



FOR PUBLICATION



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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JOHN "JACK" ANGELLO,	)	Small Claims No. 20-0140
)	
Plaintiff,	)	ORDER FINDING THAT THE COURT
	)	HAS JURISDICTION WHEN AN
v.	)	AGENCY UNLAWFULLY WITHHOLDS
	)	OR UNREASONABLY DELAYS
COMMONWEALTH OF THE	)	MAKING A DECISION PURSUANT TO
NORTHERN MARIANA ISLANDS	)	1 CMC § 9112(f)(1).
DEPARTMENT OF LABOR AND	)	HOWEVER, PLAINTIFF JOHN
SECRETARY OF THE	)	ANGELLO HAS SINCE BEEN PAID
COMMONWEALTH OF THE	)	HIS PANDEMIC UNEMPLOYMENT
NORTHERN MARIANA ISLANDS	)	ASSISTANCE BENEFITS AND HAS
DEPARTMENT OF LABOR VICKY	)	REQUESTED TO DISMISS THE CASE,
BENAVENTE,	)	THEREFORE THE CASE IS DISMISS
	)	WITH PREJUDICE
Defendants.)	

I. INTRODUCTION

THIS MATTER came before the Court on March 16, 2021 at 2:30 p.m. on (i) the Plaintiff's Motion to Dismiss, and (ii) the Defendants' Motion to Dismiss Pursuant to NMI R. Civ. P. 12(b)(1) for Lack of Jurisdiction and NMI R. Civ. P. 12(b)(6) for Failure to State a Claim. Plaintiff John Angello¹ ("Angello" or the "Plaintiff") appeared *pro se*. The Defendants, the Commonwealth of the Northern Mariana Islands ("CNMI") Department of Labor (the "DOL") and Secretary of the CNMI DOL Vicky Benavente (the "DOL Secretary") were represented by

¹ John Angello also known as Jack Angello. The Court edited the case caption as to both parties for clarity.

By order of the Court, Associate Judge Joseph N. Canacho

1 Deputy Attorney General Lillian A. Tenorio. Also present was DOL employee and Pandemic
2 Unemployment Assistance (“PUA”) Coordinator Colleen F. Diaz.

3 Based on a careful review of the filings and applicable law, and the arguments of the
4 parties, the Court issues the following Order.

6 II. FINDINGS OF FACT

- 7 1. The Parties stipulated to the admission all the attachments to their pleadings.
- 8 2. On March 27, 2020, in response to the economic impact of the COVID-19 pandemic,
9 the Coronavirus Aid, Relief, and Economic Securities (CARES) Act was signed into
10 law. The Pandemic Unemployment Assistance (PUA) program was established in order
11 to provide financial assistance to those individuals who became unemployed due to the
12 pandemic. The CNMI DOL was assigned the responsibility of administering and
13 implementing the PUA program in the CNMI. The PUA program in the CNMI
14 reviewed an estimated 36,000 applications. The DOL Secretary stated that the DOL
15 was overwhelmed by the number of applications and acknowledged that a lack of
16 sufficient manpower caused delays in issuing the benefit payments.
- 17 3. On June 11, 2020, Angello received notice that his Public School System (PSS)
18 contract was being prematurely terminated due to the COVID-19 pandemic situation.
- 19 4. On June 12, 2020, Angello applied for PUA benefits by registering online on the DOL
20 portal.
- 21 5. The DOL portal provides individuals who register online for PUA benefits with access
22 to information that is posted on the portal, including a handbook titled “Pandemic
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1 Unemployment Assistance & the Federal Pandemic Unemployment Compensation
2 Benefits Rights Information Handbook.”

3 6. Usage of the DOL portal was fraught with problems. For example, the portal was linked
4 to Guam’s portal system, contributing to the confusion over the status of applications.
5 When Angello registered online using the DOL portal on June 12, 2020, he was unable
6 to register in the CNMI’s portal system and was instead registered with HIREGUAM
7 in Guam’s portal system.

8 7. On June 14, 2020, two days after registering online, Angello submitted his entire PUA
9 application packet in person at the DOL office on Capitol Hill, Saipan, because he could
10 not certify his unemployment status on the DOL portal. Angello subsequently
11 submitted his entire PUA application packet in hard copy to the DOL’s PUA
12 Representative, Ms. Rayzor Tebuteb, who verified that all documents were in order.

13 8. On July 22, 2020, Angello once again went in person to the DOL office to inquire about
14 the DOL’s lack of response to Angello’s PUA application since June 14, 2020. Eugene
15 Tebuteb, the Director of Labor, spoke with Angello and requested that Angello submit
16 his supporting documents again. Angello resubmitted all necessary documents, and the
17 Director of Labor informed Angello that a DOL representative would contact him in
18 the near future.

19 9. On July 25, 2020, Angello received a call from a DOL PUA Representative, informing
20 him that his application had been improperly placed in the Guam DOL system and he
21 could instead submit his application over the phone. Angello proceeded to submit his
22 application over the phone, answering questions.

