

THE STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY **SUPERIOR COURT**

Claude Pottier

v.

The State of New Hampshire, Department of Employment Security

and,

George Copadis, Commissioner, Department of Employment Security

and,

Richard Lavers, Deputy Commissioner, Department of Employment Security

Docket No. 217-2021-CV-00179

VERIFIED COMPLAINT
(Jury Trial Demanded)

INTRODUCTION

NOW COMES Claude Pottier (“Claude”) and hereby submits the following Complaint and Demand for Jury Trial. Claude, like thousands of other New Hampshire citizens, has been subject to a state unemployment insurance system that is acting illegally toward him. Claude has waited months for a mandated hearing to contest the state’s claims regarding the status of unemployment benefits the state paid him but maintains, erroneously, he must pay back.

This same government claims, illegally, that Claude (and others) must accept the accrual of interest resulting from the state’s erroneous insistence of repayment. Claude is filing this suit to protect himself from this illegality. In this case, Claude alleges that the state has violated his statutory and constitutional rights, both state and federal, and he seeks relief, including prospective and declaratory relief. Among other theories of relief, Claude alleges that the state has deprived him of due process of the law and that is seeking to illegally take his property

without just compensation. Claude also alleges that the state has subjected him to an illegal tax under the state constitution, requiring him to bare the disproportionate cost of the state's policy failures, which damaged the economy and caused thousands, Claude included, to lose their jobs and seek coverage under the state's unemployment insurance system.

In further support of this complaint, Claude states as follows:

PARTIES

1. Claude Pottier is a taxpaying resident of Rye, New Hampshire. His address is 556 Washington Road, Rye, New Hampshire 03870.

2. The New Hampshire Department of Employment Security ("DES") is a state agency within the executive branch of the New Hampshire state government. It is located at 45 South Fruit Street, Concord, New Hampshire 03301.

3. DES is the state executive branch agency responsible for paying "Unemployment Compensation benefits in a timely manner to eligible claimants and collect the tax which funds these payments."¹

4. George N. Copadis is the Commissioner of DES ("Copadis"). In this capacity as Commissioner, Copadis has resided at 45 South Fruit Street, Concord, New Hampshire 03301.

5. Richard Lavers is the Deputy Commissioner of DES ("Lavers"). In this capacity, Lavers has resided at 45 South Fruit Street, Concord, New Hampshire 03301.

6. DES, Copadis and Lavers ("Defendants") bear responsibility for supervising and implementing executive branch policy and law in regard to the state's unemployment compensation and insurance programs.

¹ See <https://www.DES.nh.gov/about/index.htm>.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter by virtue of the parties' contacts with New Hampshire and the allegations set forth herein, all of which justify subjecting Defendants to the personal and subject matter jurisdiction of this Court, pursuant to RSA 491:7, RSA 491:14, RSA 491:22, RSA 498:1 and RSA 507:9.

8. This Court has jurisdiction over this matter by virtue of Part I, Article 8, of the New Hampshire Constitution, and other provisions of the state and federal constitutions, as well as under laws derived from these sources, both express and implied.

FACTS COMMON TO ALL COUNTS

I. The State Government's Failure to Protect New Hampshire Citizens During a Pandemic.

9. This case arises out of actions by the state government and its officials that have substantially interfered with the property and personal interests, rights and privileges of hundreds of thousands of New Hampshire citizens suffering amidst a pandemic.

10. The risk of pandemics and their effects on our lives have long been a subject of substantial public policy analysis, discussion, and historical understanding.²

11. When COVID-19 hit, our public officials were not prepared to respond.

12. Governor Christopher Sununu first minimized COVID-19, likened it to a flu in public statements about the disease, and minimized its impact on New Hampshire.³

² See Derek Bryston Taylor, *A Timeline of the Coronavirus Pandemic*, NY TIMES (Mar. 17, 2021) (tracing the spread of COVID-19 across the world) [<https://www.nytimes.com/article/coronavirus-timeline.html>]; see generally, Frank M. Snowden, *EPIDEMICS AND SOCIETY: FROM THE BLACK DEATH TO THE PRESENT* ix-x (2020 ed.) ("Like all pandemics, COVID-19 is not an accidental or random event. ... Particularly since the outburst of H5N1 influenza in 1997, the public health community has consistently sounded the alarm. Its messages is that future outbreaks are inevitable—particularly of pulmonary viral diseases, to which our society is highly vulnerable.").

³ Rick Ganley & Mary McIntyre, *Gov. Sununu: No Need to Declare State of Emergency Due to Coronavirus*, NHPR (Mar. 11, 2020) [<https://www.nhpr.org/post/gov-sununu-no-need-declare-state-emergency-due-coronavirus#stream/0>]

13. He predicted that thousands of New Hampshire workers who have yet to recover permanent employment would be only “off for a couple of weeks” without any paid sick leave, insisting that the missed time was “something that is very likely manageable from a financial standpoint.”⁴

14. Lagging behind neighboring states, he and his government were slow to respond to the pandemic and its specific impact on New Hampshire.

15. Only after it became apparent that Governor Sununu had misjudged the situation did he reformulate his approach.

16. Swinging from one pole to another, Governor Sununu took unprecedented control over the state’s lawmaking and law execution functions, commandeering nearly all aspects of the state’s economy during the spring and summer of 2020.

17. On March 13, 2020, Governor Sununu declared a state of emergency in New Hampshire, describing substantial risks posed to New Hampshire arising from the “outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19)” which had evolved into a pandemic.⁵

18. On March 16, 2020, Governor Sununu prohibited gatherings of fifty people or more engaged in an array of social, spiritual and recreational activities.⁶

⁴ *Id.*

⁵ An Order Declaring a Statute of Emergency Due to Novel Coronavirus (COVID-19), No. 2020-04 (March 13, 2020) [<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/2020-04.pdf>]

⁶ Temporary Prohibition on Scheduled Gatherings of 50 or More Attendees and Onsite Food and Beverage Consumption, Emergency Order No. #2, (March 16, 2020) [<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-2.pdf>]

19. In the same order, Governor Sununu restricted food and beverage sales to carry-out, delivery, curbside pick-up or drive through and barred all onsite consumption of food and beverage at all establishments across the state.⁷

20. On March 23, 2020, Governor Sununu issued a new order, overriding his prior orders. That order prohibited the gathering of ten or more people engaged in an array of social, spiritual or recreational activities.⁸ The same day, Governor Sununu issued an order closing all non-essential businesses and requiring Granite Staters to stay at home.⁹

21. On May 29, 2020, Governor Sununu extended his March 23, 2020, order governing non-essential businesses through June 15, 2020.¹⁰

22. Governor Sununu thus closed, either completely or partially, every non-essential business in New Hampshire by executive order for a period of three months in 2020, from mid-March 2020 through mid-June 2020.

23. New Hampshire's workforce was crushed by these orders. By the end of May 2020, New Hampshire residents filed 170,000 unemployment claims.¹¹

24. Meanwhile, news reports indicated that the Governor's undifferentiated approach, so damaging to the economy and to the health and welfare of so many of New Hampshire's

⁷ *Id.*

⁸ Temporary Prohibition on Scheduled Gatherings of 10 or More Attendees, Emergency Order # 16. (March 23, 2020) [<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-16.pdf>]

⁹ Closure of Non-Essential Businesses and Requiring Granite Staters to Stay Home, Emergency Order # 17. (March 26, 2020) [<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-17.pdf>]

¹⁰ An Order Extending Emergency Order #40, Executive Order # 49, (May 29th, 2020) [<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-49.pdf>]

¹¹ Michael Cousineau, *COVID-19 hikes state's unemployment rate by 16%*, UNION LEADER.COM (May 18, 2020) [https://www.unionleader.com/news/business/whats_working/covid-19-hikes-states-unemployment-rate-by-16/article_25f28f47-8241-5655-83dd-974daaab3cc8.html]

citizens, failed to protect obvious areas of vulnerability, resulting in substantial, unnecessary death.

25. Long-term care facilities housing seniors who were obviously vulnerable to COVID-19 became a situs for COVID-19 outbreaks and the deaths of hundreds of New Hampshire's citizens.

