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6 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

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

13  
14 Petitioners,

15 v.

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

25  
26 Defendants

Case No.: CV20-00755

Dept. No.: 8

**POWERPOINT TO SPECIAL  
MASTER'S  
REPORT NO 2.**

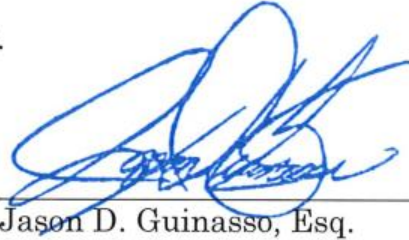
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<u>EXHIBIT</u>	<u>Description</u>	<u>Page Nos.</u>
1	POWER POINT TO SPECIAL MASTER'S REPORT NO. 2	26

AFFIRMATION

The undersigned does hereby affirm that the foregoing document filed in this matter does not contain the social security number of any person.

DATED this 20<sup>th</sup> day of August, 2020.



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Jason D. Guinasso, Esq.

Special Master

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of HUTCHISON  
3 & STEFFEN, PLLC and that on this 20th day of July, 2020, I caused service of a true and  
4 correct copy of the **POWERPOINT TO SPECIAL MASTER'S REPORT NO. 2** by  
5 electronically filing the foregoing with the Clerk of the Second Judicial District Court for the  
6 State of Nevada and service completed by delivery via e-flex to:

7 Mark Thierman, Esq., Joshua Buck, Esq., Leah Jones, Esq., Joshua Hendrickson,  
8 Esq.  
*Attorneys for Iris Posada-Mireles, et al.*

9 Gregory Ott, Esq. and Robert Whitney, Esq.  
10 *Attorneys for Nevada Department of Employment, Training and Rehabilitation,*  
11 *Kimberly Gaa, Administrator for ESD, State of Nevada, Heather Korbolic, NV*  
*Director of DETR*

12 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of HUTCHISON  
13 & STEFFEN, PLLC and that on this 20<sup>th</sup> day of July, 2020, I caused service of a true and  
14 correct copy of the **POWERPOINT TO SPECIAL MASTER'S REPORT NO. 2**. Service was  
15 completed by U.S. Mail, deposited in Reno, Nevada, upon the following:

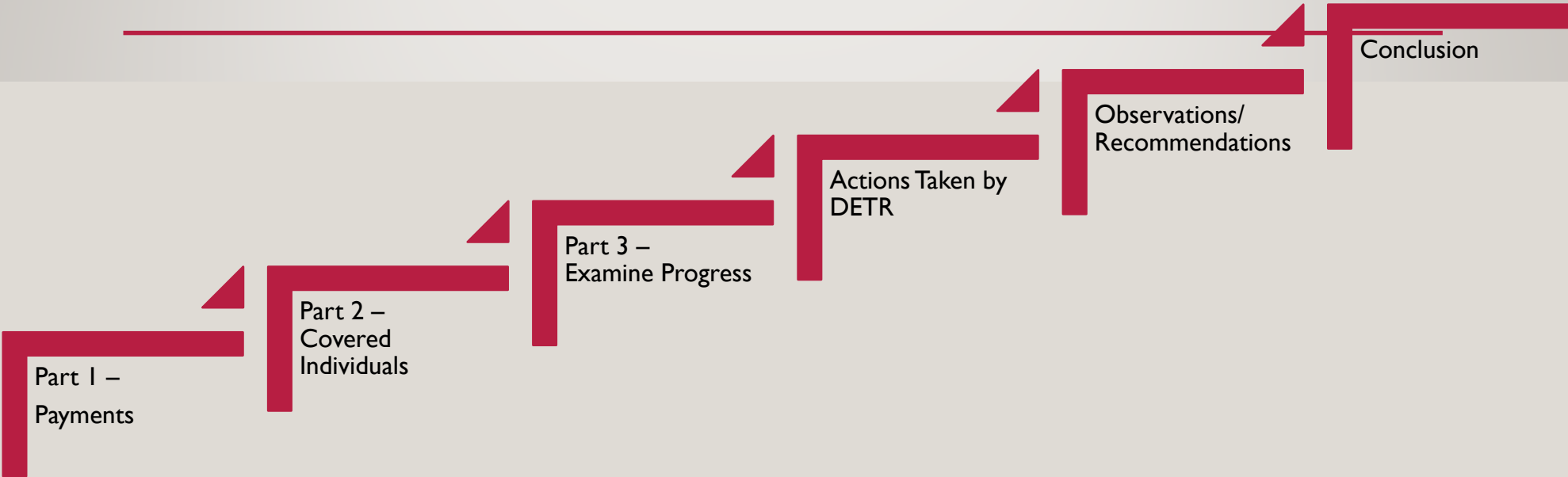
16  
17 Dennis Perea, as Deputy Director of DETR  
18 6330 W. Charleston Blvd  
Las Vegas, NV 89146