1 10. Later on the same day of July 25, 2020, Angello received an email from the PUA
2 Coordinator, complaining of unsuccessful attempts to contact Angello on the phone
3 and informing him that another DOL staff member would contact him. However,
4 Angello did not receive a call from DOL following this email.

5 11. On July 30, 2020, following the instructions he received from DOL, Angello submitted
6 his online weekly certifications of his unemployment status.

7 12. On July 31, 2020, Angello received a PUA Unemployment Insurance Claim
8 Information notice, listing his weekly benefit certifications and stating that no
9 outstanding issues had been found on his claim, but that benefit payments were still in
10 progress.

11 13. On August 7, 2020, Angello sent a message to PUA Coordinator Colleen Diaz and
12 received an automatically generated read receipt, indicating that his message had been
13 read.

14 14. On August 9, 2020, Angello received a Claim Status notice on the DOL portal. The
15 notice stated that a claim benefit of \$2,260 had been paid through direct deposit into
16 Angello's bank account. However, no such deposit had been made into Angello's bank
17 account.

18 15. The PUA Coordinator Colleen Diaz, in her declaration, stated that the amount of \$2,260
19 listed in the Claim Status notice to Angello was calculated based on Angello's response
20 to the PUA weekly claim questions in the certification process, but clarified that the
21 issuance of the notice to Angello did not necessarily mean that the amount had in fact
22 been deposited into the Angello's bank account. At that time, Angello's application
23 remained pending for review by the PUA Adjudication Section. The PUA Adjudication
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1 Section, headed by the PUA Coordinator Colleen Diaz, was tasked with reviewing all
2 PUA applications. In its review, the PUA Adjudication Section may determine that
3 further documents are required, either from the applicant or from the former employer,
4 before the application can be approved.

5 16. The PUA Adjudication Section review process does not have a set timeframe for
6 completion and when it will issue its decision.

7 17. On September 14, 2020, and again on September 18, 2020, Angello emailed the PUA
8 Coordinator Colleen Diaz about his PUA claim and expressed his frustration at not
9 receiving any benefit payment.

10 18. On September 18, 2020, Angello received a notice on his portal account, stating that
11 determinations and re-determinations were made, and that no records were found for
12 monetary determinations or overpayment determinations.

13 19. On or about September 21, 2020, the DOL portal indicated that Angello's estimated
14 total claim was \$13,455. The DOL portal further indicated that payments were "in
15 progress" and stated that claim decisions may take up to 21 days.

16 20. By September 26, 2020, Angello had a new contract with the Public School System for
17 the school year of 2020-2021 and was therefore no longer eligible for PUA benefits.

18 21. On October 3, 2020, Angello sent a message to the DOL, requesting a response
19 regarding the status of his PUA benefits and indicating that he would take legal steps
20 if the DOL did not respond to his requests for information.

21 22. On November 20, 2020, Angello filed his small claims complaint. As of that time, he
22 had not yet received any PUA benefits payments: his application and benefit claims
23 were pending review by the PUA Adjudication Section. As of November 20, 2020, it
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1 had been over three months since Angello had received a response from the DOL,
2 whose last reply to him on August 7, 2020 had only been an automatically generated
3 read receipt indicating Angello's email inquiry had been opened.

4 23. Upon reviewing his application, the PUA Adjudication Section determined that
5 additional documents from Angello's former employer, PSS, were needed to complete
6 their review of Angello's eligibility for benefits. PSS provided the requested documents
7 in late December.

8 24. On January 4, 2021, the DOL determined that Angello was eligible to receive PUA
9 benefits in the amount of \$7,833, and not the amount of \$13,455 shown on the DOL
10 portal on September 21, 2020.

11 25. On January 7, 2021, Angello filed a Motion to Dismiss, in which he stated that the
12 Defendants had promised that a payment of his PUA benefits in the amount of \$7,833
13 was being processed as of January 5, 2021, and asked for a dismissal conditional on
14 payment being timely made.

15 26. On January 7, 2021, the Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(1)
16 of the NMI Rules of Civil Procedure for lack of jurisdiction and Rule 12(b)(6) of the
17 NMI Rules of Civil Procedure for failure to state a claim.

18 27. On January 21, 2021, Angello received his PUA benefits payment in the amount of
19 \$7,833.

20 28. On January 26, 2021, Angello filed an Opposition to the Defendants' Motion to
21 Dismiss.

1 29. On February 5, 2021, the Defendants filed a “Combined Motion to Dismiss for
2 Mootness/Opposition to Plaintiff’s Motion to Dismiss/Reply to Defendant’s
3 Opposition.”

4 III. LEGAL STANDARD

5 A. Dismissal for Mootness

6 The Court has a duty to “decide actual controversies by a judgment which can be carried into
7 effect, and not to give opinions on moot questions or abstract propositions, or to declare
8 principles or rules of law which cannot affect the matter at issue in the case at bar.” *Bank of*
9 *Saipan, Inc. v. Superior Court*, 2004 MP 15, ¶ 8 (citing *In re Seman*, 3 NMI 57, 64 (1992))
10 (quoting *Govendo v. Micronesian Garment Mfg., Inc.*, 2 NMI 270, 281 (1991)).

