UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL KREPS, et al.,

Plaintiffs,

v

MICHIGAN UNEMPLOYMENT INSURANCE AGENCY, et al.,

Defendants.

No. 2:22-cv-12020

HON. MARK A. GOLDSMITH

**DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT**

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**DEFENDANTS MICHIGAN UNEMPLOYMENT INSURANCE AGENCY, JULIA DALE, KIMBERLY BERRY, AND TERESA BURNS' JOINT MOTION FOR SUMMARY DISPOSITION**

Pursuant to 56(a), Defendants move for dismissal of the Plaintiffs' Second Amended Complaint and this action for the following reasons:

1. The undersigned counsel certifies that counsel communicated with in writing with opposing counsel, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief; opposing counsel thereafter expressly denied concurrence.

2. Defendants are entitled to summary judgment as there is no issue of material fact regarding the Plaintiffs' inability to establish a due process violation.

3. Defendants are entitled to summary judgment as to the UAW's *Zynda* settlement violation claim because there is no issue of material fact because the UAW failed to comply with the settlement agreement's notice provision.

4. Defendants are entitled to qualified immunity where there is no issue of material fact or law that Plaintiffs have failed to establish that the Defendants' conduct was in violation of a clearly established right.

5. Defendants are entitled to summary judgment where they had no personal involvement in the alleged unconstitutional conduct and cannot be held liable under a theory of respondeat superior.

6. Defendants ask the Declaratory relief be denied as this action is inappropriate for this type of relief.

7. Because there are parallel proceedings regarding improper collection (Count III) in state court that are substantially settled, Defendants ask this Court to abstain under *Colorado River*.

8. Defendants ask the Court to deny Plaintiffs request for injunctive relief as it is extraordinary and the Plaintiffs cannot meet the requirements necessary for this relief.

9. LOCAL RULE CERTIFICATION: I, Shannon W. Husband, certify that this document complies with Local Rule 5.1(a), including: double-spaced (except for quoted materials and footnotes); at lease one-inch margins on the top, sides, and bottom; consecutive page numberings; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 point (for proportional fonts). Also, I certify that it is the appropriate length. Local Rule 7.1(d)(3).

WHEREFORE, Defendants request this Honorable Court dismiss Plaintiffs' Complaint in its entirety and award any appropriate costs and fees.

Respectfully submitted,

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Dated: November 4, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that on November 4, 2024, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

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## CONCISE STATEMENT OF ISSUES PRESENTED

1. Defendants are entitled to summary judgment as there is no issue of material fact regarding the Plaintiffs' inability to establish a due process violation.

2. Defendants are entitled to summary judgment as to the UAW's *Zynda* settlement violation claim because there is no issue of material fact because the UAW failed to comply with the settlement agreement's notice provision.

3. Defendants are entitled to qualified immunity where there is no issue of material fact or law that Plaintiffs have failed to establish that the Defendants' conduct was in violation of a clearly established right.

4. Defendants are entitled to summary judgment where they had no personal involvement in the alleged unconstitutional conduct and cannot be held liable under a theory of respondeat superior.

5. Defendants ask the Declaratory relief be denied as this action is inappropriate for this type of relief.

6. Because there are parallel proceedings regarding improper collection (Count III) in state court that are substantially settled, Defendants ask this Court to abstain under *Colorado River*.

7. Defendants ask the Court to deny Plaintiffs' request for injunctive relief as it is extraordinary and the Plaintiffs cannot meet the requirements necessary for this relief.

## CONTROLLING OR MOST APPROPRIATE AUTHORITY

*Authority*:

U.S. Const. amend. XIV, § 1.

*Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800 (1976).

*Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

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Fed. R. Civ. P. 56(a).

## INTRODUCTION

According to publicly available data, in February of 2020, Michigan's unemployment rate was 3.7% and 30,444 initial unemployment claims were filed.[1] Two months later, the unemployment rate was 22.6% and 829,472 initial unemployment claims were filed in one month.[2] The Office of Inspector General reported that between April 1, 2020, and March 31, 2021, only 5 of 53 state workforce agencies (SWAs) (also known as unemployment agencies) were able to timely pay benefits to claimants receiving regular unemployment benefits. (Exhibit A, p. 3.) By August of 2023 (one year after the instant complaint was filed), only 34% of SWAs were paying on time compared to 75% before the pandemic.

In 2022, the individual Plaintiffs[3] and the UAW brought this complaint, alleging that the Agency and three individual supervisory officials engaged in multiple means of unconstitutional conduct by denying, delaying, or prematurely collecting overpayments. Further, they alleged that the Defendants failed to comply with a settlement agreement. At the conclusion of extensive discovery, what is clear is that the Defendants sued in their individual capacities should be

[1] https://fred.stlouisfed.org/series/MIUR <last accessed 10/29/2024>

[2] *Id*.

[3] This Court dismissed Plaintiff Zachary Brazil from this case on October 23, 2024. (Dkt. 99.)

dismissed because they had no direct involvement in the conduct complained of. In addition, for the addition reasons stated, summary judgment is appropriate. As such, Defendants ask this Court to grant their joint motion for summary disposition.

## STANDARD OF REVIEW

Summary judgment is appropriate where "the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Rule 56 mandates summary judgment "after adequate time for discovery" and upon motion against a party who fails to establish an "element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The Court must determine "whether the evidence presents sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–252 (1986).

Once the moving party identifies elements of a claim or defense that it believes are not supported by evidence, the nonmovant must present affirmative evidence tending to show a genuine dispute of material fact. *Celotex Corp.*, at 324–325. Facts are "material" only if establishment thereof might affect the outcome of the lawsuit under governing substantive law. *Anderson*, 477 U.S. at 248. A failure

of proof concerning an essential element necessarily renders all other facts immaterial. *Celotex Corp.*, 477 U.S. at 322–323. Production of a "mere scintilla of evidence" in support of an essential element will not forestall summary judgment. *Anderson*, 477 U.S. at 252.

## ARGUMENT

### I. Because there are no issues of material fact regarding Plaintiffs' due process claims, Defendants are entitled to summary judgment.

