

**IN THE STATE OF MICHIGAN
COURT OF CLAIMS**

KELLIE SAUNDERS, ERIK VARGA,
LISA SHEPHARD, DAWN DAVIS,
JENNIFER LARKE, ANNA LOGAN,
JOSHUA EGGLESTON,
JENNIFER HILLEBRAND,
CHERYL SCARANTINO,
and ELENi ZESTOS,
individual UIA Claimants,

Case No. 22-000007-MM

Hon. Brock A. Swartzle

Plaintiffs,

v.

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE
AGENCY and JULIA DALE, in her
official capacity,

Defendants.

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**FIRST AMENDED VERIFIED CLASS ACTION COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY RELIEF, EQUITABLE RELIEF,
AND DAMAGES**

*There is no other pending or resolved civil action arising out of the
transaction or occurrence alleged in the complaint.*

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NATURE OF THE CASE

1. This is a civil action alleging the illegal conduct of Michigan's Unemployment Insurance Agency operating outside of authority granted by law. Defendants' actions complained of herein violate minimum due process rights afforded by the Michigan Constitution and deprive Michigan's unemployed of property without any basis in law.

2. Defendants are acting outside the law by cancelling benefits retroactively and collecting alleged "overpayments" of unemployment insurance ("UI") benefits, including Pandemic Unemployment Assistance ("PUA") benefits and other federally-funded benefits made available through the Coronavirus Aid, Relief, and Economic Security ("CARES") Act in Michigan.

3. The state agency involved in such collection efforts, currently known as the Michigan Unemployment Insurance Agency (the "Agency") and its Director (collectively, "Defendants") are violating the due process rights of Michigan residents granted under the Michigan Constitution by: (1) assessing overpayments and undertaking collection activity from claimants based on "Monetary Redeterminations" issued more than one year after initial Determinations on the same issue, and hence collecting those benefits without jurisdiction to do so and in violation of MCL 421.32a; (2) by seeking recovery of overpayments that are required to be waived under MCL 421.62 due to Agency error without issuing an appealable Determination on waiver or providing a process by which claimants can request such a waiver; and (3) by engaging in unauthorized collection activity without any final Determination on the merits, in violation of MCL 421.32a and 421.62.

4. During this time of unprecedented economic impact of the COVID-19 pandemic, employment security remains a constant threat and source of fear. Residents of the State of

Michigan who were seeking work when the pandemic hit or who lost work as a result of the disease or the associated public health actions have been among those most impacted by the uncertainty of this trying time.

5. As a result of the Agency's actions taken to seize tax refunds, garnish wages, or withhold future benefits in violation of the law and without affording claimants due process, claimants who are unemployed through no fault of their own are left without a lifeline and are placed in financially dire situations. Those who are just now recovering from financial hardship are facing unlawful seizure of wages and tax returns without any legal basis.

6. Plaintiffs are people who reasonably relied on the Agency's initial Determination and depended on benefits for economic survival. They now face Agency overpayment assessments and associated collection activity, often based on extra-jurisdictional Monetary Redeterminations or while they have a pending protest or appeal related to the adverse Agency decision. The Agency's policies and practices adversely affect Plaintiffs and other similarly situated individuals by depriving them of due process and fair and just treatment by cancelling benefits, garnishing taxes, seizing wages, or otherwise claiming a right to repayment without any legal basis or jurisdiction to do so or before providing an opportunity to be heard.

7. For Plaintiffs and similarly situated class members, a Redetermination and overpayment notice received over a year after initial Determinations on the same issue is a recipe for financial ruin. A sudden cancellation or clawing back of support (accompanied by a notice of repayment of \$20,000.00 or even approaching \$50,000.00) can be reasonably expected to result in inability to pay rent or mortgage, food insecurity, inability to pay for transportation, late payment fees and utility shut-off fees, extended borrowing on retirement accounts or excessive interest rates

on “payday loans” or other short term high-interest bridge loans, or other financial distress and costs.

DESCRIPTION OF THE PLAINTIFF CLASSES

8. Plaintiffs bring this action on behalf of themselves and on behalf of classes of similarly situated current and former UIA claimants who were deprived of due process of law and subjected to collection activity based on Agency actions unauthorized by law, including the following:

- a. Michigan residents and self-employed small business owners who face assessments of overpayments and associated collection activity based on Monetary Redeterminations issued more than a year after the Agency’s original Monetary Determination, beyond the UIA’s statutory jurisdiction. MCL 421.32a.
- b. Michigan residents and self-employed small business owners who face assessment of overpayments and associated collection activity without Agency review of their file for waiver of overpayment due to administrative error and without the Agency issuing an appealable Determination regarding such waiver or providing a process by which claimants can request such waiver. MCL 421.62(b).
- c. Michigan residents and self-employed small business owners who face assessment of overpayments and associated collection activity before a final Determination has been made on their claim and while protests and appeals are pending. MCL 421.32a and MCL 421.62.

9. The Michigan Constitution provides: “No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.” Const 1963, art 1, § 17.

10. Plaintiffs and the classes seek declaratory and injunctive relief, mandamus, and money damages for Defendants’ violations of the Michigan Constitution.

11. Plaintiffs do not have any administrative remedy available to address the systemic constitutional violations complained of herein.

JURISDICTION AND VENUE

12. The Court of Claims has personal jurisdiction over the Defendant Agency because it is an agency of the State of Michigan and over the Defendant Director because she is an officer of an agency of the State of Michigan.

13. The Court of Claims has original jurisdiction over this matter pursuant to MCL 600.6419 *et seq.* because the claim is brought against an agency of the State of Michigan and an officer of an agency of the State of Michigan. This Court also has jurisdiction over this action pursuant to MCR 2.605 (declaratory relief); MCR 3.305(A)(2) (mandamus relief); and MCR 3.310 (injunctive relief).

14. Venue is proper in the Court of Claims pursuant to MCL 600.6419 *et seq.* because the claim is brought against an agency of the State of Michigan and an officer of an agency of the State of Michigan.

PARTIES

15. Plaintiffs Kellie Saunders, Erik Varga, Lisa Shephard, Dawn Davis, Jennifer Larke, Anna Logan, Joshua Eggleston, Jennifer Hillebrand, Cheryl Scarantino, and Eleni Zestos are Michigan residents who received unemployment insurance benefits through the Michigan Unemployment Insurance Agency during the pandemic and have now been assessed with “overpayments” and received bills from the state for collection of thousands of dollars.

16. Collectively, Plaintiffs Saunders, Varga, Shephard, Davis, Larke, Logan, Eggleston, Hillebrand, Scarantino, and Zestos are hereafter referred to as “Plaintiffs.”

17. Defendant Michigan Unemployment Insurance Agency is the state body tasked with administering unemployment insurance benefits to Michigan workers. The Agency directs the overpayment collection efforts. The Agency’s principal place of business is located in Detroit, Michigan.

18. Defendant Julia Dale is the Director of the Michigan Unemployment Insurance Agency acting under color of state law and is sued in her official capacity for purposes of injunctive and declaratory relief.

DESIGNATION OF INSTITUTION OF THE STATE INVOLVED IN CLAIM

19. Pursuant to MCL 600.6431(1), Plaintiffs designate the following institutions or agencies of the state “involved in connection with” this claim: *State of Michigan Unemployment Insurance Agency*.

DECLARATORY RELIEF

20. Pursuant to MCR 2.605, this Court has the authority to declare the rights and legal relations of the Parties to this action.

21. There exists an actual case and controversy between the Parties in that Plaintiffs allege that Defendants violated their legal rights and the rights of the classes by collecting against them before there is a final Determination or without the jurisdiction to do so and by failing to review claimant files for eligibility for waiver of overpayment due to administrative error or to provide a process by which claimants can request such waiver.

