

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTHONY D. KOLTON, S. DAVID)	
GOLDBERG, JEFFREY S. SCULLEY and)	
HENRY C. KRASNOW, individually and on)	
behalf of classes of all others similarly situated,)	
)	
Plaintiffs,)	
v.)	No. 16-cv-3792
)	
MICHAEL W. FRERICHES,)	
Treasurer of the State of Illinois,)	
Defendant.)	

**SECOND AMENDED AND SUPPLEMENTAL
CLASS ACTION COMPLAINT**

Plaintiffs, Anthony D. Kolton, S. David Goldberg, Jeffrey S. Sculley and Henry C. Krasnow, each individually and on behalf of the Class each of them represents, as defined below, for their Second Amended and Supplemental Class Action Complaint (the “Complaint”) against Defendant Michael W. Frerichs, Treasurer of the State of Illinois, in his official capacity, state as follows:

INTRODUCTION

1. Plaintiffs brought this action challenging the constitutionality under the Fifth and Fourteenth Amendments to the United States Constitution of the provision of the Illinois Uniform Disposition of Unclaimed Property Act, 765 ILCS § 1025/1, *et seq.* (“UPA” or the “Act”), which authorized the state to take for public use, without just compensation, private property that the state classifies as “presumed abandoned” pursuant to the provisions of the Act. The Act was amended in 2017, effective January 1, 2018. 765 ILCS 1026/15(RUUPA). Except where relevant to the allegations of this Complaint, or where RUUPA has replaced provisions of the Act, references are to the Act).RUUPA requires

interest to be paid on certain unclaimed property but does not apply to Plaintiffs' property or affect Plaintiffs' claims. See 765 ILCS 1026/15-607(b)-(c). Count I of the Complaint seeks declaratory and injunctive relief under 42 U.S.C. § 1983 and under the United States Constitution on behalf of all current owners of unclaimed property held by the Treasurer in the form of money. Count II seeks just compensation as damages under the United States Constitution on behalf of unclaimed property owners whose unclaimed property claims have been paid or approved since August 22, 2017.

2. The Act applies to personal property that is held by a third party (the "holder"), for example, a bank, insurance company, corporation, or public utility. Under the Act such property is "presumed abandoned" if the owner, as defined in the Act, has not communicated in writing with the holder concerning the property or has not otherwise given an indication of interest in the property within a period of five years for private holders and seven years for government holders under the Act and three years for both private and government holders under RUUPA. Property that is "presumed abandoned" must be delivered to Defendant's custody. That property, proceeds from any sale of any such property that was not in cash form when it was taken into custody, and earnings on any such property, are all used to fund state programs or operations.

3. An owner may reclaim property from the state; however, the Act provides that an owner who files a valid claim is entitled only to the property turned over to the state by the holder (or the proceeds from the sale of that property) and not to any interest or dividends or other increments that accrue on the property after delivery to the state. However, in the case of dividend-bearing securities, the owner is entitled to any dividends that accrue prior to sale of the security. The Act does not provide for compensation for the

state's taking of these fruits of the property or use of that property to fund state obligations during the period it is in the state's custody. RUUPA contains a limited exception under which certain interest-bearing instruments or bank accounts delivered to the Treasurer after July 1, 2018 are entitled to interest. 765 ILCS 1026/15-607(c)

4. The Court of Appeals for the Seventh Circuit in *Kolton v. Frerichs*, 869 F.3d 532(7th Cir. 2017), held that the Act violated the Takings Clause of the Fifth Amendment because it denies the owner of property the benefit of the property's earnings while in state custody. In *Goldberg v. Frerichs*, 912 F.3d 1009 (7th Cir. 2019), the Court reaffirmed that the State's obligation to pay just compensation does not depend on whether the property earned interest before it was delivered to the Treasurer.

5. In this Complaint, Plaintiffs seek a declaration that the Act, in providing for the state's confiscation of the interest and other earnings on unclaimed property and its beneficial use of the property without just compensation, is a taking for which Plaintiffs and the Classes they represent are entitled to just compensation. Plaintiffs also seek an injunction to implement that declaration and the payment of just compensation to those whose property has been returned since August 22, 2017, the date of the Seventh Circuit decision in *Kolton*.

