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13 DR. TIMOTHY RYAN, M.D.

14 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

15 CIVIL - UNLIMITED JURISDICTION

16 TIMOTHY RYAN, M.D., ex rel,

17 Plaintiff,

18 vs.

19 THE COUNTY OF LOS ANGELES; and
20 DOES 1-20, inclusive,

21 Defendant.

Case No. **23STCV18441**

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE CALIFORNIA PRIVATE
ATTORNEYS GENERAL ACT (PAGA), CA
LABOR CODE SECTION 2698, ET, SEQ.**

1 Plaintiff Dr. Timothy Ryan, M.D., alleges as follows:

2 **PARTIES**

3 1. Plaintiff TIMOTHY RYAN M.D. (hereinafter "Plaintiff") is an individual residing
4 in the City of Los Angeles, Los Angeles County, California, and is a former employee of the
5 Department of Surgery, Division of Vascular Surgery, at Defendant's hospital, Harbor-UCLA
6 Medical Center.

7 2. Defendant COUNTY OF LOS ANGELES ("Defendant") is a County in the State
8 of California. At all times relevant to this Complaint, Defendant owned and operated Harbor-
9 UCLA Medical Center.

10 3. Los Angeles County/Harbor-UCLA Medical Center ("Harbor-UCLA Medical
11 Center") is a public teaching hospital owned and operated by Defendant.

12 4. Plaintiff brings this representative action on behalf of the State of California and
13 all similarly aggrieved Professional Staff defined as all Professional Staff that are forced to
14 execute or agree to an illegal Waiver/Release as a condition of employment with Defendant's
15 Harbor-UCLA Medical Center, LAC-USC Medical Center now known as "Los Angeles General
16 Medical Center," Olive View Medical Center, and Rancho Los Amigos National Rehabilitation
17 Center (hereinafter "Aggrieved Employees" or "Professional Staff").

18 5. The true names and capacities, whether individual, corporate, associate, or
19 otherwise, of Does 1 to 20, inclusive, are unknown to Plaintiff at this time. Plaintiff sues those
20 Defendants by such fictitious names pursuant to Section 474 of the Code of Civil Procedure and
21 will amend this complaint to show their true names and capacities when they have been
22 ascertained.

23 6. Plaintiff is informed and believes, and on such information and belief alleges, that
24 at all times herein mentioned the Defendant was the agent, either actual or ostensible, and
25 employees of the Defendant and in doing herein alleged, were acting within the purpose and
26 scope of such agency and employment and with the advance knowledge, authorization or
27 ratification of the Defendant and at least one of the officers, directors or managing agents of the
28 Defendant.

JURISDICTION AND VENUE

7. This Court has unlimited jurisdiction over this matter because this controversy exceeds \$25,000.

8. Venue is proper in the Superior Court of California for the County of Los Angeles because Defendant and its hospitals are situated and are doing business in this County.

GENERAL ALLEGATIONS

9. From 2013 until he was terminated in October of 2018, Plaintiff served as a Staff Vascular Surgeon, Physician Specialist, at Harbor-UCLA Medical Center.

10. Plaintiff is informed and believes that all Professional Staff at the various Los Angeles County-operated Medical Centers and at all other healthcare facilities operated by the County of Los Angeles must apply for clinical privileges and renew such privileges by gaining and maintaining membership to the respective Professional Staff associations. At Harbor-UCLA Medical Center, physicians must apply to and join the Los Angeles County/Harbor-UCLA Medical Center Professional Staff Association (the "PSA") under the rules, policies and procedures set forth in the Los Angeles County/Harbor-UCLA Medical Center Professional Staff Association Bylaws (the "PSA Bylaws") to the extent that those rules, policies and procedures are lawful.

11. The maintenance of clinical privileges is necessary in order for Professional Staff to practice medicine, and is an absolute condition to maintaining employment as a practicing physician with Defendant at all County facilities including Harbor-UCLA Medical Center.

12. As a condition of initial membership in the PSA, as well as to renew PSA membership, Defendant required all Professional Staff, including Plaintiff, to agree to be bound by an illegal waiver and release of liability contained in the PSA Bylaws (the Bylaws Waiver/Release - hereafter "BWR") in favor of Defendant and its hospital facility, the Harbor-UCLA Medical Center, as follows:

4.2-3.4 Effect of the Application: In addition to the matters set forth in Section 4.1-1, by applying for appointment to the Association, each applicant thereby
* * *

1 releases from any liability the County of Los Angeles, the Association, the
2 professional schools, and their respective officers, employees or agents, for any of
3 their acts performed in good faith and without malice in connection with
evaluating the applicant and his/her credentials and other qualifications . . .

4 13. The BWR is illegal and in violation of the California Constitution, California
5 statutory law, including California Civil Code, section 43.7 (b),(e), which specifically excludes
6 *hospitals* from any immunity for peer review actions, and is against public policy as Defendant,
7 its agents, and its hospitals may not seek or demand of its Professional Staff a Waiver/Release of
8 liability that is in any respect broader than the immunity afforded by the Legislature in California
9 Civil Code Section 43.7. Defendant may not condition employment on an illegal
10 Waiver/Release. Defendant may not deprive Professional Staff of the right to seek redress in the
11 Courts or other legal forum, for claims arising from actions taken related to the peer review
12 process.

13 14. On or about March 16, 2016, Defendant completed a revision and approval of the
14 Harbor-UCLA Professional Staff Association Bylaws. This revision *removed* language from the
15 Bylaws that specifically limited the scope of the release/waiver in the Bylaws (BWR). The
16 version of the Bylaws in effect since 2002 provided:

17 Section 4. IMMUNITY FROM LIABILITY

18 A. For Action Taken

19 Each representative of the County of Los Angeles, the Medical
20 Center, or the Association, and all third parties, shall, ***to the fullest***
21 ***extent permitted by law***, be exempt from any liability to any
practitioner for any damages or other relief for any action taken or
statements or recommendations made within the scope of his/her
duties. (*emphasis added*)

22 15. Plaintiff is informed and believes that the language “to the fullest extent permitted
23 by law” demonstrated an understanding that the requested release from liability was limited in
24 scope to only what was permissible under law. This included, but did not expand upon, the
25 immunities provided under California Civil Code Section 43.7(e).

26 16. Plaintiff is informed and believes that Defendant intentionally removed the
27 limiting language from the Bylaws (BWR) in a 2016 amendment in order to improperly expand
28 the scope of the release to “the hospital” (i.e., Harbor-UCLA Medical Center) to shield itself

1 from legal claims or other regulatory/third party oversight triggered by Professional Staff.

2 17. In addition to agreement to the illegal Waiver/Release in the Bylaws, Defendant
3 further coerces and requires Professional Staff to sign an application and/or renewal application
4 containing a similarly illegal and unconstitutional waiver and release (Application
5 Waiver/Release - hereafter "AWR") every two years, as follows in pertinent part:

6 Application Waiver and Release (AWR)

7 I release from liability the County of Los Angeles, the Association,
8 the Professional Schools, and their respective officers, employees
9 or agents, for any of their acts performed in good faith and without
10 malice in connection with evaluating my qualifications and
11 credentials. I release from any liability all individuals and
organizations who provide information to the above in good faith
and without malice concerning my competence, ethics, character,
health status, and other qualifications for Association membership
and clinical privileges, including otherwise privileges (sic) or
confidential information.

12 18. The illegal AWR/BWR directly violate California law and the public policy
13 related to physician peer review in California, the aim of which is to improve quality of care to
14 patients by a balancing of the interests to minimize the potential abuse of the peer review process,
15 as noted in California Business and Professions Code B&P § 809. The mere "Good Faith"
16 requirement is insufficient to confer immunity under California Civil Code Section 43.7, which
17 requires a reasonable effort to obtain the facts, and only based on a reasonable belief that those
18 facts obtained warrant the action taken. The AWR/BWR further violate the law by specifically
19 *including* the County of Los Angeles (the hospital) in the claimed immunity for peer review
20 actions despite the explicit *exclusion* of hospitals from the list of immunized persons and entities
21 in California Civil Code Section 43.7(e).

22 19. On or around September 2017, Defendant sent Plaintiff the PSA biennial renewal
23 application for clinical privileges. Upon careful review, Plaintiff noted that the AWR was illegal.

24 20. In or around September 2017, Plaintiff interlineated the illegal AWR by striking
25 the improper release language in favor of Defendant and its hospital facility, the Harbor-UCLA
26 Medical Center. On or about September 20, 2017, Plaintiff submitted the completed renewal
27 application to Defendant with the interlineated waiver and release.
28

21. In October 2017 and November 2017, MEC member Ramy Eskander, M.D. advised Plaintiff that his renewal application will be deemed withdrawn or incomplete if not resubmitted with the waiver and release (AWR) language unaltered. Dr. Eskander advised Plaintiff that he has already agreed to the unaltered terms of the waiver and release (BWR) by simply submitting the application. Plaintiff advised Dr. Eskander that his application with the interlineated waiver and release was complete and not withdrawn. Plaintiff offered to discuss alternate language of the waiver and release (AWR) to eliminate the illegal release language. Neither Defendant nor Dr. Eskander responded.

22. At the January 2018 Executive Session of the Medical Executive Committee (MEC) meeting on or about January 22, 2018, the MEC members appointed by and acting on behalf of Defendant agreed to ask Plaintiff to *withdraw* his renewal application. By so agreeing, Defendant acknowledged that Plaintiff's renewal application with the AWR interlineated-pending since September 2017- was complete and in effect- evidencing their awareness that the AWR was illegal, unconstitutional and void as against public policy.

23. In or around April 2018, lawyers for Defendant/MEC, Thomas Curtis and David Balfour wrote a letter demanding that Plaintiff sign the illegal Waiver/Release. Plaintiff is informed and believes that Mr. Curtis and Defendant knew that the AWR was illegal as Mr. Curtis had litigated the matter styled: *Axline v. Saint John's Hospital & Health Center* (1998) 63 Cal.App.4th 907.

24. Plaintiff is informed and believes that because of his refusal to sign the illegal AWR, Defendant retaliated against him by revoking or "lapsing" and terminating his clinical privileges, as, *inter alia*:

a. In or around May 2018, Mr. Curtis wrote to Plaintiff, demanding that Plaintiff sign the illegal AWR, unaltered, within 30 days or privileges will "lapse." The PSA Bylaws contain no such allowance for a "lapse" of privileges.

b. On or about June 12, 2018, Mr. Curtis wrote to Plaintiff, threatening Plaintiff that Plaintiff will either allow his privileges to lapse or will leave Harbor-UCLA Medical Center. Mr. Curtis further demanded a predated, irrevocable letter of resignation.

1 c. On or about June 14, 2018, Plaintiff received a letter from Defendant
2 indicating his clinical privileges had “lapsed” (been revoked) and demanding that Plaintiff turn in
3 his Identification badge and to cease providing patient care.

4 d. On or about June 15, 2018, Plaintiff was placed on “ordered absence” -
5 home assignment.

6 e. On or about July 17, 2018, Plaintiff received a letter from Anish Mahajan,
7 M.D. (then the Chief Medical Officer at Harbor-UCLA Medical Center) notifying Plaintiff that he
8 would be discharged because of the loss of privileges based on his refusal to sign the illegal,
9 unconstitutional waiver.

10 f. On or about July 26, 2018, Plaintiff appealed the Notice of Intent to
11 Discharge, advising Defendant by letter that the Waiver/Release is illegal and specifically that it
12 is inconsistent with the constitutional delegation to the legislature of the authority to immunize
13 local government and to establish the scope of peer review immunity.

14 g. On October 12, 2018 Plaintiff received notice of discharge from his
15 employment with Defendant at its hospital facility, the Harbor-UCLA Medical Center.

16 25. Plaintiff is informed and believes that he, and all Professional Staff and Aggrieved
17 Employees are required to sign the same illegal AWR as a condition to renew their clinical
18 privileges, and that the failure to do so would result in a non-renewal of clinical privileges, and
19 termination of employment.

20 26. Plaintiff is informed and believes that all Professional Staff and Aggrieved
21 Employees continue to be forced to sign the same illegal AWR as a condition to renew their
22 clinical privileges every two years. The peer review immunity statute (Civil Code § 43.7)
23 specifically excludes *hospitals* from any immunity for peer review actions. The AWR illegally
24 extends to Defendant County of Los Angeles, depriving Plaintiff and and all Professional Staff
25 and Aggrieved Employees the opportunity to seek relief in a Court or other legal forum for such
26 claims.

27 27. California Labor Code § 2699(a) specifically provides for a private right of action
28 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of

1 law, any provision of this code that provides for a civil penalty to be assessed and collected by the
2 Labor and Workforce Development Agency or any of its departments, divisions, commissions,
3 boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered
4 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
5 current or former employees pursuant to the procedures specified in Section 2699.3.”

6 28. Plaintiff has exhausted his administrative remedies pursuant to California Labor
7 Code § 2699.3. On or about September 20, 2021, Plaintiff gave written notice by online filing to
8 the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendant of
9 the specific provisions of the Labor Code sections 98.6(b)(3), 432.5, 1101, 1102, and 1102.5 that
10 Defendant violated against Plaintiff, and current and former Aggrieved Employees, including the
11 facts and theories to support the violations. Plaintiff’s PAGA case number is Case No. LWDA
12 CM-845306-21. On or about December 16, 2021 and November 18, 2022, Plaintiff gave notice
13 of amended claims by online filing to the LWDA and by certified mail to Defendant again
14 specifying the specific provisions of the Labor Code that were violated, as well as the facts and
15 theories to support the violations. Plaintiff again served the Amended PAGA notice of violation
16 on Defendant by certified mail on or about December 13, 2022. At the time of this filing, 220
17 days has elapsed since Plaintiff provided his amended notice, but the LWDA has not indicated
18 that it intends to investigate Defendant’s Labor Code violations as discussed in the notice. A true
19 and correct copy of the notice is attached as **Exhibit A**.

