

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

<p>THE STATE OF OHIO, ex rel CANDY BOWLING, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MICHAEL DEWINE, in his official capacity as GOVERNOR of the State of Ohio, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Case No. 21-CV-4469</p> <p>Judge Michael Holbrook</p>
<p>THE STATE OF OHIO, ex rel JAMES PARKER, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MICHAEL DEWINE, in his official capacity as GOVERNOR of the State of Ohio, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Case No. 21-CV-5524</p> <p>Judge Michael Holbrook</p>
<p>SEBASTIAN NASH, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MICHAEL DEWINE, in his official capacity as GOVERNOR of the State of Ohio, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Case No. 21-CV-5525</p> <p>Judge Michael Holbrook</p>

PLAINTIFFS' CONSOLIDATED CLASS ACTION COMPLAINT

NOW COME Plaintiffs CANDY BOWLING (“Bowling”), SHAWNEE HUFF (“Huff”), JAMES PARKER (“Parker”), SARAH RUSSELL (“Russell”), SEBASTIAN NASH (“Nash”), and ZACHARY DUNN (“Dunn”) (collectively, “Plaintiffs”), individually and on behalf of all

others similarly situated (the “Class”, as defined below), by and through counsel, for their Consolidated Class Action Complaint against Defendants THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES (“ODJFS”), MICHAEL DEWINE, in his official capacity as Governor of the State of Ohio (“DeWine”), and MATT DAMSCHRODER, in his official capacity as Director of the Ohio Department of Job and Family Services (“Damschroder” or “Director”) (collectively, “Defendants”), hereby allege as follows:

PARTIES

1. Plaintiff Bowling is a natural person with a principal place of residence located in the City of Cincinnati, Hamilton County, State of Ohio.

2. Plaintiff Huff is a natural person with a principal place of residence located in the City of Lakewood, Cuyahoga County, State of Ohio.

3. Plaintiff Parker is a natural person with a principal place of residence located in the City of Kent, Portage County, State of Ohio.

4. Plaintiff Russell is a natural person with a principal place of residence located in the Township of Liberty, Butler County, State of Ohio.

5. Plaintiff Nash is a natural person with a principal place of residence located in the City of Dublin, Franklin County, State of Ohio.

6. Plaintiff Dunn is a natural person with a principal place of residence located in the City of Chillicothe, Ross County, State of Ohio.

7. Defendant ODJFS is a political subdivision of the State of Ohio. Defendant ODJFS is a state agency established pursuant to the Ohio Revised Code and has the authority to administer the provisions of the Ohio Unemployment Compensation Programs—codified as O.R.C. §§ 4141.01, *et seq.*

8. Defendant DeWine is the governor of the State of Ohio.

9. Defendant Damschroder is the director of the Ohio Department of Job and Family Services which is a political subdivision of the State of Ohio. Damschroder holds his office by appointment by, and at the pleasure of, DeWine.

10. Venue lies in this Court pursuant to Civ. R. 3(C)(5) and/or Civ. R. 3(C)(12).

BASIS OF THE CLAIM

11. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) was signed into law and is codified into law as 15 U.S.C. § 9001, *et seq.*

12. The CARES Act temporarily enhanced federal unemployment insurance benefits by establishing the following benefits:

- A. Pandemic Unemployment Assistance (“PUA”) for workers who were not eligible for regular unemployment benefits and whose unemployment was caused by COVID-19;¹
- B. Pandemic Emergency Unemployment Compensation (“PEUC”), which extended regular unemployment compensation benefits for workers who have exhausted their unemployment insurance benefits;²
- C. Federal Pandemic Unemployment Compensation (“FPUC”), which increased the amount of unemployment insurance benefits by \$600-per-week from March 27, 2020 through July 31, 2020.

13. PUA, PEUC, and FPUC (collectively, the “Benefit Programs”) are funded by and conferred under 42 U.S.C. §§ 1101, 1104, and 1105.4.

¹ 15 U.S.C. § 9021.

² 15 U.S.C. § 9025.

14. The CARES Act required the Secretary of the Department of Labor to provide PUA benefits, including FPUC benefits, through agreements with each State including Ohio. *See* 15 U.S.C. § 9021(b).

