

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

MARC SPARKS, on behalf of himself	)	Civil Action No.
and those similarly situated,	)	
	)	
<i>Plaintiffs</i>	)	
	)	
v.	)	
	)	
JANET MILLS;	)	
RANDALL LIBERTY; and	)	
LAURA FORTMAN,	)	
	)	
<i>Defendants.</i>	)	

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**First Amended Complaint and Demand for Jury Trial;**

**Injunctive Relief Sought**

Marc Sparks, on behalf of himself and all those similarly situated, files this class action complaint against Janet Mills, the Governor of the State of Maine, Randall Liberty, the Commissioner of the Department of Corrections, and Laura Fortman, the Commissioner of the Department of Labor. Mills, Liberty, and Fortman are being sued for money damages solely in their individual and personal capacities and not in their official capacities. Mills, Liberty, and Fortman are being sued in their official capacities solely for purposes of non-monetary relief, including injunctive and declaratory relief.

**SUMMARY**

1. Due to the COVID-19 pandemic, in March 2020 Plaintiff Marc Sparks lost his job as a cook at a restaurant. Both he and his employer welcome his returning to that job as soon as possible.

2. Mr. Sparks applied for and received unemployment benefits, primarily the \$600 per week in special COVID-19 benefits authorized by Congress.

3. The Office of the Maine Attorney General issued a formal determination that these unemployment benefits were properly due and owing to Mr. Sparks and 52 other participants in Maine's Work Release Program ("WRP") for inmates assigned to the lowest security classification.

4. Without citing any legal justification or any rationale for rejecting the opinion of the Maine Attorney General, and without providing any due process whatsoever, on May 15, 2020 Governor Mills ordered both (1) the seizure of the unemployment benefits already paid to Mr. Sparks and the other inmates in the WRP; and (2) the termination of their ongoing benefits. This unlawful Order was enforced by Randall Liberty, the Commissioner of the Department of Corrections, and Laura Fortman, the Commissioner of the Department of Labor, both of whom serve at the will of the Governor.

5. The Governor's May 15 order plainly violates the clearly established federal constitutional due process rights of Mr. Sparks and the other WRP participants. As a pillar of our nation's rule of law, federal courts serve an essential role in protecting the constitutional rights of all persons, especially those in politically unpopular groups vulnerable to scapegoating by the political branches. Thus, this Court should grant declaratory and injunctive relief and other remedies to stop and correct the lawless actions of Defendants.

### **BACKGROUND**

6. Plaintiff Marc Sparks was, until recently, employed as a grill cook at the Applebee's restaurant in Thomaston, Maine. At Applebee's, Mr. Sparks worked about forty-five hours a week, typically on Friday through Tuesday from roughly 4pm until midnight.

7. When he started his job, he made \$13 an hour, but he was recently given a raise to \$14 an hour. He enjoyed his job, and his manager greatly appreciated his work ethic and dedication.

8. The COVID-19 pandemic brought Mr. Sparks's employment, along with the employment of thousands of individuals in the state of Maine and across the country, to a halt.

9. Like many Americans, Mr. Sparks is eager to begin working again. He stays in regular contact with his manager, who intends to hire Mr. Sparks back as soon as pandemic restrictions lift.

10. The only difference between Mr. Sparks and his co-workers at Applebee's is that Mr. Sparks is incarcerated at the Bolduc Correctional Facility ("Bolduc") in Warren, Maine. While Mr. Sparks's co-workers went home at the end of their shifts, Mr. Sparks and his fellow incarcerated co-workers were transported back to Bolduc.

11. Mr. Sparks's employment at Applebee's was enabled by Bolduc's Work Release Program (WRP). The WRP allows incarcerated individuals classified as "community custody"—the lowest security classification—to work at and receive wages from employers in the local community.

12. Participants in Bolduc's WRP work at a range of businesses, such as restaurants, landscaping companies, plowing companies, lobster wharves, and sawmills. These employers typically value the work of their incarcerated employees greatly.

13. For instance, Applebee's plans to hire Mr. Sparks permanently once he is released from prison. Almost all the participants in the WRP work full-time, and many work overtime.

