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

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

22 Plaintiffs-Petitioners,

23 v.

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

Defendants-Respondents

Case No.: CV20-00755

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX
PARTE WRIT OF MANDAMUS**

1 SUMMARY OF FACT AND ARGUMENT

2 DETR has made a terrible mistake that is preventing approximately 60,000 self-
3 employed individuals from receiving about half of billion dollars in desperately needed
4 unemployment compensation benefits that they are clearly entitled to. According to a June 12,
5 2020 press conference by outgoing Defendant-Respondent DETR Director Heather Korbolic,¹
6 the vast majority² of nonpayment of PUA³ program money to gig workers is based upon DETR’s
7 conclusion that they have, in the past, been covered by other types of unemployment
8 compensation (i.e. they have a W-2 wage credit account balance in the regular Unemployment
9 Insurance program) even though currently the claimant is not eligible to actually be paid benefits
10 from that other program. This misunderstanding comes from a misreading of the United States
11 Secretary of Labor’s April 2, 2020 Unemployment Insurance Program Letter No. 14-20, which
12 states that in order to avoid duplicate payments, and not to avoid mere prior membership in
13 another program that cannot and will not pay claimant any benefits, to receive PAU money, a
14 claimant can’t “qualify for regular Unemployment **Compensation** or Extended **Benefits**.”
15 Merely having an account balance may technically be inclusion in another program, but it is not
16 the same thing as actually qualifying for **Compensation** or **Benefits under that program**, as the
17 memo requires. As the April 2, 2020 Unemployment Insurance Program Letter No. 14-20 states:
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19 _____
20 ¹ The Court is requested to take judicial notice of all statements by DETR and its employees as
21 public records, and/or admissible into evidence as an adverse party admission.

22 ² Other catch 22, class wide, mistakes in denying include, but are not limited to denying benefits
23 on the grounds that Uber and Lyft drivers were not ordered to cease working, even though
24 Nevada’s Governor Sisolak’s March 15, 2020 executive order basically took away all their
25 customers by closing the places that tourists would wish to visit via Uber or Lyft.

26 ³ The various acronyms are explained *infra*, but the exact name of each separate program is
27 irrelevant for purposes of this analysis. For this argument it is only necessary to know that
28 DETR takes the position that eligibility in PUA is mutually exclusive of eligibility in regular UI
or any other program, whereas Plaintiffs-Petitioners argue that only payment under regular UI
is in addition to, but conditioned upon, eligibility for payment under PUA, regular UI or any
other program, and therefor should have been paid as soon as eligibility under one program is
determined, even if determined subject to denial because of eligibility under another program.

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This program covers individuals who are self-employed, seeking part-time employment, or whom otherwise would not qualify for regular UC or EB under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC) under section 2107. Coverage also includes individuals who have exhausted all rights to regular UC or EB under state or federal law, or PEUC. [emphasis supplied.]

DETR’s misinterpretation of the DOL guidance to mean that anyone with an account balance in the regular UI program cannot receive PUA benefits, even though that person does not meet the criteria for actual payment of the regular UI program’s account balance at this time, is simply wrong. DETR’s interpretation of the DOL advisory memo is not what the language states, does not effectuate the purpose of the statute, is not consistent with the DOL’s requirement that DETR exercise flexibility to grant (not to deny) benefits, and is not consistent with later DOL directives. In addition, since a claimant automatically qualifies for an additional \$600 per week in Federal Pandemic Unemployment Compensation (FPUC) program money as soon as the claimant qualifies for *any* Unemployment Compensation program at all, the very DETR determination denying Pandemic Unemployment Assistance (PUA) program payments of between \$181- \$463 per week because of alleged duplicate coverage is *de facto* approval of FPUC entitlement, and therefore DETR had a clear duty to pay at least the minimum of \$600 per week per claimant in FPUC money at the time of rejection from PUA payment.⁴ Finally, DETR’s practice of first approving a gig worker for benefits and then refusing to pay those benefits on the grounds that the claimant is retroactively ineligible *ab inito* violates due process under the

⁴ Logically, if program A (payment under PUA) or program B (payment under regular UI) equals payment under program C (where C= payment of \$600 per week under the FPUC program), then DETR’s determination that there would be coverage under program A “but for” coverage under B, or coverage under B “but for” coverage under A, means that DETR has determined that there is coverage under either A or B, but not both. DETR’s determination that there is coverage under A or B means there is also coverage under C no matter which program (A or B) eventually applies. By refusing payment under the PUA program on grounds of potential coverage under another UI program, DETR has made a determination that the claimant is entitled to payment under FPUC, which DETR has a clear duty to pay immediately “when due”. DETR has failed to perform its clear duty to pay FPUC money to all claimants who it has refused payment under the PUA program on the grounds that DETR has (even if incorrectly) determined are covered under the regular UI or any other unemployment compensation program.

1 employment, or whom otherwise would not qualify for regular UC⁵ or EB⁶ under state or federal
2 law or Pandemic Emergency Unemployment Compensation (PEUC)⁷ under section 2107” of the
3 CARES Act, as well as for individuals who have exhausted all rights under these programs. *See*
4 Exhibit 1, PL 14-20. Section 2104 of the CARES Act further “authorizes the temporary FPUC⁸
5 program. This program provides eligible individuals with \$600 per week in addition to the weekly
6 benefit amount they receive from certain other UC programs,” and includes funding to states for
7 the administration of the program. *See* JES Dec. Exhibit 2, United States Department of Labor
8 Unemployment Insurance Program Letter No. 15-20, hereinafter PL 15-20 at p. 3, section 4.c.

9 Pursuant to Section 2102 of the CARES Act, the PUA provides Gig Workers 39 weeks of
10 unemployment benefits on the same basis as regular W-2 workers for every week unemployed or
11 suffering economic harm due to the COVID-19 Pandemic, retroactive to January 27, 2020 and
12 ending on or before December 31, 2020. *See* PL 14-20 at p. 3, § 4.a.i. Pursuant 2104 of the
13 CARES Act, the FPUC program provides an additional \$600 per week to all eligible gig (and
14 traditional, non-gig) workers for every week after March 15, 2020 until July 31, 2020 (for a total
15 of 24 weekly payments.) *Id.* at § 4.a.iii. As the DOL guidance states, “Section 2104(b)(1) of the
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17 ⁵These acronyms are defined through the various Department of Labor (“DOL”) program letters.
18 The “UC” designation stands for “unemployment compensation.” The various other acronyms
19 used throughout are contained in the glossary of terms which is Attachment I, beginning on page
20 I-1 of Program Letter No. 14-20UC- Unemployment Compensation. Program Letter 14-20,
hereinafter “PL 14-20.” is attached as Exhibit 1 to the Declaration of Jennifer Edison-Strekal,
hereinafter “JES Dec.”.

21 ⁶ “EB” is defined as “extended benefits” under the federal/state unemployment benefits
22 programs, however for purposes of the DOL program letters specific to the CARES Act, the DOL
23 uses the term “AB” (additional benefits) to avoid confusion with the federal/state EB program.
See Exhibit 1, PL 14-20 at p. 7 at § iii.

24 ⁷ PEUC: Pandemic Emergency Compensation under Section 2107 of CARES. *See* PL 14-20 at
25 Attachment I, p. 1-2. PEUC provides in relevant part, “for up to 13 weeks of benefits to
26 individuals who have exhausted regular UC under state or federal law, have no rights to regular
UC under any other state or federal law, are not receiving compensation under the UC laws of
Canada, and are unable to work ...”

27 ⁸ FPUC: Federal Pandemic Unemployment Compensation under Section 2104 of CARES. *Id.*
28 Provides individuals who are collecting regular UC, PEUC, PUA, EB, STC, TRA, DUA, and
SEA **with an additional \$600 per week.** *Id.*

1 CARES Act requires the additional \$600 FPUC to be paid to individuals” who are receiving
2 “regular UC, PEUC, PUA, EB, STC, TRA, DUA, and SEA.” See Exhibit 2, PL 15-20 at p. I-15,
3 § 4. “On March 31, 2020, the State of Nevada Department of Employment, Training, and
4 Rehabilitation (DETR) entered into an agreement with the federal government to implement the
5 CARES act.”⁹ The regulations require that all workers, gig and non-gig alike, must be paid
6 weekly. DETR acknowledged that it was required to start paying the gig workers in Nevada
7 starting no later than April 12, 2020.

8 As of April 12, 2020. The Division has started paying the additional \$600
9 Federal Pandemic Unemployment Compensation (FPUC) payments to
10 eligible claimants for the period starting with the week ending April 4, 2020,
11 and payable thru the week ending July 25, 2020. Last updated 04/15/20.¹⁰

12 Under the federal Social Security Act, 42 U.S.C. § 503(a)(1) (3), DETR had a clear duty
13 to provide, as it agreed, a method of administration “reasonably calculated to insure *full payment*
14 of unemployment compensation *when due*.” (emphasis supplied). In addition, PL 15-20 sets forth
15 an Allowable Methods of Payment:

16 States *must* issue payments of PFUC as soon as administratively
17 feasible. States have *some* flexibility in how they issue FPUC
18 payments; states may pay the additional \$600 either: (a) as an
19 amount which is paid at the same time and in the same manner as
20 any regular UC otherwise payable for the week involved; or (b) at
21 the option of the state, by payments which are made separately from,
22 but *on the same weekly basis* as, any regular UC otherwise payable.”

