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8 *Attorneys for Plaintiffs*

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

Case No.: CV20-00755

13 AMETHYST PAYNE, IRIS PODESTA-  
14 MIRELES, ANTHONY NAPOLITANO,  
15 ISAIAH PAVIA-CRUZ, VICTORIA  
16 WAKED, CHARLES PLOSKI,  
17 DARIUSH NAIMI, TABITHA ASARE,  
18 SCOTT HOWARD, RALPH  
19 WYNCOOP, ELAINA ABING, and  
20 WILLIAM TURNLEY behalf of  
21 themselves and all others similarly  
22 situated,  
23  
24 Plaintiffs-Petitioners,

v.

25 STATE OF NEVADA *ex rel* NEVADA  
26 DEPARTMENT OF EMPLOYMENT,  
27 TRAINING AND REHABILITATION  
28 (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-Respondents.

**PLAINTIFFS'-PETITIONERS' CASE  
APPEAL STATEMENT**

**CASE APPEAL STATEMENT**

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1 Pursuant to the Nevada Rules of Appellate Procedure 3(f)(3), Plaintiffs-Petitioners-  
2 APPELLANTS AMETHYST PAYNE, IRIS PODESTA-MIRELES, ANTHONY  
3 NAPOLITANO, ISAAH PAVIA-CRUZ, VICTORIA WAKED, CHARLES PLOSKI,  
4 DARIUSH NAIMI, TABITHA ASARE, SCOTT HOWARD, RALPH WYNCOOP, ELAINA  
5 ABING, and WILLIAM TURNLEY (“Plaintiffs-Petitioners-Appellants”) on behalf of  
6 themselves and all others similarly situated, hereby submits the following Case Appeal  
7 Statement:

8 1. This Case Appeal Statement is filed by Plaintiffs-Petitioners-Appellants  
9 AMETHYST PAYNE, IRIS PODESTA-MIRELES, ANTHONY  
10 NAPOLITANO, ISAAH PAVIA-CRUZ, VICTORIA WAKED, CHARLES  
11 PLOSKI, DARIUSH NAIMI, TABITHA ASARE, SCOTT HOWARD, RALPH  
12 WYNCOOP, ELAINA ABING, and WILLIAM TURNLEY.

13 2. This appeal is from an order denying in part and without prejudice to renew a  
14 motion for a writ of mandate entered on July 22, 2020 by the Honorable Barry L.  
15 Breslow, Judge of the District Court, Department 8, County of Washoe, State of  
16 Nevada.

17 3. Plaintiffs-Petitioners-Appellants are represented by retained counsel:  
18 Mark R. Thierman, Nev. Bar No. 8285  
19 Joshua D. Buck, Nev. Bar No. 12187  
20 Leah L. Jones, Nev. Bar No. 13161  
21 Thierman Buck Law Firm  
22 7287 Lakeside Dr.  
23 Reno, NV 89511

24 4. Defendant-Respondents-Appellees STATE OF NEVADA ex rel NEVADA  
25 DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION  
26 (DETR) HEATHER KORBULIC in her official capacity only as Nevada Director  
27 of Employment, Training and Rehabilitation, DENNIS PEREA in his official  
28 capacity as Deputy Director of DETR, and KIMBERLY GAA in her official  
capacity only as the Administrator for the Employment Security Division (ESD)  
were and are represented in the District Court by:

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5. All attorneys representing Plaintiffs-Petitioners-Appellants and Defendant-Respondents-Appellees are licensed to practice law in the State of Nevada.
6. The attorneys on this appeal for Plaintiffs-Petitioners-Appellants are the same who represented them in the District Court below.
7. Plaintiffs-Petitioners-Appellants are in the process of petitioning the District Court for leave to continue in forma pauperis.
8. This suit was originally filed on May 12, 2020 to require Defendants-Respondents-Appellees to open a website or some other way for self-employed individuals (sometimes called generically gig workers) to apply for unemployment compensation benefits after the passage of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub.L. 116–136 (2020). Suit was amended on June 22, 2020 to require payment of unemployment compensation benefits under the CARES Act “when due” as required by the federal Social Security Act, 42 U.S.C. § 503(a)(1) (3).
9. Plaintiffs-Petitioners-Appellants motion for writ of mandamus and Defendant-Respondents-Appellees return on an order to show cause were first heard by the District Court on July 7, 2020. On July 7, 2020, the District Court appointed a special master who submitted a 310 page report with thousands of pages of exhibits to the district court on July 17, 2020.<sup>1</sup> One day before receiving the

