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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

FLORENTINA FLORES DE VEGA,
HTOO LER PAW, HEATHER
FRANKLIN, VICKI POTROTTA,
WARREN CHAN, BRENDA COOK,
LISA EXTEROVICH, KINNARI SHAH,
ABDELKADIR ABDELKADIR
MOKRANI, DIANA OROPEZA, DAVID
KNELL, BRITTNEY CIANI, STACEY
QUINTERO, KATHY SELVAGGIO,
TRACY SOLORZANO, TERRY
PATTERSON and ERIN LACERRA, on
behalf of themselves and all others
similarly situated,

Petitioners,

v.

OREGON EMPLOYMENT
DEPARTMENT and DAVID
GERSTENFELD,

Case No. 20CV23377

**AMENDED PETITION TO COMPEL
AGENCY ACTION**

(ORS 183.490)

CLASS ACTION COMPLAINT

**NOT SUBJECT TO MANDATORY
ARBITRATION**

1 Respondents.
2

3
4 Petitioners, on behalf of themselves and all others similarly situated, allege as follows:

5 **INTRODUCTION**

6 1.

7 Oregon is facing an unprecedented public health and economic crisis. In March 2020, the
8 Governor used her emergency powers to direct Oregonians to stay home to the greatest extent
9 possible to stem the transmission of COVID 19.
10

11 2.

12 These essential public health measures forced many businesses to close their doors.
13 Hundreds of thousands of Oregonians suddenly found themselves out of work.

14 3.

15 Congress responded to the crisis by enacting the largest expansion of unemployment
16 benefits in U.S. history. The expansion increased weekly benefit amounts, extended eligibility
17 time periods, and made unemployment benefits available to self-employed and contract workers.
18 In Oregon, these expanded benefits, called Pandemic Unemployment Assistance (“PUA”) and
19 Pandemic Emergency Unemployment Compensation (“PEUC”), as well as traditional
20 unemployment insurance (“UI”) benefits and the Extended Benefits (“EB”) triggered by periods
21 of high unemployment, are administered by respondent Oregon Employment Department
22 (“OED”).
23

24 4.

25
26 Complex rules govern whether a worker is eligible for UI or one of the expanded types of

1 unemployment insurance created by Congress. The vast majority of unemployed Oregonians
2 qualify for traditional UI benefits. Even so, there has been inadequate guidance from State
3 officials since the COVID emergency began and, for many workers, choosing the correct
4 application category is impossibly confusing. Compounding the problem, OED offered no
5 correct application for the expanded federal PUA or PEUC benefits for weeks or months.
6 Desperate workers applied for unemployment benefits using any application available.
7

8 5.

9 Petitioners are among the more than 600,000 Oregon workers who have applied for these
10 critical benefits since the public health emergency began. Initially, they welcomed news of the
11 expanded benefits, relieved they would be able to pay rent, buy food, and take care of other
12 necessities during the crisis.
13

14 6.

15 That relief quickly turned to frustration. Some struggled to apply for traditional UI
16 benefits (the only benefit available at the beginning of the COVID crisis) online using OED's
17 antiquated computer system, which repeatedly crashed and would not accept applications. With
18 in-person WorkSource centers closed due to the pandemic, phone lines at OED were hopelessly
19 overwhelmed. Applicants called dozens of times a day, hoping to apply over the phone, only to
20 get a busy signal. Those who managed to get through sat on hold for hours, often being
21 disconnected without ever speaking to someone about their claim.
22

23 7.

24 Even after the online application for traditional UI benefits stopped crashing, the
25 confusing web-based application process and limited or no phone access made it difficult for
26

1 workers, including workers with disabilities or lack of technological sophistication, to apply for
2 benefits.

3
4 8.

5 The barriers were worse for the tens of thousands of unemployed Oregonians who do not
6 read or speak English. OED's longstanding and knowing failure to make its online benefits
7 system for traditional UI benefits available in any language other than English meant that these
8 claimants had no alternative to attempting to apply by phone.

9
10 9.

11 Those non-English speakers who were persistent and lucky enough to be able to talk to
12 someone at OED were often told that there was no one available to speak to them in their
13 language, and that they should wait for a call back from someone at OED who speaks their
14 language, or with an interpreter on the line. For many non-English speakers, that promised call
15 back never came.

16
17 10.

18 In the end, and with great effort, most petitioners overcame these barriers and submitted
19 applications. Some, however, never successfully applied because they never received help in a
20 language that they understand.

21
22 11.

23 Some petitioners have received written notice that there was a problem with their claim.
24 Others received nothing in writing, but believe that there must be a problem with their claim
25 because they have been waiting for months without getting paid. Applicants who try to contact
26 OED to address these problems cannot get through or are told that OED is working to get

1 through the claims backlog.

2 12.

3 OED’s backlog is not processed chronologically.¹ Many petitioners fear that the agency
4 is now employing a complaint-driven approach to resolving claims that prioritizes claimants who
5 have the resources and ability to spend all day calling over and over. The agency acknowledges
6 that claim issues cannot be resolved without speaking to claimants, but that the agency does not
7 employ a callback system.² In addition, the agency appears to be prioritizing the complaints
8 forwarded by state legislators.³

10 13.

11 Many out of work Oregonians who do not qualify for traditional UI benefits endured six
12 or seven weeks of waiting until OED created an application for PUA benefits. Oregon requires
13 many people to apply for and be rejected for traditional UI benefits before applying for PUA
14 benefits (the category of federally expanded benefits that covers self-employed and other
15 workers who do not qualify for traditional UI). Instead of automatically evaluating applicants
16 who are denied UI to see if they are eligible for PUA, OED requires people to file a separate
17 PUA application after being denied traditional UI.

19 ///

21 _____
22 ¹ Kyle Iboshi, *State employees wasted hours on Instagram as unemployment backlog grew*: “A lot of us were playing
23 on our phones.” KGW8 (June 29, 2020) <https://www.kgw.com/article/news/investigations/oregon-employment-department-employees-wasted-time-on-instagram-as-pua-unemployment-backlog-grew/283-9ff7a8a0-fe16-4b17-9fc0-681f39034d76>

24 ² Mike Rogoway, *Q&A: What’s the state of Oregon’s troubled jobless benefits system?* The Oregonian/OregonLive
25 (July 2, 2020), <https://www.oregonlive.com/business/2020/07/qa-whats-the-state-of-oregons-troubled-jobless-benefits-system.html>

26 ³ Iboshi, *supra* note 1.

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14.

A major backlog in evaluating PUA applications for payments now exists. As of the beginning of July, there were still over 60,000 PUA applications that had not even been processed, and OED does not expect to finish processing those applications until August 8, at the earliest.⁴ Even those individuals whose PUA applications have been processed and approved cannot get weekly benefit payments unless they call OED every week and ask a worker to manually process their weekly payment.

15.

Some petitioners, whether they speak English or not, have now lived through more than four months without the promised unemployment benefits: Four months of rent and utility costs; four months of needing to feed themselves and their families; four months of car insurance and medical bills; four months of sleepless nights, worry, anxiety, and fear. There have been reports that the delays have caused such desperation that some Oregonians are contemplating suicide.⁵

16.

These delays are, in part, a product of circumstances outside OED's control: a global pandemic and a surge of unemployment claims. But the delays are largely attributable to decisions within OED's control. Petitioners have been waiting four months for benefits because of OED's historic failure to modernize its systems and make them accessible to all Oregonians,

⁴ Lindsey Nadrich, *Waiting for PUA benefits? Oregon Sets target date*, KOIN 6 news (July 8, 2020), <https://www.koin.com/news/health/coronavirus/unemployment-benefits-oregon-employment-department-pandemic-unemployment-assistance-pua-claims-backlog-wait/>

⁵ Jeff Manning, *Participants offer inside look at employment department debacle*, The Oregonian/OregonLive (June 20, 2020), <https://www.oregonlive.com/business/2020/06/participants-offer-inside-look-at-employment-department-debacle.html>; Alex Zielinski, *"We were told to lie": Q&A with State Worker Processing Unemployment Claims*, Portland Mercury (June 25, 2020), <https://www.portlandmercury.com/blogtown/2020/06/25/28576547/we-were-told-to-lie-qanda-with-state-worker-processing-unemployment-claims>.

1 regardless of English proficiency. They have also been waiting four months for benefits because
2 OED has mishandled claims processing and payment during the crisis by failing to ensure equal
3 access to its application, failing to expedite processing applications and issuing benefits, and
4 failing to prioritize claimants who have been waiting the longest.

5
6 17.

7 OED has taken some actions to address the surge in demand for its services, such as
8 hiring additional staff to process the backlog of traditional UI and PUA applications. However,
9 some of those actions did not have a meaningful impact on the main problems facing out of work
10 Oregonians, as “processing” applications did not necessarily result in actually paying out
11 benefits or issuing a formal denial of benefits, few new staff were bilingual, and new hires were
12 not trained to speak directly to claimants on the phone for weeks. Even after they were allowed
13 to answer phones, some of these workers were not empowered to take actions that would speed
14 up processing and payment of benefits.⁶

15
16 18.

17 OED is unlawfully failing to act and unlawfully delaying taking action and making
18 decisions. These failures have deprived hundreds of thousands of newly out-of-work Oregonians
19 of exactly what OED is supposed to provide: a financial lifeline to pay for the basic necessities
20 of life such as food and rent. OED’s failures have forced an untold number of Oregonians to live
21 without the critical financial safety net of unemployment benefit money for a staggering 15
22 weeks—with catastrophic consequences for Oregonians who were low-income even before
23 losing their jobs.
24

25
26

⁶ Zielinski, *supra* note 4.

1 **PARTIES**

2 19.

3 Petitioners are residents of Multnomah, Washington, Clackamas, Marion, Deschutes, and
4 Lincoln Counties in Oregon. The facts regarding their attempts to obtain the unemployment
5 benefits to which they are entitled under Oregon and federal law are set out below.
6

7 20.

8 OED is an agency according to ORS 183.310(1) because it is a “state board, commission,
9 department, or division” of the state of Oregon.

10 21.

