STATE OF MICHIGAN
COURT OF CLAIMS

KELLIE SAUNDERS, *et al.*,

Plaintiffs,

v

MICHIGAN UNEMPLOYMENT INSURANCE AGENCY AND JULIA DALE,

Defendants.
_____/

No. 2022-000007-MM

HON. BROCK A. SWARTZLE

David M. Blanchard (P67190)
Frances J. Hollander (P82180)
Attorneys for Plaintiffs
Blanchard & Walker, PLLC
221 N. Main St., Ste. 300
Ann Arbor, MI 48104
(734) 929-4313
Blanchard@bwlawonline.com
Hollander@bwlawonline.com

Shannon W. Husband (P60352)
Rebecca M. Smith (P72184)
Laura A. Huggins (P84431)
Attorneys for Defendants
Michigan Department of Attorney General
Labor Division
3030 W. Grand Blvd., Ste. 9-600
Detroit, MI 48202
(313) 456-2200
Husbands1@michigan.gov
SmithR72@michigan.gov
HugginsL@michigan.gov
_____/

DEFENDANTS' APRIL 15, 2022 REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANTS' MARCH 14, 2022 MOTION FOR SUMMARY DISPOSITION

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INTRODUCTION

Plaintiffs disagree with Defendants' issuance of pandemic unemployment assistant (PUA) adjudications, believe that Defendants should automatically review all restitution cases to determine if the Agency should waive the resulting overpayment, and that Defendants intentionally violate law by engaging in collection activity with knowledge that a claimant has filed a timely protest or appeal to the decision establishing restitution. However, they are using the wrong court and the wrong method to do so. As such, the Agency asks that this Court dismiss this matter in its entirety.

I. Plaintiffs' own responsive pleading acknowledges that the Agency provides due process regarding PUA adjudications and that claimants have successfully challenged said adjudications through the available administrative process. Thus, no due process violation has occurred.

Plaintiffs assert that they are challenging "the constitutionality of seizure of property and the withholding of benefits that flow from Agency decisions made without due process of law" by issuing decisions that they assert conflict with the Michigan Employment Security (MES) Act's one-year limitation to issue said decisions pursuant to MCL 421.32a. *See* Plaintiffs' April 8, 2022 Response, pp 5, 11–13. However, as previously argued, the Agency's alleged failure to comply with the MES Act, by itself, is insufficient to establish the basis for a due process argument. *See* Defendants' March 14, 2022 Motion, pp 7–8. Moreover, Plaintiffs acknowledge that unknown claimants have taken advantage of their due process rights (notice and opportunity to be heard) and available administrative remedies

by appealing said decisions to the Unemployment Insurance Appeals Commission.[1] *See* Plaintiffs' April 8, 2022 Response, pp 5, 12. Said appeals resulted in decisions favorable to the claimants. *Id*. Thus, Plaintiffs have implicitly acknowledged that claimants have both notice and an opportunity to be heard as well as sufficient administrative remedies regarding an adverse PUA Agency decision. As such, they have failed to state a claim.

II. There is no state or federal law requirement that the Agency automatically review all decisions involving restitution to determine if the overpayments should be waived due to administrative or clerical error.

Plaintiffs assert that the Agency is required, without request from claimants, to automatically review all decisions establishing restitution to determine if the overpayment should be waived due to alleged Agency administrative or clerical error. *See* Plaintiffs' April 8, 2022 Response, pp 4–5, 14–16. In support of this argument, they are relying upon two Department of Labor Unemployment Insurance Program Letters: 23-80 issued on March 11, 1980 (*Id*., Exhibit 15) and 01-16, issued on October 1, 2015 (*Id*., Exhibit 16).