26. By the end of 2020, "Eighty percent of New Hampshire's COVID-19 deaths . . . ha[d] involved residents of long-term care facilities, according to state and federal data."¹²

27. 37 veterans were killed by a COVID-19 outbreak at the Tilton Veterans Home, alone, months after the outbreak occurred.¹³

28. Seniors were not the only population to suffer the impact of their government's approach, however.

29. Parents and children in public schools received little meaningful direction from the state government, with children suffering serious, negative effects to their psychological

¹² Mark Hayward, *New Hampshire ranks No. 1 – in COVID-19 nursing home deaths*, Union Leader.com (Dec. 26, 2020) [https://www.unionleader.com/news/health/coronavirus/new-hampshire-ranks-no-1----in-covid-19-nursing-home-deaths/article_e0c58f5e-f6c1-5e9e-bdaa-7b2ac059c753.html]

¹³ Josie Alberston-Gove, *State report offers no explanation for Veterans Home COVID outbreak that killed 37 vets*, UNION LEADER.COM (Mar. 18, 2021) [https://www.unionleader.com/news/veterans/state-report-offers-no-explanation-for-veterans-home-covid-outbreak-that-killed-37-vets/article_9cf6e9a4-9fe8-56f4-8d14-f8e42918c4c6.html].

well-being and educational development.¹⁴ The situation has triggered a child mental health crisis.¹⁵

30. With regard to the most vulnerable population of children, state officials engaged in a misinformation campaign around the problem of Governor Sununu's administration's failure to protect children from child abuse and neglect, publicizing a drop in reported instances as a sign of success, though schools, a primary source of reports, were shut down and so could not report on such instances.¹⁶

31. The impact of the state's failure to protect children in this environment has resulted in litigation alleging that children, already incarcerated at rates higher than any other

¹⁴ See, e.g., Kimberly Houghton, *NH experts: Some kids may be anxious over post-COVID reentry to society*, UNION LEADER.COM (May 21, 2021) [https://www.unionleader.com/news/social_issues/nh-experts-some-kids-may-be-anxious-over-post-covid-reentry-to-society/article_d8982f6a-08b6-5efc-932e-ee55d6d1b837.html?block_id=998119]; Peter Biello, *NAMI NH Sees Troubling Stat: Rise in Children Waiting for Psychiatric Hospital Care*, NHPR.com (Sept. 30, 2020) [<https://www.nhpr.org/post/nami-nh-sees-troubling-stat-rise-children-waiting-psychiatric-hospital-care#stream/0>]; Elliott Davis, *Study: New Hampshire Lacks Pandemic Planning Laws for Schools*, U.S. NEWS (Mar. 25, 2020) (noting that N.H. has no laws regarding how schools should respond to pandemics, and is the only state without such laws) [<https://www.usnews.com/news/best-states/articles/2020-03-25/new-hampshire-is-the-only-state-without-pandemic-planning-laws-for-schools>]

¹⁵ See Sarah Gibson, *Citing Child Mental Health Crisis, N.H. Senators Push for Legislation*, NHPR (Mar. 25, 2020) ("In a virtual conference on Thursday, Senator Tom Sherman, of Rye, described a recent tour of a local hospital. 'Children were along the walls in the emergency room like we've seen after a hurricane, like we've seen after a major crisis in other towns and cities,' he said. 'But this is in New Hampshire, and these children are lying there waiting for beds - in mental health crisis.'") [<https://www.nhpr.org/post/citing-child-mental-health-crisis-nh-senators-push-legislation>]

¹⁶ Compare Governor Christopher Sununu, *DCYF: Data Moving in Right Direction*, Press Release (June 17, 2020) ("Today, Governor Chris Sununu and the Department of Health and Human Services released new data that shows substantial progress within New Hampshire's Division for Children, Youth, and Families") [<https://www.governor.nh.gov/news-and-media/dcyf-data-moving-right-direction>] with Marcia Sink, *Keep an eye on children*, UNION LEADER.COM (April 3, 2020) ("In March alone, New Hampshire's Division for Children, Youth and Families (DCYF) reported a 50% decline in reports of child abuse or neglect. This decline is not because children are magically safer during the COVID-19 crisis. It is because the signs of abuse or neglect are not being seen and reported as frequently.") [https://www.unionleader.com/opinion/op-eds/marcia-sink-keep-an-eye-on-the-children/article_8161d078-cf7b-5901-a6f1-84d4749387dc.html], and Ethan Dewitt, *Pandemic has made child protection even harder*, Concord Monitor (Nov. 28, 2020) ("An annual report from the watchdog office over New Hampshire's Division for Children, Youth and Families makes one thing clear: the COVID-19 pandemic is making it harder to help abused and neglected children. With schools closed, children have fewer contact with professionals who must become mandated reporters in the face of signs of abuse.") [<https://www.concordmonitor.com/New-Hampshire-Office-of-the-Child-Advocate-DCYF-annual-report-37450322>].

jurisdiction in the nation (at a facility bearing the Governor's last name, no less), have even been the victims of child abuse and neglect at the hands of the very state employees entrusted with their care.¹⁷

32. More generally, a year into the pandemic, the state government has failed to adequately combat food insecurity in New Hampshire despite the influx of hundreds of millions of dollars in federal stimulus money into the economy.¹⁸ In this context, the state government's failure to lower administrative barriers combined with its failure to communicate with the public about program eligibility has been identified as a cause of its failure to provide sustenance to the people of New Hampshire in a time of pandemic.¹⁹

II. DES Exacerbates the Plight of New Hampshire Citizens During COVID-19

33. Facing these challenges on so many fronts without an effective state government to protect them, thousands of Granite Staters filed claims for mandated unemployment insurance to make it from one week to the next.

34. These efforts by New Hampshire citizens were met with more state government dysfunction.

¹⁷ See Holly Ramer, *Hundreds claim decades of abuse by 150 NH youth detention center staffers*, ASSOCIATED PRESS (Mar. 1, 2021) ("Abuse allegations against New Hampshire's state-run youth detention center now span six decades, with 150 staffers during that time accused of physically or sexually harming 230 clients who say they were abused between 1963 and 2018, when they were ages 7 to 18.") [<https://www.wmur.com/article/new-hampshire-youth-development-center-abuse-lawsuit-march-1-2021/35681051>]; Ethan Dewitt, *ACLU, Disability Rights Center Sue State Over Treatment of Foster Care Youth*, CONCORD MONITOR (Jan. 6, 2020) ("The organizations point to federal data from 2019 showing that in New Hampshire, 90% of foster kids age 14-17 with a mental health diagnosis were in group homes rather than foster families, putting New Hampshire at the bottom of the list for in-home foster care placement.") [<https://www.nhpr.org/post/aclu-disability-rights-center-sue-state-over-treatment-foster-care-youth#stream/0>].

¹⁸ Evan Edmonds, *Food insecurity in New Hampshire made worse by pandemic*, NEW HAMPSHIRE BUSINESS REVIEW.COM (Mar. 17, 2021) ("In January, more than one in four Granite Staters reported that it was at least somewhat more difficult than usual to pay for typical household expenses, including food. And yet, New Hampshire ranks among the lowest in the nation for people making use of food assistance programs.") [<https://www.nhbr.com/fight-food-insecurity-in-new-hampshire-made-worse-by-pandemic/>]

¹⁹ *Id.*

35. DES's antiquated, confusing system of responding to claims exacerbated the fear, panic, and sense of hopelessness faced by families across New Hampshire.

36. By mid-April of 2016, DES had only managed to pay out some 70% of what it owed to New Hampshire workers, not counting the extra \$600 weekly payment under the Coronavirus Aid, Relief, and Economic Security Act, 15 U.S.C. 9000 et seq ("CARES Act"), which DES failed to distribute until more than three weeks after it was due.²⁰

37. In Orwellian fashion, as recently as March 2021, DES reported to the public that claims filed by citizens through computer-interface messaging had disappeared, indicating to claimants with pending claims that they had no claims pending.²¹

38. New Hampshire's claimants had already described their interactions with DES's system for processing their claims for relief as a "nightmare," "an endless loop," and "like five different websites from 2001...mashed together."²²

39. Far from recognizing the plight of New Hampshire's workforce, and far from operating with caution in the claims it made on New Hampshire citizens, DES sought to increase their pain.

²⁰ Bob Sanders, *As NH's Unemployment Trust Fund Drains, Questions About Federal Reimbursement*, NEW HAMPSHIRE BUSINESS REVIEW.COM (Apr. 16 2020) [<https://www.nhbr.com/as-nhs-unemployment-trust-fund-drains-questions-about-federal-reimbursement/>]

²¹ Alli Fam, *Seeing 'You Do Not Have A Current Claim' For Your N.H. Unemployment Insurance? It's Ok*, NHPR.com (Mar. 19, 2021) [<https://www.nhpr.org/post/seeing-you-do-not-have-current-claim-your-nh-unemployment-insurance-its-ok#stream/0>]

²² Todd Bookman, *An Endless Loop: NH Unemployment Applicants Report Confusing, Outdated System*, NHPR.com Apr 23 2020 [<https://www.nhpr.org/post/endless-loop-nh-unemployment-applicants-report-confusing-outdated-system#stream/0>]; see also Kristen Carosa, *Unemployment Numbers Approach Pre-Pandemic Levels in New Hampshire, Some Recipients Struggle to Produce Newly Required Documentation*, WMUR.com (Mar. 25, 2020) ("Some people, such as Alexander Keenan, of Somersworth, received that notice but said the process has been a struggle. 'Finding out whether or not what documents I'm going to need to submit, and I'm being told contradictory things left and right.'") [<https://www.wmur.com/article/unemployment-numbers-approach-pre-pandemic-levels-in-new-hampshire/35940996>].

