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

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

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF JUDGMENT ON THE PLEADINGS**

NOW COMES DEFENDANT, Torre Jessup, Commissioner of the NC Division of Motor Vehicles, in his official capacity by and through the undersigned counsel, and hereby moves the Court to award Judgment on the Pleadings for the following reasons:

**NATURE OF THE CASE**

Plaintiffs bring this action pursuant to 42 U.S.C. §1983 against the Commissioner of the North Carolina Division of Motor Vehicles (DMV), in his official capacity, seeking declaratory and injunctive relief. Plaintiffs allege that the revocation of drivers' licenses by DMV pursuant to N.C. Gen. Stat. §

20-24.1 violates their equal protection and due process rights guaranteed under the Fourteenth Amendment of the United States Constitution.

## STATEMENT OF CASE

Plaintiffs' alleged injuries arise exclusively from state court orders that require DMV to revoke driver's licenses. The Commissioner of DMV is not a decision-maker under the revocation statute, nor does he have any discretionary authority concerning the revocation of driver's licenses for failure to pay court-ordered fines, penalties or costs under N.C. Gen. Stat. § 20-24.1. Moreover, North Carolina law does not vest Commissioner Jessup or anyone else at DMV with the legal authority to review any court order revoking a driver's license under N.C. Gen. Stat. § 20-24.1 to determine whether the court assessed the individual's ability to pay.

After receiving notice from the court system that a criminal defendant's fines remain have unpaid after forty days, DMV mails or serves the criminal defendant with written notice that he must contact the court to comply with the citation or his license will be automatically suspended indefinitely within sixty days. N.C. Gen. Stat. § 20-24.1. The notice provides the criminal defendant with the date of the violation, the citation number and the name and telephone number of the court he should contact. The criminal defendant then has the opportunity to either pay the court the fine, penalty or costs owed for

the motor vehicle offense or "demonstrate to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted." N.C. Gen. Stat. § 20-24.1(c).

The criminal defendant retains the right even after his license has been revoked to request a § 20-24.1 hearing by the court to reinstate his driver license based on his ability to pay a penalty, fine or cost N.C. Gen. Stat. § 20-24.1(b)(4). These procedural protections found in N.C. Gen. Stat. § 20-24.1 afford the Plaintiffs sufficient due process. With respect to the equal protection and "fundamental fairness," claims asserted in the Complaint, Plaintiffs correctly state that indigent criminal defendants cannot be imprisoned simply because they lack the ability to pay a court-ordered debt. However, under N.C. Gen. Stat. § 20-24.1, individuals who fail to appear in court or pay a fine, penalty or cost for a motor vehicle violation are not locked away in "debtor's prison" and deprived of their freedom, but rather their driving privileges may be suspended, which is not equivalent of deprivation of liberty by way of incarceration. Additionally, because N.C. Gen. Stat. § 20-24.1 does not result in the deprivation of a fundamental liberty interest, this statute need only be rationally related to a legitimate government interest to survive constitutional scrutiny.

## LEGAL STANDARD

A Rule 12(c) motion for judgment on the pleadings is decided under the same standard as a motion to dismiss under Rule 12(b)(6). *Deutsche Bank Nat'l Trust Co. v. I.R.S.*, 361 Fed. App'x 527, 529 (4th Cir. 2010); *see also Burbach Broad Co. v. Elkins Radio*, 278 F.3d 401, 405 (4th Cir. 2002). Thus, in order to survive a motion for judgment on the pleadings, the pleadings must contain sufficient facts "to raise a right to relief above the speculative level" and "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In reviewing the pleadings, the court accepts all well-pleaded allegations as true and construes the facts and reasonable inferences derived therefrom in the light most favorable to the non-moving party. *Venkatraman v. REI Sys. Inc.*, 417 F.3d 418, 420 (4th Cir. 2005). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). In the instant case, Plaintiff's complaint should be dismissed under Rules 12(b)(1),(2) and (6) of the Federal Rules of Civil Procedure.

For Rule 12(b)(1) challenges to jurisdiction, the plaintiff bears the burden of proving that subject matter jurisdiction exists. *Evans v. B. F. Perkins Co.,* 166 F.3d 642, 647 (4th Cir. 1999). "When a defendant challenges

subject matter jurisdiction pursuant to Rule 12(b)(1), the district court is to regard the pleadings as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Id.* (quotation omitted).

