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May 6, 2020

**VIA EMAIL ATTACHMENT ONLY**

Members of the Board  
 Public Employment Relations Board  
 Sacramento Appeals Office  
 1031 18th Street  
 Sacramento, CA 95811-4124

Chief Judge Shawn P. Cloughesy  
 Chief Administrative Law Judge  
 Public Employment Relations Board  
 1031 18th Street  
 Sacramento, CA 95811-4124

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 CHRISTINA L. ADAMS  
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Mr. Felix De La Torre  
 General Counsel  
 Public Employment Relations Board  
 1031 18th Street  
 Sacramento, CA 95811-4124

Public Employment Relations Board  
 San Francisco Regional Office  
 1330 Broadway, Suite 1532  
 Oakland, CA 94612-2514

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**Re: RNPA and SEIU Local 521  
 County of Santa Clara  
 Request to Expedite Unfair Practice Charge re Disaster Service Work**

Dear Board Members, Chief Judge Cloughesy, Mr. De La Torre, and San Francisco Regional Office:

Enclosed please find an unfair practice charge which we filed electronically on behalf of the above-named Charging Parties.

The two Charging Parties present for your consideration and determination a **model case** that will allow the PERB agency to provide much-needed guidance to all PERB constituents throughout the entire state regarding the following topics: 1) **how to interpret the MMBA’s emergency clause [Government Code section 3504.5(b)] as applied to the COVID-19 pandemic**, and further 2) **how the Disaster Service Law [Government Code 3100, et seq.] and PERB-administered collectively bargained statutes intersect, if at all.**

The County of Santa Clara (“County”) has unilaterally assigned RNPA and SEIU Local 521 members to skilled nursing facilities, providing such employees false assurances that they would treat only COVID-19-negative patients, and be adequately supervised, trained and provided with Personal Protective Equipment. Nothing could be further from the truth. The County bypassed RNPA and SEIU Local 521 and continuously refused to provide them prior notice or opportunity to bargain over these unilateral assignments, even in the face of clear and reasonable demands by RNPA and SEIU Local 521 to meet and be provided with information, and even when presented with credible complaints from County employees that the assignments at the skilled nursing facilities exposed them to life-threatening workplace hazards. The County has asserted, unabashedly, that

- Admitted in Hawaii
- ◆ Also admitted in Nevada
- ▼ Also admitted in Illinois
- ▶ Also admitted in New York and Alaska
- \* Also admitted in Florida
- ◆ Also admitted in Minnesota

its vague ordinance empowering a Director of Emergency Services to respond to an emergency, and the emergency provision in the MMBA, and the Disaster Service Law all authorize the County to act unilaterally as it did (and as it continues to do). The ordinance does not authorize the Director of Emergency Services to disregard protections and obligations set forth in Memoranda of Understanding with labor organizations or in the MMBA. As for the County's second claimed source of authority, it is clear on its face that the MMBA's emergency provision does not apply at all to this circumstance because the County has not adopted an ordinance, rule, resolution or regulation. Instead, the County has made changes in working conditions at a departmental level, by asserting managerial prerogative and by, weeks later in the process, unilaterally amending a Disaster Service Worker policy.

Additionally, the type of "emergency" contemplated in Government Code section 3504.5(b) is not a slow-burning pandemic. California has successfully flattened, and arguably "crushed" the curve, due to its proactive measures to guard against the spread of the COVID-19 virus. There is sufficient time for the County to provide prior notice and opportunity to bargain with its unions regarding matters within the scope of representation that relate to the pandemic. Lastly, the County did not make a single effort to exhaust alternatives before undertaking this unilateral action. Outrageously, the County simply *suggested* to the skilled nursing facility operators that the operators contract with a registry service (also known as "travelers" contractor); the operators said in a non-committal way that they would look into it. The County had not exhausted its own established contractual relationships with registry services either. As this Board knows well from responding to countless requests for injunctive relief in the health care setting, registry employees in the classifications of Registered Nurse and Licensed Vocational Nurse are ubiquitous. This continues to be true, even during a pandemic. The County apparently did not explore evacuating COVID-19-positive nursing home residents to the County hospitals, although the County's own hospital beds were (and still are) largely vacant. At the County facilities, the RNPA and SEIU Local 521 members could have treated the nursing home residents in a safe setting that is familiar to the County employees, while under the supervision of County supervisors and while subject to clear County rules and protocols. On or about April 8, 2020, the County of Riverside vacated nursing home residents to local hospitals; this illustrates the feasibility of such an option. Instead, the County has proclaimed that it possesses unfettered authority to send its employees anywhere it desires, and has threatened employees with discipline who decline.

The County has entirely bypassed the employees' representatives, and failed for weeks to provide even the most basic amount of information regarding which employees were working in the nursing homes and what safety precautions (if any) the County was ensuring. Understandably, one of the employees who observed the County's reckless disregard for their life asked the rhetorical question "who was advocating for us during these negotiations?" The County has derogated the role and authority of the Unions in this process, all in the name of disaster-response, although the Unions and their member-leaders have ample expertise to impart regarding how to safely perform this Disaster Service Work. The Unions are unequivocally committed to supporting the community during this time, and have made itself available any day of the week and any time of day to work with the County proactively regarding Disaster Service Work assignments. The County has declined because the County does not believe any level of engagement with the Unions is required by law.

As you are well aware, PERB Regulation 32147 (b) provides that the Board, the Chief Administrative Law Judge, or the General Counsel may expedite a pending matter “[i]n any case that presents an important question of law or policy under any statute administered by the Board, the earlier resolution of which is likely to improve labor relations between or among affected parties.” This matter presents an important question of law under the Meyers-Milias-Brown Act (“MMBA”), administered by PERB, the resolution of this matter is likely to improve the relations between the County of Santa Clara and two of its largest unions. We believe that this case provides such a clear example of a public employer’s exploitation and misapplication of the MMBA emergency clause and Disaster Service law that the PERB Board should please: **1) issue a published decision explaining why it orders this case expedited at all levels; and 2) decide the case itself after an Administrative Law Judge develops the factual record at a Formal Hearing.**

For the foregoing reasons, RNPA and SEIU Local 521 respectfully implore the PERB Board to weigh in early and express its expertise and wisdom regarding these important legal questions. PERB constituents throughout the state can benefit from PERB’s guidance during this time. Please contact me if you have any questions regarding this request.

Sincerely,



Kerianne R. Steele

KRS:sm  
opeiu 29 afl-cio(1)

Enclosures

cc: Ms. Nancy J. Clark  
149370\1081929



**STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD  
UNFAIR PRACTICE CHARGE**

**DO NOT WRITE IN THIS SPACE:** Case No: \_\_\_\_\_ Date Filed: \_\_\_\_\_

**INSTRUCTIONS:** File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at [www.perb.ca.gov](http://www.perb.ca.gov). If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES  If so, Case No. \_\_\_\_\_ NO

1. CHARGING PARTY: EMPLOYEE  EMPLOYEE ORGANIZATION  EMPLOYER  PUBLIC<sup>1</sup>

a. Full name: See attached Appendix A

b. Mailing address: See attached Appendix A

c. Telephone number:

d. Name and title of person filing charge: Xochitl A. Lopez E-mail Address: [xlopez@unioncounsel.net](mailto:xlopez@unioncounsel.net)  
Telephone number: (510) 337-1001 Fax No.: (510) 337-1023

e. Bargaining unit(s) involved: All RNPA and SEIU Local 521 represented bargaining units

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION  EMPLOYER

a. Full name: County of Santa Clara

b. Mailing address: 70 West Hedding Street, 11th Floor, San Jose, CA 95110

c. Telephone number: (408) 299-5105

d. Name and title of agent to contact: Jeffrey V. Smith, Chief Executive Officer E-mail Address: \_\_\_\_\_  
Telephone number: (408) 299-5105 Fax No.: \_\_\_\_\_

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

a. Full name:

b. Mailing address:

c. Agent:

<sup>1</sup> An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.  
PERB-61 (4/3/2020) SEE REVERSE SIDE

**5. GRIEVANCE PROCEDURE**

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes  No

**6. STATEMENT OF CHARGE**

- a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)
- Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
  - Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
  - Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
  - Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
  - Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)
  - Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
  - Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)
- b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: Gov't code secs. 3502, 3503, 3505, 3506 and PERB Regulation 32603(a), (b), (c), and (g)
- c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (***a copy of the applicable local rule(s) MUST be attached to the charge:***)  
See attached Appendix B
- d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)  
See attached Appendix B

**DECLARATION**

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on 05/06/2020

(Date)

See attached Verifications of Debbie Chang and Debbie Narvaez

at Alameda, California  
(City and State)

Kerianne R. Steele and Xochitl Lopez  
(Type or Print Name)

  
(Signature)

Title, if any: Attorney

Mailing address: 1001 Marina Village Parkway, Suite 200, Alameda, California 94501

Telephone Number: (510) 337-1001 E-Mail Address: ksteele@unioncounsel.net

xlopez@unioncounsel.net

## PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,  
State of California. I am over the age of 18 years. The name and address of my  
Residence or business is Weinberg Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

On 05/06/2020, I served the Public Employment Relations Board  
*(Date)* *(Description of document(s))*

Unfair Practice Charge \_\_\_\_\_ in Case No. tbd.  
*(Description of document(s) continued)* *(PERB Case No.)*

on the parties listed below by (check the applicable method(s)):

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by  
the United States Postal Service or private delivery service following ordinary business  
practices with postage or other costs prepaid;

personal delivery;

facsimile transmission in accordance with the requirements of PERB Regulations 32090  
and 32135(d).

electronic service (e-mail) - I served a copy of the above-listed document(s) by  
transmitting via electronic mail (e-mail) to the electronic service address(es) listed below  
on the date indicated. *(May be used only if the party being served has filed and served a  
notice consenting to electronic service or has electronically filed a document with the Board. See  
PERB Regulation 32140(b).)*

*(Include here the name, address, e-mail address and/or fax number of the Respondent and/or any other parties served.)*

Ms. Nancy J. Clark  
County of Santa Clara  
Office of the County Counsel  
Lead Deputy County Counsel  
70 West Hedding Street, 9th Floor, East Wing  
San Jose, CA 95110-1770  
Nancy.Clark@cco.sccgov.org

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct and that this declaration was executed on 05/06/2020, at  
*(Date)*

Alameda California  
*(City)* *(State)*

Stephanie Mizuhara

*(Type or print name)*

  
*(Signature)*

**RNPA and SEIU LOCAL 521 v. COUNTY OF SANTA CLARA**  
**Appendix A to PERB Charge**  
**(Charging Party 1a – c)**

**Charging Party No. 1**

Registered Nurses Professional Association  
950 South Bascom Ave., Suite 2120  
San Jose, CA 95128  
Tel: (408) 292-6061

**Charging Party No. 2**

Service Employees International Union, Local 521  
2302 Zanker Road  
San Jose, CA 95131  
Tel: (408) 678-3321

**RNPA and SEIU LOCAL 521 v. COUNTY OF SANTA CLARA**  
**Appendix B to PERB Charge**  
**(Statement 6.d)**

1. The Charging Party, Registered Nurses Professional Association (“RNPA”) is and has been at all times material hereto a recognized employee organization within the meaning of Government Code section 3501(b) and is and has been recognized by the County of Santa Clara as an employee organization that represents a number of its employees in appropriate bargaining unit.

2. The Charging Party, Service Employees International Union, Local 521 (“SEIU Local 521”) is and has been at all times material hereto a recognized employee organization within the meaning of Government Code section 3501(b) and is and has been recognized by the County of Santa Clara as an employee organization that represents a number of its employees in appropriate bargaining units.