40. As Thanksgiving 2020 approached, DES initiated a massive, undifferentiated program designed to target New Hampshire's vulnerable adult population as they were scraping by to put food, to say nothing of a Thanksgiving meal, on the tables of their households.

41. This program sought \$25 million in "overpayments" from more than 10,000 people who received unemployment insurance after the Governor shut down the economy and shut off their sources of work and income.²³

42. Defendants pursued this program against New Hampshire citizens even though federal programs had been enacted to prevent the targeting of New Hampshire's workforce in this way.

43. Defendants pursued this program even as Governor Sununu diverted some \$50 million in aid received from the CARES Act into the state unemployment trust fund, so as to lower unemployment insurance taxes on businesses by half a percentage point.²⁴

44. The CARES Act specifically authorized DES to waive a claimant's liability to repay any overpayments if it determined that the overpayment was not the fault of the claimant, and that such repayment would be contrary to good conscience. 15 U.S.C. 9023(f)(2).

45. As this case demonstrates, Defendants' opted to turn the screws instead.

²³ Michael Cousineau, *NH Trying to Collect Nearly \$25 million in Jobless 'Overpayments'*, UNION LEADER.COM (Nov. 18, 2020) [https://www.unionleader.com/news/business/whats_working/nh-trying-to-collect-nearly-25-million-in-jobless-overpayments/article_0b3237eb-4d94-53de-b227-f70680a9ec51.html].

²⁴ Bob Sanders, *Infusion of CARES Act Funds to Keep NH's Unemployment Tax at a Lower Level*, NEW HAMPSHIRE BUSINESS REVIEW.COM (Dec. 15 2020). [<https://www.nhbr.com/infusion-of-cares-act-funds-to-keep-nhs-unemployment-tax-at-a-lower-level/>]

III. Defendants Subjected Claude to an Incomprehensible and Illegal Process After He Filed for Unemployment Insurance.

46. Claude has been a victim of Defendants' efforts to harm New Hampshire citizens.

47. After being furloughed from his job at Private Jet Services in March of 2020, Claude applied for unemployment insurance benefits and received an initial determination of his eligibility, dated March 31, 2020.

48. Claude continued to fill out his weekly claim and continued to receive benefits, though not without interruption, until October of 2020.

49. Fearful of Defendants' inability to pay benefits consistently, and fearful of its policy of abruptly reversing its positions with respect to eligibility, Claude—a senior citizen desperate to be able to provide for his family—felt compelled to accept a strenuous, physical job at UPS, which subjected him to COVID-19, and which he held between October and November 2020.

50. While working at UPS, Claude observed that UPS had failed to take precautions sufficient to ensure that Claude would be safe from the spread of COVID-19.

51. Claude discontinued his work at UPS, but nevertheless contracted COVID-19 shortly thereafter.

52. As soon as he recovered from COVID-19, Claude continued to look for work, afraid of being caught once again in the machinery of DES's bureaucracy.

53. On December 30, 2020, without any advance warning or notice, Claude received eight (8) separate determinations (the "Holiday Season Determinations") from DES, which together provided three contradictory conclusions regarding Claude's eligibility for benefits:

- a. First, that Claude was ineligible for regular state unemployment insurance during the time period of March 15, 2020 – March 13, 2021, as his unemployment was a direct result of COVID-19;
- b. Second, that Claude was eligible for Pandemic Unemployment Assistance in the amount of \$427 per week during the time period of March 15 – December 26, 2020; but
- c. Third, that Claude was ineligible for any unemployment benefits whatsoever during the time period between June 28 – August 8, 2020, and was required to pay back every dollar in benefits he had received during those weeks.

54. In addition to declaring that Claude was somehow both ineligible and eligible for benefits simultaneously, but nonetheless required to pay back thousands of dollars, these Holiday Season Determinations were otherwise incomprehensible to Claude, as the text of each is small, difficult to read, and references laws and executive proclamations without sufficient specificity or guidance.

55. True and correct copies of the Holiday Season Determinations are appended hereto as follows:

- a. Determination 6750187-2, indicating Claude was ineligible for regular UI benefits for the benefit year beginning March 15, 2020 and ending March 13, 2021, as his unemployment was a direct result of COVID-19, and that he would be further assessed for Pandemic Unemployment Assistance (“PUA”) automatically, as **Exhibit 1.**

- b. Determination 7875985-1, indicating that Claude was eligible for PUA benefits in the amount of \$427 per week, for the period of March 26 – December 26, 2020, as **Exhibit 2**.
- c. Determination 7875993-1, indicating that Claude was ineligible for benefits for the week of June 28 – July 4, 2020 due to reasons Claude provided when filing his weekly claim, and demanding Claude repay the \$1,027 in benefits he received that week, as **Exhibit 3**.
- d. Determination 7875992-1, indicating that Claude was ineligible for benefits for the week of July 5 – July 11, 2020, due to reasons Claude provided when filing his weekly claim, and demanding Claude repay the \$1,027 in benefits he received that week, as **Exhibit 4**.
- e. Determination 7875988-1, indicating that Claude was ineligible for benefits for the week of July 12 – July 18, 2020, due to reasons Claude provided when filing his weekly claim, and demanding Claude repay the \$1,027 in benefits he received that week, as **Exhibit 5**.
- f. Determination 7875991-1, indicating that Claude was ineligible for benefits for the week of July 19 – July 25, 2020, due to reasons Claude provided when filing his weekly claim, and demanding Claude repay the \$1,027 in benefits he received that week, as **Exhibit 6**.
- g. Determination 7875990-1, indicating that Claude was ineligible for benefits for the week of July 26 – August 1, 2020, due to reasons Claude provided when filing his weekly claim, which does not contain an allegation of an overpayment attributable to the week indicated, as **Exhibit 7**.

- h. Determination 7875989-1, indicating that Claude was ineligible for benefits for the week of August 2 – August 8, 2020, due to reasons Claude provided when filing his weekly claim, and demanding Claude repay the \$727 in benefits he received that week, as **Exhibit 8**.

56. For the Court’s convenience, a table summarizing the Holiday Season Determinations sent to Claude is appended hereto as **Exhibit 9**.

57. Claude appealed the Holiday Season Determinations by sending an email consistent with DES’s instructions to DES. A true and correct copy of this email is appended hereto as **Exhibit 10**. In his words from that email, “I am totally puzzled as to the reason for this denial, I can only assume it must be a computer glitch or the decision from a government employee without rhyme or reason.”

58. DES never responded to this email and never scheduled a hearing so that Claude could make his case.

59. On January 19, 2021, DES issued an “Overpayment Demand Letter” claiming Claude had received overpayments totaling some \$4,859.00 (“Overpayment Letter”), a true and correct copy of which is appended hereto as **Exhibit 11**.

60. The Overpayment Demand letter claims that “Interest will accrue on the principal balance of the overpayment at 1% per month if the debt is not repaid within 60 days of the mailing date of the final decision” but does not explain how Claude was determined to be at fault for the overpayment under Emp 502.03(a), a necessary prerequisite for liability for repaying overpaid benefits under RSA 282-A:165, II.

61. The Overpayment Demand Letter does not explain how it arrived at any of the amounts due set forth in the letter nor does it explain the source of those amounts. It is otherwise incomprehensible and does not acknowledge Claude's timely appeal.

62. DES has never acknowledged or responded to Claude's appeal.

IV. Defendants Failed to Follow the Law with Respect to Claude's Claims

63. Claude is granted rights as a claimant under New Hampshire's unemployment insurance system.

64. The Unemployment Compensation Act, RSA 282-A, provides the statutory framework under which unemployment insurance is paid in New Hampshire.

65. RSA 282-A:165, I provides that "any person who has received any benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled...shall be liable to repay the commissioner such benefits all of which shall be considered to be overpayments."

66. However, "no such overpayment shall exist unless a determination has been made by the commissioner... setting forth the facts causing the creation of the overpayment and notice of such determination has been sent to the claimant who may appeal in the manner set forth in RSA 282-A:42-68."

