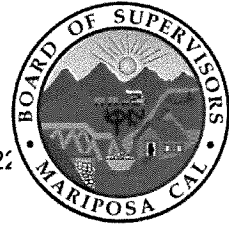


# MARIPOSA COUNTY

Human Resources/Risk Management • (209) 966-3222



## **RESOLUTION - ACTION REQUESTED 2018-85**

MEETING: March 6, 2018  
TO: The Board of Supervisors  
FROM: Steve Dahlem, County Counsel - Interim Human Resources Director  
RE: Rejection of Claim No. C17-08 Claimant: Lilliane Rogers

---

### **RECOMMENDATION AND JUSTIFICATION:**

Reject Claim No. C17-08 presented by Lilliane Rogers for an undetermined amount; and authorize the Board of Supervisors Chair to sign the Notice of Rejection.

The claimant alleges a sustained injury from an accident on Hornitos Road. The claimant failed to meet the burden of proof of liability; therefore, it is recommended that this claim be rejected.

### **BACKGROUND AND HISTORY OF BOARD ACTIONS:**

The Board has previously rejected unsubstantiated claims.

### **ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

### **ATTACHMENTS:**

**Claim No. C17-08 Lilliane Rogers (PDF)**

**Notice of Rejection - Rogers (PDF)**

**RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]**

**MOVER:** Marshall Long, District III Supervisor

**SECONDER:** Merlin Jones, District II Supervisor

**AYES:** Rosemarie Smallcombe, Merlin Jones, Marshall Long, Miles Menetrey

**EXCUSED:** Kevin Cann

RECEIVED

SEP 24 2017

BOARD OF SUPERVISORS

LILLIANE ROGERS,

Against

COUNTY OF MARIPOSA, COUNTY OF  
MARIPOSA DEPARTMENT OF PUBLIC  
WORKS

AMENDED CLAIM FOR PERSONAL  
INJURIES (Govt. Code §910)

C17-08

AMENDED CLAIM AGAINST: COUNTY OF MARIPOSA, COUNTY OF MARIPOSA  
DEPARTMENT OF PUBLIC WORKS

CLAIMANT'S NAME: LILLIANE ROGERS

DATE OF BIRTH: November 14, 1991

CLAIMANT'S ADDRESS: 1036 E. Simpson Avenue, Fresno, CA 93704

ADDRESS WHERE NOTICE ABOUT AMENDED CLAIM IS TO BE SENT, IF DIFFERENT  
FROM ABOVE:

Peter N. Kapetan, Esq.  
KAPETAN BROTHERS, LLP  
1236 M Street  
Fresno, CA 93721  
(559) 498-8000

This amended claim is based on personal injuries sustained by claimant on or about September 9, 2017, at approximately 12:20 p.m., on Hornitos Road approximately .8 miles north of Old Toll Road, in the unincorporated area of Mariposa County, California, under the following circumstances:

Claimant, Lilliane Rogers, was riding her motorcycle with a group of riders on Hornitos Road on the date of the incident. Claimant was properly licensed and insured at the time of the incident, and was properly wearing a Department of Transportation approved helmet. She was traveling approximately 45 miles per hour when her motorcycle hit a large pothole and/or depression in the roadway which caused her to loss control of the motorcycle and crash. The large pothole and/or depression created a dangerous condition which was reasonably foreseeable to cause the type of crash that Claimant was involved in.

The County of Mariposa and the County of Mariposa Department of Public Works owns and/or controls the area of Hornitos Road where the incident occurred. In addition, the County of Mariposa and the County of Mariposa Department of Public Works created, designed, managed, supervised and/or maintained the area of Hornitos Road where the incident occurred. On the date of the incident, there was a large pothole and/or depression in Hornitos Road which created a dangerous condition. The County of Mariposa and the County of Mariposa Department of Public Works knew of the dangerous condition and/or failed to conduct a reasonable inspection that would have disclosed the dangerous condition in the roadway. The County of Mariposa and the County of Mariposa Department of Public Works placed a warning sign at the area of the dangerous condition. The warning sign was improperly mounted and/or displayed so as to cause it to be ineffectual in warning drivers of the dangerous condition in the roadway. Additionally, The County of Mariposa and the County of Mariposa Department of Public Works failed to maintain the vegetation thereby allowing the grass to obstruct the warning sign. Any alleged repairs made by the County of Mariposa and the County of Mariposa Department of Public Works were ineffective in alleviating the dangerous condition. Claimant believes that the County of Mariposa and the County of Mariposa Department of Public Works committed other negligent acts which will be disclosed by further investigation.

