

# EXHIBIT 1

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(Declaration of David Schmidt)

## DECLARATION OF DAVID SCHMIDT

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2           1.     My name is David Schmidt, and I currently work in the Nevada Department  
3 of Employment, Training, and Rehabilitation as the state's Chief Economist, a role I have  
4 held since early 2018. In this role, I fill a role typically referred to among the states as the  
5 Labor Market Information Director, and am responsible for the publication,  
6 dissemination, and explanation of information concerning the state's workforce. I have  
7 been with DETR for over 15 years, with extensive experience producing reports  
8 concerning the state's unemployment insurance program. In particular, I was a subject  
9 matter expert on the unemployment insurance workload reports and worked closely with  
10 a dedicated programming expert to write specifications, test and review code, and ensure  
11 conformity of the state's unemployment insurance reports with US Department of Labor  
12 requirements. This process gave me deep exposure to the details of several aspects of the  
13 state's unemployment insurance program across the benefits, appeals, and contributions  
14 domains. I also spent 11 years creating forecasts of benefit payments and unemployment  
15 insurance tax contributions for the state's Employment Security Council, including  
16 through the entire course of the 2007-2009 recession.

17           2.     At the onset of the pandemic-driven shutdown, I was asked to serve in an  
18 emergency acting capacity as a Deputy Administrator in the Employment Security  
19 Division based on my experience across the unemployment insurance program, which I  
20 did until the current permanent Deputy Administrator was appointed on June 4.

21           3.     I offer this statement to help provide the economic and workload context  
22 necessary for judgement on what is "administratively feasible," which was the core  
23 guidance from the US Department of Labor on the timing for implementation of the  
24 CARES Act programs.

25           4.     The surge in unemployment insurance activity that Nevada has experienced  
26 since the closure of non-essential businesses in the state is not only far beyond anything  
27 the state has previously experienced, it is so far beyond any prior experience that there  
28 are no reasonable comparisons that can be made. This surge in activity happened with

1 far greater speed, and peaked at a far greater magnitude than any other time in the 82-  
2 year history of the unemployment insurance program in Nevada.

3 5. Recessions are by their nature typically a relatively fast downward cycle  
4 driven by diminished confidence, consumption, and investment. But “fast” in such terms  
5 means unfolding over several months<sup>1</sup>. This timing traditionally allows the opportunity  
6 for unemployment insurance programs to respond to increasing workload with a  
7 proportional increase in staffing. From February 1986 to February 2020, the period for  
8 which consistent weekly records are available from the US Department of Labor<sup>2</sup> the  
9 largest-ever week-to-week increase in initial claims in Nevada was 3,457 the week of  
10 January 10, 2009. 2009 would go on to be the worst year Nevada’s unemployment  
11 insurance program had ever experienced, paying out over \$1 billion in regular  
12 unemployment benefits on over 3.7 million individual weeks of benefits. Weekly  
13 (continuing) unemployment insurance claims peaked in May 2009 at 80,429 in the  
14 regular unemployment insurance program. Over 2009 and 2010, including federal benefit  
15 programs in place at the time, Nevada would pay out approximately \$3.8 billion in  
16 benefits.

17 6. In contrast, due to the policy-driven temporary closure of non-essential  
18 businesses, Nevada was hit by a flood of activity absolutely unprecedented in both speed  
19 and scope. Just 2,317 initial claims were taken the week of March 7, reflecting  
20 employment separations in the week of February 29, 2020. This rose to 6,364 the  
21 following week, temporarily breaking the January 2009 record for largest week-over-week  
22 increase in initial claims, increasing by 4,047 over the previous week. In the next  
23 following week Nevada took 92,309 claims, an increase of 85,945. This is not just record-  
24 breaking. It is not just an all-time high, it is an increase 20 times higher than the record  
25 established over the previous 34 years of published data, and is certainly the largest that  
26 has been experienced since the inception of the unemployment insurance program.

27  
28 <sup>1</sup> Since the creation of the unemployment insurance program following the Great Depression, the longest  
recession lasted 18 months, and the shortest lasted 6 months. <https://www.nber.org/cycles.html>

<sup>2</sup> <https://oui.doleta.gov/unemploy/DataDownloads.asp>, ETA 539 data

1           7.       This flood of claims descending on a staff that was staffed to handle roughly  
2 2% of that number mirrors the truly monumental challenges Nevadans were facing across  
3 the state. Prior to March 2020, the largest-even number of initial claims in a single week  
4 was 8,962. Since March 2020, Nevada has yet to get down to that previous all-time high,  
5 with initial claims dropping to 10,350 for the week of June 20, 2020. Prior to March,  
6 Nevada was averaging just under 10,000 initial claims every month. The first week of  
7 this closure DETR processed nearly double that amount every single day. DETR  
8 continues to process over 10,000 initial claims every single week.

