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

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

Case No. CV20-00755
Dept. No. 8

Plaintiffs,

vs.

STATE OF NEVADA ex rel NEVADA
DEPARTMENT OF EMPLOYMENT,
TRAINING AND REHABILITATION
(DETR), HEATHER KORBULIC in her
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.

ORDER APPOINTING SPECIAL MASTER

The instant matter came before the Court via a *First Amended Ex Parte Motion for An Order to Show Cause Why Writ of Mandamus Should Not Issue* filed by Plaintiffs on June 22, 2020. On June 24, 2020 this Court issued an *Order to Show Cause Why Writ of Mandamus*

1 *Should Not Issue.* After briefing, a hearing was subsequently held on July 7, 2020 wherein the
2 Court identified several matters requiring further investigation before the Court issues a decision.
3 At the conclusion of proceedings, the Court informed parties of its intent to appoint Mr.
4 Guinasso as Special Master.

5 Pursuant to WDCR 24, a district judge may refer any matter to a master for determination
6 and such referral may be by the judge’s own initiative. *See* WDCR 24(2); WDCR 25(1). NRCP
7 53 allows appointment of masters to address pretrial or posttrial matters that cannot be
8 effectively and timely addressed by an available judge. NRCP 53(a)(2)(B). A review of the
9 pleadings and arguments of counsel indicate the appointment of a special master is warranted.

10 Accordingly, it is **ORDERED** that Jason D. Guinasso, Esq. of the law firm Hutchison &
11 Steffen is hereby appointed Special Master for the limited purpose of assessing—with respect to
12 issues raised in this matter and as more fully delegated below—the process of the Nevada
13 Department of Employment, Training and Rehabilitation (“DETR”) responding to claims for
14 unemployment and pandemic-related benefits.

15 **I. NRCP 53 Requirements.**

16 **A. Special Master’s Duties.**

17 An Order of Appointment by this Court is required to delineate the master’s duties,
18 including any investigation or enforcement duties, and any limits on his authority under Rule
19 53(d). NRCP 53(c)(1)(A). The Court has reviewed the legal authority addressing the duties of a
20 Special Master permitted under WDCR 24, 25 and NRCP 53. Consistent with this authority and
21 the anticipated needs of the Court, the Special Master shall have the authority to identify and
22 report on the following, with respect to the issues raised in this case:¹

- 23 1. How many people have applied for UI or Pandemic-related benefits with DETR for
24 the times implicated in this case;
- 25 2. How many people or claims have been approved and/or accepted and actually paid;
- 26 3. The criteria being applied by DETR before benefits are approved, as well as the
27 process applicants must go through including determining factors;

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¹ The Court recognizes the likelihood of overlap among the stated areas.

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4. The meaning ascribed by DETR to being “approved,” and whether if the applicant is initially approved, there are future steps that may still bar benefit payment;
5. The number of accepted claims, and the average time from application to first date of benefit payment;
6. Why some applicants appear to have received an “approved” or “accepted” determination notice, yet payment was never released nor debit card credited;
7. The reasons why some applicants initially received benefits but later those benefits allegedly have stopped;
8. How claims are processed (i.e., the specific steps) from the time an application is first filed to the time a determination of benefits is made;
9. Regarding applicants who are denied benefits, the manner in which such denial is communicated, and any explanation of curative options available;
10. If applications must be adjudicated, explain the current infrastructure and process in place to do so;
11. For applications which have not yet been acted upon, the average time they have been pending and the reason(s) a determination is still pending;
12. Why applicants were allegedly prevented or “locked out” from being able to file weekly claims once their claims were determined to be under review or had issues;
13. The number of claims flagged as potentially fraudulent, including but not limited to computer-generated; invalid social security numbers; internal inconsistencies or which otherwise indicate applicants are not being truthful in seeking benefits;
14. How many claims appear to have been filed from: (1) outside the United States; and (2) outside Nevada?
15. Identify ways in which the application website can be made more user friendly, including issues designed to eliminate duplicity, human error, and confusion;
16. Whether DETR can improve communication with applicants as to their claim status;
17. Whether applicants can be better informed of additional documents or information needed before additional steps are taken to process their claims for benefits;

- 1 18. Confirm and/or update the factual statements contained in Director Gaa’s
- 2 Declaration(s) and related exhibits;
- 3 19. Whether and how DETR is determining that an applicant is precluded from
- 4 pandemic-related benefits by virtue of a UI account balance including any efforts
- 5 being undertaken to address this issue;
- 6 20. Whether DETR is taking steps to clearly advise applicants that weekly requests for
- 7 benefits need to be submitted;
- 8 21. Identify the main factors associated with alleged delay in processing applications for
- 9 UI or pandemic-related benefits and identify recommended approaches to address
- 10 such issues;
- 11 22. The current and reasonably anticipated staffing DETR has, and at what levels, to
- 12 handle the applications for UI or pandemic-related benefits it has and/or expects to
- 13 receive or in the near future;
- 14 23. To look at data from neighboring states, to compare and contrast with Nevada’s
- 15 experience.

