

1 produced using materials which had been mailed or so shipped or transported, including by computer,
2 and the production of the visual depiction involved the use of a minor engaged in sexually explicit
3 conduct as defined in Title 18, United States Code, Section 2256, and was of such conduct.

4 FORFEITURE ALLEGATION: [18 U.S.C. § 2253 - Criminal Forfeiture]

5 The United States Attorney further charges T H A T:

6 RICHARD LEROY JAMES,
7 upon conviction of the offense alleged above in this information shall forfeit to the United States under
8 18 U.S.C. § 2253, his interest in any and all matters which contain any visual depiction(s) produced or
9 possessed in violation thereof; any property, real or personal, constituting or traceable to gross profits
10 or other proceeds the defendant obtained from such offense(s); and any property, real or personal, used
11 or intended to be used to commit or to promote the commission of such offense(s) or any property
12 traceable to such property.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BENJAMIN B. WAGNER
United States Attorney

By 
MARK E. CULLERS,
Assistant U.S. Attorney
Chief, Fresno Office

UNITED STATES DISTRICT COURT Eastern District of California

UNITED STATES OF AMERICA

v.

RICHARD LEROY JAMES

AKA: James, Richard

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: **1:13CR00348-001**

Defendant's Attorney: Victor Manuel Chavez, Assistant Federal Defender

THE DEFENDANT:

- pleaded guilty to count 1 of the First Superseding Information.
- pleaded nolo contendere to count(s) ___ which was accepted by the court.
- was found guilty on count(s) ___ after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense (s):

Title & Section	Nature Of Offense	Date Offense Concluded	Count Number
18 USC § 2252(a)(4)(B)	Possession of One or More Matters Containing a Visual Depiction of a Minor Engaged in Sexually Explicit Conduct (CLASS C FELONY)	December 1, 2012 to May 17, 2013	One

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) ___ and is discharged as to such count(s).
- Count (s) ___ dismissed on the motion of the United States.
- Indictment is to be dismissed by District Court on motion of the United States.
- Appeal rights given. Appeal rights waived.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

10/27/2014

Date of Imposition of Judgment

/s/ Anthony W. Ishii

Signature of Judicial Officer

Anthony W. Ishii, United States District Judge

Name & Title of Judicial Officer

10/29/2014

Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 60 months.

- No TSR: Defendant shall cooperate in the collection of DNA.
- The court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be incarcerated in a California facility, specifically Lompoc, but only insofar as this accords with security classification and space availability.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district
 - at ___ on ____.
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before ___ on ____.
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Officer.
 If no such institution has been designated, to the United States Marshal for this district.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

By Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
180 months.

The defendant must report to the probation office in the district to which the defendant is released within seventy-two hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.), as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of qualifying offense.
- The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or a restitution obligation, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;
6. the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere, and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. As directed by the probation officer, the defendant shall participate in a program of outpatient mental health treatment.
2. As directed by the probation officer, the defendant shall participate in a co-payment plan for treatment or testing and shall make payment directly to the vendor under contract with the United States Probation Office of up to \$25 per month.
3. The defendant shall submit to the search of his person, property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects at any time, with or without a warrant, by any law enforcement or probation officer in the lawful discharge of the officer's supervision functions with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
4. The defendant shall not possess or use a computer or any device that has access to any "on-line computer service" unless approved by the probation officer. This includes any Internet service provider, bulletin board system, or any other public or private computer network.
5. The defendant shall have no contact with known children under the age of 18, excluding the defendant's own, minor children, unless approved by the probation officer in advance. The defendant is not to loiter within 100 feet of school yards, parks, playgrounds, arcades, or other places primarily used by children under the age of 18. This shall include that the defendant is not to engage in any occupation, either paid or volunteer, that causes him to regularly contact known persons under the age of 18.
6. The defendant shall consent to the probation officer and/or probation service representative conducting periodic unannounced examinations of (a) any computer, or (b) computer-related device, or (c) equipment that has an internal or external modem which is in the possession or control of the defendant. The defendant consents to retrieval and copying of all data from any such computer, computer-related device, or equipment as well as any internal or external peripherals to ensure compliance with conditions. The defendant consents to removal of such computer, computer-related device, and equipment for purposes of conducting a more thorough inspection and analysis.

The defendant consents to having installed on any computer, computer-related device, and equipment, at the defendant's expense, any hardware or software systems to monitor the use of such computer, computer-related device, and equipment at the direction of the probation officer, and agrees not to tamper with such hardware or software and not install or use any software programs designated to hide, alter, or delete his computer activities. The defendant consents to not installing new hardware without the prior approval of the probation officer.

