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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF KINGS**

11 **Keith Fagundes, In His Official Capacity as) Case No.**
12 **District Attorney for the County of Kings,)**
13 **Petitioner,) PETITION FOR WRIT OF MANDATE**
14 **vs.) AND/OR PROHIBITION AND**
15 **The County of Kings and Does 1 though 15,) COMPLAINT FOR DECLARATORY**
16 **Respondents.) AND INJUNCTIVE RELIEF.**
17 **)**
18 **) [PRELIMINARY INJUNCTION**
19 **) REQUESTED]**
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INTRODUCTION AND PARTIES

Petitioner alleges on information and belief as follows:

1. Petitioner Keith Fagundes, In His Official Capacity as District Attorney of the County of Kings, State of California, is a Constitutional Officer of the State of California.
2. As a Constitutional Officer, the District Attorney is mandated and empowered by the laws of the State of California to investigate and prosecute criminal and civil offenses without obstruction, oversight, direction, or interference of/by local authorities, and in particular, the

1 County of Kings, the Board of Supervisors of Kings County, or the subordinate employees of the
2 Board of Supervisors/County of Kings. As such, Keith Fagundes, the District Attorney, on behalf
3 of the People of the State of California, and in his official capacity, has a beneficial interest in the
4 matters as alleged following and thus, standing to bring this action.

5 3. Respondent, the County of Kings ("County"), is a local governmental entity, created and
6 authorized under state law. The elected board of supervisors of the County of Kings is the
7 legislative head of the County of Kings and directs its actions. The Board of Supervisors'
8 decisions/directions are carried out by subordinate officers and employees, such as the County
9 Administrative Officer (CAO), Human Resources Director, Risk Manager, and County Counsel.
10 By their actions and inactions, and, upon information and belief, at the Board's direction,
11 subordinate county officers and employees are interfering with the prosecution of criminal and
12 civil matters as well as the exercise of the sovereign powers delegated to the District Attorney by
13 the Constitution and laws of the State of California.

14 **JURISDICTION AND VENUE**

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16 4. Because of the information in above paragraphs 1 through 3, venue is in the County of
17 Kings, State of California.

18 19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **A. Writs of Mandate and/or Prohibition:**

21 5. California Code of Civil Procedure § 1085 provides:

22
23 "(a) A writ of mandate may be issued by any court to any inferior
24 tribunal, corporation, board or person, to compel the performance
25 of an act which the law specifically enjoins, as a duty resulting
26 from an office, trust or station, or to compel the admission of a
27 party to the use and enjoyment of a right of office to which the
28 party is entitled, and from which the party is unlawfully precluded
by such inferior tribunal, corporation, board or person."

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6. Under Code of Civil Procedure Section 526, the ground for issuances of an injunction are:

(a) An injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, of any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.

(3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.

(4) when pecuniary compensation would not afford adequate relief.

7. The purpose of a preliminary injunction is to preserve the status quo pending a determination on the merits of the claim. *Dodge, Warrant & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414.

8. To obtain injunctive relief, a plaintiff must show either: (1) a likelihood of success on the merits and the possibility of irreparable injury, or (2) the existence of a serious question going to the merits and the balance of hardships tipping in plaintiff's favor. *American-Arab Anti-Discrimination Committee v. Ashcroft* 241 F. Supp.2d 1111, (C.D. Cal 2003).

9. Injunctive relief is available when it is likely that unlawful conduct by an agency will recur, although a court must presume that the agency will obey and follow the law. *East Bay Mun. Utility Dist. v. Dept. of Forestry and Fire Protection* (1996) 43 Cal.App.4th 1113.

- 1 10. A preliminary injunction does not create a right, but merely undertakes to protect
2 a right from unlawful or injurious interference. *Southern Christian Leadership*
3 *Conference c. Al Malaikah Auditorium Co.* (1991) 230 Cal.App.3d 207.
- 4 11. An injunction properly issues only where the right to be protected is clear, injury
5 is impending and so immediately likely as to be avoided only by issuance of
6 injunction. *East Bay Mun. Utility Dist. v. Dept. of Forestry and Fire Protection*
7 (1996) 43 Cal.App.4th 1113.
- 8 12. Whether an injunction shall issue is a matter resting within the sound discretion of
9 the trial court. *Caterpillar Tractor Co. v. International Harvester Co.* (1939) 106
10 F.2d 769.
- 11 13. Enjoining enforcement of a constitutional ordinance, or failing to enjoin
12 enforcement of an unconstitutional ordinance, would constitute an abuse of
13 discretion within the usual formulation of the standard of review for the grant or
14 denial of a preliminary injunction. *Vo v. City of Garden Grove* (2004) 115
15 Cal.App.4th 425.
- 16 14. Injunctive relief is an extraordinary remedy and courts proceed with great caution
17 in exercising their powers and require a clear showing that the threatened and
18 impending injury is great, and can be averted only by injunction. *Western*
19 *Electroplating Co. v. Henness* (1959) 172 Cal.App.2d 278.
- 20 15. A trial is justified in preserving the status quo pending trial on the merits by
21 means of a preliminary injunction. *Associated Calif. Loggers Inc. v. Kinder*
22 (1978) 79 Cal.App.3d 34.

23 **B. Interactions Between District Attorneys and the Board of Supervisors:**

- 24 16. California Government Code Section 25303 limits the Supervision of the District
25 Attorney by the Board of Supervisors.
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1 The board of supervisors shall supervise the official conduct of all
2 county officers and officers of all districts and other subdivisions
3 of the county, and particularly insofar as the functions and duties of
4 such county officers and officers of all districts and subdivisions of
5 the county relate to the assessing, collecting, safekeeping,
6 management, or disbursement of public funds. It shall see that they
7 faithfully perform their duties, direct prosecutions for
delinquencies, and when necessary, require them to renew their
official bond, make reports and present their books and accounts
for inspections.

8 **This section shall not be construed to affect the independent**
9 **and constitutionally and statutorily designated investigative**
10 **and prosecutorial functions of the sheriff and district attorney**
11 **of a county. The board of supervisors shall not obstruct the**
12 **investigative functions of the sheriff of the county nor shall it**
13 **obstruct the prosecutorial function of the district attorney of a**
14 **county. (Emphasis added)**

- 15 17. Although a county board of supervisors has authority to supervise county officers
16 in order to insure that they faithfully perform their duties, the board has no power
17 to perform the county officers' statutory duties for them or direct the manner in
18 which the duties are performed. *Hicks v. Orange County Bd. Of Sup'rs* (1977) 69
19 Cal.App.3d 228.
- 20 18. Both a district attorney and a sheriff are county officers authorized to appoint as
21 many deputies as are necessary for the prompt and faithful discharge of their
22 duties. 77 Op.Atty.Gen. 82, (Op. Atty. Gen. 93-903, page 4).
- 23 19. A board of supervisors has NO authority over the district attorney in regards to
24 personnel assignments "Accordingly, it is concluded that a county board of
25 supervisors is not authorized to govern the actions of a sheriff or district attorney
26 concerning the manner in which their respective budget allotments are expended
27 **or the manner in which personnel are assigned.**" 77 Op.Atty.Gen. 82, (Op.
28 Atty. Gen. 93-903, page 6). (Emphasis added.)

1 20. A district attorney is a state officer when deciding to prosecute an individual.
2 *Weiner v. San Diego County*, 210 Fed.3d 1025 (9th Circ. 2000).

3
4 **C. The Obligation of County to Provide Legal Support and the Role of the
County Counsel.**

5 21. The Office of the County Counsel is appointed by the Board of Supervisors and
6 serves as its legal counsel. Government Code § 26526; 27640. County Counsel
7 also provide legal services to the county departments and defends or prosecutes
8 civil actions in which the County of its officers are involved in their official
9 capacities. Government Code § 26520; 26529. Additionally, County Counsel
10 defends county officers and employees in their individual capacities under certain
11 circumstances. Government Code § 995; 26529

12 22. In performing its duties, "County counsel has only one client, namely, the
13 County..." *Ward v. Superior Court*, (1977) 70 Cal. App.3d 23, 32. In advising
14 these entities, County Counsel has an ethical obligation to advise these
15 constituents whom they represent when the interests of the County are in conflict
16 with the interests of the individual officer or employee. Rules of Prof. Conduct,
17 Rule 1.13(f). In addition to these ordinary ethical issues, there is a unique type of
18 conflict that a public agency attorney may encounter.

19 23. A government entity, such as a county, may have internal departments or offices
20 that are "quasi-independent" from the entity itself. *Civil Serv. Com. v. Superior*
21 *Court* (1984) 163 Cal.App.3d 70, 77. "Where an attorney advises or represents a
22 public agency with respect to a matter as to which the agency possess independent
23 authority, such as a dispute over the matter may result in litigation between the
24 agency and the overall entity, a distinct attorney-client relationship with the
25 agency is created." *Id.* at 78. This can, in turn, create a conflict of interest that
26 prohibits County Counsel from advising or representing two independent arms of
27 the County government on the same issue.
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1 24. When such a conflict arises, County Counsel may be required to abstain from
2 representing or advising both agencies on the same matter (in this case, the
3 County and petitioner).

4 25. A conflict of interest now exists between the County and petitioner such that the
5 county counsel cannot represent both. Further, the County Counsel's Office
6 personnel are witnesses likely to be called at trial/hearing. County has previously
7 recognized that independent legal counsel of the District Attorney's choice is
8 appropriate.

9 **THE BOARD OF SUPERVISORS' 'WRONGFUL AND ILLEGAL ACTIONS**

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11 26. On/about July 6, 2021, the County of Kings received a claim as a precursor to a
12 civil lawsuit filed by Robert Waggle. (See Exhibits A and N). The claim made certain
13 allegations against the District Attorney.

14 27. On/about July 16, 2021, the District Attorney, through counsel, requested from
15 the Office of the County Counsel, independent legal counsel in order to respond to the
16 claim and potential lawsuit. (See Exhibits B and M)

17 28. On/about July 26, 2021, the County of Kings responded to petitioner, through the
18 Office of the County Counsel and County Administration Office, by presenting a defense
19 and indemnification agreement. The agreement was contingent upon the District Attorney
20 physically vacating his office for an indeterminate amount of time, and delegating day to
21 day operations to a non-elected subordinate. (See Exhibit C).

22 29. On/about July 26, 2021, the District Attorney, through counsel, responded to
23 County requesting the offending and illegal language be removed from the proposed
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25 _____
26 ¹ Unless otherwise noted, "Board of Supervisors" includes subordinate employees and the term
27 may be used interchangeably with the term "County of Kings" or "Kings County" or
28 "County."

1 defense and indemnification agreement (See Exhibit D). The proposed agreement was
2 otherwise acceptable.

3 30. On/about July 30, 2021, the County sent a letter to the District Attorney, advising
4 that it was refusing to remove the offending language, and unilaterally deemed his
5 request for defense and indemnification withdrawn. (See Exhibit E)

6 31. On/about September 7, 2021, County, without advance notice or coordination
7 with the District Attorney, transferred a key employee (Alexandria Smith "Smith") from
8 the Office of the District Attorney to the Human Resources Department. This was not a
9 re-assignment, but rather, a physical transfer away from the District Attorney's Office.
10 (See Exhibits F and M). Her absence negatively impacted the ability of the office to
11 process criminal prosecutions. Despite being physically away from the district attorney's
12 office and performing no district attorney's office work, on information and belief,
13 County continues to pay Smith out of District Attorney budgetary funds.

14 32. On/about September 15, 2021, Interim County Counsel Diane Freeman
15 ("Freeman") issued a directive (order) to the District Attorney that he was prohibited
16 from entering the County Human Resources Department until further notice and advising
17 that Smith is working in the human resources department. Freeman also directed the
18 District Attorney to preserve all property in the District Attorney's Office belonging to
19 Smith, as well as all records and evidence related to her employment. (See Exhibit G)

20 33. On/about September 17, 2021, Freeman issued a letter to the District Attorney,
21 forwarding an accusation by Smith, that she was "retaliated" against by petitioner dining
22 at a local restaurant where she was also present. (See Exhibit H)

23 34. On September 23, 2021, attorney Marguerite Melo sent an email to Freeman in
24 response to the letter of September 17, 2021, and again raising the issue of County's
25 refusal to provide petitioner legal counsel. (See Exhibit I)

26 35. On/about September 29, 2021, petitioner, through counsel, sent a letter to County
27 responding to County's earlier communications, and demanding the immediate return of
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1 the District Attorney's Office property² that Ms. Smith has, to date, refused to return. The
2 letter also asserted that the County was in a hostile litigation posture relative to petitioner.
3 Further, the letter also stated the District Attorney's position that his former employee,
4 Ms. Smith, had abandoned her employment in the District Attorney's Office when she
5 walked off the job with no notice, or words to that effect. (See Exhibit J). Later that same
6 day, petitioner, again through counsel, sent a letter to County regarding his non-waiver of
7 confidentiality, privacy, and consumer information, as well as reiterating the failure to
8 provide legal counsel. (Exhibit K).

