

STATE OF MICHIGAN

COURT OF CLAIMS

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JUDY SANDERSON, ALBERT MORRIS,  
ANTONYAL LOUIS, and MADELINE  
BROWNE,

**OPINION AND ORDER**

Plaintiffs,

v

Case No. 16-000083-MM

MICHIGAN UNEMPLOYMENT INSURANCE  
AGENCY,

Hon. Cynthia Diane Stephens

Defendant.

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Before the Court is Defendant's motion for summary disposition. Because the Court finds that Plaintiffs failed to satisfy the requirements of MCL 600.6431, the motion is GRANTED. Furthermore, because the Court finds that Plaintiffs' request for leave to amend their complaint is futile, leave to amend is DENIED. Lastly, the Court DENIES as moot Plaintiffs' motion for preliminary injunction and their motion for an extension of time to file a class certification brief.

I. BACKGROUND

A. UNEMPLOYMENT SECURITY ACT

A claim for unemployment benefits under the Unemployment Security Act, MCL 421.1 *et seq.*, (the Act) must adhere to the limitations imposed in the act as well as the regulations set

forth by Defendant Unemployment Insurance Agency (UIA). See MCL 421.32.<sup>1</sup> Pertinent to this case, the Act contains provisions for a redetermination of a claimant's eligibility for benefits. See MCL 421.32a. In event that the UIA issues a redetermination and concludes that a claimant has received benefits to which he or she was not entitled, the Act permits the UIA to seek recovery of those benefits and to impose penalties and interest. See MCL 421.54; MCL 421.62. The Act provides that if a benefits determination is reversed, "the agency may recover a sum equal to the amount received plus interest by 1 or more of the following methods: deduction from benefits or wages payable to the individual, payment by the individual in cash, or deduction from a tax refund payable to the individual . . ." MCL 421.62(a). These methods are collectively referred to as "administrative" collection efforts in this case.

The Act also contains certain time limits for the UIA to take action. At the time of the acts relevant to this case, MCL 421.62(a) provided that the UIA "shall not initiate administrative or court action to recover improperly paid benefits from an individual more than 3 years after the date that the last determination, redetermination, or decision establishing restitution is final." Moreover, the UIA was required to issue:

a determination on an issue within 3 years from the date the claimant first received benefits in the benefit year in which the issue arose, or in the case of an issue of intentional false statement, misrepresentation, or concealment of material information . . . within 6 years after the receipt of the improperly paid benefits unless the unemployment agency filed a civil action in a court within the 3-year or 6-year period; the individual made an intentional false statement, misrepresentation, or concealment of material information to obtain the benefits;

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<sup>1</sup> Some of the pertinent sections of the Unemployment Security Act cited in this opinion were amended by 2016 PA 522, effective April 9, 2017. Unless noted otherwise, all citations to the statute are to pre-amended versions of the act, because such versions were in effect during the relevant events in this case.

or the unemployment agency issued a determination requiring restitution within the 3-year or 6-year period. [MCL 421.62(a).]

## B. PLAINTIFFS IN THE INSTANT CASE

This case, which is filed as a putative class action, involves collection efforts undertaken by the UIA against former claimants following the UIA's issuance of redeterminations that each of the respective Plaintiffs was disqualified from receiving benefits. By and large, the issues in this case concern whether the UIA could pursue administrative collection efforts after 3 years from the date of redetermination. As will be discussed in more detail *infra*, Plaintiffs allege that the UIA had three years from the date redeterminations were issued in order to collect the debt owed. And, absent filing a civil action during the pertinent time period, the UIA could not collect on the debt owed after the expiration of the limitation period.

### I. PLAINTIFF JUDY SANDERSON

According to the allegations in Plaintiffs' complaint, Judy Sanderson began receiving unemployment benefits in June 2009. The UIA issued redeterminations on September 26, 27, and 28, 2011, asserting that Sanderson was not entitled to benefits because she made intentional misrepresentations in order to obtain benefits. The UIA demanded restitution and assessed fraud penalties against Sanderson. As noted, MCL 421.62(a) gives the UIA three years from the date of the last redetermination to initiate administrative action or court action to recover improperly paid benefits. In the case of Sanderson, that three-year period ended, at the latest, on September 28, 2014. According to documentary evidence attached to the UIA's summary disposition brief, the UIA began collection efforts against Sanderson in May 2014, including an administrative garnishment and the interception of Sanderson's tax returns in May 2014. In addition, the UIA alleges, and Sanderson has not contested, that the interception of her tax refund occurred on or about April 9, 2015.

