

1 LAW OFFICES OF DUNCAN M. JAMES
2 DUNCAN M. JAMES, SBN 40505
3 DOUGLAS L. LOSAK, SBN 220443
4 445 N. State Street
5 P.O. Box 1381
6 Ukiah, CA 95482
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8 Attorney for Plaintiff, Sheriff Matthew Kendall

FILED

JUL 30 2021

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MENDOCINO, UKIAH BRANCH

11 * * * * *

12 MENDOCINO COUNTY SHERIFF
13 MATTHEW KENDALL,

14 Plaintiff,

15 v.

16 MENDOCINO COUNTY BOARD OF
17 SUPERVISORS,

18 Defendant.

Case No.: 21CV00561

DECLARATION OF DUNCAN M. JAMES IN
SUPPORT OF MOTION FOR AN EX PARTE
ORDER PURSUANT TO *GOVERNMENT*
CODE §31000.6 DECLARING THE
COUNTY COUNSEL HAS A CONFLICT OF
INTEREST IN REPRESENTING BOTH THE
BOARD OF SUPERVISORS AND THE
SHERIFF AND APPOINTING THE LAW
OFFICE OF DUNCAN M. JAMES AS THE
ATTORNEY FOR THE SHERIFF

Date: July 30, 2021

Time: 2:00PM

Dept.: G

19 I, DUNCAN M. JAMES, declare that:

20 1. I am an attorney-at-law licensed to practice in the State of California and the
21 sole proprietor of the Law Office of Duncan M. James.

22 2. Attached hereto as Exhibit A is a true and correct copy of the resume of
23 Duncan M. James.
24

25 1
26 DECLARATION OF DUNCAN M. JAMES IN SUPPORT OF MOTION FOR AN EX
PARTE ORDER PURSUANT TO *GOVERNMENT CODE* §31000.6 DECLARING THE
COUNTY COUNSEL HAS A CONFLICT OF INTEREST IN REPRESENTING BOTH THE
BOARD OF SUPERVISORS AND THE SHERIFF AND APPOINTING THE LAW OFFICE
OF DUNCAN M. JAMES AS THE ATTORNEY FOR THE SHERIFF

1 3. Attached hereto as Exhibit B is a true and correct copy of the resume of Donald
2 J. McMullen.

3 4. Attached hereto as Exhibit C is a true and correct copy of the resume of Douglas
4 L. Losak.

5 I declare under penalty of perjury that the foregoing is true and correct, except as to
6 those matters declared on information and belief, and as to those I believe them to be true.

7 Executed on this 29th day of July, 2021, at Ukiah, California.

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9 
10 _____
11 DUNCAN M. JAMES
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Exhibit A

Resume - Duncan M. James

Education:

- Pacific University, Bachelor of Arts degree, 1961
- Willamette University, Doctor of Jurisprudence, 1965

Court Memberships:

- All courts of the State of California (California State Bar # 40505)
- United States District Court for Northern California
- United States Court of Appeals, Ninth Circuit
- United States Supreme Court, admitted in 1973

Employment:

- Owner of the Law Office of Duncan M. James, 1979 to the present
- District Attorney – Public Administrator, Mendocino County, 1969 through 1978
- County Counsel, Mendocino County, 1969 to 1976 – served in dual capacity as District Attorney and County Counsel from 1969 through 1976 and as such was the legal advisor to the Mendocino County Board of Supervisors; all county departments, agencies and commissions; and all school and special services districts in Mendocino County
- Deputy District Attorney – Public Administrator, Mendocino County, August 1967 through 1968
- United States Treasury Department, 1965 through July 1967

Professional achievements:

- Personally, successfully argued before the United States Supreme Court on behalf of the Mendocino County Clerk in Viola N. Richardson, as County Clerk, et. al. v. Abran Ramirez, et. al. (1974) 418 U.S. 24 [41 L.Ed.2d 551] 94 S.Ct. 2655, thereby reversing a unanimous decision of the California Supreme decision in Abran Ramirez v. Edmund G. Brown, Jr. (1973) 9 Cal.3d 199
- Ukiah Valley Sanitation District v. City of Ukiah – lead counsel. Represented Ukiah Valley Sanitation District for breach of contract and fiduciary duty, rescission and restitution which began in 1955, involved man hundreds of thousand pages of documents and continued up to the date of final settlement. The settlement left open one issue that is on hold in an effort to amicably resolved the matter which amounts to approximately \$132,000.00 in lost annual revenue to the District. The main portion case lasted six (6) years from September, 2012 to October, 2018. During the course of the litigation the City of Ukiah made multiple payments for actual damages which totaled the sum of \$16,416,296.49, in addition to agreeing to a new operating agreement which allows the District to become independent of the City with a projected annual savings to the District ratepayers of \$1,601,354.00. The City also admitted to erroneously calculating equivalent sewer service sewer unit fees for 621.51 units which will general additional income of \$7,607,282.40 for the District. Without regard to future annual savings, the gross dollar value of the settlement to the District ratepayers is \$25,624,932.89.
- North County Engineering v. State Farm Insurance – lead counsel representing North County Engineering in an insurance breach of contract and bad faith litigation (Sonoma County) – settled on February 13, 2015. Total recovery: \$8,55 million.

