IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SETI JOHNSON and MARINE BONHOMME-DICKS, on behalf of themselves and those similarly situated, and SHAREE SMOOT and NICHELLE YARBOROUGH, on behalf of themselves and those similarly situated, Plaintiffs, v. TORRE JESSUP, in his official capacity as Commissioner of the North Carolina Division of Motor Vehicles, Defendant.	)	No. 1:18-CV-00467

DEFENDANT'S OPPOSITION TO PLAINTIFFS' SECOND MOTION FOR CLASS CERTIFICATION

NOW COMES THE DEFENDANT, Torre Jessup, Commissioner of the North Carolina Division of Motor Vehicles, in his official capacity ("Defendant") by and through the undersigned counsel, and hereby opposes Plaintiffs' Second Motion for Class Certification for the following reasons.

FACTS

A. The Complaint

On August 7, 2018, Plaintiffs filed their First Amended Class Action Complaint for Declaratory and Injunctive Relief, alleging that they are North

Carolina citizens whose licenses have been, or will be, revoked under N.C. Gen. Stat. § 20-24.1. Under N.C. Gen. Stat § 20-24.1 the North Carolina Division of Motor Vehicles (DMV) is required to suspend the driver's license of an individual upon receipt of notice from the court that the individual has failed to pay a fine, penalty, or costs ordered by the court for motor vehicle offenses unless otherwise directed by the state courts. *See* N.C. Gen. Stat. § 20-24.1. Subsequently, DMV sends a notice to the individual informing him that effective sixty (60) days after the revocation order has been mailed or served on him, his license will be revoked unless he pays the court ordered fines, penalties or costs. After 60 days, DMV is required to revoke the driver's license indefinitely, unless or until the court notifies DMV that the violator has paid the court ordered fines or cost, or the motorist demonstrates to the court that their failure to pay was not willful and that the motorist is making a good faith effort to pay the penalty or fine. *See* N.C. Gen. Stat. § 20-24.1(b).

Plaintiffs allege that the DMV has revoked, or will revoke, their licenses under N.C. Gen. Stat. § 20-24.1 for failure to pay fines and costs assessed for motor vehicle offenses. Plaintiffs assert that their failure to pay these fines is because they cannot afford to pay them. Additionally, the Plaintiffs allege that this revocation process violates their due process and equal protection rights guaranteed under the 14th Amendment of the U.S. Constitution.

B. The Alleged Constitutional Violations.

Plaintiffs allege that the license revocation protocol established by N.C. Gen. Stat. § 20-24.1, and DMV's enforcement of the statute, is unconstitutional. *Amended Complaint* at ¶ 11. Plaintiffs bring this action under 42 U.S.C. § 1983 alleging due process and equal protection violations of the law. *Amended Complaint* at ¶ 12. Specifically, Plaintiffs allege that N.C. Gen. Stat. § 20-24.1 violates their Fourteenth Amendment rights under the U.S. Constitution by punishing them for non-payment without first determining their ability to pay and willful refusal to make monetary payment based on *Bearden v. Georgia*, 461 U.S. 660 (1983). *Amended Complaint* at ¶¶ 118-24. Additionally, Plaintiffs allege N.C. Gen. Stat. § 20-24.1 violates their procedural due process rights under the Fourteenth Amendment of the U.S. Constitution because it does not require a pre-deprivation hearing or provide adequate notice of the available remedies under the statute. *Amended Complaint* at ¶¶ 126-41.

C. Plaintiff's Proposed Class.

Plaintiffs seek to certify two separate classes under Fed. R. Civ. P. 23 (a) and (b)(2). Plaintiffs Johnson and Bonhomme-Dicks seek to represent a class of people defined as "All individuals whose drivers' licenses will be revoked in the future by the DMV due to their failure to pay fines, penalties, or court costs

assessed by the court for a traffic offense." *Amended Complaint* at ¶ 96. This class is referred to as the "Future Revocation Class." *Id.* Plaintiffs Smoot and Yarborough seek to represent a class of people defined as "All individuals whose drivers' licenses have been revoked by the DMV due to their failure to pay fines, penalties, or court costs assessed by a court for a traffic offense." *Amended Complaint* at ¶ 97. This class is referred to as the "Revoked Class." *Id.*

LAW AND ARGUMENT

A. Class Certification Standard

Under Fed. R. Civ. P. 23(a), a class may be certified if the movant shows all of the following:

> (1) the class is so numerous that joinder of all members is impracticable; ("numerosity")
> (2) there are questions of law or fact common to the class; ("commonality")
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; ("typicality") and
> (4) the representative parties will fairly and adequately protect the interests of the class. ("adequacy").