11 There is an exception — commonly referred to as the “capable of repetition yet evading
12 review” exception — “when the issue raised affects the public interest, and it is likely that similar
13 issues arising in the future would likewise become moot before this Court can make a
14 determination,” effectively blocking consideration of those issues whenever they arise. *Id.* For
15 example, in the case *In re Seman*, the Supreme Court of the Commonwealth of the Northern
16 Mariana Islands (the “Commonwealth Supreme Court”) addressed the question of mootness
17 where a plaintiff appealed her commitment to the hospital for psychiatric treatment by order of
18 the Superior Court after she had been released. The Commonwealth Supreme Court held that the
19 public interest exception applied because the issue of commitment for psychiatric treatment was
20 of public concern, and, if it was to recur, would likely become moot before it could be determined
21 on appeal. *In re Seman*, 3 NMI at 64-65. The United States Supreme Court, in *United States v.*
22 *New York Tel. Co.*, found that the exception applied to the appeal of an expired court order
23 requiring the phone company to assist in police surveillance of two phones for a brief period of
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1 time. *United States v. New York Tel. Co.*, 434 U.S. 159, 98 S. Ct. 364, 54 L. Ed. 2d 376 (1977);
2 *see also Bd. Of Educ. Of Hendrick Hudson Cent. Sch. Dist. V. Rowley*, 458 U.S. 176, 102 S. Ct.
3 3034, 73 L. Ed. 2d 690 (1983); *see also Meyer v. Grant*, 486 U.S. 414, 108 S. Ct. 1886, 100 L.
4 Ed. 2d 425 (1988).

5 **B. Rule 12(b)(1): Lack of Subject Matter Jurisdiction**

6 a. Exhaustion of Administrative Remedies and Final Agency Action

7 Under Rule 12(b)(1), a party may assert by motion the defense of lack of subject matter
8 jurisdiction. NMI R. Civ. P. 12(b)(1); *Atalig v. Inos*, 2006 MP 1 ¶ 16. “Both exhaustion [of
9 administrative remedies] and final agency action are jurisdictional prerequisites to judicial
10 review.” *Cody v. Northern Mariana Islands Retirement Fund*, 2011 MP 16 ¶ 10 (citing *Marianas*
11 *Ins. Co. v. Commonwealth Ports Authority*, 2007 MP 24 ¶ 27; *Ga. Power Co. v. Teleport*
12 *Commc’ns Atlanta, Inc.*, 346 F.3d 1047, 1050 (11th Cir. 2003) (“Only final agency actions can be
13 subject to judicial review”); *Rivera v. Guerrero*, 4 NMI 79, 84 (“If [the agency action] was a non-
14 final action, then [the plaintiff] could not seek review under the APA [(Administrative Procedure
15 Act)], which authorizes review only of final agency decisions”). Given that exhaustion and
16 finality of an agency action are jurisdictional prerequisites, “the Court must address exhaustion
17 and finality *sua sponte* if the parties fail to raise the issues themselves.” *Cody*, 2011 MP at ¶ 10
18 (citing *D’Lil v. Best W. Encina Lodge & Suites*, 538 F.3d 1031, 1035 (9th Cir. 2008); *Bernhardt v.*
19 *County of L.A.*, 279 F.3d 862, 868 (9th Cir. 2001)).

20 An agency action will be considered final if it meets two requirements. *Cody*, 2011 MP at
21 ¶ 18 (citing *Marianas Ins. Co.*, 2007 MP at ¶ 15). First, the agency action “must mark the
22 consummation of the agency’s decision-making process—it must not be of a merely tentative or
23 interlocutory nature.” *Id.* (citing *Bennett v. Spear*, 520 U.S. 154, 177-78, 117 S. Ct. 1154, 137 L.
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1 Ed. 2d 281 (1997)). Second, the agency action “must be one by which rights or obligations have
2 been determined, or from which legal consequences will flow.” *Id.*

3 Under the Administrative Procedure Act, “agency action” is defined in Section 9101(c) as
4 including “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent
5 or denial thereof, or failure to act.” 1 CMC § 9101(c). Section 9112(f)(1) further provides that a
6 court reviewing agency action shall “compel agency action unlawfully withheld or unreasonably
7 delayed.” 1 CMC § 9112(f)(1).

8 With respect to the second jurisdictional prerequisite, exhaustion, a party must “exhaust all
9 administrative remedies before seeking judicial review” of that agency’s decision in trial court.
10 *Marianas Ins. Co., Ltd. v. Commonwealth Ports Authority*, 2007 MP 24 ¶ 12.

