DATE FILED: February 15, 2022 10:19 AM
FILING ID: 449C32A248E34
CASE NUMBER: 2022CV30421

DISTRICT COURT, DENVER COUNTY, COLORADO Denver City and County Building 1437 Bannock Street, Denver, CO 80202 **PLAINTIFFS:** RICHARD LILGEROSE and HAROLD MORTIS, on their own behalf and on behalf of those similarly situated **v.** **DEFENDANTS:** JARED POLIS, in his official capacity as the Governor of Colorado; DEAN WILLIAMS, in his official capacity as the Executive Director of the Colorado Department of Corrections; and COLORADO DEPARTMENT OF CORRECTIONS, an agency of the State of Colorado	Δ COURT USE ONLY Δ
Attorneys for Plaintiffs: David H. Seligman, #49394 Brianne Power, #53730 Valerie Collins, Practice Pending Admission #21PPA0659 Juno Turner[1] Towards Justice PO Box 371680 PMB 44465 Denver, Colorado 80237-5680 Phone: 720-441-2236 david@towardsjustice.org brianne@towardsjustice.org valerie@towardsjustice.org juno@towardsjustice.org	Case Number: Ctrm/Div:

[1]Application for admission pro hac vice forthcoming.

David G. Maxted, #52300
Rachel Z. Geiman, #51360
Maxted Law LLC
1543 Champa Street Suite 400
Denver, CO 80202
Phone: 720-717-0877
dave@maxtedlaw.com
rachel@maxtedlaw.com

CLASS ACTION COMPLAINT

INTRODUCTION

1. In 1865, the United States enacted the Thirteenth Amendment to the U.S. Constitution, which formally eradicated the institution of slavery under which millions of Black Americans had been subject to legalized cruelty and degradation in service of the profits and power of white people in the American South.

2. Since its inception, the Thirteenth Amendment has been marked by a glaring and insidious exception. The United States Constitution states that "neither slavery nor involuntary servitude . . . shall exist within the United States," "*except* as a punishment for a crime whereof the party shall have been duly convicted" (emphasis added). Colorado's Constitution codified the exception at the state level. Until 2018, our Constitution provided "[t]here shall never be in this state slavery or involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted."

3. The so-called "Penal Exemption" has allowed states and the federal government to coerce the labor of those convicted of crimes in the United States. This practice has amounted to the use of slavery and involuntary servitude to dehumanize, degrade, and control people convicted of crimes, disproportionally people of color, by coercing their labor.

4. In 2018, Colorado's voters remedied this centuries-old injustice by finally and fully eradicating slavery and involuntary servitude in this State. Through the resounding adoption of Amendment A, the State struck the Penal Exemption from the state Constitution. Now, Article II, Section 26 of the Colorado Constitution says, "there shall never be in this state slavery or involuntary servitude." Full stop. Without exception.

5. The principle established by Amendment A is straightforward. There had been a grave injustice codified in the State's most important legal document allowing the enslavement and involuntary servitude of people serving a sentence; the voters of Colorado fixed it by abolishing slavery and involuntary servitude completely for any purpose.

6. The voters who passed Amendment A did not prohibit incarcerated people from choosing to work, nor did voters bar the State from providing work opportunities and incentives. However, by abolishing the Penal Exemption, voters did prohibit the State from continuing to require and compel people in prison to work against their will. As a House Concurrent Resolution that sent Amendment A to the voters clarified, the purpose of the proposed constitutional amendment was not to disallow opportunities for people convicted of crimes to work but instead to merely prohibit *compulsory* labor.

7. Put simply, the House Concurrent Resolution proposed that "[t]he state should not have the power to compel individuals to labor against their will."

8. Acting through the Governor of Colorado, the Executive Director of the Colorado Department of Corrections (CDOC) and the Colorado Department of Corrections (together with the Governor, collectively "Defendants" or the "State"), have ignored the will of Colorado's voters. In the years after the passage of Amendment A, the State has continued to require and compel incarcerated individuals to work under conditions amounting to involuntary servitude and under threats of punishments that include being cut off from contact with family and being socially isolated under conditions that approximate solitary confinement.

9. They compel this labor not only to exert power over the people they incarcerate. Defendants coerce subminimum wage labor from a captive workforce to cut their costs. They coerce labor that is essential to maintain Defendants' prison facilities, like the work necessary to run and maintain prison kitchens.