PARTIES

6. Plaintiff Anthony D. Kolton is and has been at all relevant times a citizen and resident of Cook County, Illinois. Plaintiff is an "owner" of property, as defined in 765 ILCS § 1025/1(f) of the Act, that is currently held in custody by Defendant.

7. Plaintiff S. David Goldberg is and has been at all relevant times a citizen and resident of Cook County, Illinois. Plaintiff is an "owner" of property, as defined in 765

ILCS § 1025/1(f) of the Act, that is currently held in custody by the Defendant.

8. Plaintiff Jeffrey S. Sculley is and has been at all relevant times a citizen and resident of New York. Plaintiff is an “owner” of property, as defined in 765 ILCS § 1025/1(f) of the Act, that is currently held in custody by the Defendant.

9. Plaintiff Henry C. Krasnow is and has been at all times relevant a citizen and resident of Cook County, Illinois. Plaintiff was an “owner” of property, as defined in 765 ILCS § 1025/1 (f) of the Act. On August 2, 2018, the state issued a warrant in payment of Plaintiff’s claim and returned his property that the Treasurer held without paying just compensation.

10. Defendant Michael W. Frerichs is the Treasurer of the State of Illinois. In that position, pursuant to the UPA and RUUPA, Defendant, or any predecessor or successor in that position, is and has been in charge of supervising and administering the Act. Plaintiffs sue Defendant Frerichs in his official capacity. In that capacity, he resides in this District and is subject to suit in this District.

JURISDICTION AND VENUE

11. The claims in this Complaint arise under the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. As such, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343. See *Kolton v. Frerichs*, 869 F.3d 532 (7th Cir. 2017). In addition, Count I of this Complaint involves a claim for a Declaratory Judgment under 28 U.S.C. § 2201, *et seq.*

12. Venue is proper in this District because Defendant resides in and is subject to suit in this District, and because a substantial portion of the events that underlie the claims asserted here occurred in this District.

STATEMENT OF FACTS

The Act and Its Operation

13. The UPA, as with most other Unclaimed Property Acts adopted by various states, is modeled after a Uniform Unclaimed Property Act promulgated by the Uniform Law Commission. As alleged above, the UPA provides that private property is “presumed abandoned” if the owner or apparent owner has not communicated in writing with the holder concerning the property or has not otherwise given an indication of interest in the property for a certain period of time. 765 ILCS § 1025/2; 765 ILCS 1026/15-201. The purpose of the UPA is twofold: first, to reunite owners with their property, and second, to allow the state rather than the holder to use the property before it is reunited with its owner.

14. Once a holder determines property in its possession is “presumed abandoned” within the meaning of the UPA, the holder is required to attempt to notify the owner and, if the property is not claimed by the owner, to deliver the property into the custody of the office of the Treasurer. 765 ILCS § 1025/11. If the property is tangible property, Defendant is required to sell the property within a reasonable time to the highest bidder at a public sale. 765 ILCS § 1025/17(a). Securities or commodities may be sold through a suitable broker or sales agent. *Id.* The unclaimed property and proceeds from the sale of unclaimed property are to be held in custody for the owner, who can reclaim the property from the State at any time. 765 ILCS §§ 1025/14 and 1025/19.

15. The Act directs the State Treasurer to deposit all funds received pursuant to the Act, including funds from the liquidation of property, into the State Pension Fund, except that an amount may be retained by the State Treasurer to ensure prompt payment of approved claims filed by owners of unclaimed property. 765 ILCS § 1025/18.

16. Pursuant to Section 105/8.12 of the State Finance Act, 30 ILCS § 105/8.12, all monies held in the State Pension Fund are to be used for the administration of the Act and for partial payment of the State's required contributions to designated State employee retirement systems. Section 105/8.12 further provides that each year the General Assembly is to appropriate the balance in the State Pension Fund, minus \$5 million, to the various State pension systems. As of July 1, 2020, Defendant held properties valued at approximately \$3.5 billion pursuant to the Act. Between July 1, 2018 and June 30, 2019, Defendant had returned more than \$300 million to owners of unclaimed property held in the form of money.