9 36. On/about October 1, 2021, Freeman sent a reply back to the District Attorney,
10 denying, contrary to her letter in Exhibit G, that she had previously issued a preservation
11 order to him, and again ordered him use his office essentially as a storage locker for non-
12 district attorney employees (Smith), or words to that effect. She also denied that County's
13 legal position was hostile to him. (See Exhibit L)

14 37. As mentioned in the declaration by petitioner, despite repeated requests, County
15 has to date, refused to return District Attorney's Office identification cards issued to their
16 employee, Smith.

17 **WHEREFORE, Petitioner prays as follows:**

18
19 That the Court issue a preliminary and permanent injunction, enjoining the
20 County of Kings from the illegal acts complained of herein; and

21 After hearing on this petition, this Court issue a Writ of Mandate and/or Prohibition under
22 the seal of the Court commanding the County of Kings to cease its illegal interference with the
23 operations of the District Attorney's Office, or to show before this Court why it has not done so
24 and why a writ should not issue; and

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27 ² The District Attorney property at issue is the official office identification card used for entry
28 into sensitive areas.

1 After a hearing on this petition, the Court issue a Writ of Mandate and/or Prohibition
2 under seal of this Court prohibiting the County of Kings from obstructing the independent,
3 constitutional and statutorily designated functions of the District Attorney; and

4 After a hearing on this petition, the Court issue a Writ of Mandate and/or Prohibition
5 under seal of this Court prohibiting the County of Kings from making or attempting to make
6 personnel assignments within the Office of the District Attorney over the objection of the District
7 Attorney; and

8 After a hearing on this petition, the Court issue a Writ of Mandate and/or Prohibition
9 under seal of this Court commanding the County of Kings to provide legal counsel to the office
10 of the district attorney in order to pursue this litigation as well as other now pending civil
11 litigation in which the Office of the District Attorney or the District Attorney (in his official
12 capacity) is the Real Party in Interest, or otherwise entitled to intervene; and

13 For a Declaration:

14 That the County Counsel's Office is presently in a conflict of interest and as such cannot
15 represent both the District Attorney's Office (and District Attorney) and the County of Kings,
16 simultaneously in this matter; and

17 That County is obliged to provide for independent legal counsel for the Office of the
18 District Attorney (and District Attorney in his official capacity) for any and all civil litigation in
19 which it has an interest; and

20 To reimburse the District Attorney for the reasonable and necessary legal fees he has
21 incurred in seeking independent representation (in his official capacity only) since the failure and
22 refusal of County to provide him with legal counsel; and

23 To direct the County to sign the previously mentioned defense and indemnification
24 agreement, striking the Constitutionally defective provisions; and

25 That the County (to include the Board of Supervisors) has no authority to direct how the
26 District Attorney's Office assigns its personnel; and

27 For costs of suit and attorneys fees herein incurred; and
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Such other relief be granted that the Court considers just and proper.

Oct. 4 2021

LAW OFFICES OF MELO AND SANSFIELD LLP

By: Marguerite Melo
Marguerite Melo, Esq.
Attorney for Petitioner

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VERIFICATION

I, Keith Fagundes, declare:

I am the duly elected District Attorney of the County of Kings, State of California.

I have read the above "**PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**" and know its contents. All the facts alleged in the petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge or alleged on information and belief. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: Oct. 4, 2021

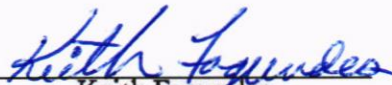

Keith Fagundes
Declarant
District Attorney, County of Kings

Table of Exhibits/Attachments

- A. Government Code 910 Claim filed on behalf of (OBO) Claimant Waggle
- B. Letter OBO District Attorney Keith Fagundes (DAKF) requesting legal counsel
- C. Draft Defense and Indemnification agreement by County
- D. Letter OBO DAKF to County requesting removal of illegal language in draft defense and indemnification agreement
- E. Letter OBO County to DAKF refusing to remove illegal language
- F. Declaration of Executive Assistant District Attorney Phil Esbenshade
- G. Letter OBO County to DAKF advising of the transfer of DA personnel, locking DAKF out of County Offices (human resources department) and ordering the preservation of property and evidence
- H. Letter OBO County to DAKF regarding complaint of restaurant retaliation
- I. Email OBO DAKF to County again raising the issue of County's failure to provide legal counsel
- J. Letter OBO DAKF to County demanding the return of District Attorney Identification Cards, and discussing the status of County (not District Attorney) employee Smith
- K. Letter OBO DAKF to County regarding non-waiver of various confidentiality laws and reiterating defense and indemnification status.
- L. Letter OBO County to DAKF denying that it had issued a preservation letter and reiterating that the district attorney's office must continue to store private property
- M. Declaration of DAKF
- N. Complaint by Waggle (Kings County Superior Court Case Number 21 C 0282)
- O. Opinion of Attorney General 93-903 (Included for convenience)

Exhibit/Attachment A

Filed with the Kings County
Clerk of the Board

JUL - 6 2021

Received by
[Signature]

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13 Attorneys for Claimant
14 ROBERT WAGGLE

15 STATE OF CALIFORNIA, COUNTY OF KINGS
16 GOVERNMENT CLAIM - KINGS COUNTY

17 IN THE MATTER OF THE CLAIM OF
18 ROBERT WAGGLE, an Individual

CASE NO.: Unknown

19 Claimant,

CLAIMANT ROBERT WAGGLE'S
GOVERNMENT CLAIM FOR DAMAGES
PURSUANT TO CALIFORNIA GOVERNMENT
CODE §§ 905 AND 910, ET SEQ.

20 vs.

21 COUNTY OF KINGS, an entity of unknown
22 origin; and DOES 1 - 50, Inclusive,

23 Respondents.
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25 Please be advised that Claimant Robert Waggle ("Claimant") hereby submits his Government Claim
26 pursuant to, *inter alia*, Government Code Sections 905 and 910, *et seq.*, as follows:
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GOVERNMENT CLAIM

1. **NAME AND ADDRESS OF CLAIMANT:**

Robert Waggle, c/o (1) Lawrence J. Lennemann, Law Office of Lawrence J. Lennemann, 29900 Hawthorne Boulevard, Rolling Hills Estates, CA 90274; (310) 265-5788; and (2) John A. Girardi, Law Offices of John Girardi, 29900 Hawthorne Boulevard, Rolling Hills Estates, CA 90274; (310) 265-5787.

2. **ADDRESS TO SEND ALL CLAIMS AND OTHER NOTICES:**

Lawrence J. Lennemann, Law Office of Lawrence J. Lennemann, 29900 Hawthorne Boulevard, Rolling Hills Estates, CA 90274; and (2) John A. Girardi, Law Offices of John Girardi, 29900 Hawthorne Boulevard, Rolling Hills Estates, CA 90274.

3. **THE DATE, LOCATION AND CIRCUMSTANCES SURROUNDING CLAIM:**

Date: Ongoing up to and including today - July 6, 2021.

Place: County of Kings (primarily).

Facts: Claimant's claims against County involve, *inter alia*, retaliation, sexual harassment/harassment and constructive termination. [A separate Complaint with the Department of Fair Employment and Housing has also been filed.]

By way of brief background, in 2003, Claimant - a heterosexual male - was hired as a Deputy Sheriff by the Kings County Sheriff's Office after graduating from the Fresno City College police academy at the top of his class. Claimant earned his B.S. Degree from California State University Fresno and eventually obtained his M.B.A. from Brandman University. Claimant was an excellent employee and promoted quickly. In 2010, when Claimant held the rank of Senior Deputy Sheriff, he transferred to the District Attorney's Office as a DA Investigator.

Once at the DA's Office, Claimant was promoted to Senior Investigator and eventually to Chief Investigator. Claimant is currently a licensed private investigator with significant training/experience in criminal investigation and computer forensics and is a part time college professor teaching Administration of Justice and Computer Information Systems.

In 2014, Keith Fagundes ("Fagundes") was elected as District Attorney. When Fagundes took office, the then Chief Investigator and Assistant Chief Investigator chose to leave the office. In July of 2015, Claimant was promoted to Chief Investigator and Claimant then filled the other vacancies with in-house personnel. Throughout his 17-year career with the County, Claimant consistently received excellent performance reviews and merit-based salary increases.

1 In 2018, when Claimant was in the process of a divorce, Fagundes offered Claimant the apartment
2 next door to Fagundes' home. Claimant repeatedly offered to pay Fagundes for the apartment but
3 Fagundes refused to accept payment, stating instead that: "You [Claimant] just being here is enough
4 for me." While Claimant was initially thankful for this assistance, Claimant was unaware of the
"strings" that would be attached to this situation.

5 During this time period, Claimant began dating Fagundes' secretary, Alexandria Smith. The three
6 often socialized together. However, Fagundes began to repeatedly make comments that Claimant's
7 relationship with Ms. Smith was causing Fagundes "angst" as it was taking away from "Keith time."

8 Fagundes began to repeatedly and inappropriately make unwanted sexual remarks to Claimant and
9 began to send Claimant numerous unsolicited sexual comments, innuendos, memes and photographs.
10 (Despite Fagundes' requests/demands that Claimant delete these messages, Claimant has saved
approximately 5,000 text messages from Fagundes.) The below are some examples (of many) of
Fagundes' extended pattern and practice of improper and unlawful sexual harassment:

- 11 • Fagundes repeatedly made sexual comments regarding Claimant's body and clothing (and,
12 eventually, Fagundes purchased the exact same articles of clothing that Claimant wore);
- 13 • Fagundes repeatedly touched Claimant in a sexual manner;
- 14 • Fagundes repeatedly blatantly stared at Claimant's crotch;
- 15 • Fagundes repeatedly initiated conversations about sex (i.e., comparing the imagined size of
16 Claimant's penis to various objects and stating: "Wow, I just can't get it out of my mind" or
17 "Wow! I'm impressed!");
- 18 • Fagundes texted Claimant a photo of a statue of a man with a broken tennis racquet with a
19 caption: "When the racquet on your tennis trophy breaks and now it looks like you won an
20 award for masturbation", beneath which Fagundes wrote: "Why did I think of you when I saw
this????";
- 21 • Fagundes visited a horse ranch and sent Claimant a photo of a male horse with its penis
22 partially exposed and texted: "We are at this horse therapy place. The instructor told us to
23 pick a horse that reminds us of ourselves. I chose this one";
- 24 • Fagundes texted Claimant a picture of an ad that stated: "Massage - 60 minute massage
25 includes head \$20" under which Fagundes had written: "You're the only person I could share
it with . . . who won't judge me any further";
- 26 • Claimant texted Fagundes that a delivery package had arrived for Fagundes and Fagundes
27 responded that he wanted to "cum over and see it";

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- Fagundes repeatedly discussed eating pineapples with Claimant because Fagundes stated that eating pineapple would make male ejaculation (“cum”) taste sweeter and sent Claimant texts which referred to pineapples (i.e., a photo of Dole pineapple juice, a photo of pineapple with white sauce beside it);
- Fagundes repeatedly raised the subject of cum with Claimant (i.e., “Do you like how cum tastes?”, “Cum doesn’t taste too bad”) and stated that he enjoyed performing oral sex on his wife after he ejaculated inside her so that he could taste it;
- Fagundes repeatedly discussed his sex life with Claimant (i.e., “My sex life is so much better now that you live here”) and “credited” Claimant with this improvement;
- Fagundes repeatedly asked Claimant’s girlfriend Ms. Smith about her sexual relationship with Claimant (i.e., what Claimant positions Claimant preferred during sexual intercourse with her) and inquired into whether the two of them had ever engaged in anal intercourse;
- Fagundes told Claimant that Fagundes had attempted to have anal intercourse with his wife but that she was unwilling/uninterested;
- Fagundes sent text messages with improper emojis (i.e., kissing faces, kissing lips) and then requested that Claimant delete the texts (which a photo of texts to be deleted);
- Fagundes texted Claimant about swimming nude and about taking a shower afterwards;
- Fagundes asked Claimant about masturbating (i.e., how often and when), referred to Claimant’s apartment as the “masturbatorium” and inquired into whether Fagundes could use Claimant’s apartment to masturbate when Claimant was not home;
- Fagundes purchased underwear for Claimant as a “gift”;
- Fagundes asked Claimant about “good” pornography sites and stated that he had “inadvertantly” clicked on homosexual pornography sites;
- Fagundes told Claimant that he “loved” him; and
- Eventually, in November of 2019, Claimant was able to move out of Fagundes’ apartment. When Claimant was moving into his new home, Fagundes came over and, when touring the house, Fagundes looked at the area where the bed would be placed in the master bedroom and stated: “I am going to imprint on you right now. I want you to envision me standing her while you are fucking Alex.”