15. On December 26, 2020, the unemployment provisions in the CARES Act, including PUA and PEUC, were extended through March 14, 2021, by the Continued Assistance for Unemployed Workers Act of 2020 (“CAUWA”). Pub. L. No. 116-260, 200-01, 206. CAUWA reauthorized FPUC in the amount of \$300-per-week, payable from December 26, 2020 through March 14, 2021. Pub. L. No. 116-260, 203.

16. On March 11, 2021, PUA, PEUC, and FPUC were extended through September 6, 2021, by the American Rescue Plan Act of 2021 (“ARPA”). Pub. L. No. 117-2, 9011, 9013, 9016.

17. PEUC and FPUC were administered through agreements between the State and the federal government. However, federal law provided that a State may terminate PEUC and FPUC with 30-days’ notice. *See* 15 U.S.C. §§ 9023(3), 9025(a).

18. Defendants entered into an agreement regarding PUA, PEUC, and FPUC with the United States Department of Labor on behalf of the State of Ohio and its citizens when the CARES Act was passed on March 27, 2020.

19. On May 13, 2021, DeWine announced that Ohio will end its participation in the FPUC program effective June 26, 2021.³

20. Consistent with DeWine’s May 13, 2021 announcement, Defendants ended Ohio’s participation in the FPUC program on June 26, 2021.⁴

³ Fox 19, *Ohio Ending Extra Unemployment Benefits Program in June*, available at: <https://www.fox19.com/2021/05/13/live-gov-dewine-gives-update-after-announcing-vaccine-lottery-health-order-end-date/> (last accessed December 2, 2022).

⁴ Ohio Department of Job and Family Services, *Pandemic Unemployment Program Updates*, available at: <https://jfs.ohio.gov/caa/> (last accessed December 2, 2022).

21. Defendants' termination of Ohio's participation in these programs reduced or eliminated the benefits to which Plaintiffs and Class members would otherwise be entitled.

22. The termination of the FPUC benefits caused Plaintiffs and Class members to be unable to cover basic living expenses such as housing, utilities, food, health care, and child care.

23. At all times relevant herein, Ohio's unemployment insurance program was (and is) governed generally by Ohio Revised Code §§ 4141.01, *et seq.*

24. At all times relevant herein, Ohio's unemployment insurance program was (and is) directed by the ODJFS at the direction of and through its Director, Damschroder.

25. At all times relevant herein, Damschroder's duties as director of ODJFS, pursuant to O.R.C. § 4141.43(I), included:

The director shall cooperate with the United States department of labor to the fullest extent consistent with this chapter, and shall take such action, through the adoption of appropriate rules, regulations, and administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the "Social Security Act" that relate to unemployment compensation, the "Federal Unemployment Tax Act," (1970) 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, the "Wagner-Peyser Act," (1933) 48 Stat. 113, 29 U.S.C.A. 49, the "Federal-State Extended Unemployment Compensation Act of 1970," 84 Stat. 596, 26 U.S.C.A. 3306, and the "Workforce Innovation and Opportunity Act," 29 U.S.C.A. 3101, *et seq.*

26. At all times relevant herein, O.R.C. § 4141.43(I) commanded Defendants to use their administrative efforts to procure all available benefits under the federal statutes listed above. *State ex rel. Bowling v. DeWine*, 2021-Ohio-2902, ¶ 38.

27. The Federal-State Extended Unemployment Compensation Act of 1970 ("EUCA") defines "extended compensation" as "compensation payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of

extended compensation.” *Bowling*, 2021-Ohio-2902 at ¶ 46 (quoting 26 U.S.C. § 3304 note, Section 205).

28. According to 15 U.S.C. 9023(i)(2)(A), one definition of FPUC was “extended compensation” as defined under the EUCA. *Bowling*, 2021-Ohio-2902 at ¶ 46.

29. Therefore, FPUC benefits constituted available advantages under the EUCA, which is one of the five enumerated statutes in O.R.C. § 4141.43(I). *Bowling*, 2021-Ohio-2902 at ¶ 46.

30. In addition, FPUC was defined as being subsumed within the definitions of PUA and PEUC. *Bowling*, 2021-Ohio-2902 at ¶ 47 (citing 15 U.S.C. § 9023(i)(2)(C); 15 U.S.C. § 9023(i)(2)(D)).

