

*Sylvia Liang, Manuel Brito, and Shazia Anwar, individually and on behalf of all those similarly situated v. State of Washington, Washington State Department of Social and Health Services, a Washington State Agency, Cheryl Strange, in her official capacity as the Secretary of the Washington State Department of Social and Health Services, No. 20-2-02506-34 Thurston County Superior Court*

This Agreement to Settle Claims (“Agreement”) is between Sylvia Liang, Shazia Anwar, and Manuel Brito on behalf of themselves and a class of similarly situated Individual Providers (“IPs”) (collectively, “Plaintiffs”), and Defendants State of Washington, Washington State Department of Social and Health Services, and Cheryl Strange in her official capacity as Secretary of the Washington State Department of Social and Health Services (“DSHS”) (collectively, “Defendants”). Plaintiffs and Defendants are collectively referred to as the “Parties.”

## **I. RECITALS**

- 1.1. Two actions are in litigation against the Defendants: 1) an action by SEIU 775 currently pending before the Washington Supreme Court on Direct Review from several orders issued by Judge Erik Price of the Thurston County Superior Court, Washington Superior Court Case No. 18-2-05584-34, Washington Supreme Court Case No. 99659-8 (“Union Wage Case”), and 2) a putative class action by Sylvia Liang, Shazia Anwar, and Manuel Brito currently pending before Judge Price of the Thurston County Superior Court, Washington Superior Court Case No. 20-2-02506-34 (“Class Action”).
- 1.2. The plaintiffs in both the Union Wage Case and in the Class Action seek backpay and other monetary damages for current and former IPs who contracted with DSHS to provide personal care services for a client whose in-home care hours were reduced because DSHS, through its agents, coded the client in a CARE assessment as having a status of “shared benefit” with respect to one or more Instrumental Activities of Daily Living (“IADLs”).
- 1.3. In 2003, DSHS enacted the “shared living rule,” which reduced clients’ in-home personal care hours by 15 percent if they lived with their caregiver. DSHS adopted the shared living rule on the theory that if caregivers must clean their own houses, go shopping, and cook meals for their own benefit, certain duplication of efforts are presumed, and the state should not pay for those tasks that benefit the entire household. In 2007, the Supreme Court of Washington invalidated the shared living rule. In 2010, a jury awarded \$57.12 million in damages against DSHS arising from the shared living rule from 2003 to 2008, and the trial court ordered prejudgment interest of \$38.65 million. In 2014 the Supreme Court upheld the jury’s award of \$57.12 million in damages, but reversed the court’s award of prejudgment interest. That case was *Rekhter v. State, Dep’t of Social and Health Servs.*, 180 Wn.2d 102 (2014).
- 1.4. After the shared living rule was invalidated, Defendants promulgated a new rule, effective March 7, 2014, and amended its policies and practices, to reduce a client’s

in-home personal care services hours when it determined that a client and their paid caregiver, or multiple clients in a household, shared in the benefit of the same IADL task being performed. Defendants' shared benefit policies and practices applied to four IADLs: meal preparation, essential shopping, housework, and wood supply. According to Defendants' shared benefit policies and practices, where DSHS determined that a paid caregiver or two or more clients in a household benefitted from the same IADL task being performed by a paid caregiver, DSHS coded the "status" for that IADL as "shared benefit" in the tool DSHS used to conduct the clients' care assessments. Clients' hours authorized to pay IPs for personal care went down in varying degrees depending on how frequently the IP or multiple clients were deemed to share in the benefit of an IADL task being performed.

- 1.5. The plaintiffs in the Union Wage Case and in the Class Action allege that the Defendants' shared benefit policies and practices violated the state Minimum Wage Act, RCW 49.46 ("MWA"), the state Wage Rebate Act, RCW 49.52 ("WRA"), and the duty of good faith and fair dealing that inheres in DSHS's contracts with IPs. They seek back pay damages for all unpaid shared benefit hours back to March of 2014; unpaid overtime and exemplary damages back to January 1, 2017, when Initiative 1433 went into effect; prejudgment interest; and attorneys' fees and costs.
- 1.6. The claims were originally asserted by SEIU 775 on behalf of all affected IPs. In addition to the MWA, WRA, and duty of good faith and fair dealing claims, SEIU 775 also sought declaratory and injunctive relief and challenged Defendants' shared benefit rules under the Administrative Procedure Act ("Rule Challenge"). That case was *SEIU 775 v. Wash. State Dep't of Social and Health Servs.*, Washington Superior Court Case No. 17-2-05201-34, Washington Supreme Court Case No. 97216-8. In 2019, the Thurston County Superior Court denied SEIU 775's challenge to the shared benefit rules and dismissed the case, and SEIU 775 appealed directly to the Washington Supreme Court. The Washington Supreme Court accepted direct review but before it issued an opinion SEIU 775 and DSHS settled the Rule Challenge in 2020. As a result of that settlement, DSHS eliminated the shared benefit rule for all clients and IPs effective March 1, 2021, with existing shared benefit adjustments phased out by December 31, 2021.
- 1.7. In the Union Wage Case, SEIU 775 conducted significant discovery, including pertaining to damages. The Defendants moved to dismiss the Union's claims for lack of associational standing. Prior to a ruling on that issue, SEIU 775 sought to amend its complaint to add class plaintiffs and assert the same shared benefit claims as a class action. After the trial court denied SEIU 775's motion to amend, Sylvia Liang, Manuel Brito, and Shazia Anwar filed suit on behalf of themselves and all similarly-situated IPs asserting the same shared benefit claims SEIU 775 had been pursuing in this Class Action, currently pending before Judge Price in Thurston County Superior Court. SEIU 775's appeal of the denial of the motion to amend the case to be a class action is pending upon application for direct review before the Washington Supreme Court. SEIU 775 and the Defendants have reached a settlement in the Union Wage Case, contingent on this Agreement becoming final and binding.

- 1.8. The plaintiffs in the Class Action assert that class certification is likely to be granted on the shared benefit claims and that they are likely to prevail on the merits of their MWA, WRA, and duty of good faith and fair dealing claims.
- 1.9. Defendants deny that the plaintiffs in the Class Action are entitled to any of the relief they seek, and they deny that collective adjudication of the monetary claims, regardless of form, is appropriate.
- 1.10. By this Agreement, the Parties to the Class Action wish to resolve all claims asserted or that could have been asserted based on the facts and allegations in the Class Action complaint.

## **II. DEFINITIONS**

- 2.1. “Agreement Execution Date” shall mean: the date on which all Parties have signed the Agreement.
- 2.2. “Class Action” shall mean: *Sylvia Liang, Manuel Brito, and Shazia Anwar, individually and on behalf of all those similarly situated v. State of Washington, Washington State Department of Social and Health Services, a Washington State Agency, Cheryl Strange, in her official capacity as the Secretary of the Washington State Department of Social and Health Services, Thurston County Superior Court Case No. 20-2-02506-34.*
- 2.3. “Class Counsel” shall mean: the law firm of Barnard Iglitzin & Lavitt LLP and any attorneys, no matter how associated with that firm, representing the Settlement Class.
- 2.4. “Class Period” shall mean: March 7, 2014, to February 28, 2021.
- 2.5. “Class Representatives” shall mean: Sylvia Liang, Shazia Anwar, and Manuel Brito.
- 2.6. “Court,” unless otherwise specified, shall mean: Thurston County Superior Court, Olympia, Washington.
- 2.7. “Defendants” shall mean: State of Washington, Washington State Department of Social and Health Services, and Cheryl Strange in her official capacity as Secretary of the Washington State Department of Social and Health Services.
- 2.8. “Effective Date of Settlement” or “Effective Date” shall mean: the later of (a) thirty-one (31) calendar days after entry of the Superior Court’s final approval of this Agreement, if no appeal of that order is filed; or (b) the date this Agreement becomes final and binding after final resolution of any appeals, including resolution of any matters remanded for lower court consideration.
- 2.9. “Individual Provider” or “IP” shall have the same meaning as defined in RCW 74.39A.240(3).

