UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL KREPS, ET AL,

Plaintiffs,

Case No. 2:22-cv-12020

v.

MICHIGAN UNEMPLOYMENT INSURANCE AGENCY, ET AL,

Hon. Mark A. Goldsmith

Defendants.

David M. Blanchard (P67190)
Blanchard & Walker, PLLC
Attorney for Plaintiffs
221 N. Main Street, Suite 300
Ann Arbor, MI 48104
(734) 929-4313
blanchard@bwlawonline.com

Edward Macey (P72939)
Attorney for Plaintiff UAW
8000 E. Jefferson Ave
Detroit, MI 48214
(313) 926-5616
emacey@uaw.net

Shannon W. Husband (P60352)
Debbie Taylor (P59382)
John Gehring (P74869)
Attorneys for Defendants
Department of Attorney General – Labor Division
3030 W. Grand Blvd., Ste. 9-600
Detroit, MI 48202
(313) 456-2200
husbandS1@Michigan.gov
taylord8@michigan.gov
gehringJ1@michigan.gov

PLAINTIFFS' REPLY BRIEF IN FURTHER SUPPORT OF CLASS CERTIFICATION

Defendants are aware that clearly established due process law guarantees that the right to ongoing unemployment benefits may not be taken without notice or any determination of ineligibility. Yet, the Michigan Agency maintains a flagging system that operates in disregard of these due process norms. Despite being on notice of the practice, the Defendants have done nothing to remedy this situation and nowhere in their extensive briefing have they meaningfully denied that the practice persists.

Defendants Response Brief focuses almost entirely on eligibility assessments and claims that each file on hold would have to be individually reviewed for eligibility. Defendants either completely misunderstand the nature of the due process violation alleged, or they are attempting to mislead the Court. This lawsuit challenges the constitutionality of Defendants flagging system. It does not challenge individual eligibility determinations. In fact, Plaintiffs rely on the Agency's determinations. Once the Agency has determined eligibility and after all eligibility decisions are final in favor of claimants, the Defendants still withhold benefits—that is deprivation of property without due process. A common issue unifies the class and begs for common resolution.

I. Judicial Review of Administrative Due Process is Essential to Legitimacy of the Administrative State

Defendants admit that the "right to unemployment benefits arises under the Michigan Employment Security Act." Defendants contend throughout this litigation

that the "Agency has exclusive jurisdiction to determine a claimant's right to receive benefits." *See* Def. Resp. in Opp. to Class Cert., ECF No. 128 at PageID 5385 (citing MCL 421.32(a)). There is no genuine factual dispute here. Under Section 27 of the MES Act, the Agency has a statutory obligation to pay benefits once it has determined a claimant is eligible.

The right to continued payment of benefits is a property right which cannot be deprived without due process. Unemployment administration, like any other government program, is required to respect constitutional rights and the right to due process. However, Defendants seem to argue that the administrative status exempts the Agency from judicial scrutiny. That is not how it works.[1]

[1] Throughout the 20th century, "[c]ongress and the courts allowed the administrative state to expand so long as it adhered to extensive procedures designed to ensure the fairness, transparency, and accountability of agencies' decisions about particular individuals and their policymaking. Procedural due process protected the important interests of individuals while constraints on rulemaking served as legitimate substitutes for individual adjudications." Ex. 1, Citron, *Technological Due Process*, 85 WASH.U. L. REV. 1249 (2007). In the 21st century, administrative agencies increasingly embraced automated and algorithmic decision-making as a way to decrease costs and improve efficiency. Policy choices and decision-making practices are now more often reflected in algorithmic decision trees and computer coding rather than in traditional "policy" manuals.

The constitutional principles have not changed. Rather, the courts' role and precedents for policing of the administrative state have been challenged to keep up with the times. Ex. 2, Calo & Citron, *The Automated Administrative State: A Crises of Legitimacy*, 70 EMORY L. JOURNAL 797 (2021). In this era of rapid "modernization", the existence and continuation of the executive administrative power depends on administrative adherence to basic due process principles, and the Court's continued oversight to ensure compliance.

