

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

**SHAUN DURAN, MONICA FISCHETTI
PALMIERI WILLIAMS, ERDEM YILDIZ,
CORAL GONZALEZ-INZA, and YOHANNA
GERGES, on behalf of themselves and others
similarly situated,**

Plaintiffs,

v.

No.

**NEW MEXICO DEPARTMENT OF
WORKFORCE SOLUTIONS, an executive
agency, and SARITA NAIR, in her official capacity
as secretary of the New Mexico Department
of Workforce Solutions,**

Defendants.

**CLASS ACTION COMPLAINT FOR VIOLATIONS OF CIVIL RIGHTS AND FOR
DECLARATORY AND INJUNCTIVE RELIEF**

The Covid-19 pandemic caused Plaintiffs, like many Americans, to suffer devastating economic and personal losses. In response to the nationwide crisis, Congress enacted federal programs designed to help states provide additional unemployment benefits to vulnerable workers. Although the federal government provided New Mexico with billions of dollars for benefits and millions of dollars for the administration of the new programs, the New Mexico Department of Workforce Solutions managed its new responsibilities incorrectly. Overwhelmed by the changes and by the flood of new unemployment applications, the Department made significant errors in awarding benefits—often awarding more benefits than permitted by the new programs. Once the Department became aware of its errors, it then sought to claw back the overpayments from New

Mexico's vulnerable, unemployed workers, leaving many with little to no income for months on end. Although the federal programs permit the Department to waive recovery of these overpaid benefits, and although it is the federal budget, and not New Mexico's, that covers the overpayments, the Department has failed to effectively implement the waivers and has not followed federal mandates requiring that when a person applies for a waiver, all collections of overpaid amounts should cease, and when a waiver is granted, all overpayments previously recovered from the claimant must be refunded. The Department's insistence on collecting overpayments it made because of its own errors has caused increased financial insecurity and personal anxiety for the very people that the Department is supposed to help, and the Department's conduct in so doing is in violation of New Mexico law.

COME NOW Plaintiffs, by and through their attorneys, THE NEW MEXICO CENTER ON LAW AND POVERTY (Sovereign Hager, Stephanie Welch, and Felipe Guevara) and IVES & FLORES, P.A. (Laura Schauer Ives, Adam C. Flores, Alyssa Quijano, Henry A. Jones, and Martha E. Mulvany), and bring this action to enforce their rights under state law and under the Due Process Clause of the New Mexico Constitution.

JURISDICTION AND VENUE

1. This Court has jurisdiction of the subject matter of this action pursuant to the New Mexico Constitution, Art. VI, § 13, the New Mexico Civil Rights Act, NMSA 1978, § 41-4A-3(B) (2021), and the Declaratory Judgment Act, NMSA 1978, § 44-6-2 (1975). This Court has personal jurisdiction over Plaintiffs and Defendants.

2. Venue is proper in Santa Fe County, New Mexico, pursuant to NMSA 1978, § 38-3-1 (1988).

PARTIES

3. Plaintiffs are residents of the State of New Mexico.
4. Defendant New Mexico Department of Workforce Solutions (“Department”) is an agency of the State of New Mexico. The Department administers unemployment compensation benefit programs for the State of New Mexico.
5. Defendant Sarita Nair is the cabinet secretary of Defendant New Mexico Department of Workforce Solutions. It is Defendant Nair’s duty “to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.” NMSA 1978 § 9-26-6 (2007). She is sued solely in her official capacity.

GENERAL ALLEGATIONS

The Federal Pandemic Programs

6. The Covid-19 pandemic has had painful consequences for New Mexico’s economy and people. More than 100,000 New Mexican workers lost their jobs within the first year and a half of the crisis. *See* Gabrielle Burkhart, *How New Mexico’s Unemployment Crisis Fares in the U.S.*, April 29, 2021, at <https://www.krqe.com/news/investigations/how-new-mexicos-unemployment-crisis-fares-in-the-u-s/> (accessed April 7, 2022). As of December 2022, the latest available data, New Mexico has one of the highest rates of unemployment in the country, with a rate of 4.14%. *See* U.S. Bureau of Labor Statistics, *Unemployment Rates for States, Seasonally Adjusted*, <https://www.bls.gov/web/laus/laumstrk.htm> (accessed January 4, 2023).
7. While New Mexicans are resilient, suffering is at an all-time high for many families. In the wake of the pandemic, thousands of New Mexicans are still struggling to pay for rent, utilities, and other necessities. Many have burned through minimal savings, struggle to find jobs that pay adequately, and have exhausted other means of survival, such as borrowing money from family.

8. In March 2020, when it first became clear that the Covid-19 pandemic would have far-reaching economic consequences, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). *See* Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). The act contained a broad range of federal funding programs designed to address the pandemic’s devastating impact.

9. Among these, the CARES Act created three new unemployment compensation programs: First, the Pandemic Unemployment Assistance program (“PUA”), which provided unemployment benefits to certain people who were not covered by regular unemployment insurance, such as the self-employed, part-time workers with low earnings, and full-time workers with low earnings or who had been recently hired. *See* 15 U.S.C. § 9021. Second, it created the Federal Pandemic Unemployment Compensation program (“FPUC”), which provided unemployment participants an extra \$600 per week from April to July 2020 (and later provided an extra \$300 per week from December 2020 to September 2021). *See* 15 U.S.C. § 9023. Third, it created the Pandemic Emergency Unemployment Compensation program (“PEUC”), which gave additional weeks of benefits to those who had exhausted their regular state or PUA benefits. *See* 15 U.S.C. § 9025.

10. On March 28, 2020, the secretary of the New Mexico Department of Workforce Solutions, acting on behalf of the State of New Mexico, entered into an agreement with the U.S. Department of Labor. Exhibit 1, Agreement Implementing the Relief for Workers Affected by Coronavirus Act, and addenda. The Agreement required the Department to implement the federal pandemic relief programs in accordance with guidance and operating instructions from the Department of Labor.

11. In December 2020, Congress enacted the Continued Assistance for Unemployed Workers Act. *See* Consolidated Appropriations Act, 2021 Pub. L. No. 116-260, 134 Stat. 1182 (Dec. 27,

2020). That Act extended the benefits of the first three programs and added a fourth, the Mixed Earners Unemployment Compensation program (“MEUC”), which provided that people already receiving regular unemployment benefits who also had a certain amount of self-employment income were eligible for an additional \$100 per week. *Id.*

12. In March 2021, Congress extended all four programs. *See American Rescue Plan Act. Pub. L. No 117-2 (Mar. 11, 2021).*

13. To properly administer these expanded unemployment benefits programs, as of March 2021, the federal government provided New Mexico with \$3 *billion* in funding for the payment of benefits, along with \$21.6 million for the administration of the programs. Exhibit 2, N.M. Legis. Fin. Comm., Spotlight: Unemployment Insurance System, May 19, 2021, at 7.

14. Despite the massive investments by the federal government, the Department haphazardly administered the federal pandemic relief programs.

15. The Department’s “[i]nadequate interpretation of state law and federal guidance” caused incorrect benefit calculations, Exhibit 2, at 1, and the implementation of new programs caused administrative errors, including the creation and issuance of forms that did not clearly explain the Department’s decisions or the claimant’s rights, as well as the issuance of multiple incomprehensible and conflicting notices.

The Department’s Eligibility Determinations

16. When claimants applied for benefits, the Department issued a bewildering flurry of notices in response—sending multiple, conflicting notices, often on the same day or just days apart. On their face, the notices did not provide all the information claimants needed to understand the Department’s determinations.

17. The notices did not explain how the Department identified certain amounts as income or wages, how income or wages were determined, or the basis for its wage and income calculations. The notices did not provide information about what income should be considered by the Department, context for the wage amounts given, or the source of the Department's wage information.

18. In addition, although PUA benefits were to be based on a claimant's net self-employment income, *see* Unemployment Insurance Program Letter No. 20-21, Change 1 (Feb. 7, 2022) (requiring PUA benefits to be based on net income), the PUA notices all erroneously stated that they were based on the claimant's gross wages, such that every notice of the basis of every claimant's PUA benefits was wrong.

19. Notices of benefit changes, called redeterminations, did not set forth the basis for the changes. Unless the claimants had themselves provided new information to the Department, they had only what the Department told them to understand the reason for the change, which was nothing.

20. Even if any one of the notices provided by the Department would have been comprehensible to claimants, the flood of ever-changing information made it impossible for claimants to know what benefits they had been approved for and for what amounts, and made it impossible to know which—if any—determinations should be appealed.

21. Adding to the confusion, the Department required most claimants receiving unemployment benefits to reapply every three months. With each reapplication, claimants received another flurry of multiple, conflicting notices. And with each reapplication, issues that had caused the Department to place holds on claimants' benefits but that had been resolved, caused the

Department to renew the holds, forcing claimants to spend hours trying to straighten out issues that had already been cleared up.

22. If claimants tried to correct information or question their determinations, the Department often placed holds on their benefits until it could sort the issue out. *See, e.g.*, Exhibit 3, Duran Monetary Redetermination-2020-5-28. The Department was not timely resolving holds, so claimants who experienced them often had to go long periods without any benefits. In addition, holds locked claimants' online accounts, leaving them unable to even communicate with the Department or see what was happening with their claims.

23. Thus, the Department's practices effectively penalized people who challenged their determinations, and incentivized passivity and acceptance of the Department's determinations.

Overpayments by the Department

24. During the pandemic, the Department incorrectly approved many New Mexicans for unemployment benefits—for months in some cases—without determining whether the claimant was actually eligible for those benefits, without determining if the claimant had submitted proper documentation, and, if the claimant was qualified under a particular program, without determining the correct amount of benefits.

25. From April 2020 through April 2021 alone, the Department made an estimated \$250 million in benefit overpayments. Exhibit 2, at 10.

26. Some of these overpayments were due to systemic mistakes by the Department. In addition to approving many claimants for benefits without actually evaluating their eligibility, the Department asked PUA applicants for the wrong information. For example, the federal government required PUA eligibility and benefit amounts to be based on the claimant's income from the most recent tax year prior to the claimant's unemployment caused by the pandemic. *See*

Unemployment Insurance Program Letter No. 20-21, Change 1 (Feb. 7, 2022). Yet in 2020 the Department used tax documents from 2018 to calculate weekly benefits, rather than tax documents from 2019. Exhibit 2, at 15; New Mexico Department of Workforce Solutions, *NMDWS Announces Benefit Applications to Begin Next Week for Self-Employed*, Apr. 22, 2020, at <https://www.dws.state.nm.us/en-us/News/Latest-News/nmdws-announces-benefit-applications-to-begin-next-week-for-self-employed> (accessed July 8, 2022). The Department also asked PUA applicants for their gross income, even though the benefit amounts were to be determined based on net income. *See* Unemployment Insurance Program Letter No. 20-21, Change 1 (Feb. 7, 2022) (requiring PUA benefits to be based on net income). These mistakes by the Department had a huge impact, since the Department made at least one payment of PUA benefits to 92,371 people. *See* Luciana Perez Uribe Guinassi, *State Overpaid Millions in Unemployment Benefits—Now DWS Wants it Back*, Searchlight New Mexico, Feb. 24, 2022, at <https://searchlightnm.org/new-mexicans-asked-to-repay-unemployment-benefits-that-the-state-sent-by-mistake/> (accessed May 4, 2022).

27. The New Mexico Center on Law and Poverty notified the Department of problems with its implementation of the PUA program, explained how the implementation violated the Department's legal obligations, and recommended changes. Exhibit 4, Letter from Felipe Guevara and Stephanie Welch to Secretary Bill McCamley and General Counsel Westley Logan, July 24, 2020.

28. When the Department issued determination notices informing claimants of their initial, often erroneous, eligibility for benefits, the notices did not sufficiently inform claimants that if they received benefits or benefit amounts that they were not entitled to—even if it was through no fault of their own—the Department would eventually take the money back, typically by taking

deductions from future unemployment benefits, but also through other means, including wage garnishment, liens on real and personal property, and the interception of tax refunds. Some notices did include a generic statement that the Department would recover overpayments, but the inclusion of this statement was inconsistent across the unemployment programs. The notices never provided details about the Department's recoupment practices.

29. Such recovery actions by the Department would have grave consequences for claimants who were already barely making ends meet, but without this information, claimants—who were in dire economic circumstances and in need of the funds provided by the Department—trusted the Department's determination and had no incentive to closely scrutinize the benefits they had been awarded.

The Department's Recoupment Actions

30. When the Department decided it had paid more benefits than a claimant was entitled to, it issued redetermination notices that informed the claimant of the overpayment, and immediately began to deduct amounts from the claimant's benefits to recoup the overpayment amounts. *See* Exhibit 2, at 15 (stating that in an audit of the Department's practices, the New Mexico Office of the State Auditor found that the Department began to recover overpayments immediately, prior to their becoming final, in 44 of the 45 PUA overpayments it examined).

31. The *Albuquerque Journal* reported that from the middle of March 2020 through the end of 2020 alone, the Department sent 24,872 letters notifying claimants of overpayments. *See* Stephen Hamway, *NM Approved to Waive Some Unemployment Overpayments*, *Albuquerque Journal*, Mar. 5, 2021, at <https://www.abqjournal.com/2366438/nm-approved-to-waive-some-unemployment-overpayments.html> (accessed May 3, 2022).

32. Because the Department was issuing multiple, conflicting benefits determinations and redeterminations, the resulting overpayment notices contained conflicting overpayment amounts, such that claimants could not know whether the amounts the Department was recouping were correct.

33. Many claimants did not appeal these overpayment notices and deductions because they were afraid that if they did, their benefits would be put on hold, their accounts would be locked, and they would not receive any benefits at all. Many claimants had experienced these types of holds earlier in their claims, and they did not want it to happen again.