11 David Gerstenfeld is the Acting Director of OED. As such, he is an agency under ORS
12 183.310(1) because he is “an officer authorized by law to make rules or to issue orders” as
13 described in ORS 657.610.
14

15 22.

16 Director Gerstenfeld is charged with the duty to “[a]dminister the unemployment insurance
17 laws of this state to support Oregonians during periods of unemployment.” ORS 657.601.
18

19 **JURISDICTION AND VENUE**

20 23.

21 The Circuit Court for Multnomah County has subject matter jurisdiction pursuant to ORS
22 183.490.

23 24.

24 Venue is proper in the Circuit Court for Multnomah County pursuant to ORS 183.490
25 and ORS 183.484(1).
26

1 **HISTORICAL FACTS**

2 **A. Oregon’s Pre-COVID 19 Unemployment System**

3 25.

4 According to 2018 U.S. Census data, more than 229,000 Oregonians—about 6% of
5 the population—speak a language other than English and speak English less than “very
6 well.” An estimated 136,429 Oregonians speak Spanish and speak English less than “very
7 well.”
8

9 26.

10 These percentages likely understate the proportion of applicants for unemployment
11 benefits who do not speak or read English. According to a June 9, 2020 report by the Pew
12 Research Center, nationally, immigrants have faced deeper job cuts in the COVID 19
13 downturn, with a 19% job loss rate compared to a 12% job loss rate for U.S.-born workers.⁷
14

15 27.

16 Job loss in the wake of COVID 19 is particularly severe for Latina women, who have
17 seen unemployment rise more than any other race or gender group.⁸

18 28.

19 Workers who speak English "less than very well" make up 13% of Oregon's food
20 preparation and service-related workforce, according to OED.⁹ Service occupations have been
21

22 ⁷ Rakesh Kochhar, *Hispanic women, immigrants, young adults, those with less education hit hardest by COVID 19*
23 *job losses* (June 9, 2020), <https://www.pewresearch.org/fact-tank/2020/06/09/hispanic-women-immigrants-young-adults-those-with-less-education-hit-hardest-by-COVID-19-job-losses/>.

24 ⁸ Lena I. Jackson, *‘We need help,’ say Latina workers, hit hard by pandemic job losses*, PBS News Hour (July 6,
25 2020), <https://www.pbs.org/newshour/show/we-need-help-say-latina-workers-hit-hard-by-pandemic-job-losses?fbclid=IwAR1IeNm-cHIjSWEx6dzuVf43rjy3cvbMYTrVC3GcIg857PNXXR2Ny8AZBv8>.

26 ⁹ Sarah Cunningham, Oregon Employment Department Workforce and Economic Research Division, *Ability of*

1 hit especially hard by COVID 19 related layoffs.¹⁰

2 29.

3 Oregonians who do not speak or read English have long faced difficulties in accessing
4 unemployment insurance benefits. In 2001, monolingual Spanish speakers filed a federal
5 lawsuit in the U.S. District Court for the District of Oregon, *Lechuga v. Crosley*, Civil Case
6 No. 01-450-AS, alleging that OED was violating their right to equal access to unemployment
7 benefits under Title VI of the Civil Rights Act.
8

9 30.

10 In 2003, OED entered into a settlement in *Lechuga*, pursuant to which OED agreed to
11 improve language access to unemployment benefits.
12

13 31.

14 Since active monitoring of the *Lechuga* settlement stopped in 2010, advocates have
15 continued to bring language access problems to the attention of OED through advocacy for
16 individual clients as well as participation in boards such as the UI Modernization Project
17 Stakeholder Board.
18

19 32.

20 Despite these efforts, OED has consistently failed to prioritize language access in the
21 unemployment benefits system.
22

23 *Oregon Workers to Speak English Varies by Type of Job* (April 15, 2020), <https://www.qualityinfo.org/-/ability-of-oregon-workers-to-speak-english-varies-by-type-of-job>.

24 ¹⁰ Amy Vander Vliet, Oregon Employment Department Workforce and Economic Research Division, *Portland Metropolitan Area Initial Claims for Unemployment Insurance* (June 25, 2020), <https://www.qualityinfo.org/-/portland-metropolitan-area-initial-claims-for-unemployment-insurance>; Migration Policy Institute, Oregon State Immigration Data Profile, <https://www.migrationpolicy.org/data/state-profiles/state/workforce/OR#> (last visited July 7, 2020).
25
26

1 33.

2 OED processes claims for unemployment benefits using a computer system so old
3 that some of its coding dates to the 1980s.

4 34.

5 For more than a decade, OED has publicly acknowledged the dire need to update the
6 unemployment computer system.

7 35.

8 In 2009, OED received \$85.6 million in funding under the federal Unemployment
9 Insurance Modernization Act to help modernize the state unemployment system. As of
10 October 2019, \$81.7 million remained unspent. OED waited nearly ten years to even begin
11 updating the system, and now says that it does not expect the overhaul to be complete until
12 2025.

13 36.

14 The limited updates OED has made, such as the creation of an online application in
15 English, have generally helped only English-speaking claimants.

16 **B. The COVID 19 Public Health Emergency and Changes to the Unemployment**
17 **System**

18 37.

19 In response to a global outbreak of COVID 19, Oregon's Governor Kate Brown
20 announced the convening of a Coronavirus Response Team on February 28, 2020. This task
21 force was charged with coordinating state and local agencies and health authorities in preparation
22 for response to COVID 19.

23 ///

1 38.

2 On March 8, 2020, Governor Brown issued Executive Order 20-03, declaring a state of
3 emergency in Oregon due to COVID 19.

4 39.

5 On March 11, 2020, the World Health Organization declared a global pandemic. On
6 March 13, 2020, the COVID 19 outbreak was officially deemed a national emergency in the
7 United States.

8 40.

9 During the month of March, 2020, Governor Brown issued Executive Orders which
10 prohibited large gatherings, closed all schools, declared an abnormal market disruption, closed
11 restaurants and bars, and ordered the postponement of non-essential health care procedures,
12 among other things. On March 23, 2020, the Governor issued an order to all Oregonians to “stay
13 home and save lives”, requiring all Oregonians except those deemed “essential workers” to stay
14 at home, and businesses deemed non-essential to close temporarily, in order to accomplish the
15 social distancing necessary to prevent the catastrophic increase in COVID 19 diagnoses that was
16 forecasted to occur without such social and economic interruptions.
17
18

19 41.

20 On March 22, 2020, in recognition of the fact that the COVID 19 pandemic had already
21 caused a significant economic downturn in Oregon and severe economic hardship for Oregonians
22 making it difficult for them to pay basic household expenses, Governor Brown issued Executive
23 Order 20-11, prohibiting residential evictions for nonpayment of rent for the following 90 days.
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42.

On March 27, 2020, Congress passed the federal CARES Act, which dramatically expanded unemployment benefits. The CARES Act created three new sources of federally funded unemployment benefits:

- a. Pandemic Unemployment Compensation (“PUC”), which increased by \$600 the amount of weekly unemployment benefits paid from late March through July 2020, in order to ensure that the benefits would provide full wage replacement for the typical worker;
- b. Pandemic Emergency Unemployment Compensation (“PEUC”), which extended by 13 weeks the duration unemployment benefits are available, so that even individuals who had recently been unemployed would have access to benefits; and
- c. Pandemic Unemployment Assistance (“PUA”), which is available to workers typically ineligible for unemployment benefits, such as self-employed or contract workers.

43.

As a result of COVID 19 disease, the “stay at home” order, and the order for non-essential businesses to close, hundreds of thousands of Oregonians lost their jobs or lost significant income. In March 2020, Oregon’s unemployment rate was 3.5%—an historic low. In April 2020, as a result of the economic crisis caused by the COVID 19 pandemic, Oregon's unemployment rate reached a record high level of 14.2%.

44.

The Extended Benefits program (“EB”), which predates the CARES Act, provides up to 20 weeks of additional unemployment benefits during periods of high unemployment. In Oregon, EB is triggered when the three-month average unemployment rate is 6.5% or higher. Oregon

1 workers who qualify for regular UI benefits can receive EB after they have received the full
2 amount of UI and PEUC benefits.

3 45.

4 A large number of newly jobless Oregonians filed for unemployment benefits between
5 March and July, 2020. By the beginning of April 2020, more Oregon workers had filed
6 applications for unemployment benefits than in the prior 39 weeks combined.¹¹
7

8 **C. Oregon’s Inadequate Steps to Ensure Prompt Processing and Payment of**
9 **Unemployment Benefits During the COVID 19 Emergency**

10 *i. General Problems*

11 46.

12 In order to receive traditional UI, a claimant must have a qualifying work separation and
13 must be able to work, available for work, and actively seeking work. On March 17 and 26, OED
14 filed temporary rules to redefine these requirements to account for COVID 19-specific reasons
15 for being out of work. For example, in order to avoid forcing claimants to take unnecessary
16 health risks, the rules provide that a claimant will be considered to be “actively seeking work” if
17 she is willing to look for work when the state of emergency ends.
18

19 47.

20 The new temporary rules were not compatible with Oregon’s unemployment application.
21 OED created video instructions explaining to claimants how they should answer application
22
23

24
25 ¹¹ Mike Rogoway, *Laid off workers are confounded by Oregon’s overwhelmed jobless claims system*, The
26 Oregonian/OregonLive (April 3, 2020),
<https://www.oregonlive.com/business/2020/04/laid-off-workers-are-confounded-by-oregons-overwhelmed-jobless-claims-system.html>.

1 questions. Because of the mismatch between the old and new rules, the instructions are often
2 counterintuitive. For example, the unemployment application asks, “Is there any reason you can’t
3 begin full-time work now?” An applicant whose workplace was closed due to COVID 19 and
4 truthfully answers that, “yes,” there is a reason she cannot begin full-time work now, is
5 automatically disqualified from receiving benefits. The video instructs an applicant in these
6 circumstances to answer “no” to the question.
7

8 48.

9 Many people who filed for UI without watching the instructions or who weren’t able to
10 access those online instructions answered the COVID related questions incorrectly and are either
11 in the agency’s informal “adjudication process” or have been erroneously denied UI benefits.
12

13 49.