14. The Maine Department of Corrections withholds roughly ten percent of the income earned by incarcerated people through the WRP to cover the costs of their room, board, and transportation. It also withdraws funds to cover child support and fines owed by individuals in the program—

typically up to fifty percent for child support and twenty-five percent for fines. Federal and state income taxes are also deducted from participants' paychecks.

15. After these mandatory withdrawals, WRP participants often have only a small amount of money left to send home to family or to purchase basic goods at the Bolduc commissary.

16. In March 2020, as the COVID-19 crisis became seriously recognized, many businesses around the State, including those at which WRP participants worked, temporarily closed, reduced operations, or furloughed workers. For example, the Applebee's where Mr. Sparks worked temporarily closed for indoor dining and reduced workers' hours. Some employers that participated in the WRP program closed altogether.

17. On March 16, 2020, Mr. Sparks and the other WRP participants were gathered and told that, effective immediately, they would be required to quarantine at Bolduc, rather than working in the community. They were told this was being done to reduce the possibility of COVID-19 spreading through Maine's prisons by limiting non-essential contact between those living at Bolduc and the outside world.

18. In response to the COVID-19 crisis and its devastating impact on the economy, the Maine State Legislature passed emergency legislation easing the requirements for unemployment benefits. *See* P.L. 2020, Ch. 617, Part B-1, codified at 26 M.R.S. § 1199(2)(A).

19. Within a week of announcing that WRP participants would be required to quarantine at Bolduc, prison officials at Bolduc encouraged Mr. Sparks and other WRP participants who had been ordered to quarantine to apply for these benefits.

20. Mae Worcester, Bolduc's Community Programs Coordinator, met with the WRP participants individually to help them file their unemployment applications. Mr. Sparks and the other program participants supplied their accurate, up-to-date information for these applications.

21. Fifty-three incarcerated individuals were ultimately deemed eligible for unemployment benefits, including the standard state benefit and the federal Pandemic Unemployment Assistance (“PUA”) payment, which paid \$600 per week through the end of July.

22. In total, the fifty-three individuals received \$198,767 in unemployment benefits—an average amount of \$3,750 per person. Like the wages earned by the WRP participants prior to the COVID-19 pandemic, large portions of these unemployment benefits were deducted by Bolduc to cover room and board, child support, and fines. Mr. Sparks, like many of the WRP participants, received the minimum unemployment benefit amount available to Maine residents: \$172 per week from the state plus the \$600 PUA payment, for a total of \$772 per week.

23. On April 29, 2020, the Maine Office of the Attorney General prepared a memorandum directed to Maine Department of Labor Commissioner Laura Fortman explaining why the individuals who had been employed under the WRP but were unable to work due to COVID-19 were eligible for unemployment benefits. The memorandum noted that “Maine’s unemployment law, the Employment Security Act, provides unemployment compensation benefits to all workers who provide services unless there is an exception set forth in the law.” Letter from Nancy Macirowski, Assistant Attorney General, to Maine Department of Labor Commissioner Laura Fortman, Commissioner (April 29,2020) (“Attorney General Letter”) at 1, attached hereto as Exhibit A.

24. It went on to conclude that “[e]mployment of inmates by private employers to perform work outside the prison is not exempted from unemployment coverage.” *Id.* at 2. Finally, it noted that under emergency legislation passed in response to the COVID-19 crisis, the incarcerated individuals are eligible for unemployment benefits because they “became unemployed for COVID-related reasons.” *Id.* at 2, citing P.L. 2020, Ch. 617, Part B-1, codified at 26 M.R.S. §

1199(2)(A) (“An individual is deemed to have met the eligibility requirements . . . as long as the individual remains able and available to work for, and maintains contact with, the relevant employer, and the individual is . . . [u]nder a temporary medical quarantine or isolation restriction to ensure that the individual has not been affected by the subject condition of the state of emergency and is expected to return to work.”).

25. On May 15, 2020, Governor Janet Mills issued a letter to Department of Corrections Commissioner Randall Liberty directing the Commissioner to:

1. Provide to the Maine Department of Labor (DOL) a list of all inmates who have participated in work release and who remain incarcerated but are prevented from engaging in work release due to the COVID-19 crisis, to include their DOB’s and SSN’s; and
2. Place any and all UI benefits received by such inmates in a separate trust account designated solely for this purpose and not distribute those funds further.

