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

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

Petitioners,

v.

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

Case No.: CV20-00755

Dept. No.: 8

**SPECIAL MASTER'S
REPORT**

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1 **I. Introduction.**

2 Pursuant to NRCP 53, WDCR 24, and WDCR 25, the Honorable Judge Barry L.
3 Breslow appointed the undersigned Special Master for the limited purpose of fact
4 gathering, investigation, assessment of the process of the Nevada Department of
5 Employment, Training and Rehabilitation (DETR) responding to claims for unemployment
6 and pandemic-related benefits, and providing answers to specific questions the Court
7 presented. The matter came before the Court via a *First Amended Ex Parte Motion for an*
8 *Order to Show Cause Why Writ of Mandamus Should Not Issue* filed by Petitioners on June
9 22, 2020. On June 24, 2020 this Court issued an *Order to Show Cause Why Writ of*
10 *Mandamus Should Not Issue*. After briefing and a hearing, the Court identified several
11 issues requiring further investigation before the Court renders a decision.¹

12 As a threshold matter, a Special Master's duty is to the Court. He is not an advocate
13 for or against any party or interest in this matter. The Special Master's mandate in this
14 matter is to provide the Court with information so that the Court can make competent legal
15 conclusions and well-informed equitable decisions. The Special Master is not the decision
16 maker.

17 In furtherance of this responsibility, the Special Master met with DETR
18 representatives in person and by phone and spent several hours interviewing Kimberly
19 Gaa, ESD Administrator, David Schmidt, Chief Economist, and Troy C. Jordan, Esq.,
20 Senior Legal Counsel, DETR/ESD, and their attorneys Greg Ott, Esq. Senior Deputy
21

25 ¹ The Special Master and his staff worked diligently around the clock from the day appointed to complete the
26 work necessary to return a report to the Court within the time specified. However, given the volume of
information required to be reviewed and analyzed, the Special Master asked for and received a two-day
extension of time to complete this report.

1 Attorney General, and Robert Whitney, Esq., Deputy Attorney General. The Special
2 Master asked several questions and made several requests for information and documents.
3 Whether the Special Master asked questions or made requests before or after regular
4 business hours, early in the morning or late at night, weekdays or weekends, the
5 Administrator, her staff, and her attorneys were courteous, professional, and worked
6 diligently to get the Special Master all the information requested and to answer all the
7 questions presented despite the crushing workload they have on a daily basis.

8 Likewise, the Special Master communicated with Petitioners counsel on several
9 occasions, asked questions, requested information, and received materials to review.
10 Petitioners' attorneys were always immediately available and willing to provide document
11 and information in a timely fashion whenever needed.

12 In preparing this 319 page report, the Special Master:

- 13 ➤ reviewed and analyzed over 3500 documents provided to the Special master
14 by ESD;
- 15 ➤ received, reviewed, and sent 136 emails to DETR ESD;
- 16 ➤ received, reviewed, and sent 62 emails to Petitioners' counsel;
- 17 ➤ received and reviewed 775 emails sent directly to the Special Master from
18 claimants;
- 19 ➤ submitted 22 written questions to the DOL;
- 20 ➤ submitted 50 + written questions to DETR;
- 21 ➤ submitted 12 written questions to Petitioners and invited Petitioners to
25 submit questions to the Special Master for review and follow up;

- read over 6000 pages of communications from claimants, including communications directly to the Special Master and his office;
- saved and printed each email, Bates stamped them, and placed them into binders;
- read posts on the Nevada-Pandemic Unemployment Assistance (PUA) Facebook Page; and
- created a spreadsheet that catalogued every issue, problem, and concern raised by thousands of claimants.

From the time appointed until submission, the Special Master has worked with the parties transparently and collaboratively. On Saturday July 11, 2020, the Special Master sent the parties a working draft outline of the report with notations on information needed and questions to be answered by the report. The parties reviewed and commented on the draft outline while assisting the Special Master in marshalling facts and materials needed to complete the report. On July 17, 2020, the Special Master sent the parties a draft version of the report for review and comment. The Special Master specifically asked the parties to review for accuracy and to provide him with any objections they had to anything reported. Revisions were made based on their collective input and the report, along with the Appendix of Documents Reviewed, was finalized and filed on July 17, 2020.

A person can't spend the kind of time and effort on work like this without being moved to empathy for everyone involved. To the suffering and desperate people who have made claims and have not received money, the Special Master hopes that this report will establish that you have been heard and that your concerns have been accurately reported to the Court. To all the people at DETR ESD who have worked over 220,000 exhausting

1 and thankless hours since March of 2020 administering the State's unemployment
2 insurance program, as well as setting up and deploying several new federal programs, in
3 furtherance of their mission to provide temporary assistance and economic security to
4 individuals who become involuntarily unemployed, the Special Master hopes that you too
5 will see in this report that you have been heard and that your efforts have been accurately
6 reported to the Court.

7 Finally, the Special Master could not have done this volume of work in such a short
8 period of time alone. In this regard, the Special Master is grateful for the hard work and
9 contributions of his colleagues and staff at Hutchison & Steffen, PLLC. Thank you.

10 **II. The Global Pandemic.**

11 **A. COVID-19 Pandemic, an overview.**

12 On December 30, 2019, a cluster of patients with pneumonia of unknown etiology
13 were observed in Wuhan, China, and reported to the World Health Organization (WHO)'s
14 China bureau in Beijing. By January 2, 2020, the full genome of a new coronavirus had
15 been sequenced by a coronavirus expert at the Wuhan Institute of Virology; just over a
16 week later, the sequence was published, and the Chinese National Health Commission
17 warned of its potential danger.²

18 The first COVID-19 patient in the United States was diagnosed in late January. As
19 of June 26, 2020, there have been 2,422,312 confirmed cases of COVID-19 in the United
20 States and 124,415 deaths. The average number of new cases per day in the U.S. peaked
21 at 31,000 on April 10, 2020, and then slowly declined to a plateau of approximately 22,000

25
26 ² See Carlos Del Rio, Preeti Malani, *COVID-19 – new insights on a rapidly changing epidemics*, JAMA
Network (February 28, 2020) <https://jamanetwork.com/journals/jama/fullarticle/2762510>

1 per day. A few weeks after reopening the economy, however, the number of new cases per
2 day has increased steadily up to 33,000.³ As of July 10, 2020, Nevada has had 25,996
3 documented cases and 581 deaths.⁴

4 **B. Government response to COVID-19.**

5 In response to the Coronavirus Pandemic, the Federal Government has taken steps
6 to provide support for people in need, and Nevada has instituted policies to help mitigate
7 the transmission of the virus.

8 At the federal level, President Donald Trump declared a national emergency on
9 March 13, 2020.⁵ On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security
10 Act (“CARES Act”), a \$2 trillion economic stimulus bill, was passed by the 116th U.S.
11 Congress and signed into law by President Donald Trump in response to the economic
12 fallout of the COVID-19 pandemic.⁶ Unprecedented in size and scope, the legislation was
13 the largest economic stimulus package in U.S. history. The 880-page legislation included
14 one-time direct payments to individuals, stronger unemployment insurance, loans and
15 grants to businesses, more health-care resources for hospitals, states and municipalities,
16 and an expansion of who qualifies for unemployment insurance to include people who were
17 furloughed, gig workers and freelancers.⁷ It included an increase in unemployment
18

19 ³ See Fred Plapp, *The Covid-19 Pandemic: A Summary*, The Pathologist (July 6, 2020)
20 <https://thepathologist.com/subspecialties/the-covid-19-pandemic-a-summary>.

21 ⁴See *Coronavirus Data*, The Nevada Independent (Last updated July 14, 2020)
22 <https://thenevadaindependent.com/coronavirus-data-nevada>.

23 ⁵ See *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, The White House (March 13, 2020) <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

24 ⁶ See H.R. 748: *Coronavirus Aid, Relief, and Economic Security Act*.

25 ⁷ See Emily Cochrane, Sheryl Stolberg, *\$2 Trillion Coronavirus Stimulus Bill Is Signed Into Law*, New York Times (March 27, 2020) <https://www.nytimes.com/2020/03/27/us/politics/coronavirus-house-voting.html>.

1 payments by \$600 per week for four months on top of what states provide as a base
2 unemployment compensation and extended the benefit to 13 weeks for people already
3 collecting unemployment insurance.⁸

4 However, while the Federal Government has provided a wide array of benefits and
5 support to people impacted by COVID-19 and the related government shut down of non-
6 essential businesses, the government has had to at times “tighten [its] grip on state jobless
7 aid programs for gig workers,” to preserve the integrity of programs and prevent fraud.⁹
8 Recently, the Department of Labor (“DOL”) increased scrutiny of state implementation of
9 benefits. While the CARES Act provided benefits for independent contractors, federal
10 officials have increased pressure on states to verify that benefit recipients qualified for the
11 program and warned that programs like Pandemic Unemployment Assistance (“PUA”) are
12 highly vulnerable to fraud. *See Appendix 12-8 (Memorandum re: Response to the Office of*
13 *the Inspector General’s OIG Alert Memorandum: The Pandemic Unemployment Assistance*
14 *Program Needs Proactive Measures to Detect and Prevent Improper Payments and Fraud,*
15 *Report Number: 19-20-002-03-315); see also Appendix 12-9 (Fraud Alert announcement*
16 *from Office of the Inspector General for the U.S. Department of Labor).* As is discussed in
17 this brief *infra*, there were a number of changes to guidelines and guidance memorandums
18 that affected how Nevada and other states implemented the program. It was not enough
19 for Nevada to look solely to the CARES Act in facilitating benefits. It also had to look to
20

21 ⁸ See Sarah Wire, *Senate passes \$2-trillion economic stimulus package*, The Los Angeles Times (March 25,
25 2020) [https://www.latimes.com/politics/story/2020-03-25/vote-senate-on-2-trillion-economic-stimulus-packa](https://www.latimes.com/politics/story/2020-03-25/vote-senate-on-2-trillion-economic-stimulus-package-coronavirus)
[ge-coronavirus](https://www.latimes.com/politics/story/2020-03-25/vote-senate-on-2-trillion-economic-stimulus-packa).

26 ⁹ See Ben Penn and Chris Marr, *Feds Tighten Grip on State Jobless-Aid Programs for Gig Workers*, Bloomberg
Law, Daily Labor Reports, (July 9, 2020). [https://news.bloomberglaw.com/daily-labor-report/feds-tighten-](https://news.bloomberglaw.com/daily-labor-report/feds-tighten-grip-on-state-jobless-aid-programs-for-gig-workers)
[grip-on-state-jobless-aid-programs-for-gig-workers](https://news.bloomberglaw.com/daily-labor-report/feds-tighten-grip-on-state-jobless-aid-programs-for-gig-workers).

1 guidance from the DOL regarding maintaining program integrity and how to be a
2 responsible gatekeeper to prevent the widespread fraud and overpayment that had begun
3 to overtake programs in states which were the first to provide PUA benefits.

4 At the state level, Governor Steve Sisolak held the first press conference on
5 coronavirus on February 28, 2020.¹⁰ On March 15, 2020, Governor Sisolak announced the
6 closure of schools in Nevada and state offices.¹¹ The City of Reno ordered nonessential
7 businesses to close the next day, and the State of Nevada followed suit on March 17, 2020.¹²
8 An emergency directive on March 24, 2020, prohibited gatherings of more than 10 people.¹³
9 The closures were extended on April 1, 2020.¹⁴ Nevada has since reopened, in part, but

10 See Jackie Valley, Michelle Rindels, *Sisolak: Don't Panic, but practice basic hygiene to prepare for coronavirus*, The Nevada Independent (February 28, 2020), <https://thenevadaindependent.com/article/sisolak-dont-panic-but-practice-basic-hygiene-to-prepare-for-coronavirus>.

11 See Jackie Valley, Riley Snyder, *Sisolak Announces statewide school closure until April to reduce coronavirus spread*, The Nevada Independent (March 15, 2020) <https://thenevadaindependent.com/article/sisolak-announces-statewide-public-school-closures-until-april-to-reduce-coronavirus-spread>; see also Jackie Valley, Michelle Rindels, *Sisolak calls for state office closures, limits on large gatherings to slow 'rapid spread' of coronavirus*, The Nevada Independent (March 15, 2020) <https://thenevadaindependent.com/article/sisolak-calls-for-state-office-closures-limits-on-large-gatherings-to-slow-rapid-spread-of-coronavirus>.

12 See Daniel Rothberg, Michelle Rindels, Jackie Valley, *City of Reno orders non-essential businesses to start closing*, The Nevada Independent (March 16, 2020) <https://thenevadaindependent.com/article/city-of-reno-orders-all-non-essential-businesses-to-close-at-10-a-m-tomorrow>; see also Megan Messerly, Jackie Valley, *Sisolak orders statewide closure of nonessential businesses, including casinos, following in footsteps of other states*, The Nevada Independent (March 17, 2020) <https://thenevadaindependent.com/article/sisolak-to-order-statewide-closure-of-non-essential-businesses-including-casinos-following-in-footsteps-of-other-states>; see also Press Release, Nevada Health Regions COVID-19, Risk Mitigation Initiative (March 17, 2020) <https://nvhealthresponse.nv.gov/wp-content/uploads/2020/05/NV-Health-Reponse-COVID19-Risk-Management-Initiative-1.pdf>.

13 See Jackie Valley, Megan Messerly, *Sisolak prohibits indoor, outdoor gatherings of more than 10 people in new emergency directive*, The Nevada Independent (March 24, 2020) <https://thenevadaindependent.com/article/sisolak-prohibits-indoor-outdoor-gatherings-of-more-than-10-people-in-new-emergency-directive>; see also Exec. Declaration of Emergency No. 007 (March 24, 2020) <https://nvhealthresponse.nv.gov/wp-content/uploads/2020/05/NV-Health-Reponse-COVID19-Risk-Management-Initiative-1.pdf>.

14 See Riley Snyder, *Sisolak extends COVID-19 shutdown until end of April, urges residents to shelter-in-place*, The Nevada Independent (April 1, 2020) <https://thenevadaindependent.com/article/sisolak-extends-covid-19-shutdown-until-end-of-april-urges-residents-to-shelter-in-place>; see also Exec. Declaration of Emergency No. 010 (Apr. 1, 2020) <https://nvhealthresponse.nv.gov/wp-content/uploads/2020/05/Declaration-of-Emergency-Directive-010-Stay-at-Home-3-31-20-1.pdf>.

1 there are still restrictions on businesses and strict adherence to social distancing
2 guidelines.

3 **C. Impact on jobs and economy.**

4 As a result of the Coronavirus Pandemic, Nevada's unemployment rate soared to the
5 highest in the nation, with impacts seen across the state.¹⁵ In fact, Nevada Department of
6 Employment, Training & Rehabilitation (DETR) chief economist David Schmidt said that
7 the State's April unemployment rate was 30.1 %, which is the highest unemployment rate
8 ever recorded for any state in any month, including in the Great Depression. ¹⁶ According
9 to the DETR April 2020 economic report, statewide jobs decreased by 18.0%, a loss of -
10 254,800 jobs since April 2019 for an employment level of 1,159,800, a trend reflected in the
11 Metropolitan Statistical Areas (MSA). The Las Vegas MSA declined at a rate of 20.8% or
12 214,500 jobs for an employment level of 817,500. In the Reno MSA, the decline was at -
13 9.9% or -24,500 jobs for an employment level of 222,400. The Carson City MSA lost jobs at
14 the rate of -12.4% or -3,800 jobs for an employment level of 26,900. Changes are seasonally
15 adjusted to show underlying trends in employment. The State's seasonally adjusted
16 unemployment rate was 28.2% in April, 6.9% in March, and 4% in April 2019. Unadjusted
17 unemployment rates for the State were 29.8% in April, 6.9% in March, and was 3.9% in
18 April 2019.

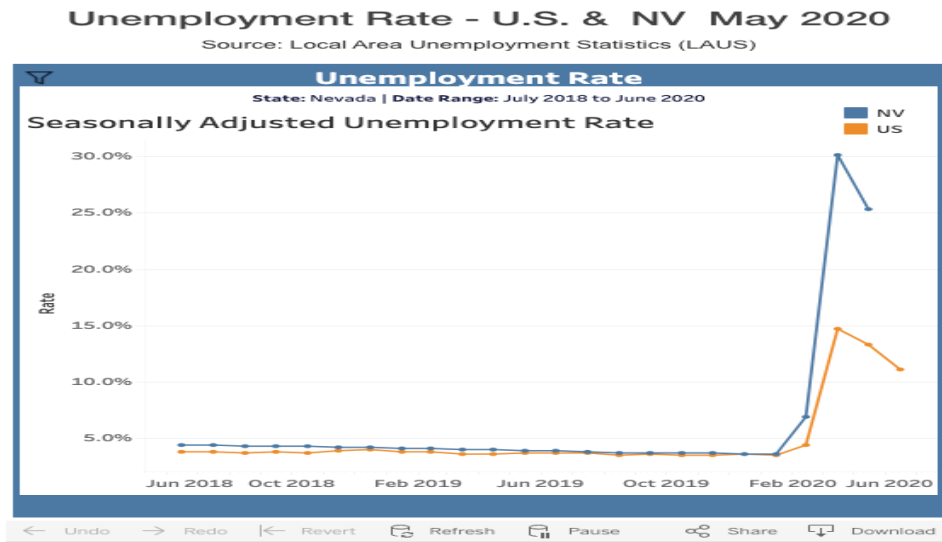
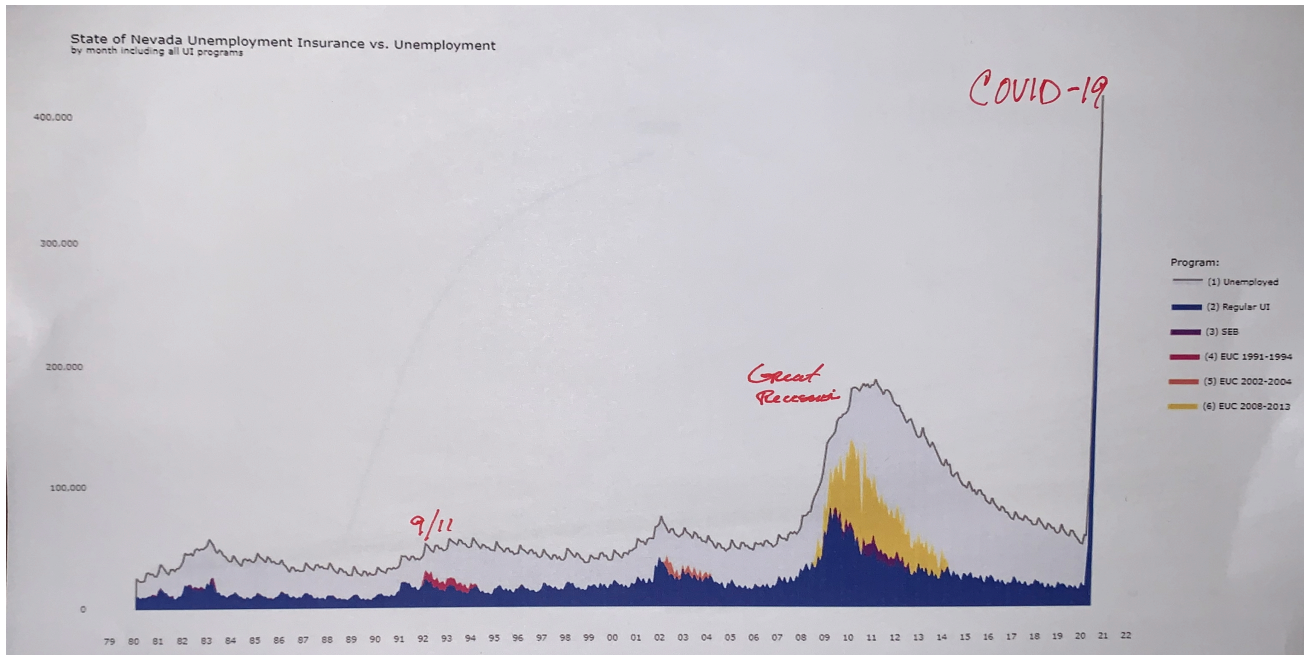
21 ¹⁵ See Research and Analysis Bureau, *Nevada has highest unemployment rate in the nation; impacts seen in*
25 *areas across the State*, Nevada Department of Employment, Training, and Rehabilitation (May 27, 2020)
<https://cms.detr.nv.gov/Content/Media/April%202020%20Sub-State%20PR.pdf>.

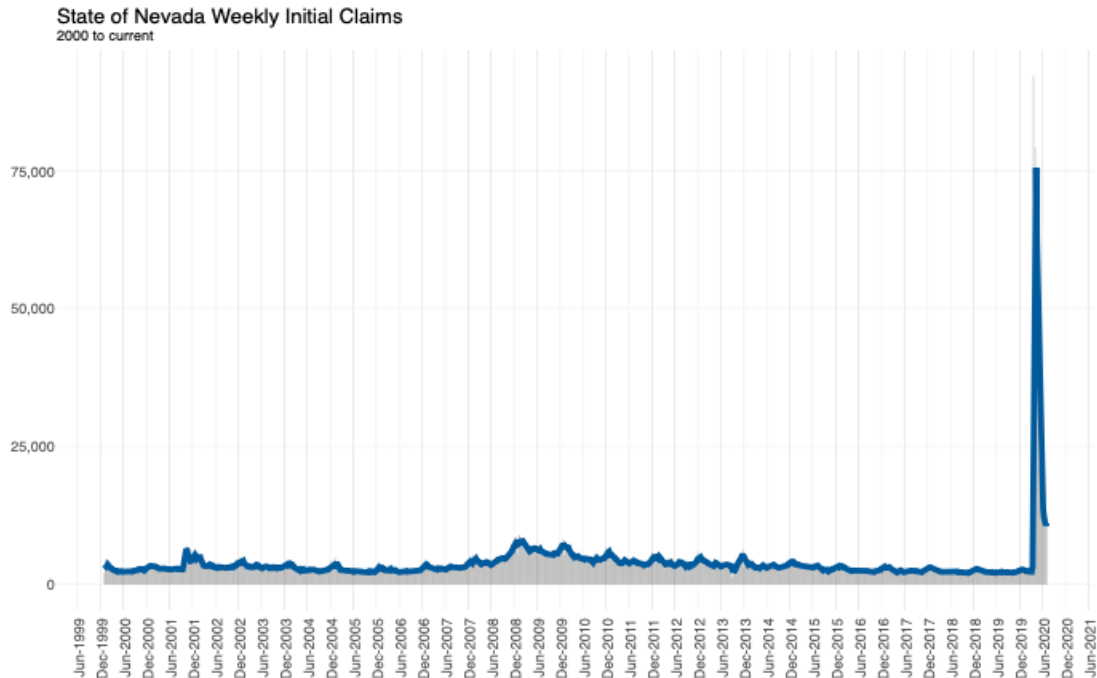
26 ¹⁶ See Research and Analysis Bureau, *Nevada has highest unemployment rate in the nation; impacts seen in*
areas across the State, Nevada Department of Employment, Training, and Rehabilitation (May 27, 2020)
<https://cms.detr.nv.gov/Content/Media/April%202020%20Sub-State%20PR.pdf>.

1 The largest impact was felt in Las Vegas, with an unemployment rate over 33% and
2 a decline in employment near 21%. However, no area of the state has been unaffected; the
3 Reno and Carson City MSAs saw employment declines near 10% and unemployment rates
4 near 20%, while the rural micropolitan areas of the state saw unemployment rates broadly
5 ranging between 10% and 20%.

6 As of June 23, 2020, employment grew in all major metropolitan markets. However,
7 despite the growth over the month, statewide jobs decreased by 17.3% or 245,300 jobs since
8 May 2019, a trend also reflected in the MSAs. The Las Vegas MSA declined at a rate of
9 21.3% or 220,400 jobs for an employment level of 813,100. In the Reno MSA, the decline
10 was at 11.7% or 29,000 jobs for an employment level of 218,300. The Carson City MSA, lost
11 jobs at the rate of 11.4% or 3,500 jobs for an employment level of 27,300. These employment
12 estimates are seasonally adjusted figures accounting for regularly seen seasonal changes
13 to show underlying trends.

14 The devastation caused by COVID-19 and the federal and state government's
15 responses related thereto was akin to an unexpected earthquake that was followed by an
16 overwhelming economic tsunami which immediately impacted employment in a way that
17 has never been experienced in modern U.S. history. The following graphs illustrate:





The surge in unemployment insurance activity that Nevada has experienced since the closure of non-essential businesses in the state is not only far beyond anything the state has previously experienced, it is so far beyond any prior experience that there are no reasonable comparisons that can be made. (*Ex. 1 to Resp't Opp'n. to Pet. for Writ of Mandamus, Decl. David Schmidt, at 4*). This surge in activity happened with far greater speed, and peaked at a far greater magnitude than any other time in the 82-year history of the unemployment insurance program in Nevada. *Id.* According to Chief Economist Schmidt, recessions are by their nature typically a relatively fast downward cycle driven by diminished confidence, consumption, and investment. (*Ex. 1 to Resp't Opp'n. to Pet. for Writ of Mandamus, Decl. David Schmidt, at 5*). But "fast" in such terms means unfolding over several months. This timing traditionally allows the opportunity for unemployment insurance programs to respond to increasing workload with a proportional increase in staffing.

1 From February 1986 to February 2020, the period for which consistent weekly
2 records are available from the US Department of Labor the largest-ever week-to-week
3 increase in initial claims in Nevada was 3,457 the week of January 10, 2009. Id. The year
4 of 2009 would go on to be the worst year Nevada's unemployment insurance program had
5 ever experienced, paying out over \$1 billion in regular unemployment benefits on over 3.7
6 million individual weeks of benefits. Id. Weekly (continuing) unemployment insurance
7 claims peaked in May 2009 at 80,429 in the regular unemployment insurance program. Id.
8 Over 2009 and 2010, including federal benefit programs in place at the time, Nevada would
9 pay out approximately \$3.8 billion in benefits. Id.

10 In contrast, Schmidt points out that, due to the policy-driven temporary closure of
11 non-essential businesses, Nevada was hit by a flood of activity absolutely unprecedented
12 in both speed and scope. (*Ex. 1 to Resp't Opp'n. to Pet. for Writ of Mandamus, Decl. David*
13 *Schmidt*, at 6). In this regard, **just 2,317 initial claims** were taken the week of March 7,
14 reflecting employment separations in the week of February 29, 2020. Id. This number rose
15 to **6,364 the following week**, temporarily breaking the January 2009 record for the
16 largest week-to-week increase in initial claims, increasing by 4,047 over the previous week.
17 Id. In the next following week Nevada took **92,309 claims, an increase of 85,945**. Id.
18 This circumstance is not just record breaking. It is not just an all-time high. It is an
19 increase 20 times higher than the record established over the previous 34 years of
20 published data, and it is certainly the largest that has been experienced since the inception
21 of the unemployment insurance program. Id.

25 This flood of claims descending on a staff that was staffed to handle roughly 2% of
26 that number mirrors the truly monumental challenges Nevadans were facing across the

1 state. (*Ex. 1 to Resp't Opp'n. to Pet. for Writ of Mandamus, Decl. David Schmidt, at 7*). Prior
2 to March 2020, the largest number of initial claims in a single week was 8,962. *Id.* Since
3 March 2020, Nevada has yet to get down to that previous all-time high, with initial claims
4 dropping to 10,350 for the week of June 20, 2020. *Id.* Prior to March, Nevada was
5 averaging just under 10,000 *initial* claims every month. *Id.* The first week of this closure
6 DETR processed nearly double that amount every single day. *Id.* DETR continues to
7 process over 10,000 initial claims every week. *Id.*

8 While the scale of the change alone was far beyond anything Nevada had ever
9 experienced, another significant factor affecting operations and claims processing was the
10 speed of that shift. (*Resp't Opp'n. to Pet. for Writ of Mandamus, Ex. 1, Schmidt Decl., at 8*).
11 The then-historic claim levels in January of 2009 rose to that point over the course of 4
12 years, from a low in 2005. The COVID-19 surge hit over the course of just 2 weeks - DETR
13 experienced a **40x increase in workload** (on a weekly basis) in a period of time 100x
14 shorter than the run-up from 2005 to 2009 and this surge of claims continued to roll in
15 week after week as claimants were able to work through the bottlenecks in the system. *Id.*

16 **D. Media Coverage of the Crisis.**

17 While there have been a number of media deep-dives into Nevada's unemployment
18 pandemic, the Nevada Independent has been at the forefront of analyzing and reporting
19 and on of Nevada's Unemployment Insurance System. It reported that the State reported
20 313,009 standard unemployment claims in its update for June 19. From March 8 through
21 June 20, there were 520,653 initial claims filed in Nevada. At that time, the State had paid

1 out more than \$1 billion in regular unemployment benefits and \$1.5 billion in FPUC
2 insurance.¹⁷

3 Outside of Nevada, news outlets such as the Washington Post noted that workers were
4 being pushed to the brink of hardship because of delayed unemployment payments. That
5 article told the story of phone systems that didn't work, visits to state offices that were
6 fruitless, and struggling workers who did not have savings to dip into during the crisis.
7 One laid off worker spoke to the dire financial state she was in: "We've been only able to
8 make half payments on everything . . . we bought a large amount of groceries and have
9 been taking things out of the freezer, but as the weeks go by, it's hard to figure out whether
10 to pay bills or whether we have enough food to last the week."¹⁸ Nationally, however, 57%
11 of claimants have been paid, an increase since April of over 10%. If anything, the trend is
12 that states are getting better at delivering benefits. But, there are many states, like
13 Nevada, have struggled. *Id.*

14 Contrasting the gloomy outlook—and in no way downplaying the severity of those who
15 have not received benefits—a June 25, 2020, Las Vegas Review-Journal article explained
16 that Nevada is performing better than most states in paying unemployment claims, even
17 as residents were dealing with poor phone lines. Compared to other states, the article
18 noted that 87.7% of all claimants received their benefits within one week of filing, which
19
20

21 ¹⁷ See Michelle Rindels & Riley Snyder, *The Indy Explains: What's happening with Nevada Unemployment*
Insurance? Initial claims for regular and PUA unemployment benefits up in past week, The Nevada
25 Independent (June 25, 2020) <https://thenevadaindependent.com/article/the-indy-explains-whats-happening-with-nevada-unemployment-insurance>.

26 ¹⁸ See Elie Rosenberg, *Workers are pushed to the brink as they continue to wait for delayed unemployment*
payments, Washington Post (July 13, 2020) <https://www.washingtonpost.com/business/2020/07/13/unemployment-payment-delays/>.

was 17th in the nation compared to other states. The article brought to light the struggles DETR is facing, as the record number of claims has, in effect, overwhelmed the system.¹⁹

III. Pre-pandemic and post-pandemic Nevada Unemployment insurance program.

A. The Employment Security Division.

i. Mission and purpose.

The Department of Employment, Training & Rehabilitation (DETR) is the state's lead workforce development agency. It consists of divisions that offer workforce-related services, job placement and training, services for people with disabilities, investigation of claims of discrimination, unemployment insurance benefits, labor market data and more. Many of these services are provided through Nevada JobConnect career centers.

The Employment Security Division (ESD) is within DETR, and is a combination of Unemployment Insurance, Workforce Development, and the Commission on Postsecondary Education.

- Unemployment Insurance is responsible for collection of employment taxes and provides temporary wage replacement for workers who are unemployed through no fault of their own.
- Workforce Development provides a combination of services, community support, job training and education that positions an individual for success in the workforce. Business engagement activities connect business to a qualified workforce and develop employment opportunities for individuals in the workforce.
- Commission on Postsecondary Education serves as the approval and licensing authority for degree-granting and non-degree granting postsecondary educational institutions, both public and private and for-profit and not-for-profit.

¹⁹ See Subrina Hudson and Arthur Kane, *Nevada Paying Unemployment Claims Faster Than Many States, data shows*, Las Vegas Review-Journal (June 25, 2020) <https://www.reviewjournal.com/business/nevada-paying-unemployment-claims-faster-than-many-states-data-shows-2059502/>.

1 ESD's vision is "Creating Success for Businesses and Nevadans." ESD's mission is:
2 "We exist to empower a vibrant labor market in Nevada by creating business and worker
3 connections with high-quality demand-driven services."

4 *ii. Kimberly Gaa, Administrator.*

5 Kimberly Gaa became the Administrator of the Employment Security Division in
6 August of 2019. As Administrator, Gaa has administrative authority and responsibility for
7 three key components of services within the ESD: the unemployment insurance
8 compensation program(s), the workforce services program(s), and the post-secondary
9 education program(s). Gaa's position also includes charges over the state's Employment
10 and Training Services, membership in the National Association of State Workforce
11 Agencies (NASWA), and various other local, state, and federal partnerships. Further, Gaa
12 is responsible for oversight of the State's Unemployment Insurance Program, which is
13 responsible for the collection of employment taxes and the payment of benefits. This
14 includes the administration, operations, support, personnel and budget of the state's
15 unemployment insurance program(s).

16 Prior to becoming Administrator of the ESD, Gaa was the Administrator of the
17 Information Development and Processing Division (IDP). She served in this position
18 beginning February of 2017. This position is typically referred to as the Chief Information
19 Officer for Information Technology (IT)—responsible for DETR's technological systems and
20 infrastructure, specifically DETR's business applications, production databases, hardware
21 infrastructure, telecommunication network, and strategic technology projects. Here, Gaa
25 oversaw administration and operations of the agency's IT personnel, functions, contracts
26 and budget, and implementation of new technologies and systems. During this period, Gaa

1 was instrumental in the modernization of the state's workforce and vocational
2 rehabilitation legacy systems to cloud-based platforms. Gaa also worked with her team to
3 improve security features in the state's UI program, to initiate the translation of the UIInv
4 system to Spanish, and to convert the existing phone systems to an improved, cloud-based
5 system. Additionally, it was during this time that Gaa completed and received her Certified
6 Public Manager certification.

7 Before her role in the IDP, Gaa served as Chief of the Bureau of Disability
8 Adjudication, Rehabilitation Division and, before that, as ESD Manager II/Call Center
9 Manager for the Unemployment Northern Call Center. When Gaa first joined DETR as an
10 ESD Call Center Manager in August of 2012, she was the manager predominantly
11 overseeing the claim examiner staff. Her responsibilities included policy implementation,
12 operations support, and personnel management for the Northern Call Center. After almost
13 two years in this position, Gaa became the Chief of the Bureau of Disability Adjudication,
14 Rehabilitation Division. Here, Gaa oversaw the administration, operations, personnel,
15 budget, and IT infrastructure of the State's medical determination bureau for federal Social
16 Security Disability benefits. While in this position, Gaa was awarded the Social Security
17 Deputy Commissioner's Team Award and the first DETR Management Excellence Award.

18 Outside of her work at DETR, Gaa served the community in numerous state and
19 county public service positions. She also has been a certified Category I, II, and III Peace
20 Officer in Nevada and Washington for over a decade. Gaa holds an Associate Degree in Law
21 Enforcement from Western Nevada College, a Bachelor of Science from the University of
25 Nevada, Reno, in General Studies and Business, and is currently pursuing her MBA.

1 Ms. Gaa is the State's Administrator for the Employment Security Division. (See
2 *Resp't Opp'n. to Pet. for Writ of Mandamus, Ex. 2, Decl. Kimberly Gaa*, ¶ 1). She has held
3 that position since August 16, 2019. In this position, she is the referenced statutory officer
4 under NRS 612.016. The position includes administrative authority and responsibility for
5 three components within ESD: Unemployment Insurance compensation programs,
6 workforce service programs, and post-secondary education programs. The programs are a
7 subset of the Federal Department of Labor – Employment and Training Administration,
8 and the Department of Education. Immediately prior to her role as EDS Administrator,
9 she administered Information Development and Processing for DETR from February 2017
10 until August 2019. Ms. Gaa's prior experience is in law enforcement, which is why she has
11 a background in fraud and identity crimes.

12 *iii. David Schmidt, Chief Economist.*

13 David Schmidt is the Chief Economist for DETR, a role in which he has served in
14 since February 2018. He is responsible for managing DETR's Research & Analysis Bureau
15 and producing employment and unemployment statistics in conjunction with the Bureau
16 of Labor Statistics and the Employment and Training Administration. These statistics
17 include the Current Employment Statistics (CES), Local Area Unemployment Statistics
18 (LAUS), Quarterly Census of Employment and Wages (QCEW) and Occupational
19 Employment Statistics (OES) programs. While Mr. Schmidt served in this role, the Bureau
20 earned the "Data Insights and Innovations" award for their work identifying demographic
21 groups with high unemployment at a local level in a way that could be shared with and
25 exported to other states. Alongside this role, he also served as the Acting Deputy
26 Administrator for the Employment Security Division from March 2020 to June 2020.

1 Prior to serving as Chief Economist, Mr. Schmidt has served as a Deputy Chief
2 Financial Officer for DETR, and as both a Supervising Economist and Staff Economist in
3 the DETR Research & Analysis Bureau, dating back to 2005. In these roles, he was
4 responsible for analyzing the state unemployment insurance trust fund, working with the
5 Employment Security Division and Employment Security Council to report on a variety of
6 aspects of the state unemployment insurance system including claims, payments,
7 determinations, appeals, overpayments, contributions and other programs. In 2009 he
8 received the Most Valuable Partner award from the Employment Security Division for his
9 work on unemployment benefit payments through the Great Recession. He worked closely
10 with both the Employment Security Division and State Treasurer's Office in the 2013 Bond
11 issue which refinanced the state's unemployment debt following the Great Recession. For
12 the last three years he has been the lead worker in compiling the Resource Justification
13 Model (RJM), the workload-driven mechanism DOL uses to allocate UI funds between the
14 states.

15 Mr. Schmidt has 15 years of experience working with Nevada's unemployment
16 insurance system and has testified before the Nevada Legislature regarding
17 unemployment statistics on a regular basis throughout that period. He was formerly the
18 reporting and data validation subject matter expert during the planning, implementation,
19 and clean-up phases of the UINV system. He has extensive experience analyzing particular
20 data elements within the system, interpreting DOL guidance with regard to federal reports
21 and data validation rules, and applying federal guidance to Nevada's unemployment
25 insurance system. He has experience working with a number of unemployment related
26 programs, including: TUEC, EUC08 Tier 1, EUC08 Tier 2, EUC08 Tier 3, EUC08 Tier 4,

1 FAC, SEB, PEUC, PUA and FPUC extended benefit programs, as well as the regular UI
2 program and has unique exposure across operational, accounting, and analytical
3 perspectives on the program.

4 *iv. Troy C. Jordan, Esq., Senior Legal Counsel, DETR/ESD.*

5 Troy Jordan is the Senior Legal Counsel for the Employment Security Division of
6 the Department of Employment, Training, and Rehabilitation, a role in which he has
7 served since May 2019. In this role he is responsible for drafting regulations and proposed
8 legislation, adjudicating petitions for judicial review based on the denial of unemployment
9 insurance program benefits as outlined in NRS Chapter 612, overseeing public records
10 requests pursuant to NRS 239, enforcing the Nevada Open Meeting Law Requirements at
11 public hearings by the agency, enforcement of the confidentiality provisions of agency data
12 contained in NRS 612.265 and 20 C.F.R. 603, handling collections and bankruptcy matters
13 for the agency.

14 Prior to serving in this role, Mr. Jordan has served as a Deputy District Attorney for
15 both Elko County and Carson City, a Senior Deputy Attorney General with the State of
16 Nevada, and he has 5 years of private practice experience. He has conducted over 40 jury
17 trials in his career and thousands of other court hearings. He has been licensed in Nevada
18 for 16 years and is also licensed in all federal courts in Nevada and the Ninth Circuit Court
19 of Appeals. His career has included four published opinions from the Nevada Supreme
20 Court, two of which occurred since joining the DETR team in 2019 as well as numerous
21 other oral arguments before the Nevada Supreme Court and the United States Ninth
25 Circuit Court of Appeals. Troy has also served as the Criminal Justice Section
26 representative to the ABA on behalf of former Nevada Attorney General now United States

Senator Catherine Cortez-Masto when he worked at the Attorney General's Office and is a bar grader for the State of Nevada Board of Bar Examiners. Troy is an active member of the State of Nevada FFA Foundation Board and the Lions Club.

v. ESD Staff pre-COVID-19.

Prior to the COVID-19 Pandemic and the government directives related thereto, ESD staff consisted of 186 people. From March 2019 to March 2020, ESD employees worked a total of 15,358 regular hours, while logging just 99.91 hours of overtime for this twelve-month period.

vi. ESD Staff post-COVID-19.

Presently, ESD staff is comprised of 303 people. An organizational chart of ESD's current staffing can be found at Appendix 8-1 (*Employment Security Division Organizational Chart*). Since the beginning of the COVID-19 crisis, 333 people working for ESD have worked 192,707.63 regular hours, while logging **30,765.42 overtime hours**.

Total Number of ESD Positions on Payroll for Sample:	515
Total Number of ESD Positions that worked OT since beginning of COVID-19 crisis:	333
Percent of agency 902 worked overtime since beginning of COVID-19 crisis:	64.66%
Total hours OT worked in agency 902 since beginning of COVID-19 crisis:	30765.42
Average Total Hours OT worked per position since beginning of COVID-19 crisis:	92.39

Monthly Stats	
Month	Hours
March	4745.28
April	8549.95
May	10084.21
June	7385.98

1 In addition to these ESD staff, an additional 370 staff have been working to
2 administer the PUA program. *See Appendix 8-4 (Employment Security Division COVID*
3 *Staffing Statistics).*

PUA Staffing		
Column1	Column2	Column3
		Totals
	1. Quantity of Contracted Alorica Staff working as Examiners to process claims:	299
	2. Quantity of Contracted Staff working as Adjudicators:	35
	3. Quantity of ESD Employees reassigned to UI from other programs	35
	5. Quantity of other state resources; NDOT, Health Exchange, Welfare:	1
		370

8
9 In a July 3, 2020 DETR Written Press Conference Q & A, DETR announced that of
10 the 133 recently-reported approved positions for ESD support, 108 had been filled. *See*
11 *Appendix 16-14 (DETR Written Press Conference Q&A (Jul. 3, 2020)); See also Appendix 8-*
12 *2 (Employment Security Claims Examination & Placement Occupational categories).*

13 *vii. Funding.*

14 After the beginning of the post-COVID crisis, emergency administrative grants were
15 provided to states (with distinct requirements). In this regard, “Section 4102” money was
16 to be used for administering unemployment compensation for “taking such steps as may be
17 necessary to ensure adequate resources in periods of high demand.” *See* DOL UIPL 13-20
18 dated March 22, 2020 at p. 3.4. There was \$10.6 million in the Families First Act funding
19 (and UIPL 13-20 explains that funding). These funds were made available by DOL to help
20 respond to the COVID Pandemic, prior to the existence of the CARES Act, and states have
21 the widest latitude in spending these funds (could be UI or other sources).

25 However, in the context of increased UI demands and CARES Act implementation
26 and contract needs pending later DOL reimbursement, this is a very limited pot of money.

1 As of roughly the middle of May, Nevada had done everything necessary to apply for the
2 two tiers of funds and those funds are available to Nevada in the ASAP system. Because
3 these are the most flexible dollars, they should also be the last dollars spent, after: UI grant
4 funds; UI above base funds; CARES implementation funds; CARES ongoing
5 reimbursements. Here is a summary of funds received for federal fiscal year 2020:

- 6 ➤ Administrative support fund: the Department of Labor Employment and
7 Training Administration Formula Grant unemployment insurance the total
8 award at this time is \$26,253,383;
- 9 ➤ Families First Coronavirus Response Act One-Time funding of \$10,684,454
- 10 ➤ CARES Act: PUA one-time funding of \$1,802,280;
- 11 ➤ CARES Act: FPUC one-time funding of \$153,610; and
- 12 ➤ CARES Act: PEUC one-time funding of \$191,892 .

13 **B. Nevada's unemployment insurance program (general overview of**
14 **program).**

15 DETR provided a graphic that is insightful in itself; it displays the State of Nevada's
16 unemployment insurance vs. unemployment by month, including the UI program.



58,641
INITIAL UI CLAIMS

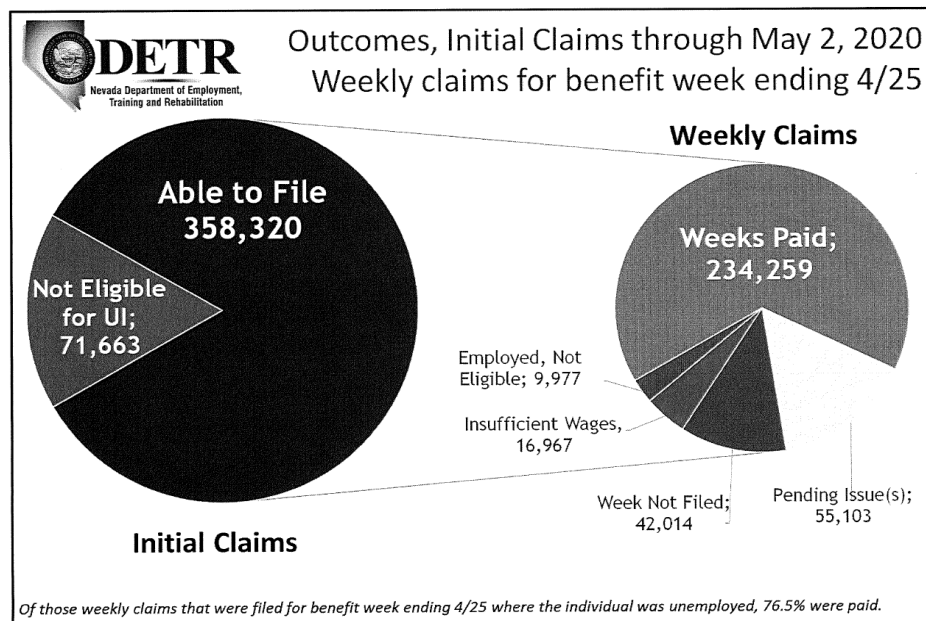
189,007
CONTINUED (WEEKLY) CLAIMS

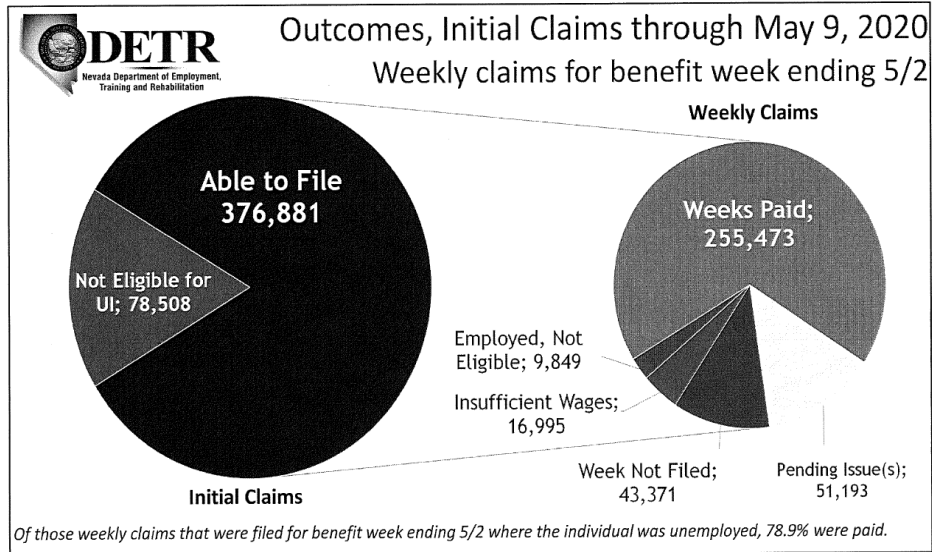
NUMBERS REFLECT CLAIMS FROM THE PREVIOUS WEEK ENDING
April 11, 2020.

INITIAL CLAIMS DOWN 26% COMPARED TO LAST WEEK
CONTINUED CLAIMS UP 57,886 CLAIMS FROM PREVIOUS WEEK.
NEVADA'S INSURED UNEMPLOYMENT RATE, WHICH IS THE RATIO OF
CONTINUED CLAIMS TO COVERED EMPLOYMENT, WAS 13.8 PERCENT
IN THE WEEK, UP FROM 9.6 PERCENT A WEEK AGO.

For a snapshot in time, to give context for UI claims after COVID, in the week preceding April 11, 2020, there were 58,641 initial UI claims. That same week there were 189,007 continued weekly claims.

The following graphs show the continuing trend:





i. *What was the process for filing a “UI Claim” prior to the pandemic?*

1. Qualifying criteria for eligibility.²⁰

Only “unemployed” claimants can receive benefits. A claimant is unemployed, pursuant to NRS 612.185, if he or she performed no work and earned no wages or worked less than full-time and was paid less than his or her weekly benefit amount. A claimant cannot be paid unemployment benefits for any week if: (1) he or she worked full-time; (2) he or she had earnings during the week equal to or more than his or her weekly benefit amount; (3) he or she was self-employed in any capacity, or (4) he or she is on a leave of absence. A claimant must have been let go for a reason not caused by them: such as discharge for misconduct or quitting without good cause. NAC 612.120.

²⁰The statutory criteria for eligibility for benefits and extended benefits is found in NRS Chapter 612, sections 375 – 3786.

2. Process for determining eligibility.²¹

To receive unemployment benefits, a claimant must do the following: First, the claimant must file a weekly claim. NRS 612.375. Weekly claims that are filed late (7 days after weekend date) may be denied. A claimant can submit a claim using an automated system called QuickClaim, using DETR's internet claim filing system, or in person. Second, the claimant must be able to work, which means he or she must be mentally and physically capable of working a normal work week. Third, a claimant must be available to work, which means he or she must be willing to accept bot full-time and part time work. This also means a claimant must have transportation and have made childcare arrangements. Fourth, the claimant must be actively seeking work, which means he or she must meet the availability requirements and make a good faith effort to obtain work. *Id.* A claimant must also report any retirement or pension payments. *Id.*

Regarding actively seeking work, the claimant must be seeking work for which he or she is suited and has adequate experience for, and he or she must seek work in a method that is most likely to result in employment. The claimant must also apply with the individual who has authority to hire him or her. Further, if an employee is registered and on the out-of-work list with the union, he or she must meet reporting requirements with a union. The claimant must be willing to accept the same level of pay and hours as is customary for his or her line of work. And the claimant is encouraged to participate in alternative work search activities. To document these ventures, the claimant must keep weekly records of his or work search activities. *See NRS 612.392.*

²¹The statutory criteria for eligibility for benefits and extended benefits is found in NRS Chapter 612, sections 450 – 533.

1 DETR offers assistance for those seeking employment through Nevada JobConnect.
2 If a claimant is selected, he or she will receive a notification letter and an appointment will
3 be set. A Nevada JobConnect representative will advise the claimant throughout the
4 process. If a claimant refuses reemployment services, after he or she is offered them, the
5 claimant's benefits may be delayed or denied if the claimant does not have a justifiable
6 reason. *See NRS 612.375(2). See NRS 612.392.*

7 There are a number of other reasons why a claimant may be disqualified. If they:
8 fail to apply for or accept suitable work, NRS 612.392; participate in a labor dispute, NRS
9 612.395; receive disability payments for an on-the-job injury, NRS 612.185(3)(b); withhold
10 or give false information that affects their claim, NRS 612.445; receive vacation pay, wages
11 in lieu of notice, severance pay, or deductible retirement equal to or greater than their
12 weekly benefit, NRS 612.430, 612.420; are resident aliens, NRS 612.448; are between
13 academic terms, NRS 612.434; or return to work and continue filing for benefits.

14 3. Application process.

15 The State of Nevada Unemployment Insurance Claimant Self Service (CCS) system
16 provides claimants an online system so that they can file unemployment insurance claims,
17 weekly claims, check the status of their existing claims, and provides information to
18 claimants. *See Appendix 4-2 (State of Nevada Unemployment Insurance Guide to Online*
19 *Claimant Self Service, p.2).*

20 The system, seemingly, has a user-friendly basic navigation system that allows for
21 users to input their information on drop down menus, and select "yes" or "no" to questions.
25 That said, as with most systems in government, the system seems outdated. It requires
26 claimants to use back buttons within CCS, instead of the internet browsers back button.

a. Step 1: registering as a new claimant.

The first step in the online claims process is to create a new online claimant account. Doing so involves creating a username and password, providing other basic information, and setting a security questions and image. After creating an account, a claimant should continue with the instructions on how to complete registration and apply for benefits. Once a claimant gains access to the system, he or she should validate that their registration information is still accurate and then proceed to the instructions on Applying for Benefits to file a new claim. All claimants, including those who have filed using our former internet claim system, will need to create a new online claimant account in order to access CSS.

After registering, the claimant needs to verify their account. This page tells the claimant their information needs to be accurate or there may be delays.

Good Afternoon Wednesday, November 20, 2019

CONFIRM NEW USER ACCOUNT

Confirm New User Account

Social Security Number	456-11-8386
First Name	Claimant
Last Name	Lastname
Mother's Maiden Name (last name only)	Test
Email Address	
Contact Phone	
Date of Birth	01/01/1984
Username	November2019

***** STOP *****

Please double check your Name, Date of Birth, and SSN

Any mistake in these items may cause significant delays in processing your claim.

If you need to correct the information displayed please click the Back button. If your information is correct click the Submit button to continue.

[Back](#) [Submit](#)

b. Step 2: completing the claimant's registration.

After creating an online CSS account, the next step in the filing process is to complete online registration information. Doing so involves the following:

- Entering Personal, Address, Contact, and Demographic Information
- Reviewing and/or updating Wage and Employer Information:

The system saves responses as a claimant move from screen to screen. If the claimant leaves the system without completing the registration or claim, the claimant has seven calendar days to log back in to complete filing. After seven days of inactivity, the system erases any partially saved information and the claimant will have to start over. The benefit period is based on the date the claimants' claim is completed, not on the date the claimant started.

After a claimant inputs the information required for a claim, CCS directs the claimant to the "Unemployment Insurance Benefits Estimator." This is a preliminary assesment of the claimant's potential eligibilty for unemployment insurance benefits.

Good Morning JUAN LOPEZ Thursday, December 21, 2017 Help | Contact | Resources | Logoff

UNEMPLOYMENT INSURANCE BENEFITS ESTIMATOR

JUAN LOPEZ CLAIMANT ID: 5274896

The Unemployment Benefits Estimator is a preliminary determination of your potential eligibility for Unemployment Insurance Benefits. The information below is based solely on wages currently on file in Nevada and is valid only for use with a claim filed today. Keep in mind that these results are an estimate presented for illustration purposes only. This estimate is not a guarantee of benefits.

Missing Wages: The Estimator will not show wages:

- Earned and reported in another state during your Base Period.
- Earned by working for the Federal Government.
- Earned while in the Military.

Any wages earned from the above will be added as a result of claim filing.

Base Period Quarterly Wages

A year is separated into four calendar quarters (January through March, April through June, July through September, and October through December). For Nevada claims, a Base Period is the first four of the last five completed calendar quarters at the time you file your initial application. The first four quarters (dates) displayed below are your base period (see Claimant Handbook link in [Resources](#) for diagram). Your employer(s) reported the earnings displayed during the listed quarters.

(#1) 07/01/2016 through 09/30/2016	(#2) 10/01/2016 through 12/31/2016	(#3) 01/01/2017 through 03/31/2017	(#4) 04/01/2017 through 06/30/2017
MEI GSR HOLDINGS LLC 8,000.00	MEI GSR HOLDINGS LLC 8,000.00	MEI GSR HOLDINGS LLC 8,000.00	MEI GSR HOLDINGS LLC 8,000.00
\$ 8,000.00	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00

* Do you have missing or incorrectly reported wages in the base period listed above?
☒ The wages reported are correct

Current Quarter Estimate

If you file your claim between 10/01/2017 and 01/06/2018, this would be your estimated benefit amount.

Monetary Eligibility Eligible	Weekly Benefit Amt \$320.00	Number of Weeks 26	Maximum Benefit Amt \$8,320.00
--------------------------------------	------------------------------------	---------------------------	---------------------------------------

Alternate Base Period Estimate

If you wait and file your claim between 01/07/2018 and 03/31/2018, this would be your estimated benefit amount.
 Benefits will not be paid for any weeks prior to the effective date of your claim.

Monetary Eligibility Eligible	Weekly Benefit Amt \$320.00	Number of Weeks 25	Maximum Benefit Amt \$8,000.00
--------------------------------------	------------------------------------	---------------------------	---------------------------------------

[Print](#) [Claimant Homepage](#) [Continue to File Claim](#)

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c. Step 3: applying for benefits.

After a claimant completes registration, he or she is ready to apply for benefits. Doing so involves: providing required eligibility information; verifying and updating employment history and information about the claimants last employer; providing information about the claimant's separation and his or her work search; reviewing information he or she entered in submitting his or her claim; and providing additional information through dynamic fact-finding, if prompted.

For example:

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APPLY FOR BENEFITS: INITIAL FILING

JUAN LOPEZ CLAIMANT ID: 5274896

Fields marked with an asterisk * are required.

Have you filed for and received payment for workers' compensation for an injury you received on the job? * ☐ Yes ☐ No

If yes, please provide the date you started receiving disability payments: (mm/dd/yyyy)

Are you self-employed ? * ☐ Yes ☐ No

Are you attending school or training ? * ☐ Yes ☐ No

Are you mentally and physically able to work? * ☐ Yes ☐ No

Is there any other reason why you cannot seek or accept immediate work (such as child care, transportation, care of a family member, etc.)? * ☐ Yes ☐ No

Have you refused any job offer / referral since 08/27/2017? * ☐ Yes ☐ No

Have you worked two or more on-call assignments since 08/27/2017? * ☐ Yes ☐ No

Have you worked two or more assignments for a temporary agency since 08/27/2017? * ☐ Yes ☐ No

Have you worked for two or more different employers since 08/27/2017? * ☐ Yes ☐ No

Next

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A claimant has to list every employer for which he or she worked during the base period (last 18 months). He or she needs to list the type of employment and information regarding former work assignments.

For the “work search” section, the employee needs to provide the following:

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APPLY FOR BENEFITS: WORK SEARCH

JUAN LOPEZ CLAIMANT ID: 5274896

Fields marked with an asterisk * are required.

Primary Occupation you are seeking? *

Note: Please note information provided on your primary and secondary occupations may be used for job placement assistance. You must be willing to seek and accept work for which you have skills and/or education.

Secondary Occupation you are seeking?

Choose a JobConnect office in the area you look for work *

What is your lowest rate of pay you will accept for the type of work you are seeking? * \$ per

Are you willing to work any day of the week normal to the occupation you are seeking? * ☐ Yes ☐ No

Are you willing to work any shift normal to the occupation you are seeking? * ☐ Yes ☐ No

What round trip distance will you travel to seek and accept work? * in miles

Are tools, license, or permits required for the work you are seeking? * ☐ Yes ☐ No

If yes, do you have the tools, licenses, or permits to perform the work you are seeking? ☐ Yes ☐ No

Next

UINVS CSS 2017-12-14 10:46:06 UAT

Capgemini in collaboration with SIProS ORACLE

A summary screen follows this, and other pages that were left out of this memorandum, that allows the claimant to edit any information that needs to be changed.



Good Afternoon JUAN LOPEZ

Thursday, December 21, 2017

[Help](#) | [Contact](#) | [Resources](#) | [Logoff](#)

APPLY FOR BENEFITS: SUMMARY

JUAN LOPEZ

CLAIMANT ID: 5274896

Please carefully review each section of the information you have provided.
If you need to change information, click the Edit button for that section.

Initial Filing

Employment

Separation

Other

Work Search

Summary

Submit

Confirmation

Personal Information

Date of Birth: 01/01/1980

Gender: Male

First Name: JUAN

Mothers Maiden Name: TEST

Last Name: LOPEZ

Withold Federal Tax? No

Middle Initial:

Number of Additional Household Members that Provide Income to the Home: 0

Suffix:

Are you required to pay Child Support? No

Other Last Name Used (1):

Child Support City:

Other Last Name Used (2):

Child Support State:

Other Last Name Used (3):

Child Support County:

Edit

Country: USA

Mailing Address: 1320 S CURRY ST

Mailing Address City: Carson City

Mailing Address State: Nevada

Mailing Address Zip: 89703

Residential Address Country:

Residential Address:

Residential Address City:

Residential Address State:

Residential Address Zip:

Closest JobConnect Office:

Commuter:

Edit

Primary Phone: Ext:

Alternate Phone: Ext:

Cell Phone:

Fax Number:

E-mail Address:

Preferred Contact Method: Mail

Edit

Highest Grade Completed: 12 - Twelfth Grade

Disabled: No

Degree Completed: Twelfth Grade - HS Graduate OR Disabled w/ Cert / IEP

Veteran: No

Race: Choose Not To Answer

U.S. Citizen: Yes

Ethnicity: Choose Not To Answer

Alien Registration Number:

Preferred Language: English

Alien Registration Expiration Date:

Edit

1 Finally, the claimant needs to submit his or her claim. The screen displays the
2 following:

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Good Afternoon JUAN LOPEZ Thursday, December 21, 2017 | Help | Contact | Resources | Logoff

UN Unemployment Insurance

APPLY FOR BENEFITS: SUBMIT CLAIM

JUAN LOPEZ CLAIMANT ID: 5274896

Claim Effective Date : 12/17/2017 [Print](#)

Penalties for Falsification

WARNING
IMPORTANT UNEMPLOYMENT INSURANCE INFORMATION

Unemployment Insurance Fraud is a felony in Nevada. You must be fully or partially unemployed as well as able and available for work in order to receive Unemployment Insurance Benefits. If you commit fraud, you will be subject to significant financial and administrative penalties, and may be prosecuted. Remember to report any work and all income from any source for each week you claim a benefit payment.

☐ Yes, I understand giving false statements or withholding information in order to receive Unemployment Insurance Benefits constitutes fraud.
☐ No, I will contact the [telephone claim center](#) to ensure I understand.

Benefits Rights and Information

For a full description of Benefits, Rights and Information [click here](#) to read the Nevada Unemployment Insurance Facts for Claimants Handbook. You may print the handbook if you wish.

☐ I understand I must read the information in the Nevada Unemployment Insurance Facts for Claimants Handbook.
☐ I understand failure to read the Nevada Unemployment Insurance Facts for Claimants Handbook does not relieve me of my claim filing responsibilities and does not serve as an excuse to prevent being found ineligible for benefits if I do not meet my responsibilities.
☐ By clicking the "Yes, I agree-File my claim" button below, I am agreeing to the responsibilities within the Nevada Unemployment Insurance Facts for Claimants Handbook and understand the penalties for falsification.
☒ I would like a Nevada Unemployment Insurance Facts for Claimants Handbook mailed to me

Backdating Claims

Nevada Unemployment Insurance Claims become effective on the Sunday of the week in which they are filed. Your claim is effective 12/17/2017

A claim for unemployment insurance benefits is effective the Sunday of the week in which you file the claim. If you wish to request benefit payment for any previous claim weeks in which you were unemployed, you may continue to file your claim electronically to complete the filing process. To establish the backdate for the prior weeks, you will need to contact the Telephone Claim Center and speak with a representative. Northern Claim Center 775-684-0350. Southern Claim Center 702-486-0350.