3. The County of Santa Clara (“County”) is a public agency within the meaning of Government Code section 3501(c). At all times material hereto the County has been the employer of numerous members of RNPA and SEIU Local 521. The Santa Clara Valley Medical Center (“SCVMC”) is an entity within the County that provides medical services, and employs RNPA and SEIU Local 521 bargaining unit members.

4. The County exercised its right under Government Code section 3507(a) to enact or reenact local rules for the administration of employer-employee relations. Those local rules were adopted in County Merit System Rules A25-339, *et seq.*, of the County of Santa Clara Ordinance Code. A true and correct copy of the County Ordinance Code can be found at <https://www.sccgov.org/sites/esa/employment/hr/Documents/county-of-santa-clara-ordinance-code-MSR.pdf> and is incorporated by reference as though set forth at length herein.

5. The County and RNPA are parties to a Memorandum of Understanding (“MOU”), which sets forth wages, hours and terms and conditions of employment of bargaining unit employees. The term of the MOU runs from November 10, 2014 through October 20, 2019. A true and correct copy of the MOU can be found at <https://www.sccgov.org/sites/esa/labor/Documents/mou-moa/registered-nurses-professional-association-RNPA-2014-through-2019.pdf> and is incorporated by reference as though set forth at length herein. RNPA and the County have negotiated a successor MOU which was reviewed and adopted by the Santa Clara County Board of Supervisors on January 14 and 28, 2020.

6. The County and SEIU Local 521 are parties to an MOU, which sets forth wages, hours and terms and conditions of employment of bargaining unit employees. The term of the MOU runs from June 22, 2015 through June 16, 2019. A true and correct copy of the MOU can be found at <https://www.sccgov.org/sites/esa/labor/Documents/mou-moa/SEIU-local-521-contract-6-22-15-through-6-16-19.pdf> and is incorporated by reference as though set forth at length herein. SEIU Local 521 and the County have negotiated a successor MOU which was adopted by the Santa Clara County Board of Supervisors on March 24, 2020.



## FACTS PERTAINING TO RNPA

7. At all times material hereto, the RNPA bargaining unit has included registered nurses who perform nursing services. At all such times, Debbie Chang has served as the President of RNPA, and Mike Benipayo and Allan Kamara have served as Vice Presidents on the RNPA Board of Directors. Shannon Ruth serves as the Association Representative and Chung Park serves as the Association Organizer/Representative for RNPA.

8. At all material times hereto, Paul Lorenz has served as the Chief Executive Officer (“CEO”) to the SCVMC. At all material times hereto, Matthew Cottrell and Cynthia Mihulka have served as Labor Relations Representatives for the County. Jill Sproul served as the Chief Nursing Officer (“CNO”), Andrea Brollini as Director of Nursing, Serena Sy and Sonia Menzies as Director in Primary Care, Sue Kehl as Director of Nursing, and Matt Gerrior as Director in Custody Health, all within the SCVMC.

### **A. COUNTY’S UNILATERAL IMPLEMENTATION OF DISASTER SERVICE WORKER ASSIGNMENTS**

9. On or about March 16, 2020, the County of Santa Clara Department of Public Health issued a Shelter in Place Order in response to the COVID-19 pandemic. A true and correct copy of March 16, 2020 Order is attached hereto, marked as **Exhibit A**, and is incorporated by reference as though fully set forth at length herein.

10. On or about April 1, 2020, the Quality Improvement Nurse Coordinator and Assistant Nurse Manager to Ambulatory and Community Health Services (i.e., clinics), Hoang Nguyen, emailed the Ambulatory nursing staff, including RNPA members. Nguyen’s email instructed the staff to complete a “Nursing Home Competency List” and a “Mandatory Policy and Procedure Review List.” Hoang instructed the staff that they must return the completed forms by 5:00 PM, that same day. A true and correct copy of the email message is attached hereto, marked as **Exhibit B**, and is incorporated by reference as though fully set forth at length herein. The County did not provide RNPA with advance notice of this instruction, nor the reason for it. At this time, RNPA had not been notified that the County was planning to send nurses to non-County facilities as Disaster Service Workers (“DSWs”).

11. On or about April 2, 2020, an Ambulatory nurse within the RNPA bargaining unit notified President Chang that the Sunnyvale Internal Medicine Clinic where she normally works had closed, and that the clinic nurses were being prepared to work at a skilled nursing facility (“SNF”). The same nurse later informed President Chang that she had received a call on April 5, 2020 from the SCVMC Director of Quality, Education and Standards, Ofelia Hawke, and was instructed by Hawke to take a vacation the next day (April 6), while plans were finalized for an assignment to the SNF. At this time, the County still had not notified RNPA regarding any assignment to a SNF, or any Disaster Service Work assignment.

12. On and around April 2, 2020 and in the days following, local media had reported surges in the COVID-positive patients in SNFs within the region, including facilities in San Jose called Canyon Springs and The Ridge. Attached herein as background information are true and correct copies of two articles published in the San Jose Mercury News on this topic, dated April

2, and 10, 2020, marked as **Exhibits C and D**, and are incorporated by reference as though fully set forth at length herein.

13. On or about April 6, 2020, Santa Clara County Labor Relations Representative, Matthew Cottrell sent an email with the subject line “Courtesy Notice on DSW Assignments” to RNPA informing RNPA that the County had been contacted by a number of SNFs requesting the County’s assistance to augment their staff. In the email, Cottrell describes that a number of staff at the SNFs are on quarantine or have resigned during the COVID-19 crisis. Cottrell described that the County staff will be assigned to the privately owned SNFs as DSW, and that the County staff would care for the COVID-19 negative patients in the SNF, in order to relieve pressure on the County’s acute care facilities. Cottrell indicated that the County was in the beginning stages of the assignments, stating that the “County will ask for volunteers prior to assigning staff to the facilities.” In the email, Cottrell did not offer to bargain over any issues related to the DSW assignments, but vaguely states that the County “hope[s] to have a 24-hour timeframe to pull the needed numbers/classifications together.” Upon receipt of this email, President Chang replied that she would like to schedule a meeting “as soon as possible” regarding the specifics of the DSW assignments. A true and correct copy of Cottrell’s April 6, 2020 email message and President Chang’s reply is attached hereto, marked as **Exhibit E**, and is incorporated by reference as though fully set forth at length herein.

14. Prior to the April 6, 2020 email from Cottrell, RNPA had not received any notice from the County regarding its plans to place bargaining unit members in SNFs or its plans to designate bargaining unit members as DSW.

15. On April 7, 2020, based on the request of President Chang, the parties met in regard to the SNF placements. President Chang, Vice Presidents Kamara and Benipayo, and RNPA staff were present for RNPA. Matthew Cottrell, Ofelia Hawke, Sonia Menzies, Serena Sy, and Matt Gerrior attended on behalf of the County. During the meeting, President Chang asked the County what its projected timeline was for placing staff in the SNFs. Gerrior responded that the first group would arrive at their shifts in forty-five minutes. Gerrior also claimed that the nurses had volunteered for the assignments, and that County nurses would only be assigned to COVID-19 negative patients. Shocked at the County’s unilateral conduct and lack of transparency, President Chang responded that RNPA was appalled that the County had completely bypassed RNPA regarding this. During the meeting, the County described its pre-determined plans regarding the terms and conditions of employment for the DSW. The County failed to provide an opportunity to bargain.

16. Later that same day April 7, 2020, after their shifts, *five* different nurses who had been assigned to the Canyon Springs SNF as DSW, emailed Director Hawke with an alarming list of concerns regarding the SNF assignment. Among the concerns listed were unsafe and unsanitary working and care conditions at the SNF, concerns about inadequate training and onboarding prior to being left alone with patients at the facility, excessive patient-to-nurse ratios that contradicted what the nurses had been promised prior to the assignment, failure of the SNF to appropriately mark patients for droplet precautions, unsound medication administration practices that risked errors and endangered nurses’ licenses, lack of support and information about who to contact with emergencies, and other concerns. One nurse noted “[w]e signed up to become a nurse to help sick people not to end up harming them even more because of things that

could have been prevented by us, management and the people who [are] supposed to support us through all of this.” Another nurse asked in her email: “Was our experience and background even considered before negotiations? Who was advocating for us during these negotiations?” The same nurse demanded that prior to making SNF assignments the County must:

Ask for our input, especially prior to giving us assignments and agreeing to specific job responsibilities. We will be the ones caring for these patients. We know our own skill sets, what we are comfortable with, and what we’ll need more training for.

A true and correct copy of the April 7, 2020 email chain from the Canyon Springs DSW nurses to County management is attached hereto, marked as **Exhibit F**, and is incorporated by reference as though fully set forth at length herein.

17. On this same day, RNPA sent an email to the membership alerting the members to the County’s unilateral actions and direct dealing, and requesting that members with information about SNF assignments contact RNPA. A true and correct copy of the April 7, 2020 membership email is attached hereto, marked as **Exhibit G**, and is incorporated by reference as though fully set forth at length herein.

#### **B. COUNTY’S FAILURE AND REFUSAL TO BARGAIN ABOUT CLOSURE OF CLINICS**

18. On this same day, at or around 4:08 PM, RNPA Association Representative, Shannon Ruth, emailed Serena Sy, requesting to meet and confer over the effects of the closures of the County clinics. County Labor Representatives Mihulka and Cottrell were also copied on the correspondence. Ruth provided multiple dates of availability. The County’s clinic management failed and refused to agree to meet and confer. A true and correct copy of the correspondence stemming from Ruth’s April 7, 2020 request to meet and confer is attached hereto, marked as **Exhibit H**, and is incorporated by reference as though fully set forth at length herein. Although the County did not confirm this at the time, RNPA learned that the clinic nurses relevant to this demand were the same nurses the County had required to report for duty at the SNFs as DSWs.

#### **C. COUNTY’S FAILURE AND REFUSAL TO PROVIDE INFORMATION AND BYPASSING OF RNPA TO DIRECTLY DEAL WITH RNPA MEMBERS**

19. On or about April 8, 2020, President Chang sent a request for information to the County, in order to understand the County’s process for selecting DSW as well as the County’s process in assessing the conditions and needs at the SNFs. RNPA also wanted to understand the SNF working conditions so that RNPA would be equipped to bargain with the County regarding safety measures, support for staff, and other terms and conditions of employment for the DSW nurses. President Chang addressed the information request to CEO Paul Lorenz, and copied Cottrell, and Menzies. The information request included a request for a list of the nurses who have been assigned to SNF facilities; a copy of the County’s Aerosol Transmitted Disease (“ATD”) Exposure Control Plan for the SNFs, which medical facilities are required to create and enforce at all times pursuant to Cal/OSHA regulation 8 CCR § 5199 (d); a copy of the

Cal/OSHA 300 illness and injury logs for the SNFs; and other relevant information. RNPA also requested information regarding the “County’s particularized assessment of the risks and hazards that have been identified at each skilled nursing facility.” President Chang requested that the information be provided to RNPA no later than April 10, 2020. The County did not comply with this deadline. A true and correct copy of the April 8, 2020 information request is attached hereto, marked as **Exhibit I**, and is incorporated by reference as though fully set forth at length herein.

20. On the same day April 8, 2020, Gerrior emailed RNPA a packet of documents that had been provided to the DSW nurses prior to their assignments. The packet included a general “plan” for the Canyon Springs SNF, a floor plan, a schedule, and an instruction sheet on how to put on and remove Personal Protective Equipment (“PPE”). Prior to this date, the County had not provided RNPA with these documents, nor informed RNPA that such documents would be sent to RNPA members. A true and correct copy of the April 8, 2020 email with documents is attached hereto, marked as **Exhibit J**, and is incorporated by reference as though fully set forth at length herein.

