

# **EXHIBIT 4**

*Plaintiffs Undisputed & Disputed Facts*

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## PLAINTIFFS UNDISPUTED/DISPUTED FACTS

DETR's Assertions	Plaintiffs' Response Disputed/Undisputed	Legal Authority / Reference/Claimant Examples
<p>“On March 27, 2020 the Coronavirus Aid, Relief and economic Security Act (“CARES Act”) was signed into law.” Opp. at p. 2:3-4.</p>	<p>Undisputed.</p>	
<p>“DETR then voluntarily entered into a written agreement with the [DOL] on March 28, 2020 to implement the CARES Act.” Opp. at p. 2:4-5.</p>	<p>Undisputed.</p>	
<p>“...DETR is only able to provide PUA, FPUC, and PEUC pursuant to its agreement with the [DOL].” Opp. at p. 2:7-8.</p>	<p>Undisputed as to statement, disputed as to DETR's application of the requirements.</p> <p>DETR's systematic denial of benefits as opposed to provide claimants with benefits now, or at least promptly under the definition of the applicable regulations, when these benefits are so desperately needed (and quite literally may be the difference between life and death) as opposed to several months or even years down the line when the claimants have lost the homes, families, sanity, self-worth, and have</p>	<p>20 CFR §625.14 <i>Procedural requirements</i>, sec. (g) cites to §§625.9 and 625.10.</p> <p>§625.9 states:</p> <p><b>(a) Determination of initial application.</b></p> <p><b>(1)</b> The State agency shall promptly, upon the filing of an initial application for DUA, determine whether the individual is eligible, and if the individual is found to be</p>

	<p>become an even bigger drain and detriment to the recovery of Nevada’s economy.</p> <p>DETR sends “qualifying determinations” with the statement: “You may receive multiple decision on your claim; please note that nay one denial decision supersedes all other decisions.” Then claims sits in limbo, is erased, told there is a “glitch”, told they will receive payment in one week, two weeks, 21 days ... and nothing.</p> <p>“You have [XX] days to appeal” but no appeal mechanism.</p>	<p>eligible, the weekly amount of DUA payable to the individual and the period during which DUA is payable.</p> <p><b>(d) Notices to individual.</b> The State agency shall give notice in writing to the individual, by the most expeditious method</p> <p><b>(e) Promptness.</b> Full payment of DUA when due shall be made with the greatest <u>promptness</u> that is administratively feasible.</p>
<p>The Agreement requires DETR, when administering the PUA program, to administer the program in accordance with the Disaster Unemployment Assistance (“DUA”) regulations at 20 CFR 625 including follow(sic) the provision for fraud and overpayment.” Opp. at p. 2:8-11.</p>	<p>Undisputed as to the applicability of 20 CFR §625.</p> <p>Disputed as to DETR’s compliance.</p> <p>Petitioner/Plaintiffs (hereinafter “Plaintiffs”) do not dispute that DETR has a duty to confirm eligibility prior to distributing benefits.</p> <p>Plaintiffs dispute the process DETR is employing because it amounts to a systematic campaign to deny benefits as opposed to approve them.</p> <p>As an initial matter there is no evidence whatsoever that the State will lose its benefits and/or be required to pay them back to the Fed from the State treasury based on a good faith effort to pay eligible claims, including an increase in alleged fraud that Congress</p>	<p>See Agreement entered into by DETR and DOL, at Opp. at Exhibit 3, hereinafter “Agreement” at Addendum 2 and 3, §IV – fraud and overpayment.</p> <p>The Agreement entered into with the DOL at Addendum No. 2 specifically states for FPUC and PEUC <b>only</b> that benefits, if an individual is, after an opportunity for hearing found to have “knowingly made, or caused to be made by another, a false statement or representation of a material fact’ the individual (a) shall be ineligible for FPUC compensation, (b) shall be subject to prosecution, (c) shall be required to repay the amounts but that DETR can waive repayment if (i) no fault on part of individual (i.e., identity theft) and (ii) repayment would be contrary to equity and good conscience (i.e., a global pandemic).</p>

was aware of when it passed the Act. *See* testimony to the House Oversight Committee acknowledging:

“The enormous expansion of UI [unemployment insurance] benefits by more than \$260 billion dollars under the CARES Act also substantially increases fraud risk, with criminals easily exploiting system vulnerabilities,” Dahl told a House Oversight subcommittee. “This Department has estimated that about 10% of the UI payments are improper under the best of times. We are in the worst of times.”

<https://oversight.house.gov/legislation/briefings/subcommittee-on-government-operations-briefing-with-the-inspector-general-for>

DETR and the State will not be responsible for repayment/overpayment the individual claimants bear that responsibility. The Agreement DETR entered into with the DOL specifically states:

Consistent with the requirements of the provisions identified in paragraph XIV and the related addenda, [DETR] will take such action *as reasonably may be necessary to recover* for the account of the United States all benefit amounts erroneously paid and restore any lost or misapplied funds paid to the state for benefits of Administration of this Agreement.

*See* Agreement at Exhibit 3 to Opp. at p. 2, § VIII.

The Program provides that in the event of fraud and overpayment, the requirements of 20 C.F.R. 625.14

Additionally, the State has 3 years to attempt recovery.

***There is no such requirements for PUA.***

*See also*, 20 C.F.R. 625.14 provides for repayment of the total sum the individual was not entitled to.

