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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COLIN SCHOLL and LISA STRAWN, on
behalf of themselves and all others
similarly situated.

Plaintiffs,

v.

STEVEN MNUCHIN, in his official
capacity as the Secretary of the U.S.
Department of Treasury; CHARLES
RETTIG, in his official capacity as U.S.
Commissioner of Internal Revenue; U.S.
DEPARTMENT OF THE TREASURY;
the U.S. INTERNAL REVENUE
SERVICE; and, the UNITED STATES OF
AMERICA.

Defendants.

Case No. 3:20-cv-5309

CLASS ACTION COMPLAINT

1 continue his rehabilitative programs inside to prepare for his anticipated release in November
2 2021.

3 5. Plaintiff Lisa Strawn was incarcerated at San Quentin State Prison in Marin
4 County, California from February 5, 2018 to July 14, 2020. Ms. Strawn currently resides in San
5 Francisco. She is a citizen of the United States and is not claimed as a dependent on anyone
6 else's tax return. Ms. Strawn has not filed a return for 2018 or 2019 and does not have a filing
7 obligation for those years. Although Ms. Strawn was exposed to COVID-19 prior to her release
8 from San Quentin, Ms. Strawn has not received the COVID-related relief that Congress passed
9 because of her incarceration status at the time the CARES Act funds were released. Ms. Strawn
10 has not filed a claim for an EIP benefit because doing so would be futile pursuant to the IRS's
11 stated position on the ineligibility of incarcerated persons, and because she fears that making the
12 request now could subject her to additional prosecution or other administrative penal remedies for
13 making a false claim. If she received an EIP, Ms. Strawn would use it to help cover the cost of
14 food, transportation, housing and other necessities in her transition from prison to the San
15 Francisco community.

16 6. Defendant Steven T. Mnuchin is the Secretary of the Treasury. Secretary Mnuchin
17 exercises full authority to administer and enforce the internal revenue laws and has the power to
18 create an agency to enforce these laws. He is responsible for distributing the EIPs under the
19 CARES Act and, in his official capacity, has unlawfully withheld EIP benefits from incarcerated
20 individuals.

21 7. Defendant Charles Rettig is the United States Commissioner of Internal Revenue
22 Service. In that capacity, he administers the application of the internal revenue laws. Defendant
23 Rettig reports to Defendant Mnuchin and, as part of his duties, oversees the issuance of EIP
24 benefits under the CARES Act. In his official capacity, he has unlawfully withheld EIP benefits
25 from incarcerated individuals.

26 8. Defendant U.S. Department of the Treasury is an agency of the United States
27 government. The Department of the Treasury is responsible for, among other things, the
28

1 disbursement of payments to the American public, including under the CARES Act. The U.S.
2 Department of the Treasury has unlawfully withheld EIP benefits from incarcerated individuals.

3 9. Defendant U.S. Internal Revenue Service is a bureau of the U.S. Department of the
4 Treasury organized to carry out the responsibilities of the Secretary of the Treasury under 26
5 U.S.C. § 7801. It was created based on the legislative grant of authority to the Secretary of the
6 Treasury to enforce the internal revenue laws. The IRS calculates and sends recovery payments
7 to eligible persons under the CARES Act.

8 10. Defendant United States of America is sued through its agencies, the U.S.
9 Department of the Treasury and U.S. Internal Revenue Service.

10 **BACKGROUND**

11 **I. The CARES Act**

12 11. Beginning in early 2020, the novel coronavirus pandemic created a severe
13 economic hardship on millions of Americans. To address this economic crisis, Congress passed
14 and President Trump signed into law the Coronavirus Aid, Relief, and Economic Security
15 (CARES) Act. Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act”. See
16 Pub. L. 116-136, 134 Stat. 281 (Mar. 27, 2020).

17 12. Under the CARES Act, eligible individuals may receive a payment of up to \$1,200
18 (or \$2,400 in the case of eligible individuals filing a joint return), plus \$500 for each qualifying
19 child. 26 U.S.C. § 6428(a). The amount of the credit may be adjusted based on an individual’s
20 adjusted gross income. *Id.* § 6428(c).