14 By May, enormous numbers of Oregonians had still received no unemployment insurance
15 benefits—some of those individuals had been out of work since mid-March. Many applicants
16 had not even received any information on whether their claim was being processed, or if they
17 needed to take some action to fix a problem with their application or claim.
18

19 50.

20 Beginning in late March, people desperate for replacement income were attempting to
21 call the agency for information, and OED phone lines were overwhelmed.¹² OED acknowledged
22 publicly that many people could not get through by phone. Many callers tried for hours every
23 day to get through, only to get a busy signal over and over again. Those who were lucky enough
24

25 ¹² Mike Rogoway, *Oregon Employment Department faces continued problems, new pressures as laid-off workers’*
26 *frustrations mount*, The Oregonian/OregonLive (April 8, 2020),
<https://www.oregonlive.com/business/2020/04/oregon-employment-department-faces-continued-problems-new-pressures-as-laid-off-workers-frustrations-mount.html>.

1 to get through by phone had an average wait time on hold of over 3.5 hours. Many people waited
2 on hold for many hours only to be disconnected by OED's phone system before ever speaking to
3 OED staff.

4
5 51.

6 On May 27 and 30, 2020, OED Director Kay Erickson and then-Assistant Director David
7 Gerstenfeld reported to the Oregon Legislative committee on Labor that 200,000 applications for
8 UI had yet to even be initially "processed". OED stated publicly that its inability to respond to
9 the increase in UI applications, as well as rapidly changing eligibility criteria for UI, were largely
10 due to the state's antiquated computer system.

11
12 52.

13 OED asserted that, by June 13, 2020, more than 99% of the 495,600 UI applications filed
14 since mid-March had been "processed". However, an application that is "processed" is not the
15 same as one that has been either approved or denied for UI benefits. To date, OED has not
16 provided data on how many of the nearly half million applicants have received a final agency
17 decision either approving or denying their application for benefits.

18
19 53.

20 An unknown number of Oregonians whose UI applications have been "processed" have
21 been put in OED's informal adjudication process. This informal adjudication process requires
22 that an OED employee contact the applicant and ask for additional information, or clarification
23 of information provided on the application. There is no timeline by which the adjudication
24 process must end and a final agency decision be issued. UI Applicants have no right to challenge
25 the agency's decision to put them into this adjudication process. Applicants placed in this
26

1 adjudication process have been waiting for as long as 15 weeks—and counting—for a final
2 agency decision on whether they can get UI benefits.

3 *ii. Language Access*

4 54.

5 Since the COVID 19 pandemic caused a surge in calls to OED, and access to OED by
6 phone has become excruciatingly difficult, individuals who need to apply for traditional UI
7 benefits over the phone because they don't speak English have been severely limited in their
8 ability to apply for UI benefits. Additionally, OED does not have an adequate number of
9 bilingual staff dedicated to talk to non-English speaking callers, so even those non-English
10 speaking callers who manage to reach OED by phone do not receive adequate help, or any help
11 at all, in the language they understand when they call.
12
13

14 55.

15 Most Oregonians apply for traditional UI benefits through the state's online application.
16 This online application is the most direct and most efficient way to apply for UI benefits.
17 Oregon's online application for traditional UI benefits is only available in English. The only way
18 to file a traditional UI claim in any language other than English is to call OED and apply over the
19 phone with an interpreter, or to request a paper application in a language other than English, fill
20 it out, and submit that application to OED.
21

22 56.

23 For many weeks after the declaration of the public health emergency, the counterintuitive
24 COVID 19 instructions described above were not available in any language other than English.
25 Without these specific instructions, applicants with limited English proficiency truthfully
26

1 answering the UI application questions such as whether they left work voluntarily or whether
2 they were currently actively looking for work would answer the questions incorrectly, leading to
3 a referral to the lengthy adjudication process or an erroneous denial of benefits.

4
5 57.

6 OED addresses problems with claims languishing in adjudication by responding to
7 individual complaints. This approach, rather than prioritizing resolution of claims by the length
8 of time the person has been waiting for benefits, again falls most heavily on the shoulders of
9 applicants who do not speak English, who are less likely to be able to communicate with OED
10 about the problem with their claim.

11
12 58.

13 OED did not create an email address to which people who speak a language other than
14 English who have computer access can send an email request for a call back from someone who
15 speaks their language until the end of May 2020.

16 In the face of mounting pressure,¹³ OED agreed to outsource part-time phone application
17 assistance for limited English proficient speakers beginning on July 6, 2020. The phone line will
18 not assist with resolving ongoing problems with benefits.

19 *iii. Pandemic Unemployment Assistance (“PUA”)*

20
21 59.

22 On April 28, 2020, OED began accepting applications for PUA, the program created by

23
24

¹³ Kate Davidson, *Applying For Unemployment Is Even Harder For Workers With Limited English*, Oregon Public
25 Broadcasting (May 16, 2020, updated May 19,2020) <https://www.opb.org/news/article/unemployment-harder-workers-with-limited-english/>

1 the federal CARES Act to support workers who lost work or earnings due to COVID 19, but who
2 do not qualify for UI.

3 60.

4 Applicants can apply for PUA by downloading a fillable PDF and uploading the
5 completed PDF through OED website (the preferred method) or by completing a paper
6 application and submitting it by fax or mail.
7

8 61.

9 The PUA application requires the claimant to “certify” that they are ineligible for regular
10 UI benefits.

11 62.

12 The rules governing eligibility for UI are highly technical. Many workers do not know if
13 they are employees who may qualify for UI or self-employed workers who would qualify for
14 PUA. Others do not know if they have worked a sufficient number of hours or earned enough
15 money during the “base period” to qualify for UI.
16

17 63.

18 Many individuals who likely qualify for PUA benefits, and not traditional UI benefits,
19 were directed to apply for UI benefits so that they could “certify” they did not qualify for regular
20 UI benefits on the PUA application. Because of the backlog in processing UI applications, this
21 meant a lengthy delay before the claimant could submit her application for PUA benefits.
22

23 64.

24 Furthermore, in about May 2020, upon information and belief, OED adopted a policy
25 regarding the classification of employment that required certain classes of self-employed or “gig
26

1 worker”¹⁴ applicants to submit an application for regular UI after they had already submitted a
2 PUA application.

3 65.

4 In Oregon, individuals who apply for UI in order to be able to “certify” that they are not
5 eligible for UI benefits on their application for PUA benefits must wait for their UI applications to
6 be “processed”, for any eligibility questions to be resolved through an informal “adjudication”
7 process or “Tax Department” review process, and then wait for their UI claim to be formally
8 approved or denied. This process often has taken many months, and many are forced to fill out a
9 PUA application after they are denied UI benefits, and then wait in line to have their PUA
10 application processed. OED’s policy of making people apply separately for PUA benefits after
11 being found ineligible for UI adds more time to an already unreasonably long delay in processing
12 PUA applications.
13
14

15 66.

16 By July 6, 2020, more than 92,000 people had submitted PUA applications to OED. Of
17 those applications, more than 65,000 of those applications had yet to even be “processed” and
18 only about 21,000 claims had been paid.¹⁵
19

20 67.

21 People who have been approved for PUA benefits are not getting regular PUA payments,
22 despite filing weekly claims to certify that they still qualify for PUA benefits. In order to get
23

24 ¹⁴ “Gig worker” is a term used to describe a person who is hired to work on demand to perform a single project or
25 task, often using a website or mobile application that matches the worker with customers. Elka Torpey and Andrew
26 Hogan, U.S. Bureau of Labor Statistics, *Working in a gig economy* (May 2016),
<https://www.bls.gov/careeroutlook/2016/article/what-is-the-gig-economy.htm>.

¹⁵ State of Oregon Employment Department, Unemployment Claims Progress as of 7/6/2020,
https://govstatus.egov.com/ORUnemployment_Claims-Progress (last visited July 7, 2020).

1 their benefits, these individuals must call weekly to prompt OED staff to manually release that
2 week's benefits. This need to call in order to have PUA benefits paid weekly is made more
3 difficult because access to OED by phone is limited due to demand, and also creates an incentive
4 for people to call OED often, adding to the difficulty for anyone trying to get through on the
5 already overburdened OED phone lines.
6

7 *iv. Pandemic Emergency Unemployment Compensation ("PEUC") and Extended*
8 *Benefits ("EB")*

9 68.

10 On May 22, 2020, OED launched the PEUC Program, which provides 13 weeks of
11 additional benefits to workers whose unemployment benefits had exhausted or expired on or
12 after July 1, 2019. Submitting a separate application for PEUC is mandatory for workers who
13 may be eligible for this extension. In a June 18, 2020 Facebook post, OED acknowledged that
14 there are at least 35,000 workers entitled to Oregon PEUC benefits.
15

16 69.

17 Because OED did not launch PEUC until nearly two months after the CARES Act was
18 passed, and after more than two months of pandemic-related economic hardship for Oregonians,
19 mandatory PEUC applicants have suffered and continue to suffer financial harm by delaying
20 their ability to apply for PEUC.
21

22 70.

23 Oregon workers who qualify for traditional unemployment benefits ("UI") can, upon
24 exhaustion of their UI and PEUC benefits, receive up to 20 additional weeks of benefits under
25 the Extended Benefits ("EB") program. EB predates the CARES Act and is becomes available
26

1 when the average three-month unemployment rate in Oregon exceeds 6.5%.

2 71.

3 There are no special additional requirements for PEUC or EB beyond using up 26 weeks
4 of regular UI or PUA. Other than the usual weekly claim certification, OED does not need to
5 gather any new information upon expiration of UI or PUA benefits to figure out if the recipient is
6 eligible for PEUC or EB.
7

8 72.

9 OED has given insufficient and confusing guidance about when a claimant must apply
10 for PEUC or EB, and has made it impossible for many Oregon workers to transition from regular
11 UI or PUA to PEUC and/or EB. In some cases, OED has told applicants who exhaust their 26
12 weeks of regular UI benefits that they must submit a new application for PEUC or EB and then
13 get at the back of the line, with interruptions of benefits lasting weeks or months.
14

15 v. *Mismanagement of the Unemployment Benefits System Caused Widespread and*
16 *Severe Delay in Processing and Paying Benefits During the COVID 19*
Emergency

17 73.