*Recovered overpayments*, sec. (d) specifically states, “Overpayments recovered in any manner shall be credited or returned ... to the appropriate account of the United States.”

*Final decision*, sec. (f) specifically provides that “Recovery of an overpayment of [the benefit] shall not be enforced by the State agency until the determination establishing the overpayment has become final, or appeal is taken from the determination, until the decision after opportunity for a fair hearing has become final.

*See also*, U.S. Department of Labor (“DOL”) Unemployment Insurance Program Letter (“UIPL”) 16-20, dated 5/5/20, Attachment I, p. I-8, ¶5:

Termination of PUA Agreement: Either party, upon thirty days written notice, may terminate the PUA Agreement. The Department reserves the right to terminate this Agreement if it determines that the State does not have an adequate system for administering such assistance, including because the State is not adequately ensuring that individuals receiving benefits under the PUA Program are

	<p>shall apply with respect to PUA. <i>See</i> UIPL, 16-20 dated 4/5/20 at Attachment 1, p. I-12 § (f).</p>	<p>eligible for such benefits. In the case of termination, the PUA period will end 30 days after the date one of the parties to the agreement notifies the other party of its election to terminate the PUA agreement. No PUA payments may be made with respect to weeks which begin after the date the termination of the agreement is effective. However, PUA is payable for weeks of unemployment ending on or before such termination date.</p>
<p>“DETR’s contract, authorizing the administration of PUA, FPUC and PEUC specifically requires it to follow fraud and overpayment regulations.” Opp. at p. 2:11-13.</p>	<p>Undisputed.</p> <p>Plaintiffs’ position is that DETR fails to see the forest through the trees and has adopted the regrettable view that it must prevent people from receiving benefits, as opposed to helping them receive benefits.</p>	
<p>“Additionally, DOL can terminate the Agreement when it determines that “the State did not comply will all requirements of such provision or provisions of the Act identified in paragraph XIV, or any applicable guidance or operating</p>	<p>Undisputed in part/Disputed in part.</p> <p>Undisputed as to the applicability of the Agreement and paragraph XIV.</p> <p>Disputed as to DETR’s performance of the terms of the Agreement.</p> <p>DETR cannot pick and choose which terms of the Agreement it elects to follow when such actions result in a systematic effort to prevent Nevadans from obtaining benefits as opposed to providing processes under which eligible Nevadans can receive benefits.</p>	<p><i>See</i> UIPL 16-20 dated 4/5/20 at Attachment I, pp. I-11 – I-12, no. 13 (a) through (h) in pertinent parts:</p> <p>Provide Notices to Individuals such that:</p> <p>(a) Determination of Initial Claim. When an individual files an initial claim for PUA the state agency must determine <b><i>promptly</i></b> the eligibility of the individual and, if eligible, the weekly maximum amounts of PUA payable. <i>If denied PUA, the individual must be issues an appealable determination.</i></p> <p>(b) Determination of Weekly Claims. ... if entitled to a payment of PUA ... issue a prompt payment.”</p>

instructions issued by the [DOL]. DETR's agreement with DOL is terminable by DOL upon a DOL determination that DETR has not complied with all requirements of the CARES Act and paragraph XIV of the Agreement. Opp. at p. 2:14-20.

***DETR has not, as of yet, even provided for an appeal process some 58 days after to go live date and 107 days after DETR signed the Agreement.***

DETR has failed to follow the pertinent regulations on providing claimants Notice, which prevents claimants from knowing what if any actions they can take to correct claims, what if any program they are eligible for, how to correct errors, let alone be paid ***promptly***.

DETR's own records reflect that as of June 29, 2020 some 247,030 total persons have applied for benefits, but only 107,923 have been paid. Thus, 139,107 Nevadans who have applied for benefits have yet to be paid for various reasons, equal 57+% percent unpaid. See PUA Claims and Payments chart discussed in hearing dated 7/8: Claims paid 107,923 versus total claims of 247,030 as of June 29 = 43.68% paid.

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

This is especially disturbing because the CARES Act provides for Emergency State Staffing Flexibility at §2016, which provides "state agencies with emergency flexibility for personnel standards on a merit basis limited to engaging of temporary staff, rehiring or retirees, or former employees on a non-competitive

(d) Notice to Individual. The state agency must give ***written notice*** to the individual of any determination of redetermination of an initial claim and all weekly claims. Each notice must include such information regarding rights to reconsideration or appeal, or both, using the same process that is used for redeterminations of regular compensation.

(e) **Promptness.** *Full payment of PUA when due must be made as soon as administratively feasible.*

(g) Promptness of Appeals Decisions.

**Promptness** is defined throughout 20 CFR §650. Specifically:

**§ 650.1 Nature and purpose of the standard. (a)** This standard is responsive to the overriding concern of the *U.S. Supreme Court in California Department of Human Resources v. Java, 402 U.S. 121 (1971)*, and that of other courts with delay in payment of unemployment compensation to eligible individuals, including delays caused specifically by the adjudication process. The standard seeks to assure that all administrative appeals affecting benefit rights are heard and decided with the ***greatest promptness that is administratively feasible.*** (emphasis added).

**§ 650.4 Review of State law and criteria for review of State compliance.**

**(a)** A State law will satisfy the requirements of § 650.3(a) if it contains a provision requiring, or is construed to require, hearing and decision for claimants who are parties to an administrative appeal affecting

basis, and other temporary actions to *quickly process applications and claims.*” (emphasis supplied.)

