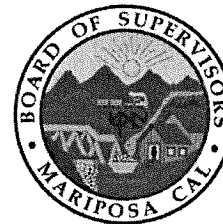


# MARIPOSA COUNTY

County Counsel • (209) 966-3222



## **RESOLUTION - ACTION REQUESTED 2014-319**

MEETING: July 8, 2014

TO: The Board of Supervisors

FROM: Steve Dahlem, County Counsel

RE: Second Amendment to Professional Services Agreement with Wanger, Jones, Helsley, PC

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### **RECOMMENDATION AND JUSTIFICATION:**

Approve and authorize Chair to sign the Second Amendment to Professional Services Agreement with Wanger, Jones, Helsley, PC to provide additional compensation for continued legal services in the matter of *Hanna v. Mariposa County Sheriff's Department, et al.*

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

Plaintiff has filed three (3) separate civil rights actions pursuant to 42 U.S.C. Section 1983, each alleging that while he was detained in the Mariposa County Jail on April 8, 2011, deputies used excessive force against him. Due to the multiple filings arising from the same incident, the procedural history of these actions is somewhat complicated.

"Hanna 1" was filed on December 8, 2011 in Mariposa County Superior Court (Case No. 10082). After the Superior Court had indicated that it intended to dismiss Hanna 1 with prejudice due to Plaintiff's failure to timely serve the summons and complaint, Plaintiff voluntarily dismissed Hanna 1 on May 30, 2012.

"Hanna 2" was filed on April 2, 2012 in the United States District Court for the Eastern District of California (Case No. 1:12-cv-00501) naming the Mariposa County Sheriff's Department and four (4) deputies. Defendants have never been properly served with process in Hanna 2.

"Hanna 3" was filed on August 20, 2012 in Mariposa County Superior Court (Case No. 10223) naming the County of Mariposa and Sheriff Binnewies. Defendants were properly served with process in Hanna 3.

On November 1, 2012, the County entered into a Professional Services Agreement with Wanger, Jones, Helsley, PC ("WJH") to represent the County in Hanna 3.

The County removed Hanna 3 to the United States District Court for the Eastern District of California on November 15, 2012 (Case No. 1:12-cv-01885). The County

filed a motion to dismiss Hanna 3 on December 21, 2012. As a result thereof, Plaintiff filed a notice of voluntary dismissal with prejudice and Hanna 3 was dismissed with prejudice on February 22, 2013.

On March 11, 2014, a First Amendment to Professional Services Agreement was approved to provide additional compensation to WJH in order to address several unanticipated procedural issues and to respond to Plaintiff's numerous filings in connection therewith.

The County successfully moved to set aside the entry of default which was improperly entered in Hanna 2.

In addition, Plaintiff's motion to set aside the voluntary dismissal with prejudice in Hanna 3 was denied following a day-long evidentiary hearing and supplemental briefing.

In connection with its motion to set aside the default in Hanna 2, the County also filed a motion to dismiss Hanna 2 based on the dismissal with prejudice of Hanna 3. On June 5, 2014, the Magistrate Judge issued Findings and Recommendations Granting in Part and Denying in Part Defendant's Motion to Dismiss, which recommends as follows:

- 1) Defendant's motion to dismiss on the basis of res judicata be granted to the Mariposa County Sheriff's Department, and denied as to the deputies; and
- 2) Defendant's motion to dismiss for improper service on the individual defendants should be granted, and the U.S. Marshall should be ordered to re-serve the summons and complaint.

The Magistrate Judge concluded that since the only defendants who were named and subject to the jurisdiction of the Court in Hanna 3 were the County of Mariposa and Sheriff Binnewies, they are the only parties to receive the benefit of res judicata from the dismissal of Hanna 3.

These findings and recommendations have been submitted to the District Judge and it is anticipated that they will be adopted. It is also anticipated that the summons and complaint in Hanna 2 will be re-served and that it will be necessary to defend this action to its conclusion.

The additional compensation being requested is based on an estimated budget from WJH which covers outstanding fees and estimated fees to defend this matter through a jury trial.

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

If additional compensation is not approved, the County will be unable to continue defending this matter through the use of outside counsel. County Counsel is unable to

devote sufficient time to properly defend this matter due to his other duties and functions.

**FINANCIAL IMPACT:**

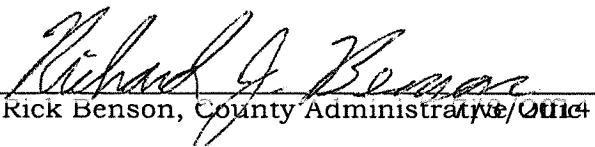
**Potentially \$140,000 to defend this matter.**

**ATTACHMENTS:**

**Second Amendment to PSA-Hanna (PDF)**

**CAO RECOMMENDATION**

Requested Action Recommended

  
Rick Benson, County Administrative Officer

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

**MOVER:** John Carrier, District V Supervisor

**SECONDER:** Janet Bibby, District III Supervisor

**AYES:** Stetson, Jones, Bibby, Cann, Carrier