22. Defendants have not provided any affirmation that they will comply with their statutory and constitutional obligation to issue Redeterminations only within one year after the initial Monetary Determination, MCL 421.32a.

23. As such, Plaintiffs are entitled to declaratory relief.

WRIT OF MANDAMUS OR SUPERINTENDING CONTROL

24. This Court has jurisdiction to issue a writ of mandamus. MCR 3.305(A)(1).

25. Defendants have a clear legal duty, as mandated by the Michigan Constitution and by the Michigan Employment Security Act, (1) to issue Monetary Redeterminations only within one year after the initial Monetary Determination, MCL 421.32a; and (2) to review alleged overpayments for waiver based on administrative error and provide notice of the Determination and (if denied) opportunity to appeal. MCL 421.62(a).

26. These legal duties, as set out in the Michigan Constitution and by statute, are ministerial in nature.

27. Plaintiffs and the classes have a clear legal right, pursuant to the Michigan Constitution and statute, to receive process, including review for eligibility for waiver of overpayment, before deprivation of unemployment benefits.

28. No other adequate legal or equitable remedy exists that might achieve the same result.

29. As such, the factors mandate a writ of mandamus or superintending control.

PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

30. Pursuant to MCR 3.310, this Court has the authority to issue injunctive relief.

31. Plaintiffs are likely to prevail on the merits of their claims because Defendants have deprived Plaintiffs and the classes of unemployment benefits without providing mandatory due process pursuant to the Michigan Constitution, including by (1) engaging in collection activity based on Monetary Redeterminations issued without jurisdiction more than one year after the initial Determination, MCL 421.32a; (2) engaging in collection activity before reviewing for administrative error waiver and providing notice of the Determination and opportunity to protest or appeal, MCL 421.62(a); and (3) engaging in collection activity against claimants before there is a final Determination on the merits that would permit assessment of restitution, MCL 421.32a and 421.62(a).

32. Plaintiffs and the classes face real and imminent danger of irreparable harm if an injunction is not issued. As a threshold matter, a “loss of a constitutional right constitutes irreparable harm which cannot be adequately remedied by an action at law.” *Garner v Mich State Univ*, 185 Mich App 750, 764; 462 NW2d 832 (1990). Defendants’ continued unlawful collection activity deprives Plaintiffs and the classes of the process they are due under the law.

33. The balance of harm weighs in favor of Plaintiffs and the classes, as Defendants are inflicting on them irreparable harm by violating their constitutional right to due process prior to deprivation of property. Defendants cannot credibly claim any harm to themselves when Plaintiffs are simply asking that they comply with their constitutional and statutorily-mandated duties to stop collection activity before providing due process.

34. There is a clear public interest in the right to receive benefits and to be free from unlawful garnishment and seizure, especially given the ongoing COVID-19 pandemic.

35. As such, the factors mandate preliminary and permanent injunctive relief.

ALLEGATIONS REGARDING PLAINTIFFS AND CLASS REPRESENTATIVES

Plaintiff Kellie Saunders

36. Plaintiff Kellie Saunders is a Michigan business owner—a wedding and event photographer—whose business was halted by the COVID-19 pandemic.

37. Plaintiff Saunders applied for benefits and promptly provided the Defendant Agency with all requested information.

38. In April 2020, the Defendant Agency issued a Monetary Determination finding Plaintiff Saunders entitled to a Weekly Benefit Amount (“WBA”) of \$362.00.

39. Following approval, Plaintiff Saunders continued to provide the Defendant Agency with all requested information in a timely manner.

40. In October 2021, more than one year after finding Plaintiff Saunders entitled to a WBA of \$362.00, the Agency issued a Notice of Redetermination finding that Plaintiff Saunders should have been entitled to a reduced WBA of \$160.00.

41. This calculation error was the fault of the Defendant Agency.

42. Nonetheless, the Defendant Agency assessed an overpayment of over \$14,000.00 against Plaintiff Saunders based on an extra-jurisdictional Monetary Redetermination made more than one year after the Monetary Determination.

43. The Agency also failed to consider Plaintiff Saunders’ alleged overpayment for statutorily-required waiver for Agency error or to issue an appealable Determination regarding the Agency’s decision on waiver eligibility.

Plaintiff Erik Varga

44. Plaintiff Erik Varga is a Michigan resident and hospitality worker who was laid off from his Michigan employer at the start of the pandemic.

45. The Defendant Agency found Plaintiff Varga entitled to a WBA of \$362.00.

46. In January 2021, the Defendant Agency found Plaintiff Varga ineligible for benefits.

47. In January 2021, the Defendant Agency notified Plaintiff Varga that it was seeking to collect over \$17,000.00 in benefits and that it intended to withhold his federal income tax refund.

48. Plaintiff Varga timely protested.

49. Despite his pending protest, in April 2021, the Defendant Agency garnished Plaintiff Varga's 2020 federal tax return.

50. The Defendant Agency continued to send notices of delinquency on Plaintiff Varga's balance.

51. On August 16, 2021, the Defendant Agency sent Plaintiff Varga a notice of overpayment seeking to collect \$17,224.57.

52. In August 2021, the Defendant Agency also sent Plaintiff Varga another notice of garnishment, announcing its intention to garnish up to 25% of his earned income each pay period.

53. The Agency's own files reflected that Plaintiff Varga's protest was still under review at the time the original Complaint was filed in this matter.

54. Despite the fact that Plaintiff Varga has not received a final Determination from the Defendant Agency, he continues to get notices of delinquency and reasonably worries his tax refunds will be seized and that the Defendant Agency will pursue other collection activity.

55. The Agency also failed to consider Plaintiff Varga's alleged overpayment for statutorily-required waiver for Agency error or to issue an appealable Determination regarding the Agency's decision on waiver eligibility.

56. Since this lawsuit was filed, the Agency partially rescinded the collection notices. However, this does not remedy the constitutional violation, nor does it prevent the Agency from future constitutional violations.

Plaintiff Lisa Shephard

57. Plaintiff Lisa Shephard is a Michigan resident who was concerned about the lack of safety protocols at her job and became ill with suspected COVID in March of 2020. The effects lingered for months.

58. In May 2020, the Defendant Agency found Plaintiff Shephard eligible for benefits.

59. In June and in July 2020, the Defendant Agency issued Monetary Redeterminations again finding Plaintiff Shephard eligible for benefits.

60. On August 6, 2020, the Defendant Agency issued a Notice of Determination finding Plaintiff Shephard ineligible for benefits. The Defendant Agency also sent Plaintiff Shephard a notice of weeks of overpayment seeking to recover \$4,420.00 in benefits.

61. Plaintiff Shephard timely appealed the Determination finding her ineligible for benefits.

62. On September 28, 2020, the Defendant Agency issued a separate Notice of Determination finding Plaintiff Shephard ineligible for benefits. The Defendant Agency also sent Plaintiff Shephard a notice of overpayment seeking to recover \$3,311.00 in benefits.

63. Plaintiff Shephard again timely appealed the Determination finding her ineligible for benefits.

64. In November 2020, an Administrative Law Judge found that Plaintiff Shephard was eligible for benefits related to the August 2020 denial.

65. Nonetheless, the Defendant Agency continued to collect against Plaintiff Shephard.

66. Plaintiff Shephard's timely protest of the September 2020 Determination has never been heard or even logged in the Defendant Agency's system.

67. In June 2021, Plaintiff Shephard received notice that her federal income tax refund was being garnished by the Defendant Agency. The Defendant Agency then seized Plaintiff Shephard's 2020 tax refund.

68. As of December 2021, the Defendant Agency claimed that Plaintiff Shephard still owed over \$3,000.00 in benefits and interest.