23 See Exhibit 2, PL 15-20 at p. I-5, § 3.

24 ⁹ “April 1, 2020 - Cares Act Summary Expansion Of Unemployment Benefits State of Nevada”
25 https://www.google.com/search?q=date+Governor+Sisolak+or+his+representative+actually+signed+the+agreement+with+the+DOL+to+accept+and+administer+this+new+Unemployment+Compensation+program.&rlz=1C1GCEU_enUS820US820&oq=date+Governor+Sisolak+or+his+representative+actually+signed+the+agreement+with+the+DOL+to+accept+and+administer+this+new+Unemployment+Compensation+program.&aqs=chrome..69i57.4117j0j8&sourceid=chrome&ie=UTF-8 (last viewed June 18, 2020)

28 ¹⁰ DETR Website [https://detr.nv.gov/Page/COVID-19_\(Coronavirus\)_Information_for_Claimants_and_Employers](https://detr.nv.gov/Page/COVID-19_(Coronavirus)_Information_for_Claimants_and_Employers) , (Last visited June 18, 2020).

1 According to the press conference held on June 5, 2020, DETR Director Heather Korbolic
2 estimated 26,876 PUA claims had been paid out of some total 172,000 gig worker claimants.¹¹ If
3 Ms. Korbolic is correct, that is a mere 15.6% of claims processed since the May 16, 2020 go live
4 date. Excluding that Friday, June 5, that is 8 days of processing including weekends, this equals
5 a potential daily processing rate of approximately 3,360 Nevada gig worker claimants. At this
6 rate it will take DETR forty-three (43) additional days to processes the remaining 145,000+
7 claims.¹² Payment to about 70,000¹³ unpaid Gig Workers were “due” no later than April 11, 2020.
8 As of the end of this coming week (June 26, 2020), DETR will be at least eleven (11) weeks late
9 on payment. Notwithstanding the actual PUA amount owed, just using the mandatory \$600 FPUC
10 benefit multiplied by eleven weeks of payments equals \$6,600 per gig worker. Multiplying
11 \$6,600 times 60,000 gig workers reveals the State is behind in payments to the tune of \$462
12 million or almost half a billion dollars, *not* including interest.¹⁴

13 _____
14 ¹¹ A You Tube video was available of the Press Conference on June 5, 2020 and was last viewed
15 on that date. However, the video has since been “removed by the uploader.” As stated
16 hereinafter, the assertion Ms. Korbolic made during the weekly press briefing are blatantly
17 untrue.

18 ¹² The calculations are as follows: 172,000 total claimants less 26,876 processed = 145,124
19 outstanding claims. 26,876 is 15.62% of the 172,000 total claims. Eight days divided into 26,876
20 claims is equal to 3,359.5 claims per day. 3,360 divided into the remaining 145, 124 claims is
21 equal to 43.19 days.

22 ¹³ This number may significantly understate the problem. On June 12, 2020, “State officials say
23 47,582 people who have filed for the Pandemic Unemployment Assistance program for
24 independent workers have been paid so far — an increase of more than 20,000 from the prior
25 week and about 41 percent of all initial claims filed.” Although DETR does not say exactly how
26 many gig worker’s claims are unpaid, if 47,582 gig workers have been paid, and gig workers
27 have the same rate (40%) of payment to applications as do regular UI claimants, then 118,955
28 gig workers must have originally applied, and 70,183 have not been paid rather than 60,000 used
for conservative estimates by Plaintiffs-Petitioners. See, June 12, 2020 *Nevada Independent*
story “Officials: Nearly 48,000 independent workers have been paid PUA unemployment
benefits” By Michelle Rindels <https://thenevadaindependent.com/article/officials-nearly-48000-independent-workers-have-been-paid-pua-unemployment-benefits>

¹⁴ Using the Nevada legal interest rate for 2020 of 6.75%
(<https://www.washoecourts.com/TopRequests/InterestRates>) per annum shows that
\$462,000,000 multiplied by 6.75% = \$31,185,000 divided by 365 = \$85,438.35 *per day*, for at
least 77 days or almost \$6.5 Million (\$6,578,752.95) to date in interest alone. Although DETR

1 Moreover, by this coming Friday, June 26, 2020, it will have been over five weeks since
2 DETR began accepting applications for unemployment compensation (PUA) by Gig Workers. In
3 almost all cases, DETR first approves the application for benefits, then fails to make payments,
4 and usually retroactively claims a non-sensical *post hoc* rationalization for its unlawful behavior.
5 Once the initial application for benefits is approved, which should almost always be the case with
6 the gig workers, benefits must continue until there is a reversal of that determination after an
7 administrative hearing to afford the claimant due process of law. *California Department of*
8 *Human Resources Development v. Java*, 402 U.S. 121, 133 (1971) (“We conclude that the word
9 ‘due’ in § 303(a)(1), when construed in light of the purposes of the Act, means the time when
10 payments are first administratively allowed . . . Paying compensation to an unemployed worker
11 promptly after an initial determination of eligibility accomplishes the congressional purposes of
12 avoiding resort to welfare and stabilizing consumer demands; delaying compensation until
13 months have elapsed defeats these purposes.”) Rather than admit that DETR has denied payment
14 of benefits after granting them based upon prima facie showing that the applicant is entitled to
15 benefits, DETR retroactively says the approved application was incomplete, or had issues, and
16 therefore was unapproved retroactively so it does not have to meet the constitutional requirements
17 of notice and a fair hearing before governmental action. *Gray v. Department Of Employment Sec.*,
18 681 P.2d 807, 817 (Utah 1984) (“Subsection 503(a)(3) further requires the state to insure
19 “[o]ppportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for
20 unemployment compensation are denied.”).

21 _____
22 itself may not be allowed to award interest by regulation, this Court can award pre-judgment
23 interest in a mandamus action and / or under 42 U.S.C. 1983 to compensate the class for the harm
24 caused or to pay its counsel. In this case, the requirements for the additional award of interest
25 are met once the court determines DETR wrongfully denied and/or failed to pay benefits “when
26 due.” Clearly, there is: (1) an underlying monetary obligation, (2) damages which are certain or
27 capable of being made certain by calculation, and (3) a right to recovery that vests on a particular
28 day. The rationale for the mandamus interest award is that a claimant who is wrongfully denied
unemployment insurance benefits must receive compensation for the egregious delay in receiving
benefits caused by the necessity of filing a mandamus action. *See American Fed. of Labor v.*
Unempl. Ins. Appeals Bd., 13 Cal.4th 1017, 1022 (Cal. 1996); 6 Witkin, Summary of Cal. Law
(9th ed. 1988) Torts, § 1397, pp. 868-869 [prejudgment interest compensates plaintiffs for delay
in recovery of damages].)

1 The vast majority of unpaid claimants first receive letters and their personal records on-
2 line are updated by DETR stating that they are approved for PUA and CARES, even though their
3 status according to the website states, “in progress” and/or “Unresolved Issues” changes later
4 from “No” to “Yes.” At the time of initial approval, even if the website says, “unresolved issues
5 yes”, there are no issues that can be found either by DETR staff when the claimant finally gets
6 through to a DETR by phone, or on the website record available to a claimant. The claimants are
7 told that they will be paid, but payment never comes, and “unresolved issues” are often changed
8 from No to Yes at the same time claimants are being given a date by which to expect payment.

9 For the remainder of the applicants that are not paid, the “unresolved issues” come and
10 go, but DETR still does not pay any unemployment compensation. There are four main
11 components to DETR’s massive non-payment due to a “glitch” in the logic of the workflow
12 system that DETR uses to process claims: 1) “Not Disaster Related” ((Payment type active issues
13 Code DUA-UI “); 2) “Other Eligibility” (mix of W-2 and 1099 and self-employment income); 3)
14 “Unresolved Issues- No outstanding Issues”; 4) Formerly DUA-UI but still no payment
15 (unresolved issues goes away, but it slips into No outstanding issues but still no payments are
16 made). But when and if these articulated unresolved issues are actually resolved, the record still
17 says “unresolved issues-yes” with nothing stated unresolved, and the claimant is still denied
18 payment for no reason. As a result, approximately 60,000 people who are owed collectively half
19 a billion dollars slid deeper into poverty each day.

20 In some cases, there is a record of staff review, even after the claimant has received an
21 approval letter. Then the claimant calls DETR and speaks to an adjudicator, who tells the claimant
22 that the issue is resolved, and the claimant will receive payment (DETR typical says between, 24
23 to 72 hours to 21 to 30 days after the phone call). DETR tells the claimant that their account will
24 be updated within 24 hours, and that the change in unresolved issues from NO to YES is just a
25 flag, but the account is not updated and DETR does not pay the claimant.

26 In many cases, after being initially informed that they entitled to a benefit, DETR then
27 decides that many of these gig workers are retroactively ineligible for unemployment
28 compensation because many years ago, had the claimant had some W-2 income which left a

1 theoretical account balance in the regular UI program—an account balance that will never be paid
2 to the claimant during this pandemic relief time.