- North County Engineering v. State Farm Insurance (2014) 224 Cal.App.4th 902 – successfully appealed and reversed a trial court decision dismissing the case. The Court of Appeal held in part: products completed operations (PCO) coverage gave rise to duty to defend against claims of breach of contract and negligence in construction of dam; claims of breach of contract and negligence in construction of dam were not within exclusion for “professional services or treatments; testimony of liability insurers’ claims personnel admitting that there was a “potential for coverage” under the policy was relevant to establish that insurer owed a duty to defend, where the testifying employees were not “lower echelon,” and they were the employees charged with the decision; and, liability policy’s “professional services” exclusion from coverage is analyzed narrowly against the insurer
- Dion J. and Donald L. v. Roman Catholic Archbishop of San Francisco, et al (Marin County, California) – on December 12, 2012, settled childhood sexual abuse case arising out of acts committed by an employee in the late 1980’s and early 1990’s for the total sum of \$1,800,000.
- Personal injury case (Mendocino County) arising out of dead-on collision south bound on the Burke Hill grade on Highway 101 settled for \$3,800,000.
- Insurance bad faith case (Riverside County) brought by policy holder against his insurance broker and two insurance companies. One insurance company settled for \$150,000 and the other went to trial resulting in a judgment in the amount of \$921,355.21, for a total of \$1,071,355.21
- Insurance bad faith case (Humboldt County) brought by policy holder against her insurance company which went to trial in and resulted in a judgment of \$970,000
- Successfully represented clients in civil trials relating to all areas of my practice, including but not limited to real estate, business, real estate, construction, personal injury, insurance bad faith, criminal law, probate, and family law
- Successfully prosecuted and defended numerous criminal cases including: murder; rape; robbery; child abuse, structural and wild land arson fires; marijuana; drug offenses, property and theft crimes, in addition to almost every other type of felony and misdemeanor criminal activity.

Other:

- California District Attorneys Association: President, 1977-1978; officer and member of the Board of Directors, 1969-1978
- Joint Legislative Committee – California District Attorneys Association, Sheriff’s Association, Chiefs of Police and Peace Officers Association, 1969-1978
- Mendocino County Bar Association, President, 1977-1978
- Candidate for Attorney General of the State of California, Republican Primary, 1986
- Mendocino Municipal Court, judge pro tem
- Mendocino County Superior Court, Settlement Conference Official

Professional and Community Awards:

- California District Attorneys Association – Distinguished Service Award, 1978
- Mendocino County Peace Officers Association – Outstanding Service Award
- City of Ukiah, Cultural Arts Commission Award for the Historical Preservation of the Lamb’s Inn – 1980
- Greater Ukiah Chamber of Commerce – Outstanding Achievement Award – 1980

- Business and Professional Women of Ukiah – Boss of the Year – 1981

Community Organizations:

- Ukiah Education Foundation, founding member of the Board of Directors, 1992 to the present
- Ukiah Host Lions Club, President, 1987. Member 1969 to the present
- Benevolent and Protective Order of Elks, Lecturing Knight, 1988. Member 1982 to the present
- South Ukiah Little League – President, 1973; manager, 1971 – 1981
- NorCal Fed Youth Football League, Redwood Empire League – President, 1972 to 1974; legal counsel and member of the Board of Directors, 1971 – 1976
- Ukiah Men's Golf Club – President, 1987 to 1989; member of the Board of Directors 1985 to 1990
- Ukiah High Golf Classic – co-founded and operated with wife from 1986 through 1995

Exhibit B

Donald J. McMullen

445 N. State Street, Ukiah CA 95482 · 707 468-9271

Lawoffice@duncanjames.com

LEGAL EXPERIENCE (California State Bar No. 220840 – admitted November 26, 2002)