16 In exercising his duties, the Special Master shall take all appropriate measures to perform
17 his assigned duties fairly and efficiently and proceed with all reasonable diligence.²

18 **B. Communications with the Parties and the Court.**

19 NRCP 53(c)(1)(B) directs the Court to set forth “circumstances, if any, in which the
20 master may communicate ex parte with the court or a party.” The Special Master is permitted to
21 communicate ex parte with the Court at the Special Master’s discretion, regarding the nature and
22 management of his activities and without providing notice to parties.

23 In addition, the Special Master may communicate ex parte with any party and his/her
24 attorney as the Special Master deems appropriate for the purposes of ensuring efficient and
25 effective oversight of this case, pursuant to this Order. Nevertheless, the Special Master shall not
26

27 ² To the extent these enumerated issues do not capture the full breadth of the concerns addressed
28 by the Court in the two recent hearings, the Special Master may go beyond this Order consistent
with the directives from the Court at those hearings.

1 communicate to the Court or any other persons confidential information learned during an ex
2 parte communication unless otherwise directed.³

3 **C. Special Master's Record.**

4 The Court is also mandated to indicate the nature of the materials that must be preserved
5 and filed as the record of the master's activities. *See* NRCP 53(c)(1)(C). The Special Master
6 shall maintain normal billing records of his time spent on this matter, with reasonable
7 descriptions of his activities. As directed by the Court, the Special Master shall submit a formal
8 report regarding the matter to the Court and file it on the case docket.

9 **D. Review of the Special Master's Findings and Report.**

10 NRCP 53(c)(1)(D) requires the Court to specify time limits, a method of filing the record,
11 other procedures, and any criteria for the master's findings and recommendations. Consistent
12 with this Court's decision from the bench, the Special Master shall prepare a report upon the
13 matters submitted to the Special Master and in accordance with this Order. He shall file his
14 Findings and Report with the Court by **Wednesday, July 15, 2020 at 2:00 p.m.**⁴

15 **E. Compensation.**

16 NRCP 53(c)(1)(E) also mandates that the appointing order must fix the "basis, terms, and
17 procedure" for fixing the master's compensation under Rule 53(g). *See* NRCP 53(g). In
18 consideration of the factors laid out in NRCP 53(g)(2), the Special Master shall be compensated
19 at the rate of \$325 per hour, plus reasonable administrative costs. Subject to motion practice,
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22 ³ Information communicated to the Special Master may be designated confidential by a party by
23 clearly labeling or identifying it as such. Once so designated, the Special Master and those
24 working to assist him administratively, shall not communicate, describe or relay the substance of
25 such information absent order of the Court. Further, such information must be returned or
26 certified destroyed at the conclusion of these proceedings. Any disputes which may arise
regarding such designation or use of material will be addressed by the Court or Discovery
Commissioner.

27 ⁴ The Special Master shall use best efforts to return a report at the specified time. However, the
28 Court is aware of the volume of information to be reviewed and analyzed. At the request of the
Special Master, and for good cause shown, a very limited extension of time may be granted.

1 reallocating if appropriate, Plaintiffs and Defendants shall each bear 50% of the Special Master's
2 fees and costs.⁵

3 **F. Other Matters.**

4 **a. Affidavit.**

5 NRCP 53(b)(4)(A) requires a Special Master to file an affidavit disclosing any grounds
6 for disqualification under Revised Nevada Code of Judicial Conduct Rule 2.11. The required
7 affidavit(s) has been submitted,⁶ and the parties have confirmed they do not object to the
8 appointment.

9 **b. Cooperation.**

10 The parties and their counsel, including successors in office, agents, and employees, shall
11 provide full cooperation to the Special Master.

12 **c. Access to Information.**

13 The parties will make readily available to the Special Master any and all information,
14 documents, materials, data, programs, files, databases, computer programs, and processes
15 necessary for the Special Master to fulfill his functions under this Order. As set forth above, the
16 Special Master shall not reveal information imparted to him in confidence unless and until
17 directed by the Court. In the interests of protecting claimants' identities, parties shall first strike
18 or black out any identifying information and exercise best efforts to maintain anonymity.
19 Accordingly, and consistent with this Court's ruling from the bench, filings may be made under
20 seal.

21 **IT IS SO ORDERED.**

22 **DATED** this 10th day of July, 2020.

23 
24 BARRY L. BRESLOW
25 District Judge

26 ⁵ The factors include a consideration of: the nature and amount of the controversy, the parties'
27 means, and the extent to which any party is more responsible than other parties for the reference
28 to a master. NRCP 53(g)(2).

⁶ See Affidavit of Jason D. Guinasso, Esq.; Addendum to Affidavit of Jason D. Guinasso, Esq.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 10th day of July, 2020, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Mark Thierman, Esq.

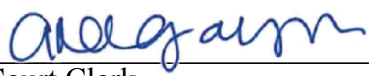
Joshua Buck, Esq.

Gregory Ott, Esq.

Robert Whitney, Esq.

Joshua Hendrickson, Esq.

Leah Jones, Esq.



Court Clerk