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I. INTRODUCTION

Plaintiffs Emily Bellamy and Janice Carter are indigent people who are being unlawfully punished by South Carolina with the indefinite suspension of their driver's licenses simply because they cannot pay fines and fees for traffic violations. Linqista White is an indigent person who has been similarly punished in the past and now faces imminent risk of again being punished with a driver's license suspension for traffic tickets that she cannot pay.

The South Carolina Department of Motor Vehicles (the "DMV") automatically and indefinitely suspended Plaintiffs' driver's licenses under South Carolina Code Section 56-25-20 ("Section 56-25-20") when they were reported for failure to pay traffic tickets. Before effecting these deprivations, the DMV did not determine whether Plaintiffs could afford to pay the fines and fees owed but had willfully failed to do so. Nor did the DMV inform Plaintiffs of any process by which they could contest the indefinite suspension of their driver's licenses for failure to pay. Rather, the DMV made clear that the only way Plaintiffs could regain their driver's licenses is to pay in full the traffic fines and fees as well as additional fees the DMV charges to reinstate a driver's license.

Ms. Bellamy and Ms. Carter cannot afford to pay the accumulated fines and fees. Without driver's licenses, they continue to live in financial hardship because they are unable to drive to work or to secure better paying jobs without risking further legal consequences—including additional fines and jail time—for driving on a suspended license. Ms. White suffered several months of similar hardship before she was eventually able to pay to have her driver's license reinstated, but she once again faces the risk of suspension because of recent tickets related to her limited financial circumstances. Suspension of her driver's license for failure to pay traffic tickets will significantly impair Ms. White's ability to provide for her family because

she cannot take her daughter to and from school, get herself to and from work, and run necessary errands without driving.

Ms. White and Ms. Carter submitted written requests to the South Carolina Office of Motor Vehicle Hearings (“OMVH”) for hearings to contest the indefinite suspension of their driver’s licenses on the basis that they are unable to pay the traffic fines and fees that led to the suspensions. Ms. White and Ms. Carter also requested waivers of the OMVH’s \$200 filing fee. Both requests were summarily denied, confirming the OMVH does not provide redress to indigent people seeking to contest a failure-to-pay suspension. The suspensions of the driver’s licenses of Ms. Bellamy and Ms. Carter are thus absolute and long lasting simply because they remain unable to pay. And Ms. White is at substantial risk that she will again be subjected to similar punishment for her inability to pay recent traffic tickets that stem from her lack of financial resources.

Plaintiffs are not alone in their predicament. As of May 2019, more than 190,000 people had South Carolina driver’s licenses that were indefinitely suspended for nonpayment of monetary penalties for traffic offenses, which include fines, fees, surcharges, court costs, and assessments (“traffic fines and fees”). And as a matter of policy and practice, the DMV did not provide any hearings, or otherwise inquire into ability to pay, or determine that nonpayment was willful before suspending these driver’s licenses. Like Plaintiffs, tens of thousands of South Carolinians are thus subjected to indefinite, wealth-based driver’s license suspensions that prevent them from legally driving to find and keep their jobs, take their children to and from school, seek and receive medical care, purchase groceries and basic necessities, travel to places of worship, and be with their families. The economic and personal consequences are severe in South Carolina, where the vast majority of counties are rural and lack accessible public transportation and where nine out of ten people rely on driving to pursue their livelihoods.

Plaintiffs bring this lawsuit under 42 U.S.C. § 1983 to vindicate their Fourteenth Amendment rights to due process and equal protection and to obtain declaratory and injunctive relief on behalf of themselves and classes of similarly situated people. Plaintiffs seek to have the Court (1) declare that the DMV's indefinite suspension of driver's licenses for failure to pay traffic tickets under Section 56-25-20 is unconstitutional; (2) order the DMV to lift driver's license suspensions made on this ground, to strike related reinstatement fees, and to reinstate licenses that have no other basis for suspension; (3) enjoin the DMV from suspending driver's licenses in the future without adequate pre-deprivation notice, an ability-to-pay hearing, and a determination that failure to pay was willful; (4) declare that South Carolina Code Section 56-1-390(1) ("Section 56-1-390") is unconstitutional because it requires the indefinite suspension of driver's licenses for nonpayment of reinstatement fees without requiring an ability-to-pay hearing and determination that nonpayment was willful; (5) enjoin the DMV from suspending driver's licenses solely for nonpayment of reinstatement fees and order the DMV to reinstate driver's licenses that have no other basis for suspension; (6) declare that the OMVH's enforcement of South Carolina Code Section 56-5-2952 to deny administrative hearings to contest driver's license suspensions absent payment of a \$200 filing fee for each suspension is unconstitutional; and (7) enjoin the OMVH from denying such a hearing for nonpayment of a filing fee absent a finding that the failure to pay was willful.

Plaintiffs now move for certification of two Classes under Rule 23(a) and (b)(2). Ms. Bellamy, Ms. Carter, and Ms. White seek to represent a Class of individuals whose driver's licenses are currently suspended, or will be suspended, by the DMV due to their failure to pay traffic fines and fees. Plaintiffs also seek to represent a Class of all individuals whose licenses are currently suspended, or will be suspended, by the DMV due to their failure to pay reinstatement fees.

Both Classes satisfy the requirements of Rule 23. The Classes are sufficiently numerous, share common questions of law or fact, are represented by typical and adequate Plaintiffs, and challenge conduct that is generally applicable to all members, making final injunctive relief and corresponding declaratory relief appropriate to the Classes as a whole. Plaintiffs therefore respectfully ask the Court to grant their motion.

II. BACKGROUND

A. **The DMV automatically suspends driver’s licenses when notified of nonpayment of traffic fines or fees without determining that nonpayment was willful.**

When the DMV receives a report from a court or an out-of-state motor vehicle department stating that a defendant has not paid a traffic ticket, the agency automatically and indefinitely suspends the individual’s driver’s license under Section 56-25-20 of the South Carolina Code. ¶¶ 52–53.¹ Section 56-25-20 codifies South Carolina’s participation in the Nonresident Traffic Violator Compact (“NRVC”), an interstate agreement that allows penalties to be imposed on drivers in their home state for certain traffic violations that take place out of state.² But on its face, Section 56-25-20 applies to all South Carolina residents as well as South Carolina driver’s license holders, regardless of where they reside. *See* S.C. Code § 56-25-20.

Section 56-25-20 does not require the DMV to suspend driver’s licenses. Instead, the statute merely permits the agency to indefinitely suspend a driver’s license if the agency is notified within twelve months of the issuance of a traffic citation or littering summons that a South Carolina resident or driver’s license holder has failed to comply with the citation or summons. *See* S.C. Code § 56-25-20 (providing the DMV “may suspend or refuse to renew” a

¹ Unless otherwise noted, references to “¶ _” are to paragraphs in Plaintiffs’ Class Action Complaint for Injunctive and Declaratory Relief, ECF No. 1.

² South Carolina Bench Book for Magistrates and Municipal Court Judges § M.1, <https://bit.ly/2JctwcG> (last visited Oct. 31, 2019), attached as Ex. A to the Declaration of Nusrat J. Choudhury (“Choudhury Decl.”).

driver’s license upon notice of “fail[ure] to comply with the terms of a traffic citation”).

Defendant Kevin Shwedo is the Executive Director of the DMV. He is the final decisionmaker as to the DMV’s policies and practices concerning the suspension of driver’s licenses for failure to pay traffic fines and fees under Section 56-25-20. ¶ 20. As a matter of policy and practice, the DMV enforces Section 56-25-20 only to suspend driver’s licenses for failure to pay traffic tickets (“FTPTT”). ¶¶ 53–54, 309. The DMV maintains a list of 92 violations that will result in indefinite suspensions if the tickets are not paid, and the list includes low-level traffic violations—such as failure to wear a seatbelt, improper parking, vehicle equipment violations (e.g., “improper lights”), and speeding less than ten miles per hour over the speed limit—as well as more serious traffic offenses, such as driving under the influence.³ The list of offenses also includes violations that are entirely unrelated to traffic safety, such as “failure to change address/name,” “log book violation,” and disorderly conduct.⁴

As a matter of policy and practice, the DMV begins the Section 56-25-20 suspension process (called the “NRVC procedures”) when it receives a report of failure to pay a traffic citation from a South Carolina court or a court or motor vehicle department of a state that participates in the NRVC.⁵ The DMV is given only information about the citation, the defendant, the court that adjudicated the traffic case, the amount in fines and fees imposed by the court, and the trial date.⁶ The DMV is not given, and does not seek, any information demonstrating that any reported noncompliance (such as failure to pay) was willful.⁷ And the

³ Municipal Association of South Carolina, Table VS7-1, List of Violations That Are Used to Suspend for FTPTT (Failure to Pay Traffic Tickets), <https://bit.ly/2BsMZZb>, attached as Ex. B to Choudhury Decl.