#### A. PUA benefits are not "property" that due process rights can attach to.

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Courts have interpreted the Fourteenth Amendment to protect both procedural and substantive due process rights. See, e.g., *Puckett v. Lexington-Fayette Urban County Gov't,* 833 F.3d 590, 604–605 (6th Cir. 2016) (*citing Braun v. Ann Arbor Charter Twp.*, 519 F.3d 564, 572–574 (6th Cir. 2008)). These claims are examined under a two-part analysis. For procedural due process, first, the court must determine whether the interest at stake is a protected liberty or property interest under the Fourteenth Amendment. *Puckett*, 833 F.3d at 605. Second, the court must then consider whether the deprivation of that interest contravened the notions of due process under the Fourteenth Amendment. *Id.*

The Supreme Court found that a plaintiff must establish a legitimate claim of entitlement to an interest protected by the Fourteenth Amendment. *Board of Regents of State College v. Roth*, 408 U.S. 564, 575-578 (1972). In *Roth*, an assistant professor was working on a fixed one-year contract with no tenure rights. *Id*., at 566. When his employer denied continuance of his employment, he sued alleging that he had been denied due process. *Id*. The *Roth* court found that to establish a protectable property right that would entitle the plaintiff to due process, he had to do more than allege an "abstract need or desire for" the property right. *Id.*, at 577. The plaintiff had to establish a "legitimate claim of entitlement." *Id*. Because the *Roth* plaintiff failed to establish a constitutional right to continued employment, he did not establish a violation of his due process rights. *Id*., at 575–578.

Defendants conceded that the Fourteenth Amendment has been applied to regular/state unemployment benefits. *See Turner v. Dep't of Emp't Sec.*, 423 U.S. 44 (1975); see also Defendants' Motion to Dismiss (Dkt. 19, PageID.861). But Defendants did not expressly address whether the CARES Act conferred a property interest on PUA benefits, which would be required to meet the first of the two-part procedural due process test. *Puckett*, 833 F.3d at 605.

Multiple courts, including a sister court of this circuit, have found that PUA benefits are not "property." *Graham v Payne*, 3:21-cv-888, 2022 WL 815138 (at

2)(N.D. Ind.), March 17, 2022; *Moss v Lee*, 3:21-cv-00561, 2022 WL 68388 (at 5)(M.D. Tenn.), January 6, 2022; *McClendon v Bernard*, 4:21-cv-00823-KGB, 2021 WL 5567369 (at 2)(E.D. Ark.), November 29, 2021; *Winter v New Mexico Dep't of Workforce Solutions*, 21-475 JFR/SCY, 2023 WL 184115 (at 3–5)(D. N.M.), January 13, 2023; *Jackson v Daniel*, 1:21-cv-1107-LY-SH, 2022 WL 1157656 (at 4–5)(W.D. Tex.), April 18, 2022; and *Sterling v Feek*, 3:22-cv-05250, 2023 WL 5718163 (at 4–6)(W.D. Wash.), September 5, 2023 (PEUC benefits are not property)(Exhibits B–G.) As such, PUA benefits are not property.

### B. For those Plaintiffs who received or filed for PUA benefits, this Court should dismiss those claims.

Here, five of the nine Plaintiffs received or applied for PUA benefits: Shipe, Boudrie, Foster (formally known as I.F. [no longer a minor]), Brainer, and Holifield. (Exhibits H–L.) Since PUA benefits are not "property" for purposes of procedural due process analysis, Defendants could not violate due process rights that these Plaintiffs did not possess. Of the remaining four Plaintiffs, three (Andrew Myrold, Patricia Myrold, and Quigg) filed multiple claims where at least one was a PUA claim. (Exhibits M–O.) Thus, any due process allegations regarding their PUA claims should be dismissed.

Counts I through III allege both substantive and procedural due process violations. (Dkt. 36, PageID.1291–1301.) This Court dismissed all substantive

due process claims. (See July 12, 2023, Opinion and Order (Dkt. 33, PageID.20–21.) As such, Defendants ask this Court to completely dismiss Plaintiffs Shipe, Boudrie, Foster, Brainer, and Holifield. Further, Defendants ask this Court to dismiss any Count I, II, or Count III due process allegations as they relate to PUA claims involving Plaintiffs Andrew Myrold, Patricia Myrold, and Quigg.

### C. For the four Plaintiffs with state unemployment claims, their claims should be dismissed.

#### 1. Pre-deprivation hearings are not required.

In only one case, *Goldberg v. Kelly*, 397 U.S. 254 (1970), involving welfare benefits, has the Court held that a hearing closely approximating a judicial trial is necessary before governmental benefits may be terminated. *Id.* at 266–271. However, the pre-deprivation requirement in *Goldberg* was overturned by statutory amendment in 1996 wherein Congress pronounced that there was no entitlement to "any individual or family to assistance under any State program funded under this part." 42 U.S.C. § 601(b). See also, *State ex rel KM v. W. Va. Dep't. of Health & Human Resources*, 212 W. Va. 783, 792 (2002). To determine whether a pre-deprivation hearing is required, the Supreme Court has indicated that courts should consider three factors:

1. "the private interest that will be affected by the official action";
2. "the risk of an 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 interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

In *Mathews*, the Supreme Court found that a pre-deprivation hearing was not required prior to the termination of disability benefits. *Id.* at 349. The same is true here. PUA eligibility is not based upon financial need. Rather, eligibility is based on whether the individual lost work due to COVID-19, whether they would be ineligible to receive state unemployment benefits, whether they met state able and available requirements, and whether they met one of the enumerated eligibility requirements. 15 U.S.C. 9021 § (a)(3)(A).

In addition, the requirement of a pre-deprivation hearing when the Agency typically handles hundreds of thousands of claims (and currently over one million) would not be administratively feasible and would divert resources from ensuring other claims are being timely processed. This would be even more true during the pandemic when the volume of claims exploded.

Plaintiffs have offered no supporting authority that claimants are entitled to a pre-deprivation hearing when it comes to unemployment benefits. In fact, under Michigan law, the Agency can suspend unemployment benefits upon the issuance of an adverse decision without a pre-deprivation hearing. Mich. Comp. Laws § 421.27(1)(a). As such, Defendants did not violate Plaintiffs' due process rights.

**2. Defendants did not violate Plaintiffs' due process rights.**

Further, procedural due process guarantees "the government [must] provide a 'fair procedure' when depriving someone of life, liberty, or property." *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012) (citing *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992)). The notice and hearing requirements imposed by the Due Process Clause include a "reasonably definite statement of the charge" so that the interested party "can appear at the hearing and offer any objections." *Yang v. City of Wyoming, Michigan,* 793 F.3d 599, 608 (6th Cir. 2015) (quoting *Eaton v. Charter Twp. of Emmett,* 317 F. App'x 444, 448 (6th Cir. 2008)). "The Constitution judges the adequacy of notice from the perspective of the sender, not the recipient." *Yang*, 793 F.3d at 602 (*quoting Lampe v. Kash*, 735 F.3d 942, 944 (6th Cir. 2013)). Courts look at the aggregate of sender's efforts at providing notice to determine if they were "reasonable" under the "particular circumstances." *Yang*, 793 F.3d at 603, 605.