In 2013, the UIA claimed to be at the forefront of modernizing and automating state unemployment systems with a promise of efficiency and ease. Instead, it became the poster child for automated due process violations on an international stage.[2] An entire thread of academic literature took note of Michigan's failures as a literal textbook example.[3] When the dust had settled, the Department of Labor had issued instructions to all states that the determinations could not be automated without first providing notice and opportunity to be heard. UIPL 01-16. The Courts had rebuked the Agency process, and the state agreed to halt the practice and review and refund those wrongfully accused – but only after losing three attempts to dismiss the *Zynda v. Arwood* case.

[2] "Michigan was among the first states to "modernize" their entire unemployment insurance system through a contract with a third-party company. As a result of over-calibrated, faulty algorithmic programming, the system wrongly charged tens of thousands of claimants as "fraudsters" and billed and collected exorbitant amounts of money that the state had no evidence was actually owed." Ex. 3, Rachael Kohl, *Automated Stategraft: Faulty Programming and Improper Collections in Michigan's Unemployment Insurance Program*, 2024 WISC. L. REV. FORWARD 43 (2023); Ex. 4, Rankin, *The MiDAS Touch: Atuahune's "Stategraft" and Unregulated Artificial Intelligence*, 98 NYU L. REV. ONLINE 225 (2023); Ex. 5, Robert Charette, *Michigan's MiDAS Unemployment System: Algorithm Alchemy Created Lead, Not Gold*, IEEE Spectrum (Jan. 2018).

[3] *See* e.g. Ex. 6, Spencer Headworth, *Stategraft in Public Assistance Programs*, 2024 WISC. L. REV. 503 (2024); Ex. 7, *Algorithmic Accountability: The Need for a New Approach to Transparency and Accountability When Government Functions Are Performed by Algorithms*, January 18, 2022 (Report of the Media Freedom & Information Access Clinic, Yale Law School).

In the wake of the robo-fraud debacle, rather than providing the required due process before a determination, the Agency cynically adopted a practice of putting benefits on hold without any determination at all. From the Agency perspective, if it doesn't issue a determination, it couldn't be accused of failing to provide notice. For claimants and class members the result is the same: immediate cessation of benefits, no notice, no due process.

Defendants' briefing in this matter seeks to misrepresent or redirect the discussion as if it were a dispute about whether Plaintiffs are eligible for benefits. Plaintiffs are unified in that they have been determined eligible on their initial application for benefits AND all adverse Agency determinations have been resolved in their favor. Yet they were still not paid unemployment benefits due to them based on the unconstitutional practice of the Agency to withhold benefits, without notice or any determination.

II. The DOL Has Never Recommended or Condoned Indefinite Benefit Payment Stops Without Notice

Contrary to Defendants' assertion, the Department of Labor has never instructed the Agency to put payments on indefinite hold. Every DOL instruction has affirmed the due process obligation to continue timely payments unless the Agency issues a timely determination (after notice and opportunity to be heard). For instance, while acknowledging the vulnerabilities of the PUA program, the US

Department of Labor continued to remind states of their due process obligations to continue payment. For instance, in April 2021, UIPL 16-21 reminded states that:

> If the state determines that it is appropriate to pause payment while the identity verification is being conducted, the state is not required to issue payment for the week in question until it issues a determination of eligibility or ineligibility, ***as long as the determination is timely***. For continued claims, timely payment (i.e., payment "when due") means that a determination is made no later than the end of the week following the week in which the issue is detected. ***If the decision is not issued timely, the state must continue to pay the continued claim*** and issue a determination as soon as administratively feasible after payment is made. (See UIPL No. 01-16 and UIPL No. 04-01.)

