

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

RACHEL CREAGER IRELAND, RAEVENE  
ADAMS and DARCEAL TOBEY, on behalf of  
themselves and all other similarly situated  
individuals,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 1:21-CV-01049

**Class Action Complaint Seeking Money Damages from Defendant United States Under the  
Little Tucker Act, 28 U.S.C. § 1346, and CARES Act, 15 U.S.C. § 9021, for Failure to  
Provide Pandemic Unemployment Assistance Payments**

**INTRODUCTION**

1. In the wake of the unprecedented public health emergency and economic crisis caused by the COVID-19 pandemic the United States Congress sought to ensure that workers affected by the pandemic would receive federal financial support. It initially did so through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) enacted on March 27, 2020.

2. In the Act, Congress provided for “pandemic unemployment assistance” or PUA for individuals who were not covered by preexisting unemployment compensation programs or who had exhausted the benefits available under such programs. The Act mandates that the Secretary of Labor “shall provide” PUA payments to covered individuals. *See* 15 U.S.C. § 9021(b).

3. The Act further directs the Secretary to provide such benefits “through agreements with States” that have an “adequate system for administering such assistance.” *See*

15 U.S.C. § 9021(f)(1). However, the federal government was responsible for 100% of the cost of the program, including both benefit payments and administrative expenses, *see* 15 U.S.C. § 9021(f)(2), and nothing in the CARES Act or its amendments limited PUA benefits to residents of states that the Secretary determined to have an “adequate system” for administering benefits.

4. The PUA program was originally slated to end on December 30, 2020 but was extended by Congress through September 6, 2021. *See* 15 U.S.C. § 9021(c)(1)(A).

5. In describing the Secretary of Labor’s obligation to provide PUA payments, the language of the CARES Act is clear and mandatory. It does not grant discretion to the Secretary or states to deny PUA payments guaranteed by the Act to qualified individuals.

6. Nevertheless, between approximately June 12 and July 3, 2021, prior to the end date of the PUA program, recipients in 20 states had their benefits terminated prematurely, when their states chose to end their administration of the program, including Texas (on June 26, 2021), Alabama (on June 19, 2021), Arkansas (on July 26, 2021), Georgia (on June 27, 2021), Idaho (on June 19, 2021), Iowa (on June 12, 2021), Louisiana (on July 31, 2021), Mississippi (on June 12, 2021), Missouri (on June 12, 2021), Montana (on June 27, 2021), Nebraska (on June 19, 2021), New Hampshire (on June 19, 2021), North Dakota (on June 19, 2021), Oklahoma (on June 26, 2021), South Carolina (on June 30, 2021), South Dakota (on June 26, 2021), Tennessee (on July 3, 2021), Utah (on June 26, 2021), West Virginia (on June 19, 2021) and Wyoming (on June 19, 2021) (collectively “Terminating States”).

7. The United States did nothing to ensure that the affected recipients would receive benefits notwithstanding their states’ decision to cease administering the program. Through this inaction, the United States disregarded the mandate of the Act that the “Secretary *shall provide* to any covered individual unemployment benefit assistance” while such individual was eligible

and the PUA benefit entitlement remained in effect. 15 U.S.C. § 9021(b) (emphasis added).

8. Plaintiffs Rachel Creager, Raevne Adams and Darceal Tobey, all residents of Texas, were three of the individuals affected by this unlawful discontinuation of benefits when the state of Texas terminated its administration of the PUA program on June 26, 2021.

9. Each Named Plaintiff had been determined to be eligible to receive PUA benefits by the Texas Workforce Commission (“TWC”) pursuant to the eligibility requirements set forth in the CARES Act; each was receiving PUA benefits when the governor of Texas, Governor Abbott, terminated Texas’s administration of the program; and each would have continued to receive PUA benefits but for failure of the United States to pay those benefits after Texas chose to stop administering the benefits prematurely.

10. Like the Named Plaintiffs in this case, hundreds of thousands of residents of Texas and the other Terminating States were denied PUA benefits for which they had been found eligible by their respective state unemployment agency pursuant to the eligibility requirements set forth in the CARES Act. These individuals would have continued receiving benefits if not for the failure of the United States to pay those benefits after their states chose to stop administering the benefits prior to September 6, 2021.