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<sup>1</sup> However, the Special Master’s report never answered its own question on page 54 of “When were benefits due . . .” - perhaps because that was a legal matter for the court. However, the Special Master did reference in a footnote United States Department of Labor Unemployment

1 special master's final report, on July 16, 2020, Plaintiffs-Petitioners-Appellants  
2 filed with the District Court a Renewed Motion And Supplemental Argument In  
3 Support Of Writ Of Mandamus. A hearing was held before the District Court on  
4 July 22, 2020. The district court announced its decision from the bench that day,  
5 and then entered a written order on July 22, 2020. The district Court held a further  
6 hearing on \_\_\_\_ and has scheduled yet another hearing for \_\_\_\_\_. It has not  
7 yet reconsidered its denial of the relief requested at paragraph 4 of Plaintiffs-  
8 Petitioners-Appellants' renewed motion.

9 10. The issue on appeal is when must Defendants-Respondents-Appellees start  
10 paying unemployment compensation benefits to claimants whom Defendants-  
11 Respondents-Appellees have sent a favorable written determination of eligibility.  
12 In its July 22, 2020, the Court granted a writ of mandate to require Defendants-  
13 Respondents-Appellees to resume payments to any claimant that had begun  
14 receiving benefits (with a few exceptions) until a final determination was rendered  
15 by an impartial hearing officer after a hearing affording claimants sufficient due  
16 process. This order was consistent to paragraph 5 of the Plaintiffs-Petitioners-  
17 Appellants requested relief in its renewed motion. Defendants-Respondents-  
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19 Insurance Program Letter ("UIPL") NO. 04-01 which states in part: "In the 1971 decision,  
20 *California Department of Human Resources Development v. Java*, the Supreme Court  
21 interpreted "when due" in Section 303(a)(1), SSA, to mean "at the earliest stage of  
22 unemployment that such payments [are] administratively feasible after giving both the worker  
23 and the employer an opportunity to be heard." Although the specific holding in *Java* required the  
24 State to pay benefits to claimants initially determined eligible pending an employer appeal, the  
25 Court's reasoning was broader, requiring promptness at all stages of the eligibility determination  
26 and payment processes. See UIPL No. 1145, Attachment, page 1; *Fusari v. Steinberg*, 419 U.S.  
27 379, 387-388 n.15 (1975); and *Pennington v. Didrickson*, 22 F.3d 1376, 1386 (7th Cir. 1994)  
28 (quoting *Jenkins v. Bowling*, 691 F.2d 1225 (7th Cir. 1982)). The Department has issued  
regulations interpreting the promptness requirement of Section 303(a)(1), SSA, to require  
payment of UC to eligible claimants, and the making of determinations, "with the greatest  
promptness that is administratively feasible." 20 CFR 640.3(a). In addition, in the attachment to  
UIPL No. 1145, the Department interpreted the promptness requirement of Section 303(a)(1),  
SSA, to require prompt determinations on individual claims. See pages 8 & 14, UIPL No. 1145,  
Attachment."

1 Appellees represented that this portion of the Court’s order resulted in payment  
2 to approximately 3,000 additional claimants.<sup>2</sup> The Court refused to require  
3 payment to all claimants who had received a written notice of eligibility  
4 determination either stating either that 1) the claimant was approved for payment  
5 under the PUA program of unemployment compensation or 2) the claimant was  
6 not approved for payment under the PUA program because DETR had determined  
7 that the claimant was eligible for benefits under the regular Unemployment  
8 Insurance (UI) or some other program, all of which have the same weekly benefit  
9 amounts based upon the same formulae. Defendants-Respondents-Appellees  
10 represented that this portion of Plaintiffs-Petitioners-Appellants Renewed Motion  
11 (requested relief paragraph number 4) would result in payment to approximately  
12 70,000 additional claimants.

- 13 11. This case has not been previously subject to an appeal or to this court’s original  
14 jurisdiction.  
15 12. This case does not involve child custody or visitation.  
16 13. Settlement seems unlikely and time is of the essence.

17 **AFFIRMATION**

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

21  
22 DATED: August 3, 2020

23 Respectfully Submitted,  
24 THIERMAN BUCK LLP

25 /s/Mark R. Thierman

26 Mark R. Thierman  
27 Joshua D. Buck  
28 Leah L. Jones  
Attorneys for Plaintiffs-Petitioners

29 <sup>2</sup> Counsel estimates that the average payment would be about \$10,000 for each of the 3,000  
30 claimants covered by this portion of the District Court’s order. All the money for CARES Act  
31 payments comes from the federal government only.