Ex. 8, UIPL 16-21 at 6 (Identity Verification for Unemployment Insurance Claims) (also noting that "The state must have a process to reissue any benefits as soon as administratively feasible and through an alternative method (e.g. new direct deposit account, debit card, *paper check.*")

III. Defendants Were Aware of their Due Process Obligations, Which Did Not Change During the Pandemic

Throughout the Pandemic, Defendants own internal and external communications recognized the duty to continue payment. *See* Ind. Pls. Resp. Br. in Opp. To Summ. J., ECF No. 129 at PageID 5451-5458. Defendants were also on actual notice and refused to confer or make necessary corrections. *See* Pl. UAW Resp in Opp. To Summ. J., ECF No. 130. The Defendants were also parties in Sixth Circuit Appeals Court litigation on these same issues and were subject to repeated rulings affirming the property right in unemployment benefits and the due process

right to notice and opportunity to be heard pre-deprivation. *Cahoo v. SAS Analytics Inc.*, 912 F.3d 887, 900 (6th Cir. 2019) (Rejecting the states qualified immunity appeal on a motion to dismiss, and thoroughly discussing the property interests in continued payment of benefits and rejecting Defendant's arguments that these rights were not clearly established – even in light of defective technologies); *Cahoo v. SAS Inst., Inc.,* 71 F.4th 401, 411 (6th Cir. 2023) ("[h]ad this program been used to deprive these individuals of benefits without any process, we would rule the same way again); *see also Drumright v. Padzieski*, 436 F. Supp. 310, 319 (E.D. Mich. 1977) ("[T]he due process clause... appl[ies] to terminations of unemployment compensation benefits because they are statutorily created property interests, within the meaning of the Fifth and Fourteenth Amendments.")

Defendants half-heartedly use their Response Brief as a vehicle to argue that PUA is somehow different and outside of the protection of constitutional norms. The Parties have already briefed the scope of PUA benefits and why they give rise to the same property interest under state law as other forms of unemployment benefits. *See* Ind. Pls' Resp. in Opp. to Summ. J., ECF No. 129 at Page ID 5454-5458 (Dec. 9, 2024). Moreover, Defendants' recitation of the CARES Act is flawed. For instance, Defendants incorrectly claim that the $600 weekly supplemental benefits provided under the Cares Act are PUA benefits. The supplemental program under the CARES Act was called the FPUC (Federal Pandemic Unemployment Compensation), and it

provided additional payments to recipients of "regular" (state funded) unemployment programs as well as PUA and other (federally funded) unemployment programs.

The fact that Defendants' Counsel cannot accurately distinguish between the various unemployment funding programs four years later only underscores the fact that, regardless of the program or eligibility criteria, these were all designated as "unemployment benefits" and subject to the same due process rights and state adjudication methods as all other unemployment benefits. Regardless of the funding source, the state holds the money in a trust fund and is required to make payments and adjudicate claims in accordance with due process and applicable state law. Under the law, claimants are entitled to payment once the Agency has determined they are eligible.

IV. Claims of Fraud Vulnerabilities Are Irrelevant to the Due Process Rights of Legitimate Claimants

Plaintiff and the putative class members are real people impacted by the state's unconstitutional practice. They have been deprived of property without due process. Defendants' Response Brief repeats a refrain about crime rings and fraudulent claims (mostly perpetrated by Defendants' own employees) as if that should excuse deprivation of Plaintiffs' property rights. It does not. The defense is essentially that since the Agency could not sort out the difference between legitimate people that they have determined eligible and imposters - the burden of that Agency failure

should fall on Plaintiffs and hundreds of thousands of other Michiganders who were jobless throughout a public health emergency. There is no basis for such a defense.

V. Defendants' Erroneous Assertions About the Merits of Plaintiffs' Unemployment Eligibility Are Irrelevant to Certification

Plaintiffs have already clearly substantiated the merits of their claims in their Opening Brief. (1) Plaintiffs are not imposters. (2) Plaintiffs filed legitimate claims. (3) Plaintiffs were determined eligible by the Agency. (4) The Agency did not pay. Plaintiffs' well-substantiated merits allegations must be accepted for purposes of class certification.[4] Defendants in Response includes various misstatements of fact and law regarding Plaintiffs that are not entitled to any weight.