11 There are several narrow exceptions to the requirement to exhaust administrative remedies,
12 which generally fall into one of three categories:

13 First, a claimant may circumvent the administrative process and go directly to court
14 when the exhaustion requirement would cause undue prejudice to a subsequent
15 assertion of a court action. [*McCarthy v. Madigan*, 503 U.S. 140, 146-47, 112 S.
16 Ct. 1081, 1087-88 (1992)] For example, prejudice might result from an
17 unreasonable or indefinite timeframe for administrative action, resulting in a
18 conflict with a statute of limitations. *Id.* at 147. Second, an agency’s lack of
19 authority or inability to provide adequate relief may prompt an exception. *Id.* at
20 147-48. For instance, a claimant may forego the exhaustion requirement when an
agency lacks the institutional competence to resolve the issue in dispute, such as
determining the constitutionality of a statute. *Id.*; see also *Reid v. Engen*, 765 F.2d
1457, 1461 (9th Cir. 1985) (“We may decide an issue not raised in an agency action
if the agency lacked either the power or the jurisdiction to decide it.”). Third, an
exception may arise when the adequacy of the administrative procedure itself is
challenged, as opposed to the merits of a particular decision. *McCarthy*, 503 U.S.
at 148-49.

21 *Marianas Ins. Co., Ltd. v. Commonwealth Ports Authority*, 2007 MP 24 ¶ 21. The United States
22 Supreme Court, in its 1992 decision in *McCarthy v. Madigan*, provided further analysis of this
23 first category of circumstances in which “requiring resort to the administrative remedy may
24 occasion undue prejudice to subsequent assertion of a court action.” *McCarthy*, 503 U.S. at 146-

1 47. Undue prejudice may result, for example, from an unreasonable or indefinite timeframe for
2 administrative action: an administrative remedy is most often “deemed inadequate ‘[...] because
3 of delay by the agency.’” *Id.* (quoting *Gibson v. Berryhill*, 411 U.S. 564, 575, n. 14, 36 L. Ed. 2d
4 488, 93 S. Ct. 1689 (1973)). Further examples² include *Coit Independence Joint Venture v. Fed.*
5 *Sav. & Loans Ins. Corp.*, in which the United States Supreme Court held that “[b]ecause the Bank
6 Board’s regulations do not place a reasonable time limit on FSLIC’s consideration of claims, Coit
7 [, the plaintiff,] cannot be required to exhaust those procedures.” *Coit Independence Joint Venture*
8 *v. FSLIC*, 489 U.S. 561, 587, 109 S. Ct. 1361,1376 (1989). In its analysis, the Court noted that the
9 lack of a reasonable time limit in the administrative claims procedure at issue rendered it
10 inadequate for several reasons, including the fact that it allows the administrative agency “to delay
11 the administrative processing of claims indefinitely, denying a litigant its day in court, while the
12 statute of limitations runs.” *Id.*

13 The Court, “[w]hen ruling on a motion to dismiss for lack of subject matter jurisdiction
14 under Rule 12 (b)(1), [...] must accept as true the complaint’s undisputed factual allegations and
15 construe the facts in the light most favorable to plaintiff.” *Atalig v. Commonwealth Election*
16 *Comm’n*, 2006 MP 1 ¶ 16 (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d
17 90 (1974)). Furthermore, “[i]f the court lacks jurisdiction, it has no power to enter judgment and
18 may only dismiss.” *Id.*, (citing *Dassinger v. S. Cent. Bell Tel. Co.*, 505 F.2d 672, 674 (5th Cir.
19 1974); 10 WRIGHT & MILLER § 2713 at 404-405).

20 b. Applicability of Small Claims Procedures

21 Under Rule 83(a) of the Commonwealth Rules of Civil Procedure, small claims procedure

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23 ² See also *Walker v. Southern R. Co.*, 385 U.S. 196, 198, 17 L. Ed. 2d 294, 87 S. Ct. 365 (1966) (exhaustion
24 unnecessary due to possible delay of 10 years in administrative proceedings); *Smith v. Illinois Bell Telephone Co.*,
270 U.S. 587, 591-592, 70 L. Ed. 747, 46 S. Ct. 408 (1926) (a plaintiff “is not required to indefinitely await a
decision of the rate-making tribunal before applying to a federal court for equitable relief.”)

1 is applicable to any civil action in which the value of the claim is \$5,000 or less, exclusive of
2 interest, attorney’s fees and costs. COM. R. CIV. P. 83(a).

3 **C. Rule 12(b)(6): Failure to State a Claim upon which Relief may be Granted**

4 Rule 8(a)(2) of the Commonwealth Rules of Civil Procedure states that a pleading “shall
5 contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief.”

6 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief can be
7 granted.” NMI R. CIV. P. 12(b)(6). A Rule 12(b)(6) motion tests the legal sufficiency of the
8 claims asserted in a complaint. *Camacho v. Micronesian Dev. Co.*, 2008 MP 8 ¶ 10. To survive
9 a Rule 12(b)(6) motion to dismiss, a “complaint must contain either direct allegations on every
10 material point necessary to sustain a recovery on any legal theory, [...] or contain allegations
11 from which an inference fairly may be drawn that evidence on these material points will be
12 introduced at trial.” *Atalig v. Mobil Oil Mariana Islands, Inc.*, 2013 MP 11 ¶ 23 (quoting *In re*
13 *Adoption of Magofna*, 1 NMI 449, 454 (1990)) (citations omitted). When deciding a Rule
14 12(b)(6) motion to dismiss, the Court must assume that all factual allegations in the challenged
15 pleading are true and construe them in the light most favorable to the non-moving party. *Id.*
16 (quoting *Syed v. Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶ 22); see also *Cepeda v. Hefner*,
17 3 NMI 121, 127-128 (1992); *Govendo v. Marianas Pub. Land Corp.*, 2 NMI 482, 490 (1992).

