

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NOS.:  
SUCV2007-04285  
SUCV2008-01093**

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**BIENVENIDO LUCIANO,**

**Plaintiff,**

**v.**

**MICHELLE AMANTE, Director,  
Department of Unemployment  
Assistance,**

**Defendant.**

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**and**

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**GIOVANNA LAWSON,**

**Plaintiff,**

**v.**

**MICHELLE AMANTE, Director,  
Department of Unemployment  
Assistance,**

**Defendant.**

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**SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

Plaintiffs Bienvenido Luciano and Giovanna Lawson and Defendant Michelle Amante, as Director of the Department of Unemployment Assistance (DUA), enter into this Settlement Agreement (Agreement) to resolve all the claims that were or

could have been asserted in Civil Actions Nos. SUCV2007-04285 and SUCV2008-01093 (the Actions). This Agreement supersedes the earlier agreement signed by Defendants and Plaintiffs on August 24, 2010, and September 15, 2010, respectively, and that agreement shall have no further force or effect.

## **II. DEFINITIONS**

As used in this Agreement, the following words have the following meanings:

“Cover Sheet” means the document that DUA includes with Questionnaires, describing a claimant’s responsibility to complete the Questionnaire, when the Questionnaire must be returned, and the consequences for not responding.

“Covered LEP claimant” means LEP claimants coded for one of the Covered Languages.

“Covered Languages” refers to English, Spanish, Chinese, Haitian Creole, French, Italian, Portuguese, Vietnamese, Laotian, Khmer, Korean, and Russian.

“Fact-Finding” means the process by which DUA gathers information during its adjudication to determine claimant eligibility for unemployment insurance.

“LEP” means limited English proficiency.

“LEP Cover Sheet” means a Cover Sheet, in a Covered LEP claimant’s Primary Language, that contains information regarding obtaining telephonic assistance from DUA to answer the Questionnaire.

“Parties” means Plaintiffs Bienvenido Luciano and Giovanna Lawson and Defendant Michelle Amante, in her capacity as DUA Director.

“Primary Language” means the language which a UI claimant identifies as the primary language in which he or she communicates and in which a UI claimant is coded to receive communications from DUA.

“Questionnaires” means the English language documents DUA sends to claimants, or makes available electronically on UI Online, for Fact-Finding.

“Translated Documents” means the documents listed in Attachment 1 to this Agreement.

“UI” refers to Unemployment Insurance.

“UI Online” is the DUA computer-based system used to assist with the administration of the unemployment insurance system including, but not limited to, assisting individuals in applying for and receiving unemployment insurance benefits.

## **III. TERMS AND CONDITIONS**

The Parties agree that DUA shall take the following steps to resolve the Actions. Steps listed in Section III. A, below, are intended to be completed within six months

of the signing of this Agreement by the last Party to sign (unless otherwise indicated). Steps listed in Section III. B, below, are intended to be completed within 18 months of that signing. The parties recognize that a contingency may develop in that statutory or federal regulatory changes may take place in the future that, in DUA's good faith judgment, require a diversion of resources away from implementing one or more of the six-month or 18-month steps in this Agreement. In such a case, DUA will notify plaintiffs' counsel of any anticipated delay and DUA will propose new timeline commitments and adjust any reporting and meeting requirements accordingly. In no event is DUA required under this Agreement to make an expenditure in excess of the amount legally available to it under state or federal law.

**A. STEPS DUA INTENDS TO TAKE WITHIN SIX MONTHS OF SIGNING THE SETTLEMENT AGREEMENT**

**1. LEP Cover Sheets and Telephonic Procedures for LEP Claimants.**

Within the scope of its responsibilities under G. L. c. 151A, DUA's policy generally is to assist LEP claimants in their primary language and, in particular, DUA expresses its commitment to assist LEP claimants in their primary language in completing Questionnaires to help determine UI eligibility. DUA uses various methods to help LEP claimants. Consistent with that policy, DUA agrees to take the following steps:

a. In its adjudication of claims, DUA conducts investigations and fact-finding into various issues, including a claimant's initial and continuing eligibility for UI benefits. One of the ways DUA does this is to send a claimant one or more Questionnaires. Claimants are requested to answer the questions in the Questionnaires. These Questionnaires are written only in the English language. Nothing in this Agreement obliges DUA to change this practice.

b. A Cover Sheet typically accompanies the Questionnaires. As modified in accordance with this Agreement, DUA will include an LEP Cover Sheet with the Questionnaires sent to Covered LEP claimants.