34. When claimants did try to call the Department in an effort to understand what was going on and to resolve any issues, the totally overwhelmed Department generally failed to answer their calls. In March 2021, the *Santa Fe New Mexican* reported that the Department had received approximately 18 million calls since the start of the Covid-19 pandemic one year earlier, but that it was only able to answer 1.2 million of these—just 6.6% of the calls. See Ike Swetlitz and Ed Williams, *New Mexico Unemployment Office Struggles to Answer Millions of Calls*, *Santa Fe New Mexican*, Mar. 13, 2021, at https://www.santafenewmexican.com/news/local_news/new-mexico-unemployment-office-struggles-to-answer-millions-of-calls/article_f753a920-82a8-11eb-afaf-cf9a804288a9.html (accessed August 26, 2022). Some claimants told the *Albuquerque Journal* they called the Department more than 100 times a day to get a claim established or a question resolved, with no option to leave a voicemail or a callback number. See Stephen Hamway, *Workforce Agency Tries New Solution to Call Snags*, *Albuquerque Journal*, June 10, 2021, at <https://www.abqjournal.com/2398767/workforce-agency-tries-new-solution-to-call-snags-ex-deluged-by-unemployment-inquiries-system-links-claims-to-phone-numbers.html> (accessed May 3, 2022).

35. Cutting benefits to recover the overpayments caused by the Department's own errors left many claimants with little to live on. One claimant reported that the Department cut her benefits from about \$1,000 a week to less than \$450 per week after assessing an overpayment, leaving her with less than half of her benefits to provide for herself and six children, and leaving them with too little to survive on. *See* Dean Thompson, *Unemployment Calculations Hit Self-employed*, Silver City Daily Press, May 29, 2020, at <https://www.scdailypress.com/2020/05/29/unemployment-recalculations-hit-self-employed/> (accessed March 20, 2023). The cuts left many claimants unable to pay their bills. *See* Luciana Perez Uribe Guinassi, *State Overpaid Millions in Unemployment Benefits—Now DWS Wants it Back*, Searchlight New Mexico, Feb. 24, 2022, at <https://searchlightnm.org/new-mexicans-asked-to-repay-unemployment-benefits-that-the-state-sent-by-mistake/> (accessed May 4, 2022).

36. The Department reported, “As of the start of 2021 ... 13,564 of the overpayments had been resolved through regular deductions from weekly benefits.” Stephen Hamway, *Unemployment Benefits Haunting Some Recipients*, Albuquerque Journal, Feb. 6, 2021, at <https://www.abqjournal.com/2357029/unemployment-benefits-haunting-some-recipients.html> (accessed August 26, 2022).

37. In addition to taking deductions from claimants' benefits, under the PUA program, the Department is also authorized to collect overpayments via a civil action, the interception of tax refunds, or the issuance of a warrant commanding the county sheriff to levy upon and sell the real and personal property of the claimant. *See* 15 U.S.C. § 9021(h) (stating that 20 C.F.R. § 625 governing disaster unemployment assistance provides the regulations governing PUA benefits); 20 C.F.R § 625.14 (providing that a state shall take all reasonable measures authorized under any state or federal law to recover the total sum of overpayments); NMSA 1978, § 51-1-38(I) (2013)

(providing that overpaid amounts may be collected as permitted by NMSA 1978, Section 51-5-36(B) (2013), which allows for collection via a civil action or through the issuance of a warrant commanding the sheriff to levy upon and sell the real and personal property of the claimant); NMSA 1978, § 7-2C-5 (1994) (permitting the taxation and revenue department to withhold funds from a claimant's refund in order to collect an outstanding debt owed for an overpayment of unemployment compensation benefits). There is no limitation on the time for collecting overpaid amounts, such that any claimant who was overpaid PUA benefits continues to be subject to actions for collection indefinitely.

38. Under the FPUC, MEUC, and PEUC programs, the Department may continue to collect from the claimant's benefits for a period of three years. *See* 15 U.S.C. § 9023(f)(3) (FPUC and MEUC); 15 U.S.C. § 9025(e)(A) (PEUC).

Overpayment Waivers

39. Although collecting overpayments caused by the Department's own errors is the norm for regular unemployment benefits under state and federal law, due to the special nature of the pandemic and the federal pandemic relief benefits, Congress provided that states could waive the collection of federal pandemic relief overpayments, including the first week's benefits of regular unemployment, if the claimants met two requirements: 1) the claimant was without fault in receiving the overpayment, and 2) collection of the overpayment would be contrary to equity and good conscience. *See* Unemployment Insurance Program Letter No. 20-21 (May 5, 2021); Unemployment Insurance Program Letter No. 20-21, Change 1 (Feb. 7, 2022).

40. In evaluating fault, states could look to such factors as whether the claimant may have provided incorrect information due to the state's own "conflicting, changing, or confusing information or instructions," whether the claimant was unable to reach the state despite their best

efforts to do so, or whether there were difficulties related to education, literacy, or language barriers. *See* Unemployment Insurance Program Letter No. 20-21, Change 1 at 10.

41. Congress first provided states with this waiver authority for overpayments of PUA benefits on December 27, 2020. Continued Assistance for Unemployed Workers Act (Continued Assistance Act) enacted under Division N, Title II, Subtitle A of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), Dec. 27, 2020; 15 U.S.C. § 9021(d)(4). The authority applied retroactively, back to the original enactment of the pandemic unemployment programs. Pub. L. 116-260.

42. On March 4, 2021, the Department announced it would waive PUA overpayments for claimants who requested a waiver and had received the overpayment through no fault of their own. New Mexico Department of Workforce Solutions, *NMDWS News Release-March 4, 2021: Waivers to Be Available for N.M. Claimants who Received Overpayment*, Mar. 4, 2021, at <https://www.employnm.com/post/nmdws-news-release-030421-waivers-to-be-available-for-nm-claimants-who-received-overpayments> (accessed May 27, 2022). The Department stated it would send a notice about the availability of the waiver and a questionnaire to claimants. *Id.*

43. Representatives of the New Mexico Center on Law and Poverty, OLE, the New Mexico Asian Family Center, the Tierra del Sol Housing Corporation, the Red Willow Center, El Centro de Igualdad y Derechos, La Semilla Food Center, the Center for Civic Policy, ProgressNow NM Education Fund, NM Voices for Children, Empowerment Congress, and 170 individual New Mexicans explained the systemic errors made by the Department that caused many overpayments and recommended actions to ensure full implementation of the PUA waiver. Exhibit 5, Letter to Secretary Bill McCamley and General Counsel Westley Logan, Mar. 12, 2021.

44. The Department posted a notice about the availability of the waiver to some PUA participants' online accounts. *See, e.g.*, Exhibit 6, PUA Overpayment Questionnaire for Waiver Consideration Notice. The Department sent a notice to some PUA participants via mail and e-mail. The notice asked claimants to answer, "What is the reason for the overpayment?" *Id.* Yet the answer to that question was almost entirely within the knowledge of the Department, and was often not known to claimants. The contradictory, confusing, and insufficient determination and overpayment notices previously provided by the Department made it impossible for claimants to ascertain this information.

45. Some claimants who may have been eligible for the PUA waiver did not receive any notice about the availability of waivers from the Department.

46. Later, Congress expanded states' waiver authority to overpayments in all pandemic unemployment benefits, including PEUC, FPUC, and MEUC benefits. 15 U.S.C. § 9025(e)(2), Section 2107(e)(2) of the CARES Act (PEUC); Section 2104(f)(2) of the CARES Act, as amended (FPUC and MEUC).

47. In May 2021, the federal government further expanded states' waiver authority, by authorizing states to issue "blanket waivers." Unemployment Insurance Program Letter No. 20-21 (May 5, 2021). Under two specified circumstances, states could waive overpayments for multiple claimants using a single set of facts that applied to all of them, without requiring individuals to submit waiver requests.

48. In late 2021, the Department posted a notice to some claimants' online accounts that it would waive overpayments under FPUC, PEUC, PEUC-A, and MEUC, when the claimant was not at fault and repayment would be a financial hardship. Exhibit 7, DWS Alerts: Unemployment Insurance Overpayment Questionnaire for Waiver Consideration Notice, Dec. 21, 2021. Many

claimants followed the notice's instructions to click on a link to request a waiver, only to be taken to a general webpage about unemployment that did not have the waiver application.

49. Some claimants who did not receive a notice about waivers but who wanted to apply had no way within their online accounts to apply for a waiver.

50. Claimants who lacked the ability to apply for an overpayment waiver online had to apply over the telephone, but it was almost impossible to reach a Department employee in this manner. In addition, the Department refused to allow some claimants to submit the application in writing or online, such that they were forced by the Department into the often-futile nightmare of trying to get the Department to take their calls.

51. On February 7, 2022, the federal government further enlarged states' blanket waiver authority, expanding the circumstances in which a state could waive multiple claimants' overpayments of federal pandemic relief without requiring individuals to submit requests. Unemployment Insurance Program Letter No. 20-21, Change 1 at 11–14. For example, states could issue blanket waivers of PUA overpayments when the state incorrectly calculated benefits using gross income instead of net income or using documents from the wrong tax year. States could waive overpayments based on this single set of facts that applied to multiple claimants, without undertaking additional fact-finding in each individual case and without requiring each individual to submit a waiver request. The federal government specified seven situations for which states could apply blanket waivers, and it permitted states to request approval for additional situations.

52. All overpayment waivers authorized for pandemic programs are funded by federal dollars.

53. The Department publicly announced it would waive overpayments of federal pandemic relief to the full extent allowed by the federal government, including through blanket waivers. *See* Luciana Perez Uribe Guinassi, *State Overpaid Millions in Unemployment Benefits—Now DWS*

Wants it Back, Searchlight New Mexico, Feb. 24, 2022, at <https://searchlightnm.org/new-mexicans-asked-to-repay-unemployment-benefits-that-the-state-sent-by-mistake/> (accessed May 4, 2022).

54. Over 17,000 people filed applications for waivers of PUA overpayments as of mid-February 2022. *See id.* Although the Department announced it would waive PUA overpayments on March 4, 2021, as of mid-February 2022, the Department had processed less than 16% of waiver applications. *Id.*

55. The federal government directed that, when a claimant seeks a waiver, the Department is required to cease all further efforts to collect the overpayment until a determination is made on the request. *See* Unemployment Insurance Program Letter No. 20-21 at 11 (“[S]tates must, upon receipt of the waiver request, pause further collections until a determination of waiver eligibility is made.”).

56. For every waiver granted, the federal government requires states to not just waive recovery of overpayments still owed but also to refund any amounts that were collected prior to the determination of the waiver. *Id.* at 18.

57. Nevertheless, the Department continued to reduce claimants’ benefits to collect overpayments after claimants applied for waivers. And when waivers were granted, the Department did not refund amounts collected prior to the waiver determination.

58. The Department consistently failed to inform claimants that they had the right to appeal the Department’s overpayment waiver determinations.

59. Many claimants still have no way to apply for a waiver through their online accounts.

60. The Department’s actions, which were supposed to alleviate New Mexicans’ economic woes, have had the effect of causing uncertainty and economic harm.

ALLEGATIONS REGARDING PLAINTIFFS AND CLASS REPRESENTATIVES

Plaintiff Shaun Duran

61. Shaun Duran is a Bernalillo County resident who worked as an Uber and Lyft driver from approximately November 2017 to February 2020.

62. Mr. Duran was immunocompromised, and with the arrival of Covid-19, Mr. Duran stopped working as a driver on the advice of his medical providers.

63. In April 2020, Mr. Duran applied for PUA benefits. His work as an independent contractor for Uber constituted self-employment for purposes of unemployment benefits, and so Mr. Duran's application indicated that, based on his 2019 1040A tax form, he had \$47,229 in gross self-employment wages, and a net income of \$1,781. Exhibit 8, Duran PUA Application-2020-04-27. PUA benefits are to be based on net income, and therefore Mr. Duran's benefits should have been based on \$1,781 in self-employment income for the 2019 tax year.

64. On April 28, 2020, the Department issued an eligibility determination awarding Mr. Duran \$461 per week in PUA benefits, plus \$600 per week in FPUC benefits, totaling \$1,061 per week. The notice indicated that the determination was based on self-employment wages of \$49,010 for the period of January 2019 through December 2019. Exhibit 9, Duran Eligibility Determination-2020-04-28. Mr. Duran did not know how the Department arrived at this wage amount, although it appears in hindsight that the Department just added the two numerals on Mr. Duran's application indicating his gross income and net wages.

65. Mr. Duran's benefits were backdated to the week ending February 29, 2020, and as a consequence, he received a lump sum of \$6,549 in benefits. Exhibit 10, Duran Lump Sum Payment-2020-04-27.

66. The eligibility determination notice explained that Mr. Duran could appeal the determination but did not inform him of the significant consequences of receiving and failing to appeal a determination that granted more benefits than he was entitled to receive. Exhibit 9. Mr. Duran did not understand how income was calculated to determine unemployment benefit eligibility and had no basis for evaluating whether the determination was correct. Mr. Duran called the Department repeatedly to try to understand its calculation, which seemed high, but he was unable to get through. He did not think to appeal the Department's calculation as he did not understand it, and relied on the Department to make the correct determination. In addition, he needed the benefits to survive and did not want to disturb the award.

67. Every quarter, the Department required Mr. Duran to reapply for unemployment benefits. Mr. Duran timely reapplied as required, starting in the summer of 2020. The application was identical each quarter.

68. On May 28, 2020, the Department issued a monetary redetermination stating that Mr. Duran only qualified for \$169 per week in PUA benefits, plus \$600 in FPUC benefits. The redetermination was based on the Department's calculation of gross wages of \$1,781 for the period of January 2019 through December 2019. The notice did not state why a redetermination was made or if the previous determination notices were incorrect. Exhibit 3. Mr. Duran did not have gross wages of \$1,781 in 2019; he had a net income of that amount. Exhibit 8. The redetermination letter stated that responses to the determination would place a hold on Mr. Duran's claim until investigated and that Mr. Duran should not return the document unless he was filing an appeal. This was one of many aspects of the Department's procedures that discouraged Mr. Duran from taking any formal action to challenge the Department's determinations.

69. Additionally, as will be described momentarily, the Department began making its deductions almost immediately and without waiting for the appeal period to pass.

70. The May 28, 2020, notice stated that Mr. Duran had been overpaid PUA benefits in the amount of \$3,796. Exhibit 3.

71. Just three days later, on May 31, 2020, the Department began deducting approximately 50% of Mr. Duran's benefits in order to recover the overpaid amount. This deduction occurred before the time for Mr. Duran to appeal the overpayment determination. Exhibit 11, Duran Overpayment Offset-2020-05-31.

72. The Department continued to take deductions from Mr. Duran's benefits, and by August 2020, it had deducted more than the amount that Mr. Duran had allegedly been overpaid.

