

## SETTLEMENT AGREEMENT

*Carolyn Phillips et al. v. State of California et al.*,  
Fresno County Superior Court, Case No. 15CECG02201

This Settlement Agreement (“Agreement”) is entered into by the following parties: Carolyn Phillips (“Phillips”), Ruthina Estrada (“Estrada”) (together, “Plaintiffs”), and the State of California (“Defendant” or “State”) (collectively, the “Parties”).

### RECITALS

A. Plaintiffs and Defendant are parties to the case titled *Carolyn Phillips et al. v. State of California et al.*, currently pending in the Superior Court of the State of California, County of Fresno, Case Number 15CECG02201 (the “Action”).

B. In the Action, Plaintiffs allege that the State is failing to provide effective legal representation to indigent defendants in criminal court proceedings in California courts. Plaintiffs seek declaratory and injunctive relief under California Code of Civil Procedure section 526a to protect the rights of indigent persons charged with crimes in California.

C. Defendant denies Plaintiffs’ allegations in this Action. Defendant specifically denies that the State has failed to carry out any constitutional or statutory duty whatsoever in relation to the claims and allegations asserted in this Action, and further denies that any act, omission, law, or policy of the State has caused or will cause any harm to Plaintiffs or those whose rights they claim to protect in this Action.

D. The Superior Court overruled Defendant’s arguments at the demurrer stage, in relevant part, concluding that:

The Sixth Amendment right to counsel is a provision of the Bill of Rights so “fundamental and essential to a fair trial” that it “is made obligatory upon the States by the Fourteenth Amendment.” (*Gideon v. Wainwright* (1963) 372 U.S. 335, 342-43, emphasis added.) The Fourteenth Amendment’s Due Process Clause in turn provides: “nor shall any State deprive any person of life, liberty, or property, without due process of law.” (US. Const, amend XIV (emphasis added). ... The State cannot disclaim its constitutional responsibilities merely because it has delegated such responsibilities to its municipalities. ... Nor can the State evade its constitutional obligation by passing statutes. ... If the State created an indigent defense system that is systematically flawed and underfunded, [caselaw] indicates that the State remains responsible, even if it delegated this responsibility to political subdivisions.

*Phillips et al. v. California et al.*, Superior Court of the State of California, County of Fresno, Case Number 15CECG02201, Ruling on Demurrers, April 13, 2016.

E. Without any admission of fault or wrongdoing, and without conceding or otherwise expressing any position on any legal issue or argument previously raised in this Action, the Parties wish to settle the Action and all disputes arising therein as among them, in order to avoid the cost, difficulty, and uncertainty associated with further litigation.

### AGREEMENT

Now, therefore, in view of the foregoing recitals, and in consideration of the mutual promises contained in this Agreement, the Parties covenant and agree as follows.

1. The State shall expand the mission of the Office of the State Public Defender (“OSPD”) such that OSPD shall, in addition to such other duties as may be consistent with state law, be authorized to provide support for California counties’ provision of trial-level indigent criminal defense in non-capital cases.

2. The support authorized in accordance with Paragraph 1 may include, but need not be limited to, the provision of training to attorneys providing trial-level indigent criminal defense services on behalf of California counties; the provision of technical assistance to attorneys providing trial-level indigent criminal defense services on behalf of California counties; and efforts to identify further steps that could be taken to improve California counties’ provision of trial-level indigent criminal defense.

3. The commitments made in Paragraphs 1–2 are contingent upon enactment by the California Legislature and the Governor of appropriate legislation—including, but not limited to, the enactment of an appropriations bill funding such commitments to such extent as the Legislature and the Governor may provide.

4. The State, through the Governor’s Office, agrees to undertake a good-faith effort to advance appropriate legislation as described in Paragraph 3 carrying out the commitments made in Paragraph 1–2. This good-faith effort shall consist of the inclusion of the commitments made in Paragraphs 1–2 in the Governor’s 2020–21 Budget proposal (to be released on or before January 10, 2020), as well as continued good-faith efforts by the Governor’s Office to obtain the enactment of legislation during the 2019–20 legislative session that substantially conforms to the commitments made in Paragraphs 1–2. This good-faith effort shall continue until the enactment of such legislation or the conclusion of the 2019–20 legislative session, whichever is sooner.

5. On or before January 21, 2020, Plaintiffs shall file with the court and serve a dismissal, in writing, pursuant to Code of Civil Procedure section 581, subdivision (b)(1), requesting that the State be dismissed without prejudice from the Action, and that all claims and causes of action pled against the State in this Action be dismissed without prejudice in their entirety. In addition, Plaintiffs shall promptly take any further steps that may be necessary to cause the State and all claims and causes of action pled against the State to be dismissed without prejudice from the Action.

6. Plaintiffs agree that, if the State fulfills the commitments made in Paragraphs 1–4, they shall not re-file this Action against the State, and shall waive all claims against the State as provided for in Paragraph 9.