17. Property remitted to the Defendant and the State pursuant to the Act earns interest, dividends or other accruals and/or is held in interest-bearing accounts or instruments, and such interest, dividends and other accruals are used by the State Pension Fund. The Treasurer periodically transfers all interest earned on unclaimed property to the State's General Revenue Fund to meet the State's financial obligations. 15 ILCS § 520/2

18. Unlike an escheat statute, in which actual title to abandoned property may eventually vest in the State after certain due process procedures are followed, the Act is purely custodial in nature, and title to abandoned property is never transferred from the owner to the State of Illinois. Thus, title and ownership at all times remain with the original owner of the property. As stated in the Prefatory Note to the Uniform Disposition of Unclaimed Property Act (Rev. 1966 Act), which, with amendment, was adopted by the State of Illinois and forms the basis of the current Act:

The Uniform Act is custodial in nature -- that is to say, it does not result in the loss of the owner's property rights. The state takes custody and remains the custodian in perpetuity.... In this respect the measure differs from the escheat type of statute, pursuant to which the right of the owner is foreclosed and title to

the property passes to the state.

19. While the UPA recognizes that unclaimed property remains the private property of the owner and provides that unclaimed property owners may reclaim their property by filing a valid claim with the Treasurer, 765 ILCS § 1025/20(b), it also provides that “[w]hen property is paid or delivered to the State Treasurer under this Act, the owner is not entitled to receive income or other increments accruing thereafter, except that income accruing on unliquidated stock and mutual funds ... may be paid to the owner.” 765 ILCS § 1025/15.

20. Although the Act gives the Treasurer discretion whether to return income on stocks or mutual funds held pursuant to the Act (as described in Paragraph 19, above), the Illinois Supreme Court in *Canel v. Topinka*, 212 Ill.2d 311, 818 N.E.2d 311 (2004), held that dividends issued on shares of stock while in State custody (and prior to the liquidation by sale) are the property of the owner and the owner is entitled to the dividends or just compensation for the taking of the dividends when the stock or its purchase price is claimed. The Illinois Supreme Court, however, limited its analysis to dividends issued on stock while held in State custody. On information and belief, the Treasurer does not return to the property owner any income or other increments which have accrued on mutual funds held in custody pursuant to the Act. Other than the narrow category of dividends on stock in state custody and the exception contained in the RUUPA Section 607 (c) the Treasurer does not compensate the owner of property for lost interest, dividends, or other earnings or accruals on the principal, or the loss of the beneficial use of property, while it is in State custody.

21. Moreover, by its terms, the Act prohibits owners of unclaimed property from receiving interest, dividends or other income or increments on any property that is liquidated or

is a cash account, regardless of the nature of the property. 765 ILCS § 1025/15, except as provided under RUUPA. In *Cwik v. Giannoulis*, 237 Ill.2d 409, 930 N.E. 2d 990 (2010), the Illinois Supreme Court upheld the constitutionality of that prohibition. In 2013, however, the United States Court of Appeals for this Circuit, in considering the constitutionality of Indiana's Unclaimed Property Act, rejected the view that unclaimed property was abandoned property subject to escheat, and held that the state had taken a portion of plaintiff's unclaimed property and was required to compensate her for this taking. *Cerajeski v. Zoeller*, 735 F.3d 577 (7th Cir. 2013). In *Cerajeski*, the Court of Appeals compared the taking of the interest on Cerajeski's principal to the taking of fruit that grows on trees. In both cases, the custodian of the property must compensate the owner for the custodian's taking and enjoyment of the fruits of the property.

22. In *Kolton v. Frerichs*, 869 F.3d 532 (7th Cir.2017), the Court of Appeals held that the same principles and precedents that governed the Indiana statute that was at issue in *Cerajeski* apply to the Illinois statute. The Court of Appeals reasoned (869 F.3d at 533):

The Supreme Court has held that the Takings Clause protects the time value of money just as much as it does money itself. *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 235, 123 S. Ct. 1406, 155 L. Ed. 2d 376 (2003); *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 165-72, 118 S. Ct. 1925, 141 L. Ed. 2d 174 (1998); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 162-65, 101 S. Ct. 446, 66 L. Ed. 2d 358 (1980). In *Cerajeski v. Zoeller*, 735 F.3d 577 (7th Cir. 2013), we applied these precedents to an Indiana statute like the Illinois statute in this case. We held that a state may not take custody of property and retain income that the property earns. A state may charge a bookkeeping fee, which for small accounts may exceed the property's time value, but must allow the owner the benefit of the property's earnings, however large or small they turn out to be. *Id.* at 578-80.