9           8.       While the scale of the change alone was far beyond anything Nevada had  
10 ever experienced, another significant factor affecting operations and claims processing  
11 was the speed of that shift. The then-historic claim levels in January of 2009 rose to that  
12 point over the course of 4 years, from a low in 2005. The COVID-19 surge hit over the  
13 course of just 2 weeks – DETR experienced a 40x increase in workload (on a weekly basis)  
14 in a period of time 100x shorter than the run-up from 2005 to 2009 and this surge of  
15 claims continued to roll in week over week as claimants were able to work through the  
16 bottlenecks in the system.

17           9.       Initially, these claims were processed through the regular unemployment  
18 insurance program, as the CARES Act would not be passed until two weeks after the  
19 emergency declarations by the Governor and President. From the week ending March 28  
20 through the week ending June 20, DETR has processed over 3.5 million weekly claims for  
21 benefits. The closest comparable 13-week period in history ended July 11, 2009 with 1.02  
22 million claims in that 13-week period. But unlike 2009, DETR has done this with a  
23 staffing level that was based on the lowest ratio of claims to employment in state history,  
24 not one that had been able to be recruited, trained, and mobilized as the Great Recession  
25 unfolded.

26           10.       Beyond just the claim process, Nevada faced the greatest impact of any state  
27 in this shutdown. In April, Nevada's unemployment rose not only to the highest level in  
28 state history, **but it rose to the highest level any state has experienced in any**

1 month since records began in 1976. Unemployment rose from the state's all-time low  
2 of 3.6% in February 2020 to 30.1% in April 2020, the only state ever to exceed 30%. This  
3 unemployment rate exceeds estimates of the national unemployment rate in December  
4 1933, around 25%<sup>3</sup>.

5 11. In looking at total initial claims, it is important to understand additional  
6 detail about what DETR means by "initial claims." Broadly, initial claims represent an  
7 initial application for benefits, which must be followed by a series of weekly claims  
8 establishing eligibility for each individual week of benefits. There are three primary types  
9 of initial claims: new, additional, and reopened claims<sup>4</sup>. New claims occur when a  
10 claimant first establishes eligibility for a new benefit year. Reopened or Additional claims  
11 occur when a claimant has an existing benefit year, goes more than 2 weeks without filing  
12 for benefits, and wants to resume filing for benefits; the Reopen/Additional claim process  
13 re-establishes eligibility. Additional claims are recorded if the break in weekly filing was  
14 due to intervening employment, Reopened claims are recorded when the break in filing  
15 was not due to intervening employment. Because the US Department of Labor uses initial  
16 claim data as a proxy to measure job separations, Initial and Additional claims are  
17 included in the weekly ETA 539 report, but Reopened claims are not. This is important in  
18 part because initial claims over a sufficiently long period of time may not be equivalent to  
19 unique individuals. Early in the pandemic it was a fair assumption that all types of  
20 initial claims were representative of individuals newly-affected by the COVID-19  
21 closures. With each passing week, that assumption becomes weaker.

22 12. While the Unemployment Insurance Nevada ("UINV") system is relatively  
23 recent, it is built on an older architecture adapted from earlier implementations in other  
24 states, and the core code is therefore older than the launch date of the system. Extracting

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25 <sup>3</sup> When comparing to 1933, it is important to note that at the time there was no consistent survey of both  
26 employment and unemployment with the labor force concepts that are used today. Therefore, estimates of  
27 the unemployment rate in the Great Depression are only estimates and not created with directly  
comparable methodologies.

28 <sup>4</sup> A fourth type, transitional claims, represents the start of a new claim year based on a new period of  
eligibility, which follows a week in which a claimant received benefits for the very last week of an expiring  
claim year, and then established new eligibility in the following year.

1 data from the system requires a detailed knowledge of the interrelationship of both  
2 technical and program functions. Different queries run at different times and designed in  
3 different ways will yield different results. Through the course of the pandemic, we have  
4 made good-faith efforts to provide representative information about the activity that was  
5 taking place in the system, while aware of the fact that building detailed and precise  
6 reports would require months of dedicated work with programmers to sort through these  
7 details, as it did when building our federal reports prior to the launch of UINV. DETR  
8 was and is focused on finding ways to enhance automated processing of claims, maintain  
9 ongoing operations, and build out the functionality to support CARES Act programs and  
10 programming precise reporting was not and is not a top priority. In our reporting, we use  
11 a blend of both the prespecified federal reports, such as the ETA 539, which are more  
12 accurate but also more inflexible as well as a small number of queries and ad hoc reports,  
13 which provide more flexibility but less testing and evaluation. In reporting this data to  
14 the public and other people outside the Unemployment Insurance (“UI”) program, we will  
15 tend to refer to broad generalizations of overall activity, with the intent of conveying the  
16 overall status of the program, not the specifics of every possible detail and permutation.