21 13. The CARES Act defines eligibility for an EIP broadly. The statute defines
22 “eligible individual” to include “any individual other than—(1) any non-resident alien individual,
23 (2) any individual with respect to whom a deduction under section 151 is allowable to another
24 taxpayer . . . , and (3) an estate or trust.” 26 U.S.C. § 6428(d). Congress did not impose any other
25 status-based limitations on the definition of “eligible individual” under 26 U.S.C. § 6428(d).

26 14. Pursuant to the CARES Act, Defendants are required to issue EIP benefits “as
27 rapidly as possible.” 26 U.S.C. § 6428(f)(3)(A). Pursuant to the IRS’s implementation of the
28 CARES Act, eligible persons who already filed a tax return for 2018 have automatically received

1 their EIP benefits without taking any additional action. See IRS, *Economic Impact Payment*
 2 *Information Center*, Q4. Do I need to take action?, [https://www.irs.gov/coronavirus/economic-](https://www.irs.gov/coronavirus/economic-impact-payment-information-center)
 3 [impact-payment-information-center](https://www.irs.gov/coronavirus/economic-impact-payment-information-center). All eligible persons who were not entitled to an EIP based
 4 on their 2018 return and have filed a 2019 return that entitles them to payment have or will
 5 receive an EIP without taking additional action. Persons who were not required to file a tax
 6 return in either year must file a claim through the IRS's online portal for "non-filers." See
 7 <https://www.irs.gov/coronavirus/non-filers-enter-payment-info-here>. Once filed, the IRS has no
 8 discretion to refuse to disburse an EIP to anyone who satisfies the CARES Act's statutory
 9 requirements.

10 15. Although the CARES Act does not exclude incarcerated individuals from
 11 eligibility for an EIP, the IRS announced on its website on May 6, 2020, more than five weeks
 12 after the passage of the CARES Act, that incarcerated individuals were ineligible for the EIP.
 13 The IRS's website states:

14 Q15. Does someone who is incarcerated qualify for the Payment?

15 A15. No. A Payment made to someone who is incarcerated
 16 should be returned to the IRS by following the instructions about
 17 repayments. A person is incarcerated if he or she is described in
 18 one or more of clauses (i) through (v) of Section 202(x)(1)(A) of
 19 the Social Security Act (42 U.S.C. § 402(x)(1)(A)(i) through (v)).
 For a Payment made with respect to a joint return where only one
 spouse is incarcerated, you only need to return the portion of the
 Payment made on account of the incarcerated spouse. This amount
 will be \$1,200 unless adjusted gross income exceeded \$150,000.

20 16. In addition to requesting that incarcerated individuals return their EIP benefits
 21 without providing any explanation of the legal basis for doing so, the IRS has affirmatively taken
 22 action to withhold or retrieve the EIP from incarcerated individuals as described in a Government
 23 Accountability Office (GAO) report dated June 25, 2020 entitled "COVID 19 Opportunities to
 24 Improve Federal Response and Recovery Efforts." On page 222 of that report, the GAO states:
 25 "According to IRS officials, IRS also worked with federal and state prison officials to assist in the
 26 return of payments made to incarcerated individuals." GAO-20-625,
 27 <https://www.gao.gov/reports/GAO-20-625/>.

17. On June 24, 2020, the Associated Press reported that although “checks of up to \$1,200 were automatically sent in most cases to people who filed income tax returns for 2018 or 2019, including some who are incarcerated,” “[a] couple of weeks later, the IRS directed state correction departments to intercept payments to prisoners and return them.” Rebecca Boone, *Inmates Got Virus Relief Checks, and IRS Wants Them Back*, Associated Press, June 24, 2020, <https://apnews.com/0810bb67199c9cef34d4d39ada645a92>. Pursuant to the IRS’s directive, “[t]he Kansas Department of Correction alone intercepted more than \$200,000 in checks by early June. Idaho and Montana combined had seized over \$90,000.” *Id.* Other states, including Washington, Vermont, Mississippi, Pennsylvania, Arizona, California, Oregon, and Utah have intercepted stimulus payments to incarcerated persons at the IRS’s behest.

