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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11

12 RENEE OKAMURA; KATHRYN DIN;
and LEGAL AID AT WORK,

13 Plaintiffs,

14 v.

15 EMPLOYMENT DEVELOPMENT
16 DEPARTMENT; NANCY FARIAS, in her
individual and official capacities; GRECIA
17 STATON, in her individual and official
capacities; and DOES 1 through 10,
18 inclusive,

19 Defendants.

Case No.

COMPLAINT

Jury Trial Demanded

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1 **INTRODUCTION**

2 1. Unemployment insurance has always been a safety net for workers who have
3 lost their jobs through no fault of their own. But in 2020, unemployment insurance
4 became perhaps *the* most important safety net program that Americans relied on for
5 financial stability during the depths of the pandemic and associated economic shock.
6 Governments turned to traditional unemployment insurance and newly created Pandemic
7 Unemployment Assistance as a way to keep Americans housed, fed, and financially afloat.
8 Officials encouraged claimants to file for unemployment benefits, and Californians did so
9 in large numbers. Around 20 million claims were filed with the state’s Employment
10 Development Department between 2020 and 2022.

11 2. Initially, most claimants who filed for unemployment benefits in California
12 were paid those benefits, even when the EDD flagged a potential eligibility issue with the
13 claim. In the last three years, the EDD has reviewed these millions of claims retroactively.
14 In many cases, the EDD has decided—correctly or wrongly—that claimants were not
15 eligible for benefits they received long ago, benefits that claimants have typically already
16 spent on rent, food, health care, and other basic living expenses. In addition, when the
17 EDD decides that a claimant was not eligible, it also often decides that the claimant made a
18 willful false statement—in other words, acted fraudulently—when applying for benefits.
19 These decisions often result in the Department telling claimants that they need to pay back
20 the money they received, plus an additional 30 percent penalty. Overpayment decisions
21 often involve thousands of dollars, an amount many Californians cannot pay without
22 devastating financial consequences.

23 3. To inform claimants of these potentially life-altering decisions, the
24 Department sends claimants notices—called Notices of Determination and Notices of
25 Overpayment (the “Notices”). The process for informing claimants about these
26 consequential decisions violates basic due process protections and claimants’ rights to a
27 “fair hearing” for two core reasons.

28 4. First, the EDD only sends these notices by mail, to a claimant’s last reported

1 address. To meet due process minimums, the EDD must take steps to inform claimants of
2 any decision using methods that an entity genuinely interested in informing claimants
3 would reasonably use to accomplish that goal. Sending these notices only by mail—often
4 years after a claimant has stopped receiving benefits—does not meet that obligation.
5 Because the EDD’s process is so flawed, many claimants never receive the Notices. The
6 mail might not be reliable, or the claimant may have moved or become unhoused in the
7 time since they were accessing benefits. Some claimants only learn that the Department
8 wants them to pay thousands of dollars back months later, when the EDD sends them a
9 collection demand, seizes their tax refund, or initiates garnishment of their wages. At this
10 point, claimants who disagree with EDD’s determination are typically past the 30-day
11 appeal deadline, meaning they will have a burden to show good cause for delay, or, in
12 many cases, will reasonably believe that they have lost their right to contest the EDD’s
13 decision at all.

14 5. The Department, for good reasons, encourages claimants to communicate
15 with it online and by the phone for nearly all other purposes. The Department has
16 claimants’ phone numbers and email addresses. It maintains an online portal through
17 which claimants can access and receive messages. And it is on notice that many claimants
18 will have moved years after they filed their claims. Yet it makes no efforts to obtain
19 updated mailing addresses, and it makes no effort to send Notices to claimants by email,
20 phone, or the online portal.

21 6. Second, even when Notices are received, these Notices are written in a way
22 that makes them virtually unintelligible to the average claimant. Due process and the right
23 to a fair hearing requires the EDD to tell claimants: (1) what the Department has decided,
24 (2) why it has made the decision, (3) the facts it has relied upon to make its decision,
25 (4) the consequences of the decision, and (5) a claimant’s options for how to challenge the
26 decision. To comply with due process, the EDD would have to provide this information in
27 a manner that can actually be understood by claimants, who are regular Californians, not
28 attorneys and technocrats steeped in the byzantine terminology of unemployment

1 insurance. The EDD’s Notices entirely fail to provide these core pieces of information to
2 claimants. Claimants trying to read these determinations regularly end up bewildered and
3 confused—not educated and informed. As discussed in greater detail below, the Notices
4 violate claimants’ due process rights because they:

- 5 • use legal jargon and other complex language written at or above a college
6 level;
- 7 • omit key information, such as when the Department tells claimants that they
8 “gave the Department incorrect information, or withheld information,” but
9 fail to specify what incorrect information was provided (or withheld), or
10 when that information was provided (or withheld);
- 11 • include false and misleading information about the law and claimants’ rights;
- 12 • bury information about the right to appeal; and
- 13 • use illegible formatting that makes it difficult for claimants to understand the
14 information in the Notices.

15 7. Without clear, accurate information, claimants cannot make an informed
16 decision about whether to exercise their right to have the EDD’s decision reviewed. And
17 even if a claimant does take advantage of the right to review, they are denied the ability to
18 prepare for the hearing effectively. How are claimants supposed to prepare effectively for
19 an appeal hearing if, for example, they have only been told that they “gave the Department
20 incorrect information, or withheld information,” but have not been told what information
21 they are accused of giving (or withholding)? Or if they are told that they did not explore
22 “all reasonable solutions” to a problem at work before quitting, but are not told what
23 solutions the Department thinks the claimant did explore, or what solutions the Department
24 thinks the claimant should have explored, but failed to explore? Or if they have been told
25 the incorrect legal standard governing the eligibility issue in question? Or if they cannot
26 understand the issues decided, because the notice is written in highly technical language?

27 8. The failure to notify claimants of this crucial information is particularly
28 egregious because the EDD’s decisions are frequently wrong—both legally and as a matter

1 Alameda County and because the California Attorney General has an office in Alameda
2 County.

3 **PARTIES**

4 14. Plaintiff Renee Okamura lives in Alameda County. Ms. Okamura had
5 worked for an outdoor retailer as a cashier. She applied for unemployment insurance
6 benefits after she was furloughed in April 2020. The company re-opened in mid-
7 June 2020, but it was not safe for Ms. Okamura to work in person because a chronic health
8 condition put her at high risk for complications from COVID-19. Once Ms. Okamura was
9 told about the reopening, she immediately told her store manager about her concerns, and
10 requested a leave of absence. The company understood, and put her on an unpaid leave of
11 absence. Plaintiff Okamura was willing to perform remote work, which she had done in
12 the past, and she looked for remote work while she was receiving benefits. She even
13 performed some remote work when it was offered to her. In February 2021, she spoke
14 with an EDD representative about her claim; her benefits had been held for multiple
15 months before the interview. The representative asked her about her availability to work.
16 The representative concluded that Ms. Okamura was able and available to work, and
17 Ms. Okamura's held benefits were released to her. She had two additional interviews with
18 EDD representatives in 2021. In early May 2022, Ms. Okamura received yet another call
19 from an EDD representative. This representative was hostile and accusatory during the
20 interview. Ms. Okamura left the interview stunned; she thought it was strange the
21 interviewer never asked if she was able and available to work. A few weeks later, on
22 May 23, 2022, the Department sent a Notice of Determination to Plaintiff Okamura's
23 home address. The Notice said she was ineligible because: "You cannot work for health
24 reasons." The Notice also stated, without further detail, that "you gave the Department
25 incorrect information, or withheld information, concerning your ability to work." On or
26 about June 21, 2022, Ms. Okamura received a Notice of Overpayment stating that she
27 owed the Department \$4,945.20, including a penalty of \$1,141.20 because [sic] "wilful
28 false statements were made or relevant information was withheld." The Notices were

