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12 *Attorneys for Plaintiffs-Petitioners*

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15 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
16 **THE STATE OF NEVADA IN AND FOR THE**  
17 **COUNTY OF WASHOE**

18 AMETHYST PAYNE, *et al.*, on behalf of  
19 themselves and all others similarly situated,

20 *Plaintiffs-Petitioners,*

21 v.

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

*Defendants-Respondents*

Case No.: CV20-00755

**DECLARATION OF**

**Steve Zuelke**

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1 State of Nevada

2 County of Lyon

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4 I, Steve Zuelke, being duly sworn, upon my oath, hereby depose and say:

5 1. The following declaration is based upon my own personal observation and  
6 knowledge, and if called upon to testify to the things contained herein, I could competently so  
7 testify, except as to those matters stated to be based upon information and belief, and as to  
8 those matters, I believe them true because I believe that the source of the information is  
trustworthy and the statement is admissible in a court of law.

9 2. As a Nevadan, I am deeply disturbed by what has occurred to the unemployed as  
10 a result of the devastating mass layoffs. As a humanitarian, I ache for the tens of thousands who  
11 remain without payable benefits - for many going on three months now. As a retired  
12 professional, I am appalled.

13 3. I believe there will be significant interest in the viewpoint of a retired expert who  
14 understands how your actions and inactions contributed to payment delays.

15 4. **My Qualifications to Make These Observations** - I retired from the Nevada  
16 Employment Security Division (ESD) after 25+ years of service in December, 2016. I served in  
17 the capacity of claims examiner, adjudicator, Business Process Analyst (an occupational class I  
18 helped establish in 2002), and a decade as the manager responsible for Benefit  
Integrity Programs.

19 5. I have formalized training and practical experience in both the budgetary  
20 Resource Justification Model and payment accuracy Benefits Timeliness and Quality processes.  
21 I have written Supplemental Budget Requests and evaluated Requests For Proposal. I have  
22 developed Corrective Action Plans and addressed multiple national conferences regarding  
23 unemployment insurance considerations.

24 6. I worked for the ESD through three different recessions, each using different  
25 technologies. I was deeply involved in design teams and implementation projects through TWO  
26 system redesigns, including the current UInv benefits program. I created the original base fact  
finding forms modified for use in the current system.

27 7. Under my stewardship as a Business Process Analyst, the Nevada ESD was the  
28 FIRST state to pay Federal extended benefits following the 9/11 economic crash.

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8. I have drafted and interpreted law and policy for some two decades, including legislation that is the basis of the current UI fraud laws and overpayment collection activities. This latter legislation was cloned by the Nevada Controller's Office due to its efficacy. I personally "broke" three major fraud cases in Nevada and identified the upstart of a national identity theft case that haunts Nevada to this day.

9. I have been sworn in and identified as a Nevada unemployment insurance expert in Las Vegas Federal District Court. Like you, I carry the Certified Public Manager designation.

10. Brian Sandoval formalized a Proclamation thanking me for my dedication to, and expertise in, Nevada unemployment insurance. I was commended for my career efforts by the United States Department of Labor, Office of Fraud and Racketeering for the Los Angeles Region.

11. I cite these career accomplishments to establish that I am intimately familiar with Nevada unemployment insurance, the laws governing the program, the technology involved, the funding structures and the challenges of administering the program. Please feel free to compare your credentials to mine.

12. What I am about to say comes from a dedicated, retired ESD employee. This is not my job, but it is my *responsibility* as a Nevadan and human being. The people need to understand aspects of this crisis not related publicly through your office.

13. **The Stage** - The unemployment insurance program has long been a significant underpinning to the ability of an economy to recover from recessions. The goal of the unemployment insurance program is to insure proper payment of benefits when benefits are due. They are payable to covered individuals found to be out of work through no fault of their own, without significant impingement on their ability to return to work as a bridge to new, gainful employment.

14. When Governor Sisolak announced a statewide closure of non-essential businesses in March, I immediately understood what was about to happen. The automation of UInv and insufficient staffing set the stage for disaster. I have fully supported the shutdown despite this understanding.

15. The public health was - and remains - seriously at risk regardless of economic impact. My post-retirement business was shut down by his order as non-essential.

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16. I quickly announced my availability to assist the public, pro bono, through Social Media groups. I have since been engaged in answering questions, providing insight and expert knowledge. I provide a map and a light to some 10 percent of the unemployed. This exposure gives me reason to believe that my observations are based on a relevant sampling.

