

SETTLEMENT AGREEMENT

It is hereby agreed among the Defendants and Plaintiffs (collectively, the “Settling Parties”) in *Janice Page, et al. v. Administrative Director of the Division of Workers’ Compensation, et al.*, Los Angeles Superior Court Case Number BC 625992, Second District Court of Appeal Case Number B282643 (hereafter, “Litigation”) that, for purposes of settling and finally resolving the Litigation and of satisfying the Settling Parties’ shared goals of preventing bias and discrimination within the California workers’ compensation system, but without any admission of liability on the part of Defendants or any agreement or concession by Defendants as to any of Plaintiffs’ allegations in the Litigation, the Settling Parties agree to the following terms:

1. Regulatory Changes: The Settling Parties agree to engage in good faith efforts to obtain promulgation of a regulation or regulations that implement(s) the terms attached as Exhibit A to this agreement.

2. Apportionment Training: The Division of Workers’ Compensation (“DWC”) will continue offering guidance regarding lawful apportionment practices. Among other steps, the DWC will develop a webinar training addressing apportionment, including identifying and preventing possible bias in apportionment determinations, which will be posted to the DWC website, and available for viewing free of charge by any interested person. Said training will address the statutory provisions concerning apportionment, as well as the case law, and in addition, will include content addressing the importance of medical evaluators basing apportionment decisions on the medical evidence applicable to each individual applicant and not based on assumptions, stereotypes, or bias about an applicant’s gender, race, or other protected characteristic. For Qualified Medical Examiners (“QMEs”), completion of the training will provide one hour of continuing education credit. Although the specific content of the training will be in the discretion of Defendants, Defendants agree to meet and confer with Plaintiffs’ counsel concerning the content and in the development of the training. As part of this meet and confer process, Defendants agree to provide a draft of the proposed training to Plaintiffs’ counsel prior to finalization, and will welcome and consider in good faith any input and feedback Plaintiffs’ counsel provide in a timely manner. There will be a presumption that any change suggested by Plaintiffs should be implemented absent a showing by Defendants that the change is not reasonable. Defendants agree to complete this training module and have it posted on the DIR/DWC website within 180 days of the effective date of this Settlement Agreement.

3. Guidance/Protocol on Rating of Industrial Cancer: The Division of Workers’ Compensation will draft and post on its website a Guidance Form, Protocol, or similar such document, which may include a checklist, (hereinafter “Guidance Form”), providing guidance to QME physicians, Disability Evaluation Unit (“DEU”) raters, parties, and workers’ compensation administrative law judges as to how permanent disability resulting from industrial cancer should be properly evaluated and rated under existing law and the AMA Guides. The Guidance Form will include at least one example addressing the rating of an applicant with industrial breast

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cancer. The Guidance Form will also ask QME physicians to inform injured workers that the DWC takes complaints about QMEs and that a complaint form can be found on the DWC website. The exact content of the Guidance Form, including as initially posted and as to any future modifications or updates, will be in the discretion of Defendants. Prior to finalizing the Guidance Form, Defendants will provide a draft to Plaintiffs' counsel for review and comment. Defendants will welcome and consider in good faith any input and feedback that Plaintiffs' counsel provided in a timely manner. There will be a presumption that any change suggested by Plaintiffs should be implemented absent a showing by Defendants that the change is not reasonable. The form and checklist may be updated or modified as necessary as determined in Defendants' discretion during the term of this Settlement Agreement to comply with any regulatory changes, or for other reasons. Use of the Guidance Form and checklist will not be required or mandatory for any evaluating physician, and the form will not and does not replace the applicable provisions of the Labor Code or the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment (5th Edition) with respect to the determination of impairment resulting from industrial cancer. The Guidance Form, and checklist if applicable, will be posted on the DWC website within 180 days of the effective date of this Settlement Agreement. The Guidance Form will also be provided to DEU raters at least once per year along with instructions about its purpose and use.

4. Anti-bias Training for QME Evaluators: If regulatory requirements applicable to Qualified Medical Examiners are modified to include anti-bias training as part of the initial and/or continuing education required for certification, such training content or materials will include at least one example of potential gender bias in a fictitious evaluation that makes an apportionment rating based on an assumption about a risk factor related solely to an applicant's female sex or gender, as well as at least one example about a breast cancer rating. The training will include a self-assessment or test to enhance the learning process and to assist QMEs in understanding how to apply what they learn from the training in practice. Defendants will create such training content or materials within 180 days of the effective date of the regulations.

