

IN THE STATE OF MICHIGAN
COURT OF CLAIMS

KELLIE SAUNDERS, et al.,

Plaintiffs,

Case No. 22-000007-MM

v.

Hon. Brock A. Swartzle

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE
AGENCY and JULIA DALE, in her
official capacity,

Defendants.

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Kelly R. McClintock (P83198)
BLANCHARD & WALKER PLLC
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**STIPULATED ORDER FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT AGREEMENT, CERTIFICATION OF SETTLEMENT CLASS
PURSUANT TO MCR 3.501, APPOINTMENT OF CLASS REPRESENTATIVES AND
CLASS COUNSEL, APPOINTMENT OF MEGAN P. NORRIS AS SPECIAL MASTER,
APPOINTMENT OF CLAIMS ADMINISTRATOR, APPROVAL OF PROPOSED
CLASS NOTIFICATION PLAN, APPROVAL OF PROPOSED CLASS NOTICE,
APPROVAL OF PROPOSED PLAN OF ALLOCATION, APPROVAL OF CLASS
REPRESENTATIVE SERVICE AWARDS, APPROVAL OF ATTORNEY FEES AND
COSTS OF LITIGATION AND ADMINISTRATIVE COSTS, AND SETTING FINAL
APPROVAL AND FAIRNESS HEARING DATE**

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Upon the stipulation and agreement of the parties, and the Court being otherwise fully informed:

WHEREAS, the Parties have reached a Class Action Settlement Agreement in the above captioned matter, and seek Preliminary Court Approval of terms and Method of Settlement, Certification of a Settlement Class;

WHEREAS, the Court has been provided supporting documentation to evaluate the fairness of the settlement for purposes of preliminary approval, including:

- A fully executed copy of the Class Action Settlement Agreement,
- Declaration of proposed Class Counsel,
- Declaration, Proposed Notice and Plan of Allocation from Analytics Consulting LLC,
- Letter and investment information of proposed Escrow Agent Huntington Bank, and
- Letter Resource information from Director Bentley of the Michigan State Bar Foundation.

WHEREAS, upon review, the Court finds the Proposed Class Action Settlement to be fair, reasonable, and adequate; and

WHEREAS, the Court will have an opportunity to further review the settlement at the Final Approval hearing date set forth below.

IT IS HEREBY ORDERED that:

The terms and conditions of the Class Action Settlement Agreement in this matter are preliminarily APPROVED as fair and reasonable to the proposed Settlement Class; and

That this action is certified as a Class Action pursuant to MCR 3.501(B)(3)(b); and

A settlement class is certified consisting of: all claimants who were subject to improper collection based on agency collection activity on any unemployment insurance claim filed from March 1, 2020, until the date of this order.

Named Plaintiffs Kellie Saunders, Erick Varga, Lisa Shephard, Dawn Davis, Jennifer

Larke, Anna Logan, Joshua Eggleston, Jennifer Hillebrand, Cheryl Scarantino, Eleni Zestos, and Theresa Brandt are hereby appointed Class Representatives in this action, and individual service awards to class representatives as provided in Appendix A of the Class Action Settlement Agreement are APPROVED;

Plaintiffs' Counsel, David Blanchard of Blanchard & Walker PLLC is appointed as Class Counsel;

Megan P. Norris is appointed as Special Master in this action;

Analytics Consulting LLC is appointed as Claim and Notice Administrator in this action;

Huntington Bank is appointed as the Escrow Agent for purposes of holding and investing the settlement funds;

The proposed class notice, notice procedures, and the plan of allocation, as outlined in the Class Action Settlement Agreement and proposed by Notice Administrator is APPROVED;

Plaintiffs' Counsel's Attorneys' Fees in the Amount of one-third of the settlement and Costs, as outlined in the Settlement Agreement, are APPROVED and the requested set-aside of \$500,000.00 for notice and administration related costs is APPROVED;

A Relief Fund as provided in the Class Action Settlement Agreement is established for Agencies providing free advice and representation to class members and other UI claimants, and an initial set-aside of \$500,000.00 of the Relief Fund shall be made available to the State Bar Foundation as soon as the settlement is funded, to provide additional resources to non-profit agencies who serve UI claimants with free legal advice and representation;

Establishment of a Common Fund as outlined in Appendix B of the Class Action Settlement Agreement is APPROVED; and

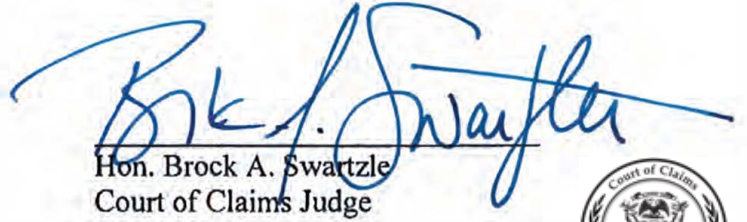
The settlement timeline as recommended by the Claims Administrator or otherwise

reflected in Appendix B of the Settlement Agreement is APPROVED.

IT IS FURTHER ORDERED that a Final Approval hearing shall be held on March 20, 2025, at 10 AM PM. Class Counsel's Motion for Final Approval shall be submitted to the Court three weeks before that hearing date.


IT IS SO ORDERED.


Dated: April 25, 2024


Hon. Brock A. Swartzle
Court of Claims Judge



Stipulated to, approved as to form and notice waived by:


David M. Blanchard (P67190)
Attorney for Plaintiffs
Dated: April 17, 2024

/s/ Shannon W. Husband 
Shannon W. Husband (P60352)
Attorney for Defendants
Dated: April 17, 2024

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Saunders et al v. Unemployment Insurance Agency et al.
Class Action Settlement Agreement

Whereas, this case was filed in January 2022 alleging that the Unemployment Insurance Agency (“Agency”) acted beyond its jurisdiction and violated the State Constitutional Rights to Due Process by initiating Collection Activity against Unemployment Insurance Claimants before notice and opportunity for a fair hearing.

Settlement Remedies and Relief

1. **Reforms:** Before reactivation of Collection Activity against any Unemployment Insurance Agency (“Agency”) claimants, but in no case later than implementation of a new benefits platform, the Agency shall adopt or reform practices to ensure that class members and all claimants are provided due process rights to notice and opportunity for a fair hearing as to all decisions impacting rights to benefits before collection activity occurs.¹ Therefore, the Agency agrees to adopt, amend and maintain policies and practices as follows:

2. **Remedial Actions**

2.1 The Agency may void all denials of Good Cause (Re)Determinations in response to any adjudication denying benefits dated April 23, 2020, to January 25, 2022, and set them aside upon a finding of good cause (which is presumed), unless more than one year elapsed before receipt of the protest or appeal. If the Agency does not void all denials as indicated above, it must forego any collection action until it has issued a Redetermination on the merits.

2.2 The Agency may void all (Re)Determinations dated March 1, 2020, to February 1, 2024, which denied benefits for lack of being “able and available” to perform full or part-time work as a condition of eligibility to receive benefits under the federal Pandemic Unemployment Assistance (PUA) program under MCL 421.28(1)(c). The Agency will then issue new Determinations consistent with applicable law, and those Determinations may be protested or appealed. If the Agency does not void such (Re)Determinations, the Agency will forego any collection action until the Agency has reached a Redetermination on the merits.

2.3 To the extent it has not already done so, the Agency must inform all class members that (1) they are still considered subject to overpayment, *and* (2) they have a right to ask the Agency to waive recovery of an improperly paid benefit (including interest) if repayment “would be contrary to equity and good conscience” as defined in Section 62a of the Michigan Employment Security (“MES”) Act. Such notice must include simple direction (such as an e-mail address or http link) regarding how a request for waiver should be made.

2.4 The Agency is not required to incorporate the details of the waiver process in its notice to class members or its notice to future individuals who are subject to collections for

¹ Provided that the State has taken measures to ensure that class members and all claimants are provided due process rights, reactivation can occur even if formal manuals are not yet finalized.

overpayments. It is sufficient that individuals are advised at the time an overpayment is determined that they have a right to request a waiver for all purposes under Section 62a and that they are provided written instruction informing them of the methods for doing so as described above. Claimants may seek a waiver based on the available statutory grounds if they choose to do so in their own written request (unless or until the appropriate forms are available).

3. Future Practices -- Reconsideration

3.1 Going forward, the Agency will not reconsider any previous finding of benefit entitlement more than 30 days after the first Monetary Determination is made or within one year with good cause. The Agency has up to three years after a claimant first receives benefits to issue a Determination of Restitution under Section 62(a) or three years after a first payment that is determined to be fraudulent under Section 62(a).

3.2 Determinations or (Re)Determinations issued more than 30 days after an initial Agency payment in a claim series shall not be applied retroactively unless they include notice of the reason for retroactive application under MCL 421.32a(3) exceptions.

3.3 If the Agency rejects a protest or appeal as untimely and/or without good cause, it shall notify the claimant of the Denial of Reconsideration decision and advise the claimant of their right to appeal. No new Determination of Restitution shall be issued until the Denial of Reconsideration decision has also become final under §32(a).

4. Future Practices -- Waiver

4.1 The Agency shall implement a process for seeking a waiver, including administrative and/or clerical error as well as financial hardship as reasons for a waiver, and will allow for waiver applications to be considered at all times after a final (Re)Determination of Restitution or the reversal of a decision of benefit entitlement has been made and is final. Such process should be set forth in writing at the time of a (Re)Determination of restitution and shall include notice of the factors for waiver set forth in MCL §421.62(a).

4.2 The Agency will suspend collection the first time an individual seeks a waiver of an overpayment on such a claim until the determination on waiver has become final. However, if collection is properly reinstated and the individual files multiple waiver requests on the same overpayment determination, the Agency will not be required to suspend collection a second or subsequent time. For this purpose, a "claim" will be defined as the original claim filed, any additional or re-openings of the original claim, and any extensions of that claim. Nothing in this provision will prevent an individual from seeking a waiver and getting a suspension on a subsequent, different claim.

4.3 The Agency will not grant a waiver under Section 62(a) if the claimant has been found to have committed intentional misrepresentation or failed to provide required documentation. Otherwise, waivers will be granted to the extent provided for in Section 62(a).

5. Future Practices – Overpayments and Restitution

5.1 The Agency shall not continue to or take any measures to collect overpayments until the individual has had an opportunity to timely exhaust any rights to a review or appeal. Any (Re)Determination of Overpayment shall be accompanied by a notice of the waiver process to evaluate waivers for all purposes under Section 62(a).

5.2 The Agency is not required to forego collections based on protests or appeals denied because of a (Re)Determination that the protest or appeal was untimely. The Agency will not issue a new Determination of Restitution Due or institute collection until at least 30 days after the deadline to protest or appeal and no late protest or appeal is received. If a late protest or appeal is received, the Agency will not issue a new Determination of Restitution Due or initiate collections until there is a final determination on whether there was good cause for the late protest or appeal.

5.3 No Determination of Restitution Due shall be made until both (a) a Determination on Overpayment and (b) a (Re)Determination regarding benefit entitlement have become final (with notice and opportunity to protest or appeal). The waiver is applied retroactive to the date the application is filed if it is filed due to financial hardship under section 62(a)(ii). If a waiver is requested based on (a) a wage reporting error or (b) an administrative or clerical error, the waiver is prospectively applied under section 62(a)(i) or (iii). If a waiver is requested based on economic hardship, then the waiver is applied retroactive to the date the application is filed.

5.4 Any (Re) Determination of Restitution Due shall include notice of appeal rights, including that the individual can only protest or appeal the amount of the overpayment or the number of benefit weeks involved. Any challenge to the (Re)Determination(s) that established the overpayment (ineligibility or disqualification) must be done directly and timely regarding those (Re)Determinations or decisions. A protest and appeal process for (Re)Determinations of Restitution Due shall be made available in the same manner as all other Agency (Re)Determinations.

6. Information Sharing. Upon written request from Plaintiffs' counsel directed to the Agency's legal advisor, with a copy to the Department of the Attorney General, the Agency will provide Plaintiffs' counsel with (a) documentation reflecting both the internal changes in the Agency's processes and the date of implementation of same, and (b) documentation of notice to class members advising them of their administrative remedies if such remedies have not been exhausted, unless notice has already been given. The documentation requested must be relevant to the topics covered in this Settlement Agreement. To the extent that the documentation would not be subject to disclosure under local, state, or federal law (such as FOIA), this documentation will not be subject to disclosure.

7. Complete List of Reforms: Except as otherwise provided herein, the Agency will not be required to (a) void additional Determinations, (Re)Determinations, or decisions reversing previous findings of monetary benefit entitlement for other named or similarly qualified class members more than a year after the Monetary Determination on the claim, or (b) cancel all associated overpayments unless and until such individuals have exhausted their administrative

remedies to protest or appeal, provided that the Agency provides due process with notice and opportunity to receive a fair hearing.

8. Relief Fund: A Relief Fund shall be established to accommodate the volume of new Agency determinations generated by new review processes contemplated above by providing grants to non-profit Agencies who provide free advice and representation to Agency claimants, as agreed by the parties.

9. Preliminary Injunction: The Preliminary Injunction will remain in effect and no claimant Collection Activity will be reactivated unless and until the Parties agree or the Court finds that the above terms have been implemented.

Settlement Administration, Notice and Claims Process

10. Total Settlement Amount: The Agency will pay a Total Settlement Amount of \$55,000,000.00 in full and complete release and satisfaction of all violations alleged in the Litigation, to be allocated and administered according to terms of administration, notice, and allocation as defined in Appendix B, or as otherwise agreed in writing by the Parties and approved by the Court.

11. Court Approval: All terms in this Settlement Agreement are subject to Court approval. The parties agree to cooperate and to file an Unopposed Motion for Settlement Approval, incorporating the terms of this Settlement Agreement, which will be drafted by Plaintiffs' Counsel and provided to Defendants' counsel for approval before filing.

12. Common Fund: A Common Fund shall be created to provide relief for the benefit of all Settlement Class Members who choose to participate by submitting a valid claim form.

13. Settlement Class: Settlement Class Members are defined as all Claimants who were subject to Improper Collection based on Agency Collection Activity on any Unemployment Insurance claim filed from March 1, 2020, until the Court of Claims provides preliminary approval of the settlement of this matter.

14. Improper Collection: Improper Collection means: money collected from a Class Member by any method: (a) while a timely protest or appeal, or a late protest or appeal with good cause, was pending, (b) after a claimant attempted to protest or appeal and was unable to access services, or (c) after a claimant submitted a protest or appeal that was not timely processed, never processed, or later deleted.

15. Releases: Subject to Court approval of the Settlement Agreement and claims process, every Settlement Class Member who submits a claim will be required to sign a release of the Released Claims.

16. Certification Process: Each Settlement Class Member on the Class List shall be eligible to participate in Common Fund allocation by submitting a claim form verifying they were subject to Improper Collection.

17. Class Certification: Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of the Settlement Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement without modification. If the Court wishes to modify the class definition, this Settlement Agreement is void. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit or venue. If the Settlement does not become effective, the Agency reserves the right in further proceedings to contest any issues relating to class certification, liability, and damages. Class Counsel will be required to establish that all of the elements of Class Certification are present so that the Court may certify this Litigation as a Settlement Class. The Agency will join Class Counsel in requesting that a Settlement Class be certified by the Court.

18. Settlement Class Uniform Release: The Parties will agree on a Settlement Class Uniform Release as defined in this Agreement. No payment to a Class Member or Named Plaintiff will be made without first receiving a properly executed Release from the Claimant entitled to the payment.

19. The parties agree that Settlement Class Members who are also named Plaintiffs or Class Members in *Kreps v. MUJA, Case No. 2:22-cv-12020 (U.S.D.C., E.D. Mich.)* shall release claims for any improper collection including for any alleged violation of Count III of the *Kreps* Litigation.

20. The Total Settlement Amount is the total amount intended to reimburse or compensate for improper collection alleged in this litigation. However, for avoidance of doubt, settlement payments to settlement class members are without prejudice to, and have no effect on, claimant rights to receive Unemployment Insurance benefits as individually determined in the administrative process on a final determination after notice and opportunity for a fair hearing, and also without prejudice to the State's right to collect improper overpayments after a final determination with notice and opportunity for a fair hearing. Nothing in this Settlement Agreement shall be construed to deny, waive or diminish a claimant's rights to receive Unemployment Insurance benefits or to the State's rights or obligations to collect benefits determined to be improperly paid after final determination with notice and opportunity for a fair hearing, and consistent with the terms of this Agreement.

General Settlement Terms

21. Definitions: All terms are taken to have their meaning as defined in the MES Act. If not defined therein, words and terms shall be defined by referenced to common legal usage, except that the Parties stipulate and agree to definitions of capitalized terms used herein for purposes of interpretation of this Settlement Agreement, as contained in Appendix A.

22. Implementation: Within 90 days of Preliminary Approval by the Court, the Agency shall issue written directives to all operationally relevant personnel within the Agency clarifying its recovery procedures for overpayments of unemployment insurance benefits as provided in this Agreement. As soon thereafter as is practicable, the Agency shall issue revised

manual sections for its policy and procedures manual(s) consistent with the terms of this Settlement Agreement. The Agency will provide Plaintiffs' counsel with a courtesy copy of the written directives issued under this Settlement Agreement at the time they are issued, and an advance copy of the revised manual sections provided for under this paragraph no less than 30 days prior to their publication/distribution.

23. Reporting: The Agency will provide notice and copies of revised Unemployment Insurance forms² and Agency policies at least 30 days (or as soon as practicable) prior to the proposed implementation. Any objection to the content of proposed Agency form revisions for compliance with this agreement must be raised within 30 days (or as soon as practicable) after receipt. Suggested and accepted changes will be made on a prospective basis.

24. Saunders Compliance Liaison: A Saunders Compliance Liaison for issues related to implementation of this Settlement Agreement and compliance shall be appointed within the Agency. The liaison is the Agency Director of Compliance Kimberly Breitmeyer, at an email to be provided by Defendants. The Agency may designate substitutions of the liaison by notice, under the terms of this Agreement.

25. Notice and Opportunity to Cure: If Plaintiffs' counsel believes any Agency policy, practices, or actions are not in compliance with this Settlement Agreement, he shall give the Agency written notice of such alleged breach providing the opportunity to cure such breach for a period of 30 business days after delivery of the notice. Within 10 days of notice, the Agency shall provide a response (written, by phone, or in person) of the actions proposed in response, if any. Any notice of breach shall be made by email as agreed by the parties.

26. Appointment of Special Master: The Parties agree to the appointment of a Special Master to hear and resolve any disputes regarding settlement administration relating to Class Members and compliance by the Parties. The designation may be substituted from time to time as necessary by agreement of the Parties or by appointment by the Court. All disputes regarding settlement compliance shall be brought to the Court only after meeting and conferring among counsel and then (if the Agency requests) presenting the disagreement to the Special Master. In such case, any petition to the Court regarding administration or compliance with this Settlement Agreement shall be accompanied by a recommendation of the Special Master for resolution of the dispute. The Special Master may be substituted by (1) consent of the parties, or (2) petition to the Court accompanied by a recommendation by the then current Special Master for one or more suitable replacements. Any disputes regarding settlement compliance by the Parties, as well as the Special Master recommendations, will remain confidential unless the parties bring a matter before the Court. Cost of the Special Master for this purpose shall be equally paid by the Parties unless otherwise recommended by the Special Master.