23. In July of 2017, the Illinois General Assembly enacted Public Law 100-0022, which replaced certain provisions of the Act with provisions from the Revised Uniform Unclaimed Property Act. That revision became effective as of January 1, 2018. It

did not change Illinois law in any respect that is material to the claims in this lawsuit, because, under the revised statute, Illinois will still not compensate owners of unclaimed property for the time value of their money while held in state custody. Under Section 15-607 of RUUPA, and owner of unclaimed property is not entitled to interest on money held in custody by the Treasurer except:

If an interest-bearing demand, savings, or time deposit is paid or delivered to the administrator (the Treasurer) on or after July 1, 2018, then the administrator (Treasurer) shall pay interest to the owner at the lesser of: (i) the percentage increase, if any, in the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor (CPI-U0; or (ii) the rate the property earned while in the possession of the holder and reported to the administrator. 765 ILCS 1026/15-607 (b)-(c)

Plaintiffs' Property

24. According to the Defendant's online records, Defendant holds Mr. Kolton's property in custody. That property includes unclaimed property of more than \$100, which, upon information and belief as recalled by Mr. Kolton was held in an interest- bearing bank deposit account and delivered to the state by Bank One. Mr. Kolton is the owner under the Act with respect to that property, and with respect to other property as to which no claim has been filed. Defendant has at all times since delivery held Mr. Kolton's property in custody subject to its being claimed by or on behalf of Mr. Kolton.

25. While the Defendant held Mr. Kolton's property in custody, the state used the property for public purposes, including by investing the property and earning interest, and otherwise using it to fund the state's operations and programs.

26. Under §§ 1025/15 and 1025/20 of the Act and § 1026/15-607 of RUUPA, should Plaintiff claim his property, Defendant will return the property delivered by Bank One and other holders, but will not pay just compensation for the confiscation of interest or use of

that property during the period of custody.

27. According to the Defendant's online records, Defendant holds Mr. Goldberg's property in custody. Mr. Goldberg is an owner under the Act with respect to that property. Defendant has at all times since delivery that property in custody subject to its being claimed by or on behalf of Mr. Goldberg.

28. While the Defendant held Mr. Goldberg's property in custody, the state used the property for public purposes, including by investing the property and earning interest, and otherwise using it to fund the state's operations and programs.

29. Under §§ 1025/15 and 1025/20 of the Act, and § 1026/15-607 of RUUPA, should Plaintiff claim his property, Defendant will return the property delivered by the holder, but will not pay just compensation for the confiscation of interest or use of that property during the period of custody.

30. According to the Defendant's online records, Defendant holds Mr. Sculley's property in custody. That property includes unclaimed property as follows: (a) property of less than \$100, which was held in an interest-bearing savings account and delivered to the state by the University of Illinois Employees' Credit Union; and (b) property of less than \$100, which was held in a checking account and delivered to the state by the University of Illinois Employees' Credit Union. Mr. Sculley is the owner under the Act with respect to that property, and with respect to other property as to which no claim has been filed. Defendant has at all times since delivery held Mr. Sculley's property in custody subject to its being claimed by or on behalf of Mr. Sculley.

31. While the Defendant held Mr. Sculley's property in custody, the state used the property for public purposes, including by investing the property and earning interest, and otherwise using it to fund the state's operations and programs.

32. Under §§ 1025/15 and 1025/20 of the Act, and § 1026/15-607 of RUUPA, should Plaintiff claim his property, Defendant will return the property delivered by the University of Illinois Employees' Credit Union and other holders, but will not pay just compensation for the confiscation of interest or use of that property during the period of custody.

33. Plaintiff Henry C. Krasnow was the owner of two unclaimed properties held in custody by Defendant until August 2, 2018, when the state issued a warrant in payment of both claims.

34. While the Defendant held Mr. Krasnow's property in custody, the state used the property for public purposes, including by investing the property and earning interest, and otherwise using it to fund the state's operations and programs.

35. Pursuant to §§ 1025.15 and 1025/20 of the Act and § 1026/15-607 of RUUPA, when Defendant returned Plaintiff's property to him, the state did not pay just compensation for the confiscation of interest or use of that property during the period of custody.

