VIA ELECTRONIC COMPLAINT SYSTEM
Enforcement Division
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

FAIR POLITICAL PRACTICES COMMISSION COMPLAINT

Re: Russell Judd, Alton Scott Thygerson, and Andrew Cantu
Chief Officers of the Kern County Hospital Authority

To Whom It May Concern:

Sydnee Galusha, in her capacity as Researcher for Service Employees International Union Local 521 ("SEIU Local 521"), hereby files this complaint against current and former chief officers of the Kern County Hospital Authority—Russell Judd, Alton Scott Thygerson, and Andrew Cantu—alleging violations of Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq*. based on their participation as public officials in the making of contracts under which they had a cognizable financial interest.

Parties Who Allegedly Violated Gov't Code § 1090 and the Political Reform Act, Gov't Code § 87100 *et seq.*

Russell Judd – Chief Executive Officer of the Kern County Hospital Authority
(2016 – December 2021)

Alton Scott Thygerson – Chief Executive Officer of the Kern County Hospital Authority
(January 19, 2022 – present), formerly Chief Strategy Officer

Andrew Cantu – Chief Financial Officer of the Kern County Hospital Authority

Kern County Hospital Authority
1700 Mt. Vernon Avenue
Bakersfield, CA 93306

Complaining Party

Sydnee Galusha
Service Employees International Union Local 521
2302 Zanker Road
San Jose, CA 95131

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INTRODUCTION

SEIU Local 521 has uncovered a corrupt scheme in Kern County's public health system that has undermined the quality of care available for the people of Kern County while enriching a small clique of executives. Kern County is home to one of the most impoverished and medically vulnerable communities in California. After years of financial mismanagement by the Kern County government, the Kern County Hospital Authority ("KCHA") was established in 2016 to make Kern County's public health system more efficient and comprehensive in the healthcare services it provides. As a public entity, KCHA's mission is "to operate a hospital[and] clinics [that] provide health care services to the entire community" in Kern County and to "provide safe, compassionate, and high-quality care that improves the health and well-being of community"[1] KCHA has failed in this venerable mission.

Since its inception, KCHA executives have increasingly privatized the public healthcare system for their own benefit and to the detriment of the underserved community in Kern County. KCHA paid millions of dollars in public funds to private consultants, Meridian Healthcare Partners, Inc. ("Meridian") and Cantu Management Group, Inc. ("CMG"), to manage KCHA and its entities, the Kern Medical Center ("KMC"),[2] the Kern Medical Center Foundation ("the Foundation"),[3] the Kern Medical Auxiliary ("the Auxiliary"),[4] and the Kern Medical Surgery Center, LLC ("the LLC").[5] It hired Meridian's owner and President, Russell Judd, to serve as KCHA's Chief Executive Officer ("CEO") from 2016 to 2021. It hired Meridian's Vice President, Alton Scott Thygerson, to serve as KCHA's Chief Strategy Officer ("CSO") until 2021 and its CEO starting in January 2022. It hired CMG's owner and President, Andrew Cantu to serve as KCHA's Chief Financial Officer ("CFO"). Unfortunately, these executives engaged in a pattern of self-enrichment at the expense of Kern County's poorest residents.

Judd, Thygerson, and Cantu have used their positions as KCHA executives to commit numerous conflict-of-interests violations under Government Code section 1090 and the Political Reform Act. Repeatedly, these executives marked up their services, upcharging the taxpayers hundreds of thousands of dollars. They also funneled millions of dollars in unauthorized payments to their own companies—Meridian and CMG. These executives then used their positions of trust to convince KCHA's Board of Governors ("the Board") to retroactively rubber-stamp these overpayments. Often, the executives would use their authority to put these retroactive authorizations of overpayments on the "consent agenda," reserved for items not worthy of discussion or substantive independent review. Conveniently, they failed to file correct

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[1] Hospital Authority, Kern Medical, https://www.kernmedical.com/about-us/hospital-authority/ (last visited Jan. 10, 2024).
[2] Cal. Health & Saf. Code § 101853 (b) (1); Cal. Health & Saf. Code § 101852.1 (g); Chapter 2.170 to Title 2 of the Ordinance Code of the County of Kern; Proposed transfer of ownership of Kern Medical Center to the Kern County Hospital Authority.
[3] KCHA BoG Meeting: Proposed Resolution to extend insurance coverage maintained by the Kern County Hospital Authority to Kern Medical Center Foundation and Kern Medical Auxiliary (May 20, 2020) https://drive.google.com/file/d/1fC0_cjiE09RBK4KBeoUjBALsJUoirMei/view.
[4] *Ibid.*
[5] Operating Agreement & Amendments for the Kern Medical Surgery Center, LLC https://drive.google.com/file/d/143MBMkqsDexeU2vOsPm0qtAuAYOOJndA/view?usp=sharing.

conflict of interest disclosure statements.[6] As a result, Judd, Thygerson, and Cantu essentially paid themselves hundreds of thousands in compensation for nebulous "services"—payments that were neither anticipated nor substantially scrutinized by the Board.

Even when KCHA finally decided to end Meridian's "services," Thygerson used the opportunity to further enrich himself with taxpayer money. Meridian's contract with KCHA provided for termination without additional payments based on Meridian's conflicts of interests and its failure to ensure KCHA's compliance with Medicare and Medicaid regulations. To avoid this, in August 2023, Thygerson used his position to influence the Board to sign an entirely unnecessary termination agreement that provided Meridian with an unwarranted additional $850,000 termination fee and other operation fees. By misleadingly presenting these superfluous fees as a discount on the total amount that KCHA would have owed Meridian, Thygerson once again used his public position to benefit his own financial interest as Vice President of Meridian. Again, the taxpayers and the poorest residents of Kern County ultimately paid the price.

The community will greatly benefit from a thorough investigation of the relationship between KCHA and the executives trusted to manage it. The people of Kern County deserve a public health system that serves them, and not the narrow financial interests of a small group of executives. As interested responsible members of the community, SEIU Local 521 respectfully requests that the FPPC take action to investigate and correct the abuses described herein.

FACTUAL BASIS FOR COMPLAINT

A. Background on Kern County

Located at the southern end of the Central Valley, Kern County is a land of disparity.[7] While large corporations profit off the area's abundant oil and gas reserves, the area's residents, largely immigrant and low-income, suffer the consequences. Poor air quality, pollution, pesticide exposure, contaminated water, and drug abuse are just a handful of the public health concerns plaguing the county. Close to 8% of the Kern County residents do not have any health insurance at all, and approximately 45% rely on Medi-Cal.[8]

KCHA is tasked with serving this vulnerable population. Nonetheless, it has repeatedly failed at this task. In 2022, Kern County ranked 53 out of 58 among all California counties in health outcomes, based on a number health factors including access to and quality of clinical

[6] On September 20, 2022, SEIU Local 521 submitted a public comment for KCHA's September 21, 2022 Board of Governors meeting, identifying the failure by multiple KCHA executives, including CEO Alton Scott Thygerson and CFO Andrew Cantu, to file accurate and complete Statements of Economic Interest in compliance with the Political Reform Act. *See* Sydnee Galusha Public Comments for 9/21/22 Board Meeting (Sept. 20, 2022), https://drive.google.com/file/d/1AIvYq30Fhlnq2fFnISdh8RlRPUHX2Egt/view. During the September 20, 2022, KCHA Vice President and General Counsel Karen Barnes advised the Board of Governors that KCHA and the Board did not have an obligation to ensure that its chief executives filed true and correct Statements of Economic Interest. *See* Recording of 9/21/22 Board Meeting, 13:00-16:15 (Sept. 21, 2022), https://drive.google.com/file/d/1yZ-2i6EY5l9rluORY3ywylvohzpL8dTp/view.

[7] *See* CASSIE HARTZOG, CAROLYN ABRAMS, NANCY ERBSTEIN, JONATHAN K. LONDON & SARA WATTERSON, SIERRA HEALTH FOUNDATION, KERN COUNTY: GEOGRAPHY OF INEQUITY AND OPPORTUNITIES FOR ACTION (2017), https://centralvalleypartnership.org/wp-content/uploads/2020/05/Kern-County-Geography-of-Inequity-and-Opportunities-for-Action-2017-.pdf.

[8] *Ibid.*

care.[9] Residents suffer from the lack of primary care physicians.[10] They suffer from a disproportionate number of hospitalizations that may have been prevented by outpatient treatment compared to the rest of the state.[11] Finally, they suffer from rampant financial abuse and mismanagement at the county's public hospitals and medical centers, as demonstrated below in this complaint.

B. KCHA's governance structure

KCHA was established in 2016 to oversee the public health system in Kern County as well as to operate and manage KMC, a public hospital located in East Bakersfield, California. It is governed by a Board of Governors, which consists of seven voting members. The Board of Governors holds regular monthly meetings to consider matters relevant to the administration of KCHA. Meeting materials are prepared by KCHA staff and certain items are labeled "consent agenda" items. These are items "considered to be routine and non-controversial by Kern County Hospital Authority staff."[12] They are considered first and are approved without discussion unless a board or audience member explicitly raises an objection.[13]

Management often refers to KCHA and its entities as Kern Medical, which is a brand name for public purposes and not a legal entity.[14] For example, Thygerson is identified as the CEO of Kern Medical on KCHA's website,[15] and the Board of Governors has approved multiple Kern Medical organizational charts.[16] However, when analyzing financial transactions in connection with KCHA, it is important to be aware that KCHA controls at least four legally distinct entities, including KMC, the Foundation, the Auxiliary, and the LLC.

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[9] UNIVERSITY OF WISCONSIN POPULATION HEALTH INSTITUTE, COUNTY HEALTH RANKINGS & ROADMAPS, 2022 STATE REPORT: CALIFORNIA, 2 (2022), https://www.countyhealthrankings.org/sites/default/files/media/document/CHR2022_CA_0.pdf.

[10] Based on data from 2020, there was one primary care physician per 2020 people in Kern County, compared to one primary care physician per 1230 people in California. Kern, CA, County Health Rankings & Roadmaps, https://www.countyhealthrankings.org/explore-health-rankings/california/kern?year=2023 (last visited Jan. 10, 2024).

[11] In Kern County, there were 3,009 hospital stays per 100,000 people enrolled in Medicare that might have been prevented by outpatient treatment in 2020, compared to 2,256 preventable hospital stays per 100,000 people enrolled in Medicare in California during that same year. Kern, CA, County Health Rankings & Roadmaps, https://www.countyhealthrankings.org/explore-health-rankings/california/kern?year=2023 (last visited Jan. 10, 2024).

[12] *See, e.g.*, KCHA BoG Meeting (July 20, 2022), https://www.kernmedical.com/documents/pdf/1-Full-Packet-07.20.22.pdf#page=1.

[13] *Ibid.*

[14] James Burger, *County Hospital Tweaks Name, Launches Ads to Remake Image*, THE BAKERSFIELD CALIFORNIAN, January 13, 2016, https://web.archive.org/web/20240202191218/https:/www.bakersfield.com/news/county-hospital-tweaks-name-launches-ads-to-remake-image/article_ba778c16-b2df-50aa-bc6d-41d096f37dbd.html.

[15] Kern Medical, *Scott Thygerson, Chief Executive Officer*, https://www.kernmedical.com/about-us/leadership/scott-thygerson-chief-executive-officer/ (last visited Feb. 26, 2024).

[16] Kern Medical Organization Charts (Mar. 16, 2016, Jun. 21, 2023, Sep. 20, 2023), https://drive.google.com/file/d/1e7R8s131VPcU6eK2RYAfKv9kHTiwRCnh/view?usp=sharing.

KCHA and KMC's daily operations are handled by its chief officers.[17] Russell Judd served as KCHA's CEO from its inception until December 2021. Alton Scott Thygerson, formerly KCHA's CSO, has served as KCHA's CEO since January 19, 2022. Andrew Cantu serves as KCHA's CFO. All these chief officers were previously contracted through either Meridian (Judd, Thygerson) or Cantu Management Group (Cantu). Since August 31, 2023, Thygerson and Cantu have both been hired directly by KCHA to continue managing the hospital authority and KMC.

