

1090
1 Mark R. Thierman, Nev. Bar No. 8285
mark@thiermanbuck.com
2 Joshua D. Buck, Nev. Bar No. 12187
josh@thiermabuck.com
3 Leah L. Jones, Nev. Bar No. 13161
leah@thiermanbuck.com
4 Joshua R. Hendrickson, Nev. Bar No. Nev. Bar. No. 12225
Joshh@thiermanbuck.com
5 **THIERMAN BUCK LLP**
7287 Lakeside Drive
6 Reno, Nevada 89511
Tel. (775) 284-1500
7 Fax. (775) 703-5027

8 *Attorneys for Plaintiffs-Petitioners*

9
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
11 **THE STATE OF NEVADA IN AND FOR THE**
12 **COUNTY OF WASHOE**

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

22 Plaintiffs-Petitioners,

23 v.

24 STATE OF NEVADA ex rel NEVADA
25 DEPARTMENT OF EMPLOYMENT,
26 TRAINING AND REHABILITATION
27 (DETR); HEATHER KORBULIC in her
28 official capacity only as Nevada Director of
Employment, Training and Rehabilitation,
DENNIS PEREA in his official capacity as
Deputy Director of DETR, and 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

FIRST AMENDED

**PETITION FOR WRIT OF MANDAMUS
AND/OR CLASS ACTION COMPLAINT
FOR DAMAGES**

**NEV. CONST. ART. 6, § 6, NRS 41.031
and 42 U.S.C §1983**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COME NOW Plaintiffs-Petitioners AMETHYST PAYNE, IRIS PODESTA-MIRELES, ANTHONY NAPOLITANO, ISAAH PAVIA-CRUZ, VICTORIA WAKED, CHARLES PLOSKI, DARIUSH NAIMI, TABITHA ASARE, SCOTT HOWARD, RALPH WYNCOOPON, ELAINA ABING, and WILLIAM TURNLEY, on behalf of themselves and all others similarly situated, and allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over all claims herein against Defendant-Respondent STATE OF NEVADA *ex rel* Nevada Department of Employment, Training and Rehabilitation (hereinafter DETR) pursuant to Nevada Constitution Article 6, Section 6 and NRS 41.031.

2. This Court has jurisdiction over all non-monetary claims such as mandamus and an order of mandate against individual Defendants-Respondents HEATHER KORBULIC in her official capacity only as Nevada Director of Employment, Training and Rehabilitation, and KIMBERLY GAA in her official capacity only as the Administrator for the Employment Security Division (ESD) pursuant to NRS 41.160 and the federal Civil Rights Act, 28 U.S.C. 1983.

3. Plaintiffs-Petitioners reserve the right to and will amend this petition and complaint to substitute for any individual Defendant-Respondent named above, any successor to their office, if and when such successor assumes the position of job described above.

4. Venue is proper in the Second Judicial District because the two original Plaintiffs-Petitioners each worked in the City of Reno, resided in the County of Washoe, and their claims arose from the acts complained of herein performed within the County of Washoe.

PARTIES

5. Plaintiff-Petitioner AMETHYST PAYNE was for over 5 years and is still today working as a self-employed Licensed Massage Therapist (NVMT-7902), lawfully doing business as “Therapeutic Massage by Amethyst” which is licensed by the Secretary of State for Nevada as a sole proprietorship. Massage by Amethyst studio is physically located on Ridge Street, in Reno, NV 89501 and her business office address for all financial matters is on South Meadows Parkway, Reno, 89521. Each year, Plaintiff-Petitioner PAYNE reports her gross revenue to the

1 federal government and pays taxes on the net income as profit. She does not pay herself as a W-
2 2 employee. She is a single mom and sole support for herself and her minor child living in her
3 home. On or about June 4, 2020, Plaintiff-Petitioner Payne received her unemployment
4 compensation later than when it was due, and without interest thereon, her attorneys fees or costs
5 she incurred in obtaining such payment, which she demand at the conclusion of this litigation.

6 6. Plaintiff-Petitioner IRIS PODESTA-MIRELES was for over 3 years and is still
7 today lawfully working as a self-employed adult interactive cabaret performer licensed by the
8 City of Reno and holding a valid state and city of reno business license. Plaintiff-Petitioner
9 PODESTA-MIRELES is a resident of the City of Reno, works in the City of Reno, and is a single
10 mom and sole support for herself and her five-year-old child living in her home. Plaintiff-
11 Petitioner MIRELES earns additional income each year as a server and bartender employed by
12 others. Each year, Plaintiff-Petitioner MIRELES reports her wages from bartending and serving
13 and her gross revenue from dancing to the federal government and pays taxes according to law.
14 She does not pay herself as a W-2 employee for the income received as a result of her dancing
15 but does have W-2 income as an employee of these other employers. On or about June 14, 2020,
16 Plaintiff-Petitioner MIRELES received her unemployment compensation later than when it was
17 due, and without interest thereon, her attorney’s fees or costs she incurred in obtaining such
18 payment which she demand at the conclusion of this litigation.

19 7. Plaintiff-Petitioner ANTHONY NAPOLITANO lives in Las Vegas with his wife
20 and three minor children.

21 8. Plaintiff-Petitioner ISAAH PAVIA-CRUZ works in the Las Vegas area as a
22 contract driver for Lyft, Uber and Instacart

23 9. Plaintiff-Petitioner VICTORIA WAKED is a single mother of a child with special
24 needs living in Southern Nevada. Until the pandemic and quarantine shut Las Vegas down, she
25 worked as a 1099 independent contractor (or freelancer) skin care specialist and makeup artist.
26 She has not worked or made any money since March 13, 2020, when she was mandated to cease
27 work by Governor Sisolak’s emergency directive.

28

1 10. Plaintiff-Petitioner CHARLES PLOSKI is a gig worker from Southern Nevada
2 who has not received his unemployment compensation from Defendant-Respondent DETR when
3 due .

4 11. Plaintiff-Petitioner DARIUSH NAIMI has a family to feed, so when his Uber
5 revenue dropped as a result of the lack of tourists, he did more local routes. His income went
6 down 60%, but he worked even more hours overtime to earn 40% of what he did before. His
7 webpage progress report from DETR said he was not eligible for unemployment compensation
8 under the PUA program because he was not unemployed, even though the DOL memos state
9 quite clearly that earning a reduced income, or partial income, does not count against receiving
10 the full \$600 per week FPUC money.

11 12. Plaintiff-Petitioner TABITHA ASARE lives in Las Vegas, Nevada. 12.

12 13. Plaintiff-Petitioner SCOTT HOWARD was a driver for Uber who never worked
13 a W2 job in the state of Nevada or anywhere else for over 10 years.

14 14. Plaintiff-Petitioner RALPH WYNCOOPON

15 15. Plaintiff-Petitioner ELAINA ABING

16 16. Plaintiff-Petitioner WILLIAM TURNLEY

17 17. Defendant-Respondent DEPARTMENT OF EMPLOYMENT, TRAINING AND
18 REHABILITATION (DETR) is a Department of the State of Nevada responsible for
19 administration and payment of unemployment benefits to all qualified individuals who apply.
20 Defendant-Respondent DETR is certified by the United States Secretary of Labor pursuant to
21 Section 303(a)(1) of the federal Social Security Act, 42 U.S.C. § 503(a)(1) (3) to administer and
22 pay all federally financed unemployment benefits to qualified individuals. In addition, a
23 substantial part of the cost of DETR's administration of both State and Federal unemployment
24 compensation is paid in whole or in part by the United States.