Letter from Janet Mills, Governor, to Maine Department of Corrections Commissioner Randall Liberty (May 15, 2020) (“Governor Mills Letter”) at 1, attached hereto as Exhibit B. Governor Mills further noted that she was “likewise directing Maine DOL to withhold distribution of further UI benefits of any kind to these inmates.” *Id.* at 2.

26. In her letter, Governor Mills noted that “the Attorney General’s Office has determined . . . that this circumstance [of the incarcerated individuals receiving unemployment benefits] is legal under the emergency law passed unanimously by the legislature.” *Id.* at 1. Governor Mills made no attempt to refute the WRP Participants’ eligibility for unemployment benefits. Rather, her explanation was that she found the distribution of unemployment benefits “appalling and to be bad public policy,” and that she did “not believe that it was the intent of the Legislature or Congress to allow inmates to receive state or federal benefits, including the \$600 weekly PUA payment.” *Id.*

27. Governor Mills wrote that unemployment funds should be reserved for Mainers “struggling to pay for basic necessities.” *Id.* But that is exactly how Mr. Sparks and the other WRP participants used their benefits.

28. Contrary to what Governor Mills appears to have incorrectly assumed, basic necessities also cost money for incarcerated individuals and their struggling Maine families. Mr. Sparks used his benefits primarily to support his children, and then to pay for room and board, and to purchase basic necessities. Prior to his employment at Applebee’s, Mr. Sparks’s domestic partner had to send him money for toothbrushes, soap, shampoo, toiletries, phone calls, clothes for job interviews, and other personal supplies at the Bolduc commissary. She even sent Mr. Sparks money for food because he was not always present at Bolduc during the limited dining hours. After he began earning an income by working at Applebee’s, Mr. Sparks was able to pay for his own needs and begin supporting his domestic partner, whose income is below the federal poverty level, and providing child support so that his children’s subsistence needs could be met.

29. The families of Mr. Sparks and the other incarcerated individuals in the WRP were often dependent on income earned from their employment to afford basic human necessities, and they depended on the unemployment benefits to continue to provide those necessities.

30. Under Governor Mills’s directive, Commissioner Fortman and the Department of Labor halted the distribution of further unemployment benefits to the WRP participants. And Commissioner Liberty and the Department of Corrections seized funds from the bank and phone accounts of WRP participants—regardless of the source of the money—to take back the unemployment benefits those individuals had already received. The money seized from the WRP participants has been placed in a designated trust account they cannot access. Moreover, the inmates are subject to ongoing garnishment from their commissary account and those who are

released are subject to garnishment from income and unemployment benefits. Neither Mr. Sparks nor other similarly situated inmates have been provided an accurate accounting of how much they owe or what funds are being held by Bolduc in the trust account.

31. Liberty and the Department of Corrections took these actions—stopping and taking back unemployment benefits from all WRP participants —despite their knowledge of the clear legal authorities that this money rightfully belonged to those participants. In particular, they knew about both the (1) Attorney General’s legal determination that, as a general matter, the participants were legally entitled to those benefits; and (2) the Bureau of Unemployment Compensation’s specific determination for each participant that the particular circumstances of their employment warranted an award of benefits under Maine and federal law regarding unemployment benefits.

32. Maine law mandates a specific procedure for collecting overpayment of unemployment benefits when the recipient is not at fault, which provides for a final determination of the fact and amount of the erroneous overpayment and notice to the recipient of the opportunity to request a waiver from repayment. *See* 26 M.R.S. §1051(5). Governor Mills and Commissioners Fortman and Liberty did not follow that procedure and instead immediately seized all funds in the accounts of WRP recipients.

33. The seizure of funds ordered by Governor Mills has severely injured those incarcerated at Bolduc who received unemployment benefits. For instance, because Mr. Sparks spent about \$350 of the money that he had received in unemployment benefits before his money was suddenly seized, his phone account was levied to pay back the \$350 each time his domestic partner placed money to the account, depriving Mr. Sparks of use of the phone.