21. On or about April 11, 2020, CNO Jill Sproul, emailed President Chang, notifying her that “a request for volunteers went out last night” for bargaining unit members “that are willing to go to the SNFs to help.” Sproul stated that the County requested RN, LVN, CNA and EVS volunteers from the County bargaining units to work at the SNFs. Sproul claimed in the email that the County had obtained “some staff that had volunteered.” Sproul also offered to set up a call so that RNPA “could better understand the work environment.” President Chang responded by requesting a meeting. President Chang also described several of the Union’s concerns, and asserted that the County’s execution of the DSW assignments “was not a well thought out plan.” Chang described that nurses were misled by the County’s representations about the assignments, and that the County’s conduct created a lack of trust. President Chang also stated that she was “deeply concerned and disheartened” about how “RNPA was bypassed” in the process to determine the working conditions of the DSW. The parties set a meeting for Monday April 13, 2020. Prior to the April 11, 2020 email, the County had not informed RNPA that it would be sending out another call for volunteers for the SNFs. A true and correct copy of Sproul’s April 11, 2020 email and related correspondence is attached hereto, marked as **Exhibit K**, and is incorporated by reference as though fully set forth at length herein.

22. The parties met on April 13, 2020. Lorenz, Sproul, Menzies, Gerrior, Director of Nursing, Sue Kehl, Nurse Manager in Custody Health, Meaghan Hernandez, and Hospital Medical Director, Jennifer Tong, were present on behalf of the County. RNPA was represented by President Chang, and Vice President Kamara. At the meeting, President Chang emphasized the County’s failure to involve RNPA in its process regarding the DSW assignments. President Chang explained that by failing to engage RNPA the County created many problems. President Chang identified various problems with the conditions of employment faced by the DSW nurses. President Chang expressed that members were frustrated because they had been deceived and were not aware that they were being sent to a SNF. President Chang explained that the nurses experienced staff taking unsafe shortcuts at the SNFs, that they were not provided sufficient PPE or training, that staff who were concerned for their own family’s health were forced to rent Airbnb lodging at their own expense, and other concerns about the DSW terms and conditions of employment. President Chang demanded that nurses must have access to County policies on

basic nursing care at the SNFs, and that the other problems must be promptly resolved. County representatives did not agree to bargain with RNPA over the effects of the SNF assignments.

23. On that same day, the Director Kehl forwarded President Chang an email that had been sent by County management to bargaining unit members, requesting volunteers to work at the SNFs. A true and correct copy of the forwarded call for volunteers is attached hereto, marked as **Exhibit L**, and is incorporated by reference as though fully set forth at length herein.

**D. COUNTY'S ADMISSION OF UNILATERALLY IMPLEMENTED TERMS AND CONDITIONS OF EMPLOYMENT AND FURTHER FAILURE AND REFUSAL TO BARGAIN WITH RNPA**

24. Also on April 13, 2020, President Chang sent an email to the Board of Supervisors, Lorenz, and County Labor Relations representatives Cottrell and Mihulka, laying out bargaining demands pertaining to the effects of the coronavirus crisis on the RNPA bargaining unit. These demands were aimed at the bargaining unit in general, not specifically directed to the DSW assignment. On or about April 15, 2020, Cottrell responded by describing the benefits the County had already decided to provide (without negotiating with the Union), and stated that "the County is not willing to enter into negotiations to further expand County benefits." A true and correct copy of correspondence stemming from President Chang's bargaining demands is attached hereto, marked as **Exhibit M**, and is incorporated by reference as though fully set forth at length herein.

25. On or about April 13, 2020, the County provided a partial response to the Union's information request of April 8, 2020. The County provided only basic policy documents and failed to provide any evidence that they had engaged in any review of the workplace safety conditions at the SNFs, prior to sending RNPA bargaining unit members to those privately owned facilities as DSW. For example, the County stated that it had no ATD exposure control plan for the SNFs, and provided no information in response to the Union's request for the County's particularized assessment of workplace hazards at the SNFs. A true and correct copy of the County's partial response is attached hereto, marked as **Exhibit N**, and is incorporated by reference as though fully set forth at length herein. The fact that the County was unable to provide RNPA with its assessment of workplace hazards at the SNFs, nor basic safety related procedures such as the ATD Exposure Control Plan, indicated to RNPA that the County had utterly failed to take seriously its duty to protect RNPA nurses from workplace harm.

**E. COUNTY'S UNILATERAL IMPLEMENTATION OF CHANGES TO THE DISASTER SERVICE WORKER POLICY AND FURTHER DIRECT DEALING WITH RNPA'S MEMBERS, INCLUDING THREATS OF DISCIPLINE**

26. Prior to and through April 13, 2020, the County has maintained a policy pertaining to DSWs. The policy is posted on the County's website. A true and correct copy of that policy is attached hereto, marked as **Exhibit O**, and is incorporated by reference as though fully set forth at length herein. On or about April 13, 2020, the County unilaterally amended its Disaster Service Worker policy, without notice to RNPA or opportunity to bargain. RNPA was not made aware of the changes to this policy until the amended version was emailed directly to RNPA members on April 17, as provided below. The new or revised policy includes a much

more detailed procedure set of instructions and rights, in the case of assigned DSW. It provides that the Human Resources Department will create a database of skills possessed by each employee related to the disaster service work, and that Emergency Operations Center will coordinate with Human Resources and Department heads to determine which individuals will be deployed for each role. It also specifies that DSW may be supplemented by volunteers and outside contractors. The new or revised policy also provides that Department heads will provide each deployed worker with the Policy and an FAQ, neither of which have been reviewed by the Union. It provides that DSW may be required to perform daily timekeeping. It further states that employees may be disciplined for refusing a DSW assignment, that no hazard pay will be provided for DSW, and incorrectly states categorically that employees may not refuse a DSW assignment on the grounds that they live with an individual who is medically vulnerable to COVID-19. None of these details were included in the original DSW policy.

27. On or about April 14, 2020, Cottrell emailed President Chang with an “update” that the County would be activating additional DSWs as early as “tomorrow,” and informed President Chang that he would be available to answer questions. As before, Cottrell did not offer nor did he provide RNPA with an opportunity to bargain over these assignments or the effects of the assignments. Cottrell also mentioned that the County was seeking assistance from the State in hiring contract staff for the SNFs. A true and correct copy of Cottrell’s April 14, 2020 email is attached hereto, marked as **Exhibit P**, and is incorporated by reference as though fully set forth at length herein.

28. On or about April 17, 2020, Gil Garinderjit, Manager of the Progressive Care Unit (“PCU”) at SCVMC, sent an email message to all PCU RNPA bargaining unit members at the SCVMC asking for volunteers to work at the SNFs. Garinderjit stated that if there were insufficient volunteers, names would be “drawn from a hat” for mandatory four-week assignments. The County failed to consult RNPA regarding this solicitation and deployment method, including the method for seeking “volunteers,” or the decision to draw names “from a hat” to assign workers to the SNF. Understandably, Garinderjit’s email caused widespread alarm among the membership. At least one nurse was told that her name was drawn, contacted the Union, concerned that her name was not selected at random, but rather purposely selected, as the drawing did not occur in front of any witnesses. Three days later, Garinderjit informed the staff that sufficient volunteers were received, and incorrectly claimed that the County was working with the Union. A true and correct copy of Garinderjit’s April 17 and 20, 2020 email correspondence is attached hereto, marked as **Exhibit Q**, and is incorporated by reference as though fully set forth at length herein.

29. Also on April 17, 2020, County management sent an email to all staff, including RNPA bargaining unit members, requesting they fill out a survey of their interest in DSW assignment, skills and qualifications. A true and correct copy of the April 17 email message with survey is attached hereto, marked as **Exhibit R**, and is incorporated by reference as though fully set forth at length herein. The County did not notify RNPA in advance of this survey, nor was RNPA ever provided with the questions in the survey or the responses received from the survey.

30. On April 17, 2020, the Nurse Manager for the County’s “6 Medical” unit at SCVMC, Lucia Heylman, sent an email to nurses in her unit instructing employees to work at the SNFs, and threatening discipline if they do not accept DSW assignment. Heylman’s email

included an FAQ about DSW assignments, and the County's amended DSW policy (described above), as attachments. A true and correct copy of Heylman's April 17 email message, attached FAQ, and amended policy, is attached hereto, marked as **Exhibit S**, and is incorporated by reference as though fully set forth at length herein. Prior to this date, the County had not made RNPA aware that it had amended its DSW policy, that it would send the policy and FAQ to RNPA members, that it would require members to accept DSW assignments on threat of discipline, or that it would send such an email to members. Understandably, members responded with great alarm to this threatening message, and several contacted RNPA with concerns.

#### **F. COUNTY'S CONTINUED FAILURE AND REFUSAL TO BARGAIN WITH RNPA ABOUT DSW ASSIGNMENTS**

31. On April 21, 2020, during a standing meeting of RNPA and the County, RNPA again raised concerns about the SNF deployment. Sproul, Brollini, Kehl and others were present on behalf of the County, and President Chang, Vice Presidents Benipayo and Kamara, and RNPA staff and Board members were present for the Union. Chang spoke to concerns regarding the direct dealing, surveys, and competency forms sent to the members by the County, and the County's unilateral process of designating staff to send to the SNFs. RNPA expressed concerns regarding lack of transparency in the deployment process, and apparent inconsistencies in the method for selecting and communicating with DSW from department to department. RNPA proposed that a different designation method, rather than random selection, would be better, and offered the possibility of utilizing a method based on inverse seniority. RNPA requested that the parties resolve these matters cooperatively. The County representatives stated the County's position that bargaining over the deployment process is not required because all County staff were already designated as DSW by statute, such that there is nothing to bargain over. The County further stated that it was in the process of obtaining commitments from contract nursing staff ("travelers" or "registry" employees), such that it may not be necessary to further deploy bargaining unit members.

32. On or about May 1, 2020, President Chang sent an email message to Cottrell, again requesting to bargain regarding the deployment method for designating DSW, as well as "safety precautions" and "hours and working conditions" relating to DSW assignments. Cottrell responded by refusing to meet and confer over the DSW assignments, asserting that the County has a right to act unilaterally under Government Code §§ 3100, and 3504.5(b). A true and correct copy of Chang's May 1, 2020 request to bargain and the County's refusal is attached hereto, marked as **Exhibit T**, and is incorporated by reference as though fully set forth at length herein.

#### **FACTS PERTAINING TO SEIU LOCAL 521**

33. SEIU Local 521 is the exclusive representative of many thousands of employees who are employed by the County in various classifications, including in the classification of Licensed Vocational Nurse ("LVN"). LVNs work for the SCVMC.

34. Deborah Narvaez serves as the Chief of Staff of SEIU Local 521. She recently served as the Chief Negotiator for SEIU Local 521 in the successor negotiations between SEIU Local 521 and the County. Riko Mendez is the Chief Executive Officer of SEIU Local 521, which means he is the highest-ranking elected representative of SEIU Local 521. Andrea

Hightower is a Coordinator for SEIU Local 521, assigned to the County worksite. Merina Au Yeung is an Internal Worksite organizer assigned to the County worksite. Narvaez, Chief Elected Officer Mendez, Hightower and Au Yeung are all authorized agents representing SEIU Local 521.

**A. THE COUNTY SOLICITS “VOLUNTEERS” TO STAFF PRIVATE SECTOR SNFS, PROVIDES THEM MINIMAL TRAINING, AND ASSIGNS THEM TO REPORT TO WORK AT THE SNFS, ALL WITHOUT PROVIDING PRIOR NOTICE OR OPPORTUNITY TO BARGAIN TO SEIU LOCAL 521**

35. On or about March 23, 2020, unbeknownst to SEIU Local 521, the County requested that many SEIU Local 521-represented LVNs commit to being reassigned to skilled nursing facilities for the sole purpose of helping combat the spread of COVID-19. Dozens of SEIU Local 521-represented LVNs responded to this call by offering their services to these private facilities on behalf of the County, knowing full well the risk this would present to them and to their loved ones with whom they live.