25 18. Individual Defendant-Respondent KORBULIC is the Nevada Director of
26 Employment, Training and Rehabilitation, and is sued in her official capacity only for non-
27 monetary relief. Together with the other individual Defendants-Respondents herein, Individual
28 Defendant-Respondent KORBULIC is responsible for executing the functions of DETR as it

1 pertains to the timely processing and payment “when due” of Unemployment Compensation to
2 all eligible individuals. On or about June 19, 2020, Defendant-Respondent KORBULIC will be
3 resigning from her current position at Defendant-Respondent DETR, but exactly when she
4 relinquishes control over the organization is unclear. Plaintiffs-Petitioners will seek to amend to
5 replace her with her successor as soon as one is announced.

6 19. Individual Defendant-Respondent GAA is the Administrator for the Employment
7 Security Division and is sued in her official capacity only for non-monetary relief. Together with
8 the other individual Defendants-Respondents herein, Individual Defendant-Respondent GAA is
9 responsible for executing the functions of DETR as it pertains to the timely processing and
10 payment “when due” of Unemployment Compensation to all eligible individuals.

11 20. Plaintiffs reserve the right to seek to amend this complaint to name other
12 individual(s) in his or her official capacity, should another person assume the position any
13 individual Defendant-Respondent now occupies.

14 21. The identity of DOES 1-100 is unknown at this time and this petition and
15 complaint will be amended at such time when the identities are known to Plaintiffs-Petitioners.
16 Plaintiffs are informed and believe that each Defendant sued herein as DOE is responsible in
17 some manner for the acts, omissions, or representations alleged herein and any reference to
18 “Defendant” or “Defendants” herein shall mean “Defendants and each of them.”

19 **CLASS ACTION ALLEGATIONS**

20 22. Plaintiffs-Petitioner brings this action on behalf of themselves and all other
21 similarly situated, as follows:

- 22 a. The Class (also referred to hereinafter as the “Gig Worker Class”) is Defined As:
23 All self-employed individuals, independent contractors and/or the owners of sole
24 proprietorships who do not pay their own wages as a W-2 employee (also referred
25 to hereinafter as “gig workers”) and who worked within the State of Nevada
26 immediately prior to March 15, 2020, and who have suffered a significant
27 reduction of income, revenue and/ or earnings from said work as a result of
28 Governor Sisolak’s Declaration of Emergency For COVID_19 dated March 12,

2020 and effective March 15, 2020 or the presence of Coronavirus 19 Pandemic in the State of Nevada, and who have on or after May 16, 2020 submitted to Defendant-Respondents DETR a prime facie eligible claim for unemployment compensation pursuant to Coronavirus Aid, Relief, and Economic Security Act (“CARES” Act) but who have not yet been paid the applicable amount of PUA program funding, which is not more than 39 weeks of unemployment benefits on the same basis as regular W-2 workers for every week unemployed or suffering economic harm due to the COVID-19 Pandemic, retroactive to January 27, 2020 and ending on or before December 31, 2020, plus an additional \$600 per week to all eligible gig workers for every week after March 15, 2020 until July 31, 2020 (for a total of 24 weekly payments.).

For purposes of the above stated class definition, the term “any person who has submitted to Defendant-Respondents DETR prime facie eligible claim for unemployment compensation” shall include any claimant for Unemployment Compensation who has received from Defendant-Respondent DETR, notice of:

1. at least one Pandemic Unemployment Qualifying Determination of “ACCEPTANCE” (irrespective of any contrary determinations of initial eligibility; and/or
2. at least one notice of an unresolved issue: “eligible for other benefits;” and/or
3. at least once notice of “Unresolved Issues: No” which was later replaced by a notice of “Unresolved Issues: Yes;” and/or
4. any notice that the claimant was eligible for inclusion in the PUA or any other program of unemployment benefits such as regular UC, PEUC, EB, STC, TRA, DUA, and/or SEA; and/or
5. any notice of ineligibility that did not provide notice and access to DETR’s web-based process to initiate an appeal of said determination.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- ii. the applicable amount of PUA program funding shall be the a) the “weekly benefit amount (WBA)” as calculated by DETR according to law, or b) for all class members who have received a “Notice of PUA Monetary Determination” or similar communication from Defendant-Respondent DETR, the “weekly benefit amount (WBA)” as stated in such Notice of PUA Monetary Determination, and if more than one Notice of PUA Monetary Determination has been received, the highest “weekly benefit amount (WBA)” stated in any such Determination letter or email or other notice, whichever is higher.

- b. The Class is Sufficiently Numerous: For purposes of estimating numerosity of the class, Plaintiffs-Petitioners estimate that the gig worker class consists of at least 60,000 people. Plaintiffs-Petitioners base this estimate upon June 12, 2020, article by Michelle Rindels entitled “Officials: Nearly 48,000 independent workers have been paid PUA unemployment benefits” published by the Nevada Independent at <https://thenevadaindependent.com/article/officials-nearly-48000-independent-workers-have-been-paid-pua-unemployment-benefits>, which stated “State officials say 47,582 people who have filed for the Pandemic Unemployment Assistance program for independent workers have been paid so far — an increase of more than 20,000 from the prior week and about 41 percent of all initial claims filed.” Although DETR does not say exactly how many gig worker class members’ claims are still unpaid, if 47,582 gig workers have been paid, and gig workers have the same rate (40%) of payment to applications as do regular UI claimants, then 118,955 gig workers must have originally applied, and 70,183 gig workers class members have not been paid.

- c. Plaintiff’s Claims are Typical to Those of Fellow Class Members: Plaintiffs-Petitioners allege that they like all other class members are entitled under federal law to seek and obtain unemployment compensation through Nevada State DETR,

and were prevented from so doing by lack of any mechanism or website to apply to DETR for these federally granted benefits.

- d. Common. Questions of Law and Fact Exist Common questions of law and fact exist and predominate as to Plaintiffs-Petitioners and the Class, including if Defendants owed a duty to provide a mechanism for class members to apply for unemployment compensation and if so, have they discharged that duty appropriately.
- e. Each Plaintiff-Petition Is an Adequate Representative of the Class: Plaintiffs-Petitioners will fairly and adequately represent the interests of the Classes because each Plaintiff-Petition is a member of the Class, each has issues of law and fact in common with all members of the Class, and each does not have any interests antagonistic to Class Members. Plaintiffs-Petitioners and Counsel are aware of their fiduciary responsibilities to Class Members and are determined to discharge those duties diligently and vigorously by seeking the maximum possible recovery for Class Members as a group.
- f. Predominance/Superior Mechanism: Common questions of whether Defendants-Respondents failed to act according to state and federal law predominate over individual questions. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Each Class Member has been damaged and is entitled to recovery by reason of Defendants-Petitioners failure to allow them a reasonable method for applying for, and obtaining, a federally provided unemployment compensation benefit. The prosecution of individual remedies by each Class Member will be cost prohibitive and may lead to inconsistent standards of conduct for Defendants-Respondents and result in the impairment of Class Members' rights and the disposition of their interest through actions to which they were not parties.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATEMENT OF FACTS

A. Background of Clear Duty

23. Plaintiffs-Petitioners hereby adopt the particular facts as stated above under the heading “Parties” as is relevant to each individual Plaintiff-Petitioner and each Defendant-Respondent in this lawsuit as if fully set forth herein.