5. Training for Workers' Compensation Judges: The Division of Workers' Compensation will contract with an outside consultant or vendor to create an effective interactive training¹ program that WCJs would need to complete annually, covering information regarding (i) the new Guidance for determining impairment ratings for industrial cancer; (ii) the approval process to evaluate settlements for nondiscrimination, the possibility of discrimination in the evaluation and rating process, and ordering development of the record where necessary; and (iii) the standards for evaluating and, where necessary, rejecting Qualified Medical Examiner reports. DEU raters will also be required to view the training annually. Defendants will provide Plaintiffs with notice of the outside consultant or vendor once that entity or person is selected. There will be a presumption that any objection raised by Plaintiffs should be acted upon absent a

¹ An effective interactive training includes, as examples, the types of training methods described in 2 CCR 11024(a)(2)(A) through (D), but is not limited to those forms of instruction; nor are the terms of this Agreement intended to be defined by or to incorporate by reference the provisions that regulation.

showing by Defendants that the objection is not reasonable. The instruction shall include questions that assess learning, skill-building activities that assess the trainee's application and understanding of the content learned, and hypothetical scenarios about the three topics referenced above this paragraph and unconscious bias, each with one or more discussion questions so that trainees remain engaged in the training. Examples include pre- or post-training quizzes or tests, small group discussion questions, discussion questions that accompany hypothetical fact scenarios, use of brief scenarios discussed in small groups or by the entire group, or any other learning activity geared towards ensuring interactive participation as well as the ability to apply what is learned to the trainee's work. Although the specific content of the training and materials will be in the discretion of Defendants, Defendants agree to meet and confer with Plaintiffs' counsel concerning the content of the training and to consider constructive input and feedback submitted in a timely manner. There will be a presumption that any change suggested by Plaintiffs should be implemented absent a showing by Defendants that the change is not reasonable. Defendants will also make good faith efforts to include a live (in person) training addressed to at least one of the three topics referenced above in this paragraph, and/or to the topic of unconscious bias (or identifying and preventing bias, or similar such topic), as part of the annual training conference for workers' compensation administrative law judges.

6. Data on Breast Cancer Cases: Defendants agree to provide data to Plaintiffs concerning workers' compensation cases alleging breast cancer as an industrial injury as follows:

- a) Within 120 days of the date that this Agreement is signed, using available data contained within the WCIS system, Defendants will generate a list (as is possible to determine from the WCIS data) of all breast cancer industrial injury cases reported into the WCIS system from January 1, 2014 through September 1, 2019. This list will be generated by using data from the First Report of Injury (FROI), including the Injury Code and Injury Description, cross-referenced with data from the medical billing database containing diagnosis codes, so as to identify cases that appear from the WCIS data to be breast cancer/industrial injury cases (i.e., as distinct from other types of industrial injuries suffered by individuals who coincidentally also happen to have had breast cancer at some point). The list will be produced in Excel spreadsheet or similar format. This list will have the names of the injured workers, social security numbers, and other personally identifying information removed.
- b) Using the list of likely breast cancer/industrial injury cases generated from the WCIS FROI and medical billing databases, Defendants will also provide information on the spreadsheet for each such case, if available, concerning any disposition reported in a Subsequent Report of Injury (SROI) in the WCIS. Such information in the SROI, when provided, indicates by code number simply whether the case was resolved by Compromise & Release, Stipulations and Request for An Award, or other manner of disposition. The information reported in the SROI does not include any information concerning permanent disability ratings.

c) Using the list of likely breast cancer/industrial injury cases generated as indicated above, and to the extent available data allows, Defendants will cross-reference claims numbers and/or social security numbers with data in the workers' compensation Electronic Adjudication Management System (EAMS) to determine whether any case was filed in EAMS for the breast cancer/industrial injury. If so, Defendants will review the EAMS records to determine if there has been a disposition of the case, and if so, if the permanent disability rating assigned to the breast cancer injury can be determined from the records. If so, the manner of disposition (e.g., Compromise and Release, or Stipulations With Request for Award, Findings & Award, etc.), the date of disposition, and the permanent disability rating assigned or stipulated to for the breast cancer injury, will be provided as part of the data produced on the spreadsheet or other similar document. In addition, Defendants will also cross-reference claim numbers and/or social security numbers for the breast cancer/industrial injury cases with the records of the Disability Evaluation Unit (DEU) to determine if there is any available DEU rating available for the breast cancer injury. If so, this information will also be provided on the spreadsheet or similar such document.

