



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Aaron Johnson, et al.,	)	
Plaintiffs	)	
v.	)	
	)	
	)	CV-2022-
Fitzgerald Washington, Secretary of	)	
Alabama Department of Labor and	)	
Alabama Department of Labor,	)	
Defendants	)	

**REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

**Nature of Claim**

1. Plaintiffs bring this action against defendant Fitzgerald Washington, in his official capacity as Secretary of the Alabama Department of Labor, and defendant Alabama Department of Labor (“ADOL”), seeking that they be ordered to faithfully, properly, and timely perform mandatory duties under the Social Security Act of 1935, 42 U.S.C. §§501-504, and the Alabama Unemployment Compensation Act, Ala. Code §§ 25-4-1 et seq., and regulations promulgated in accordance with these laws, and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, to process their unemployment applications, make determinations of their eligibility, pay the unemployment benefits for which they have been deemed eligible, provide timely and adequate notice before denying or terminating benefits, schedule requested administrative appeal hearings and redress deprivations of claimants’ rights by giving claimants whose claims were denied or terminated without proper notice an opportunity for a fair hearing and a rescission of improper determinations of overpayments.
2. Defendants’ failure to process applications for unemployment compensation benefits in a timely manner and their terminations without notice cause thousands of Alabama

households to suffer. Plaintiffs have experienced extreme delays at every step of the unemployment process, including waiting many months, often more than a year, for an ADOL claims examiner to consider their applications for benefits and determine their eligibility, for information about termination of benefits, and for their appeals to be scheduled for hearing by an administrative hearing officer. Plaintiffs have a clear legal right to prompt action by defendants in connection with their pending eligibility determinations, owed payments, and requested appeal hearings, and they have a right to timely and adequate notice of action on their claims. Plaintiffs have no other adequate legal remedy.

3. Defendants' failure to pay unemployment compensation claimants when due is partly due to practices that also deny those claimants other rights under the Alabama Unemployment Compensation Act and the Due Process Clause. Defendants rely primarily on electronic and hard versions of an information sheet to provide claimants with key information about unemployment compensation. The information sheet is written at an educational level that most claimants cannot understand. For example, the explanation of unemployment compensation grades out at 16 for Flesch Kincaid readability (college graduate) and 20.2 for a Gunning Fog score. As a result, claimants are often unsure of what they need to do, and they make mistakes. This adds to defendants' administrative burden and leads to claimants being denied and requesting hearings, adding to the hearing backlog. When defendants send claimants notices, all too often the notices are confusing, inconsistent with other notices they have sent, and lacking sufficient information for the claimants to determine the reason for the denial. Many of the claimants who do not hear anything for months after they apply call defendants to try to learn what is going on.

Many who get confusing notices call defendants to try to get an explanation. These calls that result from defendants' delays and from their failure to provide useful and adequate information help create a situation where defendants often have far more people calling them than can get through.

4. Claimants who are wrongly denied and cannot reach someone at ADOL to resolve the problem often request hearings, which contributes to a huge number of hearing requests, resulting in defendants being so far behind in scheduling hearings that as of January 20, 2022, ADOL was scheduling hearings that claimants requested in August of 2020.
5. Many of the claimants waiting for hearings had drawn some amount of unemployment compensation benefits before the benefits terminated. ADOL sent most of them overpayment letters right after sending the termination letters. Many others received overpayment notices after receiving unfavorable decisions, and ADOL at least in some situations has counted all regular and pandemic benefits as overpayments even when the hearing officer only found claimants ineligible for or disqualified from receiving regular unemployment compensation benefits. The U.S. Department of Labor has given defendants considerable leeway to waive overpayments of federal pandemic unemployment compensation benefits, but defendants have granted few waivers. ADOL then sent many claimants it charged with overpayments Treasury Offset Program letters while the claimants were waiting for hearings. All the actions of which plaintiffs complain build on each other to the detriment of everyone involved.
6. A claimant's expectation of benefits is a property interest protected under the 14th Amendment to the U.S Constitution, and plaintiffs have a due process right to the unemployment compensation benefits for which they qualify.

### Parties

7. Plaintiff Aaron Johnson is a 68-year-old resident of Alabama. After retiring from the military, he worked for the U.S. Census for approximately one year. When laying the employees off last fall, Mr. Johnson's supervisor told the employees to apply for unemployment compensation. Mr. Johnson applied in late October 2020. On October 29, 2021, ADOL sent him a letter saying: "A monetary determination has been made regarding the unemployment compensation benefits claim you filed. This is a determination of wages only and does not establish personal eligibility. Payments are pending final approval of the claim." Below information about earnings and weekly benefit amounts was: "Message: The base period contains insufficient wages. If the wages listed are incorrect, provide proof of correct wages." Mr. Johnson continued looking for work and certifying weekly with ADOL. On December 16, 2020, ADOL sent him a second monetary determination again saying: "A monetary determination has been made regarding the unemployment compensation benefits claim you filed. This is a determination of wages only and does not establish personal eligibility. Payments are pending final approval of the claim." This notice showed the same wage information as the first, but it showed that Mr. Johnson's weekly benefit amount was \$275. ADOL never sent a decision on Mr. Johnson's eligibility for unemployment compensation. He continued signing up and certifying until January 2022. Mr. Johnson has tried calling the appointments line many times without ever getting through to get an appointment. He last called in January 2022.
8. Christin Burnett is a resident of Alabama over the age of 19. After losing her job in 2019, Ms. Burnett applied for unemployment compensation. ADOL found Ms. Burnett

eligible and paid her until October 2020, when her regular benefits ran out. She applied for pandemic unemployment assistance in October 2020. The Department did not send Ms. Burnett a decision, but eventually her computerized records showed that the Department had decided that she was not eligible. Ms. Burnett made numerous phone calls to the Department to try to find out why. On February 11, 2021, she got through to the claims inquiry line and got an appointment for a call from a worker. At 7:00 a.m. on February 12, 2021, a worker called and told Ms. Burnett that she was disqualified because of an error involving her social security number and because she lost her job before COVID. Ms. Burnett is unable to find new employment because of COVID. She is waiting for ADOL to acknowledge her hearing request and schedule a hearing.

