

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**VON KING, DANIELLE JOHNSON,
CHELSEA SHAW, JOY FLOWERS,
SUSAN KOLYNO, JACQUELINE
PERKINS, ARTHUR WILLIAMS,
And JANE/JOHN DOE 1-9,**

**Plaintiffs, on behalf
of themselves and all others
similarly situated,**

v.

**STATE OF GEORGIA,
GEORGIA DEPARTMENT OF
LABOR, and
COMMISSIONER MARK BUTLER,
in his official capacity,**

Defendants.

**CIVIL ACTION
1:21-CV-03082-JPB**

(CLASS ACTION)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Named Plaintiffs Von King, Danielle Johnson, Chelsea Shaw, Joy Flowers, Susan Kolyno, Jacqueline Perkins, and Arthur Williams, on behalf of themselves and the

Prompt Determination Class, Prompt Payment Class, and Prompt Appeals Class (collectively the “Plaintiffs”), on the one hand, and Defendants State of Georgia, the Georgia Department of Labor (“GDOL”), and Mark Butler, in his official capacity as Commissioner of the Georgia Department of Labor (collectively the “Defendants”) on the other hand.

Subject to approval by the Court, the Parties hereby stipulate and agree that the case, and the matters raised by the case, are settled, compromised, and dismissed on the terms and conditions set forth below.

BACKGROUND

Plaintiffs filed this case as a class action in the Superior Court of Fulton County in June of 2021, alleging that Defendants had failed (and were continuing to fail) to properly administer Georgia’s unemployment benefits system in violation of the Plaintiffs’ rights, and the rights of all those similarly situated. Plaintiffs sought declaratory and injunctive relief. Defendants denied these claims and removed the case to the U.S. District Court for the Northern District of Georgia.

Defendants filed dispositive motions, and permitted Plaintiffs limited discovery with respect to a motion for class certification. Plaintiffs deposed corporate representatives of the Georgia Department of Labor and moved for class

certification of the Prompt Appeals Class. The Prompt Appeals Class is defined as “All individuals who (a) have been partially or totally unemployed between March 1, 2020, and the present; (b) have applied for unemployment benefits distributed by the Georgia Department of Labor; (c) received an initial determination that they were ineligible; (d) filed a timely appeal; (e) did not receive an appellate hearing and determination within four weeks of their initial determination; and (f) are still awaiting a hearing or determination. Named Plaintiffs Von King, Jacqueline Perkins, and Joy Flowers represented the Prompt Appeals Class. Plaintiffs intended to move to certify the Prompt Determinations Class and the Prompt Payments Class after further discovery was conducted.

After the limited discovery and the motion for class certification, counsel for the Parties mediated the dispute and ultimately reached an agreement on appropriate injunctive relief as discussed below.

SETTLEMENT TERMS

1. The Settlement Class Under Rule 23(b)(2)

The Parties agree that class certification for the Prompt Determinations Class, the Prompt Payments Class, and the Prompt Appeals Class is warranted in this case for settlement purposes according to the terms below.

The Parties agree that they will seek certification of the above classes under Federal Rule of Civil Procedure 23(b)(2) given the injunctive relief that is described below.

2. Class Counsel

The Parties agree that the following counsel for Named Plaintiffs shall be appointed as Class Counsel ("**Class Counsel**"):

Miriam Gutman
Jamie Rush
Kirsten Anderson
Southern Poverty Law Center
150 E Ponce de Leon Avenue, Ste 340
Decatur, GA 30030

Jason J. Carter
Juliana Mesa
Bondurant, Mixson & Elmore, LLP
1201 W. Peachtree St., N.W., Ste 3900
Atlanta, GA 30309-3417

2.1 No Waiver

In agreeing to seek certification of a class for settlement purposes only, Defendants expressly reserve and will not be deemed to waive any procedural or substantive objections to certification of any class for any other purposes, in the event the Agreement does not become final for any reason.

3. Court Approval

The Parties acknowledge that Court approval of this Agreement is required for it to take full effect. The necessary steps, and the Parties' responsibilities thereto, are outlined below.

3.1. Preliminary Approval

Plaintiffs shall submit, with the approval of Defendants, a motion and proposed order to the Court seeking its entry of a Preliminary Approval Order.

3.1.1. Time to Submit Motion

Representative Plaintiff shall submit the motion on or before June 14, 2022, as set by the Court.