36. Also without providing prior notice of opportunity to bargain to SEIU Local 521, the County assured those SEIU Local 521 members that they would receive adequate training to allow them to perform their duties and protect their own health at their new assignments, and that they would be assigned only to work with residents who were not infected or suspected of being infected with COVID-19 (with existing facility staff being responsible for caring for residents who were either suspected or confirmed as having contracted COVID-19).

37. Also unbeknownst to SEIU Local 521, the County assured the SEIU Local 521 members that all applicable laws and safety standards, including straightforward decontamination, isolation, and PPE norms and protocols, would be followed during their assignments—i.e., that the impressive risks inherent to entering such hotbeds of COVID-19 transmission would be minimized to the greatest extent possible.

**B. THE COUNTY PROVIDES “COURTESY” NOTICE TO SEIU LOCAL 521 OF THE ASSIGNMENTS, AND FAILS TO DISCLOSE THAT EMPLOYEES ARE REPORTING TO WORK AT SNFS THAT VERY DAY**

38. As was also sent (simultaneously via the same message) to RNPA, on or about April 6, 2020, Cottrell of the County sent an email with the subject line “Courtesy Notice on DSW Assignments” to SEIU Local 521 informing SEIU Local 521 that the County had been contacted by a number of SNFs requesting the County’s assistance to augment their staff. In the email, Cottrell described that a number of staff at the SNFs are on quarantine or have resigned during the COVID-19 crisis. Cottrell stated that the County staff would be assigned to the privately owned SNFs as DSW, and that the County staff would care for the COVID-19 negative patients in the SNF, in order to relieve pressure on the County’s acute care facilities. Cottrell indicated that the County was in the beginning stages of the assignments, stating that the “County will ask for volunteers prior to assigning staff to the facilities.” In the email, Cottrell does not offer to bargain over any issues related to the DSW assignments, but vaguely states that the County “hope[s] to have a 24-hour timeframe to pull the needed numbers/classifications



together.” His email indicates that he provided the notice to SEIU Local 521 as a mere “courtesy.” (See Exhibit U, below.)

39. That same day, on or about April 6, 2020, Narvaez of SEIU Local 521 promptly responded that SEIU Local 521 would like to understand when the County plans to start asking for volunteers to work at the SNFs. She asked to either discuss the topic at a pre-scheduled meeting the coming Friday, or to set a separate and meeting sooner than that. She expressed SEIU Local 521 members’ desire to assist with the COVID-19 crisis. She emphasized the importance of SEIU Local 521 members being ready to respond, and wanted to make sure that people volunteer. A true and correct copy of the April 6, 2020 email exchange between Cottrell and Narvaez is attached hereto, marked as **Exhibit U**, and is incorporated by reference as though fully set forth at length herein.

40. The following day, on or about April 7, 2020, Narvaez of SEIU Local 521 sent a follow up email to Cottrell of the County stating that SEIU Local 521 “would like to make it clear that we are demanding to bargain with [the County] over this change in working conditions for Disaster Service Workers.” She requested information relevant to the SNF assignment. She asked to receive the information prior to the meeting with the County “and before the County begins implementation.” She said that SEIU Local 521 wants to “avoid a situation where there is an exploitation of Disaster Service Workers.” She restated the members’ unequivocal commitment to helping the community. A true and correct copy of Narvaez’s April 7, 2020 email to Cottrell is attached hereto, marked as **Exhibit V**, and is incorporated by reference as though fully set forth at length herein.

41. Without the knowledge of SEIU Local 521, following the County’s March 23, 2020 unilateral call for commitments, the County provided the SEIU Local 521 members who were assigned to the two facilities (Canyon Springs and The Ridge) with approximately 13 hours of passive and interactive training prior to these workers beginning their first shifts at these facilities. This training, completed on or about April 2, 3, and 7, 2020, consisted of basic instructions on such topics as using intravenous pumps, operating feeding tubes, taking vital signs, and donning and doffing PPE. A significant portion of the training consisted of watching video tutorials.

42. The County further failed to inform SEIU Local 521 that, on or about April 7, 2020, several SEIU Local 521 members completed approximately 60 to 90 minutes of training before receiving text messages assigning them to report to Canyon Springs at 2:30 p.m. These workers promptly traveled to Canyon Springs, where they met with remaining facility staff and became acquainted with basic processes. At the time of their assignment, these County employees remained under the impression that they would be working only with COVID-19-negative residents at Canyon Springs, providing services in isolation from the unknown number of Canyon Springs residents with confirmed or suspected COVID-19 infections.

43. The following day, on or about April 8, 2020, without receiving additional hands-on training, these employees began shadowing facility staff delivering patient care. On information and belief, the facility staff were entirely unprepared to train the County employees on hands-on practices and procedures at Canyon Springs.

**C. COUNTY FAILS AND REFUSES TO PROVIDE ALL INFORMATION REQUESTED, AND REVEALS THAT IT DEALT DIRECTLY WITH SEIU LOCAL 521 MEMBERS**

44. On or about April 8, 2020, Gerrior of the County sent a partial response to Narvaez's April 7, 2020 information request. The sparse documentation Gerrior provided in response did not explain what process the County used to determine which SEIU Local 521 members would be assigned to the SNFs. The documents also mentioned Canyon Springs only, and did not reference The Ridge. Insultingly, one document set forth generic public health advice regarding putting on and taking off PPE without providing any detail regarding how to interact with COVID-19 positive patients or Patients Under Investigation for COVID-19. A true and correct copy of Gerrior's insufficient response is attached hereto, marked as **Exhibit W**, and is incorporated by reference as though fully set forth at length herein. It seems the County had unilaterally issued some or all the information to SEIU Local 521 members who were assigned to the SNFs, entirely bypassing SEIU Local 521.

**D. COUNTY MISLEADINGLY TELLS SEIU LOCAL 521 THAT ASSIGNMENTS AT SNFS ARE VOLUNTARY AND THAT SAFETY PRECAUTIONS HAVE BEEN IMPLEMENTED**

45. On or about April 8, 2020, County representatives, including Cottrell, and SEIU Local 521 representatives and members, including Narvaez, participated in an urgent Zoom conference call regarding the subject of the County's unilateral assignment of SEIU Local 521-represented LVNs to SNFs. Repeatedly during the Zoom call, the County claimed that the assignment was "voluntary" and that SEIU Local 521 members were not assigned to work with COVID-19 positive patients. Counsel for SEIU Local 521 pressed the County representatives to explain what measures they had exhausted prior to unilaterally assigning County employees to provide health care services for the (often unscrupulous) SNF operators. The County's paltry response was that it had recommended to the SNF operators that the SNF operators look into using a registry service, and that the County was looking into a registry service to contract with too.

46. Thereafter, on April 9, 2020, SEIU Local 521 participated in proactive conversations with Jeffrey Smith, the County's, Chief Executive Officer, and Cindy Chavez, an elected Board of Supervisors member, regarding how to ensure the safety of County employees who perform Disaster Service Work. The consensus among the participants to the conversation was for the County to enter into a Side Letter or Letter of Agreement with SEIU Local 521 based on the discussion of issues including but not limited to hotel accommodation for unit members, appropriate training, appropriate notice prior to further implementation and incentives.

**E. SEIU LOCAL 521 MEMBERS CONTINUE TO FACE LIFE-THREATENING HEALTH AND SAFETY RISKS AT SNFS**

47. On April 9, 2020, the SEIU Local 521-represented County employees continued to take on increasing levels of responsibility and hands-on patient care duties as they continued to work in tandem with facility staff. The County employees assigned to Canyon Springs quickly observed several worrisome conditions and practices at the facility that appeared to give rise to

workplace CalOSHA violations and, most importantly, presented significant health risks to residents and staff alike. These included:

- Facility staff generally wore only surgical masks rather than respirators of N95 quality or better. It was unclear whether the facility had tried and failed to obtain such minimally protective masks;
- Staff also appeared to lack other basic medical and protective gear. (For example, County employees observed one SNF employee wearing a rain jacket and fishing boots or fishing overalls in lieu of a gown and other appropriate PPE.);
- Insufficient isolation practices between the section of Canyon Springs designated to house and treat COVID-19-positive and suspected positive residents and the section without such residents. (For example, the zipper entrance in the plastic barrier erected to separate the two sections generally remained open rather than being closed after every use, allowing air to pass freely between the two sections. Additionally, staff were not consistently changing or sufficiently sanitizing gowns and other protective equipment when crossing from one section to another, including most relevantly when crossing from the COVID-19 section to the ostensibly non-COVID-19 section.);
- Substandard practices to prevent cross-contamination between patients within each of these two sections. (For example, it was not common practice to change gowns between seeing different patients, or even to sanitize gowns between seeing different patients. In some instances, staff were expected to hang up one common gown outside of each resident's room, with each employee donning and then doffing the common gown before and after treating the patient in question, even though these workers typically interacted with dozens of residents each day. These gowns were frequently not sanitized between uses.);
- County employees assigned to the SNFs observed that pill carts that were utilized in COVID-positive patient areas were then transported to COVID-negative patient areas and were not properly decontaminated and/or stored after use;
- County employees assigned to the SNFs were not properly supervised by County supervisors at all times on all shifts. (For example, a nurse manager would be present for a couple hours a day to check in with staff but would not remain on-site to oversee and ensure safety protocols were adhered to at all times.)

48. This absence of sufficient training and adherence to basic safety protocols caused real harm to SEIU Local 521 members: On or about April 9, 2020, at least two County employees and two SNF staff appear to have been exposed to a potential undiagnosed COVID-19 patient during a tragic and deeply disturbing incident. One of the County employees, an SEIU Local 521-represented LVN, was shadowing a nurse employed by the facility that day. As they were distributing medication to various residents in the designated COVID-19-negative section of Canyon Springs, a certified nursing assistant informed the two nurses that a patient in a nearby room appeared to be dead. After Canyon Springs staff entered the resident's room and yelled

“Code Blue,” the County employee responded to the call and walked into the room, where she observed that the patient appeared to have died. The SEIU Local 521-represented LVN reacted to the situation using her preexisting training that predated the current pandemic, reaching to touch the patient’s forearm to gauge her temperature and confirming that she was cold to the touch while observing that her lips were dark blue in color. Working with facility staff in the room, the County employee was tasked with applying the “ambu bag” to the patient’s mouth and nose. However, the County employee found that she could not easily reposition the resident’s head in order to allow her to affix the ambu bag because the resident’s body had already stiffened. After finally managing to affix the ambu bag, the County employee, working with at least one other County healthcare employee and two existing facility staff, helped administer CPR to the resident for approximately five to ten minutes until paramedics arrived. The resident was thereafter pronounced dead. Based on the observations detailed above, it appears that this resident had died some unknown yet apparently substantial length of time before staff responded—a reality that suggests that the staff at Canyon Springs were completely overwhelmed and underprepared to effectively manage the outbreak of COVID-19 at the facility (a fact that the County likely knew and concealed from the Unions).

49. Moreover, a shortage of PPE at Canyon Springs has created conditions in which employees are experiencing heightened exposure to COVID-19: For example, during the aforementioned April 9, 2020 incident, the four employees administering CPR were necessarily required to make prolonged contact with the resident’s body, including with her head and face. Neither the County employee nor the facility staff workers on the scene were wearing gloves during this incident, apparently because there was and continues to be a shortage of gloves at Canyon Springs, and employees did not want to use gloves in caring for a patient who had been labeled as COVID-19-negative. At least one of the employees administering CPR (the staff member of Canyon Springs who had been paired all day to work with one of the County employees) has reportedly since tested positive for COVID-19.