73. Mr. Duran attempted to call the Department two or three times each day to try to find out why his benefits had been reduced, why an overpayment was determined, and how much, if any, he still owed. He was never able to connect with anyone at the Department during 2020. Each time he called, he was on hold for long periods—up to four or five hours—and then the call would drop. This process was exhausting and demoralizing.

74. On August 4, 2020, the Department again issued a monetary redetermination, inexplicably returning to its original finding that Mr. Duran had always been eligible to receive \$461 per week in PUA benefits. The redetermination was based on \$47,229 in gross wages paid to Mr. Duran for the period of January 2019 through December 2019. Exhibit 12, Duran Monetary Redetermination-2020-08-04. Because the Department had returned to its original amount, Mr. Duran assumed that this amount must have been correct and did not think to appeal. He was struggling to make ends meet and was relieved to have the increased weekly benefits.

75. DWS paid the backdated benefits through a lump sum deposit to Mr. Duran's bank account. Exhibit 13, Duran Lump Sum Payment-2020-08-03.

76. Once Mr. Duran received the monetary redetermination, he used the back payments to pay off some of his debts and to buy a van that he could use once he was able to resume his work as a driver.

77. But on October 7, 2020, the Department issued a monetary redetermination that again found that Mr. Duran was eligible only for \$169 per week in PUA benefits, based on total gross wages of \$1,781 for the period of January 2019 through December 2019. Mr. Duran was confused because he did not have gross wages of \$1,781 in 2019; he had a net self-employment income of that amount. Exhibit 8. He continued to call the Department a few times a day, but no one at the Department ever answered.

78. As a consequence of this determination, the Department indicated that Mr. Duran had been overpaid \$9,344. Exhibit 14, Duran Monetary Redetermination-2020-10-07.

79. On the same day, the Department issued Mr. Duran two letters entitled "Information for Overpaid Claimants." One said he owed \$6,424 in overpayments, and the other said that he owed \$2,920. Exhibit 15, Duran Info for Overpaid Claimants_ Conflicting Letters-2020-10-07. Each notice indicated that it was not cumulative and did not reflect the full amount that Mr. Duran might owe.

80. On October 12, 2020, only five days after the Department issued the monetary redetermination, and before the fifteen-day time for an appeal, the Department deducted \$84 from Mr. Duran's benefits to recoup the overpayment, leaving Mr. Duran with only \$76 to survive on that week. Exhibit 16, Duran Overpayment Offset-2020-10-12.

81. Mr. Duran could not afford his rent because of the reductions to his income caused by the alleged overpayments. As a result, he became homeless and started sleeping in his van.

82. In November 2020, the Department stopped providing benefits to Mr. Duran, without notice or explanation. Mr. Duran continued to make daily calls that were never answered by the Department. He also tried to figure out what was happening by looking at his account and other content on the Department's website, but the information provided was incoherent.

83. On January 4, 2021, the Department sent Mr. Duran a letter called "Final Notice of Collection Action—Pre-Warrant." Exhibit 17, Duran Final Notice of Collection Action-2021-01-04. This letter said that Mr. Duran owed \$8,756 in overpaid benefits, and that the Department would issue a warrant of levy and lien in fifteen days if the overpaid amount was not paid back in full, authorizing the sheriff's office to sell Mr. Duran's real and personal property. It said that the Department could, in its discretion, add an additional penalty of 10% of the amount due. It said that the Department would intercept any income tax refund that Mr. Duran might be due. And it said that Mr. Duran's account could be referred to the Department's legal department for possible wage garnishment and potential legal action.

84. Mr. Duran felt hopeless and defeated. He had been doing everything he could to get in touch with the Department and figure out what was going on with his benefits, but the Department was inaccessible, leaving him trapped in a bureaucratic nightmare.

85. Because Mr. Duran still needed unemployment benefits and his prior benefits had been stopped, Mr. Duran reapplied for benefits in February 2021.

86. On February 9, 2021, the Department issued a determination finding that Mr. Duran was eligible for \$169 in PUA benefits through March 13, 2021. Exhibit 18, Duran Monetary Redetermination-2021-02-09. The notice indicated that Mr. Duran owed \$8,765 in overpayments.

87. On the same day, the Department issued an “Information for Overpaid Claimants” letter stating that Mr. Duran owed \$6,424 in overpayments. Exhibit 19, Duran Info for Overpaid Claimants-2021-02-09. It was unclear why the two notices gave different and apparently arbitrary overpayment amounts.

88. On February 7, 2021, the Department began to deduct \$319 from Mr. Duran’s weekly benefits to recover the overpayment. Exhibit 20, Lump Sum Payment Offsets-2021-02-07. These deductions prevented Mr. Duran from renting an apartment because he did not have sufficient income for the first month’s rent and a deposit.

89. Just a week later, on February 15, 2021, the Department issued another monetary redetermination stating that Mr. Duran was entitled to \$169 in weekly PUA benefits, based on the same total gross wages and base period as the earlier one. Exhibit 21, Duran Monetary Redetermination-2021-02-15. It was therefore not clear what the Department had redetermined. The notice stated that the redetermination resulted in an overpayment of \$6,842.

90. On February 24, 2021, the Department issued another monetary redetermination stating that Mr. Duran was entitled to \$169 in PUA benefits, and had an overpayment of \$6,116. Exhibit 22, Duran Monetary Redetermination-2021-02-24.

91. On March 2, 2021, the Department sent Mr. Duran a monthly statement of account indicating that he owed \$12,348 in overpaid benefits. Exhibit 23, Duran Monthly Statement of Account-2021-03-02. The statement showed that on February 1, 2021, Mr. Duran had an \$8,756 beginning balance, that he had \$6,424 in new overpayments, that there had been a deduction of \$192, and that he had made payments of \$2,640, leaving him with a \$12,348 overpayment balance.

92. On March 16, 2021, the Department issued a monetary redetermination saying that Mr. Duran was not entitled to regular benefits and that he owed \$5,540 in overpayments. Exhibit 24,

Duran Monetary Redetermination-2021-03-16. It was not clear why the overpayment amount was so different from the \$12,248 balance provided in the notice just two weeks earlier.

93. Two days later, on March 18, 2021, the Department issued a monetary redetermination stating that Mr. Duran was entitled to \$169 in PUA benefits based on \$1,781 in total gross wages for the period of January 2019 through December 2019. Exhibit 25, Duran Monetary Redetermination-2021-03-18. But Mr. Duran did not have gross wages of \$1,781 in 2019; he had a net self-employment income of that amount. Exhibit 8. The notice indicated that he had an overpayment of \$5,540. Exhibit 25.

94. Sometime before March 24, 2021, the Department sent Mr. Duran a “PUA Overpayment Questionnaire for Waiver Consideration Notice,” informing him of his right to apply for a PUA overpayment waiver. Mr. Duran responded to the questionnaire and submitted his application for the waiver. Exhibit 26, Duran PUA Overpayment Questionnaire-2021-03-24.

95. After Mr. Duran applied for the waiver, the Department continued to deduct from Mr. Duran’s benefits in order to recoup the overpayment, until August 2021, when the deductions stopped.

96. By October 2021, the Department had recouped at least \$11,142 by reducing Mr. Duran’s weekly unemployment benefits.

97. That month, Mr. Duran inexplicably received \$886 total in multiple smaller checks from the Department that were described as “refunds” in his online account with the Department.

98. On November 8, 2021, approximately eight months after Mr. Duran applied for a PUA overpayment waiver and approximately a month after he received his last PUA weekly payment, the Department issued a “Notice of Determination Disaster Unemployment Assistance” letter, informing him that he had established good cause to waive his PUA overpayment. Exhibit 27,

Duran Overpayment Waiver Determination-2021-11-08. According to the letter, the amount waived was \$2,628. But the Department did not refund the full amount recouped from Mr. Duran, and it still owed him approximately \$3,959.

99. Mr. Duran continued to be unhoused and living in his van, and, due to his circumstances, has had great difficulty finding and retaining suitable employment.

Plaintiff Monica Fischetti Palmieri Williams

100. Plaintiff Monica Fischetti Palmieri Williams is a Bernalillo County resident who worked as a video editor and location scout before her business was halted by the Covid-19 pandemic.

101. In March 2020, Ms. Palmieri Williams applied for regular unemployment insurance benefits.

102. Then, in April 2020, she applied for PUA benefits.

103. On May 1, 2020, the Department issued a notice stating that Ms. Palmieri Williams was eligible to receive \$169 per week in PUA benefits through December 26, 2020. Exhibit 28, Williams Monetary Determination-2020-05-01. The form indicated that the determination was based on Ms. Palmieri Williams being self-employed and earning zero gross wages for the base period of January 2019 through December 2019. The Department's statement was incorrect, as Ms. Palmieri Williams had earned \$17,750 in gross self-employment income in 2019, but no net self-employment income. Nevertheless, its conclusion that Ms. Palmieri Williams was entitled to \$169 per week in PUA benefits was correct based on her zero net income.

104. On August 13, 2020, the Department sent Ms. Palmieri Williams a request for wage information. Exhibit 29, Williams Request for Wage Information-2020-08-13.

105. Ms. Palmieri Williams attempted to call the Department and to upload tax documents from 2019 to her online account. She called the Department daily and would be on hold for over an hour

each time, with her call ultimately being dropped. When she finally did get through, Department workers informed her that her documents had not been received and to upload them again.

106. Every quarter, the Department required Ms. Palmieri Williams to reapply for unemployment benefits. Ms. Palmieri Williams timely reapplied as required each quarter, starting in the summer of 2020. The application was identical each quarter.

107. Based on her reapplication, on October 9, 2020, the Department sent Ms. Palmieri Williams a monetary determination stating that she was ineligible for unemployment benefits because she had not earned sufficient wages for the period of July 2019 through June 2020. Exhibit 30, Williams Monetary Determination-2020-10-09. The notice indicated that for that period, Ms. Palmieri Williams earned no wages for the employer PLP Entertainment Inc.

108. On January 29, 2021, the Department sent Ms. Palmieri Williams a “Wage and Employer Correction Sheet” asking her to correct any misinformation the Department had about her employment with an employer called Revolution Business Services, LLC. Exhibit 31, Williams Wage and Employer Correction Sheet-2021-01-29. The notice said that she had been paid wages of \$11,900 for the quarter of January 2020 through March 2020, and no other wages for the remaining quarters between October 2019 and December 2020.

109. On February 9, 2021, the Department issued a monetary determination stating that Ms. Palmieri Williams was still entitled to \$169 in weekly PUA benefits. Exhibit 32, Williams Monetary Redetermination–2021-02-09. The determination indicated her weekly benefit amount was based on Ms. Palmieri Williams being self-employed and earning \$1 in gross wages for the base period of January 2019 through December 2019. It was unclear how the Department concluded that Ms. Palmieri Williams earned \$1 in self-employment income for that year.

110. On the same day, the Department issued a “PUA Self Employment Advisory” requiring Ms. Palmieri Williams to submit 2019 tax documents to substantiate her PUA claim. Exhibit 33, Williams PUA Self Employment Advisory-2021-02-09. She did so.

111. On February 17, 2021, the Department issued a monetary redetermination based on corrected wage information. This new document indicated that Ms. Palmieri Williams was entitled to \$261 in PUA benefits through March 13, 2021, based on her self-employment income of \$25,444 for the period of January 2020 through December 2020. Exhibit 34, Williams Monetary Redetermination-2021-02-17. But by law, Ms. Palmieri Williams’s PUA benefits were to be based on her 2019 income, not her 2020 income, and in 2019, Ms. Palmieri Williams’s net self-employment income had been zero, such that she should have only been entitled to \$169 per week.

112. Ms. Palmieri Williams did not understand how the Department arrived at its redetermination, so she called to find out. Remarkably, she was able to reach someone at the Department, who informed her that the redetermination reflected the correct amount.

113. Despite the fact that the Department had just increased her benefit amount, on March 29, 2021, the Department stopped paying benefits to Ms. Palmieri Williams.

114. Ms. Palmieri Williams felt helpless because she did not understand the Department’s conflicting determinations—which seemed to be a result of the Department’s own failings—or why her benefits had stopped. Ms. Palmieri Williams was so stressed by the Department’s processes and so frustrated by the Department’s seeming inability to provide her with answers that she sent her paperwork to the lieutenant governor’s office, which contacted the Department on her behalf.

115. On April 29, 2021, the Department issued a monetary redetermination reducing Ms. Palmieri Williams’s PUA benefits to \$169 per week, based on self-employment income of a total

of \$1 for the period of January 2020 through December 2020. Exhibit 35, Williams Monetary Redetermination-2021-04-29. As a consequence of this determination, the Department informed her that she had received \$4,784 in overpaid benefits.

116. On the same day, the Department issued two different notices called “Information for Overpaid Claimants.” One said that Ms. Palmieri Williams owed \$552, and the other \$4,232. Exhibit 36, Williams Info for Overpaid Claimants_ Conflicting Notices-2021-04-29. Each indicated that they were not cumulative, and that Ms. Palmieri Williams might owe more.

117. Ms. Palmieri Williams considered appealing but decided not to, because she could not understand the conflicting determinations and correctly learned from other claimants in online groups that appealing would likely cause the Department to hold up her benefits even longer.

118. On May 18, 2021, after several weeks of not paying Ms. Palmeri Williams any weekly benefits, the Department paid her a lump sum amount for the weeks that she was not previously paid. Every weekly benefit payment was reduced by \$234, such that she received a total of \$1,645 for all seven weeks combined. *See, e.g.*, Exhibit 37, Williams Overpayment Offsets-2021-05-18.

119. Ms. Palmieri Williams attempted to call the phone number listed on her overpayment notices, but was never able to reach someone at the Department and was not able to leave a message. As a result, she had no way to know if the overpayment determination and consequent deductions were correct or not.

120. In May 2021, Ms. Palmieri Williams applied for a PUA overpayment waiver through the Department’s online portal. She had not received a notice from the Department about the availability of waivers, but had heard about it from another claimant.

121. Despite her pending waiver application, the Department continued to deduct amounts from Ms. Palmieri Williams's benefits for the overpayment, contrary to federal requirements. Exhibit 38, Williams Deductions to Benefits- Some Examples-2021.

122. The deductions caused extreme hardship for Ms. Palmieri Williams. She often had to decide between buying food and other necessities or paying bills to keep an adequate roof over her head.