## 2. PLAINTIFF ALBERT MORRIS

Plaintiff Albert Morris began collecting benefits on or about October 2, 2010. On December 5, 2013, the UIA issued a redetermination and concluded that Morris was ineligible for benefits. The redetermination included a restitution order as well as the imposition of fraud penalties. Thereafter, the UIA garnished Morris's wages and intercepted his income tax refunds. According to the UIA, and Plaintiff has not refuted the same, the UIA intercepted an income tax refund in May 2015. In addition, the UIA issued wage garnishment requests with Morris's employer on November 18, 2014 and November 17, 2015.

## 3. PLAINTIFF ANTONYAL LOUIS

Plaintiff Antonyal Louis has had several claims for benefits, one of which led, according to documentary evidence attached to the UIA's supplemental motion for summary disposition, a redetermination issued on June 15, 2011. The redetermination found that Louis was ineligible for benefits because he intentionally withheld information from the UIA in order to obtain benefits. On or about October 29, 2013, the UIA issued a "Notice of Garnishment" to Louis, indicating that it would pursue an administrative wage garnishment in order to satisfy the amount of restitution, penalties, and interest owed. It appears Louis entered into an agreement with the UIA whereby he agreed to make voluntary payments in lieu of an involuntary wage garnishment. On May 27, 2014, the UIA issued a notice of intent to withhold and/or intercept Louis's federal income tax refund. According to documentary evidence attached to the UIA's motion for summary disposition, the agency intercepted Louis's state income tax refund on or about June 26, 2014. According to his affidavit, Louis last made a payment to the UIA on October 22, 2015. This payment satisfied his refund obligations, but he still owed, at the time of the

execution of his affidavit, amounts for penalties and interest, and the UIA continued to send him monthly statements, seeking repayment of the same.

#### 4. PLAINTIFF MADELINE BROWNE

Plaintiff Madeline Browne began collecting benefits in February 2010. Based on information gathered, the UIA determined that Browne intentionally misled the UIA in order to obtain benefits. The UIA issued a notice of redetermination on July 22, 2011.<sup>2</sup> The notice required Browne to reimburse the UIA for benefits received and it imposed statutory penalties and interest. On or about October 29, 2013, the UIA issued a notice of garnishment informing Browne that it was going to seek an administrative garnishment of her wages in order to satisfy the amount owed. For at least some period of time, Browne entered into an agreement to make voluntary payments in lieu of a wage garnishment; it is not apparent from the record how long that arrangement lasted. On or about May 27, 2014, the UIA issued a notice of intent to withhold or intercept Browne's federal income tax return. The UIA intercepted Browne's state income tax refund in May 2014 as well. According to the allegations in Plaintiffs' amended complaint, the UIA began an involuntary garnishment of her wages in February 2015.

#### C. ARGUMENTS

Plaintiffs Sanderson and Morris filed a putative class action complaint in this Court on or about April 11, 2016. They asserted a single count against the UIA: a constitutional tort claim premised on Const 1963, art 1, § 17. As it concerns Sanderson and other similarly situated individuals, Plaintiffs argue that MCL 421.62(a) gave the UIA three years to collect debts from

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<sup>2</sup> There is some discrepancy in the record whether this date should be June 22, 2011, or July 22, 2011. This Court uses the date of July 22, 2011; however, regardless of the date used, the result in this case is the same.

claimants and that this three-year period acted as a “statute of limitations.” Debt collection could continue after the expiration of the limitations period, according to Plaintiffs, but only if the UIA initiated a civil action against Plaintiffs and obtained judgments against them during the three-year period. However, in this case, the UIA continued to collect from Sanderson without securing a judgment, and thereby ran afoul of the limitations period in MCL 421.62(a). According to Plaintiffs, this statutory violation amounts to a deprivation of due process and it forms the basis for their constitutional tort claim against the UIA.<sup>3</sup>