1 confusing for Ms. Okamura. When she received the Notice of Determination, because the
2 Notice was so vague, Ms. Okamura did not understand what false statement the EDD was
3 accusing her of making (or what fact she was purportedly withholding). Plaintiff Okamura
4 appealed both of these notices immediately. In her appeal of the Notice of Overpayment,
5 Ms. Okamura wrote:

6 Since the 5-23-2022 determination letter provides no specifics as to what
7 information regarding my ability to work is incorrect or what information
8 was withheld, I am at a loss as to how to respond in a meaningful way to this
9 general allegation. I believe the allegation is false and incorrect. What
10 incorrect information did I give the Department? What information did I
11 withhold?

12 She had her appeal heard before Administrative Law Judge Janette Holmlund on May 25,
13 2023. On June 5, 2023, Judge Holmlund issued decisions concluding that Ms. Okamura
14 was able to work, had made no false statements, and had not been overpaid by the EDD.

15 15. Plaintiff Kathryn Din was working at a hotel in downtown San Francisco
16 when the COVID-19 pandemic hit. Ms. Din was put on a temporary layoff after the hotel
17 closed due to the shutdown, and shortly after she applied for unemployment insurance
18 benefits, with an effective date of March 15, 2020. She received no wages for the rest of
19 2020, relying on unemployment insurance benefits—along with emergency leave
20 payments from the city under the Public Health Emergency Leave Ordinance and
21 supplemental disaster pay from her employer—to support herself. In late 2020, she was
22 permanently laid off, after which she received severance pay and unpaid vacation time.
23 Despite most of these payments not being “wages” for purposes of the unemployment
24 insurance program, Ms. Din diligently reported these payments to the EDD in her weekly
25 continuing claim certification forms. In 2021, she continued receiving unemployment
26 insurance benefits under the federal extension program. In April 2021, she found a part-
27 time job. She reported these wages to the EDD in her weekly certification forms. Around
28 this time, Ms. Din stopped receiving unemployment insurance benefits.

159 16. In late 2021, Ms. Din moved to New York City to help care for her parents.
160 She put in place a forwarding address with the U.S. Postal Service to receive mail sent to

1 her San Francisco address. In January 2022, she received a notice at her New York
2 address that informed her that she would be called by the EDD regarding her “eligibility”
3 for benefits, and in February 2022, she was called by an EDD representative to ask for
4 wage information from 2020 and 2021. The representative gave her a fax number to which
5 she could send the information. Ms. Din reached out to her former employer for accurate
6 income information, and faxed this information to the EDD on February 15, 2022. The
7 EDD issued three Notices of Determination and a Notice of Overpayment in March 2022,
8 but Ms. Din did not receive these notices in the mail. The EDD sent yet another Notice of
9 Determination to her California address in May. On May 12, 2022, Ms. Din received a
10 Collection Notice from the EDD, stating that she owed the EDD \$2,645.50 “on your
11 Unemployment Insurance (UI), Disability Insurance (DI) or Paid Family Leave (PFL)
12 benefit overpayment.” This Notice was addressed to her San Francisco address, but
13 forwarded to her New York address. These collection letters do not provide any
14 explanation for why the EDD was requiring her to pay back her benefits. At this time, she
15 had not received the Notice of Determination or Notice of Overpayment explaining the
16 legal and factual grounds of this liability.

17 17. After receiving the Collection Notice, Ms. Din contacted Legal Aid at Work
18 to assist her. Also around this time, she contacted the EDD Benefit Overpayment
19 Collection Section, where a representative informed her that the EDD had produced
20 Notices of Determination and Notices of Overpayment regarding her claim, but that they
21 were unable to forward copies of these documents to her directly. Ms. Din filed an appeal
22 of the Notices in late May 2022. Because she filed the appeal late, the EDD continued to
23 engage in collection efforts. She received a Final Collection Notice on June 10 that was
24 addressed to her New York address. On June 13, 2022, she received a Notice of Intent to
25 Offset Your Federal Income Tax Refund for the above amount. On July 11, 2022, she
26 received a letter entitled Benefit Overpayment Statement of Amount Due, and she received
27 an identical letter on September 6, 2022. Ms. Din did not see any Notices of
28 Determination with regards to her work at the hotel, nor the Notice of Overpayment, until

1 she had access to the hearing appeal file on October 5, 2022, months after she first began
2 receiving collection notices. On November 1, 2022, she received a Notice of Judgement
3 Filed regarding the overpayment, despite the fact that she still had an appeal pending. On
4 November 17, 2022, Ms. Din had an appeal hearing before Administrative Law Judge
5 Michael Elliott. On November 21, 2022, Judge Elliott issued a decision in her case,
6 finding that Ms. Din had good cause for the delay in appealing the March 2022 Notices of
7 Determination, and had accurately reported all her wages while receiving benefits. Judge
8 Elliot cancelled the entirety of the overpayment originally issued against her.

9 18. Plaintiff Legal Aid at Work is a nonprofit legal services provider based in
10 San Francisco, California. Legal Aid at Work’s mission is to help people understand and
11 assert their workplace rights, and advocate for employment laws and systems that help
12 those most in need. Legal Aid at Work regularly receives calls and other requests for
13 assistance and representation from claimants who have received Notices from the
14 Department and do not understand them, or from claimants who have only just learned
15 about a determination the Department made months or years ago. Multiple staff members
16 spend time providing advice to these claimants, helping them decipher what their Notice is
17 saying, and advising them about their right to appeal and how to navigate the appeals
18 process. Efforts expended to help claimants who did not receive their Notices, or do not
19 understand the Notices they received, divert Legal Aid at Work from allocating its
20 resources to other issues facing workers in California.

21 19. Defendant Employment Development Department (“EDD” or “Department”)
22 is the agency of the State of California responsible for administering numerous benefits
23 programs for low-income, unemployed, and other Californians, including California’s
24 unemployment insurance program.

25 20. The Employment Development Department maintains offices throughout the
26 state of California. One of the EDD’s offices is in Oakland, California. The Oakland
27 office mails and sends Notices of Determination to claimants across the state.