18 OED unreasonably delayed acting or making decisions by not promptly approving or
19 denying applications for unemployment benefits. Although the Agency reports progress on
20 “processing” large numbers of traditional UI applications, “processing” denotes an initial
21 assessment of an application and not a final decision to either pay or deny benefits. “Processed”
22 applications enter a waiting limbo, and applicants have no deadline by which they can expect
23 money or an official denial with the chance to appeal. Additionally, over 65,000 PUA
24 applications still have not even been “processed”. Specifically, OED failed to:
25
26

- 1 a. Establish a reasonable timeframe after an application for unemployment benefits within
2 which OED must make a final decision on eligibility and pay benefits to eligible
3 applicants;
4
5 b. Limit how long an application can wait in the informal “adjudication process” or in the
6 Tax Department Review process (determining whether someone is an “independent
7 contractor” or an “employee”) before a final decision is made;
8
9 c. Require that, as the backlog of applicants are “processed”, the oldest applications are
10 prioritized for final decisions so that the people who have waited for unemployment
11 benefits the longest can get paid; and
12
13 d. Create a system to process and pay weekly PUA claims without requiring individuals to
14 call and request payment each week.

14 74.

15 OED failed to evaluate eligibility for, and failed to pay, applicants’ retroactive benefits in
16 the traditional UI program. Specifically, OED failed to create a mechanism for applying for
17 retroactive regular unemployment benefits; furthermore, OED has failed to collect information
18 from UI applicants about when they first became unemployed and tried to apply for benefits,
19 but were thwarted by the online application crashing and the inability to reach OED by phone to
20 apply for traditional UI benefits or request a paper application.
21

22 75.

23 OED failed to provide adequate notice, guidance, and instruction to applicants so they
24 would know which unemployment benefits to apply for. Specifically, OED failed to:

- 25 a. Give clear, accurate information so that applicants could understand which application to
26

1 submit, given their particular circumstances; and

- 2 b. Communicate with applicants to explain the status of the applications received by OED,
3 whether there were errors in the application or outstanding questions that still need to be
4 answered, and, if appropriate, what additional application they must submit to obtain
5 benefits. Lack of communication and unclear, contradictory notices have increased the
6 need for applicants to call OED, exacerbated the overburdened OED phone lines, and
7 added to the frustration of people who are still waiting for unemployment benefit money.
8

9 76.

10 OED failed to provide adequate access to unemployment benefits to Oregon residents
11 who speak a language other than English. Specifically, OED failed to:

- 12 a. Create an online application for traditional UI benefits for non-English speakers,
13 especially for Spanish speakers who make up a large portion of Oregonians who are out
14 of work for COVID related reasons;
15
16 b. Provide adequate phone access for non-English speakers who cannot use the online
17 application for traditional UI benefits due to language barriers;
18
19 c. Provide adequate interpreter services over the phone for non-English speakers who
20 cannot get PUA payments without talking to an OED employee over the phone every
21 week;
22
23 d. Clearly communicate to non-English speakers on the internet about the complex
24 unemployment benefits system so that individuals can understand which type of
25 unemployment benefits to apply for; and
26
e. Consult with non-English speaking clients to identify deficiencies in the application

1 process and then address them appropriately.

2 77.

3 Finally, OED's failure to act or unreasonable delay in even accepting applicants for the
4 new benefits categories of PUA and PEUC until April 28, 2020 and May 27, 2020, respectively,
5 have caused agonizing hardship for Oregonians, who were counting on these expanded benefits
6 to help them survive. Specifically, OED failed to:
7

- 8 a. Immediately consider whether applicants denied UI were eligible for PUA, based on
9 information in the UI application and without requiring the applicant to start over with a
10 new application for each separate program, as permitted by the U.S. Department of
11 Labor,¹⁶ and
12
13 b. Timely create applications for PUA and PEUC.

14 78.

15 Oregon law gives the courts the power to order state agencies to take action that is
16 unlawfully withheld or unreasonably delayed. Petitioners cannot afford to wait any longer.

17 **D. The Individual Petitioners**

- 18
19 i. *Florentina Flores de Vega*

20 79.

21 Florentina Flores de Vega lives in Marion County. Ms. Flores de Vega is a seasonal
22 agricultural worker. Her first language is Mixteco Alto. Her second language is Spanish. She
23 does not speak, read, or write English. Ms. Flores de Vega has been out of work since December.
24

25 ¹⁶ United States Department of Labor, Unemployment Insurance Program Letter 16-20, and UIPL 16-20 Appendix I
26 Question and Answer Document, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1_Attachment_1.pdf

1 During the winter months she called her former employer to see if there was work for her but
2 was told that there was no work available.

3 80.

4 In approximately mid-March, she tried to apply for unemployment benefits by showing
5 up in person at the Woodburn WorkSource Oregon office. She found the office closed to the
6 public due to COVID, but a WorkSource employee yelled to her through the locked glass door
7 that Ms. Flores de Vega should call on the phone. Ms. Flores de Vega tried to phone the
8 Woodburn WorkSource office numerous times, but the line was always busy. Finally, at the
9 beginning of June, Ms. Flores de Vega sought out help from an advocacy organization and was
10 advised to call a different WorkSource office number.
11

12 81.

13 On approximately June 3, 2020, Ms. Flores de Vega tried calling this new WorkSource
14 Oregon office number and finally reached an employee, but that employee did not speak
15 Spanish. That employee asked her, in English, for her phone number and date of birth. Ms.
16 Flores de Vega was unable to understand what the WorkSource employee was asking, so she
17 sought help from her daughter who got on the phone and answered the WorkSource employee's
18 questions. The WorkSource employee told Ms. Flores de Vega's daughter that no one was
19 available to talk to her mother in Spanish, but that someone would call her back. Ms. Flores de
20 Vega waited for the rest of that week, but did not receive a call back.
21

22 82.

23 Ms. Flores de Vega found work for herself and began working on June 9, 2020. At some
24 point after she began her new job, Ms. Flores de Vega received a call from OED. The employee
25
26

1 did not appear to Ms. Flores de Vega to be fluent in Spanish, and she had some trouble
2 communicating with that OED employee. The OED employee asked Ms. Flores de Vega if she
3 still wanted unemployment insurance benefits. Ms. Flores de Vega reported that she was
4 currently working, and did not understand whether she could still apply for unemployment
5 benefits for the past months when she was unemployed. The OED employee did not advise her
6 that she could apply now for retroactive benefits. The OED employee told her to just wait until
7 the next time she is unemployed, and then apply again for benefits.
8

9 83.

10 Even though Ms. Flores de Vega attempted to apply for unemployment benefits in
11 March, she was never offered the chance to apply over the phone for unemployment benefits,
12 and she was never informed that she could receive retroactive benefits. Because Ms. Flores de
13 Vega was not able to use the English online application for unemployment benefits, and was not
14 able to apply at the local WorkSource office in person, and was not able to apply over the phone,
15 her access to unemployment benefits was wholly blocked due to the fact that she does not speak
16 English. She never successfully completed an application, and she never received any
17 unemployment benefits.
18

19
20 ii. *Htoo Ler Paw*

21 84.

22 Htoo Ler Paw lives in Multnomah County. She is 29 years old, is married, and is raising
23 three children. Ms. Paw has lived in Oregon since 2012, when she arrived as a refugee from
24 Myanmar. Ms. Paw speaks Karen. She speaks and understands only a very little English.

25 ///

1 85.

2 Ms. Paw was working at a hotel as a cleaning person in March of this year, when the
3 COVID pandemic struck. She was laid off from her job in mid to late March, due to COVID.
4 Ms. Paw does not read English, so she could not use the online application for traditional
5 unemployment benefits on her own.
6

7 86.

8 She applied for traditional unemployment insurance benefits through the online
9 application on approximately March 20, 2020, with the help of her former manager who speaks
10 both English and Karen. Her former manager is also helping Ms. Paw make her online weekly
11 certifications in English.
12

13 87.

14 Several weeks after she applied for unemployment benefits, Ms. Paw received a
15 document from OED asking that she send them a copy of her green card (also known as her
16 lawful permanent resident card). Ms. Paw complied and mailed a copy of her green card to OED.
17 The next week, she received another letter from OED requesting that she send a copy of her
18 green card. Ms. Paw complied again, and again sent a copy of her green card to OED. The
19 following week Ms. Paw received yet another letter from OED requesting that she send a copy of
20 her green card. Ms. Paw complied again. This pattern continued, and Ms. Paw mailed a copy of
21 her green card to OED a total of five times.
22

23 88.

24 Because Ms. Paw still had not received any unemployment benefits and because OED
25 kept repeating their request for her green card even after she had sent it to them, Ms. Paw
26

1 became concerned that something was wrong with her claim, and she began to call OED. She
2 called repeatedly. She was able to call and talk to an OED employee several times, but each time
3 she requested a Karen interpreter and never received one. Sometimes after she asked for an
4 interpreter she was put on hold for hours, only to be disconnected. Sometimes she was told she
5 would be called back with a Karen interpreter, but she never received a call back from an
6 interpreter.
7

8 89.

9 As of July 2, 2020, it had been 14 weeks since Ms. Paw applied for unemployment
10 benefits, but Ms. Paw had not received a single call from OED with a Karen interpreter, and she
11 had not received a single payment of unemployment benefits, or a final decision denying her
12 benefits. Almost immediately after this lawsuit was filed, Ms. Paw received approximately half
13 of the unemployment benefits she was owed. More unemployment benefits were sent to her
14 within the last two weeks. As of July 23rd, Ms. Paw believes she OED may have issued her the
15 rest of the payments she is owed, although she has not actually received them yet.
16

17 iii. *Heather Franklin*

18 90.