10. In responding to grievances filed by incarcerated people complaining of Amendment A violations, including Plaintiffs Harold Mortis and Richard Lilgerose, the State has justified this policy by pointing to State statutes and regulations that require individuals incarcerated by CDOC to work. *See, e.g.*, §§ 17-20-115, 17-20-117, C.R.S.; CDOC AR 850-03.

11. Because these statutes and regulations predate Amendment A but require incarcerated people to work, they were abrogated by Amendment A and violate Article II, Section 26 of the Colorado Constitution.

12. With this action, Plaintiffs, on behalf of a class of those similarly situated, seek a permanent injunction ordering Defendants to cease requiring compulsory labor by Plaintiffs and others incarcerated in CDOC and a court order declaring unconstitutional the statutes and regulations that mandate incarcerated people must work against their will.

JURISDICTION AND VENUE

13. Venue in this Court is proper pursuant to Colo. R. Civ. P. 98 because at least one Defendant may be found in this County.

14. This Court has jurisdiction over the parties and subject matter of this action pursuant to Colo. Rev. Stat. §13-1-124 and the Colorado Constitution.

15. All available administrative remedies have been exhausted to the extent required by C.R.S. § 13-17.5-102.3. There are no other administrative exhaustion requirements that would pose a bar to any of the claims in this case.

PARTIES

16. Plaintiff Harold Mortis is incarcerated by the Colorado Department of Corrections ("CDOC") and is serving a 40-year sentence at the Fremont Correctional Facility in Cañon City, CO. If CDOC were to give Mr. Mortis credit for the "good time" and "earned time" the agency has already awarded to him, he would be eligible for parole around 2045.

17. Plaintiff Richard Lilgerose is incarcerated by CDOC and is serving an 80-year sentence at the Fremont Correctional Facility in Cañon City, CO. If CDOC were to give Mr. Lilgerose credit for the good time and earned time he has already earned, he would be eligible for parole around 2038.

18. Defendant Jared Polis is the Governor of the State of Colorado. Governor Polis is responsible for appointing the Executive Director of the Colorado Department of Corrections according to § 17-1-101, C.R.S., and is responsible for the overall administration of the laws of the State. Governor Polis had and continues to have the authority to direct CDOC Executive Director Williams in his management, supervision, and control of CDOC facilities, and to manage the prison population consistent with the requirements of the Colorado Constitution. Plaintiffs assert this action seeking declaratory and injunctive relief against Governor Polis in his official capacity.

19. Defendant Dean Williams is the Executive Director of the Colorado Department of Corrections. Mr. Williams is responsible for the overall management, supervision, and control of all Colorado Department of Corrections facilities. *See* §§ 17-1-101, 103, C.R.S. Mr. Williams acted and continues to act in accordance with his authority as Executive Director of the CDOC, and in accordance with the custom, policy, and practice of CDOC and the State of Colorado. Plaintiffs assert this action against Williams in his official capacity.

20. Defendant Colorado Department of Corrections is the State of Colorado agency principally responsible for operating the State's prisons. The CDOC operates or oversees more than 20 prisons, some operated by the State and some operated by private contractors. The CDOC is responsible for staffing state prisons.

STATEMENT OF FACTS

I. The State Compels the Labor of Incarcerated People Through Statutory and Regulatory Mandates

21. Despite Amendment A, numerous provisions of state law continue to require incarcerated people to work in violation of Article II, Section 26.

22. For example, § 17-20-115, C.R.S., continues to provide that "[a]ll persons convicted of any crime and confined in any state correctional facilities under the laws of this state, except such as are precluded by the terms of the judgment of conviction, shall perform labor under such rules and regulations as may be prescribed by the department."

23. In addition, § 17-20-117, C.R.S. establishes that "[e]very able-bodied inmate shall be put to and kept at the work most suitable to such inmate's capacity and most advantageous to the people of this state. Inmates who work in the department shall not be entitled to any right, benefit, or privilege applicable to employees of the state of Colorado."

24. In line with these statutes, a CDOC regulation mandates that "[a]ll eligible offenders are required to work unless assigned to an approved education or training program. . . . Offenders are informed of the potential consequences of refusing to work or attend assigned programs, including but not limited to: restricted privileges, loss of other privileges, delayed parole hearing date, and not being eligible for earned time." AR 850-03.