Among the chief officers, the CEO has additional powers as KCHA's Purchasing Agent. Under a May 18, 2016 Board Resolution, the CEO was designated as KCHA's Purchasing Agent, with broad authority to evaluate and enter into contracts on behalf of KCHA.[18] The CEO can "[s]ecure goods or services for the proper operation of the health facilities costing a maximum $250,000 per year with a maximum cumulative total not to exceed $750,000" without prior approval by the Board of Governors.[19] The CEO is also allowed to enter into certain medical service agreements above the above-designated amount.[20] While the Resolution originally required the CEO to provide the Board of Governors with a quarterly written report of expenditures paid pursuant to the Resolution, this requirement was removed in a revised version of the Resolution adopted on September 20, 2017.[21] The September 2017 Resolution was passed as a consent agenda item without any substantive independent review or discussion.[22]

On November 15, 2017, the Board of Governors further approved a banking resolution that retroactively authorized the CEO, CFO, Chief Strategy Officer, and the Director of Finance to establish, operate, and close bank accounts on behalf of KCHA, effective July 1, 2016.[23] The resolution also authorized these individuals to sign checks up to $250,000 on behalf of KCHA without a second signature. Again, the resolution was passed as a consent agenda item.[24]

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[17] KCHA BoG Meeting: Proposed Retroactive Agreement with Meridian Healthcare Partners, Inc., 3 (Feb. 20, 2019), https://drive.google.com/file/d/1LMjFi2p6et6_9JHn3dLEqm92K2KcWL2M/view ("During the term of this Agreement and any extensions thereof, Contractor will have exclusive authority and responsibility, as set forth in this agreement, to supervise and manage the day-to-day operations of KMC, to the extent permitted by applicable law, effective with the Commencement Date.").
[18] KCHA BoG Meeting: Delegation of Authority to the CEO to Enter into Contracts, 31-36 (May 18, 2016), https://www.kernmedical.com/documents/content/ha-board-packet-5-18-16.pdf#page=31.
[19] *Id.* at p. 34.
[20] *Ibid.*
[21] KCHA BoG Meeting: Revised Delegation of Authority of the CEO to Enter into Contracts, 79 (September 20, 2017), https://www.kernmedical.com/documents/content/1-9.20.17-Full-Board-Packet.pdf#page=79.
[22] KCHA BoG Meeting: Delegation of Authority to the CEO to Enter into Contracts, 3 (May 18, 2016), https://www.kernmedical.com/documents/content/ha-board-packet-5-18-16.pdf#page=3; KCHA BoG Meeting: Revised Delegation of Authority of the CEO to Enter into Contracts, 3 (September 20, 2017), https://www.kernmedical.com/documents/content/1-9.20.17-Full-Board-Packet.pdf#page=3.
[23] https://drive.google.com/file/d/11hjulVeKSwY0D-cNUn-gKKX8MTYxNNpH/view?usp=sharing
[24] KCHA BoG Meeting Minutes, 4 (November 15, 2017), https://web.archive.org/web/20240215172238/https://www.kernmedical.com/documents/content/11.15.17-SOP-approved-signed.pdf.

C. KCHA CFO Andrew Cantu directed millions of dollars in overpayments to his own company, Cantu Management Group, and influenced the Board of Governors to retroactively approve the overpayments

Cantu Management Group, Inc. has been the exclusive provider of financial management services for KMC, and subsequently KCHA, since February 9, 2015.[25] CMG is a private corporation owned by KCHA CFO Andrew Cantu, who also serves as CMG's CEO.[26] As part of its Professional Service Agreement with KCHA, CMG is in charge of developing KCHA's financial policies and internal controls. In his role as CFO, Cantu oversees KCHA's spending and annual external audits.[27] His duties include "[p]romot[ing] sound financial management through leadership, policy and oversight," "maintain[ing] responsibility for budget preparation and operating budget controls," and "[e]stablish[ing] internal audit controls and promot[ing] timely corrections of deficiencies."[28] The CFO's approval is "required . . . for all unbudgeted expenditures above $25,000."[29]

Under a four-year Professional Service Agreement between KCHA and Cantu Management Group beginning September 1, 2019, the maximum payable amount from KCHA to CMG was not to exceed $7.2 million for the period between September 1, 2019 through August 31, 2021.[30] Nonetheless, records indicate that KCHA had already exceeded its maximum payable amount to CMG by January 27, 2021. Between January 27, 2021 and August 31, 2021, then-KCHA CEO Russell Judd approved 15 unauthorized payments to CMG above its maximum payable, with an average payment value of $208,118.46, resulting in a total of $2,921,527.97 in unauthorized payments from KCHA to CMG during this period.[31]

As the CFO of KCHA, Cantu's approval was required for each of these unbudgeted expenditures, and he did nothing to prevent or stop the overpayments, which benefited his own financial interests.[32] KCHA did not address the overcompensation until nearly a year later, and only after SEIU Local 521 contacted KCHA about the unauthorized payments on July 10, 2022.[33] During KCHA's July 20, 2022 Board of Governors meeting, the Board passed a

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[25] Proposed Agreement with Cantu Management Group, Inc for Professional Services at Kern Medical Center (January 27, 2015), https://itsapps.kerncounty.com/clerk/minutes/granicus/978810/978831/978837/979194/979227/AgreementwithCantuManagementGroupInc.979227.pdf.

[26] Cantu Articles of Incorporation, California Secretary of State (Mar. 17, 2022), https://drive.google.com/file/d/1nSaX4jt16Eld-eZxAAI4R5LGL2VRiSra/view?usp=sharing.

[27] Agreement with Cantu Management Group Inc, 19-20 (January 27, 2015), https://itsapps.kerncounty.com/clerk/minutes/granicus/978810/978831/978837/979194/979228/Agreement979228.pdf.

[28] *Ibid.*

[29] Approval Levels for Purchase Requisitions and Invoices/Vouchers, 5 (Apr. 1, 2016), https://drive.google.com/file/d/1OzSUaZTDd7tQc-m4NqYX8BiEjAPwtogZ/view.

[30] KCHA BoG Meeting: Proposed Agreement with Cantu Management Group, Inc., 33-48 (August 21, 2019), https://www.kernmedical.com/documents/content/1-Full-Agenda-Packet.pdf#page=33.

[31] Public Comment re Cantu Management Group Unauthorized Payments (July 20, 2022), https://drive.google.com/file/d/1OzSUaZTDd7tQc-m4NqYX8BiEjAPwtogZ/view.

[32] Approval Levels for Purchase Requisitions and Invoices/Vouchers, 5 (Apr. 1, 2016), https://drive.google.com/file/d/1OzSUaZTDd7tQc-m4NqYX8BiEjAPwtogZ/view.

[33] Sydnee Galusha email to KCHA attorney Marek Pienkos (July 10, 2022) https://drive.google.com/file/d/1jDiX-7prNwhqiYubTp0Xt9OrWtIgoX6N/view.

Retroactive Amendment to the Professional Service Agreement with CMG effective September 1, 2021, retroactively authorizing the overpayments 18 months after they exceeded the maximum payable.[34] Despite the gravity of the issue of substantial overpayments to a company owned by the CFO—the very person in charge of KCHA's financial and audit controls—the Retroactive Amendment was originally placed on the meeting agenda as a consent agenda item deemed "routine" and "non-controversial."[35] The only reason it was removed from the consent agenda was because SEIU Local 521 submitted a public comment on the issue.[36] Nonetheless, the Board did nothing to address Cantu's conflict of interest in permitting these overpayments to his own company.

D. KCHA executives Russell Judd and Alton Scott Thygerson funneled millions of dollars in unauthorized payments to their own company, Meridian, and influenced the Board of Governors to retroactively approve the overpayments

Meridian first started providing exclusive executive management services to KMC under a contract signed by the Kern County Board of Supervisors on December 3, 2013.[37] After KCHA was established in 2016, Meridian continued to provide executive management services to KCHA until the contract was finally terminated effective August 22, 2023.[38] Under the Meridian contract, Meridian's owner and President, Russell Judd, was appointed to serve as KCHA's CEO. Meridian's Vice President, Alton Scott Thygerson, was appointed as KCHA's CSO and took over as KCHA's CEO in January 2022 after Judd retired.[39] Judd and Thygerson both managed the daily operations of KCHA and KMC.

Between December 2016 and December 2021, Judd and Thygerson used their positions of power as KCHA's chief executives to direct and influence Vice President and General Counsel Karen Barnes to repeatedly amend KCHA's contract with Meridian to remove established performance measures and increase Meridian's management fee, thereby increasing their own compensation.[40] While Thygerson and Judd may not have directly participated in the

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[34] KCHA BoG Meeting: Proposed Retroactive Amendment No. 1 to Agreement 049-2019 with Cantu Management Group, 229-233 (July 20, 2022), https://www.kernmedical.com/documents/pdf/1-Full-Packet-07.20.22.pdf#page=229.

[35] *Id.* at p. 4.

[36] Public Comment re Cantu Management Group Unauthorized Payments (July 20, 2022), https://drive.google.com/file/d/1OzSUaZTDd7tQc-m4NqYX8BiEjAPwtogZ/view.

[37] KC BoS Meeting: Proposed Sole Source Agreement with KMC Mgmt., Inc. for Professional Services at KMC (December 3, 2013), https://itsapps.kerncounty.com/clerk/minutes/granicus/MG322972/AS322988/AS322994/AI323084/DO323341/DO_323341.pdf. At the time, the corporation was named KMC Management, Inc. It filed a certificate of amendment of its articles of incorporation, changing its name to Meridian Healthcare Partners, Inc. on September 25, 2015.

[38] KCHA BoG Meeting: Proposed Agreement to Terminate Contractual Relationship with Meridian Healthcare Partners, Inc. (Aug. 16, 2023) https://drive.google.com/file/d/1bc6D5NVv_2TknILcdpUmJG4TVAa8GXt3/view.

[39] KCHA BoG Meeting: Proposed retroactive Resolution affirming the appointments of Scott Thygerson, Andrew J. Cantu, Tyler S. Whitezell, Glenn E. Goldis, M.D., and Tonya Barraza, RN, MSN, CNOR, as Officers of Kern County Hospital Authority, effective September 25, 2023, 7 (Oct. 18, 2022), https://drive.google.com/file/d/196d4RhuxGgtjJlPgyjNbrY6n22RYPkO8/view?usp=sharing.

[40] For example, on December 14, 2016, the Board of Governors passed by consent agenda a retroactive amendment revising the compensation methodology and removing performance measures for Meridian. (KCHA BoG Meeting: Proposed Retroactive Amendment No. 7 to Agreement 911-2013 with Meridian Healthcare Partners, Inc., 3 (Dec. 14, 2016), https://web.archive.org/web/20220728171119/https:/www.kernmedical.com/documents/content/1.18.17-04b-Summary-of-Proceedings-Signed.pdf.) On February 15, 2017, another retroactive amendment was passed as a

negotiations regarding amendments to Meridian's agreement,[41] they had control over Barnes's actions based on their ability as KCHA's CEO to determine Barnes's compensation[42] and to discipline or terminate Barnes without additional oversight from the Board of Governors.[43]

On September 29, 2015, the Kern County Board of Supervisors approved Amendment 5 to Meridian's Agreement 911-2013, which set the firm's compensation from October 1, 2015 until December 15, 2020.[44]

- From October 1, 2015 to December 15, 2018, Meridian was authorized to receive a monthly management fee of $337,379 and a quarterly performance fee of $100,500 for an annualized max payable of $4,450,550.
- From December 16, 2018 to December 15, 2020, Meridian was authorized to receive a monthly management fee of $344,131 and a quarterly performance fee of $100,500 for an annualized max payable of $4,531,576.

On February 15, 2017, the Board of Governors approved Amendment 8 to Meridian's Agreement 911-2013 to permanently remove Meridian's discretionary performance fee of $402,000 from the agreement and increase its guaranteed monthly management fee from $344,131.35 to $370,879.[45] While Meridian previously had to meet a number of established performance criteria established by KCHA before they could receive their full quarterly performance fee, Amendment 8 removed these performance criteria for Meridian and guaranteed that they would receive a higher monthly management fee.

On October 17, 2018, the Board of Governors approved Amendment 9 to Meridian's Agreement 911-2013, which superseded Amendment 5 to increase the firm's total potential

consent agenda item, again revising the compensation methodology for Meridian. (KCHA BoG Meeting: Proposed Retroactive Amendment No. 8 to Agreement 911-2013 with Meridian Healthcare Partners, Inc., 2 (Feb. 15, 2017), https://web.archive.org/web/20220808124221/https:/www.kernmedical.com/documents/content/2.15.17-Signed-SOP-from-2.15.17-Meeting.pdf.)

[41] While SEIU Local 521 does not have evidence that Thygerson and Judd directly participated in the negotiations over the Meridian's agreement between KCHA and Meridian, there is strong circumstantial evidence showing that Thygerson controlled and indirectly influenced Barnes's decisions when negotiating the termination agreement.

[42] Under KCHA Policy No. HRM-HR-500.0, "[i]t is the policy of Kern Medical that the Chief Executive Officer (CEO) is authorized to approve and adjust salaries for all management, mid-management, confidential and unrepresented employees provided the salaries are within the pay bands approved by the Board of Governors." This includes "Executive level positions which include but are not limited to Vice President . . . positions[.]" Kern Medical Compensation Administration – Non-Represented Employees (July 2016), https://drive.google.com/file/d/16o6XpzrAP9kcv56rccKGJjYSQetoptdG/view.

