

# **AGREEMENT TO DEFEND PUBLIC OFFICER OR EMPLOYEE, RESERVATION OF RIGHTS AND NON WAIVER AGREEMENT**

WHEREAS, the undersigned public officer or employee is a party defendant in the following action:

NAME OF CASE: Eric Martinez Felix v County of Fresno, et al.

ACTION NO: 1:21-CV-01417-DAD-SKO

COURT: Eastern District Court

WHEREAS, the undersigned officer or employee claims that the said action referenced above arose out of acts or omissions which, if they occurred at all, occurred within the course and scope of the officer's or employee's employment with the County of Fresno or of a Judicial District thereof and were not the result of fraud, corruption or malice; and

WHEREAS, the undersigned officer or employee has requested that the County of Fresno undertake his/her defense in said action pursuant to Article 4 (commencing with section 825), Chapter 1, Part 2, Division 2.6 of Title 1 of the Government Code and said County is willing to conduct said defense subject to a reservation of its rights/non waiver agreement to the full extent permitted in said provision of the Government Code.

## Matters Covered Under this Reservation of Rights:

- Ordinary negligence which occurred within the course and scope of your employment.

## Matters NOT COVERED by the County of Fresno under this Reservation of Rights/Non-Waiver Agreement:

- Any actions outside the course and scope of your employment.
- Any actions within the course and scope of your employment that were/are reckless, grossly negligent, willful, wanton, fraudulent, oppressive, malicious, arbitrary or capricious.
- Punitive damages (which are not currently alleged in this case)

Pursuant to this agreement, the County of Fresno may take the following actions if the facts of this case warrant:

1. Seek a declaration of rights and duties regarding its defense and/or indemnity obligations;

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2. Withdraw our defense and seek reimbursement for defense fees incurred in defending claims with no potential for coverage;
3. Seek reimbursement for any judgement or settlement paid by County of Fresno on the ground that the sums were not paid in connection with covered claims;
4. The right to have separate verdict form at trial for non-covered claims;
5. The right to amend this agreement at a later time.

*Please bear in mind that the County of Fresno is not in any way asserting the allegations against you have merit. The County of Fresno is simply stating that the claims, or a portion of them, may not be covered.*

PLEASE NOTE: The Public Officer or Employee signing this document has the right to seek advice of outside counsel/independent counsel at any time.

I, **Jeffrey Morse**, have read the above information and have had an opportunity to ask questions. I am requesting that the County of Fresno undertake my defense in the above-entitled action subject to a RESERVATION OF RIGHTS. I understand that I have the continuing right to seek advice of outside/independent counsel at any time and will advise the County of Fresno as soon as possible should I want to do so.

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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this  
2 3<sup>rd</sup> day of May, 2022, in the County of Fresno, State of California.

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4 **COUNTY OF FRESNO**

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6  
7 By:   
8 **Public Officer or Employee**

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10   
11 **Brian Pacheco, Chairman of the Board of**  
12 **Supervisors of the County of Fresno**

13  
14 **ATTEST:**  
15 **Bernice E. Seidel**  
16 **Clerk of the Board of Supervisors**  
17 **County of Fresno, State of California**

18  
19 By:   
20 **Deputy**