1 All of Fagundes' highly improper acts and communications caused Claimant to feel extremely
2 uncomfortable, abused and traumatized. As Fagundes continued to act improperly (despite Claimant's
3 many requests for Fagundes to stop), Claimant felt increasingly helpless and hopeless. Indeed, when
4 Claimant did attempt to set boundaries (or simply did not respond or said he was "busy"), Fagundes
5 reacted negatively. While Claimant would have known how to react had these improper actions come
6 from anyone other than Claimant's direct supervisor, Claimant felt powerless as a result of Fagundes'
7 actual control over Claimant.

8 Additionally, Fagundes often mentioned his "blackmail folders" that he maintains on "everybody",
9 including Claimant. Based on Fagundes prior behavior (trying to politically destroy anyone who
10 questioned/opposed him), Claimant justifiably feared retaliation. (Additionally, Fagundes' father is
11 a member of the County Board of Supervisors.) Claimant was well aware that any
12 repudiation/complaints of Fagundes' actions would also result in severe retaliation from Fagundes.

13 In any event, Fagundes expressed anger that Claimant had moved out of Fagundes' apartment and
14 in with Ms. Smith. At this time, Claimant and Fagundes' relationship began to deteriorate. At the
15 office, Fagundes began to retaliate against Claimant by, *inter alia*, continually ostracizing him,
16 ignoring/excluding him, attempting to micromanage him and by violating the chain of command.
17 Fagundes began to have private meetings with Claimant's subordinates and fail to include Claimant
18 in on the information discussed. Fagundes slowly stripped Claimant of his responsibilities/abilities to
19 the point Claimant had a difficult time performing his job. When Claimant requested to meet with
20 Fagundes regarding Fagundes' expectations moving forward, Fagundes responded: "I don't know
21 what that looks like. We wouldn't be having this conversation if it was a few years ago." Claimant
22 felt sick as if Fagundes was attempting to force him back into some type of personal relationship.

23 Then, in or about February/March of 2021, serious allegations were made regarding a sitting member
24 of the County Board of Supervisors. County Counsel Lee Burdick arranged for an outside law firm
25 to investigate these allegations. County Counsel then requested that the Attorney General become
26 involved. However, the Attorney General stated that, unless the District Attorney conflicted out, they
27 would not become involved.

28 Claimant confronted Fagundes and stated that a conflict clearly existed and that the District
Attorney's office should not be conducting the investigation. Despite this conflict, Fagundes refused
to conflict out and proceeded to assign the investigation to Claimant's subordinate. Fagundes then
altered the direction of the investigation to focus not on the County Supervisor but on two women
for supposed collusion. During this meeting, Claimant again stated that the District Attorneys' office
should not be conducting this investigation as Fagundes had personal animosities towards not only
the two women but to women in power in general. Fagundes wanted to send a message to these
women that he - and not them - has the power and control.

In March of 2021, Claimant requested a voluntary demotion to the vacant position of "Computer
Forensics Specialist" for which Claimant indisputably met all qualifications. Fagundes denied
Claimant's request by smirking, tilting his head and stating: "It's not good for the office. If I did allow
it, it would have only been because of our personal relationship, and that's not there." Thus, Fagundes
made clear that his denial of a work benefit to Claimant was a result of Claimant's refusal to remain
in the personal relationship demanded by Fagundes (i.e., a *quid pro quo*).

1 Throughout this recent time period, Claimant reported Fagundes' various improper/illegal acts to,
2 *inter alia*, the County Counsel and the County's Risk Manager.

3 As a result of Fagundes' improper/illegal acts, Claimant began to suffer severe anxiety, panic attacks
4 and other physical/psychological ailments and was diagnosed by the County's own Qualified Medical
5 Examiner with Post Traumatic Stress Disorder and Panic Disorder, directly resulting from Fagundes'
6 actions.

7 On March 24, 2021, due to the severity of Claimant's distress, Claimant was placed on FMLA leave.

8 Claimant is currently in the process of being medically retired.

9 **4. GENERAL DESCRIPTION OF INJURY:**

10 As a result of County's improper actions, Claimant has been severely damaged. The County's acts
11 and omissions set forth above have resulted in and/or will result in Complainant suffering general damages
12 and special damages (including, but not limited, to emotional distress and attorneys' fees). While the forty-
13 year old Complainant had planned and desired to end his career with the County up to and/or past the age
14 of fifty-five, the County's actions and omissions made this impossible.

15 More specifically, being forced to medically retire at such a young age will result in Claimant receiving
16 - for the remainder of his life - a substantially-discounted retirement than the retirement he would have
17 received had he retired at the end of his career, following promotions, raises and/or cost-of-living increases.
18 In other words, Claimant will now receive 60% of his salary rather than receiving 90% of a much higher
19 salary for the remainder of his life (approximately 45 years - per life expectancy tables). Although Claimant
20 has not yet retained an expert witness accountant, Claimant's counsel estimates this to exceed the \$1 Million
21 range. See, also, Section 7 below re "Amount Claimed."
22

23 Furthermore, County's actions and omissions have resulted (and will continue to result) in emotional
24 distress. Furthermore, should this matter proceed to Trial and should Claimant prevail, he would be entitled
25 to reimbursement for his reasonable attorneys' fees and costs which, per past practice, may range from
26 \$650,000.00-\$800,000.00.
27
28

Exhibit/Attachment B



**LAW OFFICES OF MELO AND
SARSFIELD LLP**

Mailing:

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Visalia, California 93277

T (559) 732-3000

Email

meloandsarsfield@icloud.com

Web

www.melo-sarsfieldlaw.com

July 16, 2021

Ms. Carrie Woolley
Acting County Counsel

Mr. Larry Spikes
Interim County Administrative Officer

Re: Waggle 910 claim filed July 6, 2021 and Related Matters-Request for Defense and Indemnification

Dear Ms. Woolley and Mr. Spikes:

We represent District Attorney Keith Fagundes. We are aware that a Government Code Section 910 claim has been filed (filed July 16, 2021) that alleges Mr. Fagundes has engaged in certain acts of misconduct, presumably work related. The claim also references a possible DFEH complaint.

It is my understanding that the claim has triggered a County of Kings Human Resources investigation into its allegations. We have been retained by District Attorney Fagundes to represent him for that investigation, and other related matters.

On District Attorney Fagundes' behalf, we are requesting that the County of Kings agree to recognize our firm as his legal counsel and reimburse him for his reasonable attorneys fees in this regard (or preferably, directly pay us), as well as indemnify him for any work-related judgment of liability related to this matter, should that unlikely eventuality occur.

We bill 250.00/hour for this type of work. If you require additional information, please do not

hesitate to ask.

Sincerely,

LAW OFFICES OF MELO AND SARSFIELD LLP

A handwritten signature in black ink, appearing to read 'John Sarsfield', written over a horizontal line.

John Sarsfield, Esq.

CC: DA Keith Fagundes

Exhibit/Attachment C

AGREEMENT TO DEFEND WITH RESERVATION OF RIGHTS

As you are aware, a government tort claim has been presented to the Clerk of the Kings County Board of Supervisors by Attorney Larry Lennemann on behalf of his client, Robert Waggle, the former Chief Investigator of the Kings County District Attorney's Office. A copy of the claim was provided to you by interim County Administrative Officer Larry Spikes on July 14, 2021. The claim alleges conduct on your part that resulted in retaliation against Mr. Waggle, sexual harassment/harassment, and constructive termination.

Per your request, the County of Kings will provide the reasonable costs associated with your defense reserving all rights pursuant to Government Code Sections 825, et seq and 995, et seq, including whether the conduct at issue, or any other wrongdoing that may arise, was a result of you being an employee of the County of Kings and within the course and scope of that employment, and were not the result of fraud, corruption or malice. In addition, the County of Kings reserves its right to refuse the payment of any punitive or exemplary damages pursuant to Government Code Section 825. The County of Kings reserves the right to seek a judicial determination of these issues. Further:

1) You have the right to retain and/or seek advice of outside counsel/independent counsel at any time. Should you retain outside counsel/independent counsel, the County of Kings will pay a maximum of \$250.00 per hour for attorney's fees, and reasonable costs of defense. The County of Kings reserves the right to challenge the amount of attorney hours incurred, and costs of defense that are billed to the County for payment.

2) In the event the conduct alleged by Mr. Waggle is judicially determined to be outside the course and scope of your employment, or as the result of fraud, corruption or malice, the County of Kings reserves the right to recover any payment of attorney's fees and costs from

you using any legal means necessary.

3) The County of Kings reserves the right to withdraw its defense and seek reimbursement for defense fees incurred in defending claims with no potential for coverage.

4) The County of Kings, through its designee, will conduct an investigation of Mr. Waggle's allegations. During the pendency of that investigation you shall physically vacate the premises of the District Attorney's Office. You will not contact or approach any employees of the District Attorney's Office about Mr. Waggle's allegations from the present, and through the course of the investigation and/or any subsequent litigation. You may, however, choose a designee from the District Attorney's Office whom you will communicate with for the purposes of the day to day management of the Office.

5) The County of Kings reserves the right to amend this agreement at a later time.

6. You will comply with the requirements to preserve any potential evidence as outlined in the attached July 23, 2021, letter from Mr. Lennemann.

I, Keith Fagundes, have read and understand the above-information. Subject to the above conditions, I am requesting that the County of Kings pay for attorney's fees and reasonable costs of my defense.

By: _____
Keith Fagundes

Date: _____

By:  _____
Larry Spikes, Interim County Administrative Officer
County of Kings

Date: 7-26-21

Exhibit/Attachment D



**LAW OFFICES OF MELO AND
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July 26, 2021

Ms. Carrie Woolley
Acting County Counsel
Mr. Larry Spikes
Interim County Administrative Officer

Re: Proposed Defense and Indemnification Agreement

Dear Ms. Woolley and Mr. Spikes:

We represent District Attorney Keith Fagundes. We received the proposed defense and indemnification agreement, dated July 26, 2021. The draft agreement raises numerous serious constitutional and legal concerns, and at present cannot be signed by our client.

DA Fagundes is an independently elected officer. As a co-equal branch of government, DA Fagundes does not report, in the employee-employer sense, to the County Administrative Office or the Board of Supervisors. As such, being directed by the County Counsel to cooperate with an administrative investigation is unenforceable. DA Fagundes has voiced his desire to voluntarily cooperate but he is under no legal duty to do so. Additionally, being directed to be placed on administrative leave is impossible. As a representative of the government who has been entrusted with the exercise of sovereign powers, he cannot voluntarily abandon his elective office, even for an investigation into these baseless allegations, nor can he delegate the exercise of those powers to an unelected subordinate.

DA Fagundes is committed to continuing to perform all of the duties of his office, as the voters expect him to do. He is also committed to maintaining a workplace free of retaliation. However, under NO circumstances will he be vacating the workplace.

You can well imagine the chaos that would follow if every allegation by a town crank would require the DA to, even temporarily, step down from the exercise of the powers of his elected office.

Letter to County Counsel and CAO
July 26, 2021

We can commit to voluntarily cooperating with the county's inquiry into this matter, and look forward to doing so. But, Mr. Fagundes will not abandon the elected post to which he has been entrusted by the voters of Kings County.

Please resubmit the proposed agreement without the objectionable language for further review.

Also, in the future, please direct all communications you wish to send to DA Fagundes regarding this matter to myself, at the email "meloandsarsfield@icloud.com."

