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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

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 14 **STATE OF CALIFORNIA, et al.,**
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 16 Plaintiffs,
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 18 **v.**
 19 **CHARLOTTE A. BURROWS, in her**
official capacity as Chair of the U.S. Equal
Employment Opportunity Commission, et
 20 **al.,**
 21 Defendants.

Case No. 3:20-cv-07664-EMC
**Settlement Agreement and Stipulation Re
 Dismissal Without Prejudice of First
 Amended Complaint**

22 Pursuant to Federal Rule of Civil Procedure 41(a)(2), the parties, through their
 23 undersigned attorneys, have reached an agreement to resolve this matter and respectfully submit
 24 this Settlement Agreement and Stipulation Re Dismissal Without Prejudice and Proposed Order.

25 WHEREAS, Plaintiffs State of California, California Department of Fair Employment and
 26 Housing, State of Illinois, Illinois Department of Human Rights, State of Maryland, State of
 27 Minnesota, Minnesota Department of Human Rights, State of Nevada, and State of New Jersey
 28 (Plaintiffs) filed a First Amended Complaint, ECF No. 11, (FAC) in this action on November 20,

1 2020;

2 WHEREAS, Plaintiffs' FAC challenges Defendants' termination of Fair Employment
3 Practice Agencies' (FEPAs) access to all Employer Information Report (EEO-1) data obtained by
4 Defendant Equal Employment Opportunity Commission (EEOC) from employers and other
5 entities covered by 42 U.S.C. § 2000e-8(c) within the FEPAs' jurisdictions; Defendants' issuance
6 of an order prohibiting such access unless the information pertained to a particular respondent
7 with a pending charge of discrimination under active investigation by the FEPA; and Defendants'
8 denial in February, June, and July 2020 of requests for jurisdiction-wide employment data
9 submitted by the FEPAs in Minnesota, California, and New Jersey, respectively;

10 WHEREAS, Plaintiffs' FAC alleges that Defendants' refusal to provide EEO-1 data from
11 all covered entities within a FEPA's jurisdiction violates 42 U.S.C. § 2000e-8(d) and seeks
12 injunctive and declaratory relief;

13 WHEREAS, on January 14, 2021, Defendants filed a Motion to Dismiss, ECF No. 22,
14 which stated that on January 31, 2020, former EEOC Chair had issued EEOC Order 750.001,
15 providing in pertinent part that "The EEOC shall share EEO Information with a Contracted FEPA
16 only with regard to a particular charge of discrimination under active investigation by the
17 Contracted FEPA";

18 WHEREAS, Plaintiffs filed an opposition to Defendants' motion to dismiss on February 11,
19 2021, ECF No. 25;

20 WHEREAS, on February 24, 2021, the parties submitted a Stipulation and Administrative
21 Motion to Stay Action, ECF No. 26, to hold the instant case in abeyance for 45 days to allow
22 Charlotte A. Burrows—who was appointed Chair of the EEOC on January 20, 2021—to review
23 and potentially revisit EEOC Order 750.001;

24 WHEREAS, the Court endorsed the parties' proposed order on February 25, 2021, ECF No.
25 27, holding the action in abeyance for 45 days, setting a Case Management Conference for May
26 6, 2021, and ordering the parties to file a submission one week before May 6, 2021 with their
27 proposed course for the litigation;

28

1 WHEREAS, on April 9, 2021, Chair Burrows issued an order—EEOC Order 750.001A, a
2 true and correct copy of which was filed with the Court at ECF No. 28-1—which “supersedes
3 Order No. 750.001, dated January 31, 2020, to ensure the FEPA data-sharing policies and
4 practices more closely align with the requirements of applicable law, including Section 709 of
5 Title VII of the Civil Rights Act of 1964, as amended”;

6 WHEREAS, under EEOC Order 750.001A, “The EEOC shall share with a Contracted
7 FEPA the EEO Information EEOC obtains from any covered entity that is subject to such FEPA’s
8 jurisdiction”¹;

9 WHEREAS, EEOC Order 750.001A provides that a FEPA’s jurisdiction is to be interpreted
10 consistent with Title VII and the state or local laws and regulations conferring authority on the
11 FEPA to enforce equal employment opportunity laws and provides that an entity is generally
12 understood to be subject to a FEPA’s jurisdiction if that entity is located within the geographical
13 jurisdiction of the FEPA and is subject to the laws enforced by the FEPA;

14 WHEREAS, by letters dated April 20, 2021, EEOC reconsidered its prior decisions related
15 to the requests of the FEPAs of California, Minnesota, and New Jersey, and informed those
16 FEPAs that EEOC would provide them with the requested EEO-1 data through a secure share
17 platform consistent with the policy and practices set forth in the revised EEOC Order 750.001A;

18 WHEREAS, EEOC made the requested Component 1 data available to the FEPAs of
19 California, Minnesota, and New Jersey available through a secure share platform on or about
20 April 26, 2021;

21 WHEREAS, in agreeing to the stipulation below, Plaintiffs reserve the right to challenge
22 any future denial of access to EEO-1 data, whether purportedly under EEOC Order 750.001A or
23 otherwise;

24 WHEREAS, Plaintiffs reserve the right to refile the instant matter if Defendants rescind
25 EEOC Order 750.001A;

26 WHEREAS, Defendants view the instant litigation as moot, do not admit liability, and
27 reserve all rights to defend any future action challenged by the Plaintiffs; and

28 ¹ The order defines “EEO Information” as “EEO Reports and any related nonpublic information and data.”

1 WHEREAS, the parties wish to resolve this matter in order to avoid the further expenditure
2 of litigation costs and to preserve judicial resources;

3 THEREFORE, the parties do HEREBY STIPULATE AND AGREE as follows:

- 4 1. Section 709(d) of Title VII, 42 U.S.C. § 2000e-8(d), provides that the EEOC “shall
5 furnish upon request and without cost to any [FEPA]” information obtained
6 pursuant to subsection 709(c) “from any employer, employment agency, labor
7 organization, or joint labor management committee subject to the jurisdiction” of
8 the FEPA.
- 9 2. Defendants will make the remainder of the EEO-1 data previously requested by
10 the FEPAs of California, Minnesota, and New Jersey available no later than July
11 30, 2021.
- 12 3. Pursuant to Title VII and EEOC Order 750.001A, upon request by any Plaintiff
13 FEPAs and any other FEPA with which EEOC has a work-sharing agreement,
14 Defendants will share all EEO-1 data that the EEOC obtains from any covered
15 entity that is subject to such FEPA’s jurisdiction² through a secure shared platform
16 or other secure means.
- 17 4. Within five business days after Defendants notify the Plaintiff FEPAs that they
18 have access to the remaining EEO-1 data as described in paragraph 2 above and
19 pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the parties will file a
20 stipulation of dismissal of the FAC without prejudice; and
- 21 5. All parties will bear their own fees and costs.
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26 ² Under EEOC Order 750.001A, EEOC will also consider, on an individual basis, sharing
27 EEO Information for an entity not within a FEPA’s jurisdiction. “For example, the EEOC may
28 provide a FEPA the EEO Information for an entity not within such FEPA’s jurisdiction when the
FEPA will use the EEO Information to conduct a labor market analysis comparing entities not
within such FEPA’s jurisdiction.” EEOC Order 750.001A at ¶ 7.6.3.

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Dated: June 30, 2021

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