31. Since “both PUA and PEUC [were] administered through provisions of the Social Security Act, another of the federal statutes” enumerated by O.R.C. § 4141.43(I), FPUC benefits constituted an “available advantage” under the provisions of the Social Security Act, which, at all times relevant herein, O.R.C. § 4141.43(I) required Defendants to “secure” for the citizens of Ohio. *Bowling*, 2021-Ohio-2902 at ¶ 47.

32. By terminating Ohio’s participation in available FPUC benefits, Defendants violated their clear, non-discretionary, legal and statutory duty to secure such benefits for Plaintiffs and Class members.

33. Although PUA, PEUC, and FPUC expired on September 6, 2021, on information and belief, the funds appropriated for those programs have yet to be exhausted and can still be obtained by the State (the “Remaining Funds”).⁵

34. On information and belief, any state—such as Ohio—that prematurely terminated its participation in FPUC can obtain its designated share of the Remaining Funds by reinstating its agreement with the federal government. Those amounts can then be used to retroactively pay FPUC benefits to claimants who would have been entitled to those benefits during the time period that FPUC was still in force, but did not receive such benefits because they lived in a state that prematurely terminated its participation in FPUC.

35. In other words, Defendants can reinstate Ohio’s participation in FPUC, and use Ohio’s share of the Remaining Funds to retroactively provide FPUC benefits to Plaintiffs and Class members for the time period beginning on June 26, 2021—*i.e.*, the date the Ohio withdrew from FPUC—through September 6, 2021—*i.e.*, the date that FPUC expired.

GENERAL FACTUAL ALLEGATIONS

Facts Relative to Plaintiff Candy Bowling

36. Bowling worked as an inspector before being laid off in January 2020 due to the Pandemic.

37. Bowling began receiving unemployment benefits from the State of Ohio effective January 19, 2020.

⁵ According to the United States Department of Labor (“DOL”), states may rescind their withdrawal from the Benefit Programs, and use the Remaining Funds to pay retroactive claims. *See*, letter from Jim Garner, the Administrator of the DOL’s Office of Unemployment Insurance, available at: https://oui.doleta.gov/unemploy/pdf/cares_act_termination.pdf (last accessed December 29, 2022). In December 2022, both Senator Sherrod Brown’s Office and Congresswoman Joyce Beatty’s office confirmed that this is the latest advice from the DOL.

38. While the Benefit Programs were still in effect, Bowling received \$325.00 in unemployment compensation plus \$300.00 weekly in FPUC which she used for housing and necessities for her family.

39. After she stopped receiving FPUC benefits as a result of Defendants' termination of Ohio's participation in FPUC, Bowling encountered difficulty paying her ordinary living expenses including rent, utilities, necessary medications for her pets and necessary expenses for her service animals.

40. In total, Bowling was deprived of approximately \$3,000.00 in FPUC benefits for which she was eligible and to which she would have been entitled had Defendants not terminated Ohio's participation in FPUC.

41. While Bowling has been able to find gainful employment to pay her basic living expenses, the deprivation of the FPUC benefits has caused ongoing harm to Bowling as the funds are needed to pay down credit card debt Bowling incurred as a result of not having the FPUC funds to pay the expenses noted above.

Facts Relative to Plaintiff Shawnee Huff

42. Huff worked in a call center before being laid off in February 2021 due to the pandemic.

43. Huff began receiving unemployment benefits from the State of Ohio effective February 21, 2021.

44. While the Benefit Programs were still in effect, Huff received \$339.00 in unemployment compensation plus \$300.00 weekly in FPUC which he used for housing and necessities for his family.

45. After he stopped receiving FPUC benefits as a result of Defendants' termination of Ohio's participation in FPUC, Huff encountered difficulty paying his ordinary living expenses including his housing, utilities, and food. Huff was unable to pay his credit cards and was launched in a spiral of debt that continues to persist in his life today.

46. In total, Huff was deprived of approximately \$3,000.00 in FPUC benefits for which he was eligible and to which he would have been entitled had Defendants not terminated Ohio's participation in FPUC.

47. Huff went back to work in October 2021, after applying for a variety of jobs and remaining unemployed for several more months.

