

1 STATE OF CALIFORNIA  
2 DEPARTMENT OF INDUSTRIAL RELATIONS  
3 DIVISION OF WORKERS' COMPENSATION  
4 BEFORE THE ADMINISTRATIVE DIRECTOR

5 In Re: ) No. URA-S24-13-T  
6 )  
7 Sedgwick Claims Services Management, Inc. )  
8 )  
9 Respondent. )  
\_\_\_\_\_ )

10 **STIPULATED SETTLEMENT AGREEMENT AND ORDER**  
11 **RE: ASSESSMENT OF ADMINISTRATIVE PENALTY,**

12 **[Labor Code § 4610, 8 CCR §9792.15]**

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14 This STIPULATED SETTLEMENT AGREEMENT (“Agreement”) is made by, between,  
15 and among the California Division of Workers’ Compensation (“DWC”) and Sedgwick Claims  
16 Management Services, Inc. (“Sedgwick”) (collectively, the “Parties”).

17 Whereas, the DWC has filed an Order To Show Cause Re: Assessment Of Administrative  
18 Penalties (“OSC”) against Sedgwick in Case No. URA-S24-13-T, containing attached Findings of  
19 Utilization Review Investigation and Utilization Review Investigation Notice of Penalty  
20 Assessments, both dated August 17, 2015.

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22 Whereas, the Parties wish to fully and completely settle their dispute in regard to the OSC  
23 without any Party making any concession as to legal positions or any admission of wrongdoing or  
24 of liability; and

25 In consideration of the mutual promises and agreements contained in this Agreement, the  
26 Parties agree to the following:  
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1 1. Sedgwick will pay the DWC a liquidated administrative penalty of one million one-hundred  
2 and twenty-nine thousand six hundred dollars (\$1,129,600) within thirty (30) calendar days of the  
3 date the DWC Administrative Director issues an order approving this Agreement. Payment shall  
4 be remitted to the "Workers' Compensation Revolving Fund" (Tax Identification No. 94  
5 3160882) and shall be sent by Federal Express, in care of:

6  
7 Attention: Alan Hersh, Legal Unit  
8 Division of Workers' Compensation  
9 1515 Clay Street, 18<sup>th</sup> Floor  
Oakland, CA 94612

10 2. Sedgwick agrees to waive its right to a hearing under Labor Code §4610 to contest the  
11 assessment of administrative penalties set forth in Case No. URA-S24-13-T.

12 3. Sedgwick agrees to provide the DWC Audit and Enforcement Unit with copies of internal  
13 utilization review audits (including requests for authorization) it conducted regarding the Kroger  
14 account from February 10, 2012, through the date the Administrative Director issues an order  
15 approving this Agreement. All information provided by Sedgwick to the DWC Audit and  
16 Enforcement Unit as referenced in this Agreement shall be sent as follows: Division of Workers'  
17 Compensation, Audit and Enforcement Unit, Attn: UR Oversight, 320 West 4<sup>th</sup> Street, Suite 900,  
18 Los Angeles, CA 90013. The DWC agrees it shall not disclose nor produce the internal Sedgwick  
19 utilization review audit findings to any third parties. The DWC further agrees to, at the end of  
20 three years from the date the Administrative Director issues an order approving this Agreement,  
21 return the original and all copies of the internal Sedgwick utilization review audit findings to  
22 Sedgwick's Chief Legal Officer at 110 Ridgeway Loop Road, Suite 200, Memphis, TN 38120.  
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24 4. For a period of three years from the date the Administrative Director issues an order  
25 approving this Agreement, Sedgwick shall conduct quarterly internal audits of utilization review  
26 and Requests for Authorization processed after the effective date of this Agreement, on any claim  
27 file related to the Kroger account, and provide a copy of each such audit to the DWC Audit Unit  
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1 within 30 calendar days of the date of completion of the audit. The DWC agrees it shall not  
2 disclose nor produce the internal Sedgwick utilization review audit findings to any third parties.  
3 The DWC further agrees to, at the end of three years from the date the Administrative Director  
4 issues an order approving this Agreement, return the original and all copies of the internal  
5 Sedgwick utilization review audit findings to Sedgwick's Chief Legal Officer at 110 Ridgeway  
6 Loop Road, Suite 200, Memphis, TN 38120.