27. Settlement Incorporated: Parties agree to the Entry of this Settlement Agreement to be incorporated by reference in a Dismissal Order as final Resolution of Saunders Litigation. If the Court rejects this Agreement in any material part, either party shall have the right to void

² Agency forms requiring notice under this provision include claimant restitution notices, questionnaires (RFI's) related to claimant benefits, monthly invoices to claimants, and the restitution waiver application.

this entire Settlement Agreement and recommence litigation on the same terms, rights and defenses as existed immediately prior to execution of this Settlement Agreement.

28. Notice: If notice is required under this Agreement, it shall be made to the following: for Plaintiffs, David Blanchard; for Defendant, Kimberly Breitmeyer. The Parties may revise its notice persons at any time by written notice to each other.

29. Severability: If any term or other provision of the Settlement Agreement and Dismissal Order is challenged by a Third Party ("Third Party" is specifically defined to exclude the Parties herein, and any of their officers, directors, managers, members, employees, agents, insurers, parent corporations, subsidiaries, affiliates, predecessors, successors, and assigns), and ultimately held by a court of competent jurisdiction or the U.S. Department of Labor to be invalid, illegal, or incapable of being enforced, or adjudged by the Agency as being in conflict with the MES Act, the full force and effect of all other terms and provisions of this Agreement shall be enforced, and there shall be substituted for the term or provision at issue a valid, legal, and enforceable provision that reflects the original intent of the Parties as closely as possible.

30. Subsequent Legal Changes: This Agreement does not prevent the Agency from making any necessary revisions to its policies and procedures required to ensure compliance with state and federal unemployment requirements, including U.S. Department of Labor direction, guidance, or program letters. In the event that changes in law or new interpretations require modification of this Settlement Agreement, the parties agree to provide notice at least 30 days in advance of the implementation of any new policy or practice it believes is required and that would otherwise prevent full compliance with the terms of the Settlement Agreement and shall, subject to the procedure for notice and cure, stipulate to modification of the Settlement Agreement to the degree necessary to bring it into compliance.

31. Construction: Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any new statute, law, ordinance, regulation, or U.S. Department of Labor direction, guidance, or program letter, contrary to which the parties have no legal right to contract, then the latter shall prevail; but in such event, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements and subject to the procedures of the preceding paragraphs.

32. Data Reporting Representations: Defendants have produced detailed collection records in connection with this mediation which the parties have materially relied upon in reaching this Settlement Agreement. Defendants represent that they have accurately reported the total amount of overpayment collected from Unemployment Insurance claimants from March 1, 2020 to present, the amount returned and the amount transferred to pay other debts on their behalf.

33. No Admission of Liability: The Agency's agreement to this Settlement is not, and should not be construed as, a direct or implied admission or acknowledgment of any wrongdoing, illegality, liability, or responsibility to any person or party for any conduct or omission, alleged or unalleged, whatsoever. The Agency enters into this Settlement for the purpose of elimination of ongoing contested legal proceedings, repose, savings of expenses

and resources, and for no other purposes.

34. Jurisdiction: The Parties shall request that the Court retain jurisdiction to enforce the Agreement.

35. Settlement Contingent on Final Approval: This Agreement shall terminate and be of no further force or effect without any further action by the Parties if (i) the Court determines not to grant preliminary or final approval of the Class Settlement; (ii) if the Court refuses to certify the class as defined without modification; and (iii) the Parties do not agree to any changes to the Class Settlement required by the Court for approval or are unable or do not agree to obtain reconsideration and reversal or appellate review and reversal of any adverse decision by the Court regarding the Settlement. However, the Parties agree to act in good faith to accept any non-material and procedural changes to this Settlement Agreement if so, required by the Court in connection with Preliminary or Final Approval of the Settlement. If settlement is rescinded, Class Counsel will return the Total Settlement Amount to the State of Michigan, less any amount expended on notice or administration activities.

36. Final Judgment: A Final Judgment under MCR 3.501(D)(5) will be entered by the Court at the conclusion of the Fairness Hearing and upon exhaustion of any timely objector's appeals. The Judgment will bind all Class Members who have not filed an election to be excluded.

37. Settlement Modification: The Parties may agree by stipulation executed by counsel to modify any aspect of this Settlement Agreement or Motions and Brief submitted in support of the Class Settlement. Any stipulation modifying the Agreement must be filed with the Court and is subject to the Court's approval.

38. Authority: The signatories below represent they are fully authorized to enter into this Agreement and to bind the Parties.

39. Best Reasonable Efforts and Mutual Full Cooperation: The Parties agree to fully cooperate with one another to accomplish the terms of this Agreement, including but not limited to, executing such documents, and taking such other action as may be reasonably necessary to implement the terms of this Settlement. The Parties to this Agreement will use their best reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary or ordered by the Court, or otherwise, to effectuate this Agreement and the terms set forth in it and to the best of their ability make it possible for distributions from the Total Settlement Amount to be made as early as possible under the terms of this Agreement.

40. Entire Agreement: This Settlement Agreement, together with any appendices, constitutes the full and entire agreement among the Parties with regard to the subject matter and supersedes all prior representations, agreements, promises, or warranties, written, oral, or otherwise. No party shall be liable or bound to any other party for any prior representation, agreement, promise, or warranty, oral or otherwise, except for those that are expressly set forth in or attached to this Agreement.

41. Binding: This Agreement will be binding upon and will inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

42. Construction: The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, arms-length negotiations between the Parties and that this Agreement will not be construed in favor of or against any party by reason of the extent to which any party or the party's counsel participated in the drafting of this Agreement.

43. Construction of Captions and Interpretations: Paragraph titles, captions, or headings in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or any provision in it. Each term of this Agreement is contractual and is not merely a recital.

44. Agreement may be executed in one or more counterparts: All executed counterparts and each of them shall be deemed to be one and the same Agreement. This Agreement may be executed by signature delivered by facsimile, PDF, text, or .jpg and need not be the original "ink" signature. A complete set of executed counterparts shall be filed with the Court. This Agreement shall become binding upon its execution by the Class Representative, the Agency's authorized representative, and counsel.


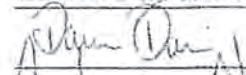

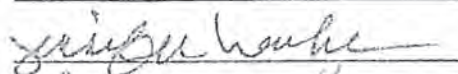

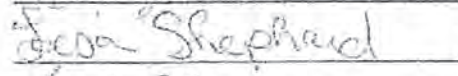
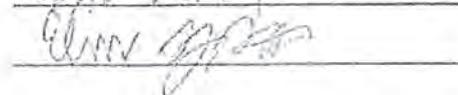
45. Other Representations: Each of the Parties to this Agreement, acknowledge and represent that:

- a. Such Party has read this Agreement;
- b. Such Party clearly understands this Agreement and each of its terms;
- c. Such Party fully and unconditionally consents to the terms of this Agreement;
- d. Such Party has had the benefit and advice of legal and other counsel of such party's own selection;
- e. Such Party has executed this Agreement fully, with knowledge, and without duress;
- f. Such Party is not relying on any other representations, either written or oral, express or implied, made by any other person or entity; and
- g. The consideration received by such Party has been actual and adequate to resolve the claims released.

[SIGNATURE PAGE FOLLOWS]

Signatures:

Dated:

Julia	Dale		
David	Blanchard		4/3/2024
Theresa	Brandt	<u>Theresa Brandt</u> <small>Theresa Brandt / CIP 3, 200-27, 1000</small>	4/3/2024
Dawn	Davis		4-3-2024
Josh	Eggleston		4-1-2024
Jennifer	Hillebrand	<u>Jennifer Hillebrand</u> <small>Jennifer Hillebrand / CIP 3, 200-27, 1000</small>	4/3/24
Jennifer	Larke		3/27/24
Anna	Logan	<u>Anna Logan</u>	4/2/24
Kellie	Saunders		4/1/24
Cheryl	Scarantino	<u>Cheryl Scarantino</u> <small>Cheryl Scarantino / CIP 3, 200-27, 1000</small>	3/27/24
Lisa	Shephard		3/27/24
Erik	Varga	<u>Erik Varga</u>	3/27, 24
Eleni	Zestos		3/28/24

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Signatures:

Dated:

Julia

Dale

Julia Dale

March 25, 2024

David

Blanchard

Theresa

Brandt

Dawn

Davis

Josh

Eggleston

Jennifer

Hillebrand

Jennifer

Larke

Anna

Logan

Kellie

Saunders

Cheryl

Scarantino

Lisa

Shephard

Erik

Varga

Eleni

Zestos

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APPENDIX A: STIPULATED DEFINITIONS

Agency or Released Party	The Michigan Unemployment Insurance Agency (“Agency”) and the State of Michigan.
Approval	Wherever in this Agreement the Agency has been granted approval rights, the Agency will not be unreasonable in withholding its approval.
Claims Administrator	The entity approved by the Court to establish a website to communicate with Claimants and to receive, review, and approve Claims under the Plan of Allocation.
Class Counsel	David Blanchard and the law firm of Blanchard & Walker PLLC.
Class List	A list of all Potential Class Members on whom the Agency has collected overpayments on claims filed March 1, 2020 to present, along with all information necessary to calculate settlement amounts and send notice of the settlement compiled from a review of files maintained by the Agency. The Class List shall be compiled and produced as set forth in this paragraph. For each individual in the Settlement Class, the Class List shall contain: 1) first, last, and middle name; 2) Michigan identification number; 3) mailing address; 4) email address (if available); the date and type of Collection; 7) the amount of the Collection; 8) the date and amount of any Refund; 9) and any other field of information the Parties determine is necessary to effectuate the Class Settlement.
Class Notice	The notice approved by the Court that comports with MCR 3.501(C) (1-7).
Class Representatives	The named Plaintiffs and signatories to this Settlement Agreement.
Collection Activity	Any undertaking to collect an overpayment based on a “(re)determination requiring restitution” issued under Section 62 of the MES Act, including: a. Alerting claimants of an outstanding balance and collecting payment on the MiWAM portal, b. Notifying the United States Department of Treasury/Internal Revenue Service of a “covered unemployment debt” or allowing continued interception of income tax refunds, c. Using or continuing the Michigan Department of Treasury interceptions of a state income tax refund or state lottery winning, d. Wage garnishment, including wage garnishment through Plaintiffs’ or putative class members’ written authorization of a “Voluntary Wage Assignment” in response to a “Notice of Garnishment” (Agency Form 1148), e. Administrative garnishment without court intervention, f. Filing a civil action to recover overpayment (not including an adversary proceeding complaint filing in a United States bankruptcy court, where the claimant shall have a pre-deprivation opportunity to challenge the overpayment before collection), or g. Recoupment of unemployment benefits.

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	h. (*Issuing a “Weeks of Overpayment” Letter is not “Collection Activity” so long as it continues to state “This is not a bill”)
Common Fund	The Total Settlement Amount paid by the Agency under the terms of this Agreement, plus any interest or earnings while it is held in trust.
Compensation Fund	The Plan of Allocation will create a Compensation Fund from which Eligible Claimants may file Claims for compensation.
Costs	All costs incurred in the prosecution of this litigation or administration of this settlement, subject to Court approval.
Court	The Michigan Court of Claims.
Effective Date	The first day after the first date on which all of the following have occurred: a. All Parties, Class Counsel, and Agency’s counsel have executed this Agreement; b. The Court has issued a preliminary approval order; c. Reasonable notice has been given to members of the Settlement Class, including providing them an opportunity to opt out of, or object to the settlement; d. The Court has entered a Final Judgment dismissing the class complaint with prejudice, approving the settlement, and ruling on Class Counsel’s fee petition; and i. Only if there are written objections filed within the applicable time period and those objections are not later withdrawn, the last of the following events to occur: If no appeal is filed, then the date on which the objector’s time to appeal the Final Judgment has expired with no appeal or any other judicial review having been taken or sought; or ii. If an appeal of the Final Judgment has been timely filed or other judicial review was taken or sought, the date that order is finally affirmed without modification by an appellate court with no possibility of subsequent appeal or other judicial review or the date the appeals or any other judicial review are finally dismissed with no possibility of subsequent appeal other judicial review. iii. It is the intention of the Parties that the settlement shall not become effective until the Court’s Final Judgment has become completely final and until there is no timely recourse by an appellant or objector who seeks to contest the settlement.
Eligible Claimant	The Claimant is on the Class List or otherwise can demonstrate that they meet the definition of Class Member.
Execution Date	The date when all Parties have executed this Agreement.
Fees	The parties agree that attorney fees shall be one third of the common fund, or as otherwise awarded by the Court.
Final Approval Order or Final Judgment	The Court’s order granting final approval of this settlement.

Litigation	This lawsuit captioned <i>Kelly Saunders, et al. v State of Michigan Unemployment Insurance Agency, et al.</i> , Michigan Court of Claims, Case No. 22-000007-MM, the Hon. Brock A. Swartzle.
Net Common Fund	Common Fund less all Fees, Costs, Administration Costs, Service Awards, Reserve Fund, and Relief Fund.
Net Settlement Fund	The amount available for distribution to Class Members computed by subtracting from the Common Fund the following amounts, if approved: a) reasonable attorneys' fees; b) litigation costs and expenses to Class Counsel; c) the expenses of the Settlement Administrator, Notice Administrator, and QSF Settlement Administrator; and d) the Named Plaintiffs' Service Payment.
Notice Administrator	The entity approved by the Court to assist the Parties in developing the Class Notice and mailing and emailing Class Notices to known Class Members and developing methods of communicating to the public the existence of the Settlement. Upon receipt of an undeliverable notice sent by US mail or a bounced email, the Notice Administrator shall make reasonable efforts to deliver the notice to the Class Member.
Opt-Out Deadline or Objection Deadline	The date the Court establishes as the deadline by which members of the Settlement Class must mail and postmark a written notice of their intent to opt-out of the settlement and by which objections to the preliminarily approved settlement must be filed with the Court.
Parties	Plaintiffs, the Agency, and Director Julia Dale.
Payment Date	Except as indicated herein, within 30 days after the Effective Date of this Settlement, the Qualified Settlement Fund Administrator shall issue payments to Class Members who have received Final Award Notifications from the Claims Administrator.
Preliminary Approval	An order from the Court granting preliminary approval of this settlement such that notice can issue.
Qualified Settlement Distribution Fund Administrator	The administrator of a Qualified Settlement Fund (QSF) for federal tax purposes under Treas. Reg. § 1.468B-1 as established by Class Counsel and approved by the Court. The QSF Distribution Administrator is responsible for the escrowing of the Settlement funds prior to the Payment Date, issuing checks or making electronic funds transfer to Class Members based on Final Awards and the preparation and filing of all documents required by the Internal Revenue Service or its agreement with Class Counsel.
Released Claims	Subject to approval of the Court, the parties agree that all Settlement Class Members who participate will be required to release all claims they have against the Agency, the State of Michigan, or any subdivision of the state of Michigan related to Improper Collection on claims filed from March 1, 2020 to the date of settlement approval. For avoidance of doubt, this release will not release claims related to any claim of a Settlement Class Member in the pending action <i>Kreps et. al v. UIA et. al.</i> in the Eastern District of Michigan, except as to Improper Collection.

Relief Fund	The Relief Fund is designated according to the terms of this Agreement in the amount of 3% of the Common Fund
Reserve Fund	The Reserve Fund is designated according to the terms of this Agreement in the amount of 2% of the Common Fund
Saunders Compliance Liaison	The Parties agree that the initial Agency Compliance Liaison is Kimberly Breitmeyer, to be substituted according to the terms of the Settlement Agreement
Service Award(s)	In recognition of their service and bravery, named Plaintiffs shall each be awarded \$25,000 from the Common Fund
Settlement Agreement	This Agreement.
Settlement Class Members	Defined in the Class Action Settlement Agreement
Settlement Class Uniform Release	The Parties will agree on language of a Uniform Release which will be broad in scope and coverage, and which will require each Claimant to release all claims asserted or which could have been asserted arising out of the Agency's Improper Collection. The Uniform Release shall include a release of claims against the QSF Administrator.
Special Master	The Parties agree that the initial Special Master shall be Megan Norris, subject to modification according to the terms of the Settlement Agreement.
Total Settlement Amount	As defined in this Settlement Agreement, the funds shall be deposited into a Qualified Settlement Fund or court-approved escrow agent within 30 days of Preliminary Approval; this sum represents the total, complete, and final payment by the Agency in settlement of this Litigation. The Parties recognize that the total settlement amount cannot be released to the qualified settlement fund or court-approved escrow agent until the total settlement amount is approved by the Michigan Legislature. The Agency agrees to make every effort to have this matter on the Legislature's docket so the settlement can be released to the qualified settlement fund or court-approved escrow agent within thirty (30) days of the court's preliminary approval. If for some reason the Legislature is unable or unwilling to take action within the allotted time frame, counsel will jointly seek direction from the court.

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APPENDIX B: SETTLEMENT ADMINISTRATION AND ALLOCATION

1. Administration Process. The claim administration procedures will be agreed upon between the Parties before seeking Preliminary Court Approval of this Settlement Agreement. The costs of Administration will be paid by the State out of the Common Fund.
2. Common Fund Apportionment. All Settlement Class Members who certify eligibility may recover *pro rata* from the Net Common Fund based on their Common Fund award points. One Common Fund award point shall be awarded for each dollar collected by the Agency. In addition, all Settlement Class Members may be allowed to certify to one or more enhanced award factors that justify greater share of the Net Common Fund. Settlement Class Members electing to certify for an enhanced award will be required to submit at least one form of agreed upon documentation in order to qualify for an enhanced settlement award.
3. Reserve Fund. 2% of the Net Common Fund will be held in reserve by the Claims Administrator. The Reserve fund shall be used to resolve later claims filed after the initial claim period. In no case will a late claim receive more than they would have received had they timely filed within the initial claim deadline. Any money remaining in the reserve 18 months after the close shall be distributed as *cy pres* awards to non-profits providing representation and advocacy regarding Unemployment Insurance issues as designated by Plaintiffs and approved by the Court.
4. Payment by Agency. In exchange for the release of claims described below, the Agency shall pay the Total Settlement Amount which shall be distributed as discussed herein. The Total Settlement Amount shall be deposited into a QSF established by Class Counsel with Agency approval. The Agency shall provide to the QSF Administrator any documentation necessary to facilitate obtaining QSF status. There shall be no reversion to the Agency from the Total Settlement Amount under any circumstance.
5. Set aside for Administrative Costs. Subject to the approval of the Court, Class Counsel may set aside from the Total Settlement an amount for Claims and Notice Administration. The Court will determine the reasonableness of the costs. Unused portions of this set aside shall be made available to the QSF Administrator to pay approved claims.
6. Release of Claims. The parties will agree on language of a Uniform Release which will be broad in coverage, and which will require each Claimant to release all claims asserted or which could have been asserted arising out of the Agency's Improper Collection. The QSF Administrator shall not make a payment for distribution unless the Claimant has properly executed and delivered to the QSF Administrator the Uniform Release.
7. Participation in the Compensation Fund. Only Eligible Claimants will be permitted to participate in the Compensation Fund. Claimants may determine their eligibility (i.e., meets the Class member definition) by making an inquiry on-line or via telephone. If the Claimant is identified as being on the Class List and can verify Improper Collection, the Claimant will be deemed to be Eligible and will be provided the information from the Class List that pertains to that Claimant. The Plan of Allocation will include a procedure for Claimants who do not appear

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on the Class List but nonetheless contend that they meet the definition of Class Member.