Thank you for your prompt attention to this matter and I look forward to a quick resolution of these distractions.

Sincerely,

LAW OFFICES OF MELO AND SANSFIELD LLP

Marguerite Melo

Marguerite Melo, Esq.

CC: DA Keith Fagundes

Exhibit/Attachment E

COUNTY OF KINGS
Office of the County Counsel
KINGS COUNTY GOVERNMENT CENTER
1400 W. LACEY BLVD., LAW BLDG. NO. 4
HANFORD, CA 93230
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FAX: (559) 584-0865



CARRIE R. WOOLLEY
Interim County Counsel
Deputies:
DIANE WALKER FREEMAN
RISÉ A. DONLON
FRANK A. RUIZ
THOMAS Y. LIN
CINDY CROSE KLIEVER
TRAN H. NGUYEN

July 30, 2021

Sent via electronic mail only

Margaret Melo, Esq.
Law Offices of Melo and Sarsfield
4216 S. Mooney Blvd. PMB 136
Visalia, CA 93277
meloandsarsfield@icloud.com

Re: Response to your letter of July 26, 2021.

Dear Ms. Melo,

The County of Kings ("County") received your letter of July 26, 2021 ("Letter"), in which you set forth your and your client's objections to the terms of the County's Defense and Indemnification Agreement.

On July 27, 2021, your Letter was considered by the Board of Supervisors ("Board") in closed session to determine whether to amend the County's offer as demanded therein. After careful consideration, the Board decided it would not amend the County's offer. Instead, the Board decided to deem your Letter to be a rejection of the County's offer to your client, Mr. Keith Fagundes, to pay his legal fees and indemnify him. The Board therefore withdraws the County's Defense and Indemnification offer in its entirety.

If you have any questions, please direct them to my attention.

Regards,

A handwritten signature in cursive script that reads "Carrie R. Woolley".

CARRIE R. WOOLLEY
Interim County Counsel

Exhibit/Attachment F

1 JOHN J. SARFIELD (SBN 138971)
2 MARGUERITE MELO (SBN 167782)
3 LAW OFFICES OF MELO AND SARFIELD LLP
4 4216 S. Mooney Blvd PMB 136
5 Visalia, CA 93277
6 Telephone: 559 732 3000
7 E-mail: meloandsarsfield@icloud.com

8 Attorneys for Petitioner Keith Fagundes, In His Official Capacity as District Attorney

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF KINGS**

11 **Keith Fagundes, In His Official Capacity as) Case No.**
12 **District Attorney for the County of Kings,)**
13 **Petitioner,) DECLARATION OF PHIL**
14 **vs.) ESBENSHADE IN SUPPORT OF**
15 **The County of Kings and Does 1 though 15,) PETITION FOR WRIT OF MANDATE**
16 **Respondents.) AND/OR PROHIBITION AND**
17 **) COMPLAINT FOR DECLARATORY**
18 **) AND INJUNCTIVE RELIEF.**
19 **)**
20 **)**

21 I, Phil Esbenshade, declare under the penalty of perjury that the following is true and
22 correct:

23 I am the Executive Assistant District Attorney for the District Attorney’s Office, County of
24 Kings. As such, I am familiar with the organization, personnel, budget, and all other organizational
25 matters of the office.

26 I am making this declaration of my own personal knowledge.

27 The District Attorney’s Office currently has authorized slots for approximately 67 persons,
28 including 15 legal secretaries and/or legal assistants. It has an annual budget of approximately 9.5
million dollars, although that can change depending upon the needs of the criminal justice system.

There is only one position for “Secretary to the District Attorney.” Until recently, that
position was held by Alexandria Smith. Ms. Smith is no longer working in the office.

1 Ms. Smith apparently left the office on/about September 7, 2021. She did not advise me
2 about her departure prior to her leaving, however she would not have been required to do so under
3 the existing command structure. I learned of it after the fact.

4 It is my understanding that Ms. Smith is now working in the County of Kings Human
5 Resources Department.

6 The secretary to the District Attorney is a key position in the District Attorney's office, and
7 he/she routinely is considered part of the District Attorney's office management staff.

8 I have included a copy of the secretary to the district attorney job description. A review of
9 that job description will show that 1) the job site is in the office of the district attorney 2) the
10 incumbent reports to and receives direction from the district attorney 3) the position requires the
11 handling of confidential matters, and 4) the position performs office management functions.

12
13 Sworn to and subscribed under penalty of perjury, in Hanford, California.

14
15
16 Dated: 10/4/2021



Phil Esbenshade
Declarant

17
18
19
20
21
22
23
24
25
26
27
28

Attachment to Declaration
(Job Description)



Secretary to the District Attorney

Class Code:
Q03

KINGS COUNTY
Established Date: Aug 1, 1987
Revision Date: Oct 1, 2008

SALARY RANGE

\$26.93 - \$32.86 Hourly
\$2,154.40 - \$2,628.80 Biweekly
\$4,667.87 - \$5,695.73 Monthly
\$56,014.40 - \$68,348.80 Annually

DEFINITION:

Under the general direction of the District Attorney, performs a wide variety of difficult, responsible legal secretarial work, office management and administrative/secretarial support to the District Attorney and legal staff.

DISTINGUISHING CHARACTERISTICS

This class is utilized in the office of the District Attorney. The incumbent reports to and receives direction from the District Attorney and supervises clerical staff. This position differs from Legal Secretary, in that the incumbent works closely with staff handling confidential employer-employee relations functions in addition to performing a variety of secretarial, administrative and legal clerical work.

EXAMPLE OF DUTIES:

Duties include but are not limited to those described below. Reasonable accommodation will be made when requested and determined by the County to be appropriate under applicable law.

Performs difficult and responsible secretarial work for the District Attorney, including legal research and preparation of briefs; schedules meetings and appointments for the District Attorney and executive staff; takes and transcribes dictation and types a variety of financial, technical and statistical reports and other material; relieves the District Attorney of administrative details; serves as receptionist, receiving callers, providing information and answering complaints; coordinates use of office facilities; checks reports and records of department; may assist in preparation of payroll; assists in preparation of department budget; prepares claims, deposit permits and journal vouchers; takes and transcribes confidential information pertaining to employer-employee relations, and maintains Department confidential

personnel files; personally prepares a wide variety of legal documents, including affidavits, complaints, warrants, judge's orders, subpoenas and other documents; transcribes investigative interview tapes; attends meetings, takes notes and prepares minutes; gives out information where judgment, knowledge and interpretation of procedures and regulations are necessary; operates a wide variety of office equipment; may supervise and train subordinate employees; may represent the Department in county-wide meetings; provides communication links with other departments and outside agencies.

MINIMUM QUALIFICATIONS:

Any combination of education and relevant experience that would likely provide the required knowledge, skills and abilities is qualifying. A typical way to obtain the required knowledge, skills and abilities would be:

Education: Equivalent to completion of the twelfth grade.

Experience: Three years of legal secretarial or clerical experience. Completion of two of college years (60 semester units) with course work in office procedures, legal terminology, shorthand or a related subject may be substituted for one year of the required experience.

License: Possession of a valid, appropriate California driver's license issued by the Department of Motor Vehicles.

Special Requirements: Type at a speed of 50 net words per minute.

Desirable Qualifications: Shorthand skills and/or the ability to accurately take and transcribe dictation accurately preferred.

Knowledge of: Legal forms, documents and terminology; modern office methods and practices, procedures, supplies and equipment; proper English usage, grammar and punctuation; business correspondence and report writing; and the principles and techniques of training.

Ability to: Understand and carry out complex oral and written directions; gather information and prepare reports and correspondence; analyze situations accurately and adopt an effective course of action; make accurate arithmetical computations; interpret and apply written and oral directions to specific situations requiring the use of sound judgment and minimal supervision; recognize the scope and limit of authority delegated; and establish and maintain cooperative relationships with those contacted in the course of work.

SUPPLEMENTAL INFORMATION:

FLSA Status: Non-Exempt
Medical Group: C
Probationary Period: One Year (2080 service hours)

Exhibit/Attachment G

COUNTY OF KINGS
Office of the County Counsel

KINGS COUNTY
GOVERNMENT CENTER
1400 W. LACEY BLVD.
LAW BLDG. NO. 4
HANFORD, CA 93230
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FAX: (559) 584-0865



DIANE FREEMAN
Interim County Counsel

Deputies:
RISÉ A. DONLON
FRANK A. RUIZ
THOMAS Y. LIN
CINDY CROSE KLIEVER
TRAN H. NGUYEN

September 15, 2021

Via electronic mail and personal delivery
Keith.fagundes@co.kings.ca.us

Keith Fagundes, District Attorney
1400 W. Lacey Blvd., Bldg. No. 4
Hanford, CA 93230

RE: Restriction from Entering the Human Resources Department;
Preservation of Property and Evidence

Dear Mr. Fagundes:

I am writing concerning your recent in-person visits to the Kings County Human Resources Department. To the extent you are not already aware, on August 24, 2021, Alexandria Smith, Secretary to the District Attorney alleged she was being subject to retaliation and harassment by you due to issues related to a pending investigation. On September 7, 2021, the County moved Ms. Smith from her position in the District Attorney's Office and placed her in the Human Resources Department as a protective measure. That same day, former Interim County Counsel, Carrie Woolley, informed you of Ms. Smith's move. On Monday, September 13, 2021, you uncharacteristically appeared at Human Resources for a routine exchange of paperwork thereby putting yourself in a position to have further contact with Ms. Smith.

Your contact with Ms. Smith undermines the County's attempts to protect her from retaliation or harassment and places the County at risk of liability. Consequently, I am informing you that, effective immediately, any future business you have with Human Resources Department that cannot be delegated to staff must be conducted remotely or by appointment only. Absent a prescheduled appointment approved by Human Resources, you are not permitted to enter the Human Resources Department. To minimize any inconvenience this may cause, the County's interoffice mail system can be used for exchange of documents and, if necessary, Human Resources is willing to send personnel to your office to facilitate such exchanges and/or conduct business. These restrictions will remain in effect until further notice.

As an additional matter, you are required to preserve all property in the District Attorney's Office that belongs to Ms. Smith and all records and evidence related to her employment.

Sincerely,


DIANE FREEMAN
Interim County Counsel

cc: Henie Ring, HR Director
Sande Huddleston, Risk Manager
Ed Hill, CAO
2021-7-961 [396583]

Exhibit/Attachment H

COUNTY OF KINGS
Office of the County Counsel

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DIANE FREEMAN
Interim County Counsel

Deputies:
RISÉ A. DONLON
FRANK A. RUIZ
THOMAS Y. LIN
CINDY CROSE KLIEVER
TRAN H. NGUYEN

September 17, 2021

Via electronic mail and personal delivery
Keith.fagundes@co.kings.ca.us

Keith Fagundes, District Attorney
1400 W. Lacey Blvd., Bldg. No. 4
Hanford, CA 93230

RE: Request for Cooperation Regarding Allegations of Retaliation

Dear Mr. Fagundes:

It has been reported that on Wednesday, September 15, 2021, you showed up at a local restaurant where Alexandria Smith was eating lunch with Robert Waggle. It is further reported that Ms. Smith and Mr. Waggle have a long standing tradition of eating lunch together at this restaurant, that you were aware of this tradition, that you have never appeared while they were eating lunch at this restaurant before, and that you have historically refused to eat at this restaurant due to a prior incident when you found hair in your food. Your appearance at this restaurant was perceived by Ms. Smith as retaliation and an attempt to harass and intimidate her.

This letter is to remind you of the County's Workplace Bullying Policy and its Program for Workplace Violence Prevention, copies of which are attached. Under these policies, the County attempts to provide a safe and secure working environment reasonably free from fear of violence, aggression, intimidation, harassment or retaliation for all employees. These policies apply to all County employees including elected officials.

In an effort to protect the interests of all, the County requests your cooperation in preventing further escalation of these issues. The County asks that you avoid all future contact with Ms. Smith, direct or indirect, inside or outside the workplace. The County further requests that you refrain from any conduct that, regardless of intent, could be perceived as retaliation, discrimination, or harassment against Ms. Smith.