20 29. Defendant acknowledged receipt of the Amended PAGA Notice by letter dated
21 December 28, 2022 from the Carl Warren Company (their file # 22-4414365(BS)) containing a
22 collection of inapplicable denials and rejected the claim for inter alia, failure to provide notice
23 under the tort claims act.

24 30. Plaintiff responded by letter January 2, 2023 explaining to the County of Los
25 Angeles, County Counsel, and Carl Warren Co. that in pertinent part, the tort claims act did not
26 apply to PAGA actions because a PAGA action is not a claim for damages, but rather an action
27 on behalf of the state of California seeking civil penalties to be paid primarily to the state. There
28 has been no response to the January 2, 2023 letter.

1 31. This continuous violation of Labor Code through the continuous use of the illegal
2 AWR & BWR relates back to the series of violations at least to 2002 when the BWR/AWR were
3 in use by Defendant.

4 32. Plaintiff is informed and believes that Defendant's hospital facility, Harbor-UCLA
5 Medical Center, has been placed on institutional probationary status, placing all residency and
6 fellowship training programs at risk. On information and belief, the Accreditation Council for
7 Graduate Medical Education (ACGME) placed the *institution* of Harbor-UCLA on probation
8 because of complaints of and actions taken to cover up allegations that a surgical department
9 chair at Harbor-UCLA routinely sexually harassed employees, made improper comments of a
10 sexual nature regarding patients, and according to complaints, had inappropriate contact of a
11 sexual nature with anesthetized patients.

12 33. Plaintiff is informed and believes that because of the fear of retaliation, which is
13 compounded by the illegally broad waiver language (AWR/BWR) physicians are reluctant to
14 report acts of Defendant's malfeasance, including the theft and diversion of fentanyl, which was
15 discussed at the March 2016 Medical Executive Committee (MEC) meeting. At that time the
16 Harbor-UCLA pharmacy was already on probation with the CA Pharmacy Board for prior
17 failures to maintain control of controlled substances. Harbor-UCLA Medical Center failed to
18 report the theft and diversion of controlled substances to the CA Pharmacy Board in direct
19 violation of CA Business and Professions Code § 4104 and CA Code of Regulations, Title 16, §
20 1715.6

21 34. Plaintiff is informed and believes that the illegal AWR/BWR has a chilling effect
22 on physicians. Many physicians at Harbor-UCLA were aware of such illegal or improper acts,
23 yet were afraid to pursue complaints or reports because of fear of retaliation through the peer
24 review process, as the illegal release contained in the AWR/BWR is used as both sword and
25 shield allowing Defendant to retaliate by taking adverse action against the Defendant's
26 employees' working conditions or clinical privileges without judicial oversight or consequence.

27 35. The illegal AWR/BWR thus violates the policy to protect the integrity of the peer
28 review process, which directly and negatively impact patient and caregiver safety.

FIRST CAUSE OF ACTION
Civil Penalties Under the Private Attorneys General Act
Labor Code 2699 et seq.

36. Plaintiff refers to and incorporates by reference the allegations of paragraphs 1 to 35 of this complaint.

37. Plaintiff sent notice to Defendant and the LWDA on September 20, 2021 and amended notices on December 16, 2021 and December 13, 2022 detailing the violations of Labor Code sections 98.6(b)(3), 432.5, 1101, 1102, and 1102.5. Over 220 days have elapsed since the date the notice was uploaded online to the LWDA, and notice last sent by certified mail to Defendant. Plaintiff has not received any communication from the LWDA indicating an intent to investigate or pursue this matter. As such, Plaintiff now acts as the private attorney general to collect civil penalties on behalf of the state of California for Defendant's Labor Code violations under Labor Code sections 98.6(b)(3), 432.5, 1101, 1102, and 1102.5.

38. Under California Labor Code Sections 26998-2699.5, Plaintiff, as an Aggrieved Employee and for all Professional Staff and Aggrieved Employees, brings this civil action to recover civil penalties for Defendant's Labor Code violations. Litigating is quintessential political activity; the right to do so is a fundamental civil right.

First Violation
(Violations of Labor Code Section 98.6 by Labor Code 1101/
California Constitution, Article 1, Section 3, Subd. (a))

38.1. Defendant commits a first type of violation of Labor Code section 98.6(a) by discriminating through interference with the rights afforded by Labor Code section 1101 and the California Constitution, Article 1, Section 3, Subd. (a), which guarantee the fundamental civil right to litigate for redress of grievances. Labor Code Section 1101 confers on each employee the right to be free from workplace rules, regulations or policies that would tend to control or direct the political activities of employees. Defendant threatens loss of clinical privileges and employment for exercise of those rights.

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Second Violation
(Violations of Labor Code Section 98.6 by Labor Code 1102/
California Constitution, Article 1, Section 3, Subd. (a))

38.2. Defendant commits a second type of violation of Labor Code section 98.6(a) by discriminating through interference with the rights afforded by Labor Code section 1102 and the California Constitution, Article 1, Section 3, Subd. (a), which guarantee the fundamental civil right to litigate for redress of grievances. Labor Code section 1102 confers on each employee the right to not be coerced to follow or engage in- or not engage in as in this case- any particular political activity. Defendant threatens loss of clinical privileges and employment for exercise of those rights.

Third Violation
(Violations of Labor Code Section 98.6 by Labor Code 1102.5(c))

38.3. Defendant commits a third type of violation of Labor Code section 98.6(a) by discriminating through interference with the rights afforded by Labor Code section 1102.5(c). Labor Code Section 1102.5(c) confers on each employee the right to be free from retaliation because that employee has exercised the right to not engage in illegal activity, ie, refuse the illegal AWR. Defendant threatens loss of clinical privileges and employment for exercise of that right.

Fourth Violation
(Violations of Labor Code Section 98.6 by Government Code Section 3203/
California Constitution, Article 1, Section 3, Subd. (a))

38.4. Defendant commits a fourth type of violation of Labor Code section 98.6(a) by discriminating through interference with the rights afforded by Government Code section 3203 and the California Constitution, Article 1, Section 3, Subd. (a), which guarantee the fundamental civil right to litigate for redress of grievances. Government Code section 3203 confers on each government employee the right to be free from restrictions placed on the political activities the employee may or may not engage in. Defendant threatens loss of clinical privileges and thereby employment for exercise of those rights.

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Fifth Violation
(Violations of Labor Code Section 98.6 by Labor Code Section 432.5)

38.5. Defendant commits a fifth type of violation of Labor Code section 98.6(a) by discriminating through interference with the rights afforded by Labor Code section 432.5; Labor Code section 432.5 confers on each employee the right to freely refuse to enter into illegal contracts. Defendant threatens loss of clinical privileges and thereby employment for exercise of that right.

Sixth Violation
(Violations of Labor Code Sections 98.6 by Government Code Section 12964.5)

38.6. Defendant commits a sixth type of violation of Labor Code section 98.6(a) by discriminating through interference with the rights afforded by Government Code section 12964.5. Government Code section 12964.5 confers on each employee the right to not be forced or coerced to "...sign a release of a claim or right under this part." Defendant threatens loss of clinical privileges and thereby employment for exercise of that right.

39. By forcing Plaintiff, Professional Staff and Aggrieved Parties to agree to and sign the illegal BWR & AWR, respectively, as conditions of maintaining clinical privileges and thereby employment, and by threatening to and actually revoking clinical privileges and terminating employment for the refusal to do so, Defendant's conduct as enumerated above violates Labor Code section 98.6, subd.(a). Labor Code section 98.6, subd. (a) provides that a person may not discharge, discriminate, retaliate or take any adverse action against an employee or job applicant for engaging in certain types of conduct protected by the Labor Code, including: political activities (Lab.C. § 1101,1102, 1102.5(c)); whistleblowing (Lab.C. § 1102.5); or **"the exercise by the employee or applicant ... of any rights afforded him or her."** (Labor Code section 98.6; see Labor Code section 98.6(a); Labor Code Section 1102.5, subd. (c).) An employer who violates Labor Code section 98.6 is subject to a civil penalty of up to \$10,000 per employee who suffered the violation for *each* violation. (Labor Code section 98.6(b) (amended eff. 1/1/15).)

40. Every two years, the renewal application waiver (AWR) is required of similarly Aggrieved Employees. Each time the AWR is required *for each similarly Aggrieved Employee* is a unique instance of each of the six violations of Labor Code 98.6, subd. (a) enumerated above.

WHEREFORE, Plaintiff prays for judgment against Defendant.

PRAYER

WHEREFORE, Plaintiff Dr. Timothy Ryan demands on behalf of the state of California and similarly Aggrieved Employees judgment against Defendant, as follows:

1. For civil penalties under PAGA in an amount up to \$10,000 per violation to be determined at trial, but at least the jurisdictional amount of this Court;
2. For prejudgment interest at the legal rate;
3. For attorney's fees and costs; and
4. For all such other and further relief as the Court may deem just, proper and equitable.

Dated: August 3, 2023

CANNATA, O'TOOLE & OLSON LLP

THERESE Y. CANNATA
Attorneys for Plaintiff
Dr. Timothy Ryan

EXHIBIT A

September 17, 2021

Ed Morrissey
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County of Los Angeles
Kenneth Hahn Hall of Administration
500 West Temple Street #648
Los Angeles, CA 90012

Janine Vintch, MD;
Harbor-UCLA Medical Center
Division of Respiratory and Critical Care
1000 W. Carson Street, CDCRC:
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Torrance, CA 90509-2910

Hal Yee, MD, PhD
Los Angeles County Health Services
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Anish Mahajan, MD
Chief Medical Officer, Harbor UCLA
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By Certified Mail and email; Contact Us@counsel.lacounty.gov

Re: Notice of Claim; PAGA, CA Labor Code § 2698 et seq, 98.6, 1101,1102, 1102.5(c), 1103; Gov § 12964.5, 3201-3203.

On Behalf of the State of California, I Timothy Ryan, MD, an aggrieved former employee (Lab §2699(c))and for the benefit of others similarly situated, hereby provide notice of claims under the Private Attorney General Act (PAGA) Labor

Code § 2698, 2699, et seq, alleging ongoing violations of Lab § 98.6, 1101, 1102, 1102.5 and 1103. Violations were and continue to be committed by County of Los Angeles and the following individuals: Christian deVirgilio, MD; Ramy Eskander, MD; Roger Lewis, MD, PhD; Anish Mahajan, MD; Mark Morrow, MD; Ed Morrissey; Beverly Petrie, MD; Brant Putnam, MD; Janine Vintch, MD; Hal Yee, MD, PhD; and all current and past members of the Harbor-UCLA Medical Executive Committee, and Does 1-100; collectively *Defendants*. *Defendants* violate the CA Constitution, CA Labor Code, Government Code and CA Civil Code. I make these claims on behalf of the State of California for redress of infringement on the rights of current and former healthcare provider employees (later further described) of the County of Los Angeles as well for the benefit of other similarly situated individuals.

Early Notice of Violations to Defendants:

The violations are ongoing, recommitted with every clinical privilege renewal application. County of Los Angeles and Medical Executive Committee members and officers/agents/employees of County of Los Angeles (Defendants) have been aware of the violations at least since July 26, 2018 by letter from Dr. Ryan. On information and belief, Defendants have been informed of and known of the violations since at least December 2017. Attorney Sara Hersch- retained by Defendant County of Los Angeles-had reason to know that the waiver and release language required of healthcare provider privilege applicants was over broad, illegal, improper and unconstitutional and unenforceable and violated Labor Code 1101 and 1102. Similarly, and more obviously, Attorney Tom Curtis also retained by Defendant County of Los Angeles had reason to know of the illegal nature of the of the application waiver and release. Mr. Curtis was uniquely positioned to advise Defendants as to the unlawful nature of the release and waiver, as before he represented COUNTY of Los Angeles, Mr. Curtis argued and prevailed in a seminal case on the issue of the extent of peer review immunity. The Court held “Whether this immunity should be extended to hospitals themselves is for the Legislature to decide, and it has. **We cannot add to or detract from what it has done**” *Axline v. Saint John's Hospital & Health Center*, 63 Cal.App.4th 907, 914 (Cal. Ct. App. 1998). (*emphasis added*)

The Group of Aggrieved Individuals:

Similarly situated individuals are all those individuals who have been offered applications for clinical privileges to practice at Harbor-UCLA Medical Center, LAC-USC Medical Center, Rancho Los Amigos Medical Center, Olive View

Medical Center and MLK Medical Center *without regard to whether or not the application was returned*. Similarly situated individuals include licensed physicians, (MD and DO), Physician Assistants, Podiatrists and other licensed healthcare providers for whom clinical privileges to provide patient care are required, limited to those individuals who have received applications for such privileges (initial and/or renewal applications) at one of the listed facilities during the period 2001-2021 and ongoing.

The class of similarly situated individuals excludes those persons who have in the past served or are now serving on the various Medical Executive Committees, and further excludes resident physicians and trainees in allied health fields.