17. I have supported the ESD in my public Social Media presence. I've routinely defended the logistical and administrative reality of what has occurred. In the background, I've been funneling in opportunities based on observations to make significant differences. Publicly, I projected the absolute imbalance of issues and claims versus available staff, and the requirement to lawfully pay benefits because I understand the program. I "get" it., I understand the challenges.

18. My Social Media presence with the unemployed is an open book and speaks for itself. My defense of those 'realities' stops here.

19. **System Challenges** - On no less than three separate occasions, I sent valid, helpful suggestions and recommendations to senior-level personnel in the ESD. These recommendations - if seriously considered and implemented - would have made significant differences in mitigating this crisis. None of these overtures were returned undeliverable. One was acknowledged, but barely. I cannot earnestly believe you were unaware of these. These were sent to subordinate staff in your direct chain of command.

20. These suggestions included opportunities to make broad-based and high-impact "data correction requests" by leveraging the technologies at hand and within the scope of authority of the Division Administrator. They provided observations of programming "regression errors"; methods to restructure existing phone queues and staffing assigned based on limited resources; evidence of old disqualifications that generated no new "issues" but held payments nonetheless; changes to document scanning and indexing processes; as well as name and wage mismatches that delay payment.

21. Everything proposed was lawful and within the statutory authority of the Administrator under Nevada Revised Statutes (NRS). Neither you nor your senior management even bothered to ask follow up questions about how these recommendations might work or be effectively implemented. Seeing ongoing delays caused by inaction indicates they have not been.

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22. We both know the UInv benefits system is not "archaic" in the vernacular of unemployment insurance benefit systems. This argument has been trotted out in defense of payment delays many times. It is not an argument, but an excuse, and the excuse makes me tired and hurts Nevadans.

23. The base implementation for UInv occurred some seven years ago. It's one of the more modern systems nationwide. This system was designed to place holds and gather information. It has done what it was built to do. I know. I helped design it.

24. States which have much older systems were able to implement Pandemic Emergency Unemployment Compensation, Pandemic Unemployment Assistance and the \$600 weekly additional benefits more quickly because they HAD older systems. Older systems contained existing model code they could adjust for the new programs and implement in realistic timeframes. Delays in implementing these programs are not my concern here. I applaud the speed in which these rollouts occurred, as I understand how complex they are and the challenges involved.

25. **Staffing Shortages** - The Unemployment Insurance Program Letter 14-20 dated April 2, 2020 authorized Employment Security Divisions to rehire retirees, allowing a bypass of normal merit-based hiring processes. On May 11, Governor Sisolak signed a directive authorizing contracting and hiring of staff. I communicate with many retirees. Few have been contacted and asked to return.

26. Some that *were* contacted chose to decline as the employment terms were reported as being imbalanced with the skill sets and duties required. Most retirees would have hit the ground at a near run, without the learning curve of the complex world of UI. Significant numbers have not been so contacted although they would have willingly returned in any capacity. Seems they care what is happening to their fellow Nevadans, too.

27. Reaching out to retirees should have been a no-brainer, even if you chose not to seek designation of these workers as a Critical Labor Shortage through the Board of Examiners. Even as short-term temporary hires, they would not lose significant production time lined up at supervisors' desks asking "what does this mean?" as happens so frequently with newly-hired staff.

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1 28. They would have also provided needed workload relief as new staff were given  
2 opportunity to receive valid training, as opposed to being introduced to fundamentals then being  
3 shipped off to front line work. Hastily trained staff create as many problems as they resolve.

4 29. It is obvious to me that you haven't been interested in marshaling resources. You  
5 have gone so far as to quite recently use an apparently unranked list to fill vacant UI  
6 management positions. I applied for recruitments 40187 and 40188, was eligible for placement  
7 and had interviewed for both these positions in years past - yet you chose not to interview me.  
8 Instead, you hired parties into senior management who have little demonstrable UI experience.  
9 This quote from the announcements: "The most qualified applicants will be contacted by the  
10 hiring agency for interview." Your explanation as to how I was not one of the most qualified  
11 applicants may be interesting.

12 30. Your actions in filling these positions violate at least the spirit of NRS and NAC  
13 284..