- 2.10. “In-home personal care services” shall mean: “Personal care services” as defined in WAC 388-106-0010 that are provided in a client’s home.
- 2.11. “Instrumental Activities of Daily Living” or “IADLs” shall have the same meaning as defined in WAC 388-106-0010.
- 2.12. “Parties” shall mean: the Plaintiffs and the Defendants.
- 2.13. “Plaintiffs” shall mean: Sylvia Liang, Manuel Brito, and Shazia Anwar, individually and on behalf of a class of similarly situated Individual Providers.
- 2.14. “Plaintiffs’ Counsel” shall mean: the law firm of Barnard Iglitzin & Lavitt LLP and any attorneys, no matter how associated with that firm, representing Plaintiffs in the Class Action.
- 2.15. “Released Claims” shall mean: any and all claims asserted in the Class Action complaint or that could have been asserted by Class Members in the Class Action based on the facts and allegations included in the Class Action complaint between March 7, 2014, and February 28, 2021, including but not limited to claims for attorneys’ fees and costs, expenses, pre-judgment and post-judgment interest, unpaid wages or overtime, statutory damages or penalties, exemplary or double damages, except that nothing in this Agreement shall release claims asserted in any action to enforce this Agreement. This Release shall be binding on the Class Representatives, Settlement Class Members (excluding individuals who have opted out), and their lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys, and agents.
- 2.16. “Releasees” shall mean: The Defendants, their subsidiaries, their successors, predecessors, officers, contractors, directors, representatives, employees, agents, assigns, attorneys, and any and all other entities and persons in privity with them which could be ostensibly liable for the claims being released.
- 2.17. “Settlement Administrator” shall mean: a settlement administration firm selected by Plaintiffs to perform the duties of the Settlement Administrator as set forth in this Agreement. Plaintiffs’ selection of a settlement administration firm is subject to Defendants’ approval, which shall not be unreasonably withheld and which shall be given or withheld within ten business days of notice of Plaintiffs’ selection.
- 2.18. “Settlement Class” shall mean: the class certified for settlement purposes under Washington Civil Rule 23(b) consisting of all current and former IPs who contracted with DSHS to provide personal care services for a client whose in-home care hours were reduced because DSHS, through its agents, coded the client in a CARE assessment as having a Status of “shared benefit” with respect to one or more IADLs.
- 2.19. “Settlement Class Members” shall mean: those individuals who comprise the Settlement Class.

- 2.20. “Shared Benefit” shall have the same meaning as defined in former WAC 388-106-0010 (2020).
- 2.21. “Shared Benefit Rule” shall mean: the combined operation of the portions of former WAC 388-106-0010 (2020) and WAC 388-106-0130 (2020) that allowed a reduction to a client’s Base Hours or Add-on Hours to account for Shared Benefit.
- 2.22. “Status” shall have the same meaning as defined in former WAC 388-106-0010 (2020).
- 2.23. “Union Wage Case” shall mean: *SEIU 775 v. Washington State et. al*, Washington Supreme Court Case No. 99659-8, on appeal from Case No. 18-2-05584-34 in Thurston County Superior Court.
- 2.24. Undefined terms: Any term undefined herein having a definition in chapter 388-106 WAC shall have the meaning defined in chapter 388-106 WAC. Undefined terms not defined in 388-106 WAC shall have their usual and customary meanings determined with reference to Webster’s Third New International Dictionary.

### **III. CONDITIONS TO THE SETTLEMENT**

#### **3.1. Review by the Centers for Medicare & Medicaid Services**

This Agreement is voidable in its entirety at Defendants’ sole option and discretion if, within ninety (90) calendar days after execution of this Agreement or one hundred twenty (120) calendar days after August 18, 2021, whichever comes first, the Federal Department of Health and Human Services, Center for Medicare and Medicaid Services (“CMS”), does not provide written assurance that federal financial participation of at least the Federal Medical Assistance Percentage (“FMAP”) applicable in the year for which reimbursement is sought will be available for all payments made to Settlement Class Members under this Agreement without any additional documentation, certification, claim, warrant, verification, or other evidence other than that called for by this Agreement itself; provided, however, in any event that Defendants shall have no right under this paragraph to void this Agreement more than one hundred and four (104) calendar days after execution of this Agreement or one hundred and thirty four (134) calendar days after August 18, 2021, whichever comes first. To void this Agreement, Defendants must provide Plaintiffs notice as provided in Section 10.14 within the period specified above. The Parties shall cooperate, in good faith, to make all reasonable efforts to obtain the written assurance from CMS described in this paragraph.

Defendants shall notify Plaintiffs within fourteen (14) calendar days upon receiving notice that CMS has provided written assurance that federal financial participation of at least the FMAP in the year for which reimbursement is sought will be available for

all payments made to Settlement Class Members under this Agreement so the next steps under the Agreement can proceed.

### 3.2. Verification

A Settlement Class Member's cashing or deposit of the Settlement Payment shall constitute verification that:

- a. the Settlement Class Member is or was an Individual Provider for a client whose monthly in-home personal care services authorization was reduced because of shared benefits provided by the Settlement Class Member;
- b. the Settlement Class Member provided in-home personal care services to that client that were included in the client's care plan for at least the number of shared benefit adjusted hours indicated in the Defendants' data, by month and year, that was used to calculate the Settlement Class Member's pro rata share of the Settlement Fund; and
- c. the Settlement Class Member was not paid for those services.

The Class Notice shall inform the Settlement Class Members that cashing or depositing their Settlement Payment shall constitute the foregoing verification. Each payment made to Settlement Class Members under this Agreement shall be accompanied by written notice that cashing or depositing the payment shall constitute the foregoing verification, and instructing each Settlement Class Member that if they cannot truthfully make the foregoing verification that they should not cash or deposit the payment.

In the event that CMS communicates in opinion, guidance, or technical assistance that different or additional information must be included in the Settlement Class Member's verification in order for CMS to authorize a Medicaid match of at least the FMAP applicable in the year for which reimbursement is sought for the State's payments under the Agreement, within fourteen (14) calendar days of the date that CMS communicates that position to the State, the State shall give notice to the Plaintiffs. The Parties shall then meet at the earliest practicable date to negotiate any necessary modifications to Settlement Class Member verifications.

### 3.3. Legislative Funding

As a condition precedent to the effectiveness and binding nature of this Agreement, this Agreement must be fully funded (i.e., at least \$116,068,000) via the enacted 2021-2023 fiscal biennium supplemental appropriations bill or other authorizing legislation. If, by July 1, 2022, legislation funding this Agreement has not been enacted, this Agreement shall be null and void. The Parties agree to collaborate in good faith to seek legislative support to adopt full funding of the Agreement in a budget bill and/or other authorizing legislation during the 2022 legislative session. DSHS shall recommend that full funding of the Agreement be included in the Governor's supplemental budget proposal.

This Agreement is voidable in its entirety at Plaintiffs' sole option and discretion within sixty (60) days of the introduction, as noted in the legislative journal, of the Governor's Proposed Supplemental Budget Bill for the 2021-23 fiscal biennium if it does not propose funding sufficient to fully fund this Agreement (i.e., \$116,068,000). To exercise this option, Plaintiffs must provide notice to Defendants as provided in section 10.14 within the 60 day period.