25. In practice, people in CDOC custody do not have a choice whether to work or participate in education or training programs under AR 850-03. Space in programs is limited and restricted, and priority is given to those with shorter prison terms. For Plaintiffs and many in CDOC not assigned to programs, work is compulsory and is compelled against their will pursuant to AR 850-03 and these statutes.

26. These provisions all mandate compulsory labor in violation of Article II, Section 26. Incarcerated people in CDOC custody lack the freedom to choose whether to work and work against their will, in paradigmatic involuntary servitude.

II. CDOC Compels the Labor of Incarcerated People by Implementing These Mandates with the Threat and Use of Coercion

27. These statutes and regulations are unconstitutional on their face. Additionally, Defendants compel and coerce incarcerated people to work against their will in numerous ways in violation of the Colorado Constitution, Article II, Section 26.

28. Choosing not to work is a Class II Offense pursuant to the CDOC's Code of Penal Discipline (COPD).

29. According to the COPD, a Class II Offense is subject to a wide range of "authorized sanctions" including the loss of up to 30 days of "good time," monetary restitution, loss of "privileges," and housing restriction sanctions. COPD sanctions constitute a legal process involving a hearing and adjudication against the individual. A COPD sanction results in punishment.

30. Subjecting Plaintiffs and others incarcerated to punishments including additional prison time through withholding or deduction of "earned time," more restrictive and harsh conditions of confinement, including isolation and cutting off contact with family, in addition to other

penalties, constitutes legal and physical coercion under any definition, constituting slavery or involuntary servitude in violation of Article II, Section 26.

A. Requiring Work In CDOC Is Involuntary Servitude Due to the Inherently Coercive Conditions In Prison

31. Conditions of confinement in prison are inherently coercive. People in prison are subject to rules and limitations imposed by the state and enforced through legal processes and punishments. A state-imposed requirement that incarcerated people labor is inherently coercive.

32. Incarcerated people have, by definition, lost their freedom by being incarcerated against their will and subjected to the strict rules of prison. In prison, incarcerated people depend entirely on prison staff to survive, since their every need and ability to survive depends on the facility. Incarcerated people are subject to non-voluntary requirements for nearly every aspect of their lives, including their dress, conduct, food, communication, living conditions, contact with loved ones, and all other aspects of daily existence in the facility.

33. Prison staff have a total monopoly on power within the facility. Prison staff control the rules and decide the consequences of a violation. Prison staff control the physical safety of those incarcerated in the facility, whose lives depend on the will of the staff. This monopoly on power, and the many rules governing a prison, ensure that incarcerated people follow staff orders.

34. This process, in which individuals submit to the rules of prison and the will of prison staff in order to survive, is called "institutionalization" or "prisonization."

35. In the highly structured, rule-bound environment of the prison, with stringent consequences for infractions, the CDOC work requirement coerces people to work whether they would voluntarily do so or not.

36. Requiring Plaintiffs and others to work in the prison context therefore constitutes involuntary servitude and replicates the condition of slavery, in violation of Colorado's constitution.

B. Defendants Use the Threat of Increased Confinement to Compel and Coerce Work Without Regard to Individual Choice

37. Defendants compel work by threatening and subjecting individuals who decline to work to more time in prison.

38. As threat and punishment for declining compelled work, Defendants extend an individual's periods of incarceration by withholding or taking away "earned time."

39. Earned time "is a monthly award of either 10 or 12 days per month (as determined by statute based upon the conviction) which is deducted from the sentence and brings the parole eligibility and mandatory release date closer as it is earned by meeting certain statutory

requirements."[2] One such requirement is that the individual "has made substantial and positive progress in accordance with performance standards in defined areas including[] work and training." *See* CDOC Reg. 550-12(III)(c).

40. Earned time calculations are used to determine when an individual may be eligible for parole. § 17-22.5-302, -303(6), C.R.S.

41. In practice, if an individual declines to work, Defendants may either choose not to grant earned time *or* take away earned time that the individual has already accrued.

42. Through the use of COPD violations, Defendants also compel individuals to work or face a longer term of imprisonment. Failure to Work is a Class II COPD violation, one punishment for which is the loss of up to 30 days of "good time."