50. According to the best information currently available, approximately 26 Canyon Springs employees had tested positive for COVID-19 as of April 15, 2020. Moreover, approximately 54 of the facility’s 144 total residents had tested positive, and another 22 test results for both staff and residents remained pending as of April 15, 2020.

51. SEIU Local 521 eventually came to learn that the safety shortcomings at Canyon Springs that are detailed above were unfortunately not isolated incidents, based on reports from SEIU Local 521 members who were assigned there. For example, one of SEIU Local 521 members who had co-administered CPR to the resident on April 9, 2020 reportedly was assigned to provide patient care to residents in the non-COVID-19 section of Canyon Springs on April 13, 2020. During this shift on April 13, 2020, she was forced to make physical contact with three of these residents while providing care without wearing gloves for the reason cited above: Canyon Springs is experiencing an ongoing dearth of PPE, and these residents had been classified as COVID-19-negative (though it does not appear that any had actually been tested at that point). All three have since tested positive and been moved to the COVID-19 section of Canyon Springs. The County employee who was exposed to all three residents was not tested and continued to be assigned to work in the ostensibly COVID-19-negative section of Canyon Springs.

52. Additionally, after receiving training as detailed above on April 2 and 3, 2020, at least one healthcare employee, a SEIU Local 521-represented LVN, was assigned by the County on April 7, 2020 to work at The Ridge prior to the County having any type of formal or informal agreement<sup>1</sup> for the County to provide support services, thus compromising the safety and licensure of SEIU 521 members. The County assigned this employee to The Ridge after the worker and other employees ultimately assigned to Canyon Springs responded to the County's March 23, 2020 call for commitments by agreeing to provide their services during this time of need. The County initially indicated that the workers would have control over which facilities they might be assigned to, but ultimately it controlled this selection process.

53. As with the County employees assigned to Canyon Springs, this LVN represented by SEIU Local 521 was informed that she would be working exclusively with residents at The Ridge who were presumptively not infected with COVID-19. Moreover, the County worker here was assured that she would be working as part of a team of County healthcare employees assigned to the facility.

54. Again, the reality on the ground was completely different than what had been promised: On arriving to The Ridge, the employee learned that she was the only County worker assigned to the facility, which seemed to be operating with very sparse staffing. Moreover, she discovered that nearly every resident and staff member had either tested positive for COVID-19 or was presumptively infected. The outbreak had escalated, in fact, to the point where she was advised on her arrival to assume that anyone she came into contact with within the facility was COVID-19-positive. To this end, when she arrived the facility did maintain a plastic separation barrier between sections in The Ridge, the County employee in question was informed that this sheeting would soon be removed, as it had lost its relevance: The entire facility was presumed to have become infected.

55. This impression is supported by statistics obtained by SEIU Local 521: As of April 15, 2020, all but one of The Ridge's 41 residents had tested positive for COVID-19, and 14 employees had likewise tested positive.

56. As opposed to the situation at Canyon Springs, the County in this case pulled its employee off her assignment to The Ridge before she returned for a second day. However, the County thereafter failed entirely to properly test the exposed employee for COVID-19, and to SEIU Local 521's knowledge continues to refuse to provide her with appropriate post-exposure treatment.

57. In response to the employee exposure at The Ridge, the County did arrange for COVID-19 testing of the worker in question, yet the test was administered only approximately 10 hours after the employee completed her exposure period (as she concluded her one shift at The Ridge at approximately 12:30 a.m. on April 8, 2020, and received the test at approximately 10:30 a.m. that same day). SEIU Local 521 and its member are concerned that such a short interval between exposure and testing jeopardized the accuracy of the test results, calling into

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<sup>1</sup> See Exhibit HH to this unfair practice charge, which appears to be the entirety of any "agreement" between the County and Canyon Springs and the County and The Ridge.

question whether the County has ensured that the worker receive appropriate post-exposure treatment, among other obligations this exposure triggered in the County.

**F. SEIU LOCAL 521 AGAIN DEMANDS TO MEET AND CONFER OVER THE DISASTER SERVICE WORKER ASSIGNMENTS AT THE SNFs TO ENSURE THAT THEY ARE SAFELY CONDUCTED**

58. Upon receiving reports from members of the potentially life-threatening working conditions at the SNFs, SEIU Local 521 again demanded on or about April 12, 2020 to meet virtually with the County. On or about April 12, 2020, Narvaez of SEIU Local 521 sent an email to Cottrell of the County explaining that “[b]ased on our experience troubleshooting the Skilled Nursing Facility (SNF) assignment and now seeing many different DSW assignments being implemented throughout the County we believe a meet and confer discussion about creating a framework about how we will work together to ensure the safety of the public and our members is urgently needed.” Narvaez drafted a simple Side Letter Agreement, which she attached to the email for the County’s consideration. A true and correct copy of the April 12, 2020 email from Narvaez to Cottrell, and its attachment, is attached hereto, marked as **Exhibit X**, and is incorporated by reference as though fully set forth at length herein. The draft Side Letter Agreement focuses on prior notice being provided to SEIU Local 521, and for SEIU Local 521 members to be dispatched through a centralized Command Center, appropriately supervised, trained and provided necessary PPE.

59. On or about April 13, 2020, Narvaez of the County sent Cottrell another urgent email. She relayed a detailed report of one of the SEIU Local 521 members who had been assigned to The Ridge. The employee was assigned there without the knowledge of her manager, and without there being any agreement in place between The Ridge and the County for the County to supplement SNF staff. A true and correct copy of Narvaez’s April 13, 2020 email to Cottrell is attached hereto, marked as **Exhibit Y**, and is incorporated by reference as though fully set forth at length herein. Again, Narvaez urged the scheduling of a meeting with the County, provision by the County of needed information, and the County committing to sign a side letter agreement that SEIU Local 521 had drafted.

**G. THE COUNTY IMPLEMENTED POLICIES AND PROCEDURES REGARDING DISASTER SERVICE WORK WITHOUT PROVIDING PRIOR NOTICE OR OPPORTUNITY TO BARGAIN TO SEIU LOCAL 521**

60. As noted above in the fact section pertaining to RNPA, the County unilaterally implemented a new Disaster Service Workers policy on April 13, 2020. It did not provide SEIU Local 521 prior notice or opportunity to bargain over the policy. The policy purports to provide the County unbridled authority to direct its employees to serve as Disaster Service Workers and perform an unlimited array of assignments, outside the course and scope of the employees’ regular job duties, and in a different location and on a different shift than usual. (See Exhibit O, above, discussed in the RNPA fact section of this Appendix.)

61. At no point did the County provide SEIU Local 521 prior notice or opportunity to bargain over the FAQ document the County developed and disseminated to SEIU Local 521 members either. (See Exhibit S, above, discussed in the RNPA fact section of this Appendix.)

62. Nor did the County provide SEIU Local 521 prior notice or opportunity to bargain over the “County Employee Serving as Disaster Service Worker (DSW) Deployment Procedures” document, which the County adopted and disseminated to SEIU Local 521 members on or around April 2020. A true and correct copy of the unilaterally adopted/published Deployment Procedures document is attached hereto, marked as **Exhibit Z**, and is incorporated by reference as though fully set forth at length herein.

**H. COUNTY UNABASHEDLY FAILS AND REFUSES TO BARGAIN OVER THE UNSAFE ASSIGNMENTS, CITING COUNTY ORDINANCES, THE DISASTER SERVICE LAW AND THE MMBA**

63. On or about April 14, 2020, in response to Narvaez’s April 12, 2020 email, Cottrell laid out the County’s legal position for the first time. He asserted that:

Under California law, all public employees are designated Disaster Service Workers (DSWs). Whenever an authorized County official proclaims a local emergency, the Governor of the State of California proclaims a state of emergency, or a state of war emergency exists, the County has the power to assign employees to serve as DSWs assisting with any Disaster Service Activity that promotes the protection of public health and safety, promotes the preservation of lives and property, or is otherwise deemed necessary by the County’s Director of Emergency Services in the execution of his or her duties under County Ordinance Code sections A8-8 and A8-9(f).

County employees are required to perform duties as DSWs, as directed by the County, in the event of a Disaster. Employees may be assigned by the County to fulfill emergency action needs outside the course and scope of their regular job duties. When serving as a DSW, an employee may also be directed to report to a different supervisor and/or to work at a different location than normal in order to fulfill the DSW role.

The County is also operating under Government Code section 3504.5(b) (MMBA emergency exception), pursuant to the declared local emergency, the County will provide notice and the opportunity to meet “at the earliest practicable time,” but we have no obligation to meet and confer on DSW assignments or enter into side letters regarding such matters. The County will notify SEIU and, by extension, all other labor organizations, of its responsible, thoughtful, and immediate response to circumstances arising on a daily basis, which necessitate critical time-sensitive responses, without the benefit of a full meet and confer process generally available under normal circumstances. Therefore, the County is amenable to meeting with 521 at the next earliest opportunity to discuss your remaining concerns over SNF []...

Finally, all County workers are by definition Disaster Service Workers, and not volunteers. Therefore, County employees do not have the option of accepting/rejecting or ending DSW assignments at their discretion.”

A true and correct copy of Cottrell's April 14, 2020 email to Narvaez is attached hereto, marked as **Exhibit AA**, and is incorporated by reference as though fully set forth at length herein.

**I. COUNTY UNILATERALLY EXPANDS THE DISASTER SERVICE WORKER ASSIGNMENTS AT SNFS**

64. On or about April 14, 2020, Cottrell of the County informed Chief Elected Officer Mendez of another DSW assignment of SEIU Local 521 members. This time, the County was going to unilaterally assign up to 15 DSWs in either the SEIU Local 521 and/or RNPA bargaining units to the Valley House Skilled Nursing Facility and Rehab ("Valley House"). Additionally, Cottrell advised that the County would assign additional County employees to work at Canyon Springs. In the email, Cottrell impliedly conceded that the County's previous deployment of SEIU Local 521 members to Canyon Springs and The Ridge was a debacle. A true and correct copy of Cottrell's April 14, 2020 email to Mendez is attached hereto, marked as **Exhibit BB**, and is incorporated by reference as though fully set forth at length herein.

65. On or about April 14, 2020, Narvaez responded to Cottrell's email by demanding to meet virtually with the County the following morning, April 15, 2020. Narvaez again reiterated SEIU Local 521's desire to work together with the County and to come to an agreement regarding how the assignments can be carried out safely. Narvaez requested relevant and necessary information regarding the assignments. She re-attached a copy of SEIU Local 521's proposed Side Letter Agreement, which Cottrell had previously rebuffed. A true and correct copy of the April 14, 2020 email from Narvaez to Cottrell is attached hereto, marked as **Exhibit CC**, and is incorporated by reference as though fully set forth at length herein.

66. On or about April 14, 2020, Cottrell responded that he would try to arrange the call for the next day. A true and correct copy of Cottrell's April 14, 2020 response to Narvaez is attached hereto, marked as **Exhibit DD**, and is incorporated by reference as though fully set forth at length herein.

**J. COUNTY CONTINUES TO FAIL AND REFUSE TO BARGAIN WITH SEIU LOCAL 521 OVER THE POTENTIALLY LIFE-THREATENING SNF ASSIGNMENTS**

67. On or about April 15, 2020, SEIU Local 521 and the County participated in a Zoom conference call. During this meeting, Dr. Toni Tully of the County indicated that SEIU Local 521 members would be deployed at three different SNFs: Canyon Springs, The Ridge and Valley House. Cottrell of the County asserted that the Side Letter Agreement proposed in SEIU Local 521's April 12, 2020 meeting was not part of this discussion. SEIU Local 521 stated that the Side Letter Agreement SEIU Local 521 was proposing was not separate from this meet and confer. A representative for the County also stated that they were working with the State to procure additional resources, but such supplemental staff will not arrive until Sunday, April 16, 2020. It was also during this meeting that SEIU Local 521 learned that no contract exists with The Ridge and Canyon Springs. (See Exhibit HH, below, which constitutes the entirety of the agreement between the County and The Ridge and the County and Canyon Springs). The County finally provided SEIU Local 521 with actual information related to bed capacity, number of positive and negative patients and staff and the reasons for short staffing at the three SNFs.