3 For example, filed here with is the undated¹⁵ Notice of PUA Monetary Employment
4 Determination by DETR’s Security Division for Anthony Napolitano (Claimant ID 0002811132),
5 *See* Napolitano Dec. which was posted on his DETR web page on May 22, 2020. In this letter,
6 DETR says that the claimant is “financially eligible for Pandemic Unemployment Assistance
7 (PUA) benefits pursuant to Section 2102 of the CARES Act of 2020 and the applicable federal
8 regulations at 20 CFR, Part 625.” And if someone is eligible for PUA benefits under 2102 of the
9 CARES Act, then they are automatically entitled to FPUC benefits which is an addition to the
10 \$600 per week. The PUA benefits are \$469 based upon the claimant’s self-employment income
11 of \$53,000.00. This money is supposed to be added to the \$600 FPUC a week, for a total benefit
12 amount of \$1,069 per week.

13 Everything is working as it should until the next letter dated April 01, 2020, in which
14 DETR’s Employment Security Division tells the claimant that he is entitled to no payments of
15 unemployment compensation at all because he has no W-2 wages earned during that period from
16 fourth quarter 2008 to third quarter 2019. Of course, the claimant had no W-2 income during that
17 time because he had \$53,000 of self-employment income. The claimant therefore is retroactively
18 declared ineligible for benefits *ab initio*, because the claimant is technically entitled to benefits
19 under another program even though the benefits under that other program are zero. Instead of
20 giving the claimant the highest benefit he is entitled to, DETR gives him the lowest, which is zero
21 benefits. Author Joseph Heller could not have created a crazier “catch 22” paradox if he tried.¹⁶
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23 _____
24 ¹⁵ Perhaps to hide its errors, DETR does not date its determination letters.

25 ¹⁶ As Mr. Napolitano states in his email: “I currently live in Las Vegas. I have three small children
26 and Wife that I take care of. I am a 1099 employee with Lyft and also a 1099 Employee with a
27 painting and drywall company in Las Vegas. Due to COVID and the shutdown mandated by Gov.
28 Sisolak, I was forced out of earning a living. Below is my timeline of my unemployment process
and the lack of any help or money that I am eligible for.

- 3/25/2020- Stopped working due to COVID shutdown; 3/27/2020- Applied for regular unemployment;

1 Another example of DETR's bait and switch retroactive eligibility letters is the June 10,
 2 2020 Pandemic Unemployment Qualifying Determination letter sent to Plaintiff-Petitioner As
 3 are, in which DETR says "We have determined that your claim is APPROVED as you meet the
 4 qualifications required by the Coronavirus Aid, Relief, and Economic Security (CARES) Act for
 5 Pandemic Unemployment assistance." Then DETR adds a caveat that of course, if DETR later
 6 decides the claimant was not really eligible, that determination takes precedence. When DETR
 7 says "You may receive multiple decisions on your claim; please note that any one denial decision
 8 supersedes all other decisions," it is reversing an acceptance of benefits which is actually taking
 9 a vested benefit without due process of law, just like California's non-payment of benefits
 10 pending appeal by an employer of EDD's initial determination was held unconstitutional. DETR's
 11 caveat in its approval letters is unconstitutional under *California Department of Human*
 12 *Resources Development v. Java supra*, as is its subsequent action of not paying benefits based
 13 upon a review of the initial grant of qualification.

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- 16 • Denied- Due to being a 1099 employee/Ineligible (Denial DETR for Regular Unemployment included with Napolitano Exhibit);
 - 17 • Waited for PUA to finally open for GIG workers on 5/16/2020;5/16/2020-Filed Initial Claim with PUA;
 - 18 • 5/22/2020- Received Monetary determination from PUA stating i was eligible for \$469.0 a week plus the 600 Stimulus (included with Napolitano Exhibit);
 - 19 • 5/24/2020- System was open to file back weeks;
 - 20 • 5/24/2020-Filed all back weeks to the week of 3/22/2020;
 - 21 • Initial outstanding issues with my claim (IP ISSUE, WORKING FULL TIME, PUA Other program Eligibility);
 - 22 • 5/27/2020- All outstanding issues fell off of my claim, Claim still says "yes" under unresolved issues though site is showing none. This is holding up my payment;
 - 23 • 6/1/2020- Phone lines are open to speak with someone about my claim;
 - 24 • From 6/1/2020 up until today i have made 1000s of unsuccessful calls to the PUA; adjudication line. After 5 minutes and 34 seconds the calls Disconnect. This goes on all day everyday even on Saturday. In addition to trying to reach the adjudication line I have emailed every senator congress person and every DETR email a group of us could find. on 6/5/2020. NO RESPONSES BACK.

27 I am running out of time and options. My savings, stimulus, any money I had for my
 28 family is about gone. and bills are piling up without any more extensions

1 The failure to promptly pay this benefit money has caused tens of thousands of Nevada
2 workers to suffer irreparable harm such as cars are being repossessed, people losing their housing,
3 children put in danger of being taken from their parents who can no longer afford to provide them
4 housing, other governmental social safety nets like homeless shelters and welfare being
5 exhausted, retirement savings being depleted, and people descending so far into debt that they
6 will never be able to recover after this pandemic ends. This is a real and dire threat to the recovery
7 of the State of Nevada as well as the end of any hope of a robust and timely national recovery. It
8 is a fundamental economic truth that people who are no longer able to sustain themselves, cannot
9 be productive workers, let alone consumers, and consumers were the engine of our last great
10 economic boom.¹⁷

11 The purpose of this writ petition is to compel the performance of an act which the law
12 especially enjoins as a duty resulting from an office. Nev. Const. art. 6, § 6; NRS 34.160. In
13 addition, Defendants-Respondents’ failure to pay unemployment compensation benefits “when
14 due” constitutes a taking of a property interest within the protection of the procedural and
15 substantive due process guarantees of the Constitution.¹⁸ See e.g., *Gray v. Department Of*
16 *Employment Sec, supra, Klimko v. Virginia Empl. Comm’n*, 216 Va. 750 (Va. 1976). For these
17 reasons, a writ of mandamus and/ or order of mandate should issue from this Court directing
18 Defendants-Respondents to make payments immediately, within a few days of the Court’s order,
19 of all outstanding claims for unemployment compensation still pending for which an official
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22 ¹⁷ Ironically, all this unpaid money, including the costs of administration, is coming from the
23 federal government, so one wonders why DETR is not freely dispensing these funds. The
24 regulations require the claimant to repay all sums paid by the government in error, an
25 admonishing threat Director Krobolic repeated during her June 5, 2020 press conference. So,
26 there is little, if any, downside risk to Nevada if a few (if any) claims are overpaid. Yet DETR
27 withholds payment of half a billion dollars to about 60,000 gig workers in order to save a few
28 thousand dollars by a few dozen, if that, potential fraudsters. DETR continues to fail to do its
job to assist the unemployed in this time of great need, for what reason, Plaintiffs-Petitioners do
not know.

¹⁸ A Court ordered “mandate” under 42 U.S.C. §1983 is essentially the same thing as a “writ of
mandamus” under Nev. Const. art. 6, § 6; NRS 34.160.

1 denial letter, containing an effectively working appeal option, has not been issued, or whenever
2 there exists an initial pandemic unemployment qualify determination of ACCEPTANCE.

3
4 **STATEMENT OF FACTS**

5 It is undeniable that 11 weeks after the creation of the “Pandemic Unemployment
6 Assistance (PUA)” program through Section 2102 of the CARES Act—which gave gig workers
7 the right to file for unemployment compensation, and the Federal Pandemic Unemployment
8 Compensation (FPUC) program authorized by Section 2104 of the CARES Act, which gave all
9 gig workers \$600 per week if they suffered an economic loss due to Governor Sisolak’s March
10 12, 2020 executive order¹⁹—the State of Nevada *still* has not paid unemployment compensation
11 “when due” to approximately 60,000 gig workers. Surely this battle had been won, when on May
12 16, 2020 only three days after the original filing of this lawsuit, the State of Nevada’s Department
13 of Employment, Training and Rehabilitation (“DETR”) finally opened its web page application
14 process for self-employed individuals, independent contractors and/or the owners of sole
15 proprietorships (“gig workers”) to apply for unemployment compensation.

16 Gig workers were legally eligible to obtain Unemployment Compensation and/or
17 Unemployment Insurance benefits from DETR on April 5, 2020 whereas they could not even
18 apply for benefits with DETR before May 16, 2020. May 16, 2020 was five weeks after April
19 11, 2020, when DETR had announced it expected to actually pay benefits, typically within two
20 weeks after accepting a claimant’s application. It is now five weeks since the opening of this web
21 portal application process, and payment should have taken at most two weeks from that date. But
22 as of the date of filing of this amended writ petition, the vast majority of those gig workers who
23 applied for unemployment compensation with DETR on or about May 16, 2020 remain unpaid.
24 These individuals have already lost significant revenue as a result of the of the March 15, 2020
25 Executive Order by Nevada State Governor Sisolak temporarily suspending operations of many

26 _____
27 ¹⁹ Governor Sisolak’s Declaration of Emergency For COVID_19 dated March 12, 202 is
28 hereinafter referred to as “Executive Order” or “Order and can be accessed at:
http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-12_-_COVID-19_Declaration_of_Emergency/

1 businesses in Nevada. It is doubtful that a court order could issue before this Friday, June 27,
2 2020. Further delay is untenable, unlawful, and inhumane.