⁴ *Id.*

⁵ Choudhury Decl. Ex. A, § M.1; *see also* ¶¶ 49, 53.

⁶ State of South Carolina, Notice of Suspension, Form DL-53, #2 Home Jurisdiction Copy, <https://bit.ly/336Ylhk>, attached as Ex. C to Choudhury Decl.; Choudhury Decl. Ex. A § M.3.

⁷ Choudhury Decl. Ex. C; ¶ 58.

DMV does not inquire into the basis of any report it receives that a South Carolina resident or driver's license holder has failed to pay a traffic ticket.⁸

South Carolina summary courts, which include both magistrate and municipal courts, do not have a policy or practice of considering or granting requests for continuances when people are unable to appear in court to respond to a traffic ticket.⁹ Instead, summary courts routinely impose traffic convictions and sentence people to pay fines and fees without those people being physically present in court—a practice known as “trial in absentia” or “TIA.”¹⁰ Many of the people reported to the DMV for failure to pay were convicted and sentenced in absentia.¹¹

In a March 2018 memorandum, South Carolina Court Administration endorsed the use of trials in absentia for NRVC-eligible offenses as well as for violations that are not supposed to be handled through the NRVC procedures.¹² If a defendant is found guilty through a trial in absentia, the memo instructs summary court judges to report the guilty disposition to the DMV at the end of the day.¹³ After imposing fines and fees through a trial in absentia, South Carolina summary courts mail to the DMV a form reporting that an individual has failed to pay a traffic

⁸ ¶ 59.

⁹ The South Carolina Bench Book for Magistrates and Municipal Court Judges (“Bench Book”) does not provide or reference any procedures relating to a request for a continuance of a traffic court hearing in summary court. Choudhury Decl. ¶ 35 (describing lack of information, orders, forms, memoranda, and rules addressing how a defendant in a traffic case may request a continuance of a hearing or providing magistrates and municipal judges guidance on how to rule on such a request and communicate the decision to the requester); *see also* ¶ 60.

¹⁰ ¶ 60.

¹¹ ¶¶ 123, 181–83, 209–10.

¹² Memorandum to Summary Court Judges and Staff from Renee Lipson, Staff Attorney, South Carolina Court Administration, March 14, 2018 (“Lipson Memo”), <https://bit.ly/2mjjsgt>, attached as Ex. D to Choudhury Decl. The Lipson Memo instructs summary court judges to conduct trials in absentia for NRVC-eligible cases “[i]f the citation has not been paid before the court date.” *Id.* at 2. It also instructs judges to conduct trials in absentia for uniform traffic tickets that do not involve arrest or a bond hearing, as well as zoning violations, animal control violations, city/county ordinance summons, and “courtesy summons.” *Id.* at 2–3.

¹³ *Id.* at 2.

ticket or a copy of the traffic ticket that was not paid.¹⁴ While the South Carolina Bench Book for Magistrates and Municipal Judges offers a stock form that can be used to notify an individual of a sentence imposed through a trial in absentia, South Carolina summary courts rarely, if ever, inform defendants that they owe fines and fees imposed in absentia and will be reported to the DMV for noncompliance unless they pay in full. ¶¶ 67–68; Declaration of Janice Carter (“Carter Decl.”), ¶ 19; Declaration of Linqiusta White (“White Decl.”) ¶ 27; Declaration of Emily Bellamy (“Bellamy Decl.”) ¶ 17.

South Carolina Code Section 56-1-350 provides that “[i]n all cases of . . . suspension . . . of drivers’ licenses, the Department of Motor Vehicles shall notify the licensee . . . that [their] license has been . . . suspended . . .” S.C. Code § 56-1-350. In accordance with this statutory directive, the DMV mails a document called an “Official Notice” to any South Carolina resident or South Carolina driver’s license holder who is reported for non-compliance with a traffic citation.¹⁵ The Official Notice provides the effective date of the suspension—usually around three weeks from the date of the notice—and indicates that the only way to prevent suspension is to pay the owed traffic fines and fees in full before the date the suspension goes into effect and bring proof of compliance to the DMV. *See, e.g.*, Official Notice dated June 13, 2017, attached as Ex. F to Carter Decl. The Official Notice also says that the only way to secure reinstatement once the suspension is in effect is to “[p]ay the fine for the ticket to the court” and to pay the DMV a \$100 reinstatement fee for each failure-to-pay suspension. *See id.*; S.C. Code § 56-25-20.¹⁶ The Official Notice offers no alternative to full payment because there is no alternative.

¹⁴ Choudhury Decl. Ex. A § M.3.7; *see* Choudhury Decl. Ex. C.

¹⁵ ¶¶ 71–72; Choudhury Decl. Ex. A § M.3.8.B (“If a South Carolina driver is involved, the [DMV] will notify the individual that his privilege to drive has been suspended, and will remain so suspended until the citation is cleared with the court.”).

¹⁶ The Bench Book explains:

¶¶ 9, 74–76.

South Carolina provides no viable process for a person to contest a failure-to-pay suspension because of inability to pay, either before or after the suspension. *See* Declaration of Robert Hunter (“Hunter Decl.”) ¶ 5; Carter Decl. ¶¶ 50–52; White Decl. ¶¶ 38–40; Declaration of Adam Protheroe (“Protheroe Decl.”) ¶¶ 8, 14. South Carolina law authorizes the OMVH to hear appeals from the DMV’s decision to suspend a driver’s license. S.C. Code § 56-1-370. But the DMV’s Official Notice does not disclose the possibility of an administrative hearing concerning a suspension for failure to pay a traffic ticket, and it would be extraordinarily difficult for a layperson to discover the OMVH process independently. Declaration of Amreeta S. Mathai (“Mathai Decl.”) ¶ 78 (indicating it took an attorney at least 19 hours to read the Official Notice, locate and read Section 56-25-20, locate and research Title 56, and locate and analyze Section 56-1-370 and the administrative rules referenced in Section 56-1-370, and the rules applicable to the OMVH to determine how to request a hearing).

Even if a layperson did discover the OMVH process, they would not necessarily know that under South Carolina Code Section 56-1-370, the clock is ticking to submit a written request for a hearing within ten days of the Official Notice. *Id.* ¶¶ 34–35. Moreover, and most significantly, to obtain a hearing, the individual would also have to pay a \$200 fee for each contested failure-to-pay suspension. Protheroe Decl. ¶ 9; Carter Decl. ¶ 52; White Decl. ¶¶ 38–40. An indigent person thus faces an impossible situation. On the one hand, they cannot afford

If, at any time, the defendant pays the fine imposed by the court, the court will issue a receipt to him which will constitute proof of his compliance with the terms of the traffic citation. If the license suspension procedure has already begun, the defendant must present that receipt to the proper authorities in his home jurisdiction (SCDMV in South Carolina) in order to have his license and driving privileges reinstated. Should the defendant fail to pay his fine, even after his license has been suspended, the suspension will continue indefinitely, until he can present proof of compliance.

Choudhury Decl. Ex. A § M.2.

to pay the ticket in order to avert the indefinite suspension of their driver's license for failure to pay under Section 56-25-20; on the other hand, they cannot afford to access the hearing needed to challenge the suspension on the basis of inability to pay.

