

# RLS RAINS LUCIA STERN ST. PHALLE & SILVER, PC

**CONFIDENTIAL**  
**FACSIMILE TRANSMISSION**

Date: March 19, 2018

To:

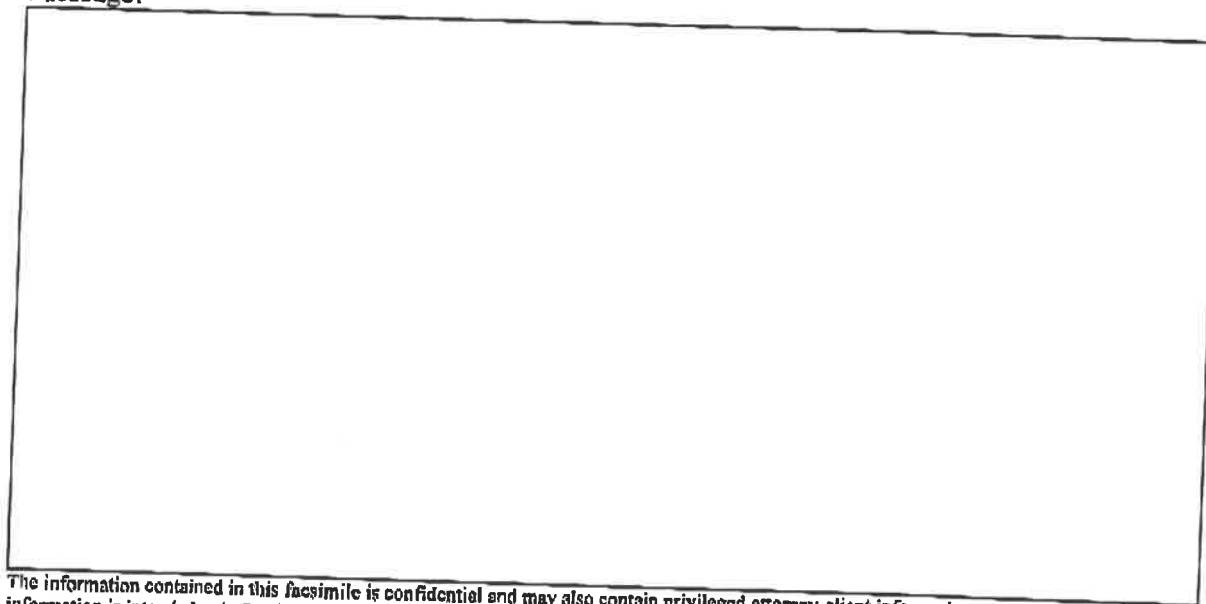
Name/Company	Facsimile Number
City of Beaumont Attn: Nicole, City Clerk	951-769-8526

From: Brian P. Ross, Esq.

Re: **Claim Form for James Gregg**

Number of Pages, Including Cover: 6

Message:



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CLAIM FORM  
CITY OF BEAUMONT  
550 EAST SIXTH STREET  
Beaumont, California 92223  
Telephone: 951-769-8520 Fax 951-769-8525

1. Date this Claim form was filled out: March 19, 2018
2. Name of Claimant: James Gregg
3. Mailing Address of Claimant: c/o Rains Lucia Stern St. Phalle & Silver, P.C.  
P.O. Box 2161, Santa Monica, CA 90407-2161
4. Mailing Address to which Claimant desires notices to be sent:  
c/o Rains Lucia Stern St. Phalle & Silver, P.C. P.O. Box 2161, Santa Monica, CA 90407-2161
5. The date of the occurrence or transaction which gave rise to the Claim:  
SEE ATTACHMENT
6. The place of the occurrence or transaction which gave rise to the Claim:  
SEE ATTACHMENT
7. A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known to the Claimant: (attach additional sheets if necessary)  
SEE ATTACHMENT  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. The name or names of the public employee or employees causing the injury, damage, or loss, if known: SEE ATTACHMENT  
\_\_\_\_\_  
\_\_\_\_\_
9. The amount of the Claim: \$ 1,500,000.

**ATTACH SUPPORTING INFORMATION**

I hereby declare, under penalty of perjury under the laws of the State of California, that the information presented in this claim is true and correct.