69. Despite Plaintiff Shephard's continued timely appeals, and despite that there is no final Determination on her claim, the Defendant Agency seized her 2020 tax refund. As of the time of the original Complaint in this matter, Plaintiff Shephard continued to receive notices of delinquency and reasonably expected her tax refunds to be seized and the Defendant Agency to continue other collection activity.

70. The Agency also failed to consider Plaintiff Shephard's alleged overpayment for statutorily-required waiver for Agency error or to issue an appealable Determination regarding the Agency's decision on waiver eligibility.

71. Since this lawsuit was filed, the Agency paid Plaintiff Shephard over \$7,000.00 in withheld benefits and sent her a check in the amount seized from her 2020 tax refund a year ago. This action does not remedy the constitutional violation of seizing and holding her property for a year, and it does not provide any guarantee it will not happen again.

Plaintiff Dawn Davis

72. Plaintiff Dawn Davis is a Michigan resident who lost her substitute paraprofessional job at Pinckney Schools due to COVID-19-related school closures.

73. In April 2020, the Defendant Agency found Plaintiff Davis entitled to benefits retroactive to March 2020.

74. In January 2021, the Defendant Agency stopped paying Plaintiff Davis any benefits without issuing a (Re)Determination or providing any explanation.

75. Thereafter, the Defendant Agency sent Plaintiff Davis multiple communications stating she was eligible for benefits.

76. On June 1, 2021, more than one year after issuing its initial Determination finding Plaintiff Davis eligible for benefits, the Defendant Agency issued a Monetary Redetermination concluding that Plaintiff Davis was entitled to a reduced WBA of \$0.00.

77. On June 1, 2021, the Defendant Agency also sent Plaintiff Davis two notices of overpayment that it was seeking to collect \$18,648.00 and \$1,840.00 in benefits paid.

78. The Defendant Agency was without jurisdiction to issue the June 2021 Monetary Redetermination and associated notices of overpayment.

79. Plaintiff Davis timely protested the Monetary Redetermination.

80. Plaintiff Davis' protest is still pending before the Defendant Agency.

81. The Agency also failed to consider Plaintiff Davis' alleged overpayment for statutorily-required waiver for Agency error or to issue an appealable Determination regarding the Agency's decision on waiver eligibility.

82. Plaintiff Davis reasonably worries and expects that her 2021 income tax refund, and future wages, will be garnished by the Agency.

Plaintiff Jennifer Larke

83. Plaintiff Jennifer Larke is a hospital administration worker who moved to Michigan to start a new job prior to the pandemic. She was laid off from her new job in April 2020 as a result of the COVID-19 pandemic.

84. After initial eligibility determinations, in October 2020, the Defendant Agency issued Determinations finding Larke retroactively ineligible for benefits.

85. On October 12, 2020, the Defendant Agency sent a notice of overpayment seeking to recover \$3,126.00 in benefits paid.

86. Plaintiff Larke timely protested all Agency adverse actions and, as of the time of this filing, there is no final Determination on her claim for benefits.

87. Nonetheless, the Defendant Agency repeatedly sent notices of delinquency to Plaintiff Larke.

88. In May 2021, the Defendant Agency sent Plaintiff Larke a Notice of Garnishment announcing an intent to garnish up to 25% of her income until her debt was paid in full.

89. The Agency seized a portion of Plaintiff Larke's 2021 unemployment benefits to pay debt that was not owed on pandemic benefits paid in 2020, in spite of the fact that there is no final Determination on her claim that would allow collection.

90. The Agency also failed to issue an appealable Determination to Plaintiff Larke regarding the Agency's decision on waiver eligibility.

91. Plaintiff Larke's most recent appeals remain pending and there is no final Determination on her claim. Yet, based on prior collection, Plaintiff Larke reasonably expects her tax return to again be seized and wages to be garnished.

Plaintiff Anna Logan

92. Plaintiff Anna Logan is a 75-year-old woman who was working as a manager at a McDonald's franchise when COVID-19 struck.

93. Plaintiff Logan was immunocompromised, and her doctor advised her to isolate or "self-quarantine."

94. After initially paying benefits to Plaintiff Logan, the Agency then issued an "ability" Determination finding Plaintiff Logan ineligible for benefits, alleging she was not able to work.

95. The Agency immediately cut off Plaintiff Logan's benefits.

96. Plaintiff Logan timely protested and had still not received a hearing on her protest at the time the original Complaint was filed in this matter. At that time, it had been nearly one year since she protested and requested a hearing.

97. Regardless, the Agency ceased paying Plaintiff Logan's benefits and is undertaking collection activity based on that ability Determination.

98. The Agency has sent monthly collection letters announcing an intention to seize Logan's tax refund and to garnish wages if she does not make payments immediately. The Agency has sought \$28,800.00 from Logan in alleged overpayment.

99. The Agency also failed to consider Plaintiff Logan's alleged overpayment for statutorily-required waiver for Agency error or to issue an appealable Determination regarding the Agency's decision on waiver eligibility

100. Logan cannot afford to repay the benefits, and she reasonably fears the Agency will garnish her wages and seize her tax refunds.

Plaintiff Joshua Eggleston

101. Plaintiff Joshua Eggleston is a self-employed construction worker whose regular work ceased in March 2020 due to the pandemic and public health orders.

102. Later, Plaintiff Eggleston was a caregiver for his children who were home from school.

103. The Agency issued a Monetary Determination on April 22, 2020 finding Plaintiff Eggleston entitled to a \$322.00 WBA.

104. On August 31, 2021, the Agency issued a Monetary Redetermination reducing Plaintiff Eggleston's WBA to \$0.00 more than a year after the original Monetary Determination finding him eligible for a WBA of \$322.00.

105. The Agency assessed an overpayment of over \$44,000.00 it claimed Plaintiff Eggleston owed.

106. Plaintiff Eggleston timely appealed the Monetary Redetermination in August 2021 and is still waiting for a hearing more than six months later.

107. On September 16, 2021, Plaintiff Eggleston requested a status on his protest, which the Agency acknowledged, yet the Agency continued sending monthly statements thereafter.

108. Nonetheless, the Agency initiated collections and announced its intent to seize Plaintiff Eggleston's tax refund and to garnish wages unless he starts paying back the \$44,000.00.

109. The Agency has engaged in collection activity against Plaintiff Eggleston despite his pending protest and despite the Agency's acknowledgment that it received his protest.

110. The Agency also failed to consider Plaintiff Eggleston's alleged overpayment for statutorily-required waiver for Agency error or to issue an appealable Determination regarding the Agency's decision on waiver eligibility

111. Plaintiff Eggleston has been paying monthly toward his overpayment under threat of garnishment, although notices confirm the Agency still intends to seize his tax refund.

Plaintiff Jennifer Hillebrand

112. Plaintiff Jennifer Hillebrand is a wedding and event photographer whose small business was halted by COVID-19 and public health directives cancelling gatherings.

113. On April 23, 2020, the Agency issued a Monetary Determination finding Plaintiff Hillebrand entitled to a \$334.00 WBA.

114. Plaintiff Hillebrand submitted her tax returns when she applied for Pandemic Unemployment Assistance.

115. More than one year after calculating her WBA as \$334.00, the Agency sent Plaintiff Hillebrand a Monetary Redetermination retroactively reducing her WBA to \$216.00, ultimately assessing an overpayment of over \$11,000.00.

116. Agency staff advised Plaintiff Hillebrand to appeal only the Monetary Redetermination since she was found not to have misrepresented anything.

117. The Agency failed to consider Plaintiff Hillebrand's alleged overpayment for statutorily-required waiver for Agency error or to issue an appealable Determination regarding the Agency's decision on waiver eligibility.