A plaintiff who brings a § 1983 procedural due process claim has the burden of pleading and proving that the state remedies for redressing the wrong are inadequate. *Vicory v. Walton*, 721 F.2d 1062, 1066 (6th Cir. 1983). Where a plaintiff fails to demonstrate the inadequacy of his state remedies, the case should be dismissed. *See Bass v. Robinson,* 167 F.3d 1041, 1050 (6th Cir. 1999).

The MES Act provides for hearing on any decision issued by the Agency. Mich. Comp. Laws § 421.33. Upon receipt of a decision denying benefits, a party can request review by the Agency or transfer of the matter to an ALJ for a hearing. Mich. Comp. Laws § 421.32(a). The ALJ is tasked with affording all parties "a reasonable opportunity for a fair hearing" and issuance of a decision. Mich. Comp. Laws § 421.33. If either party disagrees with the decision of the ALJ, they can appeal to the Appeals Commission, the circuit courts, and through the appellate courts. Mich. Comp. Laws §§ 421.33(2), 34, and 38.

**a. Paul Kreps**

Kreps asserts that the Agency will not pay his benefits, placed a stop payment indicator on his account, and closed his claim. (Dkt. 36, PageID.1255, ¶¶ 49–51). Kreps filed his unemployment claim on or about August 5, 2020. (Exhibit P, p. 123.) The Agency sent him a request for information, asking him to verify his identify. (Exhibit Q.) The deadline for Kreps to respond was August 19, 2020. (*Id*., p. 1811.) Kreps acknowledged receiving the request for information and initially asserted that he provided the documents by the deadline. (Exhibit R, pp. 29–32.) He admitted that he lost both his driver's license and his social security card in August 2020. (*Id*., p. 33, 34, 38). He had to seek replacements, and did not provide the documentation until October 2020. (*Id*., pp. 33–34, 38; Exhibit S.)

The Agency issued an adverse decision on October 12, 2020. (Exhibit T.) Kreps received the decision and did not agree with it. (Exhibit R, pp. 39–40.) Although he read the protest rights section, he did not file a protest. (*Id*.) He called the Agency and re-submitted his identification documents, which did not comply with the Determination's protest instructions. (*Id*., pp 42–47.)

Because he did not file a timely protest, the decision became final 30 days later. Mich. Comp. Law § 421.32a(1). However, the Agency, on its own motion, reconsidered and reversed the previous decision on April 13, 2021. (Exhibit U.)

On March 4, 2022, the Agency sent Kreps a letter advising him that it could not issue payment to him because it did not have a valid payment method for him. (Exhibit V.) He received the letter, which instructed him to either update his payment method online or to use the Agency's automated phone system to do so. (*Id*.; Exhibit R, pp 99–100.) Kreps admitted that his payment information (banking account) changed after he filed his claim. (Exhibit R, pp. 27–28, 50–51.) After being unable to update his payment method, he called the Agency and asked the customer service agent to update his financial information. (*Id*., pp. 51, 52, 53–54, 100.) After the agent advised that they could not take his information over the phone, they offered him a debit card. (*Id*., pp 51–52, 100.) Kreps refused the debit card. (*Id*., pp. 55–56, 100.) The call ended and Kreps never contacted the Agency

again. (*Id*., pp 52–53, 100.) There is no evidence that Defendants Dale, Berry, or Burns had any involvement with Kreps' unemployment claim.

The Agency provided Kreps with notice and opportunity to be heard. And provided him with (re)determinations and a letter to arrange for payment. (Exhibits P, Y, U, V). Kreps did not follow the instructions or take reasonable steps in response to the instructions. His failure to do so does not demonstrate a failure of Defendants to provide him with due process. His behavior, in refusing to follow written instructions or accept a debit card for thousands of dollars, can be characterized as unreasonable. He cannot demonstrate that Defendants violated his due process rights. Krep's due process claims (Counts I–III) should be dismissed.

**b. Marisa Quigg**

Quigg asserts that the Agency improperly denied her benefits. (Dkt. 36, PageID.1266, ¶ 134). Quigg filed her unemployment claim on April 5, 2020, and the Agency found her monetarily eligible three days later. (Exhibit W.) The Agency issued adverse decisions in May and July 2020. (Exhibit X.) Quigg filed a late appeal to the July 2020 decision and the Michigan Office of Administrative Hearings and Rules (MOAHR) found that she did not have good cause to do so. (Exhibits Y–Z.) She took no further appeals and the MOAHR decision became legally final. Likewise, the Agency's adverse decisions became legally final.

There is no evidence that Defendants Dale, Berry, or Burns were involved in her unemployment claim.

The Agency provided Quigg with adequate due process in that it provided her with written notice of the adverse decisions and instructions as to how to challenge the decisions. She took advantage of the instructions, albeit late, and ultimately ceased her appeals. As such, she cannot demonstrate that Defendants failed to provide her with due process. Quigg's due process claims (Counts I–III) should be dismissed.

**c. Andrew and Patricia Myrold.**

Andrew Myrold asserts that the Agency improperly denied him benefits. (Dkt. 36, PageID.1267, ¶ 140). Patricia Myrold asserts that the Agency improperly denied her benefits in May, June, and July 2020. (Dkt. 36, PageID.1267, ¶¶ 142–143).

On May 13, 2020, the Agency found him monetarily eligible for benefits. (Exhibit AA.) On July 30, 2021, and again on October 6, 2022, the Agency found him ineligible for benefits. (Exhibit AA.) Furthermore, it sought restitution for multiple weeks of improperly paid benefits. (Exhibit AA.)

Myrold appealed and MOAHR ruled in his favor. (Exhibit BB.) The decision found Myrold eligible beginning July 5, 2020 and that he was entitled to benefits if otherwise eligible and qualified. (Exhibit BB.) Myrold appealed the

favorable decision and asked MOAHR and the Unemployment Insurance Appeals Commission to order the Agency to pay him additional benefits. (Exhibit BB.) According to his circuit court brief, he wanted benefits from April 18, 2020 to July 4, 2020. (Exhibit CC.)

