

**IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA**

**RICHARD WALLS, individually,
DESIREE Del ROMANO, individually,
MIKE LATNER, individually,
TAMARA WEIMER, individually,
JAQUEZ MCCOY, individually,
MICHAEL FREAS, individually,
STEPHANIE BERGEN, individually,
HEATHER SHOWALTER, individually,
and on behalf of all others similarly
situated,**

**CASE NO.: 20-CA-792
FLA BAR NO.: 0739685**

CLASS REPRESENTATION

Plaintiffs,

v.

**RON DESANTIS, in his official capacity as the
GOVERNOR of the State of Florida, and the
FLORIDA DEPARTMENT OF ECONOMIC
OPPORTUNITY,**

Defendants.

SECOND AMENDED COMPLAINT FOR EMERGENCY WRIT OF MANDAMUS

Plaintiffs, RICHARD WALLS, individually, DESIREE Del ROMANO, individually, MIKE LATNER, individually, TAMARA WEIMER, individually, JAQUEZ MCCOY, individually, MICHAEL FREES, individually, STEPHAIE BERGEN, individually, HEATHER SHOWALTER, individually, and behalf of all others similarly situated file this Amended Complaint for Emergency Writ of Mandamus against RON DESANTIS, in his official capacity as the GOVERNOR of the State of Florida, and the FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, and state:

NATURE OF THE ACTION

1. This is an action brought under the common law of the State of Florida and under Chapter 443, Florida Statutes.

2. This action involves claims which are, individually, in excess of Thirty Thousand Dollars (\$30,000.00), exclusive of costs and interest.

THE PARTIES

3. At all times pertinent hereto, Plaintiff, RICHARD WALLS, has been a resident of the State of Florida, residing in Leon County, Florida, and is *sui juris*.

4. At all times pertinent hereto, Plaintiff, DESIREE Del ROMANO, has been a resident of the State of Florida residing in Bay County, Florida, and is *sui juris*.

5. At all times pertinent hereto, Plaintiff, MARK LATNER, has been a resident of the State of Florida, residing in Citrus County, Florida, and is *sui juris*.

6. At all times pertinent hereto, Plaintiff, TAMARA WEIMER has been a resident of the State of Florida, residing in Manatee County, Florida and is *sui juris*.

7. At all times pertinent hereto, Plaintiff, JACQUEZ MCCOY has been a resident of the State of Florida, residing in Leon County, Florida and is *sui juris*.

8. At all times pertinent hereto, Plaintiff, MICHAEL FREAS has been a resident of the State of Florida, residing in, Monroe County, Florida and is *sui juris*

9. At all times pertinent hereto, Plaintiff STEPHANIE BERGEN has been a resident of the State of Florida, residing in Charlotte County, Florida and is *sui juris*.

10. At all times pertinent hereto, Plaintiff HEATHER SHOWALTER has been a resident of the State of Florida, residing in, Pinellas County, Florida and is *sui juris*.

11. At all times pertinent hereto, Defendant, RON DESANTIS, in his official capacity as Governor of the State of Florida, is ultimately responsible for ensuring that the unemployment compensation system in the State of Florida works and is accessible to citizens in the state of Florida, like Plaintiffs. DeSantis is *sui juris*.

12. At all times pertinent hereto, Defendant, DEPARTMENT OF ECONOMIC OPPORTUNITY (DEO), is a state agency with statewide jurisdiction, including Leon County, Florida. Defendant DEO is responsible for preparing and maintaining a system for the distribution of unemployment compensation benefits to residents/citizens of the State of Florida and to ensure that the system is accessible to citizens in the state of Florida, like Plaintiffs. DEO is *sui juris*.

CONDITIONS PRECEDENT

13. All conditions precedent to this action have been satisfied if any.

STATEMENT OF THE FACTS

14. Defendants had the statutory obligation under §443.1113, Florida Statutes, to pay unemployment compensation benefits to residents/citizens of the State of Florida who qualify for said benefits. The purpose of the unemployment compensation system is to pay compensation to individuals for their unemployment. [See §443.031, Florida Statutes].

15. The Department of Economic Opportunity (Department) administers Florida's Reemployment Assistance (RA)/unemployment Program which provides temporary, partial wage replacement benefits to qualified individuals who are out of work through no fault of their own. The Program's primary goals are to connect claimants to reemployment services, pay RA benefits to qualified workers in an accurate and timely fashion, provide an efficient first-level

appeals process to claimants and employers, and promptly register employers liable for the payment of RA taxes or the reimbursement of claims.