3 Moreover, the excuses for non-payment are ridiculous. For example, in a June 12, 2020
4 press conference reported by the Nevada Independent's Michael Rindels,²⁰ former DETR
5 Director Heather Korbolic said, "About 40 percent of claims being filed are deemed ineligible for
6 the program for reasons including that people are eligible for regular state unemployment
7 insurance instead of the new federally funded program." As DETR's own graphs show, as of
8 June 12, 2020, of the total universe of 529,649 claims that were filed, DETR says 166,428 or 31%
9 were "Not eligible for Unemployment Insurance," the majority of which says Ms. Korbolic are
10 because they were eligible for another program.

11 But DETR does not say these people are being paid by those other programs. In fact, the
12 vast majority are not receiving any benefits under any program. Many Gig Workers were told
13 initially by DETR representatives that they had to apply to the regular programs as a pre-requisite
14 for applying to the Gig Worker program. *See* Freitas Dec. at ¶ 15 Even after uploading their
15 rejection letters from these other programs administered by DETR, these workers are told that
16 their application for the Gig Worker program (PUA) are not approved because the claimant is
17 eligible for the other program that has already rejected them. *See* Freitas Dec. at ¶ 15. As a result,
18 DETR is improperly denying benefits because these Nevada workers are not getting covered by
19 any program, even though they are eligible under at least one if not two of the CARES Act
20 programs.

21 And the \$600 per week FPUC money applies no matter for which program an applicant²¹
22 has been approved. As DOL states in the April 2, 2020 PL 14-20: "The Federal Pandemic
23 Unemployment Compensation (FPUC) under section 2104 provides for an additional \$600 per
24 week to an individual collecting regular UC, PEUC, PUA, EB, STC, TRA, DUA, and SEA."
25 There are no other programs. If all the programs automatically include the \$600 per week FPUC

26 ²⁰ <https://thenevadaindependent.com/article/officials-nearly-48000-independent-workers-have-been-paid-pua-unemployment-benefits> last visited June 17, 2020.

27 ²¹ Throughout this Request the terms "applicant" and "claimant" are synonymous. The terms
28 "application" and "claims are synonymous, as well.

1 payment, why are these people who DETR says are ineligible as gig worker claimants because
2 they are covered by another program not being paid at least the \$600 per week FPUC money?²²
3 It really doesn't matter to a claimant which program pays him/her the unemployment
4 compensation due (the amounts are basically the same for all programs) as long as one program
5 pays, the FPUC money is due. A determination to withhold PUA program benefits because of
6 eligibility in another program a *de facto* determination that the gig worker is covered by at least
7 one program, and therefore, as soon as the gig worker qualifies for any program, the claimant
8 must be paid pursuant to the FPUC program immediately.

9 Another nonsensical excuse for nonpayment is that gig workers in industries that are not
10 expressly mentioned in Governor Sisolak's March 15, 2020 executive order, but who suffered a
11 severe loss of revenue as a result of the closing of most tourist venues like hotels, casinos and
12 restaurants are not eligible to apply because their loss is "not disaster related." Most Uber and
13 Lyft drivers in Las Vegas make their money driving around tourists who do not have a car of their
14 own to use while in town. When the hotels, casinos, showrooms, day clubs, bars, and restaurants
15 closed because of the March 15, 2020 Executive Order, the tourists stay away. It really doesn't
16 take much deduction to realize the sudden and dramatic loss of income to gig workers who drive
17 for Uber and Lyft is totally the result of the March 15, 2020 Executive Order, which is solely the
18 result of the COVID-19 Pandemic. Yet, DETR says these people are ineligible to apply for
19 benefits because they were not 'laid off' as a direct result of the Covid 19 disaster.

20 Another common excuse to not pay benefits by DETR is that gig workers who keep
21 working, even for significantly reduced revenue, are not eligible for unemployment compensation
22 since they are not "unemployed." First, gig workers are self-employed, so they are never
23 unemployed, but they are still entitled benefits if income is reduced by Covid 19 related

24 _____
25 ²² It is inconceivable that 60,000 people out of 116,996 PUA claims or 59% of all people who
26 apply are already receiving unemployment compensation. The gig worker application process is
27 long and tedious, the website confusing, and there would be no reason for an applicant to attempt
28 to commit fraud when duplicate payments are so easily detected by a computer cross checking
social security numbers with other payments. Unemployment compensation is taxed like any
other wage, and everyone assumes the system will surely catch duplicate payments quickly. Does
DETR seriously contend that there are 60,000 evil people all committing the same crime at the
same time, even in Nevada?

1 occurrences. For example, Plaintiff-Petitioner NAIMI has a family to feed, so when his Uber
2 revenue dropped as a result of the lack of tourists, he did more local routes.²³ His income went
3 down 60%, even though he worked more hours to earn just 40% of what he did before. *Id.* DETR
4 said he was not eligible because he was not unemployed, even though the DOL memos state quite
5 clearly that reduced earnings, income, or partial income, does not count against receiving the full
6 \$600 per week FPUC money. *Id.* DETR would rather Plaintiff-Petitioner NAIMI stay home and
7 let his family starve rather than work harder to earn less. These are not reasons to sustain an
8 initial determination of ineligibility.

9 And to add insult to injury, many of these not eligible claimants have letters or web page
10 entries saying that they were determined to be eligible initially, but a few weeks later, are told
11 that their eligibility has been cancelled retroactively because there are unresolved issues in their
12 claim.²⁴ The United States Supreme Court has stated, and as the regulations now state, that once
13 a claimant is eligible, due process requires that unemployment compensation benefits must
14 continue to flow until an administrative law judge has made a finding of after a fair administrative
15 hearing. Instead, DETR uses its own delay in making payment to reconsider the initial eligibility
16 determination and then retroactively determines that a claimant was not eligible *ab initio* which
17 DETR considers a (second) eligibility determination rather than a denial of benefits already
18 granted. This trick of mislabeling a denial of existing entitlement to benefits as a second or third
19 retroactive initial eligibility determination is simply unconstitutional.

20 To save face, DETR claims that it was overwhelmed and unprepared for this never seen
21 before expansion of the Unemployment Compensation system to cover self-employed
22 individuals, also referred to as gig workers. But this is not the first time that a State administered,
23 federally financed, Unemployment Compensation system was so heavily relied upon to make
24 benefits available to individuals who are self-employed, those seeking part-time employment, or
25 those who otherwise would not qualify for Unemployment Compensation under other existing
26

27 ²³ See Declaration of Dariush Naimi, hereafter “Naimi Dec.” See DETR responses to Dariush
28 Naimi, hereinafter “Naimi Docs.” generally

²⁴ Attached as Exhibit 1 to Naimi Dec.

1 programs. The “Disaster Unemployment Assistance (DUA)” program was first created in 1970
2 by the Robert T. Stafford Disaster Relief and Emergency Relief Act (the Stafford Act), P.L. 91-
3 606 and has provided major federal Unemployment Compensation to W-2 workers and
4 independent contractors alike who suffered economic loss as a result of the disasters like the
5 September 11, 2001 terrorist attacks on the World Trade Center, the 2004 Hurricanes Charley and
6 Frances, the 2005 Hurricanes Katrina and Rita, the 2006 Hurricane Ike, the 2012 Hurricane
7 Sandy, and the 2018-2019 Hurricanes Harvey, Irma and Maria disasters, among others. *See,*
8 *EveryCRSReport.com* on the web at <https://www.everycrsreport.com/reports/RS22022.html>, last
9 visited June 16, 2020. The operational provisions and regulations of the Pandemic
10 Unemployment Assistance (PUA) programs are in all major respects, the same as the DUA
11 provisions at 20 C.F.R. Part 625. Section 2102(h) of the CARES Act states that the regulations
12 at 20 C.F.R. Part 625 shall apply to the PUA program “except as otherwise provided in this section
13 or to the extent there is a conflict” between section 2102 and 20 C.F.R Part 625. These regulations
14 “shall apply to this section as if (1) the term ‘COVID-19 public health emergency’ were
15 substituted for the term ‘major disaster’ each place it appears in such 20 C.F.R Part 625; and (2)
16 the term ‘pandemic’ were substituted for the term ‘disaster’ each place it appears in 20 C.F.R.
17 Part 625.” DETR should have and could have been better prepared.

18 Moreover, the burden of DETR’s failure to discharge its clear duty should not be shifted
19 to the innocent victims of DETR’s mismanagement. DETR has complained about its computers,
20 but that is not any claimant’s problem or fault. In addition, other states which use the same,
21 similar, or even older equipment have been able to establish web-based application pages and pay
22 claims far before, and in greater number, than DETR has to date. As Nevada Employment
23 Security Division (ESD) retiree Steve Zuelke states in his declaration at paragraph 22 – 24:

24 We both know the UInv benefits system is not “archaic” in the
25 vernacular of unemployment insurance benefit systems. This
26 argument has been trotted out in defense of payment delays many
27 times. It is not an argument, but an excuse, and the excuse makes
28 me tired and hurts Nevadans. [¶]The base implementation for UInv
occurred some seven years ago. It's one of the more modern systems
nationwide. This system was designed to place holds and gather
information. It has done what it was built to do. I know. I helped

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design it. [¶] States which have much older systems were able to implement Pandemic Emergency Unemployment Compensation, Pandemic Unemployment Assistance and the \$600 weekly additional benefits more quickly because they HAD older systems. Older systems contained existing model code they could adjust for the new programs and implement in realistic timeframes.