19 Petitioner Heather Franklin is a resident of Multnomah County and a parent of six
20 children. Ms. Franklin attempted to apply for unemployment benefits in March after she was
21 forced to close her business because of COVID 19 related school closures. Ms. Franklin did not
22 receive any denial of unemployment application. However, on April 23, 2020, OED sent an
23 email to Ms. Franklin indicating she'd been selected for the PUA pilot program.
24

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91.

On May 22, 2020, Ms. Franklin received an email from OED stating her application for PUA would be processed within two weeks. Ms. Franklin continued to send in timely weekly certifications for benefits for four additional weeks without receiving any additional notices or benefits. In mid-July, after filing this lawsuit, Ms. Franklin received payment for ten weeks of PUA benefits. For the first seven weeks of PUA benefits she had claimed, she received a notice telling her there was a problem with her claim and directing her to contact OED by phone within five days.

92.

Ms. Franklin's family had been relying for survival on \$648 per week that her husband was receiving in benefits due to unemployment that predated the COVID 19 crisis. Ms. Franklin's husband's benefits recently stopped. OED informed Ms. Franklin's husband that he would have to submit a new application for extended benefits (PEUC or EB) and that his application would go to the back of the line. An OED staff member predicted that the family should expect to wait 12 to 18 weeks before he starts receiving weekly benefits again. Ms. Franklin is concerned about the financial toll these delays have taken on her young family.

iv. *Vicki Petrotta*

93.

Petitioner Vicki Petrotta is a 70-year-old housecleaner living in Washington County. Ms. Petrotta first applied for regular UI benefits in March 2020. Ms. Petrotta lives with an impairment that makes processing written information difficult for her. Subsequent to her application, Ms. Petrotta received notice that she was required to contact OED to discuss her

1 claim. She has also received numerous confusing written communications, including a letter
2 addressed to her as an employer asking about her own work as an employee. Ms. Petrotta has
3 attempted to reach OED by phone on multiple occasions but has not been able to reach OED
4 because the line rings busy.

5
6 94.

7 Ms. Petrotta was worried and uncertain about her ability to meet her financial needs with
8 this long delay. Almost immediately after this lawsuit was filed, Ms. Petrotta received checks
9 from OED paying her for 6 weeks' worth of benefits. She believes that to date she has received
10 payment for less than half of the unemployment benefits that she qualifies for.

11
12 v. *Warren Chan*

13 95.

14 Petitioner Warren Chan of Multnomah County applied for unemployment benefits on
15 March 29, 2020, after the closure of his workplace because of COVID 19. Mr. Chan received a
16 notice that he would be entitled to \$406 in benefits per week. Mr. Chan called OED hundreds of
17 times in order to get more information on his claim and emailed OED as well. On April 26,
18 2020, Mr. Chan received an automatic response to an email query informing him that OED was
19 busy working through thousands of claims. On May 2, 2020, Mr. Chan received a similar
20 response to another email. On May 29, 2020, Mr. Chan received an automated message that his
21 application would be addressed through the Project Focus 100.

22
23 96.

24 In June, Mr. Chan accepted a new job offer. He reported this acceptance when he
25 submitted his weekly claim for benefits, as required under the rules. His new employer has not
26

1 yet given him a start date or scheduled him for work. The week of July 10, Mr. Chan received a
2 notice from OED asking why he was continuing to claim benefits when he had accepted an offer
3 of work.

4
5 97.

6 On July 13, after filing this lawsuit, Mr. Chan received five weeks of partial benefits
7 payments: \$205 per week in PUA and \$600 per week in PUC for each week. He did not receive
8 any explanation for why received payment for only five weeks of benefits instead of the 15
9 weeks of benefits he had, at that point, claimed. He did not receive any explanation for why he
10 was paid a base benefit level of \$205 per week rather than the \$406 per week his initial notice
11 indicated he should receive.

12
13 98.

14 To date, Mr. Chan is still not working and is missing at least two thirds of the benefits
15 payments for which he has submitted claims. Mr. Chan fears for the financial security of his
16 family without his income.

17 vi. *Brenda Cook*

18
19 99.

20 Petitioner Brenda Cook is a resident of Clackamas County. She is a single parent of three
21 children and a survivor of recent domestic violence. She applied for unemployment benefits on
22 March 15, 2020, after her business closed and her children's school closed because of the
23 COVID 19 pandemic. Ms. Cook tried to reach OED by telephone 86 times in April, 51 times in
24 May, and as of June 22, 2020, 48 times in June. Ms. Cook did not receive any benefits until May
25 2020; until that time, she was so impoverished that she could not afford to pay for incontinence
26

1 supplies for her disabled child. Ms. Cook sought domestic violence assistance through the
2 Department of Human Services and a staff member passed her the direct number to an OED
3 fraud investigator. That employee assisted Ms. Cook in receiving lump payments for past
4 accrued weeks of unemployment which she received on May 22, 2020. Many additional calls
5 resulted in payments on June 1 and June 12.
6

7 100.

8 While grateful for the back payments, Ms. Cook continues to have problems receiving
9 her weekly benefits even after timely submitting her weekly claim certification. Ms. Cook has
10 received no notice or explanation of why her benefits are delayed or unpaid, but OED staff have
11 suggested that she must call in order to have her payments authorized. Ms. Cook spends her free
12 time during the week redialing OED in the hope that she will be able to speak with someone who
13 will be willing to manually authorize her weekly benefit amount. It is very difficult for Ms. Cook
14 to reach OED staff. For example, on June 22, 2020, Ms. Cook was able to reach OED, was
15 placed on hold for two hours, and then disconnected by OED.
16

17 101.

18 Although she has been paid for all weeks as of the date of this petition, Ms. Cook has
19 now had her cell phone service disconnected and her car insurance cancelled due to non-
20 payment. As a survivor of domestic violence, Ms. Cook feels that her and her family's safety is
21 jeopardized by the delayed and unpredictable payments by OED. Ms. Cook has no reliable way
22 to contact OED each week to ensure that her benefits are actually paid.
23

24 ///

25 ///

1 vii. *Lisa Exterovich*

2 102.

3 Petitioner Lisa Exterovich, a resident of Multnomah County, and a single parent. As
4 survivors of domestic violence, Ms. Exterovich and her child are particularly vulnerable to
5 financial disruption and economic hardship. Because it was unclear whether she had sufficient
6 recent earnings for the traditional unemployment program, Ms. Exterovich did not know when
7 she applied whether she would qualify for regular UI or PUA. Due to school closure and
8 slowdown of her employment, Ms. Exterovich applied for regular UI on April 13, 2020 and
9 PUA thereafter.
10 PUA thereafter.

11 103.

12 Ms. Exterovich has made hundreds of calls to the agency but only got through once, on
13 June 12, 2020. During that call, she was told that the system had lost her PUA application and it
14 had to be retaken over the phone.
15

16 104.

17 Almost immediately after filing this lawsuit, Ms. Exterovich received a call from OED
18 informing her that her claim for benefits had been approved. In a subsequent call, OED staff
19 explained that prior to July 1 she had qualified for PUA. However, because on July 1 the “base
20 year” of earnings shifts forward a quarter, she qualified for regular UI starting July 1.
21

22 105.

23 Ms. Exterovich was paid for all claimed weeks of benefits on July 25, 2020. However,
24 she was erroneously paid regular UI for all weeks, when she should have received the higher
25 minimum PUA amount for all weeks through the end of June 2020.
26

///

1 106.

2 Ms. Exterovich is a renter extremely concerned about her ability to pay rent for her and
3 her daughter.
4

5 viii. *Kinnari Shah*

6 107.

7 Petitioner Kinnari Shah is a resident of Multnomah County and a single parent who
8 exhausted her regular UI benefits in January 2020. Ms. Shah attempted to apply for extended
9 unemployment benefits in March 2020 after her children's COVID 19-related school closure.
10 Ms. Shah attempted to reopen her UI claim online but continually received an error message
11 indicating she needed to call directly to OED.
12

13 108.

14 Ms. Shah called OED all day long for weeks. At one point, Ms. Shah managed to reach
15 OED and was put on hold for three hours before she was disconnected. In April 2020, Ms. Shah
16 applied for PUA and submitted weekly certifications. Subsequently, she tried reaching OED
17 through the PUA line. Ms. Shah called 183 times or more before she was able to get through. At
18 that time, she reached staff who told her that her PUA application was not valid and that she
19 must submit a different application for PEUC benefits.
20

21 109.

22 In May, Ms. Shah received no response to her PEUC application and weekly
23 certifications. In June, in desperation, Ms. Shah submitted an application for regular UI. The
24 agency promptly denied this application, but did not promptly issue a decision on her PEUC or
25 PUA application.
26

1 110.

2 Ms. Shah exhausted her savings and is deeply worried about her family's future. Almost
3 immediately after this lawsuit was filed, Ms. Shah was contacted by OED and told that her claim
4 is not properly a PEUC claim, but instead she is eligible for a new regular UI claim, and that the
5 application would be processed as such. Shortly thereafter, Ms. Shah received payment of
6 regular UI benefits for all the weeks she that she claimed unemployment benefits. She has not
7 yet received the \$600 PUC supplemental benefits for those same weeks.
8

9 ix. *Abdelkadir Abdelkadir Mokrani*

10 111.

11
12 Petitioner Abdelkadir Abdelkadir Mokrani is a resident of Multnomah County, a parent
13 to 5 children, and applied for regular UI on March 29, 2020. Mr. Mokrani worked multiple part-
14 time jobs to support his family. By March 2020, some of Mr Mokrani's work had slowed down
15 because of the pandemic; in addition, Mr. Mokrani was unable to perform his other work
16 because of health risks associated with the pandemic. Mr. Mokrani's application status indicated
17 his claim was not valid, so he unsuccessfully attempted to contact OED hundreds of time by
18 phone. Mr. Mokrani received repeated requests for the same documents, specifically his 2019 tax
19 returns and associated 1099 forms, which he repeatedly submitted to the agency.
20

21 112.

22 In early May 2020, Mr. Mokrani submitted a PUA application. Weeks later, on May 28,
23 2020, Mr. Mokrani received notice that he was "potentially eligible" for PUA and his weekly
24 claims were "not yet processed."
25

26 ///

1 113.