18 However, plaintiffs cannot base their complaints “solely on unsupported legal conclusions
19 since such conclusions do not constitute direct or indirect allegations.” *Syed v. Mobil Oil Mariana*
20 *Islands, Inc.*, 2012 MP 20 ¶ 21. Additionally, the Commonwealth Supreme Court has declined
21 in *Syed*, 2012 MP at ¶ 17, to follow the federal “plausibility” standard outlined in *Ashcroft v.*
22 *Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), if the
23 plaintiff’s complaint “lacks sufficient factual accompaniment, a court must examine whether the
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1 allegations reasonably suggest that the claimant will produce substantiating evidence.” *Atalig v.*
2 *Mobil Oil Mariana Islands, Inc.*, 2013 MP 11 ¶ 23 (citation omitted). “A statement of facts that
3 merely creates a suspicion that the pleader might have a right of action’ is insufficient.” *Id.*
4 (quoting *Rios v. City of Del Rio*, 444 F.3d 417, 421 (5th Cir. 2006)). This is because “Rule 8(a)(2)
5 does not permit a plaintiff to bring purely speculative claims.” *Id.* Furthermore, the court “has no
6 duty to strain to find inferences favorable to the plaintiff.” *Cepeda*, 3 NMI at 127-28.

7 IV. DISCUSSION

8 The parties are in agreement that the case should be dismissed. However, the parties
9 disagree as to the grounds for that dismissal.

10 Angello asks that the case be dismissed because he finally received full payment of his
11 PUA benefits from the Defendants in the amount of \$7,833, on January 21, 2021.

12 The Defendants argue that the claims of Angello should be dismissed because: (i) his
13 claims for nonpayment of his PUA benefits are now moot following the payment of his PUA
14 benefits by the Defendants; (ii) under Rule 12(b)(1) of the NMI Rules of Civil Procedure, the
15 Court lacks subject matter jurisdiction since (a) Angello failed to exhaust administrative remedies
16 and there was no final agency decision, and (b) Angello’s total claim exceeded the \$5,000 limit
17 on small claims procedures; and (iii) under Rule 12(b)(6) of the NMI Rules of Civil Procedure,
18 Angello failed to state a claim upon which relief may be granted.

19 For the reasons stated below, the Court finds that the case should be dismissed at
20 Angello’s request, given that he has now received full payment of his PUA benefits. The
21 Defendants’ Motion to Dismiss on the basis of mootness, lack of subject matter jurisdiction under
22 Rule 12(b)(1), and failure to state a claim for which relief may be granted under Rule 12(b)(6) of
23 the NMI Rules of Civil Procedure is denied.

1 **A. Mootness**

2 At issue is whether the case should be dismissed on the grounds of mootness of Angello’s
3 claims. The Defendants argue that Angello’s claim for unpaid PUA benefits is moot following
4 the Defendants’ payment of Angello’s PUA benefits in full, received by Angello on January 21,
5 2021. Angello argues that his claims are not moot as they fall within a public interest exception.

6 The Court has a duty “to decide actual controversies [...] and not to give opinions on
7 moot questions [...] or to declare principles or rules of law which cannot affect the matter at issue
8 in the case at bar.” *Bank of Saipan, Inc.*, 2004 MP at ¶ 8. Here, Angello’s Complaint, filed on
9 November 20, 2020, concerns primarily the issue of unpaid PUA benefits. Angello received
10 payment for his PUA benefits from the Defendants on January 21, 2021. Thus, the matter at issue
11 appears, on its face, to be moot.

12 However, the assessment of whether the matter is moot does not stop there: the Court
13 must consider whether the matter at issue falls within the “capable of repetition yet evading
14 review” exception for matters that affect the public interest. To fall within this exception, the
15 issue raised must affect the public interest, and it must be “likely that similar issues arising in the
16 future would likewise be moot before this Court could make a determination,” such that the issue,
17 whenever it arises, is repeatedly prevented from being considered by the Court. *Bank of Saipan,*
18 *Inc.*, 2004 MP at ¶ 8. Examples of controversies the Commonwealth Supreme Court has found
19 to fall within this exception include the appeal of commitment to a hospital for psychiatric
20 treatment lasting 30 days or less, and a challenge to an agency’s determination of whether a
21 project is a major siting requiring a permit for construction. *See, respectively, In re Seman*, 3
22 NMI at 64-65 and *Govendo*, 2 NMI at 282-283.

23 Here, Angello applied for PUA benefits intended to assist individuals who had lost their
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1 employment due to the pandemic following the early termination of his contract. Angello applied
2 for PUA benefits on June 12, 2020. Following a string of bureaucratic difficulties requiring him
3 to reapply and resubmit all supporting documents multiple times, Angello still had not received
4 any payment of PUA benefits by the date on which he received a new work contract on September
5 26, 2020. Nor had he received any information beyond an indication on the DOL portal that the
6 processing of his application was “in progress.” Angello finally filed a Complaint in the present
7 case on November 20, 2020, still having not received any PUA benefit payment and after no
8 longer receiving any communication from the Defendants. It was only several months after the
9 present case was filed that Angello received payment from the Defendants on January 21, 2021.
10 Angello therefore received his PUA benefits just over seven months after he applied.