17 13. Due to the 2007 recession, total wages in Nevada fell by a total of \$11.9  
18 billion, from their annual peak in 2008 compared to 2009 and 2010 totals. That was a  
19 loss of \$5.2 billion in 2009, \$6.7 billion in 2010, compared to the peak of \$53.8 billion  
20 annual wages in 2008<sup>5</sup>. The unemployment insurance program in those two years paid  
21 out \$3.8 billion in benefits, including all federal benefit programs<sup>6</sup>. Unemployment  
22 insurance programs typically operate at a lag to the economic shock, with more benefits  
23 paid in 2010 than in 2009, despite the formal end of the recession in June 2009. In  
24 contrast, using data on claims by industry and using the most recent average weekly  
25 wage by industry<sup>7</sup> through June 20, total wages in Nevada have fallen by \$3.28 billion.

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27 <sup>5</sup> Quarterly Census of Employment and Wages, Nevada total all industries and all ownerships.

28 <sup>6</sup> US DOL Handbook 394, <https://oui.doleta.gov/unemploy/csv/hbook.csv>

<sup>7</sup> This is an imperfect measure and likely to overstate the wage impact as the mean wage by industry is higher than the median wage due to the distribution of wages across workers within an industry.

1 In contrast to the Great Recession, when unemployment benefits replaced roughly one-  
2 third of total lost wages, due to DETR's successes in paying unemployment benefits and  
3 successful implementation of CARES Act programs, over \$3.35 billion in benefits have  
4 been paid out on the basis of claims in the regular UI program, a wage replacement rate  
5 of over 100%.

6 14. In the broader history of the UI program, Nevada historically pays  
7 approximately 90% of weekly claims, but only approximately 67% of initial claims.<sup>8</sup>  
8 Claims may be denied for a number of reasons. In 2019, there were approximately 26,000  
9 initial claims that were denied<sup>9</sup>. Of these, approximately 5,600 had insufficient wages<sup>10</sup>,  
10 the remainder were denied for reasons other than monetary eligibility. This context is  
11 important when considering what share of unpaid claims may in fact be ineligible for  
12 payment.

13 15. Claims may be improperly paid for multiple reasons, with overpayments  
14 classified into both fraudulent and nonfraudulent overpayments. From 2009 to 2010, the  
15 incidence of overpayments due to benefit fraud in the regular unemployment benefit  
16 program was 4.9%, while the incidence of nonfraud overpayments was 12.9% of all initial  
17 claims, for a total rate of 17.5%.<sup>11</sup>

18 16. Even within PUA, not every claim is eligible for benefits. One essential  
19 requirement from the CARES Act is that a claimant must be unemployed, partially  
20 unemployed, unable to work or unavailable for work due to one of the reasons listed in  
21 the CARES Act and repeated in UIPL 16-20. For example, an individual who was  
22 unemployed and ineligible for regular UI at the start of the pandemic and had no *bona*  
23 *fide* job offer to start is not unemployed due to COVID-19, and would therefore not be  
24 eligible for benefits under either program. Another example is an individual who is an  
25 independent contractor who has faced reduced income but has not been forced to suspend

26 <sup>8</sup> Calculations based on data in <https://oui.doleta.gov/unemploy/csv/ar5159.csv>

27 <sup>9</sup> This is a comparison of annual initial claims to annual "first payments" for claims.

28 <sup>10</sup> <https://oui.doleta.gov/unemploy/csv/ar218.csv>

<sup>11</sup> Calculations from <https://oui.doleta.gov/unemploy/csv/ar227.csv> and <https://oui.doleta.gov/unemploy/csv/ar5159.csv>

1 operations due to COVID-19. Because a reduction in income alone is not one of the  
2 criteria established in UIPL 16-20, this person would not qualify for PUA on that basis.