7. The defendant shall not possess, own, use, view, read, or frequent places with material depicting and/or describing sexually explicit conduct, including computer images, pictures, photographs, books, writings, drawings, videos, or video games. "Sexually explicit conduct" as defined in 18 USC 2256(2) means actual or simulated (a) sexual intercourse, including genital-genital, oral-genital, or oral-anal, whether between the same or opposite sex; (b) bestiality; (c) masturbation; (d) sadistic or masochistic abuse; or (e) lascivious exhibition of the genitals or pubic area of any person. Furthermore, the defendant shall not frequent places where the primary purpose is related to such material.
8. The defendant shall provide all requested business/personal phone records to the probation officer. The defendant shall disclose to the probation officer any existing contracts with telephone line/cable service providers. The defendant shall provide the probation officer with written authorization to request a record of all outgoing or incoming phone calls from any service provider.
9. The defendant shall consent to third-party disclosure to any employer or potential employer, concerning any computer-related restrictions that are imposed upon him. This includes any activities in which you are acting as a technician, advisor, or consultant with or without any monetary gain or other compensation.
10. The defendant shall attend, cooperate with, and actively participate in a sex offender treatment and therapy program [which may include, but is not limited to, risk assessment, polygraph examination, and/or Visual Reaction Treatment] as approved and directed by the probation officer and as recommended by the assigned treatment provider.
11. The defendant's residence shall be pre-approved by the probation officer. The defendant shall not reside in direct view of places such as school yards, parks, public swimming pools, or recreational centers, playgrounds, youth centers, video arcade facilities, or other places primarily used by children under the age of 18.
12. The defendant shall register, as required in the jurisdiction in which he resides, as a sex offender.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100		

The determination of restitution is deferred until ____ . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Totals	\$ _____	\$ _____	

Restitution amount ordered pursuant to plea agreement \$ ____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

The interest requirement is waived for the fine restitution

The interest requirement for the fine restitution is modified as follows:

If incarcerated, payment of the fine is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A. Lump sum payment of \$ 100.00 due immediately, balance due
 - Not later than _____, or
 - in accordance C, D, E, or F below; or
- B. Payment to begin immediately (may be combined with C, D, or F below); or
- C. Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after the date of this judgment; or
- D. Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. Payment during the term of supervised release will commence within ____ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendants ability to pay at that time; or
- F. Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

CLOSED

**U.S. District Court
Eastern District of California - Live System (Fresno)
CRIMINAL DOCKET FOR CASE #: 1:13-cr-00348-AWI-BAM-1**

Case title: USA v. James
Magistrate judge case number: 5:13-mj-00050-JLT

Date Filed: 09/12/2013
Date Terminated: 10/27/2014

Assigned to: District Judge Anthony W.
Ishii
Referred to: Magistrate Judge Barbara
A. McAuliffe

Defendant (1)

Richard Leroy James
TERMINATED: 10/27/2014

represented by **David A. Torres**
Law Office of David Torres
1318 K Street
Bakersfield, CA 93301
661-326-0857
Fax: 661-326-0936
Email: dtorres@lawtorres.com
TERMINATED: 08/30/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Victor Manuel Chavez
Federal Defender (FRS)
2300 Tulare Street
Suite 330
Fresno, CA 93721
(559) 487-5561
Fax: (559) 487-5950
Email: victor_chavez@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
*Designation: Public Defender or
Community Defender Appointment*

Pending Counts

SEXUAL EXPLOITATION OF
MINORS
(1s)

Disposition

Custody: 60 months. S/A: &100.00.
Fine waived. S/R: 180 months.

Highest Offense Level (Opening)

Felony

Terminated Counts

18 U.S.C. § 2252(a)(2) - Receipt and Distribution of a Visual Depiction of a Minor Engaged in Sexually Explicit Conduct; 18 U.S.C. §§ 2253(a)(1), 2253(a)(2) and 2253(a)(3) - Criminal Forfeiture (1)

Disposition

Dismissed

Highest Offense Level (Terminated)

Felony

Complaints

18 U.S.C. § 2252(a)(2) - Receipt and/or Distribution of Child Pornography

Disposition**Plaintiff**

USA

represented by **Fresno Forfeiture Unit**
 United States Attorney's Office
 2500 Tulare Street
 Suite 4401
 Fresno, CA 93721
 559-497-4000
 Email: usacae.ecffrsfor@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David L Gappa
 United States Attorney
 Fresno Office
 2500 Tulare Street
 Suite 4401
 Fresno, CA 93721
 (559) 497-4020
 Fax: (559) 497-4099
 Email: David.Gappa@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
------------	---	-------------