16. Pursuant to State law, i.e., §443.1113, Florida, Statutes, the Department launched the Reemployment Assistance Claims and Benefits Information System (RA System) on October 15, 2013. The RA System is a fully integrated Web-based claims management system that includes the following RA Program functions: initial and continued claims, wage determination, adjudication, appeals, benefit payment control, and program integrity.

17. Claimants, employers, and third-parties can access information about filed claims and communicate with Department staff through the RA/unemployment compensation System. Six types of users access the RA/unemployment compensation system: claimants, employers, Department staff, Third-Party Representatives (TPRs), Third-Party Administrators (TPAs), and other State agency staff. The RA System interfaces with various State and Federal systems as needed to process and report data applicable to the RA Program.

18. Individuals who file for RA Program (unemployment) benefits with the State of Florida are referred to as claimants and employers for whom the claimants previously worked are referred to as employers. Generally, claimants can file an automated claim for RA benefits as a first-time claimant if they have not filed for RA benefits before or as a repeat claimant if they have previously filed for RA benefits. When filing a claim, the claimant is guided by the RA System through an automated series of questions, messages, screens, and forms to enter required information in the System to complete the claim application. In addition, the RA System is designed to verify the identity of claimants as part of the completion of a claim application. Once a claim application has been completed in the RA System by the claimant, notices of claims (claim notices) are distributed to employers. A monetary determination is then issued indicating

whether and in what amount a claimant is eligible for benefits based on the claimant's employment during the base period of the claim.

19. Plaintiff Walls was employed in Leon County, Florida at the time that he was laid off on March 23, 2020, due to the coronavirus pandemic. On March 23, 2020, Plaintiff Walls first attempted to use the system in place under Chapter 443, Florida Statutes, to report his unemployment and to obtain RA/unemployment compensation benefits due to him under this law. From March 23, 2020, to date, April 23, 2020, thirty-one days, Plaintiff Walls has been unable to make contact with anyone employed with Defendant DEO to obtain unemployment compensation benefits. The unemployment site to obtain these benefits is all but unusable and Plaintiff Walls status has been "pending" since March 25, 2020. He has, at times, been able to log onto the unemployment compensation website, however, his efforts have resulted in the site displaying various error messages. One of the error messages directed Plaintiff Walls to call a number, which when called, stated that all lines were busy. There was no message service or call back service. The system then hung up.

20. Plaintiff Del Romano was notified that her hours were going to be reduced in her position with DGS working at the ticket counter for Delta Airlines on March 15, 2020. That same day, March 15, 2020, she applied online for unemployment compensation benefits but the system kept knocking her off and rejecting her application. It took multiple days to get through on the website to submit her application on March 17, 2020. On or around March 28 or 29, 2020, Plaintiff finally talked to a DEO representative for the first time by telephone after holding for approximately five (5) hours only to be told that the computers were down and none of her questions could be answered. Plaintiff looked at the website hundreds of times and her

application for these benefits ultimately showed “pending” deposit on April 22, 2020. As of the date of this filing, Plaintiff Del Romano’s benefits have still not been paid.

21. Mike Latner was laid off from his position on March 20, 2020, as a restaurant worker. He has congestive heart failure. He applied for unemployment compensation benefits on March 22, 2020. It took two weeks from that point and countless hours on his computer to try and claim unemployment compensation benefits to help him support himself and his family. After those two weeks, Plaintiff Latner went online after he was told to check back to see if his request had been approved only to find that his file/application for unemployment compensation benefits had been deleted. After many attempts to refile, due to the website allowing him to log in but then sending him back to the first page of the website multiple times, on April 13, 2020, he was able to file for unemployment compensation benefits again. Per the unemployment website operated by Defendants, Plaintiff Latner was instructed to check back on April 17, 2020, to claim his first week of unemployment. The website was then completely down for the weekend for maintenance. On Saturday, April 18, 2020 Plaintiff Latner attempted to log in again and received a message that the site was down for the weekend and by Monday, April 20, 2020, the site would be back up and he could call in to speak about his claim on that date. When Plaintiff Latner then attempted to log in on April 20, 2020, after several attempts to get past the beginning login page, the site kept directing him back to the first page of the site, just like it had done before the site was taken down to "fix it". After Plaintiff was successful in logging in after approximately six attempts, Plaintiff Latner received a determination as "ineligible" because he did not make enough money when he was with his employer. This is false. He had been with his employer for over a year and a half as the time of his lay off. To further his attempt to obtain RA/unemployment compensation benefits, Plaintiff Latner also called the number for RA and it said

it was not taking any live calls, even though the site said it would. Plaintiff called on more than one occasion and each time got a recording culminating in a being disconnected from the system. To date, Plaintiff Latner has not received benefits.