8. Plan of Allocation. Class Counsel will be solely responsible for the development and implementation of a Compensation Fund created through the Plan of Allocation for distribution of Settlement proceeds to eligible Class Members. The Agency shall approve the Plan of Allocation as part of the Preliminary Approval process.

9. Payment into QSF and QSF Obligations. In accordance with the terms of this Agreement, the Settlement Funds shall be deposited with the escrow agent and shall remain the property of the QSF. The Settlement Funds within the Qualified Settlement Fund will be held in a fiduciary capacity. The Qualified Settlement Fund shall comply with the Treasury Regulations Section 1.468B-1 et seq. regarding taxation and tax reporting obligations. The QSF shall be deemed to be in the custody of the Court. The QSF shall remain subject to the jurisdiction of the Court until such Settlement Funds are distributed in their entirety or upon further order of the Court. It shall be the responsibility of the QSF Administrator to cause the timely and proper preparation and delivery of the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. The QSF Administrator may invest the escrowed settlement funds in United States Treasury Notes or Bonds redeemable in time to make payment within 30 days after the Effective Date of the Settlement. Net Interest, if any, earned in the QSF will become part of the Common Fund to be distributed to the Eligible Claimants. The Net Interest is the amount available for distribution after a reduction for the payment to the QSF Administrator portion of the interest per the QSF Administrator fee agreement. The Agency shall not have any responsibility, financial obligations, or liability whatsoever with respect to the investment, distribution, or use of the QSF.

10. Claims Administrator Duties and Obligations. The Claims Administrator shall carry out the responsibilities for the administration of the Compensation Fund and claim administration and review set forth in this Agreement as well as any additional responsibilities, if any, set forth in any subsequent amendments to this Agreement. The Claims Administrator shall have the authority to determine Eligibility, perform all actions, to the extent not expressly prohibited by, or otherwise inconsistent with, any provision of this Agreement, deemed by the Claims Administrator to be reasonably necessary for the efficient and timely administration of this Agreement. The Claims Administrator may create administrative procedures, supplementary to (and not inconsistent with) those specified herein or in the Plan of Allocation, that provide further specific details about how the Plan of Allocation is to be administered, including, but not limited to, procedures regarding submission of documents, procedures regarding execution and signature of documents, and procedures regarding determination of timeliness of submissions. The Agency will not be liable for any act, or failure to act, of the Claims Administrator. Any payment to the Claims Administrator for services will be approved by the Court.

11. QSF Distribution Administrator Duties and Obligations. The QSF Administrator shall be the "QSF Administrator" within the meaning of Treasury Regulation §1.468B-2(k)(3). The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof in conjunction with its preliminary approval of the Settlement and Notice as described in the Agreement. In addition to all of the Administrator's other obligations under this Agreement, the QSF Distribution Administrator shall make all approved distributions to Eligible Class Members and Counsel as directed by the Trustee or the Court. The Distribution

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Administrator shall handle all federal and state tax matters related to the QSF. The Administrator shall cause a Federal Employer Identification Number for the Trust to be obtained and shall cause the annual income tax returns to be filed based on a December 31 fiscal year end. The Administrator shall take all steps necessary to ensure that any tax obligations imposed upon the QSF are paid. To the extent necessary to satisfy this objective, the QSF is hereby authorized to, among other things, (i) communicate with the Internal Revenue Service and any state agency on behalf of the QSF, (ii) make payment of taxes on behalf of the QSF (which taxes will be paid out of the QSF assets), and (iii) file all applicable tax returns for the QSF. All ordinary and necessary expenses incurred in connection with the preparation of such tax returns shall be paid from the QSF.

12. Named Plaintiffs Service Payment. Class Counsel will petition the Court for payment of \$25,000 as the service payment to each named Plaintiff, in consideration for their service to the Class. This amount shall be in addition to the amount, if any, paid to Plaintiffs from the Plan of Allocation.

13. Attorneys' Fees and Costs. Class Counsel may apply to the Court for an award of fees and costs to be paid solely from the Total Settlement Amount. The application for attorneys' fees shall be in a sum not to exceed one-third of the Total Settlement Amount. Costs (i.e., litigation expenses) shall be paid in addition to attorneys' fees in the amount in which they were or are incurred by Class Counsel and are approved for reimbursement by the Court. The Agency will not oppose the request for attorneys' fees and costs. The Agency shall have no obligation to pay any attorneys' fees or costs in addition to the payment of the Total Settlement Amount. If approved by the Court, attorneys' fees and costs will be paid to Class Counsel in one lump sum payment within 30 days of the Effective Date of this Agreement.

14. Separate Common Fund and Attorney Fees Negotiations. By signing this Agreement, the Parties warrant that, throughout mediation, they were negotiating the amount of a Common Fund and that any fees and costs to be paid from that Fund to Class Counsel were not discussed until after the amount of the Common Fund had been agreed upon. All amounts allocated as attorneys' fees and costs will be paid to Class Counsel by the QSF Administrator from the escrowed Total Settlement Amount.

15. Cy Pres or Residual Funds. Settlement Class Members shall have 180 days after their check is mailed to negotiate their check. After the 180-day check negotiation period expires, the amounts for Settlement Class Members who did not cash their check will be held by the Settlement Administrator. Within thirty (30) days, the Settlement Administrator shall deliver the sum of the uncashed checks to the Cy Pres or Residual Funds Recipient(s) approved by the Court in accordance with Michigan law.

16. Taxes. The QSF Administrator, in consultation with the Parties, will determine if taxes should be withheld from Class Member payments. To the extent settlement payments trigger any employer-side payroll or other tax obligations, the Agency shall be solely responsible for those employer-side obligations to the extent described herein.

17. Independent Tax Advice. Each Settlement Class Member shall be obligated to obtain their own independent tax advice concerning the proper income reporting and tax obligations

regarding payments that they receive under this Agreement. Class Members shall further assume the responsibility of remitting to the Internal Revenue Service or any other relevant taxing authorities all amounts required by law to be paid out of any monies received under this Agreement, without any contribution from the Agency, Class Counsel, or the Settlement Fund maintained by the QSF Administrator.

18. Access to Agency Records. The Agency shall ensure that all information contained in the Class List is compiled based on information in its possession and provided to Class Counsel within 14 days of the execution of this Agreement. The Parties agree to use best efforts to ensure that all of the information described above is produced. The Agency will either provide Class Counsel and the Claims Administrator access to the Agency records pertaining to any Claimant or appoint a full-time Agency employee to serve as Settlement Liaison. To the greatest extent possible and when and if requested by Class Counsel or the Claims Administrator, the Settlement Liaison shall promptly provide the requested information and, upon request, provide hard-copies or screen shots to verify the information provided. The Parties agree that the Class List and other information about a Claimant shall be used for purposes of this litigation only and for no other purposes. Any information provided by the Agency for the purposes herein discussed shall be destroyed at the completion of this Settlement.

19. Claw-Back Rights. The QSF Administrator may invest the escrowed settlement funds in United States Treasury Notes or Bonds redeemable in time to make payment within 30 days after the Effective Date of the Settlement. In the event the Settlement is set aside by a final appellate court order, the QSF Administrator shall liquidate the Settlement Fund within 30 days of the final appellate court order and repay to the Agency the amount in the fund minus all reasonable administrative costs already incurred.

20. Notice of Proposed Settlement and Website. The Parties shall cooperate to agree on the proposed form of a Notice of Rights to potential Settlement Class Members, advising them of their legal rights and options, subject to Court approval. Notice of Rights shall be provided as follows:

- a) The Agency will publicize the settlement. Any public-facing announcements will direct potential claimants to the MiDAS customer level alert, where all claimants who paid money to the Agency as a result of Collection Activity will be notified of the ability to certify eligibility for Settlement claim, which shall provide a link to an independent website maintained by Plaintiffs' counsel or an agreed administrator for completion of the certification process, an agreed upon Notice of Rights, and relevant pleadings and settlement documents. Counsel for the parties will negotiate the exact language of the customer level alert.
- b) For claimants for which the Agency has email addresses, the Agency shall also provide notice by email with the same link.
- c) The certification process shall include an independent process to offer manual identification if computer matching is inconclusive.

21. Notice Administrator Duties. Within five days of entry of the Order for Preliminary Approval, the Notice Administrator shall by US mail and electronic means issue a class notice of settlement approved by the Court that complies with MCR 3.501(C) (1-7). The Claims Administrator, in consultation with the Notice Administrator and Class Counsel, will maintain a website that provides Class Members and members of the public with information about the settlement, relevant and material court documents, and shall feature a means by which a Claimant can communicate with the Claims Administrator to verify Class Member status and other information necessary to pursue a claim. The Agency shall utilize appropriate systems to verify and update the addresses for each Class Member.

22. Right to Opt-Out. All members of the Settlement Class will have the right to be excluded from, *i.e.*, to “opt-out” of, the Settlement in accordance with MCR 3.501(C) (5)(b). The manner in which a Class Member may communicate their desire to opt-out will be determined by the Court. In no event shall members of the Settlement Class who purport to opt out of the Settlement as a group, aggregate, collective, or class involving more than one individual be considered a successful opt out. Any member of the Settlement Class who fails to timely and validly opt out of the Settlement under this Agreement shall be bound by the terms of this Settlement and the Final Judgment entered in this case.

23. Contingent Settlement: If ten (10) percent of the Class Members opt-out of this settlement, the Agency may terminate this Agreement. The Agency has the option of terminating this Agreement within seven (7) days of receipt of timely opt-outs. Class Counsel is responsible for providing to the Division Chief of the Labor Division, Unemployment Section, of the Department of Attorney General by email timely notice of opt-outs. In the event the opt-out threshold is met and the Agency chooses to terminate, this Agreement is null, void, and unenforceable and all remaining monies shall be returned to the Michigan Department of Treasury.

24. Objections. Class Members may object to the Settlement in a manner established by the Court. Any Class Member who does not file an objection in the manner provided by the Court shall have waived their right to appeal any aspect of the Agreement or Final Judgment. Class Counsel and the Agency agree that no payments or other consideration shall be provided to any objector or to counsel for any objector to the Settlement in connection with the objector withdrawing an objection, foregoing the right to appeal an objection, or withdrawing an appeal unless such payment is disclosed to and approved by the Court.

25. Non-Participatory Class Members. Individuals who meet the Class Member definition but fail to make a valid Claim against the Settlement Fund in accordance with the Plan of Allocation and who do not timely opt-out will be bound by the Final Judgment entered in this case.

26. Timing of Motion for Preliminary Approval of Settlement. Class Counsel will file their motion for Preliminary Approval of Settlement, Approval of Notice and Plan of Allocation, and Motion for Attorney Fees and Costs within 30 days of execution of this Agreement.

27. Motion for Final Approval of Settlement and Fairness Hearing. Plaintiffs shall move for final settlement approval no later than two weeks (14 days) following the issuance of last of the

Final Notice of Awards. The Court, at the Fairness Hearing, may in its sole discretion adjust any Final Award if the Claimant provides clear and convincing evidence that the Claims Administrator made an error in applying the Plan of Allocation criteria to the Claim.

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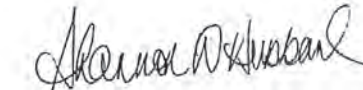
Saunders et al. v. Michigan Unemployment Insurance Agency et al
Class Action Settlement Agreement
APPENDIX C: MODIFICATIONS AND AMENDMENTS

The Parties stipulate that Appendix B, Section 9, of the Settlement Agreement is modified to strike the words "The QSF Administrator may invest the escrowed settlement funds in United States Treasury Notes or Bonds" and in its place shall be inserted "The QSF Administrator may invest the escrowed settlement funds in accounts backed by the full faith and credit of the United States Government including a fully-insured FDIC bank account."

As stipulated by Counsel for the Parties on *April 10*, 2024



David Blanchard



Shannon Husband

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IN THE STATE OF MICHIGAN
COURT OF CLAIMS

KELLIE SAUNDERS, et al.,

Plaintiffs,

v.

Case No. 22-000007-MM

Hon. Brock A. Swartzle

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE
AGENCY and JULIA DALE, in her
official capacity,

Defendants.

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Kelly R. McClintock (P83198)
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DECLARATION OF DAVID M. BLANCHARD

**IN SUPPORT OF PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT,
CERTIFICATION OF SETTLEMENT CLASS PURSUANT TO MCR 3.501
APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL,
APPOINTMENT OF MEGAN P. NORRIS AS SPECIAL MASTER,
APPOINTMENT OF CLAIMS ADMINISTRATOR,
APPROVAL OF PROPOSED CLASS NOTIFICATION PLAN,
APPROVAL OF PROPOSED CLASS NOTICE,
APPROVAL OF THE PROPOSED PLAN OF ALLOCATION,
APPROVAL OF CLASS REPRESENTATIVE SERVICE AWARDS,
APPROVAL OF ATTORNEY FEES, COSTS OF LITIGATION AND OTHER
ADMINISTRATIVE COSTS, AND FOR SETTING A DATE FOR FINAL
APPROVAL AND CLASS ACTION FAIRNESS HEARING**

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1. Plaintiffs Kellie Saunders, Erick Varga, Lisa Shephard, Dawn Davis, Jennifer Larke, Anna Logan, Joshua Eggleston, Jennifer Hillebrand, Cheryl Scarantino, Eleni Zestos and Theresa Brandt (“Plaintiffs”), on behalf of themselves and the class they seek to represent, allege that they were subjected to actual or threatened deprivation of due process by Agency Collection Activity without notice and opportunity to be heard.

2. In January 2022, Plaintiffs initiated this action asserting due process Claims, under the Michigan State Constitution, by the State of Michigan Unemployment Insurance Agency (“UIA” or “Agency”) and Julia Dale in her official capacity. After years of litigation and negotiations, the parties have reached a proposed settlement (“Settlement Agreement”), which, if preliminarily approved by the Court, would resolve the Plaintiffs’ claims and those of other similarly situated Michigan residents who were subjected to Defendants’ improper collection practices.

LITIGATION HISTORY

3. On January 28, 2022, Plaintiffs filed a putative class action against the Agency and Julia Dale in her official capacity in the Michigan Court of Claims alleging that the UIA’s actions of illegally assessing “overpayments” and initiating collection activity against a broad class of UIA claimants who relied on pandemic unemployment assistance in 2020 and 2021 violated the due process clause in Article I § 17 of the Michigan Constitution. The litigation was never merely about obtaining money but also focused on obtaining injunctive relief to stop the apparent injustices of the UIA collection operations.

4. On March 10, 2022, Plaintiffs filed a Motion for Preliminary Injunction to Suspend Agency Collection Activities. Plaintiffs’ First Amended Complaint, naming additional

Plaintiffs and clarifying allegations, was filed on March 24, 2022. In lieu of filing an answer, Defendants filed a Motion for Summary Disposition of Plaintiffs' Complaint. Defendants' Motion argued, in part, that Plaintiffs failed to state valid claims upon which relief might be granted and that the Court lacked subject matter jurisdiction where Plaintiffs failed to exhaust their administrative remedies. Ultimately, the Court entered an order denying in part and granting in part Defendants Motion for Summary Disposition and Plaintiffs' Motion for Preliminary Injunction. Importantly, the Court held that Agency Collection Activity without Due Process likely violates the Michigan Constitution. The Agency filed a motion for Reconsideration or Clarification, arguing that Defendants should only be required to halt collections or threatened collections against the named Plaintiffs but that collection against putative class members should be allowed to proceed.

5. On August 11, 2022, the Court denied the Defendants' Motion and further reaffirmed its preliminary injunction and halted the Agency's overpayment collection activity against all Michigan UI Claimants who are waiting on timely pending protests and appeals. The preliminary injunction had sweeping impact for many thousands of UI claimants that were facing unconstitutional overpayment collection activity. As of the end of 2021 fiscal year, Agency audits suggest it was seeking to collect over four billion dollars from Michiganders. All Agency collection has been suspended since December of 2022.

6. On September 21, 2022, Plaintiffs proceeded with the filing of their Motion for Class Certification. Defendants filed their response brief on October 12, 2022, and Plaintiffs filed their reply brief on October 26, 2022. On February 3, 2023, the Court entered a stipulated order to submit the matter to non-binding mediation and extend scheduling order deadlines. Since that time, the Parties engaged in numerous mediation sessions, patient negotiations, data

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analysis and fact finding in order to achieve the results and the Settlement Agreement now before the Court for preliminary approval. (Ex. 1, Settlement Agreement).

7. Settlement approval involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted. Preliminary approval first requires a determination that the settlement class meets the requirements for class certification and second that the settlement is fair, reasonable, and adequate.

8. As further explained below, the settlement class meets the requirements for class certification and the proposed settlement is fair, reasonable, and adequate.

ON THE SCOPE OF SETTLEMENT AND OTHER RESULTS OBTAINED

9. First, the Settlement Agreement provides for groundbreaking reforms and other nonmonetary Relief. First, the Agency and Director Dale have agreed to specific actions to ensure class members and all those who applied for pandemic era benefits will receive appropriate consideration under current law with notice, before collection resumes.

- a. *Good Cause.* The Agency will void all denials of late protest and appeal filings based on lack of “good cause” caused by the disruptions in service due the pandemic. The Agency will acknowledge a presumption of good cause for all pandemic era claimants who were initially approved for benefits but were later subject to retroactive ineligibility determinations by the Agency and unable to timely protest or appeal. For claims filed April 23, 2020 to January 25, 2022, the Agency will presume “good cause” or forego collection activity unless and until it has issued a new redetermination on the merits of the claim, without regard for the delay in protests or appeals.¹ Although it may appear like a technical fix, this is a paradigm shift that is embraced by new leadership at the Agency that is anticipated to result in monumental relief for pandemic era UI claimants.

¹ Settlement Agreement Section 2.1 (“The Agency may void all denials of Good Cause (Re)Determinations in response to any adjudication denying benefits dated April 23, 2020, to January 25, 2022, and set them aside upon a finding of good cause (which is presumed), unless more than one year elapsed before receipt of the protest or appeal. If the Agency does not void all denials as indicated above, it must forego any collection action until it has issued a Redetermination on the merits.”)

- b. *Able and available.* The Agency leadership has also acknowledged its obligations to apply retroactive fixes to the law that improperly barred part time workers from receiving PUA benefits based on inability to consider full time work. In the turmoil of the pandemic, The MES Act was re-written to retroactively clarify federal benefit entitlement for many part time workers.² The Settlement will allow the Agency time to void prior determinations reversing benefit entitlement that were made without the benefit of the clarification. Until a new individual determination based on current law occurs, the Agency will forego collection activity on impacted Michiganders.³ If determinations under current law are issued, class members will have the same due process rights as guaranteed to all future unemployed workers of Michigan.
- c. *Waiver rights.* Under the Settlement, the Agency will protect existing claimants and class members by issuing new notice of their rights to request a waiver of overpayment *before* any Agency collection activity occurs. That means that existing class members caught up in the system will get new notice of their rights to apply for a waiver of any overpayment before the Agency reinstates collection activity.⁴ When they do receive notice, it will provide simple and easy-to-follow instructions to request a waiver.⁵

10. Moreover, under the Settlement Agreement, systemic reforms going forward will benefit class members and install meaningful Due Process Rights in the system for all future UI Claimants.

11. The Settlement Agreement terms presented to the Court are based on a foundational

² MCL 421.28(1)(c) (“Notwithstanding any other provision of this act, for all claims filed after March 1, 2020, and established under the federal pandemic unemployment assistance program, with respect to the able and available requirements, an individual must be able and available to perform suitable full- or part-time work. An individual is considered unavailable for work under any of the following circumstances...”)

