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California Legislature

August 5, 2020

Governor Gavin Newsom
Office of the Governor
State Capitol
Sacramento, CA 95814

Dear Governor Newsom,

As you know, every legislative office in the state has experienced an unprecedented number of constituents requesting assistance in resolving claims with the Employment Development Department (EDD). With over half of all adults in California reporting lost income since March and a 17% unemployment rate across the state, that is not surprising. In our fifth month of the pandemic, with so many constituents yet to receive a single unemployment payment, it's clear that EDD is failing California.

Millions of our constituents have had no income for months. As Californians wait for answers from EDD, they have depleted their life savings, have gone into extreme debt, and are in deep panic as they figure out how to put food on the table and a roof over their heads. Every hour, we field countless calls from constituents reaching out to us as a last resort, after weeks of dead ends and misinformation from EDD.

As legislators, we have exhausted all avenues at our disposal to get resolution for the people we serve. We've waited months for EDD to provide a roadmap out of this crisis, but none has been forthcoming. We appreciate that you just announced actions to address a few of the many issues we have highlighted for months, but unfortunately, this only scratches the surface of the disaster that is EDD. We write to you out of a spirit of partnership, asking you to take further action to improve EDD operations in the following areas:

1. Assessing Bureaucratic Reform: EDD Strike Team

Despite countless conversations between legislators and EDD leadership -- in private meetings, public hearings, emails and letters offering suggestions and demanding solutions -- we have seen little progress over four and a half months. It is apparent to us that while so many EDD staffers are working hard under unprecedented circumstances, EDD is an organization directed by a small inner circle of long-serving bureaucrats rooted in the status quo and unable to drive reform. Given how little has improved at EDD over the course of the pandemic and its overall resistance to change, others must be brought in to assess the crisis and be provided authority to make change.

As some of us had suggested to the Administration, we were pleased you convened a strike team led by leaders outside of EDD, but we hope you will take this further. First, in addition to addressing the EDD

customer experience and technology with defined, milestone-driven time frames for implementation, we urge you to task the strike team with recommending solutions for the entirety of EDD, including the topics in this letter. Second**,** while the full membership of the strike force was not announced, we hope in addition to Government Operations, Department of Technology and the Office of Digital Innovation, it will be comprised of thought leaders and employees from different levels of EDD's organization whose input has not been valued, as well as representatives from the private sector innovating in UI systems and other related fields. Third, while we appreciate the 45-day roadmap deliverable, as with the 6 month DMV strike team experience, we believe changing EDD's practices and culture will require a longer, sustained effort by the EDD strike team, as well as real authority to overrule EDD leadership, who has continued to stymie change.

2. Transparency and Accountability: Governance Dashboard

It has been nearly impossible to get straight answers from EDD on most inquiries. In countless public and private settings, when we have asked for simple, factual information -- such as how many claims have remained unfulfilled, for how long, in different categories, rejected for what reasons -- we have been met with long-winded excuses, fumbling non-answers, or unclear and inconsistent data. For example, on July 8th, as EDD stated that "probably less than 1%" of claims took more than three weeks to process, the media reported that nearly 2 million claims had yet to be fulfilled based on federal Labor Department data.

Lack of transparency and accountability at best -- and obfuscation and dishonesty at worst -- has no place in government. The public deserves transparency, and government must rely on real information and data to diagnose and solve problems. **We ask you to work with the Legislature on budget trailer language that requires EDD to report weekly relevant data to the public and the Legislature.** In order to fully understand the number and nature of unresolved claims, we ask EDD to produce a transparent governance dashboard to help everyone focus on what needs to be resolved, as well as track the pace at which the agency is addressing various claims. The dashboard should be created under the oversight powers of the Labor Secretary, to ensure that it is accurate, thorough, and not designed for the purposes of EDD's public relations.

3. Clear the Entire Backlog

In your recent announcement, you committed to "focus on immediately processing claims," and said EDD "anticipates eliminating the backlog of actionable claims by the end of September," referencing "the almost 1 million claims that may be eligible for payment with additional information." In addition to begging the question of what EDD was doing before your announcement -- if it not "focusing on immediately processing claims" -- we want a commitment from you for when the backlog will be eliminated, ideally by an earlier date, since the end of September is during the 7th month after the commencement of the stay-at-home order.

239,000, 889,000 or 1,128,000 unresolved claims? In the July 30th Assembly Budget Committee oversight hearing on EDD, we asked Director Hilliard what backlog of "almost 1 million claims" would be eliminated by the end of September. She had just provided us materials that said there were 239,000 unique claims "pending EDD resolution," another 889,000 unique claims that "may be eligible with additional information," for a total of 1,128,000 unique unresolved claims that could be eligible. (We have believed that the total number is much higher than 1.13M claims, based on federal Department of Labor statistics, but have never been able to get a straight answer from EDD leadership.)