22. Plaintiff Weimer was employed in Manatee County, Florida. She is self-employed as a Real Estate Agent and language interpreter. She was averaging an income of \$700.00 per week. Plaintiff Weimer has experienced a dramatic drop in her income due to the Corona Virus Pandemic and first attempted to connect to the RA/unemployment compensation benefits system on or about March 22, 2020. Plaintiff Weimer has called their number well over 500 times at least and only got through once. Once she was able to apply, she was deemed ineligible due to being self-employed. She subsequently has been on the RA/unemployment compensation benefits system at least ten times per day attempting to reapply. She was able to reapply on April 16th and, to date, has not received a redetermination or any benefits.

23. Plaintiff McCoy formerly worked as a Senior Hospitality Chef and his last full day of work was March 23, 2020. He was earning approximately \$300 per week. Plaintiff first attempted to connect to the RA/unemployment benefits system on March 20, 2020, after speaking with his supervisor about the possibility of a layoff. Plaintiff McCoy persisted through website lag, rebooting, long loading times and was forced to restart his application about thirty-five (35) times within forty-eight (48) hours. He submitted his application at approximately 4:30 am on March 22, 2020. On or about April 29, 2020, Plaintiff McCoy was deemed ineligible with no reason given. Plaintiff McCoy has an infant, another small child, and a wife. He recently returned a box of diapers to purchase food.

24. Plaintiff Freas has owned his own photography studio since August, 2016. He averaged an income of \$750 a month prior to the COVID-19 Pandemic. Plaintiff Freas first

attempted to access the RA/unemployment benefits system on or about March 15, 2020. After numerous unsuccessful attempts to connect to the system website, he mailed in an application. On or about April 7, 2020, after repeated calls, Plaintiff Freas had his application processed on the phone. To date, Plaintiff Freas has not received any benefits and does not know if he will receive any funds. He has had to go on food stamps and take out extended credit.

25. Plaintiff Bergen was a receptionist at an animal hospital in Punta Gorda, Florida, making approximately \$420 per week. Her last day of work was March 14, 2020. Plaintiff Bergen first attempted to access the RA/unemployment benefits system on March 16, 2020. She experienced many website crashes and was forced numerous times to start at the beginning of the application. Plaintiff Bergen made approximately three hundred (300) calls a day to attempt to reach an individual. She received continual busy signals. Plaintiff Bergen made approximately two hundred and thirteen (213) attempts before her application went through on or about March 21, 2020. Plaintiff Bergen was deemed ineligible with no reason given. She has attempted to reapply; however, she continues to experience the same issues with website crashes. Plaintiff Bergen is suffering from anxiety, high blood pressure, and insomnia.

26. Plaintiff Showalter was employed with a popular bar in Tampa for the last year and a half. She was making upwards of \$500 per week. Plaintiff is now unemployed. Plaintiff Showalter first attempted to connect to the RA/unemployment benefits system on or about March 18, 2020. Plaintiff tried for weeks to apply online for benefits. She would make initial progress and then get frozen out of the website and have to start the application process from the beginning. She began to set her alarm clock to try to access the site in the wee hours of the morning. Plaintiff also attempted to call approximately fifty (50) times per day, only to hear a busy signal or get disconnected. On or about April 11, 2020, Plaintiff Showalter was able to

successfully file her claim. She called on April 22, 2020 to check on her claim. She was told she would be getting a PIN to check her account online. To date, she has not received a PIN, further information, or any funds. Plaintiff Showalter is a single mother facing stress, exhaustion, and uncertainty.

27. Plaintiffs, and all others similarly situated numbering in the thousands, were unable to obtain access to the unemployment system to apply for benefits and even after gaining said access, were diverted to another site or have been unable to obtain RA/unemployment compensation benefits rightfully due to them.

28. Mandamus is a common law remedy used to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law. To state a cause of action for mandamus, a party must allege a clear legal right to performance of the act requested, an indisputable legal duty, and the lack of an adequate remedy at law. Plaintiffs have stated a cause of action for mandamus by alleging a clear legal right to performance of actions under Chapter 443 that have not been performed including giving them access to the RA system to apply for benefits, approving citizens who are unemployed for benefits and paying them RA/unemployment compensation benefits. Plaintiffs and others similarly situated are entitled to apply for benefits, be deemed qualified for benefits, and to receive benefits under Chapter 443, none of which have occurred and which Plaintiffs seek in this action.