34. Other prisoners face the same loss of basic provisions. For many, the seizure of their funds has deprived them of the simple human acts of talking to their children and loved ones on the phone and purchasing personal care items at the commissary.

35. Many families had already relied on the unemployment benefits to pay for basic living expenses like groceries and rent, only to have the money suddenly seized without any warning. The adverse effect was felt especially hard by individuals such as Mr. Sparks whose sentences were almost over and who had been saving the money from the WRP to get back on their feet and afford stable housing when they were released.

36. Mr. Sparks is expected to be released on or before August 28, 2020, and the Maine Department of Labor has stated that it intends to levy up to 50 percent of Mr. Sparks's income upon his release from Bolduc to pay back the benefits he received, which, coupled with the seizure of his unemployment funds, will leave him destitute and unable to afford housing and basic necessities.

37. The stopping of unemployment benefits for the WRP participants and the seizure of benefits already paid occurred without even the pretense of procedural due process. Governor Mills usurped the authority of both the Maine Legislature and Congress that drafted the emergency unemployment laws and the judiciary whose role it is to interpret those laws.

38. Fifty-three individuals, including Mr. Sparks, remain legitimately entitled to the unemployment benefits they have received in the past and to the continued receipt of those benefits under Maine law. When Governor Mills unilaterally ordered the end of those benefits and the seizure of the funds already paid, and when Commissioner Fortman and Commissioner Liberty enforced that order, they deprived these individuals of their statutory property rights without any form of procedural due process.

39. Thus, Mr. Sparks brings this action on behalf of himself and the additional fifty-two WRP participants, who are all similarly situated, to invalidate and remedy this denial of their clearly established constitutional rights.

40. Mr. Sparks brings this action under 42 U.S.C. § 1983 to vindicate his right to procedural due process under the Fourteenth Amendment to the United States Constitution.

### **JURISDICTION**

41. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction).

### **VENUE**

42. Venue in the District of Maine is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the Plaintiffs' claim occurred in this District.

### **PARTIES**

43. Plaintiff Marc Sparks is a resident of Hancock County, Maine currently incarcerated in Knox County, Maine.

44. Defendant Janet Mills is the Governor of Maine. She is sued in her official capacity as a state actor solely for declaratory and injunctive relief, and is sued in her individual, personal capacity solely for monetary damages.

45. Defendant Randall Liberty is the Commissioner of the Maine Department of Corrections. He is sued in his official capacity as a state actor solely for declaratory and injunctive relief, and is sued in his individual, personal capacity solely for monetary damages.

46. Defendant Laura Fortman is the Commissioner of the Maine Department of Labor. She is sued in her official capacity as a state actor solely for declaratory and injunctive relief, and is sued in her individual, personal capacity solely for monetary damages.

### **JURY TRIAL DEMAND**

47. Under Fed. R. Civ. P. 38(b), Sparks demands trial by jury on all issues triable to a jury.

### **FACTS**

#### **A. The Plaintiffs have a legal right to unemployment benefits under Maine state law.**

48. Mr. Sparks and fifty-two others were employed by employers in the local community through Bolduc's WRP, and they received wages from those community employers until Bolduc directed them to quarantine in mid-March of 2020 due to the COVID-19 pandemic.

49. Mr. Sparks and the other WRP participants applied for and were determined by the Bureau of Unemployment Compensation to be eligible for unemployment benefits, and they began receiving benefits, including the standard state benefit and the federal PUA payment.

50. In total, the fifty-three individuals received \$198,767 in unemployment benefits. And they would have continued receiving benefits each week had Governor Mills not directed Liberty and Fortman to prevent them from doing so.

51. The Maine Office of the Attorney General acknowledges that Mr. Sparks and the other WRP participants were legally entitled to receive unemployment benefits. In its April 29, 2020 Memorandum, the Office of the Attorney General explained:

Maine's unemployment law, the Employment Security Act, provides unemployment compensation benefits to all workers who provide services unless there is an exception set forth in the law. The exception for inmates of prisons does not apply to work release. That section applies to:

[s]ervice performed in the employ of any organization that is excluded from the term “employment” as defined in the Federal Unemployment Tax Act solely by reason of 26 United States Code, Section 3306(c)(7) or (8) if . . .(g) Service is performed by an inmate of a custodial or penal institution.