9. Plaintiff Nancy Williams is a resident of Alabama over the age of 19. Ms. Williams applied for unemployment compensation after quitting a job in June 2020 because of retaliation following her complaint about racial discrimination. ADOL did not issue a decision, but it paid Ms. Williams \$600 in Federal Pandemic Unemployment Compensation (“FPUC”) on June 13, 2020; \$275 in regular unemployment compensation and \$600 in FPUC on June 20, 2020; \$275 in regular unemployment compensation and \$600 in FPUC on June 27, 2020; \$275 in regular unemployment compensation and \$600 in FPUC on July 4, 2020; \$275 in regular unemployment compensation and \$600 in FPUC on July 11, 2020; and \$275 in regular unemployment compensation and \$600 in FPUC on July 18, 2020. At that time, ADOL stopped payments without any notice. Ms. Williams called the ADOL claims inquiry line several times and eventually was able to talk to a worker on about February 10, 2021. The Department then issued a decision finding her ineligible for any unemployment compensation. It followed that decision with

a decision saying that all the benefits that she had received were erroneously paid, and that she had to repay that overpayment of \$4975. Ms. Williams requested a hearing, and she is waiting for ADOL to acknowledge her hearing request and schedule a hearing.

10. Plaintiff Derek A. Bateman is a resident of Alabama over the age of 19. Mr. Bateman is an independent shrimper. He lost the ability to sell his shrimp after the pandemic struck. In May 2020, Mr. Bateman filed an application for pandemic unemployment benefits. He was late getting a 1099, but someone from ADOL told him to submit it anyway. He has not received any notice except for monetary ineligibility notices. Each time he has received one, he has appealed. He has also sent hundreds of emails that ADOL does not respond to or acknowledge and has called what he believes must have been at least a thousand times before he was ever able to talk with a worker or schedule an appointment. The calls either yielded busy signals or "high volume" messages until Mr. Bateman got to a message saying all appointments for the next day are booked. On March 28, 2021, Mr. Bateman was able to get through and got an appointment for a call back on March 29, 2021. Before the call, he checked the claim tracker and was glad to see that his status had changed to 'active in pay status' and showing there were no more pending issues. However, when the representative from ADOL made the callback, she told Mr. Bateman that he would not be getting anything until his appeal gets resolved, and he said that ADOL was then only working on scheduling appeals filed on July 17, 2020. The representative said that he will just have to call and check a month from then and every month after. Mr. Bateman does not see how he can continue to wait. He has lost everything and does not even have a place to stay and is struggling to keep from going hungry.

11. Plaintiff Jack Ficaro is a resident of Alabama over the age of 19. After being fired from his job, Mr. Ficaro applied for unemployment compensation benefits online on or about June 29, 2020. He did not hear anything until he received a denial notice dated December 3, 2020. Mr. Ficaro promptly appealed and kept proof of the appeal. ADOL has not communicated with him at all concerning the hearing request. He is waiting for ADOL to acknowledge his hearing request and schedule a hearing.
12. Plaintiff Dashonda Bennett is a resident of Alabama over the age of 19. When Ms. Bennett lost her job in March because of the pandemic, she applied for unemployment compensation. ADOL paid Ms. Bennett until late June, but it then stopped the benefits saying that her former employer said that she had quit without good cause. Ms. Bennett told someone at ADOL she had not quit, but that person told Ms. Bennett she would have to appeal. Ms. Bennett filed an appeal in early July, but the hearing on the appeal has not been scheduled.
13. Plaintiff Latisha Kali is a resident of Alabama over the age of 19. She worked as an operation supervisor at Lowe's from 9 p.m. to 5 a.m. for two years. She caught COVID and missed eight weeks of work until she was able to test negative. When she returned to work, her supervisor started harassing her and acting in a racist manner toward her. Ms. Kali worked past the end of her shift to protect her job, but her supervisor continued harassing her. Ms. Kali made a complaint against her supervisor, who then took her off the schedule. The supervisor showed HR a schedule with Ms. Kali's name on it, leading Ms. Kali to be fired for "no show, no call." She complained up the ladder, even talking once to the CEO. But to no avail. Ms. Kali applied for unemployment compensation in early November 2020 but still has not received a decision. She and her counsel tried to

schedule an appointment to learn about her claim, but they got busy signals or “high volume” messages until getting messages that all the next day’s appointments have been booked. In the spring of 2021, the Legal Office of ADOL established a procedure for lawyers at Legal Services Alabama to email an ADOL lawyer and get a response providing information that the claimant was unable to obtain from ADOL on her own. Using this procedure, on May 21, 2021, counsel for Ms. Kali sent an email to counsel for ADOL asking why she had not yet received a decision. On June 22, 2021, counsel for ADOL said that he assumed that Ms. Kali’s case was on appeal but not yet processed. He said that Ms. Kali would get a notice of a telephonic administrative hearing when it is processed. She has not heard anything further. On January 23, 2022, and again on January 24, 2022, Ms. Kali called the appointments number to try to get an appointment to get answers about her claim. Both times she got busy signals or indications of high volume until she finally got word that all appointments for the next day had been filled.