If you are requesting a backdate of your claim, you will need to file weekly claims for benefits while waiting for a decision on eligibility. Your claim will be on hold and no benefit payments will be issued until the backdate request is resolved.

NAC 612.110 (1c) states in part... In no case may a claim be predated more than 2 weeks preceding the week in which the claim is actually filed.

[Back](#) [Yes, I agree-File my Claim](#) [No, I do not agree](#)

UINVS CSS 2017-12-14 10:46:06 UAT

Capgemini in collaboration with SIPro ORACLE

1 If an issue arises from the claimant's claim, he or she will then arrive on the "fact
2 finding" screen. It will show issues with the claim, along with facts, and request additional
3 information.

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Good Afternoon JUAN LOPEZ Thursday, December 21, 2017 | Help | Contact | Resources | Logout

APPLY FOR BENEFITS: FACT FINDING

JUAN LOPEZ CLAIMANT ID: 5274896

One or more of your answers has created potentially disqualifying issue(s) on your claim. Additional information must be obtained to determine your eligibility. Click on the link(s) below and provide the requested information.

Failure to provide the requested information will delay the payment of your claim, and will result in a decision on your eligibility made only on the information provided on the previous screens.

Issue Type	Information Due By	Link to Additional Information
Available - Initial	12/31/2017	Interview: Available - Initial
Medical Reasons - Initial	12/31/2017	Interview: Medical Reasons - Initial
School or Training - Other	12/31/2017	Interview: School or Training - Other

Warning: This information must be provided by the date(s) shown above, either by completing the forms or contacting the telephone claim center and answering the questions with a claims representative. Wait times or failure to make contact via telephone do not constitute good reason for failure to provide the information by the date(s) shown above.

[Claimant Homepage](#)

UINV CSS 2017-12-14 10:46:06 UAT

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15 The claimant will then receive a confirmation that the claim has been submitted.
16 The screen contains a confirmation number as well as additional information that the
17 claimant will need to begin filing weekly benefit claims. The claimant is encouraged to
18 print a copy of the information for his or her records.

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Good Morning MIKE ROSSI Tuesday, February 6, 2018 | Help | Contact | Resources | Logout

APPLY FOR BENEFITS: FILE CLAIM CONFIRMATION

MIKE ROSSI CLAIMANT ID: 5297337

The Nevada Department of Employment, Training and Rehabilitation is committed to meeting our Federal and State Requirements to pay benefits when due as efficiently as possible. Please watch your Homepage (after you log into the claimant self service application, click on the [Go to My Homepage](#) link) for the current status of your claim. If it has been less than 21 days since you filed your claim, we ask you to please allow the process to be completed and not call to inquire about the claim status. Your Homepage allows you to check on the status of your weekly payments.

If there are issues, they will be identified and listed on your Homepage. Until these issues are addressed, your claim will be on hold and payment cannot be made. Please respond to inquires as soon as possible to avoid a delay in your payment. You can provide the information necessary by responding to our mail correspondence or by clicking on the hyperlinked issue(s) under the **"Issues Delaying Payment"** section (hyperlinked issues are the ones that appear in blue and are underlined).

Your claim has been filed. The provided confirmation number is for tracking purposes. Copy it and keep it in a safe place until you receive your notice of eligibility or ineligibility. You may want to print this page in order to have the contact information handy.

Confirmation Number: 7516591

How to claim weeks of Unemployment Insurance

There are two steps to UI claims filing:

1. Establish a claim for benefits, which you have just done and
2. Certify a week of unemployment and request a weekly benefit payment.

When you establish a claim for benefits, you have not requested a week's payment, you have created a claim. To receive a weekly payment, you must use this UIInv system OR call into our weekly claim filing system called QuickClaim the following Sunday, and request payment for the week. Claims become effective in the week they are filed. A claim week is from Sunday at 12:01 am to Saturday midnight. You may not claim a week's payment until the week has ended.

For example, you created a claim for benefits on Friday, January 3rd.
The claim week ends Saturday, January 4th.
You may claim the week ending Saturday, January 4th any time between Sunday January 5th – Saturday January 11th.

If you wish to claim a week before the week you filed your claim, you must request a backdate when filing your claim. In order to receive a backdate you must have an explanation why you did not file earlier, have been able, available, seeking work and provide a verifiable work search for the period of time you are requesting to be paid.

While filing for Unemployment Insurance Benefits, you must meet the work registration requirements of the state in which you live. By filing a UI claim you have also registered for work in Nevada and meet this requirement. However, if you live outside Nevada, your local Job Service office can advise you how to register in that state.

Advisory: At any time during claim filing, you may receive a letter or email requesting you appear in person at a Nevada JobConnect office and/or participate in a reemployment program. Information regarding programs you must participate in if selected are found in the Nevada Unemployment Insurance Facts for Claimants Handbook. This is to ensure that Unemployment Insurance claimants continue to meet eligibility requirements to receive benefits. If you are selected, make sure to follow the instructions on the letter as failure to do so may cause your claim to be delayed or denied.

Print Claimant Homepage Logout

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d. Step 4: claiming weekly benefits.

In order to certify eligibility, a claimant needs to file weekly claims for each week he or she wishes to request benefits. As is stated *supra*, weekly claim filing begins on Sunday at 12:01am, and end on the following Saturday night at midnight. A claimant may not claim a week's payment until the week has completed.

A claimant logs in to the same system and clicks the “file weekly claim” link. He or she will then file for the eligible weeks:



Unemployment Insurance

Good Afternoon UISS WORKERX

Thursday, December 21, 2017

[Help](#) |
 [Contact](#) |
 [Resources](#) |
 [Logout](#)

WEEKLY CLAIMS: ELIGIBLE WEEKS

UISS WORKERX

CLAIMANT ID: 5274838

Our records show that you are eligible to file for Benefits for the following week(s). You will need to complete each week individually.

	* Do you want to file for the week of 11/26/2017 to 12/02/2017?	* Did you <u>end a job, complete an on-call or temporary job assignment</u> during the week of 11/26/2017 to 12/02/2017?	
File for the week of 11/19/2017 to 11/25/2017	Yes	No	Filed
File for the week of 11/26/2017 to 12/02/2017	☐ Yes ☐ No	☐ Yes ☐ No	Available
File for the week of 12/03/2017 to 12/09/2017			Available
File for the week of 12/10/2017 to 12/16/2017			Available

Note: When answering the Weekly Claim questions, remember your answers should apply to that week only. Often the answers vary from week to week, so pay close attention to the week you are filing for and answer the questions accordingly.

[Claimant Homepage](#)
[Next](#)

UIINW CSS 2017-12-14 10:46:06 UAT


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SI Pros ORACLE

ENHANCING TECHNOLOGY SOLUTIONS
A better approach.

The claimant will need to submit his or her weekly search activity and submit a certification.

The screenshot shows the 'WEEKLY WORK SEARCH ACTIVITY' page for a claimant with ID 5274838. The page includes a sidebar with navigation links: 'File Weekly Claim', 'Summary', 'Submit', 'Confirmation', and 'Claimant Homepage'. The main content area contains instructions on how to complete the weekly work search activity record, emphasizing the need to provide supporting documentation and conduct various work search activities. Below the instructions is a table for recording work search activities, with columns for Work Search Date, Business name, Business Address, Type of Work, Method, New or Re-Contact, and Results. The table has five rows for data entry. At the bottom, there are buttons for 'Claimant Homepage', 'Save', and 'Submit to Continue'.

Work Search Date (ex. MM/dd/yyyy)	Business name contact name & title	Business Address & Phone number or website address	Type of Work	Method	New or Re-Contact	Results

And as with the claim application, the claimant will receive a confirmation, unless he or she is directed to a “fact finding” screen.

e. Other CCS functions.

Each time a claimant logs into CCS, he or she arrives on the “Customer Menu” screen. Depending on a claimant’s status, he or she may see one or more of the following links:

- Go to My HomePage
- Go to JobConnect
- File weekly claim
- Reactivate my UI claim
- Please contact DETR to file your TRA claim
- Apply for extended benefits
- Benefits held
- Debit Card Website.

Claimants can also reset their account through the link on EmployNv.Gov if they are experiencing difficulty with applications. *See Appendix 16-14 (DETR Written Press Conference Q&A (Jul. 3, 2020)).*

f. Appeal information.

An “Appeal Information” screen is available for claimants that displays the list of appeals associated with his or her claim, along with the appeal date, employer (optional), and current status of appeal.

Good Afternoon Wednesday, February 14, 2018 | Help | Contact | Resources | Logoff

APPEAL INFORMATION

CLAIMANT ID:

HENDERSON NV 89011 -2671

* Appeals in open pending status are displayed below.
Those Appeals in Closed, Dismissed or Withdrawn status are not displayed.

Appeals History						
Appeal ID	Appeal Date	Claimant	Employer	Status	Level	
59061	01/16/2018	DANIEL	WYNN LAS VEGAS LLC	Scheduled	Appellate	

Schedule Details

Hearing Method : In Person	Hearing Location : In Person	Hearing Official : CONNIE GRIMBLE
Hearing Date : 02/14/2018	Scheduled Start Time : 08:15 AM	

Hearing Issues

Issues	Status	Appellant
Discharge for Misconduct - Other	Scheduled	Claimant

Hearing Participants

Name	Type	OnBehalf	Method	Attendance
WYNN LAS VEGAS LLC	Employer	Employer	In Person	
DANIEL	Claimant	Claimant	In Person	

Appeal Exhibits

Marked Appeal Packet

Claimant Homepage

UI NV CSS 2018-02-08 11:45:02 UAT JDK 1.6

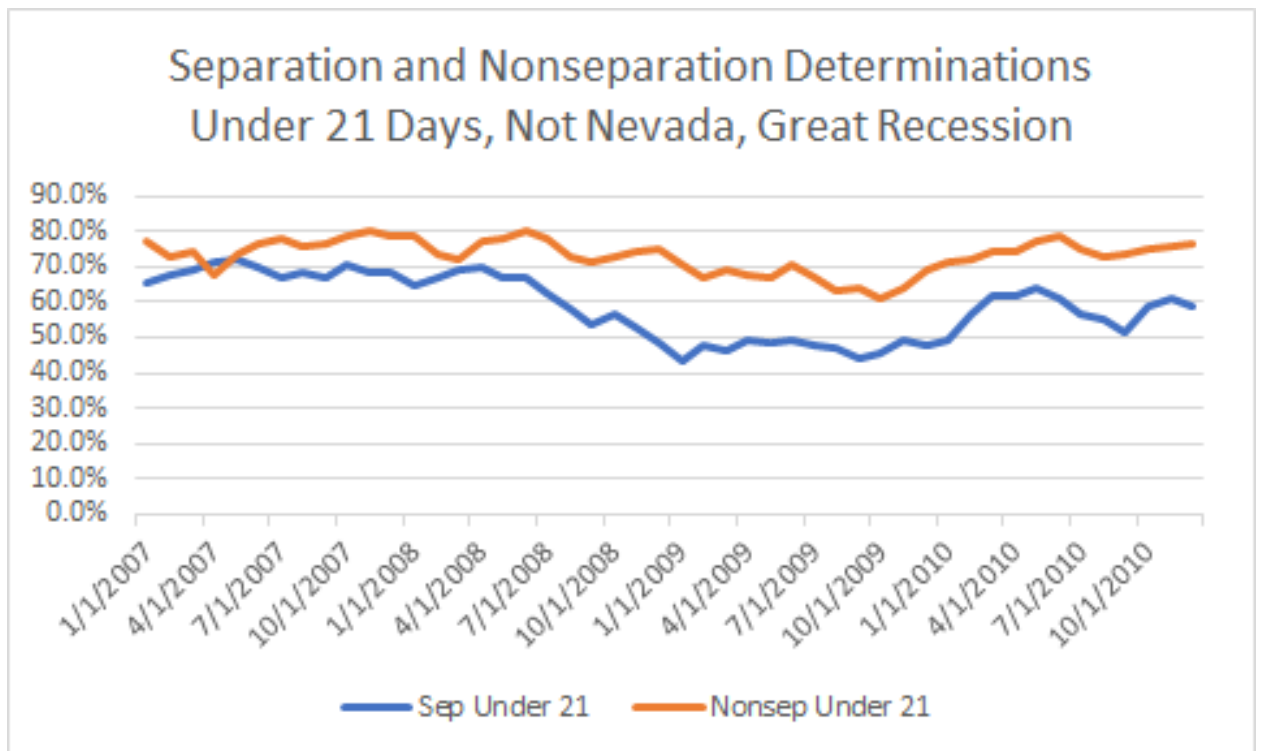
Capgemini in collaboration with N/Pros ORACLE

From this screen, a claimant can select specific appeals to display a list of the hearing history, including the hearing method, location, date/time, and hearing officer’s name. The

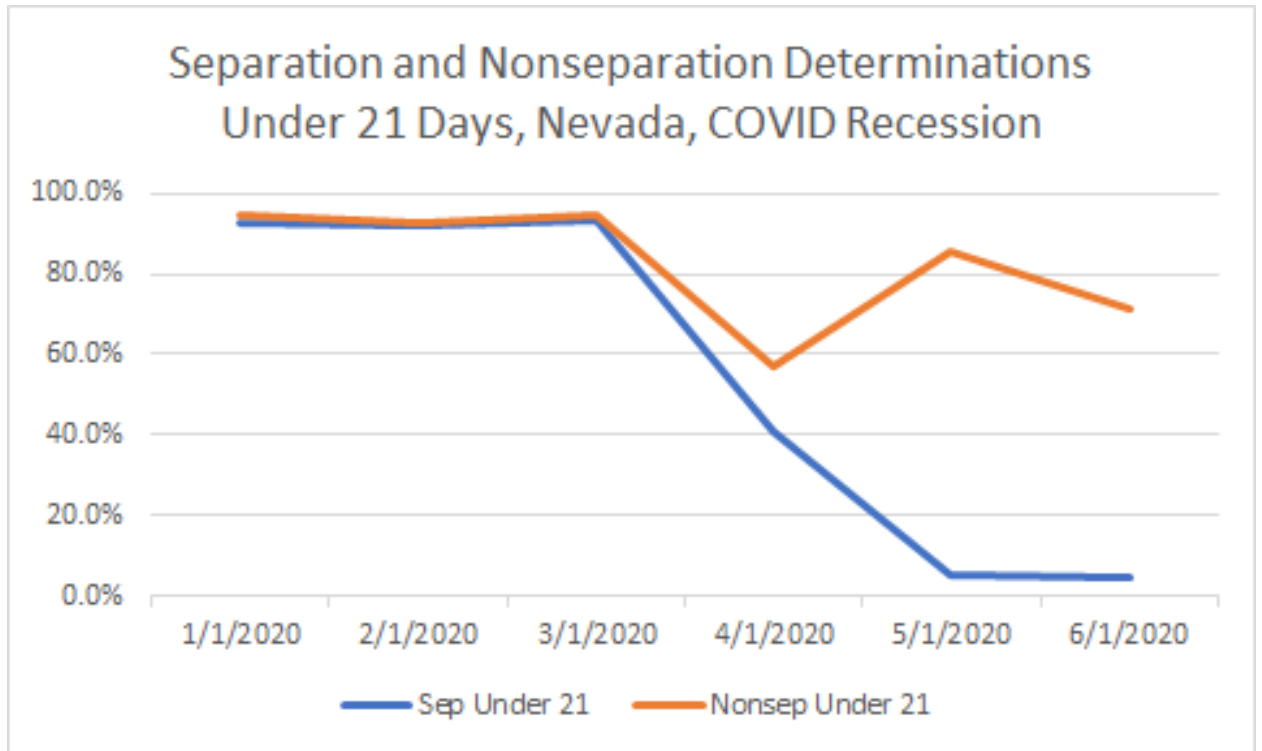
claimant can also select the hearing record to display the list of schedule details. A claimant may view the appeal packet, if available, once the hearing has been scheduled.

4. Timeline for rendering a determination on eligibility.

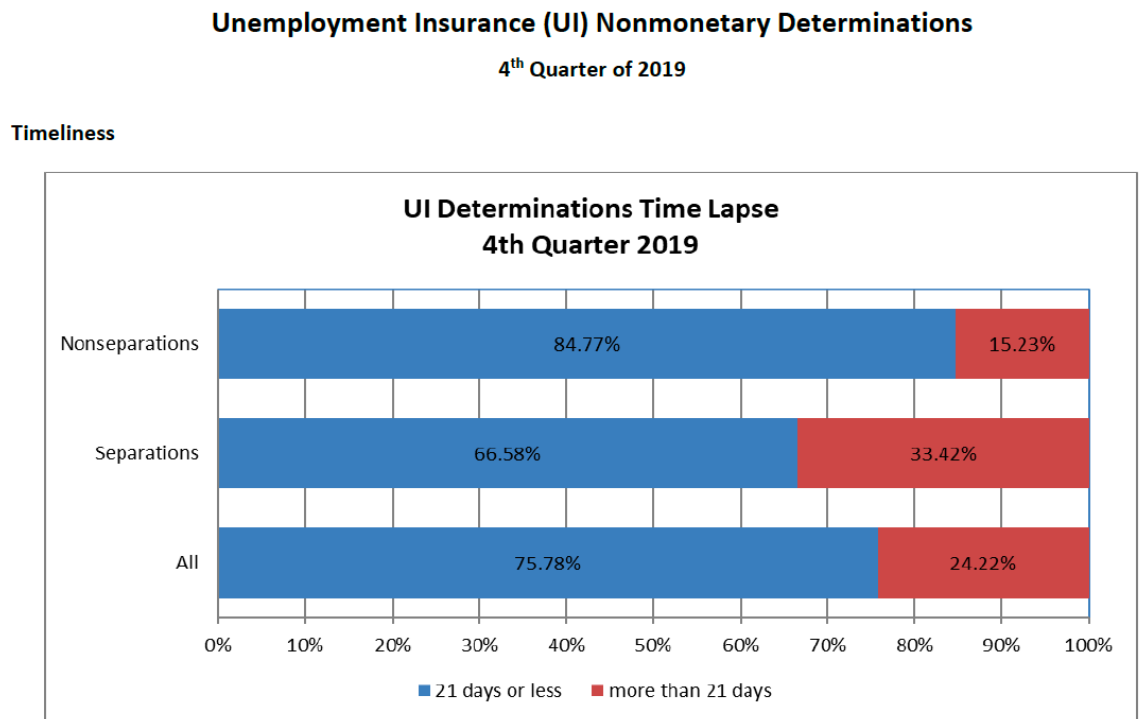
The timeline for rendering a decision was 21 days pre-pandemic, which was regularly met. In many cases the decisions were made within 7-14 days. DETR has provided the following charts that depict determinations for the Recession:



This graph contrasts the determinations for COVID:



Further, in the 4th quarter of 2019, the following timeline was abided by:



In the 4th quarter of 2019, 75.8% of all nonmonetary determinations were completed in 21 days or less, with 66.6% of the separations and 84.8% of the non-separations completed in that time frame.

Overall, Nevada ranks 4th in separations—with 93% of a time lapse within 21 days. For non-separations, it ranks 17th, with above 93% of time lapses within 21 days. See *Appendix 15-1 (Unemployment Insurance (UI) Nonmonetary Determinations 4th Quarter of 2019)*.

5. Resolving problems with applications.

If an issue arises from the claimant's claim, he or she will then arrive on the "fact finding" screen. It will show issues with the claim, along with facts, and request additional information. A claimant can call the Unemployment Insurance hotline to provide clarification. They can also respond in writing or provide documents based on instructions

1 from either the adjudicator or claims examiner. DETR also maintains a hotline for Nevada,
2 Southern Nevada, and one for out of state and rural Nevadans that allows claimants to call
3 if there are problems.

4 Further, the DOL requires that claimants who are potentially eligible for UI not be
5 paid PUA until UI eligibility is resolved. At the change of each quarter, a new quarter of
6 wages become available to claimants to potentially establish UI claims. *See Appendix 16-*
7 *14 (DETR Written Press Conference Q&A (Jul. 3, 2020)).*

8 6. Fraud.

9 a. Obligation to monitor fraud.

10 DETR and ESD take fraud seriously and regularly monitor fraud and respond to
11 fraudulent unemployment insurance claims. NRS 612.445 makes it a crime for people to
12 lie in order to obtain or increase their unemployment insurance benefits by: (1) failing to
13 properly report earnings; (2) filing a claim for benefits using the social security number,
14 name or other personal identifying information of another person; (3) filing a claim for or
15 receiving benefits and failing to disclose any compensation for a temporary total disability
16 or a temporary partial disability or money for rehabilitative services; or (4) any other
17 intentionally fraudulent act or omission. Fraud can be reported to DETR via phone or
18 online.

19 There is a repayment remedy for ESD. Under NRS 612.365, if an overpayment
20 occurs, the person receiving the overpayment is liable to repay the program, including if
21 the overpayment is for fraud. NRS 612.445 requires repayment for benefits received by
25 making false statements and outlines additional punitive penalties for fraud.

1 DETR did note that most information regarding its obligation to monitor fraud is not
2 accessible by persons outside of authorized personnel. However, program integrity is a
3 requirement outlined in the DOL guidance and cited in each UIPL issued.

4 There are other examples of federal requirements to monitor fraud, generally:

- 5 • Executive order 13520: requires that the U.S. Department of Labor
6 (Department) compile quarterly reports on high-dollar improper payments
7 identified within the Unemployment Insurance (UI) Program. State UI
8 agency Benefit Payment Control (BPC) units are responsible for identifying
9 and recovering UI overpayments. The Department requires state agencies to
10 report the number of high-dollar overpayments identified by state BPC
11 operations on the Employment and Training Administration (ETA) 227 -
12 Overpayment Detection and Recovery Activities report
13
- 14 • Office of Inspector General Hotline: The OIG operates a hotline to receive and
15 process allegations of fraud, waste, and abuse concerning DOL grants,
16 contracts, programs and operations. The OIG also addresses allegations of
17 criminal activity and serious misconduct involving DOL employees. Moreover,
18 the OIG has jurisdiction to investigate allegations of labor racketeering and
19 organized crime influence in the workplace, including the misuse of union
20 benefit plan assets or power, labor-management relations, and internal union
21 affairs.

22 b. Fraud program.

23 There are a number of resources the State of Nevada relies upon for fraud. First, it
24 can turn to the Department of Labor's monitoring. Second, it can turn to the NASWA
25 Integrity Center. The mission of NASWA's Integrity Center is to help UI agencies prevent,
26 detect and recover improper payments, prevent fraud and promote integrity. The Integrity
Knowledge Exchange provides a platform for states to retrieve and share widely applicable
resources, state-specific resources and promising practices for UI operations. The Integrity

Knowledge Exchange offers a library, a State Practices Portal and a team of Subject Matter Experts who provide on-demand, in-person services to UI agencies.²²

c. Fraud statistics.²³

The DOL maintains a lot of information about fraud, discussing security standards and program integrity. For 2019, Nevada's overpayment rate was 11.384%, the 17th highest in the country. The main reasons for overpayment were the benefit year ending and separation issues, which accounted for over 80% of overpayments. 10% were due to eligibility issues and claimants were not able and available to work. The DOL determined that the claimant bore the responsibility for overpayment 73% of the time, the claimant and the employer 13% of the time, and the agency only bore responsibility 6.5% of the time. Over 90% of underpayments were due to benefit year earnings and base period wage issues, and 100% of the time the responsibility for underpayment was because of a mistake by the claimant or employer, or both.²⁴

7. Once a person was determined eligible, what benefits were due?

a. When were benefits²⁵ due & how much?²⁶

Benefits are paid based on a claimant's "base period," which is the first four of the last five completed calendar quarters immediately preceding the claimants initial claim for benefits. NRS 612.025. If claimants to not qualify under that base period, they may be eligible if they can establish a standard base period, using the first four of the last five

²²See <https://integrity.naswa.org/integrity-knowledge-exchange>.

²³For more information, please visit the following websites: <https://oui.doleta.gov/unemploy/uianalysis.asp>.
https://oui.doleta.gov/unemploy/improp_pay.asp.

²⁴ See <https://oui.doleta.gov/unemploy/bqc.asp>.

²⁵For more information, see UIPL 04-01. <https://wdr.doleta.gov/directives/attach/UIPL4-01.cfm>.

²⁶For more information see NRS Chapter 612, Sections 025 – 371.

1 completed quarters. *Id.* There is a wage requirement, which requires claimants to earn at
2 least \$4000 in the highest quarter, and to either have base period earnings equal to or
3 exceeding one-and one-half times the high quarter earnings OR wages in each of the last
4 three of four quarters, within the base period. If a claimant is eligible, his or her weekly
5 benefit amount will be 1/25, or 4%, or his or her highest quarter earnings. NRS 612.340.
6 However, that amount cannot be higher than the maximum weekly benefit, which is set
7 every year, on July 1.

8 b. When do benefits commence?

9 A claim starts the Sunday of the week a claimant first files an unemployment
10 insurance claim. NAC 612.110. Benefits may not be paid for weeks prior to the beginning
11 Sunday of a claim. *Id.*

12 After a claimant files a claim, DETR will send the claimant a monetary
13 determination, which will be in effect throughout the benefit year. NRS 612.465. This
14 determination tells the claimant if she or he had enough base period wages to qualify for
15 Unemployment Insurance benefits. Only after a claimant receives his or her monetary
16 determination is he or she eligible: then, the claimant's factors of unemployment will be
17 considered in determining whether they will receive benefits. If the claimant is eligible for
18 benefits, payment processes in approximately seven days after filing the first weekly claim.

19 With respect to when benefits have been paid, as of July 2, 274,400 claims had been
20 filed for PUA, with an expected 82,115 self-employed filers. DETR relied on UIPL 16-20
21 and 16-20 Change 1 in determining eligibility, and it concluded that there were issues with
25 implementation due, in part, to DOL's change in instruction. Ms. Gaa "agree[d] that DETR
26 is expected to pay claimants at the earliest point once eligibility determination has been

1 completed, and there is nothing in law or DOL guidance that supports that DETR should
2 be paying either UI or PUA claims when the question of which program eligibility exists.”
3 (*See Resp’t Opp’n. to Pet. for Writ of Mandamus, Ex. 2, Decl. Kimberly Gaa, at p3*). Ms. Gaa
4 also noted that “DETR has received over 5k direct notifications from employers and identify
5 theft victims through its fraud notification form process of potentially fraudulent filings in
6 both PUA and UI.” *Id.* There was also a fair amount of user error where tens of thousands
7 of claims in both PUA and UI where filers started an initial claim but did not file any
8 weekly claims for benefits. *Id.*

9 c. When did benefits end?

10 Benefits end when a person stops filing or exhausts their balance/benefit year.

11 d. How long did it take to receive benefits once an eligibility
12 determination had been made?

13 It took 7 to 10 days. Nevada had a waiting week that helped payments for the first
14 week. This waiting week was waived by the Governor in April 2020.

15 8. What on-going obligation did claimant have after being eligible?

16 In order to certify eligibility, a claimant needs to file weekly claims for each week he
17 or she wishes to request benefits. As is stated *supra*, they begin on Sunday at 12:01am and
18 end on the following Saturday night at midnight. A claimant may not claim a week’s
19 payment until the week has completed. A claimant must also continue to abide by the
20 terms of eligibility.

21 DETR responded to potential specific obligations in its Written Press Conference Q
25 & A. *See Appendix 16-4 (DETR Written Press Conference Q&A (Jul. 3, 2020))*. Claimants
26 need to work with their banks or Bank of America Card Services if they believe their bank

1 account or card has been used fraudulently. Employees cannot refuse suitable work offered
2 by an employer due to concerns about COVID-19 exposure, unless they have a bona fide
3 direction from a medical provider. Claimants could potentially return to work part-time
4 and receive benefits, but such a circumstance depends on the wages earned and the weekly
5 benefit amount. *See Appendix 16-14 (DETR Written Press Conference Q&A (Jul. 3, 2020)).*

6 9. If claimant was determined to be ineligible, what were the appeal
7 rights of the claimant?

8 a. Hearing before a referee.

9 A claimant and his or her former employee has the right to appeal the decision and
10 obtain a fair hearing before a separate and impartial appeals referee. NRS 612.490. An
11 appeal must be filed within 11 days after the date the decision is mailed to a claimant.
12 NRS 612.495(1). The claimant must appeal the decision by sending a letter to the address
13 shown on the decision requesting an appeal. It must include the claimants name, social
14 security number, and the basis for the claimant's appeal. It must be signed and can be
15 faxed or mailed. NRS 612.495.

16 After an appeal has been filed, the claimant must continue to file claims each week
17 he or she is unemployed. If the claimant is found eligible, he or she will be paid for each
18 week that he or she has filed claims. The appeals tribunal will send a "notice of hearing"
19 at least 7 days before the hearing. NRS 612.500. At the hearing, the appeals officer will
20 consider evidence and consider all issues raised relating to claimants' rights. NRS 612.500.
21 The referee will issue a written decision soon after.

b. Appeal to a board.

An appeals officer's decision is final unless the claimant appeals to the Board of Review. NRS 612.515. This appeal may be filed within 11 days after the mailing of the decision by the Appeals Officer

c. Petition for judicial review.

After the Board of Review has issued its decision, a claimant may seek judicial review. NRS 612.530. At the judicial review stage, the findings of the Board of Review as to the facts of the case, if supported by substantial evidence and in the absence of fraud, are conclusive, and the jurisdiction of a court is confined to questions of law. NRS 612.530(4).

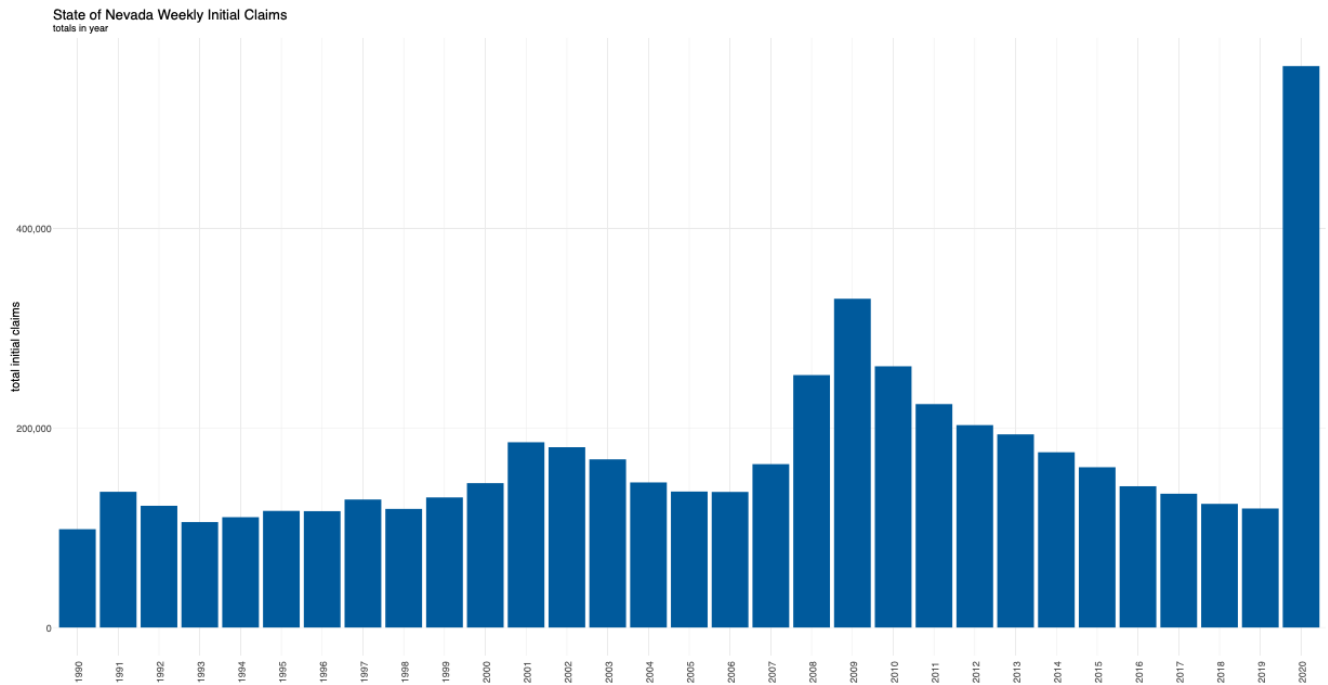
10. Questions about claims?

a. Process for responding to and resolving questions, concerns, and issues of claimants.

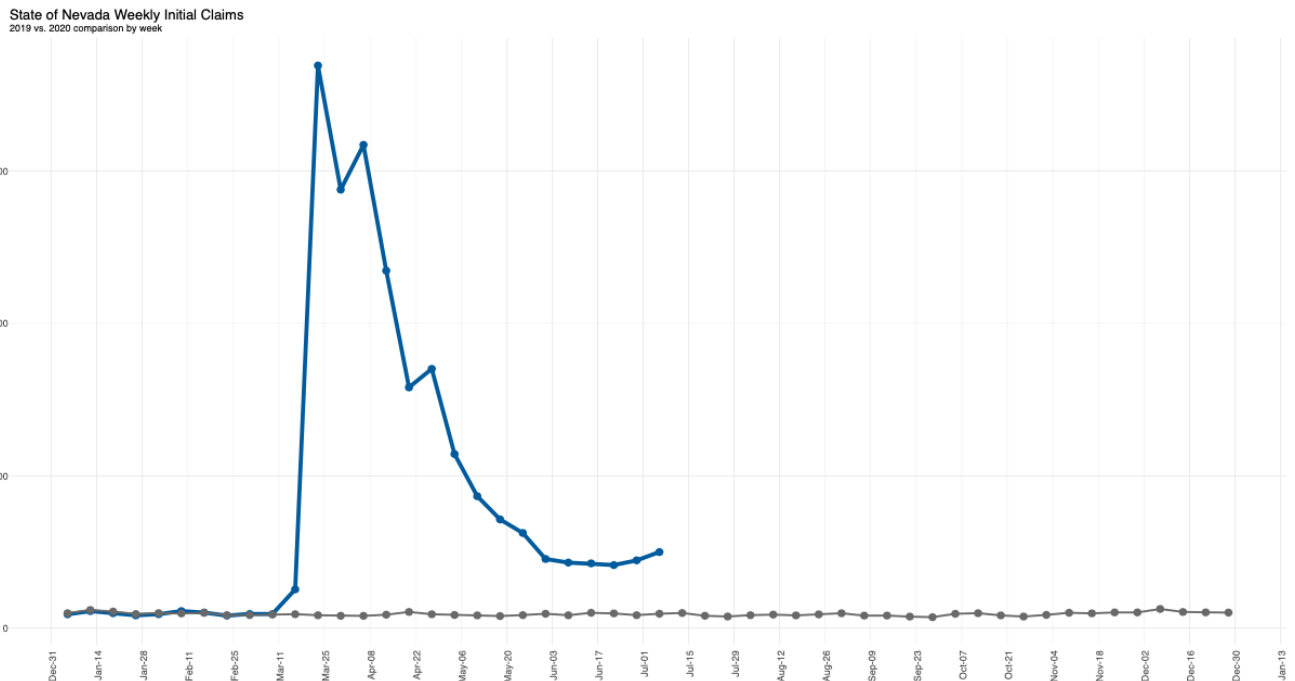
For technical assistance with an online UI claim, claimants can email internethelp@detr.nv.gob or call (775) 684-0427. When reporting specific UI claim problems via email, a claimant is required to include his or her full name and only the last 4 digits of his or her social security number.

11. Claim statistics.

Weekly claims since 1990:



Weekly claims in 2009 (historic record employment year) vs. 2020 (historic record unemployment year):



Comparing these two historic years by the numbers shows just how dramatically COVID-19 and the stay at home directives related thereto impacted Nevadans and the ESD:

Year-to-Date (June 2020)

Measure	2020YTD	2019YTD	% chg. from prev. year
Initial Claims	558,686	59,035	846.36%
Weeks Claimed	4,147,988	439,551	843.69%
Weeks Compensated	3,873,077	394,756	881.13%
Amount Compensated	\$1,334,878,337	\$138,080,851	866.74%
Weeks Compensated Total Unemployment	3,563,977	359,079	892.53%
Amount Compensated Total Unemployment	\$1,271,315,028	\$130,038,865	877.64%
First Payments	359,812	26,755	1244.84%
Final Payments (Exhaustions)	15,397	8,989	71.29%

1 ii. *Process post-pandemic for filing a claim.*

2 The process for eligibility has not changed since the pandemic began, with the
3 exception of a waiver of work search and the one-week wait period.

4 That said, the need has increased. The surge in unemployment insurance activity
5 that Nevada has experienced since the pandemic began is far beyond what the State has
6 ever experienced. (*Ex. 1 to Resp't Opp'n. to Pet. for Writ of Mandamus, Decl. David*
7 *Schmidt*, p.1.) Mr. Schmidt characterized it as lacking a reasonable comparison: it peaked
8 at a greater magnitude than ever before and happened at a quicker rate.

9 Mr. Schmidt also explained in his affidavit that the terms of this downturn were
10 much quicker than previous downturns. Comparing this downturn to the 2008 recession,
11 this downturn had little time for the State to position itself to help. The increase during
12 this downturn was 20 times higher than the previous record in 34 years of days.

1. Qualifying criteria for eligibility.

DETR has provided the following breakdown that shows the differences in criteria post-pandemic²⁷:

	Unemployment Insurance (UI) - Established by Social Security Act as federal-state partnership to provide temporary, limited income replacement to eligible individuals who lose their jobs through no fault of their own.	Pandemic Unemployment Assistance (PUA) - Established by CARES Act, provides unemployment benefits to individuals not eligible for UI and unemployed, partially unemployed, unable to work or unavailable to work due to COVID-19. Modelled on Disaster Unemployment Assistance (DUA) program. This includes, but is not limited to self-employed workers, independent contractors, and other workers whose wages are not covered by traditional unemployment benefits.
Claimant Files Initial Claim	Initial claim process gathers information from claimant regarding previous employment, reasons for leaving work, availability for work, ability to work, wages in other states, and other personal information. This information is compared to wage records on file to establish monetary eligibility for benefits as well as potential issues that may prevent payment of benefits.	Initial claim process gathers information from claimant regarding whether the claimant is unemployed due to COVID-19, wages previous employment, reasons for leaving work, availability for work, ability to work, wages in other states, and other personal information. This information is compared to wage records on file to establish monetary eligibility for benefits as well as potential issues that may prevent payment of benefits.
Initial Monetary Determination	Based on wages in UINW reported by employers, the claimant is notified of their monetary entitlement to benefits, based solely on their wages, and not other factors with their claim. This notification informs the claimant of their potential benefits, but is not a final determination of eligibility to receive those benefits. To qualify for UI, a person must have sufficient earnings in a specific period prior to the start of their claim, or they will be "monetarily ineligible." Changes to the wages attached to the claim may result in subsequent monetary redeterminations. See 20 CFR 625 Appendix B 6013 (C)(1)(a)	Based on earnings reported by the claimant in the PUA application, the claimant is notified of their monetary entitlement to benefits, based solely on their reported earnings, and not other factors with their claim. This notification informs the claimant of their potential benefits, but is not a final determination of eligibility to receive those benefits. In contrast to the UI program, a person has no minimum earnings necessary to qualify, as any person can receive at least the minimum payment (\$181) if otherwise eligible. However, wages and earnings may qualify someone for benefits that exceed this minimum level. Changes to the earnings used on the claim may result in subsequent monetary redeterminations, for example if the claimant does not provide documentation to substantiate their self-attested earnings.
Non-Monetary Determinations	If there are other factors on a claim which indicate that a claimant may not be eligible for benefits (for example, quitting work without good cause, becoming self-employed, being in school full time and unavailable for work), the claimant is notified of these issues on their claim, and the claim is referred to adjudication to resolve these issues and allow or deny benefits in accordance with NRS 612 and federal guidance. See 20 CFR 625 Appendix B 6013 (C)(1)(b)	If there are other factors on a claim which indicate that a claimant may not be eligible for benefits (for example, not being unemployed due to a COVID-19 reason provided in UIPL 16-20, potential eligibility for benefits in the regular UI program, not being attached to Nevada's workforce, refusal to return to work), the claimant is notified of these issues on their claim, and the claim is referred to adjudication to resolve these issues and allow or deny benefits in accordance with NRS 612 and federal guidance.

2. Process for determining eligibility.

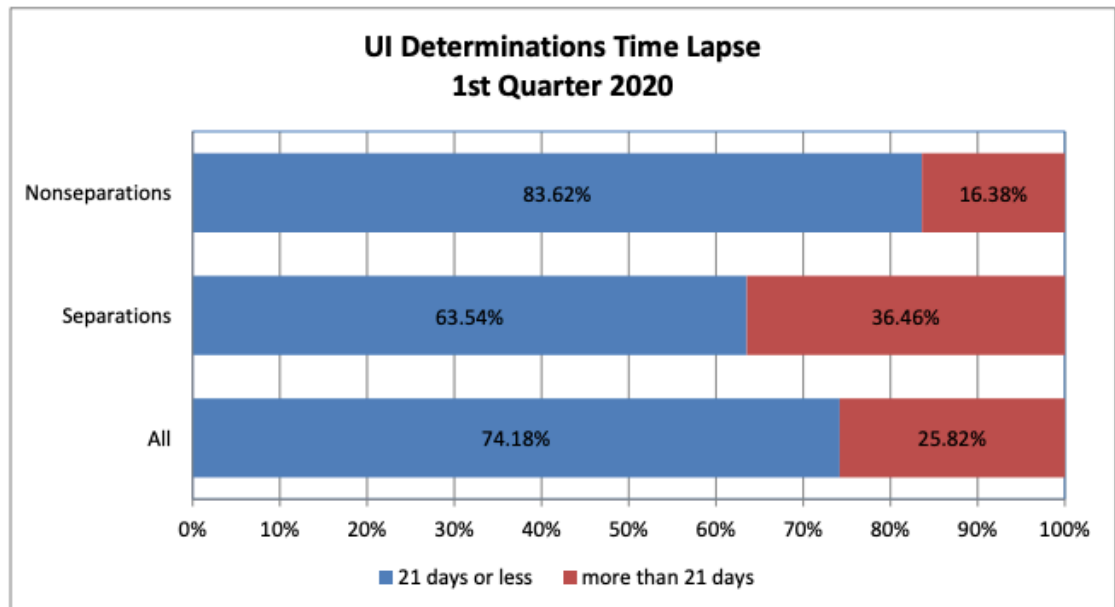
The process for determining eligibility for Unemployment Insurance has not changed. Because there is an additional program, there is an additional website portal and application process. That process, however, has not affected traditional UI. It will be explained in the section *infra*.

²⁷See Appendix 7-6 (UIPL 16-20 Re: Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020-Pandemic Unemployment Assistance (PUA) Program Reporting Instructions and Questions and Answers dated April 27, 2020).

3. *Timeline for rendering a determination on eligibility.*

The Department of Labor releases timeliness information for claims:

Timeliness



In the 1st quarter of 2020, 74.2% of all nonmonetary determinations were completed in 21 days or less, with 63.5% of the separations and 83.6% of the non-separations completed in that time frame.

4. *Resolving problems with applications*

Ms. Gaa admitted in her second declaration submitted in this matter that there were multiple issues with approvals for PUA filers that did not result in “approved” determinations when they should have. She acknowledged that there had been inquiries as to why these issues occurred, and that these issues were a glitch due to functionality problems within the system. Eventually the staff of the PUA program became aware of the issues; however, it took multiple days to resolve them. (*See Resp’t Opp’n. to Pet. for Writ of Mandamus, Ex. 2, Decl. Kimberly Gaa, at pp. 1-2*).

5. *Once a person is determined eligible, what benefits were due?*

a. When are benefits due?

If a person is eligible for Unemployment Insurance, that person also automatically qualifies for CARE's Act Federal Pandemic Unemployment Compensation. This automatically adds \$600 per week to a claimant's weekly benefit amount. FPUC is payable for weeks claimed beginning the week ending April 4, 2020 through the week ending July 25, 2020. FPUC payments will automatically be paid to claimants who are eligible for Unemployment Compensation and will show as a separate payment at the same time as regular unemployment compensation.

b. How much is due?

The weekly rate for unemployment has not changed, however, there is an additional \$600 given to those who qualify.

6. *What on-going obligation does claimant have after being eligible?*

UI

PUA

Weekly Claims

In addition to filing an initial application, claimants need to provide weekly information to DETR to request payment for each week in their claim. This process involves certifying their ongoing unemployment, and earnings during the week, work search activities and whether they have refused any offers of work during the week. This ongoing processes is essential to validating ongoing eligibility and payment cannot happen without weekly certification per DOL guidance. Any eligibility issues will be processed through the nonmonetary determination process.

NRS 612 and federal guidance.

In addition to filing an initial application, claimants need to provide weekly information to DETR to request payment for each week in their claim. This process involves certifying their ongoing unemployment due to COVID-19, any earnings during the week, work search activities and whether they have refused any offers of work during the week. This ongoing processes is essential to validating ongoing eligibility and payment cannot happen without weekly certification per DOL guidance. Any eligibility issues will be processed though the nonmonetary determination process.

7. *If claimant is determined to be ineligible, what are the appeal rights of the claimant?*

a. General appeal rights.

If a claimant was impacted by the Coronavirus, and denied, before the State implemented the PUA program, the unemployment agency must go back and review the denial of prior claims under the PUA criteria. The review period includes January 27, 2020, forward. If an impacted individual may qualify for PUA, the state should provide written notification of the individual's potential eligibility. *See Appendix 7-6 (Unemployment Insurance Program Letter No. 16-20 Re: Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020- Pandemic Unemployment Assistance (PUA) Program Reporting Instructions and Questions and Answers dated April 27, 2020).*

b. Statistics.

DETR has provided a list of “Open Issues on Unpaid Claims:”

Open Issues on Unpaid Claims Filed Before June 22, 2020		
Unique claims: 70,493		
Issue Description	Unique Claims With Issue	Share of Unique Claims With Issue
IP - Investigation Case Special Project	33,881	48.06%
PUA - Other program eligibility	24,062	34.13%
IP - Investigation SAR Internal	18,560	26.33%
DUA - Unemployment not result of disaster	13,805	19.58%
PUA Claim Stopped	8,411	11.93%
Invalid SSN	7,138	10.13%
Two-Factor Authentication failed - Bad phone	6,273	8.90%
Two-Factor Authentication failed	2,094	2.97%
PUA - Refusal to Telework	2,007	2.85%
Invalid Employer Chosen	1,856	2.63%
No employment history	617	0.88%
Fraud - Conversion	413	0.59%
PUA - Refusal of work	397	0.56%
Refusal of Referral	397	0.56%
PUA - Pension	341	0.48%
PUA - Receiving Sick Leave	303	0.43%
Requires Staff Review	242	0.34%
PUA - Requires Staff Review	200	0.28%
IP - Investigation Staff Audit	67	0.10%
Pension	65	0.09%
Potential Education Employee	53	0.08%
Claimants immigration documentation has expired	45	0.06%
PUA - Proof of employment sufficiency	28	0.04%

1	Quit Freehand	20	0.03%
2	Claimant worked outside of US or Canada	15	0.02%
3	Voluntary Quit	15	0.02%
4	PUA - Eligibility	14	0.02%
5	Suspension	11	0.02%
6	Workers' Compensation	10	0.01%
7	Discharge - No Reason Given	7	0.01%
8	Working Full Time	7	0.01%
9	Conditions on the Job	6	0.01%
10	Prior Issue (Non-Separation)	6	0.01%
11	Prior Issue (separation)	6	0.01%
12	Another job	5	0.01%
13	Company Reorganization	5	0.01%
14	Personal	5	0.01%
15	Severance Pay	5	0.01%
16	Vacation Pay	5	0.01%
17	Discharge for cause	4	0.01%
18	Health/Illness	4	0.01%
19	Labor Dispute	4	0.01%
20	Info Provided To Agency	3	0.00%
21	Self-Employment	3	0.00%
25	Transportation	3	0.00%
26	Base Period Wage Decrease	2	0.00%
	Bonus	2	0.00%
	Failure To Meet Job Requirements/Standards	2	0.00%
	Holiday Pay	2	0.00%
	IP - Investigation Tip/Lead	2	0.00%
	Moved	2	0.00%
	Reduction in Hours	2	0.00%
	Seek Other Work	2	0.00%

1	Separation reason mismatch	2	0.00%
2	SSN Mismatch	2	0.00%
3	Claim was reopened	1	0.00%
4	Domestic Responsibility	1	0.00%
5	DUA - No longer unemployed as direct result of the disaster	1	0.00%
6	Failure To Report As Scheduled	1	0.00%
7	Failure To Report Due To Illegal Drug Use	1	0.00%
8	Failure to Work Overtime/Additional Duties	1	0.00%
9	Health Certificate	1	0.00%
10	IP SSN/Name Mismatch	1	0.00%
11	Lack of Work	1	0.00%
12	Left In Lieu Of Discharge	1	0.00%
13	Military Spouse	1	0.00%
14	Refusal of Work	1	0.00%
15	Sleeping On Job	1	0.00%
16	Tardiness	1	0.00%
17	Wages Earned	1	0.00%
18	Working on a commission basis	1	0.00%

8. *Questions about claims?*

- a. Process for responding to and resolving questions, concerns, and issues of claimants.

Calls regarding traditional UI claims are answered through DETR UI call centers in Northern Nevada, Southern Nevada, and for rural areas/out of state callers. PUA claim questions are answered through DETR's contracted call center, Alorica Call Center.

The website also contains the following information:



Contact Us for Claimant Self-Service

UI Claim Information, Related Questions and Telephone Filing:

Northern Nevada: Tel (775) 684-0350 Fax (775) 684-0338
Southern Nevada: Tel (702) 486-0350 Fax (702) 486-7987
Rural Areas and Out of State Callers: Tel (888) 890-8211 Toll Free

Nevada Relay 711 or 800-326-6868
TTY 775-687-5353
Auxiliary aids and services available on request by individuals with disabilities.

[Call Center Hours of Operations](#)

Unemployment Insurance Appeals Offices:

Southern Nevada: Tel (702) 486-7933 Fax (702) 486-7949
Southern Nevada: Tel (866) 626-0629 Toll-Free

Mail:

Nevada Department of Employment, Training and Rehabilitation (DETR)
500 East Third Street
Carson City, NV 89713

Technical Assistance ONLY with online UI claim filing.

(For questions about your claim, use phone numbers above under UI Claim Information.)

Email: INTERNETHELP@detr.nv.gov
(When reporting specific UI claim problems via email, please include your full name and only the last four digits of your social security number.)

By phone: (775) 684-0427 (8:00 am to 5:00 pm Pacific Time)

Login or PIN Assistance ONLY - Monday through Friday, 8:00am to 5:00 pm, except holidays

Northern Nevada: Tel (775) 687-6838
Southern Nevada: Tel (702) 486-3293

Debit Card PIN Assistance

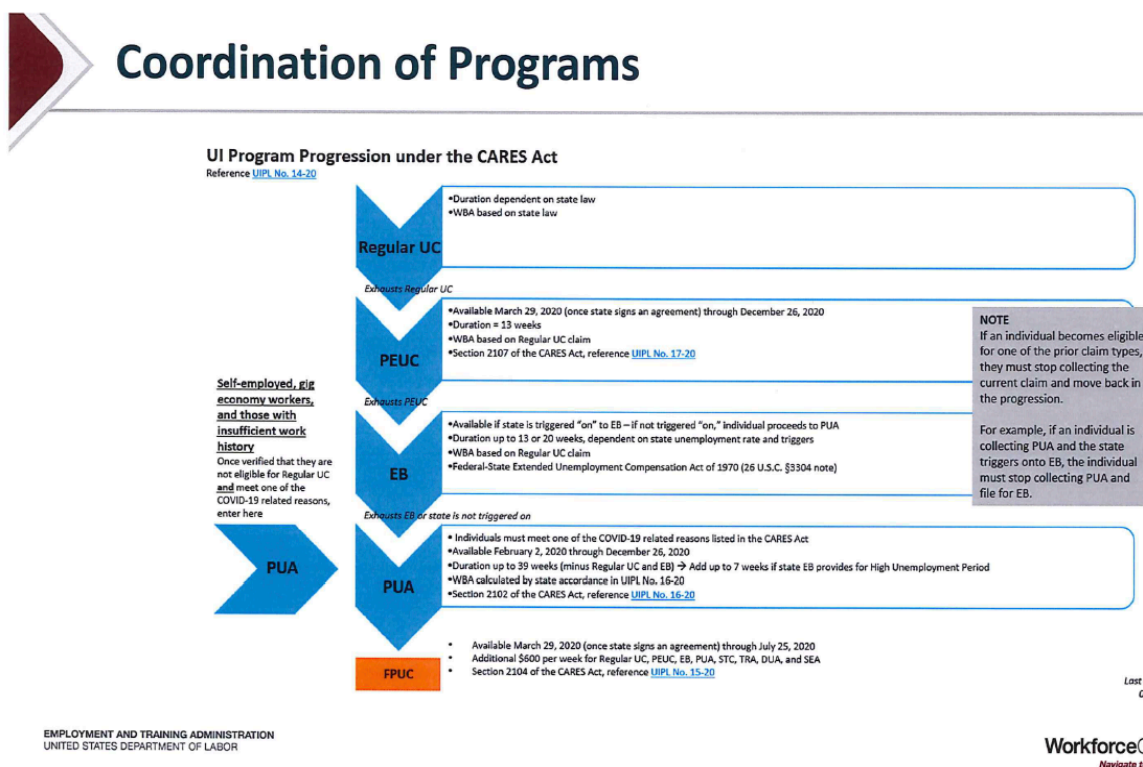
Tel (888) 339-8569
www.bankofamerica.com/nevadauidebitcard

Para la traducción al español (Spanish Language Interpretation)

El Norte de Nevada: Tel (775) 687-8148
El Sur de Nevada: Tel (702) 486-2957
Numero de llamada gratuita: (888) 887-8147

C. New programs under the Coronavirus Aid, Relief and Economic Security Act (CARES Act).

The CARES Act creates three initiatives for states to extend UI to individuals affected by COVID-19, generally by (1) expanding the amount of time an individual may collect benefits from 26 to 39 weeks, (2) increasing the amount of benefits an individual may receive by \$600/week through July 31, 2020, and (3) including individuals who do not otherwise qualify for UI benefits, such as independent contractors, individuals who are self-employed, and gig economy workers.



1 *i. Pandemic Unemployment Assistance (PUA) – unemployment support for*
2 *otherwise ineligible workers, including self-employed.*

3 On April 5, 2020, The U.S. Department of Labor announced the publication of UIPL
4 16-20 providing guidance to states for implementation of the Pandemic Unemployment
5 Assistance (PUA) program. *See Appendix 7-5 (Unemployment Insurance Program Letter*
6 *No. 16-20 Re: Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020-*
7 *Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting*
8 *Instructions dated April 5, 2020).* Under PUA, individuals who do not qualify for regular
9 unemployment compensation and who are unable to continue working as a result of
10 COVID-19, such as self-employed workers, independent contractors, and gig workers, are
11 eligible for PUA benefits. This provision is contained in Section 2102 of the Coronavirus
12 Aid, Relief, and Economic Security Act (CARES) Act enacted on March 27, 2020.

13 PUA provides up to 39 weeks of benefits to qualifying individuals who are otherwise
14 able to work and available for work within the meaning of applicable state law, except that
15 they are unemployed, partially unemployed, or unable or unavailable to work due to
16 COVID-19 related reasons, as defined in the CARES Act. Benefit payments under PUA are
17 retroactive, for weeks of unemployment, partial employment, or inability to work due to
18 COVID-19 reasons starting on or after January 27, 2020. The CARES Act specifies that
19 PUA benefits cannot be paid for weeks of unemployment ending after December 31, 2020.

20 Eligibility for PUA includes those individuals not eligible for regular unemployment
21 compensation or extended benefits under state or federal law or pandemic emergency
25 unemployment compensation (PEUC), including those who have exhausted all rights to
26 such benefits. Covered individuals also include self-employed individuals, those seeking

1 part-time employment, and individuals lacking sufficient work history. Depending on state
2 law, covered individuals may also include clergy and those working for religious
3 organizations who are not covered by regular unemployment compensation.

4 This program allows states to provide an additional \$600 per week benefit to
5 individuals who are collecting regular Unemployment Compensation (including
6 Unemployment Compensation for Federal Employees (UCFE) and Unemployment
7 Compensation for Ex-Servicemembers (UCX)), as well as the following unemployment
8 compensation programs: Pandemic Emergency Unemployment Compensation (PEUC);
9 Pandemic Unemployment Assistance (PUA); Extended Benefits (EB); Short-Time
10 Compensation (STC); Trade Readjustment Allowances (TRA); Disaster Unemployment
11 Assistance (DUA); and payments under the Self-Employment Assistance (SEA) program.
12 FPUC benefit payments are fully federally funded.

13 The CARES Act's Pandemic Unemployment Assistance (PUA) program expands
14 unemployment benefit coverage to certain workers who traditionally are not eligible for
15 unemployment benefits under state law, such as individuals who are self-employed, are
16 independent contractors, or are gig economy workers. These individuals may be eligible
17 for PUA if they are unemployed, partially unemployed, or unable to work for certain
18 reasons relating to COVID-19, including, but not limited to: (i) being diagnosed with
19 COVID-19; (ii) caring for a family or household member diagnosed with COVID-19; (iii)
20 caring for a child or household member whose school is closed due to COVID-19; (iv) being
21 unable to reach their place of employment due to an imposed quarantine; or (v) being
25 unable to report to their place of employment because it has been closed as a direct result
26 of COVID-19. *See Appendix 7-6 (Unemployment Insurance Program Letter No. 16-20 Re:*

1 *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020- Pandemic*
2 *Unemployment Assistance (PUA) Program Reporting Instructions and Questions and*
3 *Answers dated April 27, 2020).*

4 *ii. Pandemic Eligible Unemployment Compensation (PEUC) – 13 additional*
5 *weeks of benefits for regular unemployment insurance exhaustees.*

6 The CARES Act provides for a temporary federal program called Pandemic
7 Emergency Unemployment Compensation (PEUC). This program provides up to 13 weeks
8 of regular unemployment insurance for eligible claimants whose claims have been
9 exhausted (i.e., all eligible UI funds have been paid out). PEUC is payable effective March
10 29, 2020 through December 31, 2020. This program has been implemented effective May
11 10, 2020.

12 The Department of Labor issued guidelines for the implementation and operation of
13 the PEUC program. Under PUEC, in relevant part, states can provide up to 13 weeks of
14 federally funded benefits to qualified individuals who:

- 15 • have exhausted all rights to regular compensation under state law or Federal law
with respect to a benefit year that ended on or after July 1, 2019;
- 16 • have no rights to regular compensation with respect to a week under any other
state UC law or Federal UC law, or to compensation under any other Federal law;
- 17 • are not receiving compensation with respect to a week under the UC law of
Canada; and
- 18 • are able to work, available to work, and actively seeking work, although states
must offer flexibility on “actively seeking work” where there are COVID-19
19 impacts and constraints.

20 The cost of PEUC benefits is 100% federally funded. States may not charge
21 employers for any PEUC benefits paid. Implementation costs and ongoing administrative
25 costs are also 100% federally funded. In addition to the PEUC program, Employment and
26 Training Administration (“ETA”) has provided guidance to the states regarding two

1 additional CARES Act unemployment programs. Under Federal Pandemic Unemployment
2 Compensation, states will administer an additional \$600 weekly payment to certain eligible
3 individuals who are receiving other benefits. The Pandemic Unemployment Assistance
4 (PUA) program assists individuals who do not qualify for regular unemployment
5 compensation and are unable to continue working as a result of the coronavirus, including
6 self-employed workers, independent contractors, and gig workers.

7 If the Federal Government determines that a state does not have an adequate
8 system for administering assistance, including that the state is not adequately ensuring
9 that individuals are eligible to receive benefits under PEUC, the Federal Government can
10 give 30 days' notice to the state that it intends to terminate the PEUC agreement.

11 *iii. Federal Pandemic Unemployment Compensation (FPUC) – an additional \$600*
12 *added to each week of unemployment insurance or PUA.*

13 Under the Federal Pandemic Unemployment Compensation (“FPUC”), individuals
14 who are eligible for unemployment benefits will receive an extra \$600 weekly benefit for
15 all weeks of unemployment between April 5, 2020 and July 31, 2020. This amount is in
16 addition to the amount the individual otherwise would be entitled to receive under state
17 law. The \$600 supplemental benefit should be paid for any week in which an individual
18 receives unemployment benefits under state programs. Individuals are entitled to the full
19 \$600 FPUC weekly payment even if they receive just \$1 in a qualifying week under any
20 benefits program. The program is 100% federally funded and states are not allowed to
21 charge employers for the benefits. *See UIPL No. 15-20.*

25 FPUC is available from the week of unemployment starting on or after the date on
26 which the applicable state enters into an agreement with the DOL through the week of

1 unemployment ending on or before July 31, 2020. If a state is unable to immediately pay
2 FPUC benefits in the week following the execution of its agreement with the DOL, then the
3 state must provide retroactive payments to those eligible for FPUC for those missed weeks.
4 *See UIPL 15-20.*

5 States must notify an individual of his or her entitlement to FPUC. The notification
6 must include both the beginning and ending dates for the FPUC program. States have
7 flexibility in how they provide this notification. *See UIPL 15-20.* States have flexibility,
8 but can pay FPUC either at the same time and in the same manner as the same week's
9 other unemployment compensation or in a separate payment on the same weekly basis. *Id.*

10 **D. Administration of New Programs in Nevada.**

11 *i. What is a “gig” worker?*

12 1. Understanding “gig” workers and the “gig” economy.

13 Gig workers are employees in the “gig” economy, which describes the market of
14 short-term contract or freelance workers as compared to traditional permanent jobs,
15 whether full-time or part-time. The gig economy has been around for over 100 years but,
16 the gig economy expanded significantly with the introduction of technology and the digital
17 age. Today, household names such as Uber, Airbnb, TaskRabbit, and other tech companies
18 contribute significantly to the gig economy.

19 Before the CARES Act, gig workers were generally classified as independent
20 contractors. Why is this classification important? The protections afforded by the Fair
21 Labor Standards Act (FLSA), National Labor Relations Act (NLRA), and the Family
25 Medical Leave Act (FMLA) cover employees, not independent contractors. An employer
26 must also withhold federal and state income taxes, withhold and pay Social Security and

1 Medicare taxes, and pay unemployment tax on wages paid to employees, not compensation
2 paid to independent contractors. In addition, an employer pays insurance premiums
3 (health benefits and workers' compensation) for employees, not independent contractors.

