IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

Linquista White, Emily Bellamy, and Janice Carter Plaintiffs, v. Kevin Shwedo, in his official capacity as the Executive Director of the South Carolina Department of Motor Vehicles; and Ralph K. Anderson, III, in his official capacity as the Chief Judge of the South Carolina Administrative Law Court and Director of the South Carolina Office of Motor Vehicle Hearings, Defendants.	Civil Action No. 2:19-CV-03083-RMG **DEFENDANTS' MEMORANDUM IN OPPOSITION TO CLASS CERTIFICATION**

Defendants Kevin Shwedo, in his official capacity as the Executive Director of the South Carolina Department of Motor Vehicles (DMV) and Ralph K. Anderson, III, in his official capacity as the Chief Judge of the South Carolina Administrative Law Court and Director of the South Carolina Office of Motor Vehicle Hearings, submit the following memorandum in opposition to Plaintiffs' Motion for Class Certification, ECF No. 8. For the reasons set forth herein, class certification should be denied. The named Plaintiffs themselves lack standing to represent a class, and there has been no showing that anyone else has had their driver's license suspended "simply because they cannot afford to pay traffic tickets. . . ," or whose suspension were "directly the result of their inability to pay." Complaint, ¶ 2

STATEMENT

This action was filed on October 30, 2019, by Plaintiffs Linquista White, Emily Bellamy, and Janice Carter. Defendant Shwedo's Answer to the Complaint was filed on December 19, 2019.

On November 1, 2019, Plaintiffs filed a Motion for Class Certification. ECF No. 8. Plaintiffs seek certification of two classes:

1. A "Suspension Class" consisting of "[a]ll individuals whose driver's licenses are suspended, or will be suspended, by the South Carolina Department of Motor Vehicles due to their failure to pay fines, fees, surcharges, assessments, or court costs assessed for a traffic offense." ECF No. 8 at 1.

2. A "Reinstatement Fee Class" consisting of "[a]ll individuals whose driver's licenses are suspended, or will be suspended, by the South Carolina Department of Motor Vehicles due to their failure to pay reinstatement fees." *Id.*

As can readily be seen, these proposed classes would include the entire population of suspended persons, not just any persons (so far not located) whose license was suspended "simply because they cannot afford to pay traffic tickets. . . ," or whose suspensions were "directly the result of their inability to pay." Complaint, ¶ 2

ARGUMENT

1. Class certification should be denied, because the named Plaintiffs lack standing.

The Complaint asserts that "the driver's licenses of Ms. Bellamy and Ms. Carter [were] suspended simply because they cannot afford to pay traffic tickets. . . ," and that [t]he suspensions of the driver's licenses of Ms. Bellamy and Ms. Carter are thus directly the result of their inability to pay." Complaint, ¶ 2.[1] However, as shown at length in Defendant Shwedo's

[1] They also assert that they are unable to pay DMV fees, *id.*, but those fees derive from the summary court convictions and like those convictions, do not involve inability to pay as their root cause.

Memorandum in Opposition to Motion for Preliminary Injunction, none of the three named Plaintiffs was "suspended simply because they cannot afford to pay traffic tickets." Nor were their suspensions for failure to pay traffic tickets "thus directly the result of their inability to pay." Instead, they were suspended because they failed to appear at their summary court trials, and were fined the full amounts without a payment plan because they did not appear and make a showing of indigency. As a result, and as shown in the aforementioned Memorandum of Defendant Shwedo as well as in Defendant Anderson's Memorandum in Support of Motion to Dismiss, the named Plaintiffs lack standing to bring this action at all, because they do not meet the factual predicate for their claims as described in their own Complaint.

It is settled beyond all doubt that "if none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class." *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974), quoted in 1 *Newberg on Class Actions* § 2:3 (5th ed.). It is equally well settled that the fact "[t]hat a suit may be a class action, however, adds nothing to the question of standing, for even named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.'" *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 40, n. 20, quoting *Warth v. Seldin*, 422 U.S. 490, 502 (1976). In other words, even if there is someone in South Carolina who was "suspended simply because they cannot afford to pay traffic tickets" Complaint, ¶ 2, or whose suspension were "thus directly the result of their inability to pay," *id.*, no such person is among the three named Plaintiffs.

As summarized in 1 *Newberg on Class Actions* § 2:6 (5th ed.), class "relief may only be sought to redress actual injuries of the specific type suffered by the named plaintiffs." (Emphasis added.) Thus, as the Supreme Court has held,

> It is axiomatic that the judicial power conferred by Art. III may not be exercised unless the plaintiff shows "that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99. It is not enough that the conduct of which the plaintiff complains will injure someone. The complaining party must also show that he is within the class of persons who will be concretely affected. Nor does a plaintiff who has been subject to injurious conduct of one kind possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject. See *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166–167 (1972).

Blum v. Yaretsky, 457 U.S. 991, 999 (1982)(emphasis in original). The demonstrated absence of standing for these three Plaintiffs is fatal to their ability to have a class of any kind certified in this case.

2. If a class were to be certified, it would more properly consist of persons who, unlike the named Plaintiffs, were "suspended simply because they cannot afford to pay traffic tickets. . . ," and whose suspensions were "directly the result of their inability to pay," and no such persons have been identified."