28 21. Defendant Nancy Farias is the Director of the Employment Development

1 Department. Director Farias supervises and has authority over the activities of EDD,
2 including its administration of the UI program.

3 22. Defendant Grecia Staton is the Deputy Director of the Employment
4 Development Department's Unemployment Insurance Branch. Deputy Director Staton
5 supervises and has authority over the administration of the EDD's UI program. Director
6 Farias and Deputy Director Staton will be referred to together with EDD as "EDD" or
7 "Department."

8 23. Plaintiffs do not know the true names and capacities of those Defendants
9 sued herein as DOES 1 through 10, inclusive, and therefore sues those Defendants by such
10 fictitious names. Plaintiffs will amend this Complaint to allege the true names and
11 capacities of the Defendants sued herein as DOES 1 through 10 whenever they are
12 ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of the
13 Defendants acted in concert with each and every other Defendant, intended to and did
14 participate in the events, acts, practices, and courses of conduct alleged herein, and
15 proximately caused damage and injury thereby to Plaintiffs as alleged herein.

16 **FACTUAL ALLEGATIONS**

17 **I. BACKGROUND**

18 24. The unemployment insurance system is a joint state-federal program
19 governed by the United States Social Security Act.

20 25. California's unemployment insurance ("UI") program is administered by the
21 EDD.

22 26. The unemployment insurance system is designed to provide workers with
23 temporary and partial income replacement when they lose their jobs through no fault of
24 their own.

25 27. The system, which was created in response to the Great Depression, helps
26 protect workers from the immediate harms caused by their lost income, and bolsters the
27 economy by providing unemployed workers with funds that flow immediately back into
28 the economy.

1 28. Millions of California residents rely on unemployment insurance during any
2 given year.

3 29. Californians from all backgrounds rely on the unemployment insurance
4 system. According to the EDD’s demographic data, of those people who applied for
5 unemployment insurance in California since 2020:

- 6 • 11.6 percent have no high school degree or GED;
- 7 • 40.4 percent have only a high school degree or a GED;
- 8 • 23 percent have some post-secondary education, but no post-secondary
9 degree;
- 10 • 6.2 percent have an Associate’s degree;
- 11 • 14.5 percent have a Bachelor’s degree; and
- 12 • 4.2 percent have an advanced degree.

13 30. Californians speak a number of languages other than English. According to
14 data from the Migration Policy Institute, nearly 6.5 million people in California have
15 limited English proficiency—in other words, speak English less than “very well.”
16 According to the Bureau of Labor Statistics’ American Community Survey for 2021, over
17 1,120,000 households in California—8 percent of households—are Limited English
18 Speaking Households.

19 31. Many unemployed Americans have only limited English literacy. According
20 to the report issued for the 2017 Program for the International Assessment of Adult
21 Competencies (“PIAAC”), less than half of Americans have full literacy proficiency. The
22 PIAAC categorizes literacy proficiency into five levels: less than Level 1 through Level 5.
23 “At literacy proficiency level 2 adults can be considered nearing proficiency but still
24 struggling to perform tasks with text-based information.” U.S. Dep’t of Educ., Latest
25 Literacy Results from the PIAAC (2020), <https://perma.cc/FKT9-V3H3>. Less than half of
26 Americans have Level 3 or above proficiency; 33 percent have Level 2 proficiency, and 19
27 have Level 1 or less than Level 1 proficiency. Unemployed Americans had lower scores
28 on average than employed Americans. U.S. Dep’t of Educ., Highlights of PIAAC 2017

1 U.S. Results (2020), <https://perma.cc/EB9D-P7WB>.

2 32. In addition to administering the unemployment insurance program, the EDD
3 also administers Disaster Unemployment Assistance and Pandemic Unemployment
4 Assistance, temporary federal programs enacted to provide income replacement to workers
5 who are not eligible for unemployment insurance benefits.

6 33. To apply for unemployment insurance—and Pandemic and Disaster
7 Unemployment Assistance—a person must file an initial application with the EDD. These
8 applications can be filed through the mail, on the phone, or online at EDD’s website. The
9 EDD encourages applicants to file their claims online, stating on its website, “Save Time.
10 Apply Online.” File for Unemployment Insurance – Overview, Empl. Dev. Dep’t
11 (accessed May 31, 2023), <https://perma.cc/VN55-LE99/>.

12 34. After filing an initial application for unemployment insurance, the claimant
13 must fill out a continuing certification form for each subsequent week that the claimant
14 seeks benefits. These certification forms can be accessed online, over the phone, or filled
15 out in paper and sent in via mail. Again, the EDD encourages applicants to complete their
16 certifications online. The EDD’s website states, “Certify with UI OnlineSM. UI Online is
17 the fastest way to certify for benefits and report work and wages.”

18 35. The Department reviews the information in the claimant’s initial application
19 and their continued certifications to determine whether the claimant is initially eligible,
20 and whether they remain eligible, for benefits.

21 36. At times, the Department also conducts oral eligibility interviews with
22 claimants and their employers. The Department also sends claimants written eligibility
23 questionnaires.

24 **II. THE EDD USES NOTICES OF DETERMINATION AND NOTICES OF**
25 **OVERPAYMENT TO CONVEY HIGHLY CONSEQUENTIAL**
26 **INFORMATION TO CLAIMANTS**

27 37. When the Department concludes a claimant is not eligible for unemployment
28 insurance, it sends out a “Notice of Determination” to the claimant. The Department only
sends Notices of Determination via United States mail to the claimant’s last known

1 mailing address.

2 38. A determination that a claimant is not eligible for benefits usually relates to
3 one of the following core reasons for ineligibility:

- 4 • the claimant is not able and available to work;
- 5 • the claimant voluntarily quit their last employment without good cause;
- 6 • the claimant was fired for misconduct;
- 7 • the claimant refused suitable work without good cause;
- 8 • the claimant did not search for suitable work;
- 9 • the claimant willfully provided false information or withheld material
10 information from the EDD;
- 11 • the claimant did not earn enough during the base period to establish financial
12 eligibility;
- 13 • the claimant was not unemployed or partially unemployed because of
14 continued earnings.

15 39. Sometimes, the Department determines that a claimant is ineligible for
16 benefits and sends a Notice of Determination soon after a claimant initially applies for
17 benefits. Other times, the Department initially approves a claim but then later determines
18 that a claimant was not eligible for the benefits they were paid; in these cases, the
19 Department still sends claimants a Notice of Determination. If the Department determines
20 that a claimant received past benefits for which they were not eligible, and they do not
21 qualify for a waiver of the overpayment, the Department sends a second notice called a
22 “Notice of Overpayment.” As with the Notices of Determination, the Department only
23 sends Notices of Overpayment by United States mail to the claimant’s last known mailing
24 address.