Defendant Ralph K. Anderson III, the Chief Judge of the South Carolina Administrative Law Court, is the Director of the OMVH. He has the administrative authority to propose amendments the OMVH Rules, to waive or reduce the \$200 filing fee on the basis of financial hardship, and to assign hearing officers to adjudicate appeals from the DMV's indefinite suspension of a driver's license for failure to pay traffic tickets under Section 56-25-20. S.C. Code § 1-23-660(A).¹⁷ But the OMVH does not believe its role is to hear the cases of indigent people who seek to challenge the suspension of their driver's licenses under Section 56-25-20 because of their inability to pay. Hunter Decl. ¶ 5. The OMVH's workload reports do not identify a single hearing concerning suspension for failure to pay a traffic ticket in Fiscal Years 2016–17 and 2017–18, although nine cases are coded as “Miscellaneous.” *Id.* at ¶¶ 11–12.¹⁸

To have a driver's license reinstated, a person must pay the traffic fines and fees owed to the court, obtain a compliance notice from the court, and provide that notice along with any required reinstatement fees to the DMV. Carter Decl. Ex. F; Choudhury Decl. Ex. A § M.3.9; S.C. Code § 56-25-20. The DMV charges a \$100 reinstatement fee “for each suspension on [the driver's] record that has not been reinstated.” Carter Decl. Ex. F. Thus, a driver with multiple

¹⁷ Defendant Anderson III's proposals to amend the OMVH Rules are enacted unless the South Carolina legislature vetoes the proposal. *See* S.C. Code § 1-23-660(A); S.C. Constitution, art. V § 4A.

¹⁸ Hunter Decl. ¶¶ 11–12; *see also* Office of Motor Vehicles Workload Report, attached as Ex. A to the Hunter Decl. Of the thirteen non-miscellaneous categories of DMV decisions that were appealed to the Office of Motor Vehicles Hearings in Fiscal Year 2016–17 and Fiscal Year 2017–18, none concerned DMV decisions to suspend a license for failure to pay a traffic ticket. Hunter Decl. ¶ 11. The thirteen specific categories are as follows: “Implied Consent or BAC”; “Habitual Offender 1st Declared,” “Habitual Offender Reduction,” “Financial Responsibility,” “Dealer Licensing,” “Physical Disqualification,” “IFTA,” “Self-Insured,” “Driver Training School,” “IRP,” “Points Suspension,” “HOR 2,” and “IID (Ignition Interlock).” *Id.*

suspensions for failure to pay traffic tickets would also need to pay several hundred dollars in DMV reinstatement fees before being able to legally drive. Carter Decl. ¶ 52; Bellamy Decl. ¶ 36; S.C. Code § 56-1-390(1).

There is no statutory or regulatory authority for waiving or reducing reinstatement fees for suspensions imposed for failure-to-pay traffic tickets. *See* S.C. Code § 56-1-390. The DMV has established a driver’s license reinstatement fee payment program, but it does not provide relief to people whose licenses were suspended for nonpayment of traffic fines and fees they cannot afford. *See* S.C. Code § 56-1-395. People who are unable to pay their traffic tickets are ineligible because the program is limited to South Carolina residents with Section 56-25-20 suspensions who have proof of payment of the underlying traffic fines and fees and can pay up front a \$35 administrative fee and 15% of the total amount of reinstatement fees owed. *Id.*¹⁹ These requirements are out of reach for indigent people.

B. Driver’s license suspension has devastating everyday consequences for impoverished people in South Carolina.

The indefinite suspension of a driver’s license based on an individual’s inability to pay traffic fines and fees has devastating consequences on the ability to pursue a livelihood, to meet basic needs for oneself and one’s family, and to meaningfully participate in civic life. Indeed, 86% of Americans describe a car as a “necessity of life.”²⁰ Reliable, accessible public transportation is scarce throughout the vast majority of South Carolina, which leaves South Carolinians heavily dependent on driver’s licenses to find and keep their jobs, take their children

¹⁹ Inclusion in the DMV reinstatement fee repayment program requires showing that the individual has “met all other conditions for reinstatement,” which refers to the requirement to submit proof of payment of the traffic fines due. S.C. Code § 56-1-395(A).

²⁰ Paul Taylor et al., *The Fading Glory of the Television and Telephone*, Pew Research Center 1 (Aug. 19, 2010), <https://www.pewresearch.org/wp-content/uploads/sites/3/2011/01/Final-TV-and-Telephone.pdf>, attached as Ex. E to Choudhury Decl.

to and from school, seek and receive medical care, purchase groceries and basic necessities, go to places of worship, and be with their families. ¶ 33.

In 2013, 92% of surveyed South Carolinians reported using a personal vehicle for travel.²¹ The median distance of a commute to work in South Carolina is 7.6 miles each way—the thirteenth longest of any state in the country.²² According to 2017 U.S. Census estimates, 92% of people in South Carolina use a car to commute to work by driving or carpool²³—a figure higher than the national average of 85.6%.²⁴ Only 0.6% of all trips to work in South Carolina were made by public transportation—less than one-eighth of the national average of 5.1%.²⁵

A report for the South Carolina Department of Transportation (“DOT”) recognized in 2014 that an increase in the number of low-income households presented a need for public transit and that South Carolina lacked sufficient public transportation options to serve second- and third-shift workers, lacked “coordinated/scheduled services and coverage” in rural areas, and had “[l]imited scheduled public transit routes outside urban areas.”²⁶ The report to the DOT estimated in 2014 that only 44% of statewide public transit needs were met in fiscal year 2011.²⁷

The indefinite suspension of a driver’s license severely restricts a person’s ability to find and keep paid employment even when there is access to alternative means of transportation. Being able to legally drive is a qualification for many jobs including positions in construction,

²¹ CDM Smith, *Charting a Course to 2040: South Carolina Statewide Public Transportation and Coordination Plan* at 51, S.C. Dep’t of Transportation (2014), <https://bit.ly/2nhxK1j>, attached as Ex. F to Choudhury Decl.

²² Streetlight Data, *Commutes Across America: Where Are the Longest Trips to Work? Part 1* (2018) at 9, <https://bit.ly/2r4j8UP>, attached as Ex. G to Choudhury Decl.

²³ U.S. Census Bureau, *American Community Survey (2017 5-Year Estimates)*, Table S0801 (Commuting Characteristics by Sex)—South Carolina (2017), <https://bit.ly/31N6LJu>, attached as Ex. H to Choudhury Decl.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Choudhury Ex. F at 37 (Table 3-1).

²⁷ *Id.* at 66.

manufacturing, security, and transportation.²⁸ Many employers consider a valid driver’s license an indicator of reliability and employability. For example, South Carolina job postings on the website Craigslist show that a driver’s license is required for many positions, including jobs in housekeeping, cleaning, construction, painting, warehouse staffing, maintenance, and plumbing, as well as work as a courier, technician; and retail merchandiser.²⁹ A Rutgers University survey of New Jersey driver’s license holders found that 42% of respondents reported losing jobs after their licenses were suspended, 45% of whom were unable to find new jobs; of those who were able to find employment, 88% reported a decrease in income.³⁰

The suspension of driver’s licenses also limits people’s ability to care for themselves and their families and to participate meaningfully in society more broadly. People without valid driver’s licenses are routinely unable to drive to school, take their children to school and childcare, attend doctors’ appointments, pick up prescriptions at pharmacies, make trips to the grocery store and public benefits offices, travel to places of worship, and be with their families.³¹ The American Association of Motor Vehicles Administrators (“AAMVA”) has recognized that “[s]uspending a person’s driving privilege makes it less likely that fines will be paid if the person is unable to go to work and to pursue other daily activities such as attending school, going to medical appointments, and so on. This is compounded for individuals who live in areas where

²⁸ Danielle Conley & Ariel Levinson-Waldman, *Discriminatory Driver’s License Suspension Schemes* at 5, American Constitution Society (2019), <https://bit.ly/2IGJeuE>, attached as Ex. I to Choudhury Decl.

²⁹ See Choudhury Decl. ¶ 52, Charleston-area job postings, attached as Ex. Q to Choudhury Decl.; see also Back on the Road California, *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* 26–27 (2016), <https://bit.ly/31kAs4n>, attached as Ex. J to Choudhury Decl.

³⁰ Alan M. Voorhees Transportation Center et al., Motor Vehicles Affordability and Fairness Task Force: Final Report at xii-xiii (2006), <https://bit.ly/2ILarfV>, attached as Ex. K to Choudhury Decl.