[43] Under Section 5.02 of KCHA's Bylaws for Governance, the CEO has the power to "[o]rganize, appoint, discipline, and terminate employees[.]" Under Section 5.01, KCHA's CEO is the only executive officer appointed directly by the Board of Governors. KCHA Bylaws for Governance, 18-19 (Apr. 10, 2019), https://drive.google.com/file/d/1EJPt4Z2yyRQJflLgxeH4ZHiT1oKYxqR3/view.

[44] Amendment 5 to Agreement 911-2013 with KMC Management, Inc., for Professional Services at Kern Medical Center, 66-80 (Sept. 29, 2015), https://drive.google.com/file/d/1VDK63WyPHUtBYi8kuwA-t9cctC-weqfL/view?usp=sharing.

[45] Retroactive Amendment No. 8 to Agreement 911-2013 with Meridian Healthcare Partners, Inc., 92-94 (Feb. 15, 2016), https://drive.google.com/file/d/1VDK63WyPHUtBYi8kuwA-t9cctC-weqfL/view?usp=sharing.

compensation by $1.26 million (12.9%) from October 17, 2018 to December 15, 2020, [46] as shown in Table 1 below.[47]

Table 1: Increase in Compensation: Agt 911-2013 Amendment 5 (BOS) vs Amendment 9 (BOG)

Period			Agt 911-2013, Amd 5		Agt 911-2013, Amd 9; Agt 014-2019		Increase in Compensation	
Start	End	Days	Daily Max Pay	Total Comp	Daily Max Pay	Total Comp	$ USD	%
10/17/18	12/15/18	60	$ 12,193.29	$ 731,597.27	$ 13,412.61	$ 804,756.82	**$ 73,159.56**	**10.0%**
12/16/18	12/15/19	365	$ 12,415.28	$ 4,531,576.20	$ 13,815.02	$ 5,042,484.00	**$ 510,907.80**	**11.3%**
12/16/19	12/15/20	366	$ 12,415.28	$ 4,531,576.20	$ 14,229.50	$ 5,207,997.50	**$ 676,421.30**	**14.9%**
Total Period =				**$ 9,794,749.67**		**$ 11,055,238.32**	**$ 1,260,488.66**	**12.9%**

The pay increases to Meridian in Amendment 9 were justified by a pay study conducted by Mercer (US), Inc ("Mercer") nearly two years prior.[48] According to publicly available documents, the Mercer pay study was initiated by VP and General Counsel Karen Barnes on December 23, 2016, without prior authorization from the Board of Governors.[49] Only KCHA Purchasing Agent Russell Judd had the power to delegate authority to Barnes to contract with Mercer to conduct this pay study, which was ultimately used to justify pay increases to Meridian, Judd's own company.[50] There is no evidence that the findings were ever provided to the Board of Governors.[51] Nonetheless, the pay study was used to justify the pay increases to Meridian even though the findings of the study were never reviewed by the Board and the study was already outdated by two years by the time it was used to support the pay increases in Amendment 9.

On December 15, 2021, the Board of Governors approved Amendment 2 to Meridian Agreement 014-2019, which increased monthly management fees and the annualized maximum payable to Meridian even further, as demonstrated in Table 2 below. [52]

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[46] Amendment No. 9 to Agreement 911-2013 with Meridian Healthcare Partners, Inc., 96-99 (Oct. 17, 2018), https://drive.google.com/file/d/1VDK63WyPHUtBYi8kuwA-t9cctC-weqfL/view?usp=sharing; Proposed Retroactive Agreement with Meridian Healthcare Partners, Inc. – Agreement 014-2019, 1 (Feb. 20, 2019), https://drive.google.com/file/d/1Pxq4Jfbv3l08lpDGTHrah6HtYM2_LomD/view?usp=sharing.

[47] SEIU Local 521 has provided a detailed explanation of its calculations of KCHA's payments to Meridian in **Addendum A** attached.

[48] Meridian Healthcare Partners, Contract Negotiation Emails between Karen Barnes and Andrew Morgan, 17 (Sept. 11, 2018), https://drive.google.com/file/d/1l1ssjq9b1-GSPNRMs5NblMQUK-8rV-ci/view?usp=sharing.

[49] KCHA BoG Meeting: Proposed retroactive Amendment No. 2 to Agreement 358-2015 with Mercer (US), Inc., 125-135 (Jan. 18, 2017), https://web.archive.org/web/20240130161723/https://www.kernmedical.com/documents/content/1.18.17-Full-Board-Packet.pdf.

[50] Resolution delegating authority to the Chief Executive Officer of the Kern County Hospital Authority to enter into contracts and to secure and pay for certain professional and special services – Resolution No. 2021-015 (superseded: 2016-009, 2016-022, 2017-007) (Mar. 30, 2016), https://drive.google.com/file/d/1ZITveHsdO_zcQhnVGK_OBXmEhXM8kCdy/view?usp=sharing.

[51] KCHA BOG Meeting Minutes, 4 (Jan. 18, 2017), https://web.archive.org/web/20240201172107/https://www.kernmedical.com/documents/content/1.18.17-04-SOP-Signed.pdf

[52] Amendment No. 2 to Agreement 014-2019 with Meridian Healthcare Partners, Inc., 44-49 (Dec. 15, 2021), https://drive.google.com/file/d/1Pxq4Jfbv3l08lpDGTHrah6HtYM2_LomD/view?usp=sharing.

Table 2: Meridian's Compensation by Agreement & Amendment

Agreement & Amendment	Approved	Period	Management Fee (Monthly)	Performance Fee (Annual)	Lump Sum	Annualized Max Payable
Agt 911-2013, Amd 5	9/29/15	10/01/15 - 12/15/18	$ 337,379	$ 402,000		**$ 4,450,550**
		12/16/18 - 12/15/20	$ 344,131	$ 402,000		**$ 4,531,576**
Agt 911-2013, Amd 7	12/14/16	07/01/16 - 12/31/16	$ 344,131	$ -	$ 201,000	**$ 4,531,576**
Agt 911-2013, Amd 8	2/15/17	01/01/17 - 12/15/18	$ 370,879	$ -		**$ 4,450,548**
Agt 911-2013, Amd 9; Agt 014-2019	10/17/18; 2/20/19	10/17/18 - 12/15/18	$ 407,967	$ -		**$ 4,895,604**
		12/16/18 - 12/15/19	$ 420,207	$ -		**$ 5,042,484**
		12/16/19 - 12/15/20	$ 432,814	$ -		**$ 5,193,768**
Agt 014-2019, Amd 1	9/16/20	12/16/20 - 12/15/22	$ 432,814	$ -		**$ 5,193,768**
Agt 014-2019, Amd 2	12/15/21	12/16/21 - 12/15/22	$ 445,798	$ -		**$ 5,349,576**
		12/16/22 - 12/15/23	$ 459,172	$ -		**$ 5,510,064**

"Annualized Max Payable" equals "Management Fee" times twelve, plus "Performance Fee" and "Lump Sum." Grey rows are superseded by subsequent Amendments or Agreements.

E. Furthermore, audited state financial disclosure statements show that KCHA actually paid Meridian substantially more than the maximum payable authorized by KCHA's contract with Meridian even with the amendments.[53]

KMC's state financial disclosure reports to the California Department of Health Care Access and Information ("HCAI disclosures") show that it paid Meridian significantly more than the maximum payable allowed under KCHA's contract with Meridian during every single fiscal year between 2017 and 2021. [54] As displayed in Table 3 below, KMC's HCAI disclosures show that it paid Meridian a total of $ 39,886,530 between FY 2017-18 and FY 2020-21. This amounts to $20,260,655 in overpayments beyond the amounts allowed by KCHA's contract with Meridian. However, when SEIU Local 521 submitted a CPRA request to KCHA for the total amount paid by KMC to Merdian each year from 2016 through 2021, KCHA could only account for roughly half of the amount reported on the HCAI disclosures, totaling $19,320,297 for that same period between FY 2017-18 and FY 2020-21.[55]

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[53] *Compare* State Financial Reports, available at https://drive.google.com/drive/folders/1FW0ZELV6YhJqYDZ93LvK89MWXprdyTcw *with* Meridian Healthcare Partners Professional Service Agreements (Dec. 3, 2013-Oct. 5, 2022), available at https://drive.google.com/file/d/1kID-8o_ul0E8dYSh6kEme4xUsmgowD2Q/view.

[54] KMC FY 2017-2018 State Financial Report, 9 (June 30, 2018); KMC FY 2018-2019 State Financial Report, 9 (June 30, 2019); KMC FY 2019-2020 State Financial Report, 9 (June 30, 2020); and KMC FY 2020-2021 State Financial Report, 9 (June 30, 2021), available at https://drive.google.com/drive/folders/1FW0ZELV6YhJqYDZ93LvK89MWXprdyTcw.

[55] KCHA Response to SEIU Local 521 CPRA Request, 7 (May 2, 2022), https://drive.google.com/file/d/146R9KkwVPsdvJFDc3M0FRxPZ39nIyssT/view?usp=sharing; Meridian Longform Invoices for FY 2017-18 to FY 2020-21, https://drive.google.com/file/d/1PN9FC-MUHabJapjJorOxIxKRJBNlFGjF/view?usp=sharing.

Table 3: Meridian Fiscal Year Max Payable vs HCAI Disclosure

Fiscal Year	Fiscal Year Max Payable	HCAI Disclosure	KCHA CPRA Response	Potential Overpayment
FY 2017-18	$ 4,450,550	$ 10,554,486	$ 4,268,148	**$ 6,103,936**
FY 2018-19	$ 4,843,192	$ 11,897,914	$ 4,845,350	**$ 7,054,722**
FY 2019-20	$ 5,138,365	$ 9,048,202	$ 5,124,418	**$ 3,909,837**
FY 2020-21	$ 5,193,768	$ 8,385,928	$ 5,082,381	**$ 3,192,160**
Total	**$ 19,625,875**	**$ 39,886,530**	**$ 19,320,297**	**$ 20,260,655**

The major discrepancy between the amount paid to Meridian reported in KCHA's state disclosure statements and the amounts it could account for in response to SEIU Local 521's CPRA requests indicate that Meridian President Russell Judd and Vice President Alton Scott Thygerson may have used their role as CEO and Purchasing Agent of KCHA, before and after January 2022 respectively, to direct additional funding towards Meridian without prior approval by the Board of Governors.

Furthermore, SEIU Local 521 has obtained public records showing that after it submitted its CPRA request, KCHA's Legal Services Department instructed Director of Finance and CMG consultant John Mills[56] to contact Toyon Associates consultant Laura Cherry to initiate the removal of information regarding KMC's payments to Meridian from its HCAI disclosures.[57]

F. Instead of terminating Meridian's contract for cause, KCHA CEO Alton Scott Thygerson negotiated a $850,000 payout plus operation fees to benefit Meridian

Based on the conflict of interests from Thygerson and Judd using their positions of influence as KCHA's chief officers to influence KCHA's contracts with Meridian to benefit themselves and their own company, KCHA's Board of Governors had a clear basis for immediately terminating KCHA's contract with Meridian. The operating agreement between KCHA and Meridian explicitly states that KCHA "shall have the right to terminate [the] Agreement effective immediately after giving written notice" to Meridian if "(v) [Meridian] engages in acts which confer improper personal benefit upon any employee of [Meridian]; (vi) [Meridian] advises [KCHA] or KMC in a manner that is contrary to public interest or [Meridian] engages in conduct that is not in the best interest of [KCHA] or KMC; [or] (vii) attempts on the part of [Meridian] to secure personally any profit in connection with any transaction entered into

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56 KCHA Personnel List, July 1, 2016 to April 11, 2022, https://drive.google.com/file/d/1hyRmQF3zhdhXMRlhSrvs-PRYR160icXI/view?usp=sharing.

57 SEIU Local 521 CPRA Request to KCHA (March 24, 2022), https://drive.google.com/file/d/1_mJhyM8MFKK570XUOJuw_IRZoOoFBlGy/view?usp=sharing; Email Correspondence between KCHA Director of Finance John Mills and Toyon Associates consultant Laura Cherry (Mar. 25, 2022 – Jun. 14, 2022), https://drive.google.com/file/d/1C20kg1PzBHCxUsVNWa2O4w6-ut1Ref9-/view?usp=sharing. California hospitals are required to complete their HCAI disclosure reports in accordance with the *Accounting and Reporting Manual for California Hospitals* ("Hospital Manual"). (Cal. Code Regs. tit. 22 § 97018.) Section 7020.15 of the Hospital Manual requires that hospitals managed by a private company, which is not owned by the parent company of the hospital, disclose compensation information and other data about the company. By revising KMC's HCAI disclosure report to reflect that the hospital is not managed by a private company, KCHA removed Meridian's compensation information from the report.

on behalf of [KCHA] or KMC."[58] Here, Thygerson and Judd diverted millions of dollars in unauthorized payments to Meridian, passed off major contract amendments that remove performance measures and increase Meridian's management fee (often retroactively) as routine consent agenda items not worthy of discussion by KCHA's Board of Governors, and influenced the Board of Governors to rubber stamp these pay increases to themselves. Thus, they "engage[d] in acts which confer improper personal benefit" upon themselves, "advise[d] [KCHA] or KMC in a manner that is . . . not in the best interest of [KCHA] or KMC," and "attempt[ed] . . . to secure personally [a] profit in connection with" KCHA's contracts with Meridian. KCHA was well within their right to immediately terminate Meridian's contract on this basis.

