

## CLASS-ACTION SETTLEMENT AGREEMENT

### I. Introduction

This Settlement Agreement (“Agreement”) resolves the disputed matters enumerated herein concerning allegations regarding the California Employment Development Department’s (“EDD’s”) handling of benefit payments to California Unemployment Insurance (“UI”) claimants on a continued claims series while EDD determined those claimants’ eligibility for the claimed benefits.

### II. Definitions

1. “Continued Claims Series” means an existing unemployment insurance claim where the claimant has received at least one payment and has certified eligibility for benefits for at least one additional week. *See* U.S. Department of Labor Unemployment Insurance Program Letter 04-01.

2. “Continued Claims Status” means the claimant is on a continued claims series.

3. “CWR” means the Center for Workers’ Rights, a non-profit legal services organization that serves individuals seeking access to unemployment insurance and other benefits.

4. “Proposed Class” means all EDD claimants who have an existing UI claim where the claimant has received at least one payment and has certified eligibility for benefits for at least one additional week and whose eligibility EDD is investigating for past, current or future weeks or who currently have a pending appeal from a determination terminating a continuing claims series.

5. “State Parties” means the California Employment Development Department (EDD) and Rita Saenz, in her official capacity as Director of EDD.

6. “Parties” means CWR, the Proposed Class, and the State Parties.

7. “Contemplated Legal Action” means the civil action filed in Alameda Superior Court on or about July 22, 2021 in conjunction with this Agreement.

### **III. Recitals**

8. As relevant to this Agreement, EDD administers California’s UI program, which provides replacement wages to unemployed California workers.

9. Like departments responsible for administering unemployment insurance benefits in other states across the nation, EDD has faced unprecedented demand for UI benefits because of the COVID-19 pandemic, which left millions of Californians suddenly unemployed. EDD faced unprecedented challenges in meeting the unusual and steep rise in demand for UI benefits, as well as protecting UI claimants and the state from unprecedented fraud.

10. This Agreement addresses EDD’s handling of payments to UI claimants on a Continued Claim Series due to questions regarding their eligibility for UI benefits under state and federal law.

11. In February 2021, CWR informed EDD of its intent to file litigation to remedy what CWR alleged as EDD’s violations of the rights of claimants in Continued Claims Status whose benefits EDD had stopped.

12. Throughout 2021, EDD has been in discussions with the U.S. Department of Labor (“DOL”) on these and related issues and sought guidance regarding the issuance of payments to claimants on a Continued Claims Series with newly identified eligibility issues. On April 13, 2021, DOL resolved various questions that EDD had posed when it issued Unemployment Insurance Program Letter (UIPL) 16-21, which concerned Identity Verification for Unemployment Insurance (UI) Claims, and clarified how DOL currently applies UIPL 04-01, which concerned the Payment of Compensation and Timeliness of Determinations during a

Continued Claims Series (collectively, UIPLs). A few days later, and again in the weeks that followed, DOL addressed EDD's specific questions about the applicability of the UIPLs to California. Since that time, EDD has pursued the most expeditious options for implementing the guidance provided by the UIPLs and sought feedback from stakeholders, including CWR.

13. For months prior to this agreement the Parties have engaged in sincere and good faith efforts to avoid litigation. While the State Parties dispute the allegations, to avoid the cost of litigation, they have decided to enter into this Agreement.

#### **IV. Programmatic Changes**

14. Beginning on July 22, 2021, and no later than September 30, 2021, or by such later dates as expressly stated herein or that the parties expressly agree to in writing, EDD shall implement the UIPLs through each of the following policies and procedures pertaining to EDD's administration of California's UI program:

1. Continuing Payments to Claimants with Pending Eligibility Determinations:

Consistent with Department of Labor guidance, if a question regarding eligibility for benefits of a claimant in Continued Claim Status arises, EDD shall make UI benefits payments as provided in subparagraphs (a) and (b) below, subject to Paragraphs 29-31 below. EDD shall follow the procedures specified below even if the eligibility question that arose is exclusively based on any automated system of fraud detection and determination or on reports from any financial institution.

a. Questions Regarding Eligibility for Past Weeks: If the question regarding eligibility pertains to past weeks only, EDD shall continue to make UI benefits payments to the claimant for current and future weeks for which they are eligible for such benefits while resolving the question of eligibility for any past

week. EDD shall continue to make such payments unless and until EDD determines that the claimant is not eligible for benefits for current or future weeks.