Claimant has been advised that the warning sign that was improperly posted at the scene of the incident has been removed. Claimant asserts that the negligent acts committed by the County of Mariposa and the County of Mariposa Department of Public Works, includes, but is not limited to, the improperly mounting and/or displaying of the warning sign that itself created a dangerous condition.

The names, entities, and employees who caused claimant's injuries, damages, or loss, include, but are not limited to, the County of Mariposa and the County of Mariposa Department of Public Works committed. Claimant's investigation is continuing at this time.

The improper, illegal, intentional and/or negligent acts committed by the above parties include, but are not limited to, negligent hiring, training, supervision, retention and monitoring of its agents and employees; negligent creating, designing, managing, supervising and/or maintaining of the area of Hornitos Road where the incident occurred, negligent failure to properly post and maintain a warning sign so as to give the public notice of the dangerous condition.

Claimant received damages as a direct and proximate cause of the above-described incident. Claimant further suffered physical, mental, emotional and monetary damages as a result of the wrongful conduct. Claimant's physical injuries include, but are not limited to, fractures to both wrists, right elbow, lacerations to her left small finger, right knee and chin. Claimant's damages were reasonably foreseeable given the dangerous condition that existed.

///

///

///

Damages are continuing at the date of presentation of this amended claim and therefore, the amount has not yet been ascertained. However, said amount exceeds \$10,000.00, and this will be an unlimited civil case.

DATED: October 11, 2017

By: 

---

PETER N. KAPETAN,  
Attorney for Claimant,  
LILLIANE ROGERS

**PROOF OF SERVICE – CCP § 1013, 1013a, 2015.5  
and California Rules of Court, Rules 2.306, 2.251**

*Lillian Rogers v. County of Mariposa, et al.*

I, Rachel Baskin, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action. I am an employee of Kapetan Brothers, LLP, and my business address is 1236 M Street, Fresno, California 93721

On the date set forth below, I served the within document:

**AMENDED CLAIM FOR PERSONAL INJURIES  
(GOVT. CODE Section 910)**

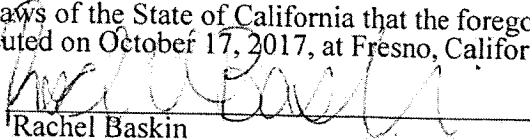
On the parties in said action addressed as follows:

**SEE SERVICE LIST BELOW**

**BY CERTIFIED MAIL:** I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth below, I served the aforementioned document(s) on the parties in said action by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Fresno, California, addressed as set forth above.

<b>Clerk of the Board 5100 Bullion Street P.O. Box 784 Mariposa, CA 95338</b>	<i>Via Certified Mail – Return Receipt Requested</i>
<b>Mariposa County Mike Healy, Public Works Director 4639 Ben Hur Rd. Mariposa, CA 95338</b>	<i>Via Certified Mail – Return Receipt Requested</i>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 17, 2017, at Fresno, California.

  
Rachel Baskin

RECEIVED  
OCT 02 2017

BOARD OF SUPERVISORS

**COUNTY OF MARIPOSA CLAIM FORM**

CLAIM OF Lilliane Rogers )  
(Claimant) )  
v. )  
COUNTY OF MARIPOSA )

CLAIM FOR PERSONAL INJURY  
AND/OR PROPERTY DAMAGE  
(Government Code § 910)

017-08

TO THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY:

YOU ARE HEREBY NOTIFIED that: (Please type or print)

Claimant: Lilliane Rogers  
Whose address is: See Attached Claim for Personal Injury.  
City and State: \_\_\_\_\_ Zip: \_\_\_\_\_

claims damages from the COUNTY OF MARIPOSA in the amount, computed as of the date of presentation of this claim, of \$ Unknown at this time.

This claim is based on: (CHECK APPROPRIATE BOX OR BOXES)

- Property Damage                       Other (Please List)  
 Personal Injury  
 Contract

which occurred on Sept. 9th 2017 in the vicinity of (place where incident occurred):  
(MONTH/DAY)

Hornitos Road approximately .8 miles north of Old Toll Road.  
(PLACE WHERE INCIDENT OCCURRED)

Describe generally the facts and circumstances that give rise to the claim: (Please provide another page if more space is needed.)

See Attached Claim for Personal Injury which is incorporated  
herein by Reference.

The name(s) of the public employee(s) causing claimant's injuries or damages under the above-described circumstances is/are:

See Attached Claim for Personal Injury which is incorporated  
herein by reference.