As it concerns Morris and the class of individuals he purports to represent, Plaintiffs’ claims are somewhat different, although they nevertheless seek to invoke a limitation period set forth in MCL 421.62(a). In this regard, Plaintiffs argue that MCL 421.62(a) required the UIA to issue a redetermination within three years of the date Morris first received benefits. However, the UIA issued its redetermination as to Morris outside of the three-year period. Thus, Plaintiffs argue that Morris should not be subjected to collection efforts. In making this argument, Plaintiffs contend that Morris was not subjected to a fraud determination, which, under the then-existing version of MCL 421.62(a), would have given the UIA six years after the date Morris first received benefits to issue a redetermination as to eligibility.

On June 10, 2016, Plaintiffs filed an amended complaint, adding Louis and Browne as Plaintiffs. Louis and Browne assert claims that are similar to Sanderson: that is, they allege that

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<sup>3</sup> Because the issue has not been raised, this Court makes no comment on the propriety of a claim alleging that a due process violation flows from a statutory violation, particularly when there are no allegations that the initial redeterminations were done without notice or an opportunity to be heard. See, generally, *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009) (describing the requirements of due process).

the UIA engaged in collection efforts beyond the three-year limitations period set forth in MCL 421.62(a). The amended complaint alleged a second count against the UIA: conversion. The conversion claim essentially alleges that the seizure or collection of funds from Plaintiffs after the purported three-year limitations period amounted to conversion of Plaintiffs' funds by the UIA.

## II. MCL 600.6431

The UIA has moved for summary disposition and its disputes Plaintiffs' interpretation of MCL 421.62(a). They allege a number of other grounds for summary disposition, only one of which needs to be addressed in detail because it is dispositive. To this end, the Court agrees with the UIA's position that Plaintiffs' have failed to comply with the notice requirements found in MCL 600.6431. In short, Plaintiffs do not identify how they complied with the statute because they decline to discuss potential dates for claim accrual. Moreover, on this Court's review of the possible dates from which compliance with MCL 600.6431 can be measured, Plaintiffs' claims do not meet the timing requirements of MCL 600.6431(3).

It is well established that the state may impose certain conditions or restrictions on claimants who seek to impose liability against the state. *McCahan v Brennan*, 492 Mich 730, 736; 822 NW2d 747 (2012). "One such condition on the right to sue the state is the notice provision of the Court of Claims Act, MCL 600.6431 . . ." *Id.* Section 6431 has been described by our Supreme Court as "establish[ing] those conditions precedent to pursuing a claim against the state." *Fairley v Dep't of Corrections*, 497 Mich 290, 292; 871 NW2d 129 (2015). See also *Rusha v Dep't of Corrections*, 307 Mich App 300, 307; 859 NW2d 735 (2014) (§ 6431 "is an unambiguous condition precedent to sue the state[.]" (citation and quotation marks omitted). In pertinent part, the statute provides that:

No claim may be maintained against the state unless the claimant, within 1 year after such claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against the state or any of its departments, commissions, boards, institutions, arms or agencies, stating the time when and the place where such claim arose and in detail the nature of the same and of the items of damage alleged or claimed to have been sustained, which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths. [MCL 600.6431(1).]

This notice period, which imposes a degree of specificity on a claimant—i.e., stating the time when the claim arose in detail—is shortened to six months for claims involving “property damage or personal injuries.” MCL 600.6431(3) (“In all actions for property damage or personal injuries, claimant shall file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action.”). The statute demands strict compliance, anything short of which requires dismissal of the action. *Fairley*, 497 Mich at 293. See also *McCahan*, 492 Mich at 740 (describing § 6431 as containing “bar-to-claims language”).