18. The IRS has no legal basis for withholding, retracting, or asking others to intercept stimulus payments to incarcerated persons. When asked, IRS spokesman Eric Smith stated “I can’t give you the legal basis. All I can tell you is this is the language the Treasury and ourselves have been using.” *Id.*

19. Indeed, a Department of Treasury Inspector General report analyzed only the initial set of 81.4 million EIP payments to eligible Americans and legal permanent residents issued on April 10, 2020. When the Inspector General inquired about the inclusion of incarcerated persons in this disbursement, “IRS management noted that payments to these populations of individuals were allowed because the CARES Act does not prohibit them from receiving a payment. However, the IRS subsequently changed its position, noting that individuals who are prisoners . . . are not entitled to an EIP.” See Treasury Inspector General for Tax Administration, *Interim Results of the 2020 Filing Season: Effect of COVID-19 Shutdown on Tax Processing and Customer Service Operations and Assessment of Efforts to Implement Legislative Provisions*, Ref No. 2020-46-041, at 4-5 (June 30, 2020), <https://www.treasury.gov/tigta/auditreports/2020reports/202046041fr.pdf>. Thereafter, the IRS took action to exclude incarcerated persons from subsequent EIP disbursements, and notified the Inspector General on May 13, 2020, that “programming was implemented to discontinue calculating and sending EIPs to prisoners” *Id.* at 5. Specifically, “the IRS provided the

1 [U.S. Department of the Treasury’s Bureau of the Fiscal Service (BFS)] with a file that contained
2 the Taxpayer Identification Numbers of prisoners . . . and requested that the BFS remove these
3 individuals from payment files. This approach was applied to the May 1, 2020 and May 8, 2020,
4 payment files.” *Id.* According to the report, as of May 21, 2020, the IRS had issued 84,861
5 payments to incarcerated people totaling \$100 million, and had begun taking steps to advise those
6 individuals (or their spouses) of the steps they should take to return those payments, as reflected
7 in the online FAQ discussed above. *Id.* at 6. (It is unclear whether these 84,861 payments
8 include *only* incarcerated people who received payments pursuant to the April 10, 2020
9 disbursement before the IRS reversed course, or whether these payments also include checks
10 inadvertently sent in subsequent disbursements.)

11 20. The IRS’s refusal to distribute the EIP to incarcerated individuals, and its attempt
12 to intercept, retrieve, and request the return of EIPs to incarcerated individuals who already
13 received them, violate the CARES Act, which does not condition eligibility for EIP benefits on
14 incarcerated status. If Congress had intended to exclude incarcerated individuals, it would have
15 done so expressly.

16 21. Although Plaintiffs and other incarcerated individuals fall squarely within the
17 group of individuals determined by Congress to be eligible for EIPs, Defendants (a) have acted
18 *ultra vires* to classify them as ineligible based on their incarcerated status alone; (b) have
19 withheld automatic payments to Plaintiffs and similarly situated individuals; and, (c) have taken
20 action to intercept and retrieve (and to demand the return of) checks that were previously mailed
21 to such persons. Upon information and belief, Defendants have also refused to distribute EIP
22 benefits to incarcerated persons who filed a claim through the IRS’s online portal on the basis of
23 their incarcerated status alone.

24 22. Because of the IRS’s policy, Plaintiffs and other similarly situated persons who did
25 not receive automatic EIP benefits are unsure whether they are authorized to utilize the non-filer
26 portal to obtain an EIP, and whether doing so will result in an accusation of filing a fraudulent
27 claim with the potential to result in enhanced sentences, revocation of parole, new criminal
28 charges, or other adverse consequences for currently or formerly incarcerated people. Further,

given Defendants' clear position regarding the ineligibility of incarcerated persons for an EIP benefit, filing a claim through the non-filer portal would be futile.

II. The Incarcerated Population

23. Congress did not exclude incarcerated individuals from the EIP program, and the IRS has not cited any legal authority to do so. Even assuming the IRS had the power to establish its own non-statutory eligibility criteria under the CARES Act, it lacks a reasonable basis to exclude incarcerated people from the EIP benefit program.