48. While Huff has been able to find gainful employment to pay his basic living expenses, the deprivation of the FPUC benefits has caused ongoing harm to Huff as he lacks the funds needed to pay down credit card debt he incurred as a result of not having the FPUC funds to pay the expenses noted above. |

Facts Relative to Plaintiff James Parker

49. Parker worked as a store manager before being laid off in early March 2020 due to the pandemic.

50. Parker began receiving unemployment benefits from the State of Ohio effective March 21, 2020.

51. While the Benefit Programs were still in effect, Parker received \$281.00 weekly in unemployment compensation plus \$300.00 weekly in FPUC which he used for housing and necessities for his family.

52. After he stopped receiving FPUC benefits as a result of Defendants' termination of Ohio's participation in FPUC, Parker encountered difficulty paying his ordinary living expenses such as rent, utilities, food, and other necessities.

53. In total, Parker was deprived of approximately \$3,000.00 in FPUC benefits for which he was eligible and to which he would have been entitled had Defendants not terminated Ohio's participation in FPUC.

54. Parker remains unemployed and the deprivation of the FPUC benefits continues to cause Parker financial hardships, including an inability to purchase basic household necessities such as food and diapers.

Facts Relative to Plaintiff Sarah Russell

55. Russell was a self-employed house cleaner before being laid off in March 2021 due to the pandemic.

56. Russell began receiving unemployment benefits from the State of Ohio effective on or about May 15, 2021, despite submission of her application in March 2021.

57. While the Benefit Programs were still in effect, Russell received \$189.00 weekly in unemployment compensation plus \$300.00 weekly in FPUC which she used for housing and necessities for her family.

58. After she stopped receiving FPUC benefits as a result of Defendants' termination of Ohio's participation in FPUC, Russell encountered difficulty paying her ordinary living expenses such as rent, utilities, food, and other necessities. Russell was unable to pay utility bills and rent, and was forced to apply for rental and utility assistance. Russell was also unable to go back to work because she was caring for a sick child, and, as a result, could not afford Christmas presents or any other comforts without assistance from charities.

59. In total, Russell was deprived of approximately \$3,000.00 in FPUC benefits for which she was eligible and to which she would have been entitled had Defendants not terminated Ohio's participation in FPUC.

60. Russell remained on unemployment until December 9, 2021 because her daughters' health conditions made it impossible for them to go to school without vaccination. As soon as the vaccines were available, she returned to the workforce. The deprivation of the FPUC benefits has caused Russell a continuing inability to ensure ongoing financial stability.

Facts Relative to Plaintiff Sebastian Nash

61. Nash worked as a store clerk before being laid off completely as of August 17, 2021 due to the pandemic. Prior to that, Nash had experienced significant reductions in his hours during Spring 2021.

62. Nash began receiving unemployment benefits from the State of Ohio effective January 21, 2021.

63. While the Benefit Programs were still in effect, Nash received \$143.00 weekly in unemployment compensation plus \$300.00 weekly in FPUC which he used for housing and necessities for his family.

64. After he stopped receiving FPUC benefits as a result of Defendants' termination of Ohio's participation in FPUC, Nash encountered difficulty paying his ordinary living expenses such as rent, utilities, food, and other necessities, and incurred significant credit card debt in order to pay these necessities. As a result of the reduction in FPUC benefits, Nash closed several credit cards, had his electricity cut off in November 2021, and was unable to pay to repair his car.

65. In total, Nash was deprived of approximately \$3,000.00 in FPUC benefits for which he was eligible and to which he would have been entitled had Defendants not terminated Ohio's participation in FPUC.

66. While Nash has been able to find gainful employment, the deprivation of FPUC benefits continues to prevent him from paying down the significant credit card debt he incurred as noted above.

Facts Relative to Plaintiff Zachary Dunn

67. Dunn worked as a dishwasher, and was laid off in early March 2020 due to the pandemic.

68. Dunn began receiving unemployment benefits from the State of Ohio effective April 18, 2020, despite initially applying as of March 15, 2020.

69. While the Benefit Programs were still in effect, Dunn received \$259.00 weekly in unemployment compensation plus \$300.00 weekly in FPUC which he used for housing and necessities for his family.