118. Plaintiff Hillebrand is still waiting for a hearing, and the Redetermination is not final.

119. Nonetheless, the Agency has initiated collection activity against Plaintiff Hillebrand and, like it has done to other claimants, announced its intent to seize her tax refunds and to garnish wages if monthly payments are not made.

120. Based on the Agency's own statements and notices, Plaintiff Hillebrand reasonably worries and expects that her 2021 income tax refund, and future wages, will be garnished by the Agency.

Plaintiff Cheryl Scarantino

121. Plaintiff Cheryl Scarantino had been working as an orthodontic assistant for over 30 years when the COVID-19 pandemic began in March 2020.

122. Plaintiff Scarantino is immunocompromised and, although she attempted to return to work when her employer re-opened, her employer failed to provide adequate protections from the risks of COVID-19, and she was advised by her medical provider not to return at that time.

123. On March 25, 2020, the Agency issued a Monetary Determination finding Plaintiff Scarantino entitled to a WBA of \$362.00.

124. On February 17, 2021, the Agency issued an "ability" Determination finding Plaintiff Scarantino ineligible for benefits, alleging she was not able to work.

125. Plaintiff Scarantino timely protested the Determination, and it was reversed.

126. On May 7, 2021, the Agency issued a "voluntary quit" Determination finding Plaintiff Scarantino ineligible for benefits, alleging she voluntarily quit her job.

127. Plaintiff Scarantino timely protested the Determination, and her protest remains pending.

128. There is no final Determination on the merits of Plaintiff Scarantino's claim.

129. The Agency failed to consider Plaintiff Scarantino's alleged overpayment for statutorily-required waiver for Agency error or to issue an appealable Determination regarding the Agency's decision on waiver eligibility.

130. Nonetheless, the Agency has issued monthly statements to Plaintiff Scarantino seeking repayment of over \$19,000.00. The Agency has done so despite acknowledgment of her pending protest. Scarantino has made monthly payments as demanded by the Agency under threat of wage garnishment.

131. Plaintiff Scarantino reasonably worries and expects that her future wages will be garnished by the Agency.

Plaintiff Eleni Zestos

132. Plaintiff Zestos was working at a daycare center when the COVID-19 pandemic struck and the daycare center was closed.

133. The Agency issued a May 13, 2020 Monetary Determination finding Plaintiff Zestos entitled to a \$160.00 WBA.

134. More than a year later, on July 29, 2021, the Agency issued a Monetary Redetermination retroactively reducing Plaintiff Zestos' WBA to \$0.00.

135. The Agency also failed to consider Plaintiff Zestos' alleged overpayment for statutorily-required waiver for Agency error or to issue an appealable Determination regarding the Agency's decision on waiver eligibility.

136. The Agency has issued monthly statements to Plaintiff Zestos seeking repayment of \$17,777.90 in benefits.

137. Based on Agency collection activity and statements made by the Agency, Plaintiff Zestos reasonably worries and expects that her 2021 income tax refund, and future wages, will be garnished by the Agency.

GENERAL ALLEGATIONS

A. Defendants Operate Michigan's Unemployment Benefits System

138. The Defendant Agency possesses executive authority to operate pursuant to state law, known as the Michigan Employment Security Act ("MESA" or the "Act"), MCL 421.1 *et seq.*, and various executive orders and state regulations.

139. The Defendant Agency operates Michigan's unemployment insurance program.

140. The Defendant Director is responsible for overseeing the Defendant Agency and its policies and procedures and ensuring that they comply with state and federal law.

141. The Agency's authority is defined and limited by the Michigan Employment Security Act.

142. The Agency is required to comply with federal law under the Social Security Act and all amendments and instruction from the United States Department of Labor.

143. The Agency is required to administer CARES Act benefits pursuant to contract with the United States Department of Labor.

B. The Federal Government Provides Grants to States Subject to a Mandate that States Provide Due Process to Unemployment Claimants

144. To support state unemployment insurance programs, the United States government, through the Department of Labor, provides monetary grants. The State of Michigan receives such monetary grants.

145. In order to be eligible for such grants, states must comply with federal law establishing minimum due process requirements. *See* 42 USC 501-503.

146. Pursuant to state and federal law, the Agency collects state payroll taxes and reimbursements from covered employers to pay benefits to eligible claimants. The payroll taxes and reimbursements collected by the Agency are deposited into a trust fund.

147. Any benefits determined by the Agency to have been improperly paid to claimants and subsequently collected by the Agency must be deposited in the trust fund.

148. Pursuant to state and federal law, the sole use of benefit overpayments collected from claimants and payroll tax revenues deposited in the trust fund is for the payment of benefits.

149. Under the Federal Unemployment Tax Act, a separate tax is paid by covered employers directly to the federal government and used to provide the federal administrative funds to operate the Agency and other state unemployment insurance agencies.

150. Federal law allows states to recover overpayments from claimants by deducting them from future unemployment benefits, but only if “[a]ny such deduction [is] made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.” 42 USC 503(g)(1).

151. Similarly, federal law allows states to recover overpayments through intercepting federal income tax refunds, subject to the same minimum due process requirements.

152. Federal law requires states to apply minimum due process to all claimants, regardless of whether they are ultimately found to be eligible or ineligible for benefits and regardless of whether they are ultimately determined to have obtained benefits through misrepresentation or other improper means.

C. Michigan Law Includes Statutory Requirements Surrounding UI Benefits

153. The MESA established the Defendant Agency and dictates how the Agency must distribute unemployment insurance benefits to those who qualify.

154. The MESA was enacted, *inter alia*, “to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof...” 1936 PA 1, MCL 421.1 through 421.75.

155. MCL 421.32a provides the process for determining eligibility for benefits and the time limits for appealing Determinations.

156. MCL 421.32a states that the Agency may reconsider a Determination or Redetermination “within 1 year after the date of mailing or personal service of the original determination on the disputed issue or, if the original determination involved a finding of fraud, within 3 years after the date of mailing or personal service of the original determination.”

157. Defendants have established policies, practices, and customs that relate to the collection of benefit overpayments under Section 62 of the MESA.

158. MCL 421.62 provides the process for recovering benefits the Agency deems to have been improperly paid (a/k/a “overpayments”).

159. MCL 421.62 provides that improperly-paid unemployment benefits may be recovered through cash payments, deduction from future benefits, garnishment of wages, or seizure of state and/or federal income tax refunds.

160. However, MCL 421.62 also requires waiver of any overpayment that was a result of Agency error.

161. Specifically, MCL 421.62(a) provides that the agency “shall waive recovery of an improperly paid benefit if repayment would be contrary to equity and good conscience and shall waive any interest.” Under the MESA, “equity and good conscience” is defined in part as requiring the Agency to waive all overpayments that are the result of Agency error. MCL 421.62(a)(iii).

162. Binding federal Department of Labor instruction requires states to either review claimant files automatically for waiver of overpayment or to provide a process by which claimants can seek such waiver. US Dept of Labor, Unemployment Insurance Program Letter (“UIPL”) 23-80 (Feb. 28, 1981). UIPL 23-80 also requires states to give claimants the right to appeal such a decision and for that appeal to be decided by the relevant appellate tribunal on the merits.

163. If a state chooses to provide a process to request a waiver of overpayment, it is required to provide notice of how to do that at the time of assessing the overpayment.

164. The Agency does not provide any administrative process for claimants to request an administrative error waiver or to appeal the denial of such waiver.

165. The Agency does not provide notice to claimants that they may request a waiver for administrative error.

D. The Federal Government Provided Additional Funds to States

166. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act went into effect.

167. The CARES Act provides, among other provisions, a \$150 billion “Coronavirus Relief Fund” for state, local, and tribal governments to cover any costs related to COVID-19 incurred between March 1 and December 30, 2020 for which the governments did not previously budget. 42 USC 801.