#### **IV. SETTLEMENT FUNDS AND SETTLEMENT PAYMENTS**

- 4.1. **The Settlement Fund.** Defendants shall, along with the Settlement Administrator, establish a fund of one hundred and sixteen million, sixty-eight thousand dollars (\$116,068,000), which shall be referred to herein as the "Settlement Fund." Defendants shall remit one hundred and sixteen million, sixty-eight thousand dollars (\$116,068,000) to the Settlement Fund within thirty (30) calendar days of the Court's entry of the Final Approval Order, but in no case earlier than July 1, 2022. All interest earned by the Settlement Fund shall become and remain part of the Settlement Fund; provided, however, that if the Agreement is terminated or voided after Defendants fund the Settlement Fund, the Settlement Administrator shall revert all proceeds from the Settlement Fund, including interest but less any Settlement Administration Expenses, to the Defendants. The Settlement Fund is inclusive of all of Defendants' financial obligations under this Agreement, including the following:
- a. Class Member Settlement Payments (as defined below);
  - b. The Attorneys' Fees and Costs Payment as set forth in paragraph 4.3(b);
  - c. Costs of printing and mailing the settlement notice to the Settlement Class Members ("Class Notice");
  - d. Settlement Administration Expenses as set forth in paragraph 4.3(f);
  - e. Withholding and remittance of any Settlement Class Member's portions of any payroll taxes owed, which Defendants customarily and routinely withhold and remit to the proper taxing authorities;
  - f. Withholding and remittance of the Defendants' share of any payroll taxes owed, which Defendants customarily and routinely withhold and remit to the proper taxing authorities;
  - g. Withholding and remittance of Union dues as set forth in paragraph 4.3(h); and
  - h. All other costs or payments necessary to effectuate the Agreement.
- 4.2. **Data Necessary to Implement Allocation Method.** Defendants shall, subject to Evidence Rule 408 and the Parties' protective orders, produce all necessary data to Plaintiffs, Plaintiffs' Counsel, and Plaintiffs' expert to implement the agreed allocation method. Defendants shall produce all such data no later than one-hundred (100) calendar days after the Agreement Execution Date.

#### 4.3. **Payments Out of the Settlement Fund**

##### a. **Initial Distribution to Settlement Class Members**

- i. The Net Settlement Fund for the Initial Distribution to Settlement Class Members shall be one hundred and five million dollars (\$105,000,000), which is the amount of the Settlement Fund minus the Attorneys' Fees and Costs Payment, the estimated costs of printing and mailing the Class Notice, the estimated costs of the Settlement Administration Expenses, the estimated costs of the Defendants' share of payroll taxes (an estimated average of 8.5%), and all other estimated costs or payments necessary to effectuate this Agreement described in paragraphs 4.1(b), (c), (d), (f), and (h). Costs and payments necessary to effectuate this Agreement described in paragraph (h) shall be subtracted from the Settlement Fund to the extent incurred or anticipated at time of the Initial Distribution.

The Net Settlement Fund shall be allocated among Settlement Class Members who have not opted out of the Settlement Class in accordance with the allocation method attached hereto as **Exhibit A**, pursuant to which payments shall be made to individual Settlement Class Members who have not opted out of the Settlement Class ("Class Member Settlement Payments"). The amount of each Class Member Settlement Payment will be a pro rata share of the Net Settlement Fund, adjusted to account for the Settlement Class Member's share of payroll taxes and union dues, if applicable, as specified in paragraphs 4.1(e) and (g) and paragraph 4.3(a)(ii).

- ii. Class Member Settlement Payments shall be treated as wages and subject to payroll taxes. The Settlement Administrator shall be responsible for paying the Defendants' portion of payroll taxes on the Class Member Settlement Payments on Defendants' behalf out of the Settlement Fund. This payment of the Defendants' portion of payroll taxes shall be in addition to, and shall not come out of, the Net Settlement Fund or the portion of the Settlement Fund allocated to costs set forth in paragraphs 4.1(b), (c), (d) and (h). The Settlement Administrator shall be responsible for calculating Defendants' portion of payroll taxes and for calculating Settlement Class Members' portions of payroll taxes owed and for remitting such taxes to the proper taxing authorities.

Defendants shall provide the applicable tax rate for Defendants' portion of payroll taxes for each individual Settlement Class Member to the Settlement Administrator within five (5) business days of the Court's Final Approval Order, and shall simultaneously provide that same information to Plaintiffs' Counsel.

- iii. Class Counsel shall provide the Settlement Administrator with each Settlement Class Member's pro rata share of the Net Settlement Fund

(both the percent and dollar value of the pro rata share of the Net Settlement Fund) within ten (10) business days of the Court's Final Approval Order.

The Settlement Administrator shall create a confidential document setting forth the amounts of the Settlement Class Members' pro rata shares of the Net Settlement Fund for the Initial Distribution, the Second Distribution, and the Third Distribution; the amounts withheld from the Settlement Class Members' pro rata shares of each distribution for payroll taxes, deductions, and withholdings (both Defendants' and employees' shares); and union dues, if applicable. That document shall be made available to Defendants and Class Counsel.

- iv. Class Member Settlement Payments shall be administered by the Settlement Administrator and issued to Settlement Class Members from the Net Settlement Fund.
  
- b. **Attorneys' Fees and Costs Payment.** Class Counsel will, subject to motion and Court approval, receive from the Settlement Fund attorneys' fees and litigation costs in the amount of one and four-tenths percent (1.4%) of the Settlement Fund, totaling one million, six hundred and twenty-five thousand dollars (\$1,625,000) ("Attorneys' Fees and Costs Payment"). This Agreement is not contingent upon an award of attorneys' fees at the level requested by Plaintiffs, and shall not terminate by reason of any Court awarding less than the amount requested. Defendants shall not object to the amount of attorneys' fees requested by Plaintiffs' Counsel. The Attorneys' Fees and Costs Payment shall be paid to Plaintiffs' Counsel within ten (10) business days after the Effective Date.
  
- c. **Supplemental Attorneys' Fees.** Plaintiffs' Counsel may be reimbursed from the Settlement Fund for fees incurred after the Settlement Execution Date, but only upon written agreement of the Defendants or upon motion made and granted by the Court. Defendants reserve the right to oppose any such motion.
  
- d. **Supplemental Costs.** Plaintiffs' Counsel may be reimbursed from the Settlement Fund for costs incurred after the Settlement Execution Date, but only upon written agreement of the Defendants or upon motion made and granted by the Court. Defendants reserve the right to oppose any such motion.
  
- e. **Incentive Awards.** Class Representatives shall receive no incentive awards.
  
- f. **Settlement Administration Expenses.** All costs and expenses of the Settlement Administrator ("Settlement Administration Expenses"), including the costs of the Notice to the Settlement Class, shall be paid from the Settlement Fund. Defendants may compensate the Settlement Administrator for its expenses incurred prior to the establishment of the Settlement Fund. Defendants shall be entitled to reimbursement of the same from the Settlement Fund.

- g. **Settlement Administration.** The Settlement Administrator shall be responsible for Notice mailings to the Settlement Class Members; tracing undeliverable mailings; recording and tracking responses to the mailings to the Settlement Class Members; tracking and responding to any inquiries made by Settlement Class Members; establishing and maintaining a Settlement Fund and depositing the Settlement Fund monies into the Settlement Fund; calculating appropriate tax obligations and withholdings; issuing the necessary checks for all Class Member Settlement Payments; withholding from each Class Member Settlement Payment, and disbursing to the IRS and other taxing authorities as applicable, the employee's portion of payroll taxes and other applicable tax withholdings attributable to the Class Member Settlement Payments; processing payments to a deceased Class Member's executor, administrator, or next of kin, as appropriate; calculating, deducting, and appropriately remitting from each Class Member Settlement Payment any other applicable wage deductions required or permitted by law; logging returned checks and making one attempt to obtain an updated address for returned checks; receiving information about Settlement Class Members' union membership to enable calculation of appropriate Dues Payments and so calculating; issuing the Attorneys' Fees and Costs Award payment, the Dues Payment, the Settlement Administration Expenses payment and the Reversion payment; performing all related tax reporting to taxing authorities and issuing all necessary tax statements; paying legal obligations of Settlement Class Members enforceable against the Settlement Fund by operation or application of law, court order, or otherwise; and any other related tasks mutually agreed to by the Parties. Other than as expressly specified in this Agreement, Releasees and the Class Representatives, individually, shall have no responsibility whatsoever for calculating, deducting, or remitting tax withholdings attributable to the Class Member Settlement Payments.