After satisfying the prerequisites established in Rule 23(a), the class action must fall within one of the three categories established in Fed. R. Civ. P. 23(b). Plaintiffs seek certifications for both proposed classes under Fed. R. Civ. P. 23(b)(2) which requires the following:

> 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.

Every class action "may only be certified if the trial court is satisfied, after a *rigorous analysis*, that the prerequisites of Rule 23(a) have been satisfied." *General Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 161 (1982) (emphasis added). Recently, the United States Supreme Court has reiterated that "[a] party seeking class certification must *affirmatively demonstrate* his compliance with the Rule." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (emphasis added).

B. Plaintiffs failed to meet their burden to certify the proposed classes.

1. Plaintiffs have failed to show they meet the numerosity requirement.

"There is no mechanical test for determining whether in a particular case the requirement of numerosity has been satisfied." *Kelley v. Norfolk & W. Ry. Co.*, 584 F.2d 34, 35 (4th Cir. 1978). The Plaintiffs are correct that "[n]o specified number is needed to maintain a class action." *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) (quoting *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n.*, 375 F.2d 648, 653 (4th Cir. 1967)). But establishing numerosity requires more than broadly stating the total number

of people that could possibly be included in a class. *See McCoy v. McLeroy*, 348 F. Supp. 1034, 1038-39 (M.D. Ga. 1972) (providing evidence of the total number of students attending the University of Georgia—without further evidence that any number of the students were discriminated against—was insufficient to show numerosity in voter discrimination lawsuit); *Golden v. City of Columbus*, 404 F.3d 950 (6th Cir. 2005) (listing all tenants in a city was insufficient for numerosity in equal protection claim where only some tenants were at risk of constitutional harm because their landlords or predecessors were indebted to the city); *Marcial v. Coronet Ins. Co.*, 880 F.2d 954 (7th Cir. 1989) (upholding denial of class certification because plaintiffs failed to show numerosity when speculating that 400-600 people would be included in the class without showing how many would have legitimate claims against the defendant).

(a) Revoked Class

Plaintiffs have failed to satisfy their burden of showing numerosity for the Revoked Class. To show numerosity, a plaintiff must show that their proposed class "is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Plaintiffs allege that the Revoked Class consists of approximately 436,000 members. *Amended Complaint* at ¶ 100. Plaintiffs assert that the evidence to support this number is shown in Exhibit I to *Declaration of Samuel Brooke*. *Id.* This exhibit includes an email from a

Division of Motor Vehicles employee stating: "The total number of Failure to Pay is 436,050." *See Exhibit I to Declaration of Samuel Brooke.* The Plaintiffs interpret this number to mean there are 436,000 "*individuals* punished with an automatic and indefinite driver's license revocation for unpaid fines and costs." *Amended Complaint* at ¶ 100 (emphasis added) Plaintiffs' evidence, however, fails to show exactly what this number represents. The language of the email does not support the Plaintiffs' assertion as to what that number represents. The email simply identifies the total number of failure to pay suspensions with no further explanation. The email does not explain the time frame of these suspensions, or even if the 436,050 suspensions is referring to individuals. Speculation based exclusively on this email, that the Revoked Class would contain hundreds of thousands of people, is not sufficient to pass the "rigorous analysis" test required to satisfy Rule 23(a) requirements. *General Tel. Co. of the Southwest v. Falcon*, 457 U.S. at 161.