08/28/2013	<u>1</u>	CRIMINAL COMPLAINT as to Richard James. (Hall, S) [5:13-mj-00050-JLT] (Entered: 08/28/2013)
08/28/2013	<u>3</u>	ARREST WARRANT RETURNED Executed on 8/27/2013 as to Richard James. (Hall, S) [5:13-mj-00050-JLT] (Entered: 08/28/2013)
08/28/2013	<u>4</u>	MINUTES (Text Only) for proceedings held before Magistrate Judge Jennifer L. Thurston: INITIAL APPEARANCE as to Richard James held on 8/28/2013. True name stated as charged. Oral motion for appointment of counsel by defendant (CJA 23 rec'd)- So Ordered, Attorney David A. Torres appointed (Initial Appearance Only). Defendant advised of charges, rights; waived formal reading and rights; NOT GUILTY PLEA ENTERED. DETENTION HEARING held, addressed- Defendant ORDERED RELEASED. Court to issue Order Setting Conditions of Release. <i>Preliminary Examination set for 9/11/2013 at 01:30 PM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe.</i> Defendant ORDERED to appear for processing at the USMS upon arrival in Fresno for his next court appearance. Government Counsel: David Gappa (telephonic) present. Defense Counsel: David Torres present. Fresno CRD W. Kusamura (telephonic) present. Custody Status: In Custody - LEGS ONLY. Court Reporter/CD Number: Hall/ECRO/FTR. (Hall, S) [5:13-mj-00050-JLT] (Entered: 08/28/2013)
08/28/2013	<u>6</u>	ASSOCIATION of ATTORNEY David A. Torres (Initial Appearance Only) in the case of Richard James. (Hall, S) [5:13-mj-00050-JLT] (Entered: 08/28/2013)
08/28/2013	<u>7</u>	ORDER SETTING CONDITIONS of RELEASE as to Richard James, signed by Magistrate Judge Jennifer L. Thurston on 8/28/2013. (Hall, S) [5:13-mj-00050-JLT] (Entered: 08/28/2013)
08/28/2013	<u>8</u>	COLLATERAL RECEIVED as to Richard James: U.S. Passport from Richard James, Passport Number 437951640. (Hall, S) [5:13-mj-00050-JLT] (Entered: 08/28/2013)
08/30/2013	<u>9</u>	COLLATERAL RECEIVED from Bakersfield Office as to Richard James: USA Passport from Richard James, 437951640. (Verduzco, M) [5:13-mj-00050-JLT] (Entered: 08/30/2013)
08/30/2013	<u>10</u>	DESIGNATION of COUNSEL FOR SERVICE. Added attorney Victor Manuel Chavez for Richard James, attorney David A. Torres terminated. (Chavez, Victor) [5:13-mj-00050-JLT] (Entered: 08/30/2013)
09/04/2013	<u>12</u>	ARREST WARRANT RETURNED Executed on 8/30/13 as to Richard James. (Martin-Gill, S) [5:13-mj-00050-JLT] (Entered: 09/05/2013)
09/05/2013	<u>11</u>	STIPULATION and PROPOSED ORDER for New Preliminary Hearing Date by USA. (Gappa, David) [5:13-mj-00050-JLT] (Entered: 09/05/2013)
09/06/2013	<u>13</u>	ORDER on STIPULATION TO CHANGE DATE for PRELIMINARY HEARING as to Richard James, signed by Magistrate Judge Jennifer L. Thurston on 09/5/13.(Preliminary Examination set for 9/18/2013 at 01:30 PM in Courtroom 7 (SKO) before Magistrate Judge Sheila K. Oberto) (Martin-Gill, S) [5:13-mj-00050-JLT] (Entered: 09/06/2013)

09/12/2013	<u>14</u>	INDICTMENT as to Richard Leroy James (1) count(s) 1. (Attachments: # <u>1</u> True Bill & Defendant Information Sheet) (Hellings, J) (Entered: 09/12/2013)
09/17/2013	<u>15</u>	PROPOSED ORDER re Defendant's Waiver of Appearance by Richard Leroy James. (Chavez, Victor) (Entered: 09/17/2013)
09/17/2013	<u>16</u>	Defendant's Waiver of Personal Appearance; ORDER - as to Richard Leroy James, signed by Magistrate Judge Barbara A. McAuliffe on 9/17/2013. (Herman, H) (Entered: 09/17/2013)
09/18/2013	<u>17</u>	MINUTES (Text Only) for proceedings held before Magistrate Judge Barbara A. McAuliffe on 9/18/2013: ARRAIGNMENT / Initial Appearance re Indictment as to Richard Leroy James (1) Count 1 held - advised of charges, rights; received Indictment - True Name stated as charged; waived reading, rights - NOT GUILTY PLEA ENTERED. Discovery requested & by statutory time; reciprocal - SO ORDERED. Parties request next hearing date be a status conference and waived excludable time - So Ordered. <u>1st STATUS CONFERENCE set for 12/9/2013 at 01:00 PM in Courtroom 3 before Magistrate Judge Barbara A. McAuliffe.</u> <i>Atty Chavez - dft has a RL 43 waiver on file [Doc. 16] and request that continue - So Ordered.</i> Excludable started as to Richard Leroy James: XT Start: 9/18/2013 Stop: 12/9/2013. Time is to be excluded under the Speedy Trial Act in that good cause exists and that the ends of justice outweigh the interest of the public and the defendant in a speedy trial. For the reasons set forth on the record, the continuance requested is granted for good cause and the Court finds the ends of justice outweigh the interest of the public and the defendant in a speedy trial. Government Counsel: David Gappa present. Defense Counsel: Victor Chavez present. Custody Status: O/R - present. Court Reporter/CD Number: ECRO - O. Figueroa. (Herman, H) (Entered: 09/18/2013)
11/20/2013	<u>18</u>	MINUTE ORDER ***TEXT Only***: TIME CHANGE ONLY - as to defendant RICHARD LEROY JAMES, 1st STATUS CONFERENCE before Judge McAuliffe, on December 9, 2013 will be heard at 2:00PM , instead of 1:00 p.m., in Courtroom 3. <i>Defense counsel is to advise the defendant regarding the Time change.</i> signed by Magistrate Judge Barbara A. McAuliffe on 11/20/2013. (Herman, H) (Entered: 11/20/2013)
12/09/2013	<u>19</u>	MINUTES (Text Only) for proceedings held before Magistrate Judge Barbara A. McAuliffe on 12/9/2013: 1st STATUS CONFERENCE as to Richard Leroy James held. Atty Chavez - parties have been talking; received some discovery & looking at other discovery in Bakersfield. Parties request another status conference and waived excludable time - So Ordered, 18 USC 3161. <u>2nd STATUS CONFERENCE set for 2/10/2014 at 01:00 PM in Courtroom 3 before Magistrate Judge Barbara A. McAuliffe.</u> Excludable started as to Richard Leroy James: XT Start: 12/9/2013 Stop: 2/10/2014. Time is to be excluded under the Speedy Trial Act in that good cause exists and that the ends of justice outweigh the interest of the public and the defendant in a speedy trial. For the reasons set forth on the record, the continuance requested is granted for good cause and the Court finds the ends of justice outweigh the interest of the public and the defendant in a speedy trial. Government Counsel: David Gappa present. Defense Counsel: Victor Chavez present. Custody Status: O/R - RL 43