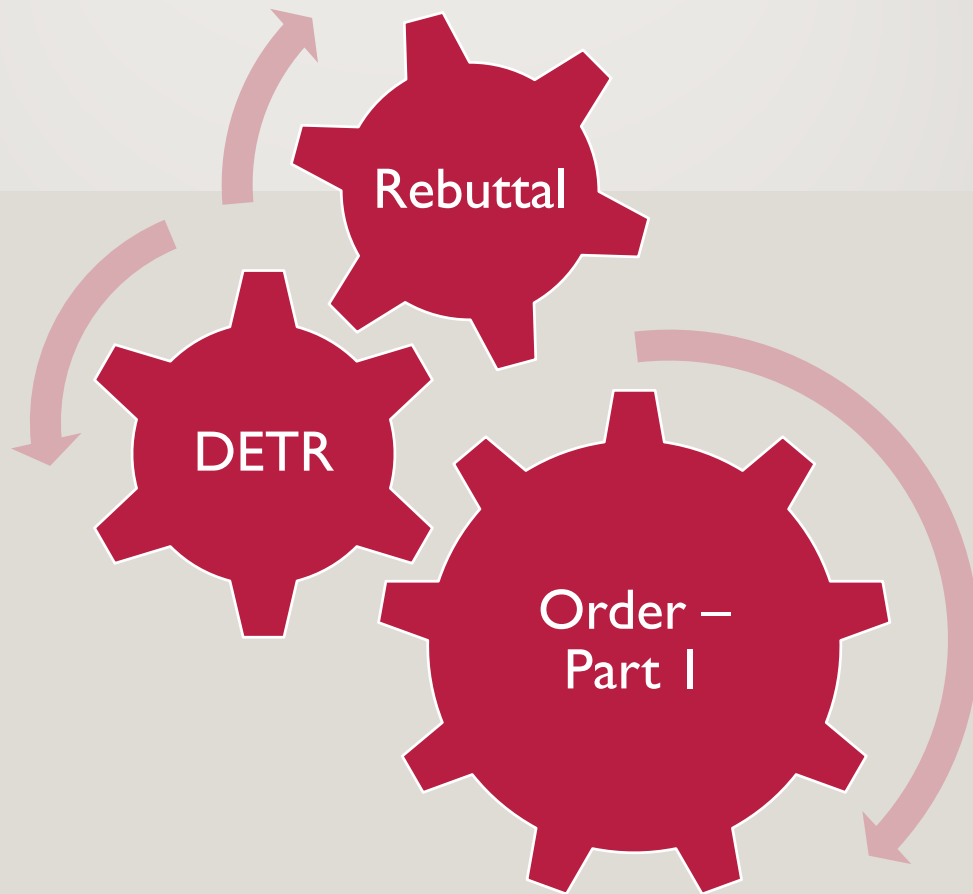
19 /s/Bernadette Francis  
20 An employee of Hutchison & Steffen, PLLC