KCHA also had the right to terminate Meridian's contract based on Thygerson and Judd's failure to establish an up-to-date compliance program for KCHA and KMC, which is required to treat Medicare and Medicaid patients.[59] Meridian's operating agreement makes clear that "the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of [Meridian]" is a basis for KCHA to immediately terminate the agreement.[60] Under the Patient Protection and Affordable Care Act of 2010 ("ACA"), physicians treating Medicare and Medicaid beneficiaries are required to establish a "compliance program" containing several core elements established by the Secretary of Health and Human Services and the Inspector General of the Department of Health and Human Services ("OIG"). (42 U.S.C.A. § 1395cc, subd. (j)(9)(A)-(B).) According to the OIG, the number one element of a compliance program is written policies and procedures.[61] "Up-to-date policies and procedures are a critical element of a compliance program."[62] "Having police and procedure documents that are not up to date diminishes their credibility to the users of such policies and procedures and other interested parties, including Government regulators. Inaccurate or unreliable policies and procedures also reduce the compliance program's authority, credibility, and effectiveness at the entity."[63]

As KCHA's CEO, Thygerson and Judd were responsible for establishing an up-to-date compliance program KMCfor the hospital to continue treating Medicare and Medicaid patients, but they failed to do so.[64] The compliance program that Judd approved for KMC on September 29, 2020 was outdated even when it was established.[65] Five of the compliance policies included in the compliance program were overdue for internal review, with review dates between June

[58] KCHA BoG Meeting: Proposed Retroactive Agreement with Meridian Healthcare Partners, Inc., 15 (Feb. 20, 2019), https://drive.google.com/file/d/1LMjFi2p6et6_9JHn3dLEqm92K2KcWL2M/view.
[59] KCHA BoG Meeting: Proposed Retroactive Agreement with Meridian Healthcare Partners, Inc., 15 (Feb. 20, 2019), https://drive.google.com/file/d/1LMjFi2p6et6_9JHn3dLEqm92K2KcWL2M/view.
[60] *Ibid.*
[61] U.S. Department of Health and Human Services, Office of Inspector General, *General Compliance Program Guidance*, 33-37 (Nov. 2023), https://oig.hhs.gov/documents/compliance-guidance/1135/HHS-OIG-GCPG-2023.pdf.
[62] *Id.* at p. 36.
[63] *Ibid.*
[64] KCHA Bylaws for Governance, Section 5.02(f), 19-20 (Apr. 10, 2019), https://drive.google.com/file/d/1EJPt4Z2yyRQJflLgxeH4ZHiT1oKYxqR3/view?usp=sharing.
[65] Compliance Program: Purpose and Overview (Sep. 29, 2020), https://drive.google.com/file/d/19XNVKyh0-fio5Fgn9C3YDSutTzYIbTvW/view.

2017 and March 2020. The other compliance policies had review dates of November 2020, April 2021, and June 2021.

There is no indication that KCHA's chief executives did anything to review the outdated compliance program until July 2023.[66] Even then, no revisions were made to KMC's compliance program, and it remains out-of-date.[67] For example, many of KMC's compliance policies reference Kern County officials, departments, and positions that no longer provide oversight to the hospital, indicating that the policies have never been updated to reflect KMC's transition from the County to KCHA.[68] Additionally, as currently written, KMC's compliance policies do not adequately address risks caused by the increase in authority granted by the Board of Governors to the CEO. For example, a qui tam lawsuit that was filed against KCHA in March 2023 implicates KCHA CEO and Purchasing Agent Russell Judd, who was responsible for negotiating the agreement, and KCHA's Acting Compliance Officer and General Counsel Shannon Hochstein, who reviewed the agreement.[69] Per KMC's internal investigation policy, if a reported compliance concern involves KCHA's compliance officer, documents related to the report are forwarded to the CEO.[70] There is no formal process for ensuring an independent investigation for compliance concerns involving KCHA's CEO and Purchasing Agent.[71] Thygerson and Judd's failure to establish an up-to-date compliance program for KMC "threatened . . . KMC's ability to participate in . . . Medicare or Medi-Cal," which is a basis for KCHA to immediately terminate Meridian's contract.[72]

In addition, KCHA also had the right to terminate Meridian's contract based on the fact that Judd caused KCHA to omit information about his own company on KMC's Medicare Enrollment Application.[73] Meridian is a "managing control" organization of KMC.[74] According

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[66] KCHA BoG Meeting: Proposed Compliance Program for Fiscal Year 2023-2024 (July 19, 2023), https://drive.google.com/file/d/1nD1Onz8d4f3sEcQb0_S2y6n9BuVAikhc/view.
[67] SEIU Local 521 CPRA Request to KCHA (Dec. 18, 2023) https://drive.google.com/file/d/1MAbA5qfRlvPtaZajEISF0sBKP-xDleIu/view?usp=sharing; KCHA Response to SEIU Local 521's CPRA Request, https://drive.google.com/file/d/1ZnFnJqCTBGj7kEmxf37yyXiMrSKKWwR4/view?usp=sharing.
[68] Resolution delegating authority to the Chief Executive Officer of the Kern County Hospital Authority to enter into contracts and to secure and pay for certain professional and special services, Resolution No. 2021-015 (superseded: 2016-009, 2016-022, 2017-007) (Mar. 30, 2016), https://drive.google.com/file/d/1ZITveHsdO_zcQhnVGK_OBXmEhXM8kCdy/view?usp=sharing.
[69] Second Amended Complaint, Dkt. 175, *United States ex rel. Collado v. Bracco, U.S.A., Inc., et al.*, Case No. 2:20-cv-08719-EP-JSA (D.N.J. Mar. 13, 2023).
[70] KMC Internal Compliance Investigations Policy (COM-LD-645), 52 (Dec. 2016), https://drive.google.com/file/d/19XNVKyh0-fio5Fgn9C3YDSutTzYIbTvW/view?usp=sharing.
[71] *Ibid.*
[72] KCHA BoG Meeting: Proposed Retroactive Agreement with Meridian Healthcare Partners, Inc., 15 (Feb. 20, 2019), https://drive.google.com/file/d/1LMjFi2p6et6_9JHn3dLEqm92K2KcWL2M/view.
[73] KMC's Medicare Enrollment Records, https://drive.google.com/file/d/1e3w2ezPD1hgz2Rzrvqg3z3_Jn32XgDax/view?usp=sharing.
[74] Under the Medicare rules for Institutional Providers such as KMC, "[a]ny organization that exercises operational or managerial control over the provider, or conducts the day-to-day operations of the provider, is a managing organization and must be reported. The organization need not have an ownership interest in the provider in order to qualify as a managing organization. For instance, it could be a management services organization under contract with the provider to furnish management services for the business." Medicare Enrollment Application for Institutional Providers (CMS-855A), 28,

to the Medicare Enrollment Application for Institutional Providers, "any omission, misrepresentation, or falsification of any information contained in this application… may be punished by criminal, civil, or administrative penalties including, but not limited to, the denial or revocation of Medicare billing privileges, and/or the imposition of fines, civil damages, and/or imprisonment."[75] Therefore, Judd's omission of Meridian's information in KMC's Medicare Enrollment Application "threatened . . . KMC's ability to participate in . . . Medicare or Medi-Cal," which is a basis for KCHA to immediately terminate Meridian's contract.[76]

Finally, KCHA also had the right to terminate Meridian's contract because Judd and Thygerson "fail[ed] to follow the reasonable directions of the Board of Governors"[77] by causing KCHA to omit or misrepresent material information about related party transactions, including transactions between KCHA and Meridian, in KCHA's independent audit. On October 17, 2018, the Board of Governors approved an agreement authorizing Moss Adams, LLP ("Moss Adams") to conduct an independent audit of KCHA, [78] as required by its bylaws.[79] The agreement approved by the Board specifically directed KCHA management to provide the auditor with "access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, and other matters[.]"[80] KCHA management failed to do so. Although KCHA's Representation Letter to Moss Adams signed by Judd (FY 2016-17 through FY 2019-20) and Thygerson (FY 2020-21 through FY 2021-22) indicated that KCHA's audited financial statements included all component units and properly disclosed all related party transactions,[81] there were many relationships and related party transactions that were not disclosed, including:

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https://web.archive.org/web/20240127223338/https:/www.cms.gov/medicare/cms-forms/cms-forms/downloads/cms855a.pdf.

[75] *Ibid.*

[76] KCHA BoG Meeting: Proposed Retroactive Agreement with Meridian Healthcare Partners, Inc., 15 (Feb. 20, 2019), https://drive.google.com/file/d/1LMjFi2p6et6_9JHn3dLEqm92K2KcWL2M/view.

[77] *Ibid.*

[78] KCHA BoG Meeting Minutes, 2 (Oct. 17, 2018), https://web.archive.org/web/20240214050137/https:/www.kernmedical.com/documents/content/10.17.18-SOP-approved-signed.pdf (approving Audit and Nonattest Services Engagement Letter from Moss Adams for FY 2017-18 (Aug. 9, 2018)).

[79] KCHA Bylaws, Section 2.13(2), p. 11 (Apr. 10, 2019), https://drive.google.com/file/d/1EJPt4Z2yyRQJflLgxeH4ZHiT1oKYxqR3/view ("The Hospital Authority shall conduct and fund an independent annual audit by an audit firm selected by the Board of Governors, approved by the Board of Supervisors and shall provide copies of all final audits of the Hospital Authority to the Board of Supervisors….")

[80] See section titled "Management's Responsibility" in Audit and Nonattest Services Engagement Letter from Moss Adams for FY 2017-18, 6-7 (Aug. 9, 2018), https://drive.google.com/file/d/1EJPt4Z2yyRQJflLgxeH4ZHiT1oKYxqR3/view; Audit and Nonattest Services Engagement Letter from Moss Adams for FY 2018-19, 6-7 (Apr. 16, 2019), https://drive.google.com/file/d/1EuY4GTW8193ZB4NYaSfLXDKJjF_69rVf/view; Audit and Nonattest Services Engagement Letter from Moss Adams for FY 2019-20, 6-7 (May 18, 2020), https://drive.google.com/file/d/1cQpPfbO-Bs6YnYQbWZkPzP7R1nuYG0LX/view; Audit and Nonattest Services Engagement Letter from Moss Adams for FY 2020-21, 7-8 (Jan. 14, 2021), https://drive.google.com/file/d/1cQpPfbO-Bs6YnYQbWZkPzP7R1nuYG0LX/view.

[81] KCHA Management Rep Letter for AFS FY 2016-17, 4 (Dec. 21, 2017), https://drive.google.com/file/d/1gsD5XkfuOucGg0QPpywiRqPeQOqIRsSy/view; KCHA Management Rep Letter for AFS FY 2017-18, 3 (Jan. 4, 2019), https://drive.google.com/file/d/1iE6-YK8eS1daAvyJLV2fBl7CHIG4egBk/view; KCHA Management Rep Letter for AFS FY 2018-19, 3 (Dec. 20,

- KCHA's relationship with the Kern Medical Center Foundation and the Kern Medical Auxiliary, [82] including $233.3 million in payments received from the Foundation on behalf of Kern Medical Center from fiscal year 2018-19 to fiscal year 2021-22[83]

- $13 million in payments from KCHA to the Kern Medical Surgery Center, LLC for services provided from August 1, 2018 to December 31, 2022 retroactively approved by the Board as a consent agenda item on January 18, 2023[84]

By omitting material information to KCHA's independent auditors, which was required by the engagement agreement approved by the Board, Judd and Thygerson "fail[ed] to follow the reasonable directions of the Board of Governors." This was another basis for KCHA to immediately terminate Meridian's contract.[85]However, instead of recommending that the Board of Governors immediately terminate KCHA's contract with Meridian based on either the conflicts of interests identified above or KCHA's chief executives' failure to establish an up-to-date compliance program for KMC, Thygerson used his power as KCHA's CEO to direct and influence Vice President and General Counsel Karen Barnes to negotiate a mutual termination agreement that benefited Meridian.[86] Under the termination agreement effective August 16, 2023, KCHA paid Meridian a $850,000 termination fee as consideration for terminating the

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2019), https://drive.google.com/file/d/1Yt2JZ7zjfoAai9-0sckUrEo_uP1fFrr7/view; KCHA Management Rep Letter for AFS FY 2019-20, 3 (Dec. 21, 2020), https://drive.google.com/file/d/1PYPp8d3ZDL0poP0klMyrSxP3F1lK0qU0/view; KCHA Management Rep Letter for AFS FY 2020-21, 3 (Dec. 17, 2021), https://drive.google.com/file/d/1LiUFvN9G55A4azZTes9vx5RSM77NujBh/view; KCHA Management Rep Letter for AFS FY 2021-22, 3 (Feb. 1, 2023), https://drive.google.com/file/d/1xHRmDphEJ6WynlyncD4P-X8wgiCTbb7N/view.