3 17. As of June 28, there were 128,217 total weeks of benefits claimed for the five  
4 week-ending dates from February 1, 2020 to February 1, 2020, weeks which all came  
5 before the first detected cases of COVID-19 in Nevada. Troublingly, the rate of claims  
6 being filed for these weeks clearly accelerated on June 22, the day that the lawsuit was  
7 filed and discussed on the Nevada Independent with the headline “DETR should pay  
8 unemployment claims now, sort out later which program money should come from.”  
9 22,797 such weeks were claimed the week prior to June 22, 41,519 such weeks were filed  
10 in the following week.

11 18. Due to the design of the program alone, there is reason to believe that PUA  
12 may be more susceptible to fraud than the regular unemployment insurance program.  
13 Unlike regular UI, PUA does not include an employer as a party to any claims, reducing a  
14 critical verification of details that establish eligibility for unemployment benefits.  
15 Because PUA does not rely upon wages in place in the UI system as the basis for payment  
16 of benefits, there is an elevated risk due to forged documents or self-attestations that do  
17 not match the underlying documents.

18 19. There is a misconception that Nevada was far behind other states in rolling  
19 out payments under CARES Act programs. Data available from the US Treasury<sup>12</sup> allows  
20 us to identify when states began drawing funds to pay PUA and PEUC benefits<sup>13</sup>.  
21 Nevada began making payments for PUA on May 27. The median state began doing so  
22 on May 8. Five other states (DE, IA, ID, NH, OK) began making payments after Nevada,  
23 with the last such state doing so on June 15. Another four states (AR, IL, KS, WI) began  
24 making PUA payments within the week before Nevada was able to do so. Nevada was  
25 not an outlier and was not the last state to pay PUA benefits by several weeks. Further,

26 <sup>12</sup> <https://treasurydirect.gov/govt/reports/tbp/account-statement/report.html>

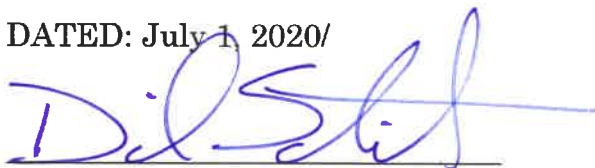
27 <sup>13</sup> Some edits to the raw data were made. Transactions of less than \$50,000 have been excluded, to filter  
28 out test / pre-launch draws, and transactions that appear to be erroneous draws from Nevada’s PUA  
account around April 20 have been removed from the data. Lacking insight into other states, it is possible  
such errors occur in other states and have not been accounted for, which would over-state how early other  
states began payments under these programs.



1 Nevada was ahead of other states in paying PEUC, and started on May 11, compared to  
2 the median payment start date of May 14. To date, four states have not made any  
3 payments in this program at all (CO, ME, NH, VA) and only 15 states were ahead of  
4 Nevada in launching PEUC benefits. The table at the end of this document labeled  
5 "Payment Start Dates" lists all the payment dates for these two programs. FPUC is  
6 drawn from a separate account at the US Treasury and does not appear in this data.

7 20. To demonstrate the impact of the publicity surrounding the "pay first, sort it  
8 out later" position, I created the chart below and attached as exhibit 4. The data for this  
9 chart comes from the PUA system, and deflects the date that a weekly claim was filed for  
10 a particular Benefit Week Ending (BWE) date. Based on the court's online filing system  
11 and the time stamp on the associated article on the Nevada Independent's website<sup>14</sup> there  
12 is a clear trend where the trend in claims for this period increases dramatically beginning  
13 on the day in which this action was filed, and continuing on through the rest of that week  
14 into the present. Typically, Sunday and Monday are the daily peak in weekly filing  
15 activity, but this chart shows a dramatic increase on Tuesday, Wednesday, and Thursday,  
16 with no program-side explanation for why such old weeks would suddenly see a rapid  
17 increase in filing.