Sincerely,

DIANE FREEMAN
Interim County Counsel

cc: Henie Ring, HR Director
Sande Huddleston, Risk Manager
Ed Hill, CAO

2021-7-961 [396913]

Exhibit/Attachment I



Maggie Melo

Fagundes/Wagggle

To: Freeman, Diane, Bcc: Fagundes.keith@gmail.com

 Sent - iCloud

September 23, 2021 at 11:36 AM

[Details](#)

Hi Diane,

I was going to write you back a formal response about the alleged "retaliation" by dining at a restaurant, but there really isn't any point. Suffice it to say, Mr. Fagundes and his party were out for a professional lunch. It was just happenstance that Mr. Wagggle and his girlfriend were at the same restaurant. It wasn't "retaliation." In any event, Mr. Fagundes is aware of his obligation to not retaliate against anyone.

On a different note, I just got a copy of the lawsuit that was filed against the County. If you want to talk with our client, even though he isn't a named defendant, please go through us.

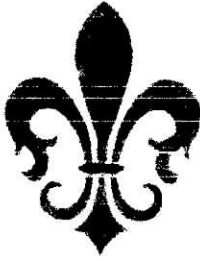
Also, in the event that anyone wants to take his deposition, we are going to have to deal with the County's ongoing failure to pay for his legal representation. I had previously mentioned to Ms. Wooley that we were prepared to seek a court order in that regard, but we'd rather work cooperatively with the county if that is possible.

Let me know if/when you have time to talk.

Thank you.

Maggie Melo

Exhibit/Attachment J



**LAW OFFICES OF MELO AND
SARSFIELD LLP**

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Sept. 29, 2021

Ms Diane Freeman
Acting County Counsel

Re: Alexandria Smith—Cease and Desist

Dear Ms. Freeman:

It has come to our attention that Ms. Smith is publicly identifying herself as an employee of the District Attorney's Office. Ms. Smith abandoned her position with the District Attorney's office earlier this month. Her representation is therefore false. Ms. Smith no longer has any association with the Office of the District Attorney. Whether she still works for the County is not our concern.

Ms. Smith will immediately cease identifying herself as a member of this law enforcement office. My client (the elected District Attorney) demands the immediate return of her District Attorney property, including Identification Card, keys/key fobs, and similar matters. Additionally, she and/or Kings County IT is to immediately reset her email so that it no longer identifies her as having ANY affiliation with the District Attorney's Office.

We have also learned that Ms. Smith has been making public statements on Facebook. These statements can fairly be described as racial, ethnic and physical appearance slurs towards the Mayor of the City of Hanford. During the course of these public statements, she is identified as an employee of the District Attorney's Office. Her public statements are a discredit to the County of Kings and are clearly violative of its anti-discrimination policies. Consider this a formal complaint into her statements and actions. We expect your office to bring its usual vigor in investigating this blatant racist screed.

///

9/29/2021

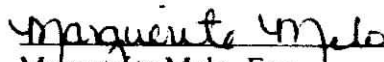
Letter to County Counsel re Smith

I have included a link so you can review the postings yourself. <https://www.facebook.com/photo.php?fbid=4834529869891846&set=a.618701544808054&type=3>

We expect the property to be returned to the office by noon on Friday, October 1, 2021.

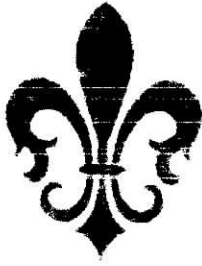
Sincerely,

LAW OFFICES OF MELO AND SANSFIELD LLP


Marguerite Melo, Esq.

CC: DA Keith Fagundes

Exhibit/Attachment K



**LAW OFFICES OF MELO AND
SARFIELD LLP**

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www.melo-sarfieldlaw.com

Sept. 29, 2021

Ms Diane Freeman
Acting County Counsel

Re. Waggle v. County of Kings, Case Number 21 C 0282

Dear Ms. Freeman:

As you know, we represent District Attorney Fagundes for all purposes relating to the above case, to include any claims of "retaliation" by former DA employee Alexandria Smith. Since this entire matter went public in July, the County of Kings has failed to provide any required legal support to Mr. Fagundes, in his official capacity as an elected county officer.

In fact, the County has now taken a position that is clearly hostile to him, in light of your unilateral transferring of his confidential secretary, your issuance of a preservation letter, and your locking out Mr. Fagundes from county administrative offices.

In light of these actions, please contact us to arrange for the removal of Ms. Smith's personal belongings to your office(s). The District Attorney's Office is not a storage locker for other county employees to use at their leisure, and is unwilling to do so. Your attempt to order DA Fagundes to the contrary is null and void. We give you until close of business on Friday, October 8 to arrange for the pick up and removal of her property, or we will arrange for the pickup and removal of the materials ourselves. You should also be advised that absolutely no District Attorney's Office materials or information will be allowed to be removed.

Additionally, we expect and insist that Ms. Smith will not be given any access to DA Fagundes' files, or the District Attorney's Office's files (to include its employees) while she is working in the administration offices. Also, be advised that you are on notice that the District Attorney's office does not waive any provisions of attorney-client confidentiality as well as work-product privileges as they apply to Ms. Smith. No violation of these obligations will be tolerated.

Your office has utterly failed to conduct a full and fair investigation into the preposterous claims by Mr. Waggle. To date, no one has contacted us to arrange for an interview with our client. Based upon the inaction, we assume that you have decided to not conduct an investigation.

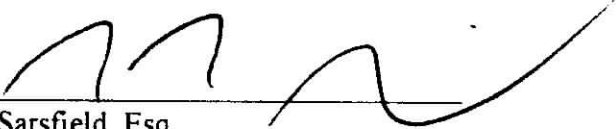
The County of Kings is obliged to provide necessary legal services to elected county office holders, including DA Fagundes. We previously submitted such a request which was summarily rejected. The basis of the rejection was that DA Fagundes was unwilling to take an illegal leave of office from his position.

We are following the above litigation very closely. You are advised that Mr. Fagundes does not authorize your office to any accept service of process on his behalf. Nor does he consent to the releasing of any of his employment or consumer information (personnel file) that may be in your custody or control.

If you would like to discuss this situation, or if you have any questions about our position, I encourage you to contact us directly.

Sincerely,

LAW OFFICES OF MELO AND SANSFIELD LLP



John Sarsfield, Esq.

CC: DA Keith Fagundes

Exhibit/Attachment L

COUNTY OF KINGS
Office of the County Counsel

KINGS COUNTY
GOVERNMENT CENTER
1400 W. LACEY BLVD.
LAW BLDG. NO. 4
HANFORD, CA 93230
TEL: (559) 852-2445
FAX: (559) 584-0865



DIANE FREEMAN
Interim County Counsel

Deputies:
RISÉ A. DONLON
FRANK A. RUIZ
THOMAS Y. LIN
CINDY CROSE KLIEVER
TRAN H. NGUYEN

October 1, 2021

Via electronic mail only
Meloandsarsfield@icloud.com

Marguerite Melo
John Sarsfield
Law Offices of Melo and Sarsfield
4216 S. Mooney Blvd., PMB 136
Visalia, CA 93277

Re: Alexandria Smith and Robert Waggle

Dear Ms. Mello and Mr. Sarsfield:

I write in response to the two letters I received from you dated September 29, 2021 on behalf of your client, District Attorney Keith Fagundes, concerning Alexandria Smith and the case filed against the County of Kings by Mr. Waggle.

First, you are mistaken about Ms. Smith's status as an employee of the Kings County District Attorney's Office. Ms. Smith did not abandon her position but was temporarily transferred by the County to provide services in another department as a protective measure due to allegations of retaliation for her connection to an investigation in which Mr. Fagundes is the subject. Ms. Smith holds permanent status in her position as Secretary to the District Attorney and has a right to continued employment in that position. She cannot be removed without providing her the protection of due process. Ms. Smith's due process rights are found in the Kings County Personnel Rules and Mr. Fagundes may not adversely affect her status or pay by any means or procedures other than those provided in Chapter 10. If Mr. Fagundes feels Ms. Smith's Facebook statements require discipline, it is a matter of County business and his proper course of action is to contact Human Resources directly to discuss appropriate action.

Second, as Ms. Smith remains Secretary to the District Attorney, the County will not remove Ms. Smith's personal belongings from the District Attorney's Office and will hold Mr. Fagundes personally responsible as the Department Head to preserve and safe guard such items until Ms. Smith returns or the matter is otherwise resolved. His failure to do so will be considered evidence of retaliation.

Third, the County does not consider itself in a position hostile to Mr. Fagundes. The County is merely fulfilling its legal duty to investigate and respond to allegations of discrimination and retaliation. The County's investigation into Mr. Waggle's claims is ongoing and, until the time that investigation is completed, the County takes no position as to the truthfulness of the allegations Mr. Waggle has asserted.

Ms. Melo
Mr. Sarsfield
October 1, 2021
Page Two

To further address your concerns in this regard, Mr. Fagundes is restricted from entering the Human Resources Department. He is not restricted from entering any other County office, including the County's Office of Administration. Similarly, I have not issued Mr. Fagundes a preservation letter. In my correspondence dated September 21, 2021, I merely forwarded a request for preservation of evidence received from an attorney who filed civil action against the County in an unrelated matter. As you are well aware, sending a preservation letter is routine practice, and the one at issue was not only forwarded to Mr. Fagundes, but to all affected County departments.

Finally, the County affirms that it continues to actively investigate Mr. Waggle's claims and that Mr. Fagundes can anticipate being contacted for an interview as the investigation continues to unfold. Accordingly, the County continues to request Mr. Fagundes' good faith cooperation in the process.

Sincerely,



DIANE FREEMAN
Interim County Counsel

cc: Edward Hill, County Administrative Officer
Larry Spikes, Interim Assistant County Administrative Officer
Sande Huddleston, Risk Manager
Henie Ring, Human Resources Director

[399243]

Exhibit/Attachment M

1 JOHN J. SARFIELD (SBN 138971)
2 MARGUERITE MELO (SBN 167782)
3 LAW OFFICES OF MELO AND SARFIELD LLP
4 4216 S. Mooney Blvd PMB 136
5 Visalia, CA 93277
6 Telephone: 559 732 3000

7 E-mail: meloandsarsfield@icloud.com

8 Attorneys for Petitioner Keith Fagundes, In His Official Capacity as District Attorney

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF KINGS**

11 **Keith Fagundes, In His Official Capacity as) Case No.**
12 **District Attorney for the County of Kings,)**
13 **Petitioner,) DECLARATION OF KEITH**
14 **vs.) FAGUNDES IN SUPPORT OF**
15 **The County of Kings and Does 1 though 15,) PETITION FOR WRIT OF MANDATE**
16 **Respondents.) AND/OR PROHIBITION AND**
) COMPLAINT FOR DECLARATORY
) AND INJUNCTIVE RELIEF.
)
)

17 I, Keith Fagundes, declare under the penalty of perjury that the following is true and correct:

18 I am the elected District Attorney for the County of Kings. As such, I am familiar with the
19 organization, personnel, budget, and all other organizational matters of the office. I am a
20 Constitutional Officer for the State of California. Phil Espenshade is my immediate subordinate.

21 I am making this declaration of my own personal knowledge.

22 I have reviewed the writ filed herein, as well as the various attachments/exhibits. All of the
23 attachments that are communications to or from the County to myself, or myself to County, are true
24 and accurate copies of the originals. The 910 claim and civil lawsuit attached to the writ are also
25 true and correct copies or the originals on file with the County or the Court. I also included a true
26 and correct copy of the relevant Attorney General Opinion for the ease of the Court in reviewing the
27 substantive law governing this dispute.
28

1 The county's action's in unilaterally transferring and taking office management personnel, in
2 this case the secretary to the district attorney, has caused a disruptive impact upon the prosecutorial
3 functions of my office. The transfer was done with neither my knowledge nor consent. The absence
4 of a secretary to the District Attorney has had a disruptive impact upon the office, to include having
5 to reassign duties, train subordinates in her job duties, and slowed the processing of criminal
6 prosecutions (secretaries, to include the District Attorney's secretary, assist prosecutors in setting up
7 files, discovery compliance, coordinating with witnesses, and other similar duties).

8 In addition to being the chief prosecutor of the District Attorney's Office, I am also the
9 hiring (and firing) authority for all District Attorney's Office personnel, including the secretary to
10 the district attorney. County's actions in this matter to date have interfered with my ability to assign,
11 control and discipline personnel within my office as I deem appropriate, consistent with the
12 requirements of due process.