68. On or about April 15, 2020, Cottrell provided only partial responses to SEIU Local 521's April 14, 2020 information requests. A true and correct copy of Cottrell's partial responses are attached hereto, marked as **Exhibit EE**, and are incorporated by reference as though fully set forth at length herein.

69. On or about April 17, 2020, having received no satisfactory response from the County to SEIU Local 521's concerns regarding the life-threatening health and safety risks its members faced at the SNFs, SEIU Local 521 filed an Imminent Hazard Complaint with CalOHSAs. A true and correct copy of the complaint is attached hereto, marked as **Exhibit FF**, and is incorporated by reference as though fully set forth at length herein. CalOSHA has since launched three investigations and conducted two site visits.

70. On or about April 17, 2020, Narvaez followed up with Cottrell regarding his partial responses to SEIU Local 521's information requests. She listed the information that the County had failed to produce:

- Names and job titles of the SEIU represented employees that will be assigned and the location and shifts they will be assigned.
- Copy of the contract between the facility and the County for the assignment of County staff to work on facility premises.
- What measures have been taken to sanitize the facility if there was a positive and when did it occur and how.
- We have not received confirmation from our previous request for our member to be re-tested, who went to the Ridge before a contract was in place. We are requesting that our member be re-tested next week.
- We have not had a response to our proposed side letter which incorporated many items we discussed and have agreement on to help manage the SNF day to day collaboration.

SEIU Local 521 also amended one of its prior requests, stating:

- Identify number of patients that have been tested for COVID-19 and/or have tested positive and been transferred out of the facility. We would now like to request that we get a daily report as this pandemic changes daily.

A true and correct copy of Narvaez's written follow up regarding SEIU Local 521's requests is attached hereto, marked as **Exhibit GG**, and is incorporated by reference as though fully set forth at length herein.

**K. THE COUNTY CONTINUES TO BYPASS SEIU LOCAL 521; THIS TIME IT SURVEYED SEIU LOCAL 521 MEMBERS REGARDING DISASTER SERVICE WORK**

71. On or about April 17, 2020, the County sent a "Countywide survey about Disaster Service Work" to RNPA and SEIU Local 521 members. As is explained above, the County never

provided SEIU Local 521 prior notice or opportunity to bargain over the survey or its contents. (See Exhibit R, above, discussed in the portion of the facts that pertain to RNPA.)

72. On or about April 19, 2020, Cottrell sent an email to Narvaez explaining that State staffing would cover the vacancies at two of the nursing homes, and that SEIU Local 521 members were still needed at Canyon Springs. For the first time, the County actually provided SEIU Local 521 the names of its members who would be assigned to a SNF, and the shifts they would be assigned. Without knowing the identities of the SEIU Local 521 members who were assigned to SNFs, SEIU Local 521 had been impaired in its ability to identify the members' needs and advocate on their behalf. A true and correct copy of Cottrell's April 19, 2020 email to Narvaez is attached hereto, marked as **Exhibit HH**, and is incorporated by reference as though fully set forth at length herein.

73. On April 20, 2020, Narvaez followed up with Cottrell asking for a response from the County to the proposed Side Letter Agreement. SEIU Local 521 explained that it believed there was agreement on some items referenced therein. Also, Narvaez followed up on the verbal agreement that an SEIU Local 521 member, Carlton Allen, would be able to join the County Command Center to oversee the SNF deployment to ensure it happened in a safe way. A true and correct copy of Narvaez's April 20, 2020 email to Cottrell is attached hereto, marked as **Exhibit II**, and is incorporated by reference as though fully set forth at length herein.

**L. COUNTY AGAIN CATEGORICALLY REFUSES TO BARGAIN OVER DISASTER SERVICE WORK, CITING COUNTY ORDINANCES, THE DISASTER SERVICE LAW AND THE MMBA**

74. On or about April 23, 2020, Jeffrey Gaskill, Principal Labor Relations Representative for the County, emailed Hightower of SEIU Local 521. He stated the same thing that Cottrell stated, on April 14, 2020, which was that the Disaster Service Worker law and emergency exception in the MMBA allowed the County's actions. He provided these bases as justification for the County's refusal to consider SEIU Local 521's proposed side letter regarding Disaster Service Work. A true and correct copy of Gaskill's April 23, 2020 email to Hightower is attached hereto, marked as **Exhibit JJ**, and is incorporated by reference as though fully set forth at length herein.

**M. SEIU LOCAL 521 LEARNS FROM ITS MEMBERS THAT THE COUNTY HAS EXTENDED UNSAFE ASSIGNMENTS INTO THE HOTEL/SHELTER SETTING**

75. On or about April 24, 2020, SEIU Local 521 learned that the County's Disaster Service Worker assignments extended well beyond the health care sector. Au Yeung of SEIU Local 521 learned that SEIU Local 521-represented social services and probation employees were deployed to provide client supportive services at various non-County shelters and hotels. The assignment was scheduled to begin, and did begin, on April 27, 2020, and would continue through July 1, 2020. Au Yeung conveyed SEIU Local 521's continued concern about safety. A true and correct copy of Au Yeung's email to Sherri Terao of the County, dated April 24, 2020, is attached hereto, marked as **Exhibit KK**, and is incorporated by reference as though fully set

forth at length herein. Again, the County failed and refused to provide SEIU Local 521 prior notice or opportunity to bargain over these dangerous assignments.

76. On or about April 29, 2020, Narvaez, having learned indirectly of the County's unilateral assignment of SEIU Local 521 members to hotels, sent an information request to Cottrell of the County.

77. On or about May 1, 2020, Cottrell of the County partially responded to SEIU Local 521's information request. His response stated unequivocally that the assignments were mandatory and not voluntary. His response also indicates that the clients the County employees are assigned to visit at shelters or hotels are COVID-19-positive or "vulnerable." A true and correct copy of Narvaez's information request and Cottrell's response with attachments are attached hereto, marked as **Exhibit LL**, and are incorporated by reference as though fully set forth at length herein.

78. As of the date of the filing of this charge, the County continues to take unilateral action to assign RNPA and SEIU Local 521-represented employees to perform Disaster Service Work.

79. As of the date of the filing of this charge, the County has not furnished all information to SEIU Local 521 that it requested in order to represent its members in connection with the DSW assignments.

## **LEGAL ARGUMENT**

80. Pursuant to Government Code § 3502, public employees have the right to be represented by their Union on all matters of employer-employee relations.

81. Pursuant to Government Code § 3503, the two Unions have had the right to represent their members in their employment relations with the County.

82. Pursuant to Government Code § 3504, the scope of representation under the MMBA shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, "wages, hours and other terms and conditions of employment." Health and safety matters are within the scope of representation as well.

83. Pursuant to Government Code section 3504.5(a), except in cases of emergency as provided in this section, the governing body of the County, and boards and commissions designated by law or by the governing body of the County, have been required to give reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the governing body or the designated boards and commissions and have been obligated to give the recognized employee organization the opportunity to meet with the governing body or the boards and commissions.

84. Pursuant to Government Code § 3504.5(b), in cases of emergency where the County must adopt an ordinance, rule, resolution, or regulation immediately without prior notice

or meeting with the Union, the County must provide notice and opportunity to meet at the earliest practicable time following the adoption of the ordinance, rule, resolution, or regulation.

85. Pursuant to Government Code § 3505, the County is obligated to meet and confer promptly upon request by the Unions and continue for a reasonable period of time in order to freely exchange information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation.

86. At all times material hereto, the County has been prohibited, pursuant to Government Code § 3506 from interfering with, intimidating, restraining, coercing or discriminating against public employees because of their exercise of their rights under Section 3502.

87. Pursuant to Government Code § 3506.5, it is unlawful for the County to deny the Unions any rights guaranteed to them by the MMBA.

#### **A. THE EMERGENCY EXCEPTION IN THE MMBA DOES NOT APPLY**

88. The MMBA requires covered public employers to provide “reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the governing body or the designated boards and commissions” and to “give the recognized employee organization the opportunity to meet . . . .” (Government Code section 3504.5(a).) This requirement for the employer to provide the union with prior notice and an opportunity to meet is suspended “[i]n cases of emergency when the governing body or the designated boards and commissions determine that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting . . . .” (Government Code section 3504.5(b).) In these emergency situations, the employer must “provide notice and opportunity to meet at the earliest practicable time following the adoption of the ordinance, rule, resolution, or regulation.” (Government Code section 3504.5(b).)

89. An employer may excuse its adoption of an ordinance, rule, resolution, or regulation without providing the union prior notice or opportunity to meet pursuant to section 3504.5, subsection (b), only “under *exceptionally limited* circumstances.” (*County of San Bernardino* (2015) PERB Decision No. 2423-M, p. 54 (emphasis added).) California appellate case law and PERB decisional law establish that to meet this exceptionally difficult burden, an employer must show that it: (1) acted pursuant to a “true emergency”; (2) had no opportunity to negotiate with the union before the unilateral adoption; and (3) had no alternatives available.<sup>2</sup>

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<sup>2</sup> The burden of proof adopted by the California Court of Appeals in *SCOPE II* is inapplicable in this case because the case was decided before PERB had MMBA unfair practice jurisdiction and under a different standard of review. At that time, the only way for a union to challenge a unilateral action of an employer under the MMBA was to file a writ of mandamus in superior court pursuant to Code of Civil Procedure section 1085. The applicable standard of review allowed the court to overturn only those decisions that were “arbitrary, capricious, or entirely without evidentiary support.” (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1004.) This was essentially an abuse of discretion standard that made it very hard for a union to prove an unfair practice. (*See id.*; *SCOPE II, supra*, 1 Cal.App.4th at 274 [stating that the trial court should respect the County’s

(*Id.*; *County of Kern* (2019) PERB Decision No. 2659-M, p. 15 fn. 13 (judicial appeal pending); *City of Long Beach* (2012) PERB Decision No. 2296-M, pp. 26-28; *Calexico Unified School District* (1983) PERB Decision No. 357, proposed decision, p.20; *Sonoma County Organization of Public Employees v. County of Sonoma* (“SCOPE I”) (1991) 1 Cal.App.4th 267, 276-277.) A situation presents a true emergency, satisfying the first element, when it is an “unforeseen situation calling for immediate action.” (*SCOPE II, supra*, 1 Cal.App.4th at 276; *see also County of San Bernardino, supra*, p. 54 (describing an emergency similarly, as a “sudden change in circumstance beyond the employer’s control”); *Calexico, supra*, proposed decision, pp. 20-22.)

90. Here, the County cannot meet its burden to show that its unilateral assignment of employees to private sector SNFs to care for SNF residents, or to shelters or hotels to provide supportive services to COVID-19-positive or “vulnerable” clients, is excused pursuant to section 3504.5, subsection (b).