24. In addition, Plaintiffs-Petitioners were each lawfully working in the State of Nevada immediately prior to March 15, 2020 as self-employed individuals, sole proprietors, and/or independent contractors who do not pay themselves as W-2 employees, commonly also referred to as gig workers.

25. Plaintiffs-Petitioners and all gig worker class members were either in an industry that was directly ordered to close by Nevada State Governor Sisolak in his March 15, 2020 Executive Order and/ or suffered a significant decline in business revenue as a result of the March 15, 2020 executive order because the cessation of operations of other businesses that were required to shut down by the aforesaid executive order deprived them of customers and/or reduced demand for their services.

26. Prior to March 27, 2020, Plaintiffs-Petitioners and all members of the gig worker class were not eligible to receive unemployment compensation benefits.

27. On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (“FFCR” Act), which provided additional flexibility for state unemployment insurance agencies and additional administrative funding to respond to the COVID-19 pandemic.

28. On Friday, March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 which, among many other things, provided that all self-employed individuals, sole proprietors, and/or independent contractors who do not pay themselves as W-2 employees would be eligible for up to 13 weeks of federally financed Unemployment Compensation in the amount of \$600 per week and up to 39 weeks of federally financed unemployment compensation in an amount equal to the weekly amount that

1 the State previously paid in Unemployment Insurance benefits to qualified unemployed regular
2 W-2 workers.

3 29. On March 31, 2020, the Defendant-Respondent DETR entered into an agreement
4 with the federal government to implement the CARES Act according to all federal mandates.

5
6 **B. Failure to Perform Clear Duty of Establishing Application Mechanism/Website for
Gig Worker**

7 30. Pursuant to the above referenced March 31, 2020 agreement, and/or state and
8 federal law, Defendant-Respondent DETR had a clear duty to begin providing unemployment
9 benefits “when due” to all gig workers who applied for benefits and were qualified to receive
10 benefits under any program of benefits referenced as applicable to gig workers by the CARES
11 Act and /or any published guidance on administration or interpretation thereof from the United
12 States Department of Labor and/or any authorized officials thereof.

13 31. On April 2, 2020, the United States Department of Labor (“DOL”) issued
14 Unemployment Insurance Program Letter (“UIPL”) No. 14-20 concerning “Coronavirus Aid,
15 Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment
16 Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing
17 Flexibility”

18 32. According to the United States Department of Labor (“DOL”), “To receive
19 unemployment insurance benefits,” applicants must “file a claim with the unemployment
20 insurance program in the state where” they worked

21 33. The federal Social Security Act, 42 U.S.C. § 503(a)(1) (3), provides in pertinent
22 part that a state program for administering unemployment compensation must: “. . . be reasonably
23 calculated to insure full payment of unemployment compensation when due”.

24 34. The United States Department of Labor has stated, with emphasis added: “An
25 individual *who believes he or she is eligible for unemployment compensation* must first make
26 application to the appropriate state agency.”

27
28

1 35. Plaintiffs-Petitioners and all gig worker class members who applied for
2 unemployment compensation as gig workers using DETR’s special PUA website believed and/or
3 are deemed to have believed that they were eligible for unemployment compensation.

4 36. On or before April 11, 2020, Defendant-Respondent DETR had a clear duty to
5 provide all gig workers who believed that they were eligible for unemployment compensation
6 benefits a reasonable method or mechanism for unemployment compensation to apply for these
7 benefits.

8 37. For all W-2 employees, Defendant-Respondent DETR did provide a website
9 application process but had not done so for class members like Plaintiffs-Petitioners until May
10 16, 2020. Plaintiffs-Petitioners and all gig worker class members were unable to effectively apply
11 for unemployment compensation with Defendant-Respondent DETR until after Defendant-
12 Respondent DETR had published to the public (“gone live”) a special PUA application website
13 on May 26, 2020.

14 38. In an April 2, 2020 article by Subrina Hudson in the Las Vegas Review-Journal,¹
15 Rosa Mendez, a spokeswoman for the Department of Employment, Training and Rehabilitation,
16 or DETR, which oversees the state’s unemployment insurance program acknowledged that the
17 Defendant DETR is required to pay unemployment insurance to self-employed individuals,
18 independent contractors and owners of a sole proprietorship but stated that Defendant DETR was
19 waiting for guidance from the United States Department of Labor.

20 39. For five weeks, from April 11, 2020 until May 16, 2020, Defendant-Respondent
21 DETR failed to perform its clear duty to provide a website or any other means for a gig worker
22 to make application for unemployment compensation.

23 40. As a result of its failure to perform its clear duty to provide a website or any other
24 means for a gig worker to make application for unemployment compensation from April 11, 2020
25 until May 16, 2020, Defendant-Respondent DETR could not even begin to perform its clear duty
26

27
28 ¹ <https://www.reviewjournal.com/business/nevada-unemployment-benefits-delayed-but-qualified-workers-to-get-back-pay-1997380/> (last visited May 10, 2020).

1 to pay “when due,” unemployment compensation to Plaintiffs- Petitioners and any and all
2 qualified members of the gig worker class.

3 41. Plaintiffs-Petitioners and all members of the gig workers class could not even start
4 the process of obtaining their federally mandated unemployment insurance by filing an
5 application with Defendant-Respondent DETR until May 16, 2020 due to DETR failure to
6 execute its clear duty to provide them a method or mechanism by which to apply for these
7 benefits.

8 42. In an May 5, 2020 interview with the Nevada Independent reporter Michelle
9 Rindels, the Director of DETR, individual Defendant Heather Korbolic, was asked “It looks like
10 some other states have already gotten their modules up and running for the Pandemic
11 Unemployment Assistance (PUA) program for independent contractors. Others, like Nevada,
12 haven’t. Why is that? And what goes into launching that program?” In response. Defendant
13 Korbolic stated “I don’t really know the details of why ...”

14 43. By the conduct described above, Defendants-Respondents DETR has breached
15 the duty of their office to Plaintiffs-Petitioners and each of them, as well to every member of the
16 gig worker class, and has caused them each undue delay in receiving payment of promised
17 Unemployment Compensation benefits to which they are entitled to as a matter of law.

18
19 **C. Failure to Perform Clear Duty to Pay Unemployment Compensation Benefits**
20 **When Due**

21 44. On page 2 of UIPL No. 14-20, the DOL has set forth a summary of the most
22 relevant provisions of the CARES Act, when it stated:

23 The UI program is facing an unprecedented demand due to the economic
24 effects of COVID-19. The CARES Act builds upon actions previously
25 taken by the Department, Congress, and the President, by including, among
26 other things, provisions for temporary coverage of individuals who have
27 exhausted their entitlement to regular UC and individuals who are not
28 eligible for regular UC, such as individuals who are self-employed or have
limited recent work history. It also provides individuals who are collecting
certain benefits with an additional \$600 in Federal benefits per week for
weeks of unemployment ending on or before July 31, 2020.