13 I am aware that a lawsuit has been filed against county (See Case Number 21 C 0282,
14 *Waggle v. County of Kings*). When the 910 claim was filed as a precursor to the lawsuit, I
15 requested legal support from County. My request was refused, unless I submitted to County's
16 illegal and unconstitutional demands that I physically vacate my elected office and turn over my
17 prosecutorial functions to a non-elected subordinate. Such demands are *per se* illegal.

18 I have had to retain legal counsel at my own expense to represent my, and the office's
19 interests, in the above matters, in light of the County's refusal to provide legal support.

20 As I am mentioned throughout the above referenced case and claim, I am considering
21 applying to the court to intervene in the *Waggle* lawsuit. To do that, I require legal counsel.

22 I issue to office personnel, to include the secretary to the District Attorney, official
23 identification cards, in order for them to be able to identify themselves to government/law
24 enforcement/court personnel, enter restricted areas such as courts and police departments, and
25 otherwise perform their District Attorney duties. Those cards are to be returned to the office upon
26 departure (separation) of all personnel. The cards are and remain the property of the office. To date,
27 Ms. Smith has failed to return her identification card. It is important to the office that only bona fide
28

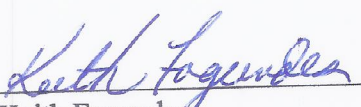
1 district attorney employees possess office identification cards, and hold themselves out as district
2 attorney employees.

3 In addition to not returning the office identification card, it is my understanding that Ms.
4 Smith continues to hold herself out as publicly as a district attorney employee. I have received
5 complaints from the public about some Facebook posts that she has been directing towards local
6 elected officials. These posts can be fairly described as racist slurs. If she were still an employee of
7 the district attorney's office, I would initiate discipline against her making what has been interpreted
8 as racially/physically inappropriate slurs. I brought this concern to the attention of County Counsel,
9 who has apparently declined to take any action.

10 I also believe, and on information and belief assert, that respondent County is paying Ms.
11 Smith's salary from budgetary funds belonging to the District Attorney's Office, despite the fact that
12 Ms. Smith is performing no district attorney functions, is not working under district attorney's office
13 personnel/directions, and is not a district attorney employee. I am familiar with the budgetary
14 process utilized by County and to my knowledge, no budgetary action has been taken that would
15 authorize the removal of District Attorney personnel, including Ms. Smith.

16 Sworn to and subscribed under penalty of perjury, in Hanford, California.

17
18
19 Dated: 10/3/2021



Keith Fagundes
Declarant

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Exhibit/Attachment N


Candy Ochoa Deputy

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2 LAW OFFICES OF JOHN GIRARDI
29900 Hawthorne Boulevard
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7 lcnnemann@att.net

8 Attorneys for Plaintiff
9 ROBERT WAGGLE

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF KINGS

13 ROBERT WAGGLE, an Individual
14
15 Plaintiff,
16
17 vs.
18
19 COUNTY OF KINGS, an entity of unknown
20 origin; and DOES 1 - 50, Inclusive,
21
22
23 Defendants.

CASE NO.: 21C-0282

PLAINTIFF ROBERT WAGGLE'S
COMPLAINT FOR:
(1) HARASSMENT (HOSTILE WORK
ENVIRONMENT) IN VIOLATION OF THE
FAIR EMPLOYMENT AND HOUSING ACT;
(2) HARASSMENT (QUID PRO QUO) IN
VIOLATION OF THE FAIR EMPLOYMENT
AND HOUSING ACT;
(3) RETALIATION IN VIOLATION OF THE
FAIR EMPLOYMENT AND HOUSING ACT;
(4) FAILURE TO TAKE CORRECTIVE
ACTION IN VIOLATION OF FEHA
REQUEST FOR JURY TRIAL; AND
(5) VIOLATION OF LABOR CODE §1102.5

REQUEST FOR JURY TRIAL

24
25 Plaintiff Robert Waggle ("Plaintiff"), with knowledge as to his own acts and based upon information
26 and belief with regard to all other matters, by and through his attorneys of record, alleges as follows:

27 ///

28 ///

Electronically filed by Superior Court of California, County of Kings, 9/8/2021 4:10 PM, Candy Ochoa

1 1. Plaintiff is an individual who, at all times relevant herein, resided within the County of Kings,
2 State of California and was employed by Defendant County of Kings (“County” or “Defendant”) at
3 Defendant’s business office(s) located in the County of Kings, State of California.
4

5 2. Plaintiff alleges that Defendant is a municipality doing business in the County of Kings, State
6 of California. The Kings County Board of Supervisors, as the governing body of the City of Kings, acts,
7 represents, and implements policy on the behalf of Defendant.
8

9 3. Defendants County and DOE Defendants 1 through 50 are hereinafter sometimes collectively
10 referred to as “Defendants”.

11 4. On or about July 6, 2020, Plaintiff exhausted his administrative remedies by: (1) filing and
12 serving a Government Claim [which referenced his concurrently-filed Department of Fair Employment and
13 Housing (“DFEH”) claim] against Defendant which was denied by operation of law; and (2) filing a
14 Complaint with the DFEH and thereafter serving the resulting “Right to Sue” on Defendant
15

16 5. Plaintiff is presently not aware of the true names and/or capacities of defendants DOES 1
17 through 50, inclusive, and therefore sues said defendants by such fictitious names. Plaintiff is informed and
18 believes and upon such information and belief alleges that said fictitiously named defendants are directly
19 and proximately responsible for the injuries and damages alleged herein. Plaintiff will amend this Complaint
20 to allege the true names and capacities of said fictitiously named defendants when, and if, ascertained.
21

22 6. Plaintiff is informed and believes and upon such information and belief alleges that at all
23 relevant times each and every Defendant was a principle, agent, employer, employee, manager, supervisor,
24 officer, shareholder and/or owner of each and every other Defendant, and each and every act and/or omission
25 of each and every Defendant occurred by and through the owner of the Defendant and within the course and
26 scope of such agency and/or employment and/or was approved and/or ratified by the acts and/or omissions
27 of each and every other Defendant.
28

1 7. As set forth herein in detail, Defendant's harassment and retaliation against and constructive
2 termination of Plaintiff violates California law and Defendant's own policies and procedures, as well as
3 Plaintiff's civil service rights.
4

5 **FACTUAL BACKGROUND**

6 **A. Plaintiff was a Long-Term Exemplary Employee with Defendant.**

7 8. By way of brief background, in 2003, Plaintiff - a heterosexual male - was hired as a Deputy
8 Sheriff by the Kings County Sheriff's Office after graduating from the Fresno City College police academy
9 at the top of his class. Plaintiff earned his B.S. Degree from California State University Fresno and
10 eventually obtained his M.B.A. from Brandman University. Plaintiff was an excellent employee and
11 promoted quickly. In 2010, when Plaintiff held the rank of Senior Deputy Sheriff, he transferred to the
12 District Attorney's Office ("DA") as a DA Investigator.
13
14

15 9. Once at the DA's Office, Plaintiff was promoted to Senior Investigator and eventually to
16 Chief Investigator. Plaintiff is currently a licensed private investigator with significant training/experience
17 in criminal investigation and computer forensics and is a part time college professor teaching Administration
18 of Justice and Computer Information Systems.
19

20 10. Throughout his 17-year career with the County, Plaintiff consistently received excellent
21 performance reviews and merit-based salary increases.
22

23 **B. Defendant and Fagundes.**

24 11. In 2014, Keith Fagundes ("Fagundes") was elected as District Attorney.

25 12. When Fagundes took office, the then-Chief Investigator and the then-Assistant Chief
26 Investigator chose to leave the office.
27

28 ///
///

Electronically filed by Superior Court of California, County of Kings, 9/19/2021 9:55 AM, Candy Urcia

1 **C. Plaintiff was Promoted by Fagundes and then Offered a Residence with**
2 **“Strings” Attached.**

3
4 13. In July of 2015, Plaintiff was promoted to Chief Investigator and Plaintiff then filled the other
5 vacancies with in-house personnel.

6 14. In 2018, when Plaintiff was in the process of a divorce, Fagundes offered Plaintiff the
7 apartment next door to Fagundes’ home.

8
9 15. Plaintiff repeatedly offered to pay Fagundes for the apartment but Fagundes refused to accept
10 payment, stating instead that: “You [Plaintiff] just being here is enough for me.”

11 16. While Plaintiff was initially thankful for this assistance, Plaintiff was unaware of the “strings”
12 that would be attached to this situation.

13
14 **D. Fagundes Sexually Harassed Plaintiff.**

15 17. During this time period, Plaintiff began dating Fagundes’ secretary, Alexandria Smith. The
16 three often socialized together. However, Fagundes (Plaintiff’s direct supervisor) began to repeatedly make
17 comments that Plaintiff’s relationship with Ms. Smith was causing Fagundes “angst” as it was taking away
18 from “Keith time.”

19
20 18. Fagundes began to repeatedly and inappropriately make unwanted sexual remarks to Plaintiff
21 and began to send Plaintiff numerous unsolicited sexual comments, innuendos, memes and photographs.
22 (Despite Fagundes’ requests/demands that Plaintiff delete these messages, Plaintiff has saved
23 approximately 5,000 text messages from Fagundes.)

24
25 19. The below are some examples (of many) of Fagundes’ (Plaintiff’s direct supervisor’s)
26 extended pattern and practice of improper and unlawful sexual harassment:

- 27
28 • Fagundes repeatedly made sexual comments regarding Plaintiff’s body and clothing (and, eventually, Fagundes purchased the exact same articles of clothing that Plaintiff wore);
- Fagundes repeatedly touched Plaintiff in a sexual manner;

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- Fagundes repeatedly blatantly stared at Plaintiff’s crotch;
- Fagundes repeatedly initiated conversations about sex (i.e., comparing the imagined size of Plaintiff’s penis to various objects and stating: “Wow, I just can’t get it out of my mind” or “Wow! I’m impressed!”);
- Fagundes texted Plaintiff a photo of a statue of a man with a broken tennis racquet with a caption: “When the racquet on your tennis trophy breaks and now it looks like you won an award for masturbation”, beneath which Fagundes wrote: “Why did I think of you when I saw this?????”;
- Fagundes visited a horse ranch and sent Plaintiff a photo of a male horse with its penis partially exposed and texted: “We are at this horse therapy place. The instructor told us to pick a horse that reminds us of ourselves. I chose this one”;
- Fagundes texted Plaintiff a picture of an ad that stated: “Massage - 60 minute massage includes head \$20” under which Fagundes had written: “You’re the only person I could share it with . . . who won’t judge me any further”;
- Plaintiff texted Fagundes that a delivery package had arrived for Fagundes and Fagundes responded that he wanted to “cum over and see it”;
- Fagundes repeatedly discussed eating pineapples with Plaintiff because Fagundes stated that eating pineapple would make male ejaculation (“cum”) taste sweeter and sent Plaintiff texts which referred to pineapples (i.e., a photo of Dole pineapple juice, a photo of pineapple with white sauce beside it);
- Fagundes repeatedly raised the subject of cum with Plaintiff (i.e., “Do you like how cum tastes?”, “Cum doesn’t taste too bad”) and stated that he enjoyed performing oral sex on his wife after he ejaculated inside her so that he could taste it;
- Fagundes repeatedly discussed his sex life with Plaintiff (i.e., “My sex life is so much better now that you live here”) and “credited” Plaintiff with this improvement;
- Fagundes repeatedly asked Plaintiff’s girlfriend Ms. Smith about her sexual relationship with Plaintiff (i.e., what Plaintiff positions Plaintiff preferred during sexual intercourse with her) and inquired into whether the two of them had ever engaged in anal intercourse;
- Fagundes told Plaintiff that Fagundes had attempted to have anal intercourse with his wife but that she was unwilling/uninterested;
- Fagundes sent text messages with improper emojis (i.e., kissing faces, kissing lips) and then requested that Plaintiff delete the texts (which a photo of texts to be deleted);
- Fagundes texted Plaintiff about swimming nude and about taking a shower afterwards;

- 1 • Fagundes asked Plaintiff about masturbating (i.e., how often and when), referred to
- 2 Plaintiff's apartment as the "masturbatorium" and inquired into whether Fagundes could use
- 3 Plaintiff's apartment to masturbate when Plaintiff was not home;
- 4 • Fagundes purchased underwear for Plaintiff as a "gift";
- 5 • Fagundes asked Plaintiff about "good" pornography sites and stated that he had
- 6 "inadvertantly" clicked on homosexual pornography sites;
- 7 • Fagundes told Plaintiff that he "loved" him; and
- 8 • Eventually, in November of 2019, Plaintiff was able to move out of Fagundes' apartment.
- 9 When Plaintiff was moving into his new home, Fagundes came over and, when touring the
- 10 house, Fagundes looked at the area where the bed would be placed in the master bedroom
- 11 and stated: "I am going to imprint on you right now. I want you to envision me standing her
- 12 while you are fucking Alex."