26 M.R.S. § 1043(11)(F)(17)(g).

The sections of the Federal Unemployment Tax Act that are references, 26 U.S.C. § 3306(c)(7) and (8), apply to unemployment by the state and political subdivisions and employment by religious and other organizations organized under 501c3 of the Tax Code. Thus, the exception applies only to inmates who perform services for the state and political subdivisions (including prisons) or for certain nonprofit organizations. Employment of inmates by private employers to perform work outside the prison is not exempted from unemployment coverage. In the absence of an applicable exemption, prisoners are workers eligible for unemployment benefits.

The prisoners became unemployed for COVID-related reasons. It is my understanding that prison officials made the determination to prohibit prisoners from performing work release because of concerns of COVID, thus quarantining the prisoners. It is the expectation that these prisoners will return to their work release jobs when quarantine is lifted. Thus, the prisoners are eligible for unemployment benefits pursuant to the emergency legislation, P.L. 2020, Ch. 617, Part B-1, codified at 26 M.R.S. § 1199(2D)](A):

2. Eligibility. An individual is deemed to have met the eligibility requirements under section 1192, subsection 2 and 3 as long as the individual remains able and available to work for, and maintains contact with, the relevant employer and the individual is:

A. Under a temporary medical quarantine or isolation restriction to ensure that the individual has not been affected by the subject condition of the state of emergency and is expected to return to work.

Attorney General Letter at 1-2.

**B. Governor Mills, acting under color of law, made an extra-procedural decision to deny the Plaintiffs the unemployment benefits to which they are entitled and seize to the benefits already paid to them.**

52. On May 15, 2020, Governor Mills sent Department of Corrections Commissioner Randall

Liberty a letter written on official letterhead demanding him to:

1. Provide to the Maine Department of Labor (DOL) a list of all inmates who have participated in work release and who remain incarcerated but are prevented from

engaging in work release due to the COVID-19 crisis, to include their DOB's and SSN's; and

2. Place any and all UI benefits received by such inmates in a separate trust account designated solely for this purpose and not distribute those funds further.

Governor Mills Letter at 1.

53. Governor Mills also noted that she had “direct[ed] Maine DOL to withhold distribution of further UI benefits of any kind to these inmates.” *Id.* at 2.

54. Governor Mills did not provide any legal response to the determination by the Office of the Maine Attorney General that Mr. Sparks and the other WRP participants were entitled to unemployment benefits, nor did she follow the procedures established by state law for appealing a determination by the Bureau of Unemployment Compensation or for collecting unemployment benefits that were erroneously paid.

55. Rather, Governor Mills noted her opinion that she found the laws' coverage of inmates on work release to private sector employers was “appalling and to be bad public policy.” *Id.* at 1. She then usurped the judicial function of interpreting the statutory intent of the federal and state legislatures, deciding that they could not have intended to allow incarcerated individuals to receive unemployment benefits. *Id.*

56. Finally, she expressed her opinion that “[w]hile work release offers inmates a valuable opportunity to learn life skills, support local employers, and earn a salary that can be used to pay restitution to victims, it is a privilege—not a right—and any inmate who loses that privilege for whatever reason should not have access to our limited public benefit system.” *Id.* She did not offer any explanation for why her personal disagreement with the laws allowed her to violate them.

57. Based on Governor Mills's directive, Laura Fortman, Commissioner of the Department of Labor, halted the distribution of further unemployment benefits to Mr. Sparks and the other WRP participants.

58. Also based on Governor Mills's directive, Randall Liberty, the Commissioner of the Department of Corrections, seized funds in the bank accounts of Mr. Sparks and the other WRP Participants and placed them in a designated trust. In an effort to take back the unemployment benefits paid to Mr. Sparks and the other WRP participants, funds placed into phone and bank accounts by the participants' families were also seized and placed in the trust. As families place more money into these accounts, those funds continue to be seized based on Governor's order to take back all unemployment benefits paid to the WRP participants even if they have already lawfully been spent.