14 31. The ESD has - in the past five years - lost volumes of institutional knowledge on  
15 the overall function of UI to service retirement. The Division has a damning shortage of staff  
16 that has dealt with a crisis of this nature - those that remain have a limited frame of reference. I  
17 am familiar with many that continue to serve, as they came up under my tutelage. Most are fine  
18 staff that don't have the experience to provide direction in a crisis of this magnitude.. Yet you  
19 have *de facto* rejected realistic avenues to shore up that critical loss of experience and minimize  
20 the subsequent impact.

21 32. **Messaging to Claimants** - I find your responses to the public crisis through press  
22 releases, interviews and newsletters to be deflective and dismissive of the valid concerns and  
23 growing financial impact on payable claimants.

24 33. Messaging and information available to the unemployed public is bureaucratic,  
25 ineffective and fails to recognize the common denominators. You are addressing hundreds of  
26 thousands of people across all walks of life - with widely varying education levels and language  
27 barriers - yet instructions and guides are filled with jargon, legalese and bereft of real answers.  
28 No wonder your phones are a logjam.

34. To someone bewildered about why they received a medical form when they  
marked that their employer placed them on a leave of absence - then to needlessly spend money  
to have a doctor fill out the form to show they were in fact able to work caused by ineffectual

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1 messaging and explanations - adds financial injury to the insult of waiting months for their  
2 matter to be cleared. There is no valid roadmap to resolution, no redress other than to call.

3 35. The phones are not jammed with "robo-callers" per se, they are filled with people  
4 trying to get answers not available elsewhere. Some of them leverage call-back programs  
5 because they have tried for months to get through to a representative with no response. They  
6 sardonically refer to it as redial finger and UI Roulette.

7 36. There is no clear guidance available to them that explains what is happening or as  
8 to why they see certain holds on payment. Nothing that tells them how to address these holds or  
9 facilitate their resolution. 'What does this "reactivate" button mean'? 'Must I Go To  
10 JobConnect'? "What is 'Other' on my claim?" These are website adjustments, not  
11 programming modifications

12 37. So they call. And they call. And they call. When they DO get through, they - by  
13 sampling - routinely get little direction other than to be told they need to speak with a 'nebulous'  
14 adjudicator or be assured their issue is resolved only to find out it hasn't been when they check  
15 the following day. This type of result is indicative of a generally inexperienced staff neither  
16 properly trained nor structured to actually help. If they are lucky enough to reach an  
17 experienced examiner, they typically are helped.

18 38. **Fallout** - I find I am - as a Nevadan and especially as a retired UI professional -  
19 deeply challenged by unfolding events. I believe failing to leverage all available resources to  
20 address the largest unemployment event in program history is either highly negligent and  
21 indicative of an uncaring attitude, or evidence of an inability to discharge the responsibilities of  
22 the position.

23 39. The significant reduction in the benefit multiplier effect due to delayed payments  
24 will reverberate through the economy. I am aware that the trust fund is not robust enough to  
25 sustain long-term unemployment at the rates currently seen. Nevada will likely again rely on  
26 loans that will need to be repaid as the economy eventually recovers. However, failure to pay  
27 these benefits timely will prolong and deepen the recession, as well as the need to rely on these  
28 loans.

39. You have the authority to build your own team, but also the responsibility to serve  
the participants in the UI programs in the best manner you possibly can. I cannot fathom how  
your actions have been a valid exercise of that responsibility. Some may call it misfeasance.

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1 41. I believe it has been a disservice to the people of the State of Nevada to not adjust  
2 the "this is the way we've always done it" models in response to this crisis. Policy and  
3 procedures are subject to modification within constraints of Nevada law and the Federal  
4 Unemployment Tax Act. Those policies and procedures are exercised under your authority.  
5 You may point to tasking Job Connect staff to resolving Deductible Income matters and  
6 releasing held payments after 4 weeks as a viable response. One small achievement does not  
7 equate to a solution.

8 42. **The Human Toll** - I have spent hundreds of pro-bono hours providing the  
9 unemployed with information. I have refreshed my knowledge and dusted off everything I  
10 learned about UI in over 25 years of service to help the unemployed find solutions. I help them  
11 untangle the legal requirements of the program. It is to their detriment you found no value in  
12 embracing my - and others' - experience and understanding of how this all works to find  
13 avenues to resolve challenges that might have resulted in sweeping changes. I would have  
14 highly valued the assistance, but that's me.