See Declaration of former Nevada Employment Security Department Manager, Steve Zuelke, hereinafter “Zuelke Dec.”

DETR is clearly under-reporting the unpaid claims rate. DETR sends a claim to adjudication even if it was approved for payment, retroactively re-determines eligibility (despite initial determination of eligibility), says a claim is “in process” for an unreasonable length of time while failing to provide any way to challenge or appeal DETR’s inaction, or simply labels the claim “under review” when there is no reason to do so.²⁵ DETR is omitting from its statics about 30% of all claims which are sent to adjudication or by calling the unpaid claims incomplete (“unresolved”) and therefore not a claim at all. These sleight of hand tricks do not help those 60,000 gig 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.e.* unpaid but who are probably not being counted in the unpaid rate of claims made by DETR.²⁶ 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

²⁵ See graphs used by DETR at June 12th conference showing almost 170,000 claims not eligible out of a total of almost six hundred claims. DETR proudly says it has paid 41% of all claims, which leave 59% of all claims unpaid after three months of processing. DETR is doing a horrible job.

²⁶ Indeed, there are several Facebook groups specific to the Nevada DETR problems/frustrations, one with over 11,958 members:
https://www.facebook.com/groups/nevadapua/?multi_permalinks=3163306237083313¬if_id=1592437452164226¬if_t=group_highlights (last visited June 19, 2020).

²⁷ Even if this were true, 33,000 out of 172,00 or the “revised” total of 116,996 PUA claims made is an appalling payout rate of only 19% to 23%, and to pay only 41% of the gig worker claims is likewise unreasonable.

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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 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.

For that reason, among others, there is no scaling of benefits for gig workers under the FPUC program. Therefore, a gig worker could receive more in Unemployment Compensation per week than the Gig Worker made prior to the March 15, 2020 cease doing business Executive Order. Finally, there is no need to be in an industry banned from working in order to receive Unemployment Compensation. Uber and Lyft Drivers are entitled to PUA and FPUC money even though they were permitted to drive, because their revenue decreased as a result of the lack of tourists using their system of transportation because Nevada’s March 15, 2020 Executive Order closed down the places tourists would visit. The system was designed on purpose to grant Unemployment 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

1 really believes over half of the gig applicants are committing fraud. A 59% unpaid claims rate
2 means two out of three applications are not being paid, which is totally unacceptable.

3 Time is of the essence when it comes to paying claims. Not only for the benefit of the
4 applicant but for the benefit of the general public and the economy as well. In addition to failing
5 to process claims quickly, Mr. Zuelke correctly reports that DETR compounded the public's
6 frustration with inadequate disclosure or transparency. As he further states at paragraphs 33-36
7 of his Declaration:

8 Messaging and information available to the unemployed public is
9 bureaucratic, ineffective and fails to recognize the common
10 denominators. You are addressing hundreds of thousands of people
11 across all walks of life - with widely varying education levels and
12 language barriers - yet instructions and guides are filled with jargon,
13 legalese and bereft of real answers. No wonder your phones are a
14 logjam. . . [¶] The phones are not jammed with "robo-callers" per se,
15 they are filled with people trying to get answers not available
16 elsewhere. Some of them leverage call-back programs because they
17 have tried for months to get through to a representative with no
18 response. They sardonically refer to it as redial finger and UI
19 Roulette. [¶] There is no clear guidance available to them that
20 explains what is happening or as to why they see certain holds on
21 payment.

22 Obviously, DETR's failure to fulfill its clear duty has had a terrible impact on so many
23 people's lives. Mr. Zuelke correctly calls DETR out and states at paragraphs 44-46:

24 Excuses ring hollow to those now reduced to going to food banks to
25 feed their families while their likely eligible claims have not been
26 paid in three months. They are empty echoes to people who have
27 had to surrender family pets as they couldn't afford to keep them.
28 They bear false witness to parents who have not been able to buy
diapers. They do not pacify those losing sleep at night wondering
how they will ever recover from this train wreck, worrying where
they may live when the eviction moratoriums are lifted. I see the
human impact of this. En masse. [¶] The hard-working people of
the State of Nevada trusted in you to help them through this. You
exert your authority but have backed away from your responsibility
to think outside the box and embrace different ideas while the toll
on lives and livelihoods mounts. [¶] In the end, there are still going
to be thousands and likely tens of thousands of ruined lives. Sadly,
a significant percentage of this was avoidable. It's called due

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diligence.

Mr. Zuelke is not the only one complaining about the effects of DETR’s failure to pay promptly. Hundreds of emails from frustrated gig workers have been received by this office, begging for help in obtaining unemployment compensation in hopes of avoiding abject poverty. *See* Declaration of Jennifer Mihal Freitas filed herewith providing a small sampling of the emails and corresponding documentation supporting Plaintiffs’ 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 being depleted, and the list of personal tragedies goes on and on.

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.

ARGUMENT

I. PURSUANT TO NRS 34.160 AND NEV. CONST. ART. 6, § 6, THIS COURT HAS JURISDICTION TO ISSUE A WRIT OF MANDAMUS ORDERING DETR TO

MAKE IMMEDIATE PAYMENTS TO ALL THOSE TO WHOM PAYMENT IS “DUE”

This court has jurisdiction²⁸ over Defendant State of Nevada ex rel. Nevada Department of Employment, Training pursuant to NRS 41.031 and Nev. Const. art. 6, § 6 for the purposes of issuing a writ of mandamus requiring DETR to pay money to all gig claimants, except those actually receiving unemployment benefits under another program, because DETR has a clear duty to so. Like the Douglass County in the case of *State ex rel. List v. County of Douglas*, 90 Nev. 272 (Nev. 1974), Nevada is party to an agreement with the federal government to administer federally funded unemployment compensation under the CARES Act according to federal regulations and published guidance by the United States Department of Labor. Since DETR is a department of the State of Nevada, it can be compelled by a writ of mandamus to pay money according to the terms of that agreement.

As of March 27, 2020, and certainly by April 11, 2020, there was, and continues to be, a clear legal duty for DETR to pay (from federal funds) all unemployment compensation benefits mandated by federal law due to each and every self-employed individual, sole proprietor, and/or independent contractor who has applied for such benefits because they suffered negative “economic effects of the Coronavirus Disease 2019 (COVID-19)”. The amount of money is readily calculable at not less than \$600 per week for every week after March 15, 2020 until July 31, 2020 (for a total of 24 weekly payments) that the applicant did not earn more than he or she earned from self-employment before March 15, 2020. In addition to the \$600 per week FPUC payments, DETR has a clear duty to provide the appropriate amount of PUA money per week (\$181 to \$493, depending on prior income) for up to 39 weeks, retroactive to January 27, 2020 and ending on or before December 31, 2020. For those gig workers who had part time or occasional W-2 type income, they are still entitled to the full \$600 per week FPUC money plus at least the \$181 per week minimum PUA money. DETR’s duty to pay this money is not discretionary.

²⁸ Venue is proper in the Second Judicial District because Plaintiffs worked and attempted to apply for unemployment in Reno, and therefore the cause of action arose within Washoe County.

1 NRS 34.160 provides that mandamus is available to compel the performance of an act
 2 which the law requires as a duty resulting from an office, trust, or station. “A writ of mandamus
 3 will issue when the respondent has a clear, present legal duty to act.” *Gill v. St. ex rel. Booher*,
 4 75 Nev. 448, 345 P.2d 421 (1959). See also, *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev.
 5 601, 603 (Nev. 1981) and *Legrand v. Eleventh Judicial Dist. Court of State*, No. 69133 (Nev.
 6 Dec. 16, 2015). Even if there are disputed issues of fact, jurisdiction to issue a writ of mandamus
 7 is proper in the District Court. *Reynolds v. Justice Court of Reno* No. 75638 (Nev. App. Apr. 27,
 8 2018).

9 **II. PURSUANT TO 42 U.S.C. 1983, THIS COURT HAS JURISDICTION TO ISSUE**
 10 **A MANDAMUS AGAINST DETR**

11 The Fourteenth Amendment to the United States Constitution commands that no state
 12 shall deprive any person of life, liberty, or property without due process of law, nor deny to any
 13 person within its jurisdiction the equal protection of the laws. See, e.g. *State ex rel. List v. County*
 14 *of Douglas*, 90 Nev. 272, 279 (Nev. 1974).²⁹ DETR is a department of the State of Nevada. As
 15 stated by the Nevada Supreme Court in *Glaser v. Emp't Sec. Div.*, 373 P.3d 917 (Nev. 2011):

16 Due process protections of the Fourteenth Amendment of the U.S.
 17 Constitution and Article I, Section 8 of the Nevada State
 18 Constitution apply to unemployment benefit hearings. *Whitney v.*
 19 *State, Employment Security Dep't*, 105 Nev. 810, 813, 783 P.2d 459,
 20 460 (1989). Due process requires a state to give a person an
 21 opportunity to be heard in a meaningful manner and at a meaningful
 22 time. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970). It also requires
 23 that one have the opportunity to establish any fact which, “according
 24 to the usages of common law or the provisions of the constitution
 25 would be a protection to himself or property.” *Wright v.*
 26 *Cradlebaugh*, 3 Nev. 341, 349 (1867).