67. RSA 282-A:48 provides that a determination, including a determination of overpayment, may be appealed within 14 calendar days.

68. Only after this appeal period has closed does a determination "become final and benefits shall be paid or denied in accordance therewith..." RSA 282-A:49. Under RSA 282-A:51, claimants are entitled to appear in person to be heard on their continued entitlement to benefits prior to the cessation of same.

69. RSA 282-A:46 further provides that a certifying officer may reconsider a determination only “for good cause,” and “within 60 days” of the original determination.

70. Nor is this opportunity to be heard the last word with respect to determining a claimant’s liability for overpayments under the law.

71. RSA 282-A:165, II provides that liability for these overpayments “shall not exist where the person receiving benefits is without fault in causing the overpayment as defined by the rules of the commissioner.”

72. DES’s rules, set forth in N.H. Admin. R. Emp. 502.03(a), provide that an individual will be considered “without fault,” and thus not liable for repayment, where such individual was without fault under Emp 502.03(b).

73. Emp 502.03(b), in turn, provides that an individual is considered at fault, and thus liable to repay overpayments, where:

- a. The individual makes a material statement or representation which the individual knew or should have known was inaccurate;
- b. The individual fails or causes another to fail to disclose a material fact which the individual knew or should have known was material; or
- c. The individual fails to return checks which the individual knew or should have known were not due.

74. Emp 402.02(a) provides that interest on “overpayments” charged to individuals accrues only as provided in RSA 282-A:165, II (where liability only exists for those determined to be “at fault” for causing the overpayment) and RSA 282-A:141 (which sets a statutory interest rate of 1 % per month for employer contributions unpaid on the date on which they are due and payable).

COUNT I

FAILURE TO PROVIDE UNINSURANCE COMPENSATION—STATE AND FEDERAL DUE PROCESS

75. Claude hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

76. Under the pertinent part of the Fourteenth Amendment to the United States Constitution, a state may not “deprive any person of life, liberty, or property, without due process of law...”

77. 42 U.S.C. § 1983 (hereafter, “Section 1983”) provides a civil remedy against any person who, under color of state law, deprives another of rights protected by the United States Constitution. *Conrad v. New Hampshire Department of Safety*, 167 N.H. 59, 72 (2014) (citing *Collins v. Harker Heights*, 503 U.S. 115, 120 (1992)).

78. Part I, Article 15 of the New Hampshire Constitution likewise precludes deprivation of an individual’s property “but by the judgment of his peers, or the law of the land...” and has long been construed as synonymous with “due process of law.” *Petition of Bagely*, 128 N.H. 275, 282 (1986) (citing *May v. Wilson*, 1 N.H. 53, 54-55 (1817)).

79. These protections extend to those matters subject to administrative adjudication and requires that administrative agencies follow fair procedures and provide due process. *Appeal of Morin*, 140 N.H. 515, 518 (1995).

80. In the context of unemployment compensation benefits, the New Hampshire Supreme Court has applied the requirements of due process identically under the state and federal constitutions. *See Royer v. State Dept. of Employment Sec.*, 118 N.H. 673, 677 (1978) (Finding DES’s “existing procedures for the termination of unemployment benefits also violate

the due process clause of the fourteenth amendment to the United States Constitution and part I, article 15 of the New Hampshire Constitution” under an identical standard).

81. Recognizing that unemployment compensation claimants have a statutorily grounded claim of entitlement to, and thus a property interest in, unemployment compensation benefits, the *Royer* Court found that both the New Hampshire and United States Constitutions required notice and hearing prior to the deprivation of that interest. *Royer*, 118 N.H. at 678.

82. The “fundamental requisite” of due process is “the opportunity to be heard” prior to a deprivation, which “is useless unless one is informed of the matter pending and the hearing is granted at a meaningful time and in a meaningful manner.” *Royer*, 118 N.H. at 679 (citing *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) and *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950)).

83. The “central meaning of due process” entitles parties whose rights are to be affected to be heard, and in order to be heard, they must be notified in such a way that apprises interested parties of the action and affords them an opportunity to present their objections. *In re Kilton*, 156 N.H. 632, 638-639 (2007) (citations omitted).

84. Claude has been deprived of notice by DES’s failure to provide notice, including through writings that are incomprehensible regarding Claude’s rights, duties and obligations.

85. The second key element of the due process requirement is “the opportunity to present one’s case—to attempt to meet one’s burden of proof—in a fair manner before an impartial fact-finder.” *Appeal of Morin*, 140 N.H. at 518 (citing *Appeal of Lathrop*, 122 N.H. 262, 265 (1982)).

86. Having established policies and procedures required in order to ensure that Claude was granted an opportunity to be heard, Defendants were obliged to abide by them and

failed to do so. *See Appeal of Morin*, 140 N.H at 518 (An agency abuses its discretion “by making arbitrary decisions; by failing to comply with the requirements of its governing legislation or with its own rules and regulations; or by failing to follow fair procedures...”)
(citations omitted).

87. In December of 2020, Defendants failed to comply with their own governing statute when it redetermined Claude’s eligibility for benefits over the period between June 28 – August 8, 2020 more than sixty days after its initial determinations of eligibility and associated payment of claims.

88. Defendants otherwise failed to comply with its own laws when it determined that Claude had received an overpayment without first notifying him that he might receive a determination denying benefits, as required by Emp. 211.01(a).

89. Defendants otherwise failed to comply with its own laws when it concluded Claude to be at fault for those overpayments without making a finding under Emp. 502.03(b).

90. This Court is empowered to grant relief, including equitable relief, attributable to the State’s violation, as set forth above, to remedy the injuries Defendants have inflicted upon Claude in violation of Claude’s constitutional rights, including under Part I, Articles 8, 12, 14 and 15 of the New Hampshire Constitution, and under Section 1983.

COUNT II

FAILURE TO ACKNOWLEDGE AND GRANT MANDATORY APPEALS ON A TIMELY BASIS—STATE AND FEDERAL DUE PROCESS

91. Claude hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

92. Under §503(a)(1) of the Social Security Act, in order to receive federal funds for unemployment compensation, New Hampshire is required to provide a method of administering

its state unemployment compensation system that is, *inter alia*, “reasonably calculated to insure full payment of unemployment compensation when due...” 42 U.S.C. §503(a)(10).

93. Under regulations promulgated by the United States Secretary of Labor, a state is deemed to substantially comply with this requirement where, with respect to first-level appeals, the state has issued at least 60 percent of all first level benefit appeal decisions within 30 days of the date of appeal, and at least 80% of the same within 45 days. 20 C.F.R. § 650.4; *see also* 20 C.F.R. § 650.3.

94. This standard is “responsive to the overriding concern of the U.S. Supreme Court in *California Dept. of Human Resources v. Java*, 402 U.S. 121 (1971) ...with delay in payment of unemployment compensation to eligible individuals, including delays caused specifically by the adjudication process...” 20 C.F.R. § 650.1.

95. *Java* centered on California’s practice of automatically suspending benefits upon an employer’s appeal of the claimant’s eligibility, after that eligibility had been initially established. *Java*, 402 U.S. at 128.

96. There, the U.S. Supreme Court enjoined California from enforcing the provision of its laws providing for such automatic suspensions, holding that while “[p]aying compensation to an unemployed worker promptly after an initial determination of eligibility accomplishes the congressional purposes of avoiding resort to welfare and stabilizing customer demands; delaying compensation until months have elapsed defeats these purposes.” *Java*, 402 U.S. at 133 (explicitly referring to the median seven-week suspension of benefits pending appeal under California law).

97. The Supreme Court affirmed the principle that “the rapidity of administrative review is a significant factor in assessing the sufficiency of the entire process” in *Fusari v.*

Steinberg, 419 U.S. 379, 389 (1975) (vacating decision of three-judge District panel and remanding to review the judgment in light of post-suit amendments to unemployment statute).

98. Defendants to ignore Claude’s timely appeal, after more than 80 days have passed since DES issued its Holiday Season Determinations.

99. Defendants’ failure to timely acknowledge, must less adjudicate, a first-instance appeal, which is Claude’s first opportunity to make his case regarding his eligibility for benefits over the relevant timeframe, violates his rights to due process of law under the New Hampshire and United States Constitutions.

100. Indeed, the New Hampshire Constitution, Part I, Article 14, mandates that “every subject” is entitled to “obtain right and justice freely,” “completely, and without any denial” “promptly without delay.” DES has violated and continues to violate this mandate with regard to its failure to grant Claude his right to an appeal.