The names and contact information for the similarly situated aggrieved individuals are uniquely available to Defendants.

Specific Allegations of Violations of CA Labor Code:

On behalf of the State of California, and for the benefit all similarly situated I claim and allege:

Defendants by and through participation on and/or control of the Medical Executive Committees do in fact control the applications for, review of and granting or denial of clinical privileges at the institutions. By appointing the chairpersons of the various clinical departments, County exercises control over the Medical Executive Committee. Accordingly, through County appointee employees, Defendants exercise complete control over employment for physicians at the institutions. The Professional Staff Bylaws at Harbor-UCLA specify that the clinical privilege application language is in a form “approved by” the Medical Executive Committee. (see **4.2-1 Application form**, pg. 23). The application contains an unconstitutional, explicitly unlawful waiver and release, in that an applicant is required to waive the right to litigate (make and prosecute claims) against County of Los Angeles to remedy improper or retaliatory peer review actions. The Harbor-UCLA privilege application waiver:

“I release from liability the County of Los Angeles, the Association, the Professional Schools, and their respective officers, employees or agents, for any and all acts performed in good faith and without malice in connection with evaluating my qualifications and credentials. I release from any liability all individuals and

organizations who provide information to the above in good faith and without malice concerning my competence, ethics, character, health status, and other qualifications for Association membership and clinical privileges, including otherwise privileged or confidential information.”(emphasis added)

The application waiver directly contradicts the relevant state law (CA CIV § 43.7(e) which specifically *excludes* the hospital (County of Los Angeles) from immunity for peer review actions. It cannot be debated that the CA Constitution reserves for the Legislature *alone* the right to determine the conditions under which a claim may be made against a County in Article XI §12. Subsequently, the court noted “Whether this immunity should be extended to hospitals themselves is for the Legislature to decide, and it has. **We cannot add to or detract from what it has done**” *Axline v. Saint John's Hospital & Health Center*, 63 Cal.App.4th 907, 914 (Cal. Ct. App. 1998). (*emphasis added*)

Confirming this interpretation, The CA Supreme Court noted “Additionally, the Legislature could have **expressly excluded all hospitals from the privilege, as it has done in other provisions granting immunity from tort liability (e.g., § 43.7** [“This section shall not be construed to confer immunity from liability on any . . . hospital.”]),” *Hassan v. Mercy American River Hospital*, 31 Cal.4th 709, 717-18 (Cal. 2003) (*emphasis added, ellipsis in original*). County and Individual Defendants- through personal participation in and/or control of the Medical Executive Committee(s)- have unconstitutionally and illegally wielded authority to limit fundamental civil rights- an authority they do not possess.

The California Constitution at Article XI, Section 12 plainly states:

“The Legislature may prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees.”

Defendants have ignored this plain statement, violated the California Constitution and assumed an authority to alter the conditions established by the legislature. To conclude that a local government entity has authority to alter the contours of the immunity or liability of a local government entity is to render Article XI Section 12 meaningless.

The California Peer Review system was established to protect the public welfare by providing a means to remove unsafe practitioners. This goal was balanced somewhat against the needs of providers to not be subjected to unfair peer review

conditions. see CA BPC § 809(a). Peer review therefore is *primarily* for the benefit of the public at large. Having been so established, the contours of peer review immunity are not subject to alteration or negotiation, having been fixed by the legislature. (see CIV §3513). Furthermore, even one argued in the absence of Civil Code §3513 or any primary public benefit of peer review (absurd assumptions), the individual and County Defendants *specifically lack authority* to alter the conditions under which claims can be made or prosecuted against a public entity. CA Const Art XI, §12.

Should any doubt remain as to the illegal nature of the waiver and release required of applicants for privileges at County-operated healthcare institutions, and no good faith doubt can exist, we turn to CA Government Code §12900, et seq for clarification. Gov §12940(f) prohibits the requirement of a psychiatric or medical examination in all but very limited circumstances. Gov §12940(h) expressly prohibits retaliation for resisting or objecting to any violation of GOV §12940.

The California Supreme Court has further held that even in cases wherein the employee reasonably but erroneously believes (s)he has been subjected to discriminatory treatment under GOV §12900 et seq, retaliation against that employee is prohibited. The conduct and resistance of the questionably prohibited conduct is protected not only when it is later found to have been illegal “...but also when the employee opposes conduct that the employee reasonably and in good faith believes to be discriminatory, whether or not the challenged conduct is ultimately found to violate the FEHA. It is well established that a retaliation claim may be brought by an employee who has complained of or opposed conduct that the employee reasonably believes to be discriminatory, even when a court later determines the conduct was not actually prohibited by the FEHA. (See, e.g., *Miller v. Department of Corrections* (2005) [36 Cal.4th 446, 473](#) [[30 Cal.Rptr.3d 797, 115 P.3d 77](#)]; *Flait v. North American Watch Corp.*, *supra*, [3 Cal.App.4th at p. 477](#); *Moyo v. Gomez* (9th Cir. 1994) [40 F.3d 982, 985](#) (*Moyo*); *Gifford v. Atchison, Topeka Santa Fe Ry. Co.* (9th Cir. 1982) [685 F.2d 1149, 1157](#)).)(*Yanowitz v. L'Oreal USA Inc.*, [36 Cal.4th 1028, 1043](#) (Cal. 2005))

It is notable for the purposes of this claim that Attorneys Linda Miller-Savitt and John Manier, both retained by County of Los Angeles submitted an amicus brief in the Yanowitz case, demonstrating with clarity that they have already tried to have the law say something it does not, and that they failed in doing so. Defendants are and have been aware that their conduct - retaliating against those who would resist violations of GOV §12940 and Lab §1101, et seq. is prohibited by law.

The waiver and release language required by COLA in the so-called “Behavioral Contract”, in the clinical privilege application and included in the Harbor-UCLA professional Staff Bylaws purports to release from liability any and all actors for actions in connection with peer review. It is undisputed that the behavioral Contracts employed by County are connected with evaluating qualifications and credentials i.e., “peer review”. The Bylaws further purport to require the waiver and release of Protected Health Information (PHI). CIV 56.10 et seq expressly prohibits any adverse employment action based on employee refusal to waive privacy of medical information.

Gov §12940(h) expressly prohibits retaliation for refusing or objecting to any of the prohibited discriminatory acts (such as the mandatory psych or medical exam). Labor Code § 1102.5(c) prohibits retaliation against an employee for refusing to engage in conduct that would violate a statute.

Finally, Gov §12964.5 expressly prohibits the requirement of any waiver or release of liability for any violations of FEHA, including the requirement of an illegal psychiatric examination and retaliation for refusing same. A practice made illegal by one code (GOV) cannot be a legal and proper practice under the Labor Code. Any act or practice- such as the privilege application waiver and release-made unlawful by one code section (12964.5) remains unlawful no matter the lens through which it is viewed, and can only be made legal through more specific, later enacted statutes. No such specific or later statute exists, and the specific statute related to peer review *specifically excludes* the immunity for hospitals claimed by County of Los Angeles, as does the case law.

The pattern and practice of COLA of illegally requiring waiver and release of liability for actions “in connection with” ... “evaluating qualifications and credentials” clearly has and continues to violate the absolute prohibition of such a waiver in GOV §12964.5(a)(1)(B).

COLA has expressly admitted that they invoke refusal of the illegal waiver as an excuse for revoking clinical privileges. COLA has repeatedly admitted that the refusal of the explicitly illegal waiver language can then be used to revoke the clinical privileges of a physician employee and then use that loss of privileges as a pretextual excuse to discharge that employee. The violations enumerated below demonstrate a pattern of continuously renewing violations, with each new or renewal application requiring the illegal waiver a part of the continuing series of violations. Indeed, the existence of the illegal waiver is a sword hanging over the head of every provider at County facilities, reminding them that should they dare

speak up to protect patient welfare or report fraud, waste or abuse- they can be certain that having waived their rights for recourse, Defendants would punish with impunity.

This practice of requiring a broad waiver and release directly impacts patient care by eliminating effective physician peer review, instead rewarding those who don't speak up and punishing those who advocate for patient care. This practice impacts the healthcare provided to hundreds of thousands of patients at Harbor-UCLA alone and likely impacts the healthcare of in excess of a million patients annually in Los Angeles County. ¹

1. Defendants repeatedly violate CA Const. Article XI § 12 and Civil Code § 43.7(e) by extending the peer review immunity in CA Civil Code § 43.7(b) to include County of Los Angeles- The hospital- in the waiver and release language every applicant is forced to agree to in order to obtain or renew clinical privileges. In doing so, they violate Lab § 1101/1102 as the right to litigate is the right to engage in political activity. Defendants have committed the violations repeatedly and continuously with *every individual application* for clinical privileges at Harbor-UCLA- on information and belief at least during the time period 2001 to present. On information and belief, Doe defendants have committed the same violations during the same time period.
2. County and individual defendants violated the CA Constitution, CIV 43.7(e), Lab 1101/1102, GOV 3201-3 by including similarly illegal and overly broad waiver and release language in the 2001 Harbor UCLA Bylaws at Article IV, Section 1., page 10, paragraph C, with virtually identical illegal release and waiver of rights.
3. County and individual defendants violated the CA Constitution Art XI §12, CIV §43.7(e), Lab §1101, 1102, 1102.5, 1103 and GOV §3201-3 by including similarly illegal and overly broad waiver and release language in the 2016 revised Harbor-UCLA bylaws.
4. Defendants violated and continue to violate CA GOV §3203 and Labor Code §1101 and 1102, 1102.5(c) and 1103 by requiring a waiver and release of liability with each application for new or renewed clinical privileges. Labor Code §1101 specifically prohibits an employer pressuring an employee to engage or not engage in political activity. Litigating- that is- making and prosecuting claims for improper peer review actions- is *Political Activity*. Gov §3201-3203 provides in exquisite clarity that the

¹ <http://www.harbor-ucla.org/wp-content/uploads/2020/01/Fact-Sheet-1-2020-1.pdf>

prohibition of interference with public employee political activity is nearly absolute. In spite of this clarity, Defendants force employees and applicants for privileges to agree to waive fundamental civil rights to political activity in the form of litigation for wrongful peer review actions under pain of loss of clinical privileges and employment.

5. **Doctrine of Unconstitutional Conditions:** Defendants violate the Doctrine of Unconstitutional Conditions each time a practitioner is required to renew their privileges every two years- requiring anew an illegal waiver of fundamental civil rights to engage in political activity under the threat of loss of clinical privileges and employment. Conditioning the receipt of a public benefit- even a discretionary benefit- on the waiver of a Constitutional right places a crippling burden- a burden County and Defendant County employees, officers and agents lack Constitutional authority to attempt to bear. Each and every distribution of the application with the unlawful waiver language is a violation of Lab §1102 in that an employee is coerced to engage in an unconstitutional bargain in order to maintain employment. Adverse employment action taken *because of complainant's refusal* to engage in that unconstitutional bargain directly violated Lab 1102.5(c).
6. **CA BPC § 809-809.8** articulates the public importance and benefit of properly conducted peer review. The legislature- and only the legislature- has authority to establish, add to or limit the terms under which a claim may be brought against a public entity. (CA Const Art. xi § 12). By extending the immunity associated with peer review actions to include the COUNTY and The Medical Center, Defendants have discarded the careful balancing done by the legislature, extended immunity to COUNTY and ignored the requirements in CIV 43.7(b) that peer review immunity requires a “reasonable effort to obtain the facts...” among other conditions. Defendants disrupted the carefully balanced interests of the public, the peer reviewers and the peer-reviewed. This extended immunity as applied TO COUNTY for peer review actions creates and has created a culture of fear in which physicians largely are unwilling to report discrimination, fraud, waste, abuse or substandard care and instead either take the money themselves or look away so as not to rock the boat. This has and continues to directly negatively impact the quality of care delivered at the named institutions by neutering the peer review mechanism. In this violation of CIV 43.7, Defendants violate Lab. §1101, 1102, 1102.5 and 1103 by coercing the waiver of fundamental civil rights to political activity under threat of loss of employment and career destruction.

7. **GOV §3202** plainly states that “this chapter shall supersede all provisions on this subject...” relating to the political activities of government employees, and §3203 plainly prohibits interfering therewith. Defendants have *habitually* interfered with the political activities (thereby violating LAB §1101, et seq) of employees by requiring waiver of the fundamental civil right to make claims against County for retaliatory peer review actions.
8. **CA Lab §1101/2** prohibit *coercing* an employee to participate or refrain from participating in any political activity by job loss or threat of job loss. Litigating is quintessential political activity. By coercing employees with threats of or actual loss of privileges and loss of employment if the employee/applicant refuses the unlawful waiver, Defendants coerce the unlawful waiver of rights to political activity and thereby violate Lab §1102. By and through threats of and actual discharge, Defendants have admitted to discharging complainant specifically because of refusal to engage in the enumerated violations of law, thus admitting violation of Lab §1102.5(c)
9. Defendants have admitted to violating Labor Code §1102.5(b), (c) and 1103. Defendant Putnam, writing on behalf of the members of the Medical Executive Committee at Harbor-UCLA admitted that the Medical Executive Committee voted to revoke clinical privileges because complainant had:
 - a) refused an unlawful behavioral contract; and
 - b) “Openly threatened to call external agencies to conduct investigations;”

As to the behavioral contract, it violated Gov §12940(f), (h), Gov§ 3203 and Labor Code §1101, 1102. Taking adverse employment action because of refusal to violate the law is a violation of Labor Code 1102.5(c).