³ Under Section 2.2 of the Settlement Agreement, “If the Agency does not void such (Re)Determinations, the Agency will forego any collection action until the Agency has reached a Redetermination on the merits.”

⁴ “To the extent it has not already done so, the Agency must inform all class members that (1) they are still considered subject to overpayment, *and* (2) they have a right to ask the Agency to waive recovery of an improperly paid benefit (including interest) if repayment “would be contrary to equity and good conscience” as defined in Section 62a of the Michigan Employment Security (“MES”) Act.” Settlement Agreement, Section 2.3.

⁵ Settlement Agreement, Section 2.3 (“Such notice must include simple direction (such as an e-mail address or http link) regarding how a request for waiver should be made.”); Settlement Agreement, Section 5.1 (“Any (Re)Determination of Overpayment shall be accompanied by a notice of the waiver process to evaluate waivers for all purposes under Section 62(a).”)

constitutional promise that has been repeatedly acknowledged by the courts: class members and all UI claimants are entitled to due process right which means a to notice and opportunity for a fair hearing as to all decisions impacting benefit rights before collection activity may occur.⁶ There can be no due process without adequate notice.⁷ For Plaintiffs and other unemployment claimants who found themselves facing clawbacks of prior benefit payments, there are at least three critical decision making points that implicate due process:

- a. *When an Agency decision reverses a prior finding of benefit entitlement for benefits that have already been paid.* Plaintiffs working with Agency leadership have developed and agreed to meaningful reforms to the way the Agency handles reversing prior benefit entitlement. Throughout the pandemic, many Michiganders were rocked by retroactive reversals of Agency determinations. “Going forward, the Agency will not reconsider any previous finding of benefit entitlement more than 30 days after the first Monetary Determination is made or within one year with good cause.”⁸ Moreover, under Section 5.3 of the Settlement, the Agency has agreed that, every unemployed Michigander will have an opportunity to appeal and be heard on a decision reversing benefit entitlement *before* the Agency will make any determination that restitution is due.⁹
- b. *When the Agency assesses an overpayment of previously paid benefits based on the reversal of benefit entitlement.* The Settlement Agreement prohibits the Agency from retroactively reversing and collecting previously paid benefits except in specific circumstances provided in state law. Under the Settlement, due process would be respected by providing unemployed claimants with notice and opportunity to respond if one of the three limited statutorily enumerated reasons for retroactive application apply.¹⁰ If a retroactive overpayment is assessed, the

⁶ Due process requires pre-deprivation Determination with notice and opportunity to be heard on all Determinations impacting a claimants’ rights under Section 303. *Cal. Dept of Labor v. Java*, 402 US 121. Decisions to reverse eligibility retroactively, to assess overpayment, and whether the overpayment is collectible in equity and good conscience are all determinations impacting a claimants’ rights. See UIPL 23-80.

⁷ *Scott v. Dep’t of Labor & Econ. Opportunity*, 2023 Mich. App. LEXIS 3755, *15 (“[W]e see no material distinction between not receiving a determination and receiving a determination containing inadequate notice of its underlying reasons”).

⁸ Settlement Agreement, Section 3.1

⁹ “No Determination of Restitution Due shall be made until both (a) a Determination on Overpayment and (b) a (Re)Determination regarding benefit entitlement have become final (with notice and opportunity to protest or appeal).” Settlement Agreement, Section 5.3.

¹⁰ Under Section 3.2, “Determinations or redeterminations issued more than 30 days after an initial Agency payment in a claim series shall not be applied retroactively unless they include notice of the reason for retroactive application under MCL 421.32a(3) exceptions.” The Agency has never

settlement agreement provides that unemployed workers will get notice of their right to be considered for a waiver before the Agency seeks restitution.¹¹ Moreover, the settlement agreement provides that the right to request an overpayment waiver is not limited to financial hardship, but also includes all rights to overpayment waiver under state law.¹² Importantly, all collection activity is suspended upon an initial waiver application so that Agency overpayment clawbacks will not go forward while a claimant is waiting for a decision on their waiver application.¹³

- c. *When the Agency decides that a claimant is legally required to repay an overpayment (a/k/a determination of restitution due).* The Settlement Agreement guarantees an essential due process right by prohibiting the Agency from determining restitution is owed until the basic notice procedures above are followed and Agency decisions related to benefit entitlement and overpayments have become final.¹⁴ Even after finality, the Settlement Agreement builds in an additional thirty-day buffer to allow for late protests and appeals to be received and allow a fair hearing before collection is initiated.¹⁵ Moreover, Agency determinations of restitution due will grant claimants the same due process rights to appeal as accorded all other Agency determinations affecting a claimants' rights.¹⁶

before provided notice of the reasons before retroactively assessing or collecting overpayments on claimants.

¹¹ Under Section 5.1 of the Settlement Agreement, "Any Determination or Assessment of Overpayment shall be accompanied by a notice of the waiver process to evaluate waiver for all purposes under Section 62a."

¹² Under Section 4.3 of the Settlement Agreement, the Agency is required to grant waivers "to the extent provided for in Section 62(a) [of the MES Act]." The Agency has previously only provided a waiver application process for waiver's based on financial hardship. As a result of the settlement, the Agency is required to do so immediately, even before required forms can be developed. Settlement Agreement Sec. 2.4 ("It is sufficient that individuals are advised at the time an overpayment is determined that they have a right to request a waiver for all purposes under Section 62a and that they are provided written instruction informing them of the methods for doing so as described above. Claimants may seek a waiver based on the available statutory grounds if they choose to do so in their own written request (unless or until the appropriate forms are available)").

¹³ Under Section 4.2 of the Agreement, "[t]he Agency will suspend collection the first time an individual seeks a waiver of an overpayment on such a claim until the determination on waiver has become final."

¹⁴ Under Section 5.3 of the Settlement Agreement "No Determination of Restitution Due shall be made until both (a) a Determination on Overpayment and (b) a (Re)Determination regarding benefit entitlement have become final (with notice and opportunity to protest or appeal)."

¹⁵ Under Section 5.2, "The Agency will not issue a new Determination of Restitution Due or institute collection until at least 30 days after the deadline to protest or appeal and no late protest or appeal is received. If a late protest or appeal is received, the Agency will not issue a new Determination of Restitution Due or initiate collections until there is a final determination on whether there was good cause for the late protest or appeal."

¹⁶ Under Section 5.4 of the Settlement Agreement, "Any (Re) Determination of Restitution Due shall include notice of appeal rights, including that the individual can only protest or appeal the

12. In the past, many parts of the above decision-making process have been assumed by the Agency without notice to claimants. Thereafter, MiDAS' automated collection clawbacks ensued as the default. The terms of the settlement agreement and the protections agreed to by the Defendants will be a meaningful step toward respecting claimants' due process rights at each stage in the Agency's decision-making process. These notice and appeal rights simply were not programmed into the decades old MiDAS System – a system whose deficiencies are now infamous.

13. Leading up to the settlement agreement, this litigation has already resulted in significant tangible financial impact for the class. As noted above, the Preliminary Injunction in 2022 halted a collection machine that was seeking to clawback over \$4 billion dollars from the accounts of recently unemployed Michiganders. Moreover, the pause allowed the Agency to uncover hundreds of thousands of previously unprocessed protests and appeals from class members, as disclosed in status reports filed throughout the litigation.

14. Since collection was halted, the Agency has already returned over \$45 Million dollars in improperly collected funds or applied those funds to other government debt. The Agency has also voided hundreds of thousands more overpayments that were the result of late reversals of benefit entitlement made more than one year after the original determination granting entitlement to benefits.

15. The Settlement Agreement will provide a Common Fund of an additional \$55 million dollars to compensate class members whose money has not yet been returned or those that

amount of the overpayment or the number of benefit weeks involved... A protest and appeal process for (Re)Determinations of Restitution Due shall be made available in the same manner as all other Agency (Re)Determinations.”

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suffered a demonstrated hardship as a result of improper collection. The fund will also pay attorney fees and costs of litigation and settlement administration.

16. If this settlement is approved, this litigation will have generated over \$100Million for Michigan UI Claimants in direct monetary relief.

17. The Non-monetary relief related to collections as described above, will result in hundreds of millions more in savings to Michigan UI Claimants who suffered job loss or small business owners who lost their source of revenue during the pandemic.

18. Finally, as part of the Common Fund, the Agency has agreed to establish a Relief Fund created under the Settlement Agreement that will set aside \$1.65 million in funding to provide support for Legal Aid and Non-Profit service providers who provide legal representation to UI claimants. By releasing \$500,000.00 of the Relief Fund immediately as requested, the Preliminary Approval Order will allow the State Bar Foundation to begin distribution of this funding to qualified agencies under an established network for supervision and stewardship. (Ex. 5, Letter from Director Bentley, Michigan State Bar Foundation).

ON APPOINTMENT OF CLASS COUNSEL

19. Counsel is uniquely qualified to serve as class counsel. The Blanchard & Walker, PLLC Firm was founded on a commitment to provide high quality and high impact representation for Michigan's workers. The Firm has represented clients in federal courts across the nation and brought home millions of dollars of recovery for our clients.

20. Since 2004, I have specialized in the representation of employees in complex litigation matters, combining skills and expertise in labor and employment law, federal multidistrict practice, and class and collective action litigation. My litigation docket has focused predominantly on class and collective cases regarding unpaid wages, overtime pay, minimum

wage, and other injuries arising from misclassification or other wage theft.

21. Since founding Blanchard & Walker, PLLC in 2015, the firm has served as lead counsel or co-counsel in dozens of class and collective actions and recovered millions of dollars for workers in Michigan and in other states across the country. I have served as lead counsel or co-counsel in many class and collective actions for installers, laborers, and other low-wage workers, and dozens of cases recovering overtime pay and uncompensated work time, or minimum wages.¹⁷

22. I have also developed a deep history and understanding of the Michigan unemployment system through two decades of individual representation of Claimants and impact litigation involving the Michigan UIA.

23. I began researching and writing on Michigan's UI system in 2008, when the great

¹⁷ See e.g. *Hubbard, et al v. Sidetrack, Inc. et al*, 21-cv-10669 (Berg D.J.) (E.D. Mich., filed March 26, 2021); *Mata v. STA Management, LLC, et al*, 19-cv-11662 (Edmunds D.J.) (E.D. Mich., filed June 5, 2019); *McFarlin, et al v. The Word Enterprises, LLC, et al*, 16-cv-12536 (Drain D.J.) (E.D. Mich., filed on July 6, 2016); and *Graham, et al. v. The Word Enterprises, LLC et al*, 18-cv-10167 (Drain D.J.) (E.D. Mich., filed on January 15, 2018). *Reeb v. Alro Steel Corp.*, 21-cv-12545 (Murphy D.J.) (E.D. Mich., filed on October 28, 2021); *Schmitt v Belle Tire Distrib.*, 20-cv-13151 (Steeh, D.J.) (E.D. Mich., filed on December 1, 2020); *Swinney v. Amcomm*, 12-cv-12925 (Edmunds D.J.) (E.D. Mich., filed Sept. 14, 2012); *Lee v. GAB*, 12-cv-14104 (Drain D.J.) (E.D. Mich., Sept 14, 2012); *Ramirez v. A Plus Painting*, 13-cv-14593 (Levy D.J.) (E.D. Mich., filed Nov. 4, 2013); *Everett v. Walgreen*, 14-cv-02151 (Helmick D.J.) (N.D. Ohio, filed Sept. 26, 2014); *Feiertag v. Apollo*, 14-cv-02643 (Marbley D.J.) (S.D. Ohio, filed Dec. 16, 2014); *Gerges v. ESD*, 15-cv-01816 (Zouhary D.J.) (N.D. Ohio, Sept. 4, 2015); *Benion et al. v. LeCom Incorporated et al.*, 15-cv-14367 (Lawson D.J.) (E.D. Mich., filed Dec. 16, 2015); *Braniff v. HCTec Partners, LLC, f/k/a HCTec, LLC*, No. 3:17-cv-00496 (M.D. Tenn., filed March 8, 2017); *Golden, et al. v. Inman's Auto Rescue of Houston, LLC et al*, 17-cv-00844 (Lake D.J.) (S.D. Tex., filed Mar. 16, 2017); *Sanders v. CJS Solutions Group, LLC d/b/a The HCI Group*, No. 1:17-cv-03809 (S.D.N.Y. May 19, 2017); *Carey v. Physician Technology Partners, LLC*, No. 3:17-cv-00213 (S.D. Ohio, filed June 26, 2017); *Arrington et al. v. Optimum Healthcare IT, LLC*, No. 17-cv-03950 (E.D. Pa., filed September 1, 2017); *Hatzey v. Divurgent, LLC*, No. 1:17-cv-03237 (E.D. Va., filed April 10, 2018); *Adams et al v. NTT Data, Inc. et al.*, 18-cv-01303 (Hegarty D.J.) (D. Colo. filed May 1, 2018); *Marmier-Romeo v. AP Preferred Solutions, LLC*, 18-cv-11943 (E.D. Mich., filed June 19, 2018).

recession shuttered businesses and many Michigan workers faced prolonged and unexpected periods of unemployment. I published articles and presented trainings for other lawyers seeking to help clients within the UI system.

24. I have represented individual and institutional clients in direct actions challenging Agency practices since 2013. I served as counsel for Plaintiffs in the Matter of *Zynda v. Arwood*, the 2014 case first challenging the Agency's robo-fraud adjudication system. That case resulted in direct repayment of over \$20 million in improper collections and the 2017 Settlement Agreement put important guardrails on the Agency's fraud accusation system that remain in place to this day.

25. Since the pandemic began in March of 2020, I have personally counseled or represented thousands of workers regarding UI benefits entitlement and appeals processes on a pro-bono or discounted flat fee basis. By April 2020, we had organized a meeting space for attorneys representing claimants, so that we could collectively track, analyze and discuss the rapidly changing legal landscape and provide up to date advice to an overwhelming surge of callers who were economically devastated by the public health emergency.

26. As 2020 turned to 2021 and the pandemic wore on, the Firm took on dozens of impact cases, mostly on a pro bono basis to protect access to the emergency financial relief as intended by the CARES act. We brought to light a defect in the Agency's application process that made it look like UI claimants had been asked to report net wages when they actually had not. The Agency ultimately waived overpayments and returned millions collected due to the administrative error. In another matter, I fought to protect access to Pandemic Unemployment Assistance for part-time workers who were intended to receive benefits under the CARES act, but had been blocked because of the Agency's misinterpretation of state law. That matter resolved after the legislature stepped in to clarify benefit entitlement for a whole category of part time workers,

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including primary caregivers, students, and disabled claimants who had lost part time work as a result of the pandemic.

27. Blanchard & Walker's ability to represent the Saunders class members and achieve the unprecedented results is directly related to two decades of commitment to advocating for Michigan's unemployed, much of it undertaken without any compensation. The types of results achieved in this matter have been made possible only through decades of experience developing an intimate knowledge of the administrative system, an expansive record of claimants, a depth of practice in suits against government actors, class actions, complex litigation, and public advocacy.

ON AWARD OF ATTORNEY FEES AND COSTS

28. The Attorney's fees and costs requested are reasonable and fair as measured against the results obtained. As discussed above, Plaintiffs in this matter have obtained wide ranging monetary AND non-monetary relief that will inure to the benefit of the whole class and to all future unemployed Michiganders who seek to access the social safety net.

29. The litigation has resulted in a complete suspension of \$4 billion in collections for a period of 15 months and counting. The Preliminary Injunction will remain in effect until it can be replaced with the significant due process protections negotiated under the Settlement.¹⁸ Moreover, the required re-evaluation of certain claims under proper legal standards and the waivers to be made available under paragraphs 2.1-2.4 ensures that a significant portion of that \$4 billion in collections will never be reinstated.

30. As the litigation progressed, the Defendants discovered a backlog of hundreds of thousands of potential unprocessed protests and appeals. Once processed, the Agency presented records to establish that approximately \$45 million in overpayments were returned or re-applied

¹⁸ Settlement Agreement Para. 9

to other (non-UI) debts, such as child support payments.

31. As a result of the Settlement Agreement, Class Counsel has secured another \$55 million to serve the interests of the class members in a Common Fund. The Attorney's fees requested are one-third (33.3%) of the common fund, but amount to only a small fraction of the total relief obtained. The fees represent only 18.3% of the \$100 million in direct financial benefit obtained by claimants and only tiny piece of the \$4 billion in collections that were halted as a result of the litigation.

32. Courts evaluate the reasonableness of the requested fee award using several factors. The value of the benefits obtained is of course the most important, but the Courts may also consider society's interest in rewarding attorneys in order to incentive others. This matter is a perfect example. Without the possibility of a contingency recovery, few lawyers would ever be incentivized to mount a challenge like this one – involving a multiyear commitment of significant resources with no retainer and no guaranty of any recovery.

33. All services here were undertaken on a pure contingency-fee agreement. No money up front, no attorney fee until we win. "Research indicates that, taken as a whole, the evidence suggests that one-third is the benchmark for privately negotiated contingent fees, but that significant variation up and occasional variation down exist as well." *In re: Flint Water Cases*, 583 F. Supp. 3d 911, 939 (2022) quoting Eisenberg, Theodore and Miller, Geoffrey P., "Attorney Fees in Class Action Settlements: An Empirical Study" (2004), *Cornell Law Faculty Publications*, Paper 356, pp. 35. Consistent with this reasonable "benchmark", claimants counsel has entered into one-third contingency fee agreements with the Named Plaintiffs. The fact that each plaintiff privately negotiated a one-third contingency fee should also be considered an indication of the reasonableness.

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34. Finally, the Attorney fee requested is also reasonable when measured against the complexity of the litigation and the professional skill required. The case was as complex as it was risky. When filed, this matter involved a theory of state constitutional rights that had not yet been confirmed by the supreme court. It involved a suit against the state challenging an administrative system. It involved specialized court of claim processes and complex remedial goal of injunctive relief. As discussed previously, class counsel was uniquely skilled for the task.

35. As a matter of costs, counsel to date has already incurred roughly \$25,000.00, with the anticipated administration ahead expected to be the most costly part of the litigation. As discussed below the notice administration process is projected to cost close to \$80,000.00. The appeals process, managed by an appointed Special Master, will also be billed back to counsel. Other anticipated administration costs will involve specialized staffing, subject matter experts and consultants, software and other incidentals. For that reason, the Settlement Agreement provides for a reasonable set-aside as requested in the parties' stipulation.¹⁹ The set-aside shall be held in an IOLTA trust account and used for authorized expenses only, with the remainder to be returned to the settlement fund for distribution to the class members upon final approval.

ON APPOINTMENT OF CLASS REPRESENTATIVES AND SERVICE AWARDS

36. The Settlement Agreement and Stipulated Approval Order provides for the Named Plaintiffs to be Appointed as class representatives. Each of them faced actual or threatened improper collection. Their bravery and willingness to risk public scrutiny has resulted in an unprecedented recovery for a large class of Michiganders and institutional reforms that will benefit UI Claimants far into the future.

37. Named Plaintiffs faced scrutiny, stigma, and questioning at every turn in the

¹⁹ Settlement Agreement, Appx. B, Para. 5.

process – sometimes by the Agency, or the press, and sometimes by their own friends and co-workers. Consider the layers of stigma that must be confronted in order to get to this point. First, many people find it embarrassing to admit they need unemployment benefits – a personal blow to the concept of financial independence. They lost a job or their business suffered, then they had to seek public assistance. Then, sometimes years later, they faced the stigma of being told (often erroneously) that they never qualified for benefits they received. They faced bills and collection notices from the government. Many class members no doubt hid those notices away – from themselves or their family – and tried to forget.