123. Ms. Palmieri Williams continued to try to call the Department, but was not able to reach anyone until late June 2021. When she finally did reach a Department employee, the employee told Ms. Palmieri Williams that the original waiver request she had submitted online had not been received but that she could submit one over the phone with the employee.

124. Ms. Palmieri Williams did so. Exhibit 39, Williams PUA Overpayment Questionnaire-2021-06-21.

125. As with Ms. Palmieri Williams's earlier waiver application, the Department continued to deduct from her benefits to recoup the overpayment, despite the pending application, and despite the fact that federal regulations required the Department to cease collections. Exhibit 38.

126. On July 9, 2021, the Department issued another monetary determination stating that Ms. Palmieri Williams owed \$2,210 in overpaid benefits. Exhibit 40, Williams Monetary Determination-2021-07-09.

127. On July 23, 2021, the Department informed Ms. Palmieri Williams that it would waive her remaining PUA overpayment of \$1,976. Exhibit 41, Williams Notice of Waiver Determination-2021-07-23.

128. The Department did not refund her the amount that it had previously recouped, which was approximately \$2,808.

Plaintiff Erdem Yildiz

129. Plaintiff Erdem Yildiz is a Bernalillo County resident who quit his job as a part-time Uber driver as a result of the pandemic.

130. In March 2020, Mr. Yildiz applied for unemployment insurance. His application explained that he had worked part-time for Safetynet Works Inc. from July 2019, through October 1, 2019, and that he left voluntarily to take a position as an independent contractor with Uber on October 1, 2019. Exhibit 42, Yildiz Unemployment Application-2020-03-26.

131. Because Mr. Yildiz's application stated that he left his job with Safetynet Works voluntarily, the Department should have concluded that he was not eligible for regular unemployment benefits. *See* NMSA 1978, § 51-5-7(A) (2011) (providing that regular unemployment benefits are generally not available to those who voluntarily leave their jobs).

132. However, on March 26, 2020, the Department sent Mr. Yildiz a monetary determination stating that he was entitled to a weekly benefit of \$132 based on his gross wages of \$3,608.74 from Safetynet Works for the period of October 2018 through September 2019. Exhibit 43, Yildiz Monetary Determination-2020-03-26. The eligibility determination did not inform Mr. Yildiz of the significant consequences of receiving and failing to appeal an award of benefits to which he was not entitled. Mr. Yildiz did not understand unemployment benefit eligibility and had no basis for evaluating whether the determination was correct.

133. On April 24, 2020, the Department issued a notice of determination, stating that Mr. Yildiz was not eligible for regular unemployment benefits because he voluntarily left his job with Safetynet Works to seek other employment. Exhibit 44, Yildiz Notice of Determination-2020-04-24.

134. Despite its determination that Mr. Yildiz was not entitled to regular unemployment benefits, on May 4, 2020, the Department issued Mr. Yildiz a lump sum payment for regular unemployment benefits for the weeks beginning with the week ending on March 21, 2020.

135. The next day, on May 5, 2020, the Department issued a notice of determination stating that Mr. Yildiz had been laid off due to lack of work, and that he was eligible to receive benefits beginning March 4, 2020, so long as all other eligibility requirements were met. Exhibit 45, Yildiz Notice of Determination-2020-05-05. It was not clear on what basis the Department determined that Mr. Yildiz had been laid off, and for reasons that are equally unclear, this notice named Mr. Yildiz himself, rather than Safetynet Works, as Mr. Yildiz's employer, although Mr. Yildiz would not have been entitled to regular unemployment benefits based on self-employment.

136. That same day, Mr. Yildiz received a monetary redetermination stating that he was eligible for \$132 per week in regular unemployment benefits based on his employment with Safetynet Works for the period of October 2018 through September 2019. Exhibit 46, Yildiz Monetary Redetermination-2020-05-05. This notice stated that "a response to the determination will place a hold on your claim until investigated," which discouraged Mr. Yildiz from appealing his redetermination. He didn't understand the contents of the different notices and he was in financially desperate straits and didn't want to put his benefits on hold.

137. Every quarter, the Department required Mr. Yildiz to reapply for unemployment benefits. Mr. Yildiz timely reapplied as required each quarter, starting in the summer of 2020. The application was identical each quarter.

138. On July 13, 2020, the Department extended Mr. Yildiz's unemployment benefits by granting him \$132 per week in PEUC benefits based on his employment with Safetynet Works, for the period of October 2018 through September 2019. Exhibit 47, Yildiz Monetary

Determination-2020-07-13. This gave him an additional thirteen weeks of benefits under the federal program because he had exhausted his regular state unemployment benefits.

139. On October 13, 2020, the Department sent Mr. Yildiz a notification of potential eligibility informing him that as his PEUC benefits had now been exhausted, he could apply for an additional thirteen weeks of benefits under the Federal State Extended Benefits Program. Exhibit 48, Yildiz Notice of Potential Eligibility-2020-10-13.

140. The same day, Mr. Yildiz reapplied for benefits. The form asked for his employment since October 2019, and because Mr. Yildiz had left Safetynet Works on October 1, 2019, and begun working as an independent contractor for Uber the next day, Mr. Yildiz listed only his employment for Uber. Exhibit 49, Yildiz PUA Application-2020-10-13.

141. On October 14, 2020, the Department awarded PUA benefits to Mr. Yildiz in the amount of \$169 per week. Because work as an independent contractor constitutes self-employment, this determination was based on Mr. Yildiz's self-employment for the period of January 2019 through December 2019, and on zero earnings for that period. Exhibit 50, Yildiz PUA Monetary Determination-2020-10-14.

142. On October 19, 2020, the Department determined that Mr. Yildiz was eligible for \$132 per week in PEUC payments based on his employment with Safetynet Works, for the period of October 2018 through September 2019. Exhibit 51, Yildiz Monetary Redetermination-2020-10-19.

143. On the same day, it determined that Mr. Yildiz was not qualified for the Federal State Extended Benefits Program that he had applied for. Exhibit 52, Yildiz Monetary Redetermination -2020-10-19.

144. On February 9, 2021, the Department determined that Mr. Yildiz qualified for \$132 per week in regular unemployment benefits based on his employment with Safetynet Works for the

base period of October 2018 through September 2019. Exhibit 53, Yildiz Monetary Determination-2021-02-09.

145. On February 10, 2021, the Department issued a “PUA Self Employment Advisory” requiring Mr. Yildiz to submit his 2019 tax documents to substantiate his claim for PUA self-employment benefits. Exhibit 54, Yildiz PUA Self Employment Advisory-2021-02-10. He did so.

146. On February 11, 2021, the Department issued multiple documents called “Information for Overpaid Claimants” indicating that Mr. Yildiz had recently received a notice stating that he owed an overpayment of \$2,345. Exhibit 55, Yildiz Information for Overpaid Claimants-2021-02-11. However, he had not received such a notice. Unlike an actual determination notice, the information letter did not provide the procedures for appealing the overpayment determination.

147. On February 15, 2021, the Department issued a monetary redetermination that again concluded that Mr. Yildiz did not qualify for the Federal State Extended Benefits he had applied for. Since he had already been denied the benefits, it was not clear why this was a redetermination. The notice stated that the determination resulted in an overpayment of \$1,516. Exhibit 56, Yildiz FBD1 Monetary Redetermination-2021-02-15.

148. On the same day, the Department issued a notice informing Mr. Yildiz that he was entitled to additional PEUC benefits in the amount of \$132 per week, based on his employment with Safetynet Works for the period of October 2018 through September 2019. Exhibit 57, Yildiz PEUC Monetary Redetermination-2021-02-15.

149. On the same day, the Department issued a monetary redetermination indicating that Mr. Yildiz was entitled to \$132 in weekly benefits based on his employment with Safetynet Works for the period of October 2018 through September 2019. Exhibit 58, Yildiz Monetary Redetermination _No Program Identified-2021-02-15. Since this was the same amount he had been receiving

previously, it is not clear why this was a redetermination. The notice said that based on the redetermination, Mr. Yildiz owed \$1,516 in overpaid benefits, and that repayment would begin immediately through an offset of Mr. Yildiz's weekly benefits.

150. The Department began taking deductions from Mr. Yildiz's benefits without waiting for the appeal period to pass.

151. Mr. Yildiz did not appeal the overpayment determination because he assumed that the Department had used the correct wage amounts and done its calculations correctly. In addition, problems with the Department's online portal made it difficult for Mr. Yildiz to see and understand his account.

152. Two days later, on February 17, 2021, the Department issued a monetary redetermination stating that Mr. Yildiz was entitled to \$169 in PUA benefits—the same amount in PUA benefits that the Department had previously determined he was entitled to. Exhibit 59, Yildiz Monetary Redetermination-2021-02-17. The notice indicated that as a result of the redetermination, Mr. Yildiz owed \$1,516 in overpaid benefits.

153. On the same day, the Department issued multiple "Information for Overpaid Claimants" letters, all stating that Mr. Yildiz owed \$2,345 in overpaid benefits. Exhibit 60, Yildiz Information for Overpaid Claimants_ Multiple Notices-2021-02-17.

154. On February 26, 2021, the Department issued a monetary redetermination, again stating that Mr. Yildiz did not qualify for Federal State Extended Benefits based on his employment with Safetynet Works for the period of October 2018 through September 2019. Exhibit 61, Yildiz FBD1 Monetary Redetermination-2021-02-26. The notice indicated that as a result of the redetermination, Mr. Yildiz owed \$689 in overpaid benefits.

155. The same day, the Department issued a redetermination stating that Mr. Yildiz was eligible for \$132 in PEUC benefits, based on his employment with Safetynet Works for the base period of October 2018 through September 2019. Exhibit 62, Yildiz PEUC Monetary Redetermination-2021-02-26. This notice also said that the redetermination resulted in an overpayment of \$689.

156. The same day, the Department issued yet another redetermination stating that Mr. Yildiz was eligible for \$132 in benefits based on his employment with Safetynet Works for the base period of October 2018 through September 2019. Exhibit 63, Yildiz Monetary Redetermination_ No Program Identified-2021-02-26. This notice also said that the redetermination resulted in an overpayment of \$689.

157. On March 2, 2021, the Department issued a “Monthly Statement of Account” for February 1, 2021, through March 1, 2021. Exhibit 64, Yildiz Monthly Statement of Account-2021-03-02. The statement indicated that Mr. Yildiz had \$3,752 in new overpayments, that \$366 was deducted from this amount, that Mr. Yildiz made \$3,063 in payments, and that there was a total overpayment balance of \$323.

158. On March 10, 2021, Mr. Yildiz filled out a questionnaire regarding his self-employment income for the 2019 tax year. Exhibit 65, Yildiz Self-Employment Income Form-2021-03-10. He indicated that his gross income was \$5,581, and that his expenses for the year were \$9,429. This left him with a net loss of \$3,848.

159. On March 15, 2021, the Department issued a monetary determination regarding Mr. Yildiz’s entitlement to regular unemployment benefits. Exhibit 66, Yildiz Monetary Determination-2021-03-15. However, because Mr. Yildiz’s weekly benefit amount was more than \$25 on his prior PEUC claim, the Department determined that he would continue to collect benefits on the PEUC claim. The determination indicated that he was not entitled to benefits based on his

employment with Safetynet Works for the period of October 2019 through September 2020, because he earned only \$1,858.81 in one of the quarters, and no income in the other quarters.

160. On March 18, 2021, the Department issued a monetary redetermination indicating that Mr. Yildiz was entitled to \$169 in weekly PUA benefits based on his self-employment income of zero dollars for the period of January 2019 through December 2019, since he had reported that his net income was a loss. Exhibit 67, Yildiz Monetary Redetermination-2021-03-18.

161. On March 24, 2021, the Department issued a “PUA Overpayment Questionnaire for Waiver Consideration Notice” informing Mr. Yildiz that the U.S. Department of Labor had granted states the authority to waive PUA overpayments when the person was not at fault for the payment and repayment would be a financial hardship. Mr. Yildiz filled out the application for the waiver. Exhibit 68, Yildiz PUA Overpayment Questionnaire for Waiver Consideration Notice-2021-03-24.

162. On April 6, 2021, the Department sent Mr. Yildiz a monetary determination stating that he was ineligible for regular unemployment benefits because he had not earned sufficient wages in the base period of January 2020 through December 2020. Exhibit 69, Yildiz Monetary Determination-2021-04-06. The notice indicated that his employer was Uber Technologies, Inc., and that he had earned no wages for the base period.

163. The Department issued several more such notices in April. Exhibit 70, Yildiz Additional Redeterminations-2021-04.

164. On May 6, 2021, the Department issued a notice of determination stating that Mr. Yildiz was ineligible for MEUC benefits as the documentation he submitted did not establish at least \$5,000 in net self-employment income. Exhibit 71, Yildiz Notice of Determination-2021-05-06, MEUC.

165. On the same day, the Department issued another monetary redetermination stating that Mr. Yildiz did not qualify for Federal State Extended Benefits based on his employment with Safetynet Works for the period of October 2018 through September 2019, and that as a result of this redetermination, Mr. Yildiz owed \$1,684 in overpaid benefits. Exhibit 72, Yildiz Monetary Redetermination-2021-05-06.

166. On the same day, the Department issued an “Information for Overpaid Claimants” letter, stating that Mr. Yildiz owed \$7,776 in overpaid benefits. Exhibit 73, Yildiz Information for Overpaid Claimants-2021-05-06. He had never received a notice stating that this was the amount he owed, and unlike an overpayment notice, the information letter did not describe a process for appealing.

167. On May 10, 2021, the Department issued Mr. Yildiz a payment plan, which stated that his current debt balance was \$1,684, and indicated that he should make monthly payments of \$56.13 in order to repay the overpayment. Exhibit 74, Yildiz Payment Plan-2021-05-10.

168. On May 24, 2021, just two weeks later, the Department issued Mr. Yildiz another payment plan stating that his current debt balance was now \$2,172, and that he should make monthly payments of \$362 to repay the overpayment. Exhibit 75, Yildiz Payment Plan-2021-05-24.

169. Mr. Yildiz tried to make a payment through the Department’s online system, but the system did not accept the payment.

170. That same day, the Department also issued a monetary redetermination indicating that Mr. Yildiz was entitled to \$132 in weekly PEUC benefits based on his employment with Safetynet Works during the period of October 2018 through September 2019, and that this redetermination resulted in an overpayment of \$2,388. Exhibit 76, Yildiz Monetary Redetermination-2021-05-24.