[82] KCHA AFS FY 2016-17, 14-15, 32 (Jun. 30, 2017), https://drive.google.com/file/d/12K3600ccJYxHtDpwUqYPLcXCsgulQgJZ/view; KCHA AFS FY 2017-18, 15-16, 37-38 (Jun. 30, 2018), https://drive.google.com/file/d/1Cc-XnKakze8MdHPx1pDDFKYgoccOmKZP/view; KCHA AFS FY 2018-19, 18, 39 (Jun. 30, 2019), https://drive.google.com/file/d/1DDxOGAeQZBMot7buy7mqk_GJgj0OR3QB/view; KCHA AFS FY 2019-20, 18-19, 38-39 (Jun. 30, 2020), https://drive.google.com/file/d/11It3yoKR5EuyrlZp9yzr0ncPQVxEjf4o/view; KCHA AFS FY 2020-21, 18-19, 35-36 (Jun. 30, 2021), https://drive.google.com/file/d/1Y7gXfVZsHLU-36W7COpV0yfRgguRy-Oo/view; KCHA AFS FY 2021-22, 21-22, 40 (Jun. 30, 2022), https://drive.google.com/file/d/1CIA1Skvonmf6wXYdIK8s2zSvQoFJcRxU/view.

[83] According to records from the California Department of Health Care Services ("DHCS") obtained by Local 521 via CPRA, from FY 2018-19 to FY 2021-22, the Foundation received $233.2 million on behalf of KMC. SEIU CPRA Request to DHCS & DHCS Responsive Documents, (Oct. 13, 2022), https://drive.google.com/file/d/1LUT1bpGSC2W7papEACXp_h7Zt2NQWi2t/view?usp=sharing. The transfer of these payments from DHCS to KMC is not disclosed. Some or all of the DHCS payments to the Foundation were also not disclosed in the Foundation's tax filings (Form 990), which were signed by Russell Judd from 2014 to 2020. *See* https://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y.

[84] Kern Medical Surgery Center, LLC – Retroactive Agreement 014-2023 (Jan. 18, 2023), https://drive.google.com/file/d/1aD4ZdyE9I_fyKj_y_emWk4DvZO1FAb_o/view?usp=sharing; KCHA Management Rep Letter for AFS FY 2021-22 (Feb. 1, 2023), https://drive.google.com/file/d/1xHRmDphEJ6WynlyncD4P-X8wgiCTbb7N/view?usp=drive_link. KCHA's Representation Letter to Moss Adams was signed by Thygerson two weeks after this $13 million transaction was retroactively approved by the Board.

[85] KCHA BoG Meeting: Proposed Retroactive Agreement with Meridian Healthcare Partners, Inc., 15 (Feb. 20, 2019), https://drive.google.com/file/d/1LMjFi2p6et6_9JHn3dLEqm92K2KcWL2M/view.

[86] KCHA BoG Meeting: Proposed Agreement to Terminate Contractual Relationship with Meridian Healthcare Partners, Inc. (Aug. 16, 2023), https://drive.google.com/file/d/1bc6D5NVv_2TknILcdpUmJG4TVAa8GXt3/view.

contract.[87] The termination agreement also did not provide for a prorated reduction in Meridian's annual operation fee as allowed in Section 6.1.3 of their latest operating agreement.[88] Given that KCHA already had multiple bases for terminating Meridian's contract, there was no need for them to negotiate a separate termination agreement that benefitted Meridian.

While Thygerson may not have directly participated in the negotiations regarding the Meridian termination agreement,[89] he had control over Barnes's actions based on his ability as KCHA's CEO to determine Barnes's compensation[90] and to discipline or terminate Barnes without additional oversight from the Board of Governors.[91] Despite its decision to terminate Meridian's contract, the KCHA Board of Governors had already approved a three-year agreement for Thygerson to remain as KCHA's CEO as a KCHA employee, effective July 19, 2023.[92] Thus, during the entire time that Barnes was negotiating KCHA's termination agreement with Meridian, she knew that Thygerson had and would continue to have direct control over the terms and conditions of her own employment, including her pay and any potential discipline. Barnes was beholden to Thygerson when negotiating KCHA's termination agreement with Meridian and was thus influenced to negotiate terms that financially benefited Thygerson and Meridian. As KCHA's CEO, Thygerson also permitted the proposed termination agreement to be presented to the Board of Governors and influenced the Board to sign the termination agreement to benefit their own financial interest as Vice President of Meridian.

LEGAL BASIS FOR COMPLAINT

A. <u>Chief officers of KCHA violated Gov't Code section 1090(a) by participating in the making of contracts under which they had a cognizable financial interest</u>

The law recognizes the "truism that a person cannot serve two masters simultaneously . . . ." (*Thomson v. Call* (1985) 38 Cal.3d 633, 637.) Government Code section 1090, subd. (a)

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[87] *Id.* at p. 3.

[88] *Compare* KCHA BoG Meeting: Proposed Agreement to Terminate Contractual Relationship with Meridian Healthcare Partners, Inc., 3 (Aug. 16, 2023) https://drive.google.com/file/d/1bc6D5NVv_2TknILcdpUmJG4TVAa8GXt3/view *with* KCHA BoG Meeting: Proposed Retroactive Agreement with Meridian Healthcare Partners, Inc., 7 (Feb. 20, 2019), https://drive.google.com/file/d/1LMjFi2p6et6_9JHn3dLEqm92K2KcWL2M/view.

[89] While SEIU Local 521 does not have evidence that Thygerson directly participated in the negotiations over the termination agreement between KCHA and Meridian, there is strong circumstantial evidence showing that Thygerson controlled and indirectly influenced Barnes's decisions when negotiating the termination agreement.

[90] Under KCHA Policy No. HRM-HR-500.0, "[i]t is the policy of Kern Medical that the Chief Executive Officer (CEO) is authorized to approve and adjust salaries for all management, mid-management, confidential and unrepresented employees provided the salaries are within the pay bands approved by the Board of Governors." This includes "Executive level positions which include but are not limited to Vice President . . . positions[.]" Kern Medical Compensation Administration – Non-Represented Employees (July 2016), https://drive.google.com/file/d/16o6XpzrAP9kcv56rccKGJjYSQetoptdG/view.

[91] Under Section 5.02 of KCHA's Bylaws for Governance, the CEO has the power to "[o]rganize, appoint, discipline, and terminate employees[.]" Under Section 5.01, KCHA's CEO is the only executive officer appointed directly by the Board of Governors. KCHA Bylaws for Governance, 18-19 (Apr. 10, 2019), https://drive.google.com/file/d/1EJPt4Z2yyRQJflLgxeH4ZHiT1oKYxqR3/view.

[92] KCHA BoG Meeting: Proposed Agreement with Alton Scott Thygerson, a contract employee, for professional services as chief executive officer of Kern County Hospital Authority (July 19, 2023), https://drive.google.com/file/d/17K14JBVrjWqHcGFDGfffW5XAnNSoTjk3/view.

makes it an illegal conflict of interest for "county. . . officers or employees . . .[to] be financially interested in any contract made by them in their official capacity" "To determine whether section 1090 has been violated, a court must identify (1) whether the defendant government officials or employees participated in the making of a contract in their official capacities, (2) whether the defendants had a cognizable financial interest in that contract, and (3) (if raised as an affirmative defense) whether the cognizable interest falls within any one of section 1091's or section 1091.5's exceptions for remote or minimal interests." (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1074.) Here, Judd's, Thygerson's, and Cantu's conduct meets all the elements under section 1090 and constitutes an illegal conflict of interest.

1. Judd, Thygerson, and Cantu are county officers or employees under Government Code section 1090

As applied under Government Code section 1090, the terms "officers" and "employees" have been broadly interpreted. The California Supreme Court has ruled that the term "officers" applies to not just formal officers but also "outside advisors with responsibilities for public contracting similar to those belonging to formal officers." (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 237.)

Pursuant to its enabling ordinance, KCHA is a local public agency in the county. (Kern County, Cal., Municipal Code § 2.170.030.) As such, KCHA's chief officers are considered county "officers" under Government Code section 1090. Judd first served as the CEO of KMC and became the CEO of KCHA once it was established in 2016. He remained in this position until he retired in December 2021. Thygerson first served as the Chief Strategy Officer of KCHA in 2016 and took over as CEO of KCHA in January 2022. Cantu became the CFO of KMC in February 2015 and continued on as the CFO of KCHA in 2016. As KCHA's chief executives, Judd had, and Thygerson and Cantu continue to have exclusive authority to manage the day-to-day operations of KCHA and KMC.[93] Their responsibilities are indistinguishable from "those belonging to formal officers." (*People v. Superior Court (Sahlolbei)*, *supra*, 3 Cal.5th at p. 237.) Thus, Judd, Thygerson, and Cantu qualify as "officers" subject to Government Code section 1090.

Furthermore, "it has long been recognized that '[a] person merely in an advisory position to a [county] is affected by [Government Code section 1090].'" (*California Taxpayers Action Network v. Taber Construction, Inc.* (2017) 12 Cal.App.5th 115, 146, citing *Schaefer v. Berinstein* (1956) 140 Cal.App.2d 278, 291.) "'The fact that someone is designated an independent contractor is not determinative; the statute applies to independent contractors who perform a public function.'" (*California Housing Finance Agency v. Hanover/California Management and Accounting Center, Inc.* (2007) 148 Cal.App.4th 682, 690 [approving quoted statement as a jury instruction].) Thus, the fact that Judd, Thygerson, and Cantu were each hired by KCHA through contracts with Meridian and CMG does not place them outside of the purview

[93] KCHA BoG Meeting: Proposed Retroactive Agreement with Meridian Healthcare Partners, Inc., 3 (Feb. 20, 2019), https://drive.google.com/file/d/1LMjFi2p6et6_9JHn3dLEqm92K2KcWL2M/view; Proposed Agreement with Cantu Management Group, Inc for Professional Services at Kern Medical Center (January 27, 2015), https://itsapps.kerncounty.com/clerk/minutes/granicus/978810/978831/978837/979194/979227/AgreementwithCantuManagementGroupInc.979227.pdf.

of Government Code section 1090 because they each "performed a public function" as chief officers of a KCHA, a public agency.

Even if Judd, Thygerson, and Cantu were considered corporate consultants based on their hiring through KCHA's contracts with Meridian and CMG, the law is clear the term "employees" includes "corporate consultants" hired by a local government because consultants are "capable of influencing an official decision . . . ." (*California Taxpayers Action Network v. Taber Construction, Inc.*, *supra*, 12 Cal.App.5th at pp.146–147 citations omitted.) As KCHA's chief executives, Judd, Thygerson, and Cantu each performed key functions. As the former CEO, Judd had a duty to "[p]lan, direct and manage the current operations, future growth and program development of [KCHA]."[94] As the designated Purchasing Agent, he also had a free hand in signing contracts on behalf of KCHA.[95] Thygerson took over these duties when he moved from the role of CSO to CEO in January 2022. As the CFO, Cantu is expected to "[p]romote sound financial management through leadership, policy and oversight" and "[e]stablish internal audit controls and promote timely corrections of deficiencies."[96] In each of their roles, Judd, Thygerson, and Cantu were all more than "capable of influencing an official decision." (*California Taxpayers Action Network v. Taber Construction, Inc., supra,* 12 Cal.App.5th at pp.146-147.)

Thus, the conflicts of interest prohibition under Government Code section 1090 is applicable to Judd, Thygerson, and Cantu as county officers or employees.

2. Judd, Thygerson, and Cantu participated in the making of contracts with Meridian and CMG as chief officers of KCHA

Public officials "participate" in the making of a contract if they exert influence at any stage leading up to the signing of the contract. "[A]n official (or a public employee) may be convicted of [a] violation [of Government Code section 1090] no matter whether he actually participated personally in the execution of the questioned contract, if it is established that he had the opportunity to, and did, influence execution directly or indirectly to promote his personal interests." (*People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052, citing *People v. Watson* (1971) 15 Cal.App.3d 28.)