29. In addition, the named class members and all others similarly situated numbering in possibly the hundreds of thousands, by the failure to provide RA/unemployment compensation benefits, are starving. They cannot pay for their medications. They cannot buy food. They

cannot obtain necessities to exist during the pandemic due to the loss of their jobs. Emergency relief is necessary under these circumstances.

30. Plaintiffs have retained the undersigned to represent their interests in this cause and are obligated to pay a fee for these services. Defendants should be made to pay said fee under the laws referenced above.

CLASS ACTION ALLEGATIONS:

31. Plaintiffs reallege and incorporate herein by reference the foregoing paragraphs 1 through 26.

32. Plaintiffs seek class certification under subsection (b)(2) or, alternatively, (b)(3) of Rule 1.220 against the Defendant.

33. Commonality: Questions of law and fact are common to all members of the class. Specifically, the Plaintiffs' claims arise from the same events or practices or course of conduct by the Defendants which gives rise to the claims of the putative class, and their claims are based upon the same legal theories as those of the putative class. The overarching common issue is whether the Defendants breached their duty of reasonable care to the Plaintiffs and the class and whether Defendants should pay benefits due to Plaintiffs and other class members immediately under Chapter 443, Florida Statutes. The common questions of law and fact at issue include, among others:

a. Payment of unemployment compensation benefits to citizens of the State of Florida;

b. Defendants' failure to maintain adequate unemployment compensation system to pay valid claims for compensation to unemployed citizens in Florida, in fact, some of the most needy citizens due to the COVID-19 pandemic, which has violated Chapter 443;

The answers to these common questions of law and fact are subject to common legal theories and generalized proof.

34. Typicality: Plaintiffs' claims are typical of the claims of the class inasmuch as they arise from the same course of conduct as the claims of the putative class; that is, the Defendants' failure to pay unemployment compensation benefits to unemployed citizens in the state of Florida.

35. Numerosity and Class Definition: it is estimated there are hundreds of thousands of individuals in the putative class. Therefore, the putative class is so numerous that separate joinder of each member is impracticable. The proposed class consists of: all persons in the State of Florida who have been denied unemployment compensation benefits and/or who have had these benefits delayed.

36. Adequacy of Representation: Plaintiffs will fairly and adequately protect and represent the interests of each member of the class in that they have interests in common with the class, have no conflicts with the class, understand their responsibilities as class representatives, and have retained counsel experienced in the prosecution of complex class action litigation. The Plaintiffs are members of the class they seek to represent.

37. The Defendants have acted on grounds generally applicable to all the members of the class, to wit: they have acted to deny and/or failed to ensure the payment of unemployment compensation benefits to multiples of thousands of citizens in the State of Florida. Accordingly, this action is maintainable under subsection (b)(2) of Rule 1.220.

38. Alternatively, Defendants' failure to pay unemployment compensation benefits as required under Chapter 443, Florida Statutes, raises questions of law and fact common to the Plaintiffs and the class. These questions stated above, predominate over questions affecting only

individual members, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy. Accordingly, this action is also maintainable under subsection (b)(3) of Rule 1.220.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants for the following:

- (a) that process issue and this Court take jurisdiction over this case;
- (b) that this Court grant equitable relief against Defendants under the applicable counts set forth above, mandating Defendants' obedience to the laws enumerated herein and providing other equitable relief to Plaintiff;
- (c) enter judgment against Defendants and for Plaintiffs awarding all legally-available general and compensatory damages and economic loss to Plaintiff from Defendants for Defendants' violations of law enumerated herein;
- (d) enter judgment against Defendants and for Plaintiffs permanently enjoining Defendants from future violations of law enumerated herein;
- (e) enter judgment against Defendants and for Plaintiffs awarding Plaintiffs attorney's fees and costs;
- (f) award Plaintiffs interest where appropriate;
- (g) award emergency relief to Plaintiffs and others similarly situated; and
- (h) grant such other further relief as being just and proper under the circumstances.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues herein that are so triable.

Respectfully submitted,

/s/ Gautier Kitchen

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Florida E-Filing Portal to all counsel of record this 29th day of April, 2020.

s/ Marie A. Mattox

Marie A. Mattox