1 45. As UIPL No. 14-20 states, self-employed individuals who are by definition not
2 eligible for regular Unemployment Compensation, extended benefits under state or federal law,
3 or PEUC, and who otherwise meet the requirements under section 2102(a)(3)(A)(ii)(I) of the
4 CARES Act, are entitled to collect PUA under section 2102.

5 46. On or about April 5, 2020, the U.S. Department of Labor’s Employment and
6 Training Administration (ETA) announced the publication of Unemployment Insurance Program
7 Letter (UIPL) 16-20 and its voluminous appendixes which gave guidance to state officials in
8 providing unemployment benefits: “to those individuals not eligible for regular unemployment
9 compensation or extended benefits under state or Federal law or Pandemic Emergency
10 Unemployment Compensation (PEUC), including those who have exhausted all rights to such
11 benefits. Covered individuals also include self-employed, those seeking part-time employment,
12 individuals lacking sufficient work history, and those who otherwise do not qualify for regular
13 unemployment compensation or extended benefits under state or Federal law or PEUC.”

14 47. On April 10, 2020 the U.S. Department of Labor’s Employment and Training
15 Administration (ETA) announced the publication of Unemployment Insurance Program Letter
16 (UIPL) 17-20, which provides *further* guidance to states as they implement the CARES Act,
17 including the PEUC program.² Under the PEUC program, Defendant DETR must provide up to
18 13 weeks of federally funded benefits to self-employed individuals, sole proprietors and/or
19 independent contractors who earned their income from working in the State of Nevada prior to
20 March 15, 2020, and who were ordered by Nevada State Governor Sisolak to cease doing
21 business as of March 15, 2020. As stated by U.S. Secretary of Labor Eugene Scalia in the official
22 DOL guidance:

23 The CARES Act provides valuable relief to American workers facing
24 unemployment, including unemployed workers who may not otherwise be
25 eligible for regular Unemployment Insurance benefits. . . The guidance
26 issued to states today follows significant guidance and support the

27 _____
28 ² The cost of PEUC benefits is 100% federally funded Implementation costs and ongoing
administrative costs are also 100% federally funded. *See*,
<https://www.dol.gov/newsroom/releases/eta/eta20200410> (last visited May 10, 2020).

THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Department of Labor has already provided to our state partners, including \$500 million in emergency administrative funding.

48. On March 27, 2020 Plaintiff-Petitioner NAPOLITANO applied for regular unemployment (UI) and was denied due to being a 1099 employee/Ineligible. Prior to March 15, 2020, he was a driver for Lyft and also was a 1099 employee for TGJ Painting of Henderson, Nevada. Due to the COVID shutdown mandated by Gov. Sisolak, he was forced out of earning a living. He is running out of time and options. His savings, stimulus, any money he has had for his family is about gone, and bills are piling up without any more extensions.

49. On May 16, 2020, Plaintiff-Petitioner NAPOLITANO filed his initial claim as an independent contractor with DETR. On May 22, 2020, Plaintiff-Petitioner NAPOLITANO received a monetary determination letter from DETR stating he was eligible for \$469 a week under the “Pandemic Unemployment Assistance” also known as the PUA program plus the \$600 a week under the “ Federal Pandemic Unemployment Compensation” also known as the FPUC program. On May 24, 2020, the first day possible, Plaintiff-Petitioner NAPOLITANO filed for all back weeks allowed - to the week of March 22, 2020.

50. Initially, Plaintiff-Petitioner NAPOLITANO’s personal DETR status report webpage stated that there was outstanding issues with his claim as follows: “IP ISSUE, WORKING FULL TIME, PUA Other program Eligibility.” On May 27, 2020, his personal DETR status report webpage showed that all outstanding issues were no longer on his claim but the claim still said "yes" under unresolved issues, even though the website report site was showing no particular unresolved issues at all. Upon information and belief, the mere notation “unresolved issues” was holding up Plaintiff-Petitioner NAPOLITANO’s payment of the promised unemployment compensation.

51. From June 1, 2020, the date DETR first opened up its phone lines to speak with a representative about gig worker claims until June 19, 2020, Plaintiff-Petitioner NAPOLITANO has made 100s of unsuccessful calls to DETR’s PUA adjudication line. After 5 minutes and 34 seconds the calls automatically disconnect. This went on all day every day, even on Saturday. In all that time, Plaintiff-Petitioner NAPOLITANO was unable to speak to anyone at DETR about

1 his claim. He still has not been paid any unemployment compensation nor has he been given any
2 notice of an appeal process that he could use to object to this lack of payment.

3 52. On May 20, 2020, Plaintiff-Petitioner PAVIA-CRUZ filed for unemployment
4 compensation on the DETR gig worker website. He received a letter entitled “Notice of PUA
5 Monetary Determination” on May 22, 2020 and another one on May 27, 2020. Plaintiff-Petitioner
6 PAVIA-CRUZ filed weekly certification reports as required by DETR. For weeks after he filed,
7 DETR showed various unresolved issues on his personal DETR status webpage. One issue stated
8 “PUA – Other Program Eligibility” and another stated “DUA- Unemployment not due to
9 disaster.”

10 53. This last issue, “DUA- Unemployment not due to disaster” made no sense since
11 there is no work for drivers on contract to Lyft and Uber when all the potential customers are
12 aware that all the places that they potentially would want to be driven to are now closed by the
13 March 15, 2020 executive order of Nevada Governor Sisolak

14 54. About one week before the filing of this amended complaint, this issue “DUA-
15 Unemployment not due to disaster” disappeared from Plaintiff-Petitioner PAVIA-CRUZ’s
16 personal DETR progress report webpage.

17 55. Another issue, “DUA-Employment ended” did not make sense either but it went
18 away also. The PUA issue was gone from her webpage as of the Tuesday, one week before the
19 filing of this amended complaint. Plaintiff-Petitioner PAVIA-CRUZ webpage now says “No
20 Outstanding Issues” but in the portion of the webpage that says “Summary, Unresolved Issues” it
21 still says “Yes”. Upon information and belief, this “Yes” notation was one reason that Defendant-
22 Respondent DETR was not paying Plaintiff-Petitioner PAVIA-CRUZ any unemployment
23 compensation.

24 56. When Plaintiff-Petitioner PAVIA-CRUZ was finally was able to speak to a DETR
25 representative by phone, the Representative told him to wait and a decision would be made within
26 21 days of the initial application date. So far, this has not happened even though 21 days has long
27 past. In addition, the personal DETR progress report webpage for Plaintiff-Petitioner PAVIA-
28 CRUZ states “In Progress” but DETR has not made any payments to him yet. DETR has not

1 provided Plaintiff-Petitioner PAVIA-CRUZ with notice of an appeal process that he could use to
2 object to this lack of payment.

3 57. On May 16, the first day that the gig worker website from DETR site became
4 available, Plaintiff-Petitioner WAKED applied for unemployment compensation. Initially her
5 personal progress report webpage form DETR said “unresolved issues NO” and nothing appeared
6 under outstanding issues column heading. On May 22, 2020, Plaintiff-Petitioner WAKED’s
7 personal progress report webpage form DETR said “PUA-Other program eligibility” under
8 outstanding claim issues. However, “Unresolved issues” remained “NO” on her personal
9 progress report webpage form DETR.