101. This Court is empowered to grant relief, including equitable relief, attributable to the State’s violation, as set forth above, to remedy the injuries Defendants have inflicted upon Claude in violation of Claude’s constitutional rights, including under Part I, Articles 8, 12, 14 and 15 of the New Hampshire Constitution, and under Section 1983.

COUNT III

ILLEGAL TAKING OF PROPERTY IN VIOLATION OF THE STATE AND FEDERAL CONSTITUTIONS

102. Claude hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

103. Defendants have sought and have obtained, Claude’s property, without just compensation, in violation of the state and federal constitutions.

104. Defendants have done so by depriving Claude of mandated benefits that he is owed, without justification or compensation.

105. Defendants have done so by asserting that Claude must pay interest on the accrual of overpayments Defendants allege they are owed, in violation of the law.

106. The state and federal constitutions prohibit DES from taking property from Claude without just compensation. Defendants have violated this provision with respect to Claude.

107. This Court is empowered to grant relief, including equitable relief, attributable to the State's violation, as set forth above, to remedy the injuries Defendants have inflicted upon Claude in violation of Claude's constitutional rights, including under Part I, Articles 8, 12, 14 and 15 of the New Hampshire Constitution.

COUNT IV

ILLEGAL TAXATION

108. Claude hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

109. The New Hampshire Constitution, Part I, Article 12, and Part II, Articles 5 and 6, mandate that citizens only be required to contribute their share to the protection of the state.

110. Defendants have pursued a policy of extreme, regressive taxation in which they seeks to burden Claude, and unemployment insurance claimants like him, with demands for overpayment without justification, as an approach to balancing Defendants' budgetary demands.

111. It has done so by subjecting Claude, and others like him, to an enforcement policy, masked as overpayment recoupment effort, that is, in fact, an illegal tax on those who sought unemployment insurance during the COVID-19 pandemic.

112. Defendants have pursued this policy even as its officials and Governor Sununu diverted millions of dollars of relief funds to replenish the state's unemployment trust fund rather than use those millions of dollars to provide aid to workers whose livelihoods had been stripped away due to the pandemic and the state's overbroad, poorly tailored response to it.

113. As such, Defendants have engaged in violations of Part I, Article 12 of the New Hampshire Constitution and Claude has been injured as a result.

114. This Court is empowered to grant relief, including equitable relief, attributable to the State's violation, as set forth above, to remedy the injuries Defendants have inflicted upon Claude, in violation of his constitutional rights.

COUNT V

ILLEGAL STATE GOVERNMENT

115. Claude hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

116. Part I, Article 8 of the New Hampshire Constitution confers on the public a right to a lawful, responsive and accountable government.

117. For the reasons set forth herein, Defendants have violated Claude's right to a lawful, responsive and accountable government by taking property from him without due process or just compensation, in violation of state and federal constitutional law, and by threatening him with additional actions against his property, including demands for repayment of unemployment insurance, with interest accrued.

118. This Court is empowered to grant relief, including equitable relief, attributable to the State's violation, as set forth above, to remedy the injuries Defendants have inflicted upon Claude in violation of Claude's constitutional rights.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests the following relief from this Court:

- a. A trial by jury in this matter;
- b. Judgment according to the laws of New Hampshire;
- c. Any and all monetary damages under the governing laws, including consequential and enhanced damages and statutory relief, including double or treble damages;
- d. Preliminary and permanent injunctive relief enjoining defendants from any continuing violations of law as set forth above and requiring that they abide by their legal duties as set forth above;
- e. Declaratory relief;
- f. Statutory relief and constitutional relief, including attorneys' fees and costs; and
- g. Any other relief this court deems necessary, just, or equitable.

Respectfully submitted by:

CLAUDE POTTIER

By and through:

RATH YOUNG AND PIGNATELLI, PC

s/Craig McMahon

Michael Lewis, NH Bar # 16466

msl@rathlaw.com

Craig McMahon, NH Bar # 272941

ctm@rathlaw.com

Rath, Young and Pignatelli, PC

One Capital Plaza

Concord, New Hampshire 03302

603-226-2600


Dated: March 26, 2020

VERIFICATION

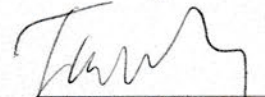
I, Claude Pottier, verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on March 26, 2021

At RYE NH


Claude Pottier
Plaintiff

On this 26th day of March, 2021, before me personally appeared Claude Pottier who swore that the foregoing facts are true and accurate to the best of his knowledge and belief.


Notary Public

FAITH A. MCEVOY
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
November 25, 2024



EXHIBIT 1



JFS-83000

NEW HAMPSHIRE EMPLOYMENT SECURITY
DETERMINATION OF UNEMPLOYMENT COMPENSATION

Claimant's Name CLAUDE A. POTTIER		Social Security Number [REDACTED]
Benefit Year Beginning Date 03/15/2020	Benefit Year Ending Date 03/13/2021	Application Date 03/20/2020
[REDACTED] CLAUDE A. POTTIER [REDACTED]		Date Issued 12/30/2020
		Determination Identification Number 6750187-2
		Business Unit BAU - Manchester 45 South Fruit Street Concord NH 03301-4857 Phone: (800) 266-2252 Fax: (603) 226-4324

THIS NOTICE IS A DETERMINATION ON ELIGIBILITY FOR UNEMPLOYMENT BENEFITS.

You indicated that the reason for separation from your last employer was directly related to the COVID-19 public health emergency. After a review of information provided, this department finds that effective 03/20/2020, you are considered to be unemployed or partially unemployed as a direct result of the COVID-19 public health emergency and not eligible for regular UI benefits. You may qualify for Pandemic Unemployment Assistance (PUA) per Section 2102 of Federal law 116-136 and your eligibility for that program will be automatically established by this department. Complete law/rule reference can be viewed at www.nhes.nh.gov by using the LAW & RULE link on the left side of the page, or at any NH Employment Security Office.

Interested

Parties: PRIVATE JET SERVICES GROUP LLC

APPEAL RIGHTS: You may appeal this determination and have the opportunity for a hearing. To file an appeal, complete an on-line form at the NHES website at <http://www.nhes.nh.gov/forms/index.htm>; mail a form or letter to NHES Appeal Tribunal Unit, PO Box 2009, Concord, NH 03302-2009 or fax to (603) 223-6141; send an email to appeals@nhes.nh.gov; or go in person at an NHES office. Include the determination ID number, your name, the last four digits of the claimant's social security number and any additional facts and/or documentation to support the appeal. An appeal must be postmarked or received in an NHES office within 14 days from the determination mail date, unless the Commissioner finds sufficient grounds to justify or excuse a delay in filing the appeal. If the 14th day is not a Department business day, the Commissioner has already extended the deadline. **A timely appeal must be filed no later than 01/13/2021.** If the appeal is filed after this date include a statement with: (1) the date you received the determination; and (2) the reason for filing late. If unemployed, claimants should continue to file weekly benefit claims while the determination is under appeal.

CLAIMANT: Upon conclusion of the appeals process, you may request a compromise to forgive some or all of an overpayment debt. If shown to be in the best interests of the state, the Commissioner may waive certain costs and/or settle any overpayment debt with approval of the Attorney General. Send a written explanation of why the Commissioner should compromise the debt to **Commissioner, 45 South Fruit Street, Concord, NH 03301. RSA 282-A: 29 and EMP 408.**

Si usted no puede leer esto, llame por favor a 1-800-266-2252 para una traducción.

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Page 1 of 2THIS SPACE FOR OFFICIAL USE ONLY
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NOTICE: J141N7

EXHIBIT 2



NEW HAMPSHIRE EMPLOYMENT SECURITY
DETERMINATION OF PANDEMIC UNEMPLOYMENT ASSISTANCE

JFS-83000

Claimant's Name CLAUDE A. POTTIER		Social Security Number [REDACTED]
PUA Period Begin Date 03/15/2020	PUA Period End Date 12/26/2020	Application Date 12/29/2020
CLAUDE A. POTTIER [REDACTED]		Date Issued 12/30/2020
		Determination Identification Number 7875985-1
		Business Unit Wages and Special Programs
		45 South Fruit Street PO Box 2009 Concord NH 03302-2009 Phone: (800) 266-2252 Fax: (603) 223-6137

THIS IS NOT A GUARANTEE OF PAYMENT. THIS NOTICE IS A DETERMINATION OF MONETARY ELIGIBILITY ONLY.

NON-MONETARY ELIGIBILITY REQUIREMENTS MUST ALSO BE MET. SEPARATE DETERMINATIONS MAY BE ISSUED FOR NON-MONETARY ISSUES SUCH AS AVAILABILITY OR REASON FOR SEPARATION.