43. According to CDOC, good time "is the portion of the maximum sentence (either 50% or 25% as determined by the statutory requirements of the conviction) that is credited to establish a parole eligibility date.[3]

44. Good time is automatic. *See* § 17-22.5-301, C.R.S.

45. If an individual declines to work, CDOC can punish them and attempt to compel their labor by subjecting the individual to COPD charges, which can result in CDOC deducting good time.

46. The threat of lost or withheld good time and earned time coerces people incarcerated in CDOC to work, for fear of spending more time in prison than they otherwise would.

47. In practice, the withholding or deducting good time and earned time results in an individual being confined in prison for a longer period of time. Defendants utilize these practices specifically to compel the labor of Plaintiffs and others incarcerated in CDOC. Plaintiffs and many proposed class members have been coerced to perform work against their will through these practices, resulting in a condition of involuntary servitude.

C. Defendants Compel Work by Threatening and Using Physical Restraint, Confinement, and Physical Coercion

48. Defendants also compel work by threatening and punishing those who decline to work by subjecting them to greater isolation, physical restraint, and coercion.

---

[2] *See* CDOC, Time Comp Basics (last visited Feb. 15, 2022), https://cdoc.colorado.gov/resources/time-comp-basics.
[3] *See supra* note 2.

49. To coerce involuntary work, Defendants threaten to and do in fact remove those who decline work from "incentive units" or subject them to what CDOC euphemistically terms "Restricted Privilege" (RP) status.

50. Although called "Restricted Privilege" status, this term is a misnomer. Placing someone on RP involves myriad legal and punitive consequences beyond restriction of mere "privileges." In practice, when someone enters CDOC they receive a baseline of access to food, social interaction with other incarcerated people, contact with family and loved ones in the community, and other necessities to survive and maintain health and sanity in prison. By placing someone on RP status, Defendants strip them of these fundamental human needs in order to coerce involuntary labor.

51. CDOC intentionally uses RP status as a cudgel to coerce people in CDOC to work against their will.

52. RP status is experienced by people in CDOC as similar to "the hole," or solitary confinement, due to the severity of conditions and the increased amount of time people on RP status spend isolated and in a cell.

53. CDOC staff move individuals on RP to a particular housing unit and subject them to greater physical restraint on their freedom within the facility compared to those not on RP status.

54. People on RP status may be forced to spend up to 21 hours per day in their cell, in a condition essentially as harmful and coercive as solitary confinement.

55. Individuals on RP status are permitted less time in the dayroom or recreation area of their housing unit, confining them in their cells for greater amounts of time compared to those not on RP status.

56. Individuals on RP status are permitted fewer phone calls to family and loved ones, or in some cases are prohibited from making any social calls at all.

57. Individuals on RP status are prohibited from having other people visit their cells and prohibited from visiting with individuals in adjacent cells.

58. Individuals on RP status receive less time for meals compared to those not on RP status.

59. Individuals on RP status are not permitted to keep their own property.

60. Individuals on RP status are permitted fewer contact visits with family and other visitors compared to those not on RP status.

61. Individuals who were in incentive units when they are placed on RP status are removed from the incentive unit.

62. RP status results in a person being subjected to far more harsh, restrictive conditions and increased isolation and stigma.

63. Individuals on RP status are also forced to wear orange pants denoting their status, which stigmatizes them among prison staff and other incarcerated individuals.

64. Individuals who are not on RP status are not allowed to associate or communicate with individuals on RP status.

65. In addition to the systematic threat of being placed on RP status for refusing to work, prison guards sometimes threaten those who refuse to work with being placed in complete solitary confinement or Restricted Housing (RH), known as "the hole."

66. CDOC staff, following unconstitutional statutes, regulation, and practices as alleged herein, require and compel Plaintiffs and others incarcerated within CDOC to work, using RP status as a tool to coerce labor.

67. CDOC coerces work by threatening RP status including the above-described harsh consequences against people in Defendants' custody who refuse to perform assigned work.

68. People placed on RP status may only escape these coercive conditions by working, a prototypical example of an unconstitutional condition of slavery or involuntary servitude.