Under Government Code section 1090, the "making of a contract" is focused on not just the point of execution, but "the transaction as a whole." (*People v. Honig* (1996) 48 Cal.App.4th 289, 320.) This includes any point leading up to the signing of the contract in which a public official can exert influence. (*People v. Lofchie* (2014) 229 Cal.App.4th 240, 247 ["A contract is made for purposes of section 1090 if the public official 'had the opportunity to, and did, influence execution [of the contract] directly or indirectly to promote his personal interests.'"]; *People v. Honig, supra*, 48 Cal.App.4th at p. 315 [The making of a contract "encompasse[s] the

[94] Proposed Sole Source Agreement with KMC Mgmt., Inc. for Professional Services at KMC, Exhibit A, 21-22 https://drive.google.com/file/d/1kID-8o_ul0E8dYSh6kEme4xUsmgowD2Q/view.
[95] KCHA BoG Meeting: Revised Delegation of Authority of the CEO to Enter into Contracts, 79 (September 20, 2017), https://www.kernmedical.com/documents/content/1-9.20.17-Full-Board-Packet.pdf#page=79.
[96] Agreement with Cantu Management Group Inc, 19-20 (January 27, 2015), https://itsapps.kerncounty.com/clerk/minutes/granicus/978810/978831/978837/979194/979228/Agreement979228.pdf.

planning, preliminary discussion, compromises, drawing of plans and specifications and solicitation of bids that led up to the formal making of the contract."].) Here, Judd, Thygerson, and Cantu all "participated" in the "making of contracts" that benefited them financially.

a. Russell Judd

As KCHA's CEO from 2015 until December 2021, Judd was tasked with "[p]lan[ning], direct[ing] and manag[ing] the current operations, future growth and program development of [KCHA] while ensuring responsible use of fiscal, human and physical resources."[97] As KCHA's designated Purchasing Agent, he was also free to sign contracts on behalf of KCHA for goods and services up to $250,000 per year without approval by the Board of Governors.[98]

Judd participated in the making of contracts that he had a financial interest in when he allowed numerous amendments increasing compensation to Meridian to appear before the Board of Governors as routine consent agenda items.[99] These amendments and the circumstances under which they were made are detailed in Section D of the "Factual Basis of the Complaint" above. Given that KCHA ultimately paid Meridian close to or more than double the maximum payable allowed by their contract each year between 2017 through 2021 (as described in Section E of the "Factual Basis of the Complaint" above), Judd also likely used his role as Purchasing Agent for KCHA to make contracts directing additional funding towards Meridian.

b. Alton Scott Thygerson

As KCHA's Chief Strategy Officer from 2015 until December 2021, Thygerson also participated in the making of contracts that he had a financial interest in when he allowed the numerous amendments increasing compensation to Meridian to appear before the Board of Governors as routine consent agenda items without the need for substantive review or discussion. These amendments and the circumstances under which they were made are detailed in Section D of the "Factual Basis of the Complaint" above. Additional unauthorized overpayments are detailed in Section E of the "Factual Basis of the Complaint" above. By allowing these amendments to appear before the Board of Governors as consent agenda items not worthy of discussion and thereby minimizing the importance of these amendments, Thygerson participated in the making of the contracts and "had the opportunity to, and did, influence execution directly or indirectly to promote his personal interests." (*People v. Sobel*, *supra*, 40 Cal.App.3d at p. 1052.) In doing so, Thygerson promoted his personal interests and benefited from these

[97] Proposed Sole Source Agreement with KMC Mgmt., Inc. for Professional Services at KMC, Exhibit A, 21-22 https://drive.google.com/file/d/1kID-8o_ul0E8dYSh6kEme4xUsmgowD2Q/view.

[98] KCHA BoG Meeting: Revised Delegation of Authority of the CEO to Enter into Contracts, 79 (September 20, 2017), https://www.kernmedical.com/documents/content/1-9.20.17-Full-Board-Packet.pdf#page=79.

[99] These include a 2016 amendment to Meridian's contract which removed set performance measures and converted a contingent $201,000 "performance fee" into a set "management fee." It also includes the October 16, 2018 amendment to Meridian's contract which provided a one-time 10% increase to Meridian's management fee plus an additional 3% annual increase for each following year, based on the findings of a pay study which was never presented to the Board of Governors. The October amendment was only removed from the consent agenda during the Board of Governors meeting because one of the Board members, Russell Bigler, recused himself due to a familial interest with someone at Meridian.

contracts because they directed greater funding towards Meridian and increased his compensation under the contract as KCHA's CSO.

As CEO for KCHA starting in January 2022, Thygerson further participated in the making of a contract in which he had a financial interest when he influenced and controlled VP and General Counsel Karen Barnes in the negotiation of a termination agreement between KCHA and Meridian that resulted in KCHA paying Meridian a $850,000 termination fee and full operation fees. Based on the conflict of interests described above and the chief officers' failure to establish an up-to-date compliance program for KMC, KCHA had the right to immediately terminate its contract with Meridian without a separate termination agreement and a termination fee. Instead of advising KCHA's Board of Governors of this fact, Thygerson influenced Barnes to negotiate a termination agreement that benefited his own financial interests as a Vice President of Meridian.

Given that Thygerson had direct control over the terms and conditions of Barnes's employment, including her compensation and any potential discipline or termination, as CEO of KCHA, Thygerson "had the opportunity to, and did, influence execution [of the contract] . . . indirectly." (*People v. Lofchie*, *supra*, 229 Cal.App.4th at p. 247; see also *People v. Wong* (2010) 186 Cal.App.4th 1433, 1450 [finding that the defendant "pushed the City to negotiate with [a contracting entity] while he was a [public officer]" and holding that "a public official can violate Government Code section 1090 even though he did not participate in the contract's execution"].) By way of his control over Barnes's employment, Thygerson "pushed [Barnes] to negotiate with [Meridian] while he was [CEO of KCHA]" and thus indirectly influenced KCHA's decision to sign the termination agreement with Meridian. (*People v. Wong*, *supra*, 186 Cal.App.4th at p. 1450.) Knowing that Thygerson would stay on as KCHA's CEO even after the termination of Meridian's contract, Barnes was beholden to Thygerson when negotiating the termination agreement with Meridian. Furthermore, Thygerson also allowed the termination agreement to appear before the Board of Governors for approval. Thus, he participated in the making of the contract to benefit the interests of Meridian and his own financial interests as Meridian's Vice President.

c. Andrew Cantu

As KCHA's CFO, Cantu has a duty to "[p]romote sound financial management through leadership, policy and oversight" and "maintain responsibility for budget preparation and operating budget controls."[100] He also has a duty to "[d]evelop and execute financial control systems within the organization through direct supervision of the financial team" and "[e]stablish internal audit controls and promote timely corrections of deficiencies."[101] His approval is "required . . . for all unbudgeted expenditures above $25,000."[102]

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[100] Agreement with Cantu Management Group Inc, 19-20 (Jan. 27, 2015), https://itsapps.kerncounty.com/clerk/minutes/granicus/978810/978831/978837/979194/979228/Agreement979228.pdf.

[101] *Ibid.*

[102] Approval Levels for Purchase Requisitions and Invoices/Vouchers, 5 (Apr. 1, 2016), https://drive.google.com/file/d/1OzSUaZTDd7tQc-m4NqYX8BiEjAPwtogZ/view.

Using his role as CFO, Cantu participated in the making of contracts that he was financially interested in with Cantu Management Group. In 2019, KCHA entered into a contract with CMG, setting a maximum payable amount of $7.2 million between September 1, 2019 and August 31, 2021. Nonetheless, KCHA had already exceeded that amount by January 27, 2021, and Cantu allowed 15 unauthorized payments totaling nearly $3 million to go to CMC between January 27, 2021 and August 31, 2021. Thus, Cantu used his position to promote his own personal interests. He did not inform the Board of Governors of these overpayments at the time they occurred. As a chief officer, he also allowed a staff proposal for the Board to retroactively amend CMG's contract, approving the overpayments 18 months later in July 2022. In so doing, he participated in the making of the amended contract and directly promoted his personal interests.

3. Judd, Thygerson, and Cantu had cognizable financial interests in KCHA's contracts with Meridian or CMG based on their executive roles in each corporation

While Government Code section 1090 does not define the term "financial interest," courts have liberally interpreted the term in applying the statute. "The phrase 'financially interested' broadly encompasses anything that would tie a public official's fortunes to the existence of a public contract." (*Carson Redevelopment Agency v. Padilla* (2006) 140 Cal.App.4th 1323, 1335.) "[A]n official has a financial interest in a contract if he might profit from it." (*People v. Honig*, *supra*, 48 Cal.App.4th at p. 333.) "[P]rohibited financial interests are not limited to express agreements for benefit and need not be proven by direct evidence." (*Id.* at p. 315.) They can stem from "implied agreement[s]" and "may be inferred from the circumstances." (*Ibid.*)

Cantu had a cognizable financial interest in KCHA's 2022 retroactive amendment to its contract with CMG because it approved close to $3 million in overpayments to the company that were previously made in violation of their 2019 contract with a maximum payable amount of $7.2 million between September 1, 2019 and August 31, 2021. The retroactive amendment also increased the maximum payable to CMG by $13,043,284, to $20,243,284 for the period from September 1, 2019 to August 31, 2023. Since the compensation to CMG "covers all salaries, costs and expenses to provide the services," he directly profited from the additional payments to his own company and any resulting increases in his compensation as KCHA CFO under the contract.

Similarly, Judd and Thygerson had cognizable financial interests in each of KCHA's amended contracts with Meridian from 2016 to the present because the amendments increased management fees to Meridian, which resulted in increased compensation to the chief executives. These amendments and the circumstances under which they were made are detailed in Section D of the "Factual Basis of the Complaint" above. Additional unauthorized overpayments are detailed in Section E of the "Factual Basis of the Complaint" above. Judd and Thygerson directly profited from each of these amended contracts with Meridian. The additional compensation to Meridian directly translated into greater compensation to each of them in their roles as chief officers of KCHA under the contracts. Thus, it is clear they each had a cognizable financial interest in the Meridian contracts.

Thygerson also had a cognizable financial interest in KCHA's termination agreement with Meridian because the agreement provided Meridian with an additional $850,000 termination fee and did not permit KCHA to prorate their annual operation fees, as allowed in the parties' original operating agreement. Meridian would not have been entitled to this termination fee and the unprorated operation fees if KCHA's chief executives had not negotiated the termination agreement with Meridian and instead advised KCHA to terminate Meridian's contract for cause. As Vice President of Meridian, Thygerson has his "fortunes [tied] to the existence of [KCHA's] public contract" with Meridian.

Thus, Judd and Thygerson had cognizable financial interests in KCHA's contracts with Meridian. Cantu had a cognizable financial interest in KCHA's contracts with CMG.

4. Judd, Thygerson, and Cantu's interests in KCHA's contracts with Meridian or CMG are not remote or minimal

The only financial interests that are outside of the prohibition under Government Code section 1090 are interests that are "remote" under Government Code section 1091 or "noninterests" (sometimes referred to as "minimal interests") under Government Code section 1091.5. (*Lexin v. Superior Court*, *supra*, 47 Cal.4th at pp. 1073-1074.) The contention that certain financial interests are remote or minimal interests is an affirmative defense to a section 1090 conflict of interest claim. (*Id.* at p. 1074.) Government Code section 1091 defines a number of "remote interest[s]" including "[t]hat of an employee or agent of the contracting party, if . . . [t]he employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party." Under Government Code section 1091.5, "[a]n officer or employee shall not be deemed to be interested in a contract if his or her interest is . . . [t]he ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income."

Here, Judd, Thygerson, and Cantu's interests in KCHA's contracts increasing management fees for Meridian and CMG are not "remote" or "minimal." They all served "in a primary management capacity with the contracting party" as the owner and President of Meridian, the Vice President of Meridian, and the owner and President of CMG, respectively. (Gov. Code § 1091, subd. (b)(3)(D).) They were also all paid directly by Meridian or CMG for both their chief executive roles within KCHA and their management roles at Meridian or CMG, so "payments made to him or her by the corporation" far exceeded "5 percent of his or her total annual income." (Gov. Code § 1091.5, subd. (a)(1).)

As Vice President of Meridian, Thygerson's interest in KCHA's termination agreement with Meridian was also not "remote" or "minimal." Based on his "primary management" role as Vice President and likely a shareholder of Meridian, Thygerson stood to benefit from Meridian's profits or gains from the $850,000 termination fee and additional operation fees from KCHA. (Gov. Code § 1091, subd. (b)(3)(D).)

Thus, Judd, Thygerson, and Cantu all participated in the making of contracts with Meridian and CMG by way of their positions as chief officers of KCHA. They each had cognizable financial interests that were not remote or minimal in one or more of these contracts. Therefore, they each violated the conflicts-of-interest prohibition for public officials or employees under Government Code section 1090.