15 43. Challenge is opportunity. Blaming an "old" computer system and  
16 inadequate phones doesn't forgive the failure to quickly adjust meaningfully to evolving  
17 circumstances, especially when you had guidance. Pointing to statistics of payment rates now  
18 achieved as a success gauge is misleading. There is an entire book titled "How to Lie with  
19 Statistics".

20 44. Excuses ring hollow to those now reduced to going to food banks to feed their  
21 families while their likely eligible claims have not been paid in three months. They are  
22 empty echoes to people who have had to surrender family pets as they couldn't afford to keep  
23 them. They bear false witness to parents who have not been able to buy diapers. They do not  
24 pacify those losing sleep at night wondering how they will ever recover from this train wreck,  
25 worrying where they may live when the eviction moratoriums are lifted. I see the human impact  
26 of this. En masse.

27 45. The hard-working people of the State of Nevada trusted in you to help them  
28 through this. You exert your authority, but have backed away from your responsibility to think  
outside the box and embrace different ideas while the toll on lives and livelihoods mounts.

46. In the end, there are still going to be thousands and likely tens of thousands of  
ruined lives. Sadly, a significant percentage of this was avoidable. It's called due diligence.



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47. I hope someday you come face to face with some of these people, those that are losing everything. I hope you can honestly look them in the eye and tell them you did the best you could under the circumstances. I doubt you have that fortitude or confidence. I cannot speak for you, but I give a damn what happens to my fellow Nevadans.

48. **Our History** - I cite this only to ensure that others in receipt of this email are aware we have previously interacted and this does not come from out of the blue. This is not a disgruntled former employee or sour grapes but a recognition of an apparent unwillingness to accept assistance, or do the right thing in difficult circumstances.

49. When you arrived in the Carson City Call Center in 2012 as a manager, I introduced myself and the Benefit Integrity function, offering assistance and mentorship. You had no established UI background. You chose not to take me up on my offer and showed little interest in accessing my understanding of UI. Subsequent overtures were met with a dismissive response.

50. However, you personally called me in February of this year to dissuade me from speaking with Federal Public Defenders requesting insight regarding an identity theft prosecution that originated while I was still manager of the Benefits Integrity Unit. The conversation started with you asserting your position as THE Administrator. You expressed frustration that I would not deny this party due process by refusing to cooperate with their inquiry. While you requested the department attorney attend, it was not mine to approve.

51. I am hard pressed to disassociate the history with current events. I wish I could. I wish I could find good faith, but I can't.

52. **Why I'm Writing This** - Knowing what challenges Nevada faced, I offered the ESD realistic potential solutions to many of the myriad logistical and legal problems exposed by an event of this magnitude. You didn't wish to hear them. Others stood in the wings looking to help, People who had actual claims, monetary and adjudication experience. You didn't want to involve them.

53. You hold yourself out as doing everything possible to resolve the real problems faced by the out-of-work. I believe this narrative shows this is simply not the case.

54. I worked closely with three previous Administrators of this program. Each would have embraced an infusion of experience, knowledge and aptitude under the reality of this event.

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55. You express that only 33,000 claims have not been paid. You cite adjudication delays as the cause. Adjudication workloads do not include those unpaid due to unprocessed combined wage claims, name mismatches, base period advance claims and old disqualifications that have not yet been addressed but are not counted as outstanding issues. The actual unpaid claim figures are likely much higher than those presented

56. The Governor and Director rely on information through your office to present responses to the general concern. They expect it to be accurate, authoritative and unstained by omissions. While important they project positive outlooks, when the information they receive is obfuscated, slanted and omits significant details, it loses credibility.

57. I believe those with constituencies, readerships, viewers and clients will now ask more pointed, focused questions. Hundreds of thousands of Nevadans deserve to understand what has transpired, why it happened, and what might have been done differently to address their financial distress more efficiently. As you project the Division has been doing everything possible to help these people, I say, unequivocally, "no madam, you as Administrator assuredly have not".

58. I do not expect a reply, but I do anticipate responses. You have positional authority as well as responsibility. Dr. Tyler-Garner fell on the proverbial sword, but it was not her failure as much as it has been yours. As the Administrator, you also have accountability.

59. You no longer have my expertise nor input available to you. One only has two cheeks, and I've turned them. The people of the State of Nevada are paying a humanitarian and economic toll for your leadership or lack thereof. That is a damned shame.

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