All but two of the Plaintiffs experienced suspension of benefits after the Agency began paying on their claims and then halted their payments without notice as follows:

- **Boudrie** – Defendants don't dispute that they approved Diana Boudrie for benefits in April 2020, held back payments for weeks between May and July, and **stopped payment without notice** in August 2020. But only paid some of those benefits this year.
- **Brainer** – Defendants don't dispute that they approved Richard Brainer for benefits in April 2020, **stopped payment without notice** between July and September and closed his claim in December 2020 when they

[4] *Carroll v. United Compucred Collections*, 2002 U.S. Dist. LEXIS 25032 at *39 (M.D. Tenn. Nov. 15, 2002) ("The plaintiffs' allegations on the merits of the case are accepted as true in determining whether class certification is appropriate") (*citing Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 at 177-178 (1974) (Rule 23 does not give a court "authority to conduct a preliminary inquiry into the merits of a suit to determine whether it may be maintained as a class action."))

reversed entitlement and accused him of misrepresentation and demanded repayment of $25,760.

- **Holifield** – Defendants don't dispute that they approved Ms. Holifield for benefits in April 2020 and **stopped payment without notice** in June 2020. They deprived Ms. Holifield for another six months even after all issues were resolved in her favor. Even then, Defendants never paid all that is owed, and they misrepresent Ms. Holifield's clear and unequivocal testimony by claiming otherwise.[5]

- **I.F.** – Defendants don't dispute that they approved I.F. for benefits in April 2020 and **stopped payment without notice** between July and September without notice (like they did to Plaintiff Brainer). Defendants also don't deny that they approved I.F. for additional benefits in February and March 2021, but never paid her for any weeks after her claim was flagged for ID theft in December 2020.[6] They claim that I.F.'s benefits "expired" after 39 weeks when in fact, approved up to 79 weeks. They even sent her a bank debit card which she checked daily for nearly a year.[7]

- **A. Myrold** – Defendants don't dispute that they approved Andrew Myrold for benefits in May 2020 (retroactive to March) and then **stopped payment without notice** until May 2021, when they issued only partial payment. It is beyond dispute that all adverse determinations have been reversed, and that Defendants have never issued an adverse determination reversing eligibility for the unpaid weeks. Defendants still refused to pay him. When Mr. Myrold sought relief from the administrative law judge, the administrative appeals commission and a state circuit court, they all ruled that they lacked jurisdiction to compel payment because the Agency had never issued an appealable determination for those weeks. As a result, Defendants continue to deprive Mr. Myrold of benefits they approved in 2020 and they offer no lawful defense.

- **P. Myrold** – Defendants admit that they approved Patricia Myrold for benefits in May 2020 and **stopped payment without notice** later that

[5] Ex. 9, Holifield Dep. Tr. at 29-30 ("And so for the Lost Wage Assistance program you're claiming roughly $1800?. Answer: "Yes.") *See* also Holifield Documents Collected.

[6] Ex. 10, Screenshot December 14, 2020 Fraud Investigation; Ex. 11, February 1, 2021 Monetary Redetermination; Ex. 12, March 22, 2021 Monetary Redetermination (confirming eligibility for up to 79 weeks of benefits).

[7] Ex. 13, I.F. Dep. Tr. at 36:10.

month. They don't dispute that they resumed only partial payment after a year, and they admit that they are still holding the remainder. Defendants say Ms. Myrold must file an additional claim ("AC") before they will pay the previously approved benefits. Defendants offer no authority for the requirement because there is none. In fact, Defendants are aware that the AC indicator is just another flag that holds benefits without any notice or determination.[8]

- **Quigg** – Defendants admit that they approved Marissa Quigg for benefits in July 2020 and issued only one payment before **stopping payment without notice**. (Def Resp Brief at 10). In March 2022, the adverse determinations from an unrelated claim were finally reversed, but Defendants added new holds, delaying payment for another year.[9]

For remaining named Plaintiffs, the Agency admits they were approved for benefits and yet benefits were on indefinite hold from day one.