3.1.2. Content of Proposed Preliminary Approval Order

The motion shall request an order that:

- (i) preliminarily approves this Agreement;
- (ii) certifies the Settlement Classes;
- (iii) appoints Class Counsel;
- (iv) approves the form, content, and manner of notice of settlement to be provided to the Settlement Class (the “Notice Plan”), which is described in section 3.2 below;
- (v) sets a date of no later than thirty (30) days after the issuance of the Preliminary Approval Order by which any objection must be filed with the Clerk of Court;
- (vi) sets a date and time for a hearing that is approximately sixty (60)

days after Preliminary Approval, or as soon thereafter as the Court determines is fair and reasonable (the “Fairness and Final Approval Hearing”).

3.1.3. If The Court Denies Preliminary Approval

If the motion for preliminary approval is denied by the Court, or if the Court enters the Judgment and appellate review is sought and on such review such Judgment is materially modified or reversed, the Parties will address any concerns or the basis of denial and again move the Court for approval consistent with the terms therein.

3.2. Notice

Upon entry of the Preliminary Approval Order, the Parties shall make best efforts to provide electronic and publication notice to the Settlement Class Members as discussed below.

3.2.1 Notice Mechanism

Defendant GDOL and Class Counsel Southern Poverty Law Center (“SPLC”) shall post the Notice Content (described below, and including the attached Notice) on their respective websites (the “Notice Web Pages”).

To the extent either the GDOL or Class Counsel has collected the email

addresses of potential appeal class members and other individuals that have identified themselves as wanting additional information regarding the lawsuit, the GDOL and Class Counsel shall send an email to all those individuals on their respective email lists informing the individuals of the settlement and referring them to the Notice Webpages. On all its social media channels, Class Counsel SPLC shall post announcements regarding the proposed Agreement and links to the Notice Webpages.

On all their social media channels, Defendants shall announce the settlement and post links to the Notice Content Webpages. Defendants shall place signage in the GDOL career centers announcing the proposed Agreement and information on how to access the Notice Webpages.

The Parties shall issue a joint press release to media outlets throughout the state that announces the Settlement and provides information for how to access the Notice Content Webpages.

3.2.2 Notice Content

The Notice Content shall provide the class definitions, shall inform potential class members that this case is being settled pursuant to Federal Rule of Civil Procedure 23(b)(2), and shall include the text of the preliminary

approval order, this Agreement, and the specific injunctive relief agreed to below. It shall also identify the date by which any objection must be filed with the Clerk of the District Court.

3.3. Fairness Hearing

At the Fairness and Final Approval Hearing, the Parties will urge the Court to approve this Settlement as fair, reasonable, and adequate, and dismiss with prejudice the claims of the Named Plaintiffs and the Settlement Classes against Defendants.

3.4. Final Order and Judgment

3.4.1. If Approved

The Court's Order and Judgment approving the Agreement shall become the **Final Order and Judgment** on the latest of the following dates:

- a.** if no appeal is taken therefrom, ten (10) days after the time to appeal therefrom has expired;
- b.** if any appeal is taken therefrom, ten (10) days after the date on which all appeals therefrom, including petitions for rehearing or re-argument, petitions for certiorari or any other form of review,

have been finally disposed of in a manner resulting in an affirmance of the Order and Judgment; or

- c. on a date after entry of the Order and Judgment, which date counsel for the Parties agree to in writing.

3.4.2. If The Court Denies Final Approval

If the Court denies Final Approval of the Agreement, or if the Court enters the Judgment and appellate review is sought and on such review such Judgment is materially modified or reversed, the Parties will address any concerns or the basis of denial and again move the Court for approval consistent with the terms therein.

4. Agreed Injunctive Relief

4.1. Constituent and Stakeholder Engagement Group

The GDOL agrees to host a Constituent Engagement Group to meet quarterly to provide feedback on the unemployment benefit process and the progress of the projects described below. The group will consist of five members of the community with three members designated by Plaintiffs and two members designated by Defendants. Defendants will have discretion, based on its operational expertise, on whether to adopt feedback from the constituent group. Defendants agree to continue

hosting the constituent group until 18 months from the effective date of the Agreement.