b. Questions Regarding Eligibility for Current and Future Weeks: If the question regarding eligibility pertains to current and future weeks and if EDD fails to make a determination regarding such eligibility by the end of the week following the week that EDD first became aware of the question, EDD shall ensure that the claimant receives conditional payment, that is payment prior to the determination of eligibility is completed (“Conditional Payment”), except where the claimant (1) is fully employed or reported excessive earnings; (2) is serving a prior false statement penalty; (3) has an existing disqualification; or (4) has a prior outstanding overpayment. If a claimant has a prior outstanding overpayment, EDD shall pay the claimant a portion of their benefit payments; the remaining portion will be used to offset the amount of the outstanding overpayment.

i. When EDD provides a Conditional Payment, EDD shall provide the claimant with notice of Conditional Payment pending eligibility review (“Notice”). This Notice shall inform the claimant that any Conditional Payment received during EDD’s pending eligibility review will be considered an overpayment if EDD later finds the claimant ineligible, unless the claimant qualifies for a waiver.

ii. Either in the Notice itself or in a subsequent notification EDD shall inform the claimant of the basis for EDD’s eligibility review and

how the claimant may provide information to EDD to resolve such eligibility issues.

iii. If EDD determines that a claimant must return the Conditional Payment provided to the claimant, EDD shall inform the claimant of the claimant's right to seek a waiver and shall provide an overpayment waiver form to the claimant in instances of no fraud and no fault. If a Notice of Overpayment is subsequently issued, the Notice of Overpayment shall include the claimant's right to appeal.

2. Notice to Claimants Regarding Determinations: Promptly after making a determination on a claimant's eligibility, and in no event after EDD stops payment of benefits, EDD shall provide the claimant with a Notice of Determination that, to the extent it is adverse, includes a claimant's appeal rights to the California Unemployment Insurance Appeals Board ("CUIAB"), including the requisite time period for submitting the appeal. Any Notice of Determination that resolves a claim adversely to the claimant shall (i) clearly identify the basis for its decision to enable the claimant to appeal and (ii) state whether the disqualification is for a specified past period of paid benefits or is ongoing until the disqualifying condition ends.

3. Minimum Access to EDD by Claimants to Respond:

a. EDD shall not require a claimant to communicate with EDD by telephone during any step of the benefits process, unless EDD provides the claimant a guaranteed window of time when an EDD representative will be available to answer the claimant's telephone call.

b. Commencing no later than January 1, 2022, EDD shall provide oral and signed language unemployment insurance services in real time by qualified interpreters or qualified bilingual staff.

i. If EDD staff cannot obtain interpretation in the claimant's language and linguistic variant in real time after good faith efforts to acquire language services, EDD shall provide the claimant with a return telephone or relay call in the claimant's language within a reasonable timeframe.

ii. Upon the claimant's request, a qualified interpreter shall read EDD documents and notices aloud in the claimant's preferred language within a reasonable timeframe.

**V. Release & Forbearance from Further Litigation**

15. Upon approval of this Agreement, certification of the Proposed Class, and entry of judgment in the Contemplated Legal Action by the Alameda County Superior Court, CWR on its own behalf and on behalf of the certified Proposed Class shall fully, finally, and forever release, relinquish, and discharge State Parties from any and all claims asserted in the Contemplated Legal Action that accrued based upon events or actions that occurred up to and including the date the Parties sign this Agreement. The Agreement is a final settlement of the alleged facts, legal theories and cause of action in the Contemplated Legal Action and has the same preclusive effect as if the Agreement were a judgment following a judicial decision on the merits in a class action lawsuit.

16. Upon execution of this Agreement by all of the Parties, CWR on behalf of the Proposed Class shall file the Contemplated Legal Action with the Alameda County Superior Court and shall simultaneously request approval of a class action settlement based on this

Agreement pursuant to California Rules of Court, Rule 3.769. In such motion, CWR shall seek certification of the Proposed Class and appointment as class counsel. The Parties believe that notice to the class is not required to implement the agreement, but agree that CWR shall provide such notice to the Proposed Class as the Court concludes is required under Rule 3.769 or otherwise. If the settlement is approved, the Parties shall jointly submit an order and judgment for the court to enter the Agreement as a final order and judgment of the court, and to dismiss the entirety of the action with prejudice. Upon court approval, the terms of the Agreement shall have the same preclusive effect for the Proposed Class as if the Agreement were a judicial decision on the merits in a class action lawsuit.