7. The Parties agree that they will not make, or cause to be made, any announcement or other public statement disclosing the terms of this Agreement prior to the release of the Governor's 2020-21 Budget proposal. Defendant agrees to promptly notify Plaintiffs' counsel as soon as the release time and date for the Governor's 2020-21 Budget proposal are announced. The Parties further agree to give each other no less than 24 hours' notice before making any public announcement of the terms of the settlement; this does not include the announcement, by the Office of the Governor, of the Governor's 2020-21 Budget proposal. Nothing in this Paragraph shall be construed to limit the authority of either Party to exercise sole control over the substance of any such announcement that it may choose to make; neither Party shall be required to seek the other Party's review or approval of the substance of any such announcement.

8. No Admission of Liability: This Agreement does not constitute, nor shall it be construed as, an admission or concession by any of the Parties for any purpose. By executing this Agreement, no Party admits liability or concedes any factual or legal allegation, claim, or contention asserted by any other Party in the Action.

9. Mutual Release of Claims: The Parties release and discharge each other Party to this Agreement and their agents, employees, attorneys, affiliates, representatives, heirs, executors, conservators, successors, assigns, and those who they represent or whose rights they seek to protect in this Action from all claims, causes of action, obligations, liabilities, damages, costs, expenses, and attorney fees of any nature whatsoever, whether they are known or unknown, suspected or not suspected to exist, claimed or not claimed, disputed or undisputed, that arose or that may arise, from the facts, claims, and contentions alleged in the Action. This release does not affect claims for acts or omissions that occur after the date of this Agreement.

10. Construction: This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. The Parties agree that this Agreement shall be construed and interpreted without regard to the identity of the party drafting this Agreement, as though all Parties hereto participated equally in the drafting of this Agreement.

11. Advice of Counsel: The Parties represent that they know and understand the contents of this Agreement, and that this Agreement has been executed voluntarily. The Parties each further represent that they have had an opportunity to consult with an attorney of their choosing and that they have been fully advised by the attorney with respect to their rights and obligations under this Agreement.

12. Entire Agreement: No promise, inducement, understanding, or agreement not expressly stated herein has been made by or on behalf of the Parties, and this Agreement contains the entire agreement of the Parties related to the subject matter of this Agreement.

13. Amendments in Writing: This Agreement may not be altered, amended, modified, or changed in any way except by a writing duly executed by all Parties hereto.

14. Attorneys' Fees and Costs: The Parties agree that the Parties to this Agreement shall bear their own respective attorneys' fees and costs incurred in the Action.

15. Choice of Law and Jurisdiction: This Agreement shall be governed by the laws of the State of California. If any party to this Agreement brings a lawsuit to enforce or interpret this Agreement, the lawsuit shall be filed in the Superior Court for the County of Sacramento, California.

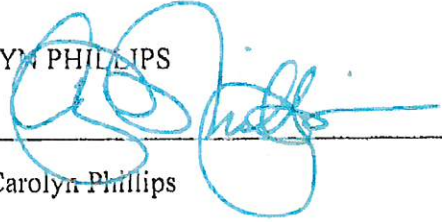
16. Counterparts: This Agreement may be executed electronically in counterparts, each of which is deemed an original and all of which together shall constitute this Agreement.

17. Effective Date: This Agreement shall become effective (the "Effective Date") on the date on which the last counterpart of this Agreement is executed such that the Agreement is executed in full by all Parties hereto and signed by all Parties' respective attorneys.

18. Representation and Warranties of Authority: Each Party to this Agreement has the authority to execute this Agreement, and this Agreement as so executed will be binding upon each Party and upon its agents, employees, attorneys, affiliates, representatives, heirs, executors, conservators, successors, assigns, and those who they represent or whose rights they seek to protect in this Action. Each person signing this Agreement represents and warrants that they have the authority to sign and execute this Agreement on behalf of the Party for which they sign.

This Agreement consists of Recitals A – E and Paragraphs 1 – 18.

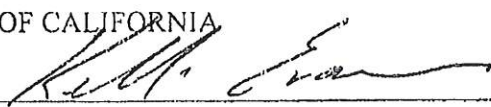
DATED: 1/6/2020

CAROLYN PHILLIPS  
By:   
Carolyn Phillips

DATED: 1/7/2020

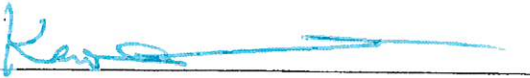
RUTHINA ESTRADA  
By:   
Ruthina Estrada

DATED: 1/6/2020

STATE OF CALIFORNIA  
By:   
Kelli Evans  
Chief Deputy Legal Affairs Secretary  
Office of Governor Gavin Newsom

**Approved as to Form:**

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA, INC.

By: 

Kathleen Guneratne

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

By: 

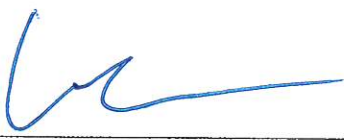
Emma Andersson

*Attorneys for Plaintiffs Carolyn Phillips  
and Ruthina Estrada*

**Approved as to Form:**

XAVIER BECERRA

Attorney General of California

By: 

Aaron Jones  
Deputy Attorney General  
*Attorneys for Defendant the State of California*