14. Plaintiff Quinton Lee is a resident of Alabama over the age of 19. Mr. Lee last worked on June 8, 2020. He filed for unemployment compensation on June 15, 2020, and continued to certify weekly. After almost a month, the webpage for his account showed his status as “failure to provide information” and said a determination letter was mailed to him on July 6, 2020. He called the ADOL inquiry line and was able to speak with someone who told him that she would get the matter cleared up. It never was cleared up. He has not been able to sign up for regular unemployment compensation benefits or PUA.
15. Plaintiff Esta Glass is a resident of Alabama over the age of 19. She is self-employed as a provider of services for concerts and similar events. As a result of COVID, Ms. Glass

has not been able to get much work, as there have been cancelations of so many concerts and parades and other events. Ms. Glass made numerous attempts to apply for phone after losing her job in March but was only able to file online in late June 2020. ADOL approved her claim for pandemic unemployment compensation but did not pay for weeks before her online application. Ms. Glass filed a request for a hearing on November 30, 2020, but ADOL has not acted on the hearing request.

16. Plaintiff Joyce Jones is a resident of Alabama over the age of 19. She applied for unemployment compensation after losing her job due to COVID. ADOL approved her application and paid her, but then it stopped paying her without sending a notice explaining why. After Ms. Jones had gone at least six weeks signing up for benefits and calling trying to find out why they were not being paid, ADOL reinstated her benefits. She never found out why the benefits stopped, never got any notice and never could get through at the claims inquiry number.

17. Plaintiff Michael Dailey is a resident of Alabama over the age of 19. Mr. Dailey was fired from his job for supposedly being late, but this appeared to be a ruse so that relative of a supervisor could be hired. Mr. Dailey filed a claim for unemployment compensation on or about August 11, 2020. Mr. Dailey signed up for fifteen weeks, but ADOL never acted on the claim.

18. Plaintiff Deja Bush is a resident of Alabama over the age of 19. Ms. Bush filed an application for regular and pandemic unemployment compensation benefits and certified for benefits. By mistake, on May 16, 2021, she answered one question wrong, and ADOL denied her benefits for that week. Ms. Bush tried to correct the error and tried to get someone working for ADOL to help her correct it. She sought assistance from Legal

Services Alabama. In the spring of 2021, the Legal Office of ADOL established a procedure for lawyers at Legal Services Alabama to email an ADOL lawyer and get a response providing information that the claimant was unable to obtain from ADOL on her own. Using this procedure, on May 24, 2021, counsel for Ms. Bush sent an inquiry to counsel for ADOL asking that Ms. Bush be given an opportunity to correct the erroneous response so that she could get benefits for that week. ADOL did not respond directly or through counsel. Ms. Bush called the appointments number for ADOL. After several attempts, on January 24, 2022, Ms. Bush was able to make an appointment. A representative from ADOL called her on January 25, 2022, and said that Ms. Bush had exhausted her benefits, and that she could not get any more benefits until after March 2022. The representative said that only after that time could ADOL consider whether Ms. Bush was due benefits for the week that she missed. Ms. Bush explained that she did not understand, but the ADOL representative said that she could not provide any more of an explanation.

19. Plaintiff Jarvis Dean applied for unemployment compensation early in 2021. He returned to work but had to leave work again when he became ill with COVID. In early 2021, he was able to get through to ADOL to check the status of his claim. He learned then that he was being charged with an overpayment, but he does not know why and has never received any notice regarding an overpayment. Someone at ADOL told Mr. Dean he had to supply his social security number and copies of identification, which he did. Mr. Dean went to his local employment office May 24, 2021. There a worker confirmed that an inquiry had been made to Mr. Dean's former employer on April 28, and that ADOL was still waiting for a response. In the spring of 2021, the Legal Office of ADOL established

a procedure for lawyers at Legal Services Alabama to email an ADOL lawyer and get a response providing information that the claimant was unable to obtain from ADOL on her own. Using this procedure, Mr. Dean's counsel sent an email On May 24, 2021, to counsel for ADOL asking why ADOL could not make a decision based solely on Mr. Dean's certification, since the former employer had failed to respond timely. Counsel for Mr. Dean followed up on that email on August 31, 2021. The ADOL has not provided any information and has not paid Mr. Dean.