4 Over the past few years, gig workers have contested their independent contractor
5 classification with some success. For example, in 2019, California passed a law (AB5)
6 making app-based workers (those working for Uber, Lyft, TaskRabbit, etc.) employees
7 unless proven otherwise. The law went into effect on January 1, 2020 and is a landmark
8 state law providing certain benefits to gig workers. Most state and federal courts, however,
9 are faced with several different fact-driven tests to consider and apply on a case by case
10 basis, resulting in inconsistent results across the country about whether gig workers are
11 employees or independent contractors.

12 Although the classification of gig workers is far from consistent, the CARES Act
13 allows all gig workers, like traditional employees, to claim unemployment benefits under
14 certain circumstances. Under the CARES Act, a gig worker may receive unemployment
15 benefits if the individual is unable to work because:

- 16 • He or she is diagnosed with COVID-19;
- 17 • He or she has symptoms of COVID-19 and is in the process of seeking a medical
diagnosis;
- 18 • His or her household member has been diagnosed with COVID-19;
- 19 • He or she is providing care to a household member with COVID-19;
- 20 • A child or other person in the household for which the individual is the primary
caregiver is unable to attend school or daycare due to COVID-19;
- 21 • The individual is unable to reach work due to a quarantine;
- 22 • The individual is unable to attend work because a healthcare professional
advised him or her to self-quarantine;
- 23 • The individual is scheduled to commence employment and does not have a job or
is unable to reach the job as a direct result of COVID-19;
- 24 • The individual is the sole wage earner in his or her household due to death of the
head of household as a direct result of COVID-19;

- The individual was required to quit his or her job as a direct result of COVID-19;
or
- The individual's place of employment closed as a direct result of COVID-19.

The Department of Labor (DOL) has provided general guidance on payment of benefits to individuals who are typically ineligible, but state unemployment benefit offices have to implement the provisions of the CARES Act, create procedures and forms through which gig workers to apply for such benefits, and make eligibility determinations.

Because PUA provides benefits to workers that are not covered by traditional unemployment insurance, this inclusion is unique. One category is independent contractors who are not traditional employees, like a driver for a ride-share application or someone who is paid on an as-needed basis.

- a. How gig work is different than traditional full/part time employees.

There are significant differences in independent contract payment to traditional unemployment insurance. While traditional employers control schedules of their employees, independent contractors design their own schedules. Unemployment insurance is typically founded on the premise that someone lost their job through no fault of their own, in addition to other eligibility requirements.²⁸ This alone creates difficulty in administering benefits to individuals in establishing cause for unemployment, as the CARES Act requires unemployment, partial unemployment, or someone being unable to work due to COVID-19. Because independent contractors control their own hours of

²⁸ See dol.gov/general/topic/termination.

operation, this information is difficult to ascertain. There is also no suspension or reduced hours.

- b. The unique challenges presented in establishing a program to benefit gig workers.

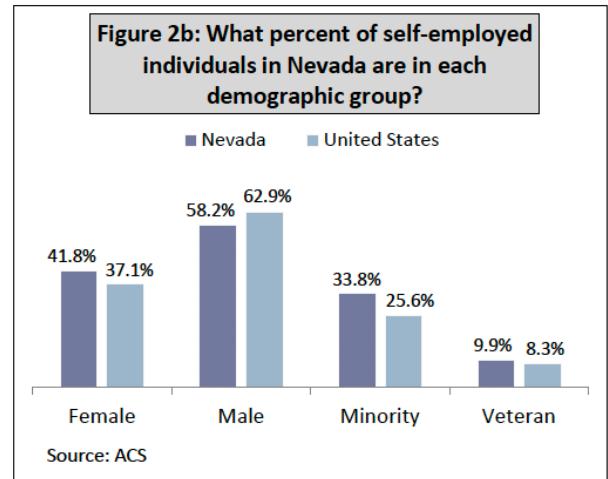
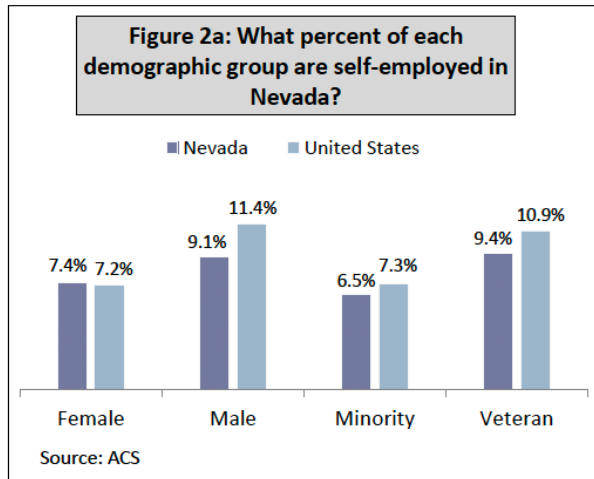
There are several challenges:

- In a traditional UI claim, there is a separate employer who has an interest in the outcome of that claim. This creates a reporting incentive and avoids fraud.
- In traditional UI, DETR has a record of wages earned and can quickly verify monetary eligibility with confidence. Lacking state income tax, DETR has no way to access 1099 tax forms or other similar submissions from such workers to verify income, which could lead to fraud.
- Because of variability in earnings for independent contractors, it is difficult to determine the appropriate benefits for any given week.²⁹

2. Nevada's gig economy.

Nevada's gig economy data is hard to determine. According to the Small Business Administration data, there are 245,000+ self-employed Nevadans. The Small Business Advocacy Group did a snapshot of Nevada's small businesses. Here is the demographic breakdown for self-employed in the Nevada.

²⁹For a longer discussion on the challenges of contingent work and administering a benefits program, See Monthly Labor Review, *Electronically Mediated Work: New Questions in the Contingent Worker Supplement*, U.S. Bureau of Labor Statistics (September 2018) <https://www.bls.gov/opub/mlr/2018/article/electronically-mediated-work-new-questions-in-the-contingent-worker-supplement.htm>.



According to US Census data for 2018, Nevada had an estimated 82,115 self-employed workers. With this number in mind, Nevada has paid \$4,201 in PUA benefits per self-employed worker, the 7th highest amount of any state. *See Appendix 16-14 (DETR Written Press Conference Q&A (Jul. 3, 2020)).*

3. Challenges in establishing a program to benefit gig workers.

Part of the trouble for states in establishing a program that benefits gig workers is that group of workers has traditionally not qualified for unemployment. States had to wait for the Department of Labor to issue guidelines; they had to reopen or initiate new programs for workers who did not qualify under unemployment to qualify with specific applications and formatting for PUA programs. The federal government did say that it would reimburse states for the cost of implementing PUA; however, unemployment agencies—in the meanwhile—are forced to implement them without much support. Further, when states do have information about employees, they have struggled to figure out how to calculate weekly benefits because self-employed workers have wages that are on multiple forms and are harder to verify.

1 ii. *Process for filing a claim to receive PUA.*³⁰

2 Claimants can apply online or by phone. This is explained at length *infra*.

3 1. *Qualifying criteria for eligibility.*³¹

4 PUA expands coverage to certain workers who traditionally are not eligible for
5 unemployment benefits under state law, including individuals who are self-employed,
6 independent contractors, or have exhausted regular unemployment benefits, among others,
7 and are unemployed due to COVID-19 related circumstances.

8 UIPL No. 16-20 provides additional examples of what may constitute a qualifying
9 COVID-19 related circumstance for PUA eligibility, including, *inter alia*:

- 10 • An individual has quit a job as a direct result of COVID-19 because the individual
11 has been diagnosed with COVID-19 and continuing work activities (such as through
12 telework) is not possible by virtue of the diagnosis or condition;
13 • An individual is “providing care” for a family member or member of the individual’s
14 household who has been diagnosed with COVID-19 and the provision of care requires
15 “such ongoing and constant attention that the individual’s ability to perform other
16 work functions is severely limited;”
17 • An individual is the primary caregiver of a child or household member who is unable
18 to attend school or another facility that is closed due to COVID-19. Notably, this
19 includes an individual whose job allows for telework, but where the provision of care
20 to a child or household member requires such “ongoing and constant attention that
21 it is not possible for the individual to perform work at home;”
 • An individual is unable to reach his or her place of employment because doing so
 would require violating a state or municipal order restricting travel that was
 instituted to combat the spread of COVID-19;
 • An individual’s immune system is compromised by a serious health condition and he
 or she has been advised by a health care provider to self-quarantine in order to avoid
 the greater-than-average health risks the individual might face if he or she were to
 become infected;
 • An individual was scheduled to commence employment, but no longer has a job
 because the employer rescinded the job offer as a direct result of COVID-19;
 • An individual was diagnosed with COVID-19 by a qualified medical professional
 and, although the individual no longer has the virus, the illness caused health

25 ³⁰ See generally, DETR Memorandum from Brian Bracken to Troy Jordan re PUA Claim Process, June 29,
26 2020.

³¹See also UIPL 16-20; 16-20 Change 1. (See Appendix 7-6.)

1 complications that render the individual “objectively unable to perform his or her
2 essential job functions, with or without a reasonable accommodation;”

- 3 • An individual’s place of employment is closed due to an emergency declaration or
4 “necessarily social distancing protocols” resulting from COVID-19; or
- 5 • An individual works as an independent contractor with reportable income and is
6 unemployed, partially employed, or unable or unavailable to work because the
7 COVID-19 public health emergency has severely limited his or her ability to continue
8 performing customary work activities, and has thereby forced the individual to
9 suspend such activities. For example, a driver for a ridesharing service may qualify
10 for PUA benefits if he or she has been forced to suspend operations as a direct result
11 of the COVID-19 public health emergency, “such as if an emergency state or
12 municipal order restricting movement makes continued operations unsustainable.”

13 Those who are not eligible for PUA:

- 14 • If a claimant is eligible for regular UI claim, PEUC or SEB.
- 15 • If a claimant is able to work remotely without reduced pay.
- 16 • If a claimant is receiving paid sick leave or other leave benefits.
- 17 • If a claimant is unemployed, but not due to COVID-19.
- 18 • If a claimant was not working in Nevada at the time he or she became
19 unemployed due to COVID-19.

20 UIPL 16-20 further states, however, that many of the qualifying circumstances for PUA
21 benefits “are likely to be of short-term duration.” For example, the UIPL explains that a
22 child’s school will not be “closed as a direct result of COVID-19,” for purposes of PUA
23 benefits, after the date the school year was originally scheduled to end.

24 PUA benefits generally are not available to individuals who have the ability to
25 telework with pay, or who are receiving paid leave benefits (including sick leave). However,
26 an individual who is receiving paid leave benefits for less than his or her customary work
week or is teleworking with pay for less hours than the individual worked prior to the
COVID-19 pandemic, may still be eligible for a reduced PUA weekly benefit amount.

1 call center for all PUA related questions at (800) 603-9681 between 8 a.m. and 8 p.m.,
2 Monday through Friday, and Saturday between 8 a.m. and noon. PUA claimants must also
3 be able and available for work as defined in state law, must have prior earnings in Nevada
4 or a job offer to work in Nevada and must not be eligible for any UI benefits, including
5 regular UI, Pandemic Emergency Unemployment Compensation, and State Extended
6 Benefits.

7 At the outset, Geographic Solutions, the designer of the PUA portal, explained that
8 the program would have convenient drop-down menus for claimants and precise questions
9 that made the system user friendly. *See Appendix 5-1 (Pandemic Unemployment*
10 *Assistance (PUA) Portal for Claimants)*. Geographic Solutions also indicated that the
11 questions would swiftly trigger actions in the system to establish a PUA claim if a claimant
12 qualified. It also asked questions tied to PUA eligibility, and incorporated federal
13 guidelines, like “PUA rules mandate that claimants only receive benefits if they are not
14 eligible for UI.” *Id.* The program allows for self-employment wages to establish a PUA
15 claim. Further, the system could make PUA monetary determinations and track PUA
16 claims to parent claims. It also had reporting mechanism to comply with the DOL’s
17 reporting requirements.

a. Step 1: filing the initial claim

Access [Nevada's PUA Portal](#) at [EmployNV.gov](#) home page (see figure below).

The screenshot displays the EmployNV.gov homepage. At the top, there is a banner image of a lake and mountains with the EmployNV logo. To the right of the banner is a login section with fields for Username and Password, and buttons for Sign In, Register, and a link for 'Forgot Username/Password?'. Below the banner, there are two prominent blue buttons: 'File a PUA Claim' (highlighted with a red box) and 'File Your PUA Weekly Certification'. Underneath these buttons is a section titled 'Pandemic Unemployment Assistance (PUA)' with a detailed paragraph explaining the program. Below this text are two buttons: 'Click here for PUA Claimant Guide' and 'File a regular unemployment claim'. Further down, there is a job search section with 'Find a Candidate' and 'Find a Job' buttons. Below that is a search bar with the prompt 'Enter a keyword and/or city or ZIP code and radius to search for jobs in your area.' and fields for 'Search', 'Enter Keyword', 'Zip Code or City', '25 miles', and a 'Search' button. At the bottom, there is a 'News and Announcements' section with several links: 'How to Access Nevada Cancer Center Services', 'Weekly Hot Jobs Listings', 'Unemployment Insurance Information', 'Work Opportunity Tax Credit (WOTC)', 'Rapid Response Resource Packet for Laid Off Workers', and 'Rapid Response Resource Packet for Laid Off Workers - Spanish'. A 'Live Chat' button is located in the bottom right corner.

After clicking “file a claim,” a PUA welcome screen displays what is and what is not covered under the program. *See Appendix 5-1 (Pandemic Unemployment Assistance (PUA) Portal for Claimants).*

The screenshot shows a web interface titled "Your re-employment process starts here". Below this is a "Welcome" section. The main heading is "Pandemic Unemployment Assistance (PUA) RELIEF FOR WORKERS AFFECTED BY CORONAVIRUS ACT". A paragraph explains that PUA provides payment to workers not traditionally eligible for unemployment benefits (self-employed, independent contractors, workers with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency. The screen is divided into two sections: "COVERED" and "NOT COVERED". The "COVERED" section lists 14 bullet points detailing various circumstances under which a worker is eligible for PUA. The "NOT COVERED" section lists 2 bullet points detailing circumstances where a worker is not eligible. At the bottom right, there is a blue button labeled "Next >>".

Your re-employment process starts here

Welcome

Pandemic Unemployment Assistance (PUA)
RELIEF FOR WORKERS AFFECTED BY CORONAVIRUS ACT

Pandemic Unemployment Assistance (PUA) provides payment to workers not traditionally eligible for unemployment benefits (self-employed, independent contractors, workers with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.

COVERED

- Diagnosed with COVID-19 or with COVID-19 symptoms and seeking diagnosis
- Member of household has been diagnosed with COVID-19
- Providing care for family or household member diagnosed with COVID-19
- Primary caregiver for child unable to attend school or another facility closed due to COVID-19
- Unable to reach place of employment due to an imposed quarantine or because advised by medical provider to self-quarantine due to COVID-19
- Scheduled to commence new employment and cannot reach workplace as direct result of COVID-19
- Became major breadwinner because head of household died from COVID-19
- Quit job as a direct result of COVID-19
- Place of employment closed as a direct result of COVID-19
- Self-employed / Independent Contractors / 1099 filers / Farmers – and affected by COVID-19
- Seeking part-time employment but affected by COVID-19
- With insufficient work history and affected by COVID-19
- Otherwise not qualified for regular or extended UI benefits and affected by COVID-19

NOT COVERED

- Individuals that can telework with pay
- Individual receiving paid sick leave or other paid leave benefits (regardless of meeting a category listed above)

[Next >>](#)

The PUA application portal appears less rigid and more modern than the UI application portal. However, it requires a good number of questions to determine eligibility. First, it begins with general identification information including social security number and login requirements. Then, it requires education and employment information as well as major disaster information so that ESD can determine whether a claimant qualifies for PUA.

Major Disaster Information

* Are you unemployed as a direct result of a pandemic or major disaster?
 ☒ Yes
 ☐ No

* In what state were you affected?

Pennsylvania

* What was the major disaster?

COVID-19

Self Certification

* Are you self employed, business owner, worked with a religious entity, or a gig worker whose employment was affected by the COVID-19 virus?
 ☒ Yes
 ☐ No

* Does your business have a name?
 ☐ Yes
 ☒ No

* What was your net earnings for the 1st quarter of 2019?

\$12,000.00

* What was your net earnings for the 2nd quarter of 2019?

\$12,000.00

* What was your net earnings for the 3rd quarter of 2019?

\$12,000.00

* What was your net earnings for the 4th quarter of 2019?

\$12,000.00

* Were you working full time or part-time?
 ☐ Part-time
 ☒ Full-time

* How did the COVID-19 pandemic cause your unemployment or partial unemployment? Select one that best fits.

- ☐ You have been diagnosed with COVID-19.
- ☐ A member of your household has been diagnosed with COVID-19 and you are providing care.
- ☐ A family member has been diagnosed with COVID-19, and you were quarantined due to a doctor or public official's order.
- ☐ You stopped working after a lack of childcare due to the closing of a school.
- ☐ You stop working because you are unable to reach your place of work due to a public official's required quarantine.

after a public...

- ☐ You temporarily closed your business due to COVID-19.
- ☐ You permanently closed your business due to COVID-19.
- ☐ You are currently working reduced hours due to COVID-19.
- ☐ You have a reduction in gig work due to COVID-19. Gig work includes: Uber, Lyft, Musicians, Instacart, freelancer.
- ☒ You were unable to start working as a self-employed individual due to COVID-19.
- ☐ You worked for a church or non profit who is closed due to COVID-19.
- ☐ You become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19.
- ☐ You were to start working but was unable to due to the closure of the business caused by COVID-19.
- ☐ You were laid off due to a lack of work after a business closure caused by COVID-19.
- ☐ Your employer reduced your hours due to COVID-19.
- ☐ A reason not listed above.

* What is the date that you last performed work?

03/17/2020 (mm/dd/yyyy)

Today

* Did your employer offer you the ability to telework?
 ☐ Yes
 ☒ No

What date do you expect to return to work or start your self-employment?

07/01/2020 (mm/dd/yyyy)

Today

Acknowledgement

* I acknowledge that I understand that making the certification is under penalty of perjury and intentional misrepresentation in self-certifying that I may fall in one or more of these categories is fraud!
 ☒ Yes, I understand

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1 The system requires proof of earnings, which allows a claimant to submit W-2s, tax
2 returns, and “other:”

3 **Proof of Earnings - Document Upload**

4 

5 You must upload documentation to support the amount of quarterly wages you entered. If you cannot supply proof,
6 your eligibility may be set at the minimum weekly rate of \$195.00. Although you are limited to 5 documents on this
7 page, you should upload any remaining documents from your dashboard after the claim is complete. From your
8 dashboard, you will also upload other documentation to support your PUA eligibility such as doctor's note for
9 quarantine, proof of corporate officer status, etc.

10 **Document 1:**

11 No file chosen

12 No file chosen

13 No file chosen

14 No file chosen

15 No file chosen

16 No file chosen

17 No file chosen

18 **Document 4:**

19 No file chosen

20 **Document 5:**

21 No file chosen

25 * Acceptable file types include: jpg, png, tiff, pdf and doc

15 Given the claims from petitioners, it is possible this portion of the application process
16 makes it difficult for the claimants to establish earnings, unless they submit their tax
17 returns and that is sufficient.

18 There are steps in the middle, which require more information about employers, and
19 then a claim may be submitted. The confirmation screen alerts the claimant that their
20 claim is being processed and provides information to ensure the claimant complies going
21 forward and remains eligible for benefits.

Pandemic Unemployment Assistance Claim Filing Process

Eligibility Registration Work History Certification

Complete

Pandemic Unemployment Assistance Claim Confirmation

Your Pandemic Unemployment Assistance claim and work registration account has been created successfully and will be reviewed for eligibility.

ACKNOWLEDGEMENTS

You have acknowledged that:

- To be eligible for benefits each week you **MUST** be able to go to work each day. If you were offered a job today, you must be able to accept it.
- Beginning this Sunday, you **MUST** file a weekly certification to receive benefits. You can file online at [\[redacted\]](#). Continue to file each week if do not have a job. You cannot be paid for any week(s) that you do not claim.
- You **MUST** report ANY earnings for the week you work, **even if you've not yet been paid**. Include all income, commissions, tips and gratuities. Report the gross amount before deductions.
- If your contact information changes, inform the UC service center ([\[redacted\]](#)), the [\[redacted\]](#) system ([\[redacted\]](#)) and the United States Postal Service immediately, even if you are not filing for benefits at that time.
- You MUST read and understand the Pandemic Unemployment Compensation Handbook, which explains these requirements in more detail. Please [click here](#) here to download and view the PUA Handbook.
- I acknowledge that any false statements in this document are punishable pursuant to [\[redacted\]](#) and CFR 625.14 referenced in Section 2102 of CARES Act of 2020, relating to unsworn falsification to authorities, and that a person who knowingly makes a false statement or knowingly withholds information to obtain UC or other benefits commits a criminal offense under Section 801 of US Law 43 P.S. 871, and may be subject to a fine, imprisonment, restitution, and loss of future benefits.

[Next >>](#)

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1 program, it too offered fraud “prevention resources to enhance integrity of unemployment
2 insurance programs.” To accomplish this goal, the DOL has issued press releases that
3 encourage participation in monitoring and that directs states, employers, and citizens
4 towards resources that can prevent fraud. A May 19, 2020 press release indicated:

5 Unemployment insurance fraud takes many forms. Employer
6 fraud may include certain actions to avoid tax liability or
7 establishing a fictitious employer account to enable fraudulent
8 claims against that account. Claimant fraud may include
9 knowingly submitting false information, knowingly continuing to
10 collect benefits when ineligible, certifying for benefits under state
11 law while not being able and available to work, or intentionally
12 collecting full benefits while not reporting wages or income.
13 Additionally, identify theft may result in unemployment
14 insurance fraud that is neither the fault of the employer nor the
15 identify theft victim.

11 The CARES Act includes the Federal Pandemic Unemployment
12 Compensation, Pandemic Unemployment Assistance, and
13 Pandemic Emergency Unemployment Compensation programs.
14 In addition to its recent guidance related to continued eligibility
15 for benefits, the Department has consolidated all state
16 unemployment insurance fraud hotlines on one page for ease of
17 access.

15 DOL, Press Release, <https://www.dol.gov/newsroom/releases/eta/eta20200519>.

16 The CARES Act and DOL Guidelines require that states monitor for fraud when
17 distributing federal dollars through PUA payments. The PUA requires claimants to self-
18 certify that they are unemployed, partially unemployed, or unable or unavailable to work
19 because of a COVID-19-related reason, and the state agency must accept this certification
20 with a warning about the repercussions of fraudulent representations.

21 In guidance from the Department of Labor, states were directed to “maintain a
25 steadfast focus on UI functions and activities that ensure program integrity and the
26 prevention and detection of improper payments and fraud across all UI programs.” See

1 *Appendix 7-7 (Unemployment Insurance Program Letter No. 23-20 Programs Integrity for*
2 *Unemployment Insurance (UI) Program and the UI Programs Authorized by the*
3 *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic*
4 *Unemployment Compensation (FPUC), Pandemic Unemployment Compensation (PEUC)*
5 *Programs dated May 11, 2020, p.2).* Some states have attempted to expedite the process,
6 requesting relief from monitoring obligations, however, the DOL did now allow this,
7 stating: “A number of states have requested relief from conformity and compliance
8 activities to support more expedited processing of claims. While the Department
9 understands the rationale behind these requests, UI mandates . . . remain fundamental
10 requirements . . . which must be adhered to.” *Id.*

11 This guidance was a reiteration of prior DOL guidance:

12 **Importance of Program Integrity.** The programs and
13 provisions in the CARES Act operate in tandem with the
14 fundamental eligibility requirements of the Federal-State UI
15 program, which remain in place. In addition, some of the
16 programs include new eligibility requirements. These
17 requirements include that individuals are only entitled to benefits
18 if they are no longer working through no fault of their own and
19 that individuals must be able and available to work.

20 *See Appendix 7-4 (UIPL 14-20, p.2).*

21 b. The Agreement between the State and the Department of
22 Labor.

23 DETR also entered into an agreement with the Department of Labor so that it could
24 provide PUA, FPUC, and PEUC. The Agreement requires that DETR, when administering
25 the program, follow the provisions for fraud and overpayments. (*Ex. 3 to Resp’t Opp’n. to*
26 *Pet. for Writ of Mandamus,– DOL Contract with DETR*). The Agreement “will immediately

1 terminate with respect to any of the provisions of the Act . . . upon the Department of
2 Labor’s determination that the state did not comply with all of the requirements” in the
3 Agreement. *Id.* at p.1. The State must also furnish records for inspection if the Department
4 of Labor decides to audit the State’s implementation of the programs. In multiple parts,
5 the Agreement makes clear that an individual may not fraudulently receive benefits.
6 However, it does not outline the requirements on states to monitor fraud in depth, beyond
7 requiring that “no further benefits be payable” if there is fraud.

8 c. Nevada’s obligation to abide by its own fraud requirements.

9 Under 20 CFR Section 625.11:

10 The terms and conditions of the State law of the applicable State
11 for an individual, which apply to claims for, and the payment of regular
12 compensation, shall apply to applications for, and the payment of,
[Disaster Unemployment Insurance] to each individual as specifically
set forth in the provisions of this part.

13 Therefore, Nevada has to abide by its requirements and procedure outlined in NRS
14 and NAC Chapter 612.

15 d. Obligation to monitor fraud.

16
17 Generally, states are required to provide due diligence and take necessary actions to
18 prevent fraudulent payments of claims. The Office of Employment and Training
19 Administration for the Federal Government continues to actively work with states and law
20 enforcement partners to combat fraud. It has issued guidance to states in implementing
21 programs consistent with integrity. It regularly coordinates with the Office of Investigation
25 – Labor Racketeering to increase access to necessary state unemployment insurance data
26

1 to help detect fraud, communicate fraud schemes, and identify effective fraud prevention
2 techniques and strategy.

3 The Office of Employment and Training Administration has provided resources and
4 tools for states to combat fraud in the context of COVID-19 and the CARES Act, such as
5 continued expansion of its Integrity Data Hub, which provides resources to help prevent
6 and detect fraud, including:

- 7 • A Suspicious Actor Repository that allows States to share and cross-match with
known fraud data elements to detect fraud;
- 8 • Cross-matches with suspicious Internet Protocol (IP) addresses;
- 9 • A multi-state claims data cross-match that enables data analytics to detect fraud;
- 10 • A real time Fraud Alert System that allows states to interact with each other;
- 11 • Implementing a national identity verification tool to support States;
- 12 • Weekly calls to share and communicate fraud prevention strategies;
- 13 • Other training for State staff.

14 The Office of Employment and Training Administration also issued UIPL 23-20 to
15 emphasize the importance of program integrity and the need to address improper fraud in
16 the UI system. *See Appendix 7-7 (UIPL 23-20)*. This UIPL discussed administrative issues
17 that have arisen in CARES Act program administration and the many fraud and
18 overpayment prevention tools available to states.

19 In addition, as part of its proactive response to PUA fraud, the Office requires states
20 to include warnings for fraud throughout the system. *See Appendix 7-5 (UIPL 16-20)*. The
21 warnings must state that fraud can result in criminal sanctions, serving as a reminder to
22 individuals that there are serious consequences.

1 e. States may not require substantiating documents, in-part.

2 On the other hand, this reading of the CARES Act may be inconsistent with the
3 language of the statute. It is likely that states do not have authority to require submission
4 of documentation for the purpose of determining an individual's eligibility for the program.
5 Congress intended self-certification to be an intrinsic aspect of the CARES Act. Eligibility
6 for PUA benefits under the CARES Act is defined in Section 2102(a)(3)(A), which
7 determines a "covered individual" as someone who:

- 8
- 9 (i) Is not eligible for regular compensation or extended benefits under
10 State or federal law or pandemic emergency unemployment
11 compensation under section 2107, including an individual who has
12 exhausted all rights to regular unemployment or extended benefits
13 under State or Federal law or pandemic emergency unemployment
14 compensation under section 2107; **and**
 - 15 (ii) (I) Provides **self-certification** that the individual is otherwise able to
16 work and available for work within the meaning of applicable state law,
17 except the individual is unemployed, partially unemployed, or unable
18 or unavailable to work because of one of the [COVID-19 related
19 reasons]; **or**
 - 20 (iii) (II) the individual provides **self-certification** that the individual "is
21 self-employed, is seeking part-time employment, does not have
22 sufficient work history, or otherwise would not qualify for regular
23 unemployment or extended benefits under State or Federal law or
24 pandemic emergency unemployment compensation under section 2107
25 and meets the requirements of subclaus (I).

18 With this reading, benefits must be provided to individuals who are determined to
19 be eligible under the methods described above. Under Section 2102(b), the Secretary of
20 Labor "shall" provide any covered individual unemployment benefit assistance while such
21 individual is unemployed, or any of the other factors above. The language is not
22 discretionary.

1 This non-discretionary nature of the unemployment benefit assistance is reiterated
2 multiple times. Further, “self-certification” is defined by Oxford Dictionary as the “practice
3 of making an official declaration that something complies with regulatory standards or
4 procedures without independent substantiating evidence.”³²

5 With this reading of statute, there is no statutory ambiguity as to how the
6 requirement is fulfilled: thus, states do not have authority to interpret the language to
7 include additional requirements such as substantiating documentation of employment.

8 f. Fraud program.³³

9 DETR was not willing to make the details of the fraud program public because such
10 disclosure would compromise fraud detection efforts and undermine ongoing
11 investigations. However, DETR has agreed to provide the Court with a confidential, in
12 camera, presentation on its fraud program and will answer any and all questions of the
13 Court and the Petitioners.

14 g. Fraud statistics.

15 Due to the design of the program alone, PUA is more susceptible to fraud than the
16 regular unemployment insurance program. (*Ex. 1 to Resp’t Opp’n. to Pet. for Writ of*
17 *Mandamus, Decl. David Schmidt, at 18*); *See also Appendix 12-8 (Memorandum re:*
18 *Response to the Office of the Inspector General’s OIG Alert Memorandum: The Pandemic*

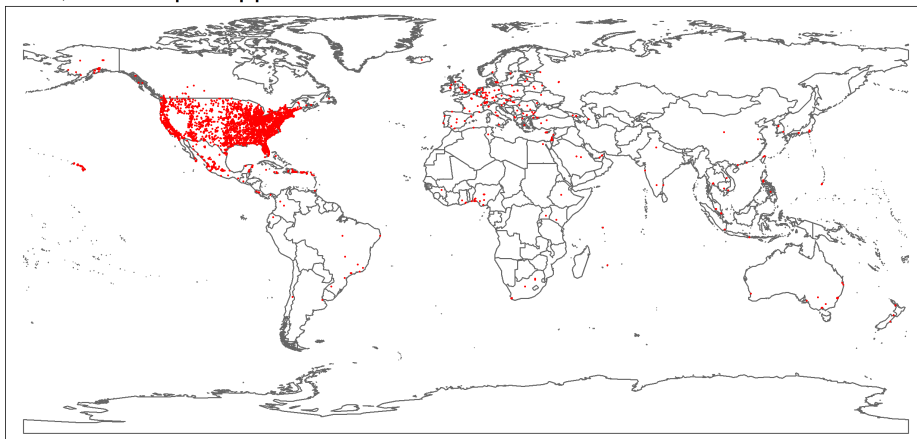
20 ³² See *Oxford Dictionary*; see also *Black’s Law Dictionary* (11th ed. 2019) (“The signing of a form or note to
verify that one has done something or to explain that one has not done something.”)

21 ³³Nevada isn’t the only state to crack down on fraud. Washington tightened anti-fraud measures, even with
criticism that it denied benefits, because it determined that \$300 million had been paid to criminals who stole
identifying information to file fraudulent unemployment benefits claims. See Natalie Swaby, *Laid-off*
25 *workers in limbo as Washington state cracks down on unemployment fraud*, Associated Press (May 28, 2020)
26 <https://www.king5.com/article/news/laid-off-workers-in-limbo-as-washington-state-cracks-down-on-unemployment-fraud/281-3a70a80e-2fbd-4b9a-afa0-721974c48518>.

1 *Unemployment Assistance Program Needs Proactive Measures to Detect and Prevent*
2 *Improper Payments and Fraud, Report Number: 19-20-002-03-315).* Unlike regular UI,
3 PUA does not include an employer as a party to any claims thereby reducing a critical
4 verification of details that establish eligibility for unemployment benefits. *Id.* Because
5 PUA does not rely upon wages in place in the UI system as the basis for payment of benefits,
6 there is an elevated risk due to forged documents or self-attestations that do not match the
7 underlying documents. *Id.* According to Ms. Gaa's declaration, DETR suspects there are a
8 vast number of fraudulent requests, more than 100k, for example, for PUA.³⁴ (*Ex. 2 to*
9 *Resp't Opp'n. to Pet. for Writ of Mandamus, Decl. Kimberly Gaa at p. 14).*

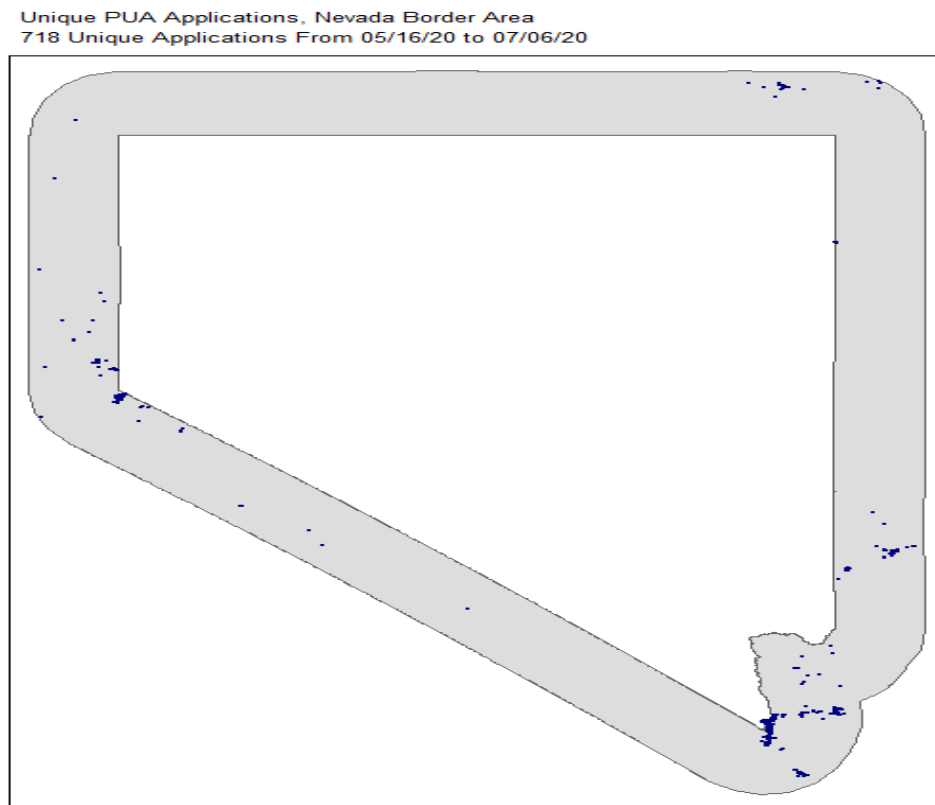
10 As of July 13, 2020, there is substantial evidence of widespread and systematic
11 fraud. In this chart, Chief Economist Schmidt reinforces the DOL's message about
12 potential PUA fraud:

13 IP Addresses Filing PUA Claims Outside Nevada
14 175,403 Unique Applications



1 The above attached chart shows those claims that have at least one week filed on a
2 claim from outside Nevada. These numbers are staggering (175,403 applications – as of the
3 July 6 data, this number was 149,000)).

4 Presented in contrast to the over 37,000 PUA applications outside both Nevada and
5 the surrounding area, here is a map of the applications within the "buffer" around Nevada:

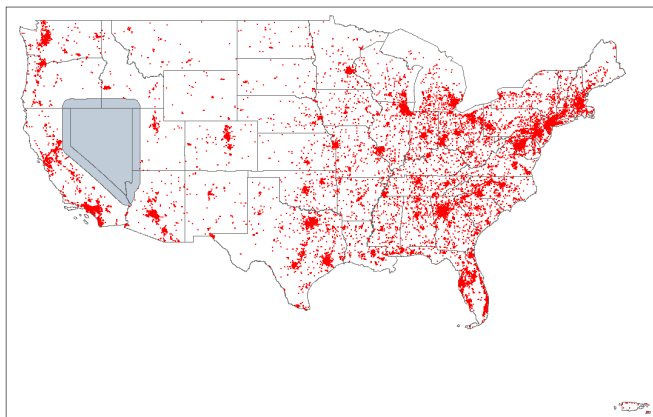


8 This area captures the South Lake Tahoe, Truckee, Bullhead City and St. George
9 areas and, at least in theory, should capture the out-of-state applications with the highest
10 likelihood of having a bona fide attachment to Nevada's labor force. Chief Economist
11 Schmidt expressed grave concerns over the fact that there are only 718 such applications
12 (as opposed to the 37,000+ further outside Nevada). In this regard, Schmidt opined, "the
13 fact that out-of-state applications appear more correlated with population than proximity
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1 to Nevada suggests that the likely validity of the vast majority of those claims is very low.”

2 One out of every eight PUA applications are from outside the State of Nevada. Of
3 those applications, just 718 are from communities near Nevada (Truckee, South Lake
4 Tahoe, Bullhead City, etc) where there may be a reasonable connection to the Nevada labor
5 force. According to Schmidt, “[I]f we say that ‘out of state PUA applications are not likely
6 to be valid’” then the reasonable objection would be that Nevada has lots of cross-border
7 activity. This “718” answers that objection by showing that the number of applications
8 from people living near Nevada's borders is very low, relatively speaking, and that the out-
9 of-state filter is therefore a more likely flag for potential fraud.” This chart adds to the
10 analysis significantly, as it focuses on those PUA applications we have received from
11 outside Nevada:

12 Unique PUA Applications Outside Nevada
13 37,370 Unique Applications From 05/16/20 to 07/06/20



19

20 Not pictured: Alaska, Hawaii, Guam, American Samoa.

21 *7. Once a person was determined eligible, what benefits were due?*

22

25 The DOL’s update, UIPL 16-20, includes guidance about how states should calculate
26 an individual’s PUA weekly benefit amount (“WBA”). *See Appendix 7-6 (UIPL 16-20).* As

1 a general rule, the PUA WBA is calculated using the same formula as the applicable state's
2 regular unemployment program. This is done by taking an individual's wages over an
3 established "base period" and applying a formula that varies from state-to-state. For PUA
4 purposes, the "base period" is calendar year 2019. An individual's PUA WBA may not be
5 higher than the applicable state maximum WBA for regular unemployment benefits. For
6 weeks of unemployment beginning on or after April 5, 2020 and ending on or before July
7 31, 2020, PUA recipients also are entitled to an extra \$600 per week in Federal Pandemic
8 Unemployment Compensation benefits in addition to the PUA WBA.

9 If an eligible individual has insufficient wages or net income (or no wages or income)
10 in the base period to compute a WBA, the individual is entitled to receive the minimum
11 PUA WBA. The minimum PUA WBA varies by state, but is calculated as "50 percent of the
12 average weekly payment of regular compensation in the state" as published by the DOL.
13 In this event, PUA looks to calendar year 2019 as the "base period" for a claimant's prior
14 earnings, and claimants can provide a variety of documentation to establish those earnings,
15 including income tax returns, paycheck stubs, and bank receipts. If a claimant cannot
16 produce any such records, he or she will receive the PUA's minimum weekly benefit
17 amount, which is calculated according to the Department of Labor's records of the state's
18 average weekly payment of regular compensation.

19 *8. When do benefits commence?*

20 States may begin making PUA payments after they have entered into an agreement
21 with the DOL, but PUA claims may be backdated to February 2, 2020 (the start of the
25 "Pandemic Assistance Period"), if the individual meets PUA's eligibility requirements. PUA
26

1 is unavailable for weeks of unemployment ending after December 31, 2020. *See Appendix*
2 *7-5 (UIPL 16-20).*

3 DETR reported, as of July 3, 2020, that since the start of payments on July 2, 104,319
4 unique claimants had been paid \$989.9 million in both PUA and PUA-FPUC funds. The
5 total amount for PUA alone was \$349.4 million. However, approximately 76,000 PUA
6 claims did not have weekly claims filed. *See Appendix 16-14 (DETR Written Press*
7 *Conference Q&A (Jul. 3, 2020)).*

8 *9. What on-going obligation did claimant have after being eligible?*

9 Like unemployment insurance, claimants must continue to file weekly claims to
10 receive weekly PUA benefit payments. This includes if PUA benefits are on hold due to
11 eligibility issues or pending appeal. *See Appendix 5-3 (DETR Pandemic Unemployment*
12 *Assistance (PUA) FAQs, last updated 5/13/2020).*

13 *10. If claimant was determined to be ineligible, what were the appeal*
14 *rights of the claimant?*

15 On June 1, 2020 the PUA adjudication line became operational and responsible for
16 reviewing and resolving PUA eligibility issues preventing payment. *See Appendix 16-15*
17 *(DETR Press Release, June 3, 2020).* The PUA adjudication line phone number, however,
18 was only provided to individuals who received additional information notices through their
19 Employ NV client portal. On the first day of operation, the PUA call center received nearly
20 140,000 PUA claims and adjudication calls.

21 Before this, a claimant could check his or her claim status online through the
25 EmployNV portal, which would show:

- Claim Details: showing an overview of what you need to know about your current claim status.
- Outstanding Claim Issues: lists any active issues on your claim, which could affect future benefits. As long as you remain unemployed, continue to file your weekly claim as instructed. You will be notified by mail when any decisions are made; these decisions may take up to 21 days.
- Weekly Benefit Certifications: lists the weeks for which you have completed certifications to continue your unemployment benefits. Click on a Payment Amount hyperlink to see the details of that payment, including any stimulus amount paid.
- Payment Summary: lists the details on how each weekly payment was determined.
- Overpayment: Summary provides a comprehensive view of any overpayments to your benefit claim. An overpayment results when more funds were dispersed than you were eligible for.

See Appendix 5-1 (PUA Portal Claimant's Guide).

a. Hearing before a referee.

Presently, there is no appeal process for PUA claims. However, in the July 3, 2020 DETR Written Press Conference Q & A, DETR announced that it “is actively working with our vendor Geographic Solutions Inc. to provide appeals filing capability. This is functionally expected mid-July 2020.” *See Appendix 16-14 (DETR Written Press Conference Q&A (Jul. 3, 2020)).* It directed claimants to check the website for further updates. *Id.* However, Administrator Gaa updated this information by explaining that the appeals module is scheduled to be live this week on Friday July 17, 2020, at 8:00 p.m. Accrued appeals as of July 17, 2020, will be accepted 30 days after the launch of the program. The appeals process will be similar to the process in traditional UI as all the following possibilities:

- File an appeal request in the PUA module;
- Initial review for redetermination, if no move to appeal hearing setting;
- Set Appeal hearing with Appeal referee;
- Hearing – (no employer included) review the materials presented in the appeal by the filer;

- Hearing determination – approve – move to payment; denied – advise of right to escalate to the Board of Review;
- Board of Review – review for remand back to adjudication for redetermination – approval – move to payment, denial – may request additional review; approved – reversal of prior denial move to payment; denial – advise of right to petition the court;
- Petition for Judicial Review in District Court.

As of June 3, 2020, 90,756 initial PUA claims had been successfully filed and 716,964 weeks in claims had been successfully filed with DETR paying out nearly \$119 million in combined PUA and Federal Pandemic Unemployment Compensation (FPUC) assistance representing 18,445 claims. *See Appendix 16-15 (DETR Press Release, June 3, 2020).* DETR continues to remove barriers, process, and release funds on PUA claims daily, in the order in which they were received. DETR works closely with law enforcement to identify, track, and prevent payment on a significant number of fraudulent claims.

Questions about claims? The Alorica Call Center.

On April 9th, DETR and Governor Sisolak announced a vendor had been selected to “provide at least 100 full-time operators to boost unemployment insurance (UI) call center capacity during a period of unprecedented demand.”³⁵ Beginning April 15th, DETR—in conjunction with Irvine-based, global customer service provider Alorica—began operating an expanded call center for general unemployment insurance questions.³⁶ After soliciting

³⁵See Press Release, Governor of Nevada, Governor Sisolak Announces Selection of Call Center Vendor, Adding at Least 100 Full-Time Operators to Manage Unemployment Calls (Apr. 9, 2020) http://gov.nv.gov/News/Press/2020/Governor_Sisolak_Announces_Selection_of_Call_Center_Vendor,_Adding_at_Least_100_Full-Time_Operators_to_Manage_Unemployment_Calls/

³⁶ See Jeff Munson, *New Unemployment Call Center Begins Wednesday for Nevadans, DETR Reiterates New Online Filing System Method*, Carson Now, April 15, 2020.. <https://carsonnow.org/story/04/15/2020/new-unemployment-call-center-begins-wednesday-nevadans-detr-reiterates-new-online-f>

1 bids from five companies, the state awarded the contract to Alorica “based on ability to
2 meet the Department’s needs, price, and an agreement to hire Nevadans first.”³⁷

3 As part of the \$5 million contract, which was retroactively approved by the State’s
4 Board of Examiners on April 23rd, Alorica would establish a 1-800 number and designate
5 100 employees at two call centers to answer generic questions about the filing process.
6 Issues arose immediately as frustrated claimants complained the new call center operators
7 were a “waste of money” because agents were unable to answer claimants’ specific
8 questions about the status of their claim. According to figures provided by DETR officials
9 to the Las Vegas Review-Journal, more than 30% of calls were prematurely ended by the
10 caller after listening to a message that said the call center does not have access to
11 information on existing claims.³⁸ The Wisconsin Department of Workforce Development
12 also contracted with Alorica to expand its call center operations.³⁹ However, unlike the
13 DETR-Alorica call center, operators at the DWD-Alorica call center are trained to answer
14 specific questions regarding the status of a claim and, if the operator is unable to answer
15 the question, will transfer the call to the appropriate party. DWD officials stated that, in
16 the first two weeks following implementation of the new call center, the Department made
17 nearly 3.8 times the number of customer contacts it was typically able to.

18
19
20 ³⁷ See Riley Snyder, *State board approves 5.1 million in contracts to help beleaguered unemployment insurance system*, Nevada Independent, April 23, 2020. <https://thenevadaindependent.com/article/state-board-approves-5-1-million-in-contracts-to-help-beleaguered-unemployment-insurance-system>

21 ³⁸ See Bailey Schulz, *New Unemployment call center ‘waste’ of money, frustrated jobless say*, Review Journal, April 22, 2020. <https://www.reviewjournal.com/business/new-unemployment-call-center-waste-of-money-frustrated-jobless-say-2012197/>

25 ³⁹ Press Release, Wisconsin Department of Workforce Development, DWD Expanding Efforts to Directly Assist More Wisconsinites (May 15, 2020).
26 <https://dwd.wisconsin.gov/news/2020/200515-expanding-efforts.htm>

1 By contrast, other states (such as California and New Jersey) opted to introduce
2 virtual chat bots in order to free up time for agents to focus on complex claims that need
3 intervention—rather than answering frequently asked questions.⁴⁰ Following the massive
4 increase in call volume, the California EDD announced the virtual chat bot was available
5 by Facebook messenger as well as through the EDD website. The chat bot service, available
6 in English or Spanish, is capable of answering more than 214,000 common questions from
7 claimants each week.⁴¹ Diverting general unemployment application questions away from
8 the limited amount of live operators has decreased the call queue’s wait time, helping
9 ensure callers with the most urgent issues can get through on the phone lines.

10 When 200 Alorica staff in Nevada were onboarded, they were only provided on
11 average one day and a half of training due to the urgency to establish a call center. These
12 call center FTE’s are given remediation training from time to time, but they have been the
13 consistent source of criticism of the public who have not been satisfied with their customer
14 service efforts. To be fair, the call volume has been extraordinary. *See Appendix 17 (Call*
15 *Center Statistics)* provides a call log showing that the peak of demand Alorica FTE’s were
16 fielding 3,200 calls a day.

17 Complaints about Alorica raise various issues, but the most pervasive complaint the
18 Special Master has reviewed has been complaints of that Alorica Staff are unhelpful and
19

20 ⁴⁰ *Employment Development Department, State of California*, News Release No. 20-23 (Jun. 4, 2020)
21 https://edd.ca.gov/About_EDD/pdf/news-20-23.pdf; *See Karen Price Mueller, EDD launches new tools, NJ*
22 *Advance Media including text message and chat bot services, to assist workers*, (May 11, 2020)
23 [https://www.nj.com/coronavirus/2020/05/cant-reach-nj-unemployment-labor-dept-launches-new-tool-to-](https://www.nj.com/coronavirus/2020/05/cant-reach-nj-unemployment-labor-dept-launches-new-tool-to-help.html)
24 [help.html](https://www.nj.com/coronavirus/2020/05/cant-reach-nj-unemployment-labor-dept-launches-new-tool-to-help.html)

25 ⁴¹ *See Robb Mayberry, EDD provides customer service and hiring updates, Cal OES News (July 9, 2020)*
26 [http://www.oesnews.com/california-workers-struggling-through-pandemic-receive-41-3-billion-in-](http://www.oesnews.com/california-workers-struggling-through-pandemic-receive-41-3-billion-in-unemployment-benefits/)
[unemployment-benefits/](http://www.oesnews.com/california-workers-struggling-through-pandemic-receive-41-3-billion-in-unemployment-benefits/)

1 rude to claimants. Untrained or “bad apple” staff are just compounding the issues and
2 inhibiting the State’s ability, “to ensure the successful processing of claims.” *See Appendix*
3 *7-3 (UIPL 13-20 dated 3/22/20 at p. 4sec. (ii))*. Moreover, disabled callers have claimed
4 they are not being accommodated. DETR must ensure communications are ADA complaint
5 so that people with disabilities (such as sight or hearing impaired) are provided equal
6 access. Additionally (ii) states that DETR “should ensure that individuals have access to
7 staff that have been properly trained to provide ... assistance and service to assist in claims
8 taking by facilitating routine acceptance information.” In all events, the DOL has made it
9 clear that State’s must notify claimants “on why and what steps the claimants can take to
10 ensure the successful processing of claims.” The evidence reviewed by the Special Master
11 raises serious questions about Alorica’s performance on behalf of the State.

12 *11. Claim statistics March 2020 to July 2020.*

13 a. Accepted and denied claims.

14 The table below compares the total number of PUA initial claims reported to the
15 Nevada Department of Labor on weekly claim reports. This data ranks Nevada compared
16 to total PUA initial claims. It is interesting that Nevada's rank on this chart is similar to
17 its ranking of PUA paid to total self-employment. This suggests that at the very least
18 Nevada's performance is similar to the performance of other states, both in terms of total
19 potential workload as well as total dollars paid.

Ratio of PUA Initial Claims to Pre-COVID Covered Employment				
PUA Initial Claims Through June 20				
State	Covered Employment	PUA Initial Claims	Ratio	Rank
RI	473,597	88,608	18.7%	1
MA	3,568,892	624,091	17.5%	2
MI	4,305,711	729,051	16.9%	3
AZ	2,885,408	462,728	16.0%	4
WA	3,351,028	432,381	12.9%	5
ME	603,932	72,354	12.0%	6
PA	5,814,461	691,712	11.9%	7
NJ	4,025,826	477,671	11.9%	8
NV	1,379,654	154,027	11.2%	9
LA	1,891,334	189,492	10.0%	10
MS	1,109,819	105,174	9.5%	11
NC	4,402,750	392,902	8.9%	12
NY	9,408,510	809,029	8.6%	13
MD	2,555,073	198,607	7.8%	14
OH	5,346,565	392,497	7.3%	15
MT	455,906	33,420	7.3%	16
HI	621,474	43,815	7.1%	17
ID	733,499	43,779	6.0%	18
CA	17,330,010	939,147	5.4%	19
AR	1,196,468	63,030	5.3%	20
IN	3,041,986	159,836	5.3%	21
NM	802,978	38,173	4.8%	22
TX	12,304,547	572,343	4.7%	23
CO	2,666,358	122,343	4.6%	24
AK	308,137	13,462	4.4%	25
SC	2,087,060	88,848	4.3%	26
WI	2,853,837	98,525	3.5%	27
AL	1,929,897	66,011	3.4%	28
MO	2,794,254	94,774	3.4%	29
KS	1,364,944	37,041	2.7%	30
ND	412,797	10,620	2.6%	31
CT	1,653,302	41,563	2.5%	32
IL	5,914,575	127,628	2.2%	33
WY	270,013	5,701	2.1%	34
IA	1,531,621	28,905	1.9%	35
DE	445,741	8,073	1.8%	36
VA	3,739,821	60,635	1.6%	37
TN	3,278,927	45,028	1.4%	38
OK	1,568,967	19,362	1.2%	39
NE	963,512	11,541	1.2%	40
SD	417,997	4,482	1.1%	41
UT	1,474,336	11,471	0.8%	42
VT	303,379	1,688	0.6%	43
MN	2,864,234	15,254	0.5%	44
DC	579,419	2,325	0.4%	45
KY	1,893,451	7,395	0.4%	46
OR	1,914,153	2,710	0.1%	47
FL	8,590,846	0	0.0%	48
GA	4,388,404	0	0.0%	48
NH	649,845	0	0.0%	48
VI	35,422	0	0.0%	48
WV	667,871	0	0.0%	48

source: <https://oui.doleta.gov/unemploy/csv/ar539.csv> and https://oui.doleta.gov/unemploy/docs/weekly_pandemic_claims.xlsx

iii. Process for filing a claim to receive FPUC.

1. Qualifying criteria for eligibility.

Individuals qualify for FPUC if they qualify regular unemployment compensation under state programs; Pandemic Emergency Unemployment Compensation (PEUC); Pandemic Emergency Assistance (PUA); Extended Benefits (EB); Short-Time Compensation (STC); Trade Readjustment Allowances (TRA); Disaster Unemployment Assistance (DUA); and Payments under the Self-Employment Assistance (SEA) program.

See UIPL No. 15-20.

FPUC is not available to those receiving benefits under a state's "additional benefits" program, which extends the duration of benefits during high unemployment to those in approved training programs who have otherwise exhausted benefits for a variety of reasons.

If qualified, individuals are entitled to the full \$600 FPUC weekly payment if they receive at least \$1 in a qualifying week under any of the above programs. This means that eligible individuals receiving even partial unemployment benefits (such as those working reduced hours) under a state program are entitled to the full supplemental \$600 weekly benefit.

2. Process for determining eligibility.

States must notify an individual of his or her entitlement to FPUC. The notification must include both the beginning and ending dates for the FPUC

1 program. States have flexibility in how they provide this notification. Individuals
2 do not need to separately apply for FPUC. *See UIPL 15-20.* This process is, in
3 theory, automatic.

4 *3. Fraud.*

5 Given that FPUC supplements the other programs, the fraud requirements equally
6 apply. There are no additional fraud requirements for FPUC requirements other than a
7 general Federal obligation on states to monitor for fraud like the other programs.

8 *4. Once a person was determined eligible, what benefits were due?*

9 FPUC is available from the week of unemployment, starting on or after the date on
10 which the state enters into an agreement with the DOL through the week of unemployment
11 ending on or before July 31, 2020. If a state is unable to immediately pay FPUC benefits in
12 the week following the execution of its agreement with the DOL, then the state must
13 provide retroactive payments to those eligible for FPUC for the missed weeks. *See UIPL*
14 *15-20.*

15 **E. What obligations did the State commit to when it entered into** 16 **agreement with DOL?**

17 On March 28, 2020, the state of Nevada, by and through Nevada ESD Administrator
18 Kimberly Gaa, entered into an agreement with the U.S. Department of Labor to carry out
19 the provisions of the Relief for Workers Affected by Coronavirus Act (CARES Act),
20 establishing the PUA and FPUC programs. As part of this agreement and in order to
21 participate in the programs, Nevada agreed to maintain certain records pertaining to its
25 administration of the programs and to furnish all information and reports deemed
26 necessary by the Department of Labor. The DOL required the state to administer benefits

1 pursuant to the requirements set forth in section 303(a)(1) of the Social Security Act and
2 use funds received from the programs only for the payment and administration of benefits.

3 The agreement further stipulated that if a state provided payments as part of the
4 programs to individuals who did not qualify, the state would “take such action as
5 reasonably may be necessary to recover ... all benefit[s] erroneously paid” and “restore any
6 lost or misapplied funds paid to the state for benefits or the administration of [benefits]”.
7 Lastly, the agreement required states to comply with all requirements in statute, operating
8 instructions and guidance, and program-specific addendum. If the Department of Labor
9 determines the state failed to comply with any of the agreement’s provisions or attached
10 materials, the agreement automatically terminates and no further benefits shall be
11 payable.

12 **IV. Timeline for ESD response to pandemic.**

13 A. March.

14 On March 12, 2020, DETR-ESD began receiving UIPL from the Department of Labor
15 regarding the administration of unemployment compensation and COVID-19. The initial
16 UIPL indicated the DOL was actively working on guidance to ensure states could effectively
17 administer the program. (*See Resp’t Opp’n. to Pet. for Writ of Mandamus, Ex. 2, Decl.*
18 *Kimberly Gaa, See Declaration of Kimberly Gaa, p.2*; *see also UIPL 10-20*).

19 On Saturday March 14, Ms. Gaa submitted a continuity of operations plan for ESD
20 to address the shutdown. This included information for remote access to technology
21 systems and the need to immediately expand hours for public access to UI call centers, plus
25 addressing staffing expansion for unemployment insurance.

1 On March 14, DETR announced it was expanding its business hours to accommodate
2 the increase in unemployment insurance claims while encouraging online filing. Its new
3 hours became 8 a.m. to 8 p.m. Monday through Friday and provided the telephone and call
4 center phone numbers. *See Appendix 16-16 (DETR Press Release, March 14, 2020).*

5 On March 15, the Department of Labor modified UIPL 10-20, changing how certain
6 covered employees are classified. There was more substantive guidance from the DOL on
7 March 22, which provided information for additional administrative funding for UI
8 operations.

9 From March 15 to April 4, Nevada saw standard UI claims that equated to multiple
10 years of work.

11 From March 16 through April 10, DETR ESD moved teams of staff from other units
12 within ESD to call centers.

13 On March 27, 2020, the Federal Government passed the CARES Act.

14 On March 28, Ms. Gaa signed an Agreement with the DOL that allowed for Nevada
15 to administer CARES Act funds through PUA, FEUC, and FPUC.

16 On March 31, 2020, DETR announced it entered into an agreement to take steps to
17 implement the CARES Act. It announced that it was expected to release program
18 guidelines shortly and implement programs, like FPUC, that would help independent
19 contractors, freelancers, gig workers and other workers. *See Appendix 16-17 (DETR Press*
20 *Release, March 31, 2020).*

21 B. April.

25 From April 2 through April 10, DETR IT and UI technical support staff began
26 working to stand up the FPUC addition to UI, which became effective March 29, 2020.

1 DETR was able to reuse and adjust its current UI system to accommodate the additional
2 \$600 payment.

3 On April 2, DOL issued UIPL 14-20, which outlined the basics of the CARES Act,
4 including highlighting the “Importance of Integrity” in the program and eligibility
5 requirements. *See Appendix 7-4 (UIPL 14-20).*

6 On April 4, UIPL 15-20 was released, which gave guidance on FPUC money and
7 explained how to administer the program.

8 On April 5, DOL released UIPL 16-20, outlining PUA requirements with operating
9 details and instructions. *See Appendix 7-7 (UIPL 16-20).* This letter further iterated that
10 the State must ensure that individuals who receive the benefits are eligible.

11 On April 8, DETR released a press release cautioning claimants about potential
12 insurance scams, suggesting tips from the Nevada Attorney General’s Bureau of Consumer
13 Protection.

14 On April 9, DETR-ESD entered into contract with Geographic Solutions, Inc. for
15 PUA software. The justification of work reads, in-part: “[a] new emergency program
16 included in the Federal Coronavirus Aid Relief, and Economic Security act, the Pandemic
17 Unemployment Compensation program, requires a technology solution to properly
18 administer.”⁴² The projected timeline for implementation was 3 weeks from the contract’s
19 initiation.

20
21 ⁴²*See Appendix 9-2 (Contract entered into by and between DETR-Employment Security and Geographic*
22 *Solutions, Inc. re: PUA Software)* . The Statement for Work is also attached. Geographic Solutions is a
23 privately held corporation based in Florida, which employs 340 full-time employees. The company has
24 experience in disaster response, including disaster employment system and mass layoffs. It has also been
25 involved in response to natural disasters: Deepwater horizon oil spill, hurricane Katrina, Louisiana floods,
26 just to name a few. In March 2013, for example, Louisiana was the first state to implement a program
designed to help with unemployment applications (Virtual OneStop). Geographic Solutions designed it.

1 On April 10, the DOL published guidance letter UIPL 17-20, which gave guidance
2 on implementing PEUC.

3 On April 12, code was launched into UInv so that FPUC payments could be
4 distributed to unemployment claim filers. Beginning April 14, filers would receive the
5 FPUC payments.

6 From April 13 through 27, several decisions were made to continue working to
7 standup the PUA program and improve Nevada's technical functionality to accept claims
8 in the program. On April 14, the Governor and Ms. Gaa formally announced that DETR
9 ESD was opening a separate call center for PUA filers, which was contracted under Alorica.
10 A staffing plan was written to submit to the Governor's Finance Office for the creation of
11 147 full-time positions to augment existing staff in favor of direct and indirect UI services.

12 On April 15, DETR announced a call center vendor, that the agency was partnering
13 with Alorica⁴³ to manage its staff and the call volume.

14 April 17, DETR issue a press release cautioning claimants about sharing information
15 with non-sanctioned sources to combat fraud.

16 _____
17 Geographic Solutions has implemented this program in multiple other states since then. It claims to have
18 expertise in software development, data conversion, systems integration, Microsoft, and customer service.
19 Specific to Coronavirus, Geographic Solutions stood up programs in Louisiana, Nebraska, Tennessee, and
20 Virginia.

21 The statement of work indicates that "Geographic solutions will implement the PUA system for [Nevada]
22 from Geographic Unemployment Insurance System (GUS) with the unique requirements" of integrating the
23 functionality within Nevada's EmployNV website, creating a PUA system based on DETR's configuration
24 options, creating a NV UI system interface, hosting applications to provide disaster recover customer service,
25 web based staff training for 4 days, maintaining the system, and providing general technical support.
26 Geographic Solutions certified that the PUA system would provide the ability to create initial and weekly
claims, as well as adjudicate and process payments. It offered other programs and training, that can be found
in the contract itself.