Even more disturbing is that the CARES Act provides that related to the PUA and FPUC benefits “[i]mplementation costs and ongoing administrative costs are 100% federally funded.” *See* UIPL 16-20 dated 4/5/20 at p. 5, and §II.A.vii – Funding.

Furthermore, \$10,684,454 in funds have been earmarked for Nevada in the Emergency Grants Program to be used for “taking such steps as may be necessary to ensure adequate resources in periods of high demand. *See* UIPL 13-20 dated 3/22/20 at p. 3 sec. 4.

Moreover, in order for Nevada to receive its portion of the Emergency Administrative Grants, DETR must meet three criteria including (i) providing notification, (ii) assure applications for benefits and assistance with the application process are accessible in at least two of the following mediums in an effort to ensure equal access: in person, phone, or online, with properly trained staff and (iii) if DETR cannot process an application it must “provide[] information to the applicant on why and what steps he applicant can take to ensure successful processing of the application.

“States that do not immediately process an application, which is often due to an identity verification process, must notify the applicant that the application for benefits has been received, identify the reason why the claim was not processed, and provide information *on what steps*

benefit rights with the *greatest promptness that is administratively feasible.*

(b) A State will be deemed to comply substantially with the State law requirements set forth in § 650.3(a) with respect to first level appeals, *the State has issued at least 60 percent of all first level benefit appeal decisions within 30 days* of the date of appeal, *and at least 80 percent of all first level benefit appeal decisions within 45 days.* These computations will be derived from the State’s regular reports required pursuant to the Unemployment Compensation Manual, part III, sections 4400-4450.

	<p><i>the applicant can take to ensure the successful processing of the application.</i>  <i>See UIPL 13-20, dated 3/22/20 at pp. 4-5 §§ (ii) and (iii).</i></p>	
<p>Paragraph XIV of the Agreement requires DETR to follow addendum 1 regarding PUA and provisions for fraud and overpayment.”  Opp. at p. 2:14-20.</p>	<p>Undisputed in part/Disputed in part.</p> <p>Undisputed as to the applicability of the Agreement and paragraph XIV.</p> <p>Disputed as to DETR’s performance of the terms of the Agreement.</p>	<p>DETR and the State will not be responsible for repayment/overpayment; the individual claimants bear that responsibility. The Agreement DETR entered into with the DOL specifically states:</p> <p>Consistent with the requirements of the provisions identified in paragraph XIV and the related addenda, [DETR] will take such action <i>as reasonably may be necessary to recover</i> for the account of the United States all benefit amounts erroneously paid and restore any lost or misapplied funds paid to the state for benefits of Administration of this Agreement. <i>See Agreement at Exhibit 3 to Opp. at p. 2, § VIII (emphasis supplied).</i></p> <p>The Program provides that in the event of fraud and overpayment, the requirements of 20 C.F.R. 625.14 shall apply with respect to PUA. <i>See UIPL, 16-20 dated 4/5/20 at Attachment 1, p. I-12 § (f).</i></p> <p>20 C.F.R. 625.14 provides for repayment of the total sum the individual was not entitled to.</p> <p><i>Recovered overpayments, sec. (d) specifically states, ‘Overpayments recovered in any manner shall be credited or returned ... to the appropriate account of the United States.’</i></p>

See Agreement entered into by DETR and DOL, at Opp. at Exhibit 3, hereinafter “Agreement” at Addendum 2 and 3, §IV – fraud and overpayment.

The Agreement entered into with the DOL at Addendum No. 2 specifically states for FPUC and PEUC *only* that benefits, if an individual is, after an opportunity for hearing found to have “knowingly made, or caused to be made by another, a false statement or representation of a material fact’ the individual (a) shall be ineligible for FPUC compensation, (b) shall be subject to prosecution, (c) shall be required to repay the amounts but that DETR can waive repayment if (i) no fault on part of individual (i.e., identity theft) and (ii) repayment would be contrary to equity and good conscience (i.e., a global pandemic). Additionally, the State has 3 years to attempt recovery.

***There are no such requirements for PUA.*** See Agreement at Addendum No. 1 at p. 5.

See also, UIPL 15-20 dated 4/4/20, Change 1 at p. I-3 for FPUC.

Q#7: May a state apply its own state law waiver provisions to FPUC overpayments?

A: Section 2014(f)(2) of CARES permits the state to waive the repayment if the state determines that the payment of FPUC was without fault on the part of the individual and such repayment would be contrary to equity and good conscience. (emphasis in original).