		waiver, no appearance. Court Reporter/CD Number: ECRO - Renee Gaumnitz. (Herman, H) (Entered: 12/11/2013)
02/10/2014	20	MINUTES (Text Only) for proceedings held before Magistrate Judge Barbara A. McAuliffe: SECOND STATUS CONFERENCE as to Richard Leroy James held on 2/10/2014. Defense counsel advises the Court that an offer has been received and a counter-offer made. Defense counsel further states that a forensic examiner may been to be retained and, as such, a continuance is requested - SO ORDERED. THIRD STATUS CONFERENCE set for 5/12/2014 at 01:00 PM in Courtroom 3 before Magistrate Judge Barbara A. McAuliffe. (The parties are advised that if the matter is not resolved by the next hearing, a trial date will be set.) (Excludable time Start: 2/10/2014 Stop: 5/12/2014) Time is to be excluded under the Speedy Trial Act in that good cause exists and that the ends of justice outweigh the interest of the public and the defendant in a speedy trial. For the reasons set forth on the record, the continuance requested is granted for good cause and the Court finds the ends of justice outweigh the interest of the public and the defendant in a speedy trial. Government Counsel: David Gappa present. Defense Counsel: Victor Chavez present. Custody Status: (O/R - Rule 43 waiver on file - defendant not present). Court Reporter/CD Number: ECRO (Otilia Figueroa). (Rooney, M) (Entered: 02/13/2014)
04/28/2014	21	MINUTE ORDER ***TEXT Only***: Due to calendar conflict, <i>CHANGE as to the Time and Judge Only</i> - 3rd STATUS CONFERENCE as to Richard Leroy James is set for May 12, 2014 at 01:30 PM in Courtroom 7 (SKO) before Magistrate Judge Sheila K. Oberto on Duty Calendar. Previously set before Judge McAuliffe on 1:00PM criminal Status Conference calendar for May 12, 2014. signed by Magistrate Judge Barbara A. McAuliffe on 4/28/2014. (Herman, H) (Entered: 04/28/2014)
05/12/2014	22	MINUTES (Text Only) for proceedings held before Magistrate Judge Sheila K. Oberto: THIRD STATUS CONFERENCE as to Richard Leroy James held on 5/12/2014. The parties requested the matter be placed on calendar for a change of plea before the District Judge. Change of Plea Hearing set for 6/16/2014, at 10:00 AM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii. Time is excluded under the Speedy Trial Act for the reasons set forth on the record. The Court finds that good cause exists and that the ends of justice outweigh the interest of the public and the defendant in a speedy trial, XT Start: 5/12/2014 Stop: 6/16/2014. Government Counsel: D. Gappa present. Defense Counsel: V. Chavez present. Custody Status: O/R- NOT present, Rule 43 waiver on file. Court Reporter/CD Number: ECRO- O. Figueroa. (Gaumnitz, R) (Entered: 05/12/2014)
06/16/2014	23	MINUTES (Text Only) for proceedings held before District Judge Anthony W. Ishii: STATUS CONFERENCE as to Richard Leroy James held on 6/16/2014. XT Start: 6/16/14 Stop: 8/11/14, (Change of Plea Hearing set for 8/11/2014 at 10:00 AM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii.) Government Counsel: D. Gappa present. Defense Counsel: V. Chavez present. Custody Status: (O/R) not present Court Reporter/CD Number: G. Thomas. (Nazaroff, H) (Entered: 06/18/2014)
08/01/2014	<u>24</u>	