91. As a threshold matter, section 3504.5 does not apply because the County’s unilateral assignment was not made via an “ordinance, rule, resolution, or regulation” adopted by its governing body, designated board, or designated commission. The plain meaning of “ordinance, rule, resolution, or regulation” is a policy decision made through a public and formal lawmaking process. This is especially clear given the section applies only to those decisions made by the employer’s governing body, designated board, or designated commissions—all legislative or quasi-legislative bodies that make decisions in a formal, regulated, and transparent manner.<sup>3</sup> Here, the County’s unilateral assignment of employees to private sector SNFs, and shelters and hotels, was not made through any public or formal lawmaking process. It also was

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exercise of legislative power “unless and until SCOPE proved that the County had abused its discretion,” then citing a number of C.C.P. § 1085 cases[.]. In contrast, PERB jurisprudence before and after the *SCOPE II* decision has uniformly held that the public employer bears the burden of establishing an “emergency” defense. (*See, e.g., Calexico, supra*, proposed decision, p. 20; *Regents of the University of California* (1998) PERB Decision No. 1255-H, proposed decision, p. 37; *City of Long Beach, supra*, pp. 27-28 *County of San Bernardino, supra*, p. 54; *County of Kern, supra*, p.15 fn. 13.)

<sup>3</sup> This plain meaning of the phrase is supported by a comparison of section 3504.5 with section 3505, as well as the legislative history of section 3504.5. As the California Supreme Court recognized in *Boling v. Public Employment Relations Bd.*, section 3505, which sets out the meet and confer obligations of public employers covered by the MMBA, is much broader than 3504.5 and applies in addition to the requirements of section 3504.5. (*See Boling, supra*, 5 Cal. 5th 898, 917-918.) Rather than referring to the narrow category of “ordinance, rule, resolution, or regulation,” section 3505 broadly refers to “a determination of policy or course of action.” Rather than referring only to the employer’s governing body and designated boards and commissions, section 3505 also refers to “administrative officers or other representatives as may be properly designated by law or by such governing body.” A prior version of section 3504.5 included broad language similar to section 3505—“the governing body of a public agency, and boards, commissions, *administrative officers or other representatives* designated by law or by such governing body”—but was rejected early in the legislative process. (Sen. Bill No. 1228, 1968 Reg. Sess., ch. 1390, 1968 Cal. Stat. (as amended July 30, 1968; emphasis added[.]).) The Legislature’s narrowing of the language of section 3504.5 shows that the Legislature meant for the notice requirements and emergency escape clause of section 3504.5 to apply only in the “one particular circumstance” of the proposal of a formal measure, and otherwise only the more general meet and confer requirement of 3505 to govern. (*See Boling, supra*, 5 Cal. 5th at 917.)

not made by the County's governing body or a designated board or commission. Instead, the County made the assignment by mere managerial dictate through its Labor Relations Department representatives in or around March 2020 or early April 2020. Thus, the County's assignment was not made through an "ordinance rule, resolution or regulation" and thereby section 3504.5 cannot apply.

92. RNPA and SEIU Local 521 anticipate that the County will argue that it made the unilateral and dangerous assignments through pre-existing authority it possessed pursuant to the County of Santa Clara Ordinance Sections A.8-8 and A8-9. Those ordinances state:

**Sec. A8-8. - Office of Director of Emergency Services created.**

The County Executive shall be the Director of Emergency Services. The Chief Operating Officer or other individuals designated by the County Executive and approved by the Board shall serve as Director of Emergency Services during any temporary absence or disability of the County Executive.

**Sec. A8-9. - Powers, duties of Director of Emergency Services.**

The Director of Emergency Services is hereby empowered to:

- (a) Request the Board to proclaim the existence or threatened existence of a local emergency if the Board is in session, or to issue such a proclamation if the Board is not in session. Whenever a local emergency is proclaimed by the Director, the Board shall take action to ratify the proclamation within seven days thereafter or the proclamation shall have no further force or effect.
- (b) Request the Governor to proclaim a state of emergency when, in the opinion of the Director, locally available resources are inadequate to cope with the emergency.
- (c) Control and direct the effort of the County Emergency Organization for the accomplishment of the purposes of this Division.
- (d) Direct cooperation between and coordination of services and staff of the County Emergency Organization; and resolve questions of authority and responsibility that may arise between them.
- (e) Represent this County in all dealings with public or private agencies on matters pertaining to emergencies as defined herein.
- (f) In the event of the proclamation of a local emergency as herein provided, the proclamation of a state of emergency by the Governor or the Director of the California Office of Emergency Services, or the existence of a state of war emergency, *the Director is hereby empowered:* (1) Subject to Section A8-15,<sup>4</sup> to make and issue rules and

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<sup>4</sup> Importantly, section A8-15 states: **Sec. A8-15. - Authority for emergency orders and regulations.** The Board, to provide prompt response to emergency situations following the proclamation of a local emergency as authorized in this Division, or the proclamation of a state of emergency or existence of a state of war emergency, specifically delegates to the Director of Emergency Services the authority to promulgate orders and regulations to provide for the protection of life, property, and the environment, where necessary to preserve the public order and safety. *To have legal effect, all such orders and regulations must be in writing and signed by the promulgating official, and must be ratified at the next regular meeting of the Board.* (Emphasis supplied.) The Charging Parties are unaware of any order or regulation pertaining to Disaster Service Work assignments to private sector SNFs, shelters or hotels.

regulations on matters reasonably related to the protection of life, property, and/or the environment as affected by such emergency; provided, however, that such rules and regulations must be confirmed at the earliest possible time by the Board; (2) To obtain vital supplies, equipment, and such other properties found lacking and needed for the protection of life, property, and/or the environment, and to exercise the authority set forth in Section A34-79 in doing so; if required immediately, to commandeer the same for public use; and to make expenditures, binding the County for the fair value thereof; (3) *To require emergency services of any County officer or employee* and, in the event of the proclamation of an emergency, to command the aid of as many citizens of this County as he or she deems necessary in the execution of his or her duties; provided that such persons shall be entitled to all privileges, benefits and immunities as are provided by state law for registered disaster service workers; (4) *To requisition necessary personnel or material of any County department or agency*; and (5) To execute all of the power of the County Executive, all of the special powers conferred upon him or her by this Division or by resolution or emergency plan pursuant hereto adopted by the Board, by any statute, by any agreement approved by the Board, and by any other lawful authority. (6) This subsection shall be construed to grant the broadest powers permissible to the Director to effectively deal with a proclaimed emergency.

(g) During a proclaimed emergency, if none of the individuals designated pursuant to Section A8-8 is available, then the Director of Emergency Services shall establish an order of succession to that office, a copy of which shall be filed with the Clerk of the Board of Supervisors as soon as practicable.

(County of Santa Clara Ordinance Sections A.8-8 and A8-9, emphasis supplied.)

93. These preexisting ordinances cited above do not provide the Director of Emergency Services the right to bypass collectively bargained rights and obligations, or to ignore the bargaining obligations set forth in the MMBA. Further, the County did not contend at any stage in this process that the unilateral and dangerous assignments of RNPA and SEIU Local 521 members were ordered by the Director of Emergency Services.

94. Even assuming *arguendo* the County's unilateral assignment was an "ordinance, rule, resolution, or regulation," the County cannot meet its burden to show it meets any of the required elements of section 3504, subsection (b).

95. First, there was no true emergency in this case. The County can point to no sudden change in circumstance beyond its control that triggered its unilateral assignment. It is true the County made the assignment in the context of the COVID-19 pandemic, and while statewide and local emergency declarations were in effect. However, the Board should not defer to state and local government's declarations of emergency here. These declarations were made to more effectively respond not to a sudden and temporary occurrence but to a slow-burning and long-lasting pandemic that will be fixture of American life for many months, if not years. Moreover, the declarations were not new at the time of the County's unilateral assignment, but had been in effect for more than two weeks. Further, the emergency declarations were made to expand the scope of the government's powers in the time of the pandemic, rather than to exempt the government from procedural requirements. Courts are less deferential to these types of emergency declarations. (*San Francisco Fire Fighters Local 798 v. City & County of San*

*Francisco* (2005) 125 Cal.App.4th 1307, 1321 fn. 4.) Finally, the emergency declarations are insufficient to show that the emergency was particularized to the issue in this case, in other words that the assignment of employees to private SNF facilities at issue was of an emergency nature. (See *Regents of the University of California* (1998) PERB Decision No. 1255-H, proposed decision, p. 37 (finding that even in the context of a devastating earthquake, the unilateral contracting of health care staff outside the bargaining unit was not of an emergency nature because the employer waited three to six weeks after the earthquake to hire the staff).) Here, given the pandemic had emerged more than two weeks before the County's unilateral assignment, the County could have foreseen a need to support private sector SNFs in caring for COVID-19 patients. Thus, there was no emergency in this case.

96. Second, the County cannot show it had no opportunity to negotiate with the Union before the unilateral assignment. Before finalizing the assignment, the County provided the employees notice, facilitated sign-ups for the assignment, and trained the employees, all without SEIU Local 521's knowledge. If the County had time to meet with employees on multiple occasions regarding the assignment, the County had time to meet with RNPA and SEIU Local 521 on the same subject. (See *Santa Clara Cty. Corr. Peace Officers' Assn., Inc. v. Cty. of Santa Clara* (2014) 224 Cal. App. 4th 1016, 1033 (finding section 3504.5 was not met where the County was "able to meet three times prior to implementing the proposed change in work schedules".)) There was no true emergency and the County could have negotiated with the Unions before making the assignment.

97. Third, the County did have infinite alternatives available to it. The County could have utilized its own registry contracts to assign employees to the SNFs. The County could have done a better job of emphasizing the SNFs to engage registry employees directly. Registry services are ubiquitous in the health care industry. If the SNF operators were inept or inexperienced in contracting with registry services, the County could have escalated the matter sooner to the State to seek intervention. The State was apparently intending all along to send state personnel to staff the SNFs, and this ultimately did happen. Further, the County could have evacuated the residents from the SNFs, as the County of Riverside did on or about April 8, 2020.<sup>5</sup> That way, the residents of the SNFs could have received care in County facilities, which are supervised by County supervisors, are governed by County policies, and are more likely to adhere to recognized workplace safety standards. Moreover, even assuming *arguendo* that some kind of assignment of existing employees to private sector SNFs was necessary in this situation, the particular manner in which the County assigned its employees was not predetermined. The County had plenty of alternative ways to make the assignment, in particular regarding employee work shifts, work locations, and working conditions such as PPE provisions, which would still allow the County to support private sector SNFs in treating COVID-19 patients. The County ignored RNPA's suggestion to assign the work by inverse seniority.

98. Thus, section 3504.5, subsection (b), cannot excuse the County's unilateral assignment employees to COVID-19 duties at private sector SNFs, or to shelters or hotels, at issue in this case.

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<https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/4.8.20%20SNF%20Magnolia%20Rehabilitation.pdf?ver=2020-04-08-085911-707&timestamp=1586361636633>



**B. THE DISASTER SERVICE WORKER LAW, GOVERNMENT CODE SECTION 3100, IS INAPPLICABLE HERE**

99. The County argues that the Disaster Service Worker law also provides authority for the interruption or nullification of collective bargaining terms or collective bargaining statutes. The text of the relevant statutes, regulatory codes, and legislative history reveals the error of this argument. Public entities may enlist volunteers, including public employees, in the provision of emergency services to prevent or mitigate the immediate threat of loss of life or property.<sup>6</sup> However, the Disaster Service Worker law has no applicability to public employees that are performing functions and duties which are more or less unchanged from those during normal times, even during a state of emergency.

**1. The Plain Meaning of the Relevant Statutes**

100. It is a common maxim of statutory interpretation that the plain meaning of the statutory text should be given effect where ascertainable. This principle is itself enshrined into law at Cal. Code of Civil Procedure section 1858. The plain meaning of the relevant statutes pertaining to disaster service work and public employees show that there is no applicability to public employees while the employees are engaged in their normal work activities.