<p>The CARES Act authorized three separate and distinct new types of compensation ...” Opp. at pp. 2:23-24 and 3:1-8.</p>	<p>Undisputed as to weeks of eligibility and weekly benefit amount (“WBA”).</p>	
<p>“Petitioner’s claim rests largely on the mistaken contention that ineligibility for traditional unemployment insurances guarantees eligibility for PUA compensation.” Opp. at p. 3:8-10.</p>	<p>Disputed.</p> <p>Again, DETR’s takes a restrictive position when it should be taking an expansive position in order to effectuate the purpose of the ACT. Specifically, the CARES Act is remedial in purpose and thus an expansive reading must be applied:</p> <p>“The CARES ACT was designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways. The CARES Act includes a provision of temporary benefits to individual who have exhausted their entitlement to regular unemployment compensation (UC) as well as coverage for individual who are not eligible for regular UC (such as individuals who are self-employed or who have limited recent work history).”</p> <p><i>See e.g.</i> UIPL 16-20, dated 4/5/20 at pp.1-2, sec (b); p. 4(b) “Like DUA, the PUA program is an emergency program activated in response to a crisis, and designed to provide benefits to certain individuals who are ineligible for or who have exhausted entitlement to regular unemployment compensation or extended benefits”</p>	<p><i>See</i> UIPL 14-20 dated, 4/2/20, Attachment I at p. I-1 – I-2.</p> <p><u>PUA</u>: Provides for benefits to individual who are self-employed, seeking part-time employment, or otherwise would not qualify for regular unemployment compensation (UC) or extended benefits (EB) under state or federal law or PEUC under section 2107. Coverage includes individuals who have exhausted all rights to regular UC or EB under state or federal law or PEUC.</p> <p><u>FPUC</u>: Provides individuals who are collecting regular UC, PEUC, PUA, EB, STC, TRA, DUA, and SEA with an additional \$600 per week.</p> <p><u>PEUC</u>: Provides for individuals who have exhausted regular UC, have no rights to regular UC, and are able to work, available to work, and actively seeking work. States must offer flexibility in meeting the “actively seeking work” requirement if individuals are unable to search for work because of COVID-1, including because of illness, quarantine, or movement restriction.</p> <p><i>See also</i>, UIPL 14-20 dated 4/2/20 at pp. 6-7 §(b) for description on coordination of programs and the order of payment determinations; UIPL dated 4/27/20 at</p>

	<p>The only actual determining characteristic is if the claimant is a “covered individual” and self-certifies that he/she is unemployed, partially unemployed, or unavailable or unable to work because of COVID-19 related reasons listed in §2102, i.e.</p> <ul style="list-style-type: none"> <li>• Regular UI = paid UI and FPUC</li> <li>• Exhausted UI, not on job long enough, bona fide offer – paid PEUC and FPUC</li> <li>• 1099 with self-certification = paid PUA and FPUC</li> </ul>	<p>Attachment I, p. I-1: “Unlike DUA, an individual filing for PUA does not need to provide proof of employment or self-employment to qualify, nor does PUA take into account the individual’s principal source of income as part of the self-certification process.”</p>
<p>“However, many persons are not eligible for traditional unemployment insurance and PUA.” Opp. at p. 3:11, citing Schmidt Declaration at ¶ 16:</p> <p>(1) “For example, an individual who was unemployed and ineligible for regular UI at the start of the pandemic and had no <i>bona fide</i> job offer to start is not unemployed due to</p>	<p>Disputed as to the restrictive reading of the CARES Act.</p> <p>The CARES Act is an expansive program that provides benefits for “covered individuals” for, as DETR admits in its Opposition “three separate and distinct new types of compensation”</p> <p>As to (1) DETR, though Mr. Schmidt’s declaration seems to ignore one of the three programs when stating “both” programs. If an individual is not entitled to regular UI, then he or she may be entitled to PUA or PEUC. (And if that individual is entitled to UI, PUA, or PEUC he or she is entitled to FPUC.) PEUC provides for 13 weeks of extended regular unemployment if regular benefits have expired. Thus, someone who has been out of work, prior to and since the pandemic began, and has exhausted regular UI would be eligible for PEUC.</p>	<p>See UIPL 10-20 dated March 12, 2020 at p. 2 4.(a) – Determining whether an individual is “unemployed” – “The Department has a longstanding legal interpretation of federal UC law the “Unemployment” includes a reduction of both work and earnings.</p> <p>See also UIPL 16-20 dated 4/5/20 @ Attachment I, p. I-3. §C.1 – Eligibility.</p> <p>“Covered individual” are those individuals not qualified for regular unemployment compensation [i.e. UI], extended benefits under state or Federal law, or pandemic emergence unemployment compensation (PEUC), including those who have exhausted all rights to such benefits. “Covered individuals also includes self-employed, individuals seeking part-time employment, individuals lacking sufficient work history, or those otherwise not qualified for regular UC, extended benefits under state or federal law, or PEUC. ...</p>

COVID-19 and would therefore not be eligible for benefits under either program.”

(2) “Another example is an individual who is an independent contractor who has faced a reduce income but has not been force to suspend operations due to COVID-19. Because a reduction in income alone is not one of the criteria established in UIPL 16-20, this person would not qualify for PUA on that basis.”

As to (2) DETR is incorrect; a reduction in income alone would be sufficient to qualify an individual for PUA. The dispositive question is, is he/she is employed or self-employed less than full time, which all putative class members arguably are. Thus, because there is a reduction due to COVID-19, no matter how much they made before, even if greater than the WBA, he/she would still be entitled to 50% of the average weekly payment in Nevada. And, because it is arguably more than \$1, he/she is also eligible for the \$600 in FPUC. *See* DOL UIPL 16-20 dated 4/27/20 @ p. I-14.

For purposes of PUA coverage, and individual “lacking sufficient work history” means an individual ... (3) who became unemployed or ***partially unemployed*** because of one of the COVID-19 related reasons identified under Section 2102. ...