		STIPULATION and PROPOSED ORDER for Continuing Change of Plea. (Chavez, Victor) (Entered: 08/01/2014)
08/01/2014	<u>25</u>	STIPULATION and ORDER to Continue Change of Plea to August 25, 2014, signed by District Judge Anthony W. Ishii on 8/1/2014. (Change of Plea Hearing as to Richard Leroy James previously set for 8/11/2014, has been CONTINUED to 8/25/2014, at 10:00 AM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii.) (Gaumnitz, R) (Entered: 08/01/2014)
08/25/2014	<u>29</u>	MINUTES (Text Only) for proceedings held before District Judge Anthony W. Ishii: ARRAIGNMENT and PLEA on SUPERSEDING INFORMATION as to Richard Leroy James (1) Count 1s held on 8/25/2014. Government provided superseding information, waiver of indictment, and plea agreement to the Court for review. Defendant received superseding information, waived his right to be indicted, advised of charge, maximum penalties, and his rights, waived his rights, GUILTY PLEA ENTERED as to Count 1of the Superseding Information. Defendant agreed to forfeiture allegation and waived his right to any forfeiture proceedings. Referred to probation for pre-sentence report and recommendation. <i>Sentencing set for 11/3/2014, at 10:00 AM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii.</i> Courtroom Deputy returned original documents to Government for filing with the Clerk's Office. Defendant ORDERED REMANDED pending sentencing. Government Counsel: D. Gappa present. Defense Counsel: V. Chavez present. Custody Status: O/R, present. Court Reporter/CD Number: G. Thomas. (Gaumnitz, R) (Entered: 08/28/2014)
08/27/2014	<u>26</u>	PLEA AGREEMENT as to Richard Leroy James. (Gappa, David) (Entered: 08/27/2014)
08/27/2014	<u>27</u>	WAIVER of INDICTMENT by Richard Leroy James (Lundstrom, T) (Entered: 08/28/2014)
08/27/2014	<u>28</u>	SUPERSEDING INFORMATION as to Richard Leroy James (1) count(s) 1s. (Lundstrom, T) (Entered: 08/28/2014)
09/29/2014	<u>30</u>	<i>(TO BE VIEWED BY ASSIGNED COUNSEL ONLY)</i> DISCLOSED PRESENTENCE INVESTIGATION REPORT (DRAFT) as to Richard Leroy James. Informal objections shall not be submitted via CM/ECF and shall be in compliance with the sentencing schedule and pursuant to Local Rule 460. (Attachments: # <u>1</u> Victim Impact Letters)(Provencio, D) (Entered: 09/29/2014)
10/09/2014	<u>31</u>	MINUTE ORDER: (Text Entry Only) At the request and by agreement of Counsel, Sentencing as to Richard Leroy James (1) previously set for 11/3/2014, has been ADVANCED to 10/27/2014, at 10:00 AM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii. Minute Order signed by District Judge Anthony W. Ishii on 10/9/2014. (Gaumnitz, R) (Entered: 10/09/2014)
10/14/2014	<u>32</u>	SENTENCING PRESENTENCE INVESTIGATION REPORT (FINAL) as to Richard Leroy James. (Attachments: # <u>1</u> Victim Impact Letters, # <u>2</u> Plea Agreement, # <u>3</u> Defendant's Informal Objections to Presentence Investigation Report, # <u>4</u> Response to Defendant's Informal Objections)(Provencio, D) (Entered: 10/14/2014)
10/27/2014	<u>33</u>	

		MINUTES (Text Only) for proceedings held before District Judge Anthony W. Ishii: SENTENCING held on 10/27/2014 for Richard Leroy James (1), Defense Counsel provided a letter to the Court for consideration and requested the Court recommend Lompoc. Government requested the Court follow the parties' agreement and the report of the probation officer. The Court made findings and sentenced the defendant on Count 1 of the Superseding Information- Custody: 60 months. S/A: &100.00. Fine waived. S/R: 180 months (with standard and special conditions). Appeal rights waived. The Court recommended an institution in California, specifically Lompoc. Oral motion by the Government to dismiss the indictment (Count 1) was GRANTED. CASE CLOSED. Government Counsel: D. Gappa present. Defense Counsel: V. Chavez present. Custody Status: Custody. Court Reporter/CD Number: G. Thomas. (Gaumnitz, R) (Entered: 10/27/2014)
10/29/2014	<u>34</u>	JUDGMENT and COMMITMENT as to Richard Leroy James, signed by District Judge Anthony W. Ishii on 10/29/2014. (Gaumnitz, R) (Entered: 10/29/2014)
10/30/2014	<u>35</u>	COLLATERAL RETURNED as to Richard Leroy James: Passport #437951640 at DOC# 8, returned to US Dept. of State, Office of Passport Policy and Advisory Services. (Hellings, J) (Entered: 10/31/2014)

PACER Service Center			
Transaction Receipt			
06/06/2018 16:22:52			
PACER Login:	Odlegal94612:2536794:0	Client Code:	AFU
Description:	Docket Report	Search Criteria:	1:13-cr-00348-AWI-BAM
Billable Pages:	5	Cost:	0.50



State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
GOVERNOR

OCT 06 2017

Richard Leroy James
41607 Ponderosa Drive
Caliente, CA 93518

**Re: Registered Nurse
License No. 569670**

Dear Mr. James:

The Deputy Director and Chief Counsel of the California State Department of Health Care Services (Department) has been notified by the California Board of Registered Nursing (Board) that your license has been revoked, effective March 10, 2017. As a provider of health care services, you were granted certain permissions to receive payment from the Medi-Cal program by operation of law with or without applying for enrollment. Pursuant to Welfare and Institutions Code, section 14043.6, the Department is required, automatically, to suspend these permissions, which means that you are precluded from being eligible to receive payment from the Medi-Cal program directly or indirectly. This requirement applies to any individual or entity who has a license, certificate, or other approval to provide health care, which is revoked or suspended by a federal or state licensing, certification, or approval authority, has otherwise lost that license, certificate, or approval, or has surrendered that license, certificate, or approval while a disciplinary hearing on that license, certificate, or approval was pending. This suspension is non-discretionary, and shall be effective on the date that the license, certificate, or approval was revoked, lost, or surrendered. Furthermore, pursuant to Business and Professions Code, sections 2732 and 2760, and California Code of Regulations, title 22, section 51067, it is unlawful to engage in the practice of nursing without a license.

In addition, the Department has been notified of your August 27, 2014, conviction in the United States District Court, Eastern District of California (*U.S. v. Richard Leroy James*, No. 1:13-cr-00348) for violation of 18 United States Code section 2252(a)(4)(B). This is a conviction that has been determined by the Board to be substantially related to the qualifications, functions, or duties of a provider of service. Pursuant to Welfare and Institutions Code section 14123, subdivision (a), the Director is required to suspend your eligibility to receive payment from the Medi-Cal program directly or indirectly. This requirement applies to anyone who provides health services whenever that person is

Richard Leroy James

Page 2

OCT 06 2017

convicted of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service. (See 42 C.F.R. § 1001.501(a); Welf. & Inst. Code, § 14123.25.)