25 40. The Department sometimes sends Notices of Determination and Notices of
26 Overpayment months or even years after the claimant’s initial application, and in many
27 cases even after a claimant has long exhausted their benefits and is no longer in regular
28 communication with EDD.

1 41. A decision that a claimant is not eligible for benefits and a decision that a
2 claimant was overpaid benefits are serious and can have long-term and life-changing
3 financial consequences for claimants. At the very least, a determination that a claimant is
4 ineligible means they can no longer count on having funds to cover essential costs. But
5 such a determination can also mean that a claimant:

- 6 • will not be able access several weeks’ worth of unemployment insurance
7 benefits if they become unemployed at a later date;
- 8 • will have to pay back all benefits they have already been paid, even though
9 they may have used the funds to pay for essential living expenses; and
- 10 • will have to pay a penalty to EDD beyond the amount benefits they received.

11 **III. THE EDD ONLY MAILES NOTICES, EVEN THOUGH THE EDD**
12 **OTHERWISE COMMUNICATES WITH CLAIMANTS BY EMAIL, TEXT**
13 **MESSAGE, AND PHONE CALLS**

14 42. In violation of due process and its obligations under the Social Security Act,
15 the Department fails to provide some UI claimants with notice of the Department’s
16 decisions of ineligibility or overpayment.

17 43. The EDD only sends Notices by mail to the address last provided by the
18 claimant to the Department. Because Notices of Overpayment are often sent months, if not
19 years, after the initial claim is submitted, these addresses are frequently out of date. The
20 Department does not send the Notices in any other form, such as email, text message, or
21 via the online portal that claimants use to certify for benefits, even though it sends similar
22 notices via the portal to Disability Insurance claimants, and even though it strongly
23 encourages claimants to use the online portal to file their claims and do their certifications.

24 44. The U.S. Department of Labor, which regulates unemployment insurance
25 administration, requires state unemployment insurance programs to take “reasonable
26 attempts to notify the individual and other interested parties of an issue” related to
27 unemployment insurance. It advises state agencies that “[r]easonable attempts should
28 include contacting the individual by e-mail or telephone if the state agency has this contact
information.” It further instructs:

1 The state agency must also take reasonable steps to ensure the contact
2 information it has is accurate, which may include notifying claimants at the
3 time of filing of the initial claim that contact and address information must
4 be updated if it changes during the benefit year. E-mail, phone, or other
5 steps to confirm contact information may be necessary particularly if the
6 overpayment is being investigated after the claimant's benefit year ended.

7 Unemployment Insurance Program Letter No. 01-16, Change 1 (Jan. 13, 2017),
8 <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-01-16-change-1>.

9 45. Upon information and belief, the Department does not take steps to verify
10 and/or update a claimant's mailing address where it sends the Notices, such as by checking
11 the claimant's address in other government agencies' databases.

12 46. The EDD's online portal also has a section for Benefit Overpayment
13 Services, the division of EDD that oversees the collection of benefit repayments from
14 claimants. This section of the portal includes a page that allows claimants to access letters
15 sent by mail by the Benefit Overpayment Services section. Notices are not accessible
16 through this portal.

17 47. Claimants who have never received the Notice of Determination or Notice of
18 Overpayment cannot appeal the overpayment using the EDD's instructions even if they
19 learn about the adverse determination or overpayment through other means. The EDD's
20 appeal instructions state that the only way to appeal a decision is to "[m]ail your appeal to
21 the return address shown on the decision notice." Unemployment Ins. Appeals, Empl.
22 Dev. Dep't (accessed June 7, 2023), <https://perma.cc/CK5P-BXVP>. It is not possible to
23 obtain the address that a Notice was sent from on the EDD's website, because the notices
24 are sent from multiple offices throughout the state.

25 **IV. THE EDD'S NOTICES FAIL TO INFORM CLAIMANTS ABOUT THEIR RIGHTS AND OPTIONS**

26 48. Notices are template documents that largely use stock, prepopulated
27 language, as well as standardized formatting.

28 49. Notices vary slightly depending on the type of findings and decisions made

1 by the Department. But the parts of the notices that vary still use stock language from a
2 limited set of pre-written options. These options are published in the EDD's Benefit
3 Determination Guide.

4 50. Upon information and belief, most Notices of Determination contain the
5 same stock language for the majority of the notice.

6 51. The only section of the Notice of Determination that the Department changes
7 in an individual claimant's notice is the description of the reason for the adverse
8 determination or determinations against the claimant. All of these descriptions, however,
9 use stock language with minimal modification related to the claimant's situation.

10 52. Upon information and belief, all Notices of Overpayment contain the same
11 stock language for the majority of the notice.

12 53. The only section of the Notice of Overpayment that the Department changes
13 in an individual claimant's notice is a short description of the reason for the finding of an
14 overpayment—in some cases, this section just refers the claimant to a Notice of
15 Determination already sent to the claimant. Depending on the cause of the alleged
16 overpayment, the notice may also include language related to false statement penalties and
17 waiver of overpayments.

18 54. To fully inform claimants, a Notice should explain five core pieces of
19 information to the claimant:

20 (a) the specific decision (or decisions) the Department has made
21 regarding the person's claim;

22 (b) the facts that support the Department's decision;

23 (c) the law that supports the Department's decision;

24 (d) the practical consequences that the Department's decision has for the
25 claimant; and

26 (e) the steps the claimant can take in response to the decision, including
27 the claimant's right to have an independent review of the decision, and how to effectuate
28 such a review.

1 55. The Notices do not provide these core pieces of information to claimants.
2 Claimants are frequently bewildered and confused and do not understand what the
3 Department has decided or what they can do now that this decision has been made.

4 56. As described more fully below, the Notices fail to provide due process
5 because they fail to inform claimants in four main respects:

6 (a) the Notices omit necessary information;

7 (b) the Notices provide inaccurate or misleading information;

8 (c) the Notices do not provide clear information about the claimant’s
9 right to appeal;

10 (d) the Notices provide necessary information in unintelligible and
11 technical language; and

12 (e) the design and formatting of the Notices make it difficult for
13 claimants to identify and process necessary information.

14 **A. The Department’s Notices Omit Necessary Information**

15 57. The Notices omit necessary information about the decision the Department
16 has made and the factual and legal rationale for the decision.

17 58. On information and belief, Notices of Determination do not disclose facts
18 specific to the individual claimant’s case. Instead, they use generic statements in stock
19 language, modified only to include the name of the employer, a general subject matter, or a
20 date range. As such, the Notices do not specify the exact reason for the determination of
21 ineligibility or the facts supporting the determination.

22 59. For example, when the Department determines a claimant is not eligible
23 because the Department found the claimant willfully provided false information or omitted
24 information relevant to their claim, the Notice says only that “YOU GAVE THE
25 DEPARTMENT INCORRECT INFORMATION, **OR** WITHHELD INFORMATION
26 CONCERNING” [emphasis added], and then refers generally to the category of eligibility
27 issue in question, for example, “your ability to work.”

