

## SETTLEMENT AGREEMENT

This Agreement relates to *League of Women Voters of California v. Kelly*, Northern District of California Case No. 3:17-cv-02665-LB. It is made by and among Defendants Brian Kelly in his official capacity as the Secretary of the California State Transportation Agency, Jean Shiomoto in her official capacity as the director of the California Department of Motor Vehicles (“DMV”), and Alex Padilla in his official capacity as the California Secretary of State, and Plaintiffs League of Women Voters of California (“LWV”), ACCE Institute (“ACCE”), National Council of La Raza (“NCLR”), now renamed Unidos US, and California Common Cause (“CCC”) (hereinafter referred to collectively as “Parties”).

### Recitals

WHEREAS the Secretary of State is the chief election official of the State of California (“State”) with the obligation to enforce the State’s obligations under the National Voter Registration Act of 1993 (“NVRA”);

WHEREAS Section 5 of the NVRA, 52 U.S.C. § 20504, obliges the DMV to provide voter-registration services to individuals who apply for, renew, or change address with respect to a motor vehicle driver’s license or state-issued, non-driver identification card;

WHEREAS in a letter dated February 5, 2015, the ACLU Foundation of San Diego and Imperial Counties, Demos, Project Vote, and Morrison & Foerster LLP, on behalf of the LWV, NCLR, ACCE, CCC, Shelley Small, David Hinz, and Dan Vicuña, and other persons and organizations similarly situated, officially notified Secretary of State Alex Padilla, in his capacity as the state’s chief election official, of the DMV’s failure to provide the voter registration services required by Section 5 of the NVRA and that failure to cure the violations would result in a lawsuit;

WHEREAS pursuant to a Memorandum of Understanding executed on May 5, 2016, between DMV, the Secretary of State, and the organization and individual signatories to the original notice letter, the DMV and the Secretary of State implemented changes to resolve Section 5 compliance issues relating to DMV’s application, online and in-person renewal, and change of address processes;

WHEREAS on May 9, 2017, after failing to reach agreement on a timeline to ensure that changes to DMV’s mail renewal process would be completed prior to the 2018 elections, the ACLU Foundation of Northern California, Demos, and Morrison & Foerster LLP filed this action in federal court on behalf of plaintiffs LWV, NCLR, ACCE, and CCC;

WHEREAS Defendants do not concede liability, Defendants maintain that they have complied at all times with Section 5 of the NVRA, and are entering into this agreement to avoid the time, expense, and burden associated with litigation;

WHEREAS Defendants have provided Plaintiffs the most recent draft of the new combined renewal-by-mail/voter-registration form (revised 12/21/17), and Plaintiffs agree that the form complies with Section 5 of the NVRA and with the requirements of this Agreement; and

WHEREAS the Parties desire to resolve the final outstanding claim regarding mail renewals without further litigation and ensure that all changes to the mail renewals process are completed by April 30, 2018;

NOW, THEREFORE, the Parties hereby agree as follows:

### Agreement

#### **I. DEFINITIONS**

- A. "DMV" means the California Department of Motor Vehicles.
- B. "Driver's License" means a motor vehicle driver's license as defined in 52 U.S.C. § 20502(3), which includes all state-issued, non-driver identification cards.
- C. "Plaintiffs" means, collectively, LWV, CCC, ACCE, and NCLR/Unidos US.
- D. "Plaintiffs' Attorneys" means, collectively, Demos, ACLU Foundation of Northern California, and Morrison & Foerster, LLP.
- E. "Secretary of State" means the Secretary of State of California.
- F. "Defendants" means Jean Shiomoto, Brian Kelly, and Alex Padilla in their official capacities.

#### **II. REVISIONS TO RENEWAL BY MAIL PROCEDURE**

Not later than April 30, 2018, the DMV and Secretary of State shall:

- A. Ensure that the driver's license renewal by mail notice serves as an application for voter registration, is returnable to the DMV, and does not require individuals to provide information for voter registration purposes that duplicates the information already provided on the renewal form or that is otherwise in DMV's possession. The renewal by mail transactions shall also provide the NVRA required notices per 52 U.S.C. § 20504(c) (2) (C) and (D).
- B. Develop, procure, and launch any technology and hardware Defendants believe are needed to scan and transmit to the Secretary of State all of the information required by AB 1461.
- C. Ensure that voter registration information is transmitted, pursuant to 52 U.S.C. § 20504(e), to the Secretary of State not later than 10 days after the date it is received by DMV. This requirement applies only to forms that comply with DMV's system requirements for processing.