The injuries sustained by claimant, as far as known, as of the date of presentation of this claim consist of:  
(Describe generally claimant's injuries or damages.)

See attached Claim for Personal Injury which is incorporated  
herein by reference.

The amount claimed, as of the date of presentation of this claim is computed as follows:

**Damages incurred to date:** See attached Claim for Personal Injury.

Expenses for medical and hospital care \$ \_\_\_\_\_  
Loss of earnings \$ \_\_\_\_\_

Specific damages (ITEMIZE & PROVIDE 3 REPAIR ESTIMATES)  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

Other damages (ITEMIZE)  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

**TOTAL DAMAGES INCURRED TO DATE:** \$ \_\_\_\_\_

**Estimated future damages as far as known from this incident:**

Total estimated prospective damages: \$ \_\_\_\_\_

**TOTAL AMOUNT CLAIMED AS OF DATE OF PRESENTATION OF THIS CLAIM:** \$ \_\_\_\_\_

All notices or other communications with regard to this claim should be sent to claimant at:

See attached Claim for Personal Injury.  
(ADDRESS TO WHICH NOTICES ARE TO BE SENT)

Please return the completed form to: Clerk of the Board, 5100 Bullion St, PO Box 784, Mariposa, CA 95338

**\*\*PLEASE NOTE that once submitted, this document becomes a public record and is subject to all forms of public inspection including, but not limited to, display on the internet, and all public records requests.**

Dated: 9/28/17

Signed: [Signature]  
(CLAIMANT/AGENT FOR CLAIMANT)

**Government Code § 911.2. Time of or presentation of claims**

A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with § 915) of this chapter not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with § 915) of this chapter not later than one year after the accrual of the cause of action.

LILLIANE ROGERS,

Against

COUNTY OF MARIPOSA, COUNTY OF  
MARIPOSA DEPARTMENT OF PUBLIC  
WORKS

CLAIM FOR PERSONAL INJURIES  
(Govt. Code §910)

CLAIM AGAINST: COUNTY OF MARIPOSA, COUNTY OF MARIPOSA  
DEPARTMENT OF PUBLIC WORKS

CLAIMANT'S NAME: LILLIANE ROGERS

DATE OF BIRTH: November 14, 1991

CLAIMANT'S ADDRESS: 1036 E. Simpson Avenue, Fresno, CA 93704

ADDRESS WHERE NOTICE ABOUT CLAIM IS TO BE SENT, IF DIFFERENT FROM  
ABOVE:

Peter N. Kapetan, Esq.  
KAPETAN BROTHERS, LLP  
1236 M Street  
Fresno, CA 93721  
(559) 498-8000

This claim is based on personal injuries sustained by claimant on or about September 9, 2017, at approximately 12:20 p.m., on Hornitos Road approximately .8 miles north of Old Toll Road, in the unincorporated area of Mariposa County, California, under the following circumstances:

Claimant, Lilliane Rogers, was riding her motorcycle with a group of riders on Hornitos Road on the date of the incident. Claimant was properly licensed and insured at the time of the incident, and was properly wearing a Department of Transportation approved helmet. She was traveling approximately 45 miles per hour when her motorcycle hit a large pothole and/or depression in the roadway which caused her to lose control of the motorcycle and crash. The large pothole and/or depression created a dangerous condition which was reasonably foreseeable to cause the type of crash that Claimant was involved in.



The County of Mariposa and the County of Mariposa Department of Public Works owns and/or controls the area of Hornitos Road where the incident occurred. In addition, the County of Mariposa and the County of Mariposa Department of Public Works created, designed, managed, supervised and/or maintained the area of Hornitos Road where the incident occurred. On the date of the incident, there was a large pothole and/or depression in Hornitos Road which created a dangerous condition. The County of Mariposa and the County of Mariposa Department of Public Works knew of the dangerous condition and/or failed to conduct a reasonable inspection that would have disclosed the dangerous condition in the roadway. The County of Mariposa and the County of Mariposa Department of Public Works placed a warning sign at the area of the dangerous condition. The warning sign was improperly mounted and/or displayed so as to cause it to be ineffectual in warning drivers of the dangerous condition in the roadway. Additionally, The County of Mariposa and the County of Mariposa Department of Public Works failed to maintain the vegetation thereby allowing the grass to obstruct the warning sign. Any alleged repairs made by the County of Mariposa and the County of Mariposa Department of Public Works were ineffective in alleviating the dangerous condition. Claimant believes that the County of Mariposa and the County of Mariposa Department of Public Works committed other negligent acts which will be disclosed by further investigation.