³¹ See, e.g., Carter Decl. ¶¶ 65–66; Bellamy Decl. ¶¶ 54–59; White Decl. ¶ 57.

other transportation options are not readily available.”³² Similarly, in 2018, the American Bar Association (“ABA”) condemned the suspension of driver’s licenses for nonpayment of court fines and fees, noting that “[p]eople who are prohibited from driving often lose their ability to work or attend to other important aspects of their lives” and that suspending a driver’s license for nonpayment is out of proportion to the purpose of ensuring payment and destructive to that end.³³

As of May 31, 2019, more than 190,000 people had a South Carolina driver’s license under indefinite suspension for failure to pay traffic fines and fees.³⁴ Impoverished and low-income people are particularly likely to be unable to pay monetary penalties imposed for traffic violations. Research by the Federal Reserve shows that 40% of Americans cannot afford to pay a \$400 emergency expense or could only cover such an expense by selling something or borrowing money.³⁵ According to 2017 U.S. Census estimates, South Carolina has the eleventh highest population of people living in poverty in the United States, with 16.6% of South Carolinians earning less than the Federal Poverty Guideline for their household.³⁶ Moreover, Black South Carolinians are disproportionately impacted by the DMV’s indefinite suspension of

³² American Association of Motor Vehicle Administrators, *Reducing Suspended Drivers and Alternative Reinstatement Best Practices* at 12 (2018), <https://bit.ly/2nXb3zL>, attached as Ex. L to Choudhury Decl.

³³ American Bar Association, Working Group on Building Public Trust in the American Justice System, et al., Report to the House of Delegates, Resolution 114, 6, 7 n. 22 (Aug. 6, 2018), <https://bit.ly/2nQRKZf>, attached as Ex. M to Choudhury Decl.

³⁴ In response to a public records request, the SC DMV reported that 192,263 people had driver’s license suspended by the DMV for failure to pay a traffic ticket as of May 31, 2019. See Declaration of Patrick Brooks (“Brooks Decl.”) at ¶ 9; DMV Letter Response to ACLU-SC’s April 22, 2019 Follow-Up Questions at 2, attached as Ex. C to Brooks Decl.

³⁵ Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2017* at 2 (2018), <https://bit.ly/2LoT78j>, attached as Ex. N to Choudhury Decl.

³⁶ U.S. Census Bureau, *American Community Survey (2017 5-Year Estimates)*, Table GCT1701 (Percent of People Below Poverty Level in the Past 12 Months (For Whom Poverty Status is Determined)) 1 (2017), <https://bit.ly/2mnrDYW>, attached as Ex. O to Choudhury Decl.

driver's licenses for nonpayment of traffic tickets. According to 2017 U.S. Census estimates, non-Latinx Black people make up 27% and non-Latinx white people make up 64% of the South Carolina population.³⁷ But DMV data shows that as of May 31, 2019, Black people made up 48% and white people made up only 35% of all people with driver's licenses indefinitely suspended for FTPTT under Section 56-25-20.³⁸

C. The consequences for driving under suspension are dire and perpetuate a cycle of poverty, debt, and involvement with the criminal legal system.

The indefinite suspension of driver's licenses for nonpayment of traffic fines and fees requires impoverished and low-income people to make a difficult and unfair decision: lose their jobs, face barriers to finding employment, and fail to care for themselves and their families, or drive illegally and risk further legal consequences for driving on a suspended license, including fines, fees, jail time, and extension of probation or parole. ¶ 43. When faced with this dilemma, most people drive on a suspended license. ¶ 44.

A 2003 report by the National Cooperative Highway Research Program estimated that as many as 75% of people with suspended and revoked licenses continue to drive while under suspension.³⁹ A study commissioned by the AAMVA Suspended and Revoked Working Group analyzed 114,626 driver records from eight geographically and demographically diverse states and concluded that people with suspended licenses continue to drive despite the seriousness of the consequences for driving on a suspended license.⁴⁰ In condemning license suspension for

³⁷ U.S. Census Bureau, *American Community Survey (2017 5-Year Estimates)*, Table DP05 (ACS Demographic and Housing Estimates)—South Carolina 1, 2 (2017), <https://bit.ly/2VH3gTu>, attached as Ex. R to Choudhury Decl.

³⁸ Brooks Decl. ¶ 9.

³⁹ Timothy R. Neuman et al., *Guidance for Implementation of the AASHTO Strategic Highway Safety Plan Volume 2: A Guide for Addressing Collisions Involving Unlicensed Drivers and Drivers with Suspended or Revoked Licenses* at III-1, National Cooperative Highway Research Program (2003), http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_500v2.pdf, attached as Ex. P to Choudhury Decl.

⁴⁰ Choudhury Decl. Ex. L at 6.

nonpayment of fines and fees, the ABA recognized that driver’s license suspension “can lead to a cycle of re-incarceration, because many such individuals find themselves in an untenable position of either driving with a suspended license or losing their jobs, and because driving on a suspended license is itself an offense that may be sanctioned with incarceration.”⁴¹

In South Carolina, the steep penalties associated with driving on a suspended license push people who live with such suspensions deeper into cycles of poverty, debt, and entanglement with the criminal legal system. ¶ 45. A first offense for driving under suspension (“DUS”) carries a \$300 fine, up to 30 days in jail, or both.⁴² A second offense carries a \$600 fine, up to 60 days in jail, or both.⁴³ A third offense carries a \$1,000 fine and up to 90 days in either jail or home detention, and the defendant must pay the cost of home detention.⁴⁴ A DUS conviction also leads to the imposition of additional assessments and a 30-day suspension of the person’s driver’s license.⁴⁵ A person convicted of DUS three or more times in three years is designated a “habitual offender” and may be charged with a felony and face up to five years of incarceration if convicted again.⁴⁶

Tens of thousands of people are vulnerable to the steep penalties South Carolina law imposes for driving on a license that has been suspended for failure to pay a traffic ticket. Between March 30, 2018 and March 30, 2019, law enforcement issued 18,828 DUS tickets for which one of the underlying suspensions stemmed from failure to pay a traffic ticket. Brooks Decl. ¶ 11.

⁴¹ Choudhury Decl. Ex. M at 6–7.

⁴² S.C. Code § 56-1-460(A)(1)(a).

⁴³ S.C. Code § 56-1-460(A)(1)(b).

⁴⁴ S.C. Code § 56-1-460(A)(1)(c).

⁴⁵ S.C. Code § 56-1-460(B).

⁴⁶ S.C. Code §§ 56-1-1020(a)(4), 56-1-1100.

D. Plaintiffs suffer ongoing harm from the DMV's practice.

1. Plaintiff Emily Bellamy

Plaintiff Emily Bellamy is a single mother of four children under seven years old, one of whom is only an infant. Bellamy Decl. ¶ 3. Ms. Bellamy's driver's license is currently suspended because she cannot afford to pay fines and fees for four traffic tickets she received last year. *Id.* ¶ 5, 19, 36. Despite working full time at a children's daycare facility, Ms. Bellamy is unable to earn enough to support her family. *Id.* ¶ 4. And because her driver's license is suspended for failure to pay traffic tickets, she is unable to secure higher-paying work for which she is eligible with two former employers. *Id.* ¶ 6.

In 2017, Ms. Bellamy had two part-time jobs to support herself and her children: one as a supervisor for a company that provided housekeeping for hotels and condominiums and the other providing in-home healthcare and assistance for disabled and elderly people. *Id.* ¶ 7. Both jobs required her to travel to work and to drive between job sites. *See, e.g., id.* ¶ 27. For example, as a housecleaner, Ms. Bellamy would drive from home to Myrtle Beach to check in at one location, travel to another location to get heavy linens and cleaning supplies, and then travel to clean condominiums. *Id.* ¶ 53.

On February 8, 2018, Ms. Bellamy was ticketed for speeding while picking up supplies for her daughter's birthday dinner. *Id.* ¶ 8. Ms. Bellamy contacted the Georgetown County Central Traffic Court to request a continuance because she was unable to find coverage at work. *Id.* ¶¶ 11–12. She was told the court would grant her a continuance, but she never received notice of the new hearing date in the mail. *Id.* ¶¶ 12–13. She was convicted in a trial in absentia on April 17, 2018, and sentenced to pay \$76.50. *Id.* ¶ 16.

On May 29, 2018, Ms. Bellamy was involved in a multiple-vehicle accident for which she was issued three traffic tickets that totaled \$665 in possible fines. *Id.* ¶ 21. The citing

officer also told her that the DMV had not been able to verify her car insurance. *Id.* ¶ 22.

Because Ms. Bellamy could no longer drive, both companies she worked for stopped scheduling her for work, and she stopped receiving any income from either job. *Id.* ¶¶ 27, 32.

In June 2018, Ms. Bellamy called the Conway Municipal Court for a continuance on the hearing for the three accident tickets because she was concerned that she would be unable to secure transportation to get to the hearing. *Id.* ¶¶ 29–30. Ms. Bellamy was told the court would grant a continuance, but she did not receive notice of the new hearing date. *Id.* ¶¶ 30–31. In the meantime, on July 8, 2018, the DMV suspended Ms. Bellamy’s driver’s license for failure to pay the February 2018 ticket, but she did not receive notice. *Id.* ¶ 19.