Initially, the circuit court ordered the Agency to pay Myrold benefits from July 5, 2020 to January 19, 2023. (Exhibit DD.) However, after the Agency sought review, the circuit court scheduled a show cause hearing on the issue of whether the Agency had to pay Myrold any additional benefits. (Exhibit DD.) Both parties filed responsive pleadings. (Exhibit EE.) The circuit court found that "while Agency/Appellee *can* demonstrate that Claimant/Appellant is not otherwise eligible to receive payment of benefits for the period in questions, it will not be necessary to make that analysis." (Exhibit DD; Emphasis added.) The court affirmed the MOAHR and UIAC decisions and "revoked" its earlier ruling requiring the Agency to pay Myrold benefits from July 5, 2020 to January 19, 2023. (*Id*.) Myrold did not seek any further appeals.

The Agency provided Myrold with adequate due process in that it provided him with written notice of the adverse decisions and instructions as to how to challenge the decisions. He took advantage of the instructions and pursued his appeals to Jackson County Circuit Court. As such, he cannot demonstrate that

Defendants failed to provide him with due process. Myrold's due process claims (Counts I–III) should be dismissed.

Patricia Myrold filed a regular claim on May 10, 2020. (Exhibit FF.) The Agency found her eligible for benefits. (*Id*.) Regarding the claim, the Agency paid her 26 weeks, Myrold waived her payment for 5 weeks, and the Agency did not pay her for 2 weeks because her reported earnings offset her weekly benefit amount. (*Id*.) There were multiple weeks where the Agency required Myrold to file an additional claim: weeks ending May 9, 2020 through August 1, 2020. (*Id*.)

Myrold called customer service on May 3, 2021 and spoke with UI examiner Chequetta Shed. Ms. Shed advised Myrold to file a new (additional) claim, but Myrold refused. Had Myrold filed the additional claim, the Agency would have been able to pay for the involved weeks if she was eligible.

Myrold's due process claim fails. She acknowledges that she was aware that she needed to file an additional claim, but she refused to do so. She had notice and an opportunity to receive payment, but unreasonably failed to do so. As such, there are no material issues of fact and her claim should be dismissed.

### D. Should this Court believe that the PUA Plaintiffs have due process claims, their claims should be dismissed as they were afforded due process.

Defendants contend that Shipe, Boudrie, Brainer, Foster, and Holifield are not entitled to a due process claim because they have no property interest in PUA

benefits. (See Sections I, A–B). However, if this Court believes that such a right exists, Plaintiffs Boudrie, Brainer, and Holifield still cannot proceed on their due process claims because they were given notice and an opportunity to be heard.

**1. Diana Boudrie.**

Boudrie asserts that the Agency engaged in premature collection against her and failed to pay her benefits owed. (Dkt. 36, PageID.1256–1257, ¶¶ 61–69). Boudrie filed a PUA claim on April 21, 2020 and The Agency monetarily approved the claim three days later. (Exhibit I.) She certified for, and received payments, for weeks ending April 11, 2020 through August 22, 2020. No payment was issued for weeks ending August 29, 2020 through September 19, 2020 because she refused her employer's offer to return to work. (Exhibit GG, pp. 19–20; Exhibit HH). She never returned to work thereafter. (Exhibit GG, p. 23). On November 6, 2020, the Agency found her monetarily ineligible for PUA benefits. (Exhibit II.) She timely appealed (Exhibit JJ), but the Agency send her some collection letters. (Exhibit KK.) The Agency did not collect any money. (Exhibit GG, p. 29.)

The Agency provided Boudrie with adequate due process in that it provided her with written notice of the adverse decisions and instructions as to how to challenge the decisions. She took advantage of the instructions and filed a timely protest. As such, she cannot demonstrate that Defendants failed to provide her

with due process. Also, there is no evidence that Defendants Dale, Berry, or Burns were involved in her unemployment claim.

Finally, Boudrie claimed that she was denied due process because her appeal was delayed. (Dkt. 36, PageID.1256, ¶ 59.) There is no statutory authority setting deadlines for when adjudications are complete or when matters are heard by impartial tribunals. Most importantly, Boudrie admitted that she never intended to return to work. Thus, this was not a situation where she needed a timely administrative hearing in order to obtain more benefits. As such, her due process claims should be denied under Counts I–III.

**2. Richard Brainer.**

Brainer asserted that the Agency prematurely collected $532 from him while his appeal was pending. (Dkt. 36, PageID.1265, ¶ 122.) The Agency subsequently reimbursed him for the intercepted funds. (Exhibit LL, p. .) Other than the seizure of the $532, he did not allege any other injuries or damages. (Dkt. 36, PageID.1264–1265, ¶¶ 115–123.) There is no evidence that Defendants Dale, Berry, or Burns were involved in his unemployment claim.

**3. Christine Holifield.**

Holifield alleges that after the Agency approved her unemployment claim, the Agency stopped paying her in June 2020. (Dkt. 36, PageID.1263, ¶¶ 107–

108.) Further, it issued adverse decisions that the Unemployment Insurance Appeals Commission did not reverse until July 29, 2022. (Dkt. 36, PageID.1263, ¶¶ 110–112.)

On October 16, 2020, the Agency issued an adverse decision to Holifield finding her ineligible for benefits (due to availability) beginning March 22, 2020 going forward. (Exhibit MM.) She appealed the decision and the Unemployment Insurance Appeals Commission found in her favor after a retroactive change in Michigan law. (Exhibit NN).

There is no evidence that Defendants Dale, Berry, or Burns were involved in her unemployment claim. Again, the Agency provided Holifield with adequate due process in that it provided her with written notice of the adverse decisions and instructions as to how to challenge the decisions. She took advantage of the instructions and was ultimately successful with her appeals. As such, she cannot demonstrate that Defendants failed to provide her with due process.

Further, Holifield asserts that because the Agency did not pay her the balance of her 2020 benefits until 2023, it violated her due process rights and caused her to lose additional financial benefits. However, once the Agency issued the adverse decisions in July and October 2020, it did not have to issue any further payments until the decisions were reversed. § 27(a)(1). And to the extent that Holifield implies that the Agency's adverse decision was improper or wrong, she is

incorrect. The decision was affirmed by MOAHR (Exhibit OO) and the Appeals Commission reversed based upon a change in state law while her appeals were pending. (Exhibit NN.) As such, Holifield's due process claims (Counts I–III) should be dismissed.

## II. This Court should dismiss Counts II, III, and IV as they relate to the *Zynda* settlement agreement.

### A. Plaintiff UAW failed to comply with the notice provision of the settlement agreement.

Plaintiffs rely on the *Zynda* settlement agreement regarding Counts II (failure to provide prompt appeals), III (premature collection), and Count IV (violation of the settlement agreement). (Dkt. Page.ID1293–1302.) These remaining counts should be dismissed.