28 60. Such statements do not tell the claimant:

- 1 • whether the claimant is accused of affirmatively providing false information,
2 or accused of withholding material information;
- 3 • what information was provided (or withheld),
- 4 • when that information was provided (or withheld),
- 5 • what the Department alleges was false about the information provided (or
6 withheld), and
- 7 • why the Department believes any falsity was provided willfully, and not
8 inadvertently.

9 61. On information and belief, when the Department determines that a claimant
10 is not eligible because the Department believes the claimant voluntarily quit without good
11 cause, because the claimant did not do enough to explore alternatives to quitting (another
12 basis of ineligibility under the UI Code), the Department’s stock language for Notices
13 regarding the reasoning behind the determination states in full: “YOU DID NOT
14 EXPLORE ALL REASONABLE SOLUTIONS BEFORE YOU QUIT.” This statement
15 does not tell the claimant:

- 16 • what “solutions” the Department finds the claimant did pursue at work
17 before they quit; or
- 18 • what “solutions” the Department finds the claimant did not pursue but should
19 have pursued in those circumstances.

20 Both facts would be essential for a claimant to pursue an appeal. The failure to pursue
21 alternatives before quitting only negates good cause if there is an “appropriate or feasible
22 alternative for [the claimant] in the circumstances of his complaints and nature of his
23 employment.” (*Rabago v. Unemployment Ins. Appeals Bd.* (1978) 84 Cal.App.3d 204,
24 214.)

25 62. A determination of ineligibility due to misconduct for not performing job
26 duties requires a finding that the claimant’s failure to provide the job duties was
27 intentional, knowing, deliberate, grossly negligent, or repeated.

28 63. On information and belief, when the Department determines that a claimant

1 is not eligible due to misconduct for not performing job duties, the Department’s Notice
2 states: “YOU WERE DISCHARGED FROM YOUR LAST JOB WITH [EMPLOYER
3 NAME] BECAUSE YOU WERE NOT PERFORMING THE DUTIES OF YOUR JOB
4 AS REQUIRED. AFTER CONSIDERING THE AVAILABLE INFORMATION, THE
5 DEPARTMENT FINDS THAT YOU DO NOT MEET THE LEGAL REQUIREMENTS
6 FOR PAYMENT OF BENEFITS.” This statement, however, neither explains what
7 specific duties the Department believes the claimant did not perform, nor why the
8 Department believes the failure to perform those duties was intentional, knowing,
9 deliberate, grossly negligent or repeated.

10 64. On information and belief, the Notices also omit core information about the
11 consequences claimants face because of the EDD’s determinations. For example, the stock
12 Notices of Determination do not inform claimants who the Department concludes made a
13 willful false statement that:

- 14 • the Department will eventually send them a Notice of Overpayment and seek
15 repayment of any benefits paid;
- 16 • the claimant will be required to pay an additional 30 percent penalty;
- 17 • the claimant will not be able to seek waiver of an overpayment because of
18 financial need;
- 19 • this overpayment will not be dischargeable in bankruptcy.

20 65. Often, Notices of Overpayment contain no explanation of why an
21 overpayment is being assessed other than saying “SEE NOTICE OF DETERMINATION
22 DATED [MM-DD-YYYY].”

23 66. On information and belief, Notices of Overpayment typically fail to inform
24 claimants that they may be eligible for a waiver of overpayment, if the overpayment was
25 not their fault and their present financial circumstances merit a waiver. Notices of
26 Overpayment rarely, if ever, explain why the Department believes that the overpayment is
27 the fault of the claimant, which is one of three elements used to determine whether a
28 waiver of overpayment should be granted.

1 **B. The Notices Contain Inaccurate, Misleading, and Confusing**
2 **Information**

3 67. The Notices also provide inaccurate, misleading, and confusing information
4 to claimants about the Department’s decisions on their claims, including about the
5 applicable legal standards. These misleading statements likely cause significant confusion
6 and deter claimants from appealing their Notices even though they have a right to appeal
7 and, in many cases, may have grounds for reversal of the determination.

8 68. For example, on information and belief, Notices of Determination that
9 include a determination of a willful false statement state: “HE OR SHE MUST SUBMIT
10 A CONTINUED CLAIM FORM TO THE FIELD OFFICE TO COVER EACH WEEK
11 AND MEET ALL ELIGIBILITY REQUIREMENTS.” As of the filing of this complaint,
12 however, the EDD does not have open field offices for unemployment insurance
13 claimants—and has not had open offices for over 20 years—and requires claimants to
14 certify for benefits online, by phone, or by mail. *See ABC 7 News ABC, Inc., KGO-TV,*
15 *Should EDD Reopen Unemployment Offices? Right Now They're Shut for Good* (Aug. 20,
16 2021), <https://perma.cc/7KD4-9HCN>.

17 69. On information and belief, the Notices tell claimants who have been
18 determined to have voluntarily quit without good cause: “YOU HAVE FAILED TO
19 SHOW THAT YOU EXPLORED ALL REASONABLE SOLUTIONS BEFORE YOU
20 QUIT.” This statement misstates the law, which only requires that employees take
21 reasonable steps to preserve employment, not that they “explore[] all reasonable
22 solutions.” *See In the Matter of Brenda Smith*, Precedent Decision 514, p. 9 (Cal.
23 Unemployment Ins. Appeals Bd. April 18, 2018) (“An individual who quits without
24 attempting to resolve the work-related dissatisfactions that prompted the leaving is
25 disqualified for benefits. This rule does not require that all possible remedies be
26 exhausted. It is sufficient that the claimant made a reasonable effort to resolve his or her
27 dissatisfactions,”); *In the Matter of Raymond Powers*, Precedent Decision 457 (Cal.
28 Unemployment Ins. Appeals Bd. July 28, 1987).

1 70. On information and belief, the Department provides the same legal
2 explanation in its Notices of Determination to claimants found to have been discharged for
3 misconduct as in those provided to claimants found to have quit for good cause:

4 SECTION 1256 PROVIDES - AN INDIVIDUAL IS DISQUALIFIED IF
5 THE DEPARTMENT FINDS HE VOLUNTARILY QUIT HIS MOST
6 RECENT WORK WITHOUT GOOD CAUSE OR WAS DISCHARGED
7 FOR MISCONDUCT FROM HIS MOST RECENT WORK.

8 SECTION 1260A PROVIDES - AN INDIVIDUAL DISQUALIFIED
9 UNDER SECTION 1256 IS DISQUALIFIED UNTIL HE/SHE,
10 SUBSEQUENT TO THE DISQUALIFYING ACT, PERFORMS
11 SERVICES IN BONA FIDE EMPLOYMENT FOR WHICH HE/SHE
12 RECEIVES REMUNERATION EQUAL TO OR IN EXCESS OF FIVE
13 TIMES HIS OR HER WEEKLY BENEFIT AMOUNT.

14 Including both an explanation of voluntary quitting and misconduct is unnecessary and
15 invites confusion. Claimants found to have voluntarily quit may incorrectly believe they
16 have been accused of committing misconduct, and vice versa.