On August 29, 2018, the Conway Municipal Court tried Ms. Bellamy in her absence, convicted her on all three of the May 2018 tickets, and sentenced her to pay \$665 in fines and fees. *Id.* ¶ 33. On September 25, 2018, the DMV placed another suspension on Ms. Bellamy’s driver’s license for operating an uninsured motor vehicle. *See* Bellamy 10-Year Record, attached as Ex. C to Bellamy Decl. On December 6, 2018, the DMV placed another three suspensions on her driver’s license for failure to pay the May 2018 tickets. *Id.* ¶ 36. Again, Ms. Bellamy did not receive notice of the suspension from the DMV. *Id.*

In April 2019, after nearly a year of unemployment due to the driver’s license suspensions, Ms. Bellamy found a job at a daycare with a boss who initially assisted her with transportation, but can no longer do so. *Id.* ¶¶ 43, 47. While she now earns a small income from this job, Ms. Bellamy must pay to have her three younger children attend the daycare while she works. *Id.* Because her boss can no longer help her with transportation, Ms. Bellamy does not know how she will pay to transport her daughter to school and get herself and her three younger children to the daycare facility during the work week. *Id.* ¶¶ 47–49.

If Ms. Bellamy had a driver's license, she could return to her work in housekeeping and in-home healthcare, both of which pay more than her current job at the daycare. *Id.* ¶ 64. Even if she continued to work in daycare, with a driver's license, Ms. Bellamy could increase her income by driving to housekeeping jobs on the weekends. *Id.* ¶ 53. But because Ms. Bellamy cannot pay at least \$716.50 in fines and fees to the courts and at least \$1,305 in reinstatement fees to the DMV, she remains without a driver's license and without the ability to obtain higher-income work that would allow her to pay these debts. *Id.* ¶¶ 18, 33, 37, *See* Bellamy DMV Reinstatement Requirement List, attached as Ex. D to Bellamy Decl.

2. Plaintiff Janice Carter

Ms. Carter is an Air Force veteran whose driver's license is currently suspended because she cannot afford to pay fines and fees for several traffic tickets. Carter Decl. ¶¶ 4, 43–46. She has struggled financially since the closure of her residential and commercial cleaning company in late 2016, which left her without stable income. *Id.* ¶¶ 6–7. From April 2018 to July 2019, Ms. Carter was only able to secure sporadic, short-term, and part-time work in residential cleaning, marketing, babysitting, and hotel laundry. *Id.* ¶ 9. In 2018, Ms. Carter earned only \$5,360, an annual income well below the Federal Poverty Guideline. *Id.* ¶ 10.⁴⁷ Since July 2019, Ms. Carter has worked part-time in human resources for A Second Chance Resource Center, an organization that assists people involved in the criminal legal system and their families as well as people dealing with substance abuse. Carter Decl. ¶ 11. But even with this position, Ms. Carter struggles to support herself financially and pay off her debts. *Id.* ¶¶ 12.

⁴⁷ U.S. Dep't of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *2019 Poverty Guidelines*, <https://aspe.hhs.gov/2019-poverty-guidelines> (2019) (last visited Nov. 1, 2019), attached as Ex. S to the Choudhury Decl. (indicating that the 2019 Federal Poverty Guideline for a one-person household is \$12,490).

Since 2017, the DMV has imposed four suspensions on Ms. Carter's driver's license under Section 56-25-20 due to her inability to pay traffic fines and fees. Carter Decl. ¶¶ 13, 30, 42. These suspensions remain in place because Ms. Carter cannot afford to pay the underlying traffic fines and fees and DMV reinstatement fees required to have her driver's license reinstated. *Id.* ¶¶ 43–46. These suspensions prevent Ms. Carter from finding and maintaining steady, full-time employment that would enable her to pay the fines and fees she owes to courts and the DMV. Carter Decl. ¶¶ 58–59.

In August 2019, Ms. Carter's supervisor indicated that she was prepared to offer Ms. Carter a position as a case manager at A Second Chance Resource Center contingent upon demonstrating that she has a valid driver's license. Carter Decl. ¶ 56. While the position would provide Ms. Carter with an income that would bring her financial stability, it requires a valid driver's license because case managers must drive to meet clients at their homes. *Id.* ¶¶ 57; 60–61. Ms. Carter cannot get this position because her driver's license remains suspended. *Id.* ¶ 59. Ms. Carter also needs a driver's license to consistently and reliably get to work, church, and medical appointments, as public transportation is limited and time consuming and she cannot rely on anyone else for transportation. *Id.* ¶¶ 63–66.

Ms. Carter's cycle of traffic debt and driver's license suspension began on December 7, 2016, when she received a speeding ticket while driving through Yemassee, South Carolina, on her way to visit her son in Florida. Carter Decl. ¶ 14. She was unable to pay the \$129 fine before the February 16, 2017 court date. *Id.* ¶ 18. Ms. Carter did not attend court because she forgot the court date amidst stress relating to the shutting down of her business and family matters. *Id.* ¶¶ 16–17. On June 13, 2017, the DMV indefinitely suspended Ms. Carter's driver's license for failure to pay a traffic ticket under Section 56-25-20. *Id.* ¶¶ 20, 30. Ms. Carter never received a notice of the suspension from the DMV and continued to drive. *Id.* ¶ 19.

On January 19, 2018, Ms. Carter was ticketed for speeding in Jacksonville, Florida, while driving her son to a medical appointment. Carter Decl. ¶ 22. She could not get off work to attend court in Florida and could not pay the \$129 fine before the hearing. *Id.* ¶¶ 22–23. The court tried Ms. Carter in absentia, convicted her of speeding, and sentenced her to pay \$129. *Id.* ¶ 24. The DMV indefinitely suspended Ms. Carter’s driver’s license, but again, she did not receive a notice. *Id.* ¶ 25.

On August 15, 2018, Ms. Carter was ticketed in Ravenel, South Carolina, for driving a car with a defective headlight and for driving on a suspended license. Carter Decl. ¶ 26. During the stop, she learned for the first time that her driver’s license was suspended. *Id.* ¶ 27. When she went to the DMV, Ms. Carter was told she had to pay the fines and fees in full for each of the four traffic tickets that led to the failure-to-pay suspensions on her driver’s license and a \$100 reinstatement fee for each suspension. *Id.* ¶ 37. Ms. Carter was unable to attend her hearing in the Ravenel Magistrate Court on December 20, 2018, because the court is located nearly 25 miles from her home and she was unable to secure transportation to get there. *Id.* ¶ 38. There is no reliable public transportation between Ms. Carter’s home and the Ravenel Magistrate Court that she could have taken to attend the hearing on time. *Id.* Ms. Carter was unable to pay the \$647 fine for driving under suspension and the \$232.50 fine for driving with a defective headlight. *Id.* ¶ 42. The Ravenel Magistrate Court tried Ms. Carter in absentia and sentenced her to pay \$879.50 in fines and fees. ¶ 39.

Ms. Carter received two notices from the DMV in January or February 2019 stating that she had to pay the traffic fines and fees owed to the Ravenel Magistrate Court in full by February 18, 2019 to prevent her license from being suspended for failure to pay traffic tickets under Section 56-25-20. Carter Decl. ¶ 40. Ms. Carter could not afford to pay, and the DMV imposed two additional, indefinite FTPTT suspensions on her license. *Id.* ¶ 42.

Ms. Carter submitted a written request to the OMVH for a consolidated contested case hearing on July 1, 2019, explaining that she was unable to pay the traffic fines and fees that led to the four FTPTT suspensions on her driver's license, providing her financial information, and requesting a waiver of the \$200 filing fee for inability to pay. Protheroe Decl. ¶ 3, Ex. A; Carter Decl. ¶ 51. The OMVH denied Ms. Carter's request by letter two days later, stating:

The OMVH filing fee is set by statute and there is not a waiver provision in statute or the OMVH rules. Therefore, a request must be accompanied by the \$200 filing fee. Further, we are unable to consolidate suspensions into one contested case hearing. Accordingly, each case must be accompanied by a filing fee.