AN APPEAL SHOULD ONLY BE FILED ON THIS DOCUMENT IF YOU DISAGREE WITH THE TOTAL BASE PERIOD WAGES REPORTED BELOW OR IF YOU DISAGREE WITH AN OVERPAYMENT DISPLAYED BELOW.

New Hampshire Employment Security has ALLOWED your application for Pandemic Unemployment Assistance (PUA) in compliance with Section 2102 of Federal law 116-136 dated 3/27/2020. Your eligibility for PUA benefits will end any time you can again establish eligibility for regular unemployment benefits (UI), Extended Benefits (EB), or Pandemic Emergency Unemployment Compensation (PEUC) in any State, or when your circumstances no longer meet a certified COVID-19 pandemic reason for unemployment.

The maximum number of weeks of PUA benefits that can be paid is 39. The number of weeks you may be eligible for is reduced by the number of weeks you have been paid in regular unemployment, emergency benefits or extended benefits for week ending 2/8/2020 or any week thereafter. Each week paid benefits, whether in full or in part, is considered a full week.

PUA Weekly Benefit Amount is: \$427.00

Your PUA Base Period is 01/01/2019 to 12/31/2019. Wages during that period listed below.

Employer Name	Total Base Period Wages	Weekly Charge Amount	Charge Percentage	Start Date	End Date

Si usted no puede leer esto, llame por favor a 1-800-266-2252 para una traducción.



EXHIBIT 3

4835.00



**NEW HAMPSHIRE EMPLOYMENT SECURITY
DETERMINATION OF UNEMPLOYMENT COMPENSATION**

JFS-83000

Claimant's Name CLAUDE A. POTTIER		Social Security Number [REDACTED]
Benefit Year Beginning Date 03/15/2020	Benefit Year Ending Date 03/13/2021	Application Date 03/20/2020
		Date Issued 12/30/2020
		Determination Identification Number 7875993-1
CLAUDE A. POTTIER [REDACTED]		Business Unit BAU - Manchester 45 South Fruit Street Concord NH 03301-4857 Phone: (800) 266-2252 Fax: (603) 226-4324

THIS NOTICE IS A DETERMINATION ON ELIGIBILITY FOR UNEMPLOYMENT BENEFITS.

Section 2102 of Federal law 116-136 requires that an individual certify each week that they are able to work and available for work except for a reason that is directly related to the COVID-19 public health emergency. For the week(s) beginning 06/28/2020 and ending 07/04/2020, you certified that none of the approved COVID-19 reasons pertained to you. After a review of the facts provided by you, this department finds that you do not meet the eligibility requirements per Section 2102 of Federal law 116-136. Complete law/rule reference can be viewed at www.nhes.nh.gov by using the NH LAW & RULE link on the left side of the page, or at any NH Employment Security Office. You are not eligible to receive benefits from 06/28/2020 through 07/04/2020.

You have been overpaid benefits to which you were not entitled in the amount of \$1027.00.

Week ending date	Comments	Amount Overpaid
07/04/2020	DENIED	\$1,027.00

Per RSA 282-A:165 I. Any person who has received any benefits under this chapter while any condition for the receipt of benefits imposed by this chapter were not fulfilled or while he was disqualified from receiving benefits shall be liable to repay to the commissioner such benefits all of which shall be considered to be overpayments. II. Liability shall not exist where the person receiving benefits is without fault in causing the overpayment as defined by the rules of the commissioner, per Emp 502.03. IV. The commissioner shall collect any overpayment created under this chapter by civil action in any manner provided for the collection of contributions in RSA 282-A:141 - 156 and shall withhold, in whole or in part as determined by the commissioner, any future benefits payable to the individual and shall credit such amount withheld against the overpayment until it is repaid in full. Interest will accrue as per Emp 402.02. You may request a compromise of the overpaid amount by writing to: Deputy Commissioner, New Hampshire Employment Security, 45 South Fruit Street, Concord, NH, 03301, per RSA 282-A:29.

The total amount of the overpaid benefits you are ordered to repay is \$1027.00.

Si usted no puede leer esto, llame por favor a 1-800-266-2252 para una traducción.



EXHIBIT 4



NEW HAMPSHIRE EMPLOYMENT SECURITY
DETERMINATION OF UNEMPLOYMENT COMPENSATION

JFS-83000

Claimant's Name CLAUDE A. POTTIER		Social Security Number [REDACTED]
Benefit Year Beginning Date 03/15/2020	Benefit Year Ending Date 03/13/2021	Application Date 03/20/2020
		Date Issued 12/30/2020
[REDACTED] CLAUDE A. POTTIER [REDACTED]		Determination Identification Number 7875992-1
		Business Unit BAU - Manchester 45 South Fruit Street Concord NH 03301-4857 Phone: (800) 266-2252 Fax: (603) 226-4324

THIS NOTICE IS A DETERMINATION ON ELIGIBILITY FOR UNEMPLOYMENT BENEFITS.

Section 2102 of Federal law 116-136 requires that an individual certify each week that they are able to work and available for work except for a reason that is directly related to the COVID-19 public health emergency. For the week(s) beginning 07/05/2020 and ending 07/11/2020, you certified that none of the approved COVID-19 reasons pertained to you. After a review of the facts provided by you, this department finds that you do not meet the eligibility requirements per Section 2102 of Federal law 116-136. Complete law/rule reference can be viewed at www.nhes.nh.gov by using the NH LAW & RULE link on the left side of the page, or at any NH Employment Security Office. You are not eligible to receive benefits from 07/05/2020 through 07/11/2020.

You have been overpaid benefits to which you were not entitled in the amount of \$1027.00.

Week ending date	Comments	Amount Overpaid
07/11/2020	DENIED	\$1,027.00

Per RSA 282-A:165 I. Any person who has received any benefits under this chapter while any condition for the receipt of benefits imposed by this chapter were not fulfilled or while he was disqualified from receiving benefits shall be liable to repay to the commissioner such benefits all of which shall be considered to be overpayments. II. Liability shall not exist where the person receiving benefits is without fault in causing the overpayment as defined by the rules of the commissioner, per Emp 502.03. IV. The commissioner shall collect any overpayment created under this chapter by civil action in any manner provided for the collection of contributions in RSA 282-A:141 - 156 and shall withhold, in whole or in part as determined by the commissioner, any future benefits payable to the individual and shall credit such amount withheld against the overpayment until it is repaid in full. Interest will accrue as per Emp 402.02. You may request a compromise of the overpaid amount by writing to: Deputy Commissioner, New Hampshire Employment Security, 45 South Fruit Street, Concord, NH, 03301, per RSA 282-A:29.

The total amount of the overpaid benefits you are ordered to repay is \$1027.00.

Si usted no puede leer esto, llame por favor a 1-800-266-2252 para una traducción.



EXHIBIT 5



JFS-63000

NEW HAMPSHIRE EMPLOYMENT SECURITY
DETERMINATION OF UNEMPLOYMENT COMPENSATION

Claimant's Name CLAUDE A. POTTIER		Social Security Number [REDACTED]
Benefit Year Beginning Date 03/15/2020	Benefit Year Ending Date 03/13/2021	Application Date 03/20/2020
		Date Issued 12/30/2020
		Determination Identification Number 7875988-1
CLAUDE A. POTTIER [REDACTED]		Business Unit BAU - Manchester 45 South Fruit Street Concord NH 03301-4857 Phone: (800) 266-2252 Fax: (603) 226-4324

THIS NOTICE IS A DETERMINATION ON ELIGIBILITY FOR UNEMPLOYMENT BENEFITS.

Section 2102 of Federal law 116-136 requires that an individual certify each week that they are able to work and available for work except for a reason that is directly related to the COVID-19 public health emergency. For the week(s) beginning 07/12/2020 and ending 07/18/2020, you certified that none of the approved COVID-19 reasons pertained to you. After a review of the facts provided by you, this department finds that you do not meet the eligibility requirements per Section 2102 of Federal law 116-136. Complete law/rule reference can be viewed at www.nhes.nh.gov by using the NH LAW & RULE link on the left side of the page, or at any NH Employment Security Office. You are not eligible to receive benefits from 07/12/2020 through 07/18/2020.

You have been overpaid benefits to which you were not entitled in the amount of \$1027.00.