We were astonished when Director Hilliard only committed to resolving the 239,000 "pending" claims by the end of September. We hear from many of the 899,000 struggling Californians who "may be eligible with additional information" that EDD's online portal does not tell them what more information is needed, that they are not sent communications specifying what more information is needed, and they cannot get through call center lines to speak to EDD claim specialists to ask this question. Obviously, we need EDD to resolve all of these claims in short order, and want to understand EDD's plan to resolve all 1,128,000 unresolved claims.

Award benefits in the interim. As claimants suffer without income while EDD slowly makes its way through the queue of backlogged claims, EDD should provide many of them with at least initial or partial benefits. EDD should continue to manually review weeks in which certification questions were answered incorrectly and issue overpayment notices, if necessary. However, the assumption should be that the vast majority of claimants have legitimate claims to what they are owed, with retroactive certification.

There is precedent for this. In September 2013, four weeks after an EDD's technology system upgrade left 80,000 Californians with unpaid claims, former California Secretary of Labor and Workforce Development Marty Morgenstern gave the order, with Governor Jerry Brown's support, that EDD "immediately begin the process of paying backlogged claims for continued UI benefits prior to a final determination of eligibility."

Similarly, during the current crisis, on March 20, 2020, Labor Secretary Julie Su issued a similar directive to EDD to expedite payments. During the Budget oversight hearing, Director Hilliard testified that the US Department of Labor had questioned this directive. We do not believe this was true, and instead, is indicative of EDD's inclination towards overly restrictive interpretations of eligibility requirements while hiding behind the excuse of federal mandates for such restrictiveness. Director Hilliard's false testimony about the March 20th directive causes us to question whether EDD has implemented all efforts allowed under federal and state law to get payments in the hands of eligible Californians as quickly as possible. We ask that your staff review any state or federal issues, and work with the Legislature immediately if budget trailer language or other approvals are required. If the federal government can send billions of dollars of federal stimulus funding to the largest corporations in America with minimal upfront verification, California should be able to provide initial checks to Californians who are owed them and teetering on the economic edge.

4. Implementing Basic Customer Service Practices

There is a culture within EDD that presumes every claimant may be guilty of fraud and must prove themselves innocent, rather than a desperate constituent who should be treated with compassion and dignity via a model of truly customer-focused government. Here are some proposals to renew a focus on real customer service:

Hours of operation. EDD public relations insists that its employees are "working around the clock," but the EDD's UI claims support number, which constituents need to call to address many specific claim issues, is only open for four hours a day from 8am to 12pm. EDD's excuses for these hours have made no sense; this call line needs to be expanded immediately to handle the millions of unanswered calls every month. At the Budget oversight hearing, we were astonished to learn that while EDD will have budgeted 5,300 staff to address UI, only 100 claim specialists work this call line to address the specific claims of our constituents.

Call back solution for call center. So many of our constituents are immensely frustrated that they cannot get through EDD call lines despite making hundreds of calls. Oftentimes, when call center agents cannot

answer a question, our constituents are placed on a call back list, but report never receiving a call back or being placed on a call back list with a four- to six-week-long queue. Like any basic call center operation throughout the private sector and in many public sectors, EDD should implement an automatic call back feature. Even if the call back doesn't happen immediately, that would be far superior and serve our constituents far better than the status quo.

Call center training and appropriate deployment. Despite the hiring of 5,300 new or redeployed EDD staff, the call center staff on the main UI line are only able to relay basic information already listed in EDD's website and cannot address specific questions about claims or payment information. EDD needs to train a much larger subset of its call center staff to address specific questions and redeploy them to UI claims support.

Accountability for call center operations - ending hang-ups. We receive consistent feedback that if after many, many attempts, our constituents are miraculously connected with an EDD representative, EDD representatives frequently give inaccurate information or literally hang up on our constituents. At the Budget oversight hearing, Director Hilliard surprised us by saying she was "not sure exactly of the specifics" of the issue of hang-ups, despite countless examples provided to her by Californians through our offices and the press. Professional call center operations ensure that "this call may be monitored or recorded for quality assurance" or provide a service ticket number; EDD needs to establish similar accountability.

Waive paper deadlines. Applicants report having their claims closed or rejected due to mailed paperwork not being received in time. Applicants then have to go through a lengthy appeal process which unnecessarily delays their benefits. During the pandemic, all paperwork deadlines should be waived.

Ensuring language access. EDD is potentially in violation of the Dymally-Alatorre Bilingual Services Act, which requires every state agency "directly involved in the furnishing of information or the rendering of services to the public whereby contact is made with a substantial number of non-English-speaking people, shall employ a sufficient number of qualified bilingual persons in public contact positions to ensure provision of information and services to the public, in the language of the non-English-speaking person." Californians for whom English is not their first language face tremendous barriers in the EDD process, and call center staff and applications for programs offered by EDD are not available in enough languages. EDD should work with other agencies to leverage existing language resources and prioritize language accessibility.