2 Mr. Mokrani again made multiple unsuccessful attempts to contact OED to confirm
3 receipt of his PUA application, his weekly claims, and his previously submitted requested
4 documents. Unsure of his status, Mr. Mokrani submitted a new application for PUA on June 4,
5 2020. To date, Mr. Mokrani has not received benefits, nor an explanation as to why he has not
6 received payment.
7

8 114.

9 Mr. Mokrani waited 15 weeks for unemployment benefits, worried about caring for his
10 children. Almost immediately after this lawsuit was filed, Mr. Mokrani was contacted by OED
11 and told that someone had looked into his case, that someone had made a mistake in telling him
12 that he was ineligible for traditional UI benefits, that he is in fact an employee and not a “gig
13 worker”, and that he would be issued his benefit payments soon. As of the date of this amended
14 filing, Mr. Mokrani received payment for two weeks of benefits. He is still awaiting payment of
15 the remaining 11 weeks of benefits that he claimed.
16

17 x. *Diana Oropeza*

18 115.

19 Petitioner Diana Oropeza is a resident of Multnomah County and a restaurant worker
20 who was employed by the same employer since 2016. After she was laid off due to temporary
21 closure of her employer, Ms. Oropeza applied for regular UI on March 22, 2020. On April 1,
22 2020, she received a denial notice stating that she did not make enough money during the base
23 period to qualify for benefits. On April 3, 2020 Ms. Oropeza submitted a request for
24 redetermination and hearing.
25
26

1 116.

2 On May 11, 2020, Ms. Oropeza received an email response indicating that she needed to
3 submit proof of her earnings, without instruction about how or where to submit them. The
4 agency offered no information about processing her request for hearing. Ms. Oropeza submitted
5 the proof of income to the same email address she had used to request a hearing.
6

7 117.

8 Meanwhile, Ms. Oropeza attempted to call OED repeatedly but was unable to get
9 through. WorkSource told Ms. Oropeza that it looked like OED was still processing her
10 application. In May, Ms. Oropeza was finally able to speak with an agent from OED who
11 confirmed that “everything looks good with the request, but it’s still being processed.”
12 Ms. Oropeza still has not received any benefits and OED online portal only states that her claim
13 is “not processed yet.” Ms. Oropeza is suffered great financial hardship after going months
14 without unemployment benefits. Almost immediately after this lawsuit was filed, Ms. Oropeza
15 was contacted by OED and told that she would be paid the benefits she is owed. On Monday,
16 July 20, Ms. Oropeza received 15 weeks of checks for unemployment benefits. Ms. Oropeza
17 believes that she is still owed benefits for one week in which she claimed benefits.
18

19
20 xi. *David Knell*

21 118.

22 Petitioner David Knell is a resident of Lincoln County. He is a hybrid worker, with base
23 years earnings from regular employment as well as self-employment. Because of his regular
24 employee earnings, he applied for traditional UI on March 28, 2020. On April 28, 2020, he
25 submitted a PUA application as well. On or about May 12, 2020, Mr. Knell received notice from
26

1 the agency that his traditional UI application was not valid based on his work history, with a
2 determination pending. Mr. Knell assumed that this denial was based on the agency's failure to
3 obtain his out-of-state wages. The notice did not advise Mr. Knell about what steps to take.

4
5 119.

6 Mr. Knell tried reaching the agency, calling at least ten times per day. In early June, Mr.
7 Knell discovered that there was a new phone line for PUA applicants and, after multiple tries,
8 was able to get through. Agency staff advised him that his PUA application would be approved
9 and he would receive benefits within a couple of days. At the very end of the call, Mr. Knell
10 asked if the agency had gathered all of his wages. In response, agency staff told him that instead
11 of paying his PUA benefits, they would transfer his application to the Tax Department for further
12 review. Mr. Knell contacted the Tax Department and OED staff told him that they could not
13 assist him.
14

15 120.

16 As of the original filing of this lawsuit, Mr. Knell had not received any benefits. He
17 recently took out a substantial loan in order to pay living expenses. He is worried about how he
18 will repay the loan and how he will meet his basic needs when the loan money runs out. Almost
19 immediately after this lawsuit was filed, Mr. Knell received a phone call from OED. Mr. Knell
20 was told that his case was being elevated to a higher tiered OED worker for resolution. Soon
21 after that, Mr. Knell received a call from an employee of the Tax Department, who told him that
22 Oregon was reviewing the earnings Mr. Knell had from other states during 2019, and then that
23 the state or Oregon would begin the process to request payment of benefits from Michigan,
24 where Mr. Knell earned income in 2019. As of the date of this filing, Mr. Knell still has not
25
26

1 received any benefits payments.

2
3 xii. *Tracy Solorzano*

4 121.

5 Petitioner Tracy Solorzano is a resident of Deschutes County who returned to work in
6 late 2019 after spending several years caring for her terminally ill mother. She was working part-
7 time at a restaurant and had a contract to provide weekly cleaning services at a salon in early
8 March, 2020. She was let go from her job at the restaurant on March 7, after business slowed
9 down due to concern about COVID 19. Her work cleaning at the salon stopped after the salon
10 closed under the Governor’s “stay home, save lives” order.
11

12 122.

13 Ms. Solorzano applied for UI on March 8, but was denied on the ground that she had
14 insufficient base year earnings. The denial notice said that she might qualify for UI based on an
15 alternate base year. Ms. Solorzano tried to call OED to provide them information about her
16 earnings in the past three months. She called 82 times in a single day before she made it past a
17 busy signal and was placed on hold. After waiting on hold for three hours, it sounded like
18 someone answered her call, but she was immediately disconnected. She attempted many times in
19 the next several weeks to call but, despite placing hundreds of calls, she never again made it past
20 the busy signal.
21

22 123.

23 Ms. Solorzano applied for PUA on April 28, 2020, the first day PUA applications became
24 available. She has great difficulty submitting her weekly certifications because she has no
25 internet access or printer at home and must try to submit the required documentation on her
26

1 smart phone. She was never sure if she successfully claimed weekly benefits.

2 124.

3 A few weeks after applying for PUA, Ms. Solorzano called the WorkSource Center in
4 Redmond and left a message. OED worker who returned her call told Ms. Solorzano, who had by
5 then gone two months without any income, that “because you were fired, the application has to
6 go all the way up the chain of command and that usually takes 6 weeks” and “there is nothing I
7 can do to help you.”
8

9 125.

10 On June 29, 2020, after going without any income for 16 weeks, Solorzano received
11 payment for 11 weeks of PUA benefits.
12

13 126.

14 Since being paid on June 29, Ms. Solorzano has not received any additional weekly
15 payments. She emailed the PUA address the first week of July to ask about those benefits, but
16 two weeks later, she has received no response. She has heard that PUA recipients have to
17 connect by phone to get their weekly benefits paid, but has been unable to get through on the
18 PUA line, despite numerous attempts.
19

20 127.

21 On July 22, 2020, Ms. Solorzano received a written notice from OED, informing her that
22 her benefits for the week of July 12 to 18 would not be paid because she had either gone back to
23 work or stopped claiming benefits. Ms. Solorzano has neither gone back to work nor stopped
24 claiming benefits.
25

26 ///

1 disconnected at 6pm. Ms. Quintero has emailed OED but never received a response.

2 132.

3 Ms. Quintero and Mr. Bailey have put out bids for new contracts, but no job sites are
4 reviewing bids because so much is on hold due to fears of a new shutdown. They fear it will be a
5 long time before their business can resume.
6

7 133.

8 Ms. Quintero's family could not keep up with their car payments and so has lost two
9 vehicles. She has borrowed money from her parents to pay the mortgage. Her father, who is 78
10 years old, has moved in with the family to help them with housing and other costs. Ms. Quintero
11 recently applied for SNAP (food stamps). She has never received public assistance before. The
12 family has drained their savings, including resorting to using money they had put aside for their
13 children, ages 7 and 12. The family is down to a single phone (the business phone) and has
14 gotten rid of their personal phones. They had belongings, including business equipment, in a
15 storage unit. When they couldn't pay the monthly storage costs, they lost all the property.
16

17 134.

18 Ms. Quintero has been under so much stress that her hair is falling out. The experience
19 has put tremendous strain on her relationship. She estimates that she gets only a few hours of
20 sleep each night.
21

22 xiv. *Kathy Selvaggio*

23 135.

24 Kathy Selvaggio is a 64-year-old resident of Clackamas County who attempted to
25 continue a prior, unexpired, regular unemployment claim in early April 2020 after she suffered a
26

1 work slowdown caused by COVID 19. OED's online claim system would not permit her claim
2 and instructed her to call OED. Ms. Selvaggio called OED hundreds of times and was not able to
3 get through to the Department. In late April 2020, Ms. Selvaggio finally reached a Work Source
4 office. Staff there instructed her to wait until her claim expired upon its one-year anniversary in
5 May, and to then apply for regular benefits again.
6

7 136.

8 In mid-May, after the expiration of her claim, Ms. Selvaggio attempted to make a new
9 claim for benefits online. She received a letter with a customer ID number for PEUC. Several
10 weeks later, having heard nothing about her claim and desperate for benefits, Ms. Selvaggio
11 contacted her state legislators for help contacting OED on her behalf. On June 12, 2020, Ms.
12 Selvaggio received a call from OED staff who informed her that she should have applied for
13 PUA rather than regular benefits or PEUC. Ms. Selvaggio, confused but determined to follow
14 agency direction, submitted a PUA application and PUA weekly certifications that very day, and
15 has since submitted weekly PUA certifications.
16

17 137.

18 Again, Ms. Selvaggio heard nothing about the status of her application and could not
19 reach OED by phone. After repeatedly calling OED, on July 16, 2020. Ms. Selvaggio was able to
20 get through to the PUA line at 8:00 am. She was placed on hold for two hours and transferred to
21 a worker who placed her on hold for an additional four and a half hours. Finally, an OED worker
22 answered, and told Ms. Selvaggio that they could not help her on the PUA line because Ms.
23 Selvaggio's claim was a regular unemployment claim, not a PUA claim. OED worker agreed to
24 transfer Ms. Selvaggio and promised it would be a 15-30 minute wait to speak with the
25
26

1 appropriate staff.