As to the claim that complainant “threatened” to call external agencies, there is no dispute that complainant in fact had already reported fraud, waste, medical record falsification both internally and externally. Ample documentation and testimony from defendants prove that Defendants knew that complainant had in fact already reported the crimes.

By admitting in the November 10, 2016 “Notice of Charges”, Dr Putnam has admitted on behalf of Defendants that they acted to retaliate (in violation of Lab §1102.5(b),(c) by voting to revoke the clinical privileges of complainant *because* complainant reported fraud, kickbacks and medical record falsification and *because* he refused to participate therein.

Defendants Putnam and Vintch then forged documents to be used in the quasi-judicial proceeding (peer review hearing) in their quest to retaliate

against complainant. In April 25, 2016, at a Meeting of the Medical Executive Committee, the matter of a whistleblower retaliation lawsuit was discussed. In the minutes taken at that meeting, the desire to avoid the appearance of retaliation was discussed. These minutes were then verified and signed by Dr Putnam on May 23, 2016.

Months later, as Defendants prepared documents for use in the quasi-judicial proceeding in their continued efforts to retaliate, Dr.'s Putnam and Vintch realized the incriminating nature of the record of their retaliation. Dr. Putnam then engaged with Dr. Vintch to *edit* (that is, commit forgery CA PEN 132) the MEC minutes of April 25, 2016, Putnam emailed the forged documents to Dr. Vintch on December 13, 2016 at 7:01pm PST, asking her to review before he would send them to the attorneys.

On December 18, 2016 at 12:22 pm PST, Putnam then emailed the forged documents to the Medical Staff office.

The documents were then provided to Erin Muellenberg, a lawyer at Arent Fox representing Defendants in their retaliatory efforts. Ms. Muellenberg then caused copies of the forged minutes to be delivered to Counsel for complainant in April 2017.

The document produced by Defendants purported to be the Minutes of the Medical Executive Committee meeting of April 25, 2016 (designated LAC00320-323) is a forgery created by Dr. Putnam and or Dr. Vintch. The actual MEC minutes from April 25, 2016 were delivered to the Division of Investigation of the California Department of Consumer Affairs in response to a subpoena in June 2020, and were subsequently produced by Defendants as (DEF011956-011958).

Considering that Defendants have shown themselves willing to commit the felony of introducing a forged document into a proceeding (PEN 132), the fact that these additional acts represent additional misdemeanor violations of Labor Code § 1102.5 and 1103 is of lesser consequence.

10. **LAB § 98.6** Defendants violated and do violate LAB § 98.6, 1101, 1102 each time the unlawful privilege application waiver and release is delivered to an applicant as an unlawful adhesion contract. Defendants have used and continue to use the threat of loss of clinical privileges and subsequent discharge from employment if the applicant or employee insists on retaining the right to engage in political activity (Lab§ 1101/1102, Gov §3201-3203). The Harbor-UCLA bylaws and CA law require each

practitioner to renew clinical privileges every two years. The 2016 Harbor-UCLA bylaws at (**4.4 Reappointment Process**, pg. 30) plainly state that failure to timely complete the renewal application for privileges will result in loss of clinical privileges. Employees or applicants without clinical privileges cannot maintain or obtain employment, respectively. Defendants improperly and unlawfully condition the grant and renewal of clinical privileges on the waiver of the fundamental right to political activity. Defendants repeat the violation every time the unlawful waiver is provided to an applicant for privileges. The privilege application waiver and release is offered as an adhesion contract on a strictly take it or leave it basis- requiring applicants to waive fundamental civil rights in order to obtain or maintain employment. The waiver and release language is *chosen by the Members of the Medical Executive Committee*. They have repeatedly chosen to continue to extort the waiver of fundamental civil rights in exchange for the possibility of maintaining employment- to the grave detriment of effective peer review and patient care.

11. **GOV § 12964.5** plainly makes it an unlawful employment practice for an employer to require a waiver or release from liability for any violation of (the Chapter) GOV §12900, et seq. Gov §12940(h) expressly prohibits *retaliation* for resisting such a violation. There can be no doubt that the waiver and release required by Defendants purports to waive rights to civil action and thereby expressly violates GOV§ 12964.5. By and through control of the Bylaws and the Medical Executive Committee through control of the application waiver and release language violate Lab §1101, 1102 and 1102.5(c). Lab §1101 is violated by “(b) *Controlling or directing, or tending to control or direct the political activities or affiliations of employees.*” by means of requiring a waiver of the rights to pursue civil actions, as litigating is “political activity”. Lab §1102 is violated through threat and coercion by means of threatened loss of clinical privileges if an employee refuses the waiver of rights to engage in political activity (litigate) as guaranteed by GOV §12964.5. Lab §1102.5(c) is violated by threat of and actual retaliation against any employee refusing or resisting the illegal waiver language, (Gov §12940(f), (h)), the illegal waiver of PHI (CIV §56.20(b)) and by retaliation for refusing to engage in the violation-through forced waiver of rights to political activity-of GOV §3201-3. That is- by admitting that they will and have revoke(d) the clinical privileges and discharge an employee who has refused unlawful practices (the unlawful waiver) the Defendants admit violations of Lab §1102.5(c).
12. **Labor Code § 1103** criminal violations. Each violation of Division 2, Part 3, Chapter 5 of the California Labor Code- which encompasses Lab §1101-1106 is a misdemeanor punishable by a fine of up to \$1,000, imprisonment

in the county jail not to exceed one year or both that fine and imprisonment.

By including waiver and release language in the bylaws and privilege renewal applications, Defendants act in “controlling or tending to control or direct the political activities...” of employees, as litigating is political activity. In so doing, Defendants violate Lab §1101 each time they offer a privilege application with the unlawfully broad waiver and release. Accordingly, each privilege renewal application is by itself a crime under Lab §1103.

The threat of loss of privileges- leading to loss of employment- explicitly made in writing in the bylaws, repeated in the privilege application and in communications and actions from the Medical Executive Committee members and COLA agent Mr. Curtis each represent overt violations of Lab §1102 in that the threat of loss of employment has been made in effort to coerce the waiver of the right to political activity. Each of these violations of Lab §1102 is a discrete criminal violation under Lab §1103.

Defendants have admitted to revoking clinical privileges explicitly because of refusal to agree to their unconstitutional and unlawful conditions. In so doing they admit to violations of Lab § 1102.5(c). By violating Lab § 1102.5(c), they have committed a crime for each violation under Lab §1103. Specifically, I refused their attempts to violate Gov §12964.5. That section prohibits requiring a waiver of the right to sue for violations of FEHA. I refused the attempted violation of Gov § 3203 in that that section prohibits with clarity any attempt to restrict political activities of government employees.

13. California Business and Professions Code § 2236 provides that conviction of any misdemeanor substantially related to the qualifications, functions or duties of a physician and surgeon is unprofessional conduct and therefore is subject to licensure action by the California Medical Board. Each violation of Labor Code §1101-1102.5(c) represents a separate act of unprofessional conduct by each of the licensed physician defendants.

Demand:

No cure is possible for prior failures in peer review that resulted from this culture of fear. Similarly, no cure can be possible for prior infringements on the rights to petition, nor for the silencing effects these infringements caused.

On behalf of the State of California, and for the benefit of myself and all others who have been provided applications for clinical privileges at the named institutions, limited to those individuals who received applications with waiver and release language extending beyond the statutory immunity in CIV §43.7(b)&(e), further limited to those individuals who have not served on the Medical Executive Committee, and further limited to those who received privilege applications 2001-present, I demand the following:

- A. Immediate suspension of use of the illegally broad waiver and release language, with immediate replacement by reference to/incorporation of the statutory immunities and *only* the statutory immunities;
- B. Immediate notice to all County-employed and associated providers of the illegality of and rescission of the waiver and release terms;
- C. Immediate reinstatement with back pay, interest, benefits and tax neutralization for each individual so affected;
- D. LAB § 98.6 Civil Penalty of \$10,000 per violation- The civil penalty applies to each delivery of the unlawful waiver and release language to each and every potential applicant, i.e., repeated violations every two years for every staff member/applicant not also an MEC member.
- E. LAB §2699(f) civil penalty from each of the individual defendants of \$100 per pay period per applicant subjected to the illegal waiver and release terms.
- F. Actual damages according to proof.
- G. Attorney fees under LAB § 2699(g), 1101,1102, 1102.5(c).

Sincerely,

Timothy Ryan, MD

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December 16, 2021

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By Certified Mail and email; Contact Us@counsel.lacounty.gov

Re: Notice of Amended Claim (LWDA Case No. LWDA-CM-845306-21). PAGA, CA Labor Code § 432.5, 2698 et seq, §98.6, §1101-1104; Gov § 12964.5, 3201-3203.

On Behalf of the State of California, I Timothy Ryan, MD, an aggrieved former employee (Lab §2699(c)) and for the benefit of others similarly aggrieved, hereby provide notice of amended claims under the Private Attorney General Act (PAGA) Labor Code § 2698, 2699, et seq, alleging ongoing violations of Lab §432.5, 98.6, 1101-1104. Additionally, the claims made in LWDA Case No. LWDA-CM-

845306-21 are hereby incorporated completely as if recited fully herein. See Appendix 1.

Violations were and continue to be committed by County of Los Angeles and the following individuals: Christian deVirgilio, MD; Ramy Eskander, MD; Roger Lewis, MD, PhD; Anish Mahajan, MD; Mark Morrow, MD; Ed Morrissey; Beverly Petrie, MD; Brant Putnam, MD; Janine Vintch, MD; Hal Yee, MD, PhD; and all current and past members of the Harbor-UCLA Medical Executive Committee, and Does 1-100; collectively *Defendants*. *Doe Defendants* by virtue of Medical Executive Committee membership are limited to those MEC members 2000 to present. *Defendants* violate the CA Constitution, CA Labor Code, Government Code and CA Civil Code. I make these claims on behalf of the State of California for redress of infringement on the rights of current and former healthcare provider employees (later further described) of the County of Los Angeles as well for the benefit of other similarly situated individuals.

Early Notice of Violations to Defendants:

The violations are ongoing, recommitted with every clinical privilege renewal application. Respondent Medical Executive Committee members and officers/agents/employees of County of Los Angeles (Defendants) have been individually aware of the illegality of the required waiver and release at least since July 26, 2018 by letter from Dr. Ryan.

Respondent- employer County of Los Angeles was a party to *County of Los Angeles v. Raytheon Co.*, 159 Cal. App. 4th 27 (Cal. Ct. App. 2008). The published opinion for this case cites *Hassan v. Mercy American River Hospital*, 31 Cal.4th 709, 717-18 (Cal. 2003). The Hassan court explicitly noted the exclusion of *hospitals* from the group of entities partially immunized for peer review activities. In the Raytheon case, Hassan was cited particularly for the clarity with which the Hassan court addressed the issue of statutory interpretation as to the *exclusion* of hospitals from immunity under Civ 43.7(e).

“Additionally, the Legislature could have expressly excluded all hospitals from the privilege, as it has done in other provisions granting immunity from tort liability (e.g., [§ 43.7](#) [“This section shall not be construed to confer immunity from liability on any . . . hospital.”])” *Hassan, supra*.

Similarly, respondent COUNTY was a party to *City of Alhambra v. County of L.A.*, S185457 (Cal. 2012) in which *Hassan* was again cited for the clarity of

explanation of statutory interpretation as to the *exclusion* of hospitals from immunity under CIV 43.7(e).

Attorney Sara Hersch- retained by Defendant County of Los Angeles-had reason to know that the waiver and release language required of healthcare provider privilege applicants was over broad, illegal, improper and unconstitutional and unenforceable and violated Labor Code 1101-1104; Government Code 12940, 12964.5 and Government Code 3203.

Similarly, and more obviously, Attorney Tom Curtis also retained by Defendant County of Los Angeles had reason to know of the illegal nature of the of the application waiver and release. Mr. Curtis was uniquely positioned to advise Defendants as to the unlawful nature of the release and waiver, as before he represented COUNTY of Los Angeles, Mr. Curtis argued and prevailed in a seminal case on the issue of the extent of peer review immunity. The Court held “Whether this immunity should be extended to hospitals themselves is for the Legislature to decide, and it has. **We cannot add to or detract from what it has done**” *Axline v. Saint John's Hospital & Health Center*, 63 Cal.App.4th 907, 914 (Cal. Ct. App. 1998). (*emphasis added*)

It is therefore beyond debate that County of Los Angeles and individual respondents knew that a waiver and release requirement that extended immunity to The County of Los Angeles (The Hospital) was unlawful.

The Group of Aggrieved Individuals:

Similarly aggrieved individuals are all those individuals employed (and/or formerly employed) by County of Los Angeles 2001-present who have been offered applications for clinical privileges to practice at Harbor-UCLA Medical Center, LAC-USC Medical Center, Rancho Los Amigos Medical Center, Olive View Medical Center and MLK Medical Center. Similarly aggrieved individuals include licensed physicians, (MD and DO), Physician Assistants, Podiatrists and other licensed healthcare providers for whom clinical privileges to provide patient care are required, limited to those individuals who have received applications for such privileges (initial and/or renewal applications) at one of the listed facilities during the period 2001-2021 and ongoing.