20. Plaintiff Taja Penn attempted to apply for unemployment compensation after losing her job in 2020. She was unable to file an application for unemployment compensation, because someone else was using her Social Security number to draw benefits. Ms. Penn completed and submitted a fraud affidavit, but she never heard back from ADOL. She filed her taxes and in May 2021 received a letter from IRS that suggests that she is being asked to pay taxes on the unemployment compensation paid to someone else under her Social Security number. In the spring of 2021, the Legal Office of ADOL established a procedure for lawyers at Legal Services Alabama to email an ADOL lawyer and get a response providing information that the claimant was unable to obtain from ADOL on her own. Using this procedure, Ms. Penn's counsel sent an email May 17, 2021, asking ADOL to say whether ADOL had made a determination of fraud against some third party and whether it would pay Ms. Penn the benefits that she never received. On July 9, 2021, the lawyer for ADOL responded saying "if you can get me her last day worked, the weeks she would have certified for and alleges she should be paid, we may be able to work something out. Also, I need a contact number so that we can call her if we need to." On July 9, 2021, counsel for Ms. Penn responded with the requested information. On

September 1, 2021, and then again on November 4, 2021, counsel for Ms. Penn sent a follow-up email. Neither Ms. Penn nor her counsel heard from ADOL about her claim until this month when Ms. Penn called the ADOL “appointments” number. The first time, she lost her phone and missed the call. On February 1, 2022, Ms. Penn called again and was told she would get a call some time during February 2, 2022..

21. Plaintiff Lisa Cormier is over the age of 2019. She started work as an assistant manager at a Circle K in Gulf Shores in September 2019. In August 2020 she got sick and was placed on COVID quarantine until she could be tested. Ms. Cormier’s test was negative, but her doctor was concerned that she might nevertheless have COVID. He instructed her not to return to work until she had gone 72 hours without a fever. Ms. Cormier provided all the information to her supervisor who had not yet made the latest schedule. The supervisor expressed her displeasure about Ms. Cormier missing work, but she never told Ms. Cormier that she would be fired. Ms. Cormier heard nothing further from her supervisor. At the beginning of the next week, Ms. Cormier called and had to leave a message asking what was going on. When she got no response, she logged into the work app and learned she had been terminated. Ms. Cormier applied for unemployment compensation in August 2020, but she has not received a decision on her claim. When she managed to get through to talk with someone at ADOL, that person told her that because Circle K said she had been fired for misconduct, Ms. Cormier would get a call from an investigator. The investigator never called. In the spring of 2021, the Legal Office of ADOL established a procedure for lawyers at Legal Services Alabama to email an ADOL lawyer and get a response providing information that the claimant was unable to obtain from ADOL on her own. Using this procedure, Ms. Cormier’s counsel sent an

email to the Legal Office of ADOL. On May 19, 2021, a lawyer for ADOL responded to an email from Ms. Cormier's counsel and said that ADOL had decided that Ms. Cormier should receive a partial disqualification pursuant to Ala. Code 25-4-78(3)c, but that an examiner would have to determine whether to issue a final decision of partial disqualification, change it to a total disqualification or clear Ms. Cormier for full benefits. Counsel for Ms. Cormier emailed the lawyer from ADOL again September 1, 2021, to say that Ms. Cormier had never gotten a call and never heard anything on her claim. Neither Ms. Cormier nor her counsel has heard anything from ADOL about her case since then. Without any unemployment compensation benefits to make up for her lost income from work, Ms. Cormier fell behind on her bills. Although she found a new job in November 2021, she had to give up her home and move to live with family in South Carolina. Fortunately, she was able to transfer and continue working. Ms. Cormier never received a decision on her application, and she has never received any unemployment compensation benefits. She is still behind on bills because of the money she was never paid. Ms. Cormier tried calling the appointments number three times during the week of January 23, 2022, one day at 5:15 p.m., then at 5:07 p.m. and finally at 5:03 p.m. Each time she got a message that said that the appointments for the day were full, and that she would have to call again another day.

22. Plaintiff Mia Brand is a resident of Alabama over the age of 19. Ms. Brand received unemployment compensation benefits in 2020 and part of 2021. In May 2021, she filed for recertification. She is still waiting for a decision on that application. Her claims portal shows that there are some issues to be resolved, but ADOL appears to have already made an adverse eligibility determination, because ADOL sent an overpayment notice

June 1, 2021, saying that Ms. Brand received a \$32,961 overpayment for receiving benefits while disqualified or ineligible. She has never received a decision finding that she was disqualified or ineligible. On August 23, 2021, Ms. Bran requested a hearing. She is waiting for ADOL to schedule a hearing.

23. Plaintiff Tammy Cowart is a resident of Alabama over the age of 19. Ms. Cowart is a single mother of two and is the primary breadwinner of her family. She was laid off from her job and applied for unemployment benefits in October. She learned that someone had applied for unemployment benefits under her name roughly a month before. She does not know who it is, but it was someone who had knowledge of her address roughly ten years ago. Ms. Cowart made an application for fraud investigation and did not hear anything from ADOL. She made an appointment and went to Montgomery, from Bessemer, on November 30, 2020. There a worker told her that someone would email her the next day (12/01/2020), but to this date she has still not received a follow-up. Furthermore, she has not been able to get through the new phone system. Ms. Cowart has returned to work, but she is still awaiting a response from ADOL about her fraud application and her eligibility to receive unemployment compensation during the period she was unemployed.

24. Plaintiff John Young is a resident of Alabama over the age of 19. Mr. Young was fired from his job on November 24, 2020 after previously being told to quarantine because several people in his household tested positive for Covid-19. He eventually tested negative and returned to work. He was fired the day he returned and still does not know the reason why. He applied for Unemployment and received a monetary determination in January. He never received an actual determination. He then was able to get through and

speak with someone on June 11<sup>th</sup>, 2021. He was told that his employer stated he voluntarily quit. He filed a hearing request shortly after and has yet to receive a response.