E. The CARES Act Expanded Unemployment Benefits

168. The CARES Act expanded unemployment benefits through Pandemic Emergency Unemployment Compensation (“PEUC”) and Pandemic Unemployment Assistance (“PUA”).

169. PEUC provides an additional \$600 weekly in benefits for those who file for and receive unemployment benefits of at least \$1 as a weekly benefit for the weeks between March 29 and July 31, 2020. 15 USC 9023.

170. PEUC also extended the benefits period for unemployment insurance by thirteen (13) weeks for those who had exhausted their regular benefits.

171. PUA provides additional benefits weeks to individuals not typically eligible for regular unemployment, beginning retroactively on January 27, 2020.

172. Under an agreement with the United States Department of Labor, the Agency was permitted to provide PUA to individuals not eligible for regular unemployment, such as those who are self-employed, those who lost part-time employment, and others who otherwise would not qualify for regular unemployment compensation.

173. Regardless of the program, the Michigan Unemployment Insurance Agency is required to follow state law with regard to eligibility determinations and overpayment collections activity and to adhere to federal law and United States Department of Labor instructions requiring notice and opportunity to be heard and other due process protections.

F. Defendants' Actions Regarding Claimant Eligibility Determinations, Overpayment Assessments, and Collections Fail to Comport with Minimum Due Process Requirements

174. The United States Supreme Court has established that the termination of a person's welfare benefits demands procedural due process protections and has found that welfare benefits are a property interest because they are a statutorily-created entitlement. *Goldberg v Kelly*, 397 US 254, 261-62 & n 8; 90 S Ct 1101; 25 L Ed 2d 287 (1970).

175. Plaintiffs and other class members have property interests created by state and federal law in any benefits paid to them by the Agency, in their wages, and in their state and federal tax refunds. These interests are protected by Article I Section 17 of the Michigan Constitution.

176. Plaintiffs and other class members have liberty interests in avoiding prosecution, imprisonment, and/or penalty without due process.

177. The State of Michigan's due process obligations to Plaintiffs and the classes include an obligation to follow the minimum due process requirements with respect to the collection of unemployment debts, including overpayments and penalties.

178. Defendants have adopted policies and practices that deny benefits to claimants who are eligible and initiate collection activities based on invalid Monetary Redeterminations issued beyond the Agency's jurisdiction more than one year after an original Monetary Determination, including against those for whom state law and federal law due process obligations require assessment for Agency error and notice of that decision, and against those who have pending appeals and thus are without a final Determination on which the Agency is allowed to collect.

179. Defendants wrongfully engage in collection activity against Plaintiffs and the class members to collect benefit repayments that are not actually owed, including by decreasing future unemployment benefits, seizing state and federal tax returns, and garnishing wages.

180. Defendants engage in collection activity against Plaintiffs and other class members while protests and/or appeals are pending.

181. Benefits to which Plaintiffs and other class members are entitled have been suspended or recalled without notice or without a hearing in violation of the due process clause of the Michigan Constitution.

182. Defendants are not entitled to governmental immunity because their unlawful activities, as described herein, constitute conduct that is unauthorized by law and is therefore not a *bona fide* governmental function. *See Smith v State*, 428 Mich 540, 610; 40 NW2d 749 (1987).

183. As a result of the violations of the Michigan Constitution alleged above, Plaintiffs and other class members have suffered significant economic damages due to the loss of state and federal income tax refunds, wages, or subsequent UI benefits, in addition to economic and non-economic damages caused by Defendants' deprivations of property without due process and without fair and just treatment as required by Article I, Section 17 of the Michigan Constitution.

184. As a result of the violations of the Michigan Constitution alleged above, Plaintiffs and the classes suffered one or more of the following: inability to pay rent or mortgage, food insecurity, inability to pay for transportation, late payment fees and utility shut-off fees, extended borrowing on retirement accounts, or excessive interest rates on "payday loans" or other short term high-interest bridge loans essential to meet immediate needs during the pandemic.

185. Post-deprivation remedies are insufficient to protect Plaintiffs' and the class members' rights to due process because even a temporary deprivation of wages, unemployment benefits, or tax refunds creates a substantial burden on UI claimants who rely on such income to survive.

CLASS ACTION ALLEGATIONS

The Illegal Extra-Jurisdictional Redetermination Class

186. Plaintiffs Saunders, Davis, Zestos, Eggleston, and Hillebrand bring this matter as a class action pursuant to MCR 3.501 on behalf of themselves and as the Class Representatives of the following persons:

All individuals against whom the Agency has assessed overpayments and initiated collection activity based on Monetary Redeterminations

retroactively reducing or eliminating their weekly benefit amount more than one year after the original Monetary Determination (the “Jurisdiction Class”).

187. If certified for class-wide treatment, the Jurisdiction Class is brought on behalf of all similarly situated persons who do not opt-out of the Jurisdiction Class.

188. Plaintiffs Saunders, Davis, Zestos, Eggleston, and Hillebrand’s claims satisfy the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of a class action pursuant to MCR 3.501 for the Jurisdiction Class.

189. The Jurisdiction Class satisfies the numerosity standard as it consists of hundreds if not thousands of persons who are geographically dispersed and, therefore, joinder of all Jurisdiction Class members in a single action is impracticable.

190. Questions of fact and law common to the Jurisdiction Class predominate over any questions affecting only individual members. The questions of law and fact common to the Jurisdiction Class arising from Defendants’ actions include, without limitation:

- a. Whether they applied for and received UI and/or PUA benefits through the Defendant Agency;
- b. Whether the Agency alleged that they were ineligible for UI and/or PUA benefits already received;
- c. Whether the Agency assessed overpayments and initiated collection activity based on a Monetary Redetermination issued more than one year after the initial Monetary Determination; and
- d. Whether the Agency was operating beyond its jurisdiction and without statutory authority when it issued Monetary Redeterminations more than one year after the initial Monetary Determinations.

191. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claim.

192. Plaintiffs Saunders, Davis, Zestos, Eggleston, and Hillebrand's claims are typical of those of the Jurisdiction Class in that:

- a. They applied for and received UI and/or PUA benefits through the Defendant Agency;
- b. The Agency alleged that they were ineligible for UI and/or PUA benefits already received; and
- c. The Agency issued a Monetary Redetermination more than one year after issuing the initial Monetary Determinations.

193. Plaintiffs Saunders, Davis, Zestos, Eggleston, and Hillebrand are adequate representatives of the Jurisdiction Class because they are members of the class they seek to represent and their interests do not conflict with the interests of the members of the Jurisdiction Class. The interests of the members of the Jurisdiction Class will be fairly and adequately protected by Plaintiffs Saunders, Davis, Zestos, Eggleston, and Hillebrand and their counsel, who have extensive experience prosecuting complex wage and hour, employment, and class action litigation.

194. Maintenance as a class action of the claim asserted is superior to other available methods for fairly and efficiently adjudicating the controversy, as members of the Jurisdiction Class have little interest in individually controlling the prosecution of separate class actions, no other litigation is pending over the same controversy, it is desirable to concentrate the litigation in this Court, and there are no material difficulties impairing the management of a class action.

195. It would be impracticable and undesirable for each member of the Jurisdiction Class who has suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members.

196. The filing of this Complaint fulfills the notice requirements of MCL 600.6452 on Defendants as to all members of the Jurisdiction Class because the Defendants similarly deprived all Jurisdiction Class members of their rights to due process, as described in the Class Action Allegations.

The Waiver Class

197. Plaintiffs bring this matter as a class action pursuant to MCR 3.501 on behalf of themselves and as the Class Representatives of the following persons:

All individuals for whom the Agency seeks to collect overpayments before reviewing whether the overpayment is a result of administrative error or before issuing notice and opportunity to protest or appeal an adverse Determination regarding such waiver (the “Waiver Class”).

