there is an exclusion in the Memorandum of Coverage for the Liability Pool relating to breach of contract claims. The claim does not have coverage through the Employment Risk Management Authority because there is an exclusion of coverage for claims regarding employee compensation.

**FINANCIAL IMPACT:**

Rejection of a claim filed under the tort claim statute does not cause an immediate financial impact. Rejection begins the time period during which a claimant can enter into settlement discussions or decide to file an action with the Court. The City is responsible for payment for legal

representation on our behalf, and such matters are accounted for in the contracted legal services line item of the Insurance Reserve Fund.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

Rejection of claims filed under Government Code §910 is not addressed in the Vision or Action Plan; the requested action is also not in conflict with any of the actions or goals contained in that plan.

**ALTERNATIVES:**

If Council does not take action to formally reject the claim, the claim will be rejected by operation of law.

**ATTACHMENTS:**

1. Claim submitted by Mr. Wilson.

**CLAIM FOR DAMAGES**

**CLAIMANT:** Robert Wilson  
**ADDRESS:** [REDACTED]

Madera City Clerk  
RECEIVED  
By: Melvarz  
Date: 1/25/19

**NOTICES ARE TO BE SENT TO:** Barry J. Bennett  
Bennett, Sharpe & Bennett, Inc.  
2444 Main Street, Suite 150  
Fresno, California 93721  
Phone (559) 485-0120  
Fax (559) 485-5823  
Email: [barry@bennettsharpe.com](mailto:barry@bennettsharpe.com)

**DATE OF INJURY:**

The actions described herein commenced on and after December 6, 2018 and continuing to date.

**LOCATION OF INJURY:**

City Hall, Madera, California

**CIRCUMSTANCES:**

See attached narrative.

**LIABILITY:**

Breach of oral contract; breach of covenant of good faith and fair dealing

**DESCRIPTION OF LOSS:**

Loss of salary for work performed in good faith reliance

**NAMES OF ENTITY AND EMPLOYEES CAUSING LOSS:**

Successor Agency to the Former Madera Redevelopment Agency, City Of Madera; Andrew Medellin, Mayor, City of Madera and Presiding Officer of the Successor Agency to the Former Madera Redevelopment Agency

**JURISDICTION:**

Jurisdiction will lie in the California Superior Court. This claim would not be a limited civil case, and exceeds \$25,000.00.

Claimant requests that all documents, and any other such relevant evidence related to this incident be preserved.

Dated: January 22, 2019

LAW OFFICES OF  
BENNETT, SHARPE & BENNETT, INC.

By Barry J. Bennett  
BARRY J. BENNETT  
Attorneys for Claimant

## ROBERT WILSON - CLAIM FOR DAMAGES

Prior to January 11, 2012, Claimant occupied the position of Business Manager for the Redevelopment Agency for the City of Madera, reporting to the Executive Director of said Agency. Effective January 11, 2012, as a result of changes in California law, the City Council of the City of Madera enacted Resolution no. CC 12-08, by which the City Council accepted the designation as the Successor Agency to the former Madera Redevelopment Agency (hereinafter "Successor Agency"). On April 11, 2012 the Madera City Council, acting in the capacity as the Successor Agency, adopted By-Laws for the Successor Agency, naming the Mayor and Mayor Pro Tempore as Officers of the Successor Agency, providing for the employment of an Executive Director and other employees of the Successor Agency, and providing for the appointment of a Business Manager by the Executive Director. The Executive Director of the Successor Agency remained in office, and designated Claimant to continue as Business Manager of the Successor Agency. The salary of the Executive Director was substantially higher (more than double) than that of the Business Manager

In December, 2017, the Executive Director of the Successor Agency resigned and, on February 14, 2018, at a public meeting of the Successor Agency, Claimant was appointed to be the Executive Director of the Successor Agency and entered into an oral agreement to so serve, thereby assuming the duties and responsibilities of the position of Executive Director. The terms of said agreement were oral, in that the expected duration of the Successor Agency was expressly stated to be 18-24 months before all the funds of the Agency had been committed, and all properties held in the Successor Agency's name disposed of, and all terms of the former Executive Director's employment were to remain the same, except for salary. The City Council, acting as the Successor Agency, designated an ad-hoc committee to, inter alia, research the question of salary, and negotiate a fair salary with Claimant. Claimant accepted those terms, and the position of Executive Director of the Successor Agency, in reliance on the good faith of Respondents herein.

For the next 10 months, and continuing to date, Claimant dutifully discharged and carried out the higher duties and greater responsibilities of the position of Executive Director of the Successor Agency, working with a reduced staff and limited resources to carry on the work of the Successor Agency and to bring the work of the Successor Agency to a close. Periodically, Claimant contacted the Mayor to establish a meeting date on which the salary of the position of Executive Director could be discussed and finalized, but the Mayor delayed having a such meeting and did not respond to Claimant's inquiries, except to assure Claimant, at a meeting on September 19, 2018, that any salary adjustment for the added responsibilities of Executive Director, would be retroactive. Claimant then continued to perform the duties of Executive Director of the Successor Agency, with the apparent assurance that his salary adjustment would be retroactive to the beginning of his tenure as Executive Director.

On December 6, 2018, the Mayor and Councilmember Gallegos (the members of the ad-hoc committee) met with Claimant and stated that the Mayor had, in closed session, met with members of the Successor Agency and that the members had decided that, even though Claimant had performed the work of Executive Director for 10 months already, the Successor Agency was going to offer Claimant no additional compensation for his performance of the higher duties and responsibilities of the position, and that Claimant would continue to receive his compensation as Business Manager of the Successor Agency, notwithstanding his performance of duties and responsibilities of a higher, managerial, position. In so doing, Claimant submits, Mayor Medellin and the Council - violated the covenant of good faith and fair dealing which attaches to every contract in the State of California, and is liable to Claimant in an amount to be determined, but which is in excess of \$25,000.