The Settlement Administrator will amend the payments reported to the IRS if any Class Member Settlement Payments are not cashed.

Any identifying personal information of Settlement Class Members and their data provided to or from the Settlement Administrator or to or from Defendants, Class Counsel, Class Representatives, or the Parties' experts pursuant to this Agreement, including any "sensitive personal information" of any Individual Provider or client of DSHS, as that term is defined in RCW 42.56.640, shall be used solely for the purposes of administering this Agreement and not for any other purpose. The Settlement Administrator, Defendants, Class Counsel, Class Representatives, and the Parties' experts shall maintain all such information and data as private and strictly confidential and shall not disclose such data to any persons or entities (including government entities), except as required by this Agreement, by law, or by Court order. Notwithstanding the foregoing, the Settlement Administrator may disclose individual Settlement Class Member data to the individual Settlement Class Member to whom the data applies. The

Settlement Administrator must agree to a nondisclosure and confidentiality agreement incorporating these obligations.

As to Class Member Settlement Payments, and the Second and Third Distributions described in paragraphs 4.3(j)—(k), the Settlement Administrator shall provide Plaintiffs' Counsel and Defendants' Counsel with data regarding each Settlement Class Member's name, provider number, gross settlement payment, dues payment if any, payroll taxes and withholdings, net settlement payment, and whether or not the settlement payment was cashed or deposited.

Plaintiffs will use best efforts to select a Settlement Administrator that will agree to specifically indemnify and hold Defendants harmless for any errors or omissions the Settlement Administrator may make in appropriately withholding and remitting to any taxing authority whatsoever the Defendants' and Settlement Class Members' portions of taxes attributable to the Class Member Settlement Payments.

- h. **Dues Payment.** The Settlement Administrator shall deduct 3.2% from Class Member Settlement Payments and remit that money to SEIU 775 for every month that the Settlement Class Member receiving that Class Member Settlement Payment was a member of SEIU 775, provided that the Settlement Class Member is currently an SEIU 775 member or, if the Settlement Class Member is no longer working as an Individual Provider as of the date of the Final Approval Order, then if the Settlement Class Member was a member of SEIU 775 on the end date of the Individual Provider's last paycheck.
- i. **Address Tracing for Undeliverable Checks.** In the event Class Member Settlement Payments have been returned as undeliverable, the Settlement Administrator shall attempt one trace to locate a good address and, if located, shall make a second attempt at mailing the check. If such check is again returned as undeliverable, no further attempts of mailing the check are required to be made and the Settlement Administrator shall promptly provide the name of that Settlement Class Member to Plaintiffs' Counsel. Notwithstanding the foregoing, the Settlement Administrator may mail a check to a Settlement Class Member at an address obtained by other means if the Settlement Class Member's check is returned as undeliverable or upon the Settlement Class Member's request for the same (e.g., if Plaintiffs' Counsel or another Settlement Class Member provides the Settlement Administrator an address for a Settlement Class Member not previously provided or obtained through a trace).
- j. **Second Distribution to Settlement Class Members.** In the event Class Member Settlement Payments have not been cashed within one hundred and eighty (180) calendar days after their issuance, then such uncashed payments, along with any interest accrued by the Settlement Fund, any estimated but unused costs of Defendants' share of payroll taxes, any estimated but unused costs of Settlement Administration and Class Notice, and any other monies received by the

Settlement Fund shall be paid on a pro rata basis to Settlement Class Members who have not opted out of the Settlement Class using the same allocation method set forth in Exhibit A and calculation method set forth in paragraph 4.3(a), but limiting the second distribution to only the Settlement Class Members who have not opted out of the Settlement Class and who have cashed their Class Member Settlement Payments, less the Defendants' share of payroll taxes calculated at the actual average tax rate for Class Member Settlement Payments, the total costs of redistribution, and any Supplemental Attorneys' Fees and/or Supplemental Costs sought by Plaintiffs and awarded by the Court. All payments made in the second distribution shall be treated in accordance with the provisions of sections 4.3(a), (h), (i), and (m) (regarding calculation, dues, tax allocations, tax reporting, address tracing, etc.).

- k. **Third Distribution.** In the event any payments made as part of the second distribution have not been cashed within one hundred and eighty (180) calendar days after their issuance, then such uncashed payments, along with any interest accrued by the Settlement Fund, any estimated but unused costs of Settlement Administration and Class Notice, and any other monies received by the Settlement Fund shall be paid on a pro rata basis to Settlement Class Members who have not opted out using the same allocation method set forth in Exhibit A and calculation method set forth in paragraph 4.3(a) but limiting the third distribution to only the Settlement Class Members who have not opted out of the Settlement Class and who have cashed any Class Member settlement payment, less the Defendants' share of payroll taxes calculated at the actual average tax rate for Class Member Settlement Payments, the total costs of redistribution, and any Supplemental Attorneys' Fees and/or Supplemental Costs sought by Plaintiffs and awarded by the Court. All payments made in the third distribution shall be treated in accordance with the provisions of sections 4.3(a), (h), (i), and (m) (regarding calculation, dues, tax allocations, tax reporting, address tracing, etc.).
- l. **Reversion Payment.** In the event any payments made as part of the third distribution have not been cashed within one hundred and eighty (180) calendar days after their issuance, then such uncashed payments, less any remaining costs of Settlement Administration or necessary to effectuate this Agreement, together with any accrued interest on such payments shall revert to Defendants. Prior to remitting payment, the Settlement Administrator shall receive payment instructions from Defendants and follow those instructions to accomplish payment to the State.
- m. **Tax Reporting.** The Settlement Administrator shall prepare and provide to each Settlement Class Member receiving settlement payments from the Settlement Fund a Form W-2 (for wages). Releasees shall have no responsibility to make any tax filings relating to this Settlement Agreement or the Settlement Fund. The Settlement Administrator shall issue Plaintiffs' Counsel a Form 1099 for the Attorneys' Fees and Costs Payment and any Supplemental Attorneys' Fees

and/or Costs Payment. The Parties agree that any Attorneys' Fees and Costs Payments need not be reported to the IRS as being income to the Settlement Class Members receiving settlement payments, based on the analysis in Internal Revenue Service Office of Chief Counsel Memorandum PRENO-111606-07 (May 18, 2007). The Settlement Administrator shall satisfy all tax and other reporting obligations required to treat the Settlement Fund as a Qualified Settlement Fund under Treasury Regulation §1.468B-1 et seq. Neither Class Counsel nor Defendants' Counsel intend anything contained in this Agreement to constitute legal advice regarding the taxability of any amount paid hereunder, nor will it be relied upon as such.

## **V. DUTIES OF THE PARTIES PRIOR TO OBTAINING COURT APPROVAL**

- 5.1. Within fourteen (14) calendar days of execution of this Agreement, the Parties to the Class Action shall jointly move the trial court to stay all proceedings in this case, except those necessary to effectuate this Agreement, including, without limitation, those detailed in paragraph 6.1 below; any additional proceedings shall be either with agreement of all Parties or leave of Court.
- 5.2. In the event that this Agreement does not become final and binding, is voided, or does not become effective or terminates for any reason, this stay shall not prejudice any Party's rights to pursue or defend the claims in the Class Action. In particular, the time during which the stay is in effect shall not count against the requirement under CR 23(c)(1) that the Court determine class certification as early as practicable.