198. If certified for class-wide treatment, this class is brought on behalf of all similarly situated persons who do not opt-out of the Waiver Class.

199. Plaintiffs’ claims satisfy the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of a class action pursuant to MCR 3.501.

200. The Waiver Class satisfies the numerosity standard as it consists of hundreds if not thousands of persons who are geographically dispersed and, therefore, joinder of all Waiver Class members in a single action is impracticable.

201. Questions of fact and law common to the Waiver Class predominate over any questions affecting only individual members. The questions of law and fact common to the Waiver Class arising from Defendants' actions include, without limitation:

- a. Whether they applied for and received UI and/or PUA benefits through the Defendant Agency;
- b. Whether the Agency assessed an overpayment for UI and/or PUA benefits already received;
- c. Whether the Agency failed to review the file for administrative error waiver at the time overpayment was assessed;
- d. Whether the Agency failed to issue notice of a Determination regarding administrative error waiver or to provide opportunity to appeal the denial of such waiver; and
- e. Whether the Agency allows an administrative process to request a waiver based on Agency error, as required to satisfy due process.

202. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claim.

203. Plaintiffs' claims are typical of those in the Waiver Class in that:

- a. They applied for and received UI and/or PUA benefits through the Defendant Agency;
- b. The Agency later determined that they were ineligible for UI and/or PUA benefits already received;

- c. The Agency failed to review the file for administrative error waiver at the time overpayment was assessed;
- d. The Agency failed to issue notice of a Determination regarding administrative error waiver and failed to provide an opportunity to appeal an adverse Determination; and
- e. The Agency did not allow or provide any administrative process to request a waiver of overpayment based on Agency error, as required to satisfy due process.

204. Plaintiffs are adequate representatives of the Waiver Class because they are members of the Class they seek to represent and their interests do not conflict with the interests of the members of the Waiver Class. The interests of the members of the Waiver Class will be fairly and adequately protected by Plaintiffs and their counsel, who have extensive experience prosecuting complex wage and hour, employment, and class action litigation.

205. Maintenance as a class action of the claim asserted is superior to other available methods for fairly and efficiently adjudicating the controversy, as members of the Waiver Class have little interest in individually controlling the prosecution of separate class actions, no other litigation is pending over the same controversy, it is desirable to concentrate the litigation in this Court, and there are no material difficulties impairing the management of a class action.

206. It would be impracticable and undesirable for each member of the Waiver Class who has suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Waiver Class members.

207. The filing of this Complaint fulfills the notice requirements of MCL 600.6452 on Defendants as to all members of the Waiver Class because Defendants similarly deprived all Waiver Class members of their rights to due process, as described in the Class Action Allegations.

The Unauthorized Early Collection Class

208. Plaintiffs Varga, Shephard, Larke, Logan, Eggleston, Hillebrand, and Scarantino bring this matter as a class action pursuant to MCR 3.501 on behalf of themselves and as the Class Representatives of the following persons:

All individuals who have been subject to Agency attempts to collect alleged overpayments before any “final determination” that would give the Agency legal authority to initiate collection (the “Early Collection Class”).

209. If certified for class-wide treatment, this class is brought on behalf of all similarly situated persons who do not opt-out of the Early Collection Class.

210. The class satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of a class action pursuant to MCR 3.501.

211. The Early Collection Class satisfies the numerosity standard as it consists of hundreds if not thousands of persons who are geographically dispersed and, therefore, joinder of all Early Collection Class members in a single action is impracticable.

212. Questions of fact and law common to the Early Collection Class predominate over any questions affecting only individual members. The questions of law and fact common to the Early Collection Class arising from Defendants’ actions include, without limitation:

- a. Whether they applied for and received UI and/or PUA benefits through the Defendant Agency;
- b. Whether the Agency alleged that they were ineligible for UI and/or PUA benefits already received; and

- c. Whether the Agency engaged in collection activity based on a Determination that was not final, *i.e.* while claimants had a protest or appeal pending.

213. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claim.

214. Plaintiffs Varga, Shephard, Larke, Logan, Eggleston, Hillebrand, and Scarantino are typical of those of the Early Collection Class in that:

- a. They applied for and received UI and/or PUA benefits through the Defendant Agency;
- b. The Agency alleged that they were ineligible for UI and/or PUA benefits;
- c. The Agency engaged in collection activity even though they had a protest or appeal pending; and
- d. The Agency engaged in garnishment or other collection activity before issuing a final Determination on the merits.

215. Plaintiffs Varga, Shephard, Larke, Logan, Eggleston, Hillebrand, and Scarantino are adequate representatives of the Early Collection Class because they are members of the Class they seek to represent and their interests do not conflict with the interests of the members of the Early Collection Class. The interests of the members of the Early Collection Class will be fairly and adequately protected by Plaintiffs Varga, Shephard, Larke, Logan, Eggleston, Hillebrand, and Scarantino and their counsel, who have extensive experience prosecuting complex wage and hour, employment, and class action litigation.

216. Maintenance as a class action of the claim asserted is superior to other available methods for fairly and efficiently adjudicating the controversy, as members of the Early Collection Class have little interest in individually controlling the prosecution of separate class actions, no other litigation is pending over the same controversy, it is desirable to concentrate the litigation in this Court, and there are no material difficulties impairing the management of a class action.

217. It would be impracticable and undesirable for each member of the Early Collection Class who has suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Early Collection Class members.

218. The filing of this Complaint fulfills the notice requirements of MCL 600.6452 on Defendants as to all members of the Early Collection Class because the Defendants similarly deprived all Early Collection Class members of their rights to due process, as described in the Class Action Allegations.

COUNT I
VIOLATION OF DUE PROCESS UNDER THE MICHIGAN
CONSTITUTION ARTICLE I, SECTION 17
(ON BEHALF OF PLAINTIFFS SAUNDERS, DAVIS, EGGLESTON, ZESTOS AND HILLEBRAND AND
THE JURISDICTION CLASS)

219. Plaintiffs hereby incorporate by reference and reassert the allegations set forth above.

220. MCL 421.32a provides the process for determining eligibility for benefits and the time limits for appealing those Determinations.

221. MCL 421.32a states that the Agency may reconsider a Determination or Redetermination “within 1 year after the date of mailing or personal service of the original

determination on the disputed issue or, if the original determination involved a finding of fraud, within 3 years after the date of mailing or personal service of the original determination.”

222. The Agency is without jurisdiction to reconsider a Determination more than one year after issuing the original Determination on the same issue.

223. The Michigan Constitution provides in relevant part that “[n]o person shall...be deprived of life, liberty or property, without due process of law.” Const 1963, art 1, § 17.

224. The UIA is operating without jurisdiction and outside of any statutory authority by issuing new Monetary Redeterminations more than one year after original Monetary Determinations.

225. Untimely Monetary Redeterminations beyond the jurisdiction of the Agency are void *ab initio*.

226. Defendants wrongly subject the Jurisdiction Class members to Monetary Redeterminations reducing or eliminating their weekly benefit amount and assessing overpayments retroactively back to the start of the pandemic.

227. The Agency has assessed overpayments and attempted to collect based on illegal Redeterminations issued outside of its jurisdictional limits.

