

October 24, 2013

To: [WesternPalms@aol.com](mailto:WesternPalms@aol.com) (via Email Only)  
Emerson Drake

Re: California Public Records Act Request

Dear Mr. Drake:

On October 21, 2013, Modesto Irrigation District received a Public Records Act Request in which you made the following requests:

1. "I would like a copy of any an all payouts from MID to Jim Mortensen and the reasons behind each."

In accordance with Government Code section 6253, MID will comply with your requests to the extent you have described identifiable records that are not privileged or otherwise exempt from production under the California Public Records Act, or other applicable law.

Attached are documents related to a settlement of a lawsuit filed by James Gartin Mortensen against the Modesto Irrigation District on June 21, 1985, alleging damage to Mortensen's real and personal property.

Also, on March 14, 2002, Mr. Mortensen received a \$400 power saver rebate from MID pursuant to its residential rebates program for a qualifying HVAC purchase. Documents pertaining to this rebate are not kept beyond seven (7) years.

Should you have any questions, please do not hesitate to call me.

Sincerely



Joy A. Warren  
General Counsel

Attachments

Copy: Roger VanHoy  
Pat Mills

MODESTO IRRIGATION DISTRICT

P. O. BOX 4060 • MODESTO • CALIFORNIA 95352

TO: Warren F. Gant, General Counsel

June 26 . 19 85

FROM: Joan Wishon, Secretary

SUBJECT: Complaint for Damages

The attached Complaint for Damages No. 208154 by James Gartin Mortensen against the Modesto Irrigation District was hand delivered on June 26, 1985.

xc: Giddings, Corby, Hynes, Inc.  
Michael Morey

MODESTO IRRIGATION DISTRICT

P. O. BOX 4060 • MODESTO • CALIFORNIA 95352

TO: Warren F. Gant, General Counsel

July 2, 1985

FROM: Joan Wishon, Secretary

SUBJECT:

The following order was passed by the Board of Directors of the Modesto Irrigation District and entered in the minutes of July 2, 1985:

COMPLAINT FOR DAMAGES - JAMES GARTIN MORTENSEN - REFER TO GENERAL COUNSEL

The Complaint for Damages of James Gartin Mortensen was read and referred to the Modesto Irrigation District General Counsel for his recommendation.

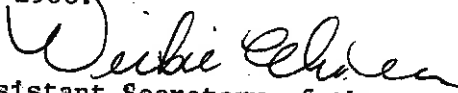
xc: M. Morey  
L. DeLano

DAMAGE CLAIM  
JAMES GARTIN MORTENSEN

Moved by Director Lyons, seconded by Director Beck, that the District authorize payment of \$20,152.00 to James Gartin Mortensen for damage to Mortensen's residence caused by alleged overflow of waters from District's facilities. The Assistant General Counsel is hereby authorized to execute a release of all claims and upon said release deliver warrant in the amount of \$20,152.00. Motion carried.

oOo

I, VICKIE EHRLER, Assistant Secretary of the Board of Directors of the MODESTO IRRIGATION DISTRICT, do hereby CERTIFY that the foregoing is a full, true and correct copy of a minute order duly adopted at a regular meeting of said Board of Directors held on the 10th day of June, 1986.

  
Assistant Secretary of the  
Board of Directors of the  
Modesto Irrigation District

## RELEASE OF ALL CLAIMS

1. **Parties:** This is a Release between the undersigned, James Mortensen, hereinafter referred to as "Mortensen", and Modesto Irrigation District, hereinafter referred to as "District".

2. **Recitals:** This Release is made with reference to the following facts:

2.1 Certain disputes and controversies have arisen between Mortensen and District.

2.2 Such disputes and controversies relate to the claims, demands, and causes of actions directly and indirectly relating to property damage to Mortensen's residence resulting from the alleged overflow of waters from District's facilities, as more particularly set forth in Mortensen's Complaint for Damages and First Amended Complaint for Damages, Stanislaus County Superior Court Action No. 208154.