## **VI. SETTLEMENT CLASS**

### **6.1. Establishment of a Settlement Class**

The Parties agree to the following procedures for obtaining preliminary approval of the Agreement, certifying the Settlement Class for purposes of settlement, notifying putative members of the Settlement Class, and obtaining final approval of the Agreement:

- a. The Class Representatives shall file a motion to obtain preliminary approval of the Settlement Class ("Preliminary Motion") within seven (7) business days of the date that the budget bill and/or other authorizing legislation during the 2022 legislative session that funds the Agreement has been signed by the Governor, and not earlier. The Class Representatives will ask the Court to enter an order ("Preliminary Approval Order") preliminarily approving the Agreement, approving the form of the Class Notice, approving the method of submission of the notice to the putative members of the Settlement Class, and setting a date for a hearing on Final Approval to determine whether the Court will grant final approval of the Settlement. In the Preliminary Approval Motion, the Class Representatives shall ask the Court to certify the Settlement Class, finding the Class Representatives to be adequate and typical class representatives of the Settlement Class and certifying Plaintiffs' Counsel as

Class Counsel. The Parties shall stipulate, for settlement purposes only, that the elements of Rule 23 for certification of the Settlement Class are met and the relief sought by the Class Representatives in the Preliminary Approval Motion is proper. Class Representatives' motions will be provided to Defendants for review and comment. Defendants shall not oppose these motions, but reserve right to file a response to address any disputes or disputed language that remains in the motions. The Parties agree that certification of the Settlement Class shall not be construed as an admission by the Defendants; dispositive on the issue of class certification or any other issue in the event the Agreement is terminated or rendered void for any reason; or an admission that certification of this class is the likely or necessary outcome if this case were to be fully litigated; or establish a precedent of any kind in this or other litigation. The Settlement Class in this case is established solely for the purpose of resolving the disputed claims in this legal proceeding and effectuating the Agreement and nothing more.

- b. Notice of the proposed compromise shall be given to all putative members of the Settlement Class in such manner as the Court directs.
- c. By the date set by the Court in its order granting the Preliminary Motion, Plaintiffs shall provide the Settlement Administrator with the Court-approved notices, inclusive of translated notices, for mailing.
- d. The Class Notice shall be issued as follows:
  - i. The Class Notice, in a form approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail, within fourteen (14) calendar days after entry of the Preliminary Approval Order and approval of the proposed form of Class Notice by the Court. The Defendants shall provide the Settlement Administrator and Class Counsel with the names and most current addresses for putative Settlement Class members it has in its possession within fourteen (14) calendar days of the date that the budget bill and/or other authorizing legislation during the 2022 legislative session that funds the Agreement has been signed by the Governor. The list shall be provided solely to the Settlement Administrator and Class Counsel. The Settlement Administrator shall maintain the list in strict confidentiality in accordance with paragraph 4.3(g). The cost of printing and mailing shall come out of the Settlement Fund.
  - ii. The Settlement Administrator will run all the addresses provided through the U.S. Postal Service NCOA database to obtain current address information, and will mail the Notice to the members of the Settlement Class via first-class regular U.S. Mail using the most current mailing address information available.

- iii. Any Notices returned to the Settlement Administrator before the Opt-Out Deadline with a forwarding address will be sent to the forwarding address affixed thereto.
  - iv. If a Notice is returned from the initial notice mailing without a forwarding address, the Class Administrator will submit the applicable and available information, including name and original mailing address to a company that specializes in address skip tracing in an attempt to locate a more current address. The Settlement Administrator may also request alternative contact information from Class Counsel and/or Defendants that may be used to contact the Class Member in an effort to obtain a new mailing address. If the Settlement Administrator is successful in locating a new address, it will re-mail the Notice to the Settlement Class Member. If a new address cannot be located or if the Notice is again returned as undeliverable after a second mailing, no further attempts at delivery are required.
  - v. During the notice and opt-out period, Defendant Washington State Department of Social and Health Services shall prominently post, electronically, a link to the Agreement and Court-approved Class Notice and opt-out form. Defendant Washington State Department of Social and Health Services shall also post translated versions of the class notice and opt-out form. Defendants shall have no obligations to post these materials once the opt-out period has ended.
  - vi. Defendants shall cause to have the Court approved class notice and claim form translated into the following languages at no cost to the Settlement Fund: Arabic, Khmer, Korean, Laotian, Russian, Samoan, Simplified Chinese, Somali, Spanish, Tagalog, Ukrainian, and Vietnamese. A copy of each translation shall be provided to the Settlement Administrator and Class Counsel.
- e. The Settlement Administrator shall create a webpage which contains the following material:
- i. A description of the Class Action, including a summary of the litigation to date, provided to the Settlement Administrator by Plaintiffs, and subject to approval by Defendants, which shall not be unreasonably withheld.
  - ii. A description the Settlement Class.
  - iii. A summary of the Agreement as stated in the Class Notice.
  - iv. Translated versions of the Class Notice.
  - v. A timeline and schedule of events, including deadlines for objecting and opting out.
  - vi. How to contact Plaintiffs' Counsel for additional information.
  - vii. Key litigation and settlement documents, or links to documents.

## **6.2. Settlement Class Member Opt-Outs**

- a. A Settlement Class member who chooses to opt out of the Settlement must mail, via First Class United States Mail, postage prepaid, a written, signed opt-out statement (in a form approved by the Court) to the Settlement Administrator. To be effective, the opt-out statement must include the Settlement Class Member's name, email, address, and telephone number and state: "I opt out of the IP shared benefit settlement." To be effective, an opt-out statement must be postmarked within thirty (30) calendar days from the date on the Class Notice (which date shall be the date three (3) calendar days after the date the Notice is mailed).
- b. The Settlement Administrator shall stamp the postmark date on the original of each opt-out statement that it receives and shall serve copies of each opt-out statement on Class Counsel and Defendants' counsel not later than three (3) business days after receipt thereof. The Settlement Administrator shall also, within three (3) business days of the end of the opt-out period, provide to Class Counsel stamped copies of any opt-out statements, which Class Counsel will submit to the Court at the time of filing of the Final Approval Motion. The Settlement Administrator shall, within twenty-four (24) hours of the end of the opt-out period, send a final list of all opt-out statements to Class Counsel and Defendants' Counsel by both email and overnight delivery. The Settlement Administrator shall retain the stamped originals of all opt-out statements and originals of all envelopes accompanying opt-out statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.
- c. Any Settlement Class Member who does not properly submit an opt-out statement pursuant to this Agreement shall be deemed to have accepted the Agreement.
- d. Defendants, in their sole and exclusive discretion, may void this Agreement if more than three percent (3%) of the Settlement Class Members opt out of this Agreement. To exercise this option to void, Defendants must give Plaintiffs written notice, as specified in section 10.14, within eight (8) calendar days after the end of the opt-out period.

## **6.3. Objections; Binding Effect**

- a. Settlement Class Members will have thirty (30) calendar days from the date on the Class Notice (which date shall be the date three (3) calendar days after the date the Notice is mailed) to object to the

Agreement. Any Settlement Class Member may object to this Agreement, provided that such objections are made in writing, filed with the Court, and served on Plaintiffs' Counsel and counsel for the Defendants no later than thirty (30) calendar days after the date of the Notice. Such objection shall include the information specified in the Class Notice.