B. Chief officers of KCHA violated the Political Reform Act by participating in or influencing government decisions in which they were financially interested

Under the Political Reform Act ("the Act"), "[a] public official at any level of state or local government shall not make, participate in making, or in any way attempt to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest." (Gov't Code § 87100.) Under the statute, a "'[p]ublic official' means every member, officer, employee, or consultant of a state or local government agency." (Gov't Code § 82048.) As explained above, Judd, Thygerson, and Cantu are each considered an officer or employee of KCHA, a county government agency. Therefore, they are legally required to abide by the financial conflicts-of-interest provision of the Political Reform Act.

The Fair Political Practices Commission has promulgated regulations laying out four steps for determining whether a public official has a prohibited conflict of interest under the Act. (See Cal. Code Regs., tit. 2, § 18700, subd. (d).) Here, it is clear after going through all four steps that Judd, Thygerson, and Cantu have a prohibited conflict of interest.

1. Step one: it was reasonably foreseeable that KCHA's decision to enter into contracts with and approve overpayments to Meridian and CMG would have a financial effect on Judd's, Thygerson's, and Cantu's financial interests based on their roles as officers of Meridian and CMG

Step one asks: "Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests?" (Cal. Code Regs., tit. 2, § 18700, subd. (d).) "A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the subject of a proceeding if the decision involves the . . . approval . . . of [a] contract with, the financial interest." (Cal. Code Regs. tit. 2, § 18701.) For purposes of the Political Reform Act, the definition of "financial interest" includes "[a]ny business entity . . . in which the public official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d))." (Cal. Code Regs. tit. 2, § 18700, subd. (c)(6)(D).)

Under Government Code section 87103(d), Judd, Thygerson, and Cantu each have financial interests in either Meridian or CMG based on their roles as chief officers of those corporations. Judd has a financial interest in Meridian because he is the President of Meridian. Thygerson has a financial interest in Meridian because he is a Vice President at Meridian. Cantu has a financial interest in CMG because he is the President of CMG.

Given that Judd, Thygerson, and Cantu each had financial interests in Meridian or CMG, and each of these corporations was the subject of multiple contracts with KCHA, including KCHA's final termination agreement with Meridian, it is presumed to be reasonably foreseeable that KCHA's decision to enter into contracts with each corporation or approve any overpayments to the companies would have a financial effect on each of their financial interests.

2. Step two: the reasonably foreseeable financial effect of KCHA's decision to enter into contracts with and approve overpayments to Meridian and CMG was material and resulted in increases to Meridian and CMG's gross revenues and assets

Step two asks: "Will the reasonably foreseeable financial effect be material?" (Cal. Code Regs., tit. 2, § 18700, subd. (d).) "The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity is material if . . . [t]he entity is a named party in, or the subject of, the decision, including any decision in which the entity . . . [e]nters into, a contract with the agency." (Cal. Code Regs. tit. 2, § 18702.1, subd. (a)(1)(C).) In addition, the reasonably foreseeable financial effect of a decision is also material if "[t]he decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or more than: (A) $1,000,000; or (B) Five percent of the entity's annual gross revenues and the increase or decrease is at least $10,000." (Cal. Code Regs. tit. 2, § 18702.1, subd. (a)(2).)

The reasonably foreseeable financial effect of KCHA's decisions on Cantu's financial interest in CMG was material because CMG was subject to numerous contracts with KCHA. As explained above, KCHA decided to sign an amended contract with CMG in 2019 that authorized increased compensation and set a maximum payable amount of $7.2 million from KCHA to CMG between September 1, 2019 and August 31, 2021. When KCHA made the decision to retroactively approve close to $3 million in overpayments to CMG under that contract and additionally increased CMG's compensation by another $13 million in July 2022, that likewise had a reasonably foreseeable financial effect on Cantu's financial interest in CMG that was material.

The reasonably foreseeable financial effect of KCHA's decisions on Judd and Thygerson's financial interests in Meridian was also material because Meridian was the subject of several contracts with KCHA. As explained above, KCHA also made numerous decisions to amend Meridian's contracts with KCHA, providing it with greater funding for executive management services. Given that Judd and Thygerson both had a financial interest in Meridian based on their roles as officers in the corporation and Meridian was the subject of numerous contracts with KCHA during each of their tenures as chief officers for KCHA, the reasonably foreseeable financial effect of KCHA's decision to enter into each of these contracts was material.

Finally, KCHA's decision to enter into a termination agreement with Meridian effective August 31, 2022 also had a reasonably foreseeable financial effect on Thygerson's financial interest in Meridian that was material. As Vice President of Meridian, Thygerson had a financial interest in Meridian, and the termination agreement provided Meridian with an $850,000 termination fee plus additional operation fees, which were not necessary.

Here, Judd, Thygerson, and Cantu each had a financial interest in either Meridian or CMG based on their roles as officers in the corporations. Each of these entities was the subject of numerous decisions by KCHA, including decisions to enter into and amend contracts with the entities, providing them with additional funding. KCHA further decided to enter into a termination agreement that provided Meridian with a $850,000 termination payment and additional operation fees in August 2023. Therefore, the reasonably foreseeable financial effect of KCHA's decision on Judd's, Thygerson's, and Cantu's financial interests in each of these entities was material.

3. Step three: Judd, Thygerson, and Cantu cannot demonstrate that the material financial effect of KCHA's decision to enter into contracts with and overpay Meridian and CMG was indistinguishable from its effect on the general public

Step three asks, "Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally?" (Cal. Code Regs., tit. 2, § 18700, subd. (d).) "A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on the official's financial interest is not unique compared to the effect on the significant segment." (Cal. Code Regs. tit. 2, § 18703, subd. (a).) If the financial interest is in a business entity, "a significant segment of the public" is defined as "at least 25 percent" of "[a]ll businesses or non-profit entities within the official's jurisdiction." (Cal. Code Regs. tit. 2, § 18703, subd. (b)(1)(A).) "A unique effect on a public official's financial interest includes a disproportionate effect on . . . the income producing potential of the official's real property or business entity." (Cal. Code Regs. tit. 2, § 18703, subd. (c)(1).)

KCHA's chief officers cannot demonstrate that the "material financial effect" of KCHA's decision to contract with and overpay Meridian and CMG "on [their] financial interest is indistinguishable from its effect on the public generally." (Cal. Code Regs., tit. 2, § 18700, subd. (d).) Judd and Thygerson cannot establish that the material financial effect of KCHA's decision to enter into contracts with Meridian was "indistinguishable from its effect on the public generally" given that KCHA's Professional Service Agreement with Meridian named it as the sole provider of executive management services for KCHA. Similarly, Cantu cannot establish that the financial effect of KCHA's decision to enter into contracts with CMG on his financial interest was not unique because the contract named CMG as the sole provider of financial management services for KCHA. These professional service agreements and any subsequent amendments only served to benefit Meridian and CMG. Other businesses in the jurisdiction do not enjoy similar benefits from the contracts. Likewise, no other businesses aside from Meridian stood to benefit from KCHA's termination agreement with Meridian, which provided a $850,000 payout and additional operation fees to Meridian.

4. Step four: Judd, Thygerson, and Cantu either participated in or used their positions in KCHA to influence KCHA's decision to enter contracts and approve overpayments to Meridian and CMG without significant review from KCHA's Board of Governors

Finally, step four looks at whether "the public official is 'making, participating in making, or in any way attempting to use the official's position to influence a governmental decision.'" (Cal. Code Regs., tit. 2, § 18700, subd. (d).) Under the Political Reform Act, "[a] public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official's agency to any course of action, or enters into any contractual agreement on behalf of the official's agency." (Cal. Code Regs. tit. 2, § 18704, subd. (a).) "Participating in a decision" is defined as "[p]roviding information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review." (Cal. Code Regs. tit. 2, § 18704, subd. (b).) "'Significant intervening substantive review' has been interpreted to require more than the mere review of the recommendations by superiors, but rather the independent checking of the results without solely relying on the data of the official." (*Lisbeth Landsman-smith* Advice Letter, No. A-21-119, 2022 WL 850735, at *5, citing *Greenwold* Advice Letter, No. I-90-349.)

As chief officers of KCHA, Judd, Thygerson, and Cantu were all in charge of the management and operations of KCHA, including preparing materials related to contracts between KCHA and Meridian or CMG. As KCHA's chief officers, they routinely participated in the making of decisions that they knew they had a financial interest in by allowing proposed amendments to these contracts to appear before the Board of Governors as "consent agenda" items that are "considered to be routine and non-controversial by Kern County Hospital Authority staff."[103] Even though these amendments often granted significant additional funding and overcompensation to the entities, the chief officers recommended Board approval without any substantive discussion. It is not apparent that the Board of Governors does any "significant intervening review" or independent fact checking as defined in *Greenworld* and *Landsman-smith* prior to their voting based on materials prepared by the KCHA staff.

Similarly, as the CEO of KCHA, Thygerson also participated in the making of a decision that he knew he had a financial interest in when he influenced the Board's decision to pay Meridian $850,000 plus additional operations fees to terminate its contract with Meridian. As CEO, Thygerson maintained direct control over the terms and conditions of VP and General Counsel Karen Barnes's employment, including her compensation and any potential discipline or termination. Accordingly, Barnes was beholden to Thygerson in her negotiations over the Meridian termination agreement. This was especially the case given that Barnes knew Thygerson would continue to serve as KCHA's CEO even after the Meridian contract was terminated. Thus, Thygerson indirectly influenced any recommendations that Barnes provided to the Board over whether to sign the termination agreement. He also participated in the making of the decision by allowing the proposed termination agreement to appear before the Board of Governors for approval rather than advising the Board that it could terminate the Meridian contract for cause without the need for KCHA to pay Meridian a $850,000 termination fee. This benefited his own financial interest as Vice President of Meridian.

Thus, Judd, Thygerson, and Cantu each committed violations of the financial conflicts-of-interest provision of the Political Reform Act by participating in KCHA's decisions regarding

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[103] *See, e.g.*, KCHA BoG Meeting (July 20, 2022), https://www.kernmedical.com/documents/pdf/1-Full-Packet-07.20.22.pdf#page=1.

contracts with and overpayments to Meridian and CMG, in which they knew they had a financial interest.

WITNESSES

All relevant information in this complaint is based upon publicly available information, including minutes from KCHA's regular Board of Governors meetings, as well as documents obtained through California Public Records Act requests from SEIU Local 521 to KCHA.

Sydnee Galusha
SEIU Local 521
Strategic Research
2302 Zanker Road
San Jose, CA 95131

We request that you immediately begin an investigation into these allegations and take appropriate action to sanction this inappropriate conduct on the part of these public officials.

Please keep the undersigned advised of all developments and feel free to contact the undersigned if you require any further information.

Sincerely,

Sydnee Galusha

Sydnee Galusha
SEIU Local 521

Addendum A

To compare Meridian's compensation as reported to the California Department of Health Care Access and Information ("HCAI") to the maximum payable allowed in the company's contract, SEIU Local 521 converted Meridian's annual maximum payable to a fiscal year maximum payable based on KMC's fiscal year from July 1 to June 30 ("Fiscal Year Max Payable"). Local 521 estimated Meridian's maximum payable for each fiscal year by:

- Annualizing Meridian's predetermined monthly management fee and annual performance fee for each period (i.e., Annualized Max Payable = Management Fee x 12 months + Annual Performance Fee).
    - Assumes a 0% vacancy rate and the successful completion of all performance metrics.
    - Annualized Max Payable reflects the amount Meridian would receive for a full year, regardless of the actual length of the period.
- Dividing the Annualized Max Payable by 365 days to determine the Meridian's Daily Max Payable (i.e., Daily Max Payable = Annualized Max Payable / 365 Days).
- Multiplying the Daily Max Payable by the number of actual days in the period to determine the Total Compensation for each period.

The first section of this document ("Summary of Meridian Contract Revisions") summarizes all of Meridian's contract revisions and converts Meridian's compensation into an "Annualized Max Payable" and "Daily Max Payable" (see Table 1.1); then this section uses Meridian's "Daily Max Payable" to compare the company's compensation over the years, showing an estimated 12.9% increase in total potential compensation to Meridian between 2015 and 2019.

The second section of this document ("Conversion of Meridian's Compensation to Fiscal Year") converts Meridian's "Daily Max Payable" to a "Fiscal Year Max Payable."

The third section of this document ("Comparison to HCAI Disclosures") compares Meridian's "Fiscal Year Max Payable" to the compensation reported in KMC's HCAI disclosure to determine the company's Potential Overpayment.

1. Summary of Meridian Contract Revisions

The table below summarizes all of Meridian's contract revisions and converts Meridian's compensation into an "Annualized Max Payable" and "Daily Max Payable."