The names, entities, and employees who caused claimant's injuries, damages, or loss, include, but are not limited to, the County of Mariposa and the County of Mariposa Department of Public Works committed. Claimant's investigation is continuing at this time.

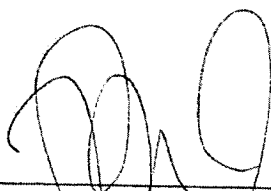
The improper, illegal, intentional and/or negligent acts committed by the above parties include, but are not limited to, negligent hiring, training, supervision, retention and monitoring of its agents and employees; negligent creating, designing, managing, supervising and/or maintaining of the area of Hornitos Road where the incident occurred, negligent failure to properly post and maintain a warning sign so as to give the public notice of the dangerous condition.

Claimant received damages as a direct and proximate cause of the above-described incident. Claimant further suffered physical, mental, emotional and monetary damages as a result of the wrongful conduct. Claimant's physical injuries include, but are not limited to, fractures to both wrists, right elbow, lacerations to her left small finger, right knee and chin. Claimant's damages were reasonably foreseeable given the dangerous condition that existed.

Damages are continuing at the date of presentation of this claim and therefore, the amount has not yet been ascertained. However, said amount exceeds \$10,000, and this will be an unlimited civil case.

DATED: September 28, 2017

By: \_\_\_\_\_

  
PETER N. KAPETAN,  
Attorney for Claimant,  
LILLIANE ROGERS

**PROOF OF SERVICE – CCP § 1013, 1013a, 2015.5  
and California Rules of Court, Rules 2.306, 2.251**

*Lillian Rogers v. County of Mariposa, et al.*

I, Rachel Baskin, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action. I am an employee of Kapetan Brothers, LLP, and my business address is 1236 M Street, Fresno, California 93721

On the date set forth below, I served the within document:

**CLAIM FOR PERSONAL INJURIES  
(GOVT. CODE Section 910)**

On the parties in said action addressed as follows:

**SEE SERVICE LIST BELOW**

**BY CERTIFIED MAIL:** I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth below, I served the aforementioned document(s) on the parties in said action by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Fresno, California, addressed as set forth above.

<b>Clerk of the Board 5100 Bullion Street P.O. Box 784 Mariposa, CA 95338</b>	<b><i>Via Certified Mail – Return Receipt Requested</i></b>
<b>Mariposa County Mike Healy, Public Works Director 4639 Ben Hur Rd. Mariposa, CA 95338</b>	<b><i>Via Certified Mail – Return Receipt Requested</i></b>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 28, 2017, at Fresno, California.

  
Rachel Baskin




Lilliane Rogers  
c/o Peter N. Kapetan, Esq.  
Kapetan Brothers, LLP  
1236 M Street  
Fresno, CA 93721

**NOTICE OF REJECTION OF CLAIM No. C17-08/LILLIANE ROGERS**

Notice is hereby given that the claim which you presented to the Board of Supervisors on October 2, 2017 for an undetermined amount was rejected by operation of law on November 16, 2017.

The foregoing was passed by the following vote of the Board on the 6<sup>th</sup> day of March 2018:

AYES: SMALLCOMBE, JONES, LONG, MENETREY  
NOES: NONE  
ABSENT: CANN  
ABSTAINED: NONE

  
ROSEMARIE SMALLCOMBE, Chair  
Board of Supervisors

ATTEST:

  
RENE' LA ROCHE  
Clerk of the Board

APPROVED AS TO FORM:

  
STEVEN W. DAHLEM  
County Counsel

**Warning**

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.

**Proof of Service by Mail**  
(1013a, 2015.5 CCP)


STATE OF CALIFORNIA, COUNTY OF MARIPOSA:

I am a citizen of the United States and a resident of the aforesaid County. I am over the age of eighteen years and not a party to the within entitled action; my business address is 4988 11<sup>th</sup> Street (P.O. Box 1917), Mariposa, CA 95338. On March 12, 2018 I served the within Notice of Rejection of Claim No. C17-08/Lilliane Rogers on the claimant in said action by placing a true copy in a postage-paid envelope addressed to the person(s) hereinafter listed, in California, addressed as follows:

Lilliane Rogers  
c/o Peter N. Kapetan, Esq.  
Kapetan Brothers, LLP  
1236 M Street  
Fresno, CA 93721

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on March 12, 2018 at Mariposa, California.

  
\_\_\_\_\_  
Donna Wass