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17
 18 **IN THE UNITED STATES DISTRICT COURT**
 19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 20 **SAN FRANCISCO DIVISION**

21 **WILLIAM KAPPELMAN,**
 22
 23 Petitioner/Plaintiff,

24 vs.

25 **CALIFORNIA UNEMPLOYMENT**
 26 **INSURANCE APPEALS BOARD,**
 27 **PATRICK HENNING, Director,**
 28 **Employment Development Department, and**
EMPLOYMENT DEVELOPMENT
DEPARTMENT,

Respondents/Defendants.

Case No.: 3:18-cv-03104-RS

SETTLEMENT AGREEMENT TO
DISMISS ACTION AND ~~[PROPOSED]~~
ORDER

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SETTLEMENT AGREEMENT

Petitioner/Plaintiff WILLIAM KAPPELMAN and Respondents/Defendants CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, PATRICK HENNING, and EMPLOYMENT DEVELOPMENT DEPARTMENT (hereafter collectively referred to as "the Parties"), enter into the following Settlement Agreement ("Agreement"):

RECITALS

- A. WHEREAS, on April 16, 2018, Petitioner/Plaintiff William Kappelman filed a Petition for Writs of Mandate and Administrative Mandate pursuant to California Code of Civil Procedure sections 1085 and 1094.5 in the Superior Court of the State of California, County of Alameda;
- B. WHEREAS, on May 24, 2018, Respondents/Defendants California Unemployment Insurance Appeals Board, Employment Development Department, and Patrick Henning removed the action to the United States District Court for the Northern District of California;
- C. WHEREAS, on June 24, 2018, Respondents/Defendants filed an Answer to Petitioner's Petition for Writs of Mandate and Administrative Mandate;
- D. WHEREAS, by Stipulation filed September 7, 2018, the Parties agreed that Mr. Kappelman should be granted leave to file an Amended Petition and Complaint;
- E. WHEREAS, pursuant to the Court's Order filed and served on September 11, 2018, Mr. Kappelman's Amended Petition and Complaint was filed and served on the same date;
- F. WHEREAS, on October 12, 2018, Respondents/Defendants filed a Motion to Dismiss Amended Verified Petition and Complaint for Injunctive and Declaratory Relief pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6);
- G. WHEREAS, on December 6, 2018, the Motion to Dismiss hearing was held and the Parties, through their respective counsel, appeared at the hearing;

1 H. WHEREAS, by Order dated January 31, 2019, the Court denied

2 Respondent/Defendants' Motion to Dismiss but instructed the Parties to meet and confer
3 about how the action should proceed;

4 I. WHEREAS, as instructed by the Court, the Parties have met and conferred and reached
5 an agreement about how the action should proceed;

6 NOW, THEREFORE, to avoid the delay, uncertainty, inconvenience, and expense of
7 protracted litigation of the above claims, and in consideration of the mutual promises and
8 obligations of this Agreement, the Parties agree and covenant as follows:
9

10 TERMS AND CONDITIONS

- 11 1. William Kappelman agrees to dismiss the case known as *Kappelman v. California*
12 *Unemployment Insurance Appeals Board, Employment Development Department, and*
13 *Patrick Henning, Director of the EDD*, 3:18-cv-03104-RS, with prejudice. The Parties
14 agree that the dismissal must be filed within 30-days of the execution of this agreement.
- 15 2. California Unemployment Insurance Appeals Board, Employment Development
16 Department, and Patrick Henning agree to waive collection of any overpayment against
17 Mr. Kappelman.
- 18 3. Each Party agrees to bear their own legal and other costs incurred in this case, including
19 the cost of preparing the administrative record.
- 20 4. The Parties hereto represent and agree that, prior to executing this Agreement, each has
21 had the opportunity to consult with independent counsel concerning the terms of this
22 Agreement.
- 23 5. Each party and signatory to this Agreement represents that it freely and voluntarily enters
24 into this Agreement without any degree of duress or compulsion.
- 25 6. This Agreement is governed by the laws of the United States. The exclusive jurisdiction
26 and venue for any dispute relating to this Agreement is the United States District Court
27 for the Northern District of California sitting in San Francisco, California.
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7. The Parties shall execute any additional documents reasonably necessary to effectuate the intent and purposes of this Agreement.

8. This Agreement constitutes the complete agreement between the Parties and shall not be altered except by writing, executed by all Parties hereto.

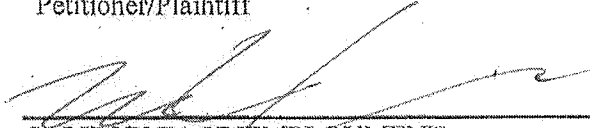
9. Each signatory hereto represent that they have the express authority from the Party they represent to sign for and bind that Party to the terms herein.

10. This Agreement may be executed in counterparts, each of which constitute an original and all of which constitute one and the same Agreement. Facsimile and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

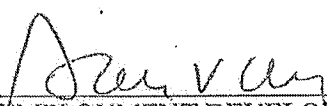
Dated: 3/29/19


WILLIAM KAPPELMAN
Petitioner/Plaintiff

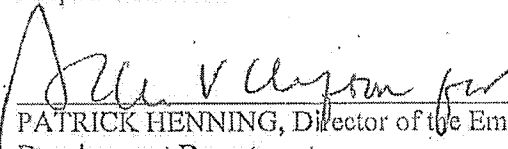
Dated: 3/27/19


CALIFORNIA UNEMPLOYMENT
INSURANCE APPEALS BOARD
Agent: MARK WOO-SUN
Respondent/Defendant

Dated: 3/12/2019


EMPLOYMENT DEVELOPMENT DEPARTMENT
Agent: Sandra Clifton, General Counsel
Respondent/Defendant

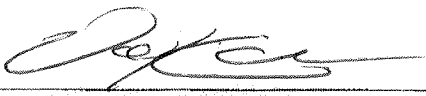
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PATRICK HENNING, Director of the Employment
Development Department
Respondent/Defendant

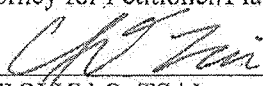
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Approved as to form:

Dated: 3-29-19


VERONICA R. KONTILIS
LEGAL SERVICES OF NORTHERN CALIFORNIA
Attorney for Petitioner/Plaintiff

Dated: 3/22/19


CAROLYN O. TSAI
OFFICE OF THE ATTORNEY GENERAL
Attorney for Respondents/Defendants

~~PROPOSED~~ ORDER

Having considered the Parties' Settlement Agreement, and with good cause appearing,
PURSUANT TO THE AGREEMENT and Federal Rule of Civil Procedure 41(a)(2), IT IS
HEREBY ORDERED that:

1. The action is hereby dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).
2. Respondents/Defendants CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, EMPLOYMENT DEVELOPMENT DEPARTMENT, AND PATRICK HENNING, Director of the Employment Development Department, are prohibited from collecting any overpayment from Mr. Kappelman;
3. The Court agrees to retain jurisdiction to enforce the terms of the Settlement Agreement.

IT IS SO ORDERED.

Dated: 4/2/19


The Honorable Richard Seeberg
United States District Court Judge