Plaintiffs' evidence also fails to show that the alleged "hundreds of thousands of people" in the proposed Revoked Class are suspended due to their economic inability to pay. Plaintiffs assert an unsupported allegation that the proposed Revoked Class members are low income individuals, like Ms. Smoot and Ms. Yarborough, who are spread out across the state. *Amended Complaint* at ¶ 102. As evidence of this proposed class, Plaintiffs speculate that because

Plaintiffs Smoot and Yarborough's licenses were revoked because of an inability to pay, then hundreds of thousands of others are similarly situated across the state. *Amended Complaint at* ¶¶ 100-02. The statements of Plaintiffs and the email provided by DMV do not show numerosity. Instead, this evidence simply shows the potential existence of two Revoked Class members. Plaintiffs Smoot and Yarborough ask this Court to speculate over the existence of other members and conclude that joinder of these hypothetical members is impractical. This type of mere speculation over the existence of a class does not satisfy numerosity requirement. *See Baltimore v. Laborers' Int'l Union of N. Am*, No. 93-1810, 1995 U.S. App. LEXIS 27703, at *3-*4 (4th Cir. Oct. 2, 1995); *Wheeler v. Anchor Cont'l. Inc.*, 80 F.R.D. 93, 98-99 (D.S.C. 1978); *see also Moreno v. Univ. of Md.*, 420 F. Supp. 541, 564 (D. Md. 1976), *aff'd*, 556 F2d 573 (1977).

(b) Future Revocation Class

Plaintiffs have also failed to satisfy their burden in showing numerosity for the Future Revocation Class. In their Complaint, Plaintiffs allege that the Future Revocation class "consists of hundreds of thousands of people who cannot or will not be able to afford to pay fines and costs and therefore will face revocation of their licenses." *Amended Complaint* at ¶ 101. Plaintiffs fail to meet their burden of showing numerosity of a proposed Future Revocation

class just as they did with the proposed Revoked Class. Plaintiffs have not provided sufficient evidence or even a reasonable estimation of the number of people that would be included in this proposed Future Revocation Class. Instead, Plaintiffs rely on the email contained in Exhibit I to *Declaration of Samuel Brooke* and the statements of Plaintiffs Johnson and Bonhomme-Dicks as evidence to conclude that the number of people in the Future Revocation class "consists of hundreds of thousands of people." *Amended Complaint* at ¶ 101, *Second Motion for Class Certification* at ¶8 and attached *Declarations of Plaintiffs*. The statements of Plaintiffs Johnson and Bonhomme-Dicks, however, only proves the existence of two potential class members. Furthermore, the email — even assuming it means what the Plaintiffs allege it to mean — only provides insufficient evidence to support the existence of a Revoked Class, but does not support the Plaintiffs' assertion that a Future Revocation Class would contain hundreds of thousands of people.

(c) Both Proposed Classes

The evidence provided by Plaintiffs is not sufficient to establish numerosity under a "rigorous analysis." Although Plaintiffs assert that the license revocation protocol set forth in N.C. Gen. Stat. § 20-24.1 "disproportionately impacts" low income individuals across the state, Plaintiffs provide no evidence to show that "numerous" license suspensions are of low-

income individuals who are unable to pay. Furthermore, Plaintiffs provide no evidence to show that joinder would be impractical. Instead, the Amended Complaint simply presents four claims of residents of Mecklenburg, Cabarrus, Franklin and Wake Counties as evidence that similarly situated individuals exist across the other ninety-six counties in North Carolina, and that these other individuals are so numerous that joinder would be impractical. Because Plaintiffs have failed to establish numerosity for both the proposed Revoked Class and Future Revocation Class, Plaintiffs' request for certification should be denied for failing to meet the requirements of Rule 23(a). *See* Fed. R. Civ. P. 23(a).

2. <u>Plaintiffs have failed to show typicality and commonality</u>

Under a modern view, it is understood that "commonality and typicality 'tend to merge'." *Brown v. Nucor*, 576 F.3d 149, 159 (4th Cir. 2009). Therefore, this section will address both commonality and typicality, starting first with typicality.