Therefore, on behalf of the Director of the Department, you are hereby notified that you are prohibited from being able to receive payment from the Medi-Cal program for an indefinite period of time, effective March 10, 2017. Your name will be posted on the "Medi-Cal Suspended and Ineligible Provider List," available on the Internet. During the period of your suspension, no person or entity, including an employer, may submit any claims to the Medi-Cal program for items or services rendered by you. If you are currently enrolled in Medi-Cal, that enrollment will be terminated. Any involvement by you directly or indirectly (i.e., as an office manager, administrator, billing clerk processing or preparing claims for payment, salesperson for medical equipment, etc., or utilizing any other provider number or group or clinic number for services rendered by you) will result in nonpayment of the claim(s) submitted. Any person who presents or causes to be presented a claim for equipment or services rendered by a person suspended from receiving Medi-Cal payment shall be subject to suspension from receiving payment, the assessment of civil money penalties, and/or criminal prosecution. (See Welf. & Inst. Code, §§ 14043.61, 14107, 14123.2; Cal. Code Regs., tit. 22, §§ 51458.1, 51484, 51485.1.) The Department will seek recoupment of any monies paid for claims presented to the Medi-Cal program for services or supplies provided by you during the duration of your suspension.

If you have any questions about this action, please submit your concerns, in writing, to the Office of Legal Services, Mandatory Suspension Desk, at the address above.

Sincerely,



Sara M. Granda
Attorney

cc: See Next Page

Board of Registered Nursing
P.O. Box 944210
Sacramento, CA 94244-2100

Board of Vocational Nursing and
Psychiatric Technicians
ATTN: Enforcement Division
2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833-2919

Hadi Azimi
Case Development Section
Audits & Investigations, MS 2301
Department of Health Care Services
P.O. Box 997413
Sacramento, CA 95899-7413

Avril Singh
Provider Enrollment Division, MS 4704
Department of Health Care Services
P.O. Box 997413
Sacramento, CA 95899-7413

Teresa Ghilardi
Provider Enrollment Division, MS 4704
Department of Health Care Services
P.O. Box 997413
Sacramento, CA 95899-7413

Becky Swol, Chief
Clinical Assurance and Administrative Support
Administrative Support Division, MS 4504
Field Operations Support Branch
Department of Health Care Services
P.O. Box 997419
Sacramento, CA 95899-7419

Marisa Razo
Audits & Investigations, MS 2300
Department of Health Care Services
P.O. Box 997413
Sacramento, CA 95899-7413

Martin Gomez, Chief
Case Development Section
Audits & Investigations, MS 2300
Department of Health Care Services
P.O. Box 997413
Sacramento, CA 95899-7413

John Mikanda
Primary Care and Family Health, MS 8306
Department of Public Health
P.O. Box 997419
Sacramento, CA 95899-7419

Debbie Rielley
Criminal Division
Office of Attorney General
Bureau of Medi-Cal Fraud and Elder Abuse
Department of Justice
2329 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833-4252

John Gordon
Department of Industrial Relations
1515 Clay Street, Suite 1700
Oakland, CA 94612-1486

Mike Schumacher
Senior Management Auditor
Criminal Division
Bureau of Medi-Cal Fraud and Elder Abuse
Department of Justice
2329 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833-4252

Ivan Negroni
Special Agent-in-Charge
Office of Investigations
Office of Inspector General
U.S. Department of Health & Human Services
1855 Gateway Boulevard, Suite 585
Concord, CA 94520

Patrona N. Davis
Investigations Analyst
Office of Investigations - Exclusions Branch
Office of Inspector General
U.S. Department of Health & Human Services
90 7th Street, Suite 3-500
San Francisco, CA 94103

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

RICHARD LEROY JAMES a.k.a.,
RICHARD JAMES

Registered Nurse License No. 569670

Respondent.

Case No. 2016-1224

OAH No. 2016080591

DECISION

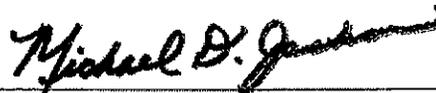
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter, except that pursuant to Government Code Section 11517(c)(2)(C), the Decision is hereby modified to correct one technical error as follows:

1. Paragraph 2 on page 1, shall read as follows:

“Katherine Messana, Deputy Attorney General, appeared on behalf of Joseph Morris, Ph.D., M.S.N., R.N., ~~Louise R. Bailey, M.Ed., R.N.~~, Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs State of California.”

This Decision shall become effective March 10, 2017.

IT IS SO ORDERED: February 09, 2017



BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RICHARD LEROY JAMES, aka
RICHARD JAMES,

Registered Nurse License No. 569670,

Respondent.

Case No. 2016-1224

OAH No. 2016080591

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on December 1, 2016, in Los Angeles, California.

Katherine Messana, Deputy Attorney General, appeared on behalf of Louise R. Bailey, M.Ed., R.N. (complainant), Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs, State of California.

Respondent Richard Leroy James, also known as Richard James, appeared telephonically and represented himself.¹

Oral and documentary evidence was received. The record was closed and the matter was submitted on December 1, 2016.

SUMMARY

Complainant seeks to revoke or suspend respondent's license and certificate based on respondent's felony conviction for possession of matters containing visual depictions of minors engaged in sexually explicit conduct. Respondent admits committing the crime and offers evidence of mitigation and rehabilitation. Complainant established by clear and convincing evidence that respondent's license should be disciplined.