c. DUA will draft the LEP Cover Sheet in consultation with Plaintiffs' counsel. Consultation shall consist of DUA affording Plaintiffs' counsel an opportunity to propose, review, and comment on the language and form of the LEP Cover Sheet before its implementation.

d. DUA will provide an LEP Cover Sheet to each Covered LEP claimant. The LEP Cover Sheet will be designed so that a claimant requesting telephonic assistance can return only that Cover Sheet (or a portion of the Cover Sheet), not the entire Questionnaire, and request that a DUA employee telephone the claimant at the telephone number given by the claimant in the returned portion of the Cover Sheet.

e. There will be separate LEP Cover Sheets for each of the following three groups:

**Group A.** Group A consists of all claimants whose Primary Language is either Spanish or Portuguese. This LEP Cover Sheet shall inform Group A claimants that they can call the existing DUA main telephone number and press particular numbers for Spanish or Portuguese. It shall ask claimants to tell DUA staff that they are seeking assistance with completing a Questionnaire. Group A claimants will be able to call this number during business hours on Monday through Friday for assistance with completing Questionnaires. This LEP Cover Sheet also will inform Group A claimants that they can send in the tear-off portion of the Cover Sheet and a DUA staff member will contact them to complete the Questionnaire. DUA employees who answer calls from Group A claimants shall provide assistance in a claimant's Primary Language either by a DUA staff person who speaks the claimant's Primary Language or by using the language line.

**Group B.** Group B consists of all claimants whose Primary Language is: Chinese, Vietnamese, Khmer, or Haitian Creole. This LEP Cover Sheet shall provide these claimants a separate telephone number that will be routed to DUA's main telephone number. It shall ask claimants to inform DUA staff that they are seeking assistance with completing a Questionnaire. There will be a recorded message at this telephone number in each of the Group B languages telling the caller the expected wait-time for the call and that a DUA staff member will provide services, through an interpreter, in the claimant's Primary Language. (There will be a recorded message in Cantonese, but not in Mandarin.) The message will include a prompt to allow the caller to transfer the call to a DUA employee for the purpose of fact-finding. With the aid of the language line, fact-finding will be available in the Group B claimant's Primary Language. DUA will inform staff members answering these calls that this special number is intended for Group B claimants. Group B claimants can call this number during business hours on Monday through Friday for assistance with completing any and all outstanding Questionnaires. This LEP Cover Sheet also shall inform Group B claimants that they can mail back the tear-off portion of the Cover Sheet and a DUA staff member will contact them at the telephone number the claimant provides on the tear-off portion to complete the Questionnaire. DUA employees will be trained in handling communications with LEP claimants and shall provide assistance in a claimant's Primary Language either by a DUA staff person who speaks the claimant's Primary Language or by using the language line.

**Group C:** Group C consists of all claimants whose Primary Language is: French, Italian, Korean, Laotian, or Russian. This LEP Cover Sheet shall give claimants in Group C the main DUA telephone number and will 1) inform claimants how to bypass the general queue to have their calls directed to DUA fact-finding staff and 2) ask claimants to inform DUA staff that they are seeking assistance with completing a Questionnaire. The Cover Sheet also shall inform Group C claimants how to request an interpreter when contacting DUA. Group C claimants will be able to obtain telephonic assistance with completing all outstanding Questionnaires

during business hours on Monday through Friday. DUA employees, including fact-finding staff, will be trained in handling communications with LEP claimants and shall provide assistance in a claimant's Primary Language either by a DUA staff person who speaks the claimant's Primary Language or by using the language line.

## **2. Fact finding procedures for Covered LEP claimants who return LEP Cover Sheets requesting assistance.**

If a Covered LEP claimant, by returning the LEP Cover Sheet or tear-off portion, requests assistance with fact-finding, DUA will call the claimant at the telephone number provided by the claimant. Before making that call, DUA shall ascertain what Questionnaire or Questionnaires had not been returned. If the claimant answers the call, DUA, with the assistance of the language line as needed, shall request information from the claimant to answer all outstanding, unreturned non-monetary Questionnaires to complete any outstanding fact-finding for a claimant.