(a) Typicality

To show typicality, the movants must show that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Plaintiffs allege that the statute unfairly discriminates against people with lower economic backgrounds. To support this claim,

Plaintiffs explain their personal inability to pay their own fines. *See Declarations of Plaintiffs*. Plaintiffs then suggest that their economic situation is representative of hundreds of thousands of people suspended for failure to pay. Their declarations, however, fall short of affirmatively showing that their economic situation is typical of other putative class members suspended under N.C. Gen. Stat. § 20-24.1. Where Plaintiffs fail to provide evidence proving typicality, class certification is inappropriate. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) (requiring the plaintiffs to affirmatively demonstrate compliance with the requirements of the class certification rule). Moreover, many of the 436,000 proposed class member's claims may be barred by North Carolina's three-year statute of limitations applicable to 42 U.S.C. § 1983 claims. *See* N.C. Gen. Stat. § 1-52 (2); *See also Cole v. Cole*, 633 F.2d 1083 (4th Cir. 1980). When some class members are barred by the statute of limitations, a typicality problem arises. *See Kirkman v. N.C. R.R.*, 220 F.R.D. 49, 53 (M.D.N.C. 2003) (finding that a statute of limitations bar affecting only some class members is problematic for typicality). Here, this Court would have to individually examine the nature of each driver's license suspension to determine if the statute of limitations would bar that individual class member's claim. This would require an extensive administrative inquiry to determine the time frame of each suspension. When the court would be

burdened with this type of extensive individualized inquiry, a class action is not appropriate. *Zimmerman v. Bell*, 800 F.2d 386, 390 (4th Cir. 1986).

Additionally, the relief sought by Plaintiffs would require an individualized inquiry into the driver's eligibility for reinstatement. While the *Declarations of Plaintiffs* may be evidence of their eligibility for reinstatement, their personal situation has no impact on the eligibility of other prospective class members. To exemplify the type of inquiry that would be required of each potential claimant, Plaintiff Smoot's eligibility must be examined even further as her statement explains she also has a revoked license for multiple failures to appear. *Declaration Plaintiff Smoot* at ¶25. This Court could not grant the relief of license reinstatement for Plaintiff Smoot as requested in the *Amended Complaint* without first determining whether she is otherwise eligible to hold a valid license. As evidenced by Plaintiff Smoot's situation, this Court would be required to conduct an individual inquiry into the eligibility of each potential class member prior to granting the Plaintiffs requested relief of license reinstatement. *See Amended Complaint, Prayer for Relief (e) (iii).* As further evidenced by the statute of limitations issue, the necessity for individualized evaluation before granting the relief requested is further proof that class certification is not appropriate. *Zimmerman*, 800 F.2d at 390.

Finally, it is important to recognize that under N.C. Gen. Stat. § 20-24.1(b)(4), a person whose license is suspended may demonstrate to the court that his failure to pay is not willful. If the person satisfies N.C. Gen. Stat. § 20-24.1(b)(4) before the effective date of the revocation, the DMV must prevent the suspension from taking effect. *See* N.C. Gen. Stat. § 20-24.1(c). Understanding this step is important in analyzing yet another deficiency in the Plaintiffs typicality claim. In the Plaintiffs' statements, they explain that they were not given the opportunity to resolve their fines without paying in full, nor did the court ask about their ability to pay. *See Declarations of Plaintiffs.* There is no evidence that other individuals whose licenses have been suspended for failure to pay fines and costs have not taken advantage of the opportunity to have their revocation orders dismissed or their licenses reinstated without payment in full upon satisfying the conditions set forth in N.C. Gen. Stat. § 20-24.1(b).

The foundation of this proposed class action rests solely on Plaintiffs' statements. Their statements purport to show that the Plaintiffs' claims are typical of people across the state. It is worth noting, however, that the Plaintiffs reside in only 4% of North Carolina's counties. *Amended Complaint* at ¶¶ 15-18. Evidence of revocation practices in Cabarrus, Mecklenburg, Franklin and Wake County courts alone is insufficient to show typicality.