The class of similarly aggrieved individuals excludes those persons who have in the past served or are now serving on the various Medical Executive Committees, and further excludes resident physicians and trainees in allied health fields.

The names and contact information for the similarly aggrieved individuals as well as the Doe Defendants are uniquely available to respondents.

Specific Allegations of Violations of CA Labor Code:

On behalf of the State of California, and for the benefit all similarly aggrieved I claim and allege:

Defendants by and through participation on and/or control of the Medical Executive Committees do in fact control the applications for, review of and granting or denial of clinical privileges at the institutions. By appointing the chairpersons of the various clinical departments, County exercises control over the Medical Executive Committee. Accordingly, through County appointee employees, respondents exercise complete control over employment for physicians at the institutions. The Professional Staff Bylaws at Harbor-UCLA specify that the clinical privilege application language is in a form “approved by” the Medical Executive Committee. (see **4.2-1 Application form**, pg. 23). The application contains an unconstitutional, explicitly unlawful waiver and release, in that an applicant is required to waive the right to litigate (make and prosecute claims) against County of Los Angeles to remedy improper or retaliatory peer review actions. The Harbor-UCLA privilege application waiver:

“I release from liability the County of Los Angeles, the Association, the Professional Schools, and their respective officers, employees or agents, for any and all acts performed in good faith and without malice in connection with evaluating my qualifications and credentials. I release from any liability all individuals and organizations who provide information to the above in good faith and without malice concerning my competence, ethics, character, health status, and other qualifications for Association membership and clinical privileges, including otherwise privileged or confidential information.”(emphasis added)

The application waiver directly contradicts the relevant state law (CA CIV § 43.7(e) which specifically *excludes* the hospital (County of Los Angeles) from immunity for peer review actions. The general statute (Labor code 1104) makes plain that an employer is *liable for the acts of its employees/agents/officers*.

It cannot be debated that the CA Constitution reserves for the Legislature *alone* the right to determine the conditions under which a claim may be made against a County in Article XI §12. Subsequently, the court noted “Whether this immunity

should be extended to hospitals themselves is for the Legislature to decide, and it has. **We cannot add to or detract from what it has done**" *Axline v. Saint John's Hospital & Health Center*, 63 Cal.App.4th 907, 914 (Cal. Ct. App. 1998). (*emphasis added*)

Confirming this interpretation, The CA Supreme Court noted "Additionally, the Legislature could have **expressly excluded all hospitals from the privilege, as it has done in other provisions granting immunity from tort liability (e.g., § 43.7** ["This section shall not be construed to confer immunity from liability on any . . . hospital."])," *Hassan v. Mercy American River Hospital*, 31 Cal.4th 709, 717-18 (Cal. 2003) (*emphasis added, ellipsis in original*). County and Individual Defendants- through personal participation in and/or control of the Medical Executive Committee(s)- have unconstitutionally and illegally wielded authority to limit fundamental civil rights- an authority they do not possess.

The California Constitution at Article XI, Section 12 plainly states:

"The Legislature may prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees."

Defendants have ignored this plain statement, violated the California Constitution and assumed an authority to alter the conditions established by the legislature. To conclude that a local government entity has authority to alter the contours of the immunity or liability of a local government entity is to render Article XI Section 12 meaningless.

The California Peer Review system was established to protect the public welfare by providing a means to remove unsafe practitioners. This goal was balanced somewhat against the needs of providers to not be subjected to unfair peer review conditions. see CA BPC § 809(a). Peer review therefore is *primarily* for the benefit of the public at large. Having been so established, the contours of peer review immunity are not subject to alteration or negotiation, having been fixed by the legislature. (see CIV §3513). Furthermore, even if argued in the absence of Civil Code §3513 or any primary public benefit of peer review (absurd assumptions), the individual and County Defendants *specifically lack authority* to alter the conditions under which claims can be made or prosecuted against a public entity. CA Const Art XI, §12.

COLA has expressly admitted that they invoke refusal of the illegal waiver as an excuse for revoking clinical privileges. COLA has repeatedly admitted that the refusal of the explicitly illegal waiver language can then be used to revoke the clinical privileges of a physician employee and then use that loss of privileges as a pretextual excuse to discharge that employee. The violations enumerated below demonstrate a pattern of continuously renewing violations, with each new or renewal application requiring the illegal waiver a part of the continuing series of violations. Indeed, the existence of the illegal waiver is a sword hanging over the head of every provider at County facilities, daily reminding them that should they dare speak up to protect patient welfare or report fraud, waste or abuse- they can be certain that having waived their rights for recourse, Defendants would punish with impunity.

This practice of requiring a broad waiver and release directly impacts patient care by eliminating effective physician peer review, instead rewarding those who don't speak up and punishing those who advocate for patient care. This practice impacts the healthcare provided to hundreds of thousands of patients at Harbor-UCLA alone and likely impacts the healthcare of in excess of a million patients annually in Los Angeles County.¹

1. Defendants repeatedly violate CA Const. Article XI § 12 and Civil Code § 43.7(e) by extending the peer review immunity in CA Civil Code § 43.7(b) to include County of Los Angeles- The hospital- in the waiver and release language every applicant is forced to agree to in order to obtain or renew clinical privileges. In doing so, they violate Lab § 1101/1102 as the right to litigate is the right to engage in political activity. Defendants have committed the violations repeatedly and continuously with *every individual application* for clinical privileges at Harbor-UCLA- on information and belief at least during the time period 2001 to present. On information and belief, Doe defendants have committed the same violations during the same time period.
2. County and individual defendants violated the CA Constitution, CIV 43.7(e), Lab 1101/1102, GOV 3201-3 by including similarly illegal and overly broad waiver and release language in the 2001 Harbor UCLA Bylaws at Article IV, Section 1., page 10, paragraph C, with virtually identical illegal release and waiver of rights.
3. County and individual respondents violated the CA Constitution Art XI §12, CIV §43.7(e), Lab §432.5 1101, 1102, 1102.5, 1103, 1104 and GOV

¹ <http://www.harbor-ucla.org/wp-content/uploads/2020/01/Fact-Sheet-1-2020-1.pdf>

§3201-3 by including similarly illegal and overly broad waiver and release language in the 2016 revised Harbor-UCLA bylaws.

4. County and individual defendants violated the CA Constitution Art XI §12, CIV §43.7(e), Lab §432.5, 1101, 1102, 1102.5, 1103, 1104 and GOV §3201-3 by including similarly illegal and overly broad waiver and release language in the 2017 LAC-USC Medical Center Staff Bylaws.
5. Defendants violated and continue to violate CA GOV §3203 and Labor Code §432.5, 1101 and 1102, 1102.5(c), 1103, 1104 by requiring a waiver and release of liability with each application for new or renewed clinical privileges. Labor Code §432.5 prohibits the requirement of a written agreement the employer knows to be unlawful. §1101 specifically prohibits an employer pressuring an employee to engage or not engage in political activity. Litigating- that is- making and prosecuting claims for improper peer review actions- is *Political Activity*. Gov §3201-3203 provides in exquisite clarity that the prohibition of interference with public employee political activity is nearly absolute. In spite of this clarity, Defendants force employees and applicants for privileges to agree to waive fundamental civil rights to political activity in the form of litigation for wrongful peer review actions under pain of loss of clinical privileges and employment. The requirement of the illegal waiver violates Labor Code 432.5, 1104 and 1102.5(c), 1102, and 1101. Each violation of 1101-1104 is a unique violation of Labor Code 98.6. Each violation of Labor code 432.5, without a particular civil penalty is in turn subject to the catch-all civil penalties under Lab 2699(f)(2).
6. **Doctrine of Unconstitutional Conditions:** Defendants violate the Doctrine of Unconstitutional Conditions each time a practitioner is required to renew their privileges every two years- requiring anew an illegal waiver of fundamental civil rights to engage in political activity- litigation- under the threat of loss of clinical privileges and employment. Conditioning the receipt of a public benefit- even a discretionary benefit- on the waiver of a Constitutional right places a crippling burden- a burden County and Defendant County employees, officers and agents lack Constitutional authority to attempt to bear. Each and every distribution of an application with the unlawful waiver language is a violation of Lab §1102 in that an employee is coerced to engage in an unconstitutional bargain in order to maintain employment. Adverse employment action taken *because of complainant's refusal* to engage in that unconstitutional bargain directly violated Lab 1102.5(c). The acts of requiring the waiver and adverse action for refusing it are violations of Lab 1103.

7. **CA Lab §1101/2** prohibit *coercing* an employee to participate or refrain from participating in any political activity by job loss or threat of job loss. Litigating is quintessential political activity. By coercing employees with threats of or actual loss of privileges and loss of employment if the employee/applicant refuses the unlawful waiver, Defendants coerce the unlawful waiver of rights to political activity and thereby violate Lab §432.5 and 1102. By and through threats of and actual discharge, Defendants have admitted to discharging complainant specifically because of refusal to engage in the enumerated violations of law, thus admitting violation of Lab §432.5, 1101, 1102, 1102.5(c), 1103, and 1104.
8. Defendants have admitted to violating Labor Code §1102.5(b), (c) and 1103. Defendant Putnam, writing on behalf of the members of the Medical Executive Committee at Harbor-UCLA admitted that the Medical Executive Committee voted to revoke clinical privileges because complainant had:

Refused an (unlawful) behavioral contract; and

Defendant Eskander wrote to complainant by letter on October 23, 2017 and November 19, 2017 and by email on November 27, 2017 explicitly threatening complainant with loss of clinical privileges unless complainant agreed to the unconstitutional and unlawful conditions in the renewal application. In doing so, Eskander has admitted to violations of Labor Code 432.5, 1101, 1102, 1102.5(c), 1103 and 1104. In April and May 2018, Tom Curtis and David Balfour acting as agents for COLA threatened complainant in writing on May 8, 2018 and again on June 12, 2018 with loss of privileges and employment if Ryan continued to refuse their unconstitutional conditions.

June 13, 2018 the Medical Executive Committee made good on Dr Eskander's written threats to reject or ignore complainant's completed renewal application and revoked his clinical privileges in another violation of 432.5, 1102.5(c), 1103, 1104 Defendants have admitted that they revoked Ryan's clinical privileges *because* Ryan refused to engage in their unlawful waiver of constitutional rights.

9. **LAB § 98.6** Defendants violated and do violate LAB § 98.6, 432.5, 1101, 1102, 1103 and 1104 each time the unlawful privilege application waiver

and release is delivered to an applicant as an unlawful adhesion contract. Defendants have used and continue to use the threat of loss of clinical privileges and subsequent discharge from employment if the applicant or employee insists on retaining the right to engage in political activity (Lab§ 1101/1102, Gov §3201-3203). The Harbor-UCLA bylaws and CA law require each practitioner to renew clinical privileges every two years. The 2016 Harbor-UCLA bylaws at (**4.4 Reappointment Process**, pg. 30) plainly state that failure to timely complete the renewal application for privileges will result in loss of clinical privileges. Employees or applicants without clinical privileges cannot maintain or obtain employment, respectively. Defendants improperly and unlawfully condition the grant and renewal of clinical privileges on the waiver of the fundamental right to political activity. Defendants repeat the violation every time the unlawful waiver is provided to an applicant for privileges. The privilege application waiver and release is offered as an adhesion contract on a strictly take it or leave it basis- requiring applicants to waive fundamental civil rights in order to obtain or maintain employment. The waiver and release language is *chosen by the Members of the Medical Executive Committee*. They have repeatedly chosen to continue to extort the waiver of fundamental civil rights in exchange for the possibility of maintaining employment- to the grave detriment of effective peer review and patient care.

10. **Labor Code § 1103** criminal violations. Each violation of Division 2, Part 3, Chapter 5 of the California Labor Code- which encompasses Lab §1101-1106 is a misdemeanor punishable by a fine of up to \$1,000, imprisonment in the county jail not to exceed one year or both that fine and imprisonment.

By including waiver and release language in the bylaws and privilege renewal applications, Respondents act in “controlling or tending to control or direct the political activities...” of employees, as litigating is political activity. In so doing, Defendants violate Lab §1101 each time they offer a privilege application with the unlawfully broad waiver and release. Accordingly, each privilege renewal application is by itself a crime under Lab §1103.

The threat of loss of privileges- leading to loss of employment- explicitly made in writing in the bylaws, repeated in the privilege application and in communications and actions from the Medical Executive Committee members and COLA agent Mr. Curtis each represent overt violations of Lab §432.5, 1101,1102, 1102.5(c), 1103 and 1104 in that the threat of loss of employment has been made in effort to coerce the waiver of the right to

political activity. Each of these violations of Lab §1101,1102, 1102.5 is a discrete criminal violation under Lab §1103.

Defendants have admitted to revoking clinical privileges explicitly because of refusal to agree to their unconstitutional and unlawful conditions. In so doing they admit to violations of Lab §432.5, 1102.5(c). By violating Lab § 1102.5(c), they have committed a crime for each violation under Lab §1103. Specifically, I refused their attempts to violate Lab 432.5 and Gov §12964.5. That section prohibits requiring a waiver of the right to sue for violations of FEHA. I refused the attempted violation of Gov § 3203 in that that section prohibits with clarity any attempt to restrict political activities of government employees.

11. California Business and Professions Code § 2236 provides that conviction of any misdemeanor substantially related to the qualifications, functions or duties of a physician and surgeon is unprofessional conduct and therefore is subject to licensure action by the California Medical Board. Each violation of Labor Code §1101-1102.5(c) represents a separate crime under Lab 1103 and an act of unprofessional conduct by each of the licensed physician defendants.