24. Incarcerated individuals, as defined by 42 U.S.C. § 402(x)(1)(A)(i)-(v), have tax obligations and can obtain tax benefits just like other individuals subject to the taxes imposed by Title 26 of the United States Code. Incarcerated individuals do not lose their status (or responsibilities) as taxpayers by virtue of their incarceration.

25. Incarcerated individuals, like other members of society, have personal, financial, and other relationships that put them in need of economic assistance just like other members of society. For example, hundreds of thousands of incarcerated individuals will be released from custody in the near future, returning to the same bleak economy that necessitated passage of the CARES Act; EIP funds will assist them with re-entry and help mitigate recidivism. According to a Bureau of Justice Statistics report, the total number of incarcerated people released from either state or federal jurisdiction in 2016 was 626,019, and 622,377 in 2017. *See* U.S. Department of Justice Bureau of Justice Statistics, Prisoners in 2017, Table 7 (Apr. 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>. Similarly, according to the Federal Bureau of Prisons, 17,281 people have already been released from federal custody in 2020 to date, 45,075 were released in 2019, and 37,820 were released in 2018 (federal institutions house approximately 10% of the United States' incarcerated population). *See* https://www.bop.gov/about/statistics/statistics_inmate_releases.jsp.

26. Indeed, the average incarcerated person spends a relatively short period of time behind bars, even if sentences are longer. According to one study, approximately 28% of convicted criminal defendants in state courts who are given jail sentences receive sentences averaging 7 months, and the average amount of time served for all persons subject to state

incarceration is 27 months. See Matthew R. Durose & Patrick A. Langan, Ph.D., *State Court Sentencing of Convicted Felons, 2002 Statistical Tables*, Bureau of Justice Statistics, Tables 1.2, 1.3, and 1.5 (May 2005) <https://www.bjs.gov/content/pub/pdf/scscf02.pdf>. In the federal prison system, the median prison sentence nationally is 18 months and 12 months in the Ninth Circuit. See United States Sentencing Commission, *Statistical Information Packet Fiscal Year 2019 Ninth Circuit*, Table 7, <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2019/9c19.pdf>. EIP benefits will assist those who will soon re-enter society with overcoming the various economic, housing, and social obstacles to achieving stability and avoiding recidivism.

27. Additionally, most incarcerated individuals come from low income families where assistance is needed most, and thus can use the EIP funds to support family members who are not in confinement. A 2015 study by the Prison Policy Initiative found that incarcerated people have a median annual income of \$19,185 prior to their incarceration, compared to a median income of \$41,250 for non-incarcerated people. See Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-incarceration Incomes of the Imprisoned* (July 9, 2015), Prison Policy Initiative, <https://www.prisonpolicy.org/reports/income.html>.

28. Further, the racial disproportionality among those who are incarcerated mirrors the racial disproportionality among those most harmed by COVID-19. Black people are incarcerated at six times the rate and Latinx people are imprisoned at three times the rate of white people in the United States. *Racial Disparities in Incarceration and Coronavirus*, FWD.us, (Apr. 14, 2020), <https://www.fwd.us/news/coronavirus-disparity/>. Native Americans are incarcerated “at over four times the rate for whites.” *Race & Justice News: Native Americans in the Justice System*, The Sentencing Project, (Mar. 28, 2016), <https://www.sentencingproject.org/news/race-justice-news-native-americans-in-the-justice-system/>. Not only is COVID-19 disproportionately fatal for Black, Indigenous, and Latinx people, but Black, Indigenous, and Latinx communities are disproportionately bearing the economic devastation wrought by the pandemic. “Workers of color are overrepresented in the lowest-paid agricultural, domestic, and service vocations,” which limits their ability to maintain economic stability in the midst of a pandemic and a recession.