69. Defendants' practice of mandating work in CDOC is not therapeutic or rehabilitative. To the contrary, coerced labor is harmful to the individual and fundamentally anti-therapeutic and undermines any rehabilitative goals of CDOC. Coerced labor undermines the autonomy and dignity of the people subjected to it and causes harm in myriad ways.

70. Coerced labor in CDOC is also not therapeutic or rehabilitative because it is used to perform tasks for the benefit of Defendants, including maintaining the operations of CDOC facilities and providing Defendants with cost savings. This work extends beyond simple daily housekeeping or maintaining clean and organized personal spaces.

71. Coerced labor in CDOC is also harmful and anti-therapeutic because the threat of punishments including RP status causes substantial harm.

72. Coerced labor is inhumane and treats Plaintiffs and others as objects of cheap labor to be exploited by the facility—literally a captive population of laborers who have no choice but to work to sustain the facility which imprisons them.

73. Coerced labor is also anti-rehabilitative because it strives to engender what can only be described as a slave-master relationship between incarcerated people and prison staff, rather than a relationship based in mutual respect. The practice allows prison staff to take away good and earned time, put people in housing conditions approximating or equivalent to "the hole" threaten legal and other sanctions, and otherwise deploy their authority to force incarcerated people to

work. Incarcerated people have no meaningful choice but to work or suffer severely coercive consequences.

74. There is nothing redeeming about compulsory labor in CDOC. It is slavery or involuntary servitude and it is unconstitutional.

III. Plaintiff Harold Mortis's Compelled Labor

75. Plaintiff Harold Mortis is a 32-year-old man who has been subjected to slavery or involuntary servitude while in CDOC, in violation of Article II, Section 26.

76. Mr. Mortis suffers from asthma. Due to his asthma diagnosis, Mr. Mortis is medically vulnerable to serious illness and death from COVID-19.

77. In October 2020, while incarcerated at Fremont Correctional Facility, Mr. Mortis contracted COVID-19 during an outbreak at the facility. Several other incarcerated people in Mr. Mortis's unit also contracted COVID-19.

78. Around November 2020, CDOC informed Mr. Mortis and other incarcerated people in his unit that due to staff shortages, individuals living in incentive units would be forced to fill essential worker positions within the facility.

79. Specifically, Mr. Mortis and other incarcerated people in his unit were informed that they were required to work 8-hour shifts in the prison's kitchen, preparing food for other people incarcerated in the facility.

80. When CDOC ordered Mr. Mortis to work in the kitchen, Mr. Mortis was deeply concerned that working in the kitchen would expose him to health risks. He was still struggling from many symptoms of COVID-19, and the facility was still confronting a deadly outbreak.

81. CDOC informed Mr. Mortis and his unit that declining the work order would result in "removal from the incentive living program" and could be a violation of prison rules potentially resulting in punishment, including the imposition of RP status.

82. CDOC agents also informed Mr. Mortis that if he declined to work in the kitchen, CDOC would take away or withhold some of his earned time, pushing back his eligibility for parole.

83. Left with no other options to protect himself against further infection and illness due to the deadly outbreak of COVID-19, Mr. Mortis stopped working.

84. Shortly after Mr. Mortis declined to work in the kitchen, around December 1, 2020, Mr. Mortis was called to speak with the Warden, the Captain of his unit, and the Head of Security. Mr. Mortis explained he did not feel safe working in the kitchen, especially after having COVID-19 and still experiencing side effects. The prison officials told him that he had been deemed "recovered" and could not catch COVID-19 again. This is incorrect. The prison officials also

threatened that if Mr. Mortis continued to decline to work, he could lose his previous, usual job position in the furniture shop and get kicked out of his incentive unit.

85. On December 1, 2020, Mr. Mortis also received a "request for interview" from his case manager instructing him to "stay away from negative chrons" (a note entered into an inmate's "chron log" showing a disciplinary violation or other negative note about the inmate's behavior) because with two or more in one month he would "lose 2 days of earn[ed] time."

86. On December 3, 2020, Mr. Mortis responded stating his concerns and basis for his choice. Mr. Mortis never received a response.

87. However, true to his case manager's threat, Mr. Mortis did lose two days of earned time, causing him to spend more time in prison than he otherwise would have, for declining to work.