*AMETHYST PAYNE, ET AL.*  
*V.*  
*STATE OF NEVADA, ET AL.*

**SPECIAL MASTER'S REPORT  
NO. 2**

# COMPLIANCE WITH THE JULY 22<sup>ND</sup> ORDER





# #1: PAYMENTS TO BEGIN ON/BEFORE JULY 28, 2020

- DETR ESD Statement of Compliance
  - Total unpaid PUA claims: 243,963
  - Total unpaid PUA with another program eligibility stop: 53,292 (excludes anything resolved)
  - Total unpaid PUA with Fraud issue (197, 261, 598, 213, 749): 186,826
  - Balance: 3,875 of which 2,700 have no claim filed in any week



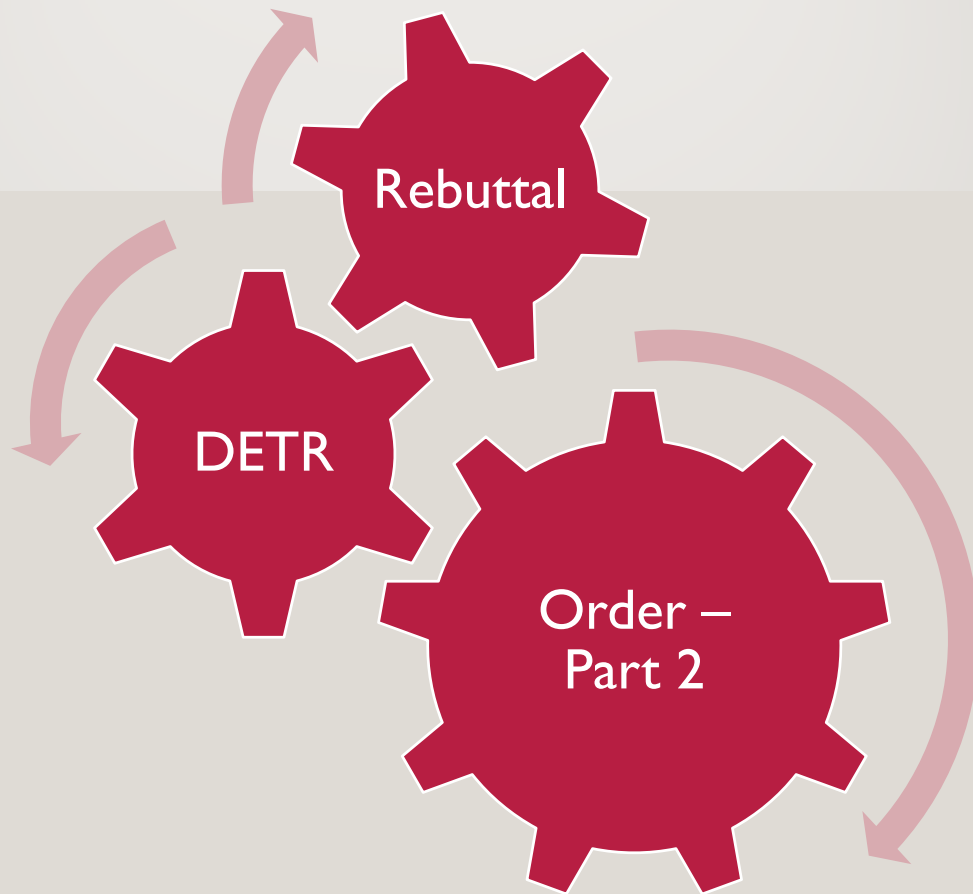
# INDIVIDUALS WHO EXPERIENCED STOP IN PAYMENT

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- DETR determined 30,647 claims experienced a stop in payment.
- Of those claims, the following were identified:
  - 7,407 claims had failed to file weekly claims or were disqualified for excessive earnings.
    - Balance of claims stopped for other reasons: 23,240
      - DETR **determined** 2 of the highest numerical categories stopping payment were **unlikely to meet the Court ordered standard of clear and convincing evidence of fraud.**
    - DETR ESD identified over 3,500 claims that were stopped for possible fraudulent filings.
- On August 18, 2020, Director Cafferata confirmed **3,500 claims have been released from fraud holds in the past three weeks.**

## PLAINTIFFS' REBUTTAL

- DETR is in contempt of the Court's order requiring payment by July 28, 2020.
  - Per Director Cafferata's August 18, 2020 statement, **3,500 claims have been released.**
- DETR does not overrule this Court.
- DETR further admits that they don't believe the "first appeals" will be heard until "the second half of September."
- DETR also admits 53,292 claimants have other program eligibility ~ these claimants must be paid.