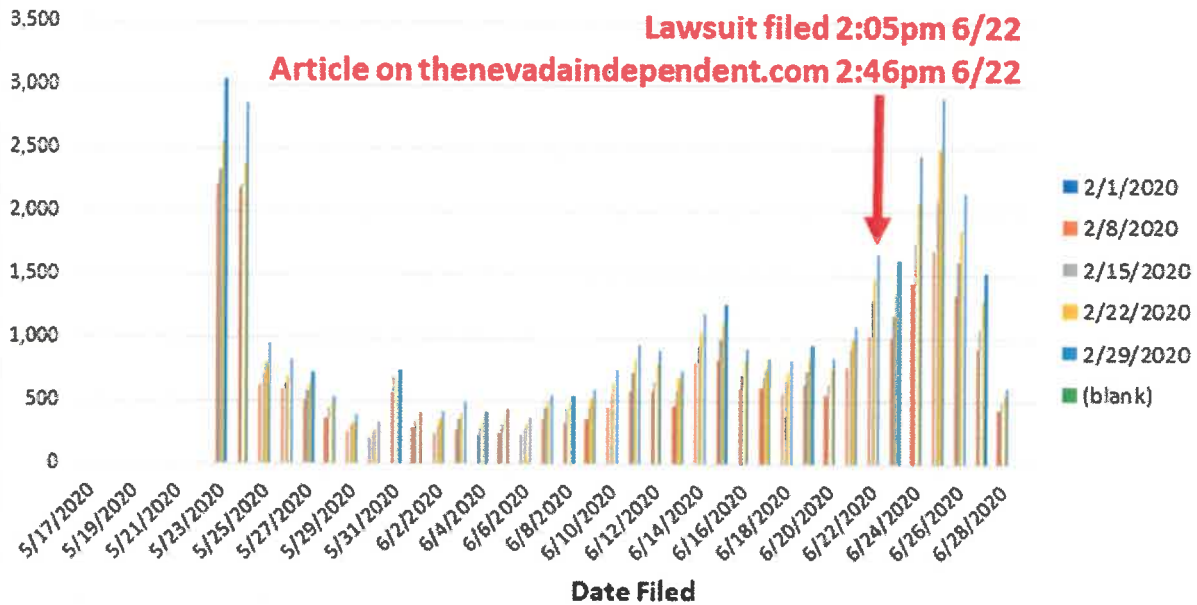
18 DATED: July 1, 2020/

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20 DAVID SCHMIDT

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28 <sup>14</sup> <https://thenevadaindependent.com/article/lawsuit-detr-should-pay-unemployment-claimants-now-sort-out-later-which-program-money-should-come-from>

**Claims for BWEs in February by Date Weekly Claim Filed**



**Payment Start Dates (Minimum \$50,000)**

**Pandemic Unemployment Assistance (PUA)**

**Pandemic Emergency Unemployment Compensation (PEUC)**

	21-72 WD FOR PANDEMIC UNEMPLOY ASSIST	21-74 WD FOR PANDEMIC EMER UC (PEUC)
AK	5/14/2020	6/23/2020
AL	4/22/2020	4/24/2020
AR	5/21/2020	5/7/2020
AZ	5/14/2020	6/18/2020
CA	4/29/2020	5/4/2020
CO	4/27/2020	No Payment
CT	5/8/2020	5/29/2020
DC	4/30/2020	5/7/2020
DE	5/29/2020	5/6/2020
FL	5/13/2020	6/12/2020
GA	4/29/2020	6/12/2020
HI	5/20/2020	5/26/2020
IA	6/9/2020	6/9/2020
ID	6/11/2020	6/11/2020
IL	5/21/2020	4/22/2020
IN	5/8/2020	5/11/2020

1	KS	5/27/2020	6/3/2020
	LA	4/13/2020	5/11/2020
2	MA	4/23/2020	5/26/2020
	MD	5/11/2020	5/11/2020
3	ME	5/7/2020	No Payment
	MI	4/23/2020	4/23/2020
4	MN	4/24/2020	4/16/2020
5	MO	4/22/2020	5/5/2020
	MS	4/24/2020	5/4/2020
6	MT	5/1/2020	5/5/2020
7	NC	4/24/2020	5/22/2020
	ND	4/30/2020	5/15/2020
8	NE	4/28/2020	6/4/2020
9	NH	6/15/2020	No Payment
	NJ	5/5/2020	4/13/2020
10	NM	4/27/2020	4/27/2020
	NV	5/27/2020	5/11/2020
11	NY	5/11/2020	5/11/2020
12	OH	5/18/2020	5/4/2020
13	OK	6/12/2020	6/12/2020
	OR	5/11/2020	5/19/2020
14	PA	5/11/2020	5/20/2020
15	PR	5/12/2020	6/10/2020
	RI	4/17/2020	5/11/2020
16	SC	4/27/2020	5/28/2020
17	SD	5/11/2020	6/8/2020
	TN	4/27/2020	5/14/2020
18	TX	4/20/2020	5/13/2020
	UT	5/14/2020	5/22/2020
19	VA	5/6/2020	No Payment
20	VT	5/18/2020	5/29/2020
	WA	4/22/2020	4/22/2020
21	WI	5/26/2020	6/26/2020
22	WV	5/13/2020	5/14/2020
	WY	5/5/2020	6/16/2020
23	<b>Median:</b>	5/8/2020	5/14/2020

Source: <https://treasurydirect.gov/govt/reports/tbp/account-statement/report.html>

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