17 **C. The Notices Fail to Provide Clear Information About the Right to
18 Appeal**

19 71. The Department’s Notices do not adequately inform claimants of their right
20 to appeal the determination. In part this is because appeal information is typically buried
21 below language that makes it appear as though the EDD’s decision is final, and the
22 claimant will receive a harsher penalty if they do not immediately comply with it.

23 72. For example, on information and belief, Notices of Overpayment state on the
24 first page:

25 YOU ARE LIABLE TO REPAY THIS OVERPAYMENT. FAILURE TO
26 DO SO MAY RESULT IN LEGAL ACTION. MAKE YOUR CHECK OR
27 MONEY ORDER PAYABLE TO EMPLOYMENT DEVELOPMENT
28 DEPARTMENT, INCLUDE SOCIAL SECURITY NUMBER, AND SEND
IT TO THE FIELD OFFICE AT THE ADDRESS SHOWN ABOVE.

Information about the possibility of appeal is buried beneath this instruction to pay the
overpayment—sometimes this information ends up on the second page of the notice. The
language of the Notices inaccurately suggests that claimants have no option other than to
pay back money owed, and that they must do so immediately or face legal action. Some
claimants incorrectly, but reasonably, believe that they are being charged with criminal

1 conduct. It also commands claimants to pay by check or money order at the time they
2 receive a Notice, even though, in fact, the Department has a policy of abstaining from
3 collection efforts during the pendency of an timely filed appeal and provides claimants
4 with a number of options to pay back an overpayment, including through an installment
5 plan, once an appeal is final or the deadline for a timely appeal has passed.

6 **D. The Notices Are Not Understandable to Most Claimants**

7 73. Whether claimants can understand a Notice depends on more than the
8 accuracy of the words used. The language must also be readable. There is a robust set of
9 best practices on how to provide information to users in a plain way. Indeed, the
10 Department of Labor encourages the use of plain language, and recognizes that “concise,
11 reader-focused information helps reduce burden on claimants and results in a more positive
12 customer experience.” U.S. Dep’t of Labor, Empl. & Training Admin, Use of Plain
13 Language in Claimant Notices (accessed June 7, 2023), <https://perma.cc/W4LX-U4R9>.

14 These plain language practices include:

- 15 • using simple terms;
- 16 • providing easy to understand definitions of complex terms;
- 17 • using the active voice;
- 18 • using action-oriented language;
- 19 • using short sentences;
- 20 • avoiding the use of conditional statements; and
- 21 • using short sections.

22 74. The Department’s Notices do not implement these practices. They use
23 technical language, passive voice, long sentences, and unnecessary legal terminology.
24 Regularly, the subject of a sentence is a citation to the Unemployment Insurance Code.
25 The result is that the Notices are functionally incomprehensible to many claimants.

26 75. For example, when explaining the legal rationale and consequences of a
27 determination of a willful false statement, the Notices state:

28 SECTION 1257A PROVIDES - AN INDIVIDUAL IS DISQUALIFIED IF

1 HE WILLFULLY MAKES A FALSE STATEMENT OR WITHHOLDS
2 RELEVANT INFORMATION TO OBTAIN BENEFITS. SECTION 1260D
3 PROVIDES -AN INDIVIDUAL DISQUALIFIED UNDER
4 SECTION 1257A IS INELIGIBLE FOR BENEFITS FROM 5 TO 15
5 WEEKS IF BENEFITS WERE PAID AS A RESULT OF THE
6 MISSTATEMENT OR OMISSION. HE OR SHE MUST SUBMIT A
7 CONTINUED CLAIM FORM TO THE FIELD OFFICE TO COVER
8 EACH WEEK AND MEET ALL ELIGIBILITY REQUIREMENTS. NO
9 BENEFITS ARE PAYABLE FOR THREE YEARS FROM THE
10 ORIGINAL EFFECTIVE DATE OF THIS DISQUALIFICATION UNLESS
11 IT IS SATISFIED AT AN EARLIER DATE AND YOU ARE
12 OTHERWISE ELIGIBLE. THE REPAYMENT OF ANY
13 OVERPAYMENT DOES NOT REMOVE THE DISQUALIFICATION.

8 Common readability algorithms rate this paragraph as difficult to read. The Flesch-
9 Kincaid Grade Level rates this paragraph at a grade level of around 15—a college level;
10 the Flesch Reading-Ease Score rates this paragraph at around 30, which is a college
11 graduate level.

12 76. The Notices' explanation of a determination that a claimant has voluntarily
13 quit or been fired for misconduct, quoted in paragraph 70, is equally confusing. Common
14 reading algorithms rate this paragraph as difficult to read. The Flesch-Kincaid Grade
15 Level rates this paragraph at a grade level of around 20—above a college graduate level;
16 the Flesch Reading-Ease Score rates this paragraph around 25, which is at a college
17 graduate level.

18 77. Notices of Overpayment include the following explanation of the
19 Department's ability to recover overpayments:

20 SECTION 12419.5 OF THE GOVERNMENT CODE PROVIDES THAT
21 THE STATE CONTROLLER MAY COLLECT ANY AMOUNT OWING
22 A STATE AGENCY BY DEDUCTING THE AMOUNT OWED FROM A
23 STATE TAX REFUND, UNCLAIMED PROPERTY, AND LOTTERY
24 WINNINGS. TITLE 26, UNITED STATES CODE SECTION 6402(F)
25 AUTHORIZES THE STATE TO SUBMIT ANY FINAL AND LEGALLY
26 ENFORCEABLE UNEMPLOYMENT INSURANCE BENEFIT
27 OVERPAYMENT DEBT TO THE TREASURY OFFSET PROGRAM TO
28 COLLECT THE AMOUNT OWED FROM ANY FEDERAL INCOME
TAX REFUND PAID TO YOU BY THE INTERNAL REVENUE
SERVICE.

26 Common readability algorithms rate this paragraph as difficult to read. The Flesch-
27 Kincaid Grade Level rates this paragraph at a grade level of around 20—above a college
28 graduate level; the Flesch Reading-Ease Score rates this paragraph of around 25, which is

1 at a college graduate level.

2 78. It is certainly possible to convey this information in easier to understand
3 terms. In fact, the EDD website contains a page that explains this same information in a
4 far simpler manner, stating:

5 If you do not repay your overpayment on time, the money can be deducted
6 from future unemployment, disability, or PFL benefits. We can also:

- 7 • Withhold your federal and state income tax refunds.
- 8 • Withhold your state lottery winnings.
- 9 • Withhold other money the state owes you.
- 10 • File a claim against you in court.
- 11 • Charge you court costs and interest.
- 12 • Record a lien on your property.