1 Connor Maxwell & Danyelle Solomon, *The Economic Fallout of the Coronavirus for People of*
 2 *Color*, CENTER FOR AMERICAN PROGRESS (Apr. 14, 2020),
 3 [https://www.americanprogress.org/issues/race/news/2020/04/14/483125/economic-fallout-](https://www.americanprogress.org/issues/race/news/2020/04/14/483125/economic-fallout-coronavirus-people-color/)
 4 [coronavirus-people-color/](https://www.americanprogress.org/issues/race/news/2020/04/14/483125/economic-fallout-coronavirus-people-color/). And with an average net worth roughly one-tenth the size of white
 5 households, Black and Latinx households have less liquidity and fewer assets to weather lay-offs
 6 and furloughs. *Id.*

7 29. The government's failure to provide incarcerated individuals the EIP benefits not
 8 only affects those in confinement but also their families. According to the U.S. Department of
 9 Justice, 50 percent to 75 percent of incarcerated individuals report having a minor child. Eric
 10 Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, National
 11 Institute of Justice, (May 2017), <https://www.ncjrs.gov/pdffiles1/nij/250349.pdf>. More than 2.7
 12 million children have an incarcerated parent. Daniel M. Leeds, Juliana Pearson, Simone Robers,
 13 and Leslie Scott, *Incarcerated adults with dependent children* (February 2020),
 14 [https://static1.squarespace.com/static/51bb74b8e4b0139570ddf020/t/5e41932d16c3c736370cd9c](https://static1.squarespace.com/static/51bb74b8e4b0139570ddf020/t/5e41932d16c3c736370cd9c2/1581355822385/2020_CNA_Incarcerated_Adults_Dependent_Children.pdf)
 15 [2/1581355822385/2020_CNA_Incarcerated_Adults_Dependent_Children.pdf](https://static1.squarespace.com/static/51bb74b8e4b0139570ddf020/t/5e41932d16c3c736370cd9c2/1581355822385/2020_CNA_Incarcerated_Adults_Dependent_Children.pdf). Nearly half of
 16 Americans have an immediate family member who is formerly or currently incarcerated. Equal
 17 Justice Initiative, *Half of Americans Have Family Members who Have Been Incarcerated*
 18 (December 11, 2018), [https://eji.org/news/half-of-americans-have-family-members-who-have-](https://eji.org/news/half-of-americans-have-family-members-who-have-been-incarcerated/)
 19 [been-incarcerated/](https://eji.org/news/half-of-americans-have-family-members-who-have-been-incarcerated/). Incarceration is concentrated in economically disadvantaged communities:
 20 the proportion of people who have an incarcerated family member increases as income declines.
 21 *See id.* Further, as with the disproportionate harm inflicted by COVID-19, Black adults are 50%
 22 more likely to have had a family member incarcerated than white people; Latinx people are nearly
 23 twice as likely to have a family member in jail or prison for more than one year; and Native
 24 Americans have high rates of family incarceration. *Racial Disparities in Incarceration and*
 25 *Coronavirus*, FWD (Apr. 14, 2020), <https://www.fwd.us/news/coronavirus-disparity/>. These
 26 families need the EIP funds the most. Nearly two in three families are unable to meet basic needs
 27 such as food, housing, and medical care while their family member is incarcerated. *See id.*
 28

30. The EIP also provides important funds to incarcerated persons when other sources may have evaporated due to the economic pressures related to COVID-19. Prisons and jails have shifted more and more costs onto incarcerated people—costs for things like hygiene supplies, medical copayments, and communication with loved ones—and this is unlikely to diminish given the predicted government budget shortfalls caused by a COVID-affected tax base. Indeed, incarcerated people are also consumers in a sizeable retail market. A 2016 report concluded that approximately one-third of state prison systems privatize their commissaries in some respect, with sales by commissaries operated by private corporations accounting for more than half of the \$1.6 billion in annual prison commissary revenues. See Stephen Raher, *Paging Anti-trust Lawyers: Prison Commissary Giants Prepare to Merge*, Prison Policy Initiative (July 5, 2016), <https://www.prisonpolicy.org/blog/2016/07/05/commissary-merger/>. The spending of people under confinement is largely focused on life essentials like food and hygiene, and often is reliant on support from people on the outside as prison incomes are too low to cover average costs. A recent study, for example, determined that annual commissary sales to incarcerated people in Illinois, Massachusetts, and Washington were \$48.4 million, \$11.7 million, and \$8.6 million, respectively, with an overall average of \$947 in annual spending per confined person, “well over the typical amount incarcerated people earn working regular prison jobs in these states (\$180 to \$660 per year).” Stephen Raher, *The Company Store: A Deeper Look at Prison Commissaries*, Prison Policy Initiative (May 2018), <https://www.prisonpolicy.org/reports/commissary.html>. The study found that the vast majority of these sales related to food products: in Illinois, \$34.3 million out of \$48.4 million of prison population spending went to food products, while in Massachusetts the ratio was \$9.1 million out of \$11.7 million, and in Washington it was \$6.6 million out of \$8.6 million. *Id.* The next highest amounts were for hygiene products, clothing, household goods and supplies, and mail and stationary. *Id.* EIP benefits will thus go in large part towards providing for these life essentials which are often sold to incarcerated people by private corporations.