13 20. All of Fagundes' highly improper acts and communications caused Plaintiff to feel extremely

14 uncomfortable, abused and traumatized.

15 21. As Fagundes continued to act improperly (despite Plaintiff's many requests for Fagundes to

16 stop), Plaintiff felt increasingly helpless and hopeless.

17 22. Indeed, when Plaintiff did attempt to set boundaries (or simply did not respond or said he was

18 "busy"), Fagundes reacted negatively.

19 23. While Plaintiff would have known how to react had these improper actions come from

20 anyone other than Plaintiff's direct supervisor, Plaintiff felt powerless as a result of Fagundes' actual control

21 over Plaintiff.

22 24. Additionally, Fagundes often mentioned his "blackmail folders" that he maintains on

23 "everybody", including Plaintiff.

24 25. Based on Fagundes prior behavior (trying to politically destroy anyone who

25 questioned/opposed him), Plaintiff justifiably feared retaliation. (Additionally, Fagundes' father is a member

26 of the County Board of Supervisors.)

27 ///

1 26. Plaintiff was well aware that any repudiation/complaints of Fagundes' actions would also
2 result in severe retaliation from Fagundes.

3
4 **E. Fagundes Retaliated Against Plaintiff.**

5 27. In any event, Fagundes expressed anger that Plaintiff had moved out of Fagundes' apartment
6 and in with Ms. Smith.

7 28. At this time, Plaintiff and Fagundes' relationship began to deteriorate.

8 29. At the office, Fagundes began to retaliate against Plaintiff by, *inter alia*, continually
9 ostracizing him, ignoring/excluding him, attempting to micro-manage him and by violating the chain of
10 command.

11 30. Fagundes began to have private meetings with Plaintiff's subordinates and fail to include
12 Plaintiff in on the information discussed.

13 31. Fagundes slowly stripped Plaintiff of his responsibilities/abilities to the point Plaintiff had
14 a difficult time performing his job.

15 32. When Plaintiff requested to meet with Fagundes regarding Fagundes' expectations moving
16 forward, Fagundes responded: "I don't know what that looks like. We wouldn't be having this conversation
17 if it was a few years ago."

18 33. Plaintiff felt sick as if Fagundes was attempting to force him back into some type of personal
19 relationship.

20
21 **F. Plaintiff Disclosed Defendant's Unlawful Conduct.**

22 34. Then, in or about February/March of 2021, serious allegations were made regarding a sitting
23 member of the County Board of Supervisors.

24 35. County Counsel Lee Burdick arranged for an outside law firm to investigate these allegations.

25
26
27
28
///

H. As a Result of Defendant’s Unlawful Conduct, Plaintiff Suffered Damage.

45. Throughout this recent time period, Plaintiff reported Fagundes’ various improper/illegal acts to, *inter alia*, the County Counsel and the County’s Risk Manager.

46. As a result of Fagundes’ improper/illegal acts, Plaintiff began to suffer severe anxiety, panic attacks and other physical/psychological ailments and was diagnosed by the County’s own Qualified Medical Examiner with Post Traumatic Stress Disorder and Panic Disorder, directly resulting from Fagundes’ actions.

47. On March 24, 2021, due to the severity of Claimant’s distress, Claimant was placed on FMLA leave.

48. On July 8, 2021, as a result of Defendant’s actions, Plaintiff was forced to take an Industrial Disability Retirement (i.e., constructively terminated.)

FIRST CAUSE OF ACTION

HARASSMENT (HOSTILE WORK ENVIRONMENT)

IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT

(Against All DEFENDANTS)

49. Plaintiff realleges Paragraphs 1 through 48 above and incorporates same as though fully set forth herein.

50. Plaintiff was an employee of Defendant.

51. As set forth above, Plaintiff was subjected to severe and/or pervasive harassment which created a work environment that was hostile, intimidating, offensive, oppressive and/or abusive. Additionally, a reasonable man in Plaintiff’s circumstances would have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive.

52. The above-referenced conduct was engaged in by Plaintiff’s direct supervisor.

1 74. For sake of example (and there are many), in addition to the facts set forth above regarding
2 Fagundes' violation of the Fair Employment and Housing Act:

- 3 • Fagundes has tampered with evidence in a criminal jury trial in an attempt to obtain a guilty
4 verdict;
- 5 • Fagundes has abused his prosecutorial discretion by interfering in criminal prosecutions and
6 has manipulated cases to either be unfairly tough on defendants where he has a personal
7 relationship with the victims or, conversely, to be unfairly lenient on defendants with whom
8 he also has relationships;
- 9 • Fagundes has admittedly maintained "blackmail folders" on many (i.e., Fagundes has
10 preserved an emotionally charged and aggressive voicemail from one of the County
11 Supervisors within the Board of Supervisors, as potential blackmail, in the event Fagundes
12 needed to use it; Fagundes has also preserved an aggressive voicemail of a former female
13 employee that had been harassed by him while she was employed for the District Attorney's
14 Office);
- 15 • Fagundes has arbitrarily utilized resources within his control at the District Attorney's Office,
16 for acquaintances or friends (such as the Bureau of Investigations) to bypass the appropriate
17 protocol for investigations that should be conducted by other law enforcement agencies;
- 18 • Fagundes improperly became involved in criminal cases in which his wife, Renea Fagundes,
19 might potentially be a witness (due to her position as Principal of a local public school) and
20 has otherwise improperly influenced these cases by pressuring the Deputy District Attorneys
21 to handle them in a certain ways;
- 22 • Fagundes has used government funding to directly benefit his immediate family members
23 in their private businesses and has often influenced decisions compelling employees to send
24 business to his family members with government funds;
- 25 • Fagundes has a close relationship with his fiscal analyst which allows for "creative funding"
26 which Fagundes has often used to influence/gain compliance from his employees by
27 permitting the purchase of unnecessary equipment and luxuries using government funding,
28 including the use of government equipment such as take-home vehicles, cellular phones, and
other conveniences, for personal use;
- Fagundes has knowingly submitted inaccurate information on official documents submitted
to the State of California and the Department of Justice, in order to gain approval for the case
management system used by the Kings County District Attorney's Office to act as a
repository for sensitive law enforcement information accessed through the California Law
Enforcement Telecommunications System (CLETS);

///

///

- 1 • Fagundes has frequently violated the rules and practices set forth in the County’s Personnel
- 2 Rules which has caused further issues for Human Resources and additional liability for the
- 3 County;
- 4 • Fagundes has often referred to women whom he does not like as “cunts” and “bitches”;
- 5 • On numerous occasions, Fagundes failed to comply with established County Policies with
- 6 regards to the hiring of employees (i.e., Fagundes hired an employee - against the advice of
- 7 Human Resources - following a failed drug test; Fagundes attempted to circumvent the
- 8 system by claiming to pay the employee out of his “discretionary” fund account);
- 9 • Prior to being the District Attorney (when Fagundes had been placed in a supervisory
- 10 position), Fagundes harassed multiple subordinates and demonstrated a propensity to
- 11 breaking the rules to always get his way;
- 12 • Fagundes has failed to act on multiple occasions to hold employees accountable for
- 13 inappropriate and offensive conduct occurring in his presence and in front of other
- 14 employees, failed to act on reported inappropriate conduct/bullying of employees, and failed
- 15 to recommend that internal affairs investigations be initiated to resolve matters;
- 16 • Fagundes violated County Policies by personally conducting unauthorized construction
- 17 within the District Attorney’s Office, further violating building codes and regulations,
- 18 resulting in the exposure of employees to safety issues, and compelling the County to rectify
- 19 his mistakes by hiring licensed contractors to repair the work; and
- 20 • Fagundes created a parking spot by painting lines on the ground - believing he was legally
- 21 justified to do so.

22 75. In response to the disclosures and complaints initiated by Plaintiff, Defendant failed to timely
 23 and thoroughly investigate and/or properly respond to same and, to the contrary, humiliated, degraded,
 24 retaliated against and constructively terminated Plaintiff as more fully described above.

25 76. Defendants’ treatment of and response to the disclosures, complaints and grievances filed by
 26 Plaintiff was in violation of *Labor Code* §1102.5.

27 77. Plaintiff’s disclosure of information was a contributing factor in his constructive termination.

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1 78. As a proximate result of Defendant's actions as alleged above, Plaintiff has been harmed by
2 the loss of the wages, salary, income, benefits and additional amounts Plaintiff would have received if he
3 had not been constructively terminated by Defendant. As a result of such actions and consequent harm,
4 Plaintiff has suffered such damages as according to proof.

6 79. In addition to the damages sought above, as a proximate result of Defendants' actions as
7 alleged above, Plaintiff will also seek backpay and benefits, actual damages and a civil penalty. *Labor Code*
8 §§98.6(b), §1105, 1102.5(f).

10 80. As a direct and proximate result of the above-described acts of Defendants, Plaintiff has
11 necessarily incurred attorney's fees and costs and Plaintiff is entitled to the reasonable value of such
12 attorney's fees and costs pursuant to *Labor Code* §1102.5, Assembly Bill 1947 and *Code of Civil*
13 *Procedure* §1021.5.

16 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as follows:

- 18 1. For compensatory damages, including loss of earnings, income and benefits, deferred
19 compensation, bonuses, vacation and other employment perquisites and other special and general damages
20 according to proof;
- 21 2. Damages for pain and suffering and emotional distress;
- 22 3. Interest, including pre-judgment interest, at the prevailing legal rate;
- 23 4. Attorneys' fees and costs incurred herein; and
- 24 5. Costs of suit and such further and other relief as the Court deems just and proper.

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Electronically filed by Superior Court of California, County of Kings, 9/9/2021 9:50 AM, Candy Ucnoa

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REQUEST FOR TRIAL BY JURY

Plaintiff hereby demands a Trial by Jury.

DATED: September 8, 2021

LAW OFFICE OF LAWRENCE J. LENNEMANN

By: Lawrence J. Lennemann
LAWRENCE J. LENNEMANN
Attorneys for Plaintiff ROBERT WAGGLE

Attachment/Exhibit O

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

DANIEL E. LUNGREN
Attorney General

OPINION	:	No. 93-903
of	:	May 3, 1994
DANIEL E. LUNGREN	:	
Attorney General	:	
ANTHONY S. Da VIGO	:	
Deputy Attorney General	:	

THE HONORABLE RICHARD K. RAINEY, MEMBER OF THE CALIFORNIA ASSEMBLY, has requested an opinion on the following question:

Does a county board of supervisors have the legal authority to govern the actions of an elected sheriff concerning the manner in which the sheriff's budget allotment is to be spent, including the manner in which personnel will be assigned?

THE HONORABLE GARY T. YANCEY, DISTRICT ATTORNEY, COUNTY OF CONTRA COSTA, has requested an opinion on the following question:

Does a county board of supervisors have the legal authority to govern the actions of an elected district attorney concerning the manner in which the district attorney's budget allotment is to be spent, including the manner in which personnel will be assigned?

CONCLUSION

A county board of supervisors is not authorized to govern the actions of a sheriff or district attorney concerning the manner in which their respective budget allotments are expended or the manner in which personnel are assigned.

ANALYSIS

The present inquiry concerns whether a county board of supervisors¹ may govern the actions of a sheriff or district attorney with respect to the manner in which budget allotments for

¹It will be assumed for purposes of this analysis that the county in question is a general law county.

those offices are expended, including issues of personnel deployment.² Generally, a county possesses and can exercise only such powers as are granted to it by the Constitution or by statutes, together with those powers as arise by necessary implication from those expressly granted. (Gov. Code, § 23003; *Byers v. Board of Supervisors* (1968) 262 Cal.App.2d 148, 157; 70 Ops.Cal.Atty.Gen. 227, 228 (1987).)³ Some county powers are exercised by the board of supervisors, while others are exercised by county officers and agents acting under "authority conferred by law." Section 23005 states: "A county may exercise its powers only through the board of supervisors or through agents and officers acting under authority of the board or authority conferred by law."