- **Kreps** - Defendants don't dispute that they approved Paul Kreps for payment in August 2020, **and stopped payment indefinitely** until August of 2024 – just in advance of this motion.[10] By October 2020,

[8] Ex. 14, Kratz Dep. Tr. at 81 (Kratz testimony that "additional claim required" is one of many indicators that prevent payment). *See* also Ex. 15, April 29, 2020 Abdo email to Berry and others ("Attached are SQRs we submitted some time ago to assist us in meeting timeliness. They fix the issue of claimants not being paid due to AC indicators and indefinite stops.")

[9] Ex. 16, Quigg Customer Notes Screenshot (March 28, 2022 UIA Applied favorable ALJ and UIAC orders, April 7, 2022 UIA adjudicates ID verification issue, July 1, 2022 claim added to review list, July 11, 2022 stop payment indicator added ("SPI"), February 17, 2023 SPI removed, claim added to the BPR list for a manager to review, March 6, 2023 Payment released following manager review.")

[10] The voluntary conduct of a defendant cannot moot a case unless "subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000); *see also Amin v. Colvin*, 301 F. Supp. 3d 392, 400 (E.D.N.Y. 2018) (finding defendants' "willingness to reinstate benefits after the lawsuit was filed, if anything, cuts against their mootness argument.")

Mr. Kreps had already provided verification of his identity three times.[11] Moreover Defendants know that ID verification doesn't lift the holds.[12] Defendants do not mention that they never paid six weeks of supplemental LWA benefits or that Mr. Kreps (and every other Michigan claimant) was promised more than 26 weeks—up to 59 additional weeks under the Extended Benefits (EB) program, and up to 79 weeks under the PEUC program.[13] Indeed, Mr. Kreps certified for 18 more weeks than he has been paid and there are no adverse determinations to justify the deprivation.[14] Defendants received Kreps' timely protest,[15] and later voided that sole adverse determination. Still, they did not pay. Identity verification did nothing to remove the internal flag on the file.[16]

- **Shipe** – As to Robin Shipe, Defendants' Response admits that they approved Ms. Shipe for benefits in 2020 and that she is eligible for benefits. Ms. Shipe has never been paid. They offer no defense.

VI. 23a Factors Are Met

A. Numerosity, Commonality, and Typicality Are Easily Satisfied

[11] *See* Ex. 17, Kreps Web Profile Screenshot (showing multiple ID submissions); Ex. 18, Kreps Original DL submitted April 2020; Ex. 19, Kreps Replacement DL Submitted October 2020; Ex. 20, Kreps Dep. Tr. at 95-96.

[12] *See* Ex. 21, Sparks Dep. Tr. at 28.

[13] Ex. 22, October 1, 2020 Press Release: "UIA Update: Michigan Activates Federal Extended Benefits… *Allows for up to 59 weeks of unemployment benefits to those impacted by economic uncertainty created by COVID-19*." Ex. 23, January 19, 2021 Press Release "UIA Update: Michigan begins PUA and PEUC Unemployment payments."

[14] Ex. 24, Kreps Account Closed Screenshot (showing check for partial payment issued September 5, 2024 and 18 claimed weeks with stop payment indicators).

[15] Ex. 25, Kreps Protest submitted November 2, 2020;)

[16] *See* Exhibit 21, Sparks Deposition Transcript at 28 ("…And if the Identity Verification is verified returned, it doesn't lift the Fraud investigation, does it?...Answer: No.")

Plaintiffs and putative class members have all been impacted by the same challenged policy, a state practice that indefinitely suspends payment without notice and without a determination. The Defendants' interrogatory responses confirm that this practice impacted and continues to impact hundreds of thousands of claimants, including named Plaintiffs. The fact that interrogatory responses were returned on a spreadsheet does not change the analysis.

In the course of discovery, Defendants were asked how many claimants had had benefits suspended more than 21 days without being issued a determination or an explanation of the reason for the suspension: 920,752. Defendants were asked how many claimants had benefits that remained on hold after all determinations were resolved in their favor: 265,600. Defendants were also asked how many claimants had one or more benefit week that remained unpaid by the end of 2020 as a result of stop payment indicator, generic availability, BPR or other holds. The answer: 1,370,534. The parties and the Court are entitled to rely on Defendants' interrogatory answers. The proposed class is numerous and the class members interest in relief is common and typical across the class.