“Self-employed individuals” as defined in 20 C.F.R. 625.2(n) means individuals whose primary reliance for income is on the performance of services in the individual’s own business, or on the individuals’ own farm. These individual include independent contractors, gig economy workers, and workers for certain religious entities.”

*See e.g.*, (k) – “ ... under the additional eligibility criterion established by the Secretary here, the drive may still qualify for PUA benefits is he or she has been forced to suspend operations as a direct result of COVID-19 public health emergency, such as if an emergency state or municipal order restricting movement makes continued operations ***unsustainable***.

(f) The individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, ... [such as] an individual whose immune system is compromised ... in order to avoid the greater-than-average health risks ...

(d) and (c) The individual has primary caregiving responsibilities for children or other members of the household ...

(b) and (a) individual or family member diagnosed with COVID-19

All that is required is a “self-certification” that the individual falls within one of these categories to be eligible for PUA.

*See also* DOL UIPL 16-20 dated 4/27/20 @ pp. I-4 and I-11:

Q#15: Under DUA, if an individual is employed or self-employed less than full-time, 20 C.F.R. sec. 625.6(b)(1) requires calculating the WBA (weekly benefit amount) as a percentage of the minimum WBA. Does this same calculation apply to PUA?

A: No. Section 2102(d)(1)(A)(i) of the CARES Act provides that the PUA WBA may not be less than the minimum weekly benefit amount described in 20 C.F.R. sec 625.6. For purposes of PUA, the minimum weekly benefit amount is 50 percent of the average weekly payment of regular compensation in the state, as provided quarterly by the DOL.

Q#42: UIPL No 16-20 provides an examples for a ridesharing service who is forced to significantly limits his or her performance of customary work activities because of COVID-19 ... may be eligible for PUA under Section 2102(a)(3)(A)... of the CARES Act. Does this apply to other types of independent contractors?

A: Yes. An independent contractor may be eligible for PUA if he or she is unemployed, ***partially unemployed*** or unable or unavailable to work because of one of the COVID-19 related reasons listed in section

		<p>2102(a)(3)(A)... of the CARES Act. This includes an independent contractor who experiences a <i>significant diminution of work</i> as a result of COVID-19.” (emphasis added.)</p> <p><i>See also</i>, UIPL 15-20 dated 4/4/20, Change 1 at p. I-1.</p> <p>Q#4: Is an individual who is working part-time, or has gone back to work part-time and is collecting partial UC benefits for the week eligible for FPUC&gt;</p> <p>A: Yes.</p> <p>Q#5; Does the additional FPUC payment affect how much a person could earn while working part-time before a deduction is made from the weekly underlying benefit payment?</p> <p>A: No. All earning are deducted from the underlying UC benefit payment. If an individual’s earning reduce the week’s underlying benefit payment to zero, the individual would not be eligible for the FPUC for that week.</p>
“PEUC” Opp. at p. 3;15-17.	Undisputed.	
“FPUC” Opp. at p. 3:18-22.	Undisputed.	<p><i>See</i> UIPL 15-20 dated 4/4/20 at Attachment I, p. I-5, sec. 4.a.ii, “Determining entitlement to FPUC”</p> <p>“If the individual is eligible to receive at least one dollar (41) of underlying benefits (including regular UC, PEUC, PUA, EB, STC, TRA, DUA and SEA) for the claimed week, the claimant will receive the full \$600 FPUC.</p>
“... Petitioners allege that payments to gig workers were due	Disputed – actually according to the regulations and Nevada’s Agreement to waive the first week of waiting time ( <i>see</i> Agreement at p. 3) the first payments should have begun on April 4.	<p><i>See</i> UIPL 16-20, dated 4/5/30 at p. 4(c) – Important dates:</p> <p>PUA Is payable for weeks of unemployment, <i>partial</i> unemployment, or inability to work caused by COVID-19 related reasons listed on or after <b>January 27, 2020</b>.</p>

<p>on April 11, 2020.” Opp. at p. 4:3-4.</p>	<p>Nevada entered into the Agreement on March 28, 2020, a Saturday, thus payments should have commenced on the following Saturday, April 4, 2020.</p> <p>For FPUC when employment ends on Sunday, the first week for which FPUC may be paid is the week ending April 5, 2020, provided the Agreement was in place no later than March 29, 2020. <i>See</i> UIPL 15-20, dated 4/4/20 at p. 3§(b).</p> <p>Furthermore, PUA claims can be backdated to the first week during the Pandemic Assistance Period (“PAP”) [January 27, 2020] in which the individual meets the definition of a covered individual.” <i>See</i> UIPL 16-20 dated 4/5/20 at Attachment I, p. I-10-11, (8); <i>see also</i>, UIPL 16-20 dated 4/27/20 at Attachment I, p. I-2, Q4: “An individual does not need to demonstrate good cause to backdate a PUA claim. Rather, the claims <b>must</b> be backdated to the first week during the PAP that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102[] of the CARES Act.” (emphasis in original).</p>	<p>For those states where the week of unemployment ends on a Saturday the first week of PUA may be paid is the week ending February 8, 2020. In states where the week of unemployment ends on a Sunday, the first week for PUA may be paid is the week ending February 9, 2020.</p> <p>The Pandemic Assistance Period (“PAP”) is the period beginning January 27, 2020. <i>See</i> UIPL 16-20 dated 4/27/20, Attachment II at p. II-1.</p> <p>UIPL 16-20 dated 4/5/20 @ Attachment I, p. I-3. §C.1 – Eligibility.</p> <p>“Covered individual” are those individuals not qualified for regular unemployment compensation [i.e. UI], extended benefits under state or Federal law, or pandemic emergence unemployment compensation (PEUC), including those who have exhausted all rights to such benefits. “Covered individuals also includes self-employed, individuals seeking part-time employment, individuals lacking sufficient work history, or those otherwise not qualified for regular UC, extended benefits under state or federal law, or PEUC. ...</p>
<p>“ ... but DETR has consistently advised the public and the Nevada Legislature that PUA applications would not be able to be submitted until mid-May at</p>	<p>Undisputed as to the statement but disputed as to relevancy and DETR’s assertion that it has met the requirements of the Agreement and the applicable regulations.</p> <p>Nonetheless, DETR’s statements to the “public and the Nevada Legislature” do not shield DETR from its failure to pay benefits “when due” pursuant to <i>Java</i>, under the Agreement DETR signed, and pursuant to</p>	