11. The Named Plaintiffs bring this civil action against the United States on their own behalf and on behalf of a class of similarly situated PUA-eligible individuals (the “Class”) to recover damages from the United States for its failure to comply with the CARES Act and the resulting loss of money to Plaintiffs and all members of the Class.

### **PARTIES**

12. Plaintiff Rachel Creager:

(a) is and, at all relevant times, has been a resident of Austin, Texas;

- (b) had been employed as a massage therapist at The Natural Way d/b/a Massage Studio up until on or about March 26, 2020 when the studio closed due to the pandemic;
- (c) did not qualify for regular unemployment because she had not had sufficient earnings in the preceding four quarters;
- (d) was found to be eligible to receive PUA benefits by the TWC on May 14, 2020;
- (e) was eligible to receive PUA benefits from approximately May 25, 2020 up to and including the week ending June 26, 2021;
- (f) stopped receiving PUA benefits effective on June 26, 2021 as a direct result of Texas's withdrawal from the PUA program effectuated by the Texas governor, Gov. Abbott;
- (g) continued to meet the eligibility requirements to receive PUA benefits set forth in the CARES Act and would have continued to receive PUA benefits following June 26, 2021 but for the withdrawal from the PUA benefit program by the state; and
- (h) claims damages of not more than \$10,000.

13. Plaintiff Raevene Adams:

- (a) is and, at all relevant times, has been a resident of Austin, Texas;
- (b) had been employed as a customer service cashier at a Jimmy John's Gourmet Sandwich shop in downtown Austin, Texas up until approximately the beginning of April, 2020 when the store closed due to the pandemic;
- (c) did not qualify for regular unemployment because she had not had sufficient

earnings in the preceding four quarters;

- (d) was found to be eligible to receive PUA benefits by the TWC on April 19, 2020;
- (e) was eligible to receive PUA benefits from April 19, 2020 up to and including the week ending June 26, 2021;
- (f) stopped receiving PUA benefits effective on June 26, 2021 as a direct result of Texas's withdrawal from the PUA program effectuated by the Texas governor, Gov. Abbott;
- (g) continued to meet the eligibility requirements to receive PUA benefits set forth in the CARES Act and would have continued to receive PUA benefits following June 26, 2021 but for the withdrawal from the PUA benefit program by the state; and
- (h) claims damages of not more than \$10,000.

14. Plaintiff Darceal Tobey:

- (a) is and, at all relevant times, has been a resident of Austin, Texas;
- (b) had been employed as a computer repair technician for Technical Integration Group repairing computers for schools up until on or about March 26, 2020 when he was laid off due to the pandemic;
- (c) did not qualify for regular unemployment because he had not had sufficient earnings in the preceding four quarters;
- (d) was found to be eligible to receive PUA benefits by the TWC on or about March 22, 2020;
- (e) was eligible to receive PUA benefits from March 22, 2020 up to and

including the week ending June 26, 2021;

- (f) stopped receiving PUA benefits effective on June 26, 2021 as a direct result of Texas's withdrawal from the PUA program effectuated by the Texas governor, Gov. Abbott;
- (g) continued to meet the eligibility requirements to receive PUA benefits set forth in the CARES Act and would have continued to receive PUA benefits following June 26, 2021 but for the withdrawal from the PUA benefit program by the state; and
- (h) claims damages of not more than \$10,000.

15. Defendant United States was required under the CARES Act, as discussed further below, to provide for payments to eligible recipients of pandemic unemployment assistance (PUA). The obligation was to be carried out by the Secretary of the Department of Labor (DOL), an agency in the Executive Branch of the United States whose purpose is to “to foster, promote and develop the welfare of the wage earners of the United States.” 29 U.S.C. § 551.

#### **JURISDICTION AND VENUE**

16. This Court has jurisdiction over this civil action under the Little Tucker Act, 28 U.S.C. § 1346(a)(2) (granting jurisdiction concurrent with the federal court of claims on district courts for “Little Tucker Act” claims in civil actions not exceeding \$10,000).

17. This Court is the proper venue for this action arising under the Little Tucker Act as Plaintiffs reside in this judicial district. *See* 28 U.S.C. § 1402(a)(1).