- D. Defendants shall not be in violation of this Agreement due to delays or failures of performance resulting from acts beyond their control. These acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accidents, cybersecurity incidents, strikes, lockouts, riot, freight embargo, or governmental statutes or regulations superimposed after the fact.

### **III. PROGRESS REPORTS AND FORM REVIEW**

Within 5 days of March 15, 2018 the DMV and Secretary of State shall:

- A. Provide to Plaintiffs' attorneys any updated draft of the new renewal-by-mail form.
- B. Provide to Plaintiffs' any modifications to the high-level project schedule that may impact the expected date for full implementation of AB 1461.

### **IV. QUALITY ASSURANCE AND TRACKING**

Upon full implementation of the revisions described in Section II of this Agreement and for 8 months after that:

- A. As soon as practicable, the Secretary of State shall include, in the monthly NVRA reports posted on its website, the number of original voter registrations, updates to existing voter registrations, and changes of address processed through the new renewal by mail process.
- B. As soon as practicable, Secretary of State shall disaggregate and include in the monthly NVRA reports posted on its website the number of eligible voters who decline voter registration through the new renewal by mail process.
- C. The DMV shall provide the Secretary of State, on a quarterly basis, with a report of the total number of driver's license renewals processed by mail and the total number of driver's license renewals processed online.

### **V. COMPLAINTS**

The DMV shall make best efforts to promptly forward to the Secretary of State any written complaint it receives from a customer regarding a voter registration application submitted to DMV through the renewal-by-mail procedure that did not result in the customer being registered.

### **VI. FEES**

Defendants agree to pay Plaintiffs an amount totaling \$50,000.00 in attorney's fees and costs under 52 U.S.C. § 20510(c). The Parties agree that interest will not accrue on this agreed sum. It is understood and agreed that Defendants are not responsible for, and do

not assume, any tax obligations on the payment called for in this Agreement.

Not more than 60 days after the execution of this Agreement, Defendants will submit a claim schedule to the State Comptroller for issuance of a warrant payable to Morrison & Foerster, LLP and that payment be delivered to the attention of Michael Jacobs, Morrison & Foerster, LLP, 425 Market Street, San Francisco, CA 94105.

#### **VII. TERM AND ENFORCEMENT**

This Agreement shall become effective on the date of execution and shall remain in effect for 8 months after full implementation of the revisions described in Section II of this Agreement.

Within 7 days of the execution of this agreement by all signatories, the Parties agree to jointly request the Court to enter an order, substantially in the form attached hereto as Exhibit A, retaining jurisdiction to enforce this Agreement and otherwise dismissing the matter with prejudice.


If Plaintiffs believe that the Defendants have breached this Agreement, Plaintiffs shall notify Defendants in writing of the nature of the asserted breach. If by the end of twenty days the Defendants have failed to cure the asserted breach, Plaintiffs may enforce this Agreement by any appropriate means, including moving the Court to enforce this Agreement or filing a new action both under the NVRA and to enforce this Agreement. Plaintiffs shall meet and confer with Defendants about the asserted breach before acting to enforce the Agreement.

#### **VIII. BINDING EFFECT**

The persons signing this Agreement represent they have the authority to enter into this Agreement on behalf of their respective organizations or government entities, and that this Agreement shall be binding upon the parties hereto.

#### **IX. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which shall constitute one and the same agreement.

  
Alicia Fowler  
Deputy Secretary and General Counsel  
California State Transportation Authority

1-10-18  
Date



William Davidson  
Deputy Director  
California Department of Motor Vehicles

1/11/2018  
Date



Steve Reyes  
Chief Counsel  
California Secretary of State

January 10, 2018  
Date



Melissa Breach  
Executive Director  
League of Women Voters of California

January 10, 2018  
Date

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Clarissa Martinez De Castro  
Deputy Vice President  
National Council of La Raza/UnidosUS

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Date

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Christina Livingston  
Executive Director  
ACCE Institute

\_\_\_\_\_  
Date



Kathay Feng  
Executive Director  
California Common Cause

January 10, 2018  
Date

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William Davidson  
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