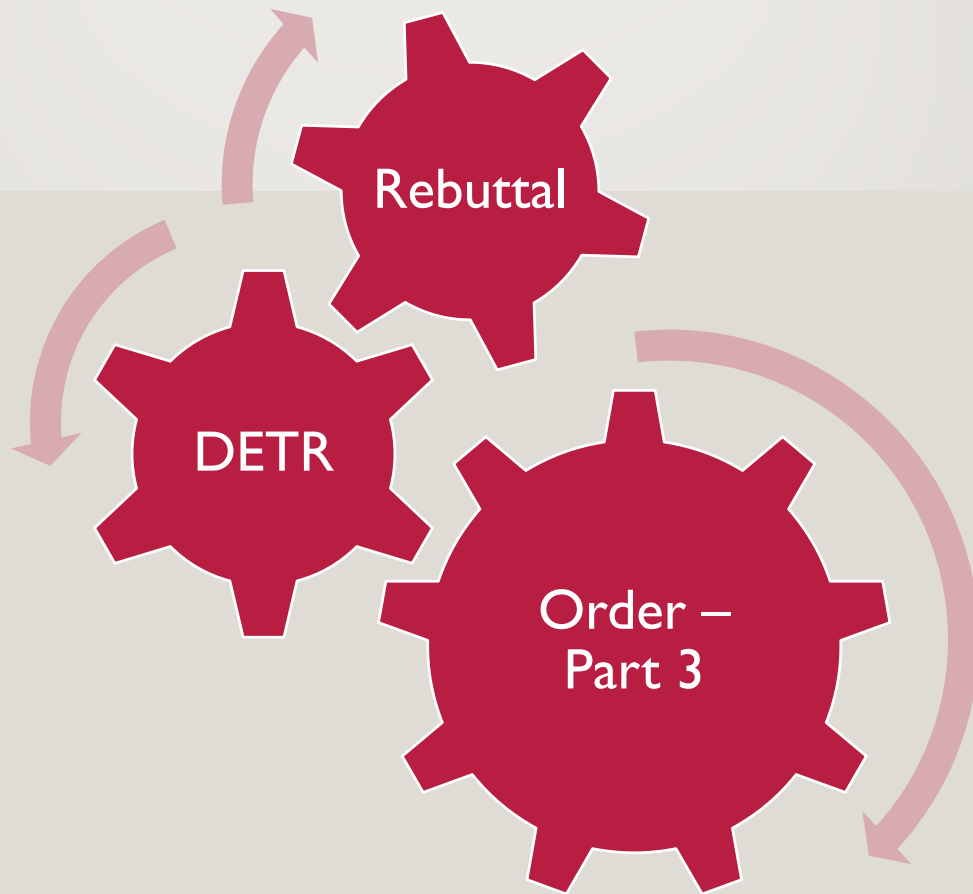


## #2: COVERED INDIVIDUALS

- DETR ESD Statement of Compliance
  - USDOL issued UIPL 16-20, Change 2 to clarify on pg. 2 that individuals who experience a significant diminution of services because of COVID-19 are covered.
  - DETR states no claims are currently unpaid pursuant to claimants addressed in UIPL 16-20.
  - DETR states payments have been denied when their income exceeds the weekly benefit amount as required by DOL guidance.