171. On July 21, 2021, the Department issued a monetary redetermination stating that Mr. Yildiz was expected to return to work. The notice indicated that the determination resulted in an overpayment of \$660. Exhibit 77, Yildiz Monetary Redetermination_ Expected to Return to Work-2021-07-21.

172. On the same day, the Department issued another monetary redetermination indicating that Mr. Yildiz was entitled to \$132 in weekly benefits based on his employment with Safetynet Works for the period of October 2018 through September 2019. The notice indicated that the determination resulted in an overpayment of \$660. Exhibit 78, Yildiz Monetary Redetermination_ No Program Identified-2021-07-21.

173. On the same day, the Department issued another monetary redetermination stating that Mr. Yildiz was eligible for \$169 in PUA benefits, based on his self-employment income of \$5,468 for the period of January 2020 through December 2020. Exhibit 79, Yildiz PUA Monetary Redetermination-2021-07-21. The notice stated that the determination resulted in an overpayment of \$660.

174. On the same day, the Department issued an “Information for Overpaid Claimants” letter indicating that Mr. Yildiz owed \$9,380 in overpaid benefits. Exhibit 80, Yildiz Information for Overpaid Claimants-2021-07-21.

175. Mr. Yildiz was frustrated and overwhelmed by these various notices, and tried many times to contact the Department, but was never able to reach anyone by phone, and no one responded to his emails.

176. All told, the Department awarded Mr. Yildiz \$132 per week for the 30 weeks beginning with the week ending on March 21, 2020, through the week ending on October 10, 2020, as well as for the 23 weeks beginning with the week ending on January 2, 2021, through the week ending

on July 3, 2021, with the exception of four weeks for which the Department did not pay benefits. This was a total of \$6,996 in regular unemployment benefits. In addition to this, it awarded him a total of \$17,100 in FPUC benefits, and \$4,901 in PUA benefits at \$169 per week for the 29 weeks beginning on the week ending on October 17, 2020, through the week ending on May 15, 2021, with the exception of several weeks for which the Department did not make payments. Then the Department also issued fourteen checks totaling \$3,189 not linked to any particular program. But over multiple weeks, the Department deducted a total of \$6,004 from these benefits, such that what Mr. Yildiz ultimately received was a total of \$26,182 in benefits.

177. What Mr. Yildiz was actually entitled to receive was \$169 per week in PUA benefits for the 68 weeks beginning with the week ending on March 21, 2020, through the week ending on July 3, 2021. This would have been \$11,492 in PUA benefits, and then he was also entitled to \$18,300 in FPUC benefits. Thus, the Department should have paid him a total of \$29,792 in benefits.

178. Since Mr. Yildiz received only \$26,182 in benefits, he was underpaid, not overpaid.

179. This underpayment was the Department's fault.

180. On March 25, 2022, Mr. Yildiz received two notices titled "Notice of Determination Disaster Unemployment Assistance." One notice stated that Mr. Yildiz had established good cause for the Department to waive what it believed was its overpayment of his PUA benefits; the other notice stated that he established good cause to waive what the Department believed was its overpayment of his FPUC benefits. Exhibit 81, Yildiz FPUC and PUA Waiver Notices-2022-03-25. Neither notice mentioned how much was being waived, whether any amount that was previously deducted from continuing benefits would be refunded, or how Mr. Yildiz could appeal these determinations if amounts waived did not fully reimburse Mr. Yildiz.

181. According to Mr. Yildiz's online account, he paid back \$6,004 to the Department in continuing benefit deductions, received a waiver for \$4,483 he still allegedly owed the Department, and he got a refund for \$3,189. Exhibit 82, Yildiz Overpayment History-2022-06-09. The Department has yet to refund the remainder of the amount it recouped from Mr. Yildiz through continuing benefit offsets, which is approximately \$3,610.

Plaintiff Coral Gonzalez-Inza

182. Plaintiff Coral Gonzalez-Inza is a resident of Bernalillo County and a licensed medical professional.

183. From May to July 2019, Ms. Gonzalez-Inza worked as an employee for various media production companies, providing medical services. To supplement her income, she also sometimes rented out her medical kit to the companies, and she was paid for this service as an independent contractor—generally making \$2,000 or less per year in this way. Ms. Gonzalez-Inza stopped working in mid-2019 because media production companies were scaling back their projects and hiring fewer people due to the Covid-19 pandemic.

184. In March 2020, several months after her last job, Ms. Gonzalez-Inza applied for unemployment benefits. The Covid-19 pandemic was now at its height and, because Ms. Gonzalez-Inza had breathing ailments, including asthma, Ms. Gonzalez-Inza did not feel safe working around people.

185. On Ms. Gonzalez-Inza's unemployment application, she noted that she was separated from her most recent employer on July 18, 2019, and that she had not applied for unemployment benefits because she did not believe she would qualify. Exhibit 83, Unemployment Application-2020-05-28. Ms. Gonzalez-Inza also noted that she was a member of a union with a hiring hall, that she was

in good standing with the union, and that she was on the union's out-of-work list. Exhibit 84, Actively Seeking Union Waiver-2020-05-28.

186. That same day or soon after, Ms. Gonzalez-Inza applied for PUA benefits. On her PUA application, Ms. Gonzalez-Inza noted that she was self-employed as an independent contractor and that her last job as such was on May 7, 2019. Exhibit 85, PUA Application-2020-05-28. She was answering the PUA application questions with her medical kit independent-contractor wages in mind.

187. On her PUA application, Ms. Gonzalez-Inza further noted that she was a union member working as a medic, and that since mid-2019, she had not been notified of any job assignments by the union due to the Covid-19 pandemic. Ms. Gonzalez-Inza also stated that she reported \$5,781 in 2019 on her 1040A tax form. *Id.*

188. Desperate to get some form of assistance, Ms. Gonzalez-Inza called the Department to inquire about her benefits. She was never able to reach someone, and the call often disconnected after 30 to 45 minutes of being on hold.

189. On May 28, 2020, the Department sent Ms. Gonzalez-Inza a "Wage and Employer Correction Sheet," asking her to correct any misinformation the Department had about her employment for the period of January 2019 through March 2020. Exhibit 86, Wage and Employer Correction Sheet-2020-05-28. The form indicated that Ms. Gonzalez-Inza was employed by Entertainment Partners Services, LLC, during that time and earned \$4,205.05 in the second quarter of that year.

190. On the same day, Ms. Gonzalez-Inza received a "Notice of Determination" stating that she was in good standing with her local union, and, because of this, her work search requirement was waived beginning May 24, 2020. The determination further stated that if her union status changed,

she was required to notify the Department and seek employment with a minimum of two different employers each week in which she claimed benefits. Exhibit 87, Notice of Determination-2020-05-28. Given that the work search requirement had been waived for all unemployment participants, this notice was incorrect and misleading.

191. That same day, the Department issued Ms. Gonzalez-Inza a monetary determination concluding that she was not eligible to establish a claim for regular unemployment benefits. Exhibit 88, Monetary Determination Regular UI-2020-05-28. The determination noted that Ms. Gonzalez-Inza had not earned sufficient wages in her base period, which showed that she only received \$4,205.05 from April to June 2019. Ms. Gonzalez-Inza never earned this amount in one quarter, nor did she state on any unemployment applications that she did.

192. Ms. Gonzalez-Inza received yet another monetary determination on this day awarding her \$169 per week in PUA benefits, plus \$600 per week in FPUC benefits, totaling \$769 per week. Exhibit 89, Monetary Determination_PUA-2020-05-28. The notice indicated that the determination was based on self-employment wages of \$5,781 for the period of January 2019 to December 2019. This was incorrect, as the wages she earned in 2019 were in employee wages.

193. On June 4, 2020, Ms. Gonzalez-Inza began receiving PUA benefits, after several months of waiting. Her benefits were backdated to the week ending March 28, 2020, for a lump sum of \$6,380. Exhibit 90, Lump Sum Payment-2020-06-04. Ms. Gonzalez-Inza was grateful to receive these benefits, and she figured everything with her benefits was fine and that the Department knew what it was doing.

194. On June 10, 2020, Ms. Gonzalez-Inza received \$692 in PUA benefits for the week ending June 6, 2020. She continued to receive this amount every week until the week ending July 25,

2020, totaling \$5,536 in PUA benefits for 8 weeks. Exhibit 91, Payments from week 6_6 to 7_25-2020.

195. Ms. Gonzalez-Inza stopped receiving benefits after the week ending July 25, 2020, because she was offered a job and did not think it was right to continue collecting unemployment benefits while preparing for a job. Furthermore, Ms. Gonzalez-Inza incorrectly thought that by not taking any more benefits, she was leaving benefits for others in more dire need.

196. From August to December 2020, Ms. Gonzalez-Inza did not receive any more PUA benefits. While the job she had lined up in July eventually fell through, she did not want to request any more benefits, as she had help from family and friends and was making it work. During this period, Ms. Gonzalez-Inza had difficult days where money was very tight, but she figured that other New Mexicans needed the benefits more than her.

197. In January 2021, Ms. Gonzalez-Inza reapplied for unemployment benefits, as she was in dire need of financial assistance. She was also encouraged by her union representative and several friends to reapply. As before, Ms. Gonzalez-Inza figured that the Department would deny her claim if she did not qualify for benefits.

198. On February 15, 2021, the Department issued a monetary redetermination awarding Ms. Gonzalez-Inza \$169 per week in PUA benefits, plus \$300 per week in FPUC benefits, totaling \$469 per week. Exhibit 92, Monetary Redetermination-2021-02-15. Like her first eligibility determination, the notice indicated that the redetermination was based on self-employment wages of \$5,781 for the period of January 2019 to December 2019.

199. On February 24, 2021, Ms. Gonzalez-Inza received a lump sum payment of \$3,376 in PUA benefits for the previous 8 weeks starting with the week ending January 2, 2021. Exhibit 93, Lump Sum Payment-2021-02-24. When Ms. Gonzalez-Inza received this lump sum payment, she figured

everything was fine and that the Department had correctly determined her eligibility for unemployment benefits.

200. On February 25, 2021, the Department issued a letter titled “PUA Self Employment Advisory.” Exhibit 94, PUA Self Employment Advisory-2021-02-25. This advisory informed Ms. Gonzalez-Inza that she had 90 days from the date of the letter, i.e., until May 26, 2021, to provide the Department with her 2019 tax documents to substantiate her PUA claim. The advisory further noted that if she was unable to provide her tax documents, she must at least submit documentation that proves she was self-employed or scheduled to begin work that was prevented by the pandemic. The advisory also directed her to submit all licenses, business permits, or certifications for her profession. The advisory made clear that if she did not submit these documents in the time frame requested, her PUA claim would be denied, and she would be required to pay back all PUA benefits she received as of the week of December 27, 2020.

201. Ms. Gonzalez-Inza was confused by this advisory, as she was unsure why the Department required proof of the minimal self-employment wages she made in 2019 when her medical kit was rented by media production companies. She called the Department several times to inquire about this matter but was unable to connect with someone who could help her. After several days of calling, however, she eventually connected with a Department employee who, after hearing Ms. Gonzalez-Inza’s explanation of the wages she earned in 2019, advised her to submit her tax information. While Ms. Gonzalez-Inza was still confused, she figured that the Department knew best and sent the Department her tax information via mail.

202. For the next three weeks—the weeks ending February 27, March 6, and March 13, 2021—Ms. Gonzalez-Inza received \$422 per week in PUA benefits. Exhibit 95, Payments from week 2_27 to 3_13-2021. Since these payments continued to come in every week, Ms. Gonzalez-Inza

assumed that the Department received her tax information and determined that everything was fine.

203. On March 18, 2021, Ms. Gonzalez-Inza received yet another monetary redetermination awarding her \$169 per week in PUA benefits, plus \$300 per week in FPUC benefits, totaling \$469 per week. Exhibit 96, Monetary Redetermination-2021-03-18. Like her previous eligibility redetermination, the notice indicated that the redetermination was based on self-employment wages of \$5,781 for the period of January 2019 to December 2019. Ms. Gonzalez-Inza figured everything was fine because the Department was sending her weekly benefits and she had provided the information the Department asked for.

204. For the next two weeks—the weeks ending March 20 and March 27, 2021—Ms. Gonzalez-Inza received \$422 per week in PUA benefits. Exhibit 97, Payments from weeks 3_20 to 3_27-2021.

205. Ms. Gonzalez-Inza did not receive her weekly benefits for the week ending April 3, 2021. It wasn't until the next week's benefits were due for the week ending April 10, 2021, that Ms. Gonzalez-Inza received \$844 in PUA benefits for both weeks. Exhibit 98, Payments from week 4_03 and 4_10-2021. Ms. Gonzalez-Inza figured this was a glitch in the Department's system and did not worry about it.

206. For the following seven weeks—the weeks ending April 17 through May 29, 2021—Ms. Gonzalez-Inza continued to receive \$422 per week in PUA benefits. Exhibit 99, Payments for the weeks 4_17 through 5_29-2021. Ms. Gonzalez-Inza, however, did not timely receive her PUA weekly payment for the week ending June 5, 2021. It was not until August 12, 2021, that Ms. Gonzalez-Inza finally received her PUA payment of \$422. Exhibit 100, Payment week 6_05-2021.

207. On June 11, 2021, Ms. Gonzalez-Inza filled out a form the Department sent her regarding her work searches. The form asked her to check the box that best described her circumstances. From the limited options available, Ms. Gonzalez-Inza checked the box saying that she was not looking for work because of a temporary plant shutdown, because she felt that this was the only option on the form that was similar to the fact that media production companies were shut down. Exhibit 101, Work Search Requirement Questionnaire-2021-06-11.

208. On June 14, 2021, the Department issued a letter titled “Work Search Verification Log” showing that on June 5, 2021, she emailed Flavor Unit Entertainment to inquire about a job and that they had yet to decide on the matter. Exhibit 102, Work Search Verification Log-2021-06-14.

209. On June 18, 2021, Ms. Gonzalez-Inza received her last PUA payment of \$422 for the week ending June 12, 2021. Exhibit 103, PUA payment week 6_12-2021-06-11.