- b. Neither Plaintiffs, Plaintiffs' Counsel, the Defendants, Defendants' counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to (i) object to the Agreement, (ii) opt out of this Agreement, or (iii) appeal from any order of the Court or any appellate court that is consistent with the terms of this Agreement.
- c. Upon receipt, counsel for the Parties shall promptly exchange with one another copies of all objections and/or challenges to the Settlement or any part thereof.

#### **6.4 Timeline and Duties of the Parties and the Settlement Administrator Following Notice**

- a. Plaintiffs shall move the Court for entry of an Order granting final approval to this Agreement ("Final Approval Order") no later than fourteen (14) calendar days following the objection deadline. It is agreed that the final approval hearing will occur on the earliest possible date after Plaintiffs file the motion for entry of an Order granting final approval to this Agreement that the Court's schedule will allow.
- b. The settlement embodied in this Agreement shall become effective on the Effective Date.
- c. The Settlement Administrator shall mail all Class Member Settlement Payments for the Initial Distribution to Settlement Class Members within ten (10) business days of the Effective Date. All such checks shall be valid for one hundred and eighty (180) calendar days after issuance and shall expressly state that they are void after that 180-day period.
- d. If any Settlement Class Members do not cash their Class Member Settlement Payments within one hundred and eighty (180) calendar days after issuance, their checks will be void.
- e. The Settlement Administrator shall issue and mail all Class Member Settlement Payments for the Second Distribution to Settlement Class Members within fourteen (14) calendar days after the expiration of the one hundred and eighty (180) day period described in paragraph 4.3(j) above, or as soon thereafter as practicable as determined by the Settlement Administrator. All such checks shall be valid for one hundred and eighty (180) calendar days

after issuance and shall expressly state that they are void after than 180-day period.

- f. If any Settlement Class Members do not cash their checks disbursing the Second Distribution within one hundred and eighty (180) calendar days after issuance, those checks will be void.
- g. The Settlement Administrator shall issue and mail all Class Member Settlement Payments for the Third Distribution to Settlement Class Members within fourteen (14) calendar days after the expiration of the one hundred and eighty (180) day period described in paragraph 4.3(k) above, or as soon thereafter as practicable as determined by the Settlement Administrator. All such checks shall be valid for one hundred and eighty (180) calendar days after issuance and shall expressly state that they are void after that 180-day period.
- h. If any Settlement Class Members do not cash their checks disbursing the Third Distribution within one hundred and eighty (180) calendar days after issuance, those checks will be void and any remaining funds, less any remaining costs of Settlement Administration or necessary to effectuate this Agreement, shall revert to Defendants.
- i. Within five (5) business days of receiving notice of the Third Distribution to Settlement Class Members, Plaintiffs shall file a stipulated dismissal of the Class Action with the Court with no costs or fees awarded to either Party other than those provided for in this Agreement.

## **7 CLAIMS AND PERSONS RELEASED**

- 7.1. Upon the Effective Date, the Class Representatives on behalf of themselves and, to the full extent permitted by law, on behalf of the Settlement Class Members who have not opted out of the Settlement Class, absolutely and unconditionally release and forever discharge Releasees from any and all Released Claims.
- 7.2. Upon issuance of the Final Approval Order, Defendants, to the full extent permitted by law, absolutely and unconditionally release and forever discharge the Class Representative(s), and the Settlement Class Members who have not opted out of the Settlement Class from all claims they have asserted or could have asserted relating to the Union Wage Case and the Class Action. Defendants' release of claims includes, without limitation, claims for breach of contractual obligations by IPs, setoff, advances, and any contract actions against Settlement Class Members relating to this Class Action, such as—by way of example and not of limitation—actions contending that any Settlement Class Member worked unauthorized hours in connection with the shared benefit rule.
- 7.3. Except to the extent a Settlement Class Member presents a timely objection to this Agreement pursuant to the procedures set forth above, Settlement Class Members

waive their right to seek any form of appellate review of any order or judgment that is consistent with the terms of this Agreement.

- 7.4. Nothing in this Agreement constitutes or may be construed as a waiver or release of any claims that post-date February 28, 2021, or that cannot be released as a matter of law.

7.5. **Representations and Warranties**

The Parties, and each of them, represent and warrant that they are voluntarily entering into this Agreement as a result of arm's-length negotiations; in executing this Agreement they are relying upon their own judgment, belief, and knowledge, and the advice and recommendations of their own counsel. The Parties, and each of them, represent and warrant that they have carefully read the contents of this Agreement and all of the matters pertaining thereto as they deem necessary; and this Agreement is signed freely by each person executing this Agreement on behalf of each party. Each individual executing this Agreement on behalf of any other person does hereby represent and warrant to the other Parties that he or she has the authority to do so.

7.6 **No Admission of Liability**

The Parties understand and agree that this Agreement embodies a compromise and settlement of disputed claims, and that nothing herein shall be deemed to constitute an admission of any wrongdoing by Defendants or any of the Releasees, or by any Settlement Class Member. Neither the fact nor the terms of this Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement or arising out of or relating to the Final Orders and motions for approval, or in defense of any claim arising out of or relating to the Agreement.

## **8 TERMINATION**

- 8.1. If the Court declines to preliminarily or finally approve the Agreement and the time for filing a motion for reconsideration and for noting an appeal have expired, then this Agreement shall automatically terminate, and thereupon become null and void.
- 8.2. If the Court of Appeals reverses the Final Approval Order, then, provided that no appeal is then pending from such a ruling, this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the order referenced in this paragraph.
- 8.3. If the Washington State Supreme Court reverses the Final Approval Order, then, provided that no appeal is then pending from such a ruling, this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the order referenced in this paragraph.

- 8.4. If the United States Supreme Court reverses the Final Approval Order, then this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the order referenced in this paragraph.
- 8.5. If an appeal is pending of an order denying approval of the Settlement, this Agreement shall not be terminated unless and until that order denying approval has been affirmed by the ultimate court of decision, except by written agreement of the Parties.
- 8.6. If the Agreement is terminated and rendered null and void for any reason, then the following shall occur:
- a. the Class Action shall revert in all respects to its status as of the Agreement Execution Date.
  - b. All releases given or executed pursuant to this Agreement shall be null and void and none of the terms of this Agreement shall be effective or enforceable.

## **9 NOTICES**

- 9.1. Unless otherwise specifically provided herein, all notices, demands, or other communications other than those between counsel of record given hereunder shall be in writing and delivered and addressed as follows:

To Class Counsel:

Jennifer L. Robbins  
Darin M. Dalmat  
Sarah E. Derry  
Barnard Iglitzin & Lavitt LLP  
18 W. Mercer St., Suite 400  
Seattle, WA 98119

To Defendants' Counsel:

William McGinty  
Dan Judge  
Margaret McLean  
Sara L. Wilmot  
Attorney General's Office  
PO Box 40124  
Olympia, WA 98504

## **10 MISCELLANEOUS**

- 10.1 The provisions of this Agreement are not severable.