Table 1.1: Summary of Changes to Meridian's Compensation; Conversation to Daily Max Payable

Agreement & Amendment	Approved	Period	Management Fee (Monthly)	Performance Fee (Annual)	Lump Sum	Annualized Max Payable	Daily Max Payable
Agt 911-2013, Amd 5	9/29/15	10/01/15 - 12/15/18 *	$ 337,379	$ 402,000	$ -	$ 4,450,550	**$ 12,193**
		12/16/18 - 12/15/20 *	$ 344,131	$ 402,000	$ -	$ 4,531,576	**$ 12,415**
Agt 911-2013, Amd 7	12/14/16	07/01/16 - 12/31/16	$ 344,131	$ -	$ 201,000	$ 4,531,576	**$ 12,415**
Agt 911-2013, Amd 8	2/15/17	01/01/17 - 12/15/18 *	$ 370,879	$ -	$ -	$ 4,450,548	**$ 12,193**
Agt 911-2013, Amd 9; Agt 014-2019	10/17/18; 2/20/19	10/17/18 - 12/15/18	$ 407,967	$ -	$ -	$ 4,895,604	**$ 13,413**
		12/16/18 - 12/15/19	$ 420,207	$ -	$ -	$ 5,042,484	**$ 13,815**
		12/16/19 - 12/15/20	$ 432,814	$ -	$ -	$ 5,193,768	**$ 14,230**
Agt 014-2019, Amd 1	9/16/20	12/16/20 - 12/15/22 *	$ 432,814	$ -	$ -	$ 5,193,768	**$ 14,230**
Agt 014-2019, Amd 2	12/15/21	12/16/21 - 12/15/22	$ 445,798	$ -	$ -	$ 5,349,576	**$ 14,656**
		12/16/22 - 12/15/23	$ 459,172	$ -	$ -	$ 5,510,064	**$ 15,096**
* Period ended early due to subsequent amendments.							

Formulas for Table 1.1:
Annualized Max Payable ◆ = (Management Fee × 12 months) + Performance Fee + Lump Sum
Daily Max Payable ◆ = Annualized Max Payable ◆ ÷ 365 days

Agreement 911-2013 Amendment 5 & Amendment 6

On September 29, 2015, the Kern County Board of Supervisors approved Amendment 5 to Meridian's Agreement 911-2013, which set the firm's compensation from October 1, 2015 until December 15, 2020.[104]

- From October 1, 2015 to December 15, 2018, Meridian was authorized to receive a monthly management fee of $337,379 and a quarterly performance fee of $100,500 for an annualized max payable of $4,450,550.
- From December 16, 2018 to December 15, 2020, Meridian was authorized to receive a monthly management fee of $344,131 and a quarterly performance fee of $100,500 for an annualized max payable of $4,531,576.

[104] Amendment 5 to Agreement 911-2013 with KMC Management, Inc., for Professional Services at Kern Medical Center, 66-80 (Sept. 29, 2015), https://drive.google.com/file/d/1VDK63WyPHUtBYi8kuwA-t9cctC-weqfL/view?usp=sharing.

On February 9, 2016, the Board of Supervisors approved Amendment 6 to Meridian's Agreement 911-2013 to revise the company's performance metrics for calendar year 2016; there were no changes to Meridian's total compensation.[105]

On March 16, 2016, the KCHA Board of Governors met for the first time.[106] KCHA assumed liability for Meridian's agreement as part of KMC's transfer from Kern County to KCHA, effective July 1, 2016.[107]

Agreement 911-2013 Amendment 7 & Amendment 8

On December 14, 2016, the Board of Governors retroactively approved Amendment 7 to Meridian's Agreement 911-2013, which revised Meridian's compensation methodology from July 1, 2016 to December 31, 2016 so that Meridian received a lump sum payment of $201,000 in lieu of its discretionary performance bonus for Quarter 3 and Quarter 4.[108]

On February 15, 2017, the Board of Governors approved Amendment 8 to Meridian's Agreement 911-2013 to permanently remove Meridian's discretionary performance fee of $402,000 from the agreement and increase its monthly management fee from $344,131.35 to $370,879, resulting in an annualized max payable of $4,450,548.[109]

Agreement 911-2013 Amendment 9, Agreement 014-2019. & Agreement 014-2019 Amendment 1

On October 17, 2018, the Board of Governors approved Amendment 9 to Meridian's Agreement 911-2013, which superseded Amendment 5 to increase the firm's total potential compensation by $1.26 million (12.9%) from October 17, 2018 to December 15, 2020.[110] (See Table 1.2 below).

- From October 17, 2018 to December 15, 2018, Meridian was authorized to receive a monthly management fee of $407,967, for an annualized max payable of $4,895,604.
- From December 16, 2018 to December 15, 2019, Meridian was authorized to receive a monthly management fee of $420,207, for an annualized max payable of $5,042,484.
- From December 16, 2019 to December 15, 2020, Meridian was authorized to receive a monthly management fee of $432,814, for an annualized max payable of $5,193,768.

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105 Amendment 6 to Agreement 911-2013 with Meridian Healthcare Partners, Inc., for Professional Services at Kern Medical Center, 81-87 (Feb. 9, 2016), https://drive.google.com/file/d/1VDK63WyPHUtBYi8kuwA-t9cctC-weqfL/view?usp=sharing.

106 KCHA BoG Meeting Minutes (Mar. 16, 2016) https://web.archive.org/web/20240127164841/https://www.kernmedical.com/documents/content/BOG-SOP-Minutes-3.16.pdf.

107 KCHA BoG Meeting: Master Contract for the Transfer of Health Facilities by and between the County of Kern and Kern County Hospital Authority, 13-525 (May 4, 2016), https://drive.google.com/file/d/1c_K6YuWhPoRF6Oy3l58PLPCrus_Zg77q/view.

108 Amendment 7 to Agreement 911-2013 with Meridian Healthcare Partners, Inc, 89 (Dec. 14, 2016), https://drive.google.com/file/d/1VDK63WyPHUtBYi8kuwA-t9cctC-weqfL/view?usp=sharing.

109 Amendment 8 to Agreement 911-2013 with Meridian Healthcare Partners, Inc, 92-94 (Feb. 15, 2016), https://drive.google.com/file/d/1VDK63WyPHUtBYi8kuwA-t9cctC-weqfL/view?usp=sharing.

110 Amendment 9 to Agreement 911-2013 with Meridian Healthcare Partners, Inc, 96-99 (Oct. 17, 2018), https://drive.google.com/file/d/1VDK63WyPHUtBYi8kuwA-t9cctC-weqfL/view?usp=sharing.

Table 1.2: Meridian's Compensation per Agreement 911-2013, Amendment 5 (BOS) v. Agreement 911-2013 Amendment 9 (BOG)

Days in Period			Agt 911-2013, Amd 5		Agt 911-2013, Amd 9; Agt 014-2019		Increase in Compensation	
Start	**End**	**Days**	**Daily Max**	**Total Comp**	**Daily Max**	**Total Comp**	**$ USD**	**%**
10/17/18	12/15/18	60	$ 12,193	$ 731,597	$ 13,413	$ 804,757	**$ 73,160**	**10.0%**
12/16/18	12/15/19	365	$ 12,415	$ 4,531,576	$ 13,815	$ 5,042,484	**$ 510,908**	**11.3%**
12/16/19	12/15/20	366	$ 12,415	$ 4,531,576	$ 14,230	$ 5,207,998	**$ 676,421**	**14.9%**
		Total =		**$ 9,794,750**		**$ 11,055,238**	**$ 1,260,489**	**12.9%**

Formulas for Table 1.2:
Days in Period ◆ = Start Date – End Date + 1
Daily Max Payable ◆ = Annualized Max Payable ◆ ÷ 365 days
Total Compensation ◆ = Days in Period ◆ × Daily Max Payable ◆

On February 20, 2019, the Board of Governors approved Meridian Agreement 014-2019, superseding Agreement 911-2013, which had no impact on Meridian's compensation.[111]

On September 16, 2020, the Board of Governors approved Amendment 1 to Meridian Agreement 014-2019, which removed specific job titles from paragraph 4.5 of the agreement.[112] Meridian's compensation was not changed.

Agreement 014-2019 Amendment 2

On December 15, 2021, the Board of Governors approved Amendment 2 to Meridian Agreement 014-2019. [113]

- From December 16, 2021 to December 15, 2022, Meridian was authorized to receive a monthly management fee of $445,789, for an annualized max payable of $5,349,576.
- From December 16, 2022 to December 15, 2023, Meridian was authorized to receive a monthly management fee of $459,172, for an annualized max payable of $5,510,064.

[111] Agreement 014-2019 with Meridian Healthcare Partners, 1 (Feb. 20, 2019), https://drive.google.com/file/d/1Pxq4Jfbv3l08lpDGTHrah6HtYM2_LomD/view?usp=sharing.
[112] Amendment No. 1 to Agreement 014-2019 with Meridian Healthcare Partners, 41-43 (Sept. 16, 2020), https://drive.google.com/file/d/1Pxq4Jfbv3l08lpDGTHrah6HtYM2_LomD/view?usp=sharing.
[113] Amendment No. 2 to Agreement 014-2019 with Meridian Healthcare Partners, 44-49 (Dec. 15, 2021), https://drive.google.com/file/d/1Pxq4Jfbv3l08lpDGTHrah6HtYM2_LomD/view?usp=sharing.

2. Conversion of Meridian's Compensation to Fiscal Year

The table below uses Meridian's "Daily Max Payable" (see Table 1.1) to determine Meridian's "Fiscal Year Max Payable."

Table 2.1: Conversion of Meridian's Daily Max Payable to Fiscal Year Max Payable

<table>
<tr><th rowspan="2">Fiscal Year</th><th rowspan="2">Agreement</th><th colspan="3">Days in Period</th><th rowspan="2">Daily Max Payable</th><th rowspan="2">Total Compensation</th><th rowspan="2">Fiscal Year Max Payable</th></tr>
<tr><th>Start Date</th><th>End Date</th><th>Days</th></tr>
<tr><td></td><td>Agt 911-2013, Amd 8</td><td>7/1/17</td><td>6/30/18</td><td>365</td><td>$ 12,193</td><td>$ 4,450,548</td><td></td></tr>
<tr><td>FY 2017-18</td><td colspan="6"></td><td>$ 4,450,548</td></tr>
<tr><td rowspan="3"></td><td>Agt 911-2013, Amd 8</td><td>7/1/18</td><td>10/16/18</td><td>108</td><td>$ 12,193</td><td>$ 1,316,874</td><td rowspan="3"></td></tr>
<tr><td rowspan="2">Agt 911-2013, Amd 9</td><td>10/17/18</td><td>12/15/18</td><td>60</td><td>$ 13,413</td><td>$ 804,757</td></tr>
<tr><td>12/16/18</td><td>6/30/19</td><td>197</td><td>$ 13,815</td><td>$ 2,721,560</td></tr>
<tr><td>FY 2018-19</td><td colspan="6"></td><td>$ 4,843,191</td></tr>
<tr><td rowspan="2"></td><td rowspan="2">Agt 911-2013, Amd 9</td><td>7/1/19</td><td>12/15/19</td><td>168</td><td>$ 13,815</td><td>$ 2,320,924</td><td rowspan="2"></td></tr>
<tr><td>12/16/19</td><td>6/30/20</td><td>198</td><td>$ 14,230</td><td>$ 2,817,441</td></tr>
<tr><td>FY 2019-20</td><td colspan="6"></td><td>$ 5,138,365</td></tr>
<tr><td></td><td>Agt 911-2013, Amd 9</td><td>7/1/20</td><td>6/30/21</td><td>365</td><td>$ 14,230</td><td>$ 5,193,768</td><td></td></tr>
<tr><td>FY 2020-21</td><td colspan="6"></td><td>$ 5,193,768</td></tr>
</table>

Formulas for Table 2.1:
Days in Period ◆ = Start Date – End Date + 1
Total Compensation ◆ = Days in Period ◆ × Daily Max Payable ◆
Fiscal Year Max Payable ◆ = Sum of Total Compensation ◆

3. Comparison to HCAI Disclosures

The table below compares Meridian's "Fiscal Year Max Payable" from Section 2 above to the compensation reported in KMC's HCAI disclosure to determine the Potential Overpayment received by Meridian from FY 2017-18 through FY 2020-21.

Table 3: Potential Overpayment Received by Meridian

Fiscal Year	HCAI Disclosure	Fiscal Year Max Payable	Potential Overpayment
FY 2017-18	$ 10,554,486	$ 4,450,548	$ 6,103,938
FY 2018-19	$ 11,897,914	$ 4,843,191	$ 7,054,723
FY 2019-20	$ 9,048,202	$ 5,138,365	$ 3,909,837
FY 2020-21	$ 8,385,928	$ 5,193,768	$ 3,192,160
Total	**$ 39,886,530**	**$ 19,625,873**	**$ 20,260,657**

Formulas for Table 3:
Potential Overpayment ◆ = HCAI Disclosure – Fiscal Year Max Payable ◆

Potential Overpayment Received by Meridian (Table 3)