Demand:

No cure is possible for prior failures in peer review that resulted from this culture of fear. Similarly, no cure is possible for prior infringements on the rights to petition, nor for the silencing effects these infringements caused.

On behalf of the State of California, and for the benefit of myself and all others who have been provided applications for clinical privileges at the named institutions, limited to those individuals who received applications with waiver and release language extending beyond the statutory immunity in CIV §43.7(b)&(e), further limited to those individuals who have not served on the Medical Executive Committee, and further limited to those who received privilege applications 2001-present, I demand the following:

- A. Immediate suspension of use of the illegally broad waiver and release language, with immediate replacement by reference to/incorporation of the statutory immunities and *only* the statutory immunities;
- B. Immediate notice to all County-employed and associated providers of the illegality of and rescission of the waiver and release terms;
- C. Immediate reinstatement with back pay, interest, benefits and tax neutralization for each individual so affected;
- D. LAB § 98.6 Civil Penalty of \$10,000 per violation- The civil penalty applies to each delivery of the unlawful waiver and release language to each and every

potential applicant, i.e., repeated violations every two years for every staff member/applicant not also an MEC member.

- E. LAB §2699(f) civil penalty from each of the individual defendants of \$100 per pay period per applicant subjected to the illegal waiver and release terms in violation of Labor code 432.5.
- F. Actual damages according to proof.
- G. Attorney fees under LAB § 2699(g), 1101,1102, 1102.5(b),(c).

Sincerely,

/s/Timothy Ryan, MD

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November 18, 2022

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Janine Vintch, MD;

Hal Yee, MD, PhD

Anish Mahajan, MD

Brant Putnam, MD
ChristiandeVirgilio
, MD

Beverly Petrie, MD
Roger Lewis, MD,
PhD
Mark Morrow, MD
Ramy
Eskander, MD

By Certified Mail and email; Contact Us@counsel.lacounty.gov

Re: Notice of Amended Claim (LWDA Case No. LWDA-CM-845306-21). PAGA, CA Labor Code § 432.5, 2698 et seq, §98.6, §1101-1104; Gov § 12964.5, 3201-3203.

On Behalf of the State of California, I Timothy Ryan, MD, an aggrieved former employee (Lab §2699(c)) and for the benefit of others similarly aggrieved, hereby provide notice of amended claims under the Private Attorney General Act (PAGA) Labor Code § 2698, 2699, et seq, alleging ongoing violations of Lab §432.5, 98.6, 1101-1104. Additionally, the claims made in LWDA Case No. LWDA-CM-845306-21 in the original Notice (September 2021 and the first amended Notice are hereby incorporated completely as if recited fully herein. See Appendix.

Violations were and continue to be committed by County of Los Angeles and the following individuals: Christian deVirgilio, MD; Ramy Eskander, MD; Roger Lewis, MD, PhD; Anish Mahajan, MD; Mark Morrow, MD; Ed Morrissey; Beverly Petrie, MD; Brant Putnam, MD; Janine Vintch, MD; Hal Yee, MD, PhD; and all current and past members of the Harbor-UCLA Medical Executive Committee, and Does 1-100; collectively *Defendants*. *Doe Defendants* by virtue of Medical Executive Committee membership are limited to those MEC members 2000 to present. *Defendants* violate the CA Constitution, CA Labor Code, Government Code and CA Civil Code. I make these claims on behalf of the State of California for redress of infringement on the rights of current and former healthcare provider employees (later further described) of the County of Los Angeles as well for the benefit of other similarly situated individuals.

Early Notice of Violations to Defendants:

The violations are ongoing, recommitted with every clinical privilege renewal application. Respondent Medical Executive Committee members and officers/agents/employees of County of Los Angeles (Defendants) have been individually aware of the illegality of the required waiver and release at least since July 26, 2018 by letter from Dr. Ryan.

Respondent- employer County of Los Angeles was a party to *County of Los Angeles v. Raytheon Co.*, 159 Cal. App. 4th 27 (Cal. Ct. App. 2008). The published opinion for this case cites *Hassan v. Mercy American River Hospital*, 31 Cal.4th 709, 717-18 (Cal. 2003). The Hassan court explicitly noted the exclusion of

hospitals from the group of entities partially immunized for peer review activities. In the Raytheon case, Hassan was cited particularly for the clarity with which the Hassan court addressed the issue of statutory interpretation as to the *exclusion* of hospitals from immunity under Civ 43.7(e).

“Additionally, the Legislature could have expressly excluded all hospitals from the privilege, as it has done in other provisions granting immunity from tort liability (e.g., [§ 43.7](#) [“This section shall not be construed to confer immunity from liability on any . . . hospital.”])” *Hassan, supra*.

Similarly, respondent COUNTY was a party to *City of Alhambra v. County of L.A.*, S185457 (Cal. 2012) in which *Hassan* was again cited for the clarity of explanation of statutory interpretation as to the *exclusion* of hospitals from immunity under CIV 43.7(e).

Attorney Sara Hersch- retained by Defendant County of Los Angeles-had reason to know that the waiver and release language required of healthcare provider privilege applicants was over broad, illegal, improper and unconstitutional and unenforceable and violated Labor Code 1101-1104; Government Code 12940, 12964.5 and Government Code 3203.

Similarly, and more obviously, Attorney Tom Curtis also retained by Defendant County of Los Angeles had reason to know of the illegal nature of the of the application waiver and release. Mr. Curtis was uniquely positioned to advise Defendants as to the unlawful nature of the release and waiver, as before he represented COUNTY of Los Angeles, Mr. Curtis argued and prevailed in a seminal case on the issue of the extent of peer review immunity. The Court held “Whether this immunity should be extended to hospitals themselves is for the Legislature to decide, and it has. **We cannot add to or detract from what it has done**” *Axline v. Saint John's Hospital & Health Center*, 63 Cal.App.4th 907, 914 (Cal. Ct. App. 1998). (*emphasis added*)

It is therefore beyond debate that County of Los Angeles and individual respondents knew that a waiver and release requirement that extended immunity to The County of Los Angeles (The Hospital) was unlawful.

The Group of Aggrieved Individuals:

Similarly aggrieved individuals are all those individuals employed (and/or formerly employed) by County of Los Angeles 2001-present who have been offered applications for clinical privileges to practice at Harbor-UCLA Medical

Center, LAC-USC Medical Center, Rancho Los Amigos Medical Center, Olive View Medical Center and MLK Medical Center. Similarly aggrieved individuals include licensed physicians, (MD and DO), Physician Assistants, Podiatrists and other licensed healthcare providers for whom clinical privileges to provide patient care are required, limited to those individuals who have received applications for such privileges (initial and/or renewal applications) at one of the listed facilities during the period 2001-2021 and ongoing.

The class of similarly aggrieved individuals excludes those persons who have in the past served or are now serving on the various Medical Executive Committees, and further excludes resident physicians and trainees in allied health fields.

The names and contact information for the similarly aggrieved individuals as well as the Doe Defendants are uniquely available to respondents.

Specific Allegations of Violations of CA Labor Code:

On behalf of the State of California, and for the benefit all similarly aggrieved I claim and allege:

Defendants by and through participation on and/or control of the Medical Executive Committees do in fact control the applications for, review of and granting or denial of clinical privileges at the institutions. By appointing the chairpersons of the various clinical departments, County exercises control over the Medical Executive Committee. Accordingly, through County appointee employees, respondents exercise complete control over employment for physicians at the institutions. The Professional Staff Bylaws at Harbor-UCLA specify that the clinical privilege application language is in a form “approved by” the Medical Executive Committee. (see **4.2-1 Application form**, pg. 23). The application contains an unconstitutional, explicitly unlawful waiver and release, in that an applicant is required to waive the right to litigate (make and prosecute claims) against County of Los Angeles to remedy improper or retaliatory peer review actions. The Harbor-UCLA privilege application waiver:

“I release from liability the County of Los Angeles, the Association, the Professional Schools, and their respective officers, employees or agents, for any and all acts performed in good faith and without malice in connection with evaluating my qualifications and credentials. I release from any liability all individuals and organizations who provide information to the above in good faith and without malice concerning my competence, ethics, character, health status, and other qualifications for Association membership and

-

clinical privileges, including otherwise privileged or confidential information.”(emphasis added)

The application waiver directly contradicts the relevant state law (CA CIV § 43.7(e) which specifically *excludes* the hospital (County of Los Angeles) from immunity for peer review actions. The general statute (Labor code 1104) makes plain that an employer *is liable for the acts of its employees/agents/officers*.

It cannot be debated that the CA Constitution reserves for the Legislature *alone* the right to determine the conditions under which a claim may be made against a County in Article XI §12. Subsequently, the court noted “Whether this immunity should be extended to hospitals themselves is for the Legislature to decide, and it has. **We cannot add to or detract from what it has done**” *Axline v. Saint John's Hospital & Health Center*, 63 Cal.App.4th 907, 914 (Cal. Ct. App. 1998). *(emphasis added)*

Confirming this interpretation, The CA Supreme Court noted “Additionally, the Legislature could have **expressly excluded all hospitals from the privilege, as it has done in other provisions granting immunity from tort liability (e.g., § 43.7** [“This section shall not be construed to confer immunity from liability on any . . . hospital.”]),” *Hassan v. Mercy American River Hospital*, 31 Cal.4th 709, 717-18 (Cal. 2003) *(emphasis added, ellipsis in original)*. County and Individual Defendants- through personal participation in and/or control of the Medical Executive Committee(s)- have unconstitutionally and illegally wielded authority to limit fundamental civil rights- an authority they do not possess.

The California Constitution at Article XI, Section 12 plainly states:

“The Legislature may prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees.”

Defendants have ignored this plain statement, violated the California Constitution and assumed an authority to alter the conditions established by the legislature. To conclude that a local government entity has authority to alter the contours of the immunity or liability of a local government entity is to render Article XI Section 12 meaningless.

The California Peer Review system was established to protect the public welfare by providing a means to remove unsafe practitioners. This goal was balanced

somewhat against the needs of providers to not be subjected to unfair peer review conditions. see CA BPC § 809(a). Peer review therefore is *primarily* for the benefit of the public at large. Having been so established, the contours of peer review immunity are not subject to alteration or negotiation, having been fixed by the legislature. (see CIV §3513). Furthermore, even if argued in the absence of Civil Code §3513 or any primary public benefit of peer review (absurd assumptions), the individual and County Defendants *specifically lack authority* to alter the conditions under which claims can be made or prosecuted against a public entity. CA Const Art XI, §12.

This practice of requiring a broad waiver and release directly impacts patient care by eliminating effective physician peer review, instead rewarding those who don't speak up and punishing those who advocate for patient care. This practice impacts the healthcare provided to hundreds of thousands of patients at Harbor-UCLA alone and likely impacts the healthcare of in excess of a million patients annually in Los Angeles County.¹

1. Defendants repeatedly violate CA Const. Article XI § 12 and Civil Code § 43.7(e) by extending the peer review immunity in CA Civil Code § 43.7(b) to include County of Los Angeles- The hospital- in the waiver and release language every applicant is forced to agree to in order to obtain or renew clinical privileges. In doing so, they violate Lab § 1101/1102 as the right to litigate is the right to engage in political activity. Defendants have committed the violations repeatedly and continuously with *every individual application* for clinical privileges at Harbor-UCLA- on information and belief at least during the time period 2001 to present. On information and belief, Doe defendants have committed the same violations during the same time period.
2. County and individual defendants violated the CA Constitution, CIV 43.7(e), Lab 1101/1102, GOV 3201-3 by including similarly illegal and overly broad waiver and release language in the 2001 Harbor UCLA Bylaws at Article IV, Section 1., page 10, paragraph C, with virtually identical illegal release and waiver of rights.
3. County and individual respondents violated the CA Constitution Art XI §12, CIV §43.7(e), Lab §432.5 1101, 1102, 1102.5, 1103, 1104 and GOV

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§3201-3 by including similarly illegal and overly broad waiver and release language in the 2016 revised Harbor-UCLA bylaws.

4. County and individual defendants violated the CA Constitution Art XI §12, CIV §43.7(e), Lab §432.5, 1101, 1102, 1102.5, 1103, 1104 and GOV §3201-3 by including similarly illegal and overly broad waiver and release language in the 2017 LAC-USC Medical Center Staff Bylaws.
5. Defendants violated and continue to violate CA GOV §3203 and Labor Code §432.5, 1101 and 1102, 1102.5(c), 1103, 1104 by requiring a waiver and release of liability with each application for new or renewed clinical privileges. Labor Code §432.5 prohibits the requirement of a written agreement the employer knows to be unlawful. §1101 specifically prohibits an employer pressuring an employee to engage or not engage in political activity. Litigating- that is- making and prosecuting claims for improper peer review actions- is *Political Activity*. Gov §3201-3203 provides in exquisite clarity that the prohibition of interference with public employee political activity is nearly absolute. In spite of this clarity, Defendants force employees and applicants for privileges to agree to waive fundamental civil rights to political activity in the form of litigation for wrongful peer review actions under pain of loss of clinical privileges and employment. The requirement of the illegal waiver violates Labor Code 432.5, 1104 and 1102.5(c), 1102, and 1101. Each violation of 1101-1104 is a unique violation of Labor Code 98.6. Each violation of Labor code 432.5, without a particular civil penalty is in turn subject to the catch-all civil penalties under Lab 2699(f)(2).
6. **Doctrine of Unconstitutional Conditions:** Defendants violate the Doctrine of Unconstitutional Conditions each time a practitioner is required to renew their privileges every two years- requiring anew an illegal waiver of fundamental civil rights to engage in political activity- litigation- under the threat of loss of clinical privileges and employment. Conditioning the receipt of a public benefit- even a discretionary benefit- on the waiver of a Constitutional right places a crippling burden- a burden County and Defendant County employees, officers and agents lack Constitutional authority to attempt to bear. Each and every distribution of an application with the unlawful waiver language is a violation of Lab §1102 in that an employee is coerced to engage in an unconstitutional bargain in order to maintain employment. Adverse employment action taken *because of complainant's refusal* to engage in that unconstitutional bargain directly violated Lab 1102.5(c). The acts of requiring the waiver and adverse action for refusing it are violations of Lab 1103.