B. Plaintiffs Are Adequate Class Representatives because they have Been Deprived and Continue to be Deprived of Unemployment Benefits Without Due Process

Named Plaintiffs were and are impacted by the Defendants' practice of imposing indefinite holds on benefits without notice or determination. The harm is

ongoing. Defendants' attempts—years later—to justify indefinite holds and continued non-payment, are an irrelevant symptom of the problem, not a serious defense. *See e.g. Wright v. O'Day,* 706 F.3d 769, 772 (6th Cir. 2013) (discussing *Goldberg v. Kelly* and noting that the Court required a hearing prior to termination of welfare benefits, notwithstanding the availability of arguments that the particular plaintiffs would still be denied benefits if the hearing were granted). Plaintiff's Opening Brief discusses the common impact on all Plaintiffs. Defendants have not identified any meaningful conflict that would interfere with their ability to serve the class. Rather, Defendants have presented misleading and erroneous assertions about their claims.

C. Representation of Counsel is Adequate

The Blanchard & Walker Firm is a well-established in class action and impact litigation and fully capable of pursuing this action. Defendants' assertions are once again erroneous and misleading. Plaintiffs have documented counsels' extensive history of class, collective, and impact litigation.[17] Moreover, even since this motion has been pending, yet another Court has certified a class of workers and confirmed counsels' adequacy, *in a contested case*.[18] Finally, Defendants inability to concede

[17] *See* ECF No. 111 at Exhibit 14, Declaration of David M. Blanchard in Support of Class Certification and Appointment of Class Counsel (detailing a history of impact litigation, class representation, and public service with supporting documents).

[18] Ex. 26, Nov 8, 2024 Order Granting Class Certification, *Barker v. STA Management* (Wayne Cnty. Cir. Ct., filed Nov. 3, 2023) ("It is uncontested that

adequacy of counsel is disingenuous when Defendants are fully aware Plaintiffs' counsel is presently administering a $55 million class settlement involving notice to over 130,000 potential class members for due process violations by Defendants.[19] Defendants have stipulated to adequacy of class counsel in that matter.

VII. 23(b)2 Factors Are Met

Class Certification under 23(b)(2) is appropriate when "the party opposing the class 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." Defendants Response fails to raise any meaningful argument why the class should not be certified under 23(b)(2). There is no "individual review of claim files" required to prohibit the practice of indefinite suspension of benefits. The Agency is free to make eligibility determinations and redeterminations within the confines of due process. Agency arguments regarding why they would or could reverse their eligibility determinations do not impact the unified equitable relief sought. Plaintiffs seek an order prohibiting the ongoing suspension of benefits without a determination. It should be a "relatively easy question to answer." *Cahoo II*, 71 F. 4th at 408.

VIII. 23(b)3 Factors Are Met

Plaintiff's counsel are highly experienced class action litigators who have litigated dozens of class actions.")

[19] Ex. 27, *Saunders v. UIA*, Stipulated Preliminary Approval Order

Predominance and superiority are satisfied for the reasons explained in Plaintiffs' Opening Brief. As to predominance, one legal question predominates across the class containing hundreds of thousands of class members:

> *After a claimant is initially determined entitled to benefits, is there any scenario, consistent with due process, that the Agency is permitted to use a hold that indefinitely suspends benefits without notice and a determination - longer than the 7-10 days allowed to investigate an issue?*

Plaintiffs contend that the answer is no. If Plaintiffs are correct, then the rights of the putative class can be conclusively decided for many people. Conversely, if Plaintiffs are wrong, then Plaintiffs claims and those of the putative class are also resolved, and the matter can be efficiently disposed of. Either way, the resolution of the legal question predominates over all other issues.