Week ending date	Comments	Amount Overpaid
07/18/2020	DENIED	\$1,027.00

Per RSA 282-A:165 I. Any person who has received any benefits under this chapter while any condition for the receipt of benefits imposed by this chapter were not fulfilled or while he was disqualified from receiving benefits shall be liable to repay to the commissioner such benefits all of which shall be considered to be overpayments. II. Liability shall not exist where the person receiving benefits is without fault in causing the overpayment as defined by the rules of the commissioner, per Emp 502.03. IV. The commissioner shall collect any overpayment created under this chapter by civil action in any manner provided for the collection of contributions in RSA 282-A:141 - 156 and shall withhold, in whole or in part as determined by the commissioner, any future benefits payable to the individual and shall credit such amount withheld against the overpayment until it is repaid in full. Interest will accrue as per Emp 402.02. You may request a compromise of the overpaid amount by writing to: Deputy Commissioner, New Hampshire Employment Security, 45 South Fruit Street, Concord, NH, 03301, per RSA 282-A:29.

The total amount of the overpaid benefits you are ordered to repay is \$1027.00.

Si usted no puede leer esto, llame por favor a 1-800-266-2252 para una traducción.



EXHIBIT 6



JFS-83000

**NEW HAMPSHIRE EMPLOYMENT SECURITY
DETERMINATION OF UNEMPLOYMENT COMPENSATION**

Claimant's Name CLAUDE A. POTTIER		Social Security Number [REDACTED]
Benefit Year Beginning Date 03/15/2020	Benefit Year Ending Date 03/13/2021	Application Date 03/20/2020
[REDACTED] CLAUDE A. POTTIER [REDACTED]		Date Issued 12/30/2020
		Determination Identification Number 7875991-1
		Business Unit BAU - Manchester 45 South Fruit Street Concord NH 03301-4857 Phone: (800) 266-2252 Fax: (603) 226-4324

THIS NOTICE IS A DETERMINATION ON ELIGIBILITY FOR UNEMPLOYMENT BENEFITS.

Section 2102 of Federal law 116-136 requires that an individual certify each week that they are able to work and available for work except for a reason that is directly related to the COVID-19 public health emergency. For the week(s) beginning 07/19/2020 and ending 07/25/2020, you certified that none of the approved COVID-19 reasons pertained to you. After a review of the facts provided by you, this department finds that you do not meet the eligibility requirements per Section 2102 of Federal law 116-136. Complete law/rule reference can be viewed at www.nhes.nh.gov by using the NH LAW & RULE link on the left side of the page, or at any NH Employment Security Office. You are not eligible to receive benefits from 07/19/2020 through 07/25/2020.

You have been overpaid benefits to which you were not entitled in the amount of \$1027.00.

Week ending date	Comments	Amount Overpaid
07/25/2020	DENIED	\$1,027.00

Per RSA 282-A:165 I. Any person who has received any benefits under this chapter while any condition for the receipt of benefits imposed by this chapter were not fulfilled or while he was disqualified from receiving benefits shall be liable to repay to the commissioner such benefits all of which shall be considered to be overpayments. II. Liability shall not exist where the person receiving benefits is without fault in causing the overpayment as defined by the rules of the commissioner, per Emp 502.03. IV. The commissioner shall collect any overpayment created under this chapter by civil action in any manner provided for the collection of contributions in RSA 282-A:141 - 156 and shall withhold, in whole or in part as determined by the commissioner, any future benefits payable to the individual and shall credit such amount withheld against the overpayment until it is repaid in full. Interest will accrue as per Emp 402.02. You may request a compromise of the overpaid amount by writing to: Deputy Commissioner, New Hampshire Employment Security, 45 South Fruit Street, Concord, NH, 03301, per RSA 282-A:29.

The total amount of the overpaid benefits you are ordered to repay is \$1027.00.

Si usted no puede leer esto, llame por favor a 1-800-266-2252 para una traducción.

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NOTICE: J141N7



EXHIBIT 7



NEW HAMPSHIRE EMPLOYMENT SECURITY
DETERMINATION OF UNEMPLOYMENT COMPENSATION

JFS-83000

Claimant's Name CLAUDE A. POTTIER		Social Security Number [REDACTED]
Benefit Year Beginning Date 03/15/2020	Benefit Year Ending Date 03/13/2021	Application Date 03/20/2020
		Date Issued 12/30/2020
		Determination Identification Number 7875990-1
CLAUDE A. POTTIER [REDACTED]		Business Unit BAU - Manchester 45 South Fruit Street Concord NH 03301-4857 Phone: (800) 266-2252 Fax: (603) 226-4324

THIS NOTICE IS A DETERMINATION ON ELIGIBILITY FOR UNEMPLOYMENT BENEFITS.

Section 2102 of Federal law 116-136 requires that an individual certify each week that they are able to work and available for work except for a reason that is directly related to the COVID-19 public health emergency. For the week(s) beginning 07/26/2020 and ending 08/01/2020, you certified that none of the approved COVID-19 reasons pertained to you. After a review of the facts provided by you, this department finds that you do not meet the eligibility requirements per Section 2102 of Federal law 116-136. Complete law/rule reference can be viewed at www.nhes.nh.gov by using the NH LAW & RULE link on the left side of the page, or at any NH Employment Security Office. You are not eligible to receive benefits from 07/26/2020 through 08/01/2020.

APPEAL RIGHTS: You may appeal this determination and have the opportunity for a hearing. To file an appeal, complete an on-line form at the NHEs website at <http://www.nhes.nh.gov/forms/index.htm>; mail a form or letter to NHEs Appeal Tribunal Unit, PO Box 2009, Concord, NH 03302-2009 or fax to (603) 223-6141; send an email to appeals@nhes.nh.gov; or go in person at an NHEs office. Include the determination ID number, your name, the last four digits of the claimant's social security number and any additional facts and/or documentation to support the appeal. An appeal must be postmarked or received in an NHEs office within 14 days from the determination mail date, unless the Commissioner finds sufficient grounds to justify or excuse a delay in filing the appeal. If the 14th day is not a Department business day, the Commissioner has already extended the deadline. A timely appeal must be filed no later than 01/13/2021. If the appeal is filed after this date include a statement with: (1) the date you received the determination; and (2) the reason for filing late. If unemployed, claimants should continue to file weekly benefit claims while the determination is under appeal.

CLAIMANT: Upon conclusion of the appeals process, you may request a compromise to forgive some or all of an overpayment debt. If shown to be in the best interests of the state, the Commissioner may waive certain costs and/or settle any overpayment debt with approval of the Attorney General. Send a written explanation of why the Commissioner should compromise the debt to Commissioner, 45 South Fruit Street, Concord, NH 03301. RSA 282-A: 29 and EMP 408.

Code of Federal Regulations 116-136 governs the various Pandemic relief programs, including Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC) and Federal Pandemic Unemployment Compensation (FPUC), including requirements and restrictions regarding overpayment of

Si usted no puede leer esto, llame por favor a 1-800-266-2252 para una traducción.

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NOTICE: J141N7



EXHIBIT 8



NEW HAMPSHIRE EMPLOYMENT SECURITY
DETERMINATION OF UNEMPLOYMENT COMPENSATION

JFS-83000

Claimant's Name CLAUDE A. POTTIER		Social Security Number [REDACTED]
Benefit Year Beginning Date 03/15/2020	Benefit Year Ending Date 03/13/2021	Application Date 03/20/2020
[REDACTED] CLAUDE A. POTTIER [REDACTED]		Date Issued 12/30/2020
		Determination Identification Number 7875989-1
		Business Unit BAU - Manchester 45 South Fruit Street Concord NH 03301-4857 Phone: (800) 266-2252 Fax: (603) 226-4324

THIS NOTICE IS A DETERMINATION ON ELIGIBILITY FOR UNEMPLOYMENT BENEFITS.

Section 2102 of Federal law 116-136 requires that an individual certify each week that they are able to work and available for work except for a reason that is directly related to the COVID-19 public health emergency. For the week(s) beginning 08/02/2020 and ending 08/08/2020, you certified that none of the approved COVID-19 reasons pertained to you. After a review of the facts provided by you, this department finds that you do not meet the eligibility requirements per Section 2102 of Federal law 116-136. Complete law/rule reference can be viewed at www.nhes.nh.gov by using the NH LAW & RULE link on the left side of the page, or at any NH Employment Security Office. You are not eligible to receive benefits from 08/02/2020 through 08/08/2020.

You have been overpaid benefits to which you were not entitled in the amount of \$727.00.