In examining the scope of a county's powers, we look first to the Constitution. Article XI, section 1, subdivision (b), of the Constitution states as follows:

"The Legislature shall provide for county powers, an elected sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing board shall provide for the number, compensation, tenure, and appointment of employees."⁴

In carrying out its constitutional mandate, the Legislature has provided for an elected governing board in each county and has prescribed its powers. (§§ 25000-26400.) Section 25300 states specifically:

"The board of supervisors shall prescribe the compensation of all county officers and shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees. Except as otherwise required by Section 1 or 4 of Article XI of the California Constitution, such action may be taken by resolution of the board of supervisors as well as by ordinance."

Section 25207 more generally provides:

"The board may do and perform all other acts and things required by law not enumerated in this part, or which are necessary to the full discharge of the duties of the legislative authority of the county government."

²The questions refer to an "elected" sheriff and to an "elected" district attorney. For purposes of this analysis, we find no talismanic significance respecting the manner of selection of these officers. (See *People v. Kelsey* (1868) 34 Cal. 470; *Beck v. County of Santa Clara* (1988) 204 Cal.App.3d 789, 794-795; 33 Ops.Cal.Atty.Gen. 180, 182 (1959).)

³Unidentified section references herein are to the Government Code.

⁴The Constitution also provides that charter counties are to provide in their charters for an elected sheriff, an elected district attorney, and an elected governing board, and for the compensation of such officers. (Cal. Const., art. XI, § 4; see *Beck v. County of Santa Clara, supra*, 204 Cal.App.3d at 796-799.)

Finally, of particular significance here regarding the powers of a board of supervisors, section 25303 states as follows:

"The board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, and particularly insofar as the functions and duties of such county officers and officers of all districts and subdivisions of the county relate to the assessing, collecting, safekeeping, management, or disbursement of public funds. It shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection.

"This section shall not be construed to affect the independent and constitutionally and statutorily designed investigative and prosecutorial functions of the sheriff and district attorney of a county. The board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative prosecutorial function of the district attorney of a county.

"Nothing contained herein shall be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff."

With respect to the authority and functions of a district attorney, the Legislature has defined various duties and responsibilities. (§§ 26500-26543.) Section 26500 states:

"The district attorney is the public prosecutor, except as otherwise provided by law.

"The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses."

A district attorney is expressly authorized and directed to institute proceedings before magistrates for the arrest of persons charged or reasonably suspected of public offenses, to attend and advise the grand jury, and to draw all indictments and informations. (§§ 26501, 26502.)

The Legislature has also enacted a statutory scheme defining the powers and duties of a sheriff. (§§ 26600-26778.) Section 26600 generally provides:

"The sheriff shall preserve peace, and to accomplish this object may sponsor, supervise, or participate in any project of crime prevention, rehabilitation of persons previously convicted of crime, or the suppression of delinquency."

A sheriff is expressly authorized and directed to investigate public offenses which have been committed and to arrest and take before a magistrate all persons who have committed a public offense. (§§ 26601, 26602.)

Both a district attorney and a sheriff are county officers authorized to appoint as many deputies as are necessary for the prompt and faithful discharge of their respective duties. (§§ 24000, 24101.)⁵

With these statutory duties in mind, we commence our analysis of the questions with a case which interpreted laws enacted under the original Constitution. In 1855, El Dorado County retained the services of a private law firm to prosecute certain parties accused of murder. The Eleventh Judicial District Court determined that the board of supervisors had no authority to make such a contract. (*Newell & Williams v. El Dorado County* (1856) 1 Labatt 102.) The court explained its decision in part as follows:

" . . . [I]t is the duty of the County to see that the laws are executed and criminals punished; but in the exercise of this duty, it goes no farther and can go no farther, than to furnish the money, officers and agents, necessary to accomplish the object. In the performance of this duty each County is restricted and controlled within certain limits, and those are fixed by Statute. It, too, is created by Statutes, they are its charter and beyond their provisions it cannot go. It possesses no power except such as has been expressly delegated and such as may be necessary to carry into effect the delegated powers.

"In looking to the Statutes for the purpose of ascertaining the extent of these powers, and the manner in which they are exercised, we find that Counties, like other corporations, conduct their affairs by means of certain officers, and these have certain duties assigned them, covering the whole field of criminal prosecutions. . .

" . . . A District Attorney is paid a liberal salary to attend to the prosecution of all criminal cases

"The theory of the law is, that these officers and their deputies are able and competent to discharge, to the satisfaction of the public and in such a manner as to meet its demands, all of the various duties that have been imposed upon them. If the Legislature has made a mistake, it is not the fault of the County or of the Board of Supervisors, any more than it would be of an agent who had not been clothed with powers sufficiently ample to attend properly to the interests of his principal." (*Id.*, at pp. 104-105.)

Nearly four decades later, a similar question arose concerning the authority of the Modoc County Board of Supervisors to employ counsel on behalf of the county to assist the district attorney in the prosecution of criminal cases. In *County of Modoc v. Spencer* (1894) 103 Cal. 498, 501, the Supreme Court analyzed the issues as follows:

" . . . [I]t is strongly urged in effect that it was within the inherent general power of the board, in the absence of special provision, to provide for the proper prosecution of these cases. But we know of no such inherent or undefined power in the board of supervisors; their powers being purely statutory, their every act must find its warrant in the statute, either expressly or by necessary implication. [Citations.] The legislature having specified certain cases in which such power may

⁵However, "[a] county district attorney prosecuting a criminal action within a county, acts as a *state* officer, exercising ultimately powers which may not be abridged by a county board of supervisors." (*Graham v. Municipal Court* (1981) 123 Cal.App.3d 1018, 1022.)

be exercised, there is no implication that she intended it to be exercised in others; *expressio unius est exclusio alterius*. In fact, an examination of all the provisions of the statute bearing upon the subject leads to the conclusion that it never was intended that the board of supervisors should be permitted to control or interfere with criminal prosecutions or with the district attorney in their management. The district attorney in the discharge of the duties of his office performs two quite distinct functions. He is at once the law officer of the county and the public prosecutor. While in the former capacity he represents the county and is largely subordinate to, and under the control of, the board of supervisors, he is not so in the latter. In the prosecution of criminal cases he acts by the authority and in the name of the people of the state."⁶

In the two cases set forth above, a county board of supervisors attempted to employ private attorneys to conduct prosecutorial functions; such employment relationship would place in the hands of the supervisors the attendant right to control the conduct and assignment of the attorneys under contract. The present inquiry focuses upon the extent of control retained by a board of supervisors over the manner in which funds allocated to the offices of the district attorney and sheriff are expended, including the manner in which personnel are deployed. As in the foregoing cases, the primary issue here concerns the authority of a board of supervisors to assume the prerogative of an employer, thereby diminishing necessarily the control exercised by the district attorney and sheriff over the conduct and deployment of those who perform the duties of their respective offices.

In *Hicks v. Board of Supervisors* (1977) 69 Cal. App.3d 228, the Court of Appeal held that the Orange County Board of Supervisors was not authorized to transfer 22 investigative positions from the district attorney's office to the sheriff's office. The court stated as follows:

"The board of supervisors has no inherent powers; the counties are legal subdivisions of the state, and the county board of supervisors can exercise only those powers expressly granted it by Constitution or statutes and those necessarily implied therefrom. (Cal. Const., art. XI, § 1; *People v. Langdon*, 54 Cal. App.3d 384, 388-389; *Byers v. Board of Supervisors*, 262 Cal. App.2d 148, 155.) An examination of the provisions of the applicable statutes and of the Constitution reveals that the board of supervisors has been granted no power of control over the district attorney in the exercise of his discretionary duties. Although the board of supervisors has the power to prescribe the number, compensation, tenure, and appointment of county employees (Gov. Code, § 25300), the board has no power to itself appoint deputies or assistants to the district attorney (*County of Modoc v. Spencer, supra*, 103 Cal. at pp. 500-502); although the county board of supervisors has authority to supervise county officers in order to insure that they faithfully perform their duties (Gov. Code, § 25303), the board has no power to perform county officers' statutory duties for them or direct the manner in which duties are performed (*People v. Langdon, supra*, 54 Cal. App.3d 384, 390), and although the board of supervisors exercises control over the county budget (Gov. Code, §§ 29021.1-29101), the board may not, by failing to appropriate funds, prevent the district attorney from incurring necessary expenses for crime detection as county charges (Gov. Code, § 29601); *Cunning v. County of Humboldt*, 204 Cal. 31, 33-35)." (*Id.*, at p. 242.)

⁶The nature and extent of a board's control over the district attorney when he is acting in the capacity of the county "law officer" is defined in sections 25203 and 31001; virtually all counties now have these civil law functions preformed by the county counsel (§§ 17640-27648). We are concerned here, on the other hand, with a district attorney acting as public prosecutor.

Following the *Hicks* decision, the last two paragraphs of section 25303, *supra*, were added (Stats. 1977, ch. 599, § 1), essentially codifying the holding of the court. By the express terms of this amendatory language, section 25303 may not be construed to affect the constitutionally and statutorily granted powers of a sheriff or district attorney.

In our view, it is clear that control by a board of supervisors over the manner in which funds allocated to the sheriff and district attorney are to be expended, including the assignment of personnel, would impair the exercise by those officers of their constitutionally and statutorily defined powers. Such supervisory control would directly conflict with the admonition that "the board has no power to perform county officers' statutory duties for them or direct the manner in which duties are performed . . ." (*Hicks v. Board of Supervisors, supra*, 69 Cal.App.3d at 242; see also *People v. Langdon* (1976) 54 Cal.App.3d 384, 388-390 [county clerk].) Consistent with the *Hicks* rationale, the Supreme Court has recently ruled that the supervisory authority of a board of supervisors over the county assessor is limited to ensuring the faithful performance of the duties of that office, and does not permit the board to control, directly or indirectly, the manner in which the duties are performed. (*Connolly v. County of Orange* (1992) 1 Cal.4th 1105, 1113, fn. 9.)

With specific regard to the office of sheriff, the court in *Brandt v. Board of Supervisors* (1978) 84 Cal.App.3d 598, 602, expressly found:

"We note the board not only had no duty but also had no right to control the operation of the jail; a board of supervisors has no legal authority to use its budgetary power to control employment in or operation of the sheriff's office . . . Only the sheriff has control of and responsibility for distribution and training of personnel and the specific use of the funds allotted to him."

In sum, the distinction to be drawn is between the power of a board of supervisors to appropriate county funds and the power of a sheriff or district attorney to manage the expenditure of the funds so appropriated. The grant of authority given to a board of supervisors by the Legislature is unaffected by allowing the sheriff and district attorney to perform their constitutional and statutory duties. A board's specific responsibility to "provide for the number, compensation, tenure, appointment and conditions of employment of county employees" (§ 25300) is simply an inherent aspect of the preparation and adoption of the county's budget, which in turn is an indispensable prerequisite to a valid tax levy, a clearly legislative function. (*Ryan v. Byram* (1935) 4 Cal.2d 596, 602; *Hicks v. Board of Supervisors, supra*, 69 Cal.App.3d at 235; *Beck v. County of Santa Clara, supra*, 204 Cal.App.3d at 800-801; *County of Butte v. Superior Court* (1985) 176 Cal.App.3d 693, 698-700; see also *California State Employees' Assn. v. State of California* (1973) 32 Cal.App.3d 103, 108, 110; *California State Employees' Assn. v. Flournoy* (1973) 32 Cal.App.3d 219, 234.) However, the budget process is integral and complete upon adoption of the budget; it does not encompass the management of budgetary resource allotments the responsibility for which is conferred by the Constitution or laws upon other county officers either expressly or by necessary implication. (*Beck v. County of Santa Clara, supra*, 204 Cal.App.3d at 800-801; *County of Butte v. Superior Court, supra*, 176 Cal.App.3d at 698-700; *Hicks v. Board of Supervisors, supra*, 69 Cal.App.3d at 242-244; cf. *State Board of Education v. Levit* (1959) 52 Cal.App.2d 441, 461-462.) Consequently, a board's authority to provide "conditions of employment" (§ 25300) cannot be interpreted to confer ongoing control over the actions to be taken by personnel previously assigned to the sheriff or district attorney.

Accordingly, it is concluded that a county board of supervisors is not authorized to govern the actions of a sheriff or district attorney concerning the manner in which their respective budget allotments are expended or the manner in which personnel are assigned.