25. Plaintiff Mark Johnson is a resident of Alabama over the age of 19. Mr. Johnson worked in a cemetery at the beginning of the pandemic. He witnessed the increase of death as he had to bury many Covid patients. Eventually, he was diagnosed with Covid. He had to quarantine for 17 days. During this time his brother died, and he took 3 unpaid bereavement days. He was fired shortly after returning to work after asking about hazard pay that he saw on their check stubs but wasn't reflected in their take home. He applied for Unemployment compensation and did not receive a determination. He went to Montgomery, and ADOL told him he was fired for insubordination he told them he disagreed and wanted to appeal. ADOL said they would contact him soon. This was June 2020, and he still hasn't heard anything back. He has since found other employment. As a result of not receiving his unemployment benefits, or at least given the chance to dispute the initial determination Mr. Johnson has almost lost his house and car.

26. Plaintiff Latara Jackson is a resident of Alabama over the age of 19. She was laid off due to Covid in March of 2020. At the behest of management, she applied for unemployment. She received Unemployment Compensation. When Ms. Jackson was preparing to return to work, her doctor told her she should continue to quarantine because of her various health issues. She requested to work another position that was not public facing with her employer. She was never put back on the schedule. She was then assessed a fraud overpayment in the amount of \$22,600. She appealed within the statutory time period and has yet to hear anything back about the overpayment appeal. She went back to work in August 2021.

27. Plaintiff Senata Waters is a resident of Alabama and over the age of 19. Ms. Waters worked security for about 3 years. She had back surgery, which requires constant care and schedule flexibility. Her employer was one of the few that provided this for her. She was terminated due to alleged misconduct and completely disputes the employer's account of the situation. ADOL denied her application for unemployment compensation. Ms. Waters filed an appeal in August 2020 and has yet to receive a response from ADOL. Since that time, the reason showing for her termination has changed several times from misconduct to voluntary quit. She was able to get through ADOL's new phone system, but the person who answered was only able to tell her that ADOL was backlogged, so she should continue to file weekly. Because she is over 65 years old, Ms. Waters is at an elevated risk of contracting COVID. She has been unable to find work.
28. Plaintiff Raymond Williams is a resident of Alabama and over the age of 19. Mr. Williams contracted COVID over the summer of 2020 and was in the ICU on a ventilator for over a month. His application for unemployment compensation was denied. He requested a hearing and then got COVID and received notice of his hearing while he was in the hospital. When he was eventually discharged from the hospital, he was unaware of his hearing and missed it. In any case, he was on oxygen and receiving doctors care at home and would have been unable to functionally participate. Mr. Williams still has trouble breathing and doing basic everyday tasks. He sent in a new hearing request detailing his situation. Mr. Williams received a notice from ADOL on Saturday, dated March 5, 2021, saying that the Board of Appeals would not hear his case because he did not appeal to the board of appeals by October 8, 2020. ADOL did not consider Mr. Williams's stay in ICU justified the late filing.

29. Plaintiff Cynthia Hawkins is a resident of Alabama over the age of 19. Ms. Hawkins has multiple underlying conditions, and she became ill during the COVID-19 pandemic. She was a cashier at a grocery store. Following her illness, the Ms. Hawkins's doctor advised her to cease work during the pandemic to avoid exposure to COVID-19. In March 2020, Ms. Hawkins went on a medical leave of absence from her employer. Ms. Hawkins's doctor signed the form. Ms. Hawkins gave her employer a copy of the form. Thereafter, the employer put the signed form in Ms. Hawkins' personnel file. On April 19, 2020, ADOL approved Ms. Hawkins for unemployment compensation benefits. She received benefits without interruption until her benefits abruptly stopped on or about August 4, 2020. Ms. Hawkins did not know why her benefits stopped. ADOL did not send her a letter, or any other correspondence, telling her why ADOL stopped her benefits. Thereafter, Ms. Hawkins called ADOL numerous times. However, she could not get an answer. In January 2021, Ms. Hawkins stood in line outside of the local unemployment office with a relative before the office opened so that she could obtain an appointment. The relative lined up at 4:30 a.m. in the cold, and Ms. Hawkins arrived sometime later. The local office was available to speak with only twenty people that day. Ms. Hawkins spoke with a claim's examiner who gave Ms. Hawkins a Doctor's Certificate form. The representative instructed Ms. Hawkins to have her doctor sign the form and return it to ADOL. Ms. Hawkins followed instructions. Upon receiving the certificate, ADOL sent Ms. Hawkins a notice of determination, stating that she left bona-fide work with an employer to voluntarily retire and that she had been overpaid. Ms. Hawkins did not retire from her employer. In February 2021, Ms. Hawkins appealed ADOL's decision. However, she has yet to receive a hearing date from ADOL despite calling ADOL

numerous times. To date, Ms. Hawkins remains unemployed with no income, and she relies on help from family and friends to get by.