A preliminary question to be answered in this case is which deadline in § 6431—the one-year notice requirement in § 6431(1), or the six-month provision in § 6431(3)—applies? The Court concludes that both of Plaintiffs’ claims allege damage to property, i.e., the seizure of Plaintiffs’ property, and that they both fall within the six-month deadline set forth in § 6431(3). See *Rusha*, 307 Mich App at 306 (looking at the crux of the claim to conclude that it “clearly seeks redress for [the plaintiff’s] personal injuries” and therefore was within the confines of § 6431(3)).

Plaintiffs’ August 1, 2016 brief asserts that the six-month provision applies to “the constitutional claim” and the one-year provision applies to “the conversion claim.” This Court disagrees because conversion involves an injury to property. See *Black’s Law Dictionary* (10th

ed) (describing conversion as “The wrongful possession or disposition of another’s property . . .”) (emphasis added). See also *Aroma Wines & Equip, Inc v Columbian Distrib Servs, Inc*, 497 Mich 337, 346; 871 NW2d 136 (2015) (describing the tort of conversion as one involving the property of another). Moreover, the Court notes that the allegations making up Plaintiffs’ constitutional tort claim and the allegations comprising their conversion claim are essentially the same. That is, both are premised on the idea that the UIA deprived them of their property by collecting on their debts in violation of MCL 421.62(a). Plaintiffs cannot, through artful pleading and by affixing a new label to a claim, extend the notice period. Rather, as noted above, this Court will look to the crux of the allegations. See *Rusha*, 307 Mich App at 306. And here, the crux of the allegations concerns a claim for damages to Plaintiffs’ property.

Applying the six-month notice deadline in § 6431(3), the Court agrees with the UIA that Plaintiffs failed to comply with the provision and that their claims must be dismissed. In so concluding, the Court assumes, without deciding, that Plaintiffs’ interpretation of MCL 421.62(a) is correct. That is, the Court assumes, for purposes of discussion, that Plaintiffs are correct in their assertion that MCL 421.62(a) sets forth a three-year period for collecting a debt, and that any administrative action taken outside of that three-year period, absent a prior civil judgment—which did not occur in this case—violates the statute.<sup>4</sup>

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<sup>4</sup> The UIA disputes this interpretation of the statute. According to the UIA, MCL 421.62(a) sets a three-year time limit for initiating administrative action, and as long as administrative action begins within that time period, the UIA can continue to use administrative action, i.e., garnishments and tax intercepts, to continue collecting on the judgment until it is satisfied. This Court declines to specifically address which side has correctly interpreted the statute for two reasons. Firstly, even assuming Plaintiffs are correct in their interpretation, they have, for the reasons noted in this opinion, failed to satisfy § 6431(3). Thus, resolution of the issue is unnecessary in this case. Moreover, the Court notes that, by way of 2016 PA 522, which became

The first filing of any kind that occurred in this case was Plaintiffs' April 11, 2016 complaint.<sup>5</sup> The complaint did not specify, as is required by § 6431(1), "the time when" Plaintiffs' claims arose. Nor have Plaintiffs attempted to provide specific dates in their briefing or argument. Moreover, on this Court's review of the relevant dates and allegations, Plaintiffs cannot satisfy the six-month notice provision contained in § 6431(3).

Plaintiffs' complaint was filed on April 11, 2016, and it alleged a "wrong" or "harm" with regard to administrative collection efforts taken by the UIA in violation of MCL 421.62(a). In order for this complaint to satisfy § 6431's notice provisions, these wrongs or harms need to have occurred within six months of April 11, 2016, i.e., October 11, 2015. None of the claims asserted by Plaintiffs fit this timeframe. As to Sanderson, she alleges that the three-year period for the UIA to collect her debt expired on or about September 28, 2014. According to Sanderson, she has been subjected to an administrative garnishment that began in 2014. This garnishment, according to Plaintiffs' interpretation of MCL 421.62(a), was wrongful as of