## PLAINTIFFS' REBUTTAL

- Plaintiffs do not know who or what level or what was asked of the DOL.
- Plaintiffs are preparing supplemental document that will provide a compilation of emails to support Plaintiffs' contentions where claimants continue to receive denial letters based on the assertion that the claimant is not eligible for benefits because the ***“individual suffered substantial interference with his or her work activities or a significant diminution of services.”***



# #3: EXAMINE PROGRESS MADE ON THREE ISSUES & DETERMINE IF FURTHER RELIEF IS NECESSARY

## ISSUE NO. 1

The status of resolving the “UI/PU loop” or UI/PUA dichotomy, including their relationship to the FPUC payments.

- DETR ESD Statement of Compliance
  - DETR has identified 4 possible ways to expedite the processing of these individuals:
    - #1 – Pay people before a determination of eligibility. ***This is specifically prohibited by DOL.***
    - #2 – Expedite the determination of eligibility by assigning more resources to the existing process.
    - #3 – Undertake efforts to reach an eligibility determination earlier in the process.
    - #4 – Improve processes to accelerate determination for individuals whose PUA or UI eligibility is initially unclear & may have to undergo multiple eligibility determinations.

6           The Special Master received an Excel template and guidance from DETR ESD on  
7 how to best gather and record claimant information so that Economist Schmidt could  
8 analyze the status of claims and outcomes. The Special Master's law office reviewed and  
9 recorded 4,000 emails sent to [PUAinfo@hutchlegal.com](mailto:PUAinfo@hutchlegal.com) and the 5,000 bates-stamped pages  
10 from our printed binders from Appendix 2 of the Special Master's first report to the Court.<sup>11</sup>  
11 Many claimants sent several emails, so the Special Master and his staff did their best to  
12 represent each claimant's data only once, but there were, more likely than not, some double  
13 entries across the Excel sheets. Thereafter, the Special Master provided the data collected  
14 in the Excel sheets to Economist Schmidt. The following is his analysis of the aggregated  
15 information he was provided in the Excel spreadsheets we created:

## EFFORTS TO AGGREGATE AND ANALYZE CLAIM DATA

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<b>Claim Status</b>	<b>Distinct Claims</b>	<b>Share of 2,499 Matches</b>
<b>Claim Paid</b>	1,343	53.7%
<b>No Weeks Claimed</b>	20	0.8%
<b>No Weeks Without Excess Earnings</b>	12	0.5%
<b>Flagged for Potential UI Eligibility</b>	530	21.8%
<b>PUA Eligibility Issue</b>	35	1.4%
<b>Two-Factor Authentication Issue</b>	83	3.3%
<b>Recent Claim Hold</b>	138	5.5%
<b>Fraud Hold</b>	307	12.3%
<b>Other Issue</b>	31	1.2%

## Open Payment-Stopping Issues on Matched Unpaid PUA Claims

Excludes Claims with Potential UI Eligibility or No Weeks Claimed

Issue Description	Issue Code	Unique Claims with Issue
IP - Investigation Case Special Project	261	299
IP - Investigation SAR Internal	598	148
Two-Factor Authentication failed - Bad phone	757	77
Invalid SSN	213	39
PUA - Requires Staff Review	749	30
Two-Factor Authentication failed	758	19
No employment history	189	10

## Open and Denied Payment-Stopping Issues on Matched PUA Claims

### Issues on Claims with Prior Payment and Unpaid Benefit Week of July 25th

Issue Description	Issue Code	Resolution Status	Unique Claims With Issue
<b>PUA - Other program eligibility</b>	750	Denied	61
<b>PUA - Eligibility</b>	746	Denied	23
<b>PUA - Requires Staff Review</b>	749	Denied	20
<b>Two-Factor Authentication failed - Bad phone</b>	757	Open	98
<b>PUA - Requires Staff Review</b>	749	Open	53
<b>IP - Investigation SAR Internal</b>	598	Open	43
<b>IP - Investigation Case Special Project</b>	261	Open	35
<b>Two-Factor Authentication failed</b>	758	Open	31