17. In furtherance of the consideration of the terms, conditions, obligations, agreements, and releases set forth herein, and while the parties continue their good faith efforts to resolve any outstanding disputes or other matters, CWR shall, on its behalf and on behalf of its clients, forbear from filing a lawsuit against State Parties for declaratory and injunctive relief alleging any claims for (1) violations of the Due Process Clause of the federal constitution (pursuant to 42 U.S.C. §1983) and (2) violations of the Due Process Clause of the state constitution. Said forbearance period shall terminate no sooner than three months from the date of entry of this Agreement as a final order and judgment of the court, unless the Parties mutually agree in writing to reduce or extend the time for negotiation.

18. CWR reserves the right to pursue litigation regarding EDD's other practices not addressed or resolved by this Agreement.

#### **VI. No Admission of Liability or Waiver of Rights**

19. State Parties expressly deny each and all of the claims and contentions CWR and Proposed Class allege in the Contemplated Legal Action, and specifically dispute the allegation

that EDD violated any federal or state rights of claimants in Continued Claim Status, including members of the Proposed Class. This Agreement, the settlement which it reflects, and any documents, statements, or proceedings related to the settlement, or contained herein, and any negotiations or proceedings hereunder, are not, and shall not be construed as, used as, or deemed to be an admission, presumption, evidence of, or concession by State Parties of the truth of any fact alleged or the validity of any claim which has or could have been asserted in the Contemplated Legal Action, or of the deficiency of any defense which has or could have been asserted in the Contemplated Legal Action, or of the existence or amount of injury, damages or penalties, or of any fault, wrongdoing or liability whatsoever.

20. This Agreement, the fact of its existence, and any term thereof shall not be construed as an admission by any State Party or used as evidence against any State Party in any proceeding or litigation, whether civil, criminal, or administrative, except to the extent necessary to enforce claims for a breach of this Agreement.

21. The provisions of this Agreement, and any orders, pleadings or other documents entered in furtherance of this Agreement, except any writing or communication protected from disclosure pursuant to Evidence Code sections 1152 and 1154, and Federal Rule of Evidence 408, may be offered or received in evidence solely: (1) to enforce the terms and provisions of this Agreement; (2) to establish an affirmative defense of preclusion or bar in a subsequent action; or (3) in connection with any motion to enjoin, stay or dismiss any other action.

22. If CWR contends that any provision of this Settlement Agreement has been breached by State Parties, CWR—on behalf of itself, a member of the Proposed Class, or both—will provide formal notification of such alleged breach to State Parties, in writing, by notifying via electronic mail at least the following individuals: the Director of EDD, the General Counsel of



the EDD, and Office of the Attorney General (“Notice of Alleged Breach”). The Notice of Alleged Breach shall specify the specific provisions of this Agreement that State Parties are alleged to have breached and shall also provide sufficient underlying factual detail to provide actual notice to State Parties of the specific nature and circumstances of the alleged breach. Following transmission of such Notice of Alleged Breach, the Parties agree that they will engage in a process of Informal Conciliation in an attempt to resolve the issues presented by CWR, which process shall include, at a minimum, a face-to-face or videoconference meeting among representatives of the Parties and further dialogue and discussion as necessary for a minimum period of at least 30 days from the Notice of Alleged Breach before any further action may be taken by CWR (“Informal Conciliation”). State Parties shall have the right and opportunity to cure any alleged default or breach within said 30-day period following the Notice of Alleged Breach, and if State Parties do so, no further action may or shall be taken by CWR with respect to the issue identified in the Notice of Alleged Breach. Said right and opportunity to cure (“Opportunity to Cure”) includes, but is not limited to, the right to take or complete an action that was due on an earlier date, the deadline for which was missed by the State Parties.

23. If the Parties are unable to resolve their differences in the Informal Conciliation process, the Parties may agree to arrange for, schedule, and participate in a formal mediation (“Mediation”), but are not required to do so. The selection of the mediator, the topic(s) to be addressed in the Mediation, and the allocation of the costs of Mediation shall be subject to the negotiation and agreement of the Parties. The purpose of the Mediation shall be for the Parties to participate in good faith, and to attempt to resolve all differences constructively and cooperatively without further dispute or adversarial action.

24. Jurisdiction by Alameda County Superior Court. If, and only if, the Parties are unable to resolve the issues raised in a Notice of Alleged Breach through the Informal Conciliation, Opportunity to Cure, and any Mediation they agree to conduct, and if and only if, CWR alleges a material breach of this Agreement, CWR may file an action to enforce the terms of this Agreement, as against an alleged material breach only, in the Superior Court of Alameda County. The Parties expressly agree that the Court shall have jurisdiction only over alleged material breaches of this Agreement (including the jurisdiction to determine whether an alleged breach is material), and only pursuant to, and subject to, the express terms of this Agreement.