7. **CA Lab §1101/2** prohibit *coercing* an employee to participate or refrain from participating in any political activity by job loss or threat of job loss. Litigating is quintessential political activity. By coercing employees with threats of or actual loss of privileges and loss of employment if the employee/applicant refuses the unlawful waiver, Defendants coerce the unlawful waiver of rights to political activity and thereby violate Lab §432.5 and 1102. By and through threats of and actual discharge, Defendants have admitted to discharging complainant specifically because of refusal to engage in the enumerated violations of law, thus admitting violation of Lab §432.5, 1101, 1102, 1102.5(c), 1103, and 1104.

8. **LAB § 98.6** Defendants violated and do violate LAB § 98.6, 432.5, 1101, 1102, 1102.5(b) and 1102.5(c) 1103 and 1104 each time the unlawful privilege application waiver and release is delivered to an applicant as an unlawful adhesion contract. Defendants have used and continue to use the threat of loss of clinical privileges and subsequent discharge from employment if the applicant or employee insists on retaining the right to engage in political activity (Lab§ 1101/1102, Gov §3201-3203). The Harbor-UCLA bylaws and CA law require each practitioner to renew clinical privileges every two years. The 2016 Harbor-UCLA bylaws at (**4.4 Reappointment Process**, pg. 30) plainly state that failure to timely complete the renewal application for privileges will result in loss of clinical privileges. Employees or applicants without clinical privileges cannot maintain or obtain employment, respectively. Defendants improperly and unlawfully condition the grant and renewal of clinical privileges on the waiver of the fundamental right to political activity. Defendants repeat the violation every time the unlawful waiver is provided to an applicant for privileges. The privilege application waiver and release is offered as an adhesion contract on a strictly take it or leave it basis- requiring applicants to waive fundamental civil rights in order to obtain or maintain employment. The waiver and release language is *chosen by the Members of the Medical Executive Committee*. They have repeatedly chosen to continue to extort the waiver of fundamental civil rights in exchange for the possibility of maintaining employment- to the grave detriment of effective peer review and patient care.

The threat of loss of privileges- leading to loss of employment- explicitly made in writing in the bylaws, repeated in the privilege application and in communications and actions from the Medical Executive Committee

members and COLA agent Mr. Curtis each represent overt violations of Lab §432.5, 1101,1102, 1102.5(c), 1103 and 1104 in that the threat of loss of employment has been made in effort to coerce the waiver of the right to political activity. Each of these violations of Lab §1101,1102, 1102.5 is a discrete criminal violation under Lab §1103.

Defendants have admitted to revoking clinical privileges explicitly because of refusal to agree to their unconstitutional and unlawful conditions. In so doing they admit to violations of Lab §432.5, 1102.5(c). By violating Lab § 1102.5(c), they have committed a crime for each violation under Lab §1103. Specifically, I refused their attempts to violate Lab 432.5 and Gov §12964.5. That section prohibits requiring a waiver of the right to sue for violations of FEHA. I refused the attempted violation of Gov § 3203 in that that section prohibits with clarity any attempt to restrict political activities of government employees.

Demand:

No cure is possible for prior failures in peer review that resulted from this culture of fear. Similarly, no cure is possible for prior infringements on the rights to petition, nor for the silencing effects these infringements caused.

On behalf of the State of California, and for the benefit of myself and all others who have been provided applications for clinical privileges at the named institutions, limited to those individuals who received applications with waiver and release language extending beyond the statutory immunity in CIV §43.7(b)&(e), further limited to those individuals who have not served on the Medical Executive Committee, and further limited to those who received privilege applications 2001-present, I demand the following:

- A. Immediate suspension of use of the illegally broad waiver and release language, with immediate replacement by reference to/incorporation of the statutory immunities and *only* the statutory immunities;
- B. Immediate notice to all County-employed and associated providers of the illegality of and rescission of the waiver and release terms;
- C. Immediate reinstatement with back pay, interest, benefits and tax neutralization for each individual so affected;
- D. LAB § 98.6 Civil Penalty of \$10,000 per violation- The civil penalty applies to each delivery of the unlawful waiver and release language to each and every

potential applicant, i.e., repeated violations every two years for every staff member/applicant not also an MEC member.

E. Actual damages according to proof.

F. Attorney fees under LAB § 2699(g), 1101,1102, 1102.5(b),(c).

Sincerely,

/s/Timothy Ryan, MD

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December 12, 2022,

Executive Officer, Board of
Supervisors. ATTN: Claims
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Kenneth Hahn Hall of
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By Certified Mail and email; Contact Us@counsel.lacounty.gov

Re: Notice of Claim (LWDA Case No. LWDA-CM-. PAGA, CA Labor Code § 432.5, 2698 et seq, §98.6, §1101-1104; Gov § 12964.5, 3201- 3203.

On Behalf of the State of California, I Timothy Ryan, MD, an aggrieved former employee (Lab §2699(c)) and for the benefit of others similarly aggrieved, hereby provide notice of amended claims under the Private Attorney General Act (PAGA) Labor Code § 2698, 2699, et seq, alleging ongoing violations of Lab §432.5, 925, 98.6, 1101-1104. Additionally, the claims made in LWDA Case No. LWDA-CM- 845306-21 in the original Notice (September 2021 and the first amended Notice are hereby incorporated completely as if recited fully herein. See Appendix. (See Amended Notice Nov 18, 2022 Attachments Plus ID AP-3837492)

Violations were and continue to be committed by County of Los Angeles and the following individuals: Christina Ghaly, MD; Christian deVirgilio, MD; Ramy Eskander, MD; Roger Lewis, MD, PhD; Anish Mahajan, MD; Mark Morrow, MD; Ed Morrissey; Eduardo Montelongo, Sara Hersh, Tom Curtis, David Balfour, Beverly Petrie, MD; Brant Putnam, MD; Janine Vintch, MD; Hal Yee, MD, PhD; and all current and past members of the Harbor-UCLA Medical Executive Committee, and Does 1-100; collectively *Defendants. Doe Defendants* by virtue of Medical Executive Committee membership are limited to those MEC members 2000 to present. *Defendants* violate the CA Constitution, CA Labor Code, Government Code and CA Civil Code. I make these claims on behalf of the State of California for redress of infringement on the rights of current and former healthcare provider employees (later further described) of the County of Los Angeles as well for the benefit of other similarly situated individuals.

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709, 717-18 (Cal. 2003). The Hassan court explicitly noted the exclusion of *hospitals* from the group of entities partially immunized for peer review activities. In the Raytheon case, Hassan was cited particularly for the clarity with which the Hassan court addressed the issue of statutory interpretation as to the *exclusion* of hospitals from immunity under Civ 43.7(e).

“Additionally, the Legislature could have expressly excluded all hospitals from the privilege, as it has done in other provisions granting immunity from tort liability (e.g., [§ 43.7](#) [“This section shall not be construed to confer immunity from liability on any . . . hospital.”])” *Hassan, supra*.

Similarly, respondent COUNTY was a party to *City of Alhambra v. County of L.A.*, S185457 (Cal. 2012) in which *Hassan* was again cited for the clarity of explanation of statutory interpretation as to the *exclusion* of hospitals from immunity under CIV 43.7(e).

Attorney Sara Hersh- retained by Defendant County of Los Angeles-had reason to know that the waiver and release language required of healthcare provider privilege applicants was over broad, illegal, improper and unconstitutional and unenforceable and violated CA Civil Code 43.7, subd. (e); Labor Code 1101-1104; Government Code 12940, 12964.5 and Government Code 3203.

Similarly, and more obviously, Attorneys (partners at that time) Tom Curtis and David Balfour subsequently retained by Defendant County of Los Angeles had reason to know of and did in fact know of the illegal nature of the of the application waiver and release. Mr. Curtis was uniquely positioned to advise Defendants as to the unlawful nature of the release and waiver, as before he represented COUNTY of Los Angeles, Mr. Curtis argued and prevailed in a seminal case on the issue of the extent of peer review immunity. The Court held “Whether this immunity should be extended to hospitals themselves is for the Legislature to decide, and it has. **We cannot add to or detract from what it has done**” *Axline v. Saint John's Hospital & Health Center*, 63 Cal.App.4th 907, 914 (Cal. Ct. App. 1998). (*emphasis added*)

It is therefore beyond debate that Mr Curtis, Mr Balfour and the County of Los Angeles and individual respondents knew that a waiver and release requirement that extended immunity to The County of Los Angeles (The Hospital) was unlawful, and any advice or counsel directing County to rely on refusal to participate in the illegal waiver as pretext for adverse employment action violates Labor code 98.6, 432.5, 1101, 1102, 1102.5 among other statutes.

Group of Aggrieved Individuals:

Similarly aggrieved individuals are all those individuals employed (and/or formerly employed) by County of Los Angeles 2001-present who have been offered applications for clinical privileges to practice at Harbor-UCLA Medical Center, LAC-USC Medical Center, Rancho Los Amigos Medical Center, Olive View Medical Center and MLK Medical Center. Similarly aggrieved individuals include licensed physicians, (MD and DO), Physician Assistants, Podiatrists and other licensed healthcare providers for whom clinical privileges to provide patient care are required, limited to those individuals who have received applications for such privileges (initial and/or renewal applications) at one of the listed facilities during the period 2001-2021 and ongoing.

The class of similarly aggrieved individuals excludes those persons who have in the past served or are now serving on the various Medical Executive Committees, and further excludes resident physicians and trainees in allied health fields.

The names and contact information for the similarly aggrieved individuals as well as the Doe Defendants are uniquely available to respondents.

Specific Allegations of Violations of CA Labor Code:

On behalf of the State of California, and for the benefit all similarly aggrieved I claim and allege:

Los Angeles County-employed Defendants by and through participation on and/or control of the Medical Executive Committees do in fact control the applications for, review of and granting or denial of clinical privileges at the institutions. By appointing the chairpersons of the various clinical departments, County exercises control over the Medical Executive Committee. The Medical Executive Committee appoints the *nominating committee*, and thereby controls access to MEC elected positions. Accordingly, through County appointee employees, respondents exercise complete control over employment for physicians at the institutions. The Professional Staff Bylaws at Harbor-UCLA specify that the clinical privilege application language is in a form “approved by” the Medical Executive Committee. (see **4.2-1 Application form**, pg. 23). The application contains an unconstitutional, explicitly unlawful waiver and release, in that an applicant is required to waive the right to litigate (make and prosecute claims) against County of Los Angeles to remedy improper or retaliatory peer review actions. Ms Hersh, Mr. Curtis, Mr Balfour all knew the waiver language was illegal. The Harbor-UCLA privilege application waiver:

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"I release from liability the County of Los Angeles, the Association, the Professional Schools, and their respective officers, employees or agents, for any and all acts performed in good faith and without malice in connection with evaluating my qualifications and credentials. I release from any liability all individuals and organizations who provide information to the above in good faith and without malice concerning my competence, ethics, character, health status, and other qualifications for Association membership and clinical privileges, including otherwise privileged or confidential information."(emphasis added)

The application waiver directly contradicts the relevant state law (CA CIV § 43.7(e) which specifically *excludes* the hospital (County of Los Angeles) from immunity for peer review actions. The general statute (Labor code 1104) makes plain that an employer is *liable for the acts of its employees/agents/officers*.

It cannot be debated that the CA Constitution reserves for the Legislature *alone* the right to determine the conditions under which a claim may be made against a County in Article XI §12. Subsequently, the court noted "Whether this immunity should be extended to hospitals themselves is for the Legislature to decide, and it has. **We cannot add to or detract from what it has done**" *Axline v. Saint John's Hospital & Health Center*, 63 Cal.App.4th 907, 914 (Cal. Ct. App. 1998). (emphasis added)

Confirming this interpretation, The CA Supreme Court noted "Additionally, the Legislature could have **expressly excluded all hospitals from the privilege, as it has done in other provisions granting immunity from tort liability (e.g., § 43.7** ["This section shall not be construed to confer immunity from liability on any . . . hospital."])," *Hassan v. Mercy American River Hospital*, 31 Cal.4th 709, 717-18 (Cal. 2003) (emphasis added, ellipsis in original). County and Individual Defendants- through personal participation in and/or control of the Medical Executive Committee(s)- have unconstitutionally and illegally wielded authority to limit fundamental civil rights- an authority they do not possess.

The California Constitution at Article XI, Section 12 plainly states:

"The Legislature may prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees."