59. Governor Mills's order was not based on any legal authority. The Constitution of the State of Maine grants the Governor, as the chief executive, the right to enforce the laws of the state. ME. CONST. art. V, § 12. However, only the judicial department can interpret the law and only the legislative department can amend it. ME. CONST. art. III, § 2 ("No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.").

60. This separation of powers is the bedrock of American and Maine democracy. The Framers "viewed the principle of separation of powers as the absolutely central guarantee of a just Government." *Morrison v Olson*, 487 US 654, 697 (1988) (Scalia dissenting). And "our Bill of Rights would be worthless" without "a secure structure of separated powers"—the fate of "the bills of rights of many nations of the world." *Id.* (Scalia dissenting).

61. Because Governor Mills's directive is entirely outside the scope of due process, Mr. Sparks and the other WRP participants had no administrative recourse to challenge or appeal the seizure of the money in their accounts and the termination of their ongoing benefits.

62. Mr. Sparks and the other WRP Participants were provided no opportunity for a hearing to determine their eligibility for unemployment benefits before their benefits were stopped and taken back.

63. They were provided no prior notice that their unemployment benefits were to be terminated and the money in their bank and phone accounts seized.

64. Their rightful statutory benefits were simply halted, and their money seized, at the fiat of a state governor who—based solely on considerations not in the laws providing for the benefits—determined that fifty-three of Maine's most destitute and powerless residents should not have received unemployment benefits they were entitled to by statute..

65. Weeks after the seizure of unemployment benefits from Mr. Sparks and other WRP Participants, and after Mr. Sparks filed the Complaint in this action for violation of his Due Process rights, the Department of Labor issued a new Deputy Decision to Mr. Sparks stating that Mr. Sparks was not eligible for unemployment insurance benefits because “[a]n incarcerated individual whose work release program has closed[] is neither able to work nor available for work” under 26 M.R.S. § 1192(3), nor is “considered to be on a temporary lay-off.”

66. The Decision issued out of the blue did not explain why, or under what authority, the earlier decision awarding benefits to Mr. Sparks had been reversed, nor did it explain under what authority the benefits already paid could be suddenly and immediately seized without notice.

67. Upon information and belief, the Department of Labor is in the process of issuing new Deputy Decisions for each of the incarcerated individuals who were approved for benefits but whose benefits were seized at the direction of the Governor.

68. This after-the-fact process is a sham because the result is clearly ordained by the Governor's order and because Liberty and the Department of Corrections have interfered with the efforts of incarcerated individuals to participate in the process. For example, some inmates have been denied permission to participate in a fact-finding interview by phone with the Department of Labor, a required step for obtaining benefits. And, upon information and belief, Liberty has directed that case managers not provide the normal help given inmates with Department of Labor paperwork or assist them in contacting the Department of Labor.

### **CLASS ALLEGATIONS**

69. Mr. Sparks seeks class certification under Fed. R. Civ. P. 23(a) and (b)(2)-(3). This Class is defined as: "All currently and formerly incarcerated individuals in the State of Maine who were deemed eligible for state and federal unemployment benefits after the loss of their WRP employment and whose benefits stopped or paid benefits were seized based on Governor Mills's May 15, 2020 directive" (the "Class").

70. A class action is the only practicable means by which Mr. Sparks and the Class can challenge the constitutionality of Governor Mills's May 15, 2020 order and the subsequent seizure of funds by Commissioner Liberty and cessation of benefits by Commissioner Fortman.

71. As set forth below, this action satisfies the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a). It also meets Federal Rule of Civil Procedure 23(b)(2)-(3).

72. **Numerosity**: Based on reports to the media, it appears that fifty-three currently and formerly incarcerated individuals received unemployment benefits after the loss of their WRP



employment but those benefits stopped following Governor Mills's May 15, 2020 order. *See* Nick Sambides Jr., *Inmates got nearly \$200K in coronavirus unemployment benefits*, BANGOR DAILY NEWS (May 20, 2020), <https://bangordailynews.com/2020/05/20/news/state/inmates-got-nearly-200k-in-coronavirus-unemployment-benefits/>; Stephen Betts, *State prison inmates were paid nearly \$200,000 in unemployment benefits*, PORTLAND PRESS HERALD (May 20, 2020), <https://www.pressherald.com/2020/05/20/state-prison-inmates-were-paid-nearly-200000-in-unemployment-benefits/>.