2.3 It is the intention of the parties hereto to settle and dispose of, fully and completely, any and all claims, demands, and causes of action arising out of, connected with or incidental to those claims, demands and causes of action related directly or indirectly in any manner whatsoever to the dispute described in Paragraph 2.2 above.

2.4 This Release is being executed in connection with a settlement and compromise of all of the claims and causes of actions as described in Paragraph 2.3 above.

3. **Release and Promises by Mortensen:** For good and valuable consideration, the receipt of which is acknowledged by Mortensen, Mortensen promises, agrees, and specifically releases as follows:

3.1 Mortensen does hereby fully release, remise, and forever discharge District of and from any and all actions, causes of action, suits, claims, demands, debts, expenses, accounts, reckonings, obligations, costs, rights, agreements, promises, liabilities, liens, damages, or causes of action of any kind or nature, whatsoever, whether now known or unknown, suspected or unsuspected, and whether specifically mentioned or not, which may exist or might be claimed to exist at or prior to the date of this Release, including, but not limited to, those arising out of, based upon, directly or indirectly, connected with, or by reason of, or in any manner related to any matter, claim or thing, alleged or described, or which could have been alleged or described, in connection with any facts or circumstances giving rise to, or serving as a basis for, the litigation and disputes between and among the parties hereto as more particularly described in paragraph 2.3 above.

3.2 Mortensen shall execute any other document or dismissal that may be necessary to effectuate the intent of this Release.

4. **Inurements:** This Release shall be binding upon and shall inure to the benefit of the parties, and each of the parties' respective agents, employees, attorneys, officers, directors, shareholders, affiliates, associates, successors, and assigns.

5. **Waiver of Civil Code Section 1542:** It is understood and agreed, as a further consideration and inducement for this Release, that it shall apply to all unknown, unanticipated and unexpected damages as set forth in Paragraph 2.2 above, and all rights under Section 1542 of the Civil Code of the State of California are hereby expressly waived, and it is understood that Section 1542 provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

6. **Agreement Is No Evidence Of Admission:** It is understood and agreed that entering into this Release is not to be construed as an admission of liability on the part of any party hereto, all such liability being specifically denied; that the parties hereto intend merely to avoid further disputes and to establish peace.

7. **Representations by Counsel:** Each of the parties represents, warrants, and agrees that it has received, or has had an opportunity to engage, independent legal advice from any attorney with respect to the meaning of California Civil Code Section 1542 and the effect of this Release.

8. **Representations and Warranties of the Parties:**

8.1 The parties further declare and represent that no inducement, promise or agreement not herein expressed, has been made to them and that this Release Agreement contains the entire agreement of the parties, and that the terms of this agreement and release are contractual and not a mere recital.

8.2 The parties further declare, represent and warrant that there has been no assignment or transfer, or purported assignment or transfer, voluntarily, involuntarily or by operation of law or contract, of any claim or matter released pursuant to this Release. The parties shall indemnify and hold harmless the other party or any of its agents, assigns, employees, officers, directors, principals, shareholders, successors, or nominees, from any claim, demand, damage, debit, liability, account, obligation, cost, expense, lien, action or cause of action naming as Defendants such party, including the payment of attorney's fees and costs actually incurred, whether or not formal legal action is taken, based upon, in connection with, or arising out of any such assignment or transfer or purported assignment of transfer. Additionally, Mortensen represents, warrants, and agrees that he has not instituted any other civil action, whatsoever, naming District, its directors, officers, agents, employees, or any of them as Defendants, other than that previously identified in paragraph 8.3, which, pursuant to this Release shall be dismissed with prejudice as herein described.

8.3 As a material part of this agreement, Mortensen agrees to dismiss that civil action against MID with prejudice, which is currently pending in the Stanislaus County Superior Court, entitled James Gartin Mortensen vs. Modesto Irrigation District, a Municipal Corporation, Action No. 208154. Mortensen shall hand to legal counsel for District all documents necessary to accomplish said dismissal upon the execution hereof.