⁴³Alorica entered into a scope of work to establish phone support for the UI system on April 15, 2020, starting
with 100 full-time employees, or the equivalent. It promised that 15% of employees would be able to assist
in Spanish and was allowed to adjust its full-time employees by 10% depending on the requirements. The
State was required to provide training and publicize Alorica's services. *See attached Scope of Work for Alorica
program.*

1 On April 27, the emergency contract scope of work was finalized for the technical
2 PUA claim system, under emergency procurement.

3 On April 27, DOL issued UIPL 16-20, which changed program administration of
4 PUA—clarifying program eligibility and requirements. *See Appendix 7-6 (UIPL 16-20).*

5 From April 27 to May 10, DOL issued UIPL 18-20 and 22-20, which set guidance for
6 DOL and CARES Act fund disbursement, government entities, and funding for UI by
7 federal funding. It included multiple changes and clarification on CARES Act
8 implementation.

9 From April 30 through May 14, staff and a PUA technical vendor met with program
10 staff and technical staff to stand up the PUA system.

11 C. May.

12 From May 8 forward, a series of press releases about user-interface for CARES Act
13 implementation, PEUC and PUA were also announced.

- 14 • May 8 – press release announcing GSI as a vendor for PUA system.
- 15 • May 9 – code was released into DETR's traditional UC system UInv to
16 accommodate filers exhausting their standard UI claims and moving to PEUC
17 filing
- 18 • May 13 – press release announcing PEUC filing capabilities now active in the
19 system.
- 20 • May 14 – DETR issued a press release announcing it was launching a PUA
21 system on May 15 for taking applications and the payment function would be
25 launched May 23. Soon after, guidance was posted on the website.

- May 16 – PUA application process stood up. It received 25,000 claims within the first 12 hours it was live.
- May 23 – the PUA payment component of the PUA system was launched and the first payments went into a filer bank account on May 27.
- May 29 – DETR reviewed the number for payout and made payments to claimants totaling more than \$2 billion dollars since March 15. (In comparison, only \$6.75 billion in UI trust funds have ever been paid out).

D. June.

On June 3, DETR announced a record volume of calls to the PUA call center. In a press release, it disclosed that the call center received nearly 140,000 PUA claims and adjudication calls.

On June 6, additional system functionality was launched for PUA payments.

On June 12, a DETR UI Claim Center employee in Southern Nevada tested positive for COVID-19; the Call center was forced to halt to half capacity.

See Appendix 10 for a complete outline of DETR's response timeline.

V. PUA Claims Administration Data March 2020 to July 2020.

A. DETR Chief Economist David Schmidt Discussion and Analysis Regarding PUA Claims Data.

In his Declaration, DETR Chief Economist Schmidt, provided a comprehensive narrative to assist the Court in understanding the PUA claims data. First, he explained, looking at total initial claims, it was important to understand additional detail about what DETR meant by "initial claims." (*Ex. 1 to Resp't Opp'n. to Pet. for Writ of Mandamus, Decl. David Schmidt* 11). According to Schmidt, initial claims represent an initial application

1 for benefits, which must be followed by a series of weekly claims establishing eligibility for
2 each individual week of benefits. *Id.* There are three types of initial claims: new,
3 additional, and reopened claims.

4 New claims occur when a claimant first establishes eligibility for a new benefit year.

5 Reopened or additional claims occur when a claimant has an existing benefit year,
6 goes more than two weeks without filing for benefits, and wants to resume filing for
7 benefits. The Reopen/Additional claim process re-establishes eligibility.

8 Additional claims are recorded if the break in weekly filing was due to intervening
9 employment, Reopened claims are recorded when the break in filing was not due to
10 intervening employment.

11 Because the US Department of Labor uses initial claim data as a proxy to measure
12 job separations, Initial and Additional claims are included in the weekly ETA 539 report,
13 but Reopened claims are not. *Id.* Schmidt points out this is important point, in part,
14 because data of initial claims over a sufficiently long period of time may not correlate with
15 unique individuals. *Id.* Early in the pandemic it was a fair assumption that all types of
16 initial claims were representative of individuals newly-affected by the COVID-19 closures.
17 *Id.* With each passing week, that assumption becomes weaker. *Id.*

18 To help the Court understand the foundation supporting his data analysis, Chief
19 Economist Schmidt explained that the Unemployment Insurance Nevada ("UInv") was
20 built on an older architecture adapted from other states. The core code is therefore older
21 than the launch date of the system. (*Ex. 1 to Resp't Opp'n. to Pet. for Writ of Mandamus,*
25 *Decl. David Schmidt*, at 12). Extracting data from the system requires a detailed
26 knowledge of the interrelationship of both technical and program functions. *Id.* Different

1 queries run at different times and designed in different ways will yield different results.
2 *Id.* Through the course of the pandemic, DETR has made good-faith efforts to provide
3 information about the activity taking place in the system. That said, it was aware of the
4 fact that building detailed and precise reports would require months of dedicated work with
5 programmers to sort through these details, as it did when building DETR's federal reports
6 prior to the launch of UINV. *Id.* In their reporting, according to Schmidt, DETR uses a
7 blend of both the prespecified federal reports, such as the ETA 539, which are more
8 accurate but more inflexible, as well as a small number of queries and ad hoc reports, which
9 provide more flexibility but less testing and evaluation. *Id.* In reporting this data to the
10 public and other people outside the Unemployment Insurance ("UI") program, DETR tends
11 to refer broadly generalize overall activity, intending conveying the overall status of the
12 program but not the specifics of every possible detail and permutation.

13 Using data on claims by industry and using the most recent average weekly wage by
14 industry through June 20, total wages in Nevada have fallen by \$3.28 billion since March.
15 (*Ex. 1 to Resp't Opp'n. to Pet. for Writ of Mandamus, Decl. David Schmidt*, at 13) Due to
16 DETR's successes in paying unemployment benefits and the implementation of CARES Act
17 programs, over \$3.35 billion in benefits have been paid out on the basis of claims in the
18 regular UI program, a wage replacement rate of over 100%. (*Ex. 1 to Resp't Opp'n. to Pet.*
19 *for Writ of Mandamus, Decl. David Schmidt*, at 13). In the broader history of the UI
20 program, Nevada historically pays approximately 90% of weekly claims, but only
21 approximately 67% of initial claims. (*Ex. 1 to Resp't Opp'n. to Pet. for Writ of Mandamus,*
25 *Decl. David Schmidt*, at 14.)

1 Building on Chief Economist Schmidt's analysis of claims data, the next several
2 pages will provide the Court with the PUA claims data the Court inquired about during
3 the hearing and followed up on during the Special Master investigation. It will help the
4 Court understand how DETR has administered the PUA program, including:

- 5 ➤ Table re: PUA Claims status, PUA initial claims, PUA weekly claims filed,
6 and PUA money paid;
- 7 ➤ Nevada Unpaid PUA Claims (May 16 to June 21);
- 8 ➤ Unpaid PUA Claims In or Near Nevada (May 16 to June 21);
- 9 ➤ Issues on Unpaid Claims With Weeks Filed and Only One Issue on Claim;
- 10 ➤ Status of PUA Claims Filed May 16, 2020;
- 11 ➤ PUA Payments by Benefit Week Date;
- 12 ➤ Paid PUA Claims in Or Near Nevada (claim filed May 16-June 21);
- 13 ➤ Average Payment Time Lapse (Days);
- 14 ➤ Open Issues on Unpaid Claims;
- 15 ➤ Open Issues on Unpaid Claims Filed Before June 22, 2020;
- 16 ➤ Open Issues on Unpaid Claims Filed May 16, 2020; and
- 17 ➤ Resolved Issues on Unpaid Claims Filed May 16, 2020.

B. Table re: PUA Claims status, PUA initial claims, PUA weekly claims filed, and PUA money paid.

Claim Status	PUA Initial Claims	PUA Weekly Claims Filed	PUA\$ Paid, Excluding FPUC
A: Claim Paid	107,923	1,466,063	343,044,663
B: Failed Identity Check	17,179	128,132	NA
C: Apparent UI Wages	45,328	485,176	NA
D: No Weeks Filed	14,548	0	NA
E: Out of Country	2,830	35,139	NA
F: IP Issue	20,786	258,718	NA
G: Recent ? Activity Stop	23,912	298,605	NA
H: Other Outstanding Issue	5,511	62,783	NA
I: No Detail	9,013	94,711	NA

Data pulled from Copy of PUA database on 7/7/2020, reflecting data as of June 29.

C. Nevada Unpaid PUA Claims (May 16 to June 21).

7/14/2020

13-auto Nevada Unpaid PUA Claims, Issues and Weeks.html

Nevada Unpaid PUA claims May 16 to June 21			
Issue Description	Issue Code	Has Weeks Claimed	No Weeks Claimed
IP - Investigation Case Special Project	261	14,643	2,337
PUA - Other program eligibility	750	14,246	4,992
IP - Investigation SAR Internal	598	12,021	2,213
DUA - Unemployment not result of disaster	271	10,313	NA
Two-Factor Authentication failed - Bad phone	757	4,977	85
Invalid SSN	213	4,002	1,616
PUA Claim Stopped	197	2,099	310
PUA - Requires Staff Review	749	2,083	8
Two-Factor Authentication failed	758	1,691	40
Invalid Employer Chosen	200	1,529	205
PUA - Refusal to Telework	747	1,362	305
No employment history	189	536	10
Fraud - Conversion	235	397	7
Refusal of Referral	108	340	NA
PUA - Refusal of work	751	340	NA
PUA - Pension	752	294	NA
PUA - Receiving Sick Leave	748	188	66
Requires Staff Review	214	154	30
Pension	163	58	2
Potential Education Employee	190	50	6
IP - Investigation Staff Audit	265	50	22
Claimants immigration documentation has expired	470	24	7
PUA - Proof of employment sufficiency	753	22	4
Claimant worked outside of US or Canada	217	15	2

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D. Unpaid PUA Claims In or Near Nevada (May 16 to June 21).

7/14/2020

11-auto Unpaid Claims In or Near Nevada by Address May 16 to June 21.html

Unpaid PUA Claims In or Near Nevada				
Claim Filed May 16 to June 21				
Claim File Date	Has Weeks Claimed, ID Failed	Has Weeks Claimed, ID Passed	No Weeks Claimed, ID Failed	No Weeks Claimed, ID Passed
2020-05-16	56	1,709	7	263
2020-05-17	112	3,200	20	703
2020-05-18	63	1,537	11	421
2020-05-19	62	1,486	10	404
2020-05-20	56	1,192	14	271
2020-05-21	34	900	7	229
2020-05-22	43	789	16	217
2020-05-23	51	644	6	171
2020-05-24	37	593	5	166
2020-05-25	25	611	3	178
2020-05-26	35	462	6	227
2020-05-27	47	492	4	246
2020-05-28	35	512	15	221
2020-05-29	34	525	8	256
2020-05-30	36	331	12	212
2020-05-31	31	391	19	325

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Unpaid PUA Claims In or Near Nevada
Claim Filed May 16 to June 21

2020-06-01	43	273	12	261
2020-06-02	45	479	27	297
2020-06-03	80	504	28	261
2020-06-04	78	465	32	246
2020-06-05	88	450	33	241
2020-06-06	89	371	37	131
2020-06-07	81	325	26	88
2020-06-08	95	382	27	131
2020-06-09	124	568	50	176
2020-06-10	128	607	62	198
2020-06-11	200	850	89	204
2020-06-12	266	1,218	133	205
2020-06-13	248	1,101	118	192
2020-06-14	167	820	72	164
2020-06-15	245	1,354	119	224
2020-06-16	300	1,551	146	311
2020-06-17	169	960	76	207

7/14/2020

11-auto Unpaid Claims In or Near Nevada by Address May 16 to June 21.html

Unpaid PUA Claims In or Near Nevada

Claim Filed May 16 to June 21

2020-06-18	174	1,146	103	204
2020-06-19	218	2,098	108	244
2020-06-20	203	2,226	78	220
2020-06-21	204	1,964	77	195
sum —	4,002	35,086	1,616	8,910

E. Issues on Unpaid Claims With Weeks Filed and Only One Issue on Claim.

7/14/2020

9-auto Single Open Issues.html

Issues on Unpaid Claims	
With Weeks Filed And Only One Issue on Claim	
col_desc	issues
Decided	
PUA - Eligibility	5,037
DUA - Unemployment Ended	2,238
Working Full Time	2,061
DUA - Unemployment not result of disaster	1,540
PUA - Other program eligibility	1,051
Lack of Work	659
Two-Factor Authentication failed	526
IP - Investigation Case Special Project	500
PUA Claim Stopped	311
Base Period Wage Decrease	132
Invalid Employer	55
Two-Factor Authentication failed - Bad phone	34
Employed	30
Potential Education Employee	16
PUA - Refusal to Telework	15
No employment history	5
Requires Staff Review	4
Leave of absence	3
Invalid Employer Chosen	2
Refusal of Referral	1
Pension	1
Fraud - Conversion	1
Info Provided To Agency	1
PUA - Refusal of work	1

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Issues on Unpaid Claims	
With Weeks Filed And Only One Issue on Claim	
Open, Unresolved	
DUA - Unemployment not result of disaster	5,575
PUA - Other program eligibility	3,407
IP - Investigation SAR Internal	2,023
IP - Investigation Case Special Project	679
Two-Factor Authentication failed - Bad phone	476
PUA Claim Stopped	428
PUA - Requires Staff Review	409
PUA - Refusal to Telework	285
Two-Factor Authentication failed	158
Invalid Employer Chosen	123
PUA - Pension	118
Refusal of Referral	85
PUA - Refusal of work	85
No employment history	81
Fraud - Conversion	70
Invalid SSN	43
Requires Staff Review	32
PUA - Receiving Sick Leave	24
Potential Education Employee	17
Pension	5
IP - Investigation Staff Audit	4
Personal	3
Claimants immigration documentation has expired	3
Conditions on the Job	2
Health/Illness	2

Issues on Unpaid Claims

With Weeks Filed And Only One Issue on Claim

Discharge - No Reason Given	2
Vacation Pay	2
Discharge for cause	2
Claimant worked outside of US or Canada	2
Another job	1
Self-Employment	1
Failure To Report Due To Illegal Drug Use	1
Labor Dispute	1
Separation reason mismatch	1
Suspension	1
Info Provided To Agency	1
PUA - Eligibility	1
In Progress	
PUA - Other program eligibility	801
PUA - Eligibility	40
DUA - Unemployment not result of disaster	23
Weeks Claimed Prior to BYB	1
Lack of Work	1
DUA - Unemployment Ended	1
Voided	
Holiday Pay	85
Closed No Action	
Holiday Pay	19

F. Status of PUA Claims Filed May 16, 2020.

7/14/2020

2-auto First Filers Sumamry.html

Status of PUA Claims Filed May 16, 2020

Claim Status	Applications	Weekly Certifications	Total Paid ¹
A: Claim Paid	20,196	314,514	\$228,287,378
B: Failed Identity Check	197	2,344	NA
C: UI Wages, 0 Open Issues	2,997	37,595	NA
C: UI Wages, 1 Open Issues	309	4,147	NA
C: UI Wages, 2 Open Issues	76	1,015	NA
C: UI Wages, 3 Open Issues	20	303	NA
D: No Weeks Filed	646	0	NA
E: Out of Country	469	5,666	NA
F: IP Issue	720	9,036	NA
H: Other Outstanding Issue	493	6,633	NA
I: No Detail	1,274	15,527	NA

¹Includes PUA and FPUC

G. PUA Payments by Benefit Week Date.

7/14/2020

14-auto Payments by Week PUA and FPUC.html

PUA Payments by Benefit Week Date		
claim_bwe_date	pua_amount	fpuc_amount
2020-02-02	\$1,158	\$0
2020-02-09	\$3,077,168	\$0
2020-02-16	\$3,657,570	\$0
2020-02-23	\$4,159,822	\$0
2020-03-01	\$4,838,042	\$0
2020-03-08	\$6,785,419	\$0
2020-03-15	\$10,200,737	\$0
2020-03-22	\$19,545,973	\$0
2020-03-29	\$22,257,493	\$0
2020-04-05	\$23,680,839	\$56,448,360
2020-04-12	\$24,171,469	\$57,489,360
2020-04-19	\$24,465,974	\$58,194,420
2020-04-26	\$24,635,708	\$58,612,080
2020-05-03	\$24,666,980	\$58,779,480
2020-05-10	\$24,465,154	\$58,429,560
2020-05-17	\$23,855,650	\$57,193,380
2020-05-24	\$24,075,978	\$57,766,500
2020-05-31	\$24,105,968	\$57,967,080
2020-06-07	\$23,630,983	\$57,204,660
2020-06-14	\$22,473,278	\$54,347,160
2020-06-21	\$21,031,113	\$50,708,160
2020-06-28	\$13,586,289	\$31,972,140
2020-07-05	\$13,109,809	\$30,817,800
2020-07-12	\$10,632,275	\$25,052,400
2020-07-19	\$0	\$0

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14-auto Payments by Week PUA and FPUC.html

PUA Payments by Benefit Week Date

2020-07-26	\$0	\$0
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H. Paid PUA Claims in Or Near Nevada (claim filed May 16-June 21).

7/14/2020

12-PUA Paid Claims In or Near Nevada by Address.html

Paid PUA Claims In or Near Nevada

Claim Filed May 16 to June 21

Claim File Date	Has Weeks Claimed, ID Passed	Has Weeks Claimed, ID Failed
2020-05-16	7,839	NA
2020-05-17	11,015	NA
2020-05-18	5,301	NA
2020-05-19	4,533	NA
2020-05-20	3,115	NA
2020-05-21	2,463	NA
2020-05-22	2,255	NA
2020-05-23	1,851	NA
2020-05-24	1,595	NA
2020-05-25	1,422	NA
2020-05-26	1,815	NA
2020-05-27	2,099	3
2020-05-28	1,884	NA
2020-05-29	1,551	1
2020-05-30	1,357	2
2020-05-31	1,044	8
2020-06-01	1,190	NA
2020-06-02	1,295	NA
2020-06-03	1,380	4
2020-06-04	1,541	11
2020-06-05	1,587	NA
2020-06-06	1,290	NA
2020-06-07	972	NA
2020-06-08	1,142	NA
2020-06-09	1,544	11

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12-PUA Paid Claims In or Near Nevada by Address.html

Paid PUA Claims In or Near Nevada
Claim Filed May 16 to June 21

2020-06-10	1,830	17
2020-06-11	2,364	38
2020-06-12	2,333	34
2020-06-13	2,097	35
2020-06-14	1,760	60
2020-06-15	2,102	71
2020-06-16	2,377	43
2020-06-17	1,576	29
2020-06-18	1,546	36
2020-06-19	716	9
2020-06-20	505	10
2020-06-21	383	13
sum —	82,669	—

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I. Average Payment Time Lapse (Days).

7/14/2020

7-auto PUA Payment Time Lapse.html

Average Payment Time Lapse (Days)

Benefits For Week Ending	Average Week Filed Date	Average Payment Date	BWE Time Lapse	Weekly Claim Time Lapse	Payments
Dec 14, 2019	Jun 22, 2020	Jul 8, 2020	207	16	1
Dec 21, 2019	Jun 22, 2020	Jul 8, 2020	200	16	1
Dec 28, 2019	Jun 22, 2020	Jul 8, 2020	193	16	1
Jan 4, 2020	Jun 22, 2020	Jul 8, 2020	186	16	1
Jan 11, 2020	Jun 22, 2020	Jul 8, 2020	179	16	1
Jan 18, 2020	Jun 22, 2020	Jul 8, 2020	172	16	1
Jan 25, 2020	Jun 23, 2020	Jul 9, 2020	165	16	2
Feb 1, 2020	Jun 27, 2020	Jul 5, 2020	154	7	6
Feb 8, 2020	Jun 8, 2020	Jun 15, 2020	127	6	13,493
Feb 15, 2020	Jun 9, 2020	Jun 15, 2020	120	6	15,880
Feb 22, 2020	Jun 9, 2020	Jun 15, 2020	113	6	17,976
Feb 29, 2020	Jun 9, 2020	Jun 15, 2020	106	6	20,739
Mar 7, 2020	Jun 9, 2020	Jun 16, 2020	100	6	28,625
Mar 14, 2020	Jun 8, 2020	Jun 16, 2020	93	7	42,653
Mar 21, 2020	Jun 6, 2020	Jun 15, 2020	85	9	79,156
Mar 28, 2020	Jun 6, 2020	Jun 15, 2020	78	9	88,204
Apr 4, 2020	Jun 6, 2020	Jun 15, 2020	71	8	93,888
Apr 11, 2020	Jun 7, 2020	Jun 15, 2020	64	8	95,625
Apr 18, 2020	Jun 7, 2020	Jun 15, 2020	57	8	96,801
Apr 25, 2020	Jun 7, 2020	Jun 15, 2020	51	8	97,498
May 2, 2020	Jun 7, 2020	Jun 15, 2020	43	8	97,777
May 9, 2020	Jun 7, 2020	Jun 15, 2020	37	8	97,190
May 16, 2020	Jun 7, 2020	Jun 16, 2020	30	8	95,134
May 23, 2020	Jun 7, 2020	Jun 15, 2020	23	8	96,088
May 30, 2020	Jun 10, 2020	Jun 16, 2020	16	6	96,437

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7-auto PUA Payment Time Lapse.html

Average Payment Time Lapse (Days)

Jun 6, 2020	Jun 13, 2020	Jun 18, 2020	11	4	95,212
Jun 13, 2020	Jun 18, 2020	Jun 20, 2020	6	2	90,504
Jun 20, 2020	Jun 23, 2020	Jun 24, 2020	3	1	84,500
Jun 27, 2020	Jun 29, 2020	Jul 1, 2020	3	1	53,278
Jul 4, 2020	Jul 6, 2020	Jul 7, 2020	2	0	51,361
Jul 11, 2020	Jul 12, 2020	Jul 12, 2020	0	0	41,754

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J. Open Issues on Unpaid Claims.

7/14/2020

1-auto PUA Open Issue Sumamry.html

Open Issues on Unpaid PUA Claims

Unique claims: 203559

Issue Description	Unique Claims With Issue	Share of Unique Claims With Issue
IP - Investigation SAR Internal	159,230	78.22%
IP - Investigation Case Special Project	71,506	35.13%
PUA - Other program eligibility	60,272	29.61%
DUA - Unemployment not result of disaster	26,183	12.86%
Invalid SSN	24,309	11.94%
Two-Factor Authentication failed - Bad phone	15,473	7.60%
PUA Claim Stopped	5,781	2.84%
Invalid Employer Chosen	4,880	2.40%
Two-Factor Authentication failed	3,414	1.68%
PUA - Refusal to Telework	3,380	1.66%
PUA - Requires Staff Review	2,534	1.24%
No employment history	779	0.38%
PUA - Refusal of work	547	0.27%
Refusal of Referral	547	0.27%
Fraud - Conversion	511	0.25%
PUA - Pension	505	0.25%
PUA - Receiving Sick Leave	406	0.20%
Requires Staff Review	231	0.11%
Potential Education Employee	107	0.05%
IP - Investigation Staff Audit	86	0.04%
Pension	72	0.04%
Claimants immigration documentation has expired	40	0.02%
PUA - Eligibility	40	0.02%
Claimant worked outside of US or Canada	34	0.02%

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Open Issues on Unpaid PUA Claims

Unique claims: 203559

PUA - Proof of employment sufficiency	27	0.01%
Quit Freehand	22	0.01%
Voluntary Quit	15	0.01%
Workers' Compensation	12	0.01%
Suspension	9	0.00%
Discharge - No Reason Given	8	0.00%
Working Full Time	7	0.00%
Company Reorganization	6	0.00%
Conditions on the Job	6	0.00%
Health/Illness	6	0.00%
Prior Issue (separation)	6	0.00%
Vacation Pay	6	0.00%
Another job	5	0.00%
Personal	5	0.00%
Prior Issue (Non-Separation)	5	0.00%
Severance Pay	5	0.00%
Bonus	3	0.00%
Discharge for cause	3	0.00%
Failure To Meet Job Requirements/Standards	3	0.00%
Info Provided To Agency	3	0.00%
Labor Dispute	3	0.00%
Seek Other Work	3	0.00%
Self-Employment	3	0.00%
Transportation	3	0.00%
Base Period Wage Decrease	2	0.00%
Holiday Pay	2	0.00%

Open Issues on Unpaid PUA Claims

Unique claims: 203559

Moved	2	0.00%
Reduction in Hours	2	0.00%
Separation reason mismatch	2	0.00%
SSN Mismatch	2	0.00%
Tardiness	2	0.00%
Claim was reopened	1	0.00%
Domestic Responsibility	1	0.00%
DUA - No longer unemployed as direct result of the disaster	1	0.00%
Failure To Report As Scheduled	1	0.00%
Failure To Report Due To Illegal Drug Use	1	0.00%
Failure to Work Overtime/Additional Duties	1	0.00%
Health Certificate	1	0.00%
IP SSN/Name Mismatch	1	0.00%
Lack of Work	1	0.00%
Left In Lieu Of Discharge	1	0.00%
Military Spouse	1	0.00%
Personality Conflict	1	0.00%
Refusal of Work	1	0.00%
Sleeping On Job	1	0.00%
Wages Earned	1	0.00%
Working on a commission basis	1	0.00%

K. Open Issues on Unpaid Claims Filed Before June 22, 2020.

7/14/2020

8-auto PUA Unpaid Open Issues Filed Before June 22.html

Open Issues on Unpaid Claims Filed Before June 22, 2020

Unique claims: 61,484

Issue Description	Unique Claims With Issue	Share of Unique Claims With Issue
IP - Investigation Case Special Project	23,411	38.08%
PUA - Other program eligibility	22,631	36.81%
IP - Investigation SAR Internal	18,555	30.18%
DUA - Unemployment not result of disaster	12,476	20.29%
Invalid SSN	7,132	11.60%
Two-Factor Authentication failed - Bad phone	5,958	9.69%
PUA Claim Stopped	3,624	5.89%
PUA - Requires Staff Review	2,395	3.90%
Two-Factor Authentication failed	2,005	3.26%
PUA - Refusal to Telework	1,984	3.23%
Invalid Employer Chosen	1,856	3.02%
No employment history	641	1.04%
Fraud - Conversion	414	0.67%
PUA - Refusal of work	400	0.65%
Refusal of Referral	400	0.65%
PUA - Pension	347	0.56%
PUA - Receiving Sick Leave	300	0.49%
Requires Staff Review	220	0.36%
IP - Investigation Staff Audit	76	0.12%
Pension	67	0.11%
Potential Education Employee	65	0.11%
Claimants immigration documentation has expired	40	0.07%
PUA - Proof of employment sufficiency	27	0.04%
Claimant worked outside of US or Canada	23	0.04%

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Open Issues on Unpaid Claims Filed Before June 22, 2020

Unique claims: 61,484

Quit Freehand	22	0.04%
Voluntary Quit	15	0.02%
PUA - Eligibility	14	0.02%
Workers' Compensation	11	0.02%
Suspension	9	0.01%
Working Full Time	7	0.01%
Company Reorganization	6	0.01%
Conditions on the Job	6	0.01%
Discharge - No Reason Given	6	0.01%
Prior Issue (separation)	6	0.01%
Another job	5	0.01%
Personal	5	0.01%
Prior Issue (Non-Separation)	5	0.01%
Severance Pay	5	0.01%
Vacation Pay	5	0.01%
Health/Illness	4	0.01%
Discharge for cause	3	0.00%
Info Provided To Agency	3	0.00%
Labor Dispute	3	0.00%
Self-Employment	3	0.00%
Transportation	3	0.00%
Base Period Wage Decrease	2	0.00%
Bonus	2	0.00%
Failure To Meet Job Requirements/Standards	2	0.00%
Holiday Pay	2	0.00%
Moved	2	0.00%

Open Issues on Unpaid Claims Filed Before June 22, 2020

Unique claims: 61,484

Reduction in Hours	2	0.00%
Seek Other Work	2	0.00%
Separation reason mismatch	2	0.00%
SSN Mismatch	2	0.00%
Claim was reopened	1	0.00%
Domestic Responsibility	1	0.00%
DUA - No longer unemployed as direct result of the disaster	1	0.00%
Failure To Report As Scheduled	1	0.00%
Failure To Report Due To Illegal Drug Use	1	0.00%
Failure to Work Overtime/Additional Duties	1	0.00%
Health Certificate	1	0.00%
IP SSN/Name Mismatch	1	0.00%
Lack of Work	1	0.00%
Left In Lieu Of Discharge	1	0.00%
Military Spouse	1	0.00%
Personality Conflict	1	0.00%
Refusal of Work	1	0.00%
Sleeping On Job	1	0.00%
Tardiness	1	0.00%
Wages Earned	1	0.00%
Working on a commission basis	1	0.00%

L. Open Issues on Unpaid Claims Filed May 16, 2020.

7/14/2020

3-auto First Filer Open Issue Sumamry.html

Open Issues on Unpaid Claims Filed May 16, 2020

Unique claims: 7201

Issue Description	Unique Claims With Issue	Share of Unique Claims With Issue
PUA - Other program eligibility	2,171	30.15%
IP - Investigation Case Special Project	1,949	27.07%
DUA - Unemployment not result of disaster	1,405	19.51%
PUA Claim Stopped	1,229	17.07%
Two-Factor Authentication failed - Bad phone	977	13.57%
PUA - Requires Staff Review	761	10.57%
Two-Factor Authentication failed	351	4.87%
PUA - Refusal to Telework	219	3.04%
Invalid SSN	197	2.74%
No employment history	111	1.54%
Requires Staff Review	100	1.39%
Fraud - Conversion	86	1.19%
PUA - Refusal of work	80	1.11%
Refusal of Referral	80	1.11%
PUA - Pension	42	0.58%
Pension	30	0.42%
PUA - Receiving Sick Leave	30	0.42%
Quit Freehand	10	0.14%
Claimants immigration documentation has expired	9	0.12%
Claimant worked outside of US or Canada	8	0.11%
Voluntary Quit	8	0.11%
Potential Education Employee	7	0.10%
Suspension	6	0.08%

file:///Volumes/hutchlegal/Shared/Reno/Client Files/P/Payne v State of Nevada, et al.CV20-00755/Documents from DETR/July 13 Data Update/documents_2020071... 1/2

Open Issues on Unpaid Claims Filed May 16, 2020

Unique claims: 7201

Invalid Employer Chosen	5	0.07%
IP - Investigation Staff Audit	4	0.06%
Conditions on the Job	3	0.04%
Prior Issue (separation)	3	0.04%
Self-Employment	3	0.04%
Another job	2	0.03%
Company Reorganization	2	0.03%
Personal	2	0.03%
Reduction in Hours	2	0.03%
Discharge for cause	1	0.01%
Failure To Meet Job Requirements/Standards	1	0.01%
Failure To Report As Scheduled	1	0.01%
Health Certificate	1	0.01%
Health/Illness	1	0.01%
Info Provided To Agency	1	0.01%
IP SSN/Name Mismatch	1	0.01%
Labor Dispute	1	0.01%
Prior Issue (Non-Separation)	1	0.01%
PUA - Eligibility	1	0.01%
PUA - Proof of employment sufficiency	1	0.01%
Refusal of Work	1	0.01%
Separation reason mismatch	1	0.01%
SSN Mismatch	1	0.01%
Tardiness	1	0.01%

M. Resolved Issues on Unpaid Claims Filed May 16, 2020.

7/14/2020

4-auto First Filer Unpaid Resolved Issue Summary.html

Resolved Issues on Unpaid Claims Filed May 16, 2020

Unique claims: 7201

Issue Description	Unique Claims With Issue	Share of Unique Claims With Issue
PUA - Eligibility	7,184	99.76%
PUA - Other program eligibility	3,873	53.78%
Working Full Time	2,808	38.99%
DUA - Unemployment Ended	1,937	26.90%
DUA - Unemployment not result of disaster	1,722	23.91%
IP - Investigation Case Special Project	1,579	21.93%
Lack of Work	1,536	21.33%
PUA Claim Stopped	1,054	14.64%
Two-Factor Authentication failed	864	12.00%
Base Period Wage Decrease	425	5.90%
Employed	172	2.39%
Invalid Employer	144	2.00%
Two-Factor Authentication failed - Bad phone	96	1.33%
PUA - Refusal to Telework	23	0.32%
Potential Education Employee	21	0.29%
Requires Staff Review	16	0.22%
Leave of absence	14	0.19%
No employment history	9	0.12%
PUA - Refusal of work	7	0.10%
Refusal of Referral	7	0.10%
PUA - Requires Staff Review	5	0.07%
Prior Issue (separation)	3	0.04%
Discharge for cause	2	0.03%
Info Provided To Agency	2	0.03%

file:///Volumes/hutchlegal/Shared/Reno/Client Files/P/Payne v State of Nevada, et al.CV20-00755/Documents from DETR/July 13 Data Update/documents_2020071... 1/2

7/14/2020

4-auto First Filer Unpaid Resolved Issue Summary.html

Resolved Issues on Unpaid Claims Filed May 16, 2020

Unique claims: 7201

52 week fraud disqualification	1	0.01%
Claimants immigration documentation has expired	1	0.01%
Disagreement	1	0.01%
Discharge - No Reason Given	1	0.01%
Domestic Responsibility	1	0.01%
Fraud - Conversion	1	0.01%
Invalid SSN	1	0.01%
IP - Investigation Staff Audit	1	0.01%
Pension	1	0.01%
PUA - Pension	1	0.01%
PUA - Proof of employment sufficiency	1	0.01%
PUA - Receiving Sick Leave	1	0.01%
Quit Freehand	1	0.01%

1 **N. What are the causes for delays in determining eligibility and paying**
2 **benefits? What is being done to address each of the causes for delay?**

3 In addition to the data provided above concerning unpaid claims and the reasons for
4 those claims either being delayed or not being paid at all, it is important to understand the
5 data in the appropriate context. Initially, these claims were processed through the regular
6 unemployment insurance program, as the CARES Act would not be passed until two weeks
7 after the emergency declarations by the Governor and President. (*Ex. 1 to Resp't Opp'n. to*
8 *Pet. for Writ of Mandamus, Decl. David Schmidt*, at 9). From the week ending March 28
9 through the week ending June 20, DETR has processed over 3.5 million weekly claims for
10 benefits. *Id.* The closest comparable 13-week period in history ended July 11, 2009 with
11 1.02 million claims in that 13-week period. *Id.* But unlike 2009, DETR has done this with
12 a staffing level that was based on the lowest ratio of claims to employment in state history,
13 not one that had been able to be recruited, trained, and mobilized as the Great Recession
14 unfolded. *Id.*

15 **VI. Summary and current status of each petitioners' claims.**

16 Petitioners request a writ of mandamus and/or to bring a class action complaint for
17 damages. There are multiple petitioners. Petitioners bring their claims against DETR,
18 the Director of DETR, Ms. Korbolic, and the Administrator for the Employment Security
19 Division, Ms. Gaa. Petitioners request a class be certified, defined as all self-employed
20 individuals, independent contractors and/or the owners of sole proprietorships located
21 within the State of Nevada who do not pay their own wages as W-2 employees that have
25 been ordered to cease working by Governor Sisolak.

1 **A. Amethyst Payne.**

2 Amethyst Payne is a self-employed massage therapist doing business as Therapeutic
3 Massage by Amethyst who does not pay herself as a W-2 employee. She is a single mom
4 and the sole provider for herself and her minor child.

5 Ms. Payne filed federal tax returns for 2019, grossing about \$34,000. Her net income
6 is the amount of money remaining after she pays rent on her studio, buys supplies, pays
7 licensing fees and taxes, pays vendors for services to the business and pays any other
8 expenses necessary to maintain her business. She does not treat profits as payment of
9 wages for tax purposes.

10 Ms. Payne grossed about \$1,150 for the week before May 15, 2020 and was looking
11 forward to a great year financially. She applied for Unemployment Insurance from the
12 State of Nevada. She was informed that the Coronavirus Aid, Relief, and Economic
13 Security Act (CARES Act) was signed into law by the President on Friday, March 27, 2020
14 and that on or about April 5, 2020, the United States Department of Labor published its
15 guidance of Pandemic Unemployment Assistance which included details on payment by
16 State Unemployment agencies of at least \$600 of federally mandated and federally paid
17 Unemployment for individuals like her.

18 Ms. Payne's application for unemployment was denied because she had no W-2
19 income from her business. She feels this is true with every self-employed individual that
20 is similarly situation and does not believe it is compliant with federal law.

21 According to DETR information, Ms. Payne's claim was resolved, and payment was
25 first rendered on June 3, 2020.

1 **B. Iris Posada-Mireles.**

2 Iris Posada-Mireles is a self-employed interactive adult cabaret performer. She is a
3 single mom and the sole supporter of herself and her five-year old child. She earns income
4 as a server and bartender, in addition to her cabaret job. She does not pay herself as a W-
5 2 employee for the income received as a result of her dancing but does have a W-2 for income
6 as an employee as a server and bartender.

7 Ms. Mireles filed a federal tax return in 2019. She made approximately \$24,000 a
8 year from dancing. She does not pay herself on a W-2 nor does she file a 1099. She believes
9 there are 300 other entertainers like her at the Spice House dance club in Reno, Nevada.
10 In her spare time, she worked as a part time bartender and food serve. However, when she
11 applied for unemployment compensation ESD rejected her because she did not earn enough
12 income to qualify for the program. Her understanding of the DETR website is that there
13 is no option for her to apply for the federal unemployment compensation program. Because
14 she makes money from individual customers, in small denominations, it would be
15 unrealistic to expect a 1099 from each customer.

16 According to DETR information, Ms. Mireles' claim was resolved, and payment was
17 first rendered on June 27, 2020. *See Appendix 3 (Payment Status of Claimants).*

18 **C. Anthony Napolitano.**

19 Anthony Napolitano was a Lyft Driver and 1099 employee for TGJ Painting in
20 Henderson Nevada, prior to March 15, 2020. He lives in Las Vegas with his wife and three
21 minor children. When the COVID shutdown occurred, Mr. Napolitano applied for UI on
25 March 27, 2020. He was denied because he was a 1099 employee. On May 16, 2020, he
26 submitted a claim as an independent contract with DETR. He received a monetary

1 determination from DETR stating he was eligible for \$469 a week under PUA plus \$600 a
2 week under FPUC. Mr. Napolitano then filed for back weeks (2 months worth).

3 Mr. Napolitano's web portal initially said: "IP ISSUE, WORKING FULL TIME, PUA
4 Other program eligibility." Three days later, on May 27, 2020, Mr. Napolitano's webpage
5 status changed to show that there was an unresolved issue.

6 Mr. Napolitano made thousands of unsuccessful calls to DETR's phone lines
7 beginning on June 1, 2020 through June 19, 2020. He notes that after 5 minutes and 34
8 seconds, the calls automatically disconnect. He was never able to speak to anyone at DETR
9 and has still not been paid any unemployment compensation.

10 According to DETR information, Mr. Napolitano's claim was resolved and payment
11 was first rendered on June 27, 2020. *See Appendix 3 (Payment Status of Claimants).*

12 **C. Isaiah Pavia-Cruz.**

13 Isaiah Pavia-Cruz worked in Las Vegas as a contract driver for Lyft, Uber and
14 Instacart. On May 20, 2020, he filed for unemployment on DETR's gig worker website. He
15 received a "PUA Monetary Determination" letter on May 22, 2020, and again on May 27,
16 2020. He filed weekly certification reports as required under DETR. For weeks after he
17 filed, DETR showed that there were unresolved issues: including, PUA eligibility and
18 unemployment not due to disaster.

19 One week after the filing of the complaint in this lawsuit, the issue disappeared from
20 his personal DETR progress report webpage. However, his webpage now says "no
21 outstanding issues" but in summary it says there are unresolved issues. He has spoken
25 with DETR representatives by phone, the representative told him to wait 21 days from the
26

1 initial application. It has been more than 21 days and nothing has happened. DETR has
2 not yet made him payments.

3 According to DETR information, Mr. Cruz's claim was resolved and payment was
4 first rendered on June 27, 2020. *See Appendix 3 (Payment Status of Claimants).*

5 **D. Victoria Waked.**

6 Victoria Waked is a single mother of a child with special needs in Southern Nevada.
7 Until the pandemic shut things down, she worked as a 1099 independent contractor skin
8 care specialist and make-up artist. She hasn't worked or made money since March 13,
9 2020.

10 On May 16, the first day that gig workers could apply through DETR, she applied
11 for unemployment. Initially her portal said there were no unresolved issues.

12 On May 23, 2020, DETR did a system update, which allowed her to update her
13 weekly certifications. Four new codes appeared at that time: lack of work, working full
14 time, DUA unemployment not result of disaster, and DUA unemployment ended.

15 Despite repeated attempts, Ms. Waked could not get through to a DETR
16 representative. On June 9, the PUA portal still said there were unresolved issues. She
17 has not been paid and can still not get in contact with a DETR representative. Ms. Waked
18 has gone three months with no income. Her credit cards are maxed out and her savings
19 are gone.

20 According to DETR information, Ms. Waked's claim was resolved and payment was
21 first rendered on June 27, 2020. *See Appendix 3 (Payment Status of Claimants).*

1 **E. Charles Ploski.**

2 Charles Ploski drove Lyft in Las Vegas full-time from December 2018 through March
3 14, 2020. He rented a car through Express Drive through Hertz to work. In March, the
4 demand for Lyft rides greatly decreased so he had to turn the vehicle in because his
5 earnings did not cover the rental expense. He applied for regular UI on March 29, 2020,
6 because he was informed that UI was a condition of PUA eligibility. He was denied on
7 April 1, 2020. He filed for PUA benefits on May 16, 2020. He uploaded his earning
8 statements from Lyft. He received a determination from DETR stating that he was
9 ineligible on May 22, 2020.

10 Since receiving his “Determination of Monetary Benefits” denial, he has spoken to a
11 DETR representative twice. The first time he was told he was eligible and should wait.
12 The second time, he was told that there was an outstanding issue, and no issue,
13 simultaneously. The DETR representative told him that everything was in progress, and
14 that he should wait for his benefits. He never received any payment.

15 According to DETR information, Mr. Ploski’s claim was resolved and payment was
16 first rendered on June 27, 2020. *See Appendix 3 (Payment Status of Claimants).*

17 **F. Dariush Naimi.**

18 Dariush Naimi is an independent contractor with Uber in Las Vegas. When the
19 COVID lockdown occurred, his revenue dropped significantly and his income went down
20 60%, even though he worked more hours. On May 16, 2020, he applied for unemployment
21 on DETR PUA page. He received a letter on May 22, 2020, stating that he was eligible for
25 \$181 a week, but it did not reflect the \$600 FPUC payment. His DETR PUA account listed
26 “unresolved issues,” and he continued to file weekly certifications.

1 Soon after, his PUA account said that he was not unemployed because of disaster.
2 There was an “issue description” listed on his account. And his certifications read as in
3 progress. As of June 6, 2020, his certifications read “Excessive earnings.”

4 **G. Tabitha Asare.**

5 Tabitha Asare lives in Las Vegas, Nevada and is a sole proprietor. She applied for
6 unemployment compensation on May 16, 2020, through DETR’s gig worker webpage. ON
7 May 22, 2020, she received a monetary eligibility letter indicating she would receive \$469
8 per week. The letter also notified her she was eligible for PUA.

9 She filed her first weekly claim on May 23, 2020 and received two codes on her
10 account. One was about identity and the other said “PUA – other program eligibility.” She
11 continued filing claims, however her claims said unresolved.

12 On June 9, Ms. Asare called DETR and spoke to a woman who approved her claim.
13 The woman sent her an approval letter, which determined her claim was approved and
14 with PUA benefits. When she was not paid, and her online portal indicated there was an
15 “unresolved issue,” Ms. Asare spoke to a DETR representative who told her the issue was
16 there to flag a supervisor to pay her.

17 The next day, Ms. Asare used 10 phones to try and get through to a DETR
18 representative. The representative advised her there was a glitch in the system and it
19 would be resolved within 48 hours.

20 On June 16, 2020 she again spoke to a third DETR representative who told her that
21 the previous representative lied to her and that it would take an additional 20-30 days.
25 Apparently, the representative was dismissive of Ms. Asare’s need for money, calling it

1 “extra money” that she should not plan her life around. This representative told her there
2 were still issues in her filing.

3 According to DETR information, Ms. Asare’s claim was resolved and payment was
4 first rendered on June 27, 2020. *See Appendix 3 (Payment Status of Claimants).*

5 **H. Scott Howard.**

6 Scott Howard is an Uber driver who is not able to drive for Uber. The lockdown
7 affected his business, he is depressed, and he struggles to get out of bed. He is lucky to
8 have family that can help support him, but, he feels degraded that he needs to ask for
9 support.

10 Mr. Howard filed a PUA claim the first day it became available on May 16, 2020. He
11 was assigned claim number 74. He has not received PUA benefits. He spoke to a DETR
12 representative on the PUA adjudication phone line three times. On June 8, 2020, the DETR
13 representative told him that he had cleared the claim issues. The DETR representative
14 sent him an approval letter via email while he was still on the phone. However, his online
15 progress report said there was unresolved issues. He was told on the phone that the issue
16 was resolved and he would receive a payment shortly.

17 On June 9, 2020, he called DETR again to check the status of his payment. He was
18 told the previous operator didn’t clear his claim correctly. This DETR representative told
19 him she fixed the problem and he should see his payment in 24-72 hours. He never received
20 a payment.

21 On June 16, 2020, a third DETR representative told him the same thing, claiming it
25 was a glitch in DETR’s system.

1 According to DETR information, Mr. Scott's claim was resolved and payment was
2 first rendered on June 27, 2020. *See Appendix 3 (Payment Status of Claimants).*

3 **I. Ralph Wyncoop.**

4 Ralph Wyncoop is an UBER Driver. He is a disabled veteran, diabetic, and in the
5 high-risk category for Covid-19. He has been hospitalized two times for pneumonia. He
6 has no money to live on and cannot get a short-term loan because he does not have verifiable
7 income. His credit cards are maxed out.

8 Mr. Wyncoop does not qualify for PUA because he does not have verifiable income.
9 He has been using the local food bank; however, they have limited supply. He filed on the
10 first day the PUA site was available and it said the claim was in process, and that he is
11 entitled to \$445 a week plus \$600 going back to March 15, 2020.

12 Mr. Wyncoop has not received any money. He has called Senator Titus' office many
13 times. He called his Congresswoman. He has reached out to many people. When he
14 applied for UI, there was no PUA portal. When it opened, however, he applied for PUA.
15 On June 12, 2020, he was able to get through to DETR on the phone line. However, there
16 has not been a resolution. His application says, "claim in process."

17 Mr. Wyncoop was contacted by an investigator from DETR this week. He was asked
18 to upload his driver's license, a current bill, and Social Security Card. Mr. Wyncoop
19 reported that he was flagged because the VPN on his laptop he has been submitting his
20 claims from has been pinged from other countries. The investigator stated she will be
21 working on getting Mr. Wyncoop his claim paid.

1 **J. Elaina Abing.**

2 According to DETR information, Ms. Abing's claim was resolved and payment was first
3 rendered on June 27, 2020. *See Appendix 3 (Payment Status of Claimants).*

4 **K. William Turnley.**

5 According to DETR information, Mr. Turnley's claim was resolved and payment was
6 first rendered on June 27, 2020. *See Appendix 3 (Payment Status of Claimants).*

7 **VII. The Gig Worker Class: Review and analysis of emails and other**
8 **communications from people presumed to be within the class.**

9 In their *First Amended Petition For Writ Of Mandamus and/or Class Action*
10 *Complaint For Damages*, Petitioners asserted their cause of action on behalf of themselves
11 and a class of workers referred to as the "Gig Worker Class." Petitioners defined this class
12 as follows:

13 All self-employed individuals, independent contractors and/or the owners of sole
14 proprietorships who do not pay their own wages as a W-2 employee (also referred to as gig
15 workers) and who worked within the State of Nevada immediately prior to March 15, 2020,
16 and who have suffered a significant reduction of income, revenue and/ or earnings from
17 said work as a result of Governor Sisolak's Declaration of Emergency for COVID-19 dated
18 March 12, 2020 and effective March 15, 2020 or the presence of COVID-19 Pandemic in the
19 State of Nevada, and who have on or after May 16, 2020 submitted to Defendant-
20 Respondents DETR a prime facie eligible claim for unemployment compensation pursuant
21 to Coronavirus Aid, Relief, and Economic Security Act ("CARES" Act) but who have not yet
25 been paid the applicable amount of PUA program funding, which is not more than 39 weeks
26 of unemployment benefits on the same basis as regular W-2 workers for every week

1 unemployed or suffering economic harm due to the COVID-19 Pandemic, retroactive to
2 January 27, 2020 and ending on or before December 31, 2020, plus an additional \$600 per
3 week to all eligible gig workers for every week after March 15, 2020 until July 31, 2020 (for
4 a total of 24 weekly payments.).

5 This Office received over 6000 pages of communications from claimants. Most of
6 these claimants are within the Gig Class of workers asserted by Petitioners. The
7 communications were sent via e-mail directly to the Special Master, received in the general
8 inquiry e-mail mailbox on the Hutchison & Steffen website, received on the Hutchison &
9 Steffen voicemail system, or forwarded from Petitioners' counsel. After reviewing each
10 communication and correcting, as best we can, for duplication or multiple messages
11 received from the same claimant, our best estimate is that a total of approximately 3084
12 separate claimants have had their communications reviewed by this office. We prepared a
13 spreadsheet that itemizes these communications for ease of review by the Court which also
14 preserves the anonymity of the claimants. [Appendix 1, Spreadsheet of Itemized Claimant
15 Communications]. It should be noted that while we have reviewed all communications
16 received by this office through the time of filing this report, our spreadsheet includes only
17 those communications we received through the morning of July 13, 2020. This limitation
18 is simply due to the large volume of communications and the time constraints this Office
19 faced in preparing the spreadsheet. In addition, we have collected all written
20 communications received through the morning of July 13, 2020, Bates-stamped them, and
21 marked them as Appendix 2, Confidential Copies of Claimant Communications Binders I-
25 VII (FILER0001-5068.) It should be carefully noted that Appendix 2 contains various

1 identifying information including social security numbers. Appendix 2 will be provided to
2 the Court upon request and should remain under seal at all times.

3 Out of the total approximately 3084 claimants who have communicated with our
4 office, 685 either concerned only W-2 workers or did not contain enough information to
5 determine whether they qualified for PUA. Therefore, this portion of the report concerns
6 information gleaned from approximately 2399 claimants. We also note that a total of 652
7 claimants have not received any benefits, but we cannot give any further information
8 concerning these claimants because no other details were provided.

9 In the process of reviewing communications from claimants, various patterns
10 emerged. This Office attempted to categorize these patterns into identifiable issues, or
11 potential “bottlenecks,” based on the descriptions from the claimants. However, it should
12 be noted that this office has not attempted to adjust these descriptions to comport with
13 categories identified or described by DETR. The claimants are laypersons and therefore do
14 not have any experience with DETR’s internal processes and vernacular. It should also be
15 noted that more than one of the issues we have identified can affect a particular claimant.
16 In addition, and as an overarching observation, our office has a strong impression that
17 there is a disconnect between the information that the claimants see on their dashboards
18 on the website for their claims and the information that DETR personnel is interpreting
19 when running reports on the PUA program.

20 The highest number of reports received concerned claimants who identified
21 themselves as “first filers.” We interpreted this term to refer to those potential PUA
25 recipients who filed their PUA claims sometime during the period between May 16th and
26 May 24th. It is our understanding that May 16th was the first day the PUA website became

1 active and therefore the first a claimant could file for PUA benefits. It appears that
2 claimants who filed any time during the first week the PUA website became active could
3 be identified as first filers. It appears that all of the first filers who have sent information
4 concerning their cases have not received any payment under the PUA program.

5 While many first filers indicate they have certain problems or errors associated with
6 their claims (these claimants will be discussed below), many other first filers state they
7 have no identifiable problems and still have not been paid.

8 The claims of the first filers who state they have no identifiable problems with their
9 claims and still have not been paid say that their payments are identified as “in progress”
10 on the PUA website. The following claimant, whose communication is dated June 16, 2020,
11 describes this situation:

12 I work in a local salon, and on March 17, 2020, I was forced to quit
13 working. I forfeited my only income to comply with the state in
14 order to combat Covid-19. While I was expecting to only be out of
15 work for 30 days, I was not surprised when that turned into 2.5
16 months without any income. When the state launched the PUA
17 system, I was hopeful that I could maybe put this whole situation
18 behind me, but I was sadly mistaken. I filed my claim at 4:00 am
19 May 16, 2020, my claim number was 1103. I was one of the first
20 few to file. 4 weeks have gone by and I have not received a dime.
I call almost every day, and the few times I have gotten through
I’m told the same thing. “Everything on your claim looks fine, just
keep waiting, this system doesn’t work on a first come first serve
basis, but when someone can look at your claim and review it,
you’ll get paid. Good luck!” I have shed many tears and wasted
countless hours, only to feel even more hopeless. I’d like to say I’ve
remained positive, but this chapter in my life is dark. I’ve
struggled mentally, and I feel as if Nevada has failed [its] people.

21 [FILER0627]

1 Another claimant described this situation in a communication dated July 9, 2020:

2 (I applied for PUA on May 16th, 2020, and remain in a status of
3 “In Progress” and “No Outstanding Issues”, but unpaid going on
4 8 weeks). I have first-hand knowledge about the following issues
5 that are contributing to the bottlenecks...First, please investigate
6 the reasons DETR is continuing to process “newer” claims while
7 “older” claims sit idle: There are 10’s of thousands of filers from
8 the first week PUA was available...whose files are clean and have
9 “No Outstanding Issues”. While they wait for payment, new filers
keep applying and are getting paid within 2 weeks! In fairness to
the “older” filers, DETR should spend less time on new claims,
and more of their limited time on old claims, and make the
“newer” claims have to wait just a bit more. In other words, go in
order the claims were filed. It makes little sense for older claims
to wait 8 weeks and counting, in the “In Progress” stage, while
newer claims wait only 2 weeks.

10 [FILER0635]

11 A large number of first filers describe their claims with the following indications on
12 the website: “Claim Under Review: No; Unresolved Issues: Yes.” Many have sent
13 screenshots of this information. Numerous claimants have offered similar explanations for
14 this “glitch.” It appears that before May 30th, there was not an option that clearly applied
15 to many claimants. Those claimants therefore tried to choose among many options that
16 did not apply very well to their circumstances. One claimant summarized this problem:

17 When gig workers were finally able to file for PUA on May
18 16th, the option [“You have a reduction in gig work due to Covid-
19 19. Gig work includes Uber, Lyft, Musicians, Instacart,
20 freelancer.”] DID NOT EXIST, nor did it exist on May 23rd...That
21 option did not appear to claimants because it wasn’t added into
the EmployNV.gov system until May 30th! So, gig workers in
these (or associated) fields had to choose the best answer that fit
their situation from the OTHER 14 available options available
before then.

25 Outside of having a diagnosis for the virus by the gig
26 worker or family member, the best answer available if a person
had a reduction in gig work due to Covid-19 may have simply
been “You were scheduled to commence employment and do not

1 have a job or are unable to reach the job as a direct result of the
2 Covid-19 public health emergency.”

3 Another option might have been “Your employer reduced
4 your hours due to Covid-19”. Since the self-employed gig worker
5 is their own employer, for many people that was the best
6 available answer when the “You have a reduction in gig work”
7 bubble option was not available.

8 But now DETR is using those answers claimants had
9 available to that question-at the time-to disqualify 34,000 of
10 them from PUA and are also saying they are being investigated
11 for fraud.

12 Also, on May 16th, ...claimants were required to file their
13 weekly certifications for ALL of their back weeks. That means
14 some, who filed back to Feb. 8, needed to file up to 15 weeks in
15 one session, using the best available bubble answer, but not the
16 one that was available later on May 30th. So now they have 15
17 weeks, plus one week for May 23rd (making 16 total weeks),
18 where they are stuck with the original answer they gave, that
19 DETR says is invalid to qualify.

20 Since claimants cannot go back into the system to change
21 their answers to weekly certification (there is no final submit
22 button if you try), it is possible that a claimant will be
23 disqualified for 16 weeks[?] worth of PUA, in which they are
24 actually qualified.

25 [FILER0637]

26 As indicated in the quote above, many of the “unresolved issues” claimants are seeing
on their claims pages on the website could be explained by their choosing an inexact
category because an applicable category was not available at the time of initial filing. In
addition, it should be noted that many claimants describe certain of these issues being
identified on their claims, and then “falling off” later. Nevertheless, the “Unresolved issues:
yes” indication continues on their accounts on the website and the claimants have still not
received any payments.

Another explanation for the “Claim Under Review: No/Unresolved Issues-Yes”
problem was received by this office from a person who sent an email to the Hutchison &

1 Steffen general inquiry e-mail mailbox to the attention of the Special Master. This person
2 specifically indicated a wish to remain anonymous. The text of the email is set forth below,
3 unedited:

4 Nevada UI needs to know that the 'fraud' is IT error! I
5 previously worked for Alorica and have to be anonymous here. A
6 large bulk of the court issue will be rooted in the fact that an IT
error, is what flagged fraud, and that has frozen movement on
tens of thousands of claimants.

7 It is not being addressed and no process is in place to
address it. This was an IT issue.

8 The software/database/operating system made errors that
9 affected all claimants system wide on a random weekend in the
beginning (specifically the second weekend of launch if memory
serves) and the PUA system started assigning fraud issues that
never applied-to ALL in the PUA system at the time.

10 For example (lack of work not caused by disaster when the
checkbox clearly stated disaster /...or "wages exceed award
11 amount" and wages were zero.../"worked out of state" yet never
had...and checked appropriate box...The system was later cleared
12 with a message of "IP special case" that then disappeared but...

13 When it was 'fixed'

14 All system claimants were flagged for an "unresolved issue-
yes" the call centers claimants contact NV state and are told
everything is fine, and to wait, but the account needs to be fixed/
15 these accounts are not separately flagged to be viewed and has
fallen into the abyss of hundreds of thousands of incomplete
accounts and accounts with legitimate issues. Additionally, the
16 state is asserting people applied from IP addresses out of state.
Claimants who legit live out of state but worked in Nevada would
17 be required to do so

18 If ignored they will not be seen by human eyes to fix it and
are in limbo tossed between all the claimant accounts It is not the
constituents financial burden to bear at this point

19 Nevada seems to be the only state nearby that has a
completely separate database for PUA and every single claimant
20 that applied near the first and second weekend of launch are the
issue.

21 Other states issue checks 'only' in order to use existing
payment systems and comply with timelines.

25 California pays bi weekly to accommodate their needs.
Washington state was reported to have paid 300 million in
26 international based fraud claims within the first ten days...

1 They are still running and going. In Vermont the governor
2 issued state based 1200 stimulus money not once but twice to all
3 waiting claimants not processed because of UI taking too long.

4 The system erroneously flagged fraud and is still causing
5 the witch hunt today.

6 [FILER5021-5022]

7 We have also received many communications from claimants that explain, in
8 addition to other issues (such as being first filers and having selected an inexact category),
9 the claimants had initially applied for UI benefits. These claimants also typically state
10 that, although they knew they didn't qualify for UI benefits because they are independent
11 contractors, they applied for UI benefits at the direction of someone they had contacted
12 either at DETR or Alorica, the third-party administrator. It should be noted that while
13 many "first filers" identify this problem, they are often claimants who would not be properly
14 categorized as the first filers. One claimant, who describes himself as an independent
15 contractor who helps clients market events such as trade shows and business conferences,
16 details this experience in a communication dated June 26, 2020:

17 On April 6, a DETR rep took my initial unemployment
18 claim over the phone. She told me that getting the claim into the
19 regular UI system might put me a step ahead of things when
20 DETR started processing claims from 1099 workers/independent
21 contractors.

22 Since then, I've received 2 monetary determinations
23 generated by the regular UI system indicating that I had no W2
24 wages and was therefore ineligible for benefits. I appealed both
25 of those determinations by fax and told DETR-once again-that I
26 am an independent contractor with 1099 income only.

27 On the day the new PUA system went live in May, I filed a
28 new initial claim in that system. And on May 22, I received a
29 monetary determination indicating that I am eligible for a weekly
30 state benefit of \$469. I did not appeal that determination since it
31 appears to be correct based on my quarterly income during 2019.

32 I have now been waiting 14+ weeks for benefits that are
33 DESPERATELY needed. And despite many, many calls to

1 understand the reason for the delayed payments, I was unable to
2 get any meaningful guidance from DETR.

3 **UNBELIEVABLY**, I spoke with a DETR rep in the
4 adjudication center last night and was told that my claim has
5 been flagged as potentially fraudulent. It is ridiculous that DETR
6 is just telling me this now.

7 **The claim is absolutely not fraudulent, and I**
8 **absolutely AM entitled to PUA benefits under the CARES**
9 **Act.** More than a dozen of my colleagues in other states (NY, NJ,
10 FL)-people who perform exactly the same work and get paid
11 exactly the same way-have been receiving PUA benefits for
12 several weeks now.

13 [FILER0648]

14 Another issue claimants have identified “outstanding claim issue” on their accounts
15 on the website, which is described as “DUA-unemployment not result of disaster.” One
16 claimant who states that she is a private piano teacher and an independent contractor for
17 a performing arts center wrote:

18 I believe the holdup is that there are unresolved issues on my
19 account, namely the “**DUA-unemployment not result of**
20 **disaster.**” There is a ridiculous question that asks, “As of x date,
21 were you unemployed due to the Covid-19 pandemic?” I always
22 answered “no” because technically I am not unemployed and am
23 working part-time. Apparently this question also means
24 underemployed but it is not clearly spelled out. It’s very sneaky
25 and misleading. Now I am stuck.

26 [FILER5023]

27 The claimant quoted above also notes that she was paid for a few weeks, but she
28 stopped receiving payments the fourth week of June. A review of the screenshots she
29 included with her communication shows that she was affected by a common problem among
30 those claimants who have received partial payment—a cessation of payments as of June
31 28, 2020. This cessation of payments seems to be a malfunction affecting all claimants who

1 have communicated with us who have received at least a few payments. Another claimant
2 who sent our office an email described this problem:

3 My self-employed unemployment benefits for the weeks
4 ending June 27 and July 4 have been delayed by a NEW problem
5 with the DETR system. I spoke with them and they said it might
6 be impacting hundreds of possibly thousands of others and they
7 said they can't fix the glitch, as they call it, quickly.

8 The glitch apparently started the week ending June 27
9 when some anti-fraud program was added to the DETR website.
10 Unfortunately, the new anti-fraud software accidentally locked up
11 existing benefit plans, one of which is mine.

12 DETR told me each account must be individually and
13 manually corrected and for this reason it's impossible to give a
14 time frame when these benefits will be paid. In the meantime,
15 subsequent weekly payments are also being delayed.

16 My payments for the weeks ending June 27 and July 4 are
17 showing as "in progress." DETR assured me my benefits will be
18 paid and my account will be fixed but they can't say when.