Protheroe Decl. Ex. C. Ms. Carter still cannot afford to pay the \$1,137.50 she owes in traffic fines and fees and the \$500 she owes in reinstatement fees imposed by the DMV. Carter Decl. ¶ 43–45. Nor can she afford to pay the \$800 OMVH filing fee required for a hearing to contest the suspensions on her driver's license for failure to pay traffic tickets. *Id.* 53.

3. Plaintiff Linguista White

Ms. White is a single mother and the primary caregiver for her daughter. White Decl. ¶ 3. From August 2018 to August 2019, Ms. White also was the sole caregiver for her goddaughter, which placed even more demands on her financial resources and time. *Id.* ¶ 4. She has experienced significant financial difficulties since losing her job as a school nurse in 2011. *Id.* ¶ 8. After several months of unemployment, Ms. White secured a position at the Medical University of South Carolina, where she now works as a pre-certification specialist. *Id.* ¶¶ 8–9. Ms. White filed for bankruptcy in 2013 because her income was insufficient to make payments toward her car insurance, childcare, debts incurred while unemployed, and other expenses. *Id.* ¶¶ 10–11. A portion of her paycheck was garnished until her bankruptcy debt was officially discharged in November 2018. *Id.* ¶ 12. Both before the discharge of her bankruptcy debt and today, Ms. White has very little money left each month from her paychecks after meeting her household's monthly expenses, which include rent, electricity, car payments,

groceries, loan payments, childcare, and medical expenses. *Id.* ¶ 10, 18, 25, 41–42. As a result, Ms. White has missed car insurance payments, and at times her car insurance has lapsed. *Id.* ¶¶ 13, 16.

On September 4, 2018, Ms. White was stopped while driving in James Island, South Carolina. White Decl. ¶ 20. The officer who stopped Ms. White informed her that her driver’s license had been suspended due to the DMV’s inability to verify her insurance information. *Id.* She was issued a ticket for driving under a suspended license. *Id.* Ms. White visited the DMV and was told she had to obtain vehicle insurance and pay reinstatement fees to the DMV to reinstate her license, but she did not have the money to do so. *Id.* ¶¶ 21–22. When she appeared in the James Island Magistrate Court, the prosecuting police officer said he would be open to reducing or dismissing the charge if Ms. White returned at her next court date with evidence that she was working on obtaining insurance. *Id.* ¶ 24. Ms. White was unable to come up with the money to pay for insurance and reinstate her driver’s license before the January 2019 hearing. *Id.* ¶ 25. The James Island Magistrate Court tried Ms. White in absentia on January 15, 2019 and sentenced her to pay a \$647 fine. *Id.* ¶ 27. The court did not notify Ms. White that she had been tried in absentia and sentenced. *Id.*

On March 24, 2019, the DMV indefinitely suspended Ms. White’s driver’s license under Section 56-25-20 for failure to pay a traffic ticket. White Decl. ¶ 30. Ms. White contacted the James Island Magistrate Court to ask if she could pay the \$647 fine in installments but was told that a payment plan would not cause her license to be reinstated. *Id.* ¶ 28. She also went to the DMV, but was told that she would be ineligible for a DMV reinstatement fee payment plan. *Id.* ¶ 33. Ms. White also made a written request to the OMVH like Ms. Carter’s request and received a similar denial for failure to pay the \$200 filing fee, even though she had requested a fee waiver due to her inability to pay. *Id.* ¶¶ 38–39; Protheroe Decl. ¶¶ 10–14.

While Ms. White's driver's license was suspended, she faced the impossible choice of not driving and failing to get to and from work while also meeting her responsibilities for her family, or driving on a suspended license and risking further penalties, including additional traffic tickets and fines and potentially jail time. White Decl. ¶ 23. At times, Ms. White drove because she had no alternative transportation for commuting to and from work while also taking her daughter and goddaughter to school and meeting other familial obligations. *Id.* During the majority of the time that her driver's license was suspended for failure to pay traffic tickets, Ms. White was the primary caregiver for both her daughter and goddaughter. *Id.* ¶¶ 3–4.

On July 15, 2019, Ms. White received three traffic tickets when she was on her way to work after dropping off her daughter and god daughter at a relative's house. White Decl. ¶ 36. She was ticketed for a second offense of having an uninsured motor vehicle, for driving without a driver's license, and for a second offense of driving under suspension ("DUS-2"). *Id.* ¶ 37. To resolve these tickets without going to court, Ms. White must pay \$1,942. *Id.*

During her financial struggles in 2018 and 2019, Ms. White sometimes fell behind on paying rent. White Decl. ¶¶ 41–42. On August 5, 2019, Ms. White was evicted and locked out of her apartment due to a mistake by her management company. *Id.* ¶ 44–46.⁴⁸ She later discovered that many of her family's belongings were ruined and money stolen during the eviction. *Id.* ¶ 48. In September 2019, Ms. White's landlord paid her some money to compensate her. *Id.* ¶ 50. Although Ms. White needed to replace her damaged property, she used a significant portion of the money to pay for car insurance, the fines for the ticket that led to the FTPTT suspension on her driver's license, and the \$100 reinstatement fee. *Id.* ¶¶ 50–51.

⁴⁸ Ms. White's management office had commenced eviction proceedings and failed to cancel those proceedings after Ms. White paid past due rent earlier in the day on August 5, 2019. White Decl. ¶¶ 43–46.

Ms. White still cannot afford to pay the \$1,942 needed to resolve the July 2019 traffic tickets without going to court. *Id.* ¶ 55. She is awaiting a court date for those tickets. *Id.* If Ms. White is found guilty of these traffic violations, she faces up to \$1,942 in fines and fees, as well as a statutorily mandated three percent collection for placement on a payment plan.

E. Plaintiffs' Claims.

Plaintiffs filed this lawsuit on behalf of other similarly situated South Carolinians who are suffering, or are imminently likely to suffer, irreparable, ongoing harm in violation of their rights to due process and equal protection because the DMV has suspended, or will suspend, their driver's licenses under Section 56-25-20 without providing proper notice and a hearing to ensure that only those who willfully failed to pay traffic tickets experience suspension. Plaintiffs also bring claims on behalf of themselves and others similarly situated who are suffering, or are imminently likely to suffer irreparable, ongoing harm in violation of rights to due process and equal protection because the DMV has suspended, or will suspend, their driver's licenses under Section 56-1-390 without providing proper notice and a hearing to ensure that only those who willfully failed to pay DMV reinstatement fees experience suspension. Plaintiffs assert claims under 42 U.S.C. § 1983 to vindicate their Fourteenth Amendment rights and to seek declaratory and injunctive relief against Defendants Shwedo and Anderson III.

III. AUTHORITY AND ARGUMENT

“District courts have ‘wide discretion in deciding whether or not to certify a proposed class,’ and their decisions ‘may be reversed only for abuse of discretion.’” *Central Wesleyan College v. W.R. Grace & Co.*, 6 F.3d 177, 185 (4th Cir. 1993) (quoting *In re A.H. Robins*, 880 F.2d 709, 728–29 (4th Cir. 1989)); *see also Krakauer v. Dish Network, L.L.C.*, 925 F.3d 643, 654–55 (4th Cir. 2019) (“Our review of class certification issues is deferential, cognizant of both the considerable advantages that our district court colleagues possess in managing complex

litigation and the need to afford them some latitude in bringing that expertise to bear.”). That said, “federal courts should ‘give Rule 23 a liberal rather than a restrictive construction, adopting a standard of flexibility in application which will in the particular case best serve the ends of justice for the affected parties and . . . promote judicial efficiency.’” *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 424 (4th Cir. 2003) (alteration in original) (quoting *In re A.H. Robins*, 880 F.2d at 740). And “certification as a class action serves important public policy purposes. In addition to promoting judicial economy and efficiency, class actions also ‘afford aggrieved persons a remedy if it is not economically feasible to obtain relief through the traditional framework of multiple individual . . . actions.’” *Gunnells*, 348 F.3d at 424 (citation omitted).

While district courts must conduct a “rigorous” analysis of the Rule 23 requirements, “[t]he likelihood of the plaintiffs’ success on the merits . . . is not relevant to the issue of whether certification is proper.” *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 319 (4th Cir. 2006). “Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.” *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 466 (2013).

To obtain class certification, Plaintiffs must demonstrate that the four threshold requirements of numerosity, commonality, typicality, and adequacy are satisfied, as well as one of the specific forms of class adjudication provided by Rule 23(b). *Krakauer*, 925 F.3d at 654–55. Plaintiffs request certification of two classes:

Suspension Class. All 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.