70. After he stopped receiving FPUC benefits as a result of Defendants' termination of Ohio's participation in FPUC, Dunn encountered difficulty paying his ordinary living expenses such as rent, utilities, food, and other necessities, including immediately falling behind on all bills, having to limit going places in a vehicle due to not being able to afford gas, having to go to Goodwill/Salvation Army just to clothe his 6-year-old daughter, and incurring significant credit card debt.

71. In total, Dunn was deprived of approximately \$3,000.00 in FPUC benefits for which he was eligible and to which he would have been entitled had Defendants not terminated Ohio's participation in FPUC.

72. While Dunn has been able to find gainful employment to meet his necessary living expenses, the deprivation of the FPUC benefits has caused ongoing harm to Dunn as the funds are needed to pay down credit card debt Dunn incurred as a result of not having the FPUC funds to pay the expenses noted above.

CLASS ACTION ALLEGATIONS

73. **Class Definition:** Plaintiffs bring this action pursuant to Ohio Rule of Civil Procedure 23 on behalf of a class of similarly situated individuals (the "Class"), defined as follows:

All Ohioans eligible to receive FPUC benefits at any point between June 26, 2021 and September 6, 2021 (inclusive), but who did not receive them as a result of Defendants' termination of FPUC benefits.

74. **Numerosity:** Upon information and belief, the Class consists of hundreds of thousands of members and accordingly the Class is so numerous that joinder of all Class members is impractical. Although the exact number and identities of Class members is presently unknown, that information can be ascertained through discovery. Class members can easily be identified through Defendants' records, as Class members necessarily provided Defendants with their identifying information when they applied for unemployment benefits.

75. **Commonality and Predominance:** All members of the Class were subject to and deprived of a statutory entitlement to FPUC benefits through a uniform course of conduct:

specifically, Defendants' improper and illegal termination of Ohio's participating in FPUC. There are questions of law and fact common to the proposed Class that predominate over any individual questions.

76. **Typicality:** Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and Class members were all erroneously deprived of their entitlement to FPUC benefits of \$300.00 per week since June 26, 2021, as a result of Defendants' singular unlawful course of conduct.

77. **Adequacy:** Plaintiffs will adequately represent the interests of the Class and do not have adverse interests to the Class. Plaintiffs have retained competent counsel who have extensive experience litigating class actions such as this one.

78. **Superiority:** A class action is the superior method for the quick and efficient adjudication of this controversy. If individual Class members prosecuted separate actions it may create a risk of inconsistent or varying judgments that would establish incompatible standards of conduct.

COUNT I
Declaratory Judgment

79. Plaintiffs reallege and incorporate paragraphs 1 through 78 of the Complaint as if fully restated herein.

80. There exists an actual controversy of a justiciable issue between the Plaintiffs and Class members and Defendants. Specifically, the justiciable issue is whether O.R.C. § 4141.43(I) required, and continues to require, Defendants to secure all possible federal pandemic unemployment benefits available to unemployed Ohioans under the five statutes enumerated therein, or whether Defendants can unilaterally usurp or ignore the General Assembly's policy preferences reflected in § 4141.43(I).

81. Plaintiffs and Defendants hold antagonistic claims that can only be resolved by a declaratory judgment. Indeed, Defendants claim that they had, and continue to have, no statutory duty under O.R.C. § 4141.43(I) to secure all possible federal pandemic unemployment benefits available to unemployed Ohioans under the five statutes enumerated therein.

82. Based on the foregoing allegations, Plaintiffs and Class members seek a declaration pursuant to O.R.C. § 2721.12 that Defendants must secure all possible federal unemployment benefits available to unemployed Ohioans under O.R.C. § 4141.43(I); and Defendants' failure and refusal to secure all available advantages on behalf of Ohio and Ohio citizens—such as the FPUC benefits—was, and continues to be, in derogation of Defendants' constitutional powers and violates their clear statutory duties.

83. Although PUA, PEUC, and FPUC expired on September 6, 2021, the controversy in this case remains justiciable because—if it is held that O.R.C. § 4141.43(I) requires Defendants to secure all possible federal pandemic unemployment benefits available to unemployed Ohioans—Defendants can reinstate Ohio's participation in FPUC, and use Ohio's share of the Remaining Funds to retroactively provide the FPUC benefits to Plaintiffs and Class members to which they were entitled.