10 58. On May 23, 2020, DETR did a “system update” which allowed Plaintiff-Petitioner
11 WAKED to go back and do weekly certifications from beginning date to current. FOUR NEW
12 Codes appeared at that time (in addition to PUA other program eligibility) under outstanding
13 claim issues: Lack of work, working full time, DUA-unemployment not result of disaster, and
14 DUA-unemployment ended. Unresolved issues changes to YES. Despite repeated attempts, no
15 DETR representatives answered her phone call.

16 59. On June 2, 2020 all of the FOUR new issues drop off automatically from the
17 account of Petitioner WAKED. But her PUA other program eligibility remained. Unresolved
18 issues remained a YES. She never to speak to anyone. Then on June 9, 2020, the “PUA other
19 program eligibility” remark drops off her personal progress report website from DETR, but
20 “Unresolved issues” remained as a “YES.” Currently, there are no outstanding issues reported
21 on her personal progress report webpage by DETR, but unresolved issues remain a “YES,” and
22 payment type says active issues.

23 60. Petitioner WAKED cannot get through to talk to anyone by telephone. There are
24 no relevant email addresses listed online. Plaintiff-Petitioner WAKED has no idea what to do,
25 but upon information and belief other people who applied later (after glitches were worked out)
26 are getting money. She had not been paid, and there is no notice of any appeal process applicable
27 to her situation.

28

1 61. Plaintiff-Petitioner WAKED has waited for DETR to pay her unemployment
2 compensation from the time she first was able to apply until now. This means she has gone
3 almost three months with no income, and times are desperate for her son and herself. Her credit
4 card is maxed out and her savings gone. She is the lone caregiver for her disabled child. She is
5 in extreme mental anguish knowing there is money granted to her by the federal government to
6 provide for herself and her son but she can't get to that money because DETR won't pay her that
7 money despite the fact she has timely submitted a meritorious claim for unemployment
8 compensation. She is unable to talk to anyone who can help her at DETR.

9 62. Plaintiff-Petitioner WAKED is particularly upset because federal funds were
10 granted to provide for her and her son during the pandemic and shutdown, and she believes that
11 these funds are being withheld without reason by DETR to her detriment. Plaintiff-Petitioner
12 WAKED has spent the entire shutdown unnecessarily worried about her son and herself, their
13 health, how they would eat, and how they would pay bills. The money has been available from
14 the Federal government since the end of March and but Defendant-Respondent DETR has not
15 performed it duty to pay her.

16 63. Plaintiff-Petitioner CHARLES PLOSKI has been driving for Lyft in the Las
17 Vegas area full time from December 2018 until March 14, 2020 using their Express Drive
18 program to rent a car through Hertz. By March 18, 2020, he noticed that the demand for rides
19 from Lyft had already diminished substantially, so he was forced to return the vehicle on that
20 date, because his earnings from driving would no longer fully covered his \$280 weekly rental
21 expense.

22 64. Plaintiff-Petitioner PLOSKI applied for REGULAR UI (Unemployment
23 Insurance) on March 29, 2020 because he was informed that ineligibility for regular UI was a
24 condition for PUA eligibility. At the time he applied for REGULAR UI, he answered all the
25 questions truthfully and listed the last day I worked as March 14, 2020, which was the last day
26 he actually drove on the Lyft platform. However, when he was later asked when was the last
27 date he was paid, he answered (again, truthfully) March 8, 2020, as that was the last time he
28 received earnings from Lyft (for the week ending March 8, 2020).

1 65. Plaintiff-Petitioner PLOSKI received a denial letter for regular UI benefits, dated
2 April 1, 2020. On May 16, 2020, he filed for PUA benefits online. He uploaded all documents
3 as instructed (2019 1040, 1099, earnings statement from Lyft, bank statement showing last
4 deposit on 3/8/2020, UI denial). And on May 22, 2020 Plaintiff-Petitioner PLOSKI received an
5 emailed “Determination of Monetary Benefits” from DETR.

6 66. Since the date of the Determination of Monetary Benefits” from DETR Plaintiff-
7 Petitioner PLOSKI has twice spoken with a DETR representative at telephone number 800-603-
8 9861. The first time he called he was told that he was eligible and should do nothing but wait.
9 The second time, he asked the DETR representative why his online claim report from DETR
10 stated that there are both outstanding ISSUES and NO ISSUES, simultaneously. The DETR
11 representative said she would look up his case on the DETR computer, and then she said that
12 everything appeared to be “in progress,” and he should just wait for his benefits. He made efforts
13 daily to reach the adjudication number at 800-603-9862 but the line is always busy, or he is put
14 on hold and then it hangs up. He has never received any payment from DETR and there was no
15 notice to him of a method to appeal DETR’s lack of payment.

16 67. Plaintiff-Petitioner ASARE applied for unemployment compensation on the first
17 day that the DETR gig worker webpage was available, May 16th, 2020. On May 22, 2020,
18 Plaintiff-Petitioner ASARE received a “Notice of PUA Monetary Determination” letter which
19 state that her Weekly Benefit Amount was 469.00. Upon information and belief, this is the
20 maximum PUA weekly benefit amount. The letter stated that the minimum PUA benefit was
21 \$181 per week, even if the claimant had no documented earnings in 2019 at all. The weekly
22 benefit amount under the PUA program is in addition to the \$600 per week that she was
23 automatically entitled to under the FPUA program. The letter, like all favorable Monetary Benefit
24 Determination letters, also stated as follows:

25 This determination notifies you, that you are financially eligible for
26 Pandemic Unemployment Assistance (PUA) benefits pursuant to Section
27 2102 of the CARES Act of 2020 and the applicable federal regulations at
28 20 CFR, Part 625.

1 68. The letter also showed that Plaintiff-Petitioner ASARE had received \$23, 424 of
2 regular W-2 employment income in the First Quarter 2019 (1st FQ), \$8,827 in 2nd FQ 2019,
3 \$12,012 in 3rd FQ 2019 and \$7,892 in 4th FQ 2019; as well as \$52,155 in Self Employment
4 income.

5 69. Plaintiff-Petitioner ASARE filed her first weekly claim on May 23, 2020 and
6 received two codes on her account. One was about an identity issue and the other said” PUA -
7 Other program eligibility” issue. Plaintiff-Petitioner ASARE continued to file her claim forms
8 weekly and the Identity issue fell off, but she still had the "PUA - Other Program Eligibility"
9 entry on the DETR individual applicant progress report webpage. However, her claim also said
10 "Unresolved Issues: NO."

11 70. On June 9, Plaintiff-Petitioner ASARE called DETR and spoke with a woman
12 who approved her claim. The woman sent her an approval letter dated June 10, 2020 which stated:

13 Dear Taitha D. Spencer-Asare:
14 We have completed a review and investigation for your claim for Pandemic
15 Unemployment Assistance referenced about. We have determined tht your
16 claim is APPROVED as you meet the qualifications required by the
17 Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 for
18 Pandemic Unemployment assistance. [PUA] I order to receive payment
19 you must maintain weekly certifications until you are employed and earning
20 over your weekly benefit amount. [¶] This qualification is effective
21 03/15/2020.