38. Class Representatives went to a lawyer for help instead. After all that, they were willing to submit to public scrutiny by filing a lawsuit alleging it was the government, not them, who had made a mistake. Service awards requested for the Class Representatives award their sacrifice and recognize the tremendous result obtained through their valor. That same steadfastness in pursuing these interests also demonstrates their suitability to be appointed as Class Representatives and to act in the best interest of the class.

ON CERTIFICATION OF THE CLASS

39. Class Certification Plaintiffs have adequately pled a basis for Class status in the Second Amended Complaint. Plaintiffs thereafter preserved their right to Class status by filing a proper Motion for Class Certification within the term permitted by MCR 3.501(B)(1)(a) (91 days after the Complaint is filed). The trial court did not rule on the Motion for Class Certification because the parties agreed to stay the case in favor of mediation shortly after. However, in its August 11, 2022 Order, the Court did previously observe that class certification was likely supported on the proffer then before the Court.

40. The Parties have defined a proper Settlement Class for Certification in the

Settlement Agreement.

41. For purposes of Settlement: “Settlement Class Members are defined as all Claimants who were subject to Improper Collection based on Agency Collection Activity on any Unemployment Insurance claim filed from March 1, 2020, until the Court of Claims provides preliminary approval of the settlement of this matter.”²⁰

42. To avoid any ambiguity at all, the term “Improper Collection” is further defined as “money collected from a Class Member by any method: (a) while a timely protest or appeal, or a late protest or appeal with good cause, was pending, (b) after a claimant attempted to protest or appeal and was unable to access services, or (c) after a claimant submitted a protest or appeal that was not timely processed, never processed, or later deleted.”

43. A class (including a settlement class) is properly certified if it meets the prerequisites of MCR 3.501(A)(1):

- a) *The class is so numerous that joinder of all members is impracticable.* MCR 3.501(A)(1)(a). Here, Defendants are required to provide a list of all claimants for whom the Agency clawed back money on claims filed after March 1, 2020. The list is expected to include approximately 140,000 claimants. Of those claimants, an estimated 40-60% suffered improper collections (as defined in the settlement agreement) and will be able to make a claim for relief.
- b) *There are questions of law or fact common to the members of the class that predominate questions affecting only individual class members.* MCR 3.501(A)(1)(b). Settlement Class members were all subjected to the government taking their property without due process when the Agency collected money from them without notice and opportunity to be heard. Every class member shares this common factual scenario that is, or would have been, subject to resolution through a single legal question.
- c) *The claims or defenses of the representative parties are typical of the claims or defenses of the class.* MCR 3.501(A)(1)(c). Class representatives each suffered the same type of violation, or faced immediate threat that the same violation would occur, but for the injunctive relief and due process protections obtained for themselves and the settlement class.

²⁰ Settlement Agreement, Para 13

- d) *The representative parties will fairly and adequately assert and protect the interests of the class.* MCR 3.501(A)(1)(d). As discussed above, the Class Representatives are not only adequately situated to protect the interests of the class, but they have uniquely proven their willingness and steadfastness in doing so.
- e) *The maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenience of the administration of justice.* MCR 3.501(A)(1)(e). For reasons that should be self-evident from the above discussion, maintenance of this action as a class is manifestly superior to individual actions pursuing the same legal challenges for the same factual scenario based on the same constitutional principle.

44. Therefore, the Settlement Class satisfies the requirements for certification under MCR 3.501.

ON THE SCOPE OF RELEASES

45. Upon final certification, each Settlement Class Member who participates by filing a claim will be considered to have released certain specific claims related to improper collection, *and only those claims*. The proposed release is not overbroad nor overinclusive. It is a fair exchange for the settlement fund provided. Because the Agency is still engaged in putative class litigation in Federal Court, Class Counsel gave careful attention to the impact for settlement class members who may also retain viable claims in *Kreps et al v. Michigan UIA et al*.

46. Under the definitions in Appendix A of the Settlement Agreement, the Parties agreed that “all Settlement Class Members who participate will be required to release all claims they have against the Agency, the State of Michigan, or any subdivision of the state of Michigan related to Improper Collection on claims filed from March 1, 2020 to the date of settlement approval. For avoidance of doubt, this release will not release claims related to any claim of a Settlement Class Member in the pending action *Kreps et. al v. UIA et. al* in the Eastern District of Michigan, except as to Improper Collection.”

47. By carefully negotiating the release language, the Parties allowed for overlapping claims for improper collection to be released, but also ensured that class members may participate

in this settlement without giving up rights to recover in *Kreps* for the independent allegations surrounding the indefinite suspension of benefits applied to many claimant accounts during the pandemic.

ON ADMINISTRATION, NOTICE AND PLAN OF ALLOCATION

48. The Parties agreed that the services of a professional claims administrator would best serve the class. Class Counsel interviewed two highly regarded claims administrators: Analytics Consulting LLC (Analytics) headquartered in Minnesota, and Simpluris of California and obtained comparable cost estimates for effective yet efficient notice and claim administration process. Ultimately, Analytics Consulting was chosen as the best fit for this project, in part based on prior experience administering a prior class notice process involving the Michigan UI claimants.

49. Richard Simmons is the President of Analytics. Simmons has 34 years of direct experience in designing and implementing class actions and notice campaigns. He has worked on more than 3000 matters of this type, and has been engaged on an ongoing basis to consult with the DOJ, FTC, and the SEC on class notice and administration matters. Analytics performs all functions in-house from its headquarters in Chanhassen, Minnesota. Analytics does not farm out the work to sub-contractors or utilize overseas claims evaluators. Mr. Simmons has proposed a notice campaign designed to ensure that all potential class members receive timely and effective notice. (Ex. 3, Affidavit of Richard Simmons, Analytics Consulting LLC).

50. Under the Settlement Agreement, the Agency will post a general notice and updates to the general public regarding where to find information on the settlement. Notably, the Agency will also post an alert on the MiWAM portal advising each potential class member of their right to

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file a claim and directing them to a website managed by the Claims Administrator.²¹

51. On top of the notice provided by the Agency, Analytics' proposed notice will be sent by mail and email to every one of the potential class members on the Class List and at least two emails will be sent. These documents will direct Class Members to the settlement website where they will find clear instructions on how to make a claim and an explanation in simple terms of the criteria that will be used to evaluate their claims.

52. Mr. Simmons employs senior claims evaluators who have worked with him for many years. His staff is first rate and Class Counsel is confident that the administration of the claims will be completed efficiently, correctly and on time.

53. As QSF administrator, Analytics proposes to deposit the settlement funds with Huntington Bank. The funds will be in FDIC insured accounts and invested in money market funds consisting solely of United States treasury instruments. Current interest rates are at a favorable 3.65%. Huntington Bank is a recognized leader in providing this type of investment service. Since disbursements are not likely to take place until Spring of 2025, the investment return is projected to generate an additional \$1.5-2.5 million for the benefit of the Class. (Ex. 4, Huntington Engagement Letter)

54. Since the Settlement Agreement was finalized, Class counsel has worked closely with both Analytics and Huntington to ensure the best possible notice and the best possible investment. For example, when Class Counsel identified a potential to realize additional returns for the benefit of the Class, counsel negotiated an amendment to the Settlement Agreement solely for this purpose.²²

²¹ Settlement Agreement, Appendix B, Para. 20.

²² Settlement Agreement, Appendix C, Modifications and Amendments.

55. Both Analytics Consulting LLC and Huntington Bank are well suited for their respective roles. Class Counsel recommends their appointment.

ON THE APPOINTMENT OF MEGAN NORRIS AS SPECIAL MASTER

56. The Settlement Agreement provides for appointment of a Special Master to ensure fairness to putative class members, and to serve an important role in compliance dispute resolution.²³ First, the plan of allocation provides an appeal process by which claimants can appeal initial claim denials by the Claims Administrator to the Special Master, who will provide for independent review of any challenged claim denial. Second, the Special Master will serve an important ongoing role in implementation of the Agency reforms called for in the Settlement. The Settlement Agreement anticipates important steps to implement specific due process protections before Agency Collection Activity can restart. In the event of any disputes about compliance, the Settlement Agreement provides a unique dispute resolution mechanism to seek a recommendation from the Special Master before any involvement of the Court.²⁴

57. The Parties have selected Megan Norris to serve as Special Master. Ms. Norris is uniquely qualified for the role based on her skills and experience as an attorney and prior involvement with this case. Ms. Norris most recently served CEO of the Miller Canfield law firm. In this role, she oversaw the firm's 18 offices in six countries. Prior to becoming CEO, Megan served as the leader of the firm's Employment and Labor Group, overseeing a large team of employment and labor attorneys and staff. She also served for eight years on the Firm's Board

²³ Settlement Agreement, Para. 26.

²⁴ *Id.* (“All disputes regarding settlement compliance shall be brought to the Court only after meeting and conferring among counsel and then (if the Agency requests) presenting the disagreement to the Special Master. In such case, any petition to the Court regarding administration or compliance with this Settlement Agreement shall be accompanied by a recommendation of the Special Master for resolution of the dispute.”)

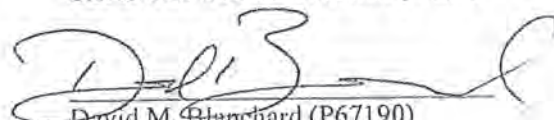
of Managing Directors and was the chair of the Board for the last six years. She is also an experienced and skilled litigator having tried more than 30 cases in state and federal courts. Megan Norris has also served as a mediator, facilitator, and arbitrator for employment matters for many years.

58. Ms. Norris has specific experience and knowledge of this case accumulated over nearly a year of mediation, fact finding, and preparation of settlement terms. She has also been previously appointed by the Court to serve as Special Master for implementation of a prior UI Settlement. Therefore, Ms. Norris is uniquely qualified for the role.

IN CONCLUSION

59. For the reasons stated upon and in the supporting documents submitted to the Court for review, Counsel for the Plaintiffs wholeheartedly endorses the terms of the Settlement Agreement as proposed to the Court as fair, reasonable and more than adequate settlement of the disputed claims. The documents provided and counsel's proffer fully support settlement approval, certification of the settlement class, appointment of Class Counsel, appointment of Class Representatives and Service Awards, appointment of the Special Master, designation of a Common Fund and the establishment of the Relief Fund, and the award of fees, costs, and set-asides as stipulated by the parties or otherwise provided for in the Settlement Agreement.

Respectfully submitted,
BLANCHARD & WALKER, PLLC


David M. Blanchard (P67190)
Attorney for Plaintiffs

Dated: April 16, 2024

STATE OF MICHIGAN
COURT OF CLAIMS

KELLIE SAUNDERS, et. al.,

Plaintiff,

v

Case No. 2022-000007-MM
Hon. Brock A. Swartzle

MICHIGAN UNEMPLOYMENT
INSURANCE AGENCY and JULIA DALE,

Defendants.

**AFFIDAVIT OF RICHARD W. SIMMONS OF
ANALYTICS CONSULTING LLC IN SUPPORT OF
PROPOSED NOTICE PROGRAM**

I, Richard W. Simmons, have personal knowledge of the facts and opinions set forth herein, and I believe them to be true and correct to the best of my knowledge. If called to do so, I would testify consistent with the sworn testimony set forth in this Declaration. Under penalty of perjury, I state as follows:

SCOPE OF ENGAGEMENT

1. I am the President of Analytics Consulting LLC (“Analytics”)¹. My company is one of the leading providers of class and collective action notice and claims management programs in the nation. It is my understanding that Analytics’ class action consulting practice, including the design and implementation of legal notice campaigns, is the oldest in the country. Through my work, I have personally overseen court-ordered class and collective notice programs in more than 3,000 matters.

¹ In October 2013, Analytics Consulting LLC acquired Analytics, Incorporated. I am the former President of Analytics, Incorporated (also d/b/a “BMC Group Class Action Services”). References to “Analytics” herein include the prior legal entity.

2. This Declaration summarizes my experience and qualifications, the proposed Notice Program² (the “Notice Plan”), and why the Notice Plan will provide the best practicable notice in this matter.

QUALIFICATIONS AND EXPERIENCE

3. Founded in 1970, Analytics has consulted for 54 years regarding the design and implementation of legal notice and claims management programs relating to class and collective action litigation. These engagements include notice and claims administration involving antitrust, civil rights, consumer fraud, data breach, employment, insurance, product defect/liability, and securities litigation.

4. Analytics’ clients include corporations, law firms (both plaintiff and defense), and the federal government. Analytics’ long-term federal contracts include the following:

- a) Since 1998, Analytics has been under contract (five consecutive five-year contracts) with the Federal Trade Commission (“FTC”) to administer and provide expert advice regarding notice (including published notice) and claims processing in their settlements/redress programs.
- b) Since 2012, Analytics has been under contract (two consecutive multi-year contracts, renewed in 2023) with the Department of Justice (“DOJ”) to administer and provide expert advice regarding (including published notice) notice and claims processing to support their asset forfeiture/remission program; and,
- c) Since 2013, Analytics has been appointed as a Distribution Agent (three consecutive five-year terms, renewed in 2023) with the Securities and Exchange Commission (“SEC”) to administer and provide expert advice regarding notice (including published notice) and claims processing to support their investor settlements.

5. I joined Analytics in 1990 and have 34 years of direct experience in designing and implementing class action settlements and notice campaigns. The notice programs I have managed

² All capitalized terms not defined herein have the same meaning as those defined in the Settlement Agreement (the “Settlement,” “Settlement Agreement” or “SA”).

range in size from fewer than 100 class members to more than 40 million known class members, including some of the largest and most complex notice and claims administration programs in history.

6. I have testified in state and federal courts as to the design and implementation of notice programs, claims processes, and the impact attorney communications has had on claims rates. As has always been my practice, I personally performed or oversaw Analytics' consulting services in each of the cases indicated on my CV, which includes a partial list of judicial comments regarding the adequacy of notice, is attached hereto as Exhibit 1.

7. I have presented to panels of judges and lawyers on issues regarding class notice, claims processing, and disbursement. In 2011, I was a panelist at the Federal Judicial Center's ("FJC") workshop/meeting regarding class action notice and settlement administration. In 2014, I was interviewed by the CFPB regarding notice and claims administration in class action litigation as part of their study on arbitration and consumer class litigation waivers. In 2016, I worked with the FTC to conduct research regarding: a) the impact of alternate forms of notice on fund participation rates; and, b) the impact of alternate formats of checks on check cashing rates. In 2016, I was an invited participant to the Duke Law Conference on Class Action Settlements regarding electronic notification of class members. In 2017, I was the primary author of the Duke Law Conference on Class Action Settlement's guide to best practices regarding the evaluation of class action notice campaigns (including notice by electronic means). In 2021, I assisted in the development of George Washington University Law School's Class Action Best Practices Checklist. In 2023, I acted as the primary author for the Rabiej Litigation Law Center' forthcoming Class Action Best Practices.

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8. I have co-authored and presented CLE programs and whitepapers regarding class notice and class action claims administration. In 2016, I co-authored a paper titled "Crafting Digital Class Notices That Actually Provide Notice" (Law360.com, New York (March 10, 2016). My speaking engagements regarding notice include: *Risks and Regulations: Best Practices that Protect Class Member Confidentiality*, HB Litigation Conference on Class Action Mastery in New York City (2018); *Recent Developments in Class Action Notice and Claims Administration*, Practising Law Institute in New York City (2017); *The Beginning and the End of Class Action Lawsuits*, Perrin Class Action Litigation Conference in Chicago (2017); *Class Action Administration: Data and Technology*, Harris Martin Target Data Breach Conference in San Diego (2014); *Developments in Legal Notice*, accredited CLE Program, presented at Shook Hardy & Bacon, LLP in Kansas City (2013), Halunen & Associates in Minneapolis (2013), and Susman Godfrey in Dallas (2014); and *Class Actions 101: Best Practices and Potential Pitfalls in Providing Class Notice*, CLE Program, presented to the Kansas Bar Association (March 2009).

9. I have been recognized by courts for my opinion as to which method of notification is appropriate for a given case and whether a certain method of notice represents the best notice practicable under the circumstances.

10. In addition to my class action consulting work, I taught a college course in antitrust economics, was a guest lecturer at the University of Minnesota Law School on issues of statistical and economic analysis, was a charter member of the American Academy of Economic and Financial Experts and am a former referee for the Journal of Legal Economics (reviewing and critiquing peer-reviewed articles on the application of economic and statistical analysis to legal issues).

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11. The Senior Executive assigned to this matter (Lisa Simmons, CEO) has direct experience administering class action notice and claims where the Michigan Unemployment Insurance Agency is the Defendant. This experience includes: receiving and interpreting data from the Michigan Unemployment Insurance Agency, receiving and processing claims associated with unemployment insurance claims, and processing appeals (including coordinating with a Special Master and the Michigan Unemployment Insurance Agency) associated with eligibility and valuation of claims.

12. This Declaration describes the Notice Program that has been proposed to be implemented in this matter and why it will satisfy MCR 3.501 and provide due process for members of the proposed Settlement Class. In my opinion, the Notice Program described herein is the best practicable notice under the circumstances and fulfills all due process requirements.

SUMMARY OF NOTICE PLAN

13. The Notice Program is the best notice that is practicable under the circumstances and fully comports with due process and MCR 3.501. The Notice Program provides for: 1) a Class Notice via U.S. Mail for all Settlement Class Member for whom a mailing address is available; and, 2) direct notice via email (the Email Notice) to all Settlement Class Members for whom the Defendant has an email addresses. Additionally, the full-length notice will be mailed upon request, and will all be available for download at the Settlement Website.

14. The Notice Program also includes a Settlement Website and toll-free telephone line where individuals can learn more about their rights and responsibilities in the litigation.

15. This Notice Plan, supported by the details outlined below, conforms to the best practices identified in the Federal Judicial Center's (or "FJC") Publication "*Judges' Class Action*

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Notice and Claims Process Checklist and Plain Language Guide" (2010) and provides the best practicable notice in this litigation.

CLASS DEFINITION

16. The Settlement Agreement defines a Class Members as either:

“all Claimants who were subject to Improper Collection based on Agency Collection Activity on any Unemployment Insurance claim filed from March 1, 2020, until the Court of Claims provides preliminary approval of the settlement of this matter.”

AVAILABLE DATA

17. I have been informed by Counsel that they have developed a dataset identifying all Settlement Class Members and that last known mailing address data have been identified for all Settlement Class Members.

DIRECT NOTICE

18. The direct notice effort in this matter will consist of mailing a Class Notice to all Settlement Class Member for whom a mailing address is available and sending a notice via email (the Email Notice) to all Settlement Class Members for whom the Defendant has an email address. In many instances, a Settlement Class Member will receive both a mailed and emailed Notice.

Direct Mailed Notice

19. No later than June 1, 2024³, the Postcard Notice will be sent by first-class mail, postage prepaid, to the last-known address, of each Settlement Class Member,

20. In preparation for mailing, mailing addresses will be updated using the National Change of Address (“NCOA”) database maintained by the United States Postal Service

³ Assuming entry of the Preliminary Approval Order on May 1, 2024.