Defendant-Respondents have ignored this plain statement, violated the California Constitution and assumed an authority to alter the conditions established by the legislature. To pretend to conclude that a local government entity has authority to alter the contours of the immunity or liability of a local government entity is to render Article XI Section 12 meaningless.

The California Peer Review system was established primarily to protect the public welfare by providing a means to remove unsafe practitioners. This goal was balanced somewhat against the needs of providers to not be subjected to unfair peer review conditions. see CA BPC § 809(a). Peer review therefore is primarily for the benefit of the public at large.

Having been so established, the contours of peer review immunity are not subject to alteration or negotiation, having been fixed by the legislature. (see CIV §3513). Furthermore, even if argued in the absence of Civil Code §3513 or any primary public benefit of peer review (absurd assumptions), the individual and County Defendants *specifically lack authority* to alter the conditions under which claims can be made or prosecuted against a public entity. CA Const Art XI, §12.

This practice of requiring a broad waiver and release directly impacts patient care by eliminating effective physician peer review, instead rewarding those who don't speak up and punishing those who advocate for patient care. This practice impacts the healthcare provided to hundreds of thousands of patients at Harbor-UCLA alone and likely impacts the healthcare of in excess of a million patients annually in Los Angeles County.¹

1. Defendants repeatedly violate CA Const. Article XI § 12 and Civil Code § 43.7(e) by extending the peer review immunity to include County of Los Angeles- The hospital- in the waiver and release language every applicant is forced to agree to in order to obtain or renew clinical privileges. In doing so, they violate Labor Code 98.6; Labor Code 432.5 ;925;Lab § 1101/1102 as the right to litigate is the right to engage in political activity. Defendants have committed the violations repeatedly and continuously with *every individual application* for clinical privileges at Harbor-UCLA- on information and belief at least during the time period 2001 to present. On information and belief, Doe defendants have committed the same violations during the same time period.
2. County and individual defendants violated the CA Constitution, CIV 43.7(e), Lab 98.6, 432.5,Lab 1101/1102, 1102.5, GOV 3201-3 by including similarly illegal and overly broad waiver and release language in the 2001 Harbor UCLA Bylaws at Article IV, Section 1., page 10, paragraph C, with virtually identical illegal release and waiver of rights.

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3. County and individual respondents violated the CA Constitution Art XI §12, CIV §43.7(e), Lab §98.6, 432.5 1101, 1102, 1102.5, 1103, 1104 and GOV §3201-3 by including similarly illegal and overly broad waiver and release language in the 2016 revised Harbor-UCLA bylaws.
 4. County and individual defendants violated the CA Constitution Art XI §12, CIV §43.7(e), Lab §98.6, 432.5, 1101, 1102, 1102.5, 1103, 1104 and GOV §3201-3203 by including similarly illegal and overly broad waiver and release language in the 2017 LAC-USC Medical Center Staff Bylaws.
 5. Defendants violated and continue to violate CA GOV §3203 and Labor Code §98.6, 432.5, 1101 and 1102, 1102.5(c), 1103, 1104 by requiring a waiver and release- thereby discriminating against those who would refuse such a waiver- of liability with each application for new or renewed clinical privileges. Labor Code §432.5 prohibits the requirement of a written agreement the employer knows to be unlawful. §1101 specifically prohibits an employer pressuring an employee to engage or not engage in political activity. Litigating- that is- making and prosecuting claims for improper peer review actions- is *Political Activity*. Gov §3201-3203 provides in exquisite clarity that the prohibition of interference with public employee political activity is nearly absolute. In spite of this clarity, Defendants force employees and applicants for privileges to agree to waive fundamental civil rights to political activity in the form of litigation for wrongful peer review actions under pain of loss of clinical privileges and employment. The requirement of the illegal waiver violates Labor Code § 98.6, 432.5, 1104 and 1102.5(c), 1102, and 1101. Each violation of § 1101-1104 is a unique violation of Labor Code § 98.6.
 6. **Doctrine of Unconstitutional Conditions:** Defendants violate the Doctrine of Unconstitutional Conditions each time a practitioner is required to renew their privileges every two years- requiring anew an illegal waiver of fundamental civil rights to engage in political activity- litigation- under the threat of loss of clinical privileges and employment. Conditioning the receipt of a public benefit- even a discretionary benefit- on the waiver of a Constitutional right places a crippling burden- a burden County and Defendant County employees, officers and agents lack Constitutional authority to attempt to bear. Each and every distribution of an application with the unlawful waiver language is a violation of Lab §1102 in that an employee is coerced to engage in an unconstitutional bargain in order to maintain employment. Adverse employment action taken *because of complainant's refusal* to engage in that unconstitutional bargain directly violated Lab § 1102.5, subd. (c). The acts of requiring the

waiver and adverse action for refusing it are violations of Lab § 1103.

7. **CA Lab §1101/2** prohibit *coercing* an employee to participate or refrain from participating in any political activity by job loss or threat of job loss. Litigating is quintessential political activity. By coercing employees with threats of or actual loss of privileges and loss of employment if the employee/applicant refuses the unlawful waiver, Defendants coerce the unlawful waiver of rights to political activity and thereby violate Lab §98.6, 432.5 and 1101/1102. By and through threats of and actual discharge, Respondents have admitted to discharging complainant specifically because of refusal to engage in the enumerated violations of law, thus admitting violations of Lab §98.6432.5, 1101, 1102, 1102.5(c), 1103, and 1104 be demonstrating for all employees to see the adverse employment actions taken against an employee who would exercise the rights in Labor Code Chapter 5 (§1101-1106)

8. **LAB § 98.6** Defendants violated and do violate LAB § 98.6, which specifically encompasses Labor code 1101, 1102, 1102.5. Each time the unlawful privilege application waiver and release is delivered to an applicant as an unlawful adhesion contract, Defendant-respondents have used and continue to use the threat of loss of clinical privileges and subsequent discharge from employment if the applicant or employee insists on retaining the right to engage in political activity (Lab§ 1101/1102, Gov §3201-3203). County and Defendant-Respondents have admitted repeatedly that they have taken adverse employment actions- that is- revocation of clinical privileges leading to discharge from employment because of a refusal to participate in the illegal waiver included with the clinical privilege renewal application. Defendants improperly and unlawfully condition the grant and renewal of clinical privileges on the waiver of the fundamental right to political activity. Defendants repeat the violation every time the unlawful waiver is provided to an applicant for privileges. The privilege application waiver and release is provided as an adhesion contract on a strictly take it or leave it basis- requiring applicants to waive fundamental civil rights in order to obtain or maintain employment. The waiver and release language has been *chosen by the Members of the Medical Executive Committee*. They have repeatedly chosen to continue to extort the waiver of fundamental civil rights in exchange for the possibility of maintaining employment- to the grave detriment of effective peer review and patient care.

9. Mr. Curtis and Mr. Balfour knowingly advised their client County of Los Angeles and/or the MEC of the Professional Staff Association to knowingly violate Labor Code § 98.6, 432.5, 1101, 1102, 1102.5 and 1103. They did so by advising that adverse employment actions (discriminatory acts- including revocation of clinical privileges, suspension and discharge from employment) be taken against an employee who had refused the illegal waiver. They did so knowingly and willfully, as Mr. Curtis was the prevailing counsel in *Axline* which articulated that such a waiver does not and *cannot* be extended to apply to hospitals.

These intentional violations of the CA Labor Code are well outside the litigation privilege. Labor code 1103 makes a violation of labor code 1102.5, subd. c a crime. Therefore, when Mr Balfour and Mr Curtis advised members of the MEC to revoke (“lapse”) clinical privileges after refusal of the illegal waiver, they were advising the Medical Executive Committee to commit a crime. 1102.5(c) prohibits adverse employment actions in retaliation for refusal to participate in an illegal activity.

Furthermore, Mr. Balfour and Mr. Curtis discovered that their clients (Putnam, Vintch, Morrissey, et, al.) had created forged MEC minutes and then submitted these forged documents into evidence in a quasi-judicial proceeding. Penal code 132 makes it a felony to offer false evidence into a judicial proceeding, while PEN 134 makes it a felony to *offer* that false document into evidence. On information and belief, that false evidence was created by Brant Putnam on or about November 23-26 2015. On information and belief, that forgery was created as a result of communications and advice from Edward Morrissey to Tim VanNatta and Hal Yee through several emails November 3-4 through DATE, which was then relayed to Dr.s Putnam and Vintch by Dr VanNatta. When Mr Curtis and Mr Balfour discovered the forgery, rather than advise the tribunal or withdraw from representing the MEC, Mr Curtis and Mr. Balfour fabricated a retaliatory “lapse” in privileges leading to a retaliatory discharge.

This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section.

Mr Curtis and Mr Balfour both knew that such a fabricated “lapse” in privileges would require an 805 report to the CA Medical Board. Every 805 report triggers an investigation. Mr Curtis and Balfour therefore advised the MEC and Dr Mahajan to avoid filing the 805 report specifically to avoid the risk that an investigation might discover the forged documents previously offered into

evidence. The CA Medical Board and the CA Department of Justice have both determined that the failure to file the 805 report was deliberate. (see Notice of Violation attached)

The threat of loss of privileges- leading to loss of employment- explicitly made in writing in the bylaws, repeated in the privilege application and in communications and actions from the Medical Executive Committee members and COLA agent Mr. Curtis each represent overt violations of Lab§98.6, 432.5, 1101,1102, 1102.5(c), 1103 and 1104 in that the threat of loss of employment has been made in effort to coerce the waiver of the right to political activity. Each of these violations of Lab §1101,1102, 1102.5 is a discrete criminal violation under Lab §1103.

Respondents have admitted to revoking clinical privileges explicitly because of refusal to agree to their (unconstitutional and unlawful) waiver conditions. In so doing they admit to violations of Lab §98.6, 432.5, 1101,1102,1102.5(c). By violating Lab § 1102.5(c), they have committed a crime for each violation under Lab §1103. Specifically, I refused their attempts to violate Lab 432.5 and Gov§12964.5. That section prohibits requiring a waiver of the right to sue for violations of FEHA. I refused the attempted violation of Gov § 3203 in that that section prohibits with clarity any attempt to restrict political activities of government employees- a violation of Labor code 1101- which is by itself an explicit violation of Labor code 98.6.

10. Ms. Hersh violated BPC §6068 and CA Bar rules related to duty to prospective clients and confidentiality. After receiving confidential information in 2016 related to the illegal waiver and release demanded by County of Los Angeles, Ms. Hersh subsequently violated her duty of confidentiality and in 2017 was illegally retained by County of Los Angeles in the identical matter. She wrote memoranda related to the illegal waiver and release required by County of Los Angeles. On information and belief, she advised County of Los Angeles that the waiver and release required was broader than that in the statutes and therefore illegal. Despite this illegal waiver, Ms. Hersh assisted, aided and acted as an agent of County of Los Angeles and used and relied upon the forged MEC minutes which had been submitted to the quasi judicial proceeding. CA Evid §956 makes NOT privileged any communication if the services were sought to enable or aid to commit or plan to commit a crime. Submission of and use of forged documents is a crime.

On discovery of Ms Hersh's illegal retention by County of Los Angeles in violation of BPC 6068, she was forced to recuse for conflict of interest. Despite and after this recusal Ms Hersh continued to provide counsel and work product to Mr Curtis and Mr Balfour and to County of Los Angeles. Ms Hersh- by and through her continued surreptitious work with Mr. Curtis and Mr. Balfour participated in a conspiracy to retaliate by continuing to violate BPC 6068. Accordingly, her communications in furtherance of the crime of PEN 182 were designed to illegally

assist Mr Balfour and Mr Curtis as they aided the County of Los Angeles in their retaliation for refusal of the illegal waiver.

Furthermore, MS Hersh has no privilege to the memoranda (communication) she wrote- reviewed by Mr Curtis and Mr Balfour- related to the illegality or enforceability of the waiver, as CA Evid § 958 holds that Ms Hersh's breach eliminates any such privilege. Hersh had confidential information on the identical topic, and her sharing that confidential information as related to her memo was per se illegal.

Demand:

No cure is possible for prior failures in peer review that resulted from this culture of fear. Similarly, no cure is possible for prior infringements on the rights to petition, nor for the silencing effects these infringements caused.

On behalf of the State of California, and for the benefit of myself and Employees (2699(c)) who have been provided applications for clinical privileges at the named institutions, limited to those individuals who received applications with waiver and release language extending beyond the statutory immunity in CIV §43.7(b)&(e), further limited to those individuals who have not served on the Medical Executive Committee, and further limited to those who received privilege applications 2001-present, I demand the following:

- A. Immediate suspension of use of the illegally broad waiver and release language, with immediate replacement by reference to/incorporation of the statutory immunities and *only* the statutory immunities;
- B. Immediate notice to all County-employed and associated providers of the illegality of and rescission of the waiver and release terms;
- C. Immediate reinstatement with back pay, interest, benefits and tax neutralization for each individual so affected by violations of Labor code § 98.6, 432.5, 1101, 1102, 1102.5 because of any refusal of the illegal terms of the waiver.
- D. LAB § 98.6 Civil Penalty of \$10,000 per violation- The civil penalty applies to each delivery of the unlawful waiver and release language to each and every Employee as that term is defined in Labor Code §2699, subd. (c) , i.e., repeated violations every two years for every staff member/applicant not also an MEC member.
- E. Actual damages according to proof.
- F. Attorney fees under LAB § 2699(g), 1101,1102, 1102.5(b),(c).

Sincerely,

/s/Timothy Ryan, MD

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