## PLAINTIFFS' REBUTTAL

DETR admits the following, but gives no indication as to when these eligible people will be paid:

- 385 claims have a monetarily eligible claim or sufficient wages for UI eligibility as of now (66.8%).
- 90 have an existing ineligible UI claim but have sufficient wages to qualify for UI now, as additional wages have been reported since the ineligible UI claim was created. (15.6%)
- 65 have had an eligible UI claim that ended since eligibility for PEUC was established, and should therefore be PEUC eligible (11.3%)

# #3: EXAMINE PROGRESS MADE ON THREE ISSUES & DETERMINE IF FURTHER RELIEF IS NECESSARY

## *ISSUE NO.2*

What steps DETR has made to move the first filers to the front of the line.

- DETR ESD Statement of Compliance
  - First filers = 67,580 PUA Claims
  - As of August 18, 2020, 48,815 have been approved & were being paid.
  - 805 additional claims have been resolved.
  - 9 identity checks have been resolved.
  - 582 cases with unemployment wages have been resolved.
  - Reduction in 56 cases with no weeks claimed.

# \$40.1 MILLION IN BENEFITS HAVE BEEN RELEASED

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- Benefits have been paid in the **last two weeks** to claimants who filed in the first week that the PUA system was live, including:
  - \$11.1 million for weeks of benefits in the month of July;
  - \$4.6 million for weeks of benefits in the month of June;
  - \$5.1 million for weeks of benefits in the month of May;
  - \$4.2 million for weeks of benefits in the month of April;
  - \$462,000 for weeks of benefits in the month of April; and
  - \$39,000 for weeks of benefits in the month of February.

# #3: EXAMINE PROGRESS MADE ON THREE ISSUES & DETERMINE IF FURTHER RELIEF IS NECESSARY

## *ISSUE NO.3*

The “retroactivity” issue.

- DETR ESD Statement of Compliance
  - 95,000 claims for benefits were received between Feb. 29, 2020 and Mar. 5, 2020.
  - DETR ESD reviewed claims for this period & determined that there was not a unilateral denial of benefits.
  - DETR ESD paid 29,724 claimants for week ending March 7, 2020 to date.
  - DETR continues to review claims for eligibility for this week as part of the eligibility determination process.

## PLAINTIFFS' REBUTTAL

- DETR admits it “continues to review claims for eligibility for this week as part of the eligibility determination process” but has not paid persons who have had a diminution in work prior to Gov. Sisolak’s shut down directive, specifying 55,462 claimants with active issues.
- Plaintiffs continue to receive emails from claimants who are still experiencing this issue.