13 Common readability algorithms rate this paragraph as much easier to read than the
14 paragraph in the Notice of Overpayment. The Flesch-Kincaid Grade Level rates this
15 paragraph at grade level of around 6.5, and the Flesh Reading-Ease Score rates this
16 paragraph at above 60, which is roughly 8th to 9th grade level. Yet the Department fails to
17 include this simple explanation about the risks to claimants of non-repayment in their
18 individual Notices or even provide a citation to the website where claimants could access
19 this simpler explanation.

20 **E. The Department Uses Confusing and Unreadable Design**

21 79. Whether a document is understandable also depends on its visual design.
22 User experience and design specialists use a set of standard practices to make sure readers
23 can understand documents. These practices include:

- 24 • using headings;
- 25 • using lowercase letters, which are more readable than text in all-capital
26 letters;
- 27 • using large type, no smaller than size 12 font;
- 28 • using informational icons;

- 1 • using proportionally spaced fonts;
- 2 • using short paragraphs;
- 3 • presenting procedural information in step-by-step instructions;
- 4 • providing users with a roadmap at the beginning of a document;
- 5 • emphasizing deadlines; and
- 6 • testing draft forms with the intended users of a form.

7 80. The EDD does not apply these design principles in its Notices. On
8 information and belief, all of the Notices use only capitalized lettering. There are virtually
9 no headings, and the few headings that are used are in the same font as the remainder of
10 the document. On information and belief, the documents use size 11 Courier font, which is
11 a monospaced font and more difficult to read than text in a proportionally spaced font. In
12 combination, these features make it very difficult for claimants to understand what is being
13 provided to them, and what steps they can take once they receive a Notice.

14 **F. The EDD Is Aware that Its Notices Are Confusing**

15 81. The EDD has repeatedly been told that its Notices are confusing. For
16 example, in September 2020, a state government task force stated:

17 [I]ndividuals who do not speak fluent English have almost no assistance to
18 make it through the process, and even fluent English speakers frequently
19 complain that they don't understand EDD notices. We encourage EDD to
20 investigate further the possibility that a lack of response from some
claimants may indicate confused and desperate people who may simply have
given up, and to use data-driven methods to make this determination.

21 82. Legal Aid at Work has repeatedly informed the Department that its Notices
22 are violating due process. Legal Aid at Work first wrote the Department about
23 deficiencies in the Notices of Overpayment on October 27, 2021, and wrote a follow up
24 letter on December 7, 2022.

25 **V. THE DEFICIENCIES IN EDD'S NOTICES DENY CLAIMANTS A
26 MEANINGFUL CHANCE TO GET EDD'S DECISION MODIFIED OR
27 REVERSED, AND LEAD TO CONFUSION AND INEFFICIENCIES
DURING THE APPEALS PROCESS**

28 83. Claimants who do not appeal the EDD's negative determinations and

1 overpayment determinations are losing out on a very meaningful chance to have the
2 EDD's decision reversed during the administrative appeals process.

3 84. Upon information and belief, claimants often do not appeal the EDD's
4 decisions because (a) the Notices never reach claimants or reach claimants after the 30 day
5 deadline to appeal, (b) claimants do not understand the EDD's decision due to the
6 inadequacy of the Notices provided by the EDD, (c) claimants do not understand the long-
7 term consequences that flow from the decision, and (d) claimants do not understand that
8 they have a right to appeal the decision.

9 85. The Department has determined that over 1,840,000 claimants who applied
10 for unemployment insurance between March 2020 and January 2023 were not eligible for
11 those benefits, according to data on the Department's website.

12 86. Upon information and belief, these decisions are often not appealed by
13 claimants.

14 87. The California Unemployment Insurance Appeals Board reported that
15 claimants appealed over 184,750 negative determinations in the last six months of 2022.
16 (The EDD can make multiple adverse determinations related to one claim.) The EDD's
17 determinations were reversed over 47.5 percent of the time on the initial appeal. More
18 were reversed at later stages of appeals.

19 88. Determinations that a claimant made a willful false statement are particularly
20 likely to be reversed on appeal. During the last six months of 2022, 25,532 determinations
21 that a claimant made a willful false statement were appealed; 54 percent of these
22 determinations were reversed at the first level of appeal.

23 89. Determinations that an overpayment should be repaid to the Department are
24 also particularly likely to be reversed. Of 17,721 overpayments appealed by claimants in
25 the last six months of 2022, 53 percent were reversed at the first level of appeal.

26 90. Claimants are likely to get their determinations reversed on appeal.
27 Nonetheless, deficiencies in Notices create an appeals process that is at times unfair and
28 inefficient because appellate officers, including Administrative Law Judges, do not have

1 Department, and who, as a result, did not timely appeal the Notice of
2 Determination therein.

3 95. This action has been brought and may properly be maintained as a class
4 action against Defendants pursuant to California Code of Civil Procedure § 382 because
5 there exists an ascertainable and sufficiently numerous class, a well-defined community of
6 interest, and substantial benefits from certification that render proceeding as a class
7 superior to the alternatives.

8 96. Numerosity: The potential members of the Class as defined are sufficiently
9 numerous that joinder of all Class Members is impractical and unfeasible. While the
10 precise membership of the proposed Class is undetermined at this time, Plaintiff is
11 informed and believes that the proposed Class is comprised of thousands of members and
12 the identity of such Class Members should be easily ascertainable through inspection of
13 Defendants' records.

14 97. Commonality: Common questions of law and fact exist as to all Class
15 Members that predominate over any questions affecting individual members, including,
16 but not limited to, the following:

17 (a) Whether and to what extent Defendants violated the United States and
18 California constitutions by failing to provide Plaintiffs and other Class Members with
19 procedural due process due to Defendants' failure to effectuate notice of negative
20 determinations to some UI claimants and their failure to provide adequate notice to other
21 UI claimants, and by denying claimants an opportunity to appeal negative determinations;

22 (b) Whether and to what extent Defendants violated the Social Security
23 Act by failing to provide notice of negative determinations to some UI claimants and
24 failing to provide adequate notice to other UI claimants, and by denying claimants an
25 opportunity to appeal negative determinations;

26 98. Typicality: The claims of the named Plaintiffs are typical of the claims of
27 Class Members. Plaintiffs and all other Class Members sustained similar injuries and
28 damages arising out of and caused by Defendants' common course of conduct in violation

1 of the law, as alleged herein.

2 99. Adequacy of Representation: Plaintiffs are members of the Class and the
3 subclasses they seek to represent and will fairly and adequately represent and protect the
4 interests of the putative Class Members because they have no disabling conflict(s) of
5 interest that would be antagonistic to those of the other Class Members. Plaintiffs have
6 retained counsel who are competent and experienced in complex class action and civil
7 rights litigation.

8 100. Superiority of Class Action: There is no plain, speedy, or adequate remedy
9 other than by maintenance of this class action, because Plaintiffs and other Class Members
10 suffered similar treatment and harm as a result of systematic policies and practices, and
11 because, absent a class action, Defendants' unlawful conduct will likely continue un-
12 remedied and unabated, given that the damages suffered by individual class members are
13 small compared to the expense and burden of individual litigation. Class certification is
14 also superior because it will obviate the need for unduly duplicative litigation that might
15 result in inconsistent judgments about Defendants' practices. Consequently, there would
16 be a failure of justice but for the maintenance of the present class action.