2 138.

3 After waiting for an additional three hours on hold, for a total of nine and a half hours,
4 Ms. Selvaggio was disconnected by OED because the Department's business hours had closed.
5 She has not been able to get through the line again since. On July 22, Ms. Selvaggio received a
6 message from OED, stating it could not approve her PUA application because she is potentially
7 eligible for regular UI benefits.
8

9 139.

10 Ms. Selvaggio is currently relying on free food boxes through a local church and is
11 worried about her financial stability, as she has been unable to find suitable work.
12

13 xv. *Brittney Ciani*

14 140.

15 Brittney Ciani lives in Clackamas County. She is 28 years old, and she was a cook at the
16 Old Chicago Pizza restaurant before the COVID pandemic hit Oregon. Due to COVID, the
17 restaurant closed down on March 17, 2020.
18

19 141.

20 Ms. Ciani applied for unemployment insurance on the same day that the restaurant
21 closed. She was able to submit an application for traditional UI on March 17. She filed weekly
22 certifications for 7 weeks in a row after filing. When she filed her weekly certification she would
23 receive a cryptic message from OED stating her filing was “processed but not paid”. She never
24 received any unemployment benefits, but she also never received any written communication or
25 any phone calls from OED to explain why not.
26

1 142.

2 As weeks went by with no information from OED to explain why she wasn't getting
3 benefits, Ms. Ciani tried to call OED to find out what was wrong. She called over and over again,
4 nearly every day for 7 weeks, but was never able to get through to a person. Because she was
5 confused and desperate to start getting some benefits, and because she received no information
6 from OED about why she was not getting UI benefits, Ms. Ciani thought she might have filed the
7 wrong application. She then filled out a PUA application on or around May 5, and subsequently
8 began to make weekly claims only on that PUA application.
9

10 143.

11 On July 21, Ms. Ciani tried again to make a weekly claim on her traditional UI
12 application, but when she tried to do that, she received an error message telling her that she must
13 "restart" her UI claim. The only way to "restart" a UI claim is by calling OED, talking to an
14 OED employee, and having the employee manually restart the claim. Ms. Ciani has tried, but has
15 been unable to reach someone at OED in order to "restart" her UI claim.
16

17 144.

18 As of the date of this filing, Ms. Ciani has been waiting for 18 weeks for any
19 unemployment benefit payment, or any communication about her claim from OED.
20

21
22 xvi. *Terry Patterson*

23 145.

24 Terry Patterson is a 53 year old resident of Multnomah County. He worked for an Oregon
25 company making pallets, when he was forced to quit because he became ill with COVID 19. He
26

1 applied for traditional UI on approximately March 27.

2 146.

3 Mr. Patterson was told that his benefits were “pending” while the Department adjudicated
4 issues related to a prior work separation at a former job. On or about April 28, 2020 Mr.
5 Patterson applied for PUA benefits, thinking that might solve the problem and enable him to
6 receive unemployment benefits. Mr. Patterson's PUA application has not been approved.
7

8 147.

9 Mr. Patterson and his wife currently have custody of their infant grandchild, and they are
10 unable to pay costs related to their home. The family are desperate and fearful of their financial
11 future. To make matters worse, Mr. Patterson’s wife Angela Patterson also applied for
12 unemployment benefits because she lost significant self-employment income due to COVID 19.
13 However, Ms. Patterson also has yet to receive any benefits from OED.
14

15 xvii. *Erin LaCerra*

16 148.

17 Erin LaCerra is a resident of Multnomah County. She was self-employed as an artist
18 before COVID 19 caused a drastic reduction in her ability to sell her art to retailers and directly
19 to consumers at the Portland Saturday Market. Ms. LaCerra applied for regular UI on March 22,
20 2020, with the week ending March 16 as her first week claimed.
21

22 149.

23 Ms. LaCerra did not hear anything from OED about her claim for two months. On May
24 15 she received a notice from OED stating she was eligible for a regular unemployment weekly
25 benefit amount of \$349 and \$600 additional per week under the CARES Act. However, Ms.
26

1 LaCerra never received any unemployment benefits payments of any type. Desperate for
2 benefits, and confused about why she had received none after 8 weeks of waiting, she applied for
3 PUA benefits on May 22, 2020.

4
5 150.

6 Weeks passed and Ms. LaCerra heard nothing. After calling the PUA phone number
7 hundreds of times, she finally was able to speak with OED staff who informed her she had a
8 “valid” claim through regular unemployment, but her case had been “flagged”. She was
9 instructed that she needed to wait for an adjudication on her claim under regular unemployment
10 before her PUA application could be processed.

11
12 151.

13 On June 25, Ms. LaCerra called OED again, and after 5 hours on hold, a representative
14 gave her a phone number for the adjudicator handling her claim. She then called the adjudicator
15 and learned she was denied benefits from regular unemployment because she voluntarily left her
16 previous job to start her own business as a full-time illustrator in 2019. The adjudicator advised
17 that Ms. LaCerra could either appeal the decision or call PUA. She promptly called PUA and
18 after two hours on hold, the call was dropped.

19
20 152.

21 On June 26, 2020, after hundreds of redials to PUA and many hours on hold, Ms.
22 LaCerra was able to reach OED staff who told her that her PUA application looked "good" but
23 that the Department had to validate if her regular unemployment claim was denied. Ms. LaCerra
24 recounted her conversation with the adjudicator the day prior and pleaded with the PUA staff to
25 review her application. The staff person asked Ms. LaCerra to resubmit 5 weeks’ worth of claims
26

1 and indicated that her teaching income was being “reviewed” by other staff members. The staff
2 person assured her that this process would take no more than two days but if she received
3 nothing, to wait two-weeks before calling back. Ms. LaCerra has received no additional
4 communication from the Department.

5
6 153.

7 On July 22nd, Ms. LaCerra called the PUA “pipeline” at 9:30 a.m., after receiving the
8 number through word of mouth from a friend. OED did not contact Ms. LaCerra to let her know
9 there was a new number to call for information regarding her claim. The new phone line acts as
10 an overflow switchboard for OED calls. The call was answered at 2:00pm, at which point Ms.
11 LaCerra requested to be connected to PUA. At 4:00pm when the call was answered, Ms. LaCerra
12 described her situation and was placed on hold again to be transferred to a “claims specialist.” A
13 Claims specialist answered at 4:15pm and explained that the claim had not been processed and
14 that her teaching income from 2019 still had not been reviewed. The specialist said that the claim
15 needed to be sent to the Tax Department, and could not give an estimate of how long that Tax
16 Department review would take. The call ended at about 5pm, more than 7 hours after Ms.
17 LaCerra began the call.

18
19 154.

20 At the time of filing this amended petition, Ms. LaCerra has gone 19 weeks without income.
21

22 **CLASS ACTION ALLEGATIONS**

23 155.

24 Petitioners reallege paragraphs 1-154.

25 //

1 156.

2 Petitioners bring this action on behalf of themselves and a class of all others similarly
3 situated, defined as all individuals who have been partially or totally unemployed between March
4 1, 2020, and the present; have applied or attempted to apply for unemployment benefits
5 administered by OED; and have waited or been waiting longer than for weeks since applying or
6 attempting to apply without receiving either payment or a denial for benefits.
7

8 157.

9 The action properly is maintained and should be certified as a class action, because:

- 10 a. The proposed class includes tens of thousands of unemployed Oregonians, so is
11 sufficiently numerous that joinder of all members is impracticable;
12
13 b. There are questions of law and fact common to the class, including whether OED
14 has withheld or unreasonably delayed providing access to and making decisions
15 regarding unemployment benefits, and whether those failures to act and
16 unreasonable delays violate provisions of Oregon and Federal law;
17
18 c. Petitioners' claims are typical of those of the members of the proposed class in
19 that they all arise from OED's failure to timely accept, process, and pay or deny
20 unemployment benefits;
21
22 d. Petitioners will fairly and adequately protect the interests of the class, in that there
23 are no disabling conflicts of interest between Petitioners and other class members
24 and Petitioners have retained counsel who are experienced in litigating claims for
25 public benefits and in class action litigation;
26

- 1 e. Petitioners seek relief only in the nature of an injunction directing OED to act, as
2 authorized by ORS 183.490, so the prelitigation notice requirement of ORCP 32H
3 does not apply; and,
4
5 f. A class action is a superior method of resolving the claims for Petitioners and the
6 class, in that: (1) inconsistent adjudications would result in OED being required to
7 act in a timely manner with respect to claims for benefits by some members of the
8 class, but not others; (2) Petitioners seek relief in the nature of an injunction that
9 would resolve the claims of the class as a whole; (3) the common questions as to
10 whether OED has unlawfully failed to act or delayed unreasonably in acting with
11 respect to class members' attempts to obtain benefits predominate over individual
12 questions as to whether individual class members should actually receive benefits;
13 (4) class members are newly unemployed and many do not have the resources or
14 motivation to pursue or control individual claims; (5) Petitioners are aware of no
15 other litigation concerning OED's failures and unreasonable delays in providing
16 decisions regarding claims for benefits; (6) class members reside throughout
17 Oregon, so concentrating the litigation in this court would be far more convenient
18 for the parties and the judicial system; (7) there are no other mechanisms
19 available for adjudicating claims for OED's unlawful failures and unreasonable
20 delays in acting on claims for benefits, and a class action is by far the most
21 efficient device for doing so given the size of the proposed class; and, (8) even if
22 individual class members were to pursue claims on their own behalf, a decision as
23
24
25
26

1 to an individual claim is unlikely to provide significant relief to the class as a
2 whole.

3 **FIRST CLAIM FOR RELIEF**

4 **(Unlawful Refusal to Act or Unreasonable Delay in Taking Action or Making a Decision –**
5 **Final Decisions on Applications for Benefits)**

6 158.

7 Petitioners reallege paragraphs 1–157.

8 159.

9 ORS 183.490 authorizes the circuit court to “compel an agency to act where it has
10 unlawfully refused to act or make a decision or unreasonably delayed taking action or making a
11 decision.”
12

13 160.