18. The relevant provisions of the CARES Act, codified at 15 U.S.C § 9021, are money-mandating under applicable law.

#### **STATUTORY BACKGROUND**

19. On March 27, 2020, shortly after it was passed unanimously by the Senate, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law by then President Donald Trump. Among other things, the Act sought to stabilize the economy in the wake of the public health emergency caused by COVID-19. To do so, the Act provided financial support and assistance to individuals suffering from the economic effects of the pandemic.

20. Title II of the Act was entitled the Relief for Workers Affected by Coronavirus Act. It provided financial enhancements and support for several existing state and federal unemployment compensation laws and programs.

21. In addition to bolstering existing unemployment compensation programs, the Act created a new program called Pandemic Unemployment Assistance (PUA), through provisions now codified at 15 U.S.C. § 9021, *et seq.* The PUA program aimed to provide benefits to individuals who were not covered by preexisting unemployment compensation programs, but who were unable to work due to COVID-19.

22. In Section 2102(b) of the Act (now codified at 15 U.S.C. § 9021(b)), Congress directed the Secretary of Labor to provide payments under the new PUA program to eligible recipients. Specifically, that section read as follows:

ASSISTANCE FOR UNEMPLOYMENT AS A RESULT OF COVID-19. Subject to subsection (c), the Secretary [of Labor] shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26, United States Code) or waiting period credit.

23. In Section 2102(c) of the Act (now codified at 15 U.S.C. § 9021(c)), Congress established the time period in which PUA benefits would be available. The end date was originally set to December 31, 2020. Section 2102(c) also established other provisions regarding timing, procedure, and duration of benefits including setting a maximum of 79 weeks of

assistance for any covered individual inclusive of any period in which the individual received regular or extended unemployment benefits under a non-PUA program.

24. The end date of December 31, 2020 was later extended by two acts of Congress to September 6, 2021. *See* P.L. 116-260 and P.L. 117-2.

25. Congress defined a “covered individual” for purposes of the PUA program in Section 2102(a)(3) of the Act (codified at 15 U.S.C. § 9021(a)(3)). In short, a “covered individual” was an individual who was not eligible for regular unemployment benefits (such as employees who did not have sufficient earnings in the prior earnings period, many independent contractors and self-employed persons), but who was nevertheless unable to work because of COVID-19. The specific statutory definition was as follows:

- (i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title;
- (ii) provides self-certification that the individual—
  - (I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—
    - (aa) the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;
    - (bb) a member of the individual’s household has been diagnosed with COVID–19;
    - (cc) the individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID–19;
    - (dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID–19



public health emergency and such school or facility care is required for the individual to work;

- (ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID–19 public health emergency;
  - (ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;
  - (gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID–19 public health emergency;
  - (hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID–19;
  - (ii) the individual has to quit his or her job as a direct result of COVID–19;
  - (jj) the individual’s place of employment is closed as a direct result of the COVID–19 public health emergency; or
  - (kk) the individual meets any additional criteria established by the Secretary [of Labor] for unemployment assistance under this section; or
- (II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title, and meets the requirements of subclause (I); and
- (iii) provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which an individual is directed by the to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation; and

(B) does not include—

- (i) an individual who has the ability to telework with pay; or
- (ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

15 U.S.C. § 9021(a)(3).

26. Congress directed that the Secretary of Labor should provide for PUA payments by entering into agreements with states, which the Secretary determined to have an “adequate system for administering such assistance.” Specifically, Section 2102(f)(1) of the Act (codified at 15 U.S.C. § 9021(f)(1)), reads as follows:

The Secretary shall provide the assistance authorized under subsection (b) through agreements with States which, in the judgment of the Secretary, have an adequate system for administering such assistance through existing State agencies, including procedures for identity verification or validation and for timely payment, to the extent reasonable and practicable.

27. Though administered by states that had adequate systems for doing so, PUA benefits and their administration by states were solely funded by the federal government. Specifically, the Act provided for the federal government to pay “100 percent” of both the benefits provided to recipients and the administrative expenses incurred by states in paying the PUA benefits. *See* 15 U.S.C. 9021(f)(2).