# INFORMATION GATHERING & TESTIMONIALS

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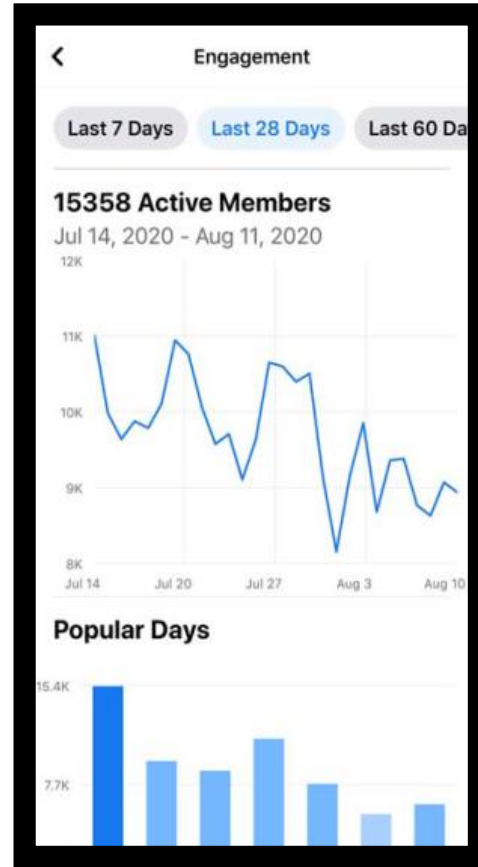
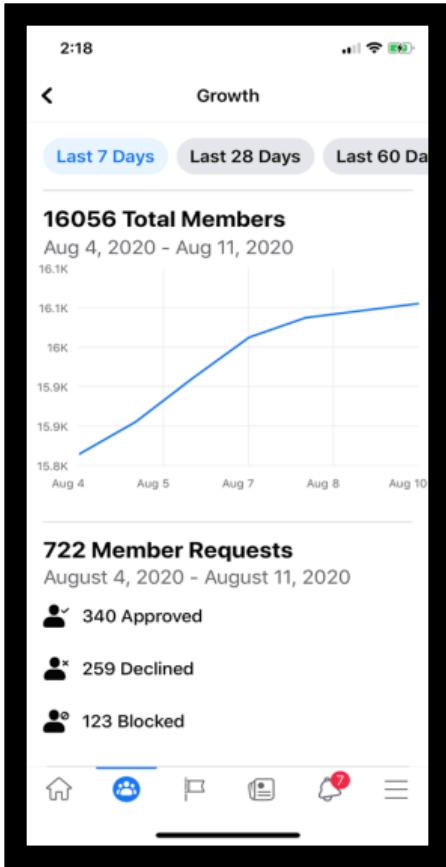
- Collaboration with Amber Hansen, claimant advocate, and the Nevada – Pandemic Unemployment Assistance (PUA) Facebook Group <https://www.facebook.com/groups/nevadapua> to gather and aggregate information on claims that have not been paid and information regarding the issues applicants are having with the benefit delivery system.
- The information was given to DETR ESD to review and respond to the information.
- DETR provided an analysis, which is contained in Section I of the report.

## HARD LIST OF PUA ISSUES/SUBGROUPS/MULTI- SUBPGROUPS

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- Ms. Hansen provided a list of 42 issues, sub-groups, and multi-subgroups that were pulled from those listed on the Facebook page

- 6 1. First Time Filers ( NO PAYMENTS May 16th-June 12th)
- 7 2. IP Case Investigation (May 25-27)
- 8 3. PUA Other (Standard verification on every claim)
- 9 4. Invalid SSN
- 10 5. PUA STOP CLAIM ( May- current)
- 11 6. Payment rejection/Reissue
- 12 7. Two-factor Authentication (July 4th-Mid July)
- 13 8. Redetermination after quarter change ( Taxes or Q Change)
- 14 9. Eligible for PUA but after July Q. Change were sent back to UI (Mid July)
- 15 10. Disqualified for certifications weeks (Feb-Mid March pre shut down)
- 16 11. Disqualified for entire claim for claiming week prior to shut down (Mid July)
- 17 12. Income for 2019 wiped and redetermination sent for min weekly benefit amount
- 18 (mid-late July)
- 19 13. Claim Summary says "Paid" but haven't been "Paid"



## OBSERVATIONS & RECOMMENDATIONS

- “One Stop Shop” for administering unemployment benefits in Nevada.
- Recommend Speaker Buckley include Ms. Hansen and the PUA Facebook Group Administrators in the work of her strike force.
- Concerns remain regarding the due process rights of claimants who have had their claims denied.
- Alorica remains a problem due to lack of knowledge & lack of authority to solve problems.

- DETR ESD is substantially complying with the Court's Writ of Mandate and is making significant progress.
- Several concerns raised by Plaintiffs' Counsel should be carefully considered.
  - DETR has not paid 243,963 of the claims submitted by gig workers compared to 139,107 unpaid gig workers claims represented by DETR to the Court at the July 7, 2020 hearing.
  - Approximately 1/5 of the PUA claims, 53,292, were denied coverage because of other program eligibility.
- The backlog in unpaid claims has been substantially reduced over the past 3 weeks.
- Substantial focus, significant resources, and efforts have been made by the State of NV to resolve the problems with NV's unemployment benefit delivery system.

## CONCLUSION



THANK YOU.