73. Some of these individuals remain incarcerated, while roughly twenty have since been released into the community. So a portion of the Class is likely spread throughout the state and beyond, making them difficult to track down and contact.

74. Even the portion of the Class that remains incarcerated is impracticably difficult to contact in its entirety. Communication with incarcerated individuals has always been difficult, and this is even more true now that COVID-19 has made attorney visits difficult or impossible.

75. As of this filing, phone and email communication with incarcerated individuals remains challenging, particularly when many of the individuals in the Class have had their phone accounts levied to pay back their unemployment benefits. Representation of each incarcerated person individually would be essentially impossible.

76. Members of the Class are typically low-income individuals who lack the financial resources to bring an independent action or to be joined in this action. By the Class's very nature, it is made up of unemployed incarcerated individuals.

77. It is reasonable to assume that these individuals would be unable to afford counsel to bring their own separate action against the Defendants. Moreover, with an average unemployment claim

of \$3,750 per person, even if an individual member of the Class could afford private counsel, he would be unlikely to do so when the cost would be many times the amount of his individual claims.

78. **Commonality**: All individuals in the Class were equally subject to the loss of their unemployment benefits and the seizure of the previously received funds from their accounts as a result of Governor Mills's May 15, 2020 order. Thus, Mr. Sparks raises his claim based on questions of law and fact that are common to, and typical of, the Class he seeks to represent.

Common questions of fact include:

- a. Whether the Class was granted and paid unemployment benefits; and
- b. Whether, as a result of Governor Mills's May 15, 2020 order, Commissioner Liberty and the Department of Corrections seized funds in the bank and phone accounts of the Class members in order to take back unemployment benefits which they had received; and
- c. Whether, as a result of Governor Mills's May 15, 2020 order, Commissioner Fortman and the Department of Labor withheld future distribution of unemployment benefits to the Class members.

79. Common questions of law include:

- a. Whether Governor Mills's May 15, 2020 order and the subsequent actions by Commissioner Liberty and Commissioner Fortman violated Class members' rights to procedural due process or right to petition their government under the Fourteenth Amendment by depriving them of a legitimate property interest with no procedural safeguards and interfering with their right to participate in administrative proceedings of the Maine Department of Labor regarding their right to unemployment benefits.

- b. Whether injunctive, declaratory, and monetary relief is appropriate and, if so, what the terms of such relief should be.

80. **Typicality**: The claims of Mr. Sparks are typical of the claims of the Class as a whole. Mr. Sparks and the rest of the Class have suffered the same loss of their statutory property interest in their unemployment benefits, and they will continue to suffer that loss until Governor Mills's order and the following actions by Commissioners Liberty and Fortman are declared unconstitutional, Commissioner Liberty is enjoined to return the unemployment benefits currently held in a designated trust account to the accounts of the appropriate individuals, and Commissioner Fortman is enjoined from denying unemployment benefits to individuals who are entitled to those benefits under Maine law.

81. Because Mr. Sparks and the Class all challenge the same unlawful actions, Governor Mills and Commissioners Liberty and Fortman will likely assert similar defenses against Mr. Sparks and the rest of the Class. Moreover, the answer to whether the March 15, 2020 order of the Governor and its enforcement are unconstitutional will determine the success of the claims of Mr. Sparks as well as every other member of the Class. If Mr. Sparks is successful in his claim that the actions of Governor Mills and Commissioners Liberty and Fortman violated his constitutional rights, that ruling will benefit every other member of the Class.

82. **Adequacy**: Mr. Sparks will fairly and adequately represent the interests of the Class he seeks to represent.

83. Mr. Sparks has no interest separate from, or in conflict with, those of the Class he seeks to represent, and he seeks no relief other than the declaratory, injunctive, and monetary relief sought on behalf of the entire proposed class.