First, UIPL 23-80 expired on February 28, 1981. *Id*., Exhibit 15. Even if it was still in effect, it does not mandate that states automatically review all overpayment decisions. It requires states to legislatively provide for overpayment waivers in one of two ways: a system that allows for the states to automatically

[1] Plaintiffs have attached multiple exhibits to their responsive motion that are barred by court rule. MCR 2.116(G)(2) and (G)(5).

review overpayment decisions and waive restitution or a system where review is complete upon individualized request. *Id.*, Exhibit 15, p 2 (emphasis added). UIPL 23-80 gave states the option of selecting one of the two options and recommended that the states select the second option because it was more "manageable and economical"—Michigan selected the second option. *Id.*; MCL 421.62(a). Further, UIPL 01-16 does not mandate automatic waiver review by states. *See* Plaintiffs April 8, 2022 Response, Exhibit 16, p 4. Nor does state law allow for blanket or automatic waivers. MCL 421.62(a). As such, there is no legal authority mandating that the Agency automatically review all overpayment decisions.

III. Defendants are not required to stay collection pending finality of a restitution decision.

Plaintiffs assert that the Agency is required to stay collection until the decision establishing restitution is legally final. *See* Plaintiffs' April 8, 2022 Response, pp 2–3, 17–22. There is no state or federal law requirement.

Plaintiffs cite federal law (26 USC §§ 6402(f)(3)(A) and (B)), but the authority cited does not require finality: it only requires that before the federal government intercepts a claimants federal income tax refund to pay an unemployment debt, a state must notify a claimant that a debt is owing and give claimants 60 days to present evidence that the debt is not "legally enforceable." 26 USC §§ 6402(f)(3)(A) and (B). There are no allegations that Defendants are failing to provide notice of debt or that Defendants are seizing federal income tax refunds prior to the 60-day requirement. In addition, UIPL 01-16 does not require a stay of collection pending

the application of an overpayment waiver ("[s]tate law *may* provide that if a request for waiver is filed the state may not commence [collection.]" *See* Plaintiffs; April 8, 2022 Response, Exhibit 16, p 4.

Moreover, while the *Zynda* settlement agreement required Defendant Agency to suspend collection until an Agency decision was final (*See* Plaintiffs; April 8, 2022 Response, Exhibit 22, Agreement p 5, ¶13), any alleged unintentional violation does not establish a constitutional violation where the agreement provides notice and opportunity to be heard by any aggrieved party. If an alleged violation of the *Zynda* agreement occurred, a claimant's remedy would be to report the alleged violation to Defendant Agency and then seek relief in federal court. (*See* Plaintiffs; April 8, 2022 Response, Exhibit 22, Stipulation p 2; Agreement pp 7–8, ¶23)

Finally, Plaintiffs have failed to cite any authority that the CARES Act requires states to suspend collection activity of PUA debt or that Indiana and Arkansas' agreement to do so is binding on Defendants. This Court should therefore consider arguments in favor of them abandoned. *King v Oakland County Prosecutor*, 303 Mich App 222, 236 (2013). In *King*, this Court declined to find the authority to support a party's position. *Id.* If a party failed to cite sufficient authority, the position would be abandoned on appeal. *Id.*

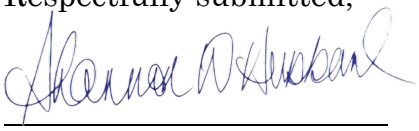
CONCLUSION AND RELIEF REQUESTED

As argued in Defendants' March 14, 2022 motion and brief to dismiss, the Plaintiffs' complaint should be dismissed in its entirety because this Court lacks

jurisdiction over Plaintiffs' claims and Plaintiffs have failed to plead sufficiently viable claims on which the Court could grant relief.

For these reasons, the Defendants respectfully request that this Court dismiss the complaint.

Respectfully submitted,



Shannon W. Husband (P60352)
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Attorneys for Defendants
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3030 W. Grand Blvd., Ste. 9-600
Detroit, MI 48202
(313) 456-2200
Husbands1@michigan.gov
SmithR72@michigan.gov
HugginsL@michigan.gov

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