30. Plaintiff Crystal Harris is a resident of Alabama and over the age of 19. Ms. Harris was on regular unemployment compensation. When her benefits were about to expire, she learned that a company was considering her for permanent employment, but unfortunately the position was eliminated due to COVID-19. Ms. Harris was able to contact Thomas Daniel, Director of Unemployment Compensation at ADOL, who told her to have her new potential employer write a letter stating that she would have been hired but Covid-19 has caused her not to be hired for the position and apply for PUA. She followed all instructions, including emailing the evidence to Thomas Daniel and Fitzgerald Washington directly. She never received a written determination, by mail or otherwise, but she eventually learned over the phone that ADOL had denied PUA. The lack of response by ADOL and then the denial have caused her family financial ruin. Her eldest son has had to drop out of college to try and contribute to the household. Ms. Harris requested a hearing to contest the PUA denial, and she is awaiting a response.
31. Plaintiff Rashunda Williams is a resident of Alabama over the age of 19. She applied for unemployment in June 2020. She worked at a mental health facility which had had several COVID cases. She was pregnant and had other high-risk medical conditions. She was advised by a doctor to go on medical leave. She COVID). In June 2021, she received a notice of overpayment of over \$5,000. She appealed that decision on June 4, 2021. She has not received a hearing. She was entitled to more benefits.
32. Plaintiff Mary C. Blackerby is a resident of Alabama over the age of 19. She applied for unemployment compensation in Jan. 2021. She was self-employed, selling football

tickets. Her ability to earn income was impacted by the pandemic and its effect on the football season. She called in from Jan. 2021 – Mar. 2021 and heard nothing. Eventually, she received benefits until June 2021. On July 13, she received a notice of overpayment for \$9,000. She appealed that decision online and in writing by certified mail on July 14, 2021. To date, she has not received a hearing.

33. Defendant Alabama Department of Labor is a department of Alabama established pursuant to Ala. Code §25-2-1 as “an executive and administrative department of the state”.
34. Defendant Fitzgerald Washington in his official capacity serves as secretary of ADOL and, pursuant to Ala. Code §5-4-110, administers Alabama’s unemployment compensation program.

### **Jurisdiction and Venue**

35. This Court has jurisdiction over this matter under Ala. Code §§12-11-30 et seq. and under 42 U.S.C. § 1983, conferring jurisdiction on both federal and state courts to redress the deprivation of federal statutory and constitutional rights. As recognized again as recently as 2009 in *ex parte Russell*, 31 So.3d 694, 697 (Ala. Civ. App. 2009), the claims against defendants are not barred by section 14 of the Alabama Constitution, because plaintiffs seek “to compel State officials to perform their legal duties. *Department of Industrial Relations v. West Boylston Manufacturing Co.*, 253 Ala. 67, 42 So.2d 787 [(1949)]; *Metcalf v. Dep’t of Industrial Relations*, 245 Ala. 299, 16 So.2d 787 [(1944)].”
36. Venue is appropriate in Montgomery County under Ala. Code §6-3-7.

### **Statutory and Regulatory Scheme**

37. Title III of the Social Security Act of 1935, 42 U.S.C. §§501-504, provides payments to states to finance the administration of their unemployment laws. A state is eligible to receive payments if it can meet certain federal requirements, including that the state's law have a provision for "such methods of administration...as are found by the Secretary of labor to be reasonably calculated to insure full payment of unemployment compensation when due." 42 U.S.C. § 503(a)(1).
38. This section of the Social Security Act is known as the "when due" provision. In *Fusari v. Steinberg*, 419 U.S. 379, 388 n.15 (1958), the U.S. Supreme Court said that by "requiring prompt administrative provision of unemployment benefits", the "when due" clause required prompt decisions on initial claims.
39. Relying on *Fusari*, the Third Circuit said, "We find no merit in the Secretary's argument that the "when due" requirement of section 303(a)(1) of the Act, 42 U.S.C. s 503(a)(1) does not apply until a claimant has first been administratively determined to be eligible for unemployment compensation benefits." *Wilkinson v. Abrams*, 627 F.2d 650, 661 n.14 (3<sup>rd</sup> Cir. 1980).
40. The federal regulation interpreting the "when due" provision requires that state unemployment compensation laws provide for "such methods of administration as will reasonably ensure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible." 20 C.F.R. § 640.3(a).
41. Created in 1935 during the Great Depression, unemployment insurance is a joint federal-state system, overseen by the federal government and operated by the states, that provides cash benefits to qualifying individuals to limit immediate hardship experienced from the loss of employment and in turn, to stabilize the economy by shoring up workers'

purchasing power during economic downturns. Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. "Unemployment benefits provide cash to a newly unemployed worker 'at a time when otherwise [they] would have nothing to spend,' serving to maintain the recipient at subsistence levels without the necessity of [their] turning to welfare or private charity." *Cal. Dep't of Human Resources v. Java*, 402 U.S. 121, 131-32 (1971).

42. Unemployment insurance provides payments to states to finance the administration of their unemployment insurance compensation laws. 42 U.S.C. §§ 501-504.
43. In accordance with these federal requirements, Alabama passed the Unemployment Compensation Act, Ala. Code §§ 25-4-1 et seq., in order to "provide a worker with funds to avoid a period of destitution after having involuntarily lost his employment and thus his income. It aids in sustaining him while he looks for other employment." See *Arrow Co. v. State Department of Industrial Relations*, 370 So. 2d 1013, 1015 (Ala. Civ. App. 1979).
44. The Alabama Supreme Court has stated that the purpose of the Act is "beneficent" and that Alabama's unemployment-compensation law "should be construed liberally to effectuate its purpose." *Ex parte Doty*, 564 So.2d 443, 446 (Ala. 1989).
45. As stated in *State Department of Industrial Relations v. Bryant*, 697 So.2d 469 (Ala.Civ.App. 1997), "[t]he Unemployment Compensation Act is insurance for the unemployed worker and is intended to be a remedial measure for his benefit[; i]t should be liberally construed in the claimant's favor and the disqualifications from benefits should be narrowly construed." 697 So.2d at 470 (citations and internal quotation marks omitted).