Plaintiff's declarations merely implicates that their experience may be typical other revocations by courts in those courts, but they certainly do not show typicality for hundreds of thousands of drivers across the state or in the other 96 counties. In fact, it is possible that other counties conduct these types of inquiries as allowed under the statute. Clearly, an individual charged with a motor vehicle violation who received an inquiry into his ability to pay would not challenge the statute alleging a violation of his due process rights. To determine whether a potential class member received the requested relief of inquiry into ability to pay, this Court would once again be required to individually evaluate the merits of each potential class member's claim for relief, yet another sign that typicality is not met. *See Zimmerman*, 800 F.2d at 390.

Here, Plaintiffs want to broadly represent everyone whose driver's licenses have been, or will be, suspended for failure to pay pursuant to N.C. Gen. Stat. § 20-24.1. Plaintiffs use their own experiences to make broad assertions that there are 436,000 drivers across the state suffering the same injury. The problem with this approach, however, is that Plaintiffs have failed to show that their claims are typical of hundreds of thousands of proposed class members. In fact, Plaintiffs have failed to show that their claims are typical of even one other person in their respective class. Since each potential class

member faces different statutory and relief limitations to their claims, this Court would be required to examine each potential class member on a case-by-case basis. Where the court is required to make a case-by-case analysis on issues important to the resolution of the litigation, typicality is not met. *See Stott v. Haworth,* 916 F.2d 134, 145 (4th Cir. 1990) (requiring class decertification so "individual scrutiny" could be undertaken for each class member's claim).

(b) Commonality

To satisfy commonality, Plaintiffs must show that there are "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality requires plaintiffs' claim to depend on a common contention. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. at 350. This contention "must be of such a nature that it is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.*

Here, Plaintiffs have alleged both procedural due process and equal protection due process violations under the Fourteenth Amendment of the U.S. Constitution. *See Amended Complaint* at ¶ 12. Plaintiffs allege that DMV's "license revocation scheme forces the most economically vulnerable further into poverty, in violation of their right to due process and equal protection of

the law under the U.S. Constitution." *Amended Complaint* at ¶ 3. In an effort to support class certification for these claims, Plaintiffs offer three common questions of fact and four common questions of law.

The alleged common questions of fact they offer are:

i. Whether Section 20-24.1 mandates the DMV to revoke, and whether the DMV has a practice of revoking, a license for non-payment without requiring a pre-deprivation hearing;

ii. Whether Section 20-24.1 mandates the DMV to revoke, and whether the DMV has a practice of revoking, a license for non-payment without requiring an inquiry into a motorist's ability to pay and determining the motorist's non-payment was willful; and

iii. Whether the revocation notice provided by the DMV to drivers whose licenses will be revoked for non-payment fails to inform drivers that (1) they may have a hearing before the revocation becomes effective; (2) a critical issue at that hearing will be their ability to pay fines and costs that they are alleged to have failed to pay; and (3) additional options exist under Section 20-24.1 to avoid revocation for those who cannot pay in full.

The alleged common questions of law they offer are:

i. Whether Section 20-24.1 and the DMV's enforcement of the statute violate the Fourteenth Amendment by failing to inquire into a motorist's ability to pay and whether the motorist's non-payment was willful before revoking a license for non-payment;

ii. Whether Section 20-24.1 and the DMV's enforcement of the statute violate the Fourteenth Amendment Procedural Due Process Clause by revoking licenses before conducting a pre-deprivation hearing;

iii. Whether Section 20-24.1 and the DMV's enforcement of the statute violate the Fourteenth Amendment Procedural Due Process

Clause by failing to provide adequate advance notice and opportunity to be heard; and

iv. Whether injunctive and declaratory relief is appropriate and if so, what the terms of such relief should be.

Amended Complaint at ¶ 104.

Plaintiffs assert that the answers to these questions of law and fact will "provide a common answer to the crucial question of whether the DMV is causing unconstitutional injuries to class members." *Plaintiffs Memorandum in Support of Plaintiffs' Second Motion for Class* Certification, p. 17. It is important to recognize, however, that "[a]ny competently crafted class complaint literally raises common questions." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. at 349 (citing Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N. Y. U. L. Rev. 97, 131-132 (2009)). Recognizing this, the U.S. Supreme Court has explained that "[c]ommonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Id.* at 349-50 (2011) (citing *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 157 (1982)).