Week ending date	Comments	Amount Overpaid
08/08/2020	DENIED	\$727.00

Per RSA 282-A:165 I. Any person who has received any benefits under this chapter while any condition for the receipt of benefits imposed by this chapter were not fulfilled or while he was disqualified from receiving benefits shall be liable to repay to the commissioner such benefits all of which shall be considered to be overpayments. II. Liability shall not exist where the person receiving benefits is without fault in causing the overpayment as defined by the rules of the commissioner, per Emp 502.03. IV. The commissioner shall collect any overpayment created under this chapter by civil action in any manner provided for the collection of contributions in RSA 282-A:141 - 156 and shall withhold, in whole or in part as determined by the commissioner, any future benefits payable to the individual and shall credit such amount withheld against the overpayment until it is repaid in full. Interest will accrue as per Emp 402.02. You may request a compromise of the overpaid amount by writing to: Deputy Commissioner, New Hampshire Employment Security, 45 South Fruit Street, Concord, NH, 03301, per RSA 282-A:29.

The total amount of the overpaid benefits you are ordered to repay is \$727.00.

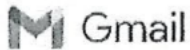
Si usted no puede leer esto, llame por favor a 1-800-266-2252 para una traducción.



EXHIBIT 9

Exhibit	Description	Summary of Content
1	Determination 6750187-2, "Holiday Season Determination" (1 of 8)	Claude was determined to be <i>ineligible</i> for regular UI benefits, as his unemployment was a direct result of COVID-19, and that he would be assessed for Pandemic Unemployment Assistance automatically.
2	Determination 7875985-1 "Holiday Season Determination" (2 of 8)	Claude was determined to be <i>eligible</i> for Pandemic Unemployment Assistance for the period of 3/26/2020 – 12/26/2020.
3	Determination 7875993-1, "Holiday Season Determination" (3 of 8)	Claude <i>was retroactively determined to be ineligible</i> for unemployment benefits for the week of 6/28/20 – 7/4/20 due to reasons Claude provided when he filed his weekly claim, and presumed at-fault for the overpayment of \$1,027.
4	Determination 7875992-1, "Holiday Season Determination" (4 of 8)	Claude <i>was retroactively determined to be ineligible</i> for any unemployment benefits for the week of 7/5/20 – 7/11/20 due to reasons Claude provided when he filed his weekly claim, and presumed at-fault for the overpayment of \$1,027.
5	Determination 7875988-1, "Holiday Season Determination" (5 of 8)	Claude <i>was retroactively determined to be ineligible</i> for unemployment benefits for the week of 7/12/20 – 7/18/20 due to reasons Claude provided when he filed his weekly claim, and presumed at-fault for the overpayment of \$1,027.
6	Determination 7875991-1, "Holiday Season Determination" (6 of 8)	Claude <i>was retroactively determined to be ineligible</i> for unemployment benefits for the week of 7/19/20 – 7/25/20 due to reasons Claude provided when he filed his weekly claim, and presumed at-fault for the overpayment of \$1,027.
7	Determination 7875990-1 "Holiday Season Determination" (7 of 8)	Claude <i>was retroactively determined to be ineligible</i> for unemployment benefits for the week of 7/26/20 – 8/1/20 due to reasons Claude provided when he filed his weekly claim. This Determination references appeal rights, but does not provide the amount of the alleged "overpayment" attributable to this week.
8	Determination 7875990-1 "Holiday Season Determination" (8 of 8)	Claude <i>was retroactively determined to be ineligible</i> for unemployment benefits for the week of 8/2/20 – 8/8/20 due to reasons Claude provided when he filed his weekly claim, and presumed at-fault for the overpayment of \$727.

EXHIBIT 10



Claude Pottier

Unemployment benefits

Claude Pottier
To: appeals@nhes.hn.gov

Thu, Dec 31, 2020 at 9:53 AM

To whom it may concern

Determination Identification Number: 7875993-1, 7875992-1, 7875988-1, 7875991-1, 7875990-1, 7875986-1, 7875989-1
all dated 12/30/2020
Social Security Number: ***-**-6865

I received notifications that my claims for unemployment benefits related to COVID-19 were denied for the period from June 28, 2020 to August 1, 2020.

I am totally puzzled as to the reason of this denial, I can only assume it must be a computer glitch or the decision from a government employee without rhyme or reason.

I was found eligible for benefits in March of 2020 as I was furloughed from my job due to COVID19, nothing changed from March to July so I don't understand why suddenly I would be found ineligible since as of June 28, 2020 the first period of your denial, I was still unemployed due to COVID19.

On September 1, 2020, you sent a notification denying benefits (Determination 7564042-1) to which I appealed per the chain of email below.

Payment of my benefits resumed after that appeal and on September 4, 2020 you sent me a notification approving me for additional benefits under LWA which you subsequently paid.

I cannot be approved and denied at the same time for the exact same circumstances, that would be kind of insane.

You are now asking me to return \$4835.00 for overpaid benefits, that money has been spent for living expenses and I am certainly unable to pay this amount especially since that denial has no logic whatsoever.

I continue to search for employment, I accepted a job for a few weeks in October with UPS which I indicated to you but the job was too physically strenuous and half the people in the company did not wear face masks, I quit the job as I was worried about catching the virus, for good reason as I did catch the virus shortly after the end of my employment, I tested positive and was quite sick for 3 weeks and quarantined at home.

I look forward to getting a clarification and favorable outcome on your re-examination of my circumstances.

Thank you for your consideration.

[Quoted text hidden]

EXHIBIT 11



JFS-86050

NEW HAMPSHIRE EMPLOYMENT SECURITY

Overpayment Demand Letter

Claimant's Name
CLAUDE A. POTTIER

Social Security Number

Date Issued:
01/19/2021

Return to:

LEGAL UNIT
45 SOUTH FRUIT STREET
CONCORD NH 03301-4857Phone: (603) 229-4391
Fax: (603) 228-4080

CLAUDE A. POTTIER

IMPORTANT NOTICE REGARDING YOUR UNEMPLOYMENT COMPENSATION PAYMENTS

You were overpaid Unemployment Compensation benefits as indicated below. The decision is final subject to any pending appeals and you are responsible for repaying these benefits. **However, in light of the pandemic, the department has suspended certain collection efforts. Please read below to learn next steps to take to repay this debt.**

DETERMINATION ID	DECISION MAIL DATE	DECISION FINAL	OVERPAYMENT AMOUNT	PENALTY AMOUNT	TOTAL BALANCE
7875988 - 1	12/30/2020	01/15/2021	\$427.00	\$0.00	\$427.00
7875991 - 1	12/30/2020	01/15/2021	\$427.00	\$0.00	\$427.00
7875989 - 1	12/30/2020	01/15/2021	\$427.00	\$0.00	\$427.00
7875992 - 1	12/30/2020	01/15/2021	\$427.00	\$0.00	\$427.00
7875993 - 1	12/30/2020	01/15/2021	\$427.00	\$0.00	\$427.00
7880312 - 1			\$2,400.00	\$0.00	\$2,424.00
7880313 - 1	12/30/2020	01/15/2021	\$300.00	\$0.00	\$300.00

OUR RECORDS SHOW THAT YOU OWE THE STATE OF NEW HAMPSHIRE, DEPARTMENT OF EMPLOYMENT SECURITY THE SUM OF \$4,859.00 FOR OVERPAID UNEMPLOYMENT INSURANCE BENEFITS.

Please be aware, you are able to request a waiver of this overpayment by going to www.unemploymentbenefits.nh.gov and clicking on 'OVERPAYMENT INFORMATION' and following the instructions.

If you file a request for waiver and are denied or do not file a request for waiver, we would like to work with you to establish a payment agreement that is affordable based upon your financial circumstances.

In order to enter into a payment agreement with the department go to www.unemploymentbenefits.nh.gov and click on 'OVERPAYMENT INFORMATION'. You will then find a fillable financial affidavit that you can download and send to collections@nhes.nh.gov.

A representative will review your completed financial affidavit and be in touch to establish a payment agreement.

Any outstanding balance will be recovered by withholding future benefits to which you may become eligible. A payment agreement may allow the offset amount to be reduced.

Interest will accrue on the principal balance of the overpayment at 1% per month if the debt is not repaid within 60

Si usted no puede leer esto, llame por favor a 1-800-266-2252 para una traducción.



days of the mailing date of the final decision.

If this debt is attributable to fraud or failure to report earnings, the Department is required to submit this debt for offset against your federal tax refund.

Make your check or money order payable to "New Hampshire UCB Account" and mail to New Hampshire Employment Security, Attn: Cashier, 45 South Fruit Street, Concord, NH 03301. (The last four numbers of your social security number should be included with your payment to insure prompt credit is given to your account).

If you recently filed bankruptcy, please notify this office at once. You will need to provide proof of the bankruptcy filing. In the case of bankruptcy, the debt will then be resolved according to bankruptcy law.

Si usted no puede leer esto, llame por favor a 1-800-266-2252 para una traduccion.