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8 5. Within 60 calendar days of the date the Administrative Director issues an order approving  
9 this Agreement, Sedgwick will:

10 (a) Submit a detailed Statement of Corrective Measures to the Audit Unit of all utilization review  
11 corrective measures taken in response to the August 17, 2015 Findings of Utilization Review  
12 Investigation and Utilization Review Investigation Notice of Penalty Assessment. The Statement  
13 of Corrective Measures shall detail all corrective measures taken in response to the Findings of  
14 Utilization Review Investigation and Utilization Review Investigation Notice of Penalty  
15 Assessments, both dated August 17, 2015, and

16  
17 (b) Provide DWC information indicating all utilization review training conducted with claims  
18 staff subsequent to February 10, 2012, through the date the Administrative Director approves this  
19 Agreement. The information shall include the dates of training(s), the subject matters of the  
20 training(s), whether all claims staff attended the training(s), if not, the number of claims staff that  
21 attended and the number that did not, and copies of all training material used.

22 The detailed Statement of Corrective Measures and utilization review training information and  
23 material shall be submitted to the Division of Workers' Compensation Audit and Enforcement  
24 Unit Attn: UR Oversight, 320 West 4<sup>th</sup> Street, Suite 900, Los Angeles, CA 90013.

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26 The DWC agrees it shall not disclose nor produce the Sedgwick Statement of Corrective  
27 Measures and Sedgwick training information and materials to be provided to the DWC under this  
28 paragraph to any third. The DWC further agrees to, at the end of three years from the date the

1 Administrative Director issues an order approving this Agreement, return all such information and  
2 materials and all copies of such information and materials to Sedgwick's Chief Legal Officer at  
3 110 Ridgeway Loop Road, Suite 200, Memphis, TN 38120.

4 6. The Audit and Enforcement Unit reserves the right to monitor the utilization review  
5 training of the Sedgwick Long Beach office staff for three years from the date the Administrative  
6 Director approves this Agreement. For each utilization review training given to employees of the  
7 Sedgwick Long Beach office during this three year period, Sedgwick will provide the Audit and  
8 Enforcement Unit with the dates of such training(s), the subject matters of the training(s), whether  
9 all claims staff attended the training(s), if not, the number of claims staff that attended and the  
10 number that did not, and copies of all utilization review training material used within thirty  
11 calendar days of the completion of each utilization review training. The utilization review training  
12 information and material shall be submitted to the Division of Workers' Compensation Audit and  
13 Enforcement Unit Attn: UR Oversight, 320 West 4<sup>th</sup> Street, Suite 900, Los Angeles, CA 90013.  
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15 The DWC agrees it shall not disclose nor produce the Sedgwick training information and  
16 materials to be provided to the DWC under this paragraph to any third parties. The DWC further  
17 agrees to, at the end of three years from the date the Administrative Director issues an order  
18 approving this Agreement, return all such information and materials and all copies of such  
19 information and materials to Sedgwick's Chief Legal Officer at 110 Ridgeway Loop Road, Suite  
20 200, Memphis, TN 38120.  
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22 7. Within 60 calendar days of the date the Administrative Director issues an order approving  
23 this Agreement, Sedgwick will provide the DWC Audit Unit with a statement that it has  
24 conducted an internal utilization review audit of all claim files adjusted by Ms. Teresa McDivitt,  
25 the date(s) of the internal audit(s), and provide the Audit Unit with a copy of all such internal  
26 audits. The DWC agrees it shall not disclose nor produce the internal Sedgwick audits of claim  
27 files adjusted by Ms. Teresa McDivitt provided to the DWC under this paragraph to any third  
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1 party. The DWC further agrees to, at the end of three years from the date the Administrative  
2 Director issues an order approving this Agreement, return all the internal Sedgwick audits of  
3 claim files adjusted by Ms. Teresa McDivitt provided to the DWC under this paragraph, and  
4 copies of such, to Sedgwick's Chief Legal Officer at 110 Ridgeway Loop Road, Suite 200,  
5 Memphis, TN 38120.