46. Ala. Code § 25-4-91 provides that “A determination upon a claim file . . . shall be made promptly by an examiner designated by the secretary, and shall include a statement as to whether and in what amount a claimant is entitled to benefits and, in the event of denial, shall state the reasons therefor . . .”
47. Despite the “prompt” processes mandated by this statute, ADOL is failing to act or perform in a prompt manner, which has caused plaintiffs to experience extreme delays—for months at a time—at every step of the claims process.
48. In response to the unprecedented numbers of workers who have become unemployed across the country due to the COVID-19 pandemic, Congress established Pandemic Unemployment Assistance (“PUA”), Pandemic Unemployment Compensation (“PUC”), and Pandemic Emergency Unemployment Compensation (“PEUC”) as part of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. 15 U.S.C. §§ 9021, 9023, and 9025.
49. PUA expanded unemployment insurance coverage to those workers who would not be eligible for regular state unemployment compensation, such as workers who are independent contractors, are self-employed, or whose wages and hours would not be sufficient to qualify for state unemployment compensation. 15 U.S.C. §§ 9021(c)(2), (a)(3(A)(i).
50. PUA is temporary and applied to unemployment costs incurred by states between March 1 and December 31, 2020. *Id.* Claimants may be eligible for PUA benefits only if they are not eligible for regular state unemployment compensation. See 20 C.F.R. § 625.4(i).
51. The CARES Act provided claimants with an additional \$600 weekly for the weeks between March 29 and July 31, 2020, extended unemployment compensation for an extra

13 weeks to those who exhausted their benefits under state programs and allowed states to pay claimants for the first week of regular unemployment, rather than requiring a one-week waiting period. 15 U.S.C. §§ 9023, 9024, 9025 (“PEUC”).

52. An extension of the CARES Act in the Consolidated Appropriations Act of 2021 passed December 21, 2020, provided that recipients of regular state unemployment benefits are eligible for an additional \$300 per week (instead of \$600) from December 26, 2020, through March 14, 2021, and provided a new unemployment compensation benefit program for “mixed earners”.
53. That extension also gave states the authority to waive overpayments of PUA that a claimant received because of an honest mistake.
54. On March 11, 2021, the CARES Act was extended again to provide extra unemployment compensation benefits until September 6, 2021.
55. When a claimant files for unemployment compensation, ADOL first determines whether the claimant is due benefits, looking at monetary issues as set forth in Ala. Code §§25-4-70 et. seq.; at eligibility issues concerning being ready, willing, and able to work and actively looking for work as set out in Ala. Code §25-4-77(a); and disqualification issues as set out in Ala. Code §25-4-78. ADOL sends a monetary determination and, if the claimant is monetarily eligible, then sends a determination whether the claimant is eligible for and not disqualified from receiving unemployment compensation benefits.
56. Because the “fundamental requisite of due process of law is the opportunity to be heard... ‘at a meaningful time and in a meaningful manner.’”, the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution requires that a determination of ineligibility or disqualification provide a recipient “timely and adequate notice detailing

the reasons for a proposed termination.” *Goldberg v. Kelly*, 397 US 454, 267-268 (1970).

The Supreme Court found the right to adequate notice especially important in cases where terminations might be based “on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases.” 397 U.S. at 268.

57. In *Escalera v. New York City Housing Authority*, 425 F.2d 853, 862 (2d. Cir. 1970), the Court found a brief statement of the basis for a lease termination constitutionally inadequate, saying: “The purpose of requiring that notice be given to the tenant before the hearing is to ensure that the tenant is adequately informed of the nature of the evidence against him so that he can effectively rebut that evidence. The instant one-sentence summary notices are inadequate for this purpose.”

58. A notice directing a claimant to call a caseworker to learn the reasons for a reduction in or termination of benefits is inadequate. *Vargas v. Trainor*, 508 F.2d 485, 489 (7<sup>th</sup> Cir. 1974), *cert. den.*, 420 U.S. 1008 (1975). Instead, the notice sent to a claimant or recipient must contain detailed enough information for the individual to be able to determine the accuracy of the agency’s finding. *Banks v. Trainor*, 525 F.2d 837, (7<sup>th</sup> Cir. 1975) (“The Notices sent to this class did not contain a breakdown of income and deductions so that the recipients could determine the accuracy of the computations. Since the Notices do not inform recipients of what factors are relevant in determining net food stamp income, the plaintiff class cannot inform caseworkers of expenditures that should be used.

59. Similarly, the plaintiff class was not informed by chart or otherwise of the allotment and purchase prices for different size households based on their food stamp income, so that members of the class can ascertain whether they are receiving the correct amounts of

coupon allotment.) Due process also requires that notices not be confusing. See *Day v. Shalala*, 23 F.3d 1052, 1065–66 (6th Cir.1994) (holding that a notice that misled claimants by equating a new application with an appeal of the initial determination violated due process); *Gonzalez v. Sullivan*, 914 F.2d 1197, 1203 (9th Cir.1990) (concluding that a notice of denial of disability benefits failed to provide adequate notice because it did not clearly indicate that a determination becomes final if no request for reconsideration is made).