19 In the meantime, it looks like my benefits for the week
20 ending July 11 will also be delayed.

21 DETR has kept this new problem quiet. They have made
22 no public comments. It's only because a DETR employee read me
23 a confidential in-house memo that I know as much as I do.

24 I have been sending emails to DETR using their PUA
25 website and I haven't received even one response.

26 [FILER5019-5020]

27 Related to the June 28, 2020 malfunction claims disappearing from the system,
28 which was reported by many claimants. Several reported having to complete a two-step
29 verification process. Some reported being told that they had failed a two-step verification
30 process when they had never been informed of the process, while others reported having to
31 file new claims entirely.

32 Another observation we have seen in numerous communications concerns the
33 position DETR took when claimants reported a loss of income. Evidently, DETR regards
34 as fraudulent any reported loss of income from before the first Covid-19 case was detected.

1 It is the contention of many claimants, however, that they began to see a reduction in their
2 income starting in February due to people traveling less because they were concerned about
3 catching Covid-19. For example, one claimant wrote:

4 With 34,000 claimants being investigated for fraud, and DETR
5 stating that's because they are claiming benefits for one or more
6 weeks in February, it should be noted that claimants were
UNABLE to state they had a reduction in gig work.

7 [FILER0637]

8 Another writes:

9 In regard to DETR insinuating that 34,000 claims who claimed
10 weeks in February as possibly fraudulent, I took offense to that.
11 When I applied for my PUA claim, I marked down the 2/15/20 as
the first week for unemployment. The reason was that the last
12 dates I performed any services was 2/7 and 2/8/20. At the time I
13 did not think that would have been the last dates I would be
performing any services but many of my clients were very
14 concerned over COVID to where they told me that they wanted to
wait and see how things looked at the beginning of March. Of
15 course, when the beginning of March things were definitely worse
and at that time my clients decided to suspend my services...PUA
states that we can claim from weeks 2/2/20. I would have
preferred to work past 2/8/20, however being self-employed I can't
do anything about it if my clients [decide] not to use my services.

16 [FILER0598-0599]

17 And another:

18 ...one of DETR's definitions of fraud is self-made and shouldn't be
19 allowed, and this is holding up 34,000 claims:

20 In DETR's press conference on Friday June 26, 2020, David
Schmidt said the following: "...The first case of Covid-19 was not
21 detected in Nevada until March 5th, so we believe that it's highly
unlikely that there would be a significant number of claims in
February; however, nearly 34,000 claims have been filed for
benefits, claiming benefits, for one or more weeks in February."

25 ...Here DETR has decided to group legitimate claimants who were
26 truly affected by the beginning stages of the pandemic with

1 individuals who filed fraudulently & with actual willful criminal
2 intent.

3 Why did DETR even give people the option to backdate to
4 February if later it was going to become an issue and deemed
5 “fraudulent”? Complete nonsense.

6 [FILER0635]

7 A more recent problem encountered that was reported to us was a claimant having
8 a payment returned by the claimant’s bank because the amount of the payment was so
9 large. Evidently, many banks have a policy of returning direct deposits if the deposit
10 amount is over a certain monetary limit.

11 A new issue that was reported to us after we cut off including communications in the
12 spreadsheet [Appendix 1] and including them in Appendix 2 concerns claimants seeing
13 payments being made on their accounts, but no subsequent amount being deposited to their
14 bank accounts, and the actual pay date being moved one day forward every day. One writer
15 explained:

16 My husband had movement for the first time on 7/12 (first day
17 filer) with a pay date of 7/13. On 7/13 transaction number was
18 available. His claim says “benefits paid: \$4,xxx. With \$2,000
19 available to be paid. But this money is not in his account. DETR
20 will try to show all these claims have been “paid” but there are
21 many people who have not received payment after getting a pay
22 date. This is easily seen on the PUA Nevada Facebook group.

23 [Email sent to Special Master Guinasso on July 15, 2020.]

24 Another claimant wrote:

25 Day 1 PUA filer here and still unpaid. However, I spoke to
26 adjudication on 7/9 and they said everything was resolved and as
long as I had a pay date and transaction# on my claim, I would be
paid. Each weekday, the pay date has increased by one day
around 5a. E.G. on 7/10, my pay date changed to 7/13, on 7/13 it
changed to 7/14. I hope your team is reconciling what is showing
paid in their system with the amount in the treasury account. I

1 have screenshots to prove this claim and would be happy to
2 provide them.

3 [Email sent to Special Master Guinasso on July 15, 2020.]

4 Another recent communication received relates a concern that, while
5 unique, is of utmost urgency and therefore our office has determined it should
6 be relayed. The claimant wrote:

7 I have finally reached someone at adjudication. I was told that I
8 needed to file an appeal by the 17th on the online system or my
9 case would be closed.

10 They were unable to tell me how to do that as the system is
11 currently not online.

12 My claim will be closed on the 17th due to an error at DETR and
13 no way to contact anyone for an appeal.

14 [Email sent to Special Master Guinasso on July 15, 2020.]

15 The most widespread difficulty described by the claimants is the call center.
16 Claimants consistently and overwhelmingly describe conditions under which it is virtually
17 impossible to connect a person when calling. Many claimants described the process of
18 attempting to have their call answered as their full-time job. Several described the process
19 was akin to “winning the lottery.” Many stated that they try to call every day. One claimant
20 who left a voicemail message described a four-month process of “calling from 8:00 in the
21 morning until 8:00 at night [that] resulted in zero chance of even reaching a live person.”
22 A claimant who carefully described all of the steps he had taken to obtain payment detailed
23 multiple days of efforts at contacting a person using call center phone lines:

24 5/27-...68 calls to connect...

25 5/29-...64 calls to connect...

26 6/1-Called PUA Adjudication from 8am to 8pm 108 times. Was not successful
reaching them...

1 6/2-Called PUA Adjudication from 8am to 8pm 96 times. Was not successful
2 reaching them...

3 This claimant went on to describe the experience:

4 When calling support, they would first thank you for calling and
5 ask you to hold for a live representative. Every minute or so they
6 would come on the line and inform you that all representatives
7 were busy and to continue to hold for a live representative. Then
8 between 5 and 6 minutes every time they would say “sorry all
9 representatives are busy” and hang up and suggest you try your
10 call later.

11 This claimant continued to recount multiple days attempting to speak with a
12 representative, making between 68 and 108 calls a day without ever reaching a live person.

13 See [FILER0605-0607.]

14 Another claimant recounted his recent experience:

15 I’ve called at least 300 times again this week. I got through 1 time
16 and she asked me my name, said she was looking up my account,
17 and click, hung up on me. After that I called 200 more times until
18 about an hour ago, it stopped letting me try. After the first
19 recorded message when I press 1, it goes straight to a very loud
20 busy tone. After a few tries, I pressed 2 for Spanish just to see if
21 it would go through, and no, it was a busy tone as well. So, I called
22 a friend and asked him to try it from his phone, and sure enough,
23 he got through at least to the first hold music. It seems I may have
24 called so many times that my number is now blocked.

25 [FILER0666-0667]

26 Clearly, the frustration felt by claimants concerning the call center is intense and a
consistent focus of the grievances expressed by the claimants in their communications.

1 **VIII. State comparators – what are other states doing?**

2 A. What are efficiencies and differences in processes that Nevada might consider
3 adopting?

4 i. *Partnerships with private sector.*

5 Many states seeking to quickly upgrade existing online systems have partnered with
6 industry leaders in the private sector in order to increase their ability to process claims,
7 communicate with claimants, and administer benefits. For example, when the amount of
8 Oregon’s backlogged PUA claims soared to more than 70,000, state officials entered into a
9 partnership with Google and launched “Focus PUA”—an initiative designed to shift
10 resources and staff to combat the massive backlog of unprocessed PUA claims.⁴⁴ The
11 Oregon Employment Department has been working with Google to build a new PUA
12 application system which should be operational mid-July. This new system will allow the
13 department to process weekly PUA claims faster because, currently, department staff must
14 process weekly claims by hand. Given the newly expanded capacity for the department to
15 process claims, Director David Gerstenfeld expects the state to process all the backlogged
16 PUA claims by August 8th.⁴⁵

17 In another example of a state-business partnership, Kentucky officials recently
18 contracted with global accounting firm Ernst & Young to clear a massive backlog of regular
19

20 ⁴⁴ See Meerah Powell, *Oregon Shifts Unemployment Focus To Backlog Of Gig Worker*
21 *Claims*, Oregon Public Broadcasting (June 17, 2020)
<https://www.opb.org/news/article/oregon-unemployment-claims-gig-pandemic-unemployment-insurance-backlog/>.

25 ⁴⁵ See Keaton Thomas, *Oregon employment department fails to meet PUA processing goal*
26 *for second week*, KATU (July 8, 2020) <https://katu.com/news/local/oregon-employment-department-fails-to-meet-pua-processing-goal-for-second-week>.

1 and PUA unemployment claims.⁴⁶ Under the agreement, the Ernst & Young processors will
2 be assisting in outreach to individuals whose claims have been backlogged the longest, as
3 well as identifying technology improvements to make the job of applying for unemployment
4 much smoother. Ernst & Young had previously assisted other states, such as Oklahoma, in
5 the processing of backlogged unemployment claims.⁴⁷

6 *ii. Deployment of National Guard.*

7 In addition to its partnership with Google, Oregon has deployed members of its
8 National Guard to assist in processing the claims stuck in the backlog.⁴⁸ Focusing mainly
9 on facilitating communications with Oregonians who have struggled to navigate the online
10 PUA application process, the Oregon National Guard members were trained to provide
11 support via outbound calls. The purpose of the outbound calls is to increase proactive
12 contact in order to let individuals know where their claims are in the system and alert them
13 of any potential problems.⁴⁹

14 The State of Washington has similarly deployed members of its National Guard in
15 order to assist with identity verification and the massive backlog of unemployment claims
16 in their system. Following a large-scale “imposter” fraud attack on Washington’s
17 unemployment system, Washington unemployment officials flagged 190,000 claims as
18

19 ⁴⁶ See Brian Planalp, *Kentucky contracts with global accounting giant to clear out backlog of unemployment*
20 *claims*, Fox 19 (June 30, 2020) [https://www.fox19.com/2020/06/30/watch-live-gov-beshear-updates-covid-](https://www.fox19.com/2020/06/30/watch-live-gov-beshear-updates-covid-kentucky/)
[kentucky/](https://www.fox19.com/2020/06/30/watch-live-gov-beshear-updates-covid-kentucky/).

21 ⁴⁷ See John Charlton, *Kentucky gets help from global accounting firm to clear backlog of unemployment claims*,
WHAS 11 (July 7, 2020) [https://www.whas11.com/article/news/investigations/focus/unemployment-claims-](https://www.whas11.com/article/news/investigations/focus/unemployment-claims-kentucky-ernest-and-young/417-91ac6a5b-97ac-45e7-a7d2-afa1769dcb04)
[kentucky-ernest-and-young/417-91ac6a5b-97ac-45e7-a7d2-afa1769dcb04](https://www.whas11.com/article/news/investigations/focus/unemployment-claims-kentucky-ernest-and-young/417-91ac6a5b-97ac-45e7-a7d2-afa1769dcb04).

25 ⁴⁸ See Sarah Wexler, *National Guard Serves Unemployed Oregonians*, My Oregon News (June 11, 2020)
<https://www.myoregon.gov/2020/06/11/national-guard-serves-unemployed-oregonians/>

26 ⁴⁹ See Galen Ettlin, *Oregon still needs to process 70,000 Pandemic Unemployment Assistance claims*, KGW8
(June 18, 2020) [https://www.kgw.com/article/money/business/oregon-and-washington-unemployment-](https://www.kgw.com/article/money/business/oregon-and-washington-unemployment-numbers/283-80c06942-ff25-4a7a-b000-11bc56659181)
[numbers/283-80c06942-ff25-4a7a-b000-11bc56659181](https://www.kgw.com/article/money/business/oregon-and-washington-unemployment-numbers/283-80c06942-ff25-4a7a-b000-11bc56659181).

possibly fraudulent. The National Guard members were summoned to verify the identity of 42,000 claims that were flagged as “suspect” and to help assist in clearing unemployment claims stuck in the adjudication process.⁵⁰

iii. Cloud-based online processes and call centers.

The Rhode Island Department of Labor and Training has significantly improved its ability to process and monitor claims, as well as communicate with claimants, through a transition to a cloud-based service in conjunction with Amazon Web Services (AWS) and the tech non-profit Research Improving People’s Lives (RIPL).⁵¹ When Rhode Island officials realized their current unemployment insurance infrastructure lacked the functionality required to collect recipient data and process payments, RIPL and AWS worked together to develop a cloud-based online process which would allow the Rhode Island DLT to collect and store PUA application information. The first day the cloud-based system went live, the system received and managed more than 11,000 applications.⁵² According to Director of the DLT Scott Jensen, without the cloud-based processing system, the previous website would’ve crashed given the amount of applications. The AWS-RIPL team also developed a way to quickly verify claimant eligibility, allowing Rhode Island to be one of the first states in the nation to successfully process and pay PUA benefits.

⁵⁰ See Opportunity Washington, *National Guard will assist ESD in claims verification*, WashACE (June 11, 2020) <https://opportunitywa.org/another-decline-in-initial-regular-ui-claims-in-washington-national-guard-will-assist-esd-in-claims-verification/>.

⁵¹ See *The Cloud Helps Rhode Island Manage an Unprecedented Surge in UI Claims*, Governing (April 24, 2020) <https://www.governing.com/work/Cloud-Helps-Rhode-Island-Manage-an-Unprecedented-Surge-in-UI-Claims.html>.

⁵² See Research Improving People’s Lives, *How a Partnership Between Government and RIPL Made Rhode Island a National Leader in Delivering CARES Act, Emergency COVID-19 Benefits to its Workers and Families*, RIPL (Last accessed July 15, 2020) <https://www.ripl.org/ripl-and-state-of-rhode-island-partnership-leads-nation-in-response-to-covid/>.

1 Additionally, Kansas, New York, and Rhode Island have all been able to make their
2 application system more user-friendly by considerably upgrading their ability to
3 communicate with claimants.⁵³ By transitioning from a traditional call center to Amazon
4 Connect, a cloud-based contact center solution designed by Amazon Web Services, these
5 states have multiplied the amount of calls they can accept at any given time. For example,
6 prior to Rhode Island's implementation of the new system, the state's Department of Labor
7 and Training was only able to handle 74 concurrent callers. Following the DLT's transition
8 to Amazon Connect, the department is able to handle up to 2,000 simultaneous calls.⁵⁴ This
9 system was designed, configured and implemented in just 10 days.

10 B. How are other states handling the unprecedented volumes of claims
11 submitted?

12 *i. States in our region.*

13 1. Arizona.

14 Arizona officially began accepting and processing PUA applications on May 12th.⁵⁵
15 As of July 4th, Arizona had processed and paid PUA claims for 556,701 individuals.⁵⁶ Prior
16 to Arizona's launch of the PUA program, the state entered into a \$2 million contract with
17 Florida-based software developer Geographic Solutions Inc. to design and implement a
18

19 ⁵³ See Sarah Chaney, *Amazon, Google Help States as Coronavirus Boosts Unemployment Claims*, The Wall
20 Street Journal (May 12, 2020) <https://www.wsj.com/articles/amazon-google-help-states-as-coronavirus-boosts-unemployment-claims-11589275801>.

21 ⁵⁴ See Parker Gavigan, *New Rhode Island unemployment certification system goes online*, WJAR (April 20,
2020) <https://turnto10.com/i-team/new-rhode-island-unemployment-certification-system-goes-online>.

22 ⁵⁵ See Dmitri Koustas, Yalun Su and Zhi Zhang, *PUA Status by State*, (Last updated May 17, 2020)
23 <http://dmitrikoustas.com/pua>.

24 ⁵⁶ See Financial Services Administration, *Arizona Unemployment Insurance Dashboard*, Arizona DES
25 (7/7/2020)
26 https://des.az.gov/sites/default/files/media/Unemployment_Insurance_Dashboard.pdf?time=1594660319344.

1 PUA program processing system that could handle the incoming claims.⁵⁷ When the
2 Arizona Department of Economic Security originally began review of the incoming PUA
3 claims, the department approved and paid claims liberally. Arizona news outlets reported
4 instances where the DES approved and paid claims where the claimants' dates of birth and
5 driver's license numbers were incorrect.⁵⁸ This type of presumptive payment left the state's
6 system vulnerable to fraudulent claims. After identifying tens of thousands of potentially
7 fraudulent claims, the DES was forced to slow their approval process and establish
8 procedures which verify people getting benefits are legitimate claimants. DES officials
9 stated that these increased fraud-prevention efforts led to many claimants' benefits being
10 delayed.⁵⁹ In an effort to address the backlog of claims and investigate reports of suspected
11 fraud quicker, the DES has increased the staff within the Unemployment Insurance Unit
12 by more than double.⁶⁰

13 2. California.

14 The California Employment Development Department (EDD) began accepting
15 online PUA applications on April 28th.⁶¹ As of July 4th, California had processed PUA claims
16

17 ⁵⁷ See Ryan Randazzo, *Arizona unemployment notices mistakenly say they're from Pennsylvania, but are legit,*
18 *officials say, Arizona Republic* (June 4, 2020) <https://www.azcentral.com/story/money/business/consumers/2020/06/04/unemployment-benefits-checks-arizona-residents-pennsylvania-department-labor/3145170001/>.

19 ⁵⁸ See Joe Ducey, Monica Williams, *Thousands of dollars in unemployment benefits sent to the wrong people. Is AZDES to blame?*, ABC15 (June 25, 2020) <https://www.abc15.com/news/rebound/coronavirus-money-help/thousands-of-dollars-in-unemployment-benefits-sent-to-the-wrong-people-is-azdes-to-blame>.

20 ⁵⁹ See Ryan Randazzo, *As state pursues unemployment fraud, some in Arizona have to wait for help with*
21 *jobless benefits, Arizona Republic* (June 16, 2020) <https://www.azcentral.com/story/money/business/consumers/2020/06/16/arizona-unemployment-fraud-investigations-delay-payments/3190822001/>.

25 ⁶⁰ See AZ Business Magazine, *Arizona DES has disbursed \$5.7 billion in unemployment insurance since March*, AZ Big Media (July 12, 2020) <https://azbigmedia.com/business/arizona-des-has-disbursed-5-7-billion-in-unemployment-insurance-since-march/>.

26 ⁶¹ See Dmitri Koustas, Yalun Su and Zhi Zhang, *PUA Status by State*, (Last updated May 17, 2020) <http://dmitrikoustas.com/pua>.

1 for 1.14 million individuals.⁶² Prior to COVID, the state experienced record low
2 unemployment with correspondingly low federal administrative funding and, therefore,
3 reduced staffing levels in the EDD. Given the increased claim workload and associated
4 increased federal funding, the EDD has prepared to add 5,300 new staff. Additionally, the
5 State introduced a new chat bot service capable of answering more than 214,000 common
6 questions from claimants each week. Available in Spanish and English, the virtual agent
7 allows the EDD to free up the phone lines for those with more complex cases. Lastly, the
8 EDD has enhanced the technology systems to increase efficiencies by automating features
9 on the largest manual staff work queues to speed up processing, implementing online
10 access for employees to certify for benefits, and building a new document uploading option
11 to help streamline the identity verification process.⁶³

12 3. Colorado.

13 Colorado began accepting and processing PUA applications on April 20th.⁶⁴ As of July
14 9th, a total of approximately 134,000 initial PUA claims have been filed. During the first
15 few weeks following the implementation of the PUA program, Colorado experienced what
16 officials described as an unusual number of claims.⁶⁵ In response, the Colorado Department
17 of Labor and Employment established additional fraud detection and barricade measures;
18

19 ⁶² See California Employment Development Department, *Unemployment Insurance (UI) Data Dashboard*,
(Last updated July 4, 2020) <https://edd.ca.gov/newsroom.htm>.

20 ⁶³ See California Employment Development Department, *California workers struggling through pandemic
receive \$41.3 billion in unemployment benefits*, (July 9, 2020) [https://edd.ca.gov/About_EDD/pdf/news-20-
32.pdf](https://edd.ca.gov/About_EDD/pdf/news-20-32.pdf).

21 ⁶⁴ See Dmitri Koustas, Yalun Su and Zhi Zhang, *PUA Status by State*, (Last updated May 17, 2020)
<http://dmitrikoustas.com/pua>.

25 ⁶⁵ See Janet Oravetz, Jennifer Campbell-Hicks, *Colorado sees big increase in fraudulent claims for
unemployment benefits*, 9News (Last updated June 19, 2020)
26 [https://www.9news.com/article/news/health/coronavirus/colorado-unemployment-benefits-top-all-of-2010/73-
feef9a61-ce1b-4699-8d48-6502a2ccbc71](https://www.9news.com/article/news/health/coronavirus/colorado-unemployment-benefits-top-all-of-2010/73-feef9a61-ce1b-4699-8d48-6502a2ccbc71).

1 accordingly, the number of claims being filed fell to an expected level. Additionally, the
2 department created a new web page designed to inform claimants how to identify fraud
3 and what to do if they think they may be a victim of fraud. After a multitude of complaints
4 that claimants were unable to get through to the unemployment department's call center,
5 the state worked with Google and designed a new virtual agent that help users with general
6 questions about filing for unemployment and receiving benefits. If the virtual system is
7 unable to resolve a claimant's problem, a live agent calls back at a scheduled time.⁶⁶

8 4. Utah.

9 By April 20th, the state of Utah had launched an operational, PUA-specific
10 application portal for gig workers to file for federal pandemic unemployment benefits.⁶⁷ In
11 order to speed up the overall timeline for getting benefits out to claimants, the Department
12 of Workforce Services opted to distribute claimants' benefits via paper checks.⁶⁸ A total of
13 over \$94 million of PUA benefits have been distributed Paid to non-traditional gig or
14 previously self-employed workers.⁶⁹

19 ⁶⁶ See Tamara Chuang, *Fraudsters foiled by Colorado's unemployment office as number of new out-of-work*
20 *claims decline*, The Colorado Sun (June 25, 2020) [https://coloradosun.com/2020/06/25/fraudsters-scams-](https://coloradosun.com/2020/06/25/fraudsters-scams-colorado-unemployment-jobs/)
[colorado-unemployment-jobs/](https://coloradosun.com/2020/06/25/fraudsters-scams-colorado-unemployment-jobs/)

21 ⁶⁷ See Dmitri Koustas, Yalun Su and Zhi Zhang, *PUA Status by State*, (Last updated May 17, 2020)
<http://dmitrikoustas.com/pua>.

22 ⁶⁸ See Jennifer Gardiner, *Here is why Utahns are still waiting on Pandemic Unemployment checks*, ABC4
23 (May 1, 2020) [https://www.abc4.com/news/local-news/here-is-why-utahns-are-still-waiting-on-pandemic-](https://www.abc4.com/news/local-news/here-is-why-utahns-are-still-waiting-on-pandemic-unemployment-checks/)
24 [unemployment-checks/](https://www.abc4.com/news/local-news/here-is-why-utahns-are-still-waiting-on-pandemic-unemployment-checks/).

25 ⁶⁹ See James McFadden, *One Billion Dollars in Utah Unemployment Benefits Paid Out Since Economic*
26 *Shutdown*, Southern Utah Independent (July 12, 2020) [https://suindependent.com/utah-unemployment-](https://suindependent.com/utah-unemployment-benefits/)
[benefits/](https://suindependent.com/utah-unemployment-benefits/).

1 ii. *Other states heavily dependent on tourism.*

2 1. Florida.

3 Despite being one of the slowest states to process regular unemployment claims
4 lawsuit during the first month of the pandemic, Florida was among the first states to begin
5 accepting and processing PUA claims. Beginning April 13th, immediately following the
6 rejection of a claimant's claim for regular UI benefits, the claim would be processed as a
7 PUA claim. Rather than require an individual to file another application after being denied
8 regular UI benefits, Florida modified its existing system and automatically re-filed all
9 denied regular UI claims as PUA applications.⁷⁰ While this automated process would
10 seemingly make the application for PUA benefits much easier given the reduced work on
11 behalf of the claimant, this process left some gig workers very frustrated as they were stuck
12 waiting in "limbo" for their regular UI application to be processed and denied before they
13 could be considered for PUA benefits. Because there was already a large, existing backlog
14 of regular unemployment claims in Florida, the processing of applications hoping to qualify
15 for PUA benefits was delayed.⁷¹ The system was so backlogged that after major problems
16 in April with Florida's online unemployment system, CONNECT, attorneys in Florida filed
17 a class-action lawsuit requesting the court order the Department of Economic Opportunity

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21 ⁷⁰ See Mike DeForest, Emilee Speck, *Floridians denied state unemployment pay do not need to reapply for CARES Act benefits*, Click Orlando (April 23, 2020) <https://www.clickorlando.com/news/local/2020/04/23/floridians-denied-state-unemployment-pay-do-not-need-to-reapply-for-cares-act-benefits/>.

22 ⁷¹ See Mike DeForest, *Florida increases number of unemployment benefit payments but backlog remains*, Click Orlando (April 21, 2020) <https://www.clickorlando.com/news/local/2020/04/21/florida-increases-unemployment-benefit-payments-but-backlog-remains/>.

1 to “fix” the system. The lawsuit alleges the DEO was negligent and violated the law by not
2 promptly providing unemployment benefits.⁷²

3 2. Hawaii.

4 Hawaii began accepting pre-applications for the PUA program on April 27th;
5 however, like Nevada, Hawaii was one of the last states to begin processing applications
6 and did not begin to do so until May 15th.⁷³ Even after finally implementing the PUA
7 system, the state was forced to slow the processing of claims after members of cybercrime
8 groups infiltrated the state’s database and filed at least \$100 million worth of fraudulent
9 PUA claims.⁷⁴ In response, the state was required to stop payment on existing PUA claims
10 in order to review and verify the identity of the claimants.⁷⁵

11 3. Montana.

12 When the PUA program was announced, the Montana Department of Labor &
13 Industry encouraged gig workers to begin applying immediately for traditional UI benefits.
14 The gig workers’ denied claims were then put into a special pending status, and following
15 the implementation of some IT programming changes, the department moved the pending
16 claims into a que to be reviewed for a PUA determination.⁷⁶ By April 23rd, the DLI had
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18 ⁷² See Jim Saunders, *Florida judge refuses to order fixes to unemployment system*, Tampa Bay Times (May
19 29, 2020) <https://www.tampabay.com/florida-politics/buzz/2020/05/29/florida-judge-refuses-to-order-fixes-to-unemployment-system/>.

20 ⁷³ See Dmitri Koustas, Yalun Su and Zhi Zhang, *PUA Status by State*, (Last updated May 17, 2020)
<http://dmitrikoustas.com/pua>.

21 ⁷⁴ See Gina Mangieri, *PUA fraud in Hawaii up to \$92 mil in claims, 6,000 victims so far*, KHON2 (June 25,
2020) <https://www.khon2.com/news/always-investigating/pua-fraud-in-hawaii-up-to-92-mil-in-claims-6000-victims-so-far/>.

25 ⁷⁵ See Christine Donnelly, *Some PUA payments grind to halt amid Hawaii’s push to end fraud*, Star
Advertiser (July 9, 2020) <https://www.staradvertiser.com/2020/07/09/hawaii-news/kokua-line/kokua-line-some-pua-payments-grind-to-halt-amid-hawaiis-push-to-end-fraud/>.

26 ⁷⁶ See Dmitri Koustas, Yalun Su and Zhi Zhang, *PUA Status by State*, (Last updated May 17, 2020)
<http://dmitrikoustas.com/pua>.

1 launched and began accepting applications through its separate, PUA-specific application
2 portal. In conjunction with the new web portal roll-out, a new phone line was introduced
3 for PUA-specific questions and for individuals without internet access to file their PUA
4 claim.⁷⁷ Following the nationwide unemployment fraud scam, the DLI was forced to
5 temporarily delay some payments while the department implemented additional identity
6 verification measures. In addition to the identity verification measures, the department:
7 (1) quadrupled the number of staff members on the UI fraud investigation unit; (2) began
8 aggressively using data analytics to cross-match potential fraudulent information with
9 other state agencies and the National Association of State Workforce Agencies Integrity
10 Center; (3) released a new phone line dedicated to calls from the public regarding UI fraud;
11 and, (4) began denials of any claim that indicated fraud.⁷⁸

12 *iii. How are other states' unemployment divisions funded?*

13 According to data provided by the U.S. Department of Labor, Nevada ranks 32nd in
14 base funding amounts distributed by the federal government to states for the operation of
15 their UI programs. For the fiscal year 2020, the state of Nevada was awarded \$20,976,437
16 in base funding.⁷⁹

17 *iv. How are other states dealing with the fraud issue?*

18 Because PUA applications allow claimants to self-certify their UI qualifications,
19 many states have fallen victim to massive unemployment fraud attacks. For example,
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21 ⁷⁷ See Montana Department of Labor & Industry, *DLI launches new web portal, begins processing UI claims*
22 *for self-employed Montanans*, (April 22, 2020) <http://dli.mt.gov/news/159>.

25 ⁷⁸ See Montana Department of Labor & Industry, *DLI prevents millions in fraudulent UI payments, bolsters*
26 *fraud detection, prevention*, (June 11, 2020) <http://dli.mt.gov/news/185>.

⁷⁹ See U.S. Department of Labor, *FY 2020 State UI Allocations*, Employee & Training Administration (Last
updated 11/1/2019) <https://oui.doleta.gov/unemploy/content/futa/fy2020suia.asp>.

1 security researchers revealed in May that a Nigerian digital crime group called “Scattered
2 Canary” was engaged in a large-scale fraud campaign targeting dozens of states’
3 unemployment insurance programs.⁸⁰ Scattered Canary agents filed at least 174
4 fraudulent claims in Washington alone.⁸¹ In some cases, the group has been able to use the
5 Green Dot prepaid cards to accept payments for their fraudulent claims. The Nigerian
6 cybercrime ring also targeted the state of Hawaii, where officials reported the state had
7 accidentally paid out over \$18 million in fraudulent claims and blocked \$95 million in
8 possibly fraudulent PUA claims.⁸² The Hawaiian Labor Department stated that by June
9 4th nearly 6,000 residents had reported themselves as victims of identity theft after
10 receiving a letter regarding PUA eligibility.

11 Following the revelation of the nationwide fraud scheme involving PUA applications,
12 some states—such as Massachusetts, Arizona, and Hawaii—had to temporarily pause PUA
13 payments in order to verify the authenticity of existing claims.⁸³ Other state unemployment
14 insurance programs had to revise previously enacted policies which allowed for claims with
15 incorrect basic information to be processed and approved. Additionally, many states worked
16 with security experts to develop systems designed to better detect and block fraudulent
17 claims. One such security improvement involved the addition of a location verification

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19 ⁸⁰ See Morgan Chalfant, *Researchers detect rise in attacks from Nigerian cyber criminals*, The Hill (May 8, 2020) <https://thehill.com/policy/cybersecurity/386591-researchers-detect-rise-in-attacks-from-nigerian-cyber-criminals>.

20 ⁸¹ See Lily Hay Newman, *The Nigerian Fraudsters Ripping Off the Unemployment System*, Wired (May 19, 2020) <https://www.wired.com/story/nigerian-scammers-unemployment-system-scattered-canary/>.

21 ⁸² See Olivia Peterkin, *Hawaii unemployment office blocks \$95M in fraudulent claims*, Pacific Business News (July 7, 2020) <https://www.bizjournals.com/pacific/news/2020/07/06/unemployment-office-blocks-false-claims.html>.

25 ⁸³ See Ted Daniel, *Much-needed unemployment benefits still on hold as state’s fraud investigation continues*, Boston 25 News (June 18, 2020) <https://www.boston25news.com/news/25-investigates/much-needed-unemployment-benefits-still-hold-states-fraud-investigation-continues/XYUHKEUDJRG5VBQ75I7XE2ZYWY/>.

1 device by the Hawaii Department of Labor and Industrial Relations. When claimants in
2 Hawaii attempt to file their weekly or bi-weekly certifications a pop-up window appears
3 asking for permission to verify that the claimant is in Hawaii.⁸⁴ When the claimant selects
4 “allow” the system is able to verify the location of the user, helping ensure it is not being
5 taken advantage of by international cyber criminals. The DLR will contact individuals
6 attempting to file a certification from out-of-state in order to verify their address and
7 confirm the claimant is not working elsewhere.

8 *v. How quickly were other states able to begin accepting and*
9 *processing claims as compared to Nevada?*

10 The President signed the CARES Act (authorizing states to begin administering
11 PUA benefits) into law on March 27th; however, it was not until May 16th that DETR
12 officially began accepting PUA applications.⁸⁵ As a result, Nevada was the last state in the
13 nation to begin delivering PUA benefits to its claimants. In trying to explain the delay,
14 DETR officials stated that because the existing system used by regular UI claimants was
15 unable to handle the increased volume of PUA applications, the state was forced to contract
16 with a third-party company to design an entirely new application system. While Nevada
17 was unable to have its system operational until mid-May, several other states were able to
18 design and implement new PUA application systems as early as mid-April. For example,
19 by April 13th, unemployment departments in Rhode Island and North Dakota had designed,

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21 ⁸⁴ See Lynn Kawano, *Efforts to combat unemployment fraud create new headaches for filers*, Hawaii News
Now (July 2, 2020) <https://www.hawaiinewsnow.com/2020/07/02/efforts-combat-unemployment-fraud-create-new-headaches-those-seeking-jobless-claims/>.

25 ⁸⁵ See April Corbin Girus, *Nevada now the only state not accepting unemployment claims from gig workers*,
Nevada Current (May 12, 2020) <https://www.nevadacurrent.com/2020/05/12/nevada-now-the-only-state-not-accepting-unemployment-claims-from-gig-workers/>.

1 implemented, and began accepting applications through new, PUA-specific channels.⁸⁶
2 Additionally, by this same time, 25 states had at least established procedures to allow
3 claimants to file PUA claims – even if they were not all currently being processed.
4 By the end of April, 36 states had successfully set up systems to accept and process PUA
5 applications (11 states implemented direct forms or channels for claimants to apply
6 through, 25 states were either processing regular UI claims as PUA claims immediately
7 after denial of regular UI benefits or had a clear PUA application portal within the regular
8 UI system). Of the remaining 14 states, seven allowed for the submission of PUA
9 applications, but were not currently processing them, and the other seven states—
10 Arkansas, Connecticut, Delaware, Kansas, Maine, Nevada, and Wyoming—had no system
11 set up for residents to file PUA applications.⁸⁷

12 When Nevada finally launched its system for PUA claims on May 16th, all other
13 states had already begun accepting and processing applications. Further, 11 other states
14 managed to design and implement PUA-specific systems faster than Nevada. The 38 other
15 states had the capacity to handle the volume of PUA applications using existing, regular
16 UI claim processes.⁸⁸

17 vi. *Have other states' unemployment departments been sued as a*
18 *result of their administration of benefits?*

19 In Florida, the Department of Economic Opportunity has been named as defendants
20 in two different suits revolving around the state's administration of unemployment
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25 ⁸⁶ See Dmitri Koustas, Yalun Su and Zhi Zhang, *PUA Status by State*, (Last updated May 17, 2020)
<http://dmitrikoustas.com/pua>.

26 ⁸⁷ Id.

⁸⁸ Id.

1 insurance benefits. In the first case, the petitioners alleged the DEO's failure to maintain
2 adequate systems to pay valid unemployment claims violated Florida Statutes Section 443
3 and sought a writ of mandamus directing the department to comply with the statutory
4 obligations. The court dismissed the complaint finding the complaint failed to state a cause
5 of action for mandamus and, specifically, failed to allege an indisputable ministerial duty
6 owed by the DEO.⁸⁹ The petitioners' motion for reconsideration was similarly denied. In
7 the second suit (involving some of the same petitioners), the complaint asserted legal
8 entitlement to "apply for benefits, be deemed qualified for benefits, and to receive benefits
9 under Section 443" and requested a preliminary injunction ordering the DEO to "fix the
10 system within 48 hours". After a three-day evidentiary hearing, the court denied the
11 preliminary injunction on the grounds that the separation of powers barred the court from
12 ordering the DEO to perform discretionary duties in a particular manner.⁹⁰

13 Additionally, on June 5th, a petition for a writ of mandamus was filed with the
14 Washington Supreme Court against the Commissioner of the Washington Employment
15 Security Division.⁹¹ The writ requests the Court order the ESD to process unemployment
16 benefit claims and make claim payments to Washington's unemployed in a timely manner
17 as required by law. Following a surge in fraudulent claims in Washington, the ESD stopped
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19 ⁸⁹ See Order dismissing petitioners' second amended complaint for emergency writ of mandamus with
20 prejudice"

21 https://cvweb.leonclerk.com/public/online_services/search_courts/image_orders.asp?caseid=2979871&jiscaseid=&defseq=&chargeseq=&dktid=109043990&dktsource=BM&sexual_case=

22 ⁹⁰ See "Order denying motion for preliminary injunction"
23 https://cvweb.leonclerk.com/public/online_services/search_courts/image_orders.asp?caseid=2979944&jiscaseid=&defseq=&chargeseq=&dktid=109121437&dktsource=BM&sexual_case=

24 ⁹¹ See Paul Roberts, *Washington's Employment Security Department commissioner sued for halting benefits during fraud investigation*, The Seattle Times (Last updated June 7, 2020)
25 <https://www.seattletimes.com/seattle-news/washingtons-employment-security-department-commissioner-sued-for-halting-benefits-during-fraud-investigation/>
26

1 payment on thousands of legitimate claims in order to verify the identities of all existing
2 claims. The petition claims the ESD lacked the legal authority to forestall these payments.
3 The case is currently pending before the Washington Supreme Court.

4 Further, the Oregon Employment Department is currently facing a lawsuit alleging
5 the OED violated state and federal law when it failed to meet its obligations to resolve
6 problems within its system and unlawfully delayed taking action to correct those problems.
7 The lawsuit, filed on behalf of 13 claimants who have yet to receive regular unemployment
8 insurance payments or PUA benefits, seeks an order from the Multnomah County Circuit
9 Court to compel OED to process unemployment claims within four weeks of filing. The
10 lawsuit also demands the OED automatically process any denied regular unemployment
11 claim as a PUA application.⁹² The case is currently pending before the court.

12 Finally, a lawsuit was filed June 23rd with the D.C. Superior Court alleging the City
13 owes the petitioner at least five weeks of unpaid unemployment benefits. The petitioner,
14 D.C. resident Michelle Ruby, says she did not receive unemployment benefits for three
15 weeks in April and two weeks in June and that the DOES told her the “claims are owed” to
16 her, but it can’t fix its computer system in order to disburse the payments. The suit seeks
17 the unpaid benefits, as well as interest on those payments and damages for pain and
18 suffering.⁹³ The case is currently pending before the Court.⁹⁴

20 ⁹² See Kate Davidson, *Lawsuit Alleges 'Catastrophic Consequences' From Unemployment Delays*, Oregon
21 Public Broadcasting (July 10, 2020) <https://www.opb.org/news/article/lawsuit-oregon-employment-department-benefit-delays/>

25 ⁹³ See Eliza Berkon, Colleen Grablick, *D.C. Resident Sues City Over Unpaid Unemployment Insurance*,
WAMU (June 26, 2020) <https://wamu.org/story/20/06/26/d-c-resident-sues-city-over-unpaid-unemployment-insurance/>.

26 ⁹⁴Michigan has also dealt with overwhelming filings. Even as early as April, Michigan topped 311,000 claims
in a week. USA Today, April 2, 2020.

IX. Disputed and Undisputed Facts

Because the Special Master was tasked by the Court to engage in fact finding, Petitioners' Counsel and Counsel for DETR were asked to prepare summaries of disputed and undisputed facts.

A. Petitioners

i. List of Disputed/Undisputed Facts.

DETR's Assertions	Petitioners' Response Disputed/Undisputed	Legal Authority / Reference / Claimant Examples
"On March 27, 2020 the Coronavirus Aid, Relief and economic Security Act ("CARES Act") was signed into law." Opp. at p. 2:3-4.	Undisputed.	
"DETR then voluntarily entered into a written agreement with the [DOL] on March 28, 2020 to implement the CARES Act." Opp. at p. 2:4-5.	Undisputed.	
"...DETR is only able to provide PUA, FPUC, and PEUC	Undisputed as to statement, disputed as to DETR's application of the requirements.	20 CFR §625.14 <i>Procedural requirements</i> , sec. (g) cites to §§625.9 and 625.10. §625.9 states:

pursuant to its agreement with the [DOL].” Opp. at p. 2:7-8.	DETR’s systematic denial of benefits as opposed to provide claimants with benefits now, or at least promptly under the definition of the applicable regulations, when these benefits are so desperately needed (and quite literally may be the difference between life and death) as opposed to several months or even years down the line when the claimants have lost the homes, families, sanity, self-worth, and have become an even bigger drain and detriment to the recovery of Nevada’s economy. DETR sends “qualifying determinations” with the statement: “You may receive multiple decision on your claim; please note that nay one denial decision supersedes all other decisions.” Then claims sits in limbo, is erased, told there is a “glitch”, told they will receive payment in one week, two weeks, 21 days ... and nothing. “You have [XX] days to appeal” but no appeal mechanism.	(a) <i>Determination of initial application.</i> (1) The <u>State agency</u> shall promptly, upon the filing of an <u>initial application</u> for DUA, determine whether the individual is eligible, and if the individual is found to be eligible, the weekly amount of DUA payable to the individual and the period during which DUA is payable. (d) <i>Notices to individual.</i> The State agency shall give notice in writing to the individual, by the most expeditious method (e) <i>Promptness.</i> Full payment of DUA when due shall be made with the greatest <u>promptness</u> that is administratively feasible.
The Agreement requires DETR, when administering the PUA program, to administer the program in accordance with the Disaster Unemployme	Undisputed as to the applicability of 20 CFR §625. Disputed as to DETR’s compliance. Petitioner/Petitioners (hereinafter “Petitioners”) do not dispute that DETR has a duty to confirm eligibility prior to distributing benefits.	See Agreement entered into by DETR and DOL, at Opp. at Exhibit 3, hereinafter “Agreement” at Addendum 2 and 3, §IV – fraud and overpayment. The Agreement entered into with the DOL at Addendum No. 2 specifically states for FPUC and PEUC <i>only</i> that benefits, if an individual is, after an opportunity for hearing found to have “knowingly made, or caused to be

nt Assistance (“DUA”) regulations at 20 CFR 625 including follow(sic) the provision for fraud and overpayment. ” Opp. at p. 2:8-11.	Petitioners dispute the process DETR is employing because it amounts to a systematic campaign to deny benefits as opposed to approve them. As an initial matter there is no evidence whatsoever that the State will lose its benefits and/or be required to pay them back to the Fed from the State treasury based on a good faith effort to pay eligible claims, including an increase in alleged fraud that Congress was aware of when it passed the Act. <i>See</i> testimony to the House Oversight Committee acknowledging: “The enormous expansion of UI [unemployment insurance] benefits by more than \$260 billion dollars under the CARES Act also substantially increases fraud risk, with criminals easily exploiting system vulnerabilities,” Dahl told a House Oversight subcommittee. “This Department has estimated that about 10% of the UI payments are improper under the best of times. We are in the worst of times.” https://oversight.house.gov/legislation/briefings/subcommittee-on-government-operations-briefing-with-the-inspector-general-for DETR and the State will not be responsible for repayment/overpayment the individual claimants bear that responsibility. The Agreement	made by another, a false statement or representation of a material fact’ the individual (a) shall be ineligible for FPUC compensation, (b) shall be subject to prosecution, (c) shall be required to repay the amounts but that DETR can waive repayment if (i) no fault on part of individual (i.e., identity theft) and (ii) repayment would be contrary to equity and good conscience (i.e., a global pandemic). Additionally, the State has 3 years to attempt recovery. <i>There is no such requirements for PUA.</i> <i>See also</i>, 20 C.F.R. 625.14 provides for repayment of the total sum the individual was not entitled to. <i>Recovered overpayments</i>, sec. (d) specifically states, ‘Overpayments recovered in any manner shall be credited or returned ... to the appropriate account of the United States.’ <i>Final decision</i>, sec. (f) specifically provides that “Recovery of an overpayment of [the benefit] shall not be enforced by the State agency until the determination establishing the overpayment has become final, or appeal is taken from the determination, until the decision after opportunity for a fair hearing has become final.
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	DETR entered into with the DOL specifically states: Consistent with the requirements of the provisions identified in paragraph XIV and the related addenda, [DETR] will take such action <i>as reasonably may be necessary to recover</i> for the account of the United States all benefit amounts erroneously paid and restore any lost or misapplied funds paid to the state for benefits of Administration of this Agreement. <i>See</i> Agreement at Exhibit 3 to Opp. at p. 2, § VIII. The Program provides that in the event of fraud and overpayment, the requirements of 20 C.F.R. 625.14 shall apply with respect to PUA. <i>See</i> UIPL, 16-20 dated 4/5/20 at Attachment 1, p. I-12 § (f).	<i>See also</i>, U.S. Department of Labor (“DOL”) Unemployment Insurance Program Letter (“UIPL”) 16-20, dated 5/5/20, Attachment I, p. I-8, ¶5: Termination of PUA Agreement: Either party, upon thirty days written notice, may terminate the PUA Agreement. The Department reserves the right to terminate this Agreement if it determines that the State does not have an adequate system for administering such assistance, including because the State is not adequately ensuring that individuals receiving benefits under the PUA Program are eligible for such benefits. In the case of termination, the PUA period will end 30 days after the date one of the parties to the agreement notifies the other party of its election to terminate the PUA agreement. No PUA payments may be made with respect to weeks which begin after the date the termination of the agreement is effective. However, PUA is payable for weeks of unemployment ending on or before such termination date.
“DETR’s contract, authorizing the administration of PUA, FPUC and PEUC specifically requires it to follow fraud and overpayment regulations.”	Undisputed. Petitioners’ position is that DETR fails to see the forest through the trees and has adopted the regrettable view that it must prevent people from receiving benefits, as opposed to helping them receive benefits.	

1	Opp. at p. 2:11-13.		
2			
3	“Additionally, DOL can terminate the Agreement when it determines that “the State did not comply will all requirements of such provision or provisions of the Act identified in paragraph XIV, or any applicable guidance or operating instructions issued by the [DOL]. DETR’s agreement with DOL is terminable by DOL upon a DOL determination that DETR has not complied with all requirements of the CARES Act and paragraph XIV of the Agreement.	Undisputed in part/Disputed in part. Undisputed as to the applicability of the Agreement and paragraph XIV. Disputed as to DETR’s performance of the terms of the Agreement. DETR cannot pick and choose which terms of the Agreement it elects to follow when such actions result in a systematic effort to prevent Nevadans from obtaining benefits as opposed to providing processes under which eligible Nevadans can receive benefits. <i>DETR has not, as of yet, even provided for an appeal process some 58 days after to go live date and 107 days after DETR signed the Agreement.</i> DETR has failed to follow the pertinent regulations on providing claimants Notice, which prevents claimants from knowing what if any actions they can take to correct claims, what if any program they are eligible for, how to correct errors, let alone be paid <i>promptly.</i> DETR's own records reflect that as of June 29, 2020 some 247,030 total persons have applied for benefits, but only 107,923 have been paid. Thus, 139,107	
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Opp. at p. 2:14-20.

Nevadans who have applied for benefits have yet to be paid for various reasons, equal 57+% percent unpaid. *See* PUA Claims and Payments chart discussed in hearing dated 7/8: Claims paid 107,923 versus total claims of 247,030 as of June 29 = 43.68% paid.

The passage of between at least 58 days or arguably 107 days is not prompt and in dereliction of DETR's duty to pay when due and under the Agreement. Indeed, first day filers (claims on May 16, 2020) have been waiting 58 days, which is between 28 days (four weeks) and 13 days outside the definition of promptness under the regulations.

This is especially disturbing because the CARES Act provides for Emergency State Staffing Flexibility at §2016, which provides "state agencies with emergency flexibility for personnel standards on a merit basis limited to engaging of temporary staff, rehiring or retirees, or former employees on a non-competitive basis, and other temporary actions to ***quickly process applications and claims.***" (emphasis supplied.)

Even more disturbing is that the CARES Act provides that related to the PUA and FPUC benefits "[i]mplementation costs and ongoing administrative costs are 100% federally funded." *See*

1 UIPL 16-20 dated 4/5/20 at p. 5,
2 and §II.A.vii – Funding.

3 Furthermore, \$10,684,454 in
4 funds have been earmarked for
5 Nevada in the Emergency Grants
6 Program to be used for “taking
7 such steps as may be necessary
8 to ensure adequate resources in
9 periods of high demand. See
10 UIPL 13-20 dated 3/22/20 at p. 3
11 sec. 4.

12 Moreover, in order for Nevada to
13 receive its portion of the
14 Emergency Administrative
15 Grants, DETR must meet three
16 criteria including (i) providing
17 notification, (ii) assure
18 applications for benefits and
19 assistance with the application
20 process are accessible in at least
21 two of the following mediums in
22 an effort to ensure equal access:
23 in person, phone, or online, with
24 properly trained staff and (iii) if
25 DETR cannot process an
26 application it must “provide[]
information to the claimant on
why and what steps he claimant
can take to ensure successful
processing of the application.

“States that do not
immediately process an
application, which is often due
to an identity verification
process, must notify the
claimant that the application
for benefits has been received,
identify the reason why the
claim was not processed, and
provide information *on what
steps the claimant can take
to ensure the successful*

1		<i>processing of the application.</i>	
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3		See UIPL 13-20, dated 3/22/20 at pp. 4-5 §§ (ii) and (iii).	
4	Paragraph XIV of the Agreement requires DETR to follow addendum 1 regarding PUA and provisions for fraud and overpayment. ” Opp. at p. 2:14-20.	Undisputed in part/Disputed in part. Undisputed as to the applicability of the Agreement and paragraph XIV. Disputed as to DETR’s performance of the terms of the Agreement.	DETR and the State will not be responsible for repayment/overpayment; the individual claimants bear that responsibility. The Agreement DETR entered into with the DOL specifically states: Consistent with the requirements of the provisions identified in paragraph XIV and the related addenda, [DETR] will take such action <i>as reasonably may be necessary to recover</i> for the account of the United States all benefit amounts erroneously paid and restore any lost or misapplied funds paid to the state for benefits of Administration of this Agreement. See Agreement at Exhibit 3 to Opp. at p. 2, § VIII (emphasis supplied). The Program provides that in the event of fraud and overpayment, the requirements of 20 C.F.R. 625.14 shall apply with respect to PUA. See UIPL, 16-20 dated 4/5/20 at Attachment 1, p. I-12 § (f). 20 C.F.R. 625.14 provides for repayment of the total sum the individual was not entitled to. <i>Recovered overpayments</i> , sec. (d) specifically states, ‘Overpayments recovered in any manner shall be credited or

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		returned ... to the appropriate account of the United States.” <i>See</i> Agreement entered into by DETR and DOL, at Opp. at Exhibit 3, hereinafter “Agreement” at Addendum 2 and 3, §IV – fraud and overpayment. The Agreement entered into with the DOL at Addendum No. 2 specifically states for FPUC and PEUC <i>only</i> that benefits, if an individual is, after an opportunity for hearing found to have “knowingly made, or caused to be made by another, a false statement or representation of a material fact’ the individual (a) shall be ineligible for FPUC compensation, (b) shall be subject to prosecution, (c) shall be required to repay the amounts but that DETR can waive repayment if (i) no fault on part of individual (i.e., identity theft) and (ii) repayment would be contrary to equity and good conscience (i.e., a global pandemic). Additionally, the State has 3 years to attempt recovery. <i>There are no such requirements for PUA. See Agreement at Addendum No. 1 at p. 5.</i> <i>See also</i>, UIPL 15-20 dated 4/4/20, Change 1 at p. I-3 for FPUC. Q#7: May a state apply its own state law waiver provisions to FPUC overpayments? A: Section 2014(f)(2) of CARES permits the state to waive the
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1			repayment is the state determines that the payment of FPUC was without fault on the part of the individual <u>and</u> such repayment would be contrary to equity and good conscience. (emphasis in original).
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5	The CARES Act authorized three separate and distinct new types of compensation ... ” Opp. at pp. 2:23-24 and 3:1-8.	Undisputed as to weeks of eligibility and weekly benefit amount (“WBA”).	
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11	“Petitioner’s claim rests largely on the mistaken contention that ineligibility for traditional unemployment insurances guarantees eligibility for PUA compensation .” Opp. at p. 3:8-10.	Disputed. Again, DETR’s takes a restrictive position when it should be taking an expansive position in order to effectuate the purpose of the ACT. Specifically, the CARES Act is remedial in purpose and thus an expansive reading must be applied: “The CARES ACT was designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways. The CARES Act includes a provision of temporary benefits to individual who have exhausted their entitlement to regular unemployment compensation (UC) as well as coverage for individual who are not eligible for regular UC (such as	See UIPL 14-20 dated, 4/2/20, Attachment I at p. I-1 – I-2. <u>PUA</u> : Provides for benefits to individual who are self-employed, seeking part-time employment, or otherwise would not qualify for regular unemployment compensation (UC) or extended benefits (EB) under state or federal law or PEUC under section 2107. Coverage includes individuals who have exhausted all rights to regular UC or EB under state or federal law or PEUC. <u>FPUC</u> : Provides individuals who are collecting regular UC, PEUC, PUA, EB, STC, TRA, DUA, and SEA with an additional \$600 per week. <u>PEUC</u> : Provides for individuals who have exhausted regular UC, have no rights to regular UC, and are able to work, available to work, and actively seeking work. States must offer flexibility in meeting the “actively
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1		individuals who are self-employed or who have limited recent work history)."	seeking work" requirement if individuals are unable to search for work because of COVID-1, including because of illness, quarantine, or movement restriction.
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4		<i>See e.g.</i> UIPL 16-20, dated 4/5/20 at pp.1-2, sec (b); p. 4(b) "Like DUA, the PUA program is an emergency program activated in response to a crisis, and designed to provide benefits to certain individuals who are ineligible for or who have exhausted entitlement to regular unemployment compensation or extended benefits"	<i>See also</i> , UIPL 14-20 dated 4/2/20 at pp. 6-7 §(b) for description on coordination of programs and the order of payment determinations; UIPL dated 4/27/20 at Attachment I, p. I-1: "Unlike DUA, an individual filing for PUA does not need to provide proof of employment or self-employment to qualify, nor does PUA take into account the individual's principal source of income as part of the self-certification process."
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10		The only actual determining characteristic is if the claimant is a "covered individual" and self-certifies that he/she is unemployed, partially unemployed, or unavailable or unable to work because of COVID-19 related reasons listed in §2102, i.e.	
11		• Regular UI = paid UI and FPUC • Exhausted UI, not on job long enough, bona fide offer – paid PEUC and FPUC • 1099 with self-certification = paid PUA and FPUC	
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20	"However, many persons are not eligible for traditional unemployment insurance and PUA."	Disputed as to the restrictive reading of the CARES Act. The CARES Act is an expansive program that provides benefits for "covered individuals" for, as DETR admits in its Opposition	<i>See</i> UIPL 10-20 dated March 12, 2020 at p. 2 4.(a) – Determining whether an individual is "unemployed" – "The Department has a longstanding legal interpretation of federal UC law the "Unemployment" includes a reduction of both work and earnings.
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1	Opp. at p. 3:11, citing Schmidt Declaration at ¶ 16:	“three separate and distinct new types of compensation”	<i>See also</i> UIPL 16-20 dated 4/5/20 @ Attachment I, p. I-3. §C.1 – Eligibility.
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3		As to (1) DETR, though Mr. Schmidt’s declaration seems to ignore one of the three programs when stating “both” programs. If an individual is not entitled to regular UI, then he or she may be entitled to PUA or PEUC. (And if that individual is entitled to UI, PUA, or PEUC he or she is entitled to FPUC.) PEUC provides for 13 weeks of extended regular unemployment if regular benefits have expired. Thus, someone who has been out of work, prior to and since the pandemic began, and has exhausted regular UI would be eligible for PEUC.	“Covered individual” are those individuals not qualified for regular unemployment compensation [i.e. UI], extended benefits under state or Federal law, or pandemic emergence unemployment compensation (PEUC), including those who have exhausted all rights to such benefits. “Covered individuals also includes self-employed, individuals seeking part-time employment, individuals lacking sufficient work history, or those otherwise not qualified for regular UC, extended benefits under state or federal law, or PEUC. ...
4	(1) “For example, an individual who was unemployed and ineligible for regular UI at the start of the pandemic and had no <i>bona fide</i> job offer to start is not unemployed due to COVID-19		
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12	and would therefore not be eligible for benefits under either program.”	As to (2) DETR is incorrect; a reduction in income alone would be sufficient to qualify an individual for PUA. The dispositive question is, is he/she is employed or self-employed less than full time, which all putative class members arguably are. Thus, because there is a reduction due to COVID-19, no matter how much they made before, even if greater than the WBA, he/she would still be entitled to 50% of the average weekly payment in Nevada. And, because it is arguably more than \$1, he/she is also eligible for the \$600 in FPUC. <i>See</i> DOL UIPL 16-20 dated 4/27/20 @ p. I-14.	For purposes of PUA coverage, and individual “lacking sufficient work history” means an individual ... (3) who became unemployed or <i>partially unemployed</i> because of one of the COVID-19 related reasons identified under Section 2102. ...
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15	(2) “Another example is an individual who is an independent contractor who has faced a reduce income but has not been force to suspend operations due to COVID-19. Because a		“Self-employed individuals” as defined in 20 C.F.R. 625.2(n) means individuals whose primary reliance for income is on the performance of services in the individual’s own business, or on the individuals’ own farm. These individual include independent contractors, gig economy workers, and workers for certain religious entities.”
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1 reduction in
2 income alone
3 is not one of
4 the criteria
5 established in
6 UIPL 16-20,
7 this person
8 would not
9 qualify for
10 PUA on that
11 basis.”

*See e.g., (k) – “ ... under the additional eligibility criterion established by the Secretary here, the drive may still qualify for PUA benefits is he or she has been forced to suspend operations as a direct result of COVID-19 public health emergency, such as if an emergency state or municipal order restricting movement makes continued operations **unsustainable**.*

(f) The individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, ... [such as] an individual whose immune system is compromised ... in order to avoid the greater-than-average health risks ...

(d) and (c) The individual has primary caregiving responsibilities for children or other members of the household

...

(b) and (a) individual or family member diagnosed with COVID-19.

All that is required is a “self-certification” that the individual falls within one of these categories to be eligible for PUA.

See also DOL UIPL 16-20 dated 4/27/20 @ pp. I-4 and I-11:

Q#15: Under DUA, if an individual is employed or self-employed less than full-time, 20 C.F.R. sec. 625.6(b)(1) requires calculating the WBA (weekly benefit amount) as a percentage of the

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		minimum WBA. Does this same calculation apply to PUA? A: No. Section 2102(d)(1)(A)(i) of the CARES Act provides that the PUA WBA may not be less than the minimum weekly benefit amount described in 20 C.F.R. sec 625.6. For purposes of PUA, the minimum weekly benefit amount is 50 percent of the average weekly payment of regular compensation in the state, as provided quarterly by the DOL. Q#42: UIPL No 16-20 provides an examples for a ridesharing service who is forced to significantly limits his or her performance of customary work activities because of COVID-19 ... may be eligible for PUA under Section 2102(a)(3)(A)... of the CARES Act. Does this apply to other types of independent contractors? A: Yes. An independent contractor may be eligible for PUA if he or she is unemployed, <i>partially unemployed</i> or unable or unavailable to work because of one of the COVID-19 related reasons listed in section 2102(a)(3)(A)... of the CARES Act. This includes an independent contractor who experiences a <i>significant diminution of work</i> as a result of COVID-19.” (emphasis added.) See also, UIPL 15-20 dated 4/4/20, Change 1 at p. I-1. Q#4: Is an individual who is working part-time, or has gone back to work part-time and is collecting partial UC benefits for the week eligible for FPUC>
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1			A: Yes. Q#5; Does the additional FPUC payment affect how much a person could earn while working part-time before a deduction is made from the weekly underlying benefit payment?
2			A: No. All earning are deducted from the underlying UC benefit payment. If an individual's earning reduce the week's underlying benefit payment to zero, the individual would not be eligible for the FPUC for that week.
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8	"PEUC" Opp. at p. 3;15-17.	Undisputed.	
9	"FPUC" Opp. at p. 3:18-22.	Undisputed.	See UIPL 15-20 dated 4/4/20 at Attachment I, p. I-5, sec. 4.a.ii, "Determining entitlement to FPUC"
10			"If the individual is eligible to receive at least one dollar (41) of underlying benefits (including regular UC, PEUC, PUA, EB, STC, TRA, DUA and SEA) for the claimed week, the claimant will receive the full \$600 FPUC.
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15	"... Petitioners allege that payments to gig workers were due on April 11, 2020." Opp. at p. 4:3-4.	Disputed – actually according to the regulations and Nevada's Agreement to waive the first week of waiting time (see Agreement at p. 3) the first payments should have begun on April 4. Nevada entered into the Agreement on March 28, 2020, a Saturday, thus payments should have commenced on the following Saturday, April 4, 2020. For FPUC when employment ends on Sunday, the first week for which FPUC may be paid is the week ending April 5, 2020,	See UIPL 16-20, dated 4/5/30 at p. 4(c) – Important dates: PUA Is payable for weeks of unemployment, <i>partial</i> unemployment, or inability to work caused by COVID-19 related reasons listed on or after January 27, 2020 . For those states where the week of unemployment ends on a Saturday the first week of PUA may be paid is the week ending February 8, 2020. In states where the week of unemployment ends on a Sunday, the first week for PUA may be paid is the week ending February 9, 2020.
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	provided the Agreement was in place no later than March 29, 2020. <i>See</i> UIPL 15-20, dated 4/4/20 at p. 3§(b). Furthermore, PUA claims can be backdated to the first week during the Pandemic Assistance Period (“PAP”) [January 27, 2020] in which the individual meets the definition of a covered individual.” <i>See</i> UIPL 16-20 dated 4/5/20 at Attachment I, p. I-10-11, (8); <i>see also</i>, UIPL 16-20 dated 4/27/20 at Attachment I, p. I-2, Q4: “An individual does not need to demonstrate good cause to backdate a PUA claim. Rather, the claims <u>must</u> be backdated to the first week during the PAP that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102[] of the CARES Act.” (emphasis in original).	The Pandemic Assistance Period (“PAP”) is the period beginning January 27, 2020. <i>See</i> UIPL 16-20 dated 4/27/20, Attachment II at p. II-1. UIPL 16-20 dated 4/5/20 @ Attachment I, p. I-3. §C.1 – Eligibility. “Covered individual” are those individuals not qualified for regular unemployment compensation [i.e. UI], extended benefits under state or Federal law, or pandemic emergence unemployment compensation (PEUC), including those who have exhausted all rights to such benefits. “Covered individuals also includes self-employed, individuals seeking part-time employment, individuals lacking sufficient work history, or those otherwise not qualified for regular UC, extended benefits under state or federal law, or PEUC. ...
“... but DETR has consistently advised the public and the Nevada Legislature that PUA applications would not be able to be submitted until mid-May at the earliest, after implementation of a new	Undisputed as to the statement but disputed as to relevancy and DETR’s assertion that it has met the requirements of the Agreement and the applicable regulations. Nonetheless, DETR’s statements to the “public and the Nevada Legislature” do not shield DETR from its failure to pay benefits “when due” pursuant to <i>Java</i>, under the Agreement DETR signed, and pursuant to the CFR requiring prompt payment. DETR’s failure to properly	

1 2 3 4 5 6 7	computer system to process this new program.” Opp. at p. 4:8-11	implement a system to process claims going on between at least 58 days or arguably 107 days is not prompt and in dereliction of DETR’s duty to pay when due and under the Agreement. Indeed, first day filers (claims on May 16, 2020) have been waiting 58 days, which is between 28 days (four weeks) and 13 days outside the definition of promptness under the regulations.	
8 9 10 11 12 13 14 15 16 17 18 19 20 21 25 26	“Petitioners also speculate that the PUA program has relatively low risk of fraud. DETR disagrees.” Opp. at p. 5:13-15.	Disputed. This alleged but unproven fraud simply does not justify DETR’s non-payment of one billion dollars to 55% of all PUA applications. In its papers, DETR says it estimates there may be 2.4 million of fraud for every week paid, or 2.4% of all payments. Why should 139,000 people suffer for the unproven wrong done potentially by 3336 of them. While DETR says in its declaration that based upon a 2010 US Census report, there are only 82,000 gig workers in Nevada, compared to the 1,466,063 weekly claims (Schmidt Chart as of 6/29/20) for PUA relief. As an initial matter, PUA covers more than just gig workers, as it includes anyone who are self-employed, seeking part-time employment, or otherwise would not qualify for regular unemployment	As both a state and federal constitutional matter, due process requires that the prosecution prove every element of the charged crimes beyond a reasonable doubt before DETR can punish anyone for such fraud. See <i>Emerson v. State</i> , No. 70606 (Nev. Jan. 18, 2018), <i>Crawford v. State</i> , 121 Nev. 744 (Nev. 2005); <i>Babb v. Lozowsky</i> , 719 F.3d 1019 (9th Cir. 2013) <i>Polk v. Sandoval</i> , 503 F.3d 903 (9th Cir. 2007).