11 The Court finds that the matter at issue is one that affects the public interest: the question
12 of emergency PUA benefits being unreasonably delayed affects the ability of those members of
13 the public who lost their jobs due to the pandemic to provide for the basic needs of themselves
14 and their families, namely food, shelter, healthcare, etc. The public has an interest in
15 unemployment benefits being available in a timely manner to those who qualify for them. If
16 every qualified applicant for PUA benefits only received those benefits seven months or longer
17 after they applied, the fundamental purpose of emergency PUA benefits, namely assisting
18 individuals in need, would be greatly undermined.

19 The Court further finds that this controversy is one “capable of repetition yet evading
20 review.” The undue delay in processing applications and issuing PUA benefit payments is
21 certainly capable of repetition. This is especially true as the pandemic is ongoing and new
22 variants of COVID-19 continue to arise: it is foreseeable that additional PUA benefits may be
23 offered in the future. Just as in the present case, any plaintiff bringing this controversy of undue
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1 delay in PUA benefit payments before the Court is likely to have to wait several months before
2 being able to bring the case. If it takes on average seven months for the DOL to issue PUA benefit
3 payments, it is likely that any plaintiff will receive payment within several months of filing a
4 complaint, causing the case to be moot. Thus, any recurrence of this undue delay in paying PUA
5 benefits would likely continue to evade review.

6 Therefore, the Court finds that the claims of Angello fall within the “capable of repetition
7 yet evading review” exception to the doctrine of mootness. The Defendants’ motion to dismiss
8 the case on the ground of mootness is denied.

9 **B. Rule 12(b)(1): Lack of Subject Matter Jurisdiction**

10 At issue is whether the case should be dismissed for lack of subject matter jurisdiction
11 under Rule 12(b)(1) of the NMI Rules of Civil Procedure.

12 The Defendants argue that the Court lacks subject matter jurisdiction over the present
13 claim for two reasons: (i) there was no final agency decision at the time Angello filed his
14 complaint, and Angello failed to exhaust administrative remedies; and (ii) Angello’s total claim
15 exceeded the \$5,000 limit on small claims procedures.

16 Angello contends that the Court does has subject matter jurisdiction, given that the
17 Administrative Procedure Act: (i) defines, in Section 9101(c), “agency action” as including a
18 failure to act; and (ii) provides, in Section 9112(f)(1), that the reviewing court shall “compel
19 agency action unlawfully withheld or unreasonably delayed.” 1 CMC § 9101(c); 1 CMC
20 § 9112(f)(1). With respect to the Defendants’ second argument, Angello contends that his claim
21 does not exceed the limit of \$5,000 for small claims procedures contained in Rule 83 of the
22 Commonwealth Rules of Civil Procedure, because his Complaint concerned a PUA benefit
23 payment of \$2,260 the Defendants reportedly issued to Angello on or about August 9, 2020,
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1 which he had not received.

2 a. Exhaustion of Administrative Remedies and Final Agency Action

3 Under Rule 12(b)(1), a party may assert by motion the defense of lack of subject matter
4 jurisdiction. NMI R. Civ. P. 12(b)(1); *Atalig*, 2006 MP at ¶ 16. For the Court to have subject matter
5 jurisdiction in the present case, the Plaintiff must have exhausted administrative remedies and there
6 must have been a final agency action prior to the Plaintiff filing his Complaint. “Both exhaustion
7 [of administrative remedies] and final agency action are jurisdictional prerequisites to judicial
8 review.” *Cody*, 2011 MP at ¶ 10 (citations omitted).

9 The Court first considers whether the jurisdictional prerequisite of final agency action has
10 been met. An agency action will be considered final if (i) it marks the consummation of the
11 agency’s process of decision making, rather than being tentative or interlocutory; and (ii) it must
12 be a decision which either determines rights or obligations, or leads to legal consequences. *Cody*,
13 2011 MP at ¶ 18 (citations omitted). However, “agency action” is defined in the Administrative
14 Procedure Act, in Section 9101(c), as including “the whole or a part of an agency rule, order,
15 license, sanction, relief, or the equivalent or denial thereof, **or failure to act.**” 1 CMC § 9101(c).
16 Emphasis in bold. Section 9112(f)(1) further provides that a court reviewing agency action shall
17 “compel agency action unlawfully withheld or unreasonably delayed.” 1 CMC § 9112(f)(1).

18 Here, the agency action at issue is best characterized as a failure to act. The claims of
19 Angello center around the failure of the DOL to process his application for PUA benefits, to issue
20 payment, and to provide information to Angello about his application in a timely manner. While
21 the Defendants have since issued full payment of PUA benefits to Angello in January 2021, the
22 agency action under review in the present case is, in fact, the failure to act.