First, this Court should dismiss Plaintiff UAW and the *Zynda* counts as the UAW failed to comply with the settlement agreement provisions. This Court has already determined that "on the record before it, the Court finds that the UAW is not likely to prevail on the success of its claims under the *Zynda* settlement agreement" because it failed to comply with the notice provision. (See July 12, 2023 Opinion and Order (Dkt. 33, PageID.24–25.)

The settlement agreement required the UAW to give the Agency written notice of alleged breaches, with the Agency receiving ten days to respond. (Exhibit PP, p. 7, ¶ 23.) The notice *shall* be made to a specified individual at a

specified mailing address. Plaintiff UAW became a party to this action upon the filing of the first amended complaint on November 28, 2022. (Dkt. 10.)

Plaintiff UAW admits that attorney David Blanchard's September 2, 2021 Notice sent to the Agency never identified the UAW by name (in full or by acronym) and was written on behalf of a non-UAW individual. (Exhibit QQ, p. 3, ¶¶ 3–5.) Further, Plaintiff UAW admits that the first Notice to mention the UAW was the November 14, 2022 Notice sent to the Agency's attorney, but not sent to the individual specified in the settlement agreement. (*Id*.) No UAW notice that complied with paragraph 23 of the settlement agreement preceded the filing of the first amended complaint which named the UAW as a plaintiff on November 28, 2022.

### B. Defendants Agency and Dale complied with the *Zynda* agreement where it expressly stated that no provision could require a violation of State law.

In Count II, Plaintiffs assert that Defendants Agency and Dale violated the *Zynda* settlement agreement by suspending benefit payments upon the issuance of an adverse decision, in violation of the settlement agreement. However, the settlement agreement did not require Defendants to act contrary to law. (Exhibit QQ; p. 10, ¶ 28.) And under Michigan law, once an adverse decision is issued, benefit payments are suspended. Mich. Comp. Laws, § 421.27(a)(1).

The MES Act requires that benefit payments cease once an adverse decision is issued finding a claimant ineligible or disqualified. (*Id*.) There is no requirement that the adverse decision be legally final[4] to cease payments reflected in either the *Zynda* settlement or in the MES Act. Even if the *Zynda* settlement purported to require such legal finality before the Agency can cease payment – which it does not – the *Zynda* settlement states clearly that state law takes precedent over any settlement term. (Exhibit QQ; p. 10, ¶ 28.) So long as Defendants are compliant with § 27(a)(1), there is no violation of the *Zynda* settlement when benefits are stopped after an adverse decision.

## III. The Defendants sued in their individual capacities are entitled to qualified immunity where the Plaintiffs fail to establish that the Defendants' conduct was in violation of aclearly established right.

### A. Government employees are entitled to qualified immunity unless their conduct violates clearly established rights.

It is well established that "government officials performing discretionary functions are generally shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Conduct violates an established law only when, at the time of the

[4] A decision becomes legally final when a party fails to file a protest or appeal within 30 days of the issuance of the decision. Mich. Comp. Laws, §§ 421.32a(1), 33(2), 34(7)) or a judicial decision (Mich. Comp. Laws, § 421.38(4)).

challenged conduct, "the contours of the right are sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

Plaintiffs must demonstrate that the right the official is alleged to have violated must have been "clearly established" in a "more particularized, and hence more relevant, sense." *Anderson*, 483 U.S. at 639. The Court analogized that while the right to due process of law is "quite clearly established," it is too general an inquiry to establish the government actors understood that their conduct violated that right. *Id.* To determine whether a constitutional right is clearly established, the Court must "look first to decisions of the Supreme Court, then to decisions of this court and other courts within our circuit, and finally to decisions of other circuits." *Hamilton v. Myers*, 281 F.3d 520, 531 (6th Cir. 2002) (quoting *Walton v. City of Southfield*, 995 F.2d 1331, 1336 (6th Cir. 1993)).

**1. Defendants are entitled to qualified immunity regarding Plaintiffs with PUA claims.**

Here, Plaintiffs allege that Defendants violated the individual Plaintiffs' procedural due process rights in denying, delaying, or prematurely collecting their PUA benefits (Counts I–III). However, because their "rights" to PUA benefits are not clearly established, Defendants are entitled to qualified immunity as to the PUA Plaintiffs (Shipe, Boudrie, Foster, Brainer, and Holifield).

**a. PUA law is distinct from regular unemployment law.**

Plaintiffs conflate PUA benefits with state or regular unemployment benefits, but they are not the same. Congress established unemployment benefits, as part of the Social Security Act, in 1935. Title III, § 383, 49 Stat. 626. In the almost 89 years since, the courts and legislatures (state and federal) have established authority regarding regular unemployment law.

In response to the nationwide COVID-19 epidemic, the CARES Act was signed into law on March 27, 2020. Pub. L. 116–136, § 2102. It gave State unemployment agencies the option of extending unemployment benefits (PUA) to individuals who ordinarily were ineligible to receive unemployment benefits under existing state law. *Id.* (Exhibit RR.) The federal government extended and amended the CARES Act with the Continued Assistance for Unemployed Workers Act (CAUW Act) on December 27, 2020 (Pub. L. 116–136, § 2201). The third, and final extension, was the American Rescue Plan Act of 2021. Pub. L. 117–2, Title IX, § 9011. The program ended on September 6, 2021. 15 U.S.C. §9021(c)(1)(A)(ii).

There is little federal law regarding the PUA program, most federal cases are at the district court level, and the cases that do exist cover several different subject matters. For example, in Westlaw, a search for "PUA and unemployment" since 2020 in the 6th Circuit yields only 12 cases covering a variety of different subject

matters: discrimination based on criminal status, a data breach, disability discrimination, etc. (Exhibit SS.) Given the lack of case law and the 6th Circuit district court *Moss* case (above finding that the CARES Act did not create a property right in PUA benefits, unlike regular unemployment benefits), there is no clearly established statutory or constitutional right to PUA benefits.

In addition, this Court must determine whether the reasonable person would have known that their conduct violated a clearly established right. Again, there was a lack of established statutory or case law regarding PUA benefits. In addition, the Department of Labor issued approximately 65 UIPLs (Unemployment Insurance Program Letters) to State unemployment agencies regarding "PUA." (Exhibit TT, p. 249.) In addition, the DOL would schedule frequent calls with States following the release of UIPLs until as late as early 2021. (*Id*., p. 250.)