31. Because incarcerated people have little ability to earn incomes, they tend to rely on money transfers from friends and family to pay for basic necessities. This is very expensive for family members, because any deposits they make may be automatically garnished by the prison

1 system to pay for an incarcerated person's outstanding financial obligations, such as restitution,
 2 child support, and so on. For example, in California, the California Department of Corrections
 3 and Rehabilitation automatically garnishes 50% of any deposit into an incarcerated person's
 4 account to satisfy that person's outstanding restitution obligations. See Cal. Dep't of Corrections
 5 & Rehabilitation, *How does a Victim Collect on the Restitution Order from an Inmate or a*
 6 *Parolee?*, <https://www.cdcr.ca.gov/victim-services/restitution-collections/>, (last accessed July 27,
 7 2020). That means that if an incarcerated person who owes restitution needs \$100 to cover their
 8 prison spending, the family on the outside must deposit \$200 to cover those expenses. As family
 9 members on the outside (who are often low-income to begin with) lose their jobs in the
 10 pandemic-induced economic collapse, families will be increasingly less able to send money to
 11 loved ones inside. The EIP checks help protect the health and well-being of those in
 12 confinement, facilitating their rehabilitation and suitability for return to society upon release,
 13 while reducing the burden on and providing relief to their loved ones at home.

14 32. Finally, many incarcerated people have outstanding financial obligations and
 15 debts, including child support, mortgages, and restitution obligations. The EIP checks will go
 16 toward satisfying those obligations, as well.

17 **CLASS ALLEGATIONS**

18 33. Plaintiffs bring this action on behalf of themselves and all others similarly situated
 19 (the "Class"), pursuant to Federal Rule of Civil Procedure 23. The Class is defined as follows:

20 All United States citizens and legal permanent residents who:

21 (a) are or were incarcerated (*i.e.*, confined in a jail, prison, or
 22 other penal institution or correctional facility pursuant to their
 23 conviction of a criminal offense) in the United States, or have been
 24 held to have violated a condition of parole or probation imposed
 under federal or state law, at any time from March 27, 2020 to the
 present;

25 (b) filed a tax return in 2018 or 2019, or were exempt from a
 26 filing obligation because they earned an income below \$12,000 (or
 \$24,400 if filing jointly) in the respective tax year;

27 (c) were not claimed as a dependent on another person's tax
 return; and,

28 (d) filed their taxes with a valid Social Security Number, and,

1 if they claimed qualifying children or filed jointly with another
 2 person, those individuals also held a valid Social Security Number.

3 Excluded from the Class are estates and trusts; Defendants; the
 4 officers, directors, or employees of any Defendant; and, any judicial
 officer presiding over this action and the members of his/her
 immediate family and judicial staff.

5 34. The exact size of the class is unknown. However, according to the U.S.
 6 Department of Justice's Bureau of Justice Statistics, in 2018, there were approximately 1,465,158
 7 people imprisoned in state or federal facilities, over 90% of whom were U.S. citizens. Thus, the
 8 class size is over 1.5 million individuals. Joinder of that many people is impractical.