<p>the earliest, after implementation of a new computer system to process this new program.” Opp. at p. 4:8-11</p>	<p>the CFR requiring prompt payment. DETR’s failure to properly implement a system to process claims going on between at least 58 days or arguably 107 days is not prompt and in dereliction of DETR’s duty to pay when due and under the Agreement. Indeed, first day filers (claims on May 16, 2020) have been waiting 58 days, which is between 28 days (four weeks) and 13 days outside the definition of promptness under the regulations.</p>	
<p>“Petitioners also speculate that the PUA program has relatively low risk of fraud. DETR disagrees.” Opp. at p. 5:13-15.</p>	<p>Disputed.</p> <p>This alleged but unproven fraud simply does not justify DETR’s non-payment of one billion dollars to 55% of all PUA applications.</p> <p>In its papers, DETR says it estimates there may be 2.4 million of fraud for every week paid, or 2.4% of all payments. Why should 139,000 people suffer for the unproven wrong done potentially by 3336 of them.</p> <p>While DETR says in its declaration that based upon a 2010 US Census report, there are only 82,000 gig workers in Nevada, compared to the 1,466,063 weekly claims (Schmidt Chart as of 6/29/20) for PUA relief. As an initial matter, PUA covers more than just gig workers, as it includes anyone who are self-employed, seeking part-time employment, or otherwise would not qualify for regular unemployment compensation. See UIPL 14-20, dated 4/2/20 at Attachment I.</p> <p>Moreover, DETR fails to mention that many of the duplicate applications were caused by DETR itself</p>	<p>As both a state and federal constitutional matter, due process requires that the prosecution prove every element of the charged crimes beyond a reasonable doubt before DETR can punish anyone for such fraud. See <i>Emerson v. State</i>, No. 70606 (Nev. Jan. 18, 2018), <i>Crawford v. State</i>, 121 Nev. 744 (Nev. 2005); <i>Babb v. Lozowsky</i>, 719 F.3d 1019 (9th Cir. 2013) <i>Polk v. Sandoval</i>, 503 F.3d 903 (9th Cir. 2007).</p>

when DETR told everyone with unpaid pending claims to reapply, and wiped out their weekly reports, but since those repeat applicants used the same social security number, these duplications are both easily eliminated, and are not evidence of fraud at all. Fraud requires intent, but an honest mistake, especially a mistake DETR induced any re-applying applicant to make, lacks any such *mens rea*, and supplying the same social security number on two applications is prima facie proof of lack of intent to deceive DETR at all.

In addition, the extent of all this alleged but unproven fraud simply does not justify DETR's non-payment of one billion dollars, to 55% of all PUA applications.

On June 1, 2020, .DOL Inspector General Scott S. Dahl told the Subcommittee on Government Operations of the House Committee on Oversight and reform that "The Department has estimated that about 10% of UI payments are improper under the best of times, and we are in the worst of times. That means at least 26 billion dollars will be wasted and a large portion of that will be pocketed by fraudsters instead of going to legitimate workers." Scott S. Dahl – Opening statement of June 1, 2020 House of Representatives Committee on Oversight and Reform Subcommittee on Government Operations (available on-line).

No one is condoning fraud. But contrasting this statement of a 10% fraud rate built into any system of unemployment benefits, with DETR's report of 37