Additionally, multiple UIPLs contained questions from various State unemployment agencies (with answers from the DOL) regarding implementation of the PUA program during multiple years including but not limited to UIPL 16-20, Change 1 (issued 04/27/2020), pp. I-1–I-14 and UIPL 16-20, Change 2 (issued 07/21/20), pp. I-2–I-10. (Exhibit UU.)

Several UIPLS warned state unemployment agencies to maintain program integrity and minimize unemployment fraud by carefully reviewing claims. (Exhibit RR, p. 2; Exhibits VV–XX.) The United States Department of Labor

recommended that state unemployment agencies implement a benefit payment review system, to be implemented by managers or skilled adjudicators, for review of large, backdated claims before they were released. (Exhibit YY [10/7/2020 Field Release, p. 1; 10/21/2020 email.) UI staff predicted that these issues would take several years to resolve. (Exhibit ZZ.)

By way of illustration, several Agency staff members (including attorneys) disagreed regarding CARES Act provisions and requirements, including but not limited to:

1. The standards for reasonable suspicion (Exhibit AAA); and

2. Whether claimants had to be able and available under state law to be eligible for PUA benefits. (Exhibit BBB, pp. 179, 213–214).

Given the establishment of a new law that expanded unemployment benefits, which resulted in two extensions, 65 UIPLs, and confusion among staff, it is reasonable to believe that Defendants would be confused as to whether their conduct regarding PUA benefits violated the law, let alone clearly established constitutional law.

**2. Defendants are entitled to qualified immunity regarding the state unemployment claims.**

Even if this Court finds that the Defendants are not entitled to qualified immunity regarding the PUA Plaintiffs due to the absence of a clear statutory or constitutional right, Defendants are still entitled to qualified immunity. Regarding

the Myrolds, Quigg, and Kreps, Defendants are entitled to qualified immunity because the Plaintiffs cannot demonstrate a clear statutory or constitutional right that Defendants violated. Defendants provided these Plaintiffs with their due process rights.

## IV. Furthermore, the individual Defendants cannot be held liable under a theory of respondeat superior.

There is no respondeat superior liability on § 1983 claims. *Skinner v. Govorchin*, 463 F.3d 518, 525–526 (6th Cir. 2006). To impose liability for a constitutional violation, the state defendant must be actively involved in the violation of Plaintiffs' federal rights. *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999). Mere knowledge of a constitutional violation is not enough. Thus, a defendant can be liable in his individual capacity only if he or she participated in, condoned, encouraged, or knowingly acquiesced in the alleged constitutional violation. *Id*. The right to control an employee who violates a plaintiff's constitutional rights is not sufficient to state a claim. *Id*.; *Doe v. Clairborne Co., Tenn.*, 103 F.3d 495, 507, 511 (6th Cir. 1996).

### 1. Julia Dale

Julia Dale became the Agency's director in late October 2021. (Exhibit CCC [08/12/2024], p. 8). She still holds that position. (*Id*.) Defendant Dale's job duties include overseeing the Agency's operations and budget. (*Id*., p. 31.) She

relied on subject matter experts, also known as division administrators. (*Id*., 32, 87.) She had general knowledge of backlogs (*Id*., pp. 27–28, 85–87.) and fraud investigations. (*Id*., p. 76–77).

When she started, the Agency was still struggling with the after effects of the pandemic. (*Id*., p. 27.) Staffing had been cut in half and resources were lacking. (*Id*., p. 28.) She was not a claims subject matter expert and she did not review individual claims. (*Id*., pp. 28–29.) Nor did she review or approve all automation requests or report requests. (*Id*., p. 114–119.) She denied taking any action to intentionally deny claimants benefits. (*Id*., [10/2/2024], p. 259.) She was not questioned about any of the individual Plaintiffs.

**2. Kimberly Berry**

Defendant Kimberly Berry joined the Agency in 2012 as a Senior Executive Management Assistant. (Exhibit DDD, p. 6.) Berry's work duties have always focused on the employer side of the Agency's operations. Berry served as a State Administrative Manager for the Collections Unit (which dealt with employer collections) and the Tax Office (overseeing employer status and tax issues). (*Id.*, pp. 7–10.) Berry became the Deputy Director of the Agency in December of 2018, and held that role until March of 2022. (*Id.*, pp. 8, 17.) Other than being the designated contact liaison under the terms of the *Zynda* settlement agreement, Berry had no responsibilities as Deputy Director that related to claimant benefits or

claimant collections. (*Id*., pp. 14–15.) As the liaison under the *Zynda* agreement when she was Deputy Director, Berry ensured that any notices received were forwarded to the proper area for review. (*Id*., pp. 22–23, 58.)

Since Berry's duties have never been on the claimant side, she lacks knowledge regarding Agency policies and procedures relating to claimant misrepresentation issues, stop payments, suspension of benefits, or benefit payment reviews. (*Id*., pp. 28–29, 33–39, 43–45, 50–51, 54–56, 69–70, 73.) While Berry did have oversight over members of the Agency management team with duties on the claimant benefits side, she had no direct overview of policies and procedures relating to claimant benefits. (*Id*., pp. 15, 39–40.) During the pandemic, these individuals effectively reported to Agency Director Steve Gray. (*Id*., pp. 40, 71.)

Berry's primary focus at this time was getting staff working from home, and hiring the thousands of additional workers who were needed at that time. (*Id*.) This is consistent with Gray's testimony, who initially stated that the management team reported to him since "[t]here wasn't anybody else that [sic] would have reported to" before clarifying that they technically would have reported to Berry. (Exhibit BBB, pp. 23–24.) Gray also confirmed that Berry was responsible for bringing on temporary staff. (*Id*., p. 26.) At some point after Gray left as Director

of the Agency, the management team no longer reported to Berry in any capacity. (Exhibit DDD, pp. 45–47.)

In March of 2022, Berry became State Administrative Manager over employer special programs. (*Id*., p. 17.) Berry is currently the Director of the Tax and Employer Services Division at the Agency, serving in this role since October of 2023. (*Id.*, pp. 3, 36.) This role involves oversight of field audit, tax office, collections, and employer special programs. (*Id*., p. 36.)

### 3. Teresa Burns

Teresa Burns is the Agency's State Administrative Manager for Internal Controls. (Exhibit TT, p. 7.) She supervises two units – compliance and special projects. (*Id*., p. 8). The duties of the unit include filing administrative appeals, reviewing documents and forms, drafting and reviewing data sharing agreements, and reviewing proposed legislation. (*Id*., p. 9). She explained the clearance process, which is the process for the generation or review of Agency documents. (*Id*., pp. 14–16.) In addition, the unit handles audits, bankruptcy, Friend of the Court, the Advocacy unit, hearings and record support, and the appeals team. (*Id*., pp. 18–19.)