6 8. For three years commencing with the date the Administrative Director issues an order  
7 approving this Agreement, the DWC Audit Unit, at its discretion, shall be permitted to conduct  
8 random, unannounced utilization review audits of the specific Sedgwick internal utilization  
9 review audit findings that were conducted on any claim file adjusted by Ms. Teresa McDivitt, and  
10 said audits will be limited to the two following areas, as provided in Labor Code §4610 and the  
11 implementing regulations: (1) that only a licensed physician may modify, delay, or deny requests  
12 for authorization of medical treatment for reasons of medical necessity to cure or relieve, and (2)  
13 timely responses to requests for authorization by the injured employee's requesting treating  
14 physician.  
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16 9. For three years commencing with the date the Administrative Director issues an order  
17 approving this Agreement, the DWC Audit and Enforcement Unit, at its sole discretion, shall be  
18 permitted to conduct random, unannounced Target investigations as referenced in California Code  
19 of Regulations 9792.11, of any claim file containing a Request for Authorization dated on or after  
20 the Administrative Director's order approving this agreement, where that claim file is or was  
21 adjusted in the Sedgwick Long Beach office, limited to the two following areas, as provided in  
22 Labor Code §4610 and the implementing regulations: (1) that only a licensed physician may  
23 modify, delay, or deny requests for authorization of medical treatment for reasons of medical  
24 necessity to cure or relieve, and (2) timely responses to requests for authorization by the injured  
25 employee's requesting treating physician.  
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1 10. The Parties agree that any DWC Target investigation of claim files referred to Paragraph 9  
2 of this Agreement shall be limited to determining whether Sedgwick has met its claims  
3 adjustment and utilization review obligations in the two following areas, as provided in Labor  
4 Code §4610 and the implementing regulations: (1) that only a licensed physician may modify,  
5 delay, or deny requests for authorization of medical treatment for reasons of medical necessity to  
6 cure or relieve, and (2) timely responses to requests for authorization by the injured employee's  
7 requesting treating physician.  
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9 11. For three years commencing with the date the Administrative Director issues an order  
10 approving this Agreement, Sedgwick agrees that if the Audit and Enforcement Unit determines,  
11 based upon any Target investigation, as referenced in Paragraphs 9 and 10 of this Agreement, that  
12 Sedgwick has less than a 92% pass rate on any Target investigation during the first year, or less  
13 than a 95% pass rate on any Target investigation during the second or third year, in either of the  
14 two audit areas set forth in paragraphs 9 and 10 of this agreement, for any request for  
15 authorization dated on or after the date of the Administrative Director's order approving this  
16 Agreement, where the claim file is or was adjusted in the Sedgwick Long Beach office, the DWC  
17 Audit and Enforcement Unit may make a recommendation to the Administrative Director for the  
18 assessment of a potential civil penalty pursuant to the provisions of Labor Code §129.5(e) related  
19 to the specific penalty assessments alleged in Case No. URA-S24-13-T and DWC may take action  
20 by filing and prosecuting such potential civil penalties related to the specific penalty assessments  
21 alleged in Case No. URA-S24-13-T. The Parties will waive any defense of the statute of  
22 limitations should the DWC seek any such potential civil penalties pursuant to Labor Code  
23 §129.5(e) related to the specific penalty assessments alleged in Case No. URA-S24-13-T. The  
24 DWC agrees that any and all Sedgwick defenses related to any potential civil penalty proceeding,  
25 related to the specific penalty assessments alleged in Case No. URA-S24-13-T, except the statute  
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1 of limitations as noted herein, are fully and completely preserved and are not affected by this  
2 Agreement.

3 12. For the three years commencing with the date the Administrative Director issues an order  
4 approving this Agreement, the DWC agrees that if the Audit and Enforcement Unit determines  
5 that Sedgwick has maintained a pass rate of at least 92% or higher on each Target investigation  
6 during the first year, and a 95% pass rate or higher on each Target investigation during the second  
7 or third year, in both of the two audit areas of the Target investigations, referenced in paragraphs  
8 9 and 10 of this agreement, for any request for authorization dated on or after the date of the  
9 Administrative Director's order approving this Agreement, where the claim file is or was adjusted  
10 in the Sedgwick Long Beach office, then the DWC will waive any right it has to file or prosecute  
11 any potential civil penalties pursuant to the provisions of Labor Code §129.5(e) against Sedgwick  
12 (1) in regard to the specific penalty assessments alleged and set forth in Attachment A to the OSC  
13 in Case No. URA-S24-13-T, dated August 17, 2015; (2) relying upon any internal Sedgwick  
14 utilization review audits provided to the DWC pursuant to Paragraphs 3, 4, and 7. The waiver of  
15 the right to file or prosecute for civil penalties contained in this paragraph shall only apply to the  
16 specific instances for which penalties were assessed in Case No. URA-S24-13-T or relying upon  
17 any internal Sedgwick utilization review audits provided to the DWC pursuant to Paragraphs 3, 4,  
18 and 7.