Professional Employment:

- Lawyer, Law Office of Duncan M. James, Ukiah, CA, 2002 to present
- Practice involves representing clients in wide variety of civil matters, litigation and otherwise, including real property, business, insurance, and governmental actions

Court Memberships:

- All courts of the State of California
- United States District Court for the Northern District of California

Select Professional Achievements:

- *North County Engineering v. State Farm* – represented North County Engineering in an insurance breach of contract and bad faith litigation (Sonoma County) both at trial and on appeal, which resulted in a published opinion: *North County Engineering v. State Farm Insurance* (2014) 224 Cal.App.4th 902. Six-plus week jury trial, successfully appealed and reversed a trial court decision dismissing the case. Total recovery: \$8.55 million.
- *Dion J. and Donald L. v. Roman Catholic Archbishop of San Francisco, et al* (Marin County, California) – represented victims of childhood sexual abuse arising out of acts committed by an employee of the defendants in the late 80's and early 90's - total recovery: \$1.8 million.
- *Moore v. Irish Beach Water District* – represented property owner in action involving sundry claims, including inverse condemnation, trespass, breach of contract, and Proposition 218 charges. Highly complex, three-phase, trial involving water rights and multiple novel legal issues – total judgment: approximately \$3 million
- *Connolly v. Trabue et al.* – represented plaintiff and cross/defendant in damages and easement litigation (Humboldt County) both at trial and on appeal, which resulted in a published opinion: *Connolly v. Trabue* (2012) 204 Cal.App.4th 1154. Successfully secured easement, recovered damages, and obtained complete defense judgment.
- *Rock v. Rollinghills et al.* – represented approximately 30 property owners both within and outside a subdivision, including the owner's property association, at trial against efforts by neighboring parcel owner to force an easement over the clients' lands. Result: complete judgment in clients' favor.

EDUCATION

- Juris Doctor (JD): University of the Pacific, McGeorge School of Law, graduated with distinction (honors), 2002.
- Master of Business Administration (MBA): California State University, Sacramento, 1999
- Bachelor of Science – Business (BS): California State University at Chico, graduated cum laude, 1998

Professional and Legal Honors:

- Law Review co-editor, McGeorge School of Law, Articles and Symposium, 2001-2002
- Law Review member, McGeorge School of Law, 2000-2001
- Graduate, University of Salzburg (Austria), International Legal Studies, Fundamental Rights in Europe and the United States, taught by United States Supreme Court Justice Anthony Kennedy (ret.)
- Judicial intern, Third District Court of Appeals, Sacramento (Justice George Nicholson (ret.)), 2001-2002

COMMUNITY INVOLVEMENT

- Asst. Treasurer, Sun House Guild, Board of Trustees
- Prior board member, Mendocino College Foundation
- Prior board member, Ukiah Valley Cultural and Recreational Center (Alex Rorabaugh Center)
- Prior member, Mendocino County Search and Rescue Team (dive team)

Exhibit C

Resume – Douglas L. Losak

California State Bar No. 220443.
Washington State Bar No. 24106.

United States Marine Corps 1978-1985;

- Selected for appointment to Staff Sergeant. Honorably Discharged March 31985.
- All Marine Wrestler – 1981. Member of All Marine Wrestling Team 1981-1984

Education:

- California State University, Humboldt. BA, Political Science. 1990
- Gonzaga School of Law, Spokane, WA, Juris Doctorate Degree, May 1994. American Jurisprudence Award for Legal Writing & Research – First year. Graduated Cum Laude.
- National District Attorneys Association, National Advocacy Center – Trial Advocacy – July 2001

Court Membership:

- All Courts of the State of California and State of Washington
- United States District Court, Northern District of California
- United States District Court, Eastern and Western Districts of Washington
- United States Court of Appeals, Ninth Circuit

Reported Decision:

Anderson v. Warner (9th Cir. 2006) 451 F.3d 1063

Mr. Anderson alleged the Jail Commander for Mendocino County Sheriff's Office assaulted him while acting under color of state law when Mr. Warner was off duty and not in uniform. Mr. Anderson filed a federal civil rights lawsuit alleging Mendocino County violated his civil rights by negligently hiring and supervising Mr. Warner, and conducting an inadequate investigation into the assault by him.