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effective on April 9, 2017, the Legislature amended MCL 421.62(a) in a way that clarifies any ambiguity that might have existed in the statute. To that end, the amended version of the statute expressly provides that "[t]he time limits in this section do not prohibit the unemployment agency from *pursuing collection methods to recover the amounts found to have been improperly paid.*" 2016 PA 522 (Emphasis added). In other words, the three-year limitation, which remained in the statute, albeit in a slightly different fashion, does not prohibit the UIA from pursuing collection methods. The phrase, "collection methods," refers to the administrative actions of garnishing wages and taxes, which are expressly mentioned in the first sentence of MCL 421.62(a). Hence, the broad term "collection methods" illustrates an intent by the Legislature that any of the statutorily authorized collection methods may be pursued notwithstanding any time limits imposed in MCL 421.62(a). This amended version of the statute comports with the UIA's proposed interpretation in this case: that is, so long as the UIA takes initial action within three years, it may continue to do so, notwithstanding any time limits imposed in the statute, until the entire debt is satisfied. To the extent Plaintiffs have identified an ambiguity in the prior version of the statute, such ambiguity has been resolved and a decision on the proper interpretation of the outdated version of MCL 421.62(a) would have little value going forward.

<sup>5</sup> Plaintiffs did not file a notice of intent.

September 29, 2014, because it was outside of the three-year period at that point. Plaintiffs' April 11, 2016 complaint was filed far more than six months after the first instance of the allegedly wrongful garnishment. In addition, the Court notes that Sanderson's tax refund was intercepted on or about April 9, 2015. Even using the date of the tax-refund intercept, Sanderson's April 11, 2016 complaint was approximately six months too late.

The UIA issued a redetermination as to Louis's eligibility on June 15, 2011; thus, the purported three-year period expired on June 15, 2014.<sup>6</sup> During this timeframe, on October 29, 2013, the UIA issued a "Notice of Garnishment" to Louis and indicated that it would begin to garnish his wages. By Plaintiffs' arguments, as soon as this garnishment or any collection efforts went beyond June 15, 2014, it was wrongful. Louis's claim was filed more than six months beyond this date. Examining the two tax garnishments on record, it appears Louis's tax returns were intercepted in May and June of 2014. His claim was filed more than six months after those dates, and therefore is untimely under § 6431(3).<sup>7</sup>

As it concerns Browne, the Court notes the July 22, 2011 redetermination. Using this date, the three-year period set forth in MCL 421.62(a) expired on or about July 22, 2014. During this timeframe, on October 29, 2013, the UIA issued a notice of garnishment. Browne alleges that this garnishment continued beyond July 22, 2014, and she cites a February 2015

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<sup>6</sup> This Court notes that, in making their argument in support of summary disposition, the UIA uses a different date—October 1, 2010—as the date for Louis's redetermination. This Court uses the date of June 15, 2011, which is listed as the original mailing date of Louis's "Notice of Redetermination." Regardless of the date chosen, however, the result is the same.

<sup>7</sup> According to statements made by counsel for the UIA at the summary disposition hearing, Louis's federal income tax return was intercepted again in May 2015. Even using the April 11, 2016 complaint filed by Sanderson and Morris, the claim was not filed within six months of this alleged injury.

garnishment. The “happening of the event giving rise to the claim” was the date the garnishment started. Her claim was not filed within six months of this date. Moreover, examining the two income tax refund intercepts on record—both of which occurred in May 2014—leads to the same result. The complaint was filed later than six months after May 2014.

Lastly, turning to Morris, the Court notes that his claim, although involving a claim that the period of limitations bars collection efforts by the UIA, is slightly different from the other Plaintiffs. In this respect, Morris argues that the UIA’s redetermination itself should have been barred by the limitations period set forth in MCL 421.62(a). The version of MCL 421.62(a) that was in effect at the pertinent time required the UIA to make a redetermination of eligibility for benefits “within 3 years from the date the claimant first received benefits in the benefit year in which the issue arose,” or within 6 years in the case of fraud. Morris first began collecting benefits on or about October 2, 2010. More than three years after this date, the UIA, in December 2013, issued a redetermination and alleged overpayment and sought restitution and penalties from Morris. Assuming Morris is correct and that his case did not involve fraud, which would have implicated the longer, six-year timeframe,<sup>8</sup> the “wrong” or “harm” on which Morris’s claim is based occurred in December 2013. His April 2016 complaint is well beyond the six-month period set forth in § 6431(3).