	<p>recent cases of identity fraud in Washoe County, which is only seven hundredths of one per cent of the general population for that county, Plaintiffs find that the sky really isn't falling at the rate DETR claims. The bottom line on the fraud claim is simply that it is illogical to apply statistical comparisons to everyone in a group when actual data per claimant will reveal with precision who is and who is not committing fraud.</p>	
<p>“For instance, despite the first COVID-19 case in Nevada being reported on March 5, 2020, DETR has received approximately thirty-four (34,000) PUA claims for the preceding week of February 29, 2020.”</p>	<p>Undisputed as to the statement, disputed as to the allegation of fraud.</p> <p>This is a <i>global pandemic and global health crisis</i>. DETR admits on one hand that Nevada, in particular the fact that many jobs in Nevada are connected to tourism, has been harder than other states. Yet, DETR asks this Court to operate in a vacuum of the “first COVID-19 case ... reported on March 5, 2020.” COVID-19 didn't suddenly appear with the first diagnosis, it has been effecting the American economy and all American citizens health as early as the end of 2019. Indeed, the PAP period began on January 27, 2020. And, in approving the CARES Act Congress acknowledged these facts, allowing for backdating of claims if the individual in question meets any of the criteria set forth under Section 2102 (a)(3)(A) as a covered individual.</p> <p>This is not an unreasonable number. Instead of relying on an outdated and biased 2010 US Census report, DETR should at least use a current US Census report which says that in 2018, there were more than 245,000</p>	<p>The Pandemic Assistance Period (“PAP”) is the period beginning January 27, 2020. <i>See</i> UIPL 16-20 dated 4/27/20, Attachment II at p. II-1.</p> <p><i>See</i> UIPL 16-20, dated 4/5/20, Attachment I, pp. 3-4 at § C.1 Eligibility.</p> <p>“Covered individual” are those individuals not qualified for regular unemployment compensation [i.e. UI], extended benefits under state or Federal law, or pandemic emergence unemployment compensation (PEUC), including those who have exhausted all rights to such benefits. “Covered individuals also includes self-employed, individuals seeking part-time employment, individuals lacking sufficient work history, or those otherwise not qualified for regular UC, extended benefits under state or federal law, or PEUC. ...</p> <p>For purposes of PUA coverage, and individual “lacking sufficient work history” means an individual ... (3) who became unemployed or <i>partially unemployed</i> because of one of the COVID-19 related reasons identified under Section 2102. ...</p>

“Nonemployer Establishments” i.e. gig workers in Nevada. <https://www.census.gov/topics/business-economy.html>.

The U.S. Census Bureau, “Nonemployer Statistics” (Updated annually) defines the term “Nonemployer establishments” to mean “A nonemployer business is one that has no paid employees, has annual business receipts of \$1,000 or more (\$1 or more in the construction industries), and is subject to federal income taxes. Nonemployer businesses are generally small, such as real estate agents and independent contractors. Nonemployers constitute nearly three-quarters of all businesses, but they contribute less than four percent of overall sales and receipts data. Nonemployers are not included in the counts of establishments from the Economic Census or County Business Patterns. “ The US Census continues to explain that “Generally, an establishment is a single physical location at which business is conducted or services or industrial operations are performed. However, for nonemployers, each distinct business income tax return filed by a nonemployer business is counted as an establishment. Nonemployer businesses may operate from a home address or a separate physical location. A business is assigned to a county location based on the business owner's mailing address, which may not be the same as the physical location of the business.”

<https://www.census.gov/quickfacts/fact/note/US/NES010218> last visited July 12, 2020.

“Self-employed individuals” as defined in 20 C.F.R. 625.2(n) means individuals whose primary reliance for income is on the performance of services in the individual’s own business, or on the individuals’ own farm. These individual include independent contractors, gig economy workers, and workers for certain religious entities.”

*See e.g.*, (k) – “ ... under the additional eligibility criterion established by the Secretary here, the drive may still qualify for PUA benefits is he or she has been forced to suspend operations as a direct result of COVID-19 public health emergency, such as if an emergency state or municipal order restricting movement makes continued operations ***unsustainable***.

(f) The individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, ... [such as] an individual whose immune system is compromised ... in order to avoid the greater-than-average health risks ...

(d) and (c) The individual has primary caregiving responsibilities for children or other members of the household ...

(b) and (a) individual or family member diagnosed with COVID-19

All that is required is a “self-certification” that the individual falls within one of these categories to be eligible for PUA.

<p>“Mere publicity surrounding this filing resulted in significant increased submittals for the program.” Opp. at p. 6:13-14</p>	<p>Undisputed.</p>				
<p>“Elimination of eligibility review by this court <i>could</i> be a significant magnet for improper filings.” Opp. at p. 6:14-15 (emphasis added).</p>	<p>Disputed in part. Plaintiffs are not asking this Court to eliminate eligibility review. Plaintiff is requesting the following:</p> <p>(1) Claimants who are have been given an notice of “apparent UI wages” be paid immediately and DETR review claims for adjudication at a later date applicants be paid immediately and DETR review claims for adjudication at a later date, with claimant subject to repayment/overpayment guidelines set forth by the Agreement.. (This group includes 45,328 individuals according to DETR’s Schmidt Chart.)</p> <p>(2) Claimants who are have been given an notice of “eligibility”, have apparent “dual eligibility” or “no pending issues for review” and are PUA or PEUC applicants be paid immediately and DETR review claims for adjudication at a later date, with claimant subject to repayment/overpayment guidelines set forth by the Agreement. (This group number is not determined in DETR’s references.)</p> <p>(3) All members of (1) and (2) be paid immediately their FPUC benefit because they are entitled to at least \$1 of UI, PUA, PEUC, or other underlying benefit and</p>				
		<p><b>Claim Status</b></p>	<p><b>PUA Initial Claims</b></p>	<p><b>PUA Weekly Claims Filed</b></p>	<p><b>PUA\$ Paid, Excluding FPUC</b></p>
		<p>A: Claim Paid</p>	<p>107,923</p>	<p>1,466,063</p>	<p>\$343,044,663</p>
		<p>B: Failed Identity Check</p>	<p>17,179</p>	<p>128,132</p>	<p>NA</p>
		<p>C: Apparent UI Wages</p>	<p>45,328</p>	<p>485,176</p>	<p>NA</p>
		<p>D: No Weeks Filed</p>	<p>14,548</p>		<p>NA</p>
		<p>E: Out of Country</p>	<p>2,830</p>	<p>35,139</p>	<p>NA</p>
		<p>F: IP Issue</p>	<p>20,786</p>	<p>258,718</p>	<p>NA</p>
		<p>G: Recent ? Activity Stop</p>	<p>23,912</p>	<p>298,605</p>	<p>NA</p>
		<p>H: Other Outstanding Issue</p>	<p>5,511</p>	<p>62,783</p>	<p>NA</p>
		<p>I: No Detail</p>	<p>9,013</p>	<p>94,711</p>	<p>NA</p>

DETR review claims for adjudication at a later date, with claimant subject to repayment/overpayment guidelines set forth by the Agreement. (This group number is not determined in DETR's references.)