8.4 No officer, agent, employee, representative, or attorney of or for any party hereto has made any statement or representation to any other party hereto or any other person regarding any fact relied upon by such party in executing this Release or entering into the settlement of the matters described in this Release, and neither party relies upon any statement, representation or promise of any other person (or of any officer, agent, employee, representative, or attorney for such other person), in executing this Release or entering into the settlement except as expressly stated in this Release.

8.5. Each party hereto has made such investigation of the facts pertaining to this Release and the settlement described herein and all the matters pertaining thereto as such party deems necessary.

8.6 Each party has read this Release and understands the contents thereof.

8.7 This Release supersedes all prior and contemporaneous written, oral or implied in fact agreements and releases between the parties.

8.8 Each party hereto has, acting by and through their respective attorneys, participated and cooperated in the preparation of this Release. Hence, any construction to be made of this Release, the same shall not be construed against either party.

8.9 Each party hereto shall bear its own costs of suit, including all expenses and legal fees.

**9. Miscellaneous:**

9.1 This Release shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of each party hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

9.2 If any term, covenant, condition or provision of this Release is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and in no way shall be effected, impaired, or invalidated.

9.3 If any legal action or arbitration or proceeding is brought for the enforcement of this Release or because of an alleged dispute, breach, or default, or misrepresentation in connection with any of the provisions of this Release, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which said party may be entitled.

DATED: June , 1986

JAMES GARTIN MORTENSEN

BY \_\_\_\_\_

DATED: June , 1986

By \_\_\_\_\_  
Attorney for James Mortensen

DATED: June , 1986

MODESTO IRRIGATION DISTRICT

By \_\_\_\_\_  
Assistant General Counsel

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (Aviso a Acusado)

MODESTO IRRIGATION DISTRICT,  
a Municipal corporation, and  
DOES I through XX, inclusive,

## YOU ARE BEING SUED BY PLAINTIFF: (A Ud. le está demandando)

JAMES GARTIN MORTENSEN

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

RECEIVED  
2:17 pm  
6-26-85  
KNOX DE WINTER  
U.E.

You have **30 CALENDAR DAYS** after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de **30 DIAS CALENDARIOS** para presentar una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: (El nombre y dirección de la corte es)

CASE NUMBER: (Número del Caso)

**208154**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS**  
802 - 11th Street - P. O. Box 1098, Modesto, California 95353

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado. es)

**GRIFFIN, CONWAY & JONES**  
1008 12th Street - P. O. Box 966  
Modesto, CA 95353  
(209) 577-6100

DATE:  
(Fecha)

**JUN 24 1985**

DAVID A. WURM  
Clerk, by  
(Actuario)

**KATHLEEN UTTERBACK**, Deputy  
(Delegado)

[SEAL]

### NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
  - as the person sued under the fictitious name of (specify):
  - on behalf of (specify): *Modesto Irrigation District*
- under:
- |  |   |
|--|---|
| <input checked="" type="checkbox"/> CCP 416.10 (corporation)     | <input type="checkbox"/> CCP 416.60 (minor)       |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (individual)  |
| <input type="checkbox"/> other:                                  |   |
- by personal delivery on (date): *June 26, 1985*

FILED

'85 JUN 21 P2:20

1 GRIFFIN, CONWAY & JONES  
2 ATTORNEYS AT LAW  
3 1008 - 12TH STREET  
4 P. O. BOX 966  
5 MODESTO, CALIFORNIA 95353  
6 TELEPHONE: 577-6100

Attorneys for Plaintiff

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

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11 JAMES GARTIN MORTENSEN, )  
12 )  
13 Plaintiff, )  
14 vs. )  
15 )  
16 MODESTO IRRIGATION DISTRICT, )  
17 a Municipal corporation, )  
18 and DOES I through XX, )  
19 inclusive, )  
20 Defendants. )

NO. 208154

COMPLAINT FOR DAMAGES

21 Plaintiff alleges:

22 1. Plaintiff is now, and at all times herein mentioned  
23 was, the owner and in possession and control of a certain parcel  
24 of real property situated in Stanislaus County, California, more  
25 particularly described on Exhibit "A", attached hereto and made  
26 a part hereof by reference as though set forth in full.  
27 Plaintiff's property is highly improved and is of great value to  
28 plaintiff.