Reinstatement Fee Class. All 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.

As discussed below, both Classes satisfy the Rule 23(a) and (b)(2) requirements.

A. The Rule 23(a) requirements are satisfied.

1. Impracticability of joinder due to numerosity is satisfied.

A class must “be so large that ‘joinder of all members is impracticable.’” *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001) (quoting Fed. R. Civ. P. 23(a)(1)). No specific number is required. *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984). And “[w]here ‘the only relief sought for the class is injunctive and declaratory in nature . . . ,’ even ‘speculative and conclusory representations’ as to the size of the class suffice as to the requirement of many.” *Doe v. Charleston Area Med. Center, Inc.*, 529 F.2d 638, 645 (4th Cir. 1975) (second alteration in original) (citation omitted).

Both Classes satisfy the numerosity requirement, particularly in the context of a request for certification under Rule 23(b)(2). In response to a public records request, the DMV provided data showing that 192,263 people had driver’s licenses that were suspended for failure to pay a traffic ticket as of May 31, 2019. Brooks Decl. ¶ 9, Ex. C at 2. The DMV also reported that it suspended the driver’s licenses of 54,077 people for failure to pay a traffic ticket under Section 56-25-20 between March 30, 2018 and March 30, 2019. Brooks Decl. ¶ 14. The Suspension Class thus consists of more than 190,000 people who currently face or will face future, indefinite suspension of their driver’s licenses for failure to pay a traffic ticket. The DMV will continue to suspend driver’s licenses for non-payment of traffic fines and fees under Section 56-25-20 absent the requested injunction, causing the size of the Suspension Class to grow over time.

The Reinstatement Fee Class also satisfies the numerosity requirement. In response to a public records request, the DMV reported that, as of January 15, 2019, there were 39,546 people with a South Carolina driver’s license suspended solely because of failure to pay DMV reinstatement fees, even after resolving the unpaid traffic tickets that original led to an FTPTT

suspension.⁴⁹ It is also reasonable to believe there are people who continue to have driver's licenses under suspension, even after their time-limited suspensions for violations like operating an unlicensed vehicle have expired, because they owe the DMV a \$100 reinstatement fee for each suspension that was otherwise resolved. On its face, Section 56-1-390 prohibits the reinstatement of a license under suspension unless all reinstatement fees are paid in full. Absent the requested injunction, the DMV will continue to be prohibited under Section 56-1-390 from reinstating driver's licenses on the basis of unpaid reinstatement fees, regardless of a person's inability to pay these fees, causing the size of the Reinstatement Fee Class to grow over time.

Joinder of more than 190,000 people with current or future driver's license suspensions for failure to pay traffic tickets and tens of thousands of people with current or future suspensions for failure to pay DMV reinstatement fees is impracticable. Indeed, the Fourth Circuit has approved certification of classes that are much smaller. *See, e.g., Brady*, 726 F.2d at 145 (holding "class as large as 74 persons is well within the range appropriate for class certification"); *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967) (affirming certification of class of 18 African-American doctors in civil rights lawsuit against publicly-funded hospital). Joinder of members of the proposed Classes is also impracticable because many members are unaware that their rights under the U.S. Constitution have been violated or that they are entitled to seek redress in court. *See Hewlett v. Premier Salons Int'l, Inc.*, 185 F.R.D. 211, 216 (D. Md. 1997) (numerosity satisfied when proposed class members "may not realize that their legal rights potentially have been violated"); *see also* 2 William B. Rubenstein, *Newberg on Class Actions* ("Newberg") § 4:65 (5th ed. 2019 update) ("class certification more likely" when "potential class members have little understanding of the

⁴⁹ Declaration of Susan Dunn ("Dunn Decl.") ¶ 8, DMV Spreadsheet Produced in Response to the December 13, 2018 FOIA Request, attached as Ex. B to Dunn Decl.

law”). Finally, members of the Classes are spread throughout the state of South Carolina, and they are typically impoverished and low-income people who lack financial resources to retain an attorney to bring an independent action or to be joined in this action. *See* Newberg § 3:12 (“geographic dispersion” and limited resources of class members “cuts in favor of certification”); *Robidoux v. Celani*, 987 F.2d 931, 935–36 (2d Cir. 1993) (numerosity satisfied where economically disadvantaged class members were dispersed throughout state). Plaintiffs meet the numerosity requirement.

2. There are common questions of fact and law.

The second threshold requirement for class certification is that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The existence of even a single common question will satisfy this requirement. *EQT Prod. Co. v. Adair*, 764 F.3d 347, 360 (4th Cir. 2014). The common question “must be of such a nature that its determination ‘will resolve an issue that is central to the validity of each one of the claims in one stroke.’” *Id.* (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). “Where the injuries complained of by named plaintiffs allegedly result from the same unlawful pattern, practice, or policy of the defendants, the commonality requirement is usually satisfied.” *Moodie v. Kiawah Island Inn Co., LLC*, 309 F.R.D. 370, 377 (D.S.C. 2015) (citation omitted).

There are numerous questions of fact and law common to members of the proposed Suspension Class, including: (1) whether the DMV has a policy and practice of suspending driver’s licenses for FTPTT without requiring a pre-deprivation hearing, inquiry into ability to pay, and determination that nonpayment was willful; (2) whether the OMVH has a policy and practice of refusing to reduce or waive the administrative filing fee set forth in Section 56-5-2952 for people who cannot afford to pay; (3) whether the suspension notice provided by the DMV fails to inform people that they are entitled to a pre-deprivation hearing and key

information about the hearing, including that a critical issue will be their ability to pay the traffic fines and fees they have incurred; (4) whether the DMV's enforcement of Section 56-25-20 violates due process and equal protection rights as delineated in *Bearden v. Georgia*, 461 U.S. 660 (1983); (5) whether the DMV's enforcement of Section 56-25-20 violates the right to an opportunity to be heard; (6) whether the DMV's enforcement of Section 56-25-20 violates the right to adequate notice as to how to prevent or contest suspension on the basis of inability to pay; and (7) whether the OMVH's enforcement of Section 56-5-2952 violates due process and equal protection rights as delineated in *Bearden*, 461 U.S. 660. ¶ 246. The questions of fact and law common to the Suspension Class underscore that Plaintiffs' and proposed Suspension Class members' injuries resulted from this same allegedly unlawful practice, satisfying commonality.

There are also numerous questions of law and fact common to the members of the proposed Reinstatement Fee Class, including: (1) whether Section 56-1-390 and the DMV's enforcement of that statute prohibit reinstatement of a driver's license absent payment in full of associated fees; and (2) whether Section 56-1-390 violates due process and equal protection rights as delineated in *Bearden*, 461 U.S. 660, by mandating the continued suspension of driver's licenses based on failure to pay reinstatement fees without considering ability to pay or determining that nonpayment was willful. The questions of fact and law common to the Reinstatement Fee Class underscore that Plaintiffs' and proposed Reinstatement Fee Class members' injuries resulted from this same allegedly unlawful practice, satisfying commonality.

Finally, there are common questions as to whether the members of each proposed Class are entitled to declaratory and injunctive relief.

3. Plaintiffs' claims are typical of the claims of members of the Classes.

The claims of the named plaintiffs must be typical of the claims of proposed class they seek to represent. Fed. R. Civ. P. 23(a)(3). "The typicality requirement is met if a plaintiff's

claim arises from the same event or course of conduct that gives rise to the claims of other class members and is based on the same legal theory.” *Moodie*, 309 F.R.D. at 378 (citation omitted). “The essence of the typicality requirement is captured by the notion that ‘as goes the claim of the named plaintiff, so go the claims of the class.’” *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006) (citation omitted). But “[t]ypicality does not require that every class representative have exactly the same claims as every member of the class.” *Moodie*, 309 F.R.D. at 378. “The Fourth Circuit has held that, in analyzing Rule 23(a)(3)’s typicality requirement, courts must identify a ‘cognizable injury’ held by the named plaintiffs ‘similar to the injuries suffered by the other class members.’” *Noel v. Hudd Distrib. Servs., Inc.*, 274 F.R.D. 187, 191 (D.S.C. 2011) (quoting *McClain v. South Carolina Nat’l Bank*, 105 F.3d 898, 903 (4th Cir. 1997)).