22 71. The "PUA - Other Program Eligibility" code fell off but her claim still read,
23 "Unresolved Issues: YES." Plaintiff-Petitioner ASARE reportedly spoke to the same DETR
24 representative that had sent the letter, who said the DETR would send her another approval
25 letter. The same DETR representative told her that the reason “Unresolved Issues” switched
26 from "No" to "Yes" was because it flagged the supervisors to pay her.

27 72. The next day, June 10, 2020, Plaintiff-Petitioner ASARE called again and spoke
28 with another DETR representative. Plaintiff-Petitioner ASARE called on 10 phones
simultaneously just to get through. This other DETR representative advised her that there was
a glitch in the system and that it would be removed within 24-48 hours.

1 73. On June 16, 2020, Plaintiff-Petitioner ASARE again spoke with yet a third
2 DETR representative who told her that the previous representatives lied to her and that it will
3 be an additional 20-30 days before she can expect to see payment because that is how long it
4 will take for the “unresolved issues” to be removed. When Plaintiff-Petitioner ASARE asked
5 this third DETR representative if there was a possibility Plaintiff-Petitioner ASARE could be
6 denied retroactively before payment was made, because she needed to plan for her life and
7 business, the DETR representative told Plaintiff-Petitioner ASARE not to count on this money
8 coming through. The DETR representative stated, "This money is not anything you should plan
9 your life around. This is extra, it's a bonus. This money shouldn't be what gets you out of the
10 red, it's a bonus."

11 74. This third DETR representative further explained that although a DETR
12 representative handled Plaintiff-Petitioner ASARE’s claim, this representative could see where
13 changes had been made. The representative stated that the computer was not recognizing that
14 my claim was actually approved despite two separate approval letters. The representative
15 stated that this was the reason Plaintiff-Petitioner ASARE had "Unresolved Issues: YES" now
16 on Plaintiff-Petitioner ASARE’s individual claim progress report online. In a bizarre way, the
17 DETR representative clearly implied that the machines controlled the human beings at DETR,
18 and not the other way around. Plaintiff-Petitioner ASARE still has this active issue in her claim
19 and has not yet been paid any unemployment compensation benefits by DETR.

20 75. Plaintiff-Petitioner HOWARD filed a PUA Claim on the first available date,
21 May 16, 2020 at about 5:30 and was assigned Claim number 74! He is informed that
22 Defendant-Respondent Heather Korbolic acting in her official capacity as the head DETR, has
23 said many times claims are processed in the order received. He has not received any PUA
24 benefits although many others who filed later than him have received benefits.

25 76. Plaintiff-Petitioner HOWARD was able to actually speak to a DETR
26 representative on the PUA Adjudication telephone line at 800-603-9682 on three occasions.

27 77. On June 8, 2020 the DETR representative told Plaintiff-Petitioner HOWARD he
28 had cleared the claim issues, even though the individual DETR claim progress report online

1 said Plaintiff-Petitioner HOWARD never had any claim issues. The DETR representative sent
2 Plaintiff-Petitioner HOWARD and approval letter via email while he was still on the phone. At
3 almost the exact same instance, Plaintiff-Petitioner HOWARD’s individual DETR claims
4 online progress report “Unresolved Issues” changed from No to YES. The DETR
5 representative a told Plaintiff-Petitioner HOWARD that this change was correct, and he was
6 now approved and would see his payments shortly.

7 78. On June 9, 2020 6/9/2020 Plaintiff-Petitioner HOWARD again called DETR to
8 check on the status of payment, since his friends that called at the same time received dates for
9 payment. At that time, Plaintiff-Petitioner HOWARD was told the previous operator didn't
10 clear his claim correctly. The second DETR representative said she had fixed the issue and
11 Plaintiff-Petitioner HOWARD should see payment in 24-72 hours. No payment was ever
12 received in the promised time window.

13 79. On June 16, 2020, a third DETR representative said the 24-72 hours to payment
14 statement was a pure “lie” and she stated that she had flagged his account again so a DETR
15 Employee could release his funds. She said that “it’s a glitch and will take 20-30 days to be
16 manually resolved by a DETR Employee in Nevada.”

17 80. Plaintiff-Petitioner HOWARD reports that DETR’s failure to pay Plaintiff-
18 Petitioner HOWARD has ruined him financially, mentally, and physically. He cannot pay his
19 bills, he cannot drive for Uber since he cannot pay insurance, and he no longer has a vehicle.
20 Plaintiff-Petitioner HOWARD says he cannot sleep at night and is am actually depressed,
21 something has never dealt with before. Getting out of bed is a struggle for Plaintiff-Petitioner
22 HOWARD after being lied and disappointed so many times. If it were not for his family,
23 Plaintiff-Petitioner HOWARD would be homeless, hungry and without a cell phone. Plaintiff-
24 Petitioner HOWARD feels that it is degrading to have to ask family for money and help when
25 he is owed so much money by DETR.

26 81. As of the date of filing this First Amended Petition and Complaint, 14 weeks has
27 elapsed since the March 15, 2020 Nevada state ordered shut down, and 11 weeks has elapsed
28 since the date Defendant-Respondent DETR should have started making PUA and FPUC

1 payments pursuant to its agreement with the United States Department of Labor on March 30,
2 2020

3 82. Defendants-Respondents have failed to make the weekly payments or back pay to
4 the vast majority of eligible gig workers who have applied for unemployment compensation.

5 83. Delay in payments of federally mandated unemployment benefits has caused, and
6 will continue to cause, Plaintiffs-Petitioners and the members of the gig workers class irreparable
7 harm.

8 84. At all times relevant herein, it was possible for Defendant Respondent DETR to
9 pay all unemployment compensation benefits due within two weeks of filing an application.

10 85. By this coming Friday, June 26, 2020, it will have been over five weeks since
11 Defendant-Respondent DETR began accepting applications for unemployment compensation
12 (PUA) by gig workers.

13 86. Since FPUC benefits are automatically in addition to any other unemployment
14 compensation benefits, there is not a separate website application process for this \$600 per week
15 of extra compensation.

16 87. In almost all cases, Defendant-Respondent DETR first approves the application
17 for benefits, then fails to make payments

18 88. Once the initial application for benefits is approved, which almost always
19 happens with applications by gig workers, benefits must continue until there is a reversal of that
20 determination by an administrative law judge after a fair hearing which affords the claimant due
21 process of law.

22 89. However, rather than allow benefits once granted to continue until an decision is
23 made by a neutral administrative law judge, Defendant-Respondent DETR fails to actually pay
24 the approved benefits, retroactively claiming that the applicant was not eligible for
25 unemployment compensation *ab initio*.

26 90. This practice of re-evaluating eligibility retroactively without a fair hearing before
27 an administrative law judge violates due process of law under the state and federal constitutions.

28

1 91. Defendant Respondent DETR informed Plaintiffs-Petitioners and gig worker class
2 members with unpaid that they are approved for PUA program under the CARES Act. Then
3 when they complain that they have not been paid, their DETR individual application progress
4 report website page either states, payment “in progress” and/or “Unresolved Issues” changes from
5 “No” to “Yes.”