88. On or around December 9, Mr. Mortis submitted his first grievance to prison officials. He explained that he was punished because he did not feel safe enough to work in the kitchen due to his asthma. He also asked them to start confirming that he and other individuals working in the kitchen tested negative for COVID-19.

89. A prison official responded shortly after, explaining that "[h]ousing assignment is not a grievable issue" and stating that "[s]taff and offenders are being tested and monitored."

90. Mr. Mortis submitted a second and third grievance outlining his concerns further. He asserted that it violated the Colorado Constitution to continue forcing him to work in the kitchen. The prison's grievance coordinator responded in June 2021, telling Mr. Mortis that his request for relief was denied and that he had exhausted his administrative remedies.

91. Feeling compelled to work against his will or else suffer severe consequences, including legal process including disciplinary violations, loss of more earned or good time, RP status including greater confinement, and other punitive sanction as alleged herein, Mr. Mortis involuntarily returned to work in the prison.

IV. Plaintiff Richard Lilgerose's Compelled Labor

92. Richard Lilgerose is a 45-year-old man who has been subjected to slavery or involuntary servitude while in CDOC, in violation of Article II, Section 26.

93. Mr. Lilgerose suffers from mental health conditions including post-traumatic stress disorder.

94. Due to these conditions, when ordered to work at CDOC in crowded or confined locations, Mr. Lilgerose suffers severe stress and anguish. This suffering takes a mental and physical toll on his well-being.

95. Mr. Lilgerose's ability to work was further compromised when he contracted COVID-19 during the facility outbreak in October 2020. Mr. Lilgerose continues to experience side effects of COVID-19 including shortness of breath, dizziness, and headaches.

96. CDOC staff assigned Mr. Lilgerose to work in food service.

97. As a result of this assignment, Mr. Lilgerose was required to work long hours in the facility kitchen for only 80 cents per day.

98. Mr. Lilgerose explained his physical and mental health issues to his housing sergeant, food service supervisors, and other prison officials. He also explained that his mental health conditions prevented him from completing the labor required by the prison. Mr. Lilgerose did not receive a response, and his mental health remained unaddressed.

99. Left with no other option to address his physical and mental health, Mr. Lilgerose stopped working around December 2020.

100. As punishment for declining to work and to coerce him to involuntarily return to work, prison officials caused Mr. Lilgerose to lose four days of earned time, which extended his period of incarceration longer than it otherwise would be.

101. As an additional coercive punishment for choosing not to work, Mr. Lilgerose was removed from his spot in the incentive unit, causing disruption to his living situation and subjecting him to instability. CDOC staff imposed this consequence to coerce Mr. Lilgerose to return to work involuntarily.

102. In December, Mr. Lilgerose's case manager informed him that under normal facility policies, he would be placed on RP status as a consequence for declining to work. However, because of the facility's COVID-19 protocols, RP procedures had been temporarily suspended at that time. Staff therefore emphasized to Mr. Lilgerose that typically, and for the indefinite future, he may be subjected to RP status for declining to work.

103. On January 27, 2021, Mr. Lilgerose submitted his first grievance to prison officials. He explained that he was punished because he declined work in food service due to his mental health, which he asserted violated the Colorado Constitution.

104. The prison's grievance coordinator responded in late February 2021, telling Mr. Lilgerose that "[c]lassification and incentive are not grievable issues." The coordinator further explained the prison's position that "HB 18-1002 eliminates antiquated language and does not impact the requirement for inmates to be employed or involved in programming while incarcerated" and that such work remains required by § 17-20-117, C.R.S.

105. Because he felt compelled to work by the threat of write-ups and punishment, COPD violations, loss of more good and earned time, the possibility of RP status, and other highly

coercive, punitive sanction as alleged herein, Mr. Lilgerose returned to work in the prison involuntarily.

106. In February 2022, Mr. Lilgerose observed a Corrections Officer enter his unit and awaken a fellow incarcerated person for his shift in the kitchen. The person objected, stating that he felt sick and could not work. In response, the CO screamed at the prisoner, threatened him with a taser and told him to "either get to the kitchen or cuff up and go to the hole."

RULE 23 CLASS ALLEGATIONS

107. Plaintiffs assert their claims as a Colo. R. Civ P. 23(b)(2) class action on behalf of themselves and on behalf of the class they seek to represent.