210. Thereafter, Ms. Gonzalez-Inza stopped certifying for benefits because she found a job.

211. On August 31, 2021, the Department issued a letter informing her that all federal unemployment programs were set to expire on September 4, 2021. Exhibit 104, Program Expiration Notification-2021-08-31. The letter stated that all federal programs, including PUA, would expire regardless of account balances, but that if someone had a pending eligibility determination for any of these benefit programs, the Department would ensure that they received payments owed to them for all weeks prior to September 4, 2021.

212. On September 23, 2021, the Department issued a non-monetary determination titled “Notice of Determination Disaster Unemployment Assistance” finding that because she had not provided the requested information to substantiate her self-employment, she did not meet the requirements of PUA. Exhibit 105, Non-Monetary Determination-2021-09-23. The determination stated that the decision was final unless Ms. Gonzalez-Inza appealed within 15 days, that she was

denied all benefits starting with the week ending May 24, 2020, and that she owed \$18,177 in overpaid PUA benefits to the Department.

213. The same day, the Department issued a letter titled “Information for Overpaid Claimants” stating that Ms. Gonzalez-Inza owed the Department \$18,177 in overpayments. Exhibit 106, Information for Overpaid Benefits-2021-09-23. The notice indicated that the overpayment was not cumulative, and that Ms. Gonzalez-Inza might owe more than the stated amount.

214. Ms. Gonzalez-Inza received two more monetary redeterminations on this day.

215. One determination found that she was eligible to receive 13 weeks of PEUC benefits and 40 weeks of PEUC-A benefits at \$403 per week. Exhibit 107, Monetary Redetermination_403-2021-09-23. Inexplicably, the determination stated that Ms. Gonzalez-Inza’s benefit year spanned from December 13, 2009, to December 11, 2010, and that she could continue receiving these benefits through December 28, 2013. The determination further found that she qualified for these benefits because she earned sufficient wages in more than one quarter working for three employers from July 2008 through June 2009, and that she had an overpayment of \$18,177.

216. The second determination found that Ms. Gonzalez-Inza was eligible to receive the same 13 weeks of PEUC benefits and 40 weeks of PEUC-A benefits, but at the different rate of \$355 per week. Exhibit 108, Monetary Redetermination_355-2021-09-23. Again, the determination bafflingly stated that Ms. Gonzalez-Inza’s benefit year spanned from December 14, 2008, to December 12, 2009, and that she could potentially continue receiving these benefits through December 28, 2013. The determination further found that she qualified for these benefits because she earned sufficient wages in more than one quarter working for nine employers from July 2007 through June 2008, and that she had an overpayment of \$18,177.

217. Despite these redeterminations, Ms. Gonzalez-Inza never received PEUC or PEUC-A benefits.

218. Ms. Gonzalez-Inza, who had stopped seeking benefits because she was working, did not see these determinations until months after they were issued. When she finally saw her overpayment determination in February 2022, she called the Department to inquire about the massive overpayment. The Department employee told her to send in her tax documents. Ms. Gonzalez-Inza explained that she had already sent her documents in February 2021, but the employee said that the Department had no record of ever receiving them.

219. After this call, Ms. Gonzalez-Inza contacted the Department's Acting Secretary Ricky Serna about her overpayment. Acting Secretary Serna told Ms. Gonzales-Inza that someone from the Department would contact her to help her with this problem. No one ever called Ms. Gonzalez-Inza back.

220. On October 25, 2021, the Department issued Mr. Gonzalez-Inza a payment plan, which stated that her current debt balance was \$18,177, and indicated that she should make monthly payments of \$3,029.50 to repay the overpayment. Exhibit 109, Payment Plan-2021-10-25.

221. On December 7, 2021, and then again on January 3, 2022, the Department issued a "Monthly Statement of Account" finding that that Ms. Gonzalez-Inza owed \$18,177 in overpaid benefits. Exhibit 110, Monthly Statement of Account-2021-12-7; Exhibit 111, Monthly Statement of Account-2022-1-03. The letters inexplicably showed that Ms. Gonzalez-Inza had made a payment of \$1,264 to satisfy the original overpayment, which was \$19,441. The December 7 letter was the first one to mention this higher overpayment amount.

222. Ms. Gonzalez-Inza continued to receive "Monthly Statement of Account" letters throughout 2022. All the letters were similar, finding that Ms. Gonzalez-Inza owed \$18,177 in

overpayments. Unlike the two “Monthly Statement of Account” letters she received in late 2021 and early 2022, these letters no longer noted that Ms. Gonzalez-Inza’s original overpayment balance was \$19,441. Instead, these letters all noted that her original overpayment balance was \$18,177. Exhibit 112, Monthly Statement of Account-Feb to Dec-2022.

223. On May 5, 2022, the Department issued an “Overpayment Waiver Consideration Notice” stating that she could apply for a waiver of her overpayment if she received benefits through any of the federal pandemic programs, including PUA. Exhibit 113, Overpayment Waiver Consideration Notice-2022-05-05. Ms. Gonzalez-Inza did not see this notice and thus did not apply for a waiver of her PUA overpayment.

224. On January 9, 2023, the Department issued yet another “Monthly Statement of Account” letter. This letter continued to find that Ms. Gonzalez-Inza owed \$18,177 in overpaid PUA benefits. Exhibit 114, Monthly Statement of Account-2023-01-07.

Yohanna Gerges

225. Plaintiff Yohanna Gerges is a Bernalillo County resident who had to stop working as an Uber and Lyft driver because of the pandemic.

226. Mr. Gerges applied for unemployment insurance in March 2020.

227. On March 26, 2020, the Department issued a monetary determination, stating that Mr. Gerges did not qualify for benefits because he had not earned sufficient wages in his base period. But the form did not state what base period the Department was using to make this determination, nor did it mention any employers for Mr. Gerges. Exhibit 115, Gerges Monetary Determination-2020-03-26.

228. On March 30, 2020, the Department issued a monetary redetermination, making the same finding that Mr. Gerges was ineligible, and again failing to mention the relevant base period or an employer. Exhibit 116, Gerges Monetary Redetermination-2020-03-30.

229. On the same day, the Department issued a second monetary redetermination, stating that Mr. Gerges was not eligible because he had not earned sufficient wages in his base period. Exhibit 117, Gerges Monetary Redetermination-2020-03-30. The notice explained that “sufficient wages” were defined as “at least 2089.72 in one quarter of the base period and at least a dollar in another quarter of the base period.” The form showed that the Department was relying on a base period of January 2019 through December 2019, and that Mr. Gerges had no income for the first three quarters of the base period and then \$12,974.63 for the last quarter of the period. The form indicated that Mr. Gerges worked for Propak Logistics, Inc., an employer for whom Mr. Gerges had not worked since 2017. Apparently, these wages were included because Propak had not paid Mr. Gerges for his 2017 work until 2019.

230. Throughout March and April 2020, Mr. Gerges called the Department multiple times to try to inquire about these letters.

231. In April 2020, Mr. Gerges applied for PUA benefits. Exhibit 118, Gerges PUA Application-2022-04-27.

232. On April 28, 2020, the Department issued a monetary determination stating that Mr. Gerges was eligible to receive \$461 in PUA benefits for as long as he was unemployed due to Covid-19 up until December 26, 2020. Exhibit 119, Gerges Monetary Determination-2020-04-28. The Department used the base period of January 2019 through December 2019, and indicated that he made \$12,933.25 per quarter, for a total of \$51,733. Mr. Gerges did not know how the Department arrived at this number, as he believed that his net income had been a loss, but he figured that the

Department must have made the correct calculation based on its internal requirements. The notice did not warn Mr. Gerges of the danger of accepting and failing to appeal an overpayment.

233. On May 13, 2020, the Department issued a monetary redetermination making the same determination. Exhibit 120, Gerges Monetary Redetermination-2020-05-13. It is not clear why this was a redetermination or why Mr. Gerges received this additional notice. This document cautioned against an appeal, warning Mr. Gerges that any response to the decision would place a hold on his claim until investigated.

234. Every quarter, the Department required Mr. Gerges to reapply for unemployment benefits. Mr. Gerges timely reapplied as required each quarter, starting in the summer of 2020. The application was identical each quarter.

235. On August 3, 2020, the Department issued a monetary determination stating that Mr. Gerges was not entitled to benefits. Exhibit 121, Gerges Monetary Determination-2020-08-03.

236. On August 10, 2020, the Department issued two monetary redeterminations stating that Mr. Gerges was not entitled to benefits because he had no earnings for the base period of April 2019 through March 2020. Exhibit 122, Gerges Monetary Redeterminations_ Two Notices-2020-08-10.

237. On October 5, 2020, the Department again issued a monetary determination stating that Mr. Gerges was ineligible for benefits because he had no wages in the base period, but the notice did not state what the base period was, nor did it name an employer. Exhibit 123, Gerges Monetary Determination-2020-10-05.

238. When Mr. Gerges reapplied in September 2020 for unemployment benefits, he stated that he was separated from his most recent employer on March 10, 2020; that he had been collecting

PUA benefits; that he had previously filed for unemployment benefits; and that in 2019, his gross income was \$68,476. Exhibit 124, Gerges Unemployment Application-2020-10-05.

239. On October 6, 2020, the Department sent Mr. Gerges a “Wage and Employer Correction Sheet” asking him to add missing employment from July 1, 2019, to June 30, 2020. Exhibit 125, Gerges Wage and Employer Correction Sheet-2020-10-06. The Department was missing some of Mr. Gerges’s wages from his employment with Uber and Lyft, so Mr. Gerges added this information.

240. On the same day, the Department issued Mr. Gerges a monetary redetermination stating that he was not entitled to benefits because he had not earned sufficient wages in the base period. It listed the base period as July 2019 through June 2020, and showed that he had earned \$12,974.63 in one of the quarters of that period from Propak Logistics and no income in any other quarter. Exhibit 126, Gerges Monetary Redetermination-2020-10-06.

241. The Department continued to pay PUA benefits to Mr. Gerges.

242. On February 9, 2021, the Department issued a monetary redetermination to Mr. Gerges saying that if approved, he would be eligible for \$461 for PUA benefits until March 13, 2021. The relevant base period was January 2019 through December 2019, and the notice indicated that Mr. Gerges was self-employed and had \$51,733 in gross wages for that period. Exhibit 127, Gerges Monetary Redetermination-2021-02-09.

243. He received three additional notices on the same day providing the same information.

244. On February 15, 2021, the Department issued another monetary redetermination, stating that Mr. Gerges was not entitled to benefits because he had not earned sufficient wages in his base period. The relevant base period was October 2019 through September 2020, and the notice indicated that Mr. Gerges worked for Propak Logistics and earned \$12,974.63 in one of the

quarters and had no earnings for the other quarters. Exhibit 128, Gerges Monetary Redetermination-2020-02-15.

245. On or around March 4, 2021, Mr. Gerges received a lump sum PUA payment. For each of the listed weeks, he received \$169 in PUA benefits plus \$300 per week in FPUC. However, the Department deducted \$234 per week as a “New Mexico Overpayment Offset,” even though it had not issued him a notice of overpayment. Exhibit 129, Gerges Overpayment Offset-2021-03-04.

246. Based on the deductions, Mr. Gerges had to cut back on necessities such as food and gas.

247. On March 5, 2021, the Department issued Mr. Gerges another monetary redetermination. Exhibit 130, Gerges Monetary Redetermination-2021-03-05. This one stated that he was receiving the redetermination based on new or corrected wage information. It said that, if approved, Mr. Gerges would be eligible for \$169 through March 13, 2021, if he was unemployed due to the Covid-19 pandemic. It listed his base period as January 2019 through December 2019 and said that he was self-employed and earned \$1.00 per quarter that year, for a total of \$4.00 in gross wages. The notice indicated that the determination resulted in an overpayment of benefits in the amount of \$12,964, and that repayment would begin immediately through an offset.

248. The same day, the Department issued a letter called “Information for Overpaid Claimants,” stating that Mr. Gerges owed the Department not \$12,964, as the redetermination letter stated, but \$13,432. Exhibit 131, Gerges Information for Overpaid Claimants-2021-03-05. It said that the amount only included the most recent determination of overpayment, and was not cumulative, and therefore might not be the total amount that Mr. Gerges owed.

249. On March 5, 2021, the Department also issued a notice of determination for disaster unemployment assistance, stating that Mr. Gerges was entitled to receive benefits beginning one

year earlier on March 8, 2020. Exhibit 132, Gerges Notice of Determination-2021-03-05. However, it listed sixteen outstanding issues that it said “might” affect his eligibility benefits.

250. On March 8, 2021, Mr. Gerges timely appealed the overpayment determination notice.

251. On or about March 24, 2021, the Department issued a “PUA Overpayment Questionnaire for Waiver Consideration Notice.” This notice indicated that the U.S. Department of Labor had given states the authority to waive PUA overpayments when an individual was not at fault for the payment and where repayment would be a financial hardship. Mr. Gerges filled out the questionnaire and submitted it. Exhibit 133, Gerges PUA Waiver Notice and Application-2021-03-24.

252. Mr. Gerges continued to receive federal pandemic relief benefits for the weeks ending March 6, 13, 20, and 27, and April 3, 2021. Each week, the Department took a deduction of \$234 as an overpayment offset. Exhibit 134, Gerges Overpayment Offset-2021-04-09. After April 3, 2021, Mr. Gerges stopped receiving federal pandemic unemployment assistance benefits.

253. On April 9, 2021, Mr. Gerges reapplied for benefits. Exhibit 135, Gerges Unemployment Application-2021-04-09.

254. The same date, the Department issued a monetary determination stating that Mr. Gerges was not entitled to benefits because he had not earned sufficient wages in his base period. Exhibit 136, Gerges Monetary Determination-2021-04-09. The notice did not provide the relevant base period, but indicated that Mr. Gerges received zero wages. The notice also stated that Mr. Gerges owed an overpayment of \$12,028.

255. On April 22, 2021, the Department issued a monetary redetermination, stating that, if approved, Mr. Gerges would be eligible for \$169 in weekly PUA benefits until September 4, 2021, if he was unemployed due to the Covid-19 pandemic. Exhibit 137, Gerges Monetary

Redetermination-2021-04-22. It indicated that Mr. Gerges was self-employed and that he earned a total of \$1.00 per quarter for the base period of January 2019 through December 2019, for a total of \$4.00. The notice further indicated that Mr. Gerges owed an overpayment of \$11,794.