9 35. There are multiple questions of law and fact common to the class including but not
 10 limited to:

11 a. Whether Defendants have unlawfully withheld or unreasonably delayed
 12 delivery of EIP benefits to Plaintiffs and the Class;

13 b. Whether Defendants' policy treating incarcerated people as ineligible for
 14 EIP benefits based on their incarcerated status is contrary to law, in excess of statutory authority,
 15 and/or arbitrary and capricious;

16 c. Whether Defendants violated the CARES Act by withholding EIP checks
 17 from Plaintiffs and the Class based on their status as incarcerated people alone;

18 d. Whether Defendants are liable to Plaintiffs and the Class for the sum of the
 19 EIP benefits to which they are entitled under the CARES Act; and,

20 e. The remedies to which Plaintiffs and the Class are entitled.

21 36. These and other questions of law and fact are common to the Class, and
 22 predominate over any questions affecting only individual members of the Class.

23 37. Plaintiffs' claims are typical of the Class, as all Class Members challenge
 24 Defendants' authority to withhold EIP checks from them on the sole basis of their status as
 25 incarcerated people. The answer to this question is the same for all members of the Class. There
 26 are no defenses of a unique nature that may be asserted against Plaintiffs individually, as
 27 distinguished from other members of the Class, and the relief sought is common to the Class.
 28

1 38. Plaintiffs will fairly and adequately protect the interests of the members of the
2 Class. Plaintiffs' interests are aligned with, and not antagonistic to, those of the other members of
3 the Class, and Plaintiffs have retained counsel competent and experienced in the prosecution of
4 class action litigation to represent themselves and the Class.

5 39. Certification of the class for injunctive relief is appropriate under Rule 23(b)(1)
6 because the prosecution of separate actions by individual class members would create a risk of
7 inconsistent or varying adjudications that would establish incompatible standards of conduct for
8 Defendants or would, as a practical matter, be dispositive of the interests of other class members
9 not parties to the individual adjudications or otherwise substantially impair or impede their ability
10 to protect their interests. Certification for injunctive and declaratory relief is also appropriate
11 under Rule 23(b)(2) because Defendants have acted on grounds that apply generally to the whole
12 class. Additionally, certification of a class for monetary relief under Rule 23(b)(3) is appropriate
13 because the common questions of fact and law predominate over questions specific to individual
14 class members. The common questions of law will determine Defendants' liability to every
15 member of the class. Class-wide treatment of these common issues in a single forum is a superior
16 means of determining Defendants' liability to each Class Member than potentially thousands of
17 other lawsuits. As a result, class-wide adjudication of Defendants liability is the most efficient
18 means of adjudication.

19 **CLAIMS FOR RELIEF**

20 **COUNT ONE**

21 **Defendants' Unlawful Withholding of EIP Benefits to Plaintiffs and the Class**

22 **(5 U.S.C. § 706(1))**

23 40. The foregoing allegations are re-alleged and incorporated herein.

24 41. Defendants have a duty to issue EIP benefits to all eligible individuals in a timely
25 manner. 26 U.S.C. § 6428. Plaintiffs and the Class have a clear right to such benefits, and
26 Defendants have no lawful basis to refuse them. The issuance of such benefits constitutes
27 discrete agency action.
28

42. Defendants have unlawfully withheld and/or unreasonably delayed the issuance of EIP benefits to Plaintiffs and the Class despite their clear entitlement to those benefits.

43. Based on the foregoing allegations, Plaintiffs seek an order compelling Defendants to issue EIP benefits to them and the Class.

COUNT TWO
Defendants' Policy Denying EIP Benefits to Plaintiffs and the Class Is Contrary to Law, In Excess of Statutory Authority, and Arbitrary and Capricious (Administrative Procedure Act ("APA"), 5 U.S.C. §§ 702, 706(2))

44. The foregoing allegations are re-alleged and incorporated herein.

45. Defendants' policy of withholding EIP benefits from incarcerated persons based solely on their status as incarcerated people exceeds Defendants' statutory authority under the CARES Act, 26 U.S.C. § 6428, is contrary to law, and is arbitrary and capricious, or otherwise unlawful within the meaning of the APA, 5 U.S.C. § 706(2).