d) Defendants will supplement the breast cancer/industrial injury data, as summarized above in this paragraph, 12 months after the original data production, 12 months after the second data production, and 12 months after the third production (resulting in four total data productions), reporting any new breast cancer/industrial injury cases input into the WCIS system subsequent to the first set of data, and also reporting any additional dispositions and related supplemental information on the cases reported in the earlier data sets.

e) If Plaintiffs identify any issue(s) of concern with respect to the data during the term of this Agreement, by so notifying Defendants in writing, Defendants agree to arrange one or more meetings, as necessary, with Plaintiffs or their representatives, for the purpose of meeting and conferring in good faith with respect to the concerns raised, including with respect to the content and significance of the data and whether any response or remedial action is warranted.

7. Evaluation: The Settling Parties will request that the Commission on Health and Safety and Workers' Compensation (CHSWC) evaluate the effectiveness of these settlement terms in CHSWC Annual Reports covering the performance of the California workers' compensation system, available here: <https://www.dir.ca.gov/chswc/AnnualReportpage1.html>.

8. Dismissal with Prejudice of Appeal: In consideration for the agreements made herein, the Settling Parties understand and agree that Plaintiffs will request dismissal with prejudice of the appeal filed in the litigation, which is currently pending in the Second District Court of Appeal, Case No. B282643 within 14 days of the execution of this agreement by all Settling Parties.

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9. Term of Agreement: The term of this Settlement Agreement will be four years from the last date of all Settling Parties' signature on the Settlement Agreement ("effective date").

10. Enforceability:

A. Notice, Informal Conciliation, and Opportunity to Cure. If Plaintiffs contend that any provision of this Settlement Agreement has been breached by Defendants, Plaintiffs will provide formal notification of such alleged breach to Defendants, in writing, by notifying via electronic mail at least the following individuals: the Director of DIR, the Administrative Director of the DWC, Chief Counsel of the DWC; and Chief Counsel of the Office of the Director Legal Unit ("Notice of Alleged Breach"). The Notice of Alleged Breach shall specify the specific provisions of this Agreement that Defendants are alleged to have breached, and shall also provide sufficient underlying factual detail so as to provide actual notice to Defendants of the specific nature and circumstances of the alleged breach. Following transmission of such Notice of Alleged Breach, the Settling Parties agree that they will engage in a process of Informal Conciliation in an attempt to resolve the issues presented by Plaintiffs, which process shall include, at a minimum, a face to face meeting among representatives of Plaintiffs and Defendants and further dialogue and discussion as necessary for a minimum period of at least 30 days before any further action may be taken by Plaintiffs. Defendants shall have the right and opportunity to cure any alleged default or breach within said 30-day period following the Notice of Alleged Breach, and if Defendants do so, no further action may or shall be taken by Plaintiffs. Said right and 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 Defendants.

B. Mediation. If the Parties are unable to resolve their differences in the Informal Conciliation process, the parties agree to arrange for, schedule and participate in a formal mediation, the cost of which will be borne equally by Defendants (50 percent) and Plaintiffs (50 percent). The purpose of the formal mediation shall be for Defendants and Plaintiffs to participate in good faith, and to attempt to resolve all differences constructively and cooperatively without further dispute or adversarial action.

C. Jurisdiction by Alameda County Superior Court. If, and only if, the parties are unable to resolve the issues raised in a Notice of Alleged Breach through the Informal Conciliation, Opportunity to Cure, and Formal Mediation processes, and if and only if, Plaintiffs allege a material breach of this Agreement, Plaintiffs may file a breach of contract action to enforce the terms of this Agreement, as against an alleged material breach only, in the Superior Court of Alameda County. The parties expressly agree that the Court shall have jurisdiction only over alleged material breaches of this Agreement (including the jurisdiction to determine whether an alleged breach is material), and only

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pursuant to, and subject to, the express terms of this Agreement. The Court does not, and shall not, have any inherent or other basis of jurisdiction over any of the parties or issues in this Action, or over any of the underlying facts and circumstances as alleged in the Action; the Court shall have jurisdiction only as expressly agreed to and provided in this Agreement.