17 **FIRST CAUSE OF ACTION**

18 **42 U.S.C. § 1983**

19 **(On behalf of the Class, the False Statement Subclass, the Failure to Receive Subclass,
20 and Legal Aid at Work, and against Nancy Farias and Grecia Staton in both their
21 personal and official capacity)**

22 101. The allegations of each of the preceding paragraphs are realleged and
23 incorporated herein by reference.

24 102. Federal law requires Defendants Farias, Staton and the Department to
25 provide "such methods of administration . . . as are found by the Secretary of Labor to be
26 reasonably calculated to insure full payment of unemployment compensation when due."
27 42 U.S.C. § 503(a)(1).

28 103. The Social Security Act also requires that the Department provide an
"opportunity for a fair hearing . . . for all individuals whose claims for unemployment
compensation are denied." 42 U.S.C. § 503(a)(3).

1 104. The Fourteenth Amendment to the United States Constitution provides that
2 “No State shall [...] deprive any person of life, liberty, or property, without due process of
3 law.”

4 105. 42 U.S.C. § 1983 provides for a civil action against “[e]very person who,
5 under color of any statute, ordinance, regulation, custom, or usage, of any State or
6 Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the
7 United States or other person within the jurisdiction thereof to the deprivation of any
8 rights, privileges, or immunities secured by the Constitution and laws.”

9 106. Defendants violate class members’ rights under the Social Security Act and
10 the Due Process Clause of the Fourteenth Amendment, by, among other things discussed
11 further above, failing to:

12 (a) take reasonable steps to ensure that notice of EDD determinations and
13 overpayments is received by class members, including providing notice to class members
14 via email, EDD’s online portal, and text message;

15 (b) provide class members with an adequate, understandable explanation
16 of the adverse determination(s) in the Notices;

17 (c) provide class members with a case-specific explanation of the facts
18 supporting the adverse determination(s);

19 (d) provide class members with an adequate, understandable explanation
20 of the law supporting the adverse determination(s);

21 (e) provide class members with an adequate, understandable explanation
22 of the possible consequences of the adverse determination(s);

23 (f) provide class members with an adequate, understandable explanation
24 of the right to an appeal, including a hearing, to review the adverse determination(s).

25 107. Plaintiffs are informed, believe, and based thereon allege that in engaging in
26 the conduct alleged herein, the individual Defendant(s) acted with the intent to injure, vex,
27 annoy and harass Plaintiffs, and subjected Plaintiffs to cruel and unjust hardship in
28 conscious disregard of Plaintiffs’ rights with the intention of causing Plaintiffs injury and

1 depriving them of their constitutional and statutory rights.

2 108. As a result of the forgoing, Plaintiffs seek nominal and compensatory
3 damages against Defendants Farias and Staton in their individual capacity.

4 109. Moreover, Plaintiffs are informed, believes, and based thereon allege that in
5 engaging in the conduct alleged herein, the individual Defendants' actions were malicious,
6 oppressive, and/or in reckless disregard for Plaintiffs' rights, and therefore Plaintiffs seek
7 exemplary and punitive damages against Defendant Farias and Staton in their individual
8 capacities.

9 WHEREFORE, Plaintiffs seek relief as set forth below.

10 **SECOND CAUSE OF ACTION**
11 **California Constitution, Art. I, § 7**
12 **(On behalf of the Class, the False Statement Subclass, the Failure to Receive Subclass,**
13 **and Legal Aid at Work, and against all Defendants)**

14 110. The allegations of each of the preceding paragraphs are realleged and
15 incorporated herein by reference.

16 111. The California Constitution provides: "A person may not be deprived of life,
17 liberty, or property without due process of law."

18 112. Defendants' process of informing Plaintiffs and class members of the EDD's
19 adverse determinations on their claims violates the class members' rights under the
20 California Constitution's Due Process Clause for the reasons described in the above
21 paragraphs.

22 WHEREFORE, Plaintiffs seek relief as set forth below.

23 **THIRD CAUSE OF ACTION**
24 **Illegal Expenditure of Funds**
25 **Code Civ. Proc. § 526a**
26 **(On behalf of Legal Aid at Work and against all Defendants)**

27 113. The allegations of each of the preceding paragraphs are realleged and
28 incorporated herein by reference.

114. Legal Aid at Work pays payroll taxes, including the California
Unemployment Insurance Tax, which funds the payment of benefits to eligible

1 addresses whenever a Notice of Overpayment or Notice of Determination has been
2 returned as undelivered.

3 5. An order requiring Defendants to include in all Notices of Overpayment and
4 Notices of Determination:

5 (a) a case-specific disclosure of the facts relied upon by the Department
6 to reach its decision, written in plain language;

7 (b) a disclosure of the law relied upon by the Department, written in plain
8 language;

9 (c) a disclosure of the possible consequences of the Department's
10 decision for the claimant, written in plain language; and

11 (d) a prominent and clear set of instructions on how to appeal an adverse
12 determination, informing the claimant of their right to have an independent review of their
13 decision by an Administrative Law Judge.

14 6. An order requiring the Defendants to:

15 (a) hire an expert in plain language and usability to test language used in
16 Notices of Determination and Notices of Overpayment that is not case specific;

17 (b) use that expert to identify language and design choices that prevent
18 claimants from easily understanding Notices of Determination and Notices of
19 Overpayment; and

20 (c) revise the Notices of Determination and Notices of Overpayment so
21 they no longer contain these defective language and design choices.

22 7. An order requiring Defendants to:

23 (a) issue lawful, revised Notices of Determination and Notices of
24 Overpayment to all class members who did not appeal their Notices of Determination
25 and/or Notices of Overpayment;

26 (b) issue these compliant Notices by email, text message, automated
27 phone call, and message in the Department's online portal; and

28 (c) provide class members a new reasonable opportunity to appeal the

1 determinations and overpayments described in the compliant Notices.

2 8. An award of actual, nominal and punitive damages to the class and
3 subclasses.

4 9. An award of actual, nominal and punitive damages to the organizational
5 plaintiff.

6 10. An award to Plaintiffs of the costs of suit.

7 11. An award to Plaintiffs of their reasonable attorneys' fees as available under
8 federal and California law.

9 12. All further relief as this Court deems proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs hereby demand a jury trial.

12

13

Respectfully submitted,

14

DATED: June 14, 2023

LEGAL AID AT WORK

15

16

By: */s/ George A. Warner*

17

George A. Warner
Alexxander Campbell
Robert Underwood

18

19

20

DATED: June 14, 2023

ROSEN BIEN GALVAN & GRUNFELD LLP

21

22

By: */s/ Jenny S. Yelin*

23

Jenny S. Yelin

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Attorneys for Plaintiffs

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