108. Pending any modifications necessitated by discovery, Plaintiffs preliminarily define the Involuntary Servitude Class, a 23(b)(2) class, as follows:

ALL PEOPLE INCARCERATED BY THE STATE OF COLORADO

109. There are questions of law or fact common to the class that predominate over any individual issues that might exist. Common questions of law and fact include whether state law and regulations mandating labor by people incarcerated by CDOC constitute involuntary servitude and whether requiring incarcerated people to work under threat of discipline and other legal and punitive sanction constitutes involuntary servitude.

110. The class claims asserted by Plaintiffs are typical of the claims of all potential class members. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because numerous identical lawsuits alleging similar or identical causes of action would not serve the interests of judicial economy.

111. Plaintiffs will fairly and adequately protect and represent the interests of the class. They were compelled to work for CDOC pursuant to unconstitutional state law and the directives of prison officials.

112. Plaintiffs have no interests that are adverse to the class or other class members.

113. Plaintiffs are represented by counsel experienced in litigating class action claims.

114. It is unlikely that any members of the putative class will be able to prosecute their claims individually in a separate action.

115. It is desirable to concentrate this litigation in this state because all Defendants are domiciled in this state.

116. This class action will not be difficult to manage due to the uniformity of claims among putative class members and the susceptibility of these claims to both class litigation and the use of representative testimony and representative documentary evidence.

117. Certification of the class under Rule 23(b)(2) of the Colorado Rules of Civil Procedure is appropriate because Defendants acted on grounds generally applicable to the classes thereby making appropriate declaratory relief with respect to the classes as whole.

118. Plaintiffs request certification of the class under Rule 23(b)(2) for equitable relief.

COUNT I: VIOLATION OF COLO. CONST.

§ 17-20-115, C.R.S., Is Facially Unconstitutional Under Article II, Section 26 of the Colorado Constitution

Against All Defendants

119. Plaintiffs incorporate by reference all statements and allegations set forth in the preceding paragraphs.

120. Plaintiffs bring this claim on behalf of themselves and the Involuntary Servitude Class.

121. After the enactment of Amendment A, Article II, Section 26 of the Colorado Constitution prohibits slavery and involuntary servitude in all circumstances, including inside the State's prisons and jails.

122. In direct violation of this provision of the Constitution and the will of the voters, § 17-20-115, C.R.S., mandates that "[a]ll persons convicted of any crime and confined in any state correctional facilities under the laws of this state, except such as are precluded by the judgment of conviction, *shall perform labor* under such rules and regulations as may be prescribed by the department" (emphasis added).

123. The plain language of § 17-20-115, C.R.S., requires all individuals incarcerated by CDOC to work without exception. It does not allow any individual to choose whether to work.

124. As a result, § 17-20-115, C.R.S., subjects all individuals incarcerated by CDOC to involuntary servitude in direct contravention to Article II, Section 26 of the Colorado Constitution as amended by Amendment A.

COUNT II: VIOLATION OF COLO. CONST.

§ 17-20-117, C.R.S., Is Facially Unconstitutional Under Article II, Section 26 of the Colorado Constitution

Against All Defendants

125. Plaintiffs incorporate by reference all statements and allegations set forth in the preceding paragraphs.

126. Plaintiffs bring this claim on behalf of themselves and the Involuntary Servitude Class.

127. After the enactment of Amendment A, Article II, Section 26 of the Colorado Constitution prohibits slavery and involuntary servitude in all circumstances, including inside the State's prisons and jails.

128. In direct violation of this provision of the Constitution and the will of the voters, § 17-20-117, C.R.S., mandates that "[e]very able-bodied inmate *shall be put to and kept at the work* most suitable to such inmate's capacity and most advantageous to the people of this state" (emphasis added).

129. The plain language of § 17-20-117, C.R.S., requires all able-bodied individuals incarcerated by CDOC to work without exception. It does not allow any individual to choose whether to work.

130. As a result, § 17-20-117, C.R.S., subjects all able-bodied individuals incarcerated by CDOC to involuntary servitude in direct contravention to Article II, Section 26 of the Colorado Constitution as amended by Amendment A.

COUNT III: VIOLATION OF COLO. CONST.