Class treatment is also plainly superior to individual lawsuits. To use individual trials for the hundreds of thousands of individual class members would involve significant duplication of judicial resources. Further the amount at issue for each individual class member would not justify the filing of individual lawsuits. While the value of benefits withheld and the length of time withheld may vary amongst class members, the need for a factfinder to make those calculations would not make the class action unmanageable. Moreover, the individual adjudication of individual cases for each class member involves a significant risk of inconsistent verdicts and standards of adjudication for substantially similar claims. Because

Plaintiffs' claims arise from a unified practice resulting in ongoing and wrongful deprivation, class treatment under Rule 23 is the far superior method of adjudication.

IX. 23(c) Factors Are Also Met

Regardless of the Rule 23b standard, Certification under 23(c)(4) is also appropriate because resolution of a common issue of liability would significantly advance the legal claims of Plaintiffs and putative class members alike.

CONCLUSION

The issue on the instant motion is simply whether a class should be certified. Other Motions fully briefed before the Court address the ongoing unconstitutional condition (ECF No. 71), the culpability of individual Defendants (ECF No. 129); and the Agency's willful breach of prior covenants (ECF No. 130). Each should be decided on their merits. As to Plaintiffs Motion for Class Certification (ECF No. 111), the class should be certified for the reasons stated above and in Plaintiffs' Opening Brief.

Respectfully Submitted,

/s/ David M. Blanchard

David M. Blanchard (P67190)
BLANCHARD & WALKER, PLLC
Attorney for Plaintiffs
221 N. Main Street, Suite 300
Ann Arbor, MI 48104
(734) 929-4313
blanchard@bwlawonline.com

Dated: December 23, 2024

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 23, 2024, she electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notifications of such filings to all participating attorneys.

/s/ Leslie M. Wenzel
Leslie M. Wenzel, Law Office Assistant

PLAINTIFFS' REPLY IN FURTHER SUPPORT OF CLASS CERTIFICATION
INDEX OF EXHIBITS

Exhibits to be filed pending resolution of protective order issues

1 Citron, *Technological Due Process*, 85 WASH.U. L. REV. 1249 (2007)

2 Calo & Citron, *The Automated Administrative State: A Crises of Legitimacy*, 70 EMORY L. JOURNAL 797 (2021)

3 Rachael Kohl, *Automated Stategraft: Faulty Programming and Improper Collections in Michigan's Unemployment Insurance Program*, 2024 WISC. L. REV. FORWARD 43 (2023)

4 Rankin, *The MiDAS Touch: Atuahune's "Stategraft" and Unregulated Artificial Intelligence*, 98 NYU L. REV. ONLINE 225 (2023)

5 Robert Charette, *Michigan's MiDAS Unemployment System: Algorithm Alchemy Created Lead, Not Gold*, IEEE Spectrum (Jan. 2018)

6 Spencer Headworth, *Stategraft in Public Assistance Programs*, 2024 WISC. L. REV. 503 (2024)

7 *Algorithmic Accountability: The Need for a New Approach to Transparency and Accountability When Government Functions Are Performed by Algorithms*, January 18, 2022 (Report of the Media Freedom & Information Access Clinic, Yale Law School)

8 UIPL 16-21 at 6

9 Holifield Dep. Tr. at 29-30

10 I.F. Screenshot December 14, 2020 Fraud Investigation

11 I.F. February 1, 2021 Monetary Redetermination

12 I.F. March 22, 2021 Monetary Redetermination

13 I.F. Dep. Tr. at 36:10

14 Kratz Dep. Tr. at 81

15 April 29, 2020 Abdo email to Berry and others

16 Quigg Customer Notes Screenshot

17 Kreps Web Profile Screenshot

18 Kreps Original DL submitted April 2020

19 Kreps Replacement DL Submitted October 2020

20 Kreps Deposition Transcript at 95-96

21 Sparks Dep. Tr. at 28

22 October 1, 2020 Press Release

23 January 19, 2021 Press Release "UIA Update: Michigan begins PUA and PEUC Unemployment payments."

24 Kreps Account Closed Screenshot

25 Kreps Protest submitted November 2, 2020

26 Nov 8, 2024 Order Granting Class Certification, *Barker v. STA Management* (Wayne Cnty. Cir. Ct., filed Nov. 3, 2023)

27 *Saunders v. UIA*, Stipulated Preliminary Approval Order