4.2. Georgia Department of Labor Communications Improvements

Defendants agree to implement the following upgrades and improvements to the systems they use to communicate with applicants, claimants, beneficiaries and/or members of the public regarding Georgia's Unemployment Benefits System:

4.2.1 Website and Web-based Claimant Portal Enhancements

On the relevant public facing website, Defendants will continue to maintain a claimant portal ("Portal") that provides information to individual claimants about their claim. In addition to the currently available information, Defendants will provide the following enhancements to the Portal:

- a. Progress bar.** A "progress bar" will be added that will inform claimants of the status of their claim. This progress bar will include various steps in the claims process including, at a minimum, an indication that (a) the claim was submitted, (b) the claim was processed, (c) there was an eligibility determination, (d) an appeal was filed, (e) the appeal was processed which will be indicated through color coding, and (f) if there is a hold or

other event that has paused the claim processing which will be indicated through color coding. Barring any unforeseen circumstances, the GDOL will have the basic claimant progress bar indicator, with features (a)-(e), completed by July 15, 2022 (the “Progress Bar Launch”). Feature (f) will be added to the progress bar by December 31, 2022.

- b. “Correspondence” enhancements.** In addition to the correspondence between the GDOL and the claimant that is currently available on the portal, the GDOL will use reasonable efforts to add to the portal copies of correspondence, notices, and/or determinations that, in its reasonable discretion, are relevant to a claimants’ claim, determination, and/or benefits.
- c. Electronic Notification.** Providing there is an email address on file, the GDOL will provide claimants with electronic notification that action may be required by a claimant in order to complete the processing of his or her claim. Defendants will use reasonable efforts to provide this feature by December 31, 2022.

4.2.2 Phone System Improvements

The GDOL has implemented improvements to its phone system that include Artificial Intelligence that streamline the call process and provide an improved user interface. This phone system includes the capability to:

- a. Collect data regarding the type and volume of phone calls that the GDOL receives;
- b. Have a modern Customer Relationship Management System that allows different live agents to access data and call histories of applicants and other users; and
- c. Streamline the phone system to ensure calls are appropriately routed.

4.2.3 Public Communication Enhancements

- a. As part of the press release issued pursuant to section 3.2.1, the parties will publicize that the Career Centers are open;
- b. Within 14 days of the effective date of the Agreement, the GDOL will issue a post on its social media accounts including Facebook and Twitter, informing the public that all career centers are open and providing information regarding the assistance that is available at the Centers;

- c. Defendants agree to continue ongoing efforts to improve their public facing guidance to clarify GDOL instructions relating to the Unemployment Insurance program, including instruction on how to file claims and appeals that are understandable by the average consumer.
- d. Following the launch of the Progress Bar, Defendants will put information on the GDOL website and on social media to inform applicants and former applicants about the availability of the new progress bar and an explanation of how to identify the status of their claim using the new tool.

4.3 Outstanding Issues from Application and Payment Backlog

4.3.1 Applicants and Initial Determinations

Defendants have represented under oath that there is no current backlog with respect to new applicants for Unemployment Benefits (Prompt Determination Class) and that determinations regarding new applicants are being completed within a reasonable time and in accordance with the timelines in the GDOL's published claims manuals.

4.3.2 Payments

Defendants have represented under oath that there is no current backlog with respect to making payments for Unemployment Benefits (Prompt Payment Class) and that such payments are being made automatically within a reasonable time and in accordance with the timelines in the GDOL's published claims manuals.

4.3.3 Plaintiffs have collected a list of individuals who maintain they still have outstanding issues with respect to initial determinations and payments. This includes, but is not limited to, some of the named Plaintiffs. No later than 10 days after the effective date of this Agreement, Plaintiffs will provide Defendants with that list and the other information regarding the individuals and their outstanding issues. Defendants will use reasonable efforts to inform individuals of the status of their claim and communicate the status of those issues to the individuals on the Plaintiffs' list. Once per quarter for 12 months after the Agreement is signed, Plaintiffs may supplement the list by submitting additional names and Defendants will use their reasonable efforts to resolve outstanding issues.

4.4 Appeals Backlog

4.4.1 Defendants acknowledge that there is a significant backlog of potential appeals that must be processed in accordance with the GDOL's existing policies to determine whether they are valid appeals, and then to perform the required review for those that are valid. This backlog includes both electronically filed documents and a number of hard copy documents (e.g., paper or fax). The electronically filed appellate documents can be processed through the GDOL's online appeals system, which provides the possibility for significantly faster review.