84. Moreover, even if Ohio cannot retroactively reinstate its participation in FPUC, there is a substantial likelihood that the United States Congress will, in the future, reauthorize FPUC (or another similar program), just as it previously did through CAUWA. *See* Pub. L. No. 116-260, 200-01, 206 (reauthorizing FPUC after initially allowing FPUC to expire for a period of time).

85. For one, although the pandemic has somewhat abated, new variants of COVID-19—including variants for which vaccines are ineffective or less effective—continue to arise.

As such, there is a substantial likelihood that a new variant of COVID-19 will, once again, disturb the United States economy and leave a significant number of individuals unemployed (thus requiring the United States Congress to reauthorize FPUC or institute another similar program).

86. For another, many economists and other experts predict that the United States is on the brink of a recession.⁶ Accordingly, there is a substantial likelihood that such a recession will leave a significant number of individuals unemployed (thus requiring the United States Congress to reauthorize FPUC or institute another similar program).

87. In the event that FPUC (or another similar program) is reauthorized in the future, there is a substantial risk that Defendants, on behalf of the State of Ohio, will refuse to participate or prematurely withdraw from participation in such a program, just as they have done in the past.

88. Given that Plaintiffs and Class members are either still unemployed, or employed in occupations that are most vulnerable to layoffs in the event of an economic downturn, Plaintiffs and Class members would likely be entitled to unemployment benefits under a reauthorized version of FPUC (or another similar program).

89. Accordingly, the controversy in this case also remains justiciable because there is a reasonable expectation that the Plaintiffs and Class members will be harmed by Defendants' premature termination (or outright refusal to participate) in FPUC (or another similar program) in the future.

COUNT II

⁶ See, e.g., CNN, *5 Signs the World Is Headed for a Recession*, available at: <https://www.cnn.com/2022/10/02/business/global-recession-fears-explained> (last accessed December 2, 2022); The Wall Street Journal, *Economists Now Expect a Recession, Job Losses by Next Year*, available at: <https://www.wsj.com/articles/economists-now-expect-a-recession-job-losses-by-next-year-11665859869> (last accessed December 2, 2022).

Injunctive Relief

90. Plaintiffs reallege and incorporate paragraphs 1 through 78 of the Complaint as if fully restated herein.

91. Defendants' premature (and unlawful) termination of Ohio's participation in FPUC deprived Plaintiffs and Class members of FPUC benefits of \$300.00 per week between June 26, 2021 and September 6, 2021, inclusive.

92. As a result of Defendants' premature termination of Ohio's participation in FPUC, Plaintiffs and Class members suffered, and continue to suffer, substantial and irreparable harms.

93. For example, without the aid of the FPUC benefits to which they were entitled, Plaintiffs and Class members were required to rely on preexisting savings, or incurred debt, in order to pay for food, medicine, housing, and other necessities. As a result, Plaintiffs and Class members currently have less money or available credit to pay for food, medicine, housing, and other necessities than they otherwise would have had if they had continued to receive the FPUC benefits to which they were entitled.

94. Similarly, without the aid of the FPUC benefits to which they were entitled, Plaintiffs and Class members were required to make significant negative changes to their lifestyles, such as moving into lower-income housing, abstaining from receiving necessary medical care, etc. As a result, Plaintiffs and Class members are currently in a worse position than they otherwise would have been had they continued to receive the FPUC benefits to which they were entitled.

95. The substantial and irreparable harms suffered by Plaintiffs and Class members can be remedied by the retroactive restoration of the FPUC benefits to which they were entitled.

The retroactive restoration of the FPUC benefits to Plaintiffs and Class members is the most plain, adequate, and complete remedy available.

96. On information and belief, although PUA, PEUC, and FPUC expired on September 6, 2021, Defendants can reinstate Ohio's participation in FPUC, and use Ohio's share of the Remaining Funds to retroactively provide the FPUC benefits to Plaintiffs and Class members to which they were entitled.

97. However, if Defendants do not reinstate Ohio's participation in FPUC in a timely manner, any Remaining Funds will be exhausted, and Ohio will be unable to obtain any portion of those Remaining Funds to retroactively provide the FPUC benefits to Plaintiffs and Class members.

