

## **FIRST SUPPLEMENTAL CLASS-ACTION SETTLEMENT AGREEMENT**

### **I. Introduction**

This First Supplemental Settlement Agreement (“First Supplemental Agreement”), between plaintiff Center for Workers’ Rights (“CWR”) and defendants California Employment Development Department (“EDD”) and EDD Director Nancy Farias, resolves the disputed matter set forth herein and supplements the Parties’ July 22, 2021 Settlement Agreement. This First Supplemental Agreement, if approved by the Court, resolves plaintiff CWR’s claim concerning EDD’s efforts to require certain unemployment insurance claimants to repay their benefits after expiration of the one-year statute of limitations set forth in California Unemployment Insurance Code (“CUIC”) §1376, in the absence of an EDD finding that the claimant has engaged in fraud, misrepresentation, or willful nondisclosure.

### **II. Definitions**

1. “California Unemployment Insurance Claimant” or “UI Claimant” means an individual who sought and was paid benefits administered by EDD under a Qualifying Program.
2. “Qualifying Program” means Unemployment Insurance (UI), including regular UI, Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-Service Members (UCX), joint UI-UXC, UI-UCFE, and UCFE-EXC claims, interstate claims, school employee claims, partial claims, and combined wage claims; Federal-State Extended Duration Benefits; California Training Benefits; California Training Benefits Extension; California Work Sharing; Pandemic Unemployment Assistance to the extent permissible by federal law; Pandemic Emergency Unemployment Compensation to the extent permissible by federal law; Pandemic Additional Compensation/Federal Pandemic

Unemployment Compensation to the extent permissible by federal law; and Mixed Earner Unemployment Compensation to the extent permissible by federal law.

3. “CWR” means plaintiff Center for Workers’ Rights, a non-profit legal services organization that serves individuals seeking access to Qualifying Programs and other EDD-administered benefits, and includes CWR’s attorneys, employees, and law firms who assisted in the drafting of this First Supplemental Agreement.

4. “Proposed Late Notice-of-Overpayment Class” means all UI Claimants who were paid benefits by EDD for any week between October 1, 2019 and the date this First Supplemental Agreement is approved by the Court, and to whom EDD issued notices of overpayment more than one year after the close of the benefit year in which they received the benefits that are the subject of the notice of overpayment, and as to whom EDD has not found fraud, misrepresentation, or willful nondisclosure.

5. “State Parties” means defendants EDD and Nancy Farias, in her official capacity as Director of EDD.

6. “Parties” means CWR, members of the Proposed Late Notice-of-Overpayment Class, and the State Parties.

7. “Pending Legal Action” means *Center for Workers’ Rights v. California Employment Development Department*, Case. No. RG21106525, filed in Alameda Superior Court on July 23, 2021, and amended in conjunction with this First Supplemental Agreement.

### **III. Recitals**

8. The Parties incorporate the Recitals from their July 22, 2021 Settlement Agreement and accordingly do not repeat them here.

9. Given the unprecedented demands on EDD's resources during the COVID-19 pandemic, EDD implemented certain measures to expedite the processing of Qualifying Program claims. Among those measures was a practice of paying benefits to certain UI Claimants while deferring those claimants' eligibility determinations.

10. EDD later determined that some of those UI Claimants were ineligible for the benefits EDD had previously paid. Many of these UI Claimants have not been subject to a finding by EDD that they engaged in fraud, misrepresentation, or willful nondisclosure.

11. CUIC § 1376(a) establishes the time frame within which EDD may seek to recover an overpayment to a UI Claimant whom EDD has not found to have engaged in fraud, misrepresentation, or willful nondisclosure. Specifically, it provides: "[i]n the absence of fraud, misrepresentation, or willful nondisclosure, notice of the overpayment determination shall be served ... [n]ot later than one year after the close of the benefit year in which the overpayment was made."

12. Notwithstanding this statute of limitations, EDD has issued notices of overpayment to some UI Claimants more than one year after the close of the benefit year in which EDD overpaid those UI Claimants, even when EDD had made no finding that the UI Claimant had engaged in fraud, misrepresentation, or willful nondisclosure ("Late Overpayment Notices").

13. After negotiating the July 22, 2021 Agreement, the Parties continued to engage in sincere and good faith efforts to avoid litigation on outstanding issues relating to UI Claimants, including the Proposed Late Notice-of-Overpayment Class Members who were adversely affected by EDD's practice of issuing overpayment notices after expiration of the statute of limitations as described herein.