1 At issue is therefore whether a failure to act can be considered a final agency action, and
2 under what circumstances. The wording of Section 9112(f)(1), which clarifies one of the purposes
3 of judicial review of agency actions, states that a court reviewing agency action shall “compel
4 agency action unlawfully withheld or unreasonably delayed.” 1 CMC § 9112(f)(1). This language
5 clearly indicates that judicial review is envisaged where final agency action is unlawfully withheld
6 or unreasonably delayed.

7 Where there is no final agency action, but a failure to act, the question of whether the
8 jurisdictional prerequisite of final agency action is met therefore rests on the question of whether
9 a final agency action is unlawfully withheld or unreasonably delayed. Here, the agency action at
10 issue concerns emergency PUA benefits. Angello applied for PUA benefits in June 2020. Over
11 five months later, when he filed his Complaint on November 20, 2020, he still had not received
12 any final agency action. In fact, it was not until several months into the present judicial review that
13 Angello finally received his payment of PUA benefits from the Defendants, on January 21, 2021,
14 over seven months after his initial application. Considering that the benefits at issue are emergency
15 pandemic unemployment relief, a delay of over seven months is an unreasonable delay of a final
16 agency action. For these reasons, the Court finds that the jurisdictional prerequisite of final agency
17 action has been met.

18 Next, the Court turns to the jurisdictional prerequisite of exhaustion of administrative
19 remedies. Here, Angello did not exhaust administrative remedies because he did not wait to receive
20 a final agency action and then appeal that agency action through the agency prior to bringing the
21 present action for judicial review of agency action.

22 However, while generally a party must “exhaust all administrative remedies before seeking
23 judicial review” of that agency’s decision in trial court, there are three categories of exceptions.
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1 *Marianas Ins. Co., Ltd.*, 2007 MP at ¶ 12. These include: (i) when the exhaustion requirement
2 would cause undue prejudice to a subsequent assertion of a court action, for example, due to an
3 unreasonable or indefinite timeframe for administrative action; (ii) when the agency lacks
4 authority or ability to provide adequate relief; and (iii) when the adequacy of the administrative
5 procedure itself is challenged. *Id.* at ¶ 21.

6 Given that the present case concerns an unreasonable delay in issuing a final agency action,
7 the Court first considers the first category of exceptions, namely when the exhaustion requirement
8 would cause undue prejudice to a subsequent assertion of a court action due to an unreasonable or
9 indefinite timeframe for administrative action. In fact, the United States Supreme Court has noted
10 that delay by the agency is the most common reason an administrative remedy is deemed
11 inadequate and found to result in undue prejudice if the exhaustion of administrative remedies is
12 required. *McCarthy*, 503 U.S. at 146-47 (quoting *Gibson*, 411 U.S. at 575, n. 14. In *Coit*
13 *Independence Joint Venture v. Fed. Sav. & Loans Ins. Corp.*, the United States Supreme Court
14 concluded that the lack of a reasonable time limit in the administrative claims procedure at issue
15 rendered the procedure inadequate for several reasons, such as allowing the administrative agency
16 “to delay the administrative processing of claims indefinitely, denying a litigant its day in court,
17 while the statute of limitations runs.” *Coit*, 489 U.S. at 587.

18 Here, similarly, there is a lack of a reasonable time limit in the administrative claims
19 procedure of the DOL concerning initial PUA benefit determinations: there appears to be an
20 indefinite timeframe for administrative action. This indefinite timeframe is particularly concerning
21 given the emergency nature of the remedy at issue, namely pandemic unemployment assistance.
22 Moreover, as in *Coit*, the lack of a reasonable time limit and apparently indefinite timeline for
23 processing of PUA benefit claims does allow the agency to delay the administrative processing of
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1 claims indefinitely. It is telling that Angello was unable to get any information or updates about
2 the anticipated timeline or status of the processing of his application during a period of several
3 months. Any plaintiff faced with a similar indefinite timeframe for administrative claims
4 processing cannot be expected to wait indefinitely, without being able to have his or her day in
5 court, while the statute of limitations runs. This is exactly the kind of undue prejudice that the first
6 category of exceptions to the exhaustion of administrative remedies requirement seeks to prevent.
7 The circumstances of the present case fit within this first category of exceptions to the exhaustion
8 of administrative remedies requirement, as the lack of a reasonable time limit for processing of
9 PUA benefit claims results in undue prejudice to a subsequent assertion of a court action.

10 On August 7, 2020, Angello received a Claim Status notice on the DOL portal that Angello
11 was entitled to \$2,260 and had been paid through direct deposit into Angello's bank account.
12 However, no such deposit had been made into Angello's bank account.

13 The DOL had all the information to decide whether Angello was eligible for PUA benefits.
14 In fact, the DOL found that Angello was entitled to PUA benefits. The delay and failure to remit
15 Angello's PUA benefits rest solely with the DOL.

16 Angello was left with no options but to circumvent the administrative process and go
17 directly to court as the administrative appeal's exhaustion requirement would have cause further
18 undue prejudice to Angello. Angello had already provided, several time – through the DOL portal,
19 by dropping off hard copies to the DOL office, and answering questions over the phone with DOL
20 employees - all the documentations and information necessary to process his PUA application. In
21 fact, the DOL found Angello eligible to receive PUA benefits. There were no reasonable grounds
22 to further withhold or delay payment of Angello's PUA benefits.