COUNT I
(CLAIM FOR DECLARATORY AND PROSPECTIVE INJUNCTIVE
RELIEF ON BEHALF OF PLAINTIFFS AND THE RULE 23(b)(2) CLASS)

36. Plaintiffs Kolton, Goldberg and Sculley reallege Paragraphs 1–35 as though fully set forth herein.

37. Plaintiffs Kolton, Goldberg and Sculley bring Count I of this action on their own behalf and as a class action pursuant to Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure seeking declaratory and prospective injunctive relief on behalf of the following class (the "Rule 23(b)(2) Class"):

All persons or entities (including their heirs, assignees, legal representatives, guardians, administrators, and successors in interest) who are owners of unclaimed property being held by the Treasurer of the State of Illinois in the form

of money under the Illinois Revised Uniform Unclaimed Property Act 765 ILCS 1026/15 (RUUPA).

38. The members of the Class are so numerous that joinder of all members is impracticable. There are currently hundreds of thousands of persons or entities who own property presumed abandoned and held in custody by Defendant under the Act. Currently the Treasurer is holding more than \$3.5 billion in unclaimed property in custody. The average amount of each claim is too small to warrant an individual action challenging the Act's constitutionality, making joinder of all class members impracticable.

39. Plaintiffs' claims are typical of the claims of the members of the Rule 23(b)(2) Class. Plaintiffs' property is being held in custody under RUUPA by Defendant and, while in state custody, is subject to the same provisions of RUUPA that prohibit the state from compensating other owners of unclaimed property for lost interest or earnings on that property or for its use.

40. Plaintiffs will fairly and adequately protect the interests of the Rule 23(b)(2) Class and have retained counsel competent and experienced in class action litigation.

41. There are questions of law and fact common to the Rule 23(b)(2) Class, including the following:

A. whether the state's retention of interest, dividends and other earnings or accruals on unclaimed property is a taking for which just compensation is due;

B. whether the state's use of unclaimed property in its custody for public purposes is a taking for which just compensation is due;

C. the proper measure of compensation for the Rule 23(b)(2) Class;

D. the amount of interest, earnings and benefit realized by the state from the use of the Rule 23(b)(2) Class' unclaimed property; and

E. the appropriate injunctive and declaratory relief for the Rule 23(b)(2) Class.

42. Plaintiffs' claims arise out of the same common course of conduct by Defendant giving rise to the claims of the other members of the Rule 23(b)(2) Class. Defendant has acted and refused to act on grounds that apply generally to the Rule 23(b)(2) Class so that injunctive and declaratory relief are appropriate.

43. As the Court of Appeals for the Seventh Circuit has recognized, the Fifth Amendment to the United States Constitution protects not only the principal of unclaimed property in the custody of the state, but also the time value of the property (that is, the interest, accruals or other earnings on the owner's money). Accordingly, upon return of their unclaimed property, Plaintiffs and the members of the Rule 23(b)(2) Class are entitled to just compensation for loss occasioned by the state's taking of the benefit of their property's earnings in violation of the Fifth Amendment to the U.S. Constitution.

44. While the amount of just compensation will depend on the circumstances, the measure of just compensation should be based on the time value of the property taken and the benefit to the state conferred from beneficial use of the property.

45. The Defendant's unlawful course of conduct will continue absent a declaration from this Court that Defendant's conduct violates the rights of the Plaintiffs and the members of the Class and an injunction from this Court requiring the Defendant to change the course of conduct that is described above.

46. Plaintiffs and the members of the Class are entitled to a judgment declaring their rights with respect to the conduct set forth in this Complaint. Therefore, judgment may issue under 28 U.S.C. § 2201, *et seq.*

WHEREFORE, Plaintiffs pray that the Court enter judgment in their favor and

against Defendant as follows:

A. Declaring that this Count I of this action may be maintained as a class action pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure on behalf of the Rule 23(b)(2) Class defined above and that Plaintiffs Kolton, Goldberg and Sculley are proper Class representatives and designating their counsel as Class Counsel;

B. Declaring that the state's confiscation of interest, dividends, earnings, or other fruits of the property delivered to the state under the Act and under RUUPA and used for public purposes) is a taking of property within the meaning of the Fifth Amendment to the U.S. Constitution for which the state is required to pay just compensation;

C. Declaring that the proper measure of just compensation is the value of the property taken and returned to the owner, taking into account the time value of money and value to the state of the benefit of the property;

D. Declaring the standard for Plaintiffs and the members of the Rule 23(b)(2) Class for measuring the value of property taken;