27 A statutory scheme providing for the receipt of government benefits may give rise to a
 28 property interests protected by the due process clause. *Mathews v. Eldridge*, 424 U.S. 319
 (1976). In that case, entitlement to social security payment was considered a property right.

²⁹ Article I, Section 8 of the Nevada State Constitution provides the same.

1 Property interests in a benefit was defined by the United States Supreme Court in *Board of*
2 *Regents of State Colleges v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972):

3 To have a property interest in a benefit, a person clearly must have
4 more than an abstract need or desire for it. He must have more than
5 a unilateral expectation of it. He must, instead, have a legitimate
6 claim of entitlement to it. It is a purpose of the ancient institution of
7 property to protect those claims upon which people rely in their daily
8 lives, reliance that must not be arbitrarily undermined.

9 In this case, the federal government requires payment under the same Social Security Act
10 at issue as in *Mathews*. “State statutes providing for the payment of unemployment compensation
11 benefits create in the claimants for those benefits property interests protected by due process.”
12 *Wilkinson v. Abrams*, 627 F.2d 650, 664 (3d Cir.1980) *N.M. Dep’t of Workforce Sol’s. v.*
13 *Garduño*, 363 P.3d 1176, 1180-81 (N.M. 2015). Since it is a property right, denial of payment
14 of unemployment compensation requires due process. As stated in *Roth*, 408 U.S. at 576, 92
15 S.Ct. 2701, “The Fourteenth Amendment’s procedural protection of property is a safeguard of
16 the security of interests that a person has already acquired in specific benefits.”

17 Because there is a property right in obtaining federally mandated unemployment
18 compensation if entitled, failing to administer a federally mandated unemployment compensation
19 benefit is a denial of due process. *Glaser v. Emp’t Sec. Div., supra*. Pursuant to 42 U.S.C. §1983,
20 this court has jurisdiction to issue an order of mandate awarding non-monetary³⁰ relief against
21 the individual Defendants-Respondents acting in their official capacities. *Fusari v. Steinberg*,
22 419 U.S. 379 (1975), *Gray v. Department of Employment Sec*, 681 P.2d 807 (Utah 1984). As
23 stated in *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 at note 10 (1989) “Of
24 course, a state official in his or her official capacity, when sued for injunctive relief, would be a

24 ³⁰No money damages are sought under 42 U.S.C. 1983 from DETR or the individual Defendants-
25 Respondents who are acting in their official capacities only. *Will v. Michigan Dept. of State*
26 *Police*, 491 U.S. 58 (1989) However, this court does have jurisdiction to award monetary relief
27 against DETR under NRS 41.031, which states: “The State of Nevada hereby waives its
28 immunity from liability and action and hereby consents to have its liability determined in
accordance with the same rules of law as are applied to civil actions against natural persons and
corporations . . .” See also, *Martinez v. Maruszczak*, 123 Nev. 433, 437 (Nev. 2007) (“In NRS
Chapter 41, the Nevada Legislature has, with some exceptions, waived Nevada's sovereign
immunity from liability.”)

1 person under § 1983 because ‘official-capacity actions for prospective relief are not treated as
2 actions against the State.’ *Kentucky v. Graham*, 473 U.S., at 167, n. 14; *Ex parte Young*, 209
3 U.S. 123, 159-160 (1908). *Knight v. Nimrod*, No. C 00-0290 SBA, [Docket No. 59], at *4 (N.D.
4 Cal. Sep. 6, 2007).

5 **III. DEFENDANTS-RESPONDENTS HAD A CLEAR DUTY TO PAY**
6 **UNEMPLOYMENT COMPENSATION “WHEN DUE”**

7 Section 303(a)(1) of the federal Social Security Act, 42 U.S.C. § 503(a)(1) (3) requires “a
8 method of administration ‘reasonably calculated to insure full payment of unemployment
9 compensation when due.’” The federal Social Security Act, 42 U.S.C. § 503 sets forth the clear
10 duty: DETR’s must pay federal and state unemployment compensation “when due.” Section
11 503(a) of the Social Security Act allows DETR to spend money collected under the Federal
12 Unemployment Tax Act [26 U.S.C. 3301 et seq] to pay unemployment compensation benefits to
13 Nevada workers only under certain conditions. The first condition of the federal statute is that
14 the State must agree to use “Such methods [of administration] as are found by the Secretary of
15 Labor to be reasonably calculated to insure full payment of unemployment compensation *when*
16 *due.*” Section 503(a)(1). Other requirements of the Social Security Act require the state
17 administrative agency to agree to provide an “Opportunity for a fair hearing, before an impartial
18 tribunal, for all individuals whose claims for unemployment compensation are denied.” Section
19 503(a)(3) also requires the State to provide for a method for the repayment of Unemployment
20 Compensation paid in error. As stated in 42 U.S.C. § 503(g):

21 A State shall deduct from unemployment benefits otherwise payable
22 to an individual an amount equal to any overpayment made to such
23 individual under an unemployment benefit program of the United
24 States or of any other State, and not previously recovered. The
25 amount so deducted shall be paid to the jurisdiction under whose
26 program such overpayment was made. Any such deduction shall be
27 made only in accordance with the same procedures relating to notice
28 and opportunity for a hearing as apply to the recovery of
overpayments of regular unemployment compensation paid by such
State.

1 In most cases, the issue of the definition of "when due" as used in the statute is matter for
2 the Courts. In the case of *California Human Resources Dept. v. Java* 402 U.S. 121 [28 L.Ed.2d
3 666, 91 S.Ct. 1347](1971), the United States Supreme Court invalidated California's Employment
4 Development Department's ("EDD") of stopping benefit payments whenever an employer
5 appealed the EDD's benefit award. The Supreme Court held that the practice of withholding
6 benefits in the event of appeal violated the claimants' statutory right to receive prompt payment.
7 *Id.*, 402 U.S. at p. 133 [28 L.Ed.2d at pp. 674-675. The entitlement to payment starts when the
8 application presents a prima facie case for eligibility.

9 In reaching this conclusion, the Supreme Court needed to determine when benefits were
10 due under the statute. The legislative history of the Social Security Act demonstrated that the
11 statute was a form of income replacement *insurance*, rather than social welfare. Like other types
12 of insurance, the payment of Unemployment Compensation was based not upon the "need" of the
13 claimant in the sense of a welfare statute is based upon the poverty level of the claimant but rather
14 the "need" for wage earners who are unemployed through no fault of their own to be paid as close
15 to their regular wages on their usual payday as possible so that they could continue to look for
16 work while they led their lives as close to normal as possible. The Supreme Court in *Java* further
17 stated:

18 It is true, as appellants argue, that the unemployment compensation
19 insurance program was not based on need in the sense underlying
20 the various welfare programs that had their genesis in the same
21 period of economic stress a generation ago. A kind of "need" is
22 present in the statutory scheme for insurance, however, to the extent
23 that any "salary replacement" insurance fulfills a need caused by lost
24 employment. The objective of Congress was to provide a substitute
25 for wages lost during a period of unemployment not the fault of the
26 employee. Probably no program could be devised to make insurance
27 payments available precisely on the nearest payday following the
28 termination, but to the extent that this was administratively feasible
this must be regarded as what Congress was trying to accomplish.
The circumstances surrounding the enactment of the statute confirm
this.

Id. at 402 U.S. at p. 130.

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Considering the legislative history further, the *Java* Court concluded that the purposes of the Section 501 of the Social Security Act was to pay the unemployed worker as soon as possible, rather than holding back payments until all disputes could be resolved, reasoning:

Other evidence in the legislative history of the Act and the commentary upon it supports the conclusion that "when due" was intended to mean at the earliest stage of unemployment that such payments were administratively feasible after giving both the worker and the employer an opportunity to be heard. The purpose of the Act was to give prompt if only partial replacement of wages to the unemployed, to enable workers "to tide themselves over, until they get back to their old work or find other employment, without having to resort to relief."

Id. at 402 U.S. at p. 131.

These are the same legislative purposes that led to the passage of the CARES Act. The United States Supreme Court’s reasoning and opinion in *Java* regarding the Social Security Act holds true seventy years later in considering the CARES Act. Specifically, the *Java* Court explained:

Unemployment benefits provide cash to a newly unemployed worker “at a time when otherwise he would have nothing to spend,” serving to maintain the recipient at subsistence levels without the necessity of his turning to welfare or private charity. Further, providing for “security during the period following unemployment” was thought to be a means of assisting a worker to find substantially equivalent employment. The Federal Relief Administrator testified that the Act “covers a great many thousands of people who are thrown out of work suddenly. It is essential that they be permitted to look for a job. They should not be doing anything else but looking for a job.”

Id.