¹ Respondent is incarcerated in federal prison. A November 22, 2016 Order authorized his telephonic appearance.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On August 3, 2000, the Board issued Registered Nurse license number 569670 to respondent. The license expired on December 31, 2015, and has not been renewed.
2. Complainant brought the Accusation in her official capacity in June 2016. Respondent timely submitted a Notice of Defense.

Respondent's Conviction

3. On August 27, 2014, in *United States v. James* (U.S.D.C., Eastern Dist. of California, 2013, No. 1:13-cr-00348-AWI-BAM-1), respondent pled guilty, entered a plea agreement, and was convicted of violating 18 U.S.C. § 2252(a)(4)(B) (possession of matters containing a visual depiction of a minor engaged in sexually explicit conduct), a felony. The court sentenced respondent to serve 60 months in prison, followed by 180 months of supervised release on various terms and conditions including that he not have contact with children under the age of 18 unless approved in advance by his probation officer, that he not reside within 300 feet of locations frequented by children, that he not engage in any paid occupation or volunteer service that exposes him to minors unless approved in advance by his probation officer, that he not use a computer connected to the internet without prior permission of his probation officer, that he not possess any child pornography or sexually explicit material involving minors, and that he complete cognitive behavioral treatment for sexual deviancy as directed by his probation officer. The court ordered that respondent shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) "or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of qualifying offense." (Ex. 4.)

4. The circumstances underlying the conviction are that, from December 1, 2012, to May 17, 2013, respondent repeatedly accessed the internet on his personal computer and viewed hundreds of visual depictions of minors engaged in sexually explicit conduct.

5. Respondent is currently serving his prison sentence at the Federal Correctional Institution in Lompoc, California; he is scheduled for release in August 2019. He is then scheduled to be on supervised release until August 2034.

Mitigation and Rehabilitation

6. Respondent explained that in late 2012 and early 2013 he was not working for an extended time due to a back injury. He was taking pain medicine, had "too much time on [his] hands," and spent a lot of time on the computer. He testified that he "stumbled across" the pornographic sites depicting minors engaged in sexually explicit acts while searching on Google for pornography in general, and "that's what led me down the bad path." Respondent admits to having watched eight or nine videos involving minors, and offers that it was a

mistake he will not repeat. "It's something I happened into when I was home and bored and not thinking clearly, not my usual self."

7. Respondent acknowledged that what he did was wrong, but argues he is paying for his actions with his incarceration. His conviction has greatly affected his ability to support his family, including a six-year-old child.

8. Respondent has been taking self-improvement programs and classes since his incarceration began in November 2014. He has had no discipline issues at prison. Respondent saw a psychiatrist and a psychologist before he was incarcerated; though he addressed his stressors at the time, he did not explore why he had searched for pornography involving minors.

9. Respondent has worked as a nurse in intensive care units and as a traveling nurse; he has been licensed in Indiana, Florida, Vermont, and Nevada. He was working as a bedside nurse at San Joaquin Community Hospital in Bakersfield when he was injured and herniated a disk in his lower back. He wants to work as a nurse again when he is released from custody; his license expired while he was in prison. He would take any courses and obtain any therapy the Board might require. He expects to comply with his probation officer's instructions when on supervised release and hopes the period of supervised release will be terminated early. He will have to register as a sex offender.

10. Respondent has no prior record of disciplinary action by the Board. Respondent has no criminal conviction other than the infraction conviction discussed herein.

Costs of Enforcement

11. Complainant submitted evidence of costs of prosecution of this matter in the amount of \$3,787.50. Those costs are reasonable.

12. Respondent currently earns \$.29 per hour in prison, and has a current savings balance of \$21. There is no other evidence on this record of respondent's ability to pay costs.

LEGAL CONCLUSIONS

1. The standard of proof to establish the charging allegations in this case is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with complainant to offer proof that is clear, explicit, and unequivocal, "so clear as to leave no substantial doubt" and "sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487 [citations omitted].)

2. The Board may discipline a license for conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse. (Bus. & Prof. Code, §§ 2761, subd. (f), 490.)^{2, 3}

3. "A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16, § 1444.)⁴ Respondent was convicted of felony possession of visual images of minors engaged in sexually explicit activity and sentenced to, among other things, register as a sex offender. Respondent's conviction was, therefore, substantially related to the qualifications, functions, and duties of a registered nurse. (Cal. Code Regs., tit. 16, § 1444, subd. (d).)

4. Cause exists to suspend or revoke respondent's Registered Nurse license number 569670 under sections 2761, subdivision (f), and 490, and California Code of Regulations, title 16, section 1444, because respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a registered nurse, as set forth in Factual Findings 3 through 5.

5. Application of the Board's disciplinary guidelines, and the criteria for mitigation and rehabilitation, warrant disciplining respondent's license. ("Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (effective 5/24/03) (Guidelines), incorporated by reference at Cal. Code Regs., tit. 16, § 1444.5.)

6. The Guidelines include recommendations for the minimum discipline for respondent's conviction. For violating section 2761, subdivision (f) (conviction of a crime substantially related to the qualifications, functions and duties of a registered nurse), the Guidelines recommend revocation.