256. On May 27, 2021, the Department held a hearing on Mr. Gerges's appeal of his monetary redetermination. Mr. Gerges argued that he did not cause his overpayment and that the Department should grant his PUA overpayment waiver. Exhibit 138, Gerges Claimant Brief-2021-05-27.

257. On June 7, 2021, the Department's Appeals Tribunal issued its decision in Mr. Gerges's case. Exhibit 139, Gerges Appeal Decision-2021-06-07.

258. The tribunal made findings that Mr. Gerges was self-employed as an Uber and Lyft driver, and that when he initially applied for PUA benefits, the Department mistakenly qualified him to receive \$461 per week, because it improperly used his reported business expenses of \$51,733 from his 2019 1040 tax form, whereas Mr. Gerges's tax form correctly indicated his net wages were actually a loss of \$232. *Id.*

259. The tribunal noted that on or about March 5, 2021, the Department redetermined Mr. Gerges's weekly benefit amount at \$169, based on his having no net income. Due to the reduction in the weekly benefit amount, an overpayment in the amount of \$13,432 was established. Some of this overpayment was recouped by deductions from Mr. Gerges's benefits, but a balance of \$11,794 remained. *Id.*

260. That same day, the Department sent Mr. Gerges a payment plan for the \$11,794 allegedly owed. The plan indicated that Mr. Gerges should pay \$1,965.66 per month for six months. It warned that the failure to make monthly payments would result in all overpayments becoming immediately due and could result in collections activities, as well as the interception of Mr. Gerges's state tax refund. Exhibit 140, Gerges Payment Plan-2021-06-07.

261. On June 22, 2021, Mr. Gerges timely appealed the tribunal's determination to the Department's Secretary.

262. On June 27, 2021, Mr. Gerges received a lump sum PUA payment of \$235, covering a period of twelve weeks. Exhibit 141, Gerges Lump Sum Payment-2021-06-27.

263. The Secretary issued a decision on June 28, 2021, affirming the appeals tribunal. The decision noted, however, that Mr. Gerges had filed an application for a waiver, which would be determined separately from the appeal. Exhibit 142, Gerges Secretary Appeal Decision-2021-06-28.

264. On July 6, 2021, Mr. Gerges again submitted his quarterly reapplication. Exhibit 143, Gerges Quarterly Reapplication-2021-07-06.

265. On the same day, the Department issued a monetary determination, informing Mr. Gerges that he was not entitled to benefits and stating that he had zero income for some unspecified base period. The determination indicated that he had an overpayment of benefits in the amount of \$11,560. Exhibit 144, Gerges Monetary Determination-2021-07-06.

266. The Department continued paying PUA benefits to Mr. Gerges throughout July 2021, but deducted \$234 from each of his weekly benefits for that month. Exhibit 145, Gerges Overpayment Offsets, July 2021.

267. On August 23, 2021, the Department sent Mr. Gerges a notice of determination for disaster unemployment assistance, informing him that there was good cause to waive his PUA overpayment, and that he had been granted a waiver of \$10,624. However, the notice did not provide for waiver of amounts previously recouped and did not set forth any option for challenging a partial waiver. Exhibit 146, Gerges Notice of Determination-2021-08-23.

268. To date, the Department has not refunded the amount it had previously collected for the waived overpayment, which is approximately \$2,808.

CLASS ACTION ALLEGATIONS

269. Plaintiffs bring this class action pursuant to Rule 1-023 NMRA on behalf of themselves and on behalf of other similarly situated current and former unemployment insurance claimants who were deprived of due process of law and who were otherwise subject to unlawful actions by the Department.

270. The proposed classes include the “Overpayment Class,” the “Waiver Process Class,” and the “Waiver Refund Class,” presently described as follows:

Overpayment Class

271. Plaintiffs Duran, Palmieri Williams, Yildiz, Gonzales-Inza, and Gerges bring this matter as a class action pursuant to Rules 1-023(B)(1) and Rule 1-023(B)(2), or, in the alternative, under Rule 1-023(B)(3) on behalf of themselves and as the class representatives of the “Overpayment Class” made up of the following persons: All individuals who did not appeal a determination of eligibility for benefits and against whom the Department subsequently assessed an overpayment on or after March 27, 2020.

272. The Overpayment Class satisfies the numerosity requirement of Rule 1-023(A)(1) because there are tens of thousands of New Mexicans across the state who were assessed overpayments, for both regular unemployment benefits and for pandemic relief benefits, and who did not appeal the eligibility determinations that resulted in those assessed overpayments, which the Department has collected in full or in part, or which the Department threatens to collect.

273. The Overpayment Class satisfies the commonality requirement of Rule 1-023(A)(2) because questions of fact and law are common to the class. These include, without limitation:

whether class members received monetary determinations from the Department; whether those determinations informed class members that the failure to appeal a determination awarding more or greater benefits than the class member was entitled to could subject the class member to collection activities; whether the monetary determination notices were reasonably calculated to apprise class members of the Department's determinations and of the need to scrutinize and appeal benefits; whether the Department made overpayment determinations without providing claimants with an opportunity to be heard; whether the Department issued overpayment notices that provided inadequate information about the overpayment; whether the Department began recouping overpayments prior to the time for the class members to appeal the overpayment determination; and whether such conduct by the Department was lawful.

274. The Overpayment Class representatives satisfy the typicality requirement of Rule 1-023(A)(3) because the representatives received determination notices that did not warn them of the consequences of failing to appeal an award of more benefits or benefit amounts than they were entitled to; the representatives received overpayment determinations without prior notice and an opportunity to be heard; the representatives received overpayment notices that were inadequate to assess whether they had been overpaid; and the representatives were subject to collection efforts by the Department prior to expiration of the time for the representatives to appeal their overpayment determinations.

275. The Overpayment Class representatives satisfy the adequacy requirement of Rule 1-023(A)(4) because they are members of the class and their interests do not conflict with the interests of the members of the class. The Overpayment Class will be fairly and adequately protected by the representatives and their counsel, who have extensive experience prosecuting unemployment litigation and class-action litigation involving government benefit programs.

276. The Overpayment Class’s claims are properly maintained under Rule 1-023(B)(1) because the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the Department, and because adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

277. The Overpayment Class’s claims are properly maintained under Rule 1-023(B)(2) because the Department has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

278. In the alternative, the Overpayment Class’s claims are properly maintained under Rule 1-23(B)(3) because the questions of law or fact common to class members predominate over questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Absent a class action, most class members would find the cost of litigating their claims to be prohibitive and would have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and litigants and promotes consistency and efficiency of adjudication.

Waiver Process Class

279. Plaintiff Gonzalez-Inza brings this matter as a class action pursuant to Rule 1-023(B)(1) and Rule 1-023(B)(2) on behalf of herself and as the class representative of the “Waiver Process Class” made up of the following persons: All individuals who received benefits pursuant to one or

more of the federal pandemic relief unemployment programs, who were assessed an overpayment of those benefits, and who were not granted a waiver of those overpayments, either because they did not apply or because they applied and the waiver was denied.

280. The Waiver Process Class satisfies the numerosity requirement of Rule 1-023(A)(1) because there are tens of thousands of New Mexicans across the state who received federal pandemic relief unemployment program benefits, were assessed overpayments, and were entitled to seek a waiver that they ultimately did not receive.

281. The Waiver Process Class satisfies the commonality requirement of Rule 1-023(A)(2) because questions of fact and law are common to the class. These include, without limitation: whether class members received federal pandemic relief unemployment benefits; whether the class members received overpayment determinations from the Department; whether the Department lawfully enacted rules governing the denial of waivers of overpayments of federal pandemic relief unemployment benefits; whether class members were provided with notice of the availability of the waivers; whether class members were provided with information in their monetary redetermination notices adequate to inform them of whether they qualified for a waiver; and whether such conduct by the Department was lawful.

282. The Waiver Process Class representative satisfies the typicality requirement of Rule 1-023(A)(3) because the representative received federal pandemic relief unemployment benefits; the representative received overpayment determinations from the Department; and the representative was eligible to apply for a waiver.

283. The Waiver Process Class representative satisfies the adequacy requirement of Rule 1-023(A)(4) because she is a member of the class and her interests do not conflict with the interests of the members of the class. The Waiver Process Class will be fairly and adequately protected by

the representative and her counsel, who have extensive experience prosecuting unemployment litigation and class-action litigation involving government benefit programs.

284. The Waiver Process Class's claims are properly maintained under Rule 1-023(B)(1) because the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the Department, and because adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

285. The Waiver Process Class's claims are properly maintained under Rule 1-23(B)(2) because the Department has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Waiver Refund Class

286. Plaintiffs Duran, Palmieri Williams, Yildiz, and Gerges bring this matter as a class action pursuant to Rule 1-023(B)(2), or, in the alternative, under Rule 1-023(B)(3) on behalf of themselves and as the class representatives of the "Waiver Refund Class" made up of the following persons: All individuals who received benefits pursuant to one or more of the federal pandemic relief unemployment programs, who received an overpayment determination, and who were granted a waiver of the overpayment, but did not receive a complete refund of all amounts recouped or owed, including amounts that the Department had previously collected in order to recoup the overpayment.

287. The Waiver Refund Class satisfies the numerosity requirement of Rule 1-023(A)(1) because, on information and belief, there are hundreds or even thousands of New Mexicans across the state who were assessed overpayments of federal pandemic relief unemployment program funds, who were granted a waiver of such overpayments and who received less than a total refund of overpaid amounts.

288. The Waiver Refund Class satisfies the commonality requirement of Rule 1-023(A)(2) because questions of fact and law are common to the class. These include, without limitation: whether class members received a waiver of overpayments of federal pandemic relief unemployment benefits; whether the Department failed to refund amounts previously collected; and whether such conduct by the Department was lawful.

289. The Waiver Refund Class representatives satisfy the typicality requirement of Rule 1-023(A)(3) because the representatives received waivers of overpayment of federal pandemic relief unemployment benefits and the Department did not issue refunds of amounts previously collected to satisfy the overpayment.

290. The Waiver Refund Class representatives satisfy the adequacy requirement of Rule 1-023(A)(4) because they are members of the class and their interests do not conflict with the interests of the members of the class. The Waiver Refund Class will be fairly and adequately protected by the representatives and their counsel, who have extensive experience prosecuting unemployment litigation and class-action litigation involving government benefit programs.

291. The Waiver Refund Class's claims are properly maintained under Rule 1-23(B)(2) because the Department has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

292. In the alternative, the Waiver Refund Class’s claims are properly maintained under Rule 1-23(B)(3) because the questions of law or fact common to class members predominate over questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Absent a class action, most class members would find the cost of litigating their claims to be prohibitive and would have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and litigants and promotes consistency and efficiency of adjudication.

CAUSES OF ACTION

Count I: Violations of the New Mexico State Constitution

293. Plaintiffs incorporate the previous allegations as if set forth herein.

294. Under the New Mexico Constitution, a person has a property interest in unemployment benefits once they are paid, and this is true even for overpaid benefits. *See New Mexico Dep’t of Workforce Sols. v. Garduño*, 2016-NMSC-002, ¶ 12, 363 P.3d 1176 (holding that a claimant has a constitutionally protected property interest in unemployment benefits when she begins to receive payments, even if it is later determined that she is not entitled to the payments).

295. Once a claimant’s property interest arises, the Department cannot either discontinue payments or recoup earlier payments without affording the claimant due process. *Id.* ¶ 18.

296. New Mexico courts use the framework established in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L. Ed. 2d. 18 (1976), to analyze due process issues. *See Garduño*, 2016-NMSC-002, ¶ 11.

297. The *Mathews* test involves consideration of three factors: (1) “the private interest that will be affected by the [government] action;” (2) “the risk of erroneous deprivation of such interest

through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government's interests, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.

298. The Department’s conduct violated Plaintiffs’ due process rights under the New Mexico Constitution in multiple ways, including, but not limited to, the following:

- A. The Department’s determinations and redeterminations failed to provide claimants with adequate notice of the benefits they were receiving or the basis for those benefits, such that claimants could not assess whether the determinations were accurate.
- B. The Department’s determinations and redeterminations informing claimants of their eligibility for benefits did not provide notice of the serious financial and personal consequences of failing to appeal any overpayments, even those caused by the Department’s own errors.
- C. The Department systematically sent multiple, conflicting and incoherent determinations and redeterminations, making it impossible for claimants to know what benefits the Department had actually awarded them, and what notices should be appealed.
- D. The Department’s notices of overpayment, which were typically included as a part of its redetermination notices, failed to provide claimants with sufficient information to determine whether or why an overpayment had occurred. This failure prevented claimants from challenging the overpayment, including the alleged amount of any overpayment. This failure later prevented claimants from

understanding if they were eligible for a waiver and prevented claimants who completed waiver applications from being able to state whether the overpayment was their fault.

- E. The Department had a practice of assessing overpayments and taking deductions from claimants' unemployment benefits in order to recoup overpayments without providing any notice of the overpayment or providing an opportunity to challenge the determination resulting in the overpayment.
- F. The Department had a practice of taking deductions from claimants' unemployment benefits in order to recoup overpayments after providing notice of the overpayment but before the time had run for people to challenge the determination leading to the overpayment.
- G. The Department had a practice of discouraging meritorious appeals by threatening claimants with a hold on their ongoing benefits.
- H. The Department failed to provide all claimants who received pandemic relief benefits with notice of the availability of an overpayment waiver.
- I. The Department's notices of the availability of a waiver failed to provide claimants with sufficient information to determine whether they were eligible for a waiver and sufficient information to apply for a waiver.
- J. The Department granted and continues to grant waivers of overpayments, without refunding amounts previously recouped by the Department and without providing any mechanism to appeal an incomplete refund.

**Count II: Violations of the New Mexico State Rules Act and
the Workforce Solutions Department Act**

299. Plaintiffs incorporate the previous allegations as if set forth herein.

300. The Workforce Solutions Department Act requires that any regulation promulgated by the Secretary comply with the provisions of that act regarding notice and a public hearing, as well as the filing requirements of the State Rules Act. *See* NMSA, 1978, § 9-26-6(E) (2007).

301. All rules “affecting any person or agency outside of the [D]epartment,” must be adopted, amended, or repealed only after a public hearing meeting the requirements under the act. *Id.*

302. Except in the case of an emergency rule, no rule shall be valid or enforceable until it is published in the New Mexico Register as provided by the State Rules Act. *See* NMSA 1978, § 14-4-5(A) (2017).

