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FILE NO. 10-14-26
THE CLERK OF
THE BOARD OF SUPERVISORS

CLAIM AGAINST KERN COUNTY
(Government Code Section 910, et seq.)

Claimant: Kristopher Lyon, M.D.
Address: c/o Law Office of Michael A. Conger
PO Box 9374
Rancho Santa Fe, CA 92067
Phone No: (858) 759-0200

**Name, address and phone
number of person to receive
notices and correspondence related
to this claim:**

BY ORDER OF THE BD/SUPV

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Date 10-14-26

Clerk of the Board of Supervisors

By [Signature], Deputy

Michael A. Conger, Esquire
Law Office of Michael A. Conger
P.O. Box 9374
Rancho Santa Fe, CA 92067
Telephone: (858) 759-0200
mike@lawconger.com

**Date and time when damage
or injury occurred:**

September 2, 2026 and ongoing

Location of occurrence:

Kern County Administrative Office
1115 Truxtun Avenue, 5th Floor
Bakersfield, CA 93301

Circumstances of occurrence: Beginning on or about January 27, 2015, Kern County (County) concocted a scheme to improperly classify Kristopher Lyon, M.D. (Dr. Lyon) as an independent contractor to provide vital County services as the EMS Medical Director. Dr. Lyon later learned that he did not accrue service credit in his retirement (Gov. Code, § 31640) while classified by the County as an independent contractor. On April 1, 2021, Dr. Lyon became a County employee. This claim covers the period January 27, 2015 to March 31, 2021. Dr. Lyon should have been classified as a County employee during this entire time period, and therefore participating in the County's employee retirement plan during that period (1/27/15 to 3/31/2021).

Labeling, such as calling Dr. Lyon an independent contractor is irrelevant because California follows the "rule that the parties' characterization of their relationship is not

dispositive because their ‘actions determine the relationship, not the labels they use.’” (*People v. Uber Technologies, Inc.*, *supra*, 56 Cal.App.5th at p. 314, quoting *Linton v. Desoto Cab Co., Inc.* (2017) 15 Cal.App.5th 1208, 1217; *Vendor Surveillance Corporation v. Henning* (2021) 62 Cal.App.5th 59, 83; Labor Code, § 2775, subd. (b).)

The fact that the parties signed a series of independent contractor agreements (that the County wrote), or that Dr. Lyon was unaware of his actual status as an employee are irrelevant, as has long been the law. The determination whether Dr. Lyon was an employee from 1/27/15 to 3/31/2021 is determined by Labor Code section 2776, which adopts the *Borello* test. Here, the County cannot meet the *Borello* test under Labor Code section 2776.

In *Yellow Cab Cooperative v. Workers’ Comp. Appeals Bd.* (1991) 226 Cal.App.3d 1288, 1297, the court explained:

. . . we first observe that the provisions of the lease agreement between applicant and Yellow do not distinguish *Borello* and are not persuasive evidence that Yellow lacked the requisite control. The “share farmers” in *Borello* signed a similar agreement, but the court deemed it ineffectual to create an independent contract relationship. (48 Cal.3d at pp. 346–347, 358–359 . . . ; *see id.* at p. 351, fn. 5) As the court observed, “*The label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced.*” (*Borello*, *supra*, 48 Cal.3d at p. 349) Even in the common-law setting, a formal agreement characterizing the relationship as independent contractorship “*will be ignored if the parties, by their actual conduct, act like ‘employer—employee.’*” [Citations.] Indeed, *the attempt to conceal employment by formal documents purporting to create other relationships [has] led the courts to disregard such terms whenever the acts and declarations of the parties are inconsistent therewith.* [Citations.]” (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 877) (Italics added.)

Labor Code section 2776 provides, in relevant part: “If an individual acting as a . . . business entity formed as a . . . corporation (‘business service provider’) contracts to provide services to another such business or to a public agency or quasi-public corporation (‘contracting business’), the determination of employee or independent contractor status of the business services provider shall be governed by *Borello*, if the contracting business demonstrates that all of the following criteria are satisfied:

- (1) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact. . . .

- (6) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.
- (7) The business service provider can contract with other businesses to provide the same or similar services and maintain a clientele without restrictions from the hiring entity.
- (8) The business service provider advertises and holds itself out to the public as available to provide the same or similar services. . . .
- (10) The business service provider can negotiate its own rates.
- (11) Consistent with the nature of the work, the business service provider can set its own hours and location of work.” (Labor Code, § 2776, subd. (a), factors 2-5, 9, and 12 omitted.)

Although the County has the burden to prove all of the 12 criteria were met under Labor Code section 2776, subdivision (a), the County cannot meet at least six of the criteria listed above.

Further, Government Code section 31469, subdivision (a), provides, in relevant part: “‘Employee’” means any officer or other person employed by a county [1] whose compensation is fixed by the board of supervisors or by statute and [2] whose compensation is paid by the county” Both of the conditions of the statute were met from 1/27/15 to 3/31/21. Dr. Lyon’s compensation was fixed by the board of supervisors and his compensation was paid by the County. Government Code section 31552, entitled “automatic membership” requires that “each person entering *county employ* becomes a member on the first day of the calendar month after his entrance into the service”) Government Code section 31460 provides, in relevant part: “‘Compensation’ means the remuneration paid in cash out of county or district funds” “It is axiomatic that a county acts only through its board of supervisors, which as its governing body ‘exercises the powers of the county.’” (*County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322, 344, fn. 9 . . . ; see *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 285)” (*Rose v. County of San Benito* (2022) 77 Cal.App.5th 688, 716.)

Finally, there is no statute of limitations issue regarding Dr. Lyon’ claim for additional service credit. In *California Teachers’ Association v. Governing Board of Yosemite Community College District* (1985) 169 Cal.App.3d 35, 44, the court “h[e]ld that teachers’ entitlement to service credits would not accrue until retirement benefits became payable upon retirement and, since service credits are dependent in part upon employer contributions, teachers’ right to compel [their employer] to make additional contributions to the Teacher’s Retirement Fund likewise accrues only upon retirement. . . .” Because Dr. Lyon has not yet

retired, any statute of limitations has not yet run. However, Dr. Lyon could bring a declaratory relief action earlier. (*Maffei v. Sacramento County Employees' Retirement System* (2002) 103 Cal.App.4th 993.)

**Description of loss, damage
or injury:**

As a result of being misclassified from January 27, 2015 through March 31, 2021, Dr. Lyon did not accrue service credit as he should have in the retirement plan, administered by the Kern County Employees Retirement Association.

**Name(s) of County employee(s)
causing injury, damage or loss, if
known:**

Unknown

**Amount claimed at present including
estimated amount of any prospective
loss:**

Pursuant to Government Code Section 910, subdivision (f) the amount exceeds \$10,000 and would not be a limited civil case.

Dated: October 13, 2026

Kristopher Lyon, M.D.
Kristopher Lyon, M.D.

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