14. This First Supplemental Agreement addresses the claims of the Proposed Late Notice-of-Overpayment Class members premised on EDD having issued notices of overpayment more than one year after the close of the benefit year in which the overpayment was made where there was no finding of fraud, misrepresentation, or willful nondisclosure. By resolving these claims, CWR does not waive or resolve any other claim or theory that UI Claimants could bring based on EDD's processing of their claims and EDD does not waive or resolve any defenses it might have to such claim or theory.

15. The State parties enter into this settlement to avoid the costs and uncertainties of litigation.

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

16. Beginning as soon as possible and to be completed no later than thirty (30) days after this First Supplemental Agreement is executed, except as to overpayments described in paragraph 17, EDD shall:

- a. Instruct EDD staff to cease issuing notices of overpayment to UI Claimants more than one year after the end of the benefits year in which the UI Claimant received the overpayment in question, unless EDD has determined that the UI Claimant engaged in fraud, misrepresentation, or willful nondisclosure.
- b. Issue to all Proposed Late Notice-of-Overpayment Class Members a "Notice of Cancellation of Overpayment." The Notice of Cancellation of Overpayment shall state:
  - i. In the event that just one late notice of overpayment is being canceled:  
"The Notice of Overpayment (DE 1444) mailed to you on

[MM/DD/YYYY] has been canceled. You do not owe this amount. A refund check will be issued if you have made a payment.”

ii. In the event that more than one late notice of overpayment is being canceled: “The Notices of Overpayment (DE 1444) mailed to you on [MM/DD/YYYY, MM/DD/YYYY, and MM/DD/YYYY] have been canceled. You do not owe these amounts. A refund check will be issued if you have made a payment.”

- c. Refund to all Proposed Late Notice-of-Overpayment Class Members any amounts the Class Member has already repaid to EDD in response to a notice of overpayment issued more than one year after the end of the benefits year in which EDD paid the benefits that are the subject of the notice of overpayment; *provided*, however, that where the UI Claimant has an outstanding overpayment obligation concerning benefits that were paid to that claimant, no timely appeal has been filed and an appeal decision by the California Unemployment Insurance Appeals Board has not been rendered as to that overpayment, EDD shall apply the refund amount required by this Settlement Agreement to satisfy or offset that outstanding overpayment, and EDD shall refund to the UI Claimant the balance remaining after the outstanding overpayment is satisfied.
- d. Provide training to EDD staff to prevent issuing Late Overpayment Notices.
- e. Develop an Unemployment Insurance Program Notice clearly informing EDD staff that they are prohibited from issuing notices of overpayment to UI Claimants whom EDD has not found to have engaged in fraud, misrepresentation, or willful

nondisclosure after one year has passed since the close of the benefits year in which EDD paid the benefits in question.

17. As to case numbers 6753898, 7064968, 7064969, 7117518, 7117519, 7250553, and 7250555, wherein overpayments were issued and appealed, and in which the California Unemployment Insurance Appeals Board has issued decisions in which the finding of fraud was reversed, but the overpayment was affirmed despite it no longer being in statute, the EDD, within ninety (90) days after this First Supplemental Agreement is entered by the Court as a Judgment will:

- a. Issue to all Proposed Late Notice-of-Overpayment Class Members in this procedural posture a “Notice of Cancellation of Overpayment.” The Notice of Cancellation of Overpayment shall state:
  - i. In the event that just one late notice of overpayment is being canceled:

“The Notice of Overpayment (DE 1444) mailed to you on [MM/DD/YYYY] has been canceled. You do not owe this amount. A refund check will be issued if you have made a payment.”
  - ii. In the event that more than one late notice of overpayment is being canceled: “The Notices of Overpayment (DE 1444) mailed to you on [MM/DD/YYYY, MM/DD/YYYY, and MM/DD/YYYY] have been canceled. You do not owe these amounts. A refund check will be issued if you have made a payment.”
- b. Refund to all Proposed Late Notice-of-Overpayment Class Members in this procedural posture any amounts the Class Member has already repaid to EDD in response to a notice of overpayment issued more than one year after the end of the

benefits year in which EDD paid the benefits that are the subject of the notice of overpayment; *provided*, however, that where the UI Claimant has an outstanding overpayment obligation concerning benefits that were paid to that claimant, no timely appeal has been filed and an appeal decision by the California Unemployment Insurance Appeals Board has not been rendered as to that overpayment, EDD shall apply the refund amount required by this Settlement Agreement to satisfy or offset that outstanding overpayment, and EDD shall refund to the UI Claimant the balance remaining after the outstanding overpayment is satisfied.