10. Claimant's signature: *B.R.*  
 Print Name: Brian Ross Esq. on behalf of James Gregg  
 Date this Claim is signed: March 19, 2018  
 Claimant's phone number: 310-393-1486

## ATTACHMENT TO CLAIM FOR DAMAGES

### I. Factual Background

Prior to July 1, 2006, Gregg was a contracted risk manager for the City. He was also contracted by the special district, ERMAC, to provide administration services. At the September 29, 2005 meeting of the Board of Directors of ERMAC, the Board of ERMAC discussed the possibility of having a member agency hire Gregg as an employee to avoid the costs and bureaucracy of creating a personnel system for the Authority. As stated in the minutes from the September 29, 2005 meeting:

The President directed the General Manager to return to the Board with recommendations relative to the possible hiring of him as a permanent employee either directly with the Authority or as a contract employee of one of the member agencies.

Subsequently, the Board adopted a Resolution that provided for the employment of Gregg by the City. As stated in the minutes from the Board of Directors meeting dated May 11, 2006:

#### Employment of General Manager

The General Manager provided a comprehensive report and proposed resolution wherein the Authority would contract with the City of Beaumont to provide a General Manager for the Authority. The General Manager currently provides his services on a contract basis. Under this proposal, the City of Beaumont would hire the General Manager and the Authority would reimburse the City for costs associated with his employment as described more thoroughly in Resolution 2006-03.

Following discussion, upon a motion by Alonzo, seconded by Kapanicas, and unanimously carried, Resolution 2006-03 as revised was approved.

Resolution 2006-03 then provided for the employment of Gregg by the City. It stated:

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby resolve as follows:

1. That ERMAC authorizes the City of Beaumont to hire Mr. James J. Gregg on behalf of ERMAC to serve as the General Manager of ERMAC on an at-will basis at the discretion of the Board of ERMAC; and
2. The Authority hereby appoints Mr. Gregg as the General Manager to manage the affairs of the Authority. The General Manager shall be supervised and take direction from the Board of Directors of ERMAC.

...

...

3. ERMAC agrees to allow the City of Beaumont to process and administer the employment of Mr. Gregg as the General Manager of ERMAC....
4. That the ERMAC Treasurer, is authorized to reimburse the City of Beaumont for all direct costs associated with processing the employment of Mr. Gregg.... Such costs shall not include the indirect costs of processing and administering the salary and benefits provided to Mr. Gregg by the City of Beaumont on behalf of ERMAC.

...

8. Mr. Gregg is appointed to the position of General Manager for a period of twelve months from the adoption of this Resolution. Mr. Gregg shall continue in this position thereafter and serve at the pleasure of the Board of Directors of ERMAC and the city of Beaumont. He shall retain no expectation of employment with either ERMAC or the city of Beaumont following the initial twelve month period.

Gregg was subsequently hired the City as its Risk Manager on July 1, 2006. His duties included performing all risk management functions for the City and providing management services to the City's insurance JPA, ERMAC. Gregg was told that he was hired on a provisional basis while the City posted the position and solicited applications for the position. He filled out a job application and undertook other actions needed for employment with the City, including submitting a copy of his social security card and a blank personal check for purposes of direct deposit of payroll, completing a City Waiver of Insurance Form with an effective date of July 1, 2006, and undergoing fingerprinting and a background check. Gregg's hiring was reported to City staff in an email dated July 6, 2006 from Finance Director, Bill Aylward. Gregg was subsequently given a City Employee Handbook, completed an IRS W-4 provided by the City, was given an employee number, and was photographed and given an official City Employee Badge with his employee number on it.

Gregg's Risk Manager position was approved annually in the City budget. Management fees paid by ERMAC to the City were approved in the ERMAC budgets with knowledge of all agencies and approved by all agencies including the City. The Budget was audited annually and all amounts identified as his City salary were reported to CalPERS on an annual basis. All matters relating to Gregg's position involving City activities and ERMAC activities were done in a transparent fashion in open session of all governmental agencies.