46. Plaintiffs and members of the Class have been aggrieved by Defendants' policy of withholding EIP benefits from incarcerated persons based solely on their incarcerated status because they have been denied a statutory benefit to which they are otherwise entitled.

47. Defendants' refusal to issue EIP benefits to incarcerated persons reflects Defendants' final, considered position, as evidenced by, among other things, the announcement of that position on the IRS's website, directives issued to state officials to intercept and return such checks from correctional facilities, and advice to the public that incarcerated persons and their spouses "should" return any checks that may have been mailed inadvertently to them. This policy thus constitutes final administrative action under 5 U.S.C. § 704.

48. Based on the foregoing violations, Plaintiffs and the Class request a declaratory judgment that Defendants lack statutory authority to withhold EIP checks from them based solely on their status as incarcerated persons.

49. Based on the foregoing violations, Plaintiffs and the Class also request injunctive relief ordering Defendants to (a) automatically issue EIP checks to Class Members who, having filed a tax return in 2018 or 2019, are entitled to an automatic payment based on the IRS's records but for their incarcerated status; (b) review and approve any claim submitted through the IRS's

“non-filer portal” which has been denied based solely on the claimant’s status as an incarcerated person and, moving forward, prohibiting Defendants from considering incarcerated status in reviewing claims made under the CARES Act; (c) withdraw the statements which express that incarcerated individuals are not entitled to CARES Act funds, thus removing the deterrent to eligible potential claimants who reasonably fear penalty for seeking benefits to which Defendants have wrongfully claimed they are not entitled; and (d) issue EIP benefits to all Class Members.

COUNT THREE
CARES Act and Little Tucker Act
(26 U.S.C. § 6824 and 28 U.S.C. § 1346(a)(2))

50. The foregoing allegations are re-alleged and incorporated herein.

51. Plaintiffs and the Class are eligible for EIP benefits pursuant to the CARES Act, 26 U.S.C. § 6428, because they are (1) U.S. citizens or “resident aliens”; (2) filed tax returns in 2018 or 2019, or were exempt from doing so; (3) are not claimed as dependents of another tax filer; (4) are not estates or trusts; and (5) if they filed tax returns jointly with another person or claimed qualifying children, those persons had a valid Social Security Number.

52. Defendants have refused to issue EIP benefits to Plaintiffs and the Class based solely on their status as incarcerated persons, despite lacking any statutory authority to do so.

53. Plaintiffs and each Class Member therefore have a civil claim against the United States, not exceeding \$10,000 in amount, founded upon the CARES Act. 28 U.S.C. § 1346(a)(2).

54. Based on the foregoing allegations, Plaintiffs and the Class seek monetary relief in an amount equal to each Class Member’s benefit under the CARES Act.

RELIEF REQUESTED

Wherefore, Plaintiffs respectfully requests that this Court:

- A. Enter an order certifying this case for class treatment pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiffs as Representatives of the Class, and appointing the undersigned attorneys as Class Counsel;
- B. Enter declaratory judgment that Defendants lack statutory authority to withhold economic impact payments from Plaintiffs and the Class based solely on their

1 status as incarcerated persons;

2 C. Enjoin Defendants from refusing to distribute economic impact payments under
3 the CARES Act for the benefit of Plaintiffs and the Class based solely on their
4 status as incarcerated persons;

5 D. Order Defendants to determine (or re-determine) the eligibility of Plaintiffs and
6 each Class Member for a CARES Act benefit without taking into consideration
7 their status as incarcerated persons, and to issue benefits to all those who meet the
8 statutory eligibility criteria;

9 E. Order Defendants to review and approve any claims filed through the “non-filer
10 portal” and denied based solely on the claimant’s status as an incarcerated person,
11 and to issue benefits to those that otherwise meet the eligibility criteria for an
12 economic impact payment;

13 F. Award damages to Plaintiffs and the Class in the amount of each individual’s
14 entitlement under the CARES Act;

15 C. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys’
16 fees, pursuant to 28 U.S.C. 2412; and

17 D. Award such additional relief as the interests of justice may require.
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1 Dated: August 1, 2020

Respectfully submitted,

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