11. No Admission of Liability. This Agreement is not, and shall not be construed as, any admission of liability or wrongdoing by Defendants; nor is it nor shall it be construed as any agreement by Defendants that the claims made in the litigation had merit.


12. Fees and Costs: Defendants deny that Plaintiffs have any right to attorneys' fees, costs and expenses. Nevertheless, Defendants agree to pay Plaintiffs' counsel the total sum of \$175,000.00 (one hundred seventy-five thousand dollars and no cents) in full, complete and final resolution of the claim for attorneys' fees, costs and expenses made in the Litigation. Said sum shall be paid within 90 days of the Effective Date of this Agreement. No additional attorneys' fees, costs or expenses may be claimed or shall be owed at any time by any of the Settling Parties pursuant to or as a result of this Agreement or the commitments made herein.

13. Effective Date. The effective date of this Agreement shall be October 1, 2019.

WORKERS' COMP
SIGNATURES
EXECUTIVE™
A SEMIMONTHLY PUBLICATION FOR THE WORKERS' COMP EXECUTIVE

For Plaintiffs:

Date: 9-21-2019



Janice Page, Plaintiff

Date: _____

Dorene Hansen, Plaintiff

Date: _____

Leticia Gonzalez, Plaintiff

Date: _____

For Service Employees International Union
California State Council, Plaintiff

(Signatures continue on next page)

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For Plaintiffs:

Date: _____

Date: 9/20/19

Date: _____

Date: _____

Janice Page, Plaintiff


Dorene Hansen, Plaintiff

Leticia Gonzalez, Plaintiff

For Service Employees International Union
California State Council, Plaintiff

(Signatures continue on next page)

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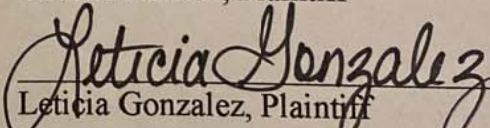
Date: _____

Janice Page, Plaintiff

Date: _____

Dorene Hansen, Plaintiff

Date: 10-02-19



Leticia Gonzalez, Plaintiff

Date: _____

For Service Employees International Union
California State Council, Plaintiff

(Signatures continue on next page)

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For Plaintiffs:

Date: _____

Janice Page, Plaintiff

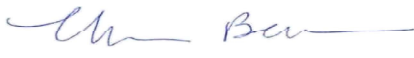
Date: _____

Dorene Hansen, Plaintiff

Date: _____

Leticia Gonzalez, Plaintiff

Date: 10/10/2019



For Service Employees International Union
California State Council, Plaintiff
Nicole Berner, SEIU General Counsel

(Signatures continue on next page)

PUBLIC COUNSEL

Date: 10/20/19

Kathryn A. Eidmann
Kathryn A. Eidmann
Counsel for All Plaintiffs

Date: _____

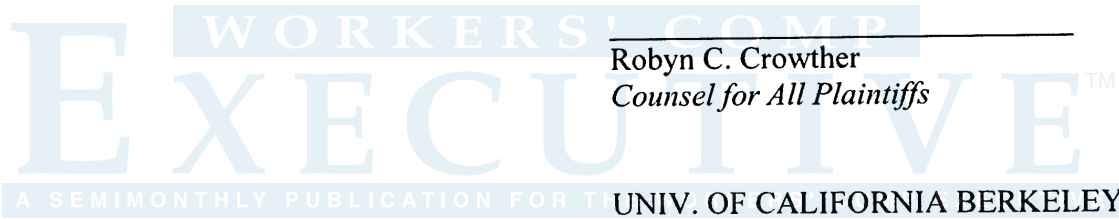
EQUAL RIGHTS ADVOCATES

Jennifer Reisch
Counsel for All Plaintiffs

Date: _____

STEPTOE & JOHNSON LLP

Robyn C. Crowther
Counsel for All Plaintiffs



Date: _____

Catherine Fisk
Counsel for All Plaintiffs

Attorney for All Plaintiffs

For Defendants:

DEPARTMENT OF INDUSTRIAL RELATIONS

Date: _____

Victoria Hassid
Chief Deputy Director
Department of Industrial Relations

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PUBLIC COUNSEL

Date: _____

Kathryn A. Eidmann
Counsel for All Plaintiffs

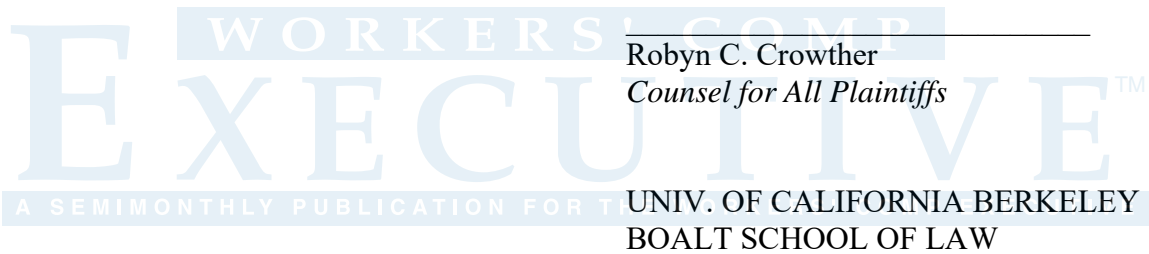
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Counsel for All Plaintiffs

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Robyn C. Crowther
Counsel for All Plaintiffs

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Catherine Fisk
Counsel for All Plaintiffs

Attorney for All Plaintiffs

For Defendants:

DEPARTMENT OF INDUSTRIAL RELATIONS

Date: _____

Victoria Hassid
Chief Deputy Director
Department of Industrial Relations

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PUBLIC COUNSEL

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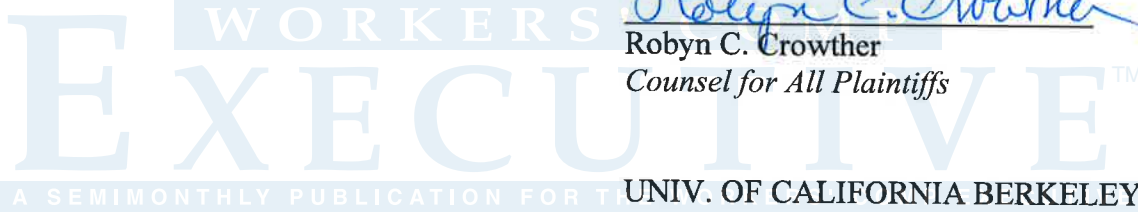
Jennifer Reisch
Counsel for All Plaintiffs

Date: _____

STEPTOE & JOHNSON LLP



Robyn C. Crowther
Counsel for All Plaintiffs



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BOALT SCHOOL OF LAW

Date: _____

Catherine Fisk
Counsel for All Plaintiffs

Attorney for All Plaintiffs

For Defendants:

DEPARTMENT OF INDUSTRIAL RELATIONS

Date: _____

Victoria Hassid
Chief Deputy Director
Department of Industrial Relations

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PUBLIC COUNSEL

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Kathryn A. Eidmann
Counsel for All Plaintiffs

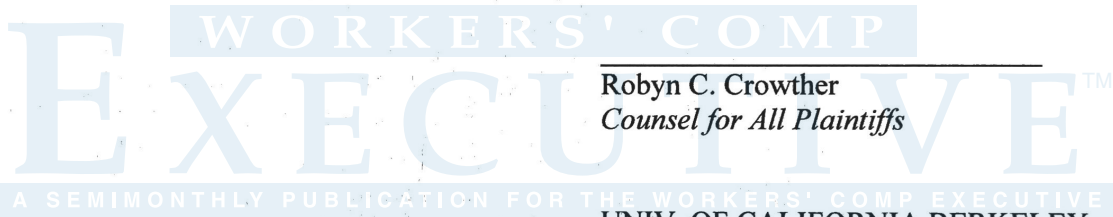
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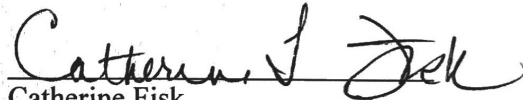
STEPTOE & JOHNSON LLP