And last, but not least, the Social Security Act, just like the CARES Act, was an application of Keynesian New Deal Economic theory in an attempt to lessen the impact of a great depression on the entire Country. This social economic “big picture” purpose was in addition to giving aid to a single working person and his family (in those days “his” would be an accurate representation of the workforce). As the Supreme Court stated:

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Finally, Congress viewed unemployment insurance payments as a means of exerting an influence upon the stabilization of industry. "Their only distinguishing feature is that they will be specially earmarked for the use of the unemployed at the very times when it is best for business that they should be so used." Early payment of insurance benefits serves to prevent a decline in the purchasing power of the unemployed, which in turn serves to aid industries producing goods and services.

Id. at 402 U.S. at 132.

IV. “WHEN DUE” MEANS NOT LATER THAN APRIL 11, 2020

In this case, the directions from the United States Secretary of Labor applied to the actions of Nevada’s governor in agreeing to accept CARES Act money, provides a clean, bright line date of no later than April 11th, 2020 for payment of unemployment compensation “when due.” As DETR correctly acknowledged:

As of April 12, 2020. The Division has started paying the additional \$600 Federal Pandemic Unemployment Compensation (FPUC) payments to eligible claimants for the period starting with the week ending April 4, 2020, and payable thru the week ending July 25, 2020. Last updated 04/15/20.³¹

V. “WHEN DUE” DOES NOT MEAN WHENEVER DETR WANTS TO, OR WHEN IT BECOMES ADMINISTRATIVELY CONVENIENT FOR DETR TO DO SO

No doubt DETR will argue that “when due” includes also being eligible for benefits initially and not just the magic date of April 11, 2020. There are several responses that show the basic flaws in DETR’s position. First, for all those gig workers who were approved for benefits based upon their May 16, 2020 application (the first day they could apply in Nevada), there was no change in their ability or qualification to receive benefits from April 11 until that application date, so why are they not assumed eligible as if they had been allowed to apply for benefits on April 12, 2020? All these gig workers should not have been delayed payment past a normal two weeks after the first day they were supposed to have been able to apply. And the same is true for every other gig worker whose application was approved for benefits based upon no changes in

³¹ DETR Website [https://detr.nv.gov/Page/COVID-19_\(Coronavirus\)_Information_for_Claimants_and_Employers](https://detr.nv.gov/Page/COVID-19_(Coronavirus)_Information_for_Claimants_and_Employers) , (Last visited June 18, 2020).

1 circumstances from April 11 until May 16, even if the claimant applied after May 16, 2020. In
2 other words, those workers who applied after May 16, 202 should not suffer any loss but the time
3 between May 16, and the date they applied. Of course, all claimants should be paid interest for
4 the time lost due to DETR's failure to construct a website in a timely manner.

5 Second, the argument of impossibility is not supported by the evidence. DETR's gig
6 worker application for Unemployment Compensation website was eventually put online, albeit
7 after every other state had done its own gig website.³² This proves it was do-able, and unlike a
8 COVID vaccine that takes years to develop because of processes that must be done in series
9 sequence, and cannot be done simultaneously, *i.e.* in parallel, here the problem is simply the time
10 it takes to do some computer programing which can be greatly accelerated by breaking the project
11 into distinct pieces, and assigning sufficient number of coders/programmers working a sufficient
12 number of hours to construct the final program in much less time. In other words, because a great
13 part of programming can be done simultaneously, throwing more money and people at the project
14 would have reduced significantly the time it took to create the website. The federal government
15 agreed to provide the money necessary for the States to build this accelerated website.

16 And if it was not truly possible to considerably shorten the engineering cycle in this case,
17 then the issue of impossibility should have been brought to the Secretary of Labor's attention so
18 that he could reconsider his April 11, 2020 deadline. This was not done. At the very least, Nevada
19 should have not been the very last state in the nation of all those that agreed to be part of the
20 CARES Act programs, to construct a gig worker Unemployment Compensation application
21 website. The sanction for the delay between when the first state published its gig application
22 website and May 16, 2020 when Nevada published its site should be an estoppel to deny claims
23 filed with the same amount of days from May 16, 2020. For example, if the court finds that
24 Nevada could have had a website two weeks earlier than it did, then the sanction, in addition to
25 interest on late paid funds, should be that any application filed within two weeks after May 16
26 shall be deemed filed and accepted as of May 16, 2020, two weeks earlier.

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³² <http://dmitrikoustas.com/pua> (last visited June 20, 2020).

1 Third, the vast majority of those not paid were initially approved, and then, usually a few
2 weeks later, were told that there were “unresolved issues”. Some have approval letters issued
3 before DETR put the “unresolved issues” on the progress record. These people were clearly
4 eligible and should be treated as if they were approved, and thus DETR took away a vested
5 benefit. DETR should be ordered to pay such people until an administrative law judge determines
6 after a fair hearing that they were not initially eligible to receive benefits. As the Third Circuit
7 observed, “The critical factor is timely payment to all eligible persons, whether their eligibility is
8 upheld initially or only after one or more appeals.” *Wilkinson v. Abrams* 627 F.2d 650, 661, fn.
9 14 (3d Cir. 1980).

10 Fourth, the Social Security Act does not say that DETR may pay “when possible”; the
11 Social Security Act says DETR must pay “when due” without regard to any administrative
12 difficulty DETR may claim. Perhaps the drafters of the Act knew that bureaucrats could always
13 find a task too complicated or hard to complete on time, especially when some did not believe in
14 Keynesian or New Deal economics, and therefore, disagreed with the expenditure of these funds
15 on grounds of fiscal responsibility. These same naysayers were probably the ones that
16 exasperated the great depression by conserving expenditures in the early 1930’s as tax revenues
17 decreased and as “fiscally responsible” legislatures refused to pump prime their way out of
18 recession. Congress is of another mind, and the statutory language in the CARES Act is clear;
19 payment is due as quick as possible even if overpayment to a few may also occur.

20 **VI. IN THE ALTERNATIVE, “WHEN DUE” MEANS AS SOON AS A *PRIMA FACIE***
21 **ELIGIBLE APPLICATION IS SUBMITTED BY A GIG WORKER ON OR**
22 **AFTER MAY 16, 2020**

23 This Court should deem bogus all the reasons DETR has stated for not paying
24 unemployment compensation within a few weeks after an application is submitted. DETR’s
25 actions are particularly egregious when DETR uses the normal administrative delay as a time for
26 second level review. If DETR wasn’t so slow to pay, redetermination of initial eligibility would
27 never occur. DETR should not benefit from its own failure to execute its duty to pay promptly.

28 DETR says that these people were all ineligible *ab initio*, and therefore there is good cause
to not pay benefits. But that is simply untrue. There was in fact a determination of eligibility by

1 DETR and then a reversal of that determination, just as if an employer had filed an appeal to
2 DETR's initial determination of eligibility in a regular UI proceeding for W-2 wage earners. This
3 retroactive reversal of an initial eligibility decision is really a denial of benefits already granted
4 and therefore can occur only *after* there has been an administrative adjudication fairly conducted
5 with adequate due process. Otherwise, DETR has taken a vested property interest without due
6 process of law.

7 In addition, the "eligible for other benefits" excuse is irrational. Every successful
8 applicant is entitled to the \$600 a week FPUC money, so DETR ought to pay that \$600 a week
9 FPUC money if the applicant is qualified under *any* program, he or she may be eligible for. If
10 there was any determination that the applicant was eligible for benefits under any program, then
11 the applicant will surely be paid the \$600 FPUC money, so why deny the money to a destitute
12 Nevada citizen just because the same amount of money may eventually come from another
13 program's funds. Simply pay the \$600 and if and when that other program starts paying, deduct
14 the \$600 already received in order to prevent duplicate payments. The way to prevent duplicate
15 payments is to stop the second, or later in time payment, not to stop the first, or both, until months
16 later when and if someone sorts it all out, while these people lose homes, transportation, faith in
17 their elected officials and the government, their pride and sanity. Nevada citizens simply don't
18 have time for DETR's internal accounting issues.

19 In addition, upon information and belief, all the other UI programs pay the same amount
20 that is paid under PUA program, which means that qualifying for any program ought to qualify
21 the claimant for the same payment amount as the CARES Act programs (including the FPUC
22 money that is a supplemental payment to every program), and the fact that the claimant is eligible
23 for one program versus another is simply irrelevant to the claimant. In the alternative, if the
24 amount of money paid per program in addition to \$600 per week FPUC money varies in amount,
25 then as soon as the applicant qualifies for one program, DETR must immediately pay at least the
26 amount associated with the lowest paying program plus the \$600 per week FPUC money. DETR
27 can then increase the base amount paid retroactively, should the applicant qualify for a higher
28 paying program later. DETR loses nothing if it pays the minimum entitlement due, and then later

1 makes an additional payment if DETR determines that the claimant was entitled to more. But to
2 withhold all payment, even payment of undisputedly owed amounts, just because some amounts
3 are still subject to adjudication is harmful to the applicant and inconsistent with the intent of the
4 statute.

5 Third, the Court must ignore the “unrelated to disaster” excuse. If income dropped
6 significantly after March 15, 2020, the burden ought to be on DETR to show an intervening cause.
7 Likewise, for most, if not all, the determinations that eligible applicants become ineligible
8 retroactively, the reasons stated for retroactive ineligibility are simply bogus. Nevertheless, even
9 if the Court were to limit these excuses as reasons to not pay claims initially, then almost all the
10 pending gig worker claims would be paid because DETR does not give claimants a way to appeal
11 these claims of retroactive *ad inito* eligibility. The Social Security statute requires DETR to
12 provide an appeal mechanism for denial of claims, but DETR does not have the same procedure
13 for a retroactive determination of initial eligibility. Without an appeal process, the claims must
14 be paid regardless of the DETR’s reasons for determining initial ineligibility retroactively.