1 compensation. See UIPL 14-20,
2 dated 4/2/20 at Attachment I.

3 Moreover, DETR fails to mention
4 that many of the duplicate
5 applications were caused by
6 DETR itself when DETR told
7 everyone with unpaid pending
8 claims to reapply, and wiped out
9 their weekly reports, but since
10 those repeat claimants used the
11 same social security number,
12 these duplications are both easily
13 eliminated, and are not evidence
14 of fraud at all. Fraud requires
15 intent, but an honest mistake,
16 especially a mistake DETR
17 induced any re-applying
18 claimant to make, lacks any such
19 *mens rea*, and supplying the
20 same social security number on
21 two applications is prima facie
22 proof of lack of intent to deceive
23 DETR at all.

24 In addition, the extent of all this
25 alleged but unproven fraud
26 simply does not justify DETR's
non-payment of one billion
dollars, to 55% of all PUA
applications.

On June 1, 2020, .DOL Inspector
General Scott S. Dahl told the
Subcommittee on Government
Operations of the House
Committee on Oversight and
reform that "The Department
has estimated that about 10% of
UI payments are improper under
the best of times, and we are in
the worst of times. That means at
least 26 billion dollars will be
wasted and a large portion of
that will be pocketed by
fraudsters instead of going to

1		legitimate workers.” Scott S. Dahl – Opening statement of June 1, 2020 House of Representatives Committee on Oversight and Reform Subcommittee on Government Operations (available on-line).	
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5		No one is condoning fraud. But contrasting this statement of a 10% fraud rate built into any system of unemployment benefits, with DETR’s report of 37 recent cases of identity fraud in Washoe County, which is only seven hundredths of one per cent of the general population for that county, Petitioners find that the sky really isn’t falling at the rate DETR claims. The bottom line on the fraud claim is simply that it is illogical to apply statistical comparisons to everyone in a group when actual data per claimant will reveal with precision who is and who is not committing fraud.	
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15	“For instance, despite the first COVID-19 case in Nevada being reported on March 5, 2020, DETR has received approximately thirty-four (34, 000) PUA claims for the preceding week of February 29, 2020.”	Undisputed as to the statement, disputed as to the allegation of fraud. This is a <i>global pandemic and global health crisis</i> . DETR admits on one hand that Nevada, in particular the fact that many jobs in Nevada are connected to tourism, has been harder than other states. Yet, DETR asks this Court to operate in a vacuum of the “first COVID-19 case ... reported on March 5, 2020.” COVID-19 didn’t suddenly appear with the first diagnosis, it has been effecting the American	The Pandemic Assistance Period (“PAP”) is the period beginning January 27, 2020. See UIPL 16-20 dated 4/27/20, Attachment II at p. II-1. See UIPL 16-20, dated 4/5/20, Attachment I, pp. 3-4 at § C.1 Eligibility. “Covered individual” are those individuals not qualified for regular unemployment compensation [i.e. UI], extended benefits under state or Federal law, or pandemic emergence unemployment compensation (PEUC), including those who
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economy and all American citizens health as early as the end of 2019. Indeed, the PAP period began on January 27, 2020. And, in approving the CARES Act Congress acknowledged these facts, allowing for backdating of claims if the individual in question meets any of the criteria set forth under Section 2102 (a)(3)(A) as a covered individual.

This is not an unreasonable number. Instead of relying on an outdated and biased 2010 US Census report, DETR should at least use a current US Census report which says that in 2018, there were more than 245,000 “Nonemployer Establishments” i.e. gig workers in Nevada. <https://www.census.gov/topics/business-economy.html>.

The U.S. Census Bureau, “Nonemployer Statistics” (Updated annually) defines the term “Nonemployer establishments” to mean “A nonemployer business is one that has no paid employees, has annual business receipts of \$1,000 or more (\$1 or more in the construction industries), and is subject to federal income taxes. Nonemployer businesses are generally small, such as real estate agents and independent contractors. Nonemployers constitute nearly three-quarters of all businesses, but they contribute less than four percent of overall sales and receipts data. Nonemployers are not included

have exhausted all rights to such benefits. “Covered individuals also includes self-employed, individuals seeking part-time employment, individuals lacking sufficient work history, or those otherwise not qualified for regular UC, extended benefits under state or federal law, or PEUC. ...

For purposes of PUA coverage, and individual “lacking sufficient work history” means an individual ... (3) who became unemployed or ***partially unemployed*** because of one of the COVID-19 related reasons identified under Section 2102. ...

“Self-employed individuals” as defined in 20 C.F.R. 625.2(n) means individuals whose primary reliance for income is on the performance of services in the individual’s own business, or on the individuals’ own farm. These individuals include independent contractors, gig economy workers, and workers for certain religious entities.”

*See e.g., (k) – “ ... under the additional eligibility criterion established by the Secretary here, the drive may still qualify for PUA benefits is he or she has been forced to suspend operations as a direct result of COVID-19 public health emergency, such as if an emergency state or municipal order restricting movement makes continued operations ***unsustainable***.*

1		in the counts of establishments from the Economic Census or County Business Patterns. “ The US Census continues to explain that “Generally, an establishment is a single physical location at which business is conducted or services or industrial operations are performed. However, for nonemployers, each distinct business income tax return filed by a nonemployer business is counted as an establishment. Nonemployer businesses may operate from a home address or a separate physical location. A business is assigned to a county location based on the business owner's mailing address, which may not be the same as the physical location of the business.” https://www.census.gov/quickfacts/fact/note/US/NES010218 last visited July 12, 2020.	(f) The individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, ... [such as] an individual whose immune system is compromised ... in order to avoid the greater-than-average health risks ... (d) and (c) The individual has primary caregiving responsibilities for children or other members of the household ... (b) and (a) individual or family member diagnosed with COVID-19
14	“Mere publicity surrounding this filing resulted in significant increased submittals for the program.” Opp. at p. 6:13-14	Undisputed.	
20	“Elimination of eligibility review by this court <i>could</i> be a significant magnet for	Disputed in part. Petitioners are not asking this Court to eliminate eligibility review. Petitioner is requesting the following:	

improper filings.” Opp. at p. 6:14-15 (emphasis added).

(1) Claimants who are have been given a notice of “apparent UI wages” be paid immediately and DETR review claims for adjudication at a later date claimants be paid immediately and DETR review claims for adjudication at a later date, with claimant subject to repayment/overpayment guidelines set forth by the Agreement.. (This group includes 45,328 individuals according to DETR’s Schmidt Chart.)

(2) Claimants who are have been given a notice of “eligibility”, have apparent “dual eligibility” or “no pending issues for review” and are PUA or PEUC claimants be paid immediately and DETR review claims for adjudication at a later date, with claimant subject to repayment/overpayment guidelines set forth by the Agreement. (This group number is not determined in DETR’s references.)

(3) All members of (1) and (2) be paid immediately their FPUC benefit because they are entitled to at least \$1 of UI, PUA, PEUC, or other underlying benefit and DETR review claims for adjudication at a later date, with claimant subject to repayment/overpayment guidelines set forth by the Agreement. (This group number is not determined in DETR’s references.)

Claim Status	PUA Initial Claims	PUA Weekly Claims Filed	PUA\$ Paid, Excluding FPUC
A: Claim Paid	\$107,923	\$1,466,063	\$343,044,663
B: Failed Identity Check	17,179	128,132	NA
C: Apparent UI Wages	45,328	485,176	NA
D: No Weeks Filed	14,548	NA	NA
E: Out of Country	2,830	35,139	NA
F: IP Issue	20,786	258,718	NA
G: Recent ? Activity Stop	23,912	298,605	NA
H: Other Outstandi ng Issue	5,511	62,783	NA
I: No Detail	9,013	94,711	NA

DETR and the State will not be responsible for repayment/overpayment the individual claimants bear that responsibility. The Agreement DETR entered into with the DOL specifically states:

Consistent with the requirements of the provisions identified in paragraph XIV and the related addenda, [DETR] will take such action *as reasonably may be necessary to recover* for the account of the United States all benefit amounts erroneously paid and restore any lost or misapplied funds paid to the state for benefits of Administration of this Agreement.

See Agreement at Exhibit 3 to Opp. at p. 2, § VIII.

1		(4) Claimants who received an eligibility determination but have since been denied, or payments having stopped, have payments resume under the terms determined initially review claims for adjudication at a later date, with claimant subject to repayment/overpayment guidelines set forth by the Agreement. (This group number is not determined in DETR's references.)	NRS 612.505 states: Consolidated appeals. When the same or substantially similar evidence is material to the matter in issue with respect to more than one individual, the same time and place for considering all such appeals may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, provided no party is prejudiced thereby.
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9		(5) As to all those class members for whom DETR has determined were not eligible for PUA or any other benefits on the grounds that they were not unemployed or there was not a reduction in employment caused by the COVID-19 pandemic, DETR shall issue a notice of consolidated group hearing pursuant to NRS 612.505 for an initial determination by an impartial administrative law judge, or a judicial hearing officer, or if the parties so agree, a retired judge acting as a private hearing officer to determine eligibility. (This group number is not determined in DETR's references.)	The Administrator of DETR retains the right to make a multi -claimant determination in favor of payment of benefits at an time by administrative action allowed under NRS 612.220 and NAC 612.700 and 612.720, pursuant to Incorporate UI Employment and Training Guidance included in Employment and Training (ET) Handbook 301 5th Edition, to wit: Multi-claimant "Other" Determinations, i.e., determinations which do not involve a labor dispute but affect a class of claimants from the same employer with a common issue. Page II-1
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25		(6) All claimants who are eligible for backdating to the PAP be paid immediately from the first week during the Pandemic Assistance Period that the individual self-attested that the claimant was unemployed, partially unemployed, or unable or unavailable to work because of a	The Pandemic Assistance Period ("PAP") is the period beginning January 27, 2020. See UIPL 16-20 dated 4/27/20, Attachment II at p. II-1
26			Under Governor's declaration published April 14, 2020, all claims are eligible for backdate and per PUA directive in UIPL 16-20 Change 1:

	COVID-19 related reason as directive in UIPL 16-20 Change 1 and DETR review claims for adjudication at a later date, with claimant subject to repayment/overpayment guidelines set forth by the Agreement. (This group number is not determined in DETR's references.) (7) All claimants whom DETR has sent any adverse determination letter or email, and for which there is no appeal mechanism within DETR (often despite assurances in the determination to the contrary) or that the link to the appeal on DETR's website is not working, DETR shall revoke immediately and retroactively reverse any and all actions based upon that adverse determination until such time as a new determination is sent with sufficient time to appeal, and a mechanism for so doing, including a method to appeal on line that actually works. (This group number is not determined in DETR's references.) (8) All claimants who have outstanding issues shall be contacted by DETR before any adverse action is taken, contact the individual class member either "in person, phone, or online" in a manner that "ensures equal access" to all claimants, to clarify responses, assist with locating documentation, and/or obtain self-attestation. Defendants-	Q#4: Is an individual required to demonstrate good cause to backdate a PUA claim? A: No. An individual does not need to demonstrate good cause to backdate a PUA claim. Rather, the claim must be backdated to the first week during the Pandemic Assistance Period that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act." The Pandemic Assistance Period ("PAP") is the period beginning January 27, 2020. <i>See</i> UIPL 16-20 dated 4/27/20, Attachment II at p. II-1 <i>See</i> UIPL 13-20 dated 3/22/20 at p. 4sec. (ii). DETR must ensure communications are ADA complaint so that people with disabilities (such as sight or hearing impaired) are provided equal access. Additionally (ii) states that DETR "should ensure that individuals have access to staff that have been properly trained to provide ... assistance and service to assist in claims taking by facilitating routine acceptance information." <i>See also</i> (iii) DETR must notify claimants "on why and what steps the claimants can take to ensure the successful processing of claims."
--	--	--

1 Respondents shall instruct all
2 employees, agents and assignees
3 that the primary mission of
4 DETR is to assist all class
5 members in making true and
6 correct application for
7 unemployment compensation
8 and to obtain for each class
9 member the greatest amount of
10 unemployment compensation for
11 which the individual is lawfully
12 entitle and eligible to obtain.
Upon receipt of a return of such
questionnaire, self-attestation
and /or documentary evidence in
support of a claim for benefits,
DETR shall immediately adjust
the status of the claimant and
payments according to proof and
the revised records in that
individual's case. (This group
number is not determined in
DETR's references.)

13
14 **B. DETR**

15 *i. List of Disputed Facts.*

16 Below is an effort to compile a list of responses to alleged facts contained in the First
17 Amended Petition for Writ of Mandamus, the Memorandum of Points and Authorities in
18 Support of the Writ of Mandamus, the Reply to Opposition to Issuance of a Writ of
19 Mandamus, and several of the attached Declarations. The below facts were assembled on
20 an expedited timeline at the request of and for the benefit of the Special Master in this
21 case.

The submission of these facts on an expedited timeframe is not a waiver of and DETR specifically reserves its right to change its assertions when it responds to the Petition through a formal court filing.

1. First Amended Petition For Writ Of Mandamus and/or Class Action Complaint For Damages.

Assertion	DETR's Response
Paragraph 24	DETR does not dispute that Petitioner-Petitioners name in lawsuit were all lawfully working in Nevada immediately prior to March 15, 2020, as self-employed individuals, sole proprietors, and/or independent contractors who did not pay themselves as W-2 employees.
Paragraph 25	DETR does not dispute that Petitioner-Petitioner's named in the lawsuit were either in an industry that was directly closed by Governor Sisolak in his March 15, 2020 Executive Order and/or suffered a significant decline in revenue as a result of the March 15, 2020 Executive Order. However, DETR does not have enough information, nor can it get enough information in the short time frame, to agree that all gig worker class members were either in an industry that was directly affected by Governor Sisolak's March 15, 2020 Executive Order or suffered a significant decline in business revenue a result of the Governor's Executive Order.
Paragraph 26	DETR does not dispute that named Petitioner-Petitioners were ineligible for unemployment compensation prior to March 27, 2020. DETR cannot determine if other members who fit into Petitioner-Petitioner's described class were ineligible to receive unemployment benefits because it would be necessary to review each class members' circumstances in order to determine if that particular class member was indeed eligible for unemployment benefits.
Paragraph 27	DETR does not dispute that President Trump signed the Families First Corona Virus Response Act, which provides additional flexibility for State unemployment agencies and additional administrative funding to respond to the COVID-19 pandemic.
Paragraph 28	DETR does not dispute Paragraph 28.
Paragraph 29	DETR disputes that the date of the Agreement between DETR and DOL was March 31. The date that the Agreement was signed was March 28, 2020.
Paragraph 30	DETR does not dispute paragraph 30.

1	Paragraph 31	DETR does not dispute paragraph 31.
2	Paragraph 32	DETR does not dispute Paragraph 32.
3	Paragraph 33.	DETR does not dispute Paragraph 33.
4	Paragraph 34.	DETR does not dispute Paragraph 34.
5	Paragraph 35	DETR disputes Paragraph 35. DETR is not aware of any statute or regulation, either State or Federal, indicating that Petitioner-Petitioners by applying for unemployment compensation on DETR's PUA website as gig workers are deemed to have believed they were eligible for unemployment compensation, or actually believed that they were eligible for unemployment compensation. Thus, DETR disputes Paragraph 35.
6	Paragraph 36	DETR disputes Paragraph 36. There is nothing in any Agreement, State or federal law or USDOL Guidance that stated that DETR had to provide gig workers who believed that they were eligible for unemployment compensation benefits a reasonable method or mechanism to apply for those benefits on or before April 11, 2020.
7	Paragraph 37	DETR does not dispute Paragraph 37. (except that there may be a typo as to May 26 instead of May 16)
8	Paragraph 38	DETR does not dispute Paragraph 38.
9	Paragraph 39	DETR disputes Paragraph 39. Again, there is nothing in in any Agreement, State or federal law or USDOL Guidance that stated that DETR had the duty to provide a website or other means for a gig worker to make application for unemployment compensation between April 11, 2020, and May 16, 2020.
10	Paragraph 40	DETR disputes Paragraph 40. DETR did not have a duty to pay benefits between April 11, 2020, and May 16, 2020, because the payments for unemployment compensation were not due.
11		As stated in Respondent's Opposition, UIPL 04-01 states:
12		As well as promptness, the Department has always interpreted "when due" in Section 303(a)(1), SSA, to require accuracy in order to ensure that payments are not made when they are not due. See 20 CFR 602.11(a) and 602.21(c). Proper application of Section 303(a)(1) requires an appropriate balancing of the dual concerns of promptness and accuracy in the "when due" provision.

1		So UIPL 04-01, USDOL's own guidance, does not reference specific
2		dates for when benefits payments are due, but suggested that time
3		should be taken by the State agency to ensure payments made are
4		accurate.
5		Additionally, there is no date cited in the Agreement DETR signed
6		with DOL on March 28, 2020, to start administering CARES benefits
7		payment, there is no date for when benefits payments are due under
8		the CARES Acts. 20 CFR Section 640.4 and 20 Section CFR 640.5,
9		cited by Petitioners, are inapplicable in this situation to PUA Claims,
10		as the plain language of 20 CFR Section 640.4 and Section CFR 640.5
11		apply to the administration and compliance of state law, not Federal
12		law, such as the CARES Act. Additionally, USDOL does not even
13		track for the PUA program the information required to be provided
14		with respect to regular unemployment in 20 CFR Section 640.5, which
15		seems to indicate that USDOL is not holding the states to the
16		standards set out for unemployment compensation with respect to
17		PUA benefits.
18	Paragraph 41	DETR does not dispute that Petitioner-Petitioners and other gig class
19		members would not begin to start filing PUA claims until May 16,
20		2020. DETR disputes for reasons stated in Paragraphs 36, 39 and 40,
21		that DETR failed to execute any clear duty on or before May 16, 2020,
22		with respect to this lawsuit. Additionally, DETR disputes the
23		characterization of these claims as federally mandated, as Nevada had
24		to contract with DOL for benefits and absent the discretionary
25		contract, no money would be payable.
26	Paragraph 42	DETR does not dispute Paragraph 42.
	Paragraph 43	DETR disputes that it breached any duty to Petitioner-Petitioners.
		DETR has not failed to make payments to Petitioner-Petitioners
		because such payments have not become due, and such delay is not
		undue.
	Paragraph 44	DETR does not dispute Paragraph 44.
	Paragraph 45	DETR does not dispute Paragraph 45, notes that ineligibility for
		traditional unemployment alone is not enough to qualify for PUA.
		UIPL 16-20, Change 1, page I-6, USDOL indicates that self-
		attestation is not sufficient to demonstrate ineligibility for regular UC,
		EB, or PEUC. The state may add a notation to the case file without
		requiring an application for regular UC if the individual has
		insufficient covered wages to meet the monetary requirements or if
		the individual has an active UC claim with a disqualification States
		must also determine whether the individual is eligible for regular UC
		in another state.

	Additionally, if the individual's eligibility for regular UC is questionable (for example, there are wages in the base period but no claim is filed, or a job separation that has not been adjudicated), then the state must first require the individual to file a regular UC claim. If the individual is subsequently disqualified from receiving regular UC, the state then must consider the individual for PUA eligibility.
Paragraph 46	DETR does not dispute Paragraph 46.
Paragraph 47	DETR does not dispute Paragraph 47.
Paragraphs 48-80	For paragraph 48-80: all Petitioner-Petitioners have started receiving payments on their claims except for Dariush Naimi, who it was determined was earning more per week than what he would earn in PUA benefits, and so is ineligible for PUA benefits. DETR cannot confirm or deny the particular allegations, but as it appears all the claimants except Dariush Naimi have started receiving payment on their claims and their claims are moot.
Paragraph 81	DETR does not dispute that, as of the date of filing this First Amended Petition and Complaint, 14 weeks elapsed since the March 15, 2020 Nevada state ordered shut down. DETR disputes that 11 weeks has elapsed since the date Defendant-Respondent DETR should have started making PUA and FPUC payments pursuant to its agreement with the United States Department of Labor on March 30, 2020. There is no language in the Agreement between DETR and USDOL setting any date for the commencement of payment pursuant to PUA and FPUC, nor are there any state or federal laws (including the CARES Act) mandating a date on which PUA and FPUC payments were to begin. 20 CFR Section 640.4 and 20 Section CFR 640.5, cited by Petitioners, are inapplicable in this situation to PUA Claims, as the plain language of 20 CFR Section 640.4 and Section CFR 640.5 apply to the administration and compliance of state law, not Federal law, such as the CARES Act. Additionally, USDOL does not even track for the PUA program the information required to be provided with respect to regular unemployment in 20 CFR Section 640.5, which seems to indicate that USDOL is not holding the states to the standards set out for unemployment compensation with respect to PUA benefits.

Paragraph 82	DETR disputes that it has failed to make weekly the weekly payments or back pay to the vast majority of eligible gig workers who have applied for unemployment compensation. As demonstrated by DETR's chart submitted in its Opposition, page 5, the majority of all gig workers who applied for compensation have been receiving benefits. It is yet to be determined what percentage of remaining claimants are eligible.
Paragraph 83	DETR disputes that any delay in payments of unemployment benefits has caused, Petitioners-Petitioners irreparable harm. There is no right to payments prior to a determination of eligibility so no legal harm can arise therefrom. DETR is required, pursuant to UIPL 16-20, page three, to determine the eligibility of claimants for PUA benefits, and not simply pay out benefits.
Paragraph 84	DETR disputes that any delay in payments of unemployment benefits has caused, Petitioners-Petitioners irreparable harm. There is no right to payments prior to a determination of eligibility so no legal harm can arise therefrom. DETR is required, pursuant to UIPL 16-20, page three, to determine the eligibility of claimants for PUA benefits, and not simply pay out benefits.
Paragraph 85	DETR does not dispute that by June 26, 2020, it would have been over five weeks since Defendant-Respondent DETR began accepting applications for unemployment compensation (PUA) by gig workers.
Paragraph 86	DETR does not dispute that since FPUC benefits are automatically in addition to any other unemployment compensation benefits, there is not a separate website application process for this \$600 per week of extra compensation.
Paragraph 87	DETR disputes that in almost all cases, Defendant-Respondent DETR first approves the application for benefits, then fails to make payments. In many cases Petitioner-Petitioners and other members of the class received financial eligibility determination letters, and not letters approving the claimants for full benefits; in other situations letters were sent that DETR admits were probably confusing to some claimants, but which were inadvertently sent when an issue was resolved, but which still indicated that the claimants might receive multiple decisions on their claim, and that any one denial would supersede all other decision. DETR has corrected its system so that letters saying approved were eliminated to reduce claimant confusion.

Paragraph 88	DETR does not dispute that once the initial application for benefits is approved, benefits must continue until there is a reversal of that determination by an administrative law judge after a fair hearing which affords the claimant due process of law. DETR disputes that benefits are granted prior to a full determination of eligibility. DETR further disputes that this almost happens with gig worker applications, as is demonstrated by the number of claims DETR has not paid on due to PUA claimants being either eligible for unemployment insurance and having to pursue those benefits or because of an issue with fraud, as outlined in Administrator Kim Gaa's declarations.
Paragraph 89	DETR disputes that it failed to pay approved benefits, and that it retroactively claimed claimants were ineligible for unemployment compensation. As stated above, Petitioner-Petitioner's mistook notice that they were financially eligible for unemployment benefits or another notice letter for notice that the claimant was eligible for full benefits.
Paragraph 90	DETR disputes that it engaged in the practice of re-evaluating eligibility retroactively without a fair hearing before an administrative law judge.
Paragraph 91	DETR disputes that it informed Petitioners-Petitioners and gig worker class members with unpaid that they were approved for PUA program under the CARES Act, and then when they complained that they have not been paid, changed their DETR individual application progress report website page to state, payment "in progress" and/or "Unresolved Issues" changes from "No" to "Yes."
Paragraph 92	DETR disputes that non-payment is non-payment is due to a "glitch" in the logic of the workflow system that DETR uses to process claims. Due to the shortened time frame and the vagueness of the terms often and 'glitch' DETR is unable to fully investigate to determine if the most common reasons for Defendant-Respondent DETR not paying claims are: 1) "Not Disaster Related" ((Payment type active issues Code DUA-UI "); 2) "Other Eligibility" (mix of W-2 and 1099 and self-employment income); 3) "Unresolved Issues- No outstanding Issues"; 4) Formerly DUA-UI.
Paragraph 93	DETR disputes paragraph 93. Due to the shortened time frame DETR has been unable to investigate and determine if unresolved issues were in actuality resolved, and so disputes this allegation.

Paragraph 94	DETR disputes that it has breached the duty of their office to Petitioners-Petitioners and each of them, as well to every member of the gig worker class, and has caused them each undue delay in receiving payment of promised Unemployment Compensation benefits to which they are entitled to as a matter of law. As noted above, DETR has the obligation to pay gig workers their benefits when due, but, as noted in response to 40 above, the payments were not due.
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2. Memorandum of Points and Authorities in Support of Ex Parte Writ of Mandamus Statement of Fact Section.

Assertion	DETR's Response
First Paragraph page 12	DETR does not dispute that it had not paid a large number of gig workers who applies for benefits provided by the CARES Act 11 weeks after the CARES Act was signed. DETR disputes that workers were entitled to claims as a result of the passage of the CARES Act, Nevada must contract with the Department of Labor to execute the program. DETR disputes that the payments to the unpaid gig workers were due. As stated in Respondent's Opposition, UIPL 04-01 states: As well as promptness, the Department has always interpreted "when due" in Section 303(a)(1), SSA, to require accuracy in order to ensure that payments are not made when they are not due. See 20 CFR 602.11(a) and 602.21(c). Proper application of Section 303(a)(1) requires an appropriate balancing of the dual concerns of promptness and accuracy in the "when due" provision. So UIPL 04-01, USDOL's own guidance, does not reference specific dates for when benefits payments are due, but suggested that time should be taken by the State agency to ensure payments made are accurate. Additionally, there is no date cited in the Agreement DETR signed with DOL on March 28, 2020, to start administering CARES benefits payment, there is no date for when benefits payments are due under the CARES Acts. 20 CFR Section 640.4 and 20 Section CFR 640.5, cited by Petitioners, are inapplicable in this situation to PUA Claims, as the plain language of 20 CFR Section 640.4 and Section CFR 640.5 apply to the administration and compliance of state law, not Federal law, such as the CARES Act. Additionally, USDOL does not even track for the PUA program the

1		information required to be provided with respect to regular unemployment
2		in 20 CFR Section 640.5, which seems to indicate that USDOL is not
3		holding the states to the standards set out for unemployment compensation
4		with respect to PUA benefits.
5		DETR does not dispute that on May 16, 2020, opened its webpage to
6		being accepting applications for PUA benefits.
7	Second	DETR disputes that gig workers were legally eligible to obtain
8	Paragraph	unemployment compensation/unemployment insurance benefits on April 5,
9	page 12	2020. Nothing in the Agreement DETR signed with USDOL, nothing in
10		statute, regulation or in the UIPL's states anything about gig workers
11		being legally eligible to obtain employment compensation/unemployment
12		insurance benefits on April 5, 2020.
13		DETR does not dispute that it did not begin to start accepting PUA
14		applications until May 16, 2020.
15		DETR disputes that payment for all claimants was expected two weeks
16		after applications were received. DETR disputes that the vast majority of
17		gig workers remain unpaid. On Page 5 of 23 of Respondent's Opposition it
18		clearly states that a majority of gig works have been getting paid.
19		DETR does not dispute that gig workers have lost significant revenue as a
20		result of the Governor's March 15, 2020 Executive Order.
21	Paragraph	DETR disputes that the reasons stated for nonpayment are ridiculous.
22	1, page 13	DETR does not dispute that the article cited by Petitioner-Petitioners
23		quoted Ms. Korbolic as stating: "About 40 percent of claims being filed are
24		deemed ineligible for the program for reasons including that people are
25		eligible for regular state unemployment insurance instead of the new
26		federally funded program."
		DETR does not dispute that the chart attached to the news article appears
		to show that as of June 12, 2020, of the total universe of 529,649 claims
		that were filed, DETR says 166,428 or 31% were "Not eligible for
		Unemployment Insurance,"
		DETR is unable to confirm in the time frame to respond that Ms. Korbolic
		stated that the majority of claimants were ineligible for unemployment
		benefits because they were eligible for another program.
		DETR does not dispute that it did not say these people are being paid by
		those other programs. DETR disputes Petitioner Petitioner's allegation

1 that the vast majority are not receiving any benefits under any program.
2 In fact, information submitted on page 5 of Respondent-Defendant's
3 Opposition reflects that the majority of PUA claims received by DETR are
4 processed and paid.

5 DETR cannot in the limited time for a response investigate to see if "many"
6 Gig Workers were told initially by DETR representatives that they had to
7 apply to the regular [UI] programs as a pre-requisite for applying to the
8 Gig Worker program. Thus, DETR disputes the claim.

9 DETR in the short time frame for a response is unable to determine if gig
10 workers, after uploading their rejection letters from other programs than
11 the PUA program administered by DETR, these workers, were told that
12 their application for the Gig Worker program (PUA) was not approved
13 because the claimant was eligible for the other program that had already
14 rejected them. Thus, DETR disputes this allegation.

15 DETR disputes that is improperly denying benefits because these Nevada
16 workers are not getting covered by any program, even though they are
17 eligible under at least one if not two of the CARES Act programs.
18 Petitioner-Petitioner's allegation is unclear, but DETR disputes that it is
19 improperly denying benefits, as it is required to determine if a claimant is
20 eligible for PUA prior to paying claimants.

21 DETR does not dispute that the \$600 per week FPUC money applies no
22 matter for which program a claimant has been approved. However, DETR
23 disputes that all claimants are eligible for assistance.

24 As DOL states in the April 2, 2020 PL 14-20: "The Federal Pandemic
25 Unemployment Compensation (FPUC) under section 2104 provides for an
26 additional \$600 per week to an individual collecting regular UC, PEUC,
27 PUA, EB, STC, TRA, DUA, and SEA." There are no other programs. If all
28 the programs automatically include the \$600 per week FPUC payment,
29 why are these people who DETR says are ineligible as gig worker claimants
30 because they are covered by another program not being paid at least the
31 \$600 per week FPUC money? DETR does not dispute that Petitioner-
32 Petitioner's quoted UIPL 14-20. However, DETR cannot simply assume
33 that a claimant who is denied unemployment compensation will
34 automatically qualify for PUA benefits or benefits under some other
35 program, such as extended benefits; thus, DETR disputes this allegation.

1 2 3 4 5 6 7 8 9 10	Paragraph one page 14	DETR disputes the paragraph one page 14: It really doesn't matter to a claimant which program pays him/her the unemployment compensation due (the amounts are basically the same for all programs) as long as one program pays, the FPUC money is due. A determination to withhold PUA program benefits because of eligibility in another program a <i>de facto</i> determination that the gig worker is covered by at least one program, and therefore, as soon as the gig worker qualifies for any program, the claimant must be paid pursuant to the FPUC program immediately. DETR disputes this paragraph because in order to receive FPUC a claimant must be eligible for regular unemployment compensation, PUA, or several other programs. See UIPL 15-20, page two. However, an eligibility determination for a particular program would need to be made before FPUC benefits could be paid, as simply because a claimant is found ineligible for PUA, for example, does not mean the claimant is automatically eligible for unemployment compensation or another applicable program.
11 12 13 14 15 16 17 18 19 20 21 25 26	Second full paragraph on page 14)	Another nonsensical excuse for nonpayment is that gig workers in industries that are not expressly mentioned in Governor Sisolak's March 15, 2020 executive order, but who suffered a serve loss of revenue as a result of the closing of most tourist venues like hotels, casinos and restaurants are not eligible to apply because their loss is "not disaster related." Most Uber and Lyft drivers in Las Vegas make their money driving around tourists who do not have a car of their own to use while in town. When the hotels, casinos, showrooms, day clubs, bars, and restaurants closed because of the March 15, 2020 Executive Order, the tourists stay away. It really doesn't take much deduction to realize the sudden and dramatic loss of income to gig works who drive for Uber and Lyft is totally the result of the March 15, 2020 Executive Order, which is solely the result of the COVID-19 Pandemic. Yet, DETR says these people are ineligible to apply for benefits because they were not 'laid off' as a direct result of the COVID 19 disaster. DETR disputes that its reason for nonpayment in these circumstances is nonsensical. As noted in Respondent-Defendant's Opposition, reduced revenue is not a sufficient reason for eligibility. Pursuant to UIPL 16-20, specifically, on page I-6, Section K, in order to collect PUA benefits the claimant must have been, because of the COVID-19 emergency, so severely limited in his or her ability to continue performing customary work activities that the gig worker had to "suspend such activities." US DOL again used the word "suspend" in its example in Section K, when it referred to activities, rather than using another word, such as decline,

1		which would have indicated that a decline/reduction in revenue would have made a claimant eligible for PUA. Thus, it is clear that a reduction in
2		revenue will not make a gig worker eligible for PUA benefits, but rather
3		the suspension of activities, rather than simply a reduction in business, by
4		the gig worker/independent contractor is required.
5	Bottom	DETR disputes the bottom paragraph on page 14:
6	paragraph	
7	on page 14	Another common excuse to not pay benefits by DETR is
8		that gig workers who keep working, even for significantly
9		reduced revenue, are not eligible for unemployment
10		compensation since they are not “unemployed.” First, gig
11		workers are self-employed, so they are never unemployed,
12		but they are still entitled benefits if income is reduced by
13		COVID 19 related occurrences. For example, Petitioner-
14		Petitioner NAIMI has a family to feed, so when his Uber
15		revenue dropped as a result of the lack of tourists, he did
16		more local routes. His income went down 60%, even though
17		he worked more hours to earn just 40% of what he did
18		before. <i>Id.</i> DETR said he was not eligible because he was
19		not unemployed, even though the DOL memos state quite
20		clearly that reduced earnings, income, or partial income,
21		does not count against receiving the full \$600 per week
22		FPUC money. <i>Id.</i> DETR would rather Petitioner-Petitioner
23		NAIMI stay home and let his family starve rather than
24		work harder to earn less.
25		These are not reasons to sustain an initial determination of ineligibility for
26		the same reasons it disputed the immediately preceding paragraph.
27	DETR	DETR disputes the following paragraph on page 15:
28	disputes	
29	the	And to add insult to injury, many of these not eligible
30	following	claimants have letters or web page entries saying that they
31	paragraph	were determined to be eligible initially, but a few weeks
32	on page 15	later, are told that their eligibility has been cancelled
33		retroactively because there are unresolved issues in their
34		claim. The United States Supreme Court has stated, and
35		as the regulations now state, that once a claimant is
36		eligible, due process requires that unemployment
37		compensation benefits must continue to flow until an
38		administrative law judge has made a finding of after a fair
39		administrative hearing. Instead, DETR uses its own delay
40		in making payment to reconsider the initial eligibility

1		determination and then retroactively determines that a
2		claimant was not eligible <i>ab initio</i> which DETR considers
3		a (second) eligibility determination rather than a denial of
4		benefits already granted. This trick of mislabeling a denial
5		of existing entitlement to benefits as a second or third
6		retroactive initial eligibility determination is simply
7		unconstitutional.
8	With	With respect to the bottom paragraph on page 15:
9	respect to	
10	the bottom	To save face, DETR claims that it was overwhelmed and
11	paragraph	unprepared for this never seen before expansion of the
12	on page 15	Unemployment Compensation system to cover self-employed
13		individuals, also referred to as gig workers. But this is not the
14		first time that a State administered, federally financed,
15		Unemployment Compensation system was so heavily relied
16		upon to make benefits available to individuals who are self-
17		employed, those seeking part-time employment, or those who
18		otherwise would not qualify for Unemployment Compensation
19		under other existing programs. The “Disaster Unemployment
20		Assistance (DUA)” program was first created in 1970 by the
21		Robert T. Stafford Disaster Relief and Emergency Relief Act
22		(the Stafford Act), P.L. 91-606 and has provided major federal
23		Unemployment Compensation to W-2 workers and
24		independent contractors alike who suffered economic loss as a
25		result of the disasters like the September 11, 2001 terrorist
26		attacks on the World Trade Center, the 2004 Hurricanes
		Charley and Frances, the 2005 Hurricanes Katrina and Rita,
		the 2006 Hurricane Ike, the 2012 Hurricane Sandy, and the
		2018-2019 Hurricanes Harvey, Irma and Maria disasters,
		among others. See, <i>EveryCRSReport.com</i> on the web at
		https://www.everycrsreport.com/reports/RS22022.html , last
		visited June 16, 2020. The operational provisions and
		regulations of the Pandemic Unemployment Assistance (PUA)
		programs are in all major respects, the same as the DUA
		provisions at 20 C.F.R. Part 625. Section 2102(h) of the
		CARES Act states that the regulations at 20 C.F.R. Part 625
		shall apply to the PUA program “except as otherwise provided
		in this section or to the extent there is a conflict” between
		section 2102 and 20 C.F.R Part 625. These regulations “shall
		apply to this section as if (1) the term ‘COVID-19 public health
		emergency’ were substituted for the term ‘major disaster’ each
		place it appears in such 20 C.F.R Part 625; and (2) the term
		‘pandemic’ were substituted for the term ‘disaster’ each place

1		it appears in 20 C.F.R. Part 625.” DETR should have and could have been better prepared.
2		
3		DETR does not dispute that it was overwhelmed and unprepared for the COVID-19 pandemic, as can be seen in Exhibit 1 and 2 of Defendant-Respondent’s Opposition. As stated in Exhibit 1 and 2, the increase in
4		claims was nothing like DETR had ever seen before in the history of the agency, especially the speed with which the flood of claims came.
5		Additionally, DETR disputes the comparisons with September 11, 2001, World Trade Center attack, the 2004 Hurricanes Charley and Frances, the
6		2005 Hurricanes Katrina and Rita, the 2006 Hurricane Ike, the 2012 Hurricane Sandy, and the 2018-2019 Hurricanes Harvey, Irma and Maria
7		disasters, among others, as DETR has no idea what staffing levels, resources and funding those states were at when they were hit with the
8		particular disaster in question.
9	Paragraph one page 16	With respect to the Paragraph one page 16:
10		Moreover, the burden of DETR’s failure to discharge its clear duty should not be shifted to the innocent victims of DETR’s
11		mismanagement. DETR has complained about its computers, but that is not any claimant’s problem or fault. In addition,
12		other states which use the same, similar, or even older equipment have been able to establish web-based application
13		pages and pay claims far before, and in greater number, than DETR has to date.
14		
15		DETR disputes that it has failed to discharge any of its duties in this matter.
16	Paragraph at the bottom of page 16	With respect to the paragraph at the bottom of page 16:
17		As Nevada Employment Security Division (ESD) retiree Steve Zuelke States in his declaration at paragraph 22 – 24:We both know
18		the UInv benefits system is not “archaic” in the vernacular of unemployment insurance benefit systems. This argument has been
19		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. [¶]The base implementation for UInv occurred some
20		seven years ago. It's one of the more modern systems nationwide. This system was designed to place holds and gather information. It
21		has done what it was built to do. I know. I helped design it. [¶] States which have much older systems were able to
25		implement Pandemic Emergency Unemployment Compensation, Pandemic Unemployment Assistance and the \$600 weekly
26		

1		additional benefits more quickly because they HAD older systems.
2		Older systems contained existing model code they could adjust for
3		the new programs and implement in realistic timeframes.
4		See Declaration of former Nevada Employment Security Department
5		Manager, Steve Zuelke, hereinafter “Zuelke Dec.”
6		Some of the challenges DETR faced in discussed in Exhibit 2, page 10-11,
7		discuss some of the challenges faced by DETR, and its decision to set up a
8		new system instead of trying to reconfigure the existing system because it
9		would have saved time was reasonable and not an abuse of discretion.
10		Additionally, Steven Zuelke, a former longtime DETR employee, never
11		worked in DETR’s IT department and DETR disputes any level pf expertise
12		assigned to him in that realm.
13	Paragraph	With respect to the paragraph on page 17:
14	on page 17	
15		DETR is clearly under-reporting the unpaid claims rate.
16		DETR sends a claim to adjudication even if it was approved
17		for payment, retroactively re-determines eligibility (despite
18		initial determination of eligibility), says a claim is “in process”
19		for an unreasonable length of time while failing to provide any
20		way to challenge or appeal DETR’s inaction, or simply labels
21		the claim “under review” when there is no reason to do so.
22		DETR is omitting from its statics about 30% of all claims
23		which are sent to adjudication or by calling the unpaid claims
24		incomplete (“unresolved”) and therefore not a claim at all.
25		These sleight of hand tricks do not help those 60,000 gig
26		workers whose claims for unemployment compensation
		remain unpaid. The statistics can’t negate the fact that this
		office alone is getting over a hundred emails a day from people
		whose claims remain “unresolved” <i>i.e.</i> unpaid but who are
		probably not being counted in the unpaid rate of claims made
		by DETR.
		DETR denies that it is underreporting claims, and that it is retroactively
		re-determining eligibility, for reasons explained in previous paragraphs.
		DETR disputes that claims are in process for an unreasonable amount of
		time, although it is understandable that a claimant wants to be paid as
		soon as possible. Rather, with the tremendous amount of claims needing
		to be process, and with DETR’s limited staff issues with claims may take
		time to resolve. DETR denies that it is omitting from its statistics 30% of
		all claims.

1 2 3 4 5 6 7 8 9 10	Paragraph at the bottom of page 17	With respect to the Paragraph at the bottom of page 17: As stated by 25-year veteran Nevada Employment Security Division (ESD) retiree Steve Zuelke at paragraph 55 of his declaration: You [DETR] express that only 33,000 claims have not been paid.²⁷ 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 DETR disputes Mr. Zuelke’s allegations, as DETR has been transparent about the number of claims it has received and processed in its weekly press briefings, and DETR stands by its number of claims presented in its Opposition.
11 12 13 14 15 16 17 18 19 20 21 25 26	First full paragraph on page 18	With respect to the first full paragraph on page 18: DETR does not seem to understand that its purpose is to pay claims, not to deny them. The CARES Act eliminated almost all the traditional obstacles to obtaining unemployment compensation benefits, even for gig workers. For example, the CARES Act eliminated the requirement that there be prior employer contributions into the Unemployment Compensation system, thereby making gig operators eligible whether or not they had been W-2 employees in the past. The CARES Act eliminated the “looking for work” requirements of traditional unemployment. The CARES Act eliminated the disqualification of interim or part time employment while attempting to collect benefits. Under the CARES Act, a simple decline in revenue would allow a gig worker to collect the full \$600 per week of FPUC money, which means a gig worker could work part time, or work the same hours and make less, and still get full FPUC money. The CARES Act recognizes that a pandemic has caused structural unemployment for millions of innocent workers, so benefits must be given for the benefit of everyone without regard to traditional standards of self-motivation and work ethic. DETR disputes the allegation its purpose is to pay claims. Rather, DETR’s purpose is to pay eligible claims. Even though the CARES Act eliminated

1		some traditional unemployment requirements there are still criteria DETR
2		need to determine in order to process PUA claims to determine claimant
3		eligibility. Additionally, a simple decline in revenue does not allow a gig
4		worker to collect the full \$600 in FPUC money. Again, a gig worker must
5		be eligible for benefits under one of the qualifying programs in order to
6		collect FPUC, and it takes more than a decline in revenue for a gig worker
7		to be eligible for PUA; rather, the gig worker must suspend operations.
8	Paragraph on page 18	With respect to the Paragraph on page 18:
9		For that reason, among others, there is no scaling of benefits
10		for gig workers under the FPUC program. Therefore, a gig
11		worker could receive more in Unemployment Compensation
12		per week than the Gig Worker made prior to the March 15,
13		2020 cease doing business Executive Order.
14		DETR does not dispute that a gig worker might end up receiving more in
15		in Unemployment Compensation per week than the Gig Worker made prior
16		to the March 15, 2020 cease doing business Executive Order.
17	Paragraph on page 18	With respect to the paragraph on page 18:
18		Finally, there is no need to be in an industry banned from
19		working in order to receive Unemployment Compensation.
20		Uber and Lyft Drivers are entitled to PUA and FPUC money
21		even though they were permitted to drive, because their
22		revenue decreased as a result of the lack of tourists using their
23		system of transportation because Nevada's March 15, 2020
24		Executive Order closed down the places tourists would visit.
25		The system was designed on purpose to grant Unemployment
26		Compensation to stimulate the economy, prevent the need for
		public assistance and carry the gig worker through this crisis,
		with hardly any of the traditional eligibility requirements.
		The claims to payout ratio for gig workers should be closer to
		100%, unless DETR really believes over half of the gig
		claimants are committing fraud. A 59% unpaid claims rate
		means two out of three applications are not being paid, which
		is totally unacceptable.
		DETR disputes that a decline in revenue makes a gig worker eligible
		for PUA benefits. Rather, the gig worker, as noted above, must have
		suspended operations to be eligible.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	First full paragraph on page 19 With respect to the first full paragraph on page 19: Time is of the essence when it comes to paying claims. Not only for the benefit of the claimant but for the benefit of the general public and the economy as well. In addition to failing to process claims quickly, Mr. Zuelke correctly reports that DETR compounded the public's frustration with inadequate disclosure or transparency. As he further states at paragraphs 33-36 of his Declaration: Messaging and information available to the unemployed public is bureaucratic, ineffective and fails to recognize the common denominators. You are addressing hundreds of thousands of people across all walks of life - with widely varying education levels and language barriers - yet instructions and guides are filled with jargon, legalese and bereft of real answers. No wonder your phones are a logjam. . . [¶]The phones are not jammed with "robo-callers" per se, they are filled with people trying to get answers not available elsewhere. Some of them leverage call-back programs because they have tried for months to get through to a representative with no response. They sardonically refer to it as redial finger and UI Roulette. [¶]There is no clear guidance available to them that explains what is happening or as to why they see certain holds on DETR does not dispute time is of the essence, and that some members of the public are frustrated. DETR admits that messaging and information available to the unemployed public might be seen as bureaucratic, ineffective. DETR denies that it has failed to recognize the common denominators from the public, as is demonstrated by the elimination of letters sent out when an issue was resolved stating that a claimant was approved in order to reduce claimant confusion. DETR does not dispute that its phone lines are likely jammed at times, but as time has moved on DETR has added more and more employees to answer phone calls.
20 21 25 26	Paragraph on page 19 With respect to the paragraph on page 19: Obviously, DETR's failure to fulfill its clear duty has had a terrible impact on so many people's lives. Mr. Zuelke correctly calls DETR out and states at paragraphs 44-46: Excuses ring hollow to those now reduced to going to food banks to feed their families while their likely eligible claims

1		have not been paid in three months. They are empty echoes
2		to people who have had to surrender family pets as they
3		couldn't afford to keep them. They bear false witness to
4		parents who have not been able to buy diapers. They do not
5		pacify those losing sleep at night wondering how they will
6		ever recover from this train wreck, worrying where they may
7		live when the eviction moratoriums are lifted. I see the
8		human impact of this. En masse. [¶] The hard-working people
9		of the State of Nevada trusted in you to help them through
10		this. You exert your authority but have backed away from
11		your responsibility to think outside the box and embrace
12		different ideas while the toll on lives and livelihoods mounts.
13		[¶] In the end, there are still going to be thousands and likely
14		tens of thousands of ruined lives. Sadly, a significant
15		percentage of this was avoidable. It's called due diligence.
16		DETR does not dispute that the COVID-19 pandemic has caused
17		tremendous hardship on many people, but that does not mean that DETR
18		has somehow not been exercising due diligence.
19	First full paragraph on page 20	DETR disputes the first full paragraph on page 20
20		Mr. Zuelke is not the only one complaining about the effects
21		of DETR's failure to pay promptly. Hundreds of emails from
22		frustrated gig workers have been received by this office,
23		begging for help in obtaining unemployment compensation in
24		hopes of avoiding abject poverty. See Declaration of Jennifer
25		Mihal Freitas filed herewith providing a small sampling of the
26		emails and corresponding documentation supporting
		Petitioners' claims. Many Gig workers are unemployable by
		others, or are lower paid, marginalized, and vulnerable
		workers who are in desperate need of money to feed
		themselves and their families and to provide for the
		necessities of life in this time of crisis. Facebook pages like
		"Can't Feed our families! Nevada DETR enough is enough" as
		well as comments on DETR's own Facebook page, abound with
		reports of gig workers who are about to suffer such irreparable
		harm. These unemployed gig workers report that cars are
		being repossessed, people are losing their housing, children
		are in danger of being taken from their parents who can no
		longer afford to provide them housing, other governmental
		social safety nets like homeless shelters and welfare payments
		are being exhausted, retirement savings are been depleted,
		and the list of personal tragedies goes on and on.

	Does not dispute that Petitioner’s counsel has received many emails from people claiming to be dissatisfied. However, DETR must not simply pay benefits, it must also determine eligibility and balance concerns such as <u>accuracy</u> and promptness (See UIPL 04-01, Section 4). DETR recognizes that people are facing difficult situations, but that does not give DETR a green light to simply pay people prior to a determination of eligibility.
Last full paragraph on page 20	With respect to the last full paragraph on page 20: The purpose of the CARES Act was as much to stimulate the economy as it was to help the unemployed worker. Before this year, the consumer was the engine that so successfully drove our economy. And most consumers are workers. With the lower paid workers having a marginal propensity to consume at a much higher rate than richer people, the CARES Act was intended to stimulate, or at least maintain, businesses by giving the consumer money to spend. Money is good for what it can buy, and business exists to supply the goods or services that people want to buy. If the consumer has no money, the business has no customers. Failure to put money into the hands of the masses will lead to the greatest depression in business since 1929. DETR’s failure to pay non-working individuals quickly will have enormous negative effects on everyone. DETR does not dispute that one of the purposes of the CARES Act was to stimulate the economy and help unemployed workers. However, that does not mean that DETR is able to ignore the guidance provided by the Department of Labor and disregard its duty to determine eligibility of PUA claimants pursuant to USDOL guidance.

3. Reply to Opposition to OSC.

Assertion	DETR’s Response
Paragraphs Page 5, line 14-Page 7 line 4	For purposes of this motion, Petitioners-Petitioners accept the data contained in the chart on page 5 of Defendants-Respondents Opposition to Petitioners’ Petition For Writ Of Mandamus filed with this court on July 1, 2020 (hereinafter which Opp.to Writ). Undisputed-except as to the footnote 6, which is primarily argument conflating claims with workers, assuming undetermined claims are

1 automatically valid and grossly understating the potential for fraudulent
2 PUA applications.

3 This chart shows that as of July 1, 2020, DETR has failed to
4 pay approximately 50,000 gig workers over 13 weeks of
unemployment compensation, and over six weeks from date
of initial application.

5 Disputed- As the chart which petitioners previously accepted as true
6 clearly states, 60,000 of the applications that were eligible for
determination came in the two weeks preceding June 26. Petitioner's
7 willful misstatements in this regard reflect a carelessness with regard to
the facts and the law in this case which is reflected throughout the
8 pleadings. Also, this allegation assumes that each claimant has applied
13 weeks and assumes each claim is from a worker and assumes each
9 claim is valid, and further assumes that each claimant applied on May
16th.

10 It is obvious that DETR has unequivocally failed to pay
11 94,772 out of the 190,262 individuals, 50% of those who have
applied for benefits under the Pandemic Unemployment
12 Assistance or "PUA" program of the CARES Act of 2020 with
two or three weeks of application and/or 46,293 out of the
141,783 individuals, 33% of those who DETR says are eligible
13 for determination within the same time period."

14 Disputed- Though the number of unpaid applications is accurate, the
15 timing of applications is grossly misrepresented. This statement also
assumes each application is filed by an eligible individual or that each
16 application by an eligible individual is eligible for benefits.

17 This is totally unacceptable under federal DOL minimum
18 payment "when due" standards which are published at 20
C.F.R. §§ 640.4, 640.5.

19 Disputed-Legal argument, but when due means when eligibility has been
20 determined, not before.

21 Impossibility of performance caused by following DOL
22 guidance and looking for bogeyman/bogeywoman
committing fraud can't be the cause of DETR's failure to
23 perform its duty to pay benefits when due because other
24 states, who must also follow the same DOL Guidelines and
25 who must also prevent fraud, have paid 95% of the PUA
26 claimants within two weeks of initial application.

Disputed-Not a factual contention, but many other states have received notices of non-conformity from the Department of Labor. Without knowing which states Petitioners are comparing to and analyzing the different facts and circumstances of state law, existing infrastructure and staffing, a comparison between states lacks context.

As stated in the opening brief, with further examples herein, DETR has bogged itself down with unnecessary and unauthorized procedures, causing an administrative paralysis which continues to delay payment of half a billion dollars of PUA relief to gig workers, and/or a billion dollars to all PUA claimants, in breach of DETR's clear duty to pay unemployment compensation when due.

Disputed-The determinations of eligibility that Petitioners ask the court to ignore are required by law. Additionally, administrative paralysis does not describe an agency that has established a new program, evaluated eligibility for 95K claimants and paid out over \$860 Million dollars in claims in 3 months.

Governor Sisolak stated publicly that DETR can only adjudicate each outstanding claim individually, which means that the 8 adjudicators will complete processing the approximately 50,000 outstanding gig worker application sometime in late 2023, or about three years from now.

Disputed-There is no citation for Governor Sisolak's statement so it cannot be evaluated, but DETR has more than 8 adjudicators. A simple review of the chart shows that DETR cleared 31K and 17K claims in the weeks immediately preceding the June 26 report. This claim also assumes a time frame for adjudication which is unstated.

As more fully set forth herein, DETR must be ordered to pay all claims that are in several categories of claims that are surely eligible for payment, including the unattached claims for \$600 a week in FPUC, in order to perform its clear duty to pay promptly "when due" the 50,000 or so gig workers whose claims have been pending for six weeks without payment.

Disputed-This is argument, but requiring payment prior to eligibility determination is not required by law, would be a magnet for fraud and could result in a determination of non-conformity from DOL which would jeopardize the PUA, FPUC and PEUC programs for those currently receiving benefits.

4. Declaration of Jennifer Edison-Strekal July 2.

Assertion	DETR's Response
6 Paragraphs 81 pages	Authenticates UIPLs and emails from claimants, no reason to dispute that they were received, but noting that there is nothing authenticating the emails came from eligible persons or that the documents submitted to Ms. Edison Strekal were what they purported to be.

5. Declaration of Jennifer Edison-Strekal June 22.

Assertion	DETR's Response
4 Paragraphs, 41 pages	Authenticates UIPLs only, nothing to dispute.

6. Declarations of Named Petitioners other than Mr. Naimi.

Assertion	DETR's Response
	Petitioners Payne, Podesta-Mireles, Napolitano, Pavia-Cruz, Waked, Ploski, Asare, Howard, Wyncoop, Abing, and Turnley are all in paid status. It is believed all have been paid or that payments have been sent to their respective financial institutions. As these petitioners have been paid, it is believed that their claims are moot. Additionally, the specifics of these claims of these petitioners were not able to be responded to in the time frame requested by the Special Master.

7. Declaration of Dariush Naimi.

Assertion	DETR's Response
	Mr. Naimi's reported earnings for each of the weeks that he has claimed PUA have exceeded the amount of PUA to which he would have received. As he has not suspended operations he is not eligible and his earnings exceed the amount he would receive under PUA. The appeals process for PUA is anticipated to be operational on Thursday.

8. Declaration of Steve Zuelke, June 18, 60 Paragraphs, 11 pages.

Assertion	DETR's Response
Paragraphs 1-2,	Don't dispute Mr. Zuelke's personal reactions to the pandemic.
Paragraph 3	Dispute any efforts to qualify Mr. Zuelke as an expert. Don't dispute that he was a DETR employee with experience in fraud detection. Dispute that he has any expertise in technology or capacity of DETR systems and note that Mr. Zuelke is not eligible for rehire at DETR. Reasons for ineligibility are confidential in accordance Nevada personnel law and chapters 284 of NRS and NAC. DETR believes Mr. Zuelke has significant bias against certain DETR employees.
Paragraph 4-6	Don't dispute that Mr. Zuelke applied for DETR ESD in the positions alleged, dispute that that experience render him an expert or qualified to make the conclusions or allegations that has formulated.
Paragraph 7	Dispute thar Mr. Zuelke was responsible for payment of claims after 9/11 or that the claims related to that recession were at all analogous to the present situation. Prior to COVD-19 the single highest week of unemployment claims ever led in a week was 8962 (in 2009, not 2001). The first week of unemployment after the closures due to COVID-19 resulted in 92,309 claims. (<i>Ex. 1 to Resp't Opp'n. to Pet. for Writ of Mandamus, Decl. David Schmidt ¶¶ 6 and 7</i>). Claims have not declined below 8900 snice that initial week and DETR has also establish the PUA, PEUC and FPUC programs pursuant to federal law at the same time.
Paragraphs 8-10	Don't dispute that Mr. Zuelke experience related to fraud detection.
Paragraph 11-12	Dispute that Mr. Zuelke has any experience necessary to make judgments regarding the information technology and systems required to process an order of magnitude increase in claims. Also dispute his motivation for involving himself in this matter.
Paragraphs 13-18	Don't dispute that Mr. Zuelke has social media presence and has been providing information to certain individuals. Dispute that a social media presence provides an accurate sample of individuals or that Mr. Zuelke comprehends the scope of the claims issues Nevada is experiencing as they are unprecedented
Paragraphs 19-21	Don't dispute that Mr. Zuelke sent suggestions to ESD staff. Each of his suggestions was considered and either a) was already being implemented such that no follow up was needed or b) was not a viable solution to

	challenge such that follow up was needed. Dispute that any ongoing delays are the result of inaction.
Paragraph 29-30	Dispute that DETR chose to decline to interview any qualified claimants. DETR's practice is to interview the top candidates on the Human Resources compiled lists these positions. Don't dispute that Mr. Zuelke was not interviewed. This is one of several potential sources of bias for Mr. Zuelke.
Paragraph 31	Dispute that a decision to rehire more retirees would have made DETR more prepared for the influx of pandemic related claims
Paragraphs 32-34	Don't dispute that communication with claimants has been and is currently subject to continuous review, revision, and improvement. The volume of claims in both PUA and traditional unemployment requires that many of the responses are automated, thus batched responses are required to provide responses to the overwhelming number of claimants.
Paragraph 35	Dispute that telephone lines do not include robotic calling features and fraudulent filers in addition to legitimate claimants
Paragraph 36-37	Dispute that DETR does not provide guidance and responses to frequently asked questions on its website.
Paragraph 38	Dispute the allegation that all available resources have not been marshalled.
Paragraph 39	Dispute Mr. Zuelke's qualification to opine on economic consequences. Don't dispute that all benefits should be paid as quickly as an eligibility determination can be made as required by law.
Paragraph 40	Dispute Mr. Zuelke's allegation that any staffing decisions have been made with any goal other than providing the best team to quickly, competently and lawfully process the incredible number of claims and establish three new programs
Paragraph 41	Dispute the contention that claims have been processed in the way that they always have been, DETR has received multiple UIPLs from the Department of Labor that inform and in some cases revise processes.
Paragraph 42	Dispute the contention that the decision not to rehire Mr. Zuelke contributed to delays experienced by claimants.
Paragraph 43	No factual allegation to respond to

1	Paragraph 44	Don't dispute that there are significant real-world implications for every valid claim
2		
3	Paragraph 45-46	Dispute the allegation that DETR staff have willfully shirked responsibility
4	Paragraph 47	Dispute all of this and also submit that its hostile, indicative of bias, and entirely unhelpful to anyone.
5		
6	Paragraphs 48-49	Dispute the contentions that DETR staff did not take opportunities to educate themselves and submit that this is further evidence of hostility and bias of Mr. Zuelke
7		
8	Paragraph 50	Dispute. Mr. Zuelke was advised to have a Division attorney accompany him to questioning.
9	Paragraph 51	Don't dispute that Mr. Zuelke's opinions are biased against DETR based on his prior interactions with staff.
10		
11	Paragraphs 52-54	Dispute Mr. Zuelke's personal attacks and submit again that they are indicative of bias and unhelpful.
12		
13	Paragraph 55	Dispute, as it is not clear if Mr. Zuelke is alleging unpaid UI claims, unpaid PUA claims or a combination of both. DETR has provided accurate numbers to the special master and further disputes Mr. Zuelke's causation.
14		
15	Paragraph 56	Dispute that he Employment Security Division is providing slanted information to the public. Mr. Schmidt has provided the public and the special master with significant amounts of data based on his request and will continue to do so.
16		
17	Paragraph 57-60	Dispute Mr. Zuelke's personal attacks and submit again that they are indicative of bias and unhelpful.
18		

9. Declaration of Jennifer Mihal-Freitas June 21. 21 Paragraphs, 41 pages.

21	Assertion	DETR's Response
25	Paragraphs 1-3	Paragraphs 1-3 are not included in the declaration as page 1 was omitted.
26	Paragraphs 4-5	Don't dispute but cannot verify the number of calls or emails send to Petitioners counsel's office

1	Paragraph 6	Dispute Ms. Mihal-Freitas' estimation of 70,000 persons entitled to PUA compensation who have been denied. Ms. Freitas provides no information as to how the estimation was arrived at except that it is based on submissions to her office, social media posts and press briefings. There is no information on how Ms. Mihal-Freitas determined eligibility (so her estimations may be based on wrongful interpretations of state and federal law and guidance), whether she has any training in eligibility determinations, whether any of the information from submissions or social media posting was vetted for identity theft or fraud or simply accepted as true and the assumptions, estimations and methods of calculation used to arrive at this estimation.
2		
3		
4		
5		
6		
7	Paragraphs 7-8	Dispute again Ms. Freitas's calculation or persons entitled to PUA and that DETR's timeline for acceptance of claims was affected by the lawsuit in any way. DETR consistently communicated a start date of Mid-May for PUA application acceptance. Don't dispute but can't confirm any information regarding press accounts but do dispute that judgments or opinions rendered by media personalities are relevant to the legal obligations of the parties.
8		
9		
10		
11	Paragraph 9	Dispute that Nevada was the last state in the nation to accept claims. Note that several states began paying claims after Nevada including Delaware, Iowa, Idaho, New Hampshire, and Oklahoma. Kentucky may not be paying PUA claims at all yet. Additionally, state to state comparisons are of limited usefulness because each state has different staffing levels, demands and existing infrastructure. Nevada identifies states paying later only to dispute the factual contention, not allege those other states were derelict in standing up their programs.
12		
13		
14		
15		
16	Paragraph 10	Dispute the entirety of this calculation. 70,000 estimation is not described in detail at all, nor is the estimation of \$781 per claimant nor how Ms. Mihal-Freitas determined that all would be eligible for 9 weeks of back pay. Nor is it explained why 5% per annum was used or what the benefit of this calculation is supposed to be other than an attempt to arrive at an exceptionally large number.
17		
18		
19		
20	Paragraph 11	Dispute because it is not possible to tell what is being alleged. declarant refers to the website, which appears to be the website to accept PUA claims, but declarant then says the claimants could take 2 weeks to be eligible for 'unemployment compensation' so it's unclear is this is PUA, traditional unemployment compensation, or some other claim.
21		
25		

1	Paragraph 12	Dispute the calculation that 60,000 claimants remain unpaid. Unclear how this estimation was reached and whether declarant means that there are 60,000 unpaid eligible claimants or whether it means 60,000 claims where eligibility is undetermined. The most recent number of PUA claimants whose eligibility is yet to be determined who have filed weekly claims is below 60,000.
2		
3		
4		
5	Paragraph 13	Dispute. Whatever method Ms. Mihal-Freitas used to estimate the categories of claimants is unknown and not described in the declaration. Nor is it possible to verify if she was including claims from actual filers, alleged filers, or made any efforts to verify the claims before grouping them.
6		
7		
8	Paragraph 14	No factual allegation to dispute as this is a generalized fact pattern. DETR does not dispute that individuals may have made thousands of calls to call centers and that despite increased staffing and the hiring of additional call center staff, the volume of calls has resulted in many busy signals and unanswerable calls. With regard to the named petitioners, we can confirm that all except for one (who earned more through employment than he would have earned through PUA) have been paid as detailed elsewhere.
9		
10		
11		
12	Paragraphs 15-16	No factual allegation to dispute as this is a generalize facts pattern. One criteria for eligibility for PUA ineligibility for other programs so those determinations must be made. Generalizations such as these individuals are never paid are incorrect as to the extent any of the individuals in the named Petitioners were a part of this grouping, they likely have been paid.
13		
14		
15		
16	Paragraph 17	No factual allegation to dispute as this is a generalized fact pattern. Facts my change from filer to filer but the individual's loss of work must be caused by the pandemic to be available for PUA.
17		
18	Paragraph 18	No factual allegation to dispute as this is a generalized fact pattern, but there can be a lag between when payment is approved and payment is processed, so without knowing specifics of the claims, it's not possible to determine if this issue is beyond the simple administrative processing of claims
19		
20		
21	Paragraph 19	Paragraph 19 is largely duplicative of paragraph 12 and disputed for the same reasons.
25		

Paragraph 20-21	No dispute that the timely and accurate processing of claims is important to claimants and delays and wrongful determinations could have consequences. These paragraphs don't contain any facts sufficient to determine legal causation, but whenever any of these terrible consequences befall an individual, it's likely that multiple causes contributed to the outcome. So, dispute any allegation of legal causation.
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X. Special Master Written Questions To DOL and DOL Responses.