- 10.2 This Agreement shall be governed by the laws of the State of Washington without regard to conflict of law principles. The Parties agree that any dispute not subject to the Superior Court's jurisdiction in this Class Action regarding the terms, conditions, releases, enforcement, or termination of this Agreement shall be resolved through mediation with Wakeen & Associates Mediation Services, LLC. If mediation is unsuccessful, disputes shall be resolved through binding arbitration in compliance with chapter 7.04A RCW, including all remedies available in fact or law, with Ret. Judge John P. Erlick or another mutually agreed upon arbitrator selected by the Parties. If the parties are unable to agree on an arbitrator, the arbitration shall be conducted by a panel of three arbitrators, each Party choosing one and the two arbitrators agreeing upon the third.
- 10.3 Before any Preliminary Approval Order, this Agreement may be modified only by written agreement signed by or on behalf of all Parties. Following entry of any Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed on behalf of all Parties and approved by the Court.
- 10.4 This Agreement constitutes the entire agreement between the Parties in settlement of the Class Action. In the event of any conflict between the terms of this written Agreement and any other representation concerning the settlement of the Class Action, the Parties agree that this Agreement shall control.
- 10.5 The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.
- 10.6 None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision thereof for the purposes of any statute, case law, or rule of interpretation or construction that would or might cause the provision to be construed against the drafter thereof.
- 10.7 The following principles of interpretation apply to this Agreement:
- a. The headings herein are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.
  - b. Definitions apply to the singular and plural forms of each term defined.
  - c. References to a person include references to an entity, and include successors and assigns.
  - d. "They" and "them" may be used in this Agreement to refer to a singular person.
  - e. References to statutes or administrative rules shall mean the versions as they existed at the time this agreement was signed by the Parties, unless otherwise specified.
- 10.8 All representations, warranties, and covenants set forth herein shall be deemed continuing and shall survive the Effective Date.

- 10.9 The signatories hereby represent that they are fully authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions hereof.
- 10.10 The Parties agree to reasonably cooperate with each other to accomplish the purpose of a full and final resolution to all disputes under the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement.
- 10.11 This Agreement may be executed by electronic exchange of signature pages (whether faxed, emailed, utilizing a secure file transfer protocol site, DocuSign, or other equivalent means), and any signature transmitted in such a manner shall be deemed an original signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which when taken together, shall constitute one and the same instrument.
- 10.12 This Agreement binds and inures to the benefit of the Parties hereto, their assigns, heirs, administrators, executors, and successors-in-interest, affiliates, benefit plans, predecessors, and transferees, and their past and present officers, directors, agents, and employees.
- 10.13 Each of the Parties agree, without further consideration, and as part of finalizing the Agreement hereunder, that they will in good faith promptly execute and deliver such other documents and take such other actions as may be necessary to consummate the subject matter and purpose of this Agreement.
- 10.14 Counsel of record may accomplish any notice required or permitted by this Agreement upon each other by email. An email notice shall be deemed received on the same day it is sent provided it is sent by 5:00 p.m. If sent after 5:00 p.m., an email notice shall be deemed received on the next calendar day.
- 10.15 **Class Counsel Signatories.** It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement.

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**10.16 Joint Statement.** The Parties agree to prepare a joint statement concerning this Settlement within fourteen (14) days of its execution, which the Parties may refer to in answering questions about this Settlement and may use for public comments about the Settlement.

**SIGNATURES:**

For all Defendants:

Signed: \_\_\_\_\_  
DONALD CLINTSMAN  
Acting Secretary  
DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES

Signed:   
\_\_\_\_\_  
SYLVIA LIANG  
Class Representative

Date: \_\_\_\_\_

Date: 09/17/2021  
\_\_\_\_\_

Signed: \_\_\_\_\_  
WILLIAM MCGINTY  
DANIEL JUDGE  
MARGARET MCLEAN  
Defense Counsel

Signed:   
\_\_\_\_\_  
MANUEL BRITO  
Class Representative

Date: 09/17/2021  
\_\_\_\_\_

Signed:   
\_\_\_\_\_  
SHAZIA ANWAR  
Class Representative

Date: 09/17/2021  
\_\_\_\_\_

Signed: \_\_\_\_\_  
JENNIFER L. ROBBINS  
Class Counsel

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
DARIN M. DALMAT  
Class Counsel

Date: \_\_\_\_\_

Signed:   
\_\_\_\_\_  
SARAH E. DERRY  
Class Counsel

Date: 09/17/2021  
\_\_\_\_\_

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For all Defendants:

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DONALD CLINTSMAN  
Acting Secretary  
DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
SYLVIA LIANG  
Class Representative

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
WILLIAM MCGINTY  
DANIEL JUDGE  
MARGARET MCLEAN  
Defense Counsel

Signed: \_\_\_\_\_  
MANUEL BRITO  
Class Representative

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
SHAZIA ANWAR  
Class Representative

Date: \_\_\_\_\_

Signed: Jennifer L. Robbins  
JENNIFER L. ROBBINS  
Class Counsel

Date: 9/17/21

Signed: Darin M. Dalmat  
DARIN M. DALMAT  
Class Counsel

Date: 9/17/21

Signed: \_\_\_\_\_  
SARAH E. DERRY  
Class Counsel

Date: \_\_\_\_\_

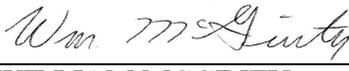
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For all Defendants:

Signed:   
DONALD CLINTSMAN  
Acting Secretary  
DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES

Date: 9/17/2021

Signed:   
WILLIAM MCGINTY  
DANIEL JUDGE  
MARGARET MCLEAN  
Defense Counsel

Signed: \_\_\_\_\_  
SYLVIA LIANG  
Class Representative

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
MANUEL BRITO  
Class Representative

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
SHAZIA ANWAR  
Class Representative

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
JENNIFER L. ROBBINS  
Class Counsel

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
DARIN M. DALMAT  
Class Counsel

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
SARAH E. DERRY  
Class Counsel

Date: \_\_\_\_\_

*Exhibit A to Agreement to Settle Claims as to Sylvia Liang, Manuel Brito, and Shazia Anwar, individually and on behalf of all those similarly situated v. State of Washington, Washington State Department of Social and Health Services, a Washington State Agency, Cheryl Strange, in her official capacity as the Secretary of the Washington State Department of Social and Health Services, No. 20-2-02506-34 Thurston County Superior Court*

## INTRODUCTION AND BACKGROUND

1. This memorandum describes the approach to be applied to allocate the Distributions to Settlement Class Members from the Settlement Fund to Individual Providers (IPs) using data provided by the Defendants in the Liang et al v. Washington DSHS et al; and the SEIU 775 v. Washington DSHS et al litigation.
2. This approach will be used to provide the Administrator of the Settlement Fund an allocation and dollar amount of the Distribution for each Settlement Class Member in four sequential rounds:
  - a. Estimated Allocation for class notification,
  - b. Initial Distribution,
  - c. Second Distribution, and
  - d. Third Distribution.
3. All necessary taxes and withholdings will be calculated and implemented by the Administrator of the Settlement Fund.

## ALLOCATION

4. For class notification, the estimated allocation of the net settlement funds for any one IP is calculated by multiplying net settlement funds by a proportional share of total back pay damages. The IPs' pro rata shares are calculated by dividing an individual IP's back pay damages by the sum of back pay damages for all IPs.

$$Allocation_{IP} = NetSettlementFunds * \frac{BackPayDamages_{IP}}{\sum_{IP} BackPayDamages_{IP}}$$

Where:

- $Allocation_{IP}$  is the allocation of net settlement funds, by  $IP$ .
- $BackPayDamages_{IP}$  is the sum of unpaid base and overtime hours for each  $IP$ .