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<sup>8</sup> The UIA asserts, and provides documentary evidence in support, that Morris was determined to have committed fraud. This fraud determination would have implicated the six-year redetermination timeframe in MCL 421.62(a), and it conclusively defeats Morris’s claim. This Court notes as much to provide an alternative basis for finding that Morris’s claim should be dismissed.

In sum, Plaintiffs failed to comply with § 6431 and their claims must be dismissed. *Fairley*, 497 Mich at 293; *McCahan*, 492 Mich at 740. No saving construction of § 6431 is permitted. *McCahan*, 492 Mich at 732. Moreover, although Plaintiffs have not specifically alleged as much or provided any details or dates in support of such a theory, the Court rejects any notion that a “continuing violations” theory could suffice to save the claims. The Court of Appeals expressly rejected such an approach in *Rusha*, 307 Mich App at 313 n 9.

In so concluding, the Court disagrees with Plaintiffs’ assertion that this case is similar to another case raising somewhat-related issues, *Bauserman et al. v Unemployment Insurance Agency*, Case no. 15-000202-MM. In the instant case, Plaintiffs argue that “[a]s with *Bauserman*, Plaintiffs have met the notice requirements of MCL 600.6431.” In *Bauserman*, the plaintiffs were subject to fraud determinations by the UIA, but the UIA later issued redeterminations indicating that the plaintiffs had not received benefits fraudulently. This Court found in *Bauserman*, which involved different types of claims, that the plaintiffs’ claims accrued when the redeterminations were issued. Hence, the plaintiffs in *Bauserman* were able to identify a specific date on which the claims accrued and which occurred within six months of the filing of the complaint in that case. Here, by contrast, Plaintiffs have failed to identify any dates that could come within the six-month notice period set forth in § 6431.

### III. PLAINTIFFS’ REMAINING ARGUMENTS

Plaintiffs argue that in the event this Court grants summary disposition, it should allow them to amend their complaint in order to cure any deficiencies. Under MCR 2.118(A)(2), leave to amend should be freely given when justice so requires. *Kincaid v Flint*, 311 Mich App 76, 94; 874 NW2d 193 (2015). Leave to amend should only be denied for particularized reasons, such as futility. *Id.* In this case, the Court denies Plaintiffs’ request because Plaintiffs fail to allege

any manner in which they could amend the complaint so as to cure the lack of compliance with § 6431. In addition, the Court notes that Plaintiffs have consistently failed to identify any particular dates to use for purposes of measuring compliance with § 6431.

Lastly, the Court rejects any claim by Plaintiffs that summary disposition is premature because discovery has not yet commenced in this case. Plaintiffs' conclusory assertions are not enough to demonstrate that discovery is warranted, particularly when dismissal in this case is required under § 6431, and any dates that could be used to argue that such a result is not warranted, i.e., other potential harms, would already be known to Plaintiffs. See *Davis v Detroit*, 269 Mich App 376, 380; 711 NW2d 462 (2005) ("Mere conjecture does not entitle a party to discovery, because such discovery would be no more than a fishing expedition.").

#### IV. CONCLUSION

IT IS HEREBY ORDERED that Defendant's motion for summary disposition is GRANTED for Plaintiffs' lack of compliance with MCL 600.6431.<sup>9</sup>

IT IS HEREBY FURTHER ORDERED that Plaintiffs' request for leave to amend is DENIED because such amendment would be futile.

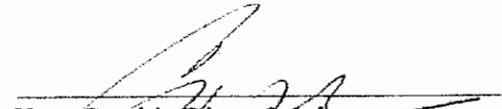
IT IS HEREBY FURTHER ORDERED that Plaintiffs' pending motion for preliminary injunction is DENIED as moot, given the resolution of the summary disposition motion. Likewise, Plaintiffs' motion for an extension of time to file a class certification brief is DENIED as moot.

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<sup>9</sup> Because Plaintiffs' lack of compliance with § 6431 mandates dismissal, the Court need not consider the UIA's alternative arguments in favor of summary disposition.

This order resolves the last pending claim and closes the case.

Dated: JUN 05 2017

  
Hon. Cynthia Diane Stephens  
Court of Claims Judge