15 Finally, DETR is wasting more time and money denying good claims than it is saving by
16 denying bad ones. DETR already has a mechanism of recovering overcharges if DETR later
17 determines that it made a mistake in approving a claim. DETR is not paying about half a billion
18 dollars in claims while it looks for a few thousand dollars paid on potentially ineligible claims.
19 The CARES Act, and all DOL guidance, favors quick payment of all claims that appear bone fide
20 at the time of initial application. Pay the money and then recover it after a due process
21 determination that it was not truly owed. And if an applicant submits a prima facie eligible
22 application that later proves to be ineligible for any one of DETR’s above discredited excuses,
23 then DETR can demand repayment of the overcharge and the claimant can take a writ /appeal
24 from an administrative adjudication to the District Court under the Nevada Administrative
25 Procedure Act, NRS Chapter 233B.

26 Of all DETR’s excuses for non-payment, it never asks the only question that matters—is
27 the applicant *actually receiving payments* under any other program. On the questionnaire, DETR
28 doesn’t ask if the applicant is receiving payment under any other program. If the

1 applicant/claimant is, the claimant may still be entitled to the \$600 FPUC in addition to the other
2 program benefits, unless the claimant is already receiving that money also. If an applicant who
3 is receiving payments already lies on the gig worker initial application form, then the claimant
4 has committed perjury and should be prosecuted. It is simply unreasonable and inconsistent with
5 the purposes of both the Social Security Act, the CARES Act and all the DOL letters of guidance,
6 to withhold half a billion dollars of payments to approximately 60,000 gig workers for the sake
7 of avoiding overpaying a few thousand dollars to handful of applicants who can be easily detected
8 by matching social security numbers at the time of payment. The duplicate payees who fail to
9 claim other payments on the initial gig worker application could and should be criminally
10 prosecuted for fraud. But, in the interest of efficiency, as well as humanity, DETR is required by
11 law to pay the money, and to recover overcharges, if any, later.

12 **VII. THIS COURT SHOULD ISSUE A WRIT OF MANDATE IMMEDIATELY**

13 Plaintiffs request immediate relief, based on *prima facie* showing that Plaintiffs-
14 Petitioners are entitled to relief sought and the exigent circumstances which prompted this request.
15 *Gilliam v. State*, 996 So. 2d 956 (Fla. Dist. Ct. App. 2008). Plaintiffs seek an order of court that
16 mandates Defendants-Respondents immediately make payment to all those gig workers who have
17 submitted an application for unemployment compensation insurance. In the alternative, the Court
18 should order Defendants-Respondents to appear in this Court at a specified time on a specified
19 date not too far in the future, and then and there, to give reasons (show cause, if any there be) why
20 this court should not issue writ of mandamus directing Defendants-Respondents to immediately
21 pay by Plaintiffs-Petitioners and all other self-employed individuals, independent contractors and
22 owners of sole proprietorships who do not pay themselves W-2 wages, who worked within the
23 State of Nevada immediately prior to Mach 15, 2020, and who have submitted a *prima facie* claim
24 for unemployment compensation on or after May 16, 2020, without any further delay all sums
25 claimed to be due.

26 A writ of mandamus is available “to compel the performance of an act which the law
27 especially enjoins as a duty resulting from an office, trust or station, or to control manifest abuse
28 of discretion.” *State of Nevada v. Dist. Ct.*, 118 Nev. 140, 146 (Nev. 2002). Section 303(a)(1)

1 of the federal Social Security Act, 42 U.S.C. § 503(a)(1) (3) clearly requires the Defendants DETR
2 to pay unemployment benefits to self-employed sole proprietors and independent contractors
3 pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) . And it is the
4 duty of each of the individual Defendants by virtue of the office, trust or station to implement a
5 method for paying those benefits “when due”.

6 “The writ will not issue, however, if a petitioner has a plain, speedy, and adequate remedy
7 in the ordinary course of the law. NRS 34.170.” *The State v. Eighth Judicial Dist. Court of*
8 *Nevada*, 267 P.3d 777, 779 (Nev. 2011). The only way “at law” to seek judicial review from a
9 denial of unemployment benefits is an action for review under NRS 233B.130. But because
10 Plaintiffs-Petitioners and all Nevada gig workers are not given a way to even appeal the
11 retroactive reconsideration of initial eligibility of benefits (i.e. a determination of initial
12 ineligibility made after a determination of initial eligibility), Plaintiffs-Petitioners and gig
13 workers cannot become a party of record in any administrative proceeding, and therefore cannot
14 institute an action “at law” under NRS 233B.130.

15 Plaintiffs-Petitioners, like so many similarly situated, have now been out of work with no
16 income for the food or the necessities of life for themselves or their dependent family members
17 since March 15, 2020. These claimants are in desperate need of financial assistance. Low paid
18 and venerable workers need immediate economic relief. Even a two-week delay in assistance has
19 the effect of propelling low paid workers into poverty—let alone the eleven+ weeks most of these
20 Nevada citizens have had to endure unnecessarily and unlawfully. The Court should issue a writ
21 of mandamus, or at least an order to show cause within a short period of time, to prevent 60,000
22 gig workers from becoming an even a greater burden on the State of Nevada. When time is
23 measured paycheck by weekly paycheck, Plaintiffs-Petitioners and the class of all gig workers
24 who were denied unemployment compensation benefits after March 15, 2020, are in imminent
25 danger of suffering irreparable harm, and have no “speedy” remedy at law available to them.

26 At the time of this first amended writ, Defendants DETR still has not paid these self-
27 employed individuals, sole proprietors, and/or independent contractors the unemployment
28 compensation that they are due. Defendants-Respondents have utterly failed to discharge the

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clear duties of their office. Therefore, this Court should issue a writ of mandate and /or an order mandating Defendants-Respondents start paying immediately Plaintiffs-Petitioners and the class of all gig workers who file or have filed an application with DETR on or after May 16, 2020 which shows prima facie initial eligibility for unemployment compensation beginning after March 15, 2020 but whose claims for unemployment compensation benefits are still unpaid. Plaintiffs-Petitioners further request pre- judgment interest at the legal rate from at least April 11, 2020 to the date of actual payment in full of all sums due, attorneys’ fees and costs.

VIII. THIS COURT SHOULD ALSO ISSUE AN ORDER OF MANDATE PURSUANT TO 42 U.S.C. 1983

“To establish a claim under § 1983, the plaintiff must prove that the conduct complained of: (1) was committed by a person acting under color of state law, and (2) deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States.” *State of Nevada v. Dist. Ct.*, 118 Nev. 140, 153 (Nev. 2002). As fully set forth above, Defendants-Respondents each had a duty to act, and failed to act, under color of state and federal law which resulted in a denial of property without due process. Under Section 2102 of the CARES Act, Defendants-Respondents had a clear duty to pay gig workers all sums due under the PUA program, *i.e.* 39 weeks of unemployment benefits on the same basis as regular W-2 workers for every week unemployed or suffering economic harm due to the COVID-19 Pandemic, retroactive to January 27, 2020 and ending on or before December 31, 2020. *See* PL 14-20 at p. 3, § 4.a.i. Pursuant to section 2104 of the CARES Act, Defendants-Respondents had a duty to pay all FPUC program money, *i.e.* an additional \$600 per week to all eligible gig workers for every week after March 15, 2020 until July 31, 2020 (for a total of 24 weekly payments.) *Id.* at § 4.a.iii. These payments were due on or about the April 11, 2020, and in the alternative as soon as a Gig Worker submitted a *prima facie* eligible application for unemployment benefits to DETR on or after May 16, 2020. DETR should be ordered to do its duty and pay these claims.

CONCLUSION

For the reasons stated herein, Plaintiffs ask this court to issue a writ of mandamus, or in the alternative, to issue an order to show cause, if any there be, why this Court should not issue

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1 of writ of mandamus and/or order of mandate ordering Defendants-Respondents to pay to each
2 and every self-employed individual, sole proprietor, and/or independent contractor who has
3 submitted to DETR a *prime facie* eligible claim for unemployment compensation after May 16,
4 2020 the applicable amount of PUA program funding, which is not more than 39 weeks of
5 unemployment benefits on the same basis as regular W-2 workers for every week unemployed or
6 suffering economic harm due to the COVID-19 Pandemic, retroactive to January 27, 2020 and
7 ending on or before December 31, 2020, **plus** an additional \$600 per week to all eligible gig
8 workers for every week after March 15, 2020 until July 31, 2020 (for a total of 24 weekly
9 payments.), plus pre judgment interest at the legal rate.

10 In addition, Plaintiffs respectfully request that the Court require Defendants-Respondents
11 to pay reasonable expenses, including attorney fees, incurred by Plaintiffs-Petitioners in bringing
12 and maintaining this legal action.

13 **AFFIRMATION**

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

18 DATED: June 22, 2020

Respectfully Submitted,
THIERMAN BUCK LLP

/s/ Mark R. Thierman

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