84. **Rule 23(b)(2)**: Class action status under Rule 23(b)(2) is appropriate because Governor Mills and Commissioners Liberty and Fortman have acted and failed or refused to act on grounds that generally apply to this proposed Class, such that final injunctive and declaratory relief is appropriate and necessary regarding each member of the Class. Specifically, the Governor Mills's order and the following actions of Commissioners Liberty and Fortman deprived all members of the Class of their statutory property interest in their unemployment benefits in violation of the Due Process Clause of the Fourteenth Amendment.

85. Thus, a declaration that Governor Mills's order and the following actions of Commissioners Liberty and Fortman are unconstitutional, an injunction mandating that Commissioner Liberty return the unemployment benefits currently held in a designated trust account to the accounts of the appropriate individuals, and an injunction enjoining Commissioner Fortman from denying unemployment benefits to individuals who are entitled to those benefits under Maine law are the only appropriate means of vindicating the rights of each member of the Class.

86. **Rule 23(b)(3)**: Further, class action status under Rule 23(b)(3) is appropriate because questions of law and fact predominate over questions affecting individuals and are superior to other available methods of adjudication.

87. Specifically, the constitutionality of Governor Mills's order and the following actions of Commissioners Liberty and Fortman is the predominating issue in this matter. The specific circumstances of the individual Class members' receipt and denial of benefits are not relevant to this overarching questions.

88. The individual class members have nothing to gain from pursuing this claim individually; on the contrary, concentration of this litigation in one forum will only benefit the incarcerated and

under-privileged members of this class who likely cannot afford individual counsel. No individuals in the Class have begun any litigation concerning this matter.

89. There will likely be minimal difficulties in managing this class action; on the contrary, this matter is likely to be far more efficient as a class action than it would be as fifty-three individual cases.

90. **Rule 23(g)**: Mr. Sparks respectfully requests that the undersigned be appointed as Class Counsel. Undersigned counsel, who is the senior partner at Camden Law, LLP, has been in full-time practice since 1996 and has extensive experience in complex civil and criminal litigation. About half of this class of inmates has, individually and through third parties, requested that undersigned counsel represent their interests in this action. In addition to already having the trust of these inmates, undersigned counsel has experience defending the rights of inmates and criminal defendants through his work as a criminal defense attorney in state court and in federal court as a CJA panel attorney. Undersigned counsel has sufficient resources to prosecute these claims on behalf of the Class, including other experienced litigation attorneys and several paralegals and law students working within the firm.

### **COUNT ONE**

#### **Fourteenth Amendment of the United States Constitution (Violation of Procedural Due Process; 42 U.S.C. §1983)**

91. Plaintiffs re-allege the allegations contained in the proceeding paragraphs.

92. Mr. Sparks asserts this claim on behalf of himself and the proposed Class he seeks to represent.

93. Based on these facts, Defendants Mills, Liberty and Fortman, while acting under color of state law, violated Mr. Sparks's federally protected constitutional rights under the Fourteenth Amendment to procedural due process regarding his property right to unemployment benefits.

94. As a direct and proximate result of Defendants' violations of the Procedural Due Process Clause, Mr. Sparks and the Class have suffered and will continue to suffer damages, including, but not limited to, lost unemployment benefits, injury to reputation, financial and emotional distress, and other pecuniary and non-pecuniary losses.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Sparks, on behalf of himself and all others similarly situated, requests relief under 42 U.S.C. § 1983 and its related provisions against Defendants as follows:

- a. Enter declaratory relief that Defendant Mills's order to the Department of Corrections and the Department of Labor to place all unemployment benefits received by the Plaintiffs into a trust account and to cease further distribution of unemployment benefits—and the subsequent actions by the commissioners of those departments acting on Governor Mills's order—are unconstitutional;
- b. Enter injunctive relief requiring Commissioner Liberty to return the money currently held in a designated trust account to the accounts of the appropriate individuals;
- c. Award compensatory damages in the amount to be determined at trial by the jury, plus prejudgment interest;
- d. Award punitive damages in the amount to be determined at trial by the jury, plus prejudgment interest;
- e. Award Plaintiff his full costs, expenses, and reasonable attorney's fees; and
- f. Award nominal damages;
- g. Enter all further relief as is deemed appropriate.

Dated August 24, 2020.

Respectfully submitted,

/s/ Christopher K. MacLean, Esq.  
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