## **VII. Additional Provisions**

25. Should the Court specified in Section V, Paragraph 14, decline to certify the Proposed Class or to approve any other material aspect of the Settlement (including but not limited to the scope of the release or the binding effect of the Settlement), and if the Parties, despite their best efforts, are thereafter unable to agree upon revisions to the Agreement that alleviate the Court's concerns, the Parties will be restored to their respective positions prior to the signing of this Agreement. This includes the State Parties' agreement to the filing of a complaint, to which the State Parties agreed solely for the purpose of settlement, shall be null and void. In such event, the terms and provisions of this Agreement will have no further force and effect and shall not be used in any proceeding for any purpose.

26. The effective date of this Agreement shall be the date the Agreement is executed by the Parties.

27. CWR and its attorneys in the Contemplated Legal Action shall be entitled to their reasonable lodestar attorneys' fees and expenses pursuant to 42 U.S.C. § 1988 and C.C.P. § 1021.5 for their efforts in negotiating and obtaining this settlement, subject to Court approval.

Under no circumstances shall CWR or its attorneys seek fees in an amount that exceeds their lodestar. Before CWR and its attorneys submit any request to the Court for attorneys' fees and expenses, the Parties shall negotiate in good faith over the reasonable and appropriate amount of such fees, and shall inform the Court if they have been able to reach agreement. If no agreement is reached, nothing in this Agreement shall preclude the State Parties from opposing CWR's and its attorneys' fees request.

28. This Agreement contains all of the terms and conditions agreed upon by the Parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Agreement regarding the subject matter of this Agreement shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein.

29. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by all Parties.

30. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of California. In addition, Section IV shall be construed and enforced consistent with the requirements of federal law. Nothing in this Settlement Agreement requires State Parties to take actions inconsistent with state or federal law or state or federal funding requirements.

31. If any provision or any part of this Agreement shall at any time be determined to be unlawful, or inconsistent with applicable law, in whole or in part, under any federal, state, county, city, municipal or other law, ruling, order, or regulation, the State Parties shall be relieved of compliance with that provision or part, but the remaining provisions of this Agreement shall remain effective and enforceable.

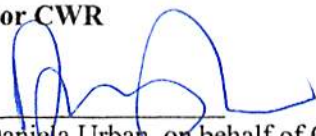
32. All Parties to this Agreement, through their respective counsel, have participated in its drafting and, consequently, any ambiguity shall not be construed for or against any party.

33. Signatories to this Agreement represent and warrant that they are authorized to sign this Agreement and bind the party on behalf of whom they sign.


34. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission or electronic mail, which shall be deemed the same as an original signature.

**VIII. Signatures**

The parties have executed this Agreement and the accompanying Exhibit A by their duly authorized representatives on the date(s) below:

**For CWR**  
By:   
Daniela Urban, on behalf of CWR

7/22/2021  
Dated

By:   
Michael Rubin  
Altshuler Berzon LLP  
Counsel for CWR  
Approved as to form

July 21, 2021  
Dated

**For State Parties**  
By: \_\_\_\_\_  
Rita Saenz, on behalf of EDD

\_\_\_\_\_  
Dated

By: \_\_\_\_\_  
Rita Saenz, in her official capacity

\_\_\_\_\_  
Dated

32. All Parties to this Agreement, through their respective counsel, have participated in its drafting and, consequently, any ambiguity shall not be construed for or against any party.

33. Signatories to this Agreement represent and warrant that they are authorized to sign this Agreement and bind the party on behalf of whom they sign.

34. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission or electronic mail, which shall be deemed the same as an original signature.

### VIII. Signatures

The parties have executed this Agreement and the accompanying Exhibit A by their duly authorized representatives on the date(s) below:

#### For CWR

By: \_\_\_\_\_  
Daniela Urban, on behalf of CWR

\_\_\_\_\_  
Dated

By: \_\_\_\_\_  
Michael Rubin  
Altshuler Berzon LLP  
Counsel for CWR  
Approved as to form

\_\_\_\_\_  
Dated

#### For State Parties

By: Rita Saenz  
Rita Saenz, on behalf of EDD

7/21/21  
Dated

By: Rita Saenz  
Rita Saenz, in her official capacity

7/21/21  
Dated

By: Brian Wesley  
Brian Wesley  
Supervising Deputy Attorney General  
California Office of the Attorney General  
Counsel for State Parties  
Approved as to form

7/22/21  
Dated \_\_\_\_\_