18. EDD shall monitor its compliance with Paragraph 16 of this First Supplemental Agreement for no less than one calendar year from the date this First Supplemental Agreement is executed. This monitoring shall include, at a minimum, pulling and reviewing data no less than every month to determine whether any Late Overpayment Notices have been issued; issuing a Notice of Cancellation of Overpayment as described in Section IV.16.b within 30 days of determining that a Late Overpayment Notice has issued; and refunding within 120 days of such determination any benefits that the UI Claimant has already paid to EDD in response to the Late Overpayment Notice, as set forth in Section IV.16.c. EDD shall also ensure that any staff who issued a Late Overpayment Notice shall receive additional training regarding the time limits within which an overpayment may be established. EDD shall provide to plaintiff's counsel a report at least quarterly notifying CWR whether it issued any Late Overpayment Notices since its last report and, if so, how many; and shall also provide a final report on December 1, 2023 confirming the number of Late Overpayment Notices issued with each data review and stating the dates the Notices of Cancellation of Overpayment and any refunds were issued. In the event

that the final report shows that more than forty-five (45) Late Overpayment Notices were issued in the final quarter of 2023, EDD shall continue monitoring the issuance of Late Overpayment Notices in accordance with this section until EDD has two consecutive quarters where it has issued no more than 45 Late Overpayment Notices in each quarter.

19. As part of EDD's modernization of its technology system, EDD shall automate the process of ensuring that Late Overpayment Notices are not issued in violation of the provisions of this First Supplemental Agreement.

#### **V. Release and Forbearance from Future Litigation**

20. Upon approval of this First Supplemental Agreement, certification of the Proposed Late Notice-of-Overpayment Class, and entry of judgment in the Pending Legal Action by the Alameda County Superior Court, CWR on its own behalf and on behalf of the certified class shall fully, finally, and forever release, relinquish, and discharge State Parties from any and all allegations and claims asserted in the Pending Legal Action that accrued based upon events or actions that occurred up to and including the date the Parties sign this First Supplemental Agreement. The First Supplemental Agreement, together with the July 22, 2021 Agreement, is a final settlement of any and all claims asserted in the Pending Legal Action, as reflected in the Proposed Amended Complaint, and has the same preclusive effect as if the First Supplemental Agreement were a judgment following a judicial decision on the merits in a class action lawsuit.

21. Upon execution of this First Supplemental Agreement by all of the Parties, CWR shall file a stipulation to amend the Complaint in the Pending Legal Action in accordance with Attachment A (Proposed Amended Complaint) and shall subsequently request approval of a class action settlement based on this First Supplemental Agreement pursuant to California Rule of Court 3.769 within 10 business days of execution of this First Supplemental Agreement. In



such motion, CWR shall seek certification of the Proposed Late Notice-of-Overpayment Class, in addition to the Proposed Class of claimants in Continued Claims Status as set forth in the parties' July 22, 2021 Agreement. CWR and Altshuler Berzon LLP shall also request to be appointed as class counsel. The Parties believe that notice to members of the classes is not required to implement the July 22, 2021 Agreement and First Supplemental Agreement but agree that CWR shall provide such notice to either or both of the proposed classes 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 terms of the First Supplemental Agreement and July 22, 2021 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 First Supplemental Agreement and July 22, 2021 Agreement shall have the same preclusive effect for the certified classes as if the Agreements were a judicial decision on the merits in a class action lawsuit.

22. 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 any additional claims against State Parties for declaratory and injunctive relief on any claims that were alleged or could have been alleged, on the facts set forth in the complaints and amended complaints in this action, for violations of the Due Process Clauses of the United States or California Constitutions. Said forbearance period shall terminate no sooner than three months from the date of entry of this First Supplemental 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.

23. CWR reserves the right to pursue litigation regarding EDD's practices not addressed or resolved by this First Supplemental Agreement or the July 22, 2021 Agreement except as provided for in Paragraph 22.

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

24. State Parties expressly deny each and all of the claims and contentions that CWR and the Proposed Late Notice-of-Overpayment Class Members allege in the Pending Legal Action as amended, and specifically dispute the allegation that EDD violated any federal or state rights of the Proposed Late Notice-of-Overpayment Class. This First Supplemental Agreement, the settlement 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 that has or could have been asserted in the Pending Legal Action, or of the deficiency of any defense that has or could have been asserted in the Pending Legal Action, or of the existence or amount of injury, damages or penalties, or of any fault, wrongdoing or liability whatsoever.