228. Plaintiffs Saunders, Davis, Zestos, Eggleston, and Hillebrand on behalf of themselves and the Jurisdiction Class seek relief in the form of declaratory judgment, mandamus, injunction, and damages for deprivation of property based on illegal collection activity. In particular, Plaintiffs Saunders, Davis, Zestos, Eggleston, and Hillebrand seek:

- a. Declaratory Judgment that overpayments assessed against Plaintiffs Saunders, Davis, Zestos, Eggleston, and Hillebrand and the Jurisdiction Class members are void because they were issued by the Agency without jurisdiction to do so;

- b. Writ of mandamus or superintending control directing the Agency to terminate collection activity based on Monetary Redeterminations issued more than one year after the initial Monetary Determination;
- c. Preliminary and permanent injunction prohibiting the Agency from any collection activity on any overpayments that the Agency has sought to collect based on a Monetary Redetermination issued more than one year after the initial Monetary Determination; and
- d. Money damages for depriving Plaintiffs Saunders, Davis, Zestos, Eggleston, and Hillebrand and the Jurisdiction Class members of property without due process of law.

COUNT II
VIOLATION OF DUE PROCESS UNDER THE MICHIGAN
CONSTITUTION ARTICLE I, SECTION 17
(ON BEHALF OF PLAINTIFFS AND THE WAIVER CLASS)

229. Plaintiffs hereby incorporate by reference and reassert the allegations set forth above.

230. Section 62 prescribes the Agency process for assessment of restitution and collection of overpayments.

231. Section 62 of the MESA requires the Agency to waive overpayments that are a result of Agency error. Specifically, MCL 421.62(a) provides that the agency “shall waive recovery of an improperly paid benefit if repayment would be contrary to equity and good conscience and shall waive any interest.”

232. Section 62 defines the statutory standard for equity and good conscience as including all situations where the alleged overpayment was a result of Agency error. MCL 421.62(a)(iii).

233. The UIA is assessing overpayments and seizing property before reviewing claimant files for administrative error waiver.

234. Due process requires that a state Agency either make *sua sponte* waiver review or provide notice and administrative process for claimants to request a waiver. Due process further requires that a state Agency issue an appealable Determination on the issue of waiver of overpayment.

235. The Agency does not provide an administrative process to request a waiver based on administrative error.

236. The Agency does not provide notice of a process to request administrative error review. The Agency is disregarding its obligations to review overpayments for Agency error waiver.

237. Since the Agency does not provide a process to request waiver based on administrative error, the only way to satisfy due process obligations is for the Agency to review claimant files for administrative error at the time the overpayment is assessed and to issue an appealable notice of the Determination.

238. The Agency issued Monetary Determinations to Plaintiffs and the Waiver Class members regarding eligibility and weekly benefit amount and paid benefits based on that calculation.

239. Later, the Agency determined that its original Monetary Determination was in error and reduced or eliminated Plaintiffs' and the Waiver Class members' benefit amount and assessed overpayments without reviewing for administrative error waiver.

240. Even if individual overpayment assessments are later reversed, the violation is capable of repetition yet evading review.

241. In fact, it has been repeated thousands of times over by the Agency in the last six months.

242. Plaintiffs on behalf of themselves and the Waiver Class seek relief in the form of mandamus, injunction, and damages for deprivation of property based on illegal collection activity. In particular, Plaintiffs seek:

- a. Writ of mandamus or superintending control directing the Agency to review alleged overpayments for administrative error or to provide notice and administrative process to request administrative error waiver;
- b. Preliminary and permanent injunction prohibiting the Agency from any collection activity on any overpayments until a review is completed or a process to request waiver of overpayment based on administrative error is put in place.
- c. Money damages for depriving Plaintiffs and the Waiver Class members of property without satisfying due process obligations.

COUNT III

VIOLATION OF DUE PROCESS UNDER THE MICHIGAN CONSTITUTION

ARTICLE I, SECTION 17

(ON BEHALF OF PLAINTIFFS VARGA, SHEPHARD, LARKE, LOGAN, EGGLESTON, HILLEBRAND, AND SCARANTINO AND THE EARLY COLLECTION CLASS)

243. Plaintiffs hereby incorporate by reference and reassert the allegations set forth above.

244. Under federal law, the state of Michigan is prohibited from collecting overpayments without notice, an opportunity to be heard, and an opportunity to present and consider any evidence. 26 USC § 6402(f)(3). *Inter alia*, the state is prohibited from collection activity unless and until it “considers any evidence presented by such person and determines that

an amount of such debt is legally enforceable and is a covered unemployment compensation debt.”
26 USC 6402(f)(3)(C).

245. Under state law, the Agency is only allowed to seek collection on alleged overpayment after all appeals have been exhausted and a decision has become final.

246. MESA Section 62(a) authorizes the Agency to assess restitution and initiate collection only after a Determination has become final. Specifically, the MESA provides that “[t]he unemployment agency shall issue a determination requiring restitution within 3 years *after the date of finality of a determination, redetermination, or decision* reversing a previous finding of benefit entitlement.” MCL 421.62(a) (emphasis added).

247. MESA Section 32a provides, “[t]he redetermination is final *unless* within 30 days after the mailing or personal service of a notice of the redetermination an appeal is filed with the unemployment agency for a hearing on the redetermination before an administrative law judge pursuant to section 33.” MCL 421.32a (emphasis added).

248. Plaintiffs Varga, Shephard, Larke, Logan, Eggleston, Hillebrand, and Scarantino and Early Collection Class members have been subject to tax garnishment, wage garnishment, or other collection activity or have been required to repay alleged overpayments before any final Determination on which the Agency was authorized to collect.

249. Plaintiffs Varga, Shephard, Larke, Logan, Eggleston, Hillebrand, and Scarantino on behalf of themselves and the Early Collection Class seek relief in the form of injunction and damages for deprivation of property based on illegal collection activity. In particular, Plaintiffs Varga, Shephard, Larke, Logan, Eggleston, Hillebrand, and Scarantino seek:

- a. Preliminary and permanent injunction prohibiting the Agency from any collection activity based on any Determination or Redetermination that is not yet final; and
- b. Money damages for depriving Plaintiffs Varga, Shephard, Larke, Logan, Eggleston, Hillebrand, Scarantino and the Early Collection Class members of property without due process of law and without any authorization to do so.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask that this Court grant them the following relief:

- A. Assume jurisdiction of this matter;
- B. Enter an Order allowing this matter to proceed as a class action;
- C. Enter Declaratory Judgment that Monetary Redeterminations issued by the Agency reducing or eliminating a WBA more than one year after the original Determination on that issue are void as outside the jurisdiction of the Agency;
- D. Enjoin Defendants from assessing overpayments and initiating collection activities based on unauthorized actions outside the jurisdiction of the Agency;
- E. Enjoin Defendants from their continuing collection activity until they review overpayments for administrative error and issue appealable Determinations regarding waiver of overpayment to Plaintiffs and class members;
- F. Enjoin Defendants from initiating collections activity while there is a pending protest or appeal and until there is a final Determination on the merits;
- G. Enjoin Defendants from future violations of Plaintiffs' and the class members' rights and require Defendants to establish proper policies and procedures for the establishment and collection of benefit overpayments;

- H. Grant damages to Plaintiffs and the class members to compensate them for unconstitutional deprivation of property including:
1. Lost time-value of terminated UI payments and deductions of UI payments based on illegally-assessed overpayments; and
 2. Establishment of a common fund to compensate Plaintiffs and the classes for property seized without legal authority, including tax return garnishments, wage garnishments, and payments made based on collections notices from the UIA under threat of wage or tax garnishment;
- I. Grant reasonable attorneys' fees and costs; and
- J. Award any other relief authorized by law that the Court deems just and equitable.

Respectfully submitted,

/s/ David M. Blanchard
David M. Blanchard (P67190)
Frances J. Hollander (P82180)
Attorneys for Plaintiff
221 North Main Street, Suite 300
Ann Arbor, MI 48104
(734) 929-4313
blanchard@bwlawonline.com
hollander@bwlawonline.com

Date: March 24, 2022

VERIFICATION

I, Kellie Saunders, have read and made this first amended verified complaint and attest that those facts stated of my own knowledge are true and those manners stated of which I have been informed I believe to be true after reasonable inquiry.