98. Once the Remaining Funds are exhausted, the substantial and irreparable harms suffered by Plaintiffs and Class members will become permanent and unable to be remedied. Accordingly, unless Ohio's participation in FPUC is restored in a timely manner, Plaintiffs and Class members will permanently suffer substantial and irreparable harm for which no adequate remedy at law exists.

99. For these reasons, the Court should enter an order requiring Defendants to reinstate Ohio's participation in FPUC, and use Ohio's share of the Remaining Funds to retroactively provide the FPUC benefits to Plaintiffs and Class members.

100. The requested injunction will not unjustifiably harm any third party, as the Remaining Funds that will be used to retroactively provide the FPUC benefits to Plaintiffs and Class members has *already* been appropriated by the United States Congress for that very purpose.

101. In addition, the State’s costs to administer the CARES Act benefits are covered by CARES Act funding. *See* 15 U.S.C. §§ 9021(g), 9023(d), 9025(a)(4)(A). Therefore, the State would neither be harmed nor inconvenienced by the requested injunction.

102. Even assuming, *arguendo*, that the requested injunction would result in some inconvenience or detriment to the State (or another third party), those harms would be far outweighed by the harm to Plaintiffs and Class members that would result if the requested injunction is denied.

103. The requested injunction is also in the public interest, as the public policy of the State of Ohio—as articulated by O.R.C. § 4141.43(I)—requires Defendants to secure all possible federal pandemic unemployment benefits available to unemployed Ohioans, including those available under FPUC. *See, e.g., Cruz v. S. Dayton Urological Associates, Inc.*, 121 Ohio App. 3d 655, 664 (1997) (noting that public policy is “expressed by the General Assembly in the form of statutory enactments”).

104. Therefore, Defendants should be ordered to reinstate Ohio’s participation in FPUC, and use Ohio’s share of the Remaining Funds to retroactively provide the FPUC benefits to Plaintiffs and Class members.

COUNT III
Mandamus

105. Plaintiffs reallege and incorporate paragraphs 1 through 78 of the Complaint as if fully restated herein.

106. This Court has jurisdiction to issue a writ of mandamus pursuant to O.R.C. § 2731.01, *et seq.*

107. O.R.C. § 4141.43(I) explicitly states:

The director shall cooperate with the United States Department of Labor

to the fullest extent consistent with this chapter, and shall take such action, through the adoption of appropriate rules, regulations, and administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the “Social Security Act” that relate to unemployment compensation, the “Federal Unemployment Tax Act,” (1970) 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, the “Wagner-Peyser Act,” (1933) 48 Stat. 113, 29 U.S.C.A. 49, the “Federal-State Extended Unemployment Compensation Act of 1970,” 84 Stat. 596, 26 U.S.C.A. 3306, and the “Workforce Innovation and Opportunity Act,” 29 U.S.C.A. 3101, *et seq.*

108. FPUC benefits are part of the federal unemployment benefits provided by the United States Department of Labor covered by O.R.C. § 4141.43(I).

109. Therefore, Defendants have a clear statutory duty to secure for Ohioans all available federal unemployment benefits, including those under FPUC.

110. On information and belief, although PUA, PEUC, and FPUC expired on September 6, 2021, Defendants can reinstate Ohio’s participation in FPUC, and obtain Ohio’s share of the Remaining Funds.

111. Since FPUC benefits remain available to the State of Ohio, Defendants have a clear statutory duty to reinstate Ohio’s participation in FPUC.

112. Nevertheless, Defendants have failed to fulfill their statutory duties under O.R.C. § 4141.43(I), and continue to refuse to perform those duties.

113. As set forth above, Plaintiffs and Class members have suffered, and will continue to suffer, substantial and irreparable harms for which no plain and adequate remedy exists if Defendants do not take the actions necessary to restore Ohio’s participation in FPUC. Indeed, only Defendants can restore Ohio’s participation in FPUC by reinstating the agreement between the State of Ohio and the federal government.

114. Accordingly, pursuant to O.R.C. § 2731.01, *et seq.*, Plaintiffs are entitled to a writ from this Court requiring Defendants to take all actions necessary to immediately restore FPUC benefits as is required by O.R.C. § 4141.43(I).