Internal Controls oversees the Agency's policies and procedures, but it does not manage, process, or adjudicate claims. (*Id*., pp., 25, 37.) Internal Controls was not responsible for the suspension of benefits, premature collection, alleged

violation of the *Zynda* settlement agreement, or the alleged delays in processing protests or appeal. (*Id*., p. 250). Burns was not questioned about any of the individual Plaintiffs.

#### 4. Defendants cannot be held liable under a theory of respondeat superior.

The organization chart demonstrates how the Agency was organized at the start of the pandemic. The state division administrators did not report to each other; instead, they reported to Defendant Berry. (Exhibit EEE.) Berry reported to former Director Steve Gray, who is not a Defendant in this litigation.

None of the individual Defendants are responsible for the behavior complained of by the Plaintiffs. Specifically, none of the individual Defendants are or were responsible for processing PUA unemployment claims, reviewing claims, or paying claims. None are or were responsible for suspending payments or stopping payments by any means. None are or were responsible for any delays in processing appeals. And none are or were responsible for premature collection. Plaintiffs have completely failed to demonstrate that any of the individual Defendants were directly involved in or responsible for the conduct of which they complain. As such, none of the Defendants can be held liable for the alleged unconstitutional conduct.

## V. Declaratory Relief is unavailable under the Declaratory Judgment Act.

Declaratory judgments are discretionary tools utilized by the courts to declare the rights of litigants and an alternative to pursuit of arguably illegal activity. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 129 (2007). In this matter, an award of declaratory relief is also improper under the Declaratory Judgment Act. 28 U.S.C. § 2201; *Public Service Comm. of Utah v. Wycoff*, 344 U.S. 237, 241 (1952). The granting of a declaratory judgment rests in the discretion of the court. *Grand Trunk Western R.R. Co. v. Consolidated Rail Corp.*, 746 F.2d 323, 326 (6th Cir. 1984).

In determining how to exercise that discretion, the court should consider:

1. whether the declaratory action would settle the controversy;
2. whether the declaratory action would serve a useful purpose in clarifying the legal relations in issue;
3. whether the declaratory remedy is being used merely for the purpose of "procedural fencing" or "to provide an arena for a race for res judicata";
4. whether the use of a declaratory action would increase friction between our federal and state courts and improperly encroach upon state jurisdiction; and,
5. whether there is a better or more effective alternative remedy.

*Grand Trunk*, 746 F.2d at 326 (citation omitted).

These factors counsel against granting declaratory relief. As to the first and second factors, a declaratory judgment would not settle this controversy or clarify the legal relations at issue. Relative to the individual Plaintiffs, most have been

paid (at least partially), all filed appeals, and several have been successful in pursuing administrative remedies. A declaratory judgment that the Plaintiffs' "constitutional and statutory rights" were violated based upon nonexistent property and due process rights and in the aftermath of an unprecedented pandemic does not provide Defendants with any information that would change their ability to process claims given the unique historical circumstances of the last two and a half years.

## VI. Because there are parallel proceedings regarding improper collection (Count III), this Court should abstain under *Colorado River*.

Under truly exceptional circumstances, federal courts may abstain out of deference to pending state court proceedings for reasons of wise judicial administration. *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800 (1976). The threshold question in *Colorado River* abstention is whether there are parallel proceedings in state court. *Crawley v. Hamilton County Comm'rs*, 744 F.2d 28, 31 (6th Cir. 1984). The United States Supreme Court has identified four factors that a federal court should consider when determining whether the interests of wise judicial administration and a comprehensive disposition of the litigation outweigh the duty to exercise jurisdiction. Courts should consider: (1) the problems that occur when a state and federal court assume jurisdiction over the same res; (2) the relative inconvenience of the federal forum; (3) the need to avoid

piecemeal litigation; and (4) the order in which the state and federal proceedings were filed. *Colorado River*, 424 U.S. at 818–819.

Here, Count III meets the "exceptional factors test." Ten other plaintiffs are pursuing an unlawful early collection claim against the Agency in *Kellie Saunders v. Michigan Unemployment Insurance Agency* (Court of Claims; docket number 2022-000007-MM). The parties have preliminarily settled the matter and are scheduled to attend a final settlement conference in March 2025. (Exhibit FFF.)

Also, concurrent state and federal court jurisdiction over the matter is likely to lead to piecemeal litigation and could produce inconsistent results. The Court of Claims is well-equipped to handle matters involving the grievances articulated by the Plaintiffs and putative class, and thus, can adequately protect their rights. Thus, under *Colorado River*, this Court should dismiss Count III and allow the state court proceeding to advance.

## VII. Plaintiffs are not entitled to injunctive relief.

Plaintiffs have already filed a motion seeking injunctive relief against Defendants Agency and Dale. (Dkt. 71.) However, Defendants will briefly address this issue in this motion.

### A. Standard of Review

Parties seeking injunctive relief bears the burden of justifying such relief. *McNeilly v. Land*, 684 F.3d. 611, 615 (6th Cir. 2012). The proof required to obtain a preliminary injunction is "much more stringent than the proof required to survive a summary judgment motion." *Id*. The factors should be balanced. *Id*.

### B. The parties are not entitled to injunctive relief.

The decision to grant or deny injunctive relief is an act of equitable discretion by the Court. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 320 (1982). Resort to equity is an extraordinary step that this Court must not take lightly. "There is no power the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or more dangerous in a doubtful case, than the issu[ance of] an injunction." *Aluminum Workers Int'l. Union v. Consol. Aluminum Corp*, 696 F.2d 437, 442 (6th Cir. 1982). Because equitable relief is an extraordinary remedy to be cautiously granted, the scope of relief should be strictly tailored to accomplish only that which the situation specifically requires, and which cannot be attained through legal remedy. *Id.*, at 466.

A plaintiff seeking injunctive relief must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: 1) the movant's likelihood of success on the merits; 2) whether the movant will suffer irreparable injury; 3) whether the issuance of a preliminary injunction would cause substantial

harm to others; and 4) whether the public interest would be served by the issuance of the preliminary injunction. *McNeilly v Land*, 684 F.3d. at 615.

Regarding the first factor, the Plaintiffs cannot demonstrate a likelihood of success on the merits. See Sections I-IV, VI. Next, the Plaintiffs will not suffer irreparable injury.