28. In sum, through these provisions of the CARES Act, Congress created a new unemployment benefit for individuals affected by COVID-19 who were not covered by existing unemployment compensation programs, such as many independent contractors, “gig workers,” self-employed individuals, church employees, student workers, employees without sufficient earnings in the base earnings period and others. Congress directed the Department of Labor to provide payments to eligible recipients and instructed the Department to do so by entering into agreements with states, to the extent those states had an adequate system for administering

benefits. And Congress established that the PUA benefit would be available to eligible persons through September 6, 2021.

29. Importantly, nothing in the statute granted authority or discretion to the Secretary of Labor to cease providing for PUA benefits prior to the end date established in the legislation. Rather, the Act stated that the Secretary of Labor “shall provide” the payments. 15 U.S.C. § 9021(b). Similarly, nothing in the statute granted power or discretion to a participating state to terminate the program prematurely.

30. The Department of Labor itself recognized the non-discretionary nature of the program. On June 5, 2020, the Department’s Solicitor Kate O’Scaannlain and Assistant Secretary Pallasch wrote to its Inspector General Scott Dahl: “The Secretary of Labor (Secretary) must provide PUA benefits to an individual who is determined to be eligible . . . The relevant language is not discretionary.”

31. Indeed, Congress’s intent to create a non-discretionary entitlement to PUA benefits is reflected in the difference between the language it used in establishing the PUA program and the language it used elsewhere in the CARES Act in providing support for preexisting unemployment compensation programs. Specifically, in those other sections, Congress provided that participating states could “terminate . . . agreement[s]” with the Secretary of Labor in relation to unemployment benefits by “providing 30 days’ written notice.” *See* 15 U.S.C. § 9023(a); 15 U.S.C. § 9024(a); 15 U.S.C. § 9025(a).

32. In contrast, Congress included no early termination language in the PUA provisions. By deciding not to do so, Congress made clear that it did not contemplate “terminat[ion]” of agreements to provide PUA benefits prior to the end date for such benefits established in the statute.

33. Further, states were not automatically entitled to participate in the administration of PUA merely through filing an application with the Secretary, as was the case with other unemployment benefit programs under the CARES Act. Instead, in Section 2102(f)(1), the Act required the Secretary of Labor to enter into such agreements only if the Secretary determined that the state had “an adequate system for administering such assistance through existing State agencies.”

34. Through this provision, Congress made clear that the Secretary of Labor had the obligation to guarantee the payment of PUA benefits, including by vetting states that would be making PUA payments on behalf of the United States and ensuring that they could do so effectively.

35. Although the Act stated that the United States should administer the program through states to the extent the Secretary determined that such states had adequate systems for doing so, the Act’s mandate that the United States pay benefits is not conditional or dependent on state administration. Rather, in the absence of an adequate state system, the United States was nevertheless required to pay benefits, such as by paying those benefits directly or arranging for one participating state to administer benefits for residents in other states.

### **FACTUAL ALLEGATIONS**

36. Shortly after the enactment of the CARES Act, the Department of Labor entered into agreements with states, including Texas and the other Terminating States as defined *supra*, for them to distribute PUA benefits to eligible residents of those states. As provided for in the statute, the costs of PUA benefits and of PUA’s administration by the states were fully funded by the United States.

37. Pursuant to the agreements, Texas and the other Terminating States began making

payments of PUA benefits to their eligible residents as the agent of DOL.

38. However, contrary to the text of the Act—which excluded early termination provisions from the sections addressing PUA benefits, as discussed above—the Department included early termination provisions in its agreements with states regarding PUA benefits.

39. On April 5, 2020, the Department’s Employment and Training Administration—Advisory System, issued an “Advisory: Unemployment Insurance Program Letter No. 16-20 (Letter 16-20) addressed to “STATE WORKFORCE AGENCIES.” The title of the letter was “Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020—Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions.” Among the instructions contained in Letter No. 16-20 appeared the following:

5. Termination of PUA Agreement. Either party, upon thirty days written notice, may terminate the PUA Agreement. The Department reserves the right to terminate this Agreement if it determines that the State does not have an adequate system for administering such assistance, including because the State is not adequately ensuring that individuals receiving benefits under the PUA Program are eligible for such benefits. In the case of termination, the PUA period will end 30 days after the date one of the parties to the agreement notifies the other party of its election to terminate the PUA agreement. No PUA payments may be made with respect to weeks which begin after the date the termination of the agreement is effective. However, PUA is payable for weeks of unemployment ending on or before such termination date.