During his tenure, Gregg received regular paychecks from the City. Gregg understood that his salary was broken into two schedules (Step 26 and an ERMAC Funded Schedule) for accounting purposes so that the City could bill ERMAC for services rendered. The portion of his salary was reimbursed by ERMAC was accounted for separately for invoicing purposes. Management fees were established and paid by ERMAC to the City following approval by the ERMAC Board of Directors. The City Manager and Finance Director approved all salary adjustments for Gregg just as they would for any other employee.

For nine years, Gregg considered himself an employee of the City performing the job of Risk Manager, and for nine years, the City considered him its employee and complied with all of its payroll and other reporting and withholding obligations as if Gregg was an employee. Gregg was managed as an employee and his work product was judged as an employee. His primary duties were to handle the risk management needs of the City inclusive of the managing of the City's joint power authority, ERMAC, which provided the City with the critical risk sharing and risk transfer products needed to meet an ever-increasing litigious society.

Gregg continued his employment with the City based upon his expected retirement benefits and forewent more lucrative job opportunities in reliance on his expected retirement benefits.

On June 30, 2015, Gregg retired from the City and began receiving retirement benefits from CalPERS consistent with representations made by the City and CalPERS. The retirement was part of his life plan, and Gregg closed his own personal law practice in reliance on the expected retirement benefits he had been receiving.

However, on June 22, 2017, CalPERS sent Gregg a notice declaring that CalPERS had "preliminarily determined" that his appointment as the Risk Manager for the City on July 1, 2006 and for the employment period extending until June 30, 2015 was "invalid". Subsequently, Gregg submitted a detailed response totaling 15 pages and including nearly 800 pages of exhibits on or about July 19, 2017. Despite this response, on September 21, 2017, CalPERS sent Gregg a letter stating that in part:

[W]e found that you were employed as a General Manager of the Exclusive Risk Management Authority of California (ERMAC) for the July 1, 2006 to June 30, 2015 [sic], not as a common law employee for the City. Since ERMAC does not contract with CalPERS for retirement benefits, you were not eligible for membership in CalPERS for the reported above service period.

Gregg has since begun the formal appeal process, in accordance with Government Code section 20134 and 2 CCR 555, *et seq.*, retaining Rains Lucia Stern St. Phalle & Silver, P.C. to pursue that appeal on his behalf.

## **II. Description of Indebtedness, Obligation, Injury, etc.**

Based on the above facts, the City intended that Gregg would be an employee of the City, that he would be eligible for membership in CalPERS, and that he would receive the attendant benefits thereof. Gregg continued his employment with the City based upon his expected retirement benefits and forewent more lucrative job opportunities in reliance on his expected retirement benefits.

As an employee of the City of Beaumont, the City should have brought action against CalPERS to defend the benefits the City promised to provide Gregg. Similarly, should it be determined that Gregg was not an employee of the City, the failure to ensure that Gregg was a proper employee would fall on the City, not on Gregg. Accordingly, Gregg bears no fault should

it be determined that he is not eligible for membership in CalPERS. Instead, Gregg relied on the express promises and representations of both the City and ERMAC, resulting in potentially significant detriment and harm.

Because of the failures of the City, Gregg has been required to act in the protection of his own interest by bringing an action against CalPERS to challenge its administrative decision and obtain the benefits to which he is entitled. Pursuant to Code of Civil Procedure Section 1021.6 and general principles of equitable and implied indemnification (see *West v. Superior Court* (1994) 27 Cal.App.4th 1625, 1633; *Bay Dev. v. Sup. Ct.* (1990) 50 Cal.3d 1012, 1033), Gregg hereby demands that the City indemnify him for the costs of pursuing his appeal of CalPERS' determination that he is not a member of CalPERS and that he is thereby not entitled the certain retirement benefits to which he would otherwise be entitled.

In addition, should CalPERS deny Gregg's appeal, the City would be responsible for the monetary value of Gregg's retirement, which was an express inducement to begin employment with the City and was a clear component of his overall compensation package. Because of the above representations and failures, the City would be obligated for such compensation under the following theories, amongst others: breach of contract, promissory and equitable estoppel, breach of fiduciary duty, fraud in the inducement, negligence, intentional and negligent infliction of emotional distress, and impairment of contractual rights in violation of the Federal and State Constitutions.

Gregg hereby further asserts that he would be entitled to costs and attorneys' fees arising from any lawsuit filed against the City.