4.4.2 Defendants have engaged a vendor (or vendors) to scan or otherwise process all paper appeal materials and convert them into electronic form, and into a format where they can be processed as part of the online appeals system. This scanning and processing shall be completed as soon as practicable, but in no event after December 1, 2022.

4.4.3 Defendants have engaged a vendor (or vendors) to create an automated validity determination system. That system will

ensure that the electronic appeal documents currently in the on-line system as of the date of this agreement will receive a validity determination as soon as practicable, but in no event later than November 1, 2022. The system will ensure that the appeals not currently in the on-line system (i.e., the hard copy appeals that must be scanned) will receive their validity determination as soon as practicable, but in no event later than thirty days after the appeal is entered into the on-line system. Barring unexpected delays, these validity determinations will be completed by December 31, 2022. This deadline may be adjusted by mutual agreement of the parties, or further order of the Court.

4.4.4 For valid appeals resulting from this process, Defendants will utilize reasonable efforts to schedule, and conduct required appeals hearings to obtain the 30-day average recommended by the United States Department of Labor in its Core Measures and Acceptable levels of Performance¹, as soon as administratively feasible. Upon receipt of the final data on valid appeals in the

¹ Available at https://oui.doleta.gov/unemploy/pdf/Core_Measures.pdf.

backlog, the parties agree to reconvene to assess a timeline by which Defendants expect to reach this 30-day average level.

4.4.5 If an appellate document is determined to be invalid, Defendants shall notify the claimant in writing of that determination.

4.4.6 As part of the reporting requirements described in Section 4.5 below, Defendants will report to Class Counsel and the Court on a monthly basis regarding the progress of each aspect of this appellate review, including (without limitation) a report on scanning, the development of the automated validity determination system, the number of appellate documents that have received a validity determination and the best estimate of how many remain to receive a determination, the number of appellate hearings that have been held and the best estimate of the number that remain to be held.

4.5 Defendants' Reporting to Plaintiffs and the Court

Every thirty days, beginning thirty days after execution of this Agreement and approval by the Court, Defendants will provide a detailed status report to Class Counsel regarding the progress that has been made on each aspect of the Agreed

Injunctive Relief. Within ten days after Defendants' report to Plaintiffs, the Parties will file with the Court a joint status report regarding the progress that has been made on the Agreed Injunctive Relief. Among other updates, this report will provide sufficient information to the Court to determine whether Defendants are on track to meet the deadlines specified in this Agreement. Defendants agree to provide monthly detailed status reports to Class Counsel, and the Parties agree to file monthly joint status reports to the Court until the sooner of eighteen months or until such time as a final order dismissing the case is entered by the Court.

5. Mutual Releases Contingent on Final Approval: Upon the Court's Final Approval of this Agreement, the Parties shall release their claims as follows:

5.1 By Named Plaintiffs and the Classes: Except for any violations that arise from a breach of this Agreement, Plaintiffs and members of the Classes, on their behalf and on behalf of their successors, heirs, and assigns, hereby release, remiss, and forever discharge Defendants and their successors, heirs, and assigns from all claims, suits, actions, charges, demands, judgments, costs, and executions, that are equitable in any manner arising out of the above-captioned litigation.

- 5.2. By Defendants:** Except for violations that arise from a breach of this Agreement, Defendants, on behalf their successors, heirs, and assigns, hereby release, remiss, and forever discharge Named Plaintiffs and members of the Classes from all claims, suits, actions, charges, demands, judgments, costs, and executions, known or unknown, that are equitable in any manner arising out of the above-captioned litigation.
- 6. Jurisdiction:** The Parties consent and stipulate to the District Court's retention of limited jurisdiction to enforce this Settlement Agreement for five years from the date of the Court's Final Approval.

Signed, this 14th Day of June 2022.

<p>Jason J. Carter Juliana Mesa BONDURANT, MIXSON & ELMORE, LLP 3900 One Atlantic Center 1201 West Peachtree Street, N.W. Atlanta, GA 30309-3417</p> <p>Miriam Gutman Jamie Rush Kirsten Anderson The Southern Poverty Law Center 150 E Ponce de Leon Avenue, Ste 340 Decatur, GA 30030</p> <p><i>Attorneys for Plaintiffs</i></p>	<p>Kimberly B. Lewis Katherine P. Stoff Bryan K. Webb Office of the Attorney General 40 Capitol Square, S.W. Atlanta, Georgia 30334-1300</p> <p><i>Attorneys for Defendants</i></p>
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