Kellie H. Saunders
Kellie Saunders

Subscribed and sworn to before me on March 22, 2022
Ke

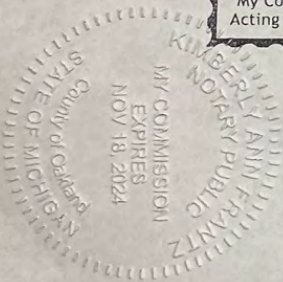
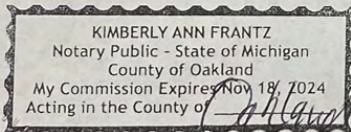
Kimberly Ann Frantz
Signature of Notary Public

Full Name of Notary Public

Notary Public, State of Michigan, County of Oakland

My Commission expires on: Nov 18 2024

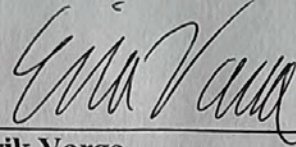
Acting in the County of Oakland



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VERIFICATION

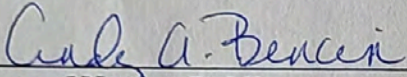
I, Erik Varga, have read and made this first amended verified complaint and attest that those facts stated of my own knowledge are true and those manners stated of which I have been informed I believe to be true after reasonable inquiry.



Erik Varga

Subscribed and sworn to before me on March 22, 2022 by Erik Varga

Ke



Signature of Notary Public

Cindy A Bencin

Full Name of Notary Public

Notary Public, State of Michigan, County of Otsego

My Commission expires on: 3/11/2027

Acting in the County of Otsego

Cindy A. Bencin
Notary Public, Otsego Co., MI
My Commission Expires March 11, 2027

VERIFICATION

I, Dawn Davis, have read and made this verified complaint and attest that those facts stated of my own knowledge are true and those manners stated of which I have been informed I believe to be true after reasonable inquiry.

Dawn Davis

Dawn Davis

Subscribed and sworn to before me on January 28th, 2022

Courtney L. Paton

Signature of Notary Public

Courtney L. Paton

Full Name of Notary Public

COURTNEY L. PATON
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF JACKSON
My Commission Expires 01/17/2024
Acting in the County of Livingston

Notary Public, State of MI, County of Jackson

My Commission expires on: January 17, 2024

Acting in the County of Livingston

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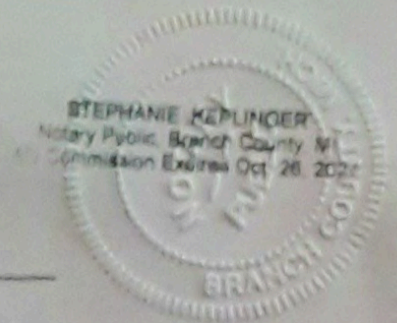
VERIFICATION

I, Lisa Shephard, have read and made this first amended verified complaint and attest that those facts stated of my own knowledge are true and those manners stated of which I have been informed I believe to be true after reasonable inquiry.

Lisa Shephard
Lisa Shephard

Subscribed and sworn to before me on 3/22, 2022

Stephanie L. Keplinger
Signature of Notary Public
Stephanie L. Keplinger
Full Name of Notary Public




Notary Public, State of MI, County of Branch

My Commission expires on: Oct 26 2024

Acting in the County of Branch

VERIFICATION

I, Jennifer Larke, have read and made this first amended verified complaint and attest that those facts stated of my own knowledge are true and those manners stated of which I have been informed I believe to be true after reasonable inquiry.



Jennifer Larke

Subscribed and sworn to before me on this 23 day of March, 2022.

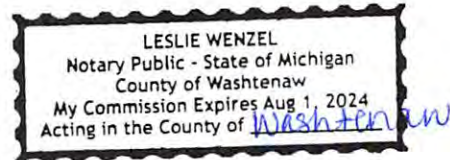


Leslie M. Wenzel, Notary Public

State of Michigan, County of Washtenaw

My Commission expires on: August 1, 2024

Acting in the County of Washtenaw



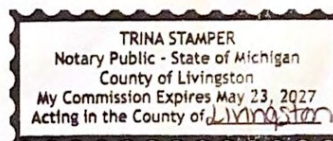
VERIFICATION

I, Anna Logan, have read and made this first amended verified complaint and attest that those facts stated of my own knowledge are true and those manners stated of which I have been informed I believe to be true after reasonable inquiry.

Anna Logan
Anna Logan

Subscribed and sworn to before me on March 21st, 2022

Trina Stamper
Signature of Notary Public
Trina Stamper
Full Name of Notary Public



Notary Public, State of _____, County of _____

My Commission expires on: _____

Acting in the County of _____

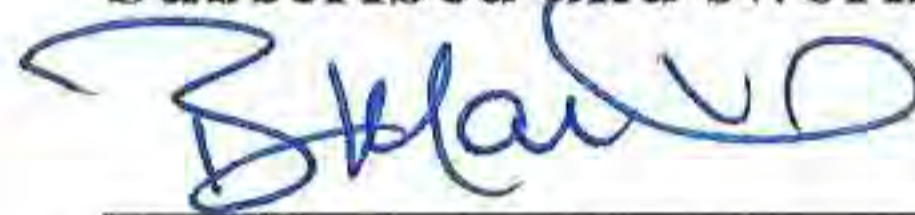


VERIFICATION

I, Joshua Eggleston, have read and made this first amended verified complaint and attest that those facts stated of my own knowledge are true and those manners stated of which I have been informed I believe to be true after reasonable inquiry.


Joshua Eggleston

Subscribed and sworn to before me on 3-23, 2022



Signature of Notary Public

Brian Martin

Full Name of Notary Public

Notary Public, State of Michigan, County of Ingham

My Commission expires on: 8-24-2027

Acting in the County of Ingham



VERIFICATION

I, Jennifer Hillebrand, have read and made this first amended verified complaint and attest that those facts stated of my own knowledge are true and those manners stated of which I have been informed I believe to be true after reasonable inquiry.

Jennifer Hillebrand
Jennifer Hillebrand

Subscribed and sworn to before me on 3/22, 2022

Nileshkumar Patel
Signature of Notary Public
NILESHKUMAR PATEL
Full Name of Notary Public

Notary Public, State of Michigan, County of Oakland

My Commission expires on: 07/24/2026

Acting in the County of Oakland

Nileshkumar Patel
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF Oakland
My Commission Expires 07/24/2026
Acting in the County of Oakland

VERIFICATION

I, Cheryl Scarantino, have read and made this first amended verified complaint and attest that those facts stated of my own knowledge are true and those manners stated of which I have been informed I believe to be true after reasonable inquiry.

Cheryl Scarantino

Cheryl Scarantino

Subscribed and sworn to before me on 03/22/2022 2022

Steven Dzierwa Jr

Signature of Notary Public

Steven Dzierwa Jr
Full Name of Notary Public

Notary Public, State of Michigan, County of
Livingston

My Commission expires on: 03/16/2028

Acting in the County of Oakland

STEVEN DZIERWA JR
Notary Public, State of Michigan
County of Livingston
My Commission Expires 03-16-2028
Acting in the County of Oakland



VERIFICATION

I, Eleni Zestos, have read and made this first amended verified complaint and attest that those facts stated of my own knowledge are true and those manners stated of which I have been informed I believe to be true after reasonable inquiry.

Eleni Zestos
Eleni Zestos

Subscribed and sworn to before me on March 22, 2022

Gary VanAllen

Signature of Notary Public

Gary VanAllen

Full Name of Notary Public

Notary Public, State of MI, County of Wayne

My Commission expires on: Feb 5 2024

Acting in the County of Wayne