303. The State Rules Act defines a “rule” as “any rule, regulation, or standard, *including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law* and amendments thereto or repeals and renewals thereof, issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing the rule *or to affect persons not members or employees of the issuing agency, including affecting persons served by the agency.*” NMSA 1978, § 14-4-2(F) (2017) (emphasis added).

304. The Department has denied waivers of overpayments under federal pandemic relief programs based on criteria that were not provided to the public through notice, were not subject to a public hearing, and were not published in the New Mexico Register.

305. The Department has limited waivers of overpayments under federal pandemic relief programs based on policies that were not provided to the public through notice, were not subject to a public hearing, and were not published in the New Mexico Register. In doing so, the Department has allowed for a narrower category of waivers than the categories authorized by the federal government, and has done so without giving the public the opportunity to comment.

306. These standards and policies limiting waiver eligibility were not enacted after notice and public hearing, and were not published in the New Mexico Register. Accordingly, the limitations are not valid and enforceable.

Count III: Violations of the New Mexico Unemployment Compensation Act

307. Plaintiffs incorporate the previous allegations as if set forth herein.

308. The New Mexico Unemployment Compensation Act requires the Secretary to “cooperate to the fullest extent possible under the act with the United States secretary of labor in his duties under the Social Security Act[.]” NMSA 1978, § 51-1-31 (1979).

309. Such cooperation includes a requirement that the Department “comply with regulations prescribed by the secretary of labor governing expenditures of such sums as may be allotted and paid to this state under Title 3 of the Social Security Act, 42 U.S.C. Sections 501 through 503, for the purpose of assisting in the administration of the Unemployment Compensation Law.” NMSA 1978, § 51-1-31 (1979).

310. The secretary of labor issues “Unemployment Insurance Program Letters” to provide directives that set forth the secretary’s interpretation of federal statutes and regulations governing unemployment insurance benefits. *See* Unemployment Insurance Program Letter No. 01-96.

311. These letters are intended to ensure uniformity in the application of federal requirements by the various states. *Id.*

312. The Department has failed to fully cooperate with the secretary of labor in multiple ways, including, but not limited to, the following:

- A. The secretary of labor has issued program letters directing that before a state can make an overpayment determination, it must give the potentially overpaid individual notice and an opportunity to be heard. *See* Unemployment Insurance Program Letter No. 20-21 (citing Unemployment Insurance Program Letter No.

01-16). After such notice and opportunity to be heard, if a state determines that an overpayment has been made, the state must “issue a written determination that provides sufficient information to understand the basis for the determination,” and must provide the opportunity for the individual to appeal. *Id.* The Department failed to comply with these requirements, in that it did not give potentially overpaid individuals the opportunity to be heard prior to the overpayment determination, and once an overpayment determination was made, it did not issue a written determination providing sufficient information to understand the basis for the determination.

- B. The secretary of labor has issued a program letter providing that when an individual requests an overpayment waiver, the state “*must . . .* pause further collections until a determination of waiver eligibility has been made.” Unemployment Insurance Program Letter No. 20-21 (emphasis added). The Department failed to comply with this requirement, in that it continued to collect funds to repay overpayments even when a claimant applied for a waiver.
- C. The secretary of labor has issued program letters providing that if a state grants an overpayment waiver, the state “*must* refund any amounts that were collected towards the applicable overpayment prior to the determination of waiver eligibility.” Unemployment Insurance Program Letter No. 20-21 (emphasis added); *see also* Unemployment Insurance Program Letter No. 20-21, Change 1. The Department failed to comply with this requirement, in that when it granted an overpayment waiver, it did not refund the amounts previously collected towards the applicable overpayment.

313. In addition, federal regulations forbid the Department from recovering any overpayment of PUA benefits “until the determination establishing the overpayment has become final, or if appeal is taken from the determination, until the decision after opportunity for a fair hearing has become final.” 20 C.F.R. § 625.14(f); *see also* 15 U.S.C. § 9021(h) (incorporating by reference the regulations governing disaster unemployment assistance into the law governing PUA benefits).

314. The Department failed to comply with this regulation, in that it recouped overpayments of PUA benefits prior to the time the overpayment became final or, when an appeal was taken, prior to the decision after a fair hearing.

Count IV: Breach of Contract

315. Plaintiffs incorporate the previous allegations as if set forth herein.

316. The Department entered into a contract with the secretary of labor that says that the Department will follow the operating instructions and guidance of the secretary of labor, along with the Disaster Unemployment Assistance regulations at 20 C.F.R. § 625. *See* Ex. 1.

317. Plaintiffs are third-party beneficiaries to that agreement.

318. The agreement requires the Department to “cooperate with the U.S. Department of Labor” in implementing the federal pandemic relief programs.

319. The agreement requires the Department to “abide by the requirements” of the relevant statutes, as well as the “operating instructions and guidance” provided by the Department of Labor, along with those of each “program specific addendum” attached to the agreement.

320. The Department breached its agreement with the Department of Labor by:

- A. Failing to comply with the requirements set forth in Unemployment Insurance Program Letter No. 20-21 that before a state can make an overpayment determination, it must give the potentially overpaid individual notice and an opportunity to be heard, and once a state determines that an overpayment has

been made, the state must “issue a written determination that provides sufficient information to understand the basis for the determination,” and must provide the opportunity for the individual to appeal.

- B. Failing to comply with the requirement set forth in Unemployment Insurance Program Letter No. 20-21, that once a person requests a waiver, the state “must . . . pause further collections until a determination of waiver eligibility has been made.”
- C. Failing to comply with the requirements set forth in Unemployment Insurance Program Letter No. 20-21 and Unemployment Insurance Program Letter No. 20-21, Change 1, that if a state grants an overpayment waiver, the state “must refund any amounts that were collected towards the applicable overpayment prior to the determination of waiver eligibility.”
- D. Failing to comply with 15 U.S.C. § 9021(h) and 20 C.F.R. § 625.14(f), which direct that the Department may not recover any overpayment of PUA benefits “until the determination establishing the overpayment has become final, or if appeal is taken from the determination, until the decision after opportunity for a fair hearing has become final.”
- E. Failing to comply with Addendum 2 to the agreement, directing that the Department may not recover any overpayment of FPUC benefits “until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.”

- F. Failing to comply with Addendum 3 to the agreement, directing that the Department may not recover any overpayment of PEUC benefits “until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.”

Count V: Equitable Estoppel

321. Plaintiffs incorporate the previous allegations as if set forth herein.

322. Based on the federal government’s authorization of waivers of overpayments for pandemic relief benefits, the Department has discretion to forego collection of overpayments under these programs, and therefore can be estopped from their collection. *Compare Waters-Haskins v. N.M. Human Servs. Dep’t*, 2009-NMSC-031, 210 P.3d 817 (holding that where an administrative agency had discretion to forego collection of overpayment of food-stamp benefits, the agency could be equitably estopped from their collection), *with Millar v. N.M. Dep’t of Workforce Sols.*, 2013-NMCA-055, 304 P.3d 427 (holding that where, under federal and state law, the department had no discretion to forego collection of overpayments for regular unemployment insurance benefits, equitable estoppel did not apply to prevent the collection of such benefits).

323. The Department made representations that were false, concealed material facts, and were calculated to convey the impression that the facts were otherwise than and inconsistent with the facts it later attempted to assert when it provided determination notices and/or redetermination notices informing class members that they were entitled to benefits that the Department later sought to recover.

324. The Department intended and expected that class members would act upon the determinations or redeterminations made by the Department.

325. The Department had actual or constructive knowledge of the real facts.

326. The class members lacked knowledge and the means of knowledge regarding the truth of the facts in question.

327. The class members relied upon the Department's conduct.

328. The class members took action based thereon so as to change their position prejudicially by spending the funds awarded to them.

329. Accordingly, the Department is equitably estopped from collecting any overpayments awarded to class members.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

Declaratory Relief

A. Declare that the Department violated Article II, Section 18 of the New Mexico Constitution in multiple ways, including but not limited to, the following:

- i. Providing inadequate eligibility determination notices not reasonably calculated to apprise Plaintiffs of the benefits they were receiving, the basis for those benefits, any basis for scrutinizing the accuracy of the Department's determinations, and the serious personal and financial consequences of failing to appeal awards of benefits;
- ii. Providing inadequate overpayment and redetermination notices not reasonably calculated to apprise Plaintiffs of the reasons for alleged overpayments and the information necessary to know whether and how to challenge the Department's findings on appeal or to successfully request a waiver;

- iii. Recouping overpayments without first providing notice of the alleged overpayment and an opportunity to challenge it, including by recouping overpayments before the expiration of time allotted for Plaintiffs to appeal;
 - iv. Denying waiver applications in full or in part without providing notice and an opportunity to appeal the full or partial denial.
- B. Declare that Section 51-1-31 of the New Mexico Unemployment Compensation Act requires the Department to follow the secretary of labor’s interpretation of the federal pandemic relief programs as described in Unemployment Insurance Program Letter No. 20-21 and Unemployment Insurance Program Letter No. 20-21, Change 1.
- C. Declare that the “Agreement Implementing the Relief for Workers Affected by Coronavirus Act” between the State of New Mexico and the federal secretary of labor requires the Department to follow the secretary of labor’s interpretation of the federal pandemic relief programs as described in Unemployment Insurance Program Letter No. 20-21 and Unemployment Insurance Program Letter No. 20-21, Change 1.
- D. Declare that the Department violated the State Rules Act and the Workforce Solutions Department Act by failing to formally enact regulations governing the denial of overpayment waivers, and by informally implementing rules used to deny waivers without notice and the opportunity for comment.
- E. Declare that the Department is equitably estopped from collecting any overpayments for pandemic relief benefits when a claimant has provided all the requested information truthfully.

Class-wide Relief for the Overpayment Class

- F. Certify the Overpayment Class under Rule 1-023(B)(1) and Rule 1-023(B)(2) as described in this Complaint.

G. Appoint Plaintiffs' counsel to represent the Overpayment Class.

H. Issue an injunction requiring the Department to:

- i. Reissue new notices to class members that provide sufficient information to enable class members to understand the Department's determinations, its reasons, and their rights to protest, request reconsideration, appeal, and successfully request a waiver. *See* Unemployment Insurance Program Letter No. 01-16; DOL *Standard for Claim Determination*, section 6013.C.2;
- ii. Implement new notice practices, including for regular unemployment benefits, that include in any monetary determination a warning sufficient to clearly inform all claimants of the very serious consequences of failing to appeal if the Department has made an error that grants the claimant benefits to which the claimant is not entitled or more benefits than the claimant is entitled to;
- iii. Cease the practice of issuing multiple conflicting monetary determinations and redeterminations, including for regular unemployment benefits, and implement a practice requiring that every new monetary determination or redetermination makes reference to the most recent prior-issued determination or redetermination and explains how the information in the new determination or redetermination relates to the information in the prior one, including a reason for the new determination;
- iv. Cease the practice of assessing overpayments, including for regular unemployment benefits, until after the Department has issued a notice of potential overpayment setting forth the Department's reasons for its belief that it has overpaid the claimant, and providing the claimant with an opportunity to be heard;

- v. Cease recouping and threatening to recoup from class members all remaining overpaid pandemic relief benefits, and refund class members all overpaid pandemic relief benefits previously collected.
 - vi. Cease the practice of collecting overpayments, including for regular unemployment benefits until after 1) the Department provides notice as described in these injunctions, and 2) the time for the claimant to appeal has passed, or, if the claimant files an appeal, until the appeal has been resolved.
- I. In the alternative, certify the Overpayment Class under Rule 1-023(B)(3) and award damages to make class members whole.

Class-wide Relief for the Waiver Process Class

- J. Certify the Waiver Process Class under Rule 1-023(B)(1) and Rule 1-023(B)(2) as described in this Complaint.
- K. Appoint Plaintiffs' counsel to represent the Waiver Process Class.
- L. Issue an injunction requiring the Department to:
- i. Process blanket waivers for class members as permitted by the federal government, without requiring each individual claimant to submit a waiver request and without undertaking individual factfinding in connection with each class member's claim. *See* Unemployment Insurance Program Letter No. 20-21 (May 5, 2021); Unemployment Insurance Program Letter No. 20-21, Change 1 at 11–14.
 - ii. Enact regulations governing the overpayment-waiver application process and the criteria for denying an overpayment waiver, as required by the State Rules Act and the Workforce Solutions Department Act;

- iii. Issue or reissue notices of the availability of a waiver of overpayments to all class members to clearly explain the application process and provide criteria for granting the waiver; and
- iv. Upon the filing of the class member's request for an overpayment waiver, cease taking deductions from benefits or otherwise making efforts to recoup overpaid amounts until the waiver determination has been made and the class member's appeal rights have been exhausted.

Class-wide Relief for the Waiver Refund Class

- M. Certify the Waiver Refund Class under Rule 1-023(B)(2) as described in this Complaint.
- N. Certify the class with respect to particular issues, Rule 1-023(C)(4)(a), namely liability: (i) whether the Department unlawfully granted waiver requests without refunding amounts previously collected from class members; or, in the alternative, (ii) whether class members are entitled to notice and an opportunity to challenge waiver grants that failed to provide complete relief.
- O. Appoint Plaintiffs' counsel to represent the Waiver Refund Class.
- P. Issue an injunction requiring the Department to:
 - i. Issue a notice informing class members of their right to a complete waiver, including a refund of all amounts collected to recoup the overpayments prior to the issuance of the waiver; and
 - ii. Fully process and approve waiver requests by class members, including refunding amounts that were previously collected to repay the overpayment prior to the determination of waiver eligibility.
- Q. In the event all class members do not receive a full refund:

- i. Provide notice to class members of their waiver determination, including the reasons all recouped amounts were not refunded with sufficient information to alert class members about their opportunity to appeal; and
 - ii. Upon filing of the class member's request for an overpayment waiver, cease taking deductions from benefits or otherwise making efforts to recoup overpaid amounts until the waiver determination has been made and the class member's appeal rights have been exhausted.
- R. In the alternative, certify the Waiver Refund Class under Rule 1-023(B)(3) and award damages to make class members whole.

Attorney's Fees and Costs

- S. Award litigation costs and reasonable attorneys' fees; and
- T. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Felipe Guevara

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