After an interview with the Special Master, Administrator Gaa and her legal counsel reached out to the Federal Department of Labor to facilitate responses to questions presented by the Special Master. Although the DOL made it clear that it was standing by its position that sovereign immunity prevents them from having to participate or answer questions in a state court proceeding, they graciously agreed to answer a set of written questions. In this regard, Gay M. Gilbert, Administrator of Unemployment Insurance for the U.S. Department of Labor Employment and Training Administration obtained permission from the Solicitor's office to answer written questions provided to the DOL by the Special Master.⁹⁵

1. Will the DOL penalize a state that pays benefits without first screening for fraud?

Response: States are required to have methods of administration for their Unemployment Insurance (UI) programs that are designed to make payments "when due" and to not make payments when "not due." See Social Security Act (SSA) section 303(a)(1) (42 U.S. C. §503(a)(1); UI Program Letter (UIPL) No 04-01, section 4: <https://wdr.doleta.gov/directives/attach/UIPL4-01.cfm> Accordingly, the administrative

⁹⁵ The DOL explained, "Our answers will be provided in writing and will be limited to providing non-privileged information. For efficiency purposes, we will answer only one set of questions provided by the special master. Please note that we are waiving sovereign immunity only for the limited purpose of providing our written answers to the special master's questions."

1 processes must ensure that payment of UI benefits is made to eligible individuals. States
2 are provided administrative funding specifically for Benefit Payment Control staff whose
3 job is to prevent, detect, and recover UI improper and fraudulent benefit payments. The
4 CARES Act provides the States administrative funding for these activities as well. See,
5 e.g., CARES Act sections 2102(f)(2)(B) (Pandemic Unemployment Assistance),
6 2104(d)(1)(A)(ii) (Federal Pandemic Unemployment Compensation), 2107(d)(2) (Pandemic
7 Emergency Unemployment Compensation).

8 To prevent fraud, States are strongly encouraged to use multiple methods when
9 verifying identity at the front end of any UI claim, such as verifying the individual's
10 identity through a cross-match with the Social Security Administration through the
11 Interstate Connection Network, cross-matching with data sets such as the state's
12 department of motor vehicles, and, when there is a question regarding an individual's
13 identity, requiring either in person or submission online of additional documents to verify
14 identity. States are also strongly encouraged to cross-match with the UI Integrity Center's
15 Integrity Data Hub that has a Suspicious Actor Repository containing data elements from
16 known fraud cases submitted by states and suspicious Internet Protocol addresses.

17 A state without sufficient methods to ensure payment of eligible individuals may be
18 subject to substantial non-compliance proceedings that can lead to loss of the state's
19 administrative grant to administer its state UI program. For programs operated based on
20 an agreement with the Secretary of Labor, including the CARES Act programs, a state's
21 failure to administer the program in accordance with Federal law and the Department's
25 guidance can result in of the agreement and cost the state's ability to administer the
26 program and provide the benefits to its citizens.

1 See UIPL No. 23-20: <https://oui.doleta.gov/unemploy/coronavirus/>.

2 **2. Will the DOL penalize a state that pays benefits without verifying facial**
3 **representations from claimants concerning eligibility?**

4 Response: The Department assumes this question relates to the self-certification
5 process to determine eligibility for PUA. The process for PUA eligibility determination is
6 different from the regular UI programs, which do require verification of at least some of
7 the information. The Department has determined that the statute governing PUA is clear:
8 eligibility requirements that an individual be otherwise able to work and available for work
9 is permitted under state law, except that the individual must be unemployed, partially
10 unemployed, or unable or unavailable to work as a result of COVID-19 can be established
11 solely through self-certification and there is no requirement that states verify the self-
12 certification is accurate. Therefore, the Department will not penalize states for not
13 verifying the claimant's self-certification.

14 **3. Do states have the flexibility to pay benefits based on minimal showing of**
15 **eligibility and then deny benefits later if the claimant is determined not to**
16 **be eligible?**

17 Response: No. States are required to determine eligibility based on Federal and
18 state law and the Department's guidance. If Federal requirements are not met in this
19 regard, the state risks not only the loss of administrative grants under the SSA, but the
20 loss of employer tax credits under Federal Unemployment Tax Act (FUTA) section 3301
21 and 3304(c). See UIPL No. 23-20, section 4a. For Federal programs operated by states
22 through an agreement with the Secretary of Labor, such as the CARES Act programs, if
23 Federal requirements are not met in this regard, the Secretary can terminate the state's
24 agreement.
25
26

1 **4. Is Nevada required to confirm representations made on applications for**
2 **benefits?**

3 Response: The Department assumes this question relates to the Pandemic
4 Unemployment Assistance (PUA) program. To be eligible for the PUA program, an
5 individual must be ineligible for regular UI benefits or extended benefits under state or
6 Federal law, or PEUC under section 2107 of the CARES Act, and be otherwise able to work
7 and available for work as provided under state law, except that the individual is
8 unemployed, partially unemployed, or unable or unavailable to work based on specific
9 COVID-related reasons identified in the CARES Act statute and the Department's
10 guidance in UIPL Nos. 16-20 and 16-20, Change 1. States are responsible for determining
11 if the claimant is eligible for regular UI benefits or extended benefits under state or Federal
12 law, or PEUC. States must require that a PUA claimant self-attest that he or she is
13 otherwise able to work and available for work, as provided under state law, except that the
14 individual is unemployed, partially unemployed, or unable or unavailable to work based on
15 one of the COVID-related reasons at the time they first apply for benefits and for any week
16 claimed thereafter. *See* CARES Act section 2102(a)(3)(A)(ii); UIPL No. 16-20, Change 1,
17 question 45. States are not required to verify the self-attestation at the time of application.

18 States also use the claimant's report of wages to determine their weekly benefit
19 amount. States are required to request supporting documentation if the benefit amount is
20 higher than the minimum. *See* UIPL No. 16-20, Change 1, question 13. Should a state
21 identify any credible evidence of fraud and/or willful misrepresentation with regard to the
25 self-attestation, the state is required to investigate and do fact-finding to determine if fraud
26 has been committed.

1 **5. Can the fact of eligibility be rebuttably presumed by a state? If**
2 **presumption is defeated by subsequent evidence presented by state, can**
3 **state rescind acceptance of a claim and claw back money paid to claimant**
4 **after providing claimant with appropriate notice and a hearing?**

5 Response: Eligibility for UI benefits cannot be presumed by the state.

6 For the regular UI program, once a claimant has established initial eligibility, the
7 claimant must certify continuing eligibility weekly and report if he or she has returned to
8 work or has any earnings, which can impact eligibility. When an issue arises, there must
9 be an opportunity for a hearing and a determination as to ongoing eligibility before benefit
10 payments can be stopped. If it is determined an individual was ineligible for any weeks
11 that were paid, an overpayment must be established, and the state is required to recover
12 the funds according to state law. Individuals must receive an overpayment determination
13 that includes appeal rights.

14 For the PUA program, claimants must self-certify each week they continue to
15 otherwise be able to work and available for work, as provided under state law, except that
16 they are unemployed, partially unemployed, or unable or unavailable to work based on one
17 of the COVID-related reasons. In addition, states need to determine at least quarterly that
18 the individual remains ineligible for regular UI benefits, or extended benefits under state
19 or Federal law, or PEUC, which is a condition of PUA eligibility. Similar to the regular UI
20 program, if the state determines that a claimant was overpaid, an overpayment must be
21 established and a determination issued (which can be appealed) and the state is required
22 to recover the funds.

1 **6. Can states relax scrutiny regarding fraud and overpayment in order to**
2 **liberally construe eligibility in favor of providing benefits?**

3 Response: No. See the response to Questions #3 and #5.

4 **7. Does the DOL maintain national statistical data on fraudulent claims**
5 **related to the payment of benefits?**

6 Response: Yes. DOL captures data through the Benefit Accuracy Measurement
7 program which is an independent audit of a statistically valid number of cases nationally
8 that identifies if payments are made correctly and also captures if the claim was fraudulent.
9 States also report data on established fraud cases.

10 **8. For every benefit dollar spent, how much is lost to fraud? Is the loss to**
11 **fraud greater than or less than .10 cents on the dollar? What is the baseline**
12 **for such losses?**

13 Response: Note that for the regular UI program, fraud is defined in state law and
14 state law definitions vary. The most recent data for the regular program is for Calendar
15 Year 2019. The estimated fraud rate based on a national statistically valid sample was
16 2.955% of overall benefit payout or \$785,267,091. That rate has hovered around 3% for
17 many years.

18 The estimated fraud rate for the UI program cannot be extrapolated to the PUA
19 program, and DOL currently has no mechanism in place to estimate the PUA fraud rate.
20 We note that the fraud being experienced in the CARES Act programs is primarily due to
21 organized fraud rings and is based on identity theft. The PUA program has been a
22 particular target for fraud because of the retroactive payments for weeks of unemployment
23 beginning on or after January 27, 2020, and the addition of the \$600 to each payment
24 through weeks of unemployment ending on or before July 31, 2020.

1 **9. Did the DOL establish a deadline for states to implement CARES ACT**
2 **programs and to pay benefits?**

3 Response: No. The statute did not establish deadline for implementation. Note that
4 benefits are not paid for programs not yet implemented. But once implemented they may
5 be paid retroactively to eligible individuals within the time frames prescribed for the
6 program. This occurred in a number of states that were delayed in being able to get the
7 programs operational. For the PUA program, states administering the program that
8 implement late are required to pay eligible individuals for the weeks for which they qualify
9 during the Pandemic Assistance Period, which are weeks of unemployment beginning on
10 or after January 27, 2020 through weeks of unemployment ending on or before December
11 31, 2020.

12 **10.Does the DOL prescribe a model method for delivering CARES ACT**
13 **benefits?**

14 Response: No. However, DOL has provided states with operating guidance for PUA
15 in UIPL Nos. 16-20 and 16-20, Change 1 that can be found at:
16 <https://oui.doleta.gov/unemploy/coronavirus/>. Operating guidance for the Federal
17 Pandemic Unemployment Compensation (FPUC) and Pandemic Emergency
18 Unemployment Compensation (PEUC) programs may also be found at this URL.

19 **11.Has the DOL defined what “when due” means?**

20 Response: For the regular program, the standard for making first payments is
21 within 14 – 21 days depending on whether the state requires claimants to serve a waiting
25 week. See 20 CFR 640.5. Continued claims are generally paid weekly or bi-weekly and
26

1 must continue to be paid until an individual is determined ineligible after the opportunity
2 to be heard, and an appealable determination has been provided to the claimant.

3 **12.What are the minimal expectations of DOL for states to monitor,**
4 **investigate, and prosecute fraud?**

5 Response: All states are expected to have a Benefit Payment Control unit that
6 focuses on the prevention, detection, and recovery of UI improper and fraudulent payments.
7 States are expected to report fraud schemes to the Department's Office of the Inspector
8 General, Office of Investigations – Racketeering and Fraud. States are expected to work
9 with their state and local law enforcement to prosecute fraud. States are provided with
10 training, technical assistance, and tools to address fraud in the UI program through the UI
11 Integrity Center funded by the Department and operated in partnership with the National
12 Association of State Workforce Agencies.

13 **13.PUA more vulnerable to fraud than other benefit programs? Does DOL**
14 **have recommended best practices for preventing and detecting fraud?**

15 Response: Yes. The Department issued UIPL No. 23-20 requiring states to use
16 many of the same tools and resources used for the regular UI program to detect fraud in
17 the CARES Act programs, such as cross-matches with key data sources.

18 As noted above, the PUA program has been a particular target because of the
19 retroactive payments to weeks of unemployment beginning on or after January 27, 2020
20 and the addition of the \$600 to each payment through weeks of unemployment ending
21 before July 31, 2020. The UI Integrity Center is actively working with states to address
25 fraud in the CARES Act UI programs and the regular UI program, including capturing and
26 disseminating best practices for preventing and detecting fraud. The Center has provided

1 tools to states that support data mining to detect fraud; is holding weekly calls with states
2 to exchange best practices for detecting and addressing fraud and recovery of funds; and
3 provides the Integrity Data Hub that enables states to cross-match against known fraud
4 data elements and provides a fraud alert system to share information on fraud schemes to
5 all states, the Department, and the Office of the Inspector General.

6 **14.What role does the DOL play in investigating and prosecuting fraud?**

7 Response: The Department's Office of the Inspector General, Office of Investigations
8 – Racketeering and Fraud plays an active role in investigating and prosecuting fraud in UI
9 programs. They do not replace, however, the need for state and local law enforcement to
10 fulfill their responsibility to monitor for, investigate, and prosecute fraud.

11 **15.What are the basic requirements of states to maintain “program integrity”?**

12 Response: Program integrity is a very broad term. Program integrity is a component
13 of almost every aspect of the UI program. Generally, however, it means that states must
14 have methods of administration that ensure accurate payments are made to eligible
15 individuals. It means that states have trained staff to process and adjudicate claims in
16 accordance with Federal and state laws; that states operate independent Benefit Accuracy
17 Measurement programs that audit sample cases to detect improper or fraudulent
18 payments, capture the reason for improper payments to determine the primary root causes
19 of improper payments, and estimate the UI improper payment rate; and that states have
20 Benefit Payment Control units to prevent, detect, and recover improper and fraudulent
21 payments and work to prosecute fraud. *See also* UI Program Letter (UIPL) No. 23-20:
25 <https://oui.doleta.gov/unemploy/coronavirus/>.

1 **16.Can states ask for exemptions to eligibility requirements to allow quicker**
2 **payment of benefits?**

3 Response: Unless provided in the statute, there is no legal authority under Federal
4 law for waivers of eligibility requirements to allow for quicker payments in the regular UI
5 program or the CARES Act UI programs. Neither PUA nor the UI program provide waivers
6 of eligibility. *See* UI Program Letter (UIPL) No. 23-20:
7 (https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4621)

8 **17.Does DOL prohibit states from allowing claimants to waive potential UI**
9 **eligibility to qualify for PUA benefits?**

10 Response: Yes. To be eligible for PUA, the statute requires that the individual not
11 be eligible for regular compensation or extended benefits, which includes individuals who
12 have exhausted such benefits. DOL is actively working to ensure that all states are
13 implementing PUA eligibility requirements in accordance with Federal law and the
14 Department's guidance. Any states found implementing the PUA program incorrectly are
15 notified the state must take immediate corrective action and the Department is providing
16 technical assistance to support states' implementation of their corrective actions.

17 **18.Do states have flexibility to pay all claimants upon application and then**
18 **later make final determinations regarding eligibility?**

19 Response: No. It is not permissible under Federal law to pay claimants without first
20 determining eligibility.

21 PUA allows for payment of a minimum benefit amount where the individual is
22 determined to be eligible, but has not submitted complete documentation to calculate
23 his/her weekly benefit amount. However, this still requires that eligibility has been
24 established.
25
26

1 **19. How late can Nevada start paying PUA claims and still get federal funding?**

2 Response: As noted previously, there is no statutory deadline for the implementation
3 of the PUA program.

4 **20. In light of question 31 of UIPL 16-20, must states go back more than 16**
5 **weeks and review self-employment income at more than UC rates prior to**
6 **a gig workers initial eligibility date? If claimant has 16 weeks of earnings**
7 **from being self-employed greater than the benefit amounts, then any carry**
8 **over disabilities from UI go away.**

9 Response: The Department assumes this is in reference to question 31 of UIPL 16-
10 20, Change 1. PUA is available to eligible individuals for weeks of unemployment
11 beginning on or after January 27, 2020. States are required to determine if an individual
12 is eligible for weeks claimed retroactively. When claimants self-certify their eligibility due
13 to a COVID-related reason for any retroactive weeks, they must also report any income
14 received for each week claimed. If the income exceeds the weekly benefit amount in any
15 given week, the individual is not eligible for PUA for that week and is also ineligible for the
16 additional \$600.00.

17 **21. If claimant self-attests that they have only gig income for the past 16 weeks,**
18 **aren't they automatically eligible?**

19 Response: No. To be eligible for the PUA program, an individual must be ineligible
20 for regular UI benefits or extended benefits under state or Federal law, or PEUC, and be
21 otherwise able to work and available for work as provided in state law, except that the
22 individual is unemployed, partially unemployed, or unable or unavailable to work based on
23 one of the specific COVID-related reasons identified in the CARES Act statute and the
24 Department's guidance in UIPL Nos. 16-20 and 16-20, Change 1. The state is responsible
25 for determining whether the individual is ineligible for regular UI benefits or extended
26

benefits under state or Federal law, or PEUC. For any weeks that a gig worker claims benefits and is otherwise eligible for PUA based on the above factors, the claimant's Weekly Benefit Amount is reduced by the individual's income for the week claimed.

22. Is it true that a claimant does not need to be in Nevada at the time of unemployment as long as the person was working in Nevada at the time right before one is unemployed- assuming that you get unemployed first, and then you move, either permanently or temporarily?

Response: Claimants need not be in Nevada at the time of filing so long as they are able and available for work. Individuals must file for PUA in the state where he or she was working at the time of becoming unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in the CARES Act statute and the Department's guidance. If an individual worked in more than one state at the time, the individual may file in any of those states.

XI. DETR ESD's Short Answers to the Court's Specific Questions.

1. How many people have applied for UI or Pandemic-related benefits with DETR for the times implicated in this case?

Response: Based on the ETA 5159 monthly claims report, Nevada has taken 486,427 claims for benefits from February 1 through June 30. This only includes new claims, and so may exclude individuals who reopened an existing claim at the onset of the pandemic and is an increase of 1,829% (461,212) from the 25,215 new claims taken in the same months in 2019. Nevada has taken 318,260 unique PUA applications from May through

July 13.⁹⁶ Reporting data does not support identifying how many individuals have applied in both systems.

2. How many people or claims have been approved and/or accepted and actually paid?

During this period, Nevada has issued 349,854 “first payments” on claims in the regular UI program, a ratio of 71.9% compared to 64.6% in the prior year. Nevada has paid benefits on 105,574 unique PUA claims as of July 13, a ratio of 33.2%.

3. What criteria is applied by DETR before benefits are approved, as well as the process claimants must go through including determining factors?

Response: For PUA, ESD is following the direct guidance outlined in the UIPL's previously mentioned from the CARES Act programs and as outline by DOL. The determining factors are based on fact finding questions for standard UI that has the potential of multiple thousands of combinations. The CARES Act PUA program is not as complex. This goes to the crux of the "eligibility" question of who is or is not eligible for benefits. There is no one-size-fits-all answer but there are some basics:

- Identity verification - must be met in order to proceed. There are a numerous reasons for this but the main ones (not inclusive) are:
 - Is this the same person as the reported wages on file for UI/ PUA, or in the supporting documentation for verification when it is not clear?
 - Legally able to work
 - Does this person have right to legally work in the US?
 - Is there documentation or clearance from Homeland Security to support this when unclear? (ie. Alien registration- work visa)
 - Are they Nevada labor force attached, or for PUA were they about to be at the start of the pandemic?

⁹⁶ Data based on reports generated from raw database access to PUA system, used herein for internal consistency with other such reports. Other reports may rely on pre-specified reports within the EmployNV system provided by the vendor which are run at different times with different specifications.

- Is there documentation to support this when unclear?
- Are they monetarily eligible for UI – do they have wages in the benefit year or alternate year from a contributing or reimbursable employer to draw against? (or currently extension eligibility for PEUC or EB)
 - Yes, move to program eligibility.
 - No, denied for lack of wages, move to wage protest/appeal?
- Are they financially certified for PUA- have they made attestation providing support for income in the benefit year (2019) and/or had estimation for work about to start.
 - Unclear, provide documentation of wages, provide wages offered, contract,
 - No, no labor force attachment, no pending work with wage, no supplemental documentation to support the disputed wage-denial, move to appeal?
 - Yes, move to program eligibility.
- Are they programmatically eligible:
 - See program eligibility outlined in NRS 612 <https://www.leg.state.nv.us/NRS/NRS-612.html>
 - See all the UIPLS for CARES Act for PUA, <https://oui.doleta.gov/unemploy/coronavirus/>
 - and for standard UI for traditional unemployment see the UIPLS for CARES Act for PEUC, EB <https://oui.doleta.gov/unemploy/coronavirus/>
 - and all UIPLs for traditional UI program back to 1984 updates at: https://wdr.doleta.gov/directives/corr_list.cfm
 - Unclear, move to adjudication process.
 - No, denied, move to Appeals?
 - Yes, move to pay status and weekly certification for program eligibility duration or change in program eligibility
- Adjudication-
 - Fact Finding – employer assertion/response, claimant assertion/response- adjudicator applies the law and guidance and decides approval/denial and issues notice to both parties for traditional UI/only claimant for PUA for appeal or moves to payment for approved claims.
 - Weekly certification – changes in eligibility starts the adjudication process over.

1 • Appeals-

- 2 ○ Both parties can appeal in traditional UI
3 ○ Singular appeal by claimant in PUA⁹⁷

4 • Board-

- 5 ○ Both parties can appeal in traditional UI
6 ○ Singular appeal by claimant in PUA

7 • District Court-

- 8 ○ Both parties can appeal in traditional UI
9 ○ Singular appeal by claimant in PUA

10 At any stage in the process the claim may be flagged for fraud, determined
11 fraudulent and move to a criminal and civil action in court.

12 **4. The meaning ascribed by DETR to being “approved,” and whether if the**
13 **claimant is initially approved, there are future steps that may still bar**
14 **benefit payment?**

15 Response: The "approved" determination notices issued to many PUA claimants
16 ultimately did not result in the release of payment. In Administrator Gaa's July 8, 2020,
17 Declaration, she acknowledged that this message generated numerous inquiries by filers
18 as to the status of claims and why they had received this correspondence and release of
19 payments did not follow. After the payment component of the system went “live” at the
20 end of May, these notices started to issue. DETR has reviewed the instances as to where
21 this was occurring and determined that issuance of an “approved” determination
22 pertaining to a specific PUA issue type(s) occurred. This should have simply been a closing

25 ⁹⁷ ESD has not had an appeal process for aggrieved PUA claimants since it was launched on May 16, 2020.
26 However, on July 17, 2020, ESD launched a PUA appeal process.

1 of the issue using the “closed with no action” functionality within the system in order to
2 resolve an issue for possible release of payment as the result.

3 Although the above outlined direction was communicated to the PUA program staff
4 early on in the payment go-live process, there were a number of days before this was fully
5 implemented. The use of the “approved” link to resolve an issue type was not the
6 appropriate closure mechanism, but the use of the "closed with no action" instead was the
7 appropriate action step, it produced the generic "approved" determination in question.
8 Unfortunately, claimants who received the “approved” determination letters took this to
9 mean this singular “approved” was all encompassing approval of the claim. However, DETR
10 provided language contained in all these determinations stating, “You may receive multiple
11 decisions on your claim; please note that any one denial decision supersedes all other
12 decisions.” Many of these claims subsequently were released to payment. The United States
13 Department of Labor (USDOL) has held that the action of releasing Unemployment
14 Insurance benefit payments by a State Workforce Agency (SWA) for a specific claim week
15 to be akin to an eligible determination for benefits.

16 DETR continues to provide updated instruction and training to its staff and Alorica
17 staff on the proper methodologies to resolve claim issues. This includes instruction on the
18 correct correspondence that should be produced and available to PUA claimants on their
19 PUA account in EmployNV.

20 **5. What is the number of accepted claims, and the average time from**
21 **application to first date of benefit payment?**

25 Response: Within the regular UI program, 55 / 70 / 74 percent of claims have been
26 paid within 7 / 14 / 21 days of the first week in the claim, compared to 50 / 74 / 91 percent

1 for the same months last year. DOL does not measure the time lapse from date of
2 application for regular UI, so data does not support this question directly. For the PUA
3 program, for claims filed prior to the launch of payment functionality in EmployNV, the
4 average time from application to payment was 18.7 days. Since payment functionality was
5 launched for those claims that have been paid, the average time from application to
6 payment has been 4.7 days.

7 **6. Why some claimants appear to have received an “approved” or “accepted”**
8 **determination notice, yet payment was never released nor debit card**
9 **credited?**

10 Response: According to Administrator Gaa, the terms are not interchangeable in the
11 PUA system. Accepted or successfully submitted means the claim has completed the
12 submission process for benefits and now it would move to adjudication. “Approved” was
13 previously described in my second declaration regarding the resolving of a particular
14 eligibility element on the claim. It wasn’t a unilateral acceptance or approval of the claim
15 resulting in payment. This language of approved was updated and that messaging was
16 stopped early in the PUA system standup process in order to address the confusion

17 **7. Why did some claimants initially receive benefits but later those benefits**
18 **allegedly had stopped?**

19 Response: In response to this question, Administrator Gaa stated there are many
20 reason this could have occurred, including: 1) claimant stopped filing a weekly
21 certification; 2) claim was stopped for fraudulent flags/markers and needed to be
22 investigated; 3) claimant filed in PUA and it was later determined that they had UI
23 eligibility; 4) user error; 5) bank flagged the claim payment for fraud or other threshold
24 activities on the account such as large payments that the bank won’t process; 6) Claimant

1 failed to upload in PUA the supporting documentation requested to affirm identity or
2 something that would resolve the fraudulent marker hold; 7) most recently, the change of
3 quarter indicating that a PUA filer has new eligibility in UI , or that a UI filer has new UI
4 eligibility; and 8) claimant reported earnings for the filed week that exceed their weekly
5 benefit-based amount (not FPUC) resulting in no payment.

6 All the foregoing issues will stop payment.

7 **8. How are claims processed (i.e., the specific steps) from the time an**
8 **application is first filed to the time a determination of benefits is made?**

9 Response: This is outlined in both the claimant guides. *See Appendix 4-2* (State of
10 Nevada Unemployment Insurance Guide to Online Claimant Self Service); *see also*
11 *Appendix 5-1* (Pandemic Unemployment Assistance (PUA) Portal for Claimants).

12 **9. Regarding claimants who are denied benefits, what is the manner in which**
13 **such denial is communicated, and an explanation of what curative options**
14 **are available, if any?**

15 Response: In response to this question, Administrator Gaa explained that the denial
16 of benefits is sent out on a determination by mail in UI, and electronically to their portal
17 in PUA. Both receive appeal rights information with the denial. Currently the
18 functionality for appeals filing in PUA goes live this weekend of 7/17/2020.

19 **10.If applications must be adjudicated, explain the current infrastructure and**
20 **process in place to do so?**

21 Response: The technical infrastructure for adjudication is UInv for traditional
22 unemployment and EmployNV for standard UI. The appeal process for UI and PUA
23 adjudication and program eligibility is described herein above.
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26

1 **11. For applications which have not yet been acted upon, what is the average**
2 **time they have been pending and the reason(s) a determination is still**
3 **pending?**

4 Response: Currently, according to Administrator Gaa, there is no average wait time
5 to cite due to volume. Guidance for transitional UI envisions a 21 day turn around. For
6 the UI program, DOL measures the time from an issue “detection date” to the issue
7 resolution date. For UI claims with at least one open issue that may be holding payment
8 in the UI system, the average detection date is May 12, 2020. For the PUA program, the
9 average claim file date for unpaid claims is June 7, 2020.

10 **12. Why were claimants allegedly prevented or “locked out” from being able to**
11 **file weekly claims once their claims were determined to be under review**
12 **or had issues?**

13 Response: For PUA claims, Administrator Gaa explained that some were due to
14 fraud flags, most were due to a code that deployed in error by the vendor the weekend of
15 6/26. This was remedied last weekend and all claims restored to view. Other lockouts are
16 due to user error. Self-Healing⁹⁸ capabilities are available for claimants to recover
17 accounts.

18 **13. What is the number of claims flagged as potentially fraudulent, including**
19 **but not limited to computer-generated; invalid social security numbers;**
20 **internal inconsistencies or which otherwise indicate claimants are not**
21 **being truthful in seeking benefits.**

22 Response: The number of UI claims currently flagged with a potentially fraudulent
23 issue is 6,200. However, due to a series of recent reports by employers, this number is rising
24 rapidly as staff are able to review and flag claims. The number of PUA claims identified as
25

26 ⁹⁸ In information technology, self-healing describes any device or system that has the ability to perceive that it is not operating correctly and, without human intervention, make the necessary adjustments to restore itself to normal operation.

1 potentially fraudulent is between 127,548 and 179,284 depending on the indicators used,
2 including both analysis within the system and data analytics not yet incorporated into the
3 PUA system. Due to system differences, this number includes suspicious activity which
4 may not have prevented payment.

5 **14.How many claims appear to have been filed from: (1) outside the United**
6 **States; and (2) outside Nevada?**

7 Response: “Outside Nevada” is defined for this analysis as the state of Nevada and
8 an area including $\frac{3}{4}$ of a degree of latitude or longitude surrounding the state to include
9 residents of border communities. As of July 13, 2020, 30,593 unpaid PUA claims have used
10 an address outside the Nevada area, 106,547 unpaid claims have used an IP address
11 outside the Nevada area, and 3,060 unpaid PUA claims have used an IP address outside
12 the states or territories of the United States.

13 **15.Identify ways in which the application website can be made more user**
14 **friendly, including issues designed to eliminate duplicity, human error,**
15 **and confusion.**

16 Response: The PUA system design is a COTS off the shelf system and ESD has
17 limited control over the design, etc, according to Administrator Gaa. Her administrative
18 team has worked with the vendor and DOL to ensure that our language conforms to the
19 requirements of DOL. The vendor has a change control process for the website as any
20 changes could affect multiple states that are using their system, not just Nevada. Nevada
21 does not have unilateral control to change the system at will. Changes that would be
25 required must go through both the vendor change board process and the DOL for
26 conformity.

1 For the UI system, Nevada does have total control over this system. Changes to the
2 system are prioritized by changes in law and regulation from the DOL, audit and corrective
3 action findings from OIG/DOL state single audits related to uniform guidance. Next would
4 be changes for defects and functionality, last would be preferred changes. This is a
5 necessary structure since the agency does not have sufficient resources to address all of
6 these at once.

7 DETR ESD reports that they continue to update FAQs and other items on their
8 website to provide additional user information.

9 **16. Whether DETR can improve communication with claimants as to their**
10 **claim status?**

11 Response: DETR ESD explained in response to this question that they post the most
12 current information available on the portal for PUA claims or UI claims. DETR ESD is
13 currently in the process of updating communication or has recently provided updates for
14 claimants regarding:

- 15 ➤ Change of quarter eligibility– new UI eligibility and requirement to file in UI for a
16 claim. Claimants are receiving messaging that the change of quarter occurred and
17 will be advised such for PUA through a message stating “other claim eligibility –
18 change of quarter.” This will result in their claim payments stopping due to the new
19 eligibility. They will be directed to check for UI eligibility. Traditional UI claimants
20 will see a new UI claim presenting to them to file. This information is going out in
21 a press release this Friday and technical support documents will be uploaded to our
25 website;
- Overpayment – adjustment to claim eligibility based on changes either in wage data
for PUA or weekly continued eligibility in both UI and PUA. This is still pending
with the vendor current ETA is August 1st;
- Appeals functionality for PUA has been slated to go live this week. We appear on
track to have this available for claimants to file a claim by the end of this week.
Information will be provided with the launch of the functionality; and
- Determinations for PUA – eligibility determinations denying benefits currently are
produced singularly as individual claims are completed. DETR remains working
with its vendor to provide determination language for use in bulk decisions as

1 identified. Claims denied for fraudulent flags may result in a different decision and
2 that language is forth coming with the vendor.

3 Many claimants are expecting daily/weekly updates on individual claims. With the volume
4 of claims there is not sufficient staff to call all callers back.

5 **17.Can claimants can be better informed of additional documents or**
6 **information needed before additional steps are taken to process their**
7 **claims for benefits?**

8 Response: In regular UI and/or PUA the process to do this is:

- 9 ➤ Provide requested information through the adjudication interview process;
10 ➤ Provide requested information from e-correspondence request in UI or PUA; and
11 ➤ Call into one of the call centers to provide the information requested from
12 correspondence.

13 There are current technology limitations in traditional UI to accept uploaded
14 documents, or to send all correspondence through an electronic format; however, DETR
15 ESD currently has an IT project being worked to gain this functionality. Also, due to NRS
16 612 prescribing that DETR mail information, DETR ESD has a pending bill submitted for
17 consideration by the legislature to allow for e-correspondence in traditional UI. DETR
18 currently does not have capabilities to physically mail correspondence to PUA claimants.
19 This would require technology and staffing resources to change.

20 **18.Whether and how DETR is determining that a claimant is precluded from**
21 **pandemic-related benefits by virtue of a UI account balance including any**
22 **efforts being undertaken to address this issue?**

23 Response: If a claimant has even one dollar of UI eligibility the claimant must file
24 and exhaust that program eligibility first.

1 **19. Is DETR taking steps to clearly advise claimants that weekly requests for**
2 **benefits need to be submitted?**

3 DETR ESD has delivered a weekly press briefing and press releases with
4 information and updates regarding the benefit program since the pandemic started. All
5 DETR ESD's written materials on filing a claim state this and the PUA module even has a
6 separate "button" to file claimant's weekly claims certification under. Instructions are
7 given in multiple ways every week as a reminder and are provided in both UI and PUA
8 claimant handbooks/instructions which are available online. This information is also
9 provided on eligibility determinations.

10 **20. Identify the main factors associated with alleged delay in processing**
11 **applications for UI or pandemic-related benefits and identify**
12 **recommended approaches to address such issues.**

13 Administrator Gaa explains that such delays are due to volume of claims in the short
14 timeframe and staffing availability to process claims. DETR ESD has taken and continues
15 to take and refine all available technological processing that can be done. The Agency
16 continues to improve and adjust this process as new functionality deploys in the case
17 management systems. ESD has been looking to add additional resources in the form of
18 additional contract support and or more staffing. State staffing is dependent on the State
19 budgeting and hiring process even with the Governor's waiver in place. These steps take
20 normally months and years and ESD continues to do this daily, weekly, and monthly once
21 it is provided the budget authority and positions to do so.

1 **21.What is the current and reasonably anticipated staffing DETR has, and at**
2 **what levels, to handle the applications for UI or pandemic-related benefits**
3 **does it have/or expect to receive in the near future?**

4 Response: See prior provided staffing level information. DETR has been working on
5 both additional contract resources and more state staffing but these are to be determined
6 at this time and dependent on state processes in large degree. The expected timeline, to
7 receive additional contract resources and more state staffing. These are 15-30 days
8 minimum.

9 **22.What does the data from neighboring states reveal when compared and**
10 **contrasted with Nevada's experience?**

11 Response: There is a misconception that Nevada was far behind other states in
12 rolling out payments under CARES Act programs. (*Ex. 1 to Resp't Opp'n. to Pet. for Writ*
13 *of Mandamus, Decl. David Schmidt at 9*). Data available from the US Treasury identifies
14 when states began drawing funds to pay PUA and PEUC benefits. This data shows Nevada
15 began making payments for PUA on May 27. *Id.* The median state began doing so May 8.
16 Five other states (DE, IA, ID, NH, OK) began making payments after Nevada, with the last
17 such state doing so on June 15. Another four states (AR, IL, KS, WI) began making PUA
18 payments within the week before Nevada was able to do so. *Id.* Nevada was not an outlier
19 and was not the last state to pay PUA benefits by several weeks. Further, Nevada was
20 ahead of other states in paying PEUC, and started on May 11, compared to the median
21 payment start date of May 14. *Id.* To date, four states have not made any payments in
25 this program at all (CO, ME, NH, VA) and only 15 states were ahead of Nevada in
26 launching PEUC benefits. *Id.* The table at the end of this document labeled "Payment

Start Dates" lists all the payment dates for these two programs. Id. FPUC is drawn from a separate account at the US Treasury and does not appear in this data. Id.

State	NV	CA	AZ	UT	ID	OR	FL	HI
Workforce Statistics								
May 2020 Unemployment Rate	25.3%	16.3%	8.9%	8.5%	8.9%	14.2%	14.5%	22.6%
Insured Unemployment Rate, Week of July 4	20.87%	15.89%	7.51%	4.90%	3.97%	10.42%	6.77%	20.73%
Self-Employment Estimate, 2018 Census Bureau	82,115	1,550,418	193,825	73,737	57,350	146,209	566,901	46,569
UI Statistics								
Initial Claims Taken March 7 to July 4	543,316	6,301,985	760,872	197,427	169,655	527,880	3,058,819	290,399
% Change Initial Claims Taken	1253%	783%	866%	1018%	908%	640%	2532%	1225%
UI Average Annual Covered Employment	1,379,654	17,330,010	2,885,408	1,474,336	733,499	1,914,153	8,604,277	621,949
Initial Claims as % of Covered Employment	39.4%	36.4%	26.4%	13.4%	23.1%	27.6%	35.5%	46.7%
Weekly Claims Taken	4,139,559	38,778,287	2,806,069	1,157,702	762,157	3,573,906	10,292,704	1,477,916
Weekly Claims per Initial Claim	7.619	6.153	3.688	5.864	4.492	6.77	3.365	5.089
% Change Weekly Claims Taken	1167%	528%	570%	699%	580%	626%	1528%	1093%
Share First Payments in 7 / 14 / 21 Days	55 / 70 / 74	6 / 63 / 83	71 / 87 / 90	69 / 85 / 92	51 / 68 / 78	65 / 76 / 84	10 / 34 / 55	13 / 29 / 44
PUA Statistics								
PUA IC Reported to DOL Through June 20	154,027	939,147	462,728	11,471	43,779	2,710	0	43,815
Earliest PUA Payment	5/27/20	4/29/20	5/14/20	5/14/20	6/11/20	5/11/20	5/13/20	5/20/20
Total PUA Payments, Not Including FPUC	\$401,417,623	\$3,492,000,000	\$355,870,044	\$31,367,205	\$399,997,079	\$44,433,260	\$272,302,062	\$155,894,783
PUA Paid per Self Employed Worker	\$4,888.48	\$2,252.30	\$1,836.04	\$425.39	\$6,974.67	\$303.90	\$480.33	\$3,347.61
PUA Paid per UI Covered Worker	\$290.96	\$201.50	\$123.33	\$21.28	\$345.33	\$23.21	\$31.65	\$250.66
PEUC Statistics								
PEUC CC Reported to DOL Through June 13	25,116	862,425	1,994	6,974	12,721	0	0	0
Earliest PEUC Payment	5/11/20	5/4/20	6/18/20	5/22/20	6/11/20	5/19/20	6/12/20	5/26/20
Total PEUC Payments	\$23,329,639	\$636,000,000	\$8,255,740		\$8,224,342	\$24,366,276	\$89,299,073	\$8,968,925
PEUC Payments, per Covered Employee	\$16.91	\$36.70	\$2.86	\$0.00	\$11.21	\$12.73	\$10.38	\$14.42
Sources								
https://www.bls.gov/web/laus/laumstrk.htm								
https://oui.doleta.gov/unemploy/docs/weekly_pandemic_claims.xlsx								
https://oui.doleta.gov/unemploy/DataDownloads.asp								
https://treasurydirect.gov/ovrt/reports/tbp/account-statement/report.html								
https://data.census.gov/cedsci/								

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Nationwide Data on CARES Act Payments as of June 30, 2020								
Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC)								
	Payments Since March 1			As % of UI		Workforce Measures		
State	Regular UI	PUA	PEUC	PEUC	PUA	Self Employment	PUA Paid per Self Employed Worker	
MA	\$2,645,086,874	\$1,624,937,749	\$213,237,174	8.1%	61.4%	202,040	\$8,043	
MI	\$2,836,636,439	\$1,675,604,214	\$63,356,332	2.2%	59.1%	225,170	\$7,442	
PA	\$3,338,286,943	\$2,192,906,233	\$129,674,879	3.9%	65.7%	322,007	\$6,810	
CO	\$994,963,766	\$1,027,657,435	\$0	0.0%	103.3%	175,171	\$5,867	
MD	\$802,535,030	\$810,982,948	\$22,900,807	2.9%	101.1%	152,568	\$5,316	
RI	\$324,901,462	\$108,199,188	\$7,359,612	2.3%	33.3%	23,068	\$4,690	
NV	\$1,451,988,691	\$344,982,781	\$16,576,626	1.1%	23.8%	82,115	\$4,201	
NY	\$4,220,979,734	\$2,202,417,337	\$217,855,216	5.2%	52.2%	543,987	\$4,049	
OH	\$2,041,593,888	\$1,034,827,954	\$41,559,675	2.0%	50.7%	266,062	\$3,889	
HI	\$592,536,493	\$144,434,605	\$6,728,949	1.1%	24.4%	46,569	\$3,102	
WV	\$246,226,585	\$91,691,089	\$10,598,128	4.3%	37.2%	30,281	\$3,028	
NJ	\$2,832,007,330	\$613,689,645	\$1,334,350,293	47.1%	21.7%	204,007	\$3,008	
WA	\$2,387,179,254	\$542,754,721	\$90,752,257	3.8%	22.7%	220,161	\$2,465	
GA	\$1,672,414,000	\$597,810,798	\$15,746,937	0.9%	35.7%	265,573	\$2,251	
AZ	\$669,716,608	\$355,870,044	\$4,424,740	0.7%	53.1%	193,825	\$1,836	
DE	\$156,926,440	\$36,396,000	\$4,096,000	2.6%	23.2%	20,862	\$1,745	
CA	\$5,004,014,191	\$2,567,000,000	\$636,000,000	12.7%	51.3%	1,550,418	\$1,656	
MN	\$1,678,089,000	\$231,737,400	\$60,923,408	3.6%	13.8%	151,948	\$1,525	
MS	\$315,178,049	\$103,706,744	\$7,853,218	2.5%	32.9%	68,485	\$1,514	
IN	\$954,350,761	\$211,277,201	\$24,444,533	2.6%	22.1%	143,439	\$1,473	
NM	\$315,372,077	\$85,958,390	\$9,812,601	3.1%	27.3%	59,526	\$1,444	
VT	\$271,282,978	\$44,817,295	\$2,587,449	1.0%	16.5%	31,355	\$1,429	
Source: Data on payments made from US Treasury: https://treasurydirect.gov/govt/reports/tbp/account-statement/report.html								
Source: Data on Self-Employed workers from US Census Bureau, Table DP03, 2018 1-Year estimates: https://data.census.gov								
FPUC payments are not included in US Treasury reports and are therefore not included here.								

1 **XII. Special Master Written Questions to DETR ESD and The Responses.**

- 2 **1. With regard to denials based on claimants being ineligible for PUA, can you**
3 **provide a detailed explanation of the appeal process that is going to be**
4 **implemented and when you expect that system to be implemented?**

5 Response: The appeals module is scheduled to be live this week on Thursday. The
6 appeals process will be similar to the process in traditional UI as all the following
7 possibilities:

- 8 ➤ File an appeal request in the PUA module;
9 ➤ Initial review for redetermination, if no move to appeal hearing setting;
10 ➤ Set Appeal hearing with Appeal referee;
11 ➤ Hearing – (no employer included) review the materials presented in the appeal by
12 the filer;
13 ➤ Hearing determination – approve – move to payment; denied – advise of right to
14 escalate to the Board of Review;
15 ➤ Board of Review – review for remand back to adjudication for redetermination –
16 approval – move to payment, denial – may request additional review; approved –
17 reversal of prior denial move to payment; denial – advise of right to petition the
18 court; and
19 ➤ File in District Court.

- 20 **2. Error in application: claimants have said that once they submit their claim**
21 **there is no way to go back and correct information such as a typo in a social**
22 **security number, address, week worked, et cetera. Is there a way for people**
23 **to update without waiting for a denial/fraud determination/full appeal**
24 **process?**

25 Response: Claimants should call the Alorica call center and follow instructions
26 provided by Alorica. DETR ESD launched a self-healing capability but changing identifying
information, including an address after submission is a fraud indication as there are groups

1 in the country that have been hijacking claims in this manner. User error is causing
2 significant delays for people as DETR ESD works through these claims.

3 **3. PUA retroactive benefits? §2102 provides up to 39 weeks retroactive from**
4 **weeks ending 1/27/20 through 12/31/20. See UIPL 16-20, dated 4/5/20 at p. I-**
5 **8.3; see also p. I-10.10; p. 3, sec. 4.a.1. Is/how is DETR going to provide**
6 **retroactive benefits for periods prior to May 16 go live date and or prior to**
7 **glitches, pending approval limo, no ability to file weekly claims, erasing**
8 **peoples claims? Can you explain retro benefits? When due? how paid?**
9 **effective date? etc.?**

10 Response: Retroactive benefits occur if a claim is otherwise eligible. Please see PUA
11 payment time lapse for issued payment by benefit week. How it works for the earliest
12 periods is certainly a tricky matter - but for a claimant to be eligible for PUA in the week
13 of February 8, for example, the claimant would need to be unemployed due to COVID-19 in
14 that week. While benefits are technically available IF a claimant meets that criteria (e.g.
15 if an IC/gig worker was forced to suspend operations in February due to declining economic
16 activity from China), eligibility a difficult bar to clear.

17 **4. How is DETR reviewing regular UI claims that were denied as of 1/27/20**
18 **forward eligibility for PUA? See UIPL 16-20 dated 4/27/20 at p. I-2, #5.**

19 Response: Traditional claims denied in UI that may be eligible for PUA are sent
20 determination information directs them to PUA. Likewise, PUA claimants with UI
21 eligibility are sent e-correspondence directing them back to UI.

22 **5. Section E – Admin of New Programs in Nevada (or see § II.A.vii – Funding)**
23 **– PUA and FPUC are 100% federally funded. See UIPL 16-20 dated 4/5/20 at**
24 **p. 5 “Program Administration” – “The cost of PUA benefits is 100% federally**
25 **funded. Implementation costs and ongoing administrative costs are also**
26 **100% federally funded.” The Special Master thinks this is undisputed. Yes**
or no?

Response: Yes, this is undisputed. This is how the act reads. Note: to date Nevada has not received implementation funding for any of the CARES act programs. Additionally, while these programs are federally funded, the administration funding is on a reimbursement basis, meaning that available cash flow may limit DETR's ability to instantly respond. Further, PUA funding will be reimbursed first through a workload-driven function, and only later will the DOL potentially work with DETR if DETR's actual expenses exceed the reimbursement DETR's already received. See UIPL 16-20, beginning on page I-14:

D. Financial Information and Instructions:

1. Payment to States. Requesting PUA Benefit Funds—Under Section 2102(f)(2) of the CARES Act, each state that has entered into an agreement with the Secretary to pay PUA, will be paid an amount equal to 100% of the amount of PUA paid to eligible individuals by the state under the agreement and in full accordance with the CARES Act and these instructions. States will request funds from the Extended Unemployment Compensation Account (EUCA) through the Automated Standard Application for Payments (ASAP) system. Drawdown requests must adhere to the funding mechanism stipulated in the Treasury-State Agreement executed under the Cash Management Improvement Act of 1990. Requests will be funded in the same manner as all ASAP transactions elected by the states (FEDWIRE or ACH to the state benefit payment account). There will be one new line in the ASAP for making drawdowns to pay PUA benefits, refer to #3 below for drawdown instructions. The line will be clearly labeled PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA).

Section 2102(f)(2)(B) authorizes the Secretary to determine the amounts to be paid to states for processing PUA workloads. Such costs will be based on workload counts reported on the ETA902P report, and will incorporate minute per unit factors and salary rates identical to those used in the computation of the regular UC program above base administrative costs. Administrative costs will be computed on the ETA 902P report, line 301, column 17. See Attachment VI for additional detail.

1 Finally, the supplemental budget request process will be used for states to request
2 funds for implementation.

3 **6. Where emergency admin grants provided to states (with distinct**
4 **requirements) “Section 4102” to be used for “including [] taking such steps**
5 **as may be necessary to ensure adequate resources in periods of high**
6 **demand.” See DOL UIPL 13-20 dated 3/22/20 at p. 3.4. The Special Master**
7 **think this is undisputed, but the Special Master is not sure how the funds**
8 **are drawn down and how they are currently being spent. "Attachment I"**
9 **provides for a potential \$10,684,454 in funds.**

10 Response: this is for programs other than UI.

11 \$10.6 million is the Families First Act funding (and UIPL 13-20 explained that
12 funding). These funds were made available by DOL to help respond to the COVID
13 pandemic, prior to the existence of the CARES Act, and states have the widest latitude in
14 spending these funds (could be UI or other sources). However, in the context of increased
15 UI demands and CARES Act implementation and contract needs pending later DOL
16 reimbursement, this is a very limited pot of money, and the 500,000+ UI claims we’re
17 taking and system demands for that would also need to be taken into account.

18 As of roughly the middle of May, Nevada had done everything necessary to apply for
19 the two tiers of funds from the FFCRA and those funds are available to Nevada in the
20 ASAP system. Because these are the most flexible dollars, they should also be the last
21 dollars spent, after:

- 22 ➤ UI grant funds;
 - 23 ➤ UI above base funds;
 - 24 ➤ CARES implementation funds; and
 - 25 ➤ CARES ongoing reimbursements.
- 26

1 **7. To what extent did the Federal guidelines emphasizing fraud protection in**
2 **administering PUA, FPUC, and PEUC affect Nevada’s acceptance/denial of**
3 **claims?**

4 Response: Note the timing of the guidance. DETR received the alert memo in April
5 before its system was live, and the OIG concerns report before payment started. This
6 coupled with UIPL 16-20 change 1 did frame the approach that Nevada took because the
7 state was already instruction that OIG was initiating audits for fraud and program
8 integrity, and information that was shared by other states where the DOL had gone in and
9 done correction action plans directing states to change their process after implementation
10 due to the level of fraud – *See Washington State as the best example.*

11 **8. What steps were taken to limit fraud in Nevada’s implementation of the**
12 **program?**

13 Response: Nevada applied the updated guidance from DOL, instructive information
14 from the OIG , and the shared state experiences from the NASWA calls of the states who
15 were experiencing large rings of fraud claims to try and prevent fraud up front. This effort
16 continues, and is tuned each week to try and sieve this down to eliminate the legitimate
filers from the stopped claims.

17 **9. The Special Master knows this was previously discussed, but can you**
18 **explain to me again why DETR decided to use two separate claim filing**
19 **systems instead of incorporating PUA into the traditional UI portal? This**
20 **Special Master recalls something about coding in an old system, but did not**
21 **track all the details.**

22 Response: This was because DETR did not have the technical resources to deploy all
23 the CARES programs simultaneously, and because DETR’s existing UInv system only had
24 shell coding that would have to be worked at the same time as the other programs and then
25
26

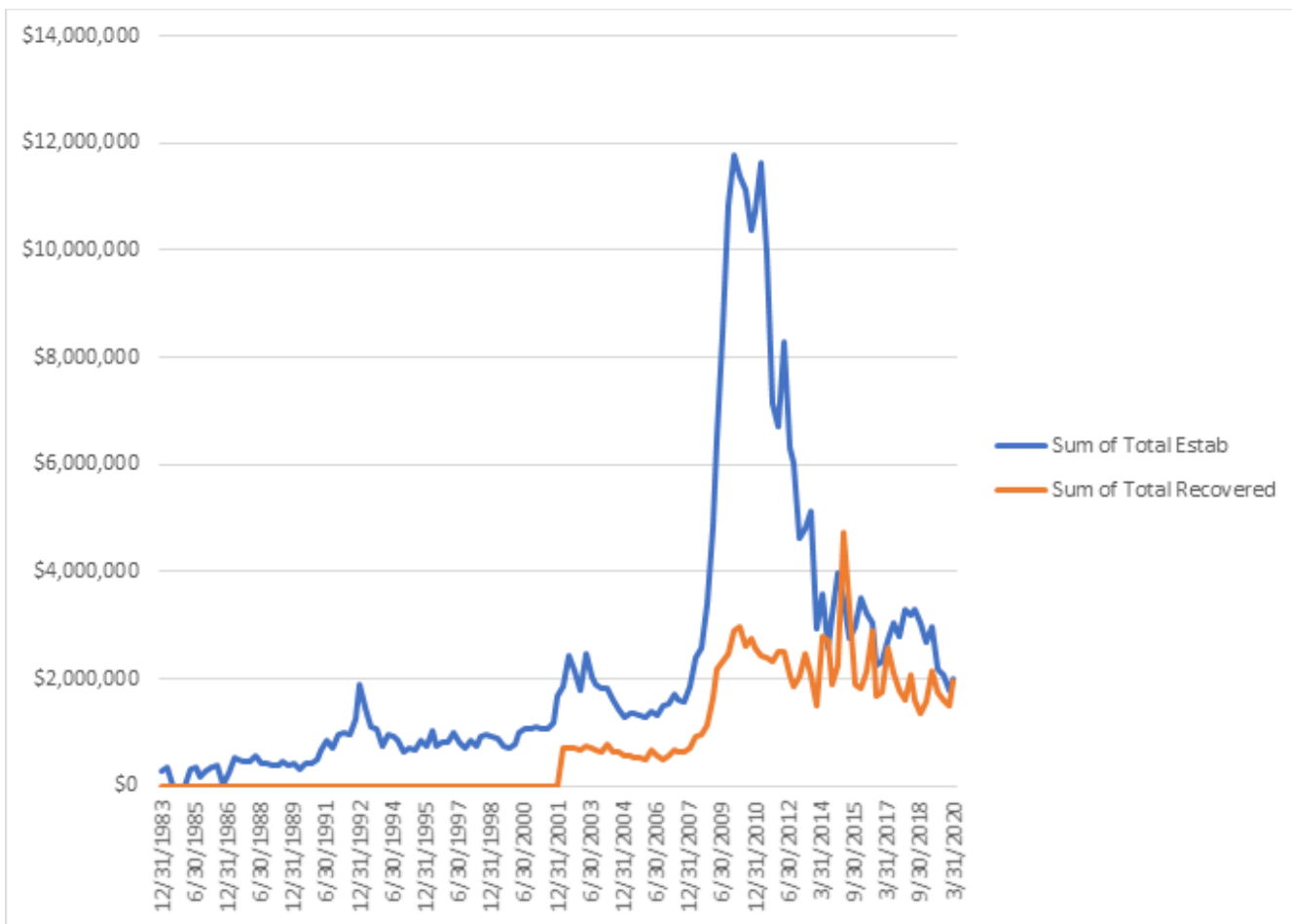
1 deployed. For system stability reasons DETR could not risk this beyond the issues DETR
2 had with resources for programming in the UInv system were so limited. This was a “speed
3 to market” and system stability decision so that we could make payments of benefits in the
4 quickest manner.

5 **10. Why was a self-certification of eligibility insufficient to allow ESD to**
6 **provide PUA benefits under the CARES Act?**

7 Response: This is based on the DOL guidance and follow up guidance listed in UIPL
8 16-20, Change 1, plus further resulting information on fraud and the need to complete other
9 steps to insure program eligibility had been met.

10 **11. Why wouldn't ESD's right to reclaim fraudulently distributed funds be**
11 **sufficient to comply with Federal guidelines?**

12 Response: The other issue that recapture is not the best is based on the information
13 of the rings operating to gain access to PUA funding fraudulently. The states requirement
14 to make certain that we follow DOL as required by the Improper Payments Information
15 Act (IPIA) and the Elimination and Recovery Act (IPERA). See this link for more details:
16 https://oui.doleta.gov/unemploy/improp_pay.asp The share of payment recaptured isn't
17 something DETR can confidently pull together in the time allowed. This chart is my best
18 attempt, and shows total overpayments established and total overpayments recovered,
19 excluding the 3rd quarter of 2013 (UINV system implementation) which was a non-
20 economic event that had a big impact on our flows. Particularly during the Great
21 Recession, there were millions of dollars in overpayments that were never recovered just
22 from the UI system... and the COVID recession is, as you know, a significantly different
25 animal in terms of the numbers and dollar amounts involved.



Source: <https://oui.doleta.gov/unemploy/csv/ar227.csv>

12. Can you provide a narrative discussion (a few paragraphs) regarding the current status of the claims of those PUA claimants who filed their claims between 5/16 and 5/24 to describe and explain the data Mr. Schmidt sent this Special Master over the weekend regarding these “first filers”?

Response: DETR had intended to send separate responses, but as of this date was unable to provide a response.

13. Can you help this Special Master understand that it means for a claimant to have on their claim status “claim under review: no” and also “unresolved issues: yes”?

Response: DETR had intended to send separate responses, but as of this date was unable to provide a response.

1 **14.Can you help this Special Master understand the policies and practices**
2 **governing call center interactions with claimants? What is supposed to**
3 **happen when a claimant calls the call center? Is there a script? A decision**
4 **or information tree? What is the scope of what they are permitted to say**
5 **or do?**

6 Response: DETR had intended to send separate responses, but as of this date was
7 unable to provide a response.

8 **15.This Special Master am not clear on how claims of people who qualify for**
9 **PUA and also have eligible UI income are handled**

10 Response: DETR is running an API/interface cross match to detect UI eligibility. For
11 claimants that indicate UI eligibility from this cross match, claimants are directed that
12 they must file for UI if they have wages indicating they may have eligibility as per DOL
13 guidance. Can a claimant waive UI eligibility so that they can claim PUA benefits? No, per
14 the DOL guidance previously sent the order of payment is established by the DOL guidance
15 and cannot be waived in any manner.

16 **16.Is there a minimum amount of UI income a PUA claimant can have but still**
17 **get PUA? A lot of claimants have described being notified they don't qualify**
18 **for PUA because they have UI income, but the UI income is a part-time job**
19 **and most of their income is from self-employment. Are those claimants**
20 **stuck with getting only \$40 a week instead of getting \$426 a week, for**
21 **example? If the answer is claimants have to decline the UI income, is there**
22 **a fast way to do this?**

23 Response: Per the DOL guidance claimants cannot decline in any fashion the UI
24 eligibility and be paid from PUA. Regardless of the disparity of the program base benefit
25 amount, if someone has \$20 of eligibility for UI benefits, the claimants must exhaust these
26 benefits before being eligible for subsequent programs including PUA.

1 **17.Is it possible the IP address problem (out of state or out of country) can be**
2 **partially attributed to using a VPN?**

3 Response: Yes, it is possible. Other states (Washington and Virginia may be two of
4 numerous) are requiring claimants with this problem to call into file because of this factor.
5 Nevada is doing the same. If a claimant is in fact blocked in some fashion we direct filers
6 to call the Alorica call center.