6 92. Defendant-Respondent DETR’s admits often non-payment is due to a “glitch” in
7 the logic of the workflow system that DETR uses to process claims. The most common excuses
8 for Defendant-Respondent DETR not paying claims are: 1) “Not Disaster Related” ((Payment
9 type active issues Code DUA-UI “); 2) “Other Eligibility” (mix of W-2 and 1099 and self-
10 employment income); 3) “Unresolved Issues- No outstanding Issues”; 4) Formerly DUA-UI but
11 still no payment (unresolved issues goes away, but it slips into “No outstanding issues” but still
12 no payments are made).

13 93. But even if these articulated unresolved issues are actually resolved, the gig
14 workers’ individual DETR unemployment compensation progress online record still says
15 “unresolved issues-yes” with nothing stated as unresolved. Notwithstanding, the gig worker class
16 member’s meritorious claim remains unpaid.

17 94. By the conduct described above, Defendants-Respondents DETR has breached the
18 duty of their office to Plaintiffs-Petitioners and each of them, as well to every member of the gig
19 worker class, and has caused them each undue delay in receiving payment of promised
20 Unemployment Compensation benefits to which they are entitled to as a matter of law.

21 **FIRST CAUSE OF ACTION**
22 **Breach of a Clear Duty And/Or Obligation Of Office**

23 95. Plaintiffs reallege and incorporate by reference all the paragraphs above in the
24 Complaint as though fully set forth herein.

25 96. Section 303(a)(1) of the federal Social Security Act, 42 U.S.C. § 503(a)(1) (3) (a)
26 (1) provides that Defendants DETR pay unemployment benefits when due, which now includes
27 all self-employed individuals, sole proprietors, and independent contractors pursuant to the
28 Coronavirus Aid, Relief, and Economic Security Act (“CARES” Act) “when due.”

1 97. Under this statute, and in this context, “when due” means at the earliest stage of
2 unemployment where unemployment compensation benefit payments are administratively
3 feasible.

4 98. On or before April 11, 2020, Defendant-Respondent DETR had a clear duty to
5 provide a reasonable method or mechanism for all eligible gig workers to apply for unemployment
6 compensation.

7 99. For all W-2 employees, Defendant-Respondent DETR had provided a website
8 application process but had not done so for the gig workers class members including Plaintiffs-
9 Petitioners until May 16, 2020.

10 100. For five weeks, Defendants-Respondents failed to perform the clear duty of their
11 office to pay unemployment compensation “when due” first by failing to provide a website or any
12 other means for a gig worker to make application for unemployment compensation from April
13 11, 2020 until May 16, 2020, and then, by failing to process such applications in a timely manner
14 so that Plaintiffs-Petitioners and all members of the gig worker class could actually receive
15 payment of unemployment benefit compensation “when due,” as required by 42 U.S.C. §
16 503(a)(1) (3) (a) (1) and the aforementioned agreement between Defendant-Respondent DETR
17 and the United States Department of Labor, as well as other state and federal statutes.

18 101. There is no indication of imminent payment of unemployment compensation
19 benefits to the members of the gig worker class Plaintiffs-Petitioners Anthony Napolitano, Isaiah
20 Pavia-Cruz, Victoria Waked, Charles Ploski, Dariush Naimi, Tabitha Asare, Scott Howard, Ralph
21 Wyncoopon, Elaina Abing, and William Turnley and all members of the gig worker class who
22 have not received payment in full as of the date of the filing of This First Amend Petition For
23 Writ Of Mandamus And /Or Class Action Complaint.

24 102. Wherefore, Plaintiffs-Petitioners Anthony Napolitano, Isaiah Pavia-Cruz, Victoria
25 Waked, Charles Ploski, Dariush Naimi, Tabitha Asare, Scott Howard, Ralph Wyncoopon, Elaina
26 Abing, and William Turnley demand a writ of mandamus and /or an order of mandate be issued
27 by this Court ordering Defendants-Respondents, and each of them, their employees, agents and
28 assigns to perform the clear duties of their office to provide unemployment benefit compensation

1 “when due,” as required by 42 U.S.C. § 503(a)(1) (3) (a) (1) and the aforementioned agreement
2 between Defendant-Respondent DETR and the United States Department of Labor, as well as
3 other state and federal statutes.

4 103. In addition, Plaintiffs-Petitioners demand an order of court stating that that
5 unemployment compensation payments are “due” at the earlier of the following times: a) two
6 weeks after April 11, 2020, if the gig class member would have been entitled to payment of
7 unemployment compensation if he or she had applied on April 11, 2020; b) at the time the gig
8 worker class member first presents a prime facia valid application for unemployment
9 compensation to Defendant-Respondent DETR; c) at the first time a letter of Unemployment
10 Qualifying Determination letter in which the claim is approved, regardless of any other
11 subsequent determinations. Nothing herein shall preclude or prevent any determination of non-
12 entitlement and/or overpayment of benefits by an administrative law judge after proper notice and
13 a fair hearing with due process of law conducted by Defendant-Respondent DETR in normal
14 course and with the usual procedures of any other denial of benefits after payment case.

15 104.

16 SECOND CAUSE OF ACTION

17 Denial of Due Process

18 105. Plaintiffs reallege and incorporate by reference all the paragraphs above in the
19 Complaint as though fully set forth herein.

20 106. Plaintiffs-Petitioners like all other Class Members have a property interest in the
21 receipt of unemployment compensation pursuant to the CARES Act. Plaintiffs-Petitioners have
22 a legitimate claim of entitlement to these benefits.

23 107. In this case, the payment of unemployment compensation benefits creates in all
24 class members a property interest protected by due process.”

25 108. Since it is a property right, denial of payment of unemployment compensation by
26 effusing to allow an individual to apply is a violation of due process. As stated in *Board of*
27 *Regents of State Colleges v. Roth*, 408 U.S. 564, 576, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972), “The
28

Fourteenth Amendment’s procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits.”

109. By the acts complained of herein, Defendants-Respondents have denied Plaintiffs-Petitioners and all Class Members due process of law.

110. Wherefore, Plaintiffs-Petitioners demand that only Defendants-Respondent DETR be ordered to immediately pay to Plaintiffs-Petitioners Anthony Napolitano, Isaiah Pavia-Cruz, Victoria Waked, Charles Ploski, Dariush Naimi, Tabitha Asare, Scott Howard, Ralph Wyncoopon, Elaina Abing, and William Turnley each and every member of the class of all unemployment compensation due pursuant to the federal CARES Act unless such sums have already been paid, and to pay each and every Plaintiff-Petitioner named herein, and all member of the gig workers class interest accrued from April 11, 2020, until the time of actual payment of all unemployment compensation due, attorneys’ fees and costs, as allowed by law.

THIRD CAUSE OF ACTION
Backpay/Damages/ Compensation Against Defendant-Respondent DETR

111. Plaintiffs-Petitioners hereby reallege and incorporate by reference all the paragraphs above in the Complaint as though fully set forth herein.

112. By the conduct alleged above, Defendant-Respondent DETR has breached its duty to pay Plaintiffs-Petitioners Anthony Napolitano, Isaiah Pavia-Cruz, Victoria Waked, Charles Ploski, Dariush Naimi, Tabitha Asare, Scott Howard, Ralph Wyncoopon, Elaina Abing, and William Turnley and each member of the gig worker class who has not yet been paid in full, that individual’s applicable weekly benefit amounts pursuant to the PUA program plus all sums due pursuant to the FPUC program for all weeks due but unpaid.