E. Declaring that Defendant must pay just compensation according to the standard determined by this Court, and issuing an injunction to ensure that the State complies with that Declaration when returning property to owners of unclaimed property;

F. Awarding Plaintiffs their attorneys' fees and reimbursement of their expenses, pursuant to 42 U.S.C. § 1988 and applicable principles of equity; and

G. Awarding such other and further relief as the Court deems just and proper.

COUNT II
(CLAIM FOR DAMAGES ON BEHALF OF PLAINTIFF KRASNOW
AND THE RULE 23(b)(3) SETTLEMENT CLASS)

47. Plaintiff Krasnow realleges Paragraphs 1-35 as though fully set forth herein.

48. Count II is brought directly under the Constitution as an inverse condemnation

claim for damages for the taking of Plaintiff's property without compensation for the loss of interest, earnings and benefits from the use of that property while in state custody.

49. Plaintiff Krasnow brings this action on his own behalf and as a class action pursuant to Rule 23(a) and Rule (b)(3) of the Federal Rules of Civil Procedure seeking just compensation as damages for violations of the U.S. Constitution on behalf of the following class (the "Rule 23(b)(3) Settlement Class"):

All persons or entities (including their heirs, assignees, legal representatives, guardians, or administrators) who were owners of Unclaimed Property and whose Unclaimed Property Claims were paid or approved for payment on or after August 22, 2017.

50. The members of the Rule 23(b)(3) Settlement Class are so numerous that joinder of all members is impracticable. There are hundreds of thousands of persons or entities who owned unclaimed property in the form of money held in custody by Defendant under the Act and whose property claims were paid or approved on or after August 22, 2017. The average amount of each claim is too small to warrant an individual action challenging the Act's constitutionality, making joinder of all class members impracticable.

51. Plaintiff's claims are typical of the claims of the members of the Rule 23(b)(3) Settlement Class. Plaintiff's property was held in custody under the Act by Defendant and, while in state custody, was subject to the same provisions of the Act that prohibited the state from compensating other owners of unclaimed property for lost interest or earnings on that property or for its use.

52. Plaintiff will fairly and adequately protect the interests of the Rule 23(b)(3) Settlement Class and has retained counsel competent and experienced in class action litigation.

53. There are questions of law and fact common to the Rule 23(b)(3) Settlement

Class, including the following:

- A. whether the state's retention of interest, dividends and other earnings or accruals on unclaimed property is a taking for which just compensation is due;
- B. whether the state's use of unclaimed property in its custody for public purposes is a taking for which just compensation is due;
- C. the proper measure of compensation for the Rule 23(b)(3) Settlement Class; and
- D. the amount of interest, earnings and benefit realized by the state from the use of the Class' unclaimed property.

54. As the Court of Appeals for the Seventh Circuit has recognized, the Fifth Amendment to the United States Constitution protects not only the principal of unclaimed money property in the custody of the state, but also the time value of the property, that is, the interest, accruals or other earnings on the property. Plaintiff and the Rule 23(b)(3) Settlement Class are entitled to just compensation for loss occasioned by the state's taking of the benefit of the property's earnings in violation of the Fifth Amendment to the U.S. Constitution.

55. While the amount of just compensation will depend on the circumstances, the measure of just compensation should be based on the time value of the property taken and the benefit conferred from beneficial use of the property.

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor and against Defendant as follows:

A. Declaring that Count II of this action may be maintained as a class action pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Damages Class defined above and that Plaintiff is a proper Class representative and

designating his counsel as Class Counsel;

B. Declaring that the state's confiscation of interest, dividends or other fruits of Plaintiff's and the Damages Class' property delivered to the state under the Act and used for the public purposes is a taking of property within the meaning of the Fifth Amendment to the U.S. Constitution for which the state is required to pay just compensation;

C. Awarding Plaintiff and members of the Damages Class just compensation as determined by this Court;

D. Awarding Plaintiff his attorneys' fees and reimbursement of expenses, pursuant to applicable principles of equity; and

E. Awarding such other and further relief as the Court deems just and proper.

Anthony D. Kolton, S. David Goldberg,
Jeffrey S. Sculley, and Henry C.. Krasnow,
individually and on behalf of a Class of All
Others Similarly Situated,

/s/ Terry Rose Saunders

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