Consolidate and simplify website information. While we understand the pandemic has required EDD to issue many "frequently asked questions" documents and memos, at this point, the information is scattered, overwhelming, and contradictory. Consolidating the overwhelming amount of information and making it user-friendly would go a long way towards reducing the need for assistance.

Regional and local partnerships. Other states have taken advantage of partnerships with Local Workforce Boards, including data sharing, training to help process claims, and the checking of the status of claims. California has a robust, statewide network of 45 Local Workforce Boards -- government, employer, labor, educational and community partnerships that represent cities, counties and sometimes multiple counties -- that already work with EDD to administer federal funding and have access to some level of EDD information. They are already assisting countless Californians struggling with UI claims on the ground, and EDD should deepen these partnerships. EDD should also consider organizing along regional internal teams to improve accountability.

Working with legislative offices. Legislators were incredibly frustrated when EDD sent a memo telling us that each office could only submit one case per week for expedited review, forcing us to choose which of our countless constituents would be able to pay the rent or put food on the table that week. This caused us to launch our #EDDFailOfTheDay campaign to highlight the common challenges by our constituents. While we appreciate that the policy has been amended and we can send a longer list of the oldest claims, our offices do not receive any feedback from EDD for at least 4 to 5 weeks for most cases, which is remarkably frustrating. Since constituents typically approach us as a last resort after months of deafening bureaucratic silence, we hope to partner in a more productive way to help them. Assigning an EDD staffer to each legislative office would help.

5. Immediate Operational Issues

Our legislative staff have had the opportunity to get up close to the operational flaws within EDD's benefit award process. On many occasions, our offices have made suggestions for immediate improvement. Some of them include:

Resolving ID Verification bottlenecks. Instead of waiting until applicants receive a letter notifying them of an ID verification issue, an applicant should be immediately notified during the application process -- especially those who are always required to verify their identity (e.g. individuals with out-of-state Driver's License). Applicants should then have the ability to upload ID verification documents online as an additional step in the application process. We were informed that the ability to upload ID verification documents online will be implemented "potentially by the end of summer" and more recently "by the end of September at the latest." As we near the fifth month of requesting this feature, we ask for an actual, hard date for completion, as well as information on how this will be integrated with call center protocols. An EDD customer service agent should be able to direct an applicant to upload a document, wait to receive it, confirm its receipt, and provide any follow-up instructions during the same call.

Allowing for application edits. If a mistake is made, an applicant cannot edit initial application details, nor can they edit responses to certification questions. Correcting these mistakes is currently an unnecessary weeks-long process. Applicants should be able to access their initial application and make necessary changes.

Ongoing certification issues. Certification questions are unclear and contribute to common mistakes which trigger unnecessary weeks of delay. EDD needs to rephrase questions and directly incorporate more information into UIOnline so claimants do not answer certification questions incorrectly, as well as create a dialog box that prompts claimants to double check questions that are commonly answered wrong. Finally, claimants should be allowed to see exactly why their weeks are stuck in pending.

Protecting claimant SSNs. A recent audit found that EDD unnecessarily exposed claimants to identity theft by sending millions of pieces of mail containing full Social Security numbers (SSNs). EDD has said they will address this issue as part of their modernization project, which they do not plan to complete until 2024. EDD needs to take much more rapid measures to better protect claimants; they cannot wait to address these identity theft risks for the millions of Californians that are applying for benefits.

Implementation of new programs. As new programs are implemented, EDD should provide new applicants and existing UI/PUA recipients with clear instructions about how to apply and whether reapplying is necessary.

Worker misclassification. Since the passage of AB 5 to reduce worker misclassification, we have received more calls from constituents who appear to be victims of misclassification and clearly fall within

the AB 5 framework. EDD staff must be better trained to correctly assist applicants. Not all workers are aware they might be misclassified, nor can they afford to wait through a misclassification review.

6. Overhauling EDD's Technology

So much of EDD's dysfunctionality is due to its 30-year-old computer system that uses a 60-year-old computer language. The COBOL language is so old that most of its programmers have retired, and EDD is the last California state agency to rely on it. It is incredibly frustrating that a decade ago, after EDD's systems broke down during the demand created by the Great Recession, EDD promised to fix its system. The department had ten years to plan for the next recession, but failed to do so. Many of the bureaucrats who run EDD today have been with the agency for that entire time. Here are three areas that should be addressed in short order:

Modernization project. During the Great Recession, EDD realized it needed to modernize its IT system. In 2016, it began an 11-year modernization project, which is an absurd time frame, since any IT is outdated within 11 years. In 2020, we are in the 4th year of that 11-year project, and vendors have yet to be selected for the work. The EDD strike team needs to review the project, shorten the project timeline, assess risks that the project will not meet the same fate as so many failed large IT projects in our state, and make recommendations that ensure monies are spent on true modernization, not more of the same. It should be noted that there are good examples of other states that have made significant improvements in their overall systems during this pandemic.