Plaintiffs complain that they have or will suffer injuries as a result of the revocation of their driver's licenses. Specifically, Plaintiffs' complain that without a driver's license, they are forced to choose between going to work, getting food for the family, attending medical appointments, driving their kids

to school, or driving on a revoked license. *See Amended Complaint* at ¶¶ 3, 28. While the *Plaintiffs' Declarations* may provide evidence of their injuries, they do not provide evidence that any number of other people are facing the same injuries. *See Gen. Tel. Co. of the Southwest v. Falcon,* 457 U.S. at 158 (finding that the plaintiff wanting to represent a class of individuals in a discrimination claim must do more than just prove the validity of their own claim).

For this Court to rule that N.C. Gen. Stat. § 20-24.1 unfairly punishes economically vulnerable people in violation of the Fourteenth Amendment of the U.S. Constitution, this Court must first determine whether there are economically vulnerable individuals facing similar injuries as the Plaintiffs under the statute. Out of the alleged 436,000 potential class members, Plaintiffs have failed to show how many, if any, are facing similar injuries as alleged by Plaintiffs. Instead, Plaintiffs would ask this Court to make a conjecture that every one of the 436,000 proposed class members suffer the same injuries as those alleged by Plaintiffs. Without any evidence, the Plaintiffs ask this Court to blindly assume that each potential class member has or will suffer the same injuries of which they complain and these same complaints can be resolved by a single answer to a common question. The type of individualized review required for each potential class member's claim precludes a finding of commonality. *EQT Prod. Co. v. Adair*, 764 F.3d 347, 363

(4th Cir. 2014) (requiring the court to evaluate lease and land ownership rights on a case-by-case basis precluded a finding of commonality); *Lukenas v. Bryce's Mountain Resort, Inc.*, 538 F.2d 594, 597 (4th Cir. 1976) (requiring the court to make individual determinations of the impact of the statute of limitations on each plaintiff prevented a finding of commonality).

Plaintiffs have failed to carry their burden in showing commonality and typicality. To grant the relief sought, this Court would first have to determine the existence of a class of people facing the same or similar injuries as Plaintiffs. This Court would then have to determine if those class members were barred by the statute of limitations and then conduct an individualized inquiry into their eligibility to drive in order to determine whether the requested relief is appropriate. Placing such a burden on this Court to satisfy the elements of class certification goes directly against the certification standard set forth in Rule 23. (Under Rule 23(a), a party seeking class certification must demonstrate that the requirements of Rule 23(a) are met. *Berry v. Schulman*, 807 F.3d 600, 608 (4th Cir. 2015), *cert. denied*, 137 S. Ct. 77, 196 L. Ed. 2d 35 (2016)). Thus, it is the Plaintiff's burden to show that their claims are typical of the other class members and that answers to their common questions would resolve the lawsuit for all other members. Here, Plaintiffs have failed to affirmatively show commonality and typicality and

therefore, class certification is not appropriate. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)

CONCLUSION

On review, a district court's decision whether or not to certify a class will only be reviewed for abuse of discretion. *Brown v. Nucor Corp.*¸785 F.3d 895, 902 (4th Cir. 2015). To grant class certification, the party seeking certification carries the burden of satisfying all four elements of Rule 23(a). Because the Plaintiffs have failed to satisfy the requirements of Rule 23(a)(1), (2), and (3), it is unnecessary to address the additional class certification standards that the Plaintiffs have failed to establish. The Commissioner, therefore, respectfully requests that this Court deny Plaintiffs' Second Motion for Class Certification.

Electronically submitted, this the 28th day of August, 2018.

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CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), I certify that the body of this memorandum, including headings and footnotes but excluding the caption, signature lines, certificates and any cover pages or indices, does not exceed 6,250 words.

This the 28th day of August, 2018.

/s/ Kathryne E. Hathcock
Kathryne E. Hathcock
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Kathryne E. Hathcock, Assistant Attorney General, do hereby certify that on this day, I have electronically filed the foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFFS' SECOND MOTION FOR CLASS CERTIFICATION** with the Clerk of Court using the CM/ECF system and electronically served Plaintiffs' copy of the foregoing through counsel, as indicated below:

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