Similarly, in response to a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, the burden is on the plaintiff to demonstrate that jurisdiction is proper. *Mylan Labs, Inc. v. Akzo, N.V.*, 2 F.3d 56, 59-60 (4th Cir. 1993); *Simmons v. Corizon Health, Inc.*, 122 F. Supp. 3d 255, 269 (M.D.N.C. 2015). Although a Plaintiff who opposes a motion to dismiss for lack of personal jurisdiction is entitled to have all reasonable inferences drawn in his favor, the court is not required to look solely to plaintiff's proof in drawing those inferences. *Mylan Labs*, 2 F.3d at 60; *IHFC Props. LLC v. APA Mktg.*, 850 F. Supp. 2d 604, 616 (M.D.N.C. 2012). Pursuant to Rule 12(b)(2), if a court does not have jurisdiction over a defendant, that defendant is entitled to an order entered granting his motion to dismiss. *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390 (4th Cir. 2003) (affirming dismissal pursuant to Rule 12(b)(2) for lack of personal jurisdiction).

A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the legal sufficiency of the plaintiff's allegations. On a motion to dismiss for failure to state a claim under Rule 12(b)(6), all well-pled

allegations are presumed to be true, and the Court views the allegations in the light most favorable to the plaintiff. *GE Inv. Private Placement Partners II v. Parker,* 247 F.3d 543, 548 (4th Cir. 2001).

Legal insufficiency may be found from an absence of allegations sufficient to make a good claim. When considering a motion under Rule 12(b)(6), "it is not . . . proper to assume that plaintiff[ ]can prove facts that [she has] not alleged or that the defendants have violated the . . .law[] in ways that have not been alleged." *Estate Constr. Co. v. Miller & Smith Holding Co.,* 14 F.3d 213, 221 (4th Cir. 1994) (quotation and citation omitted). Thus, in ruling on a 12(b)(6) motion, this Court must determine as a matter of law whether the allegations state a claim for which relief may be granted. *Papasan v. Allain*, 478 U.S. 265, 283 (1986). While this Court must accept Plaintiff's allegations as true, it need not accept as true her asserted legal conclusions. "Were it otherwise, Rule 12(b)(6) would serve no function, for its purpose is to provide a defendant with a mechanism for testing the legal sufficiency of the complaint." *District 28, United Mine Workers of America, Inc. v. Wellmore Coal Corp.,* 609 F.2d 1083, 1085-86 (4th Cir. 1979); *see also Randall v. U.S.,* 30 F.3d 518, 522 (4th Cir. 1994) (court not bound by plaintiff's legal conclusions in deciding motion to dismiss), *cert. denied*, 514 U.S. 1107 (1995).

## ARGUMENT

Defendant should be granted judgment on the pleadings because the Court lacks both subject matter and personal jurisdiction. Even if this Court had jurisdiction, Plaintiffs' First Amended Class Action Complaint should nonetheless be dismissed for Plaintiffs' failure to state a claim for which relief can be granted.

### I. THE COMPLAINT SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

This Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). This doctrine "provides that district courts lack subject-matter jurisdiction of 'cases brought by state court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.'" *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Its fundamental purpose is to bar a party losing in state court from seeking what in substance would be appellate review of a state judgment in lower federal court based on the losing party's claim that the state judgment itself violates federal rights. *Am. Reliable Ins. Co. v. Stillwell,* 336 F.3d 311 (4th Cir. 2003) (*quoting Johnson v.*

*De Grandy,* 512 U.S. 997, 1005-06 (1994). *Rooker-Feldman* applies not only to issues that actually were raised before the state court, but also to claims that are "inextricably intertwined" with state court determinations. *Feldman*, 460 U.S. at 482; *accord Exxon*, 544 U.S. at 286.

The phrase 'inextricably intertwined' describes the conclusion that a claim that asserts an injury whose source is the state court judgment is thus barred by *Rooker–Feldman*. *Id.* at 719. Alternatively, district courts lack power to "reverse or modify" a state court decree, to "scrutinize[e] or invalidat[e] an individual state court judgment, or to "overturn an injurious state court judgment." *Adkins v. Rumsfeld*, 464 F.3d 456, 464 (4th Cir. 2006).

Plaintiffs' Complaint demonstrates that the "injury" of which Plaintiffs complain is predicated directly upon the underlying state court judgments. Plaintiffs have been convicted of a traffic offense in the NC courts. As a consequence, Plaintiffs are assessed fines, penalties, and/or court costs by the court. *See, e.g., Amended Complaint at* ¶¶ 7-10 (alleging that Plaintiffs were ordered to pay fines and costs and that they are unable to pay). Plaintiffs seek to place the responsibility of holding an "ability to pay hearing" on the wrong party. As discussed above, fines and costs are "ordered" to be paid by the court, not DMV, after a traffic conviction. N.C. Gen. Stat. § 