7. The Guidelines also set forth criteria for rehabilitation. "When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime," relevant criteria include the nature and severity of the offenses, the overall criminal record, the time elapsed since the commission of the offenses, compliance with terms of probation, evidence of expungement, and evidence of rehabilitation (Cal. Code Regs., tit. 16, § 1445, subd. (b)), as well as any prior disciplinary record, evidence of mitigation, and any actual or potential harm to the public or to any patient. (Guidelines, p. 2.)

² All further statutory references are to the Business and Professions Code unless otherwise stated.

³ The Board retains jurisdiction to discipline an expired license. (§ 2764.)

⁴ "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article." (§ 2765.)

8. Based on the totality of the record, license revocation is warranted in this case.

9. Respondent was convicted of a serious offense. He is currently incarcerated as a result of that conviction and is not scheduled to be released from prison until 2019. He is then scheduled to be on supervised release for 15 years; his probation officer's approval will be required for him to engage in various activities, and he must register as a sex offender. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful, and disreputable licensees (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451), not to punish (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165). In issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.*; see also *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) Under his present circumstances of incarceration, there is little respondent can do to sufficiently establish rehabilitation. If his circumstances change, he may reapply for licensure; nothing in this decision, however, is intended to imply, one way or the other, whether any reapplication will be granted.

10. Reasonable costs of investigation and prosecution may be recovered under section 125.3. The amount of costs to be recovered from respondent is \$3,787.50. (See Factual Finding 11.) Based on evidence of respondent's earnings, (see *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45), respondent shall not be ordered to pay costs except as a condition precedent to any reapplication for licensure.

ORDER

Registered Nursing license number 569670, issued to respondent Richard Leroy James, also known as Richard James, is revoked.

Respondent shall pay the Board's costs of investigation and enforcement of this case in the amount of \$3,787.50 as a condition precedent to any reapplication for licensure.

DATED: December 30, 2016

DocuSigned by:

Howard W. Cohen

D44C96A3C8054C5...

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA L. SUN
Supervising Deputy Attorney General
3 KATHERINE MESSANA
Deputy Attorney General
4 State Bar No. 272953
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2016-1224

13 **RICHARD LEROY JAMES, AKA**
14 **RICHARD JAMES**

ACCUSATION

15 41607 Ponderosa Drive
16 Caliente, CA 93518

17 Registered Nurse License No. 569670

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs (Board).

23 2. On or about August 3, 2000, the Board issued Registered Nurse License Number
24 569670 to Richard Leroy James, aka Richard James (Respondent). Said license expired on
25 December 31, 2015, and has not been renewed.

26 ///

27 ///

28 ///

1 (d) The Legislature hereby finds and declares that the application of this
2 section has been made unclear by the holding in *Petropoulos v. Department of Real*
3 *Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a
4 significant number of statutes and regulations in question, resulting in potential harm
5 to the consumers of California from licensees who have been convicted of crimes.
6 Therefore, the Legislature finds and declares that this section establishes an
7 independent basis for a board to impose discipline upon a licensee, and that the
8 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session
9 do not constitute a change to, but rather are declaratory of, existing law.”

10
11
12
13
14
15
16 **REGULATORY PROVISION**

17 9. California Code of Regulations, title 16, section 1444, states:

18 “A conviction or act shall be considered to be substantially related to the
19 qualifications, functions or duties of a registered nurse if to a substantial degree it
20 evidences the present or potential unfitness of a registered nurse to practice in a
21 manner consistent with the public health, safety, or welfare. Such convictions or acts
22 shall include but not be limited to the following:

23 (a) Assaultive or abusive conduct including, but not limited to, those
24 violations listed in subdivision (d) of Penal Code Section 11160.

25 (b) Failure to comply with any mandatory reporting requirements.

26 (c) Theft, dishonesty, fraud, or deceit.

27 (d) Any conviction or act subject to an order of registration pursuant to
28 Section 290 of the Penal Code.”

16 **COST RECOVERY**

17 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
22 included in a stipulated settlement.

23 **CAUSE FOR DISCIPLINE**

24 **(Substantially Related Criminal Conviction)**

25 11. Respondent is subject to disciplinary action under section 490 and section 2761,
26 subdivision (f) of the Code, in conjunction with California Code of Regulations, title 16, section
27 1444, in that Respondent was convicted of a crime substantially related to the qualifications,
28 functions, and duties of a registered nurse. Specifically, on August 27, 2014, Respondent was

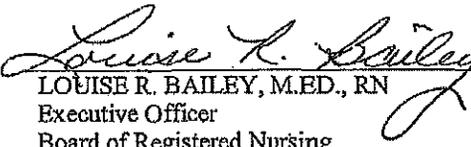
1 convicted of violating one felony count of 18 USC § 2252(a)(4)(B) [Possession of Material
2 Involving the Sexual Exploitation of Minors] in the criminal proceeding entitled *United States of*
3 *America v. Richard Leroy James* (United States District Court for the Eastern District of
4 California, 2013, 1:13-cr-00348). Respondent was ordered to serve 60 months in custody and was
5 placed on supervised release for 180 months (with standard and special conditions).

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Registered Nursing issue a decision:

- 9 1. Revoking or suspending Registered Nurse License Number 569670, issued to Richard
10 Leroy James, aka Richard James;
- 11 2. Ordering Richard Leroy James to pay the Board of Registered Nursing the reasonable
12 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
13 section 125.3;
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16
17 DATED: June 16, 2016


18 LOUISE R. BAILEY, M.ED., RN
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant

24
25
26
27
28
29 LA2016601347
30 52120602.doc