The Plaintiffs must demonstrate that there exists a real and imminent danger of *irreparable* injury in the future. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). Here, irreparable harm has not been established because this litigation is about the payment of unemployment benefits. Second, the Agency is currently enjoined from collection activity for any debt established on claims filed after March 1, 2020. (Exhibit GGG.)

Finally, substantial harm would come to Defendants, especially if this Court expanded injunctive relief to non-UAW members, nonparties, or a prospective class. The Supreme Court has held that putative class members are not parties to an action where a class has not yet been certified. *Smith v Bayer Corp*, 564 U.S. 299, 315 (2011). Here, no class has been certified. Thus, if this Court grants some form of injunctive relief, Defendants respectfully ask that any relief be limited to the UAW or the named non-UAW member Plaintiffs.

## CONCLUSION AND RELIEF REQUESTED

First, Defendants have established that no due process violations have occurred regarding the PUA Plaintiffs and several of the regular/state UI Plaintiffs received due process. Second, the individual Defendants have been named based on supervisory titles without any factual basis as to their personal involvement, and discovery has established that they were not individually involved as alleged. Finally, the UAW is seeking to enforce the very same settlement agreement that it violated when it failed to comply with the agreements notice provisions.

For these reasons, Defendants ask that this Court to dismiss this matter in its entirety.

Respectfully submitted,

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Dated: November 4, 2024

**CERTIFICATE OF SERVICE (E-FILE)**

I hereby certify that on November 4, 2024, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ *Shannon W. Husband*
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL KREPS, et al.,

Plaintiffs,

v

MICHIGAN UNEMPLOYMENT INSURANCE AGENCY, et al.,

Defendants.

No. 2:22-cv-12020

HON. MARK A. GOLDSMITH

**DEFENDANTS' INDEX OF EXHIBITS FOR JOINT MOTION FOR SUMMARY JUDGMENT**

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**INDEX OF EXHIBITS FOR DEFENDANTS MICHIGAN UNEMPLOPYMENT INSURANCE AGENCY, JULIA DALE, KIMBERLY BERRY, AND TERESA BURNS' JOINT MOTION FOR SUMMARY DISPOSITION**

Proposed exhibits to be filed after Plaintiffs have an opportunity to object pursuant to the Stipulated Protective Order (Dkt. 48, ¶ 11.)

| Exhibit | Description |
|---|---|
| A | OIG Oversight of the Unemployment Insurance Program (12/15/2023) |
| B | *Graham v Payne*, 3:21-cv-888, 2022 WL 815138 (N.D. Ind.), March 17, 2022 |
| C | *Moss v Lee*, 3:21-cv-00561, 2022 WL 68388 (M.D. Tenn.), January 6, 2022 |
| D | *McClendon v Bernard*, 4:21-cv-00823-KGB, 2021 WL 5567369 (E.D. Ark.), November 29, 2021 |
| E | *Winter v New Mexico Dep't of Workforce Solutions*, 21-475 JFR/SCY, 2023 WL 184115 (D. N.M.), January 13, 2023 |
| F | *Jackson v Daniel*, 1:21-cv-1107-LY-SH, 2022 WL 1157656 (W.D. Tex.), April 18, 2022 |
| G | *Sterling v Feek*, 3:22-cv-05250, 2023 WL 5718163 (W.D. Wash.), September 5, 2023 |
| H | Shipe PUA monetary determination |
| I | Boudrie PUA monetary determination (04/23/2020) |
| J | Foster PUA monetary determination (04/23/2020) |
| K | Brainer PUA monetary determination (04/22/2020) |
| L | Holiefield PUA monetary determination (04/23/2020) |
| M | Andrew Myrold PUA monetary determination (05/21/2021) |
| N | Patricia Myrold PUA monetary determination |
| O | Marisa Quigg PUA monetary determination (07/20/2020) |
| P | Paul Kreps monetary determination (08/05/2020) |
| Q | Kreps Request for Information (08/05/2020) |
| R | Kreps deposition excerpts (07/09/2024) |
| S | Kreps ID documents (PII redacted)(filed 10/14/2020) |
| T | Kreps Determination (10/12/2020) |
| U | Kreps Determination (04/13/2021) |
| V | Kreps Valid Payment Method Required (03/04/2022) |
| W | Quigg monetary determination (04/08/2020) |
| X | Quigg determination (05/22/2020) and redetermination (07/20/2020) |
| Y | Quigg Denial (11/08/2021) |
| Z | Quigg MOAHR decision (03/01/2022) |
| AA | A Myrold state monetary determination (5/13/2020); A Myrold decisions (07/30/2021 and 10/6/2022) |

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|---|---|
| BB | A Myrold MOAHR and UIAC decisions |
| CC | A Myrold circuit court brief |
| DD | Jackson County Circuit Court decisions |
| EE | A Myrold and UIA pleadings (excerpts) in response to show cause |
| FF | P Myrold declaration with supporting documents. |
| GG | Boudrie deposition excerpt (08/15/2024) |
| HH | Boudrie certifications |
| II | Boudrie redetermination (11/06/2020) |
| JJ | Boudrie appeal |
| KK | Boudrie collection letters |
| LL | Brainer check |
| MM | Holifield determination (10/16/20) |
| NN | UIAC decision (07/29/2022) |
| OO | MOAHR decision (12/8/2021) |
| PP | *Zynda* agreement |
| QQ | UAW Response to Request to Admit |
| RR | UIPL 16-20 (04/05/2020) |
| SS | Westlaw search <last accessed 10/27/2024> |
| TT | Burns deposition excerpts |
| UU | UIPL 16-20, Change 1 (04/27/20); UIPL 16-20, Change 2 (07/21/2020) |
| VV | UIPL 23-20 (05/11/2020) |
| WW | UIPL 28-20 (08/31/2020) |
| XX | UIPL 16-21 (04/13/2021) |
| YY | Field release (10/07/2020); Evan Anderson email |
| ZZ | Stephanie Glidden email |
| AAA | Burns email (09/27/2020) |
| BBB | Steve Gray deposition excerpts (9/17/2024) |
| CCC | Julia Dale deposition excerpts (8/12/2024 & 10/2/2024) |
| DDD | Kimberly Berry deposition excerpts (07/25/2024) |
| EEE | Organizational Charts |
| FFF | *Saunders v. MUIA* (Court of Claims; docket number 2022-000007-MM); Order approving preliminary settlement. |
| GGG | *Saunders v. MUIA*, Injunctive order. |