("USPS")⁴; certified via the Coding Accuracy Support System ("CASS")⁵; and verified through Delivery Point Validation ("DPV").⁶ This ensures that all appropriate steps have been taken to send Class Notices to current and valid addresses. This address-updating process is standard for the industry.

21. Class Notices returned as undeliverable will be re-mailed to any new address available through postal service information, for example, to the address provided by the postal service on returned pieces for which the automatic forwarding order has expired, but which is still during the period in which the postal service returns the piece with the address indicated, or to better addresses that may be found using a third-party lookup service. This process is also commonly referred to as 'skip-tracing.' Upon successfully locating better addresses, mailed Notices will be promptly re-mailed.

Direct E-Mailed Settlement Notice

22. No later than June 1, 2014⁷, after the entry of the Preliminary Approval Order, Analytics will cause the Email Notice to be sent to Settlement Class Members who have an email address in the records provided by the Defendant.

23. Prior to disseminating notice via e-mail, Analytics will perform an analysis of the class data records that contain an e-mail address. The e-mail addresses will be subjected to an e-mail cleansing and will be deduplicated. The e-mail cleansing process removes extra spaces, fixes

⁴ The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.

⁵ The CASS is a certification system used by the USPS to ensure the quality of ZIP +4 coding systems.

⁶ Records that are ZIP +4 coded are then sent through Delivery Point Validation ("DPV") to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

⁷ Assuming entry of the Preliminary Approval Order on January 19, 2023.

common typographical errors in domain name, and corrects insufficient domain suffixes (e.g., gmal.com to gmail.com, gmail.co to gmail.com, yaho.com to yahoo.com, etc.).

24. The standardized e-mail addresses will then be subject to an e-mail validation process whereby each e-mail address is compared to known invalid e-mail addresses. As an additional step in the validation process, the e-mail address will be verified by contacting the Internet Service Provider (“ISP”) to determine if the e-mail address exists.

25. Additionally, Analytics designs e-mail notices to avoid many common “red flags” that might otherwise cause a Class Members’ spam filter to block or identify the e-mail notice as spam. For instance, Analytics does not include the Claim Form as an attachment to an e-mail notice, because attachments are often interpreted by various Internet Service Providers (“ISP”) as spam. Rather, in accordance with industry best practices, Analytics includes a link to all operative documents so that Class Members can easily access this information.

26. At the completion of the notice campaign Analytics will report to the Court the total number of e-mailed, mailed and delivered notices. In short, the Court will possess a detailed, verified account of the success rate of the notice campaign.

RESPONSE MECHANISMS

Toll-Free Phone Support

27. Prior to the mailing of the Notice, we will coordinate with Class Counsel to implement a dedicated toll-free number as a resource for Class Members seeking information about the Settlement.

28. By calling this number, Class Members will be able to listen to pre-recorded answers to Frequently Asked Questions (“FAQs”) or request to have a Notice mailed to them. Automated messages will be available to Class Members 24-hours a day, 7-days a week, with call

center agents also available during standard business hours. Analytics' IVR system allows Class Members to request a return call if they call outside of business hours or if they prefer not to remain on hold. This automated process confirms the caller's phone number and automatically queues a return call the next business day.

29. Calls are transferred to agents specifically assigned to an engagement using "skillset" routing. In addition to engagement-specific training, call center agents receive training regarding Analytics' applications, policies, and procedures (such as privacy and identity proofing). This training also includes customer service-oriented modules to ensure that the answers to callers' questions are delivered in a professional, conversational, and plain-English manner.

30. Answers to frequently asked questions will be standardized and managed in Analytics' centralized knowledge management system. Each time a call is delivered to an agent, the agent is provided, on-screen, with a list of questions and Counsel-approved responses. Call center agents are monitored, graded, and coached on an ongoing basis to ensure that consistent messages are delivered regarding each matter.

Settlement Website

31. Prior to the mailing of the Notice (and within 30 days of the Preliminary Approval Date), Analytics will coordinate with Class Counsel to develop an informational website to provide information to Class Members regarding the litigation and Settlement. The Settlement Website will be the principal means for Class Members to obtain information about the Settlement and file claims, requests for exclusion, changes their address, and make elections for payment by electronic means (if desired). Guided by an intent to keep Class Members fully informed, the Website will conform to key e-commerce best practices:

- a) The top section of the home page, most prominent on lower resolution monitors, will include a summary message about the litigation along with a

prominent button labeled “File Your Claim.” that takes class members to a dedicate page explaining their options for submitting a claim (including online and paper). This button will be outside the color scheme of the page (black, gray, and white), making it especially prominent; and

- b) The home page content will be simplified and streamlined, so that specific prominent language and graphic images can direct Class Members to specific content areas:
 - i) FAQs: “Learn How This Litigation Affects Your Rights and Get Answers to Your Questions About the Litigation”;
 - ii) Important Deadlines: “Important Deadlines That Will Affect Your Rights”; and
 - iii) Case Documents: “Detailed Information About the Case” including the operative Complaint, Settlement Agreement, Notice and Claim Form.

32. Recognizing the increasingly mobile nature of advertising and communications, the Website will be mobile optimized, meaning it can be clearly read and used by Class Members visiting the Website via smart phone or tablet⁸. By visiting the Website, Class Members will be able to read and download key information about the litigation, including, without limitation:

- a) Class Members’ rights and options.
- b) important dates and deadlines.
- c) answers to FAQs; and
- d) case documents.

⁸ In a consumer settlement, it is common for more than half of class members who visit a settlement website to be using a smart phone or tablet.

33. In order to ensure accessibility to information regarding the settlement to all Class Members, the design and implementation of the website for this settlement will be compliant with ADA Section 508 of the Rehabilitation Act (29 U.S.C. § 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220).

Email Support

34. The Website will contain prominent links for Class Members to ask questions about the litigation and Settlement. These links and the supporting email address will be operational prior to the commencement of the Notice Plan.

35. Every email received by Analytics will be assigned a tracking number, and the sender will receive an immediate response confirming receipt along with a link to additional information regarding the litigation. When Class Members' questions have been answered, they will be sent a follow up email asking if they have any additional questions and verifying that their questions were answered.

CLAIMS PROCESS

36. Class members will be able to submit claims to Analytics online, by mail, and by e-mail. Class members identified by UIA will be assigned a unique Claim Number and PIN that may be used to validate whether or not a Claimant is Eligible to submit a Claim. This Claim Number and PIN will appear prominently on both the Postcard Notice and Email Notice.

37. Claimants who were not assigned a Claim Number and PIN (or do not have one available to them), but nonetheless believe that they meet the definition of Class Member, will be able to submit a claim (which will include their Michigan ID Number (or "MIN"), but a provisional Claim Number will be assigned to them. Upon receipt of a claim, Analytics will confirm that the Claimant is on the Class List (using the MIN) or otherwise can demonstrate that they meet the definition of Class Member.

38. All claims will be reviewed to determine completeness and Eligibility. Claimants submitting deficient claims (including instances where a Claimant is not Eligible) will be notified of the deficiency and provided with the opportunity to perfect their claim or appeal the determination regarding Eligibility.

39. All Settlement Class Members who certify eligibility may recover pro rata from the Net Common Fund based on their Common Fund award points. One Common Fund award point shall be awarded for each dollar collected by the Agency and not returned. In addition, all Settlement Class Members may be allowed to certify to one or more enhanced award factors that justify a greater share of the Net Common Fund. Settlement Class Members electing to certify for an enhanced award will be required to submit at least one form of documentation in order to qualify for an enhanced settlement award.

PERFORMANCE OF THE NOTICE PROGRAM

Reach

40. Because of the nature of the Class, and the fact that all Class Members are known, we expect to successfully deliver the Settlement Notice to virtually all of the Class. Many courts have accepted and understood that a 75% or 80% reach is sufficient. In 2010, the FJC issued a “Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide” (the “FJC Guide”). This FJC Guide states that, “[t]he lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.”⁹ In this matter, we expect to deliver notice above this range.

⁹ *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* at 3, FED. JUD. CTR. (2010), <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>.

PLAIN LANGUAGE NOTICE DESIGN

41. The proposed Notice forms used in this matter are designed to be “noticed,” reviewed, and—by presenting the information in plain language—understood by Class Members. The Class Notice contains plain-language summaries of key information about Settlement Class Members’ rights and options pursuant to the Settlement. Consistent with normal practice, prior to being delivered and published, all notice documents will undergo a final edit for accuracy.

CONCLUSION

42. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, state and local rules and statutes, and further by case law pertaining to notice. This framework requires that: (1) notice reaches the class; (2) the notice that actually comes to the attention of the class is informative and easy to understand; and (3) class members rights and members’ rights and options easy to act upon. All of these requirements will be met in this case:

- a) Direct Notice will be provided to nearly all Settlement Class Members in this Litigation.
- b) The Settlement Notice is designed to be “noticed” and are written in carefully organized, plain language; and,
- c) Response mechanisms are designed to support Settlement Class Member requests and respond to their inquiries.

43. The proposed Notice Program will inform Settlement Class Members of the existence of the Litigation and Settlement through email and direct mail. These notice efforts will be supplemented by a website, e-mail support, and toll-free phone support. Given the availability of data regarding Class Members, and the proposed efforts to identify updated addresses for Class Members, this Notice Program provides comprehensive notice and support to Class Members.

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44. The Notice Program will provide the best notice practicable under the circumstances of this case, conforms to all aspects of MCR 3.501, and comports with the guidance for effective notice articulated in the Manual for Complex Litigation.

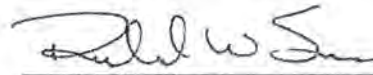
45. In my opinion, the Notice Program, if implemented, will provide the best notice practicable under the circumstances of this Litigation.

46. This Notice Program is consistent with, or exceeds:

- a) historic best practices for class notification,
- b) FJC guidance regarding class notification; and,
- c) Standards established by federal agencies with notification and distribution funds, such as the FTC, DOJ, and SEC.

under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: April 16, 2024



Richard W. Simmons
President
Analytics Consulting LLC

Subscribed and sworn to before me
this 16th day of April 2024.

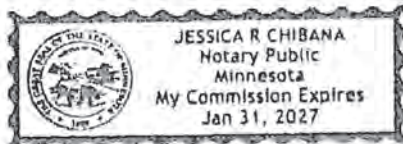

Notary Public

Exhibit 1

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Richard W. Simmons

Richard W. Simmons is the President of Analytics Consulting LLC¹. Mr. Simmons joined Analytics in 1990 and has more than 33 years of experience developing and implementing class action communications and settlement programs.

Mr. Simmons' first legal notice consulting engagement was the *Schwan's Salmonella Litigation* settlement (*In Re: Salmonella Litigation*, Case No. 94-cv-016304 (D. Minn.)). Since then, he has:

- Developed and implemented notice campaigns ranging in size up to 45 million known class members (and 180 million unknown class members);
- Testified regarding legal notice in building products, civil rights, consumer products, environmental pollution, privacy, and securities litigation settlements;
- Managed claims processes for settlement funds ranging up to \$1 billion in value.

As part of Analytics' ongoing class action notice consulting practice, Mr. Simmons:

- testified regarding the adequacy of notice procedures in direct notice cases (including the development of class member databases);
- testified regarding the adequacy of published notice plans;
- has been appointed as a Distribution Fund Administrator by the Securities and Exchange Commission tasked with developing Distribution Plans for court approval;
- has been retained as an expert by the Federal Trade Commission to testify regarding the effectiveness of competing notice plans and procedures; and,
- acted as the primary author for the Duke Law Center's guidelines for best practices regarding the evaluation of class action notice campaigns.
- assisted in developing the George Washington University Law School's Class Action Best Practices Checklist.
- acted as the primary author for the Rabiej Litigation Law Center's forthcoming Class Action Best Practices.

In addition to his class action consulting work, Mr. Simmons has taught a college course in antitrust economics, was a guest lecturer at the University of Minnesota Law School on issues of statistical and economic analysis, was a charter member of the American Academy of Economic and Financial Experts and was a former referee for the *Journal of Legal Economics* (reviewing and critiquing peer reviewed articles on the application of economic and statistical analysis to legal issues). Mr. Simmons is a published author on the subject of damage analysis in Rule 10b-5 securities litigation.

¹ In October 2013, Analytics Consulting LLC acquired Analytics Incorporated. I am the former President of Analytics Incorporated. References to Analytics herein include the prior legal entities.



ANALYTICS

Mr. Simmons graduated from St. Olaf College with a B.A. in Economics (with a year at University College, Dublin), pursued a PhD. in Agricultural and Applied Economics (with a concentration in industrial organization and consumer/behavioral economics) at the University of Minnesota², and has received formal media planning training from New York University.

APPLICATION OF TECHNOLOGY TO CLASS ACTION SETTLEMENTS

Mr. Simmons has been a visionary in the application of the Internet to class action notice campaigns and the management of settlements:

- In 1995, Mr. Simmons was the first in the nation to support class action settlements with an online presence, that included the ability to check online, the status of their claims.
- In 2000, Mr. Simmons invented online claims submission in class action litigation, filing a patent application governing "*Method and system for assembling databases in multiple-party proceedings*" US20010034731 A1.
- In 2002, Mr. Simmons established an online clearinghouse for class action settlements that provided the public with information regarding class action settlements and provided them with the ability to register for notification of new settlements. This clearinghouse received national press attention as a resource for class action settlements.
- From 2003 through 2013, Analytics' incremental changes in Internet support included class member verification of eligibility, locator services that identified retail outlets that sold contaminated products, secure document repositories, and multi-language support.
- In 2014, Mr. Simmons was the first to utilize and testify regarding product-based targeting in an online legal notice campaign
- In 2014, Analytics, under Mr. Simmons' leadership, released the first-class action settlement support site developed under e-commerce best practices.

SPEAKER/EXPERT PANELIST/PRESENTER

Mr. Simmons has presented to panels of judges and lawyers on issues regarding class notice, claims processing, and disbursement:

- Mr. Simmons served as a panelist for the Francis McGovern Conferences on "Distribution of Securities Litigation Settlements: Improving the Process", at which regulators, judges, custodians, academics, practitioners and claims administrators participated.
- In 2011, Mr. Simmons was a panelist at the Federal Judicial Center's workshop/meetings regarding class action notice and settlement administration.
- In 2014, Mr. Simmons was invited to be interviewed by the Consumer Financial Protection Bureau as an expert on notice and claims administration in class action litigation as part of their study on arbitration and consumer class litigation waivers

² Mr. Simmons suspended work on his dissertation to acquire and manage Analytics.



- In 2016, Mr. Simmons presented results of research regarding the impact of forms of notice on fund participation rates to the Federal Trade Commission.
- In 2019, Mr. Simmons was the only claims administration expert invited to be a panelist to the Federal Trade Commission's Workshop on Consumers and Class Action Notices, where he spoke regarding the impact of different forms of notice on settlement participation rates and improving response rates to class action notices.
- In 2023, Mr. Simmons was a panelist for the Rabiej Litigation Law Center Bench-Bar Conference regarding Class Action Settlements where he spoke regarding maximizing claims rates in consumer class action settlements.

Mr. Simmons' speaking engagements regarding class notice include:

- *Maximizing Claims Rates in Consumer Class Actions*, Rabiej Litigation Law Center (2023)
- *Technology and Class Action Settlements*, National Association of Securities and Consumer Attorneys (2023),
- *Risks and Regulations: Best Practices that Protect Class Member Confidentiality* presented at the HB Litigation Conference on Class Action Mastery in New York City (2018)
- *Recent Developments in Class Action Notice and Claims Administration* presented at Practising Law Institute in New York City (2017)
- *The Beginning and the End of Class Action Lawsuits* presented at Perrin Class Action Litigation Conference in Chicago (2017);
- *Class Action Administration: Data and Technology* presented at Harris Martin Target Data Breach Conference in San Diego (2014);
- *Developments in Legal Notice*, accredited CLE Program, presented at Susman Godfrey in Dallas (2014)
- *Developments in Legal Notice*, accredited CLE Program, presented at Shook Hardy & Bacon, LLP in Kansas City (2013),
- *Developments in Legal Notice*, accredited CLE Program, presented at Halunen & Associates in Minneapolis (2013),
- *Class Actions 101: Best Practices and Potential Pitfalls in Providing Class Notice*, CLE Program, presented by Brian Christensen and Richard Simmons, to the Kansas Bar Association (March 2009).

Mr. Simmons' writings regarding class notice include:

- *Crafting Digital Class Notices That Actually Provide Notice* - Law360.com, New York (March 10, 2016).

JUDICIAL COMMENTS AND LEGAL NOTICE CASES

In evaluating the adequacy and effectiveness of Mr. Simmons' notice campaigns, courts have repeatedly recognized Mr. Simmons' work. The following excerpts provide recent examples of such judicial approval in matters where the primary issue was the provision of class notice.

Honorable Stephen J. Murphy III, *Doe 1 v. Deja vu Servs., Inc.*, No. 2:16-cv-10877, ECF No. 77 (E.D. Mich. June 19, 2017):

Also, the Plaintiffs certified that notice had been provided in accordance with the Court's preliminary approval order. The notices stated—in clear and easily understandable terms—the key information class members needed to make an informed decision: the nature of the action, the class claims, the definition of the class, the general outline of the settlement, how to elect for a cash payment, how to opt out of the class, how to object to the settlement, the right of class members to secure counsel, and the binding nature of the settlement on class members who do not to opt out.

* * *

In addition, the parties took additional steps to provide notice to class members, including through targeted advertisements on social media. The Court finds that the parties have provided the "best notice that is practicable under the circumstances," and complied with the requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, and due process.³

Associate Justice Edward P. Leibensberger, *Geanacopoulos v. Philip Morris USA, Inc.*, No. 9884CV06002, Dkt. No. 230 (Mass. Super. Ct. Sept. 30, 2016):

The Court finds that the plan of Notice as described in paragraphs 12 through 20 of the Settlement Agreement, including the use of email, mail, publication and internet notice, constituted the best notice practicable under the circumstances and constituted due and sufficient notice to the Class.

Honorable Edward J. Davila, *In re: Google Referrer Header Privacy Litig.*, No. 5:10-cv-04809, ECF No. 85 (N.D. Cal. Mar. 31, 2015):

On the issue of appropriate notice, the court previously recognized the uniqueness of the class asserted in this case, since it could potentially cover most internet users in the United States. On that ground, the court approved the proposed notice plan involving four media channels: (1) internet-based notice using paid banner ads targeted at potential class members (in English and in Spanish on Spanish-language websites); (2) notice via "earned

³ Unless otherwise indicated, citations are omitted and emphasis is added.



ANALYTICS

media" or, in other words, through articles in the press; (3) a website decided solely to the settlement (in English and Spanish versions); and (4) a toll-free telephone number where class members can obtain additional information and request a class notice. In addition, the court approved the content and appearance of the class notice and related forms as consistent with Rule 23(c)(2)(B).

The court again finds that the notice plan and class notices are consistent with Rule 23, and that the plan has been fully and properly implemented by the parties and the class administrator.

Honorable Terrence F. McVerry, *Kobylanski. v. Motorola Mobility, Inc.*, No. 2:13-cv-01181, ECF No. 43 (W.D. Pa. Oct. 9, 2014):

The Court finds that the distribution of the Notice to Settlement Class Members Re: Pendency of Class Action, as provided for in the Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable under the circumstances to all Persons within the definition of the Class and fully met the requirements of due process under the United States Constitution.