If DUA's attempt to call back the claimant is unsuccessful, DUA will, if possible, leave a message in the claimant's Primary Language with voice mail, an answering machine, or a responsible person. The claimant will then have 48 hours within which to respond to the message concerning the outstanding fact-finding. If a message could not be left, DUA shall notify the claimant in writing—again, in the claimant's Primary Language—asking the claimant to call DUA. The claimant will have four calendar days from the mailing date of this second written communication within which to respond. E-mail will be used, if the claimant has elected to receive communications from DUA by e-mail, in which case the mailing date will be the date the e-mail is sent. This letter and/or e-mail will contain language analogous to that in the original Cover Sheet. (To the extent a second letter is required, that will have different information than the original Cover Sheet, DUA will have more than six months from signing of this Agreement to put this in place.) If the fourth calendar day falls on a Saturday, Sunday, or legal holiday, or a day on which DUA is closed, the deadline will be extended to the next permitted calling day. If the claimant did not respond timely, DUA would be free to issue a determination based on available information.

DUA shall document compliance with the procedures described above. If in any particular case DUA records do not show compliance with DUA procedures, and if the lack of compliance resulted in the claimant's failure to comply with a requirement or meet a deadline, then good cause would exist for the claimant's failure. If a lack of compliance occurred in 10% or more of cases, DUA shall investigate with a view to taking corrective action.

## **3. Promulgation of Regulation.**

DUA shall submit the following proposed regulation to the DUA advisory council for a vote at the next meeting in which there is a quorum. If the advisory council approves the regulation, DUA will promptly forward the regulation to the Executive Office of Administration and Finance, and encourage the scheduling of a public

hearing and final review by the advisory council as expeditiously as possible. The regulation will state:

The Department has established, and will continue to establish, policies and procedures intended to discharge its responsibility to ensure meaningful access to its programs and activities by persons with limited English proficiency, including the Department's claims, fact-finding, and hearings processes for any individual whose primary language is listed in G. L. c. 151A, § 62A(d)(iii). Any such individual who fails to comply with any requirement or deadline because the Department failed to follow its established policies and procedures will have good cause for the failure.

#### **4. Language Coding Changes.**

DUA will add a telecert question enabling claimants to change their Primary Language. This option will be made available on the English, Cantonese, Portuguese, and Spanish telecert lines. DUA will also provide an e-mail address to which requests can be sent to change a claimant's language coding.

#### **B. STEPS DUA INTENDS TO TAKE WITHIN EIGHTEEN MONTHS OF SIGNING THIS AGREEMENT**

DUA intends to make the following changes within 18 months of signing this Agreement.

1. When DUA sends a Cover Sheet, a determination, or other Translated Document to a claimant in a language other than English, it will also send the claimant an official English language version of the same communication.

2. DUA will create a separate workflow queue for all determinations of non-monetary issues on UI claims for LEP claimants. Prior to adjudication, DUA will determine whether any other Questionnaires had not been returned. If one or more Questionnaires are outstanding, and if the claimant provided DUA with a telephone number, DUA will call the claimant. If the claimant is not reached, a message will be left for the claimant, if possible, in the claimant's Primary Language with voice mail, an answering machine, or a responsible person informing the claimant of the existence of other, unanswered Questionnaires and how to contact DUA with this information.

3. If a Covered LEP claimant submits a timely Questionnaire, and before DUA has issued a determination, a DUA employee will review the Questionnaire submitted and if the completed Questionnaire contains inadequate information leading the employee to conclude that a language barrier may have resulted in the claimant not being able to complete the Questionnaire, DUA will contact the claimant by telephone in the manner prescribed above, if possible, to obtain information, or will resend the Questionnaire.

4. DUA shall document compliance with the procedures described above. If in any particular case DUA records do not show compliance with DUA procedures, and if the lack of compliance resulted in the claimant's failure to comply with a requirement or meet a deadline, then good cause shall exist for the claimant's failure. Where a lack of compliance occurred in 10% or more of cases, DUA shall investigate with a view to taking corrective action.

### **C. DATA PROVISION**

1. DUA shall provide Plaintiffs' counsel the following data on a monthly basis for six months following full implementation of the six-month items:

- a. The average waiting time for individuals who call DUA using the general customer service telephone number;
- b. The average waiting time for individuals who call DUA using the telephone number for Group A;
- c. The average waiting time for individuals who call DUA using the telephone number created for Group B;
- d. The fact-finding completion rate reported separately for both English-coded claimants and Covered LEP claimants; and
- e. The numbers of telephone calls to DUA, on a monthly basis, through the Spanish and Portuguese lines, the main DUA customer service line, and the additional telephone number for Group B claimants.

DUA shall meet with plaintiffs' counsel, at their request, to discuss issues of concern regarding these data once during the six-month reporting period and once during the two months immediately following the reporting period.