29 2. Defendant is now, and at all times herein mentioned  
30 was, a municipal corporation licensed and doing business under  
31 the laws of the State of California as an irrigation district  
32 controlling and operating an irrigation system situated in  
33 Stanislaus County, California, and adjacent to plaintiff's  
34 property on the South side.

35 3. Plaintiff is ignorant of the true names and  
36 capacities of defendants sued herein as DOES I through XX,

1 inclusive, and therefore sues these defendants by such fictitious  
2 names. Plaintiff will amend this complaint to allege their true  
3 names and capacities when ascertained.

4 4. Plaintiff is informed and believes and thereon  
5 alleges that at all times herein mentioned defendants DOES I  
6 through III were authorized and empowered by defendant MODESTO  
7 IRRIGATION DISTRICT, and each and all of the things herein  
8 alleged to have been done by them were done in the capacity of  
9 and as agent for defendants MODESTO IRRIGATION DISTRICT.

10 5. During the season of 1984, defendant bought large  
11 quantities of water into its irrigation ditches.

12 6. Defendant maintained its irrigation ditches in such  
13 a careless and negligent manner as to allow excessive amounts of  
14 water to flood and seep under and onto plaintiff's land. The  
15 seepage was excessive, extraordinary, and unnatural and therefore  
16 could not have been reasonably anticipated by plaintiff. As a  
17 proximate result of this excessive seepage, plaintiff's property  
18 was damaged, all to plaintiff's damage in the sum of \$75,000.00.

19 7. On or about November 26, 1984, plaintiff presented  
20 to MODESTO IRRIGATION DISTRICT, by delivering a claim to the  
21 clerk for the damages sustained as a result of the above-described  
22 occurrence, all in compliance with the requirements of Section 905  
23 of the Government Code. A copy of the claim is attached hereto  
24 as Exhibit "B", and made a part hereof.

25 8. On or about January 8, 1985, MODESTO IRRIGATION  
26 DISTRICT rejected the claim in its entirety within forty-five  
27 (45) days after its presentation, and the claim was thus deemed  
28 rejected, under the provision of Section 912.4 of the Government  
29 Code at the expiration of the 45-day period, to-wit, on  
30 January 9, 1985.

31 WHEREFORE, plaintiff prays judgment against defendants,  
32 and each of them, as follows:

- 33 1. For damages in the sum of \$75,000.00;  
34 2. For costs of suit herein incurred; and

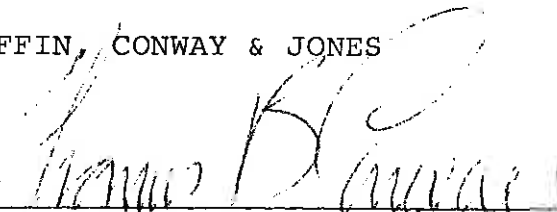
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1                   3. For such other and further relief as the Court may  
2 deem proper.

3                   DATED: May 30, 1985.

4  
5                   GRIFFIN, CONWAY & JONES

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7  
8                   By:   
9                   THOMAS B. CONWAY, ESQ.  
10                  Attorneys for Plaintiff

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FARCEL NO. 1:

All that portion of Section 30, Township 2 South, Range 9 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

COMMENCING at the Southeast corner of aforesaid Section 30; thence North 87° 30' West, 1510.74 feet along South line of Section 30; thence North 2° 15' East 1101.68 feet to the true point of beginning; thence North 87° 42' West 229.57 feet; thence North 0° 51' East 217.25 feet; thence South 87° 34' East 554.20 feet; thence South 87° 19' East 11.05 feet; thence South 0° 39' West 293.00 feet to center of an irrigation Lateral; thence North 70° 07' West 355.62 feet along center of said ditch ; thence due South 30.36 feet to the true point of beginning.