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21 13. Except for what is provided in this Agreement, nothing in this Agreement or the  
22 investigations of Utilization Review claims files referenced herein precludes the DWC from  
23 assessing administrative penalties, as defined by Labor Code §4610 and California Code of  
24 Regulations, title 8, §§9792.6 through 9792.15, for failure to comply with the Utilization Review  
25 process.

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27 14. Except for what is provided in this Agreement, the Parties agree that nothing in this  
28 Agreement — including, but not limited to, the Target investigations of utilization review claims

1 files for three years, as referenced herein in Paragraphs 9 and 10 of this Agreement — precludes  
2 the DWC and its Audit and Enforcement Unit from performing other audit, investigation,  
3 assessment, and enforcement actions as permitted by law. The Target investigations covered by  
4 this Agreement are apart from, and do not affect other audit, investigation, assessment, and  
5 enforcement actions by DWC and its Audit and Enforcement Unit, as permitted by law.

6 15. This Agreement shall only be binding if the Administrative Director issues an order  
7 approving the Agreement. The effective date of this Agreement shall be the date the  
8 Administrative Director issues an order approving this Agreement. The signed original of the  
9 Agreement shall be retained by the Administrative Director.  
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11 16. The Administrative Director or his or her designee and Sedgwick or its successors may  
12 enforce the terms of this Agreement in the Superior Court of California. Any such action(s) may  
13 be instituted in the following county or counties, at the option of the Party bringing such  
14 enforcement action: Alameda County, Los Angeles County.  
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16 17. This Agreement constitutes a compromise and settlement of all claims and matters  
17 described herein, and neither Party admits or otherwise concedes the validity of the other's claims  
18 and defenses related to the matters resolved by this Agreement. Nothing in this Agreement shall  
19 be cited or construed as constituting an admission by either Party as to any of the allegations made  
20 by either Party or of any other alleged wrongdoing or liability that is addressed and settled in this  
21 Agreement.  
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23 18. This Agreement shall be construed as if both Parties hereto, and each of them, prepared it  
24 jointly, and any uncertainty and ambiguity shall not be interpreted to favor one Party over the  
25 other Party on the basis that one Party prepared the Agreement or any portion of it.

26 19. All terms of this Agreement shall be binding upon and inure to the benefit of and be  
27 enforceable by the Parties hereto and their respective legal representatives, successors and assigns.  
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1 20. This Agreement constitutes the entire, integrated understanding of the Parties and  
2 supersedes all prior agreements, representations and discussions between the Parties concerning  
3 the subject matter of this Agreement. Any amendments or modifications to this Agreement must  
4 be in a writing signed by all Parties to be effective.

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6 Dated: 12/30/15 Alan S. Hersh

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8 By: Alan S. Hersh  
9 Special Counsel III, Division of Workers' Compensation  
10 California Department of Industrial Relations

11 Dated: 12/28/15 Marcus Topel (12)

12 By: Marcus Topel  
13 Kasowitz, Benson, Torres & Friedman LLP  
14 Counsel for Sedgwick Claims Management Services, Inc.

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17 **ORDER RE FINDINGS BY THE ADMINISTRATIVE DIRECTOR**

18 Based upon the above Stipulated Settlement Agreement, entered into between the  
19 California Division of Workers' Compensation ("DWC") and Sedgwick Claims Management  
20 Services, Inc., I find that good cause exists to approve the Stipulated Settlement Agreement.

21 The parties are hereby ordered to comply with the terms set forth in the above Stipulated  
22 Settlement Agreement.

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24 **IT IS SO ORDERED.**

25 Dated: 12/30/15

26 Destie Overpeck  
27 DESTIE OVERPECK  
28 Administrative Director