40. To the extent the letter implied that the Department of Labor would not continue to provide PUA benefits in the event that states decided to terminate their agreement with the Department, the letter was contrary to the CARES Act’s provisions since Congress made the payment of benefits mandatory and chose not to give states the right to terminate their PUA agreements with the Secretary. Further, Congress did not grant the Department of Labor the authority to delegate to any state the discretion to decide to deprive eligible recipients of PUA benefits prior to the statutory end date.

41. On May 17, 2021, Texas Governor Greg Abbott sent a letter in which he directed the Texas Workforce Commission (TWC) to terminate the state of Texas's administration of the Pandemic Unemployment Assistance (PUA) program effective June 26, 2021.

42. As discussed above, Plaintiffs Creager, Adams and Tobey were each: (a) found to be eligible for PUA benefits by Texas on or about May 14, 2020, April 19, 2020 and March 22, 2020, respectively, (b) eligible in the week following the termination of the program and (c) remained eligible through September 6, 2021. However, after Abbott purported to terminate the state's administration of the program on June 26, 2021, Plaintiffs Creager, Adams and Tobey received no benefits from Texas or the United States.

43. Each of the other Terminating States likewise terminated their respective state's administration of the PUA program at some point prior to the end of the PUA program on September 6, 2021.

44. Other similarly situated individuals who were residents of each of the Terminating States likewise were each: (a) found to be eligible for PUA benefits by their state prior to the state's termination of administration of the PUA program on June 12, 2021; June 19, 2021; June 26, 2021; June 27, 2021; June 30, 2021; July 3, 2021; and July 31, 2021; respectively and (b) eligible in the week following the termination of the program. However, after the governors of each of the Terminating States, including Texas, terminated their respective state's administration of the PUA program, such individuals received no benefits from their respective state or the United States.

45. After Texas and the other Terminating States notified the Secretary of Labor of their withdrawal from the administration of PUA benefits, Defendant United States failed to provide Plaintiffs Creager, Adams and Tobey and other eligible recipients in those states with the

mandated PUA unemployment compensation benefits they remained entitled to receive pursuant to the CARES Act, and its amendments.

46. Through this failure, the United States violated the command of the Act that it “shall provide” PUA benefits to eligible recipients. 15 U.S.C. § 9021(b).

### **CLASS ALLEGATIONS**

47. The Plaintiffs’ claims are susceptible to class certification pursuant to Rule 23(a) and (b)(3), Fed.R.Civ.P.

48. The Class is defined to include “All individuals who reside in the states of Texas, Alabama, Arkansas, Georgia, Idaho, Iowa, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, West Virginia and Wyoming (“Terminating States”) who were determined to be eligible to receive Pandemic Unemployment Assistance (“PUA”) benefits pursuant to the eligibility criteria established by Congress in the CARES Act and its amendments by each individual class member’s respective state agency up to and including the date each respective Terminating State terminated its administration of the PUA program and who remained eligible for benefits under the CARES Act and its amendments for some period after their respective states’ termination dates.”

49. Certification of the class pursuant to Rule 23(a) and (b)(3) is warranted because:

- a. This is an appropriate forum for these claims because, among other reasons, jurisdiction and venue are proper, and the Plaintiffs reside in this judicial district.
- b. The class is so numerous that joinder of all members is impracticable. On information, there are hundreds of thousands of individuals in the

Terminating States who meet the proposed class definition.

- c. One or more questions of law or fact are common to the class, including:
  - (i) Whether the CARES Act and its amendments are money-mandating;
  - (ii) Whether the CARES Act and its amendments required the Secretary of Labor to provide the PUA payments to eligible individuals in the states where distribution of PUA funds through a state was not reasonable and practicable because each such state prematurely terminated its administration of the PUA benefit program.
- d. Plaintiffs will fairly and adequately represent and protect the interests of the Class members. Plaintiffs' Counsel are competent and experienced in litigating Little Tucker Act claims and class actions.
- e. The claims of the Plaintiffs are typical of the claims of the members of the class in that, like each of the Plaintiffs, the members of the class were determined to be eligible to receive PUA benefits by the respective state agency up to the date each respective Terminating State terminated its administration of the PUA program and would have continued to be eligible for and receive PUA benefits but for each respective state's decision to prematurely terminate its administration of the PUA benefits program.
- f. The class representatives and the members of the class have been subject to, and challenge, the same action by the US DOL in terminating PUA payments prior to the end of the PUA benefits program following each Terminating State's administration of the program.