Robyn C. Crowther
Counsel for All Plaintiffs

UNIV. OF CALIFORNIA BERKELEY
BOALT SCHOOL OF LAW

Date: 10/1/2019



Catherine Fisk
Counsel for All Plaintiffs

Attorney for All Plaintiffs

For Defendants:

DEPARTMENT OF INDUSTRIAL RELATIONS

Date: _____

Victoria Hassid
Chief Deputy Director
Department of Industrial Relations

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PUBLIC COUNSEL

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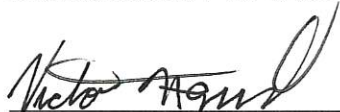
Catherine Fisk
Counsel for All Plaintiffs

Attorney for All Plaintiffs

For Defendants:

DEPARTMENT OF INDUSTRIAL RELATIONS

Date: 9/23/19 _____



Victoria Hassid
Chief Deputy Director
Department of Industrial Relations

(Signatures continue next page)

Date: _____

Victoria Hassid
For the Department of Industrial Relations

Date: _____

George Parisotto
Administrative Director
Department of Industrial Relations
Division of Workers' Compensation

Date: _____

George Parisotto
For the Division of Workers' Compensation

Date: 9/20/19



Julie Su
Secretary,
Labor and Workforce Development Agency

Date: _____


Kim E. Card
Acting Chief Counsel
Department of Industrial Relations
Office of the Director Legal Unit
Counsel for All Defendants

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A SEMIMONTHLY PUBLICATION

Date: _____

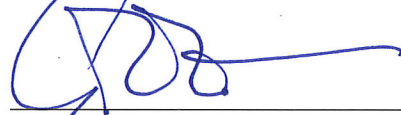
Victoria Hassid
For the Department of Industrial Relations

Date: 9/20/19



George Parisotto
Administrative Director
Department of Industrial Relations
Division of Workers' Compensation

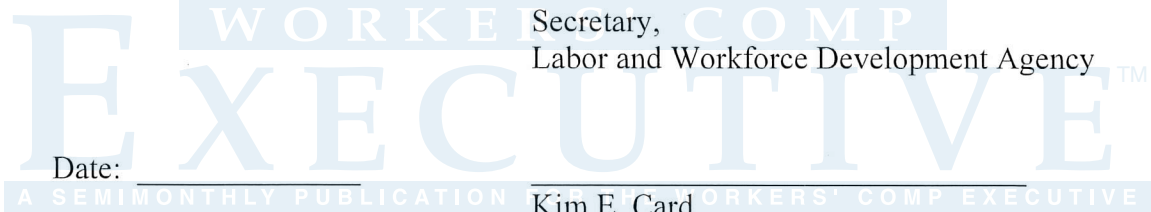
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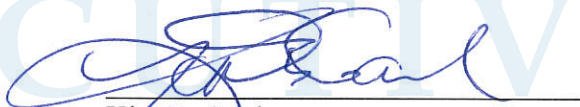
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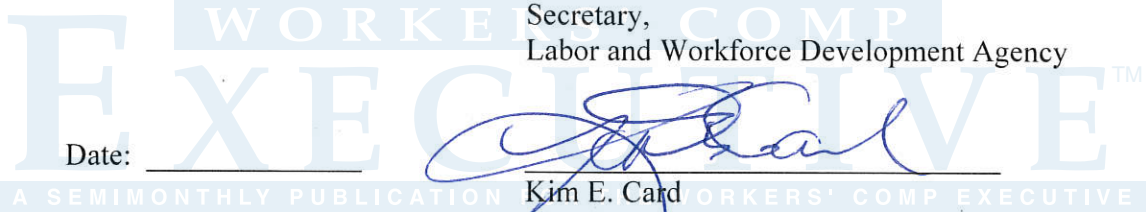


Exhibit A

Regulatory terms the Settling Parties commit to drafting and supporting include:

1. Required anti-bias training for Qualified Medical Examiners, as part of both the initial certification process and the continuing education training that is required in two-year cycles for recertification.
2. Inclusion of a certification of nondiscrimination in the standard Qualified Medical Examiner form.
3. Required Division of Workers' Compensation review, annually, as part of QME recertification, disciplinary, or monitoring procedures, of a sample of Qualified Medical Examiner reports to identify whether evidence of bias exists within the sampled reports.