7 **18.Is it possible the IP address problem (out of state or out of country) could**
8 **have initially been part of a coding error?**

9 Response: No, this was upfront discussed with the vendor providing the solution.
10 This is more of a vetted actual problem being discussed through the states as a legitimate
11 identification of fraud. It is not the only factor used to detect fraud but it is one prong.

12 **19.One group the Special Master has been spending a lot of time analyzing is**
13 **the PUA “first filers.” There appear to be a huge number of claimants who**
14 **filed on the first or second day and have not yet received benefits. Do you**
15 **have any data and/or statistic insights into that group of people?**

16 Response: Here are two reports on this group:
17 * Open Issues on Unpaid Claims Filed May 16, 2020
18 Unique claims: 11132
19
20
21
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26

Open Issues on Unpaid Claims Filed May 16, 2020

Unique claims: 11132

Issue Description	Unique Claims With Issue	Share of Unique Claims With Issue
IP - Investigation Case Special Project	6,410	57.58%
PUA Claim Stopped	3,499	31.43%
PUA - Other program eligibility	2,759	24.78%
DUA - Unemployment not result of disaster	2,050	18.42%
Two-Factor Authentication failed - Bad phone	1,127	10.12%
Two-Factor Authentication failed	398	3.58%
PUA - Refusal to Telework	224	2.01%
Invalid SSN	199	1.79%
Requires Staff Review	118	1.06%
No employment history	106	0.95%
Fraud - Conversion	86	0.77%
PUA - Refusal of work	82	0.74%
Refusal of Referral	82	0.74%
PUA - Requires Staff Review	70	0.63%
PUA - Pension	42	0.38%
Pension	30	0.27%
PUA - Receiving Sick Leave	30	0.27%
Claimants immigration documentation has expired	10	0.09%
Quit Freehand	10	0.09%

Voluntary Quit	8	0.07%
Claimant worked outside of US or Canada	7	0.06%
Suspension	7	0.06%
Potential Education Employee	6	0.05%
Invalid Employer Chosen	5	0.04%
Conditions on the Job	3	0.03%
IP - Investigation Staff Audit	3	0.03%
Prior Issue (separation)	3	0.03%
Self-Employment	3	0.03%
Another job	2	0.02%
Discharge - No Reason Given	2	0.02%
Discharge for cause	2	0.02%
Personal	2	0.02%
Prior Issue (Non-Separation)	2	0.02%
PUA - Proof of employment sufficiency	2	0.02%
Reduction in Hours	2	0.02%
Company Reorganization	1	0.01%
Failure To Meet Job Requirements/Standards	1	0.01%
Failure To Report As Scheduled	1	0.01%
Health Certificate	1	0.01%
Health/Illness	1	0.01%
Info Provided To Agency	1	0.01%
IP SSN/Name Mismatch	1	0.01%
Labor Dispute	1	0.01%

Status of PUA Claims Filed May 16, 2020

7/16/20, 9:51 PM

PUA - Eligibility	1	0.01%
Refusal of Work	1	0.01%
Separation reason mismatch	1	0.01%
SSN Mismatch	1	0.01%
Tardiness	1	0.01%

1 The foregoing two HTML reports look specifically at individuals who filed their
2 initial PUA application on May 16 ("First Filers"). The "First Filers.html" report replicates
3 in large part the chart presented during the hearing with two changes:

4 (i) Item C (wages on PUA application that suggest UI eligibility - \$ wages > 0 and
5 wages in at least 2 quarters) is matched to a report of issues in the UI system
6 currently pending adjudication. This is to clarify whether an individual is pending a
7 PUA determination while pending a determination in the UI system.

8 (ii) The "Total Paid" now includes both regular PUA and the PUA-FPUC dollars

9 Most of the group has been paid (~ 16k to 11k). Of those who have not, the most
10 common holds are for violated security flags (#1) or outright fraud stops #2). The next two
11 largest groups are those that are flagged for UI eligibility (#3) or because they are flagged
12 as not meeting the COVID-19 eligibility criteria.

13 Note that the percent on the open issue report adds to more than 100% because it
14 describes the share of claims with the listed issue. Because claims may have more than
15 one issue, the total is over 100%.

16 Also note, this report describes open issues. After DETR figures out how to report on
17 payment time lapse for this group, it will run a report that shows how many issues we have
18 resolved for this group. DETR' definition of first filer is "initial claim filed on May 16" – it
19 can easily amend that if the Special Master prefer another group.

20 The "First filers - Unpaid Claim Open Issues" report looks at all of the issues that
21 are attached to any claim from May 16 that has not yet been paid. It is important to note
25 that not every issue that may be generated will stop payment (still working on getting that
26 filter included in DETR's data), but particularly with respect to the larger categories, this

1 will help identify causes for the hold. It is also important to note that a claim may have
2 multiple issues. This is not including a claim that has 5 "750" holds on 5 different weeks,
3 but does count a claim that has a "261" hold as well as a "197" hold. For this reason, the
4 "Share of unique claims with issue" will add to more than 100%. DETR can also provide
5 the much longer "Resolved" issue list, but is trying to stay focused on what may be
6 preventing payment.

7 Important definition: "PUA Claim Stopped" = Indication of claim outside country.
8 This is vague language intended to prevent revealing methods of fraud detection, as the
9 language DETR is using to populate this report comes from the database issue description.

10 DETR is available to provide clarification, expanded details, or other shifts in how
11 the detail is presented. I'm writing the code to pull the data and also present the data, and
12 knowing how deep to dive is the trickiest part, but I want to provide you with the data that
13 will help you most accurately represent what is going on. If there's anything I can do to
14 help provide clarity, just ask.

15 I'm using this report format because it's a clean look, but could pretty easily provide
16 it in Excel or csv. I'm starting with the "first filers" based on your comments yesterday
17 about that group, as it's a natural test case to look at what's happening with all the
18 claimants in this group as a way to begin speaking about the larger population. I'm also
19 planning on broadening the scope to also look at all claims up through June 21. Any other
20 helpful breakpoints, please let me know.

21 **20. Do you have something equivalent to an aged account summary? A sheet**
25 **that lists each aged claim that has not been paid and its current status.**

1 Response: DETR has aggregated summaries, but not each individual claim on a
2 single spreadsheet. Since that would be a sheet with ~ 300,000 rows of data even limiting
3 the information to one row per claim so, DETR wants to verify what the Special Master is
4 looking for. There's also no "status" field as such. DETR can provide a number of
5 summaries (# weeks claimed / paid / # open issues, initial file date, earliest payment date),
6 but getting into the detail of each claim (precisely which issues) could get to the point where
7 DETR is potentially compromising is fraud checks.

8 DETR proposes the following, which I think I can deliver: Modified application ID
9 (DETR will modify the ID, keep a personal key, and reshuffle and map the IDs so that
10 nobody getting the data publicly would be able to tie the ID to a specific claim, but that
11 there would be traceability to a particular claim).

- 12 ➤ Number Weekly Certifications
- 13 ➤ Paid? Y/N
- 14 ➤ Earliest Pay Date (rounded to whole date, not hh:mm:ss)
- 15 ➤ # Open Issues on Claim
- 16 ➤ # Resolved Issues on Claim

17 In follow up to this response, Chief Economist Schmidt updated his response as
18 follows: Please find attached a grouped summary of applications meeting particular sets
19 of criteria. This data set is over 3000 pages, so I am providing an imbedded link here for
20 the Court's convenience if the Court would like to review this data:
21 [https://hutchlegal.egnyte.com/dl/H2gDbzzzDB/Appendix_18-](https://hutchlegal.egnyte.com/dl/H2gDbzzzDB/Appendix_18-Grouped_Applications_2020-07-13_Data.csv)
25 [Grouped Applications 2020-07-13 Data.csv](https://hutchlegal.egnyte.com/dl/H2gDbzzzDB/Appendix_18-Grouped_Applications_2020-07-13_Data.csv) ; alternatively, the Special Master can
26 provide this data in a binder upon request.

1 With regard to this data query, Schmidt explained, “I’m trying to balance both an
2 exhaustive grouping as well as ensuring that there is not link containing individual
3 application IDs.” An explanation of the columns:

- 4 ➤ Claim_file_date – date the claim was initially filed in EmployNV. Rounded
5 down to whole day.
- 6 ➤ Has_certs – whether the claim has any weekly certifications for benefits on
7 file.
- 8 ➤ Number Issues – these columns provide the number of issues on a claim /
9 group of claims matching two criteria, the issue status (Open, Resolved,
10 Other) and whether the resolution code matches the initial issue code. These
11 factors combine in ways I am still working to sort through to determine
12 whether a claim is cleared for payment. Because some issues will prevent
13 payment, even a “Resolved” issue may still be preventing payment. Other
14 issues may be open, pending review by DETR staff. Other issues may be open,
15 pending a determination by an adjudicator. Issues may be generated at the
16 time a claim is filed, or may be generated based on the answers to a particular
17 week’s certification. Some issues will disqualify benefits for particular weeks
18 (e.g. a PUA denial while the person is eligible for UI or PEUC), but not the
19 whole application. Some issues identify particular fraud investigations, other
20 identify holds pending investigation. This is the most complex part of the
21 data, and not one we can provide comprehensive detail on in a public way that
25 protects our own internal program operations. I’ve tried to strike a balance
26 on this to help you filter and narrow particular types of cases.

- Weeks_paid – number of individual weeks that have been paid.
- First_payment – date of the earliest payment issued to a claimant (date issued, not the week for which it was issued).
- Qtrs_covered_py – number of quarters in 2019 with wages reported in the EmployNV application that appear to be from W2 / UI-Covered employment. Not verified against UI application, just descriptive.
- Qtrs_uncovered_py – number of quarters in 2019 with wages reported in the EmployNV application that are not from W2 / UI-Covered employment. Not verified against any source documents, just descriptive.
- Amount_paid_group – increments of \$2,500 to describe total payments (including FPUC) made to claimants. Could customize this, kept it broad to keep the numbers manageable.
- Matching_applicaitons – total number of applications that meet all of the unique combinations of the criteria above.

Please note: the software I've been using for these reports crashed in the middle of the day yesterday, so I've occasionally seen numbers that don't line up quite right. As a result, there may be small inconsistencies if some July 6 data was not refreshed and matched to July 13 data – I'm trying to double-check everything, but this is a very new tool and time is not my friend. Everything appears representative, but there may be instances of imprecision.

1 **21.Administrator Gaa - One of the themes the Special Master has discerned**
2 **from the complaints of petitioners and messages from those presumptively**
3 **included in the "Gig Class" is extreme frustration with the call center. This**
4 **has been such a recurring theme that this issue is going to be added to this**
5 **report. To help me understand the call center and some of the grievances**
6 **against the call center, please answer the following questions:**

7 **a. Did Alorica begin accepting PUA claimant calls before**
8 **its reps were trained and before they had access to the**
9 **PUA claims system?**

10 Response: Partially, Alorica call center was operational for a couple of weeks before
11 the application system was live in production. They answered general process calls,
12 stimulus money information calls, and other related calls from the recently passed a
13 CARES and Families First Act legislation. Next phase was application taking that Alorica
14 staff were trained on the week the application went live of 5/16 . For the next week after
15 we again the Alorica staff were trained for the next phase of adjudication/payment. Once
16 the adjudication and payment functionality was live we did then publicly announce each
17 phase.

18 **b. How long did it take to get reps trained answer PUA**
19 **related claim questions?**

20 Response: Up to 1 week for each phase.

21 **c. Many PUA claimants are allegedly being told by**
22 **Alorica reps that training is ongoing - is that true -**
23 **training is still ongoing?**

24 Response: Yes, each time we roll out additional functionality we provide
25 corresponding training. We will be doing something similar with the upcoming appeals
26 functionality.

1 **d. Are reps trained and authorized to provide**
2 **substantive guidance or advice to unpaid claimants?**

3 Response: Substantive guidance yes, advice no. We in UI or PUA are not to provide
4 any advice or opinion, but instructive information. We must remain neutral/agnostic to
5 maintain program integrity.

6 **e. There are reports that reps are telling callers that,**
7 **"we're being trained on that this week . . ." Is that**
8 **something reps are trained to say to claimants?**

9 Response: DETR can't comment if that is Alorica management advising the call
10 takers to say this for certain. When we have had reports of Alorica staff not following
11 guidance and instructions on what to advise we have brought those to the Alorica
12 management team. If subsequent issues were found with Alorica staff not following the
13 guidance their rights to processing claims in Nevada have been removed. There have only
14 been a handful of these out of over 300 total agents.

15 **f. Has DETR allowed Alorica to set their call handling**
16 **protocol in a way that disconnects claimants after 6**
17 **minutes on hold?**

18 Response: DETR does not control the telephony solution for Alorica. However, DETR
19 did work with the vendor to address the Robocalling issues that they were experiencing
20 and included this information in press releases.
21
22
23
24
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26

1 g. How does DETR know it has a "robocaller" problem, as
2 you have referenced a few times in your weekly press
3 conferences and other media interactions? How are
4 DETR and Alorica distinguishing "robocalls" from
5 desperate PUA claimants who re-dial multiple times
6 due to Alorica's alleged 6-minute "hold-and-hang-up"
7 protocol?

8 Response: Alorica's telephone has software that provided the information. We do
9 know that claimants maybe included in these and there was a self-reported PUA claimant
10 on Facebook that use a multi-line conference calling mechanism to create a robocalling
11 mechanism. Based on the reports of unique numbers calling into Alorica's system verse
12 total calls attempted it was clear to them that this practice was persistent.

13 **22. Does DETR monitor emails, catalogue complaints, questions, and concerns,
14 with the objective of finding common complaints or issues with how the
15 system is working? If yes, what changes have been made to address the
16 concerns expressed by people who email DETR? If no, why not?
17 Additionally, this Special Master noticed that there are a few FB groups
18 dedicated to PUA claimants. Has DETR monitored those groups, made note
19 of concerns and questions, and taken steps to address concerns or answer
20 questions? If yes, what has been done? If no, why?**

21 Response: Yes. Prior to the pandemic the agency received several hundred
22 complaints on any given week (we had a report that the Director's Office tracked – plus an
23 email box for internet helpdesk assistance that we had 3-5 staff monitoring on given days
24 to respond to. Each complaint was tracked to resolution and responded to accordingly. The
25 most common complaint at that time were access to the UI call center by phone, and the
26 need to access the Security helpdesk to reset PIN/Passwords. This was a direct result of
position reductions that had taken effect in July 2019 from the prior biennium budget cuts
that had reduced the positions for the call center to historically low levels due to the

1 historically low level of unemployment and funding for the UI program. In order to address
2 the Security helpdesk problems there was already an IT project that had been going on for
3 over a year to upgrade and update the functionality for security resetting prior to the
4 pandemic.

5 Post pandemic those numbers for assistance swelled to more than 200K emails (and
6 is still climbing) in just the one internet helpdesk email box in a matter of several weeks.
7 The agency attempted to add management resources to try and address in the initial days
8 of the pandemic. Most of the concerns early on were magnification of the access problems
9 in the aforementioned paragraph. As a result, the agency created a team of a few additional
10 staff to manage the complaints, and we conscripted many of the Job Connect staff to also
11 assist. As the weeks went on, the agency became overrun with all the emails and calls,
12 DETR tried to deduplicate the emails, because many filers would send hundreds of emails
13 demanding immediate services repeatedly. It required weeks by numerous ESD staff and
14 IT staff to find the singular individual questions to answer and resolve. This problem
15 persists with no actual relief. We placed automatic responses on email boxes (see current
16 one attached for INTERNETHELP@detr.nv.gov to try and address the volume and ask
17 people to stop sending multiple to multiple boxes because it has enormously slowed the
18 process of addressing.

19 Additionally, we worked together with the Governor's Office to create an account
20 reset form: <http://gov.nv.gov/Forms/Unemployment/> that the team worked daily.

21 DETR expanded hours to the call centers for 8am-8pm and one-half days on
25 Saturdays the same week the pandemic started to provide additional access to services.
26 We also moved or "crashed" the schedule with a Security vendor to add self-healing

1 capabilities to UInv so we could again redistribute the resources for claim calls and
2 adjudication. As the weeks went on the complaints remained mainly about access to faster
3 phone center services and decisions on pending adjudication on claims. A series of other
4 policy decisions were made that waiver the work search requirements and other similarly
5 typed issues as DOL rolled out updated instructions and flexibility. Staff met on all of
6 these DOL instructions and guidance and walked through the technical permutations and
7 technology options to execute each one. As each one was rolled out staff would evaluate
8 the information being received by the filers about the complaints and tried to address. Not
9 all complaints had simple ways to address them, such as the security password reset
10 problem. For example, this took moving an IT project up in a very aggressive timeline for
11 functionality that wasn't planned until a much later phasing of the project.

12 Once the PUA system went live we also relied on the Alorica call center to share
13 reports of issues based on the information they received from the claimants. At the start
14 of the pandemic we had one dedicated staff member to assist with DUA if it was triggered.
15 Within a matter of weeks of the signing of the CARES Act, DETR had a contracted to staff
16 a new call center to answer general questions that were then converted to support PUA
17 with more than 100 FTE positions. These positions have now expanded to 200 FTE
18 positions (total count of staffing, including part-time are 299).

19 Response: Yes, to date DETR ESD UI has received upwards of several hundreds of
20 thousands of contacts constituting several million contacts for assistance in various forms
21 since the pandemic started. Legal has received multiple records requests about complaints
25 and resolutions. Changes that have been made to speed up processing of claims and
26 address access are as follows:

Traditional UI: (this list is not exhaustive as we have added many more that have evolved since the pandemic started.)

- Password reset functionality (see above narrative on this);
- Addition of FPUC system functionality on April 11th;
- Removal of Able and Available requirement;
- Skipping of work search requirement;
- Allowing of unilateral backdating of claims to March 15 due to the limitations in access and staffing;
- Allowing claims with deductible income to be held for only four week and pay out of subsequent weeks if all other eligibility is met, while the claim goes through full adjudication. This was recently changed to one week when the State entered phase two of reopening and there was a high percentage of initial claims that had exhausted this income that had met all other requirements; and
- Allowing several groups of quit issues to move to eligibility – people that quit for next to last employers to accept new employment, for example;
- Ending prior non-fraud disqualifications for prior benefit years; this weighed the percentage of claimants that had weeks of qualifying employment that allowed for the ending;
- Name mismatch team resolution;
- PEUC functionality on June 27th;
- SEB Functionality on July;
- Translation of UI documentation into languages beyond English and Spanish

1 **PUA:** (this list is not exhaustive as we have made many more that have evolved
2 since the pandemic started.);

- 3 ➤ Application functionality live as of May 16;
- 4 ➤ Payment functionality live as of May 23;
- 5 ➤ Change of Quarter functionality as of July 11; and
- 6 ➤ Please see the attached OPC list as they are extensive/voluminous.

7 Response: With regard to whether DETR monitored those [FB] groups, made note
8 of concerns and questions, and took steps to address concerns or answer questions, the
9 answer is: partially. The agency has one Public Information Officer and one additional
10 support staff member that was added during the pandemic started that has attempted to
11 monitor social media and other media information indicating that access or system
12 problems have been occurring. Note that there have been in the multiple thousands. It
13 has been a particularly difficult source of information for the agency to monitor Facebook
14 and Twitter relating to PUA claims. The main difficulty has been due to the threats that
15 have been received, particularly through this medium. Many of the reported barriers or
16 issues that the agency staff looked at resulted in false profiles or the inability to confirm it
17 was an actual person. They also included detected individual fraudsters. These forms of
18 communication have been used by organized fraud groups to place pressure on the agency,
19 politicians and individual employees to try and perform wide sweeping decisions to release
20 funds for unvetted claims. Most of the monitoring has made it difficult to determine the
21 root cause of issues since there is no direct dialogue with the filer to ask questions. Many
25 of the complaints are less about items needing to be addressed in functionality and more
26 about user errors or waiting on decisions.

1 DETR has reviewed and reported multiple technical issues reported by the media,
2 to us in emails, and through Facebook and Twitter to do their best to find a root cause
3 problem. The only major one to date that actually created a direct barrier for 1000s filers
4 was the issued that occurred the weekend of June 26th. This had to do with a problem of
5 code deployment by the vendor that was incomplete, and this was immediately worked on
6 to reverse. All accounts were intact, just not viewable to claimants. These accounts have
7 been restored to full viewability as of the writing of this outline.

8 Also, since the full functionality for the life-cycle of a claim was being built as DETR
9 launched, the ability to complete root cause analysis was truncated. For example, we stood
10 up Application taking functionality on May 16th; Payment functionality on May 26th,
11 updated decision notifications between May 26th through present, launched quarter
12 change functionality today, launched two factor security verification on June 24th and had
13 to turn it off that weekend because of back end problems. DETR expects to launch appeals
14 submission functionality next Thursday July 16th . Additional decision notices should also
15 launch this week. Decision approvals occur in the form of payment to the claimant
16 currently as referenced with the confusion for claimants that received “approved” notices
17 in my supplemental declaration.

18 The agency has two dedicated staff members that are responsible for monitoring
19 social media, the Department PIO – Rosa Mendez, and her assistant. Also, it is important
20 to note the numbers of the requests (in the hundreds of thousands) for assistance and the
21 deduplication attempts made have been unsuccessful. Multiple staff remain from support
25 positions and Job Connect offices throughout the State answering these complaints and
26 emails individually, but we do not have sufficient resources to speed up this process.

1 **23. This Special Master reviewed the contracts with both Geographic**
2 **Solutions and Alorica. Can you provide a brief narrative on the process**
3 **that led to your selection of these vendors. The Special Master reviewed**
4 **notes on this topic and remembered DETR used emergency authority to**
5 **select these vendors and get contracts approved. Also, please just confirm**
6 **that DETR had not conflicts of interest with the vendors (no financial**
7 **interest or other personal relationship or interest in these companies)**

7 Response: DETR solicited proposals from multiple sources for both contracts and
8 then used the emergency provision:

9 For Alorica we received proposals from the following:

10 Alorica
11 Maximus
12 DataMark
 Sutherland Global
 The Results company

13 NASWA produced a list of companies working in this space and DETR reached out
14 for proposals except for Sutherland Global that was a local company. DETR ended up
15 settling on Alorica for several reasons. They had the lowest price, they had facilities in
16 Nevada, they had background checked folks ready to go, and agreed to actively recruit in
17 Nevada. There were no conflicts of interest. The contract was for 100 FTE equivalent and
18 the average talk time is just over 15 minutes on average. DETR will send some updated
19 stats in the morning.

20 For GeoSol we solicited proposals from 4 entities:

21 GeoSol
22 Sagitec
25 Fast
26 Deloitte

1 Deloitte said they didn't have the bandwidth to take on Nevada. FAST didn't have
2 the necessary functionality. Sagitec had full capacity but their system was untested and
3 cost \$700,000 more than GeoSol. We settled on GeoSol because their system was in test in
4 three states Tennessee, Louisiana and Nebraska. DETR also had a different product
5 already under contract for our employment services and they had already established
6 minor connections to our current UI system, and as mentioned before 700,000 less.

7
8 **24.What is the maximum capacity of the Alorica call center to receive calls and**
9 **respond to questions at any given time?**

10 Response: The capacity of Alorica is measured by FTE hours. The contract with
11 DETR calls for 100 FTE and 35 adjudicators at a cost not to exceed \$6,700,0000 by
12 December 31, 2020. Training for each FTE has lasted roughly a day and half with follow
13 up remediation training. Pre-COVID, training usually took two weeks.

14 **25.Can one of you provide a step by step explanation on how a claimant would**
15 **go about getting a fraud flag removed from their file and how long that**
16 **process takes? In answer to this question, the Special Master just want you**
17 **to focus on what DETR would tell a member of the public, particularly a**
18 **claimant, who needs to know what to do to address a potential fraud issue**
19 **triggered on their claim.**

20 Response: The typical process available to claimants is to call Alorica. Thereafter,
21 a note will be made to the file. The fraud flag will trigger DETR staff to review the notes
22 and do an independent review of the file manually.

1 **26. How much investigation per claim is required to clear the claim or confirm**
2 **the claim is fraudulent?**

3 Response: DETR attached some information that came from DOL about fraud
4 scheme and concerns. There are specifics related to the CARES Act passage and potential
5 vulnerabilities to these programs. There are noted items in this communication that
6 expressly state that all the states provide due diligence take necessary actions to prevent
7 fraudulent payments of claims. These items may seem appropriate to be considered for
8 submission under seal or in camera as it relates to fraud. This does not include any
9 Integrity Center information that I am trying to work on under separate cover.

10 As has been stated several times, DETR ESD has an affirmative obligation to
11 monitor for fraud. Program integrity is a major requirement outlined in DOL guidance and
12 cited in each UIPL issued under the program integrity notice in the issued guidance.

13 Note the following information from DOL website:

14 https://oui.doleta.gov/unemploy/improp_pay.asp#

15 <https://oui.doleta.gov/unemploy/bqc.asp>

16 <https://www.oig.dol.gov/hotlinemain.htm>

17 <https://oui.doleta.gov/unemploy/highdollar.asp>

18 <https://www.paymentaccuracy.gov/>

19 <https://integrity.naswa.org/>

20 Also, attached are the Duties and responsibilities of the Fraud Unit Manager pre-
21 pandemic. Both the Fraud Manager position, along with the vacant Deputy Administrator
25 of UI, were vacated by retirement prior to and during the pandemic. They were

1 subsequently filled in June once the Governor's Finance Officer authorized the positions
2 for hire.

3 **XIII. Special Master Written Questions to Petitioners and Responses**
4 **(RESPONSES WERE NOT EDITED).**

5 **1. Do you have any observations or recommendations that you would like me**
6 **to consider adding to my report to the Court?**

7 Response: First systemic change, once DETR has informed the claimant of a favorable
8 eligibility determination, put the file aside, you don't need to waste any more time on it,
9 payment must be continued until after an ALJ says it doesn't and that can be done later.
10 So, DETR should stop wasting time on files that are now done. DETR then can move
11 forward instead of being caught in this constant re-reviewing quagmire. Pay every claim
12 with a favorable eligibility determination, and keep paying until after an ALJ says to the
13 contrary. That's what the courts will make DETR do anyway. I don't care if the manual,
14 or NRS, or anything else besides a federal statute says to the contrary. Until, and unless,
15 the Supreme Court reverses Java, that's the law. Follow it.

16 Second systemic change, If DETR says you can't get PUA because of UI, then you must
17 get UI. Start paying the UI, or don't say this is the reason for non-payment. Again, once
18 that determination is made by DETR, it should not go backwards and not pay based upon
19 a different determination. That will clear up about 45,000 of these cases right off the bat.
20 Java says when DETR makes a favorable determination the property right vests in the
21 claimant. And to stop paying the weekly benefit, is just a pre-judgment taking of property
22 without due process. Going forward, integrate the PUA and UI system, so DETR doesn't
23 mistakenly deny PUA when UI isn't really available. That's not the claimants' problem,
24
25
26

1 its DETR's. UNDER JAVA THERE IS NO 'TEMPORARY' OR CONDITIONAL
2 ENTITLEMENT DECISIONS, at least not for all the facts at the time of the decision is
3 made. Continued eligibility can be dependent upon looking for work, and not being
4 employed on the side, but that's a future event. It can't be dependent on a re-examination
5 of the facts that led to the initial decision-- at least not until an ALJ considers those
6 historical facts. The Jenkins case out of the 7th circuit even says criminal fraud can't be
7 unilaterally stopped says I will file a brief tomorrow on this. But Java overrides identify
8 theft and fraud discovered after a favorable determination letter has been sent.

9 Third systemic change, issue checks and /or direct deposit and let the banks deal with
10 the identity issue. These debit pay cards are a whole other scam, with fees and the banks
11 keeping the residue amounts. For security it's the same as issuing cash. Why do it. There
12 is nothing in the law that says the state of Nevada can't issue a check And if there is
13 interest on the float until the check is cashed, then Nevada gets its instead of some bank
14 based in North Carolina. This way, DETR builds in one more identity check precaution.
15 Not fail safe, but better than before using a debit card.

16 The same is true for any payments made, DETR can't stop paying until the funds run
17 out by the terms of the program. IF DETR could stop paying in advance of the due process
18 hearing, then Java would have been decided the other way-- especially for the one person
19 in Java where the employer won on appeal. Stop this self-help, and at the same time, free
20 up people to process new claims instead of constantly re-examining old ones.

21 Fourth systemic change stop calling the regular DETR staff without any real authority
25 "adjudicators." It confuses the public. The public thinks that these people are judges so
26 DETR looks like its disobeying a judge or that a judge has reviewed their claim. They may

1 be very important staff, but they are not judicial officers, and if they are, why isn't DETR
2 bound to follow what they say.

3 Fifth systemic change, encourage claims' payment, rather than rejection. The purpose
4 of the CARES act is not to reform the UI system to prevent fraud. The CARES act doesn't
5 even mention fraud in part II. The UI section-- except to say if the Administrator finds it,
6 she can assess a 15% penalty to the recovery of funds. That's it. No criminal prosecution,
7 although she can refer to AG (but so can you or I). And there is no money from employers
8 or the state of Nevada in the PUA program, so, to the extent DETR finds UI coverage,
9 DETR is charging an employer and the state for what would otherwise be federally paid
10 100%.

11 Sixth systemic change – DETR staff should help people fill it out correctly so they get
12 money, not make it difficult so they don't. Same as above, CARES is just PPP for workers.
13 It's helps the economy as much as it helps the claimant. There is a lot of debate and class
14 envy over where congress should inject stimulus money-- should we give the rich more
15 money in terms of a tax reduction, or should we give the poor more money because they
16 need it. From a pure economic point of view, in the long run it doesn't matter where the
17 injection point is, as the market will move the money to where supply and demand says its
18 needed. So, helping people get the money is doing a good thing for everyone. And let the
19 DETR person input data right into the computer while they are on the phone with a
20 claimant, so that we don't lose things in translation or we wait too long, or the claimant
21 didn't have the screen up and really doesn't understand the question, or the instructions
25 DETR gave. Have the claimant pull up his screen, let the DETR people pull up the same
26 page, and just like a help desk at a software company, walk the claimant through the

1 process. Swear or affirm the claimant on the phone on a recoded line, and you now have
2 self-attestation and a form that is filled out correctly.

3 Response: Not linking the UI accounts with the PUA accounts in the computer is
4 huge—first because it adds an extra time consuming step in the process and puts the
5 burden on the claimant to secure a UI payment, which despite the claim for UI eligibility,
6 is often answered in the negative which results in “No Payment” from UI for one reason or
7 another, proving the original denial of PU for UI coverage was factually incorrect. If DETR
8 denies PUA because of UI, then it ought to be estopped from denying payment under UI.
9 (Not only does an incorrect determination of UI coverage hurt the claimant, it hurts the
10 state of Nevada since the UI program does have state funds in some of it. Thus, kicking the
11 can down the road by claiming UI eligibility when there is none is a lose lose situation for
12 the people of the state of Nevada.)

13 **XIV. Recommendations**

14 In accordance with the foregoing, the primary “bottlenecks” and fractures in the
15 system appear to be: (1) No opportunity for an aggrieved claimant to challenge DETR ESD
16 decisions or non-decisions; (2) the unemployment insurance system was not created to
17 handle hundreds of thousands of claims in 90 days and establish new benefit programs to
18 serve additional people; (3) the widespread existence of “glitches” in the benefit delivery
19 system; (4) claimant errors are rampant which lead to significant delays in processing an
20 application; (5) claimants do not have a reliable person who can provide them with
21 information and assistance to accurately complete applications and resolve problems as
25 they arise; (6) the call center hired to answer claimant questions and provide assistance
26 has failed to consistently deliver competent and compassionate service; (7) the new benefit

1 programs are vulnerable to fraud; and (8) systemic fraud has constipated the system and
2 put additional strain on vexed people and limited resources.

3 Now, therefore, based on these observations, the Special Master respectfully offers
4 a few recommendations for the Court to consider as it reviews the facts presented in this
5 report. As was stated in the beginning of this report, the Special Master's role is not to
6 advocate for one party or the other, nor is it his role to render legal conclusions or make
7 equitable decisions. The Special Master merely offers the following recommendations to
8 assist the Court with considering the options available to act or not to act.

9 **A. PUA Appeal Process**

10 When the Special Master interviewed Administrator Gaa and her staff on Thursday
11 July 9, 2020, I learned that PUA claimants did not have a means to appeal written
12 determinations (or *de facto* determinations). This means that, since May 16, 2020, every
13 person who has filed a claim and been aggrieved by ESD determinations regarding PUA
14 benefits that had not had an opportunity to be heard. Hence, the only avenue to have their
15 grievances heard has been to hire an attorney and file a civil action for relief from a District
16 Court. "Due process of law" requires that a person shall have reasonable notice and a
17 reasonable opportunity to be heard before an impartial tribunal, before any binding decree
18 can be passed affecting his or her right to liberty or property. U.S. Const. Amend. 14;
19 Const. Nev. art. 1, § 8. In determining whether due process of law has been denied, regard
20 must be had to the character of the proceeding involved, and respect given to the cause and
21 object of the taking. Notice and opportunity to be heard are of the essence of the "due
25 process of law" guaranteed by the state and federal Constitution. *Humboldt Land & Cattle*
26 *Co. v. District Court of Sixth Judicial Dist.*, 47 Nev. 396, 224 P. 612 (1924). Due process of

1 law requires an orderly proceeding, adapted to the nature of the case, in which the citizen
2 has an opportunity to be heard, and to defend, enforce, and protect his rights. A hearing
3 and an opportunity to be heard is absolutely essential. We cannot conceive of due process
4 of law without this.' *Golden v. Dist. Ct.*, 31 Nev. 250, 264, 101 P. 1021 (1909).

5 PUA claimants have a right to due process, namely the right to appeal decision (or
6 non-decision) of ESD and have the merits of their contested case heard. Due process
7 protections of the Fourteenth Amendment of the U.S. Constitution and Article I, Section 8
8 of the Nevada State Constitution apply to unemployment benefit determinations. ESD has
9 a well-established procedure for providing aggrieved claimants with due process, which
10 begins with notice regarding eligibility or disqualification regarding any week in a calendar
11 year (NRS 612.470), followed by a right to appeal and have a hearing before an "Appeal
12 Tribunal" (NRS 612.495), followed by a right to appeal to the Board of Review (NRS
13 612.515), and after exhausting these administrative due process remedies, present a
14 petition to a Nevada Court for Judicial Review (NRS 612.530).

15 Denial of due process alone is an injury. *Whitney v. State, Employment Security*
16 *Dep't*, 105 Nev. 810, 813, 783 P.2d 459, 460 (1989) (recognizing a due process violation for
17 unemployment benefits is a cognizable injury); *see also Glaser Employment Sec. Div.*, 127
18 Nev. 1137, *3, 373 P.3d 917, *3 (2011) (unpublished disposition). Here, PUA claimants who
19 have disagreed with ESD determinations have been injured. In this regard, there has not
20 been any remedy available to them by which they can recover PUA and FPUC benefits
21 unjustifiably denied to them or delayed as a result of ESD decisions or non-decisions. Such
25 a circumstance is a classic denial of due process of law. The Nevada Supreme Court has
26 consistently held since 1877 in administrative cases that a parties' right to a hearing before

1 having a property right taken is secured by the fundamental constitutional principle that
2 parties are entitled to due process. *See, e.g., State of Nevada v. Northern Belle Mill &*
3 *Mining Co.*, 12 Nev. 89, 92 93 (1877); *Spilotro v. State ex rel. Nevada Gaming Comm'n*, 99
4 Nev. 187, 195, 661 P.2d 467 (1983). Moreover, in unemployment compensation cases in
5 which there is a dispute over eligibility or the delivery of benefits, basic fairness requires
6 due process before an administrative tribunal. *See, e.g., Whitney v. State, Employment*
7 *Security Dep't., supra.*

8 Administrator Gaa explained that, because the PUA system is new, a new appeal
9 process had to be established. On Thursday July 16, 2020, Administrator Gaa formally
10 announcement to Alorica about Appeals functionality GoLive in PUA tomorrow.
11 Administrator Gaa had a press conference scheduled for July 17, 2020, but due to some
12 unforeseen circumstances it was canceled. However, the Appeals module is expected to go
13 live on the morning of July 18th. Claimants will have 30 days from the date the Appeals
14 module goes live to file their appeals. Once the appeal functionality is active, claimants
15 will be directed to submit their appeal through the EmployNV application. Due to delays
16 in the implementation of the appeals module, claimants will be permitted to file a late
17 appeal for a period of 30 days after July 17, 2020. This should allow for the backlog of
18 appeals that would normally be considered late to be submitted. During that 30-day
19 window, all appeals requests will be considered timely for hearing purposes.

20 Notwithstanding Administrator Gaa's and her team's Herculean efforts to deliver
21 benefits to eligible claimants, there is no pandemic exemption to the due process rights of
25 claimants who have been aggrieved by ESD determinations (or non-determinations).

1 Therefore, I recommend that the Court appoint a Receiver⁹⁹ to ensure that claimants have
2 an effective avenue for exercising their due process rights. This is consistent with Nevada
3 law concerning due process and with the protective purpose behind Nevada's
4 unemployment compensation system to provide "temporary assistance and economic
5 security to individuals who become involuntarily unemployed." The Receiver would be
6 directed to ensure that the appeal process established by ESD is fully implemented and is
7 providing aggrieved claimants due process.

8 **B. Establish Emergency Volunteer Claim Concierge Corps.**

9 Given the backlog of claims, frustrations with the current system expressed by
10 thousands of claimants, the lack of due process, and the ESD's valid concerns about fraud,
11 the Court is presented with a crisis that must be resolved so that eligible claimants are
12 paid without compromising the integrity of the benefit programs being administered. To
13 address this crisis, following in the example of other states, this Court should consider
14 ordering a "Volunteer Claim Concierge Corps" be established. This could be facilitated by
15 the Court by appointing a Receiver to assist ESD with recruiting and establishing a
16 network of short-term volunteer workers to assist existing ESD staff in addressing the
17 backlogged unemployment insurance claims. These volunteers¹⁰⁰ would be recruited from
18

19 ⁹⁹ Even if the Court does not appoint a Receiver, the Court should consider maintaining jurisdiction in some
20 way to make sure claimants like this one are not unjustifiably denied both benefits and due process:

21 *I have finally reached someone at adjudication. I was told that I needed to file an appeal by the 17th
22 on the online system or my case would be closed.*

23 *They were unable to tell me how to do that as the system is not currently online.*

24 *My claim will be closed on the 17th due to an error at DETR and no way to contact anyone for an
25 appeal.*

26 ¹⁰⁰ The Special Master called a few leaders in this community and in Las Vegas to inquire about the feasibility
of mobilizing a group of volunteers for a 45-day period. I was told with the right training and guidance this
is was something that could be done.

1 civic organizations, labor unions, faith communities, non-profit organizations, and the
2 business community and supported by appropriate personnel from the National Guard or
3 another disaster-relief organization experienced in logistics and the delivery of emergency
4 services. Alternatively, or in tandem with such volunteers, employees of other state
5 agencies could lend assistance.

6 In Oregon and Washington, after receiving an overwhelming number of
7 unemployment insurance claims—and becoming the victim of massive unemployment
8 fraud—state officials deployed members of the National Guard to assist in processing
9 backlogged claims and verifying identities of application that were flagged as suspect.¹⁰¹
10 The members of the National Guard deployed in Oregon focused primarily on making
11 outbound calls to claimants with applications issues, meanwhile the members deployed in
12 Washington responded by reviewing the nearly 200,000 claims deemed possibly fraudulent
13 and verifying the identities of each application.

14 Oregon officials also organized a volunteer system to temporarily re-assign existing
15 state government employees to the Oregon Employment Department in order to make
16 outbound calls to Oregonians awaiting resolution of issues regarding their employment
17 claims.¹⁰² Paired with a lead employee from the Employment Department, the state
18 employees will be finding time within their existing schedules and workloads to call
19

20 ¹⁰¹ Opportunity Washington, *Another decline in initial regular UI claims in Washington; National Guard will*
21 *assist ESD in claims verification*, June 11, 2020, [https://opportunitywa.org/another-decline-in-initial-regular-](https://opportunitywa.org/another-decline-in-initial-regular-ui-claims-in-washington-national-guard-will-assist-esd-in-claims-verification/)
22 [ui-claims-in-washington-national-guard-will-assist-esd-in-claims-verification/](https://opportunitywa.org/another-decline-in-initial-regular-ui-claims-in-washington-national-guard-will-assist-esd-in-claims-verification/); Sarah Wexler, National
23 Guard Serves Unemployed Oregonians, My Oregon News, June 11, 2020
24 <https://www.myoregon.gov/2020/06/11/national-guard-serves-unemployed-oregonians/>.

25 ¹⁰² Sarah Wexler, *State Employees Volunteer to Clear Unemployment Backlog*, My Oregon News, June 8,
26 2020.
<https://www.myoregon.gov/2020/06/08/state-employees-volunteer-to-clear-unemployment-backlog/>

1 claimants and, at the minimum, explain where their claims are in the system. The
2 volunteers come from all across the Oregon state government, including staff from the
3 Governor’s office, the Oregon Department of Consumer and Business Services, Oregon
4 Department of Revenue, legislative offices, Oregon State Treasury, and the Secretary of
5 State’s office.

6 Lastly, in Hawaii, the state legislature worked with the state’s public employee
7 unions to organize a volunteer drive seeking individuals that could assist in processing
8 backlogged claims.¹⁰³ Between the Hawaii Government Employees Association, the
9 University of Hawaii Professional Assembly, and the Hawaii State Teachers Association,
10 the unions signed up over 500 volunteers. Nearly 100 additional staffers from the State
11 House of Representatives and the Legislative Reference Bureau also volunteered to assist
12 in claim processing. After two days of training, the volunteers began their work reviewing
13 claims at computer stations set up throughout the Hawai‘i Convention Center.

14 In Nevada, an “Emergency Volunteer Claim Concierge Corps” consisting of 1,000
15 competent volunteers could be deployed within several days of a Court order to assist in
16 processing backlogged claims and verifying identities of applications flagged as suspect.
17 The volunteers could also be trained and deployed to help resolve what ESD calls “user
18 errors” in completing applications. These volunteers would supplement ESD staff and call
19 center resources with the objective of eradicating the claims backlog in 45 days. Given the
20 fact that the contracted call center has been overwhelmed with phone calls, emails are not
21 responded to by vendors and state employees, and there is widespread frustration with a

25
26 ¹⁰³ “At least 700 state workers volunteer to tackle unemployment backlog”
<https://www.hawaiinewsnow.com/2020/04/23/least-state-workers-volunteer-tackle-unemployment-backlog/>

1 system that has not been nimble in addressing the needs of unemployed people in Nevada,
2 a volunteer claim concierge corps could be equipped with training and authority to help
3 ESD serve claimants in a way that it admittedly cannot right now.

4 There is a large reservoir of compassionate and talented people in Nevada ready and
5 willing to help their neighbors through this difficult time of economic uncertainty and
6 hardship if given the opportunity and properly equipped with the training and authority
7 to serve.

8 If the Court determines that equity and due process require such an extraordinary
9 action to assist claimants and ESD to resolve the claim backlog, then the Court has a
10 number of tools at its disposal to fashion a remedy, including the authority to facilitate the
11 foregoing proposal by appointing a qualified individual as a Receiver. Such an individual
12 would best possess experience in logistics, emergency management, commanding large-
13 scale operations such as military operations or similar undertakings requiring both a quick
14 initiation of effort and a speedy accomplishment of an objective. In this regard, “The
15 appointment of a receiver is an action within the trial court's sound discretion and will not
16 be disturbed absent a clear abuse” on appeal. *Nishon's Inc. v. Kendigian*, 91 Nev. 504, 505,
17 538 P.2d 580, 581 (1975). A court is empowered to appoint a receiver, who is an officer of
18 the court who exercises duties in the interests of all parties to the litigation as the court
19 may direct. *Lynn v. Ingalls*, 100 Nev. 115, 120, 676 P.2d 797 (1984). Under NRS 32.010(3)
20 and (4), a receiver may be appointed in post-judgment proceedings, e.g., when it is
21 necessary “to carry the judgment into effect,” or to assist “in the aid of execution.” While
25 the potential for a receiver is unusual in this context, NRS 32.010(6) contains broad
26 authority for the appointment of receivers where equity would be served. “A receiver may

1 be appointed by the court in which an action is pending...[i]n all other cases where receivers
2 have heretofore been appointed by the usages of the courts of equity.”

3 **C. Call Center Improvement**

4 If the State of Nevada was not bound by a contract with Alorica through December
5 31, 2020, this Special Master would be recommending that the State terminate its contract
6 with this vendor immediately based on the avalanche of complaints that have been received
7 about the customer service and performance of this call center. However, absent
8 terminating the contract, a comprehensive quality control review of the 100 FTE’s and 35
9 adjudicators should commence and additional training should be provided. If FTE’s are
10 required to received two weeks of training during normal circumstances, during
11 extraordinary circumstances training is imperative. It is unconscionable that the suffering
12 of people who have lost their jobs due to circumstances beyond their control should be
13 subjected to the cruelty of a call center that does not appear to be providing competent and
14 compassionate service.

15 **D. Deny claims when fraud is suspected**

16 One of the best defenses to fraud is due process, including a hearing and opportunity
17 to be heard. If the fraud being committed on benefit programs is as widespread as federal,
18 state and local officials are saying, then applications that have more than one flag for fraud
19 or otherwise can’t be resolved quickly by an adjudicator, should be immediate denied. A
20 hearing referee will likely be in the best position to consider the merits of the applications
21 and clear fraud flags from the applications of honest claimants. However, fraudsters are
25 not likely to show up at a hearing to further perpetuate their fraudulent conduct. But, if
26 they do, the hearing process will serve as an effective trap to help law enforcement capture

1 thieves who are compounding the suffering of Nevada's displaced and beleaguered
2 workforce.

3 **XV. Other Suggestions Submitted To Special Master That May Be Worth**
4 **Considering.**

5 As mentioned previously, the Special Master received and reviewed thousands of
6 emails. In some of those emails, there were suggestions on how to address "bottlenecks"
7 and fix the system for delivering benefits. What follows are the ideas submitted to the
8 Special Master as received for the Court to consider. Other than formatting, the Special
9 Master did not edit or revise the ideas.

- 10 **1. Prepare a query of all unresolved issues created since March 1, 2020 with**
11 **aging, delineated by issue and utilize multi-claimant determinations as**
12 **available under regulations and policy regarding parties similarly**
situated.

13 Incorporate UI Employment and Training Guidance included in Employment and
14 Training (ET) Handbook 301 5th Edition, to wit: *Multi-claimant "Other" Determinations,*
15 *i.e., determinations which do not involve a labor dispute but affect a class of claimants from*
16 *the same employer with a common issue.* Page II-1. Under Administrative authority, the
17 Administrator has right to define "good cause" relating to voluntary quit and refusal of
18 work issues.

19 NRS 612.505 provides: ***Consolidated appeals.*** *When the same or substantially*
20 *similar evidence is material to the matter in issue with respect to more than one individual,*
21 *the same time and place for considering all such appeals may be fixed, hearings thereon*
25 *jointly conducted, a single record of the proceedings made, and evidence introduced with*

1 *respect to one proceeding considered as introduced in the others, provided no party is*
2 *prejudiced thereby.*

3 This can be - by administrative action allowed under NRS 612.220 and NAC 612.700
4 and 612.720 - extended to issues pending determination.

5 “Blanket” determinations regarding certain grades and classes of the unemployed
6 are administratively feasible. While they may not meet Benefit Timeliness and Quality
7 standards for a quality determination, they nonetheless amount to a legal determination
8 of eligibility. Cases failing quality are not subject to redetermination in as much requiring
9 the Division to draft and submit corrective action plans to address.

10 This would require structured queries, including reason for separation, employer
11 involved and dates of separation. Using a process called Data Correction Request, target
12 individuals who have been similarly situated - and have been previously determined
13 eligible *or ineligible* based on similar circumstances- to issue a determination of eligibility
14 or ineligibility in those cases. This has realistic potential to resolve underlying issues
15 relating to Leaves of Absence – in the vast majority of cases since the state-wide closures,
16 at the employer’s initiation constituting a layoff unless compensated under Nevada Law.

17 This would also alleviate backlogs of persons subject to disqualification of benefits
18 under NRS 612.434 regarding employees of educational institutions, allowing those so
19 situated to proceed to either basic UI if work and earnings are in an employer-employee
20 relationship, or to the PUA program if those earnings are not covered employment and
21 allow payment under the PUA program.

25 Claimants that misrepresent their circumstances are subject to penalty under State
26 and Federal law. A small percentage of persons who were on leaves of absence due to

1 personal medical conditions may get paid, but the question regarding ability to work and
2 medical conditions can be incorporated as a filter to again weed those out for further review.
3 This question is also attested to under penalty of perjury.

4 Blanket disqualifications, such as those currently being used regarding fraudulent
5 potential, would be eligible for redetermination. The Division can and has set up review
6 processes to look at new information provided in conjunction with filed appeals to issue a
7 redetermination of eligibility.

8 **2. Issue an administrative finding that after 28 days, adjudication is**
9 **authorized to issue a determination based on any and all facts present.**

10 From ET Handbook 301: *ELEMENT 17 – ISSUE DETECTION DATE Enter, from*
11 *SWA automated claimant or nonmonetary determination history file or import date for IB-*
12 *1, the date (mmddyyyy) the SWA first became aware or should have become aware of the*
13 *issue to which the nonmonetary determination applies.*

14 Page V-10 *If a party fails to respond timely to a request for information made as part*
15 *of the factfinding process, a determination may be issued based on available information*
16 *even if subsequent adverse information is received from the other party.*

17 NRS 612.475 provides the timeliness of an employer response: *3. Upon receipt of*
18 *a notice of the filing of a claim, the employing unit shall, within 11 days after the date of the*
19 *mailing of the notice, submit to the Division all known relevant facts which may affect the*
20 *claimant's rights to benefits.*

21 The Division has the responsibility to process incoming data in a timely manner. If
25 after said 28 days, the Division has NOT processed an employer response, a presumptive
26 finding that the employer has NOT responded should be forthcoming, with the claim

1 scheduled for resolution on claimant-provided information. The additional seven days prior
2 to this finding acknowledges workload delays due to unprecedented volumes. The Division
3 MAY need to acquire additional scanning units and staffing and may need to create
4 secondary shifts to make data available in existing frameworks.

5 **3. Eliminate requirement to file a weekly continuing claim to issue a non-**
6 **monetary determination.**

7 From UI Performs, Core Measures: *First Payment Promptness: % of all 1st payments*
8 *made within 14/21 days after the week ending date of the first compensable week in the*
9 *benefit year (excludes Workshare, episodic claims such as DUA, and retroactive payments*
10 *for a compensable waiting period). ≥87%. DETR by policy has required a claimant to file a*
11 *continuing weekly claim as part of the first compensable week criteria.*

12 From ET Handbook 401page V-1-5: *b. Compensable Week. Claimants who are*
13 *monetarily eligible or who have a pending monetary determination may claim--submit for*
14 *payment or waitingweek credit—a week of unemployment for which they believe they meet*
15 *the state’s weekly eligibility conditions. A week with excessive earnings—enough to reduce*
16 *the weekly benefit amount payment to zero—is considered a week of employment and not*
17 *unemployment and thus is not a “week claimed.”*

18 Longstanding debate ensues over whether this requires the claimant to file an
19 ongoing weekly claim in conjunction with the initial claim. For example, the California
20 EDD defines a week of unemployment as follows in Miscellaneous MI 10 – Time
21 Requirements for Filing Claims, *"Week of unemployment" means the week of unemployment*
25 *in which an individual registers in person at an employment office prior to the close of*
26 *business on Friday of such week."* From UI Program Letter 33-96: *The first compensable*

1 week in the benefit year is the first possible week for which benefits could be paid, regardless
2 of a claimant's nonmonetary eligibility.

3 From UI Program Letter 4-01:

4 With this UIPL, the Department clarifies this statement in UIPL No. 1145, Attachment,
5 concerning payment during a continued claim series. Prior to the date for timely
6 determinations, a State is not required to pay UC without a determination. However, when
7 the date for a timely determination has passed in a continued claim series, the State must
8 either issue a determination of ineligibility for UC (where the facts establish ineligibility) or
9 else pay UC immediately. Payment would occur under a presumption of continuing
10 eligibility. The presumption means that the State has made an initial determination of
11 eligibility and, based on that initial determination and the absence of facts clearly
12 establishing current ineligibility, the State agency presumes the claimant's continued
13 eligibility until it makes a determination otherwise. The presumption is appropriate in a
14 continued claim series because a determination of initial eligibility exists on which the
15 presumption can be based. The presumption may not be applied on an initial claim. The
16 presumption appropriately balances the timeliness and accuracy concerns of Section
17 303(a)(1), SSA.

18 **4. Expand “role” access to claims examiners within the UINV computer**
19 **systems to allow them to resolve matters either routinely or**
20 **administratively considered non-issues.**

21 This might include leaves of absence, quit to accept other employment and identity
22 verifications. Expand the UI system to incorporate a Nevada Driver’s License/Identification
23
24
25
26

1 Card cross match in UINV as allowed under existing inter-local agreements, even if by
2 independent query in a stand-alone manner.

3 **5. Mandate more effective and transparent messaging as it applies to**
4 **programming changes and impact.**

5 Recently the Division presented claimants with several changes, including a
6 “Reactivate” UI claim and a “File a New PUA” claim option, both of which set back the
7 claimant’s progress with no explanation as to reason or impact. This explanation should
8 be plain, visible and CLEAR to any party accessing the systems so they are not left to guess
9 how to proceed. A full and clear glossary of terminology should be both readily visible and
10 functional.

11 **6. Accept claimant information as the basis to establish Combined Wage**
12 **Claims or deny the same.**

13 The Interstate Benefit Inquiry is held “hostage” to volume and other state’s
14 responsiveness. Queries that require adjustment on the back-end impact charging of other
15 states as opposed to benefit eligibility and can be amended retroactively. Further, if the
16 claimant is independently eligible in Nevada for ANY amount of benefits, regardless of
17 addition of wages from other states, the claim can and should be released based on the
18 independent eligibility. Once out-of-state wages are received and added, the claimant
19 would receive adjusted payments and benefit charges are amended and redistributed based
20 on existing processes within UInv.

1 **7. Update the PUA program to incorporate/require/request identification**
2 **information including scans of the NDL and Social Security Card at the**
3 **time of filing OR conduct an automated cross-match of Mother's Maiden**
4 **Name and state identification number as fraud preventatives.**

5 The Division incorporates (or DID incorporate) software necessary to block
6 international connections and identify the riskiest IP addresses based on volume,
7 coincidence and known fraudulence. The ID would be a secondary verification in the event
8 the claimant IP address is identified in such a cross match and would supplant the need
9 for Benefit Payment Control verification when the claimant contacts the call centers.
10 Authorize existing staff to make these verifications as opposed to referring them to Benefit
11 Payment Control, the frauds investigation arm.

12 **8. Under Governor's declaration published April 14, 2020, all claims are**
13 **eligible for backdate and per PUA directive in UIPL 16-20 Change 1:**

14 An individual does not need to demonstrate good cause to backdate a PUA claim.
15 Rather, the claim must be backdated to the first week during the Pandemic Assistance
16 Period that the individual was unemployed, partially unemployed, or unable or unavailable
17 to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I) of the
18 CARES Act.

19 DETR places automated holds on UI claims backdated more than 2 weeks and also
20 examines weekly claims filed in excess of that date. Develop an online form to request
21 under penalty of perjury without further question backdated weeks by attesting to each
22 week en-masse without adjudication. Lift backdated claim requests post declaration as a
23 matter of record. Persons that can establish a COVID impact prior to the Governor's shut-
24 down orders can file additional information for administrative relief.

1 **9. Mandate the Administrator seek classification of UI claims, adjudication**
2 **and appeals positions as Critical Need through the Board of Examiners and**
3 **offer available positions to retirees as per Governor authority May 11, 2020**
4 **and UIPL 14-20 issued April 2, 2020 or to extend contract positions to those**
5 **with the critical skill sets to address claims issues.**

6 The USDOL and the Governor granted hiring authority to return trained and
7 experienced retirees to the ranks without normal merit hiring process. If even a portion of
8 retirees elect to return, they will make a relatively immediate and positive impact on
9 processing. These rehired retirees would also create an available pool of knowledge for
10 training purposes and are useful in experience-specific functions such as combining wages,
11 Base Period Advances and monetary activities. Those hired as contract employees may not
12 be designated as “Merit” employees without clarification of the USDOL, but could be used
13 for training and programming subject matter expert positions.

14 **10. Suspend provisions of NRS 612.380 pertaining to “next-to-last” employer**
15 **and “covered employment” provisions under the same chapter for the**
16 **duration of the pandemic.**

17 The Governor has latitude under NRS 414 to exert reasonable control to insure the
18 safety and wellbeing of the people of the state during a declared and recognized emergency.
19 The Administrator has authority under UIPL 16-20 to modify definitions of “good cause”
20 and NRS 612 to issue administrative findings:

21 *“Notwithstanding any other law, if a State modifies its unemployment compensation*
22 *law and policies with respect to work search, waiting week, **good cause**, employer*
23 *experience rating, or, subject to the succeeding sentence, personnel standards on a*
24 *merit basis on an emergency temporary basis as needed to respond to the spread of*
25 *COVID-19, such modifications shall be disregarded for the purposes of applying*
26 *section 303 of the Social Security Act and section 3304 of the Internal Revenue Code*
 of 1986 to such State law.”

1 Employers adversely impacted by rulings regarding their liability for benefit payments,
2 whether in a contributory or reimbursable standing with the Division have the right to a
3 ruling not differently than any employer situated under NRS 612.551

4 **11.Set up a pool of adjudicators that receive pass-through calls from claims**
5 **examiner staff to immediately address claimants with issues pending**
6 **resolution where the issue is outstanding for a period in excess of 21 days.**

7 This is a process not covered under State or Federal law, but would be
8 administratively allowed under policy and procedures.

9 **12.Train new adjudication staff in specific issue areas as opposed to a**
10 **generalist approach, e.g., parties trained to deal with voluntary quit,**
11 **misconduct discharges, pension issues exclusively and use work**
12 **Distributors and roles to promote efficiency and competence within that**
13 **particular skill set. When backlogs are dealt with, skill sets can be**
14 **expanded.**

15 This is a process not covered under State or Federal law, but would be
16 administratively allowed under policy and procedures. This would be most effective when
17 the claimant has ONE issue withholding payment, such as a discharge or availability not
18 tied to COVID.

19 **13.Program Interactive Voice Recognition telephone systems to take claims**
20 **and calls on certain days based on the last digit of the Social Security**
21 **Number to ease stress on phones and make it easier for parties to reach**
22 **staff.**

23 This is a process not covered under State or Federal law, but would be
24 administratively allowed under policy and procedures.

1 **14.Streamline process of re-reviewing previously adjudicated issues from UI**
2 **claims as claimants transition to PUA or PEUC programs. The systems ask**
3 **for employment history and reasons for separations, creating redundant**
4 **issues and slowing the process down for the claimant, as well as the overall**
5 **process as these issues must be manually removed. Structured logic**
6 **comparing the employer and dates of employment to an approximate**
7 **degree should allow for a subroutine that does not recreate the issue**
8 **holding payment.**

9 This is a process not covered under State or Federal law, but would be
10 administratively allowed under policy and procedures.

11 **XVI. Conclusion.**

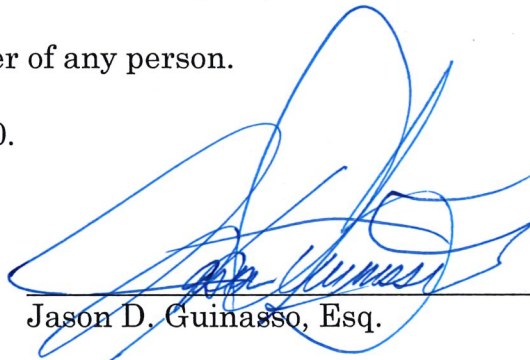
12 This concludes the Special Master's report. The Special Master understands the
13 gravity of the decisions the Court must make soon that will impact tens of thousands of
14 Nevadans during this extraordinary moment in history, as well as those working in service
15 of the public on behalf of the State of Nevada. The Special Master has worked diligently
16 with the parties to this litigation to provide the Court with a comprehensive report that
17 has all the information required to understand the pertinent issues and facts necessary to
18 arriving at competent legal conclusions and well-informed equitable decisions. The Special
19 Master, again, would like to thank DETR ESD representatives, including Administrator
20 Kimberly Gaa, Chief Economist David Schmidt, and their attorneys Troy C. Jordan, Esq.,
21 Greg Ott, Esq., and Robert Whitney, Esq., for their cooperation and assistance with getting
22 all the Special Master questions answered and the documents requested produced.
23 Likewise, the Special Master would like to thank Petitioners' attorneys, Mark Thierman,
24 Esq., and Leah L. Jones, Esq., for their cooperation and assistance. Finally, the Special
25 Master would like to thank the Court for this opportunity to serve and be of some assistance
26 in this important matter. The Special Master will remain available to answer questions,

1 in this important matter. The Special Master will remain available to answer questions,
2 provide additional information, and to continue to serve in whatever manner is deemed
3 necessary and appropriate by the Court.

4 **AFFIRMATION**

5 The undersigned does hereby affirm that the foregoing document filed in this matter
6 does not contain the social security number of any person.

7 DATED this 17th day of July, 2020.

8 

9 Jason D. Guinasso, Esq.

10 Special Master
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of HUTCHISON & STEFFEN, PLLC and that on this 17th day of July, 2020, I caused service of a true and correct copy of the **SPECIAL MASTER'S FINDINGS AND REPORT** by electronically filing the foregoing with the Clerk of the Second Judicial District Court for the State of Nevada and service completed by delivery via e-flex to:

Mark Thierman, Esq., Joshua Buck, Esq., Leah Jones, Esq., Joshua Hendrickson, Esq.
Attorneys for Iris Podesta-Mireles, et al.

Gregory Ott, Esq. and Robert Whitney, Esq.
Attorneys for Nevada Department of Employment, Training and Rehabilitation,
Kimberly Gaa, Administrator for ESD, State of Nevada, Heather Korbolic, NV
Director of DETR

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of HUTCHISON & STEFFEN, PLLC and that on this 17th day of July, 2020, I caused service of a true and correct copy of the **SPECIAL MASTER'S FINDINGS AND REPORT**. Service was completed by U.S. Mail, deposited in Reno, Nevada, upon the following:

Dennis Perea, as Deputy Director of DETR
6330 W. Charleston Blvd
Las Vegas, NV 89146

/s/Bernadette Francis
An employee of Hutchison & Steffen, PLLC