60. ADOL instructs claimants in the Unemployment Claim Determination that they may call the ADOL claims center for additional information, but during 2020 and 2021, when claimants attempted to call, they rarely were able to reach an ADOL employee.
61. During the pandemic, ADOL established various ways for claimants to get information, but none of these enabled the majority of claimants to learn what they need to know.
62. For several months, ADOL had some experienced agents go to Alabama State University, and claimants camped out overnight to get to meet with an agent.
63. For several months, ADOL allowed claimants to sign a limited power of attorney authorizing a Legal Services Alabama lawyer to speak with an ADOL worker on their behalf. These meetings often enabled a claimant to resolve the obstacles to payment and get a check.
64. In late 2020, ADOL stopped conducting these meetings and in January 2021 switched to telephone appointments, but only for claimants lucky enough to get through before the next day's appointments were booked.
65. As of January 20, 2022, DOL maintains that claimants who use the number are able to get telephone appointments.

66. Alabama Code §25-4-113 provides “The secretary shall, with the approval of the Governor, determine the number of employees needed for the efficient and economical performance of the functions and duties of administering this chapter.”
67. Once defendants have properly determined that a claimant has received an overpayment of unemployment compensation, and that determination has become final, Alabama Code §25-4-145 authorizes defendants to collect the overpayment by various means, including offsetting payments otherwise due to that claimant.
68. Pursuant to 26 USC §6402(e)(4), if the debt is for a payment received either due to fraud or due to the failure to report wages, defendants are permitted to use the Treasury Offset Program to recover the overpayment, so long as they follow they notify the claimant of the plan to take action pursuant to section 6402, provide the claimant at least sixty days to present evidence that all or part of the liability is not legally enforceable or is not a debt covered by the Treasury Offset Program, considers any evidence provided by the claimant and then determines that the amount claimed is legally enforceable, and satisfies all other conditions imposed by the U.S. Secretary of Labor to ensure that the determination is valid.
69. For imposition of a penalty, Ala. Code §6-11-20(b) defines fraud as: “An *intentional misrepresentation*, deceit, or concealment of a material fact the concealing party had a duty to disclose, which was gross, oppressive, or malicious and *committed with the intention on the part of the defendant* of thereby depriving a person or entity of property or legal rights or otherwise causing injury.”

70. 18 USC 1001(a), the first provision in Chapter 47 of the federal criminal code, covering fraud and false statements, provides that fraud requires that a statement be “knowingly and willfully” false.

71. The only definition of fraud provided by the U.S. Department of Labor is found in UIPL16-20-Change 4 App. Paragraph 21, which says: “An individual commits fraud if he or she knowingly has made or has caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of PUA to which such individual was not entitled.”

### **Claims for Relief Under 42 U.S.C. 1983**

72. The overall requirement of the “when due” clause of the Social Security Act of 1935 is to ensure that claims are paid as quickly as possible. However, the reality is that claimants, who are in desperate circumstances, are going months without receiving benefits to which they are entitled to from ADOL in violation of the “when due” clause.

73. Defendants’ policies, practices, and procedures of failing to process initial unemployment compensation applications, to provide benefits to eligible people and to schedule hearings violate plaintiffs’ rights to unemployment compensation benefits to which they are due and their rights to prompt decisions and prompt hearings.

74. Defendants’ policies, practices, and procedures of failing to provide written notice and opportunity to request a fair hearing to unemployment compensation applicants whose applications defendants have not processed promptly and recipients whose benefits are

terminated violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

75. Defendants' policies, practices, and procedures for determining when a claimant has committed fraud and when a case is appropriate for referral to the Treasury Department for tax intercept are contrary to the Alabama and federal law concerning fraud in that defendants make this finding in the absence of any evidence of intent to deceive, and defendants also fail to give adequate notice.
76. Defendants' policies, practices, and procedures for determining when a claimant has received an overpayment and the amount of the overpayment are contrary to Alabama law.

### **Prayer for Relief**

Accordingly, plaintiffs request that this Court:

- a. Issue a permanent injunction directing defendants to comply with 42 USC §503(a) and 20 CFR §640.3 and promptly make decisions on all applications;
- b. Issue a preliminary injunction directing defendants to issue an initial nonmonetary decision within the next ten days to every plaintiff who has not yet received a decision;
- c. Issue a permanent injunction directing defendants to pay every claim that has been approved within two days of the date of approval;
- d. Issue a permanent injunction requiring defendants to provide claimants who request a hearing confirmation of the request and to schedule a date not more than 90 days later than the request for the hearing;
- e. Issue a preliminary injunction directing defendants to provide within ten days a hearing date for each of the plaintiffs who have requested a hearing;

- f. Issue a permanent injunction directing defendants to provide all information about the unemployment compensation program and all notices to claimants using language and format making them easily read and understood by people with an eighth grade education;
- g. Issue a preliminary injunction directing defendants within two weeks to file a plan for rewriting notices and information sheets to ensure that they can be easily read and understood by people with an eighth grade education;
- h. Issue preliminary and permanent injunctions directing defendants to promptly rescind determinations of overpayments that were based on improper interpretations of the law; and
- i. Award plaintiffs' attorneys fees pursuant to 42 USC §1983.

Respectfully Submitted:

/s/ Michael Forton  
Michael Forton

/s/ Lawrence Gardella  
Lawrence Gardella

/s/ Ford King  
Ford King  
Legal Services Alabama  
Attorneys for the Plaintiffs  
2567 Fairlane Drive, Suite 200  
Montgomery, Alabama 20787  
(256) 551-2671