1 To require Angello to go through an administrative appeal process for PUA benefits that
2 the DOL had found him already eligible would further impose undue prejudice to Angello and
3 result in an unreasonable or indefinite delay.

4 The Court therefore concludes that Angello's case falls within an exception to the
5 exhaustion of administrative remedies requirement, and thus the jurisdictional prerequisite of
6 exhaustion of administrative remedies has been met.

7 b. Applicability of Small Claims Procedures

8 Small claims procedure is applicable to any civil action in which the value of the claim is
9 \$5,000 or less, exclusive of interest, attorney's fees and costs. COM. R. CIV. P. 83(a). Here,
10 Angello's claim concerned a monetary claim for \$2,260. This is the amount of PUA benefits he
11 believed had been paid to him based on the information he viewed on the DOL portal — an amount
12 he never received. While the Defendants contest the factual basis of this claim and argue that
13 Angello misunderstood the information that he viewed on the DOL portal, Angello's claim, as
14 stated in his Complaint, is \$5,000 or less, and therefore the small claims procedure is applicable.
15 The Court has subject matter jurisdiction.

16 In conclusion, for the reasons stated above, the Court finds that the jurisdictional
17 prerequisites have been met and the Court has subject matter jurisdiction. The Defendants' motion
18 to dismiss on the grounds of lack of subject matter jurisdiction under Rule 12(b)(1) are therefore
19 denied.

20 **C. Rule 12(b)(6): Failure to State a Claim Upon Which Relief May Be Granted**

21 At issue is whether the present case should be dismissed under Rule 12(b)(6) of the NMI
22 Rules of Civil Procedure of failure to state a claim upon which relief may be granted. The
23 Defendants contend that two of the causes of action alleged by Angello in his Complaint have no
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1 basis in fact or in law for relief to be granted. First, the Defendants submit that there is no basis
2 for relief for Angello’s claim that DOL had not provided him the necessary PUA information in a
3 timely manner, when the Defendants argue that Angello had access to this information on the
4 portal. Second, the Defendants allege that Angello’s claim that the DOL issued a PUA benefits
5 payment of \$2,260 to Angello which was never received is not supported by the exhibits attached
6 to his complaint or in his pleadings. In contrast, Angello contends that he did state a claim upon
7 which relief may be granted by making a claim for monetary relief below the ceiling of \$5,000
8 permitted for small claims procedures.

9 A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in a complaint.
10 *Camacho*, 2008 MP at ¶ 10. To survive a Rule 12(b)(6) motion to dismiss, a “complaint must
11 contain either direct allegations on every material point necessary to sustain a recovery on any
12 legal theory, [...] or contain allegations from which an inference fairly may be drawn that
13 evidence on these material points will be introduced at trial.” *Atalig*, 2013 MP at ¶ 23 (quoting
14 *In re Adoption of Magofna*, 1 NMI at 454) (citations omitted). “A statement of facts that merely
15 creates a suspicion that the pleader might have a right of action’ is insufficient.” *Id.* (quoting *Rios*
16 *v. City of Del Rio*, 444 F.3d 417, 421 (5th Cir. 2006)).

17 When deciding a Rule 12(b)(6) motion to dismiss, the Court must assume that all factual
18 allegations in the challenged pleading are true and construe them in the light most favorable to
19 the non-moving party. *Id.* (quoting *Syed*, 2012 MP at ¶ 22).

20 Here, Angello’s claims regarding (i) PUA information not being provided in a timely
21 manner, and (ii) the DOL portal showing a PUA benefits payment of \$2,260 which Angello never
22 received, essentially concern a lack of communication and notice from the Defendants
23 concerning the undue delay in issuing PUA benefits payment to Angello. While the Defendants
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1 argue that there is no factual support for Angello’s claims because information is available on
2 the PUA portal and the portal did not indicate that a PUA payment was in progress, such
3 arguments mischaracterize the nature of Angello’s complaint. Angello’s claims concern a lack
4 of procedural fairness in the DOL’s procedure for making decisions concerning PUA benefits.

5 Assuming that all factual allegations in the challenged Complaint are true, construing
6 them in the light most favorable to non-moving party, Angello, the Court finds that the claims of
7 Angello concerning a lack of procedural fairness in the form of a lack of communication and
8 undue delay are legally sufficient at this early stage of proceedings. The Defendants’ motion to
9 dismiss the case on the ground of failure to state a claim upon which relief may be granted is
10 therefore denied.

11 **V. CONCLUSION**

12 For the reasons stated above, the Court has jurisdiction when an agency unlawfully
13 withholds or unreasonably delays making a decision pursuant to 1 CMC § 9112(f)(1). However,
14 Plaintiff John Angello has since been paid his Pandemic Unemployment Assistance benefits and
15 has requested to dismiss the case, therefore the case is **DISMISS WITH PREJUDICE**.

16 **SO ORDERED** this 3rd day of January, 2022.

17
18 /s/
19 **JOSEPH N. CAMACHO**, Associate Judge