Plaintiffs’ claims are typical of the claims of the Suspension Class members because they all arise from common courses of conduct: the DMV’s practice of indefinitely suspending driver’s licenses for failure to pay traffic tickets under Section 56-25-20 without first providing adequate notice of how to contest suspension on the basis of inability to pay, a hearing on the individual’s ability to pay, and a determination that nonpayment was willful; the OMVH’s practice of requiring people to pay a non-waivable \$200 filing fee to secure an administrative hearing to contest the DMV’s suspension of a driver’s license and of failing to provide a mechanism for waiver of the filing fee based on inability to pay. Plaintiffs’ claims are therefore typical of the claims of the Suspension Class because their driver’s licenses are currently suspended, or will be suspended imminently, for nonpayment of traffic tickets; and the DMV has failed, or will fail imminently, to determine that Plaintiffs willfully failed to pay and to afford them a hearing on ability to pay and adequate notice of how to challenge the suspension on the basis of inability to pay.

Plaintiffs' claims are also typical of the claims of Reinstatement Fee Class members because their driver's licenses are currently suspended, or will be suspended imminently, for nonpayment of DMV reinstatement fees; and the DMV has failed, or will fail imminently, to determine that Plaintiffs willfully failed to pay and to afford them a hearing on ability to pay or adequate notice of how to challenge the suspension on the basis of inability to pay.

If Plaintiffs succeed on their claims by proving that Defendants' common courses of conduct violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment, the ruling and any accompanying injunctive relief will benefit every other member of the proposed Classes. In addition, Plaintiffs' injuries are similar to those of all Suspension Class and Reinstatement Fee Class members because all currently have, or will have imminently, driver's licenses suspended indefinitely without meaningful pre-deprivation notice, opportunity to be heard, and determination of willful nonpayment.

4. Plaintiffs and their counsel will fairly and adequately protect the interests of the Classes.

The fourth threshold requirement for certification is a finding that the named Plaintiffs and their counsel will fairly and adequately protect the interests of the class. *See* Fed. R. Civ. P. 23(a)(4) & (g)(1). The adequacy requirement "is 'a two-pronged inquiry, requiring evaluation of: (1) whether class counsel are qualified, experienced, and generally able to conduct the proposed litigation; and (2) whether Plaintiffs' claims are sufficiently interrelated with and not antagonistic to the class claims as to ensure fair and adequate representation.'" *Moodie*, 309 F.R.D. at 378 (citation omitted). Where the lawsuit is complex, "such as one in which the defendant's liability can be established only after a great deal of investigation and discovery by counsel against a background of legal knowledge, the representative need not have extensive knowledge of the facts of the case in order to be an adequate representative." *Gunnells*, 348 F.3d at 430 (citation omitted). With respect to the adequacy of counsel, courts consider the work

counsel has done to investigate the claims of the proposed class, counsel's experience in handling complex cases, counsel's knowledge of applicable law, and the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

Plaintiffs' claims are coextensive with, and not antagonistic to, the claims asserted on behalf of the proposed Classes. Plaintiffs have the same injuries as members of the proposed Suspension Class and Reinstatement Fee Class, and the relief they seek will benefit all members of the Suspension Class and Reinstatement Fee Class equally. Plaintiffs are committed to vigorously representing the interests of all members of both proposed Classes. Carter Decl. ¶ 71; Bellamy Decl. ¶ 66; White Decl. ¶ 73. Plaintiffs have also retained a competent and capable team of trial lawyers with significant experience in class actions and matters involving civil rights, who have been appointed to serve as class counsel in numerous cases, and who have successfully litigated cases in both federal and state courts. Choudhury Decl. ¶¶ 4–29. Plaintiffs' counsel extensively investigated the claims asserted in this lawsuit, are dedicated to pursuing those claims on behalf of the Classes, and have the resources to do so. Choudhury Decl. ¶¶ 30–32.

5. Members of the Classes are readily identifiable.

The Fourth Circuit has “recognized that Rule 23 contains an implicit threshold requirement that the members of a proposed class be ‘readily identifiable.’” *EQT Prod.*, 764 F.3d at 358 (quoting *Hammond v. Powell*, 462 F.2d 1053, 1055 (4th Cir. 1972)). “A class cannot be certified unless a court can readily identify the class members in reference to objective criteria.” *Id.* “The plaintiffs need not be able to identify every class member at the time of certification. But ‘[i]f class members are impossible to identify without extensive and individualized fact-finding or ‘mini-trials,’ then a class action is inappropriate.’” *Id.* (citation omitted).

While the Fourth Circuit has yet to address the issue, several other circuits have concluded that ascertainability is not required for a class certified under Rule 23(b)(2). *See, e.g., Cole v. City of Memphis*, 839 F.3d 530, 542 (6th Cir. 2016) (“The advisory committee’s notes for Rule 23(b)(2) assure us that ascertainability is inappropriate in the (b)(2) context.”), *cert. denied*, 137 S. Ct. 2220 (2017); *Shelton v. Bledsoe*, 775 F.3d 554, 562 (3d Cir. 2015) (“The ascertainability requirement ensures that the procedural safeguards necessary for litigation as a (b)(3) class are met, but it need not (and should not) perform the same function in (b)(2) litigation.”); *Shook v. El Paso County*, 386 F.3d 963, 972 (10th Cir. 2004) (“[M]any courts have found Rule 23(b)(2) well suited for cases where the composition of a class is not readily ascertainable; for instance, in a case where the plaintiffs attempt to bring suit on behalf of a shifting prison population.”).

If the Court finds that a 23(b)(2) class must be ascertainable, that requirement is satisfied as is the requirement that proposed Class members be readily identifiable. The proposed Classes are defined by objectively determinable criteria and their members can be readily identified from the DMV’s records. Indeed, the DMV has already reported that 192,263 people had a driver’s license that was indefinitely suspended by the DMV for failure to pay a traffic ticket under Section 56-25-20 as of May 31, 2019. Brooks Decl. ¶ 9. The DMV also reported that 39,546 people had driver’s licenses that were suspended as of January 15, 2019 solely because they owe DMV reinstatement fees. Dunn Decl. ¶ 8. Because the DMV was able to identify the total number of people with suspensions for unpaid traffic tickets and unpaid reinstatement fees, the agency must have the capacity to identify the specific people who correspond to each of these figures.

B. The Classes should be certified under Rule 23(b)(2).

Plaintiffs request certification under Rule 23(b)(2), which was specifically created for

civil rights cases challenging a common course of conduct. *Thorn*, 445 F.3d at 330; *see also* Fed. R. Civ. P. 23 advisory committee’s note to 1966 Amendment, Subdivision (b)(2) (noting that “various actions in the civil-rights field” are appropriate for (b)(2) certification).

Certification under Rule 23(b)(2) is appropriate where “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” *Berry v. Schulman*, 807 F.3d 600, 608 (4th Cir. 2015) (quoting Fed. R. Civ. P. 23(b)(2)).

Plaintiffs allege that both Defendants act on grounds that apply generally to the Classes. The DMV maintains a policy and practice of indefinitely suspending driver’s licenses for failure to pay traffic tickets in an unconstitutional manner—without any determination of willful failure to pay or ability to pay, without a pre-deprivation hearing or opportunity to be heard, and without adequate pre-deprivation notice—that is generally applicable to the proposed Suspension Class. The OMVH maintains a policy and practice applicable to the Suspension Classes of requiring payment of a non-waivable \$200 fee in order for an individual to secure an administrative appeal to challenge a driver’s license suspension for failure to pay traffic tickets, without any mechanism for fee waiver due to inability to pay. Additionally, Section 56-1-390 on its face applies to all members of the Reinstatement Fee Class because it prohibits the DMV from reinstating a suspended license when an individual owes reinstatement fees and does not require a determination of willful failure to pay or pre-deprivation notice or opportunity to be heard.

Thus, the injunctive and declaratory relief that Plaintiffs seek will be final and appropriate for the proposed Classes as a whole. A judgment that Defendants are violating the constitutional rights of members of the proposed Classes and the entry of an injunction requiring Defendants to remedy those violations will apply equally to all members of the proposed Classes. Accordingly, certification of the Classes under Rule 23(b)(2) is appropriate.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask the Court to certify the proposed Classes under Rule 23(b)(2), appoint Plaintiffs to serve as class representatives; and appoint Plaintiffs' counsel to serve as Class counsel.

DATED the 1st day of November 2019.

Respectfully submitted by,

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