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10 IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
11 COUNTY OF WASHOE

12 AMETHYST PAYNE, IRIS PODESTA-
13 MIRELES, ANTHONY NAPOLITANO,
14 ISAIAH PAVIA-CRUZ, VICTORIA
15 WAKED, CHARLES PLOSKI, DARIUSH
16 NAIMI, TABITHA ASARE, SCOTT
HOWARD, RALPH WYNCOOPON,
17 ELAINA ABING, and WILLIAM TURNLEY
behalf of themselves and all others similarly
situated,

18 Plaintiffs-Petitioners,

19
20 v.

21 STATE OF NEVADA ex rel NEVADA
22 DEPARTMENT OF EMPLOYMENT,
TRAINING AND REHABILITATION
23 (DETR) HEATHER KORBULIC in her
official capacity only as Nevada Director of
24 Employment, Training and Rehabilitation,
DENNIS PEREA in his official capacity as
25 Deputy Director of DETR, and KIMBERLY
26 GAA in her official capacity only as the
27 Administrator for the Employment Security
Division (ESD); and DOES 1-100, inclusive,

28 Defendants-Respondents

Case No.: CV20-00755

FIRST AMENDED *EX PARTE* MOTION
FOR AN ORDER TO SHOW CAUSE WHY
WRIT OF MANDAMUS SHOULD NOT
ISSUE

1 **MOTION**

2 COME NOW Plaintiffs-Petitioners AMETHYST PAYNE, IRIS PODESTA-MIRELES,
3 ANTHONY NAPOLITANO, ISAAH PAVIA-CRUZ, VICTORIA WAKED, CHARLES
4 PLOSKI, DARIUSH NAIMI, TABITHA ASARE, SCOTT HOWARD, RALPH
5 WYNCOOPON, ELAINA ABING, and WILLIAM TURNLEY behalf of themselves and all
6 others similarly situated, and hereby moves this Court for an ORDER TO SHOW CAUSE, if any
7 there be, why this court should not issue a writ of mandamus and/or order of mandate compelling
8 DEFENDANTS-RESPONDENTS STATE OF NEVADA ex rel NEVADA DEPARTMENT OF
9 EMPLOYMENT, TRAINING AND REHABILITATION (DETR) HEATHER KORBULIC in
10 her official capacity only as Nevada Director of Employment, Training and Rehabilitation, and
11 KIMBERLY GAA in her official capacity only as the Administrator for the Employment Security
12 Division (ESD), their employees, agents and assigns to perform the clear duties of their office by
13 providing each and every member of the gig worker class as hereinafter defined unemployment
14 benefit compensation “when due,” as required by 42 U.S.C. § 503(a)(1) (3) (a) (1) and the March
15 30, 2020 agreement between Defendant-Respondent DETR and the United States Department of
16 Labor, as well as other state and federal statutes, and further providing that that that
17 unemployment compensation payments are “due” at the earliest of the following times: a) two
18 weeks after April 11, 2020, if the gig class member would have been entitled to payment of
19 unemployment compensation if he or she had applied on April 11, 2020; b) at the time the gig
20 worker class member first presents a prime facia valid application for unemployment
21 compensation to Defendant-Respondent DETR; c) at the first time a letter of Unemployment
22 Qualifying Determination letter in which the claim is approved, regardless of any other
23 subsequent determinations. Nothing herein shall preclude or prevent any determination of non-
24 entitlement and/or overpayment of benefits by an administrative law judge after proper notice and
25 a fair hearing with due process of law conducted by Defendant-Respondent DETR in normal
26 course and with the usual procedures of any other denial of benefits after payment case.

1 Plaintiffs-Petitioners and all those similarly situated were forced to cease operations as a
2 result of the March 15, 2020, Governor Sisolak Executive Order. Plaintiffs-Petitioners bring this
3 motion because Defendants-Respondents have failed to execute their clear, present legal duty by
4 virtue of their office, and by the federal Social Security Act, 42 U.S.C. § 503(a)(1) (3) to
5 administer a governmental system that pays unemployment compensation: “. . . reasonably
6 calculated to insure full payment of unemployment compensation when due;” and which since
7 the March 27, 2020 passage of the federal CARES Act includes all self-employed individuals,
8 independent contractors and/or the owners of sole proprietorships located within the State of
9 Nevada who do not pay their own wages as a W-2 employee and who have been ordered to cease
10 working on March 15, 2020 by the State of Nevada, Governor Sisolak.

11 For purposes of this order, the gig worker class is defined as “All self-employed
12 individuals, independent contractors and/or the owners of sole proprietorships who do not pay
13 their own wages as a W-2 employee (also referred to hereinafter as “gig workers”) and who
14 worked within the State of Nevada immediately prior to March 15, 2020, and who have suffered
15 a significant reduction of income, revenue and/or earnings from said work as a result of Governor
16 Sisolak’s Declaration of Emergency For COVID_19 dated March 12, 2020 and effective March
17 15, 2020 or the presence of Coronavirus 19 Pandemic in the State of Nevada, and who have on
18 or after May 16, 2020 submitted to Defendant-Respondents DETR a prime facie eligible claim
19 for unemployment compensation pursuant to Coronavirus Aid, Relief, and Economic Security
20 Act (“CARES” Act) but who have not yet been paid the applicable amount of PUA program
21 funding, which is not more than 39 weeks of unemployment benefits on the same basis as regular
22 W-2 workers for every week unemployed or suffering economic harm due to the COVID-19
23 Pandemic, retroactive to January 27, 2020 and ending on or before December 31, 2020, plus an
24 additional \$600 per week to all eligible gig workers for every week after March 15, 2020 until
25 July 31, 2020 (for a total of 24 weekly payments.)”.

26 This motion is based upon the First Amended Petition for Writ Of Mandamus and/or
27 Class Action Complaint For Damages Pursuant To Nev. Const. Art. 6, § 6, NRS 41.031 and 42
28 U.S.C §1983, Memorandum of Points And Authorities In Support of *Ex Parte* Writ Of

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Mandamus, the declarations, and the proposed Order to Show Cause all filed herewith and all the other pleadings and files on record in this action.

AFFIRMATION

The undersigned does hereby affirm that the proceeding document to be filed in the Second Judicial District Court in the State of Nevada, County of Washoe, does not contain the social security number of any person.

DATED: June 22, 2020

Respectfully Submitted,

THIERMAN BUCK LLP

/s/Mark R. Thierman

Mark R. Thierman
Joshua D. Buck
Leah L. Jones
Joshua Hendrickson

Attorneys for Plaintiffs