Vendor reform and accountability. EDD has a very poor history of engaging with the private sector to modernize and upkeep its IT systems, continuing to mostly default to its long-standing relationship with its consultant Deloitte. Ten years ago, Deloitte received an initial $47 million contract to upgrade EDD's IT system within 4 years; the project ballooned into a $94 million project that took 6 years with major failings that never solved basic problems. A 2015 state audit found that project leaders had misrepresented project progress; EDD said the project was 99% done, when the auditor found the project had $53 million worth of work to do. Deloitte has received at least $259 million to do work on EDD's IT system over the years, including at least two no-bid contracts during this pandemic. It's clear that despite all of the money Deloitte has been paid, it has not successfully resolved EDD's IT challenges or modernized its system.

We understand other vendors are involved with EDD, but there is little visibility into all projects and contracts. We have been told that the many simple suggestions we have recommended for UIOnline are "in the queue" or we are given unusually long estimated timelines for completion. The public is owed a clear explanation of all pending system updates, the responsibility that each contractor has to address each work item, and reasonably estimated timelines.

Cloud strategy. Despite many questions raised about why EDD cannot quickly improve its IT system, we were told that EDD cannot easily scale or improve upon its code. This is likely in part because despite the State of California's "Cloud First" policy, EDD's IT system is largely not cloud-based. The overall lack of a cloud strategy requires EDD to buy expensive hardware and puts real constraints on scaling up during this time. A cloud strategy would be pay-as-you-go, and could scale up dramatically based on demand. The EDD strike team should evaluate a cloud strategy as part of its assessments.

In closing, during this pandemic and recession, it is unacceptable that millions of Californians have gone for months without income due to the failure of our state government. We would appreciate a timely response from your Administration on all of the issues raised in this letter. As elected officials who

believe in the power of government to help, we truly hope that our Legislature and your Administration can work in true partnership to address the suffering of our constituents.

Sincerely,



David Chiu
Assemblymember, 17th District



Buffy Wicks
Assemblymember, 15th District



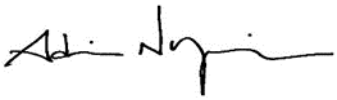
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Adrin Nazarian
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Cottie Petrie-Norris
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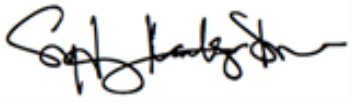
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Mike Gipson
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Cristina Garcia
Assemblymember, 58th District



Sydney Kamlager
Assemblymember, 54th District



Todd Gloria
Assemblymember, 78th District



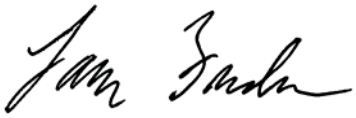
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Assemblymember, 31st District



Mark Stone
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Laura Friedman
Assemblymember, 43rd
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Marc Berman
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Sabrina Cervantes
Assemblymember, 60th
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Marc Levine
Assemblymember, 10th
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Eduardo Garcia
Assemblymember, 56th
District



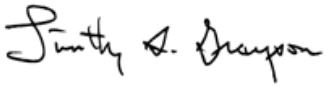
Brian Maienschein
Assemblymember, 77th
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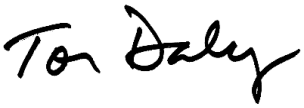
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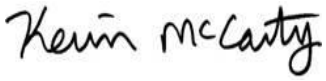
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Assemblymember, 18th
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Assemblymember, 14th
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Kevin McCarty
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Richard Bloom
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Assemblymember, 39th
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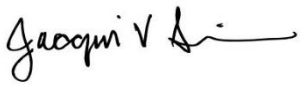
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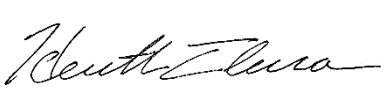
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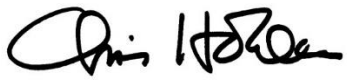
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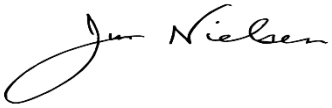
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Senator, 3rd
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Scott Wiener
Senator, 11th
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Ben Allen
Senator, 26th
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Senator, 32nd
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Maria Elena Durazo
Senator, 24th
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Brian Dahle
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Ling Ling Chang
Senator, 29th
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cc: Secretary Julie Su, California Labor and Workforce Development Agency
Director Sharon Hilliard, Employment Development Department