- g. Issues common to the class predominate over issues unique to individual class members, and pursuit of the claims as a class action is superior to other available methods for the fair and efficient resolution of this controversy; and
- h. Adjudication of these claims as a class action can be achieved in a manageable manner.

50. Pursuit of the claims set forth herein through a class action is an appropriate method for the fair and efficient adjudication of this lawsuit.

51. On information and belief, the members of the proposed class are each entitled to not more than \$10,000 in damages.

**COUNT I**  
**Little Tucker Act Claim**  
**On behalf of Plaintiffs and the Class**

52. Plaintiffs reallege and incorporate herein the paragraphs set forth above.

53. As set forth above, each of the Plaintiffs was determined to be eligible for PUA benefits by the TWC pursuant to the criteria set forth by Congress in the CARES Act and its amendments.

54. As set forth above, each of the Plaintiffs continued to meet the eligibility criteria for PUA benefits set forth by Congress in the CARES Act and its amendments and would have continued to receive PUA benefits up to the benefit week of September 6, 2021 but for the action of the governor of the state of Texas in terminating Texas's administration of the PUA program on June 26, 2021.

55. Other similarly situated individuals in each of the Terminating States were likewise determined by their state unemployment agency to be eligible for PUA benefits pursuant to the criteria set forth by Congress in the CARES Act and its amendments and would

have continued to receive PUA benefits but for the action of governor of each Terminating State in terminating that state's administration of the PUA program prior to the termination of the PUA program on September 6, 2021.

56. By failing to ensure PUA payments were paid to Plaintiffs and the members of the class during this period, the United States violated the mandate in the CARES Act that it "shall provide" benefits to eligible recipients.

57. The Little Tucker Act creates a cause of action, and waives sovereign immunity over such an action, when a statute can "fairly be interpreted as mandating compensation by the Federal Government," subject to certain exceptions. *Maine Community Health Options v. Moda Health Plan*, 140 S. Ct. 1308, 1329 (2020).

58. Here, the CARES Act can be fairly interpreted as mandating compensation by the Federal Government to the Plaintiffs because the Act states that the Department of Labor "shall provide" PUA benefits to eligible recipients. 15 U.S.C. § 9021(b). *See Maine Community*, 140 S. Ct. at 1329 (finding that a statute created a cause of action when it stated that the federal government "shall provide" for payments and "shall pay"). No exception applies that would deprive Plaintiffs and the class of a cause of action or recovery here.

59. Consequently, under the Little Tucker Act and CARES Act, Plaintiffs have stated a cause of action on their own behalf and on behalf of the class for the wrongful denial of PUA benefits to Plaintiffs and the class.

60. Each Plaintiff alleges that s/he is entitled to recover damages in the amount of the PUA unemployment benefits s/he was entitled to but did not receive from Defendant United States from the date of each Terminating State's cancellation of its administration of the PUA benefit program to September 6, 2021.

61. Plaintiffs likewise allege that members of the class are entitled to recover damages in the amount of the PUA unemployment benefits each class member was entitled to but did not receive from Defendant United States from the date of each Terminating State's cancellation of its administration of the PUA benefit program up to the benefit week of September 6, 2021.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs and the Class respectfully pray that this Court:

- A. Allow this action to proceed as a class action against the Defendant United States pursuant to Fed. R. Civ. P. 23;
- B. Enter a judgment in favor of Plaintiffs and the Class, and against the United States, for money damages in the amount of PUA benefits each Plaintiff and each Class Member should have received from the date Texas and each other Terminating State terminated its administration of the PUA benefit program up through the date the PUA program ended pursuant to the terms of the CARES Act and its amendments or the date on which each Plaintiff and each Class Member ceased being eligible for such benefits;
- C. Award attorney's fees, expenses and costs in bringing this action under the Equal Access to Justice Act, 28 U.S.C. § 2412, and otherwise;
- D. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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