Honorable Thomas N. O'Neill, Jr., *In re: CertainTeed Fiber Cement Siding Litig.*, No. 2:11-md-02270, ECF No. 119 (E.D. Pa. Mar. 20, 2014):

Settlement class members were provided with notice of the settlement in the manner and form set forth in the settlement agreement. Notice was also provided to pertinent state and federal officials. The notice plan was reasonably calculated to give actual notice to settlement class members of their right to receive benefits from the settlement or to be excluded from the settlement or object to the settlement. The notice plan met the requirements of Rule 23 and due process.

Honorable Robert W. Gettleman, *In re Aftermarket Filters Antitrust Litig.*, No. 1:08-cv-04883, ECF No. 1031 (N.D. Ill. Oct. 25, 2012):

Due and adequate notice of the Settlement was provided to the Class. . . . The manner of giving notice provided in this case fully satisfies the requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled thereto. A full and fair opportunity was provided to the members of the Class to be heard regarding the Settlements.

Honorable Marco A. Roldan, *Plubell v. Merck & Co., Inc.*, NO. 04CV235817-01, Final Judgment and Order (Mo. Cir. Ct. Mar. 15, 2013):

Under the circumstances, the notice of this Settlement provided to Class Members in accordance with the Notice Order was the best notice practicable of the proceedings and

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matters set forth therein, including the proposed Settlement, to all Persons entitled to such notice, and said notice fully satisfied the requirements due process and Missouri law.

Honorable James P. Kleinberg, *Skold v. Intel Corp.*, No. 2005-CV-039231, Order on Motion for Approval (Cal. Super. Ct. Mar. 14, 2013):

The Court finds that Plaintiff's proposed Notice plan has a reasonable chance of reaching a substantial percentage of class members.

Honorable J. Phil Gilbert, *Greenville IL v. Syngenta Crop Prot., Inc.*, No 3:10-cv-00188, ECF No. 325 (S.D. Ill. Oct. 23, 2012):

The Notice provided to the Class fully complied with Rule 23, was the best notice practicable, satisfied all constitutional due process requirements, and provides the Court with jurisdiction over the Class Members.

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Exhibit 2

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*Saunders, et al. v State of Michigan
Unemployment Insurance Agency, et al.,
Analytics Consulting LLC
c/o Settlement Administrator
PO Box XXXX
Chanhassen, MN 55317*

FIRST-CLASS MAIL
U.S. POSTAGE PAID
CITY, ST
PERMIT NO. XXXX

NOTICE OF CLASS ACTION SETTLEMENT
If the Michigan UJA seized money from you, garnished wages, withheld benefits after you submitted a protest or appeal regarding any Unemployment Insurance claim filed by you since March 1, 2020, you are entitled to submit a claim for monetary compensation under a class action settlement.

z z z: 100000000000000000000000

<<Barcode>>
Class Member ID: <<Refnum>>
<<FirstName>> <<LastName>>
<<BusinessName>>
<<Address>>
<<Address2>>
<<City>>, <<ST>> <<Zip>> <<zip4>>

WHO IS A CLASS MEMBER?

In the lawsuit *Kelly Saunders, et al. v State of Michigan Unemployment Insurance Agency, et al.*, Michigan Court of Claims, Case No. 22-000007-MM, you were subject to an Improper Collection on any Unemployment Insurance claim filed since March 1, 2020 (the "Settlement Class").

WHAT ARE THE SETTLEMENT BENEFITS AND TERMS?

Under the Settlement, UIA has agreed to pay \$55,000,000.00 into a Qualified Settlement Fund. All Class Members may submit claims to receive Pro Rata Cash Payments to refund any Improper Collection not yet returned. In addition to these cash payments, Class Members who believe they suffered additional damages are allowed to submit a claim for one or more enhanced award factors that justify a greater share of the Common Fund. Claims will be pro rata adjusted up or down based on the balance of the Settlement Fund after payments for a) reasonable attorneys' fees; b) litigation costs and expenses to Class Counsel; c) the expenses of the Settlement Administrator, Notice Administrator, and QSF Settlement Administrator; and d) the Named Plaintiffs' Service Payment. UIA has also agreed to implement or continue a series of procedural changes to limit the likelihood of a future Improper Collection.

WHAT ARE YOUR RIGHTS AND OPTIONS?
Submit a Claim Form. To qualify for a cash payment, you must complete and submit a Claim Form available online at www.Domain.com 1/3 of the \$55,000,000 Settlement Fund (i.e. no more than \$18,333,333.33) plus ("Settlement Website"). Your Claim Form must be postmarked or submitted online no later than [redacted], 2024. Please visit the Settlement Website for more details.

Opt-Out. You may exclude yourself from the settlement and retain your ability to sue UIA on your own by mailing a written request for exclusion to the Settlement Administrator that is postmarked no later than [redacted], 2024. If you do not exclude yourself, you will be bound by the settlement and give up your right to sue regarding the released claims.

Objection. If you do not exclude yourself, you have the right to object to settlement. Written objections must be signed, postmarked no later than [redacted], 2024, and provide the reasons for the objection. Please visit the Settlement Website for more details.

Do Nothing. If you do nothing, you will not receive a Settlement payment and will lose the right to sue regarding the released claims. You will be bound by the Court's decision because this is a conditionally certified class action.

Hearing on [redacted], 2024 at [time]. All persons who timely object to the Final Approval Hearing. The Court will hold a Final Approval Hearing on [redacted], 2024 at [time]. You may appear at the Final Approval Hearing. You may retain your own attorney to represent you at the Final Approval Hearing, but you are not required to do so.

Who are the Named Plaintiffs? Theresa Brandt, Dawn Davis, Josh Eggleston, Anna Logan, Kellie Saunders, Cheryl Lisa Sheplard, Erik Varga, and Elen Zestos are the Class Representatives or "Named Plaintiffs" in this lawsuit. They have remained engaged in representing the Class's interests during this litigation and reviewed and approved the proposed Settlement. They will seek a Service Award of \$25,000.00 for their services.

Who are the attorneys for the Plaintiffs and the proposed Class? Class Counsel is David Blanchard and the law firm of Blanchard & Walker PLLC. **Do I have any obligation to pay attorneys' fees or expenses?** No. The attorneys' fees and expenses will be paid exclusively from the Settlement Fund as awarded and approved by the Court. The attorneys' fees will be in an amount not to exceed \$55,000,000 Settlement Fund (i.e. no more than \$18,333,333.33) plus expenses. The motion for attorneys' fees and expenses will be posted on the Settlement Website after it is filed with the Court.

When is the Final Approval Hearing? The final approval hearing, where the Court will determine if the settlement is fair, reasonable, and adequate, will be held on [redacted], 2024 at [time]. **Who is the Judge overseeing this settlement?** Hon. Brock A. Swartzle, Michigan Court of Claims.

Where can I locate a copy of the settlement agreement, learn more about the case, or learn more about submitting a claim? www.866-199-4565 or call 1-866-199-4565.

This Notice is a summary of the proposed settlement.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Kelly Saunders, et al. v State of Michigan Unemployment Insurance Agency, et al.

THE MICHIGAN COURT OF CLAIMS AUTHORIZED THIS NOTICE.

THIS IS NOT A SOLICITATION FROM A LAWYER. YOU ARE NOT BEING SUED.

THIS NOTICE AFFECTS YOUR LEGAL RIGHTS.

If You Were Subject to to Improper Collection based on Agency Collection Activity on any Unemployment Insurance claim filed from March 1, 2020 to __, 2024, You Could be Eligible for a Payment from a Class Action Settlement

- You may be eligible to receive a payment from a proposed \$55,000,000 non-reversionary class action settlement (the "Qualified Settlement Fund").
- The class action lawsuit concerns Improper Collections based on Agency Collection Activity on any Unemployment Insurance claim filed from March 1, 2020 to __, 2024. Improper Collection means: money collected from a Class Member by any method: (a) while a timely protest or appeal, or a late protest or appeal with good cause, was pending, (b) after a claimant attempted to protest or appeal and was unable to access services, or (c) after a claimant submitted a protest or appeal that was not timely processed, never processed, or later deleted.
- UIA denies any wrongdoing and denies that it has any liability but has agreed to settle the lawsuit on a classwide basis.
- Eligible claimants under the Settlement Agreement will be eligible to receive one and/or two of the following Settlement benefits:
 - ❖ Reimbursement of Amounts Collected by Agency: All Settlement Class Members who certify eligibility may recover pro rata from the Net Common Fund based on their Common Fund award points. One Common Fund award point shall be awarded for each dollar collected by the Agency and not yet refunded.
 - ❖ Enhanced Award: All Settlement Class Members may be allowed to certify to one or more enhanced award factors that justify greater share of the Net Common Fund. Settlement Class Members electing to certify for an enhanced award will be required to submit at least one form of agreed upon documentation in order to qualify for an enhanced settlement award.
- For more information or to submit a claim visit www._____ or call 1-866-499-4565 Monday through Saturday, between 8:30 a.m. and 5:00 p.m. E.T.
- Please read this notice carefully. Your legal rights will be affected, and you have a choice to make at this time.

	Summary of Legal Rights	Deadline(s)
Submit a Claim Form	The only way to receive payment.	Submitted or Postmarked on or Before _____, 2024
Exclude Yourself By Opting Out of the Class	Receive no payment. This is the only option that allows you to keep your right to bring any other lawsuit against Defendant for the same claims if you are a Settlement Class Member.	Submitted or Postmarked on or Before _____, 2024
Object to the Settlement and/or Attend the Final Approval Hearing	You can write to the Court about why you agree or disagree with the Settlement. The Court cannot order a different Settlement. You can also ask to speak to the Court at the Final Approval Hearing on _____, 2024 about the fairness of the Settlement, with or without your own attorney.	Received on or Before _____, 2024
Do Nothing	Receive no payment. Give up rights if you are a Settlement Class Member.	No Deadline.

- Your rights and options as a Settlement Class Member – and the deadlines to exercise your rights – are explained in this notice.
- The Court still will have to decide whether to approve the Settlement. Payments to class members will be made if the Court approves the Settlement and after any possible appeals are resolved.

What This Notice Contains

Basic Information	3
Who is in the Settlement	3
The Settlement Benefits—What You Get if You Qualify	4
How do You Submit a Claim	4
What Does Defendant Get	4
Excluding Yourself from the Settlement	5
Objecting to the Settlement	5
The Lawyers Representing You	6
The Court’s Final Approval Hearing	6
If You Do Nothing	7
Getting More Information	7

BASIC INFORMATION

2. What is the lawsuit about?

The lawsuit claims that Defendant engaged in Improper Collection activities. Improper Collection means: money collected from a Class Member by any method: (a) while a timely protest or appeal, or a late protest or appeal with good cause, was pending, (b) after a claimant attempted to protest or appeal and was unable to access services, or (c) after a claimant submitted a protest or appeal that was not timely processed, never processed, or later deleted..

Defendant denies these claims and says it did not do anything wrong. No court or other judicial entity has made any judgment or other determination that Defendant has any liability for these claims or did anything wrong.

3. Why is this lawsuit a class action?

In a class action, one or more people called class representatives or representative plaintiffs sue on behalf of all people who have similar claims. Together, all of these people are called a class, and the individuals are called class members. One court resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to the Settlement. The Settlement avoids the cost and risk of a trial and related appeals, while providing benefits to members of the Settlement Class ("Settlement Class Members"). The Class Representatives appointed to represent the Settlement Class and the attorneys for the Settlement Class ("Class Counsel," see Question 18) think the Settlement is best for all Settlement Class Members.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am part of the Settlement?

You are affected by the Settlement and potentially a member of the Settlement Class if the State of Michigan Unemployment Insurance Agency collected the money from you by any method: (a) while a timely protest or appeal, or a late protest or appeal with good cause, was pending, (b) after a claimant attempted to protest or appeal and was unable to access services, or (c) after a claimant submitted a protest or appeal that was not timely processed, never processed, or later deleted.

6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the Settlement, you may call 1-866-499-4565 with questions. You may also write with questions to:

Settlement Administrators
Settlement Administrator
address
address

www. _____

THE SETTLEMENT BENEFITS – WHAT YOU GET IF YOU QUALIFY

7. What does the Settlement provide?

Under the Settlement, UIA has agreed to pay \$55,000,000.00 into a Qualified Settlement Fund. All Class Members may submit claims to receive Pro Rata Cash Payments to refund any Improper Collection. In addition to these cash payments, Class Members who believe they suffered additional damages are allowed to submit a claim for one or more enhanced award factors that justify a greater share of the Net Common Fund. Claims will be pro rata adjusted up or down based on the balance of the Settlement Fund after payments for a) reasonable attorneys' fees; b) litigation costs and expenses to Class Counsel; c) the expenses of the Settlement Administrator, Notice Administrator, and QSF Settlement Administrator; and d) the Named Plaintiffs' Service Payment. UIA has also agreed to implement or continue a series of procedural changes to limit the likelihood of a future Improper Collections.

HOW DO YOU SUBMIT A CLAIM?

8. How do I get a benefit?

To receive a benefit under the Settlement, you must complete and submit a Claim Form (a "Claim"). Every Claim must be made on a form ("Claim Form") available at www._____ or by calling 1-866-499-4565. Read the instructions carefully, fill out the Claim Form, provide the required documentation (if appropriate), and submit it according to the instructions on the Claim Form.

9. How will claims be decided?

The Settlement Administrator, Analytics, will decide whether and to what extent any Claim made on each Claim Form is valid. The Settlement Administrator may require additional information. If you do not provide the additional information in a timely manner then the Claim will be considered invalid and will not be paid.

10. When will I get my payment?

The Court will hold a Final Approval Hearing on _____, 2024 at _____ .m. EST to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals from that decision and resolving those can take time, perhaps more than a year. It also takes time for all the Claim Forms to be processed. Please be patient.

WHAT DOES DEFENDANT GET?

11. What am I giving up as part of the Settlement?

The Defendant gets a release from all claims covered by this Settlement. Thus, if the Settlement becomes final and you do not exclude yourself from the Settlement, you will be a Settlement Class Member and you will give up your right to sue Defendant and other persons ("Released Parties") as to all claims ("Released Claims") arising out of or relating to the Security Incident. This release is described in the Settlement Agreement, which is available at www._____. If you have any questions you can talk to the law firms listed in

Question 18 for free or you can talk to your own lawyer.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to be part of this Settlement, then you must take steps to exclude yourself from the Settlement Class. This is sometimes referred to as “opting out” of the Settlement Class.

12. If I exclude myself, can I get a payment from this Settlement?

No. If you exclude yourself, you will not be entitled to receive any benefits from the Settlement, but you will not be bound by any judgment in this case.

13. If I do not exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant (and any other Released Parties) for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you want to exclude yourself, do not submit a Claim Form to ask for any benefit under the Settlement.

14. How do I exclude myself from the Settlement?

To exclude yourself, send a letter that says you want to be excluded or opt-out from the Settlement in *Kelly Saunders, et al. v State of Michigan Unemployment Insurance Agency, et al.*, Michigan Court of Claims, Case No. 22-000007-MM. The letter must: (a) state your full name, address, and telephone number; (b) contain your personal and original signature or the original signature of a person authorized by law to act on your behalf; and (c) state unequivocally your intent to be excluded from the Settlement. You must mail your exclusion request postmarked by _____, 2024, to:

Settlement Administrator
Attn: Exclusion Request
address
address

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I do not like the Settlement?

You can tell the Court that you do not agree with the Settlement or some part of it by objecting to the Settlement. The Court will consider your views in its decision on whether to approve the Settlement. The Court can only approve or deny the Settlement and cannot change its terms. To object, timely written notice of an objection in the appropriate form must be filed with the Clerk of the Court on or before the Objection Deadline: [Month, Date], 2024. The address for the Clerk of Court is _____.

Your objection must be written and must include all of the following: (i) the objector’s full name, address, telephone number, and email address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class; (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing the objector;

(v) the identity of all counsel representing the objector who will appear at the Final Approval Hearing; (vi) a list of all Persons who will be called to testify at the Final Approval Hearing in support of the objection; (vii) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation.

16. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like the Settlement and why you do not think it should be approved. You can object only if you are a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and do not want to receive any payment or benefit from the Settlement. If you exclude yourself, then you have no basis to object because you are no longer a member of the Settlement Class and the case no longer affects you. If you submit both a valid objection and a valid request to be excluded, you will be deemed to have only submitted the request to be excluded.

THE LAWYERS REPRESENTING YOU

17. Did I have a lawyer in this case?

Yes. The Court appointed David Blanchard of the law firm of Blanchard & Walker PLLC as Class Counsel to represent the Class.

18. How will the lawyers be paid?

Class Counsel will ask the Court for an award for attorneys' fees up to one-third of the Qualified Settlement Fund (\$18,333,333.33), plus reasonable litigation expenses, as well as service awards of \$25,000.00 for each Class Representative. Defendant has not agreed to any award of attorneys' fees, costs, and expenses up to those amounts, to the extent they are approved by the Court. This payment for any attorneys' fees and expenses to Class Counsel and service awards will be made out of the Qualified Settlement Fund. Any such award would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement and will be the only payment to them for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis.

Any award for attorneys' fees and expenses for Class Counsel and any Service Awards must be approved by the Court. The Court may award less than the amount requested. Class Counsel's papers in support of final approval of the Settlement will be filed no later than _____, 2024 and their application for attorneys' fees, costs, and expenses will be filed no later than _____, 2024 and will be posted on the settlement website.

THE COURT'S FINAL APPROVAL HEARING

19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ m. on _____, 2024, at _____, Courtroom ___ or by remote or virtual means as ordered by the Court. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and

adequate. If there are timely and valid objections, then the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the request for an award of attorneys' fees, reasonable costs and expenses, and any service awards. After the hearing the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The hearing may be moved to a different date or time without additional notice, so Class Counsel recommend checking www._____ or calling 1-866-499-4565

21. Do I have to attend the hearing?

No. Class Counsel will present the Settlement Agreement to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to visit the Court to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in Question 15, the Court will consider it.

22. Why I speak at the hearing?

You may ask the Court for permission to speak at the final approval hearing. To do so, you must file an objection according to the instructions in Question 16, including all the information required. Your objection must be **filed** with the Clerk of the Court no later than _____, 2024. See No. 16 for further details on the requirements for submitting an objection to the Settlement.

IF YOU DO NOTHING

23. What happens if I do nothing?

If you meet the definition of a class member, and you do nothing you will not get any money from this Settlement. If the Settlement is granted final approval and the judgment becomes final, then you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant and the other Released Parties based on any of the Released Claims related to the Security Incident, ever again.

GETTING MORE INFORMATION

24. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement itself. A copy of the Settlement Agreement is available at www._____. You may also call the Settlement Administrator with questions or to receive a Claim Form at 1-866-499-4565.

This Notice is approved by the Michigan Court of Claims. **DO NOT CONTACT THE COURT DIRECTLY IF YOU HAVE QUESTIONS ABOUT THE SETTLEMENT.** Please contact the Settlement Administrator or Class Counsel if you have any questions about the Settlement.

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National Settlement Team
The Huntington National Bank

April 10, 2024

David Blanchard
Blanchard & Walker PLLC
221 North Main St., Suite 300
Ann Arbor, MI 48104

Re: *Saunders et al v. Unemployment Insurance Agency et al*

Dear David:

Thank you for considering Huntington Bank to assist you with the *Saunders v. Unemployment Insurance Agency* settlement.