FARCEL NO. 2:

COMMENCING at South quarter corner of Section 30, Township 2 South, Range 9 East; thence South 87° 30' East 20.07 feet to the East line of a County Road; thence along said County Road line North 2° 19' West 417.97 feet to the joint of beginning; thence continuing North 2° 19' West 20 feet; thence North 87° 33' East 136.25 feet; thence North 50° 04' East, 1055.07 feet; thence South 50° 00' West 1044.60 feet; thence South 87° 33' West, 143.03 feet to the point of beginning.

CLAIM AGAINST MODESTO IRRIGATION DISTRICT  
(for Damages to Real Property)

TO THE MODESTO IRRIGATION DISTRICT:

The undersigned hereby presents the following claim:

1. NAME OF CLAIMANT: James Gartin Mortensen
  - a. POST OFFICE ADDRESS OF CLAIMANT: 6161 Tully Road, Modesto, CA 95350
  - b. TELEPHONE NO.: (209) 545-3458
  - c. DRIVER'S LIC. NO.: M0926023
2. Post office address to which the person presenting this claim desires notices to be sent:  
Griffin, Conway & Jones, P. O. Box 966, Modesto, CA 95353
3. Occurrence, transaction or event from which the claim arises:
  - a. DATE: 5/27/84
  - b. TIME: 8:00 A.M.
  - c. PLACE (exact or specific location): 6161 Tully Road, Modesto, CA 95350
  - d. How and under what circumstances did the injury, damage or loss occur? Specify the particular occurrence, event, act or omission you claim caused the injury, damage or loss (use additional paper if necessary): M.I.D. canal behind the claimant's residence at above address spilled and water flowed under the foundation of claimant's residence causing total loss to claimant's residence.
  - e. What particular act or omission of the MID or its employees, caused the alleged injury, damage or loss? M.I.D. and its employees allowed water to overflow



4. Give a description of the injury, damage, or loss, so far as is known at the time of this claim. If there were none, state "none": loss of dwelling house and garage and one outbuilding.

5. Give the name(s) of the MID employee(s) claimed to have caused the injury, damage or loss: Unknown

6. Name and address of any other person injured: N/A

7. Name and address of the owner of any damaged property: Same as above

8. Damages claimed:

- a. Amount claimed as of this date: \$ 90,000.00 replacement cost of house &
- b. Estimated amount of future damages: \$ \_\_\_\_\_ outbuilding
- c. Total amount claimed: \$ \_\_\_\_\_
- d. Basis for computation of amount claimed (include copies of all bills, invoices, estimates, etc.): Unknown, future damages for loss of use of premises and demolition costs.

9. Names and addresses of all witnesses, hospitals, doctors, etc.:

a. John Welty Costner Road, Modesto, California

b. \_\_\_\_\_

c. \_\_\_\_\_

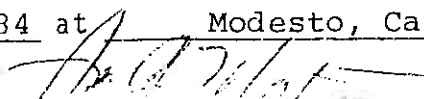
d. \_\_\_\_\_

10. Any additional information that might be helpful in considering claim: Claimant notified M.I.D. on 5/27/84 of flooding and has been negotiating with M.I.D.'s insurance carrier since May 30, 1984.

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM (Penal Code Section 72; Insurance Code Section 556.1)

I have read the matters and statements made in the above claim and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters I believe the same to be true. I certify under penalty of perjury that the foregoing is TRUE and CORRECT.

Signed this 20th day of November, 19 84 at Modesto, California



I HEREBY ACKNOWLEDGE THAT I AM IN RECEIPT OF A COPY OF THE CLAIM AGAINST MODESTO IRRIGATION DISTRICT ON THIS 26th DAY OF NOVEMBER, 1984.

*Carol M. Miller / SM*  
SECRETARY

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(VERIFICATION — 446, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF STANISLAUS

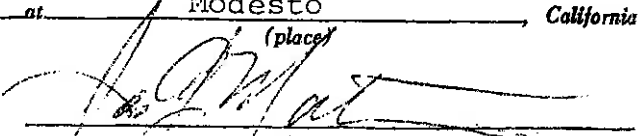
I am the Plaintiff

in the above entitled action; I have read the foregoing COMPLAINT FOR DAMAGES

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 30, 1985 at Modesto, California  
(date) (place)

  
(Signature)