101. Government Code section 3100 states that “all public employees are hereby declared to be disaster service workers subject to such disaster service activities as may be assigned to them by their superiors or by law.” (Cal Gov. Code § 3100). Despite the broad declaration, this is a designation of limited application. A reading of all relevant provisions of the law is instructive of the restrictions on this power. For instance, Cal. Lab. Code § 3211.92 (b) defines “Disaster service worker.” Here, public employees are included to the extent that they are “performing disaster work that is outside the course and scope of their regular employment without pay...” Finally, pursuant to Cal. Lab. Code § 3211.93(a), “Disaster service’ does not include any activities or functions performed by a person if the accredited disaster council with which that person is registered receives a fee or other compensation for the performance of those activities or functions by that person.

102. The statutory basis for the disaster service worker program clearly contemplates the application of the law to public employees only where the direst need exists. The use of public employees as disaster service workers is limited to extreme circumstances in which the use of their labor cannot reasonably be delayed due to urgent exigencies and the immediate need to protect against loss of life or property. This is further evidenced in the text of the regulatory code sections defining the contours of the Disaster Service Worker program.

**a. The Applicable California Code of Regulation Sections**

103. Title 19, Division 2, Subchapter 3 of the California Code of Regulations (“CCR”) elaborates the details of the disaster service worker program. California Code Regs., tit. 19, § 2570.1 (“Purpose”) provides the following statement of intent:

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<sup>6</sup> Cal. Gov. Code § 3100; 19 CCR 2570.2(b)(1).

“The Legislature has long provided a state-funded program of workers’ compensation benefits for disaster service worker volunteers who contribute their services to protect the health and safety and preserve the lives and property of the people of the state. **This Program was established to protect such volunteers from financial loss as a result of injuries sustained while engaged in disaster service activities and to provide immunity from liability for such disaster service worker volunteers while providing disaster service, to protect such volunteers from financial loss as a result of injuries sustained while engaged in disaster service activities and to provide immunity from liability for such disaster service worker volunteers while providing disaster service,** including official out-of-state deployments to jurisdictions requesting mutual aid assistance.”

(Emphasis added). This statement of purpose is fairly read as a reference to the entire Disaster Service Worker program, because the sections of the CCR immediately following § 2570.1 are not strictly applicable to the provision of worker compensation, but are generally applicable to the entire program.

104. The definition of disaster service work and disaster service worker mirror those found in the Labor Code. Section 2570.2 of the CCR defines disaster service work as “all activities authorized by and carried on pursuant to the California Emergency Services Act while assisting any unit of the emergency organization during a proclaimed emergency or during a Search and Rescue mission. . . .” The same section defines disaster service worker as “any person registered with an accredited disaster council or the California Emergency Management Agency . . . for the purpose of engaging in disaster service pursuant to the California Emergency Services Act without pay or other consideration.” This includes public employees “performing disaster work outside their regular employment without pay. . . .” Section 2570.2 of the CCR was enacted with reference to Sections 3100 (“Public employees as disaster service workers”), 8610 (“Creation by ordinance; Plan development,” referring to Local Disaster Councils) and 8612 (“Certification of disaster councils”) of the Government Code; and Sections 3211.9 (“Disaster council”), 3211.91 (“Accredited disaster council”), 3211.92 (Disaster service worker”), 3211.93 (“Disaster service”), 3211.93a (“Activities not included within ‘disaster service’”) and 3600.6 (“Disaster service workers”) of the Labor Code. This leaves no uncertainty that the definition provided at Cal. Lab. Code § 3211.92 (b) and CCR §2570.2 limits the scope of the *entire* disaster service worker authority as it pertains to public employees.

105. This position is bolstered by other relevant provisions of the Government Code, Labor Code, and Code of Regulations. For instance, Cal. Gov. Code § 8585.5 directs the Office of Emergency Services to establish various classes of disaster service workers and the scope of the duties of each class. The classes of disaster service workers are delineated at 19 CCR 2572.1. These 13 classifications and corresponding duties give insight into the intended purpose of disaster service worker volunteers. Virtually all of the listed duties support the inference that the intent of the law is to ensure the state or locality is adequately staffed to respond to a sudden and immediate emergency such as a fire, earthquake, domestic attack, or other immediate threat to life and property. For instance, the duties of the “Logistics” classification include assisting in the “procurement, warehousing, and release of supplies, equipment materials, or other

resources,” and “mobilization and utilization of public and private transportation resources required for the movement of persons, materials, and equipment.” The “Utilities” classification workers are to assist in the repair and restoration of public utilities “damaged by disaster.” The first duty listed under the “Medical and Environmental Health” classification is “Staff casualty stations, establish and operate medical and public health field units.” The duties of each classification uniformly speak to an abrupt need for direct services in the face of major disruptions to normal processes, such as the destruction of physical infrastructure or collapse of supply chains.

## **b. Legislative History**

106. The California Disaster Act of 1950 provided the governor with emergency powers and procedures for disaster response and relief. This law codified Government Code § 3100, which then read:

“It is hereby declared that the defense of the civil population during the present state of world affairs is of paramount state importance requiring the undivided attention and best efforts of public and private agencies and individual citizens. In furtherance of the exercise of the police power of the state in protection of its citizens and resources, all public employees are hereby declared to be disaster service workers subject to such disaster service activities as may be assigned to them by their superiors or by law.”

Given the time frame and the reference to the “present state of the world,” it can be inferred that the Legislature’s focus was on the fresh memory of the Second World War and the nascent Cold War. Later, in 1970, the California Disaster Act was repealed and replaced with the California Emergency Services Act. This act organized the disaster relief laws under the government code, including the disaster relief laws. The specific provisions of the statute which have been referenced throughout this section were amended piecemeal throughout the following decades. Of particular significance is the 2000 amendment to Labor Code § 3211.92 (“Disaster service worker”). That amendment added the words “performing disaster work that is outside the course and scope of their regular employment without pay” in subdivision (b) which defines the public employee disaster worker.

107. The legislative history on this change is telling. The bill analysis from the Assembly Committee on Local Government provides this explanation for the substitution:

“The Governor’s Office of Emergency Services (OES) reports that some local agencies may be claiming state-paid workers' compensation benefits for local public employees who are injured during their normal assignments. OES wants the Legislature to clarify the statutory definition of “disaster service worker” so that state-paid workers’ compensation benefits cover volunteers and public employees who are working outside their normal jobs without pay.”

108. The Legislature included this amendment to the language of Labor Code § 3211.92 expressly to prevent public entities from shirking this obligation owed to employees

under the law. It should be clear by this admission that the rules covering disaster workers are not intended to alter in any way the course of conduct and dealing between public employers and their workers where the workers are carrying out the normal duties of their jobs.

109. It is likewise telling that at no time between the original grant of these emergency powers in 1950 and the present day has the Legislature placed any parameters on the disaster service worker program aside from those outlined here, and some other provisions related to the provision of worker compensation. If the legislature truly envisioned a scenario in which public employees carrying out normal duties would be converted into disaster service workers solely by way of a declared emergency, thereby enabling the employer to ignore legal and contractual obligations to employees and labor organizations, one would think that some limitations would be required. Yet, there is no temporal limitation on the use of this power. There is no process by which the employees, or the Legislature, can challenge the designation of disaster service workers. There is no provision establishing how the state or local government will continue to fulfill its ordinary obligations to the public while the usual staff of employees is performing disaster service work. This is because the program is not intended to be used outside of the most unusual of times, where the state or locality is looking at a situation where the breakdown of order itself is in play.

110. There is no textual support for the position that the Disaster Service Worker program allows public entities to ignore CalOSHA regulations, ignore obligations under the MMBA, or abrogate agreements with public employee organizations. All public employees are required to take an oath affirming that in times of need they agree to be called upon as Disaster Service Workers. This does not, however, mean that any public entity may unilaterally alter the terms of employment upon the declaration of an emergency. This argument must be rejected, as it is meritless and seeks to dangerously expand the authority of public entities to run roughshod over the hard-fought for rights of public employees.

111. The law is irrelevant unless certain criteria are met. The work being done must be that authorized by and carried out pursuant to the CESA while assisting an emergency organization during a proclaimed emergency. Public employees doing such work are only considered disaster service workers if they are performing disaster work without pay on items outside the scope of their regular employment. Public employees performing work within the regular scope of their duties are by definition *not* disaster service workers. It is inconceivable, then, how the law could be read to authorize public entities to abrogate collective bargaining agreements or ignore MMBA obligations because the responsibilities of certain public employees become more critical or urgently needed during a time of crisis.

112. By and through its conduct described above, the County violated Government Code sections 3502, 3503, 3504, 3505, 3506, and 3506.5, and thus committed an unfair practice under Government Code section 3509(b) and PERB Regulation 32603.

## **REMEDIES**

WHEREFORE RNPA and SEIU Local 521 respectfully request that PERB issue a Complaint alleging that the County committed an unfair practice on the grounds that it failed to provide prior notice and opportunity to bargain to RNPA and SEIU Local 521 prior to adopting a

Disaster Service Worker Policy, issuing a Disaster Service Worker FAQ document and Deployment Procedures document, and before assignment RNPA and SEIU Local 521 represented employees to worksites outside of the County, without proper training, supervision or protective equipment, in violation of Government Code sections 3502, 3503, 3505, 3506 and PERB Regulation 32603(a), (b), (c), and (g). Further, a Complaint must issue alleging that the County has impermissibly dealt directly with employees regarding mandatory subjects of bargaining, and has failed to provide relevant and necessary information to RNPA and SEIU Local 521.

RNPA and SEIU Local 521 request that PERB issue all remedies which are just and proper, consistent with PERB's broad remedial authority. These remedies requested by RNPA and SEIU Local 521 include, but are not limited to, the following (1) immediately meet and confer with RNPA and SEIU Local 521 regarding how to safely carry out Disaster Service Work assignments, (2) cease and desist from taking further unilateral action, (3) rescind all previously-taken unilateral actions, (4) provide all relevant and necessary information that RNPA and SEIU Local 521 have requested, and (5) the County should be obligated to post the customary notices at all locations where RNPA and SEIU Local 521 represented employees are assigned. The County should also be obligated to distribute the customary notices via e-mail, in the manner that the County distributes standard County-issued memos to employees. (See *City of Sacramento* (2013) PERB Decision No. 2351-M.)

RNPA and SEIU Local 521 simultaneous herewith are filing a Request to Expedite this time-sensitive matter at all levels of PERB.

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**VERIFICATION OF UNFAIR PRACTICE CHARGE  
RNPA and SEIU Local 521 v. County of Santa Clara**

I, Debbie Chang, am the President of Registered Nurses Professional Association (“RNPA”), Charging Party in the above-entitled action. I have read the facts pertaining to RNPA in the foregoing Unfair Practice Charge and know the contents thereof, and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters, I believe them to be true. If called as a witness, I could testify competently regarding the matters alleged in the charge.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 5<sup>th</sup> day of May, 2020 at San Jose, California.

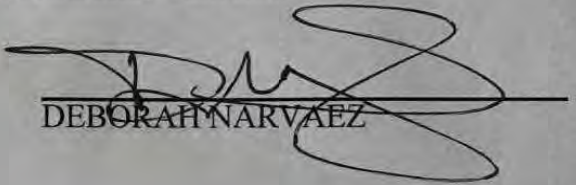
  
\_\_\_\_\_  
DEBBIE CHANG

**VERIFICATION OF PERB CHARGE**  
**RNPA and SEIU LOCAL 521 v. COUNTY OF SANTA CLARA**

I, Deborah Narvaez, am the Chief of Staff with the Service Employees International Union, Local 521, Charging Party in the above-entitled action. I have read the facts pertaining to SEIU Local 521 in the foregoing Unfair Practice Charge and know the contents thereof, and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters, I believe them to be true. If called as a witness, I could testify competently regarding the matters alleged in the charge.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on this 6<sup>th</sup> day of May 2020, Salinas, California.

  
DEBORAH NARVAEZ