113. Wherefore, Plaintiffs-Petitioners demand from Defendant-Respondent DETR for each and every unpaid gig worker class member unpaid all PUA program weekly wage benefit amount payment due for every week that the class member was unemployed or suffered economic harm due to the COVID-19 Pandemic, and/or Nevada Governor’s Sisalok’s March 15, 2020 executive order, retroactive to January 27, 2020 and ending on or before December 31,

1 2020, at the weekly rate of the greater of: a) the “weekly benefit amount (WBA)” as calculated
2 by DETR according to law, or b) for all class members who have received a “Notice of PUA
3 Monetary Determination” or similar communication from Defendant-Respondent DETR, the
4 “weekly benefit amount (WBA)” as stated in such Notice of PUA Monetary Determination,
5 whichever is higher. And if more than one Notice of PUA Monetary Determination has been
6 issued, the highest “weekly benefit amount (WBA)” stated in any such Determination shall
7 prevail.

8 114. In addition, Plaintiffs-Petitioners demand from Defendant-Respondent DETR for
9 each and every unpaid gig worker class member unpaid all FPUC program unemployment
10 compensation payment in the amount of \$600 per week for every week for which the gig worker
11 class member was paid unemployment compensation for the period starting with the week ending
12 April 4, 2020, and payable thru the week ending July 25, 2020 (but not more than a total of 24
13 weekly payments.)

14 115. In addition, Plaintiffs-Petitioners demand from Defendant-Respondent DETR for
15 each and every unpaid gig worker class member interest at the legal rate from the March 15,
16 2020, or such other date the court deems just, until the date of actual payment of all sums
17 demanded above, attorneys and costs.

18 **PRAYER FOR RELIEF**

19 For the reasons stated herein, Plaintiffs-Petitions ask this Court to issue an order as follows:

- 20 A. An order certifying the class of gig workers which is hereby defined as “All self-employed
21 individuals, independent contractors and/or the owners of sole proprietorships who do not
22 pay their own wages as a W-2 employee (also referred to hereinafter as “gig workers”)
23 and who worked within the State of Nevada immediately prior to March 15, 2020, and
24 who have suffered a significant reduction of income, revenue and/ or earnings from said
25 work as a result of Governor Sisolak’s Declaration of Emergency For COVID_19 dated
26 March 12, 2020 and effective March 15, 2020 or the presence of Coronavirus 19 Pandemic
27 in the State of Nevada, and who have on or after May 16, 2020 submitted to Defendant-
28 Respondents DETR a prime facie eligible claim for unemployment compensation

1 pursuant to Coronavirus Aid, Relief, and Economic Security Act (“CARES” Act) but who
2 have not yet been paid the applicable amount of PUA program funding, which is not more
3 than 39 weeks of unemployment benefits on the same basis as regular W-2 workers for
4 every week unemployed or suffering economic harm due to the COVID-19 Pandemic,
5 retroactive to January 27, 2020 and ending on or before December 31, 2020, plus an
6 additional \$600 per week to all eligible gig workers for every week after March 15, 2020
7 until July 31, 2020 (for a total of 24 weekly payments.)”.

8 B. An order issuing a writ of mandamus and/or order of mandate compelling Defendants-
9 Respondents, and each of them, their employees, agents and assigns to perform the clear
10 duties of their office by providing each and every member of the gig worker class
11 unemployment benefit compensation “when due,” as required by 42 U.S.C. § 503(a)(1)
12 (3) (a) (1) and the aforementioned agreement between Defendant-Respondent DETR and
13 the United States Department of Labor, as well as other state and federal statutes, and
14 further providing that that that unemployment compensation payments are “due” at the
15 earlier of the following times: a) two weeks after April 11, 2020, if the gig class member
16 would have been entitled to payment of unemployment compensation if he or she had
17 applied on April 11, 2020; b) at the time the gig worker class member first presents a
18 prime facia valid application for unemployment compensation to Defendant-Respondent
19 DETR; c) at the first time a letter of Unemployment Qualifying Determination letter in
20 which the claim is approved, regardless of any other subsequent determinations. Nothing
21 herein shall preclude or prevent any determination of non-entitlement and/or overpayment
22 of benefits by an administrative law judge after proper notice and a fair hearing with due
23 process of law conducted by Defendant-Respondent DETR in normal course and with the
24 usual procedures of any other denial of benefits after payment case.

25 C. In the alternative, an order that a time and date as determined by the Court, Defendants-
26 Respondents are ordered to show cause, if any there be, why this Court should not issue a
27 writ of mandamus and /or an order of mandate as set forth immediately above
28

- 1 D. An order that Defendant-Respondent DETR pay to Plaintiffs-Petitioners Anthony
2 Napolitano, Isaiah Pavia-Cruz, Victoria Waked, Charles Ploski, Dariush Naimi, Tabitha
3 Asare, Scott Howard, Ralph Wyncoopon, Elaina Abing, and William Turnley each and
4 every member of the class of all gig workers, as defined above, all unemployment
5 compensation due pursuant to the federal CARES Act unless such sums have already been
6 paid, together with and order to pay each and every Plaintiff-Petitioner named herein, and
7 all member of the gig workers class as defined above interest accrued from April 11, 2020,
8 or such other date the court deems just, until the time of actual payment of all
9 unemployment compensation due, attorneys' fees and costs, as allowed by law.
- 10 E. An order that Defendant-Respondent DETR pay each and every unpaid gig worker class
11 member all unpaid PUA program weekly wage benefit amounts due for every week that
12 the class member was unemployed or suffered economic harm due to the COVID-19
13 Pandemic, and/or Nevada Governor's Sisalok's March 15, 2020 executive order,
14 retroactive to January 27, 2020 and ending on or before December 31, 2020, at the weekly
15 rate of the greater of: a) the "weekly benefit amount (WBA)" as calculated by DETR
16 according to law, or b) for all class members who have received a "Notice of PUA
17 Monetary Determination" or similar communication from Defendant-Respondent DETR,
18 the "weekly benefit amount (WBA)" as stated is such Notice of PUA Monetary
19 Determination, whichever is higher. And if more than one Notice of PUA Monetary
20 Determination has been issued, the highest "weekly benefit amount (WBA)" stated in any
21 such Determination shall prevail.
- 22 F. In addition, an order that Defendant-Respondent DETR pay each and every unpaid gig
23 worker class member all unpaid FPUC program unemployment compensation benefits in
24 the amount of \$600 per week for every week for which said gig worker class member
25 was paid unemployment compensation for the period starting with the week ending
26 March 15, 2020, thru the week ending July 25, 2020 (but not more than a total of 24
27 weekly payments.)
- 28

THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

G. In addition, an order that Defendant-Respondent DETR pay each and every unpaid gig worker class member interest at the legal rate from the April 11, 2020, or such other date the court deems just, until the date of actual payment of all sums demanded above, attorneys and costs.

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 21, 2020

Respectfully submitted,

THIERMAN BUCK LLP

By: /s/ Mark R. Thierman
Mark R. Thierman
Joshua D. Buck
Leah L. Jones
Joshua R. Hendrickson

Attorneys for Plaintiffs