14 OED has unlawfully failed to act or unreasonably delayed in issuing decisions on tens of
15 thousands of UI, PUA, PEUC, and EB applications by either failing to process those applications
16 in a timely manner or by processing them, putting them into an informal “adjudication process”,
17 and not issuing a final agency decision either approving or denying benefits in a reasonable
18 amount of time.
19

20 161.

21 OED is required to “promptly examine each claim for benefits and make a decision to
22 allow or deny [every] claim.” ORS 657.267.
23

24 162.

25 The plain meaning of ORS 657.267 indicates that OED must make decisions on
26 applications quickly. The common understanding of the word “promptly” indicates an action that

1 is taken “without delay: very quickly or immediately”.¹⁷ An agency’s decision has been
2 unreasonably delayed if not made in time to make the decision meaningful to the individual
3 requesting the agency decision. *Lombardo v. Warner*, 340 Or 264, 273-74 (2006). The U.S.
4 Department of Labor defines the payment of benefits as timely if at least 87% of regular
5 unemployment claims are paid within 14 days of the end of the first week for which claimants
6 were eligible for benefits.¹⁸ Petitioners have been waiting *more than eight times* that long—and
7 counting—to receive benefits they desperately need. Unemployment benefits are meaningful to
8 Petitioners if they can replace wages that generally come to people weekly or bi-weekly,
9 allowing individuals to pay for necessities that can’t wait, like food, rent, or medicine. A 17-
10 week delay in issuing benefits designed to help people pay for urgent basic needs like food and
11 rent renders the benefits significantly less meaningful.
12

13
14 163.

15 The clear statutory directive to the agency to decide UI claims “promptly” coupled with
16 the dire need of applicants for UI benefits to provide money for basic living expenses after the loss
17 of a job or wages, indicates that the current failures to act and delays facing Oregonians who have
18 applied for traditional UI, PUA, PEUC, or EB are unreasonable.

19 ///

20 ///

21 ///

22 ///

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24
25 ¹⁷ Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/promptly>.

26 ¹⁸ U.S. Government Accountability Office, Unemployment Insurance: States’ Customer Service Challenges and DOL’s Related Assistance, at 26 (May 2016), <https://www.gao.gov/assets/680/677082.pdf>.

1 **SECOND CLAIM FOR RELIEF**

2 **(Unlawful Refusal to Act or Unreasonable Delay in Taking Action or Making a Decision –**
3 **Effective Denial without Due Process Hearing)**

4 164.

5 Petitioners reallege paragraphs 1–163.

6 165.

7 ORS 183.490 authorizes the circuit court to “compel an agency to act where it has
8 unlawfully refused to act or make a decision or unreasonably delayed taking action or making a
9 decision.”
10

11 166.

12 Respondents have a duty to provide UI, PUA, PEUC, and EB applicants with a final
13 agency decision either denying or approving their application. The Due Process Clause of the
14 Fourteenth Amendment to the United States Constitution requires that claimants receive timely
15 processing of their UI, PUA, PEUC, and EB applications, and then an opportunity for a due
16 process hearing if benefits are denied.
17

18 167.

19 The Oregon Administrative Procedure Act requires a contested case hearing for every
20 “proceeding before an agency . . . [i]n which the individual legal rights, duties or privileges of
21 specific parties are required by statute or Constitution to be determined only after an agency
22 hearing.” ORS 183. 415(2); ORS 183. 310(2)(a)(A). By not providing a final decision to
23 Petitioners, even though Petitioners have been without any income or unemployment benefits
24 for, in some cases, up to 15 weeks, OED has effectively denied Petitioners’ applications and
25 refused to provide a contested case hearing.
26

1 168.

2 Although all Oregonians had significant barriers to reaching OED by phone to ask for
3 help with their application, non-English speakers had even less access than English speakers.
4 Petitioners who were persistent and lucky enough to get through to OED by phone were not able
5 to speak to someone in their own language, or in many cases, even receive a call back by
6 someone who spoke their language. Without this phone access, non-English speakers did not
7 have the chance to access advice from OED to help them complete their application correctly, or
8 to answer simple questions about any missing information OED identified on their application.
9 Therefore, non-English speakers were more likely to be forced into the informal adjudication
10 process delaying a final decision on whether benefits will be paid.
11

12 169.

13 Non-English speakers were delayed in submitting their application for unemployment
14 benefits. Because they had to wait to even apply for benefits, they have faced additional delays in
15 receiving final decisions or unemployment benefits. Because the online UI application was (and
16 still is) only available in English, non-English speakers had to wait until they could reach
17 someone by phone to help them apply, or send them a paper application for UI. Oregon's PUA
18 applications were not available in languages other than English until after the English PUA was
19 available.
20
21

22 **THIRD CLAIM FOR RELIEF**

23 **(Unlawful Refusal to Act – Lack of Language Access)**

24 170.

25 Petitioners reallege paragraphs 1–169.
26

1 171.

2 ORS 183.490 authorizes the circuit court to “compel agency action where it has
3 unlawfully refused to act.”
4

5 172.

6 Respondents have a legal duty to make applications for UI, PUA, PEUC, and EB benefits
7 available to non-English speakers. Title VI of the Civil Rights Act and the Equal Protection
8 Clause of the Fourteenth Amendment to the U.S. Constitution prohibit the state from
9 discriminating on the basis of national origin in the provision of public benefits like
10 unemployment insurance. 29 CFR § 38.9 requires that OED “take reasonable steps to ensure
11 meaningful access to each limited English proficient (LEP) individual served or encountered so
12 that LEP individuals are effectively informed about and/or able to participate in the program or
13 activity. UIPL 02-16 clarifies that the federal regulations specifically require that language
14 assistance must be provided in a timely manner, and UIPL 02-16 clarifies that the U.S.
15 Department of Labor believes that language assistance is considered timely “when it is provided
16 at a place and time that ensures equal access and avoids delay or denial of any aid, benefit, or
17 service at issue.” The regulations further explain that vital information, including applications for
18 benefits, is among the information that must be translated or provided access to in a timely
19 manner. 29 CFR § 38.4(ttt), UIPL 02-16.
20
21

22 173.

23 OED has knowingly and intentionally prioritized English-speaking claimants over
24 claimants with Limited English Proficiency in its program design, including by deciding to create
25 an English-only online application as the primary method to apply for unemployment benefits.
26

1 That decision was made despite OED having had ample resources to correct the problem since at
2 least 2009.

3 174.

4 Despite knowing that the only way for non-English speakers to apply for UI in Oregon is
5 by calling OED, the agency failed to act to provide dedicated phone access for non-English
6 speakers when their phone system became hopelessly overwhelmed by callers. It was
7 not until July 6, 2020 that OED established a part-time language access line for taking initial and
8 weekly applications for benefits. However, the part-time hotline is limited only to application
9 assistance, and upon information and belief, does not assist non-English speakers with ongoing,
10 necessary communication with OED to maintain their claims.
11

12 175.

13 Due to the lack of language access, non-English speakers were not informed of which
14 unemployment benefit they should apply for (regular UI or PUA) and some applied for the wrong
15 program.
16

17 176.

18 Non-English speakers were not able to correctly fill out their PUA applications with the
19 nuanced, complicated, COVID 19 specific answers required because they lacked access to the
20 COVID 19 specific instructions that were only available in English until approximately mid to late
21 May. Many answered questions incorrectly which resulted in their applications being diverted into
22 the informal adjudication process that is so delaying final decisions or paying of benefits.
23

24 ///

25 ///

1 177.

2 Many non-English speakers were significantly delayed in their ability to initially apply
3 for unemployment benefits, because the online application was only available in English,
4 applying over the phone was almost impossible because the phone lines were so jammed, and the
5 PUA application was not out in languages other than English until after the English application
6 was created.
7

8 178.

9 Applicants for all types of unemployment benefits who do not speak English are more
10 likely to be diverted into the informal adjudication process, which greatly delays issuing a final
11 decision and/or actual benefits. Non-English speakers did not have instructions available to them
12 in languages other than English about how to accurately answer the COVID related questions
13 regarding whether a person is able, available for, and actively seeking work until approximately
14 May 2020. Therefore, they were more likely to answer the complicated and nuanced questions
15 incorrectly, and be placed in the informal adjudication process, causing excessive delay in
16 getting benefits or a final agency decision.
17

18 179.

19 OED's actions and inactions constitute intentional discrimination in violation of the
20 Fourteenth Amendment and Title VI and have a disparate impact in violation of Title VI.
21

22 ///

23 ///

24 ///

25 ///

1
2 **PRAYER**

3 WHEREFORE, Petitioners pray for judgment as follows:

- 4 1. Certifying this case as a class action as alleged in paragraphs 156 and 157, above, with
5 subclasses as the Court deems appropriate;
- 6 2. Ordering Respondents to act promptly in considering and issuing a decision as to benefits
7 applications for UI, PUA, PEUC, and EB;
- 8 3. Ordering Respondents to act with alacrity in affording non-English speakers access to the
9 benefits application process, so that their requests for benefits may be considered and a
10 decision issued promptly;
- 11 4. Retaining jurisdiction in this Court to assess whether Respondents are complying with the
12 orders requested in paragraphs 2 and 3 of this Prayer for Relief; and,
- 13 5. Granting Petitioners such other relief as the Court deems just and proper under Oregon
14 law.
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DATED: July 24, 2020

By: /s/ Beth Englander

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CERTIFICATE OF SERVICE

I, Beth Englander, certify that I served a copy of the foregoing:

AMENDED PETITION TO COMPEL AGENCY ACTION

on the following parties:

David Gerstenfeld
Oregon Employment Department
c/o Justin Kidd
Oregon Department of Justice
Justin.Kidd@doj.state.or.us

By the following indicated method(s) set forth below:

- Electronic by the Court's e-filing system pursuant to UTCR at the parties' email addresses as recorded on the date of service in the e-filing system
- Email
- Hand delivery
- U.S. mail
- Facsimile

I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

DATED: July 24, 2020

OREGON LAW CENTER

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