As shown in Paragraph 11of the Rivers affidavit (Exhibit 1 to DMV's Memorandum in Opposition to Preliminary Injunction), there are approximately 68,498 persons whose licenses are under still under suspension starting in October 30, 2017, for failure to pay traffic tickets.[2] The two classes proposed by Plaintiffs would include "[a]ll individuals whose driver's licenses are suspended, or will be suspended," due solely to their "failure to pay" either traffic tickets and associated fees or reinstatement fees. ECF No. 8 at 1 (emphases added). In other words, the

[2] The reason for using only the last three years' suspensions is that any earlier suspensions would be barred by the three-year statute of limitations for Section 1983. A time bar of this nature was applied *Johnson v. Jessup*, 381 F. Supp. 3d 619, 635-636 (M.D.N.C. 2019).

classes proposed by Plaintiffs would include all of those approximately 68,498 currently-suspended persons, regardless of the reason for their nonpayment of fines or fees. In addition, Plaintiffs apparently request that the suspensions of all such suspended persons simply should be permanently erased. Complaint at 93, Prayer for Relief, ¶ (g)(ii)(requesting an injunction that would "require the DMV to lift all current suspensions on driver's licenses for failure to pay traffic tickets under Section 56-25-20, to strike all reinstatement fees related to FTPTT suspensions, to reinstate licenses that are subject to no other basis for suspension, and to provide notices to license holders of these changes. . . ."

Plaintiffs' definition of the proposed class is vastly overbroad. Given that the gravamen of Plaintiffs' case is to provide a remedy for persons who, unlike the named Plaintiffs, were "suspended simply because they cannot afford to pay traffic tickets. . . ," and whose suspensions were "directly the result of their inability to pay," a class of such persons should only be certified if such persons were first shown to exist, and secondly shown to exist in sufficient numbers. However, Plaintiffs have not shown that even a single such person exists, much less that there is a sufficient number of such persons so as to require class certification.

To repeat several points made in Defendant Shwedo's Memorandum in Opposition to Preliminary Injunction, given the availability of a statutory mandatory payment plan for persons who appear in their summary court cases and show indigency, S.C. Code § 17-25-350, a person claiming that he or she was "suspended simply because they could not afford to pay traffic tickets" would need to show all of the following:

a. The person appeared in the summary court at his or her criminal trial or hearing:

b. At the trial or hearing, the person asked for a time payment plan, was able to show indigency, and, as § 17-25-350 requires under such circumstances, was given a time payment plan by the summary court, and

c. The person then became unable to comply with the payment plan because of indigency and then had his or her driver's license suspended.

Anyone who could make the factual showing above might be able to claim that his or her license was suspended (or not reinstated) simply because they could not afford to pay, but as already pointed out, the named Plaintiffs cannot make that showing, nor have they identified any other person who can make that showing.

Because of Plaintiffs' failure to identify even one person whose license was suspended simply because they could not afford to pay traffic tickets, it follows that they also have not shown that a large number of such persons exists. After a year of preparing this case, Complaint ¶ 58, Plaintiffs' counsel have not located a single person who was "suspended simply because they cannot afford to pay traffic tickets" Complaint, ¶ 2. Such a person, again, would be one who appeared in the summary court, was given a payment plan, was unable to keep up with the payments, and then had their license summarily suspended. The failure to identify even one such person is a strong indication that there are probably far fewer such people than Plaintiffs' counsel, without actual evidence, are trying to suggest. Indeed, if anyone at all exists who fits this description, such a person is certainly not among the named Plaintiffs.

In lieu of finding even one person whose driver's license was suspended (or not reinstated), simply because they could not afford to pay, Plaintiffs instead seek to rely on an illogical inference drawn from a speculative declaration. ECF No. 35-1 at 7, 28, 35, all citing ¶ 55 of the Watson Declaration, ECF No. 35-7. Plaintiffs' Memorandum in Support of

Preliminary Injunction would carry the speculation considerably beyond what the declarant was willing to say in ¶ 55 of his Declaration, the paragraph on which Plaintiffs rely. Plaintiffs assert, ECF No. 35-1 at 7, that "DMV data show that 62% of people with an FTPTT [failure to pay traffic ticket] suspension at any point between March 30, 2018 and March 30, 2019 were unable to pay to get driver's licenses back during that period," (emphasis added) citing Watson Decl., ECF No. 35-7 ¶ 55. However, the declarant Watson himself in that paragraph only asserts that "DMV data thus shows that 62% (or 59,312 people) of the 95,023 people with an FTPTT suspension on their driver's license at any time between March 30, 2018 and March 30, 2019 did not manage to secure license reinstatement during that same year-long period." ECF No. 35-7 ¶ 55 (emphasis added). Plaintiffs' counsel have therefore, and without support, equated "not manag[ing] to secure license reinstatement" with being "unable to pay to get driver's licenses back," a leap without logic. The same illogical inference is repeated by counsel at ECF No. 35-1 at p. 28, and still again at ECF No. 35-1 at p. 31.

This unsupported, illogical inference is Plaintiffs' only basis for trying to claim that all suspended persons should have their suspensions and fees eliminated. This inference is manifestly incapable of supporting such a claim, and no other evidence has been presented in support of the assertion that all suspended persons should have their suspensions and fees eliminated.. There is therefore no reason why the Court should certify a class consisting of any of the 68,498 persons currently under suspension.

CONCLUSION

For the foregoing reasons, Defendants respectfully submit that class certification should be denied.

Respectfully submitted,

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