25. This First Supplemental 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 First Supplemental Agreement or the July 22, 2021 Agreement.

26. The provisions of this First Supplemental Agreement, and any orders, pleadings or other documents entered in furtherance of this First Supplemental Agreement, except any writing or communication protected from disclosure pursuant to Evidence Code §§ 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 First Supplemental Agreement and/or the July 22, 2021 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.

27. If CWR contends that any provision of this First Supplemental Agreement has been materially breached by State Parties, CWR—on behalf of itself, a Proposed Late Notice-of-Overpayment Class Member, or both—will provide formal notification of such alleged material breach to State Parties (“Notice of Alleged Breach”) in writing by notifying by electronic mail at least the following individuals: the Director of the EDD, the General Counsel of the EDD, and Office of the Attorney General. The Notice of Alleged Breach shall specify the specific provisions of this First Supplemental Agreement that State Parties are alleged to have materially breached and shall 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 shall 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 discussion as the parties deem appropriate and useful for a minimum period of at least 60 days from the Notice of Alleged Breach before any further action may be taken by CWR (“Informal Conciliation”). This period of time may be extended for good cause as agreed to in writing by the Parties. State Parties shall have the right and opportunity to cure any alleged default or material breach within said 60-day period following the Notice of Alleged Breach. If State Parties do so to the satisfaction of CWR, no further action may or shall be taken by CWR with respect to the issue identified in the Notice of Alleged Breach. Such 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.

28. 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.

29. 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 First Supplemental Agreement, CWR may file an action to enforce the terms of this First Supplemental 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 First Supplemental Agreement (including the jurisdiction to determine whether an alleged breach is material), and only pursuant to, and subject to, the express terms of this First Supplemental Agreement.

## **VII. Additional Provisions**

30. Should the Court decline to certify the Proposed Late Notice-of-Overpayment 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 First Supplemental Agreement that

address the Court's concerns, the Parties shall be restored to their respective positions prior to the signing of this First Supplemental Agreement, and the State Parties' agreement to the filing of an amended 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 First Supplemental Agreement will have no further force and effect and shall not be used in any proceeding for any purpose.

31. The effective date of this First Supplemental Agreement shall be the date the First Supplemental Agreement is approved by the Court.

32. CWR and its attorneys in the Pending 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 First Supplemental Agreement shall preclude the State Parties from opposing CWR's and its attorneys' fees request.

33. This First Supplemental 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 First Supplemental Agreement regarding the subject matter of this First Supplemental Agreement shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein.

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

35. This First Supplemental Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of California. Nothing in this Settlement Agreement shall be construed to require State Parties to take actions inconsistent with state or federal law or state or federal funding requirements.

36. If any provision or any part of this First Supplemental 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 First Supplemental Agreement shall remain effective and enforceable.

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

38. Each signatory to this First Supplemental Agreement represents and warrants that they are authorized to sign this First Supplemental Agreement and bind the party on behalf of whom they sign.

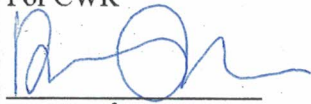
39. This First Supplemental Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This First Supplemental Agreement may be executed by signature via facsimile transmission or electronic mail, which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

## **VIII. Signatures**

The parties have executed this First Supplemental Agreement by their duly authorized representatives on the date(s) below:

For CWR

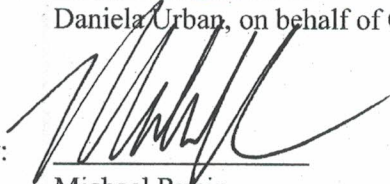
By:



Daniela Urban, on behalf of CWR

February 14, 2023  
Dated

By:



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

February 14, 2023  
Dated

For State Parties

By:

\_\_\_\_\_  
Nancy Farias, on behalf of EDD  
and in her official capacity

\_\_\_\_\_  
Dated

By:

\_\_\_\_\_  
Brian Wesley  
Deputy Attorney General  
Counsel for State Parties  
Approved as to form

\_\_\_\_\_  
Dated

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: Nancy Farias  
Nancy Farias, on behalf of EDD  
and in her official capacity

2/15/2023

\_\_\_\_\_  
Dated

By: Brian Wesley  
Brian Wesley  
Deputy Attorney General  
Counsel for State Parties  
Approved as to form

02/16/2023

\_\_\_\_\_  
Dated