2. DUA shall provide plaintiffs' counsel with the following information for the third month following full implementation of the six-month items and for the six months following full implementation of the 18-month items:

- a. The percentage of eligible claims under G. L. c. 151A, § 25(e) (1), reported separately for both English-coded and covered LEP claimants; and
- b. The percentage of eligible claims under G. L. c. 151A, § 25(e) (2), reported separately for both English-coded claimants and covered LEP claimants.

DUA will meet with plaintiffs' counsel, at their request, to discuss issues of concern regarding this data once during the six-month reporting period and once during the two months immediately following the reporting period.

## **D. OTHER PROVISIONS**

### **1. Translation of Documents Sent to Claimants.**

DUA currently translates into all Covered Languages the Translated Documents in Attachment 1 (or will do so in the future as described in Attachment 1), and will continue to provide Covered LEP Claimants with the applicable Translated Documents.

### **2. Good Cause Determinations.**

DUA makes good cause determinations based on regulations previously promulgated, the provisions of the Department of Unemployment Assistance UI Policy and Performance Interoffice Memorandum, Reference No. UIPP 2013.06, dated July 25, 2013 ("Memorandum"), and the proposed regulation referred to in paragraph A. 3., above. Before DUA changes its policy regarding good cause determinations as reflected in the Memorandum, it will notify plaintiffs' counsel.

## **E. DISMISSAL OF LITIGATION**

Contemporaneously with the execution of this Agreement, the plaintiffs to the pending lawsuits will (1) sign stipulations of dismissal under Mass. R. Civ. P. 41(a)(2)(ii) dismissing the actions with prejudice, and (2) deliver the stipulations to defendant's counsel. Defendant's counsel will file the stipulations in Court after DUA certifies to plaintiffs' counsel, with a copy to defendant's counsel, that it has implemented the six-month items. In the event that statutory or federal regulatory changes cause a delay in DUA's ability to implement the six-month items within that time period, the parties will discuss a commensurate extension of time within which to file the stipulation of dismissal.

During the interim period between execution of this Agreement and the filing of the stipulation of dismissal, plaintiffs will not seek any judicial action in Court regarding either the pending lawsuits or matters covered by this Agreement.

The parties have entered into this Agreement solely to settle the lawsuits without the further expense and uncertainty of litigation. No party to this Agreement admits or concedes any wrongdoing or violation of law, and nothing in this Agreement is intended, nor should it be construed, to constitute an admission of liability by any party. The fact that a party executes this Agreement shall not be evidence of wrongdoing or violation of law.

The parties agree that (i) this Agreement will not be filed in court, (ii) the terms of this Agreement shall not be incorporated in any order of dismissal or other order or judgment entered by the Court, and (iii) the Court shall not retain jurisdiction in this case to monitor or enforce this Agreement by contempt or any other judicial process. If the Court enters an order contrary to the foregoing, this Agreement shall be null and void and of no force and effect, and nothing herein shall be deemed to prejudice the position of any of the parties with respect to litigation or otherwise.



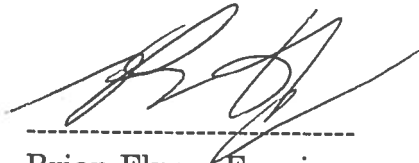
The plaintiffs agree: 1) that neither the plaintiffs nor their counsel will use, as the legal basis of any future lawsuit, any claim that there is or has been a breach of this Agreement, and 2) that the terms of the settlement are not enforceable by an action alleging breach of contract or for specific performance. The parties agree that plaintiffs are not precluded from initiating another lawsuit, if deemed warranted, based on a claim of violation of then-existing statutory or regulatory provisions.

This Agreement reflects the entire agreement between the parties and replaces and supersedes all other agreements between the parties, including the settlement agreement executed by the parties (or their predecessors) on August 24, 2010 and September 15, 2010.

Nothing in this Agreement constitutes a waiver of the sovereign immunity asserted by the Commonwealth and its instrumentalities.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, in three originals, as of the date written below.

Bienvenido Luciano and  
Giovanna Lawson, Plaintiffs  
By their attorney,



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Brian Flynn, Esquire  
Greater Boston Legal Services  
197 Friend Street  
Boston, MA 02114  
617-603-629

Dated: 12/24/2014

*December 24, 2014*

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Michelle Amante  
Defendant  
Director, Department of  
Unemployment Assistance  
Charles F. Hurley Building  
19 Staniford Street  
Boston, MA 02114

Dated: \_\_\_\_\_