There are compelling reasons to select Huntington as your banking partner:

- Huntington is one of the country's leading banks for settlement funds. During the last 20 years, we have handled more than 5,500 QSFs with over \$75 billion and 200 million payments. These settlements include *Bauserman v. Michigan Unemployment Insurance Agency* as well as the *Flint Water Settlement* with the State of Michigan.
- Huntington will waive all bank fees for the Saunders settlement including escrow agent fees. We offer this competitive pricing structure to help you maximize the value of the settlement for the class.
- Based upon the investment criteria in the Saunders Settlement Agreement, Huntington can provide a fully insured FDIC bank account. As described in the attached material, each class member can qualify for up to \$250,000 in coverage in a single Qualified Settlement Fund (QSF) account. This is a liquid investment with a variable rate tied to market conditions. The current interest rate is 5.38%. Based upon the most recent Federal Reserve meeting, rates are expected to decrease by 0.75% by year-end (3 rate drops of 0.25% each). With this assumption, the yield at year-end would be 4.53%. Using your 6-12 month estimate for the length of the Escrow Account, the projected interest is between \$1.4 million - \$2.5 million conservatively:

FDIC Insured Account	
Principal Amount:	\$55,000,000
Current Rate:	5.38%
Projected Rate at Year-End:	4.63%
6-Month Estimated Interest:	\$1,416,250
12-Month Estimated Interest:	\$2,546,500

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- Founded in 1866, Huntington ranks in the top 1% of banks in the country with \$189 billion in assets. The bank employs 25,000 colleagues and across 39 states. Huntington is the largest bank in Michigan with 290 branches.

If you have any questions, feel free to call Chris at (215) 568-2328 or Rose at (215) 430-5289.

Sincerely,

Christopher W. Ritchie

Christopher Ritchie
Executive Managing Director

Rose K. Clark

Rose Clark
Vice President

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FDIC Pass-Through Deposit Insurance

FOR QUALIFIED SETTLEMENT FUND ACCOUNTS

What is FDIC "pass-through" deposit insurance?

FDIC "pass-through" deposit insurance is federal deposit insurance coverage that applies to the interests of owners or beneficiaries in a qualified fiduciary or custodial account, which may include a Qualified Settlement Fund (QSF) account. When a QSF account meets the requirements for passthrough coverage, the amount of FDIC deposit insurance coverage is determined based upon the ownership interest of each beneficiary, rather than the total amount in the account. Each beneficiary may be eligible for up to \$250,000 in deposit insurance. Therefore, millions of dollars in the QSF account may be covered by FDIC deposit insurance depending on the number of beneficiaries.

What are the requirements for a QSF account to be eligible for pass-through coverage?

The FDIC has three requirements for pass-through eligibility for a QSF account. First, the account records must indicate the fiduciary nature of the account by including the term "Qualified Settlement Fund" or "QSF" in the account title. Second, the Claims Administrator must be able to identify all of the class members as the beneficiaries of the funds held in the QSF account. Third, the Claims Administrator must be able to identify the individual shares of each of the class members in the QSF account. The FDIC recognizes that the final calculation of some or even all of these shares might not be accomplished at the time of failure of an insured depository institution, but must be provided within a reasonable time thereafter.

What are the responsibilities of the Claims Administrator?

The Claims Administrator has two responsibilities. First, the Claims Administrator needs to maintain and provide (upon request) the records listing all of the class members and the amount in the QSF account allocated to each class member. Second, in the unlikely event of a bank failure, the Claims Administrator will need to provide the FDIC, within a reasonable time, the list of all of the class members and the amount in the QSF account allocated to each class member.

What about the class members with claims over the FDIC's \$250,000 limit?

For class members with claims over the FDIC's \$250,000 limit, the amount of funds over the FDIC limit in the QSF account, can be invested in U.S. Treasury Bills or a U.S. Treasury Money Market Fund. This will ensure that the entire amount of the QSF is held in investments backed by the full faith and credit of the U.S. Government. The Claims Administrator must separately direct this investment for those class members for which it is applicable.

What if a class member is an existing Huntington depositor?

For any class members that are existing Huntington depositors, their deposit insurance coverage for the combined balance of their interest in the QSF account and any separate account at Huntington held in the same ownership capacity is capped at the FDIC's \$250,000 limit. Any amount of the combined balance in excess of the FDIC deposit insurance coverage limit may be invested in U.S. Treasury Bills or a U.S. Treasury Money Market Fund. The investment for any claimants who are existing depositors must be directed by the Bank for its depositors based on the information from the Claims Administrator, to manage privacy considerations as required by applicable law and Bank policy.

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FDIC Pass-Through Deposit Insurance

FOR QUALIFIED SETTLEMENT FUND ACCOUNTS

If a pension fund is a class member, does pass-through coverage extend to individual participants in the pension fund?

Yes, if a pension fund is a class member in the settlement, pass-through coverage can extend to individual participants in the pension fund, as long as (i) the records of the Bank and the Claims Administrator expressly indicate that there are multiple levels of fiduciary relationships in the account; (ii) the claim of the pension fund in the QSF expressly indicates the fiduciary nature of the relationship; and (iii) the Claims Administrator (with records from the pension fund) can identify each participant and their respective non-contingent interests in the portion of the QSF allocated to the pension fund.



Does pass-through deposit insurance coverage apply to both interest bearing and non-interest bearing accounts?

Yes, FDIC pass-through deposit insurance coverage applies to both interest bearing and non-interest bearing accounts.

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This document provides a summary regarding pass-through coverage as it may be applicable for certain Qualified Settlement Fund ("QSF") deposit accounts. This information is only a summary of FDIC deposit insurance guidance and is not a guaranty of the FDIC's determination to recognize that FDIC deposit insurance applies on a pass-through basis, and is not providing legal advice. Please consult your own legal counsel for legal advice about FDIC pass-through deposit insurance coverage.

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Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Legal Division

By Fax

September 6, 2012

Daniel W. Morton, Esq.
Senior Vice President and Associate General Counsel
The Huntington National Bank
Legal Department
41 South High Street, HCO323
Columbus, Ohio 43287

Re: Qualified Settlement Funds/Pass-Through Deposit Insurance

Dear Mr. Morton:

This will respond to your letter of June 13, 2012 (originally received in draft form), in which you request confirmation that pass-through deposit insurance coverage is available for certain class action settlement accounts established pursuant to section 468B of the Internal Revenue Code of 1986, 26 USC 468B. Specifically, you seek confirmation that 1) titling a deposit account with the term "Qualified Settlement Fund" ("QSF") signifies the fiduciary nature of the account, in compliance with the FDIC's regulations under 12 CFR 330.5(b)(1); and 2) that the beneficial ownership interests in such a deposit account are "ascertainable" within the meaning of 12 CFR 330.5(b)(2) when the identity and interests of the class members in the Qualified Settlement Fund are known.

As discussed below, we can confirm that reference to a QSF in the title of a deposit account would suffice to indicate the fiduciary nature of the account. As to the second issue, FDIC pass-through deposit insurance coverage would be available only when the identity of class members, i.e., the beneficial owners of the deposits, is known at the time of a deposit insurance determination, and the shares of each of the beneficial owners is also known at that time or within a reasonable time thereafter.

We understand a QSF is established pursuant to statute and is designed to facilitate the administration and distribution of certain class action settlements. In accordance with implementing Internal Revenue Service regulations, 26 CFR Parts 1 and 602, a fund, account or trust qualifies as a QSF only if 1) it is established pursuant to an order or, or is approved by, a governmental authority (including a court) and is subject to the continuing jurisdiction of that authority; 2) the fund, account or trust is established to resolve a variety of specified claims; and 3) the fund, account or trust is a trust established under state law or its assets are segregated from other assets of the transferor, that is, the party against whom the claims lie.

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We also understand that transfer of the agreed-upon settlement amount to the QSF relieves the defendant(s) of further liability on the claims at issue. This being the case, and assuming that it is the Administrator of the QSF that establishes the deposit accounts, the deposit accounts would be fiduciary in nature, with ownership in the individual class members. Accordingly, the use of "Qualified Settlement Fund" in the title of such deposit accounts would suffice to indicate their fiduciary nature for purposes of 12 CFR 330.5(b)(1).

In order to establish the beneficial ownership necessary to qualify for pass-through deposit insurance under 12 CFR 330.5(b)(2), in the circumstances raised by your inquiry, two issues must be addressed. First, the Administrator must be able to identify the specific members of the class. Consistent with Advisory Opinions Nos. 90-68 and 92-58, we reiterate that pass-through deposit insurance would *not* be available if, at the time of a deposit insurance determination, the identity of class members cannot be ascertained because the class action is still pending or the claims administration process has yet to run its course. Since a QSF is employed in connection with the settlement of a class action, the first contingency would not appear to be an issue, and you have represented that the only QSFs for which you seek to confirm pass-through coverage are those associated with class actions in which the members of the class are "readily ascertainable from records of the defendant."

Second is the matter of identifying the individual *shares* of the beneficial owners/class members, assuming their identities are not at issue. Your letter states that "at any point in time after the Escrow Account is opened the records maintained by the QSF Administrator on behalf of Huntington Bank will identify and show the interest of each class member," (p. 6) Elsewhere your letter describes procedures wherein, after the QSF is established, notice is sent to class members advising, *inter alia*, what amounts the class members may be entitled to and how settlement amounts will be calculated. (p. 3).

This latter statement is consistent with our understanding of the use of a QSF as a settlement vehicle, namely to permit the defendant(s) in class actions or where there are multiple plaintiffs to cut off liability and realize tax benefits by depositing a gross settlement amount into a QSF. As the author of the Utah Trial Journal article made available to the FDIC in support of your letter states, "in larger cases and those with *multiple claimants* [there are] a myriad of issues to be addressed before all claimant-specific terms of a settlement can be resolved and settlement funds disbursed." Dan Hindert, Section 468B Settlement Funds: What They Are, and When and How to Use Them, Utah Trial Journal, Vol. 33, No. 1, Winter/Spring 2010, p. 35.

Your letter specifically states that Huntington requires the QSF Administrator "to maintain a record identifying the interests of current class members," and counsel has represented that this statement means that, not only are the identities of the class members known at the time the Escrow Account is opened, but also the individual shares of the class members. We also understand that the QSF Administrator is responsible for updating the records to account for any changes in class members and their ownership shares. Even so, it does appear possible that the final calculation of some or even all of these shares might not have been accomplished at the

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time of failure of the insured depository institution into which settlement funds had been deposited if the settlement funds are still in an Escrow rather than a Distribution Account. Given this possibility, we believe Advisory Opinion 95-6 provides guidance only to the extent final settlement amounts have been transferred to the Distribution Account. There, as with the insurance premium payments that moved in and out of the account at issue in Advisory Opinion 95-6, the settlement amounts would be fixed; in the event of a bank failure the Administrator's records would indicate which shares remained to be paid out and to whom

Notwithstanding the possibility that, with respect to the Escrow Account, individual settlement shares might not be calculated and fixed at the time of a bank failure and deposit insurance determination, we can advise that pass-through deposit insurance would be available if the Administrator were able to identify the individual beneficial interests to the FDIC within a reasonable time with respect to all the members of the class at the time of failure.

Please let me know if you have any further questions.

Sincerely,



Catherine A. Ribnick
Counsel
Legal Division, FDIC
(202) 898-6803
cribnick@fdic.gov

cc: Scott R. Fryzel
Chapman and Cutler LLP

The opinions expressed herein represent the views of Legal Division staff and should only be considered advisory in nature. Staff opinions are not binding upon the FDIC or its Board of Directors. In addition, the information provided is not meant to be all inclusive and the opinions expressed herein are based upon the facts presented in the original request. Any changes in the facts or circumstances may result in different conclusions.

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FDIC Law, Regulations, Related Acts

Code of Federal Regulations (CFR)

PART 330 – DEPOSIT INSURANCE COVERAGE

§ 330.5 Recognition of deposit ownership and fiduciary relationships.

(b) *Fiduciary relationships--(1) Recognition.* The FDIC will recognize a claim for insurance coverage based on a fiduciary relationship only if the relationship is expressly disclosed, by way of specific references, in the "deposit account records" (as defined in § 330.1(e)) of the insured depository institution. Such relationships include, but are not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian pursuant to which funds are deposited. The express indication that the account is held in a fiduciary capacity will not be necessary, however, in instances where the FDIC determines, in its sole discretion, that the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship.

(2) *Details of fiduciary relationships.* If the deposit account records of an insured depository institution disclose the existence of a relationship which might provide a basis for additional insurance (including the exception provided for in paragraph (b)(1) of this section), the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.

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MICHIGAN STATE BAR FOUNDATION MSBF

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To Whom it May Concern,

The Michigan State Bar Foundation was created in 1947 and is the largest state funder for civil legal aid in Michigan. Since the pandemic, civil legal aid organizations have seen a significant increase in requests for assistance with unemployment benefits. Unemployment benefits are intended to mitigate a sudden loss of income for Michigan workers. The availability of immediate funding for unemployment legal assistance will have a significant impact in the short term. It will allow the organizations to increase services and provide timely assistance to workers now.

The Foundation requires regular reports, collects data, and evaluates grantees to assure efficient and effective services are provided. The Foundation provides annual grants and/or support to the following regional and statewide nonprofit legal aid organizations that provide legal assistance in unemployment matters:

Counsel and Advocacy Law Line	Legal Services of Northern Michigan
Farmworker Legal Services	Michigan Advocacy Program
Lakeshore Legal Aid	Michigan Immigrant Rights Center
Legal Aid of Western Michigan	Michigan Poverty Law Program (MPLP)
Legal Services of Eastern Michigan	Sugar Law Center

The Foundation is willing and able to administer a grant program, open to the grantees listed above, and fund organizations that can demonstrate the capacity and expertise to provide legal assistance in unemployment matters. Please see the attached sheet that provides a summary of each organization. The Foundation anticipates that this grant program will provide access to legal advice and legal representation, possibly including a statewide hotline. If the matter is more complicated, the individual will be referred to one of the participating legal services programs for additional services, including assistance in navigating the UIA system and/or representation at an administrative hearing. This statewide structure will provide access regardless of geography, and help unemployed workers in rural areas, that might otherwise not have access to an attorney.

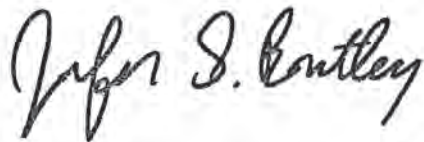
The Foundation possesses a solid administrative structure to accept and distribute these funds. The Foundation negotiates an administrative cost based on estimated costs to administer the program. The cost often ranges between 1-5%, depending on the size and complexity of the program. The Foundation has administered the Interest on Lawyer Trust Account program since 1990 and in 1994 was assigned the responsibility of administering filing fee funds. MSBF administers the contracts and bidding process for the provision of Indigent Civil Legal Assistance through state filing fees, pursuant to MCLA 600.1485.

The Foundation also administers other annual funding. Since July 2020, the Michigan State Housing Development Authority has providing funding through stimulus funding, to the Michigan State Bar Foundation to administer grants to legal aid organizations to provide legal assistance to households facing eviction. Since 2022, the Michigan Department of Health and Human Services has contracted with the Michigan State Bar Foundation to administer contracts to legal aid organizations to provide legal assistance to individuals with disabilities to obtain federal Supplemental Security Income (SSI) benefits. The Foundation also administers the Access to Justice Campaign, a collaborative centralized fundraising campaign, to increase resources for fourteen regional and statewide civil legal aid organizations.

In addition, the Foundation has a history of receiving and administering grant programs as a result of settlements and cy pres awards. In 2015, the Department of Justice, directed millions of dollars to IOLTA programs, as a result of a settlement with some financial institutions, to administer grants to legal aid programs to help with foreclosure prevention and community economic development. The Michigan State Bar Foundation received 11.35 million from that settlement and administered a multi-year grant program. In 2019, the Michigan Supreme Court amended MCR 3.501 to indicate that unclaimed residual funds, unless the judgment provides otherwise, shall be disbursed to the Michigan State Bar Foundation to support access to the civil justice system for low-income residents. In February 2023, the Conference of Chief Justices and Conference of State Court Administrators passed Resolution 2, in support of efforts by State Supreme Courts to increase funding for civil legal aid and related access to justice efforts through residual funds in class action cases.

We appreciate this opportunity to provide needed funding to assist individuals with unemployment matters. If you have questions about the Foundation or this letter, please feel free to contact me at 517-346-6401 or jennifer@msbf.org.

Sincerely,

A handwritten signature in black ink that reads "Jennifer S. Bentley". The signature is written in a cursive, flowing style.

Jennifer Bentley
Executive Director

Attachment - Description of Grantee Organizations

Lakeshore Legal Aid

Lakeshore Legal Aid (LLA) provides legal assistance in the metro Detroit area (Oakland, Macomb and Wayne Counties) through offices located in Detroit, Dearborn, Mt. Clemens, Warren, Pontiac, Southfield and Taylor. LLA also administers an attorney-staffed hotline that provides services in all 83 counties. The hotline collaborates with the five regional legal aid organizations. During the COVID-pandemic, LLA expanded its range of services, advising and assisting hundreds of clients facing issues related to unemployment insurance benefits. Much of the funding to expand these services has ended, but the need has continued.

Legal Aid of Western Michigan

Legal Aid of Western Michigan provides free legal assistance in 17 counties in west Michigan with offices located in Grand Rapids, Kalamazoo, Holland, Muskegon and St. Joseph. During the pandemic, LAWMM had an attorney dedicated to unemployment insurance (UI) work, but that position was eliminated when the COVID-era funding for it ended. Funding would allow LAWMM to add more staff to conduct outreach, triage clients by providing intake services, offer personalized legal advice, and represent eligible clients with UI issues.

Legal Services of Eastern Michigan

Legal Services of Eastern Michigan (LSEM) provides free legal assistance in 14 Mid-Michigan counties with staffed offices located in Flint and Saginaw. Since the pandemic, LSEM has experienced a consistent growing need in employment-related issues. LSEM currently contracts with an attorney to handle unemployment insurance advocacy cases, but the demand for assistance in this specialized area surpasses what a single part-time attorney can manage.

Legal Services of Northern Michigan

Legal Services of Northern Michigan (LSNM) provides free legal assistance in 36 counties in the northern lower peninsula and throughout the upper peninsula. LSNM has offices located in Alpena, Escanaba, Gaylor, Houghton, Marquette and Traverse City. LSNM does not currently have funding to handle unemployment insurance cases and with funding plans to hire staff focused on UI cases.

Michigan Advocacy Program

The Michigan Advocacy Program consists of five legal aid offices in south and central Michigan serving 13 counties (Legal Services of SouthCentral Michigan, LSSCM), as well as the statewide Farmworker Legal Services Program. MAP also provides administrative services for the Michigan Immigrant rights Center. LSSCM has offices in Battle Creek, Jackson, Lansing, Monroe and Ypsilanti. LSSCM, FLS and MIRC provide legal services related to unemployment insurance (UI) issues. MAP has developed expertise in this area of the law. Many of the COVID-era funding sources that allowed MAP to provide these services have ended, and the need far outweighs the available resources.

Maurice & Jane Sugar Law Center for Economic & Social Justice

The Sugar Law Center is a community-based legal center located in the heart of Detroit. Since 1991, their work has included extensive free representation of individuals and groups of workers facing unexpected loss of employment. They have been engaged in the direct representation of unemployment insurance claimants for more than 15 years. Over the past five years, Sugar Law Center assisted more than 1,000 persons annually. A grant would greatly assist their ability to continue and expand services.