(4) Claimants who received an eligibility determination but have since been denied, or payments having stopped, have payments resume under the terms determined initially review claims for adjudication at a later date, with claimant subject to repayment/overpayment guidelines set forth by the Agreement. (This group number is not determined in DETR's references.)

(5) As to all those class members for whom DETR has determined were not eligible for PUA or any other benefits on the grounds that they were not unemployed or there was not a reduction in employment caused by the COVID-19 pandemic, DETR shall issue a notice of consolidated group hearing pursuant to NRS 612.505 for an initial determination by an impartial administrative law judge, or a judicial hearing officer, or if the parties so agree, a retired judge acting as a private hearing officer to determine eligibility. (This group number is not determined in DETR's references.)

(6) All claimants who are eligible for backdating to the PAP be paid immediately from the first week during the Pandemic Assistance Period that the individual self-attested that the claimant was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason as

DETR and the State will not be responsible for repayment/overpayment the individual claimants bear that responsibility. The Agreement DETR entered into with the DOL specifically states:

Consistent with the requirements of the provisions identified in paragraph XIV and the related addenda, [DETR] will take such action *as reasonably may be necessary to recover* for the account of the United States all benefit amounts erroneously paid and restore any lost or misapplied funds paid to the state for benefits of Administration of this Agreement. See Agreement at Exhibit 3 to Opp. at p. 2, § VIII. NRS 612.505 states: Consolidated appeals. When the same or substantially similar evidence is material to the matter in issue with respect to more than one individual, the same time and place for considering all such appeals may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, provided no party is prejudiced thereby.

The Administrator of DETR retains the right to make a multi -claimant determination in favor of payment of benefits at an time by administrative action allowed under NRS 612.220 and NAC 612.700 and 612.720, pursuant to Incorporate UI Employment and Training Guidance included in Employment and Training (ET) Handbook 301 5th Edition, to wit: Multi-claimant "Other" Determinations, i.e., determinations which do not involve a labor dispute but affect a class of claimants from the same employer with a common issue. Page II-1

directive in UIPL 16-20 Change 1 and DETR review claims for adjudication at a later date, with claimant subject to repayment/overpayment guidelines set forth by the Agreement. (This group number is not determined in DETR's references.)

(7) All claimants whom DETR has sent any adverse determination letter or email, and for which there is no appeal mechanism within DETR (often despite assurances in the determination to the contrary) or that the link to the appeal on DETR's website is not working, DETR shall revoke immediately and retroactively reverse any and all actions based upon that adverse determination until such time as a new determination is sent with sufficient time to appeal, and a mechanism for so doing, including a method to appeal on line that actually works. (This group number is not determined in DETR's references.)

(8) All claimants who have outstanding issues shall be contacted by DETR before any adverse action is taken, contact the individual class member either "in person, phone, or online" in a manner that "ensures equal access" to all claimants, to clarify responses, assist with locating documentation, and/or obtain self-attestation. Defendants-Respondents shall instruct all employees, agents and assignees that the primary mission of DETR is to assist all class members in making true and correct application for unemployment compensation and to obtain for each class member the greatest amount of unemployment compensation for which the individual is lawfully entitled and eligible to obtain. Upon receipt of a return of such questionnaire,

The Pandemic Assistance Period ("PAP") is the period beginning January 27, 2020. *See* UIPL 16-20 dated 4/27/20, Attachment II at p. II-1

Under Governor's declaration published April 14, 2020, all claims are eligible for backdate and per PUA directive in UIPL 16-20 Change 1:

Q#4: Is an individual required to demonstrate good cause to backdate a PUA claim?

A: No. An individual does not need to demonstrate good cause to backdate a PUA claim. Rather, the claim must be backdated to the first week during the Pandemic Assistance Period that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act."

The Pandemic Assistance Period ("PAP") is the period beginning January 27, 2020. *See* UIPL 16-20 dated 4/27/20, Attachment II at p. II-1

*See* UIPL 13-20 dated 3/22/20 at p. 4sec. (ii). DETR must ensure communications are ADA complaint so that people with disabilities (such as sight or hearing impaired) are provided equal access. Additionally (ii) states that DETR "should ensure that individuals have access to staff that have been properly trained to provide ... assistance and service to assist in claims taking by facilitating routine acceptance information."

self-attestation and /or documentary evidence in support of a claim for benefits, DETR shall immediately adjust the status of the claimant and payments according to proof and the revised records in that individual's case. (This group number is not determined in DETR's references.)

*See also* (iii) DETR must notify claimants “on why and what steps the applicants can take to ensure the successful processing of claims.”