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June 7, 2024

VIA EMAIL FIRST-CLASS MAIL and C.R.R.

Deschutes County Sheriff
c/o Deschutes County Counsel
1300 NW Wall St.
Suite 205
Bend, OR 97703
Cary.colaianni@deschutes.org
john.laherty@deschutes.org
david.doyle@deschutes.org
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Re: James McLaughlin
Tort Claim Notice ORS 30.275

Dear Counsel,

This firm represents Sergeant James McLaughlin in the matter of his claims against the Deschutes County Sheriff's Office (Sheriff's Office). Claims fall under The First Amendment of the United States Constitution, The First Amendment of the Oregon Constitution, NLRB 29 U.S.C. §§ 151-169 *et seq.*, Union organizing discrimination and retaliation.

Notice of Claims

1. James McLaughlin's name and address are known to the Deschutes County Sheriff's Office because he is an employee of the Sheriff's Office. (Sergeant McLaughlin).
2. Please send correspondence to Employment Law Professionals NW LLC, 20015 SW Pacific Hwy., Suite 221 Sherwood, Oregon 97140. Telephone (503) 822-5340. Fax (503)433-1404.
3. The Deschutes County Sheriff's Office (Sheriff's Office) is a public body and covered employer under The United States Constitution, Oregon Constitution, and ORS 30.275.



Facts:

On or around October 2023, Sergeant McLaughlin filled out a Spikes K-9 survey form to nominate Deschutes County Sheriff K-9 “Ronin” for his heroic actions in September 2022 and June 2023 to capture armed and dangerous suspects. Spikes K-9 fund is a national non-profit organization from the east coast completely unaffiliated with Deschutes County or the Deschutes County Sheriff’s office.

Sergeant McLaughlin was questioned on this survey by his superiors and accused of attempting to subvert the authority of Sheriff Nelson and Captain Bailey.

Captain Garrison told Sergeant McLaughlin that his praise of K-9 Ronin (and by implication praise of Deputy Mangin) put Sheriff Nelson and Captain Bailey at risk of losing face because they were considering disciplining Mangin on another matter. Sergeant McLaughlin was told he was not being disciplined but was warned not to mention this incident. Sergeant McLaughlin was warned not to “step out of line again”. This actively threatened Sergeant McLaughlin’s employment and acted as a way to chill his speech. By praising K-9 Ronin, Sergeant McLaughlin was speaking as a private citizen on his observations on a matter of public concern—namely highlighting commendable actions taken by a law enforcement K-9 to protect the public.

On or around February 22, 2024, Sergeant McLaughlin signed a petition for Sheriff’s Office sergeants to join the employee association and unionize. Sergeant McLaughlin is scheduled to testify to the Labor and Relations Board in favor of unionization in July 2024. Sheriff Nelson is reported to be adamantly opposed to this unionization.

On or around April 25, 2024, Sheriff candidate Kent Vander Kamp held a fund-raising event at McMenamins in Bend. Sergeant McLaughlin was in attendance and gave a speech in support of the Sheriff candidate. Since this speech, Sergeant McLaughlin has been warned by many ranking officials in the Sheriff’s office to “tone down” his support for the political candidate, to not “lose your career” over this candidate, and other insinuations from high-ranking officers. These insinuations from officers are notices to Sergeant McLaughlin that current Sheriff Shane Nelson is aware of Sergeant McLaughlin’s support of this candidate and does not approve (because Sheriff Nelson publicly endorses Sheriff candidate Vander Kamp’s running opponent, Sheriff’s Office’s Captain Bailey).

On or around June 4, 2024, Sergeant McLaughlin was forced to participate in a pretextual internal affairs (IA) investigation into his comments critical of command staff. Sergeant McLaughlin was interviewed by the Sheriff’s office hired investigator Jim Ferraris. In this pretextual investigation, Sergeant McLaughlin was questioned about his knowledge of a social media account. This social media account, DSCO Follies, appears critical of current Sheriff Shane Nelson and his use of county funds.

Questioning Sergeant McLaughlin about First Amendment activity under *Garrity* by the hired investigator is inappropriate, dubious, and violates Sergeant McLaughlin’s First Amendment rights.

Legal violations:

It has long been settled by the Supreme Court of the United States—a public employee

does not lose their First Amendment right to Free Speech if they are speaking as a private citizen on a matter of public concern, see *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968) and *Connick v. Myers*, 461 U.S. 138, 146 (1983).

Speech is characterized as a matter of public concern, and not merely a complaint about internal workplace issues, if it can be “fairly considered as relating to any matter of political, social or other concern to the community.” *Connick*, 461 U.S. at 146. To determine whether a public employee’s speech is as a citizen on a matter of public concern, Courts conduct a case-by-case inquiry, examining the content, form and context of a given statement. *Connick*, 461 U.S. at 147-48. “The critical question . . . is whether the speech at issue is itself ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.” *Lane v. Franks*, 573 U.S. 228, 240 (2014).

Here, Sergeant McLaughlin’s activities are all matters of public concern. First, recommending a K-9 for an award ceremony not tied to his employer is not within the normal scope of Sergeant McLaughlin’s duties. Second, Sergeant McLaughlin’s approval and work with a labor organization to unionize Sheriff sergeants is protected concerted activity. Third, Sergeant McLaughlin’s off duty support of a political candidate running for the Sheriff’s position is without doubt a political concern to the Deschutes community. Fourth, Sergeant McLaughlin’s association, or not, with social media and investigative journalists about reported and purported mismanagement of taxpayer funds are matters of public concern.

Therefore, Sergeant McLaughlin has a right to speak on issues not related to his duties, and the Sheriff’s Office’s tactics of verbally reprimanding, micromanaging, and pretextually investigating Sergeant McLaughlin. This is chilling his protected rights and is an adverse employment action by the Sheriff’s Office.

NOTICE:

The Deschutes County Sheriff’s Office is hereby put on notice that further actions by command staff against Sergeant McLaughlin, including but not limited to the actions and tactics outlined above, will hereby be considered as further discrimination and retaliation. The Deschutes County Sheriff’s Office has had prior notice not to engage in retaliation for exercising First Amendment rights via *Kozowski v. Nelson et al.* 6:18-cv-00275-MK; a 2021 jury verdict returned in favor of Plaintiff against Sheriff Nelson and Deschutes County for First Amendment violations against a former employee.

Demand:

For James McLaughlin’s claims, the resulting damages are:

1. Non-economic damages,
2. Future loss of economic damages in wages and benefits,
3. James McLaughlin demands payment of his reasonable attorney fees and costs for his defense against these pretextual investigations and actions of command staff.



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Re: James McLaughlin Tort Claim Notice

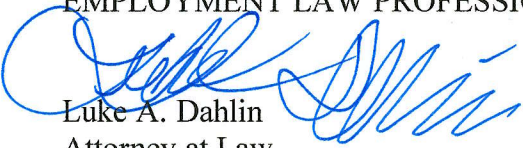
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Please contact me with any questions.

Regards,

EMPLOYMENT LAW PROFESSIONALS NW LLC



Luke A. Dahlin
Attorney at Law

LAD:rjh