AR 850-03 Is Facially Unconstitutional Under Article II, Section 26 of the Colorado Constitution

Against All Defendants

131. Plaintiffs incorporate by reference all statements and allegations set forth in the preceding paragraphs.

132. Plaintiffs bring this claim on behalf of themselves and the Involuntary Servitude Class.

133. After the enactment of Amendment A, Article II, Section 26 of the Colorado Constitution prohibits slavery and involuntary servitude in all circumstances, including inside the State's prisons and jails.

134. In direct violation of this provision of the Constitution and the will of the voters, AR 850-03 mandates that "[a]ll eligible offenders are required to work unless assigned to an approved education or training program. . . . Offenders are informed of the potential consequences of refusing to work or attend assigned programs, including but not limited to: restricted privileges, loss of other privileges, delayed parole hearing date, and not being eligible for earned time."

135. The plain language of AR 850-03 requires all individuals incarcerated by CDOC that are not assigned to an approved education or training program to work without exception. It does not allow any individual to choose whether to work.

136. AR 850-03 also explicitly incorporates the threat and use of punishment to further coerce the labor of individuals incarcerated by CDOC.

137. As a result, AR 850-03, subjects all individuals incarcerated by CDOC that are not assigned to an approved education or training program to involuntary servitude in direct contravention to Article II, Section 26 of the Colorado Constitution as amended by Amendment A.

COUNT IV: VIOLATION OF COLO. CONST.

§ 17-20-115, C.R.S., § 17-20-117, C.R.S., and AR 850-03 Are Unconstitutional Under Article II, Section 26 of the Colorado Constitution As Applied

Against All Defendants

138. Plaintiffs incorporate by reference all statements and allegations set forth in the preceding paragraphs.

139. Plaintiffs bring this claim on behalf of themselves and the Involuntary Servitude Class.

140. After the enactment of Amendment A, Article II, Section 26 of the Colorado Constitution prohibits slavery and involuntary servitude in all circumstances, including inside the State's prisons and jails.

141. In direct violation of this provision of the Constitution and the will of the voters, Defendants implement § 17-20-115, C.R.S., § 17-20-117, C.R.S., and AR 850-03 by forcing people incarcerated by CDOC to work for the State, whether they want to or not, by use or threat of extended incarceration, increased physical restraint and confinement, law or legal process, and physical and psychological coercion. As alleged herein, these practices constitute compulsory labor and involuntary servitude in violation of the Constitution.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

A. Order injunctive relief:

1. Restraining Defendants and their employees, agents, and successors in office from requiring Plaintiffs and the Class to work,

2. Restraining Defendants and their employees, agents, and successors in office from enforcing § 17-20-115, C.R.S., § 17-20-117, C.R.S., and AR 850-03,

3. Ordering Defendants immediately cease the practice of involuntary servitude within all Colorado prisons;

B. Certify the Involuntary Servitude Class, name the Plaintiffs class representatives, and name Plaintiffs' counsel class counsel;

C. Grant judgment in favor of Plaintiffs and against Defendants;

D. Award Plaintiffs and members of the Class all other appropriate equitable and injunctive relief;

E. Award Plaintiffs and members of the Class all appropriate declaratory relief, including:

1. Declaring § 17-20-115, C.R.S. facially unconstitutional;

2. Declaring § 17-20-117, C.R.S. facially unconstitutional; and

3. Declaring AR 850-03 facially unconstitutional;

4. Declaring §§ 17-20-115, 17-20-117, C.R.S., and AR 850-03 unconstitutional as applied to Plaintiffs;

F. Granting all other legal or equitable relief as this Court deems just and proper.

Dated: February 15, 2022.

Respectfully submitted,
s/ *David H. Seligman*

David H. Seligman, #49394
Brianne Power, #53730
Valerie Collins, PPA #21PPA0659
Juno Turner[4]
Towards Justice
PO Box 371680
PMB 44465
Denver, Colorado
80237-5680
Phone: 720-441-2236

brianne@towardsjustice.org
valerie@towardsjustice.org
juno@towardsjustice.org

[4]Application for admission pro hac vice forthcoming

s/ *David G. Maxted*

David G. Maxted, #52300
Rachel Z. Geiman, #51360
Maxted Law LLC
1543 Champa Street Suite 400
Denver, CO 80202
Tel: 720-717-0877
dave@maxtedlaw.com
rachel@maxtedlaw.com

Attorneys for Plaintiffs