- $\sum_{IP} BackPayDamages_{IP}$  is the sum of back pay damages for all *IPs*.
5. The distribution process will be performed in three iterative allocations. The same formula in paragraph 4 applies, with modifications to *NetSettlementFunds* and  $\sum_{IP} BackPayDamages_{IP}$  as outlined below. At each iteration, the allocation will be checked to ensure the sum of all Class Member Settlement Payments for any IP do not exceed 100% of that IP's total damages on all claims.
    - a. In the Initial Distribution, the term  $\sum_{IP} BackPayDamages_{IP}$  is the sum of back pay damages for all *IPs* who have not opted out of the settlement. The term *NetSettlementFunds* is \$105 million dollars, the amount of the Settlement Fund minus all fees and costs itemized in sections 4.1(b), (c), (d), (f), and (h) of the Settlement Agreement to which this allocation method is an exhibit.
    - b. Should Settlement Funds remain following the Initial Distribution (as a result of *IPs* not cashing their first Class Member Settlement Payments in the time allotted or other unused settlement funds), a Second Distribution will occur in which the term  $\sum_{IP} BackPayDamages_{IP}$  is the sum of back pay damages for all *IPs* who cashed their first Class Member Settlement Payment, and the term *NetSettlementFunds* are the funds remaining following the Initial Distribution and other payments from the Settlement Fund as provided for in the Agreement, including interest accrued by the Settlement Fund.
    - c. Should Settlement Funds remain following the Second Distribution, a Third Distribution will occur in which the term  $\sum_{IP} BackPayDamages_{IP}$  is the sum of back pay damages for all *IPs* who cashed their Class Member Settlement Payment from the Initial or Second distribution, and the term *NetSettlementFunds* are the funds remaining following the Second Distribution and other payments from the Settlement Fund as provided for in the Agreement, including interest accrued by the Settlement Fund.
  6. Back pay damages for each IP are determined by the sum of damages resulting from unpaid base hours and overtime hours, as shown in the equation below.

$$BackPayDamages_{IP} = BaseDamages_{IP} + OTDamages_{IP}$$

7. Base damages are the number of Shared Benefit hours allocated to a given IP times the hourly wage for that IP in a given month, summed across all months.

$$BaseDamages_{IP} = \sum_t (SBHours_{IP,t} * HourlyWage_{IP,t})$$

Where:

- $SBHours_{IP,t}$  is the total number of hours reduced as a result of Shared Benefit status coding for a given  $IP$  and month,  $t$ . In instances where more than one Assessment for a client/ $IP$  combination is in place during a given month, the Assessment with the larger number of care hours (and its respective  $SBHours_{Assmt,t}$ ) is applied.
  - $HourlyWage_{IP,t}$  is the average wage for personal care services paid to a given  $IP$  in month,  $t$ .
  - $t$  is month.
8. Damages resulting from unpaid overtime hours are calculated for the portion of the  $IP$ 's Shared Benefit hours that exceed a monthly overtime threshold of 173 hours per month for the  $IP$ 's total hours.<sup>1</sup> Total hours are the sum of allocated Shared Benefit hours and paid hours (excluding PTO) by an  $IP$ . Overtime pay is calculated using the Washington State overtime rate, which is 50 percent higher than one's hourly wage for all months beginning January 1, 2017.<sup>2</sup>

$$OTDamages_{IP} = \sum_t ((OTSBHours_{IP,t}) * HourlyWage_{IP,t} * 0.5); \forall months \geq January 2017^3$$

Where:

- $OTSBHours_{IP,t}$  is the number of Shared Benefit hours eligible for overtime pay, by month and  $IP$ .
9. For all Assessments where there is only one  $IP$  assigned to one or more IADLs coded Shared Benefit for a Client, no Agency Providers assigned to one or more IADLs coded Shared Benefit for a Client, and the  $IP$  was paid for personal care services performed in a month, the hours reduced for Shared Benefit for the Assessment are the same as the number of hours reduced for Shared Benefit for the  $IP$  and that Client, as shown in the equation below.

$$SBHours_{IP,t} = SBHours_{Assmt,t}, \forall IPS_{Assmt,t}, Prov_{Assmt,t} = 1$$

<sup>1</sup> The 173 hour per month overtime threshold is calculated as (40 hours per week \* 52 weeks per year) / (12 months per year).

<sup>2</sup> RCW 49.46.130; RCW 49.46.800

<sup>3</sup> The term "∀" can be translated to mean "for all."

10. For all Assessments where multiple providers are assigned to one or more IADLs coded Shared Benefit for a Client, the hours reduced for Shared Benefit for the Assessment are allocated to providers in proportion to the units paid to each provider by month.<sup>4</sup>

$$SBHours_{IP,t} = \frac{PaidUnits_{IP,t}}{\sum_{Prov,t} PaidUnits_{Prov,t}} * SBHours_{Assmt,t}, \forall Prov_{Assmt,t} > 1$$

11. For all Assessments where the living arrangement is coded “Multiclient household” or “Lives with paid provider in multiclient household,” the total hours reduced as a result of Shared Benefit coding is divided by two, as shown in the equation below.

$$SBHours_{Assmt,t} = \frac{1}{2} * SBHours_{Assmt,t}, \forall Assmt = "Multiclient"$$

## SUMMARY OF DATA USED TO ALLOCATE FUNDS

12. CARE system data provided in response to interrogatories 4 and 14 from the SEIU 775 v WA DSHS et al litigation contain, among other variables, the unique Client ID, the unique Assessment ID, whether any of the four IADLs were coded as “Shared Benefit,” the resulting hours reduced as a result of Shared Benefit coding, and the start and finish of the Assessment period.<sup>5,6</sup> These data include assessments that began between March 2014 and February 28, 2021. These data are used to identify  $SBHours_{Assmt,t}$  and are limited to include only clients with statuses of “Shared Benefit” on at least one IADL.
13. CARE system data provided in response to Request for Production C from the SEIU 775 v WA DSHS et al litigation (limited to include only Client Assessments with statuses of “Shared Benefit” on at least one IADL). These data are used to identify providers assigned to one or more IADLs coded Shared Benefit for all assessments provided in response to SEIU 775 v WA DSHS et al interrogatories 4 and 14.
14. ProviderOne data contains units paid, the amount paid for all units, the client to whom the units were provided, and the provider to whom the payment was made. These data are used to identify providers assigned to clients, the non-overtime  $HourlyWage_{IP,t}$ ,

<sup>4</sup> “Providers” includes IPs and Agency Providers. Shared Benefit coded hours are allocated to Agency Providers in the same manner as IPs, but they are not included in the calculation of damages.

<sup>5</sup> A number of the data sources were initially provided in the SEIU 775 v WA DSHS et al litigation and are being used for implementation of this settlement allocation. They are being updated to cover the entire settlement period.

<sup>6</sup> SEIU 775 v WA DSHS et al Interrogatory 4 Shared Benefits Clients and Individual Providers; SEIU 775 v WA DSHS et al Interrogatory 14 Response.

$PaidUnits_{prov,t}$ , and IPs' total hours for the period covered by ProviderOne. These data cover all IPs and Agency Providers for months where that provider was paid for units provided to clients with statuses of "Shared Benefit" on at least one IADL through February 28, 2021.

15. Interface 45 contains the number of units paid, the client to whom the units were provided, the wage rate at which those units were paid (separated out into straight time and overtime), and the provider to whom the payment was made for the period covered by Interface 45 through February 28, 2021. These data are used to identify IP wage information.
16. SSPS data provided in response to SEIU 775 v WA DSHS et al interrogatories 5 and 15 contain, among other variables, the unique Client ID, a unique provider, units paid to the provider, the wage rate for the provider, and a match between the units paid to the provider and the Client ID.<sup>7</sup> These data are used to identify providers assigned to clients, the non-overtime  $HourlyWage_{IP,t}$ ,  $PaidUnits_{prov,t}$ , and IPs' total hours for the period covered by SSPS. DSHS has matched Providers between SSPS and CARE using a method of two matches on the common data elements of Primary Recipient SSN, Service Recipient Name, and Service Recipient Date of Birth. These data cover all matched IPs and Agency Providers for months where that provider was paid for units provided to clients with statuses of "Shared Benefit" on at least one IADL beginning in March of 2014 until the transition to ProviderOne.

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<sup>7</sup> SEIU 775 v WA DSHS et al Interrogatory 4/Interrogatory 5 Shared Benefits Clients and Individual Providers; SEIU 775 v WA DSHS et al Interrogatory 15/Interrogatory 16 Agency Provider (AP) with Shared Benefit.