COUNT IV
Mandamus
(In the Alternative to Count III)

115. Plaintiffs reallege and incorporate paragraphs 1 through 78 of the Complaint as if fully restated herein.

116. This Court has jurisdiction to issue a writ of mandamus pursuant to O.R.C. § 2731.01, *et seq.*

117. O.R.C. § 4141.28(I) explicitly states:

If [unemployment] benefits are allowed by the director, a hearing officer, the commission, or a court, the director shall pay benefits promptly, notwithstanding any further appeal, provided that if benefits are denied on appeal, of which the parties have notice and an opportunity to be heard, the director shall withhold payment of benefits pending a decision on any further appeal.

118. FPUC benefits are part of the federal unemployment benefits provided by the United States Department of Labor contemplated by O.R.C. § 4141.28(I).

119. Prior to Ohio’s withdrawal from FPUC, the Director determined that Plaintiffs and Class members were eligible for FPUC benefits.

120. Plaintiffs and Class members remained eligible for FPUC benefits during the time period beginning on June 26, 2021—*i.e.*, the date the Ohio withdrew from FPUC—through September 6, 2021—*i.e.*, the date that FPUC expired.

121. In other words, with respect to Plaintiffs and Class members, FPUC “benefits are allowed by the Director” for the time period beginning on June 26, 2021 through September 6, 2021.

122. Therefore, Defendants have a clear statutory duty to promptly pay FPUC benefits due to Plaintiffs and Class members for the aforementioned time period.

123. Despite this clear statutory duty, Defendants have not paid Plaintiffs and Class members the FPUC benefits to which they are entitled during the aforementioned time period, and continue to refuse to perform this duty.

124. As set forth above, Plaintiffs and Class members have suffered, and will continue to suffer, substantial and irreparable harms for which no plain and adequate remedy exists if Defendants do not take the actions necessary to pay Plaintiffs and Class members the FPUC benefits to which they are entitled.

125. Accordingly, pursuant to O.R.C. § 2731.01, *et seq.*, Plaintiffs are entitled to a writ from this Court requiring Defendants to take all actions necessary to promptly pay FPUC benefits due to Plaintiffs and Class members for the period beginning on June 26, 2021 through September 6, 2021, as is required by O.R.C. § 4141.28(I).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class and against Defendants;
- D. Declaring that (1) pursuant to O.R.C. § 4141.43(I), Defendants must secure all possible federal unemployment benefits available to unemployed Ohioans, (2) Defendants violated their statutory duties under O.R.C. § 4141.43(I) by prematurely terminating Ohio's participation in FPUC benefits as of the week of June 26, 2021, and (3) Defendants' continued failure and refusal to secure all available advantages on behalf of Ohio and

Ohio citizens, such as the FPUC benefits, is in derogation of Defendants' constitutional powers and violates their clear statutory duties;

- E. Mandatorily enjoining and ordering Governor DeWine and Director Damschroder, in their official capacities, ODJFS, and Defendants' officers, employees, and agents, all persons acting in concert or participation with any Defendant, or under any Defendant's supervision, direction, or control to reinstate Ohio's participation in FPUC, and use Ohio's share of the Remaining Funds to retroactively provide the FPUC benefits to Plaintiffs and Class members;
- F. Ordering—pursuant to O.R.C. § 2731.01, *et seq.*—Governor DeWine and Director Damschroder, on behalf of the State of Ohio, to take all actions necessary to immediately reinstate Ohio's participation in all federal unemployment Benefit Programs available from the United States Department of Labor, including restoring FPUC benefits to the State of Ohio, as is required by O.R.C. § 4141.43(I), or, in the alternative, promptly pay FPUC benefits due to Plaintiffs and Class members for the period beginning on June 26, 2021 through September 6, 2021, as is required by O.R.C. § 4141.28(I);
- G. Awarding Plaintiffs and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law;
- H. Granting all such further and other relief as this Court deems just and appropriate.

Plaintiffs CANDY BOWLING, SHAWNEE HUFF, JAMES PARKER, SARAH RUSSELL, SEBASTIAN NASH, and ZACHARY DUNN, individually and on behalf of all others similarly situated

By: /s/ Brian D. Flick, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2023, a copy of the foregoing was submitted electronically to the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served via regular U.S. Mail to his, her or its respective address as indicated by previous filings herein. Parties may access this filing through the Court's system.

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