In order to hold the County liable for a violation of a his Civil Rights, a Plaintiff must show “(1) that he possessed a constitutional right of which he was deprived; (2) that the County had a policy; (3) that the policy ‘amounts to deliberate indifference’ to Mr. Anderson’s constitutional right; and (4) that the policy is the ‘moving force behind the constitutional violation.’” Mr. Anderson was not able to show that the County’s asserted deficiencies in hiring, training and supervision, if any, amounted to a policy reflecting “deliberate indifference to the rights of persons with whom the police come into contact.” Therefore, the Ninth Circuit upheld the District Court’s decision dismissing the lawsuit as to the County.

Professional Experience:

- Associate Attorney, Law Office of Duncan M. James, October 2015 to the present.
- Mendocino County Counsel's Office: January 2003 – October 2015.
- Deputy County Counsel, 2003 to 2009
- Chief Deputy County Counsel, 2009 to February 2014
- Acting/Interim County Counsel, February 2014 to October 2015.

Primary focus was tort litigation, government and employment law. Legal adviser to the Mendocino County Board of Supervisors and other county agencies and commissions. Successfully represented the County in dozens of cases in both State and Federal Court, including wrongful death, violation of federal civil rights, excessive force lawsuits, wrongful discharge and discrimination, and other employment and labor related issues. Also represented the County in cases involving the danger condition of public property and personal injury; and, before various administrative agencies, including the California Public Employment Relations Board, the State Personnel Board and the County's Civil Service Commission. Resigned as Acting/Interim County Counsel to seek new challenges in the legal profession and entered into private practice where I am currently employed.

- Deputy County Prosecutor, Island County Prosecutors Office: – June 2000- December 2002. Prosecuted misdemeanor drunk driving and domestic violence cases, trying more than 20 cases to a jury.
- Assistant City Attorney, City of Oak Harbor: May 1998 – June 2000. Prosecuted misdemeanors and represented the City in civil litigation and advised the City Council and Department Heads on legal issues
- Associate Attorney, Tario & Associates: February 1995 – May 1998. Private practice of law representing clients in criminal, dissolution and Bankruptcy cases as well as other matters.

Community Involvement:

- Member of Toastmasters International 2000-2002
- Member of Charter Counsel – River Oak Charter School 2011-2014 – President 2013.
- Member of Governing Board – Secretary for the Yokayo Pool & Racquet Club

Practice Areas:

- Litigation
- Employment Law
- Government Law
- Business Law
- Bankruptcy
- Real Estate
- Personal Injury

PROOF OF SERVICE

1 I, Nicky Lopez, declare that I am a citizen of the United States and a resident of the County of Mendocino. I
2 am over the age of eighteen years and not a party to the within above entitled action; my business address is 445 N.
3 State Street, Ukiah, CA 95482.

4 On July 30, 2021, I served the within DECLARATION OF DUNCAN M. JAMES IN
5 SUPPORT OF MOTION FOR AN EX PARTE ORDER PURSUANT TO *GOVERNMENT*
6 *CODE* §31000.6 DECLARING THE COUNTY COUNSEL HAS A CONFLICT OF
7 INTEREST IN REPRESENTING BOTH THE BOARD OF SUPERVISORS AND THE
8 SHERIFF AND APPOINTING THE LAW OFFICE OF DUNCAN M. JAMES AS THE
9 ATTORNEY FOR THE SHERIFF on the parties in this action as follows:

8 Mendocino County Counsel
9 501 Low Gap Road #1030
10 Ukiah, CA 95482

10 **By Personal Delivery.** I caused each such envelope to be personally delivered to the above
11 named.

12 **By Mail.** As follows: I am "readily familiar" with the firm's practice of collection and processing
13 correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that
14 same day with postage thereon fully prepaid at Ukiah, California in the ordinary course of business.
15 The envelope was sealed and placed for collection and mailing on this date following our ordinary
16 practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation
17 date or postage meter date is more than one date after date of deposit for mailing in affidavit.

15 **By Overnight Delivery** – I enclosed the documents in an envelope or package provided by an overnight
16 deliver carrier and addressed to the persons at the addresses listed above. I placed the envelope or package
17 for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery
18 carrier.

17 **By Electronic Service** - Based on an agreement of the parties to accept service by electronic transmission,
18 I caused the documents to be sent to the persons at the electronic notification addresses listed above.

19 **By Facsimile.** I caused each such document to be transmitted by facsimile to the number listed above.

20 I declare under penalty of perjury that the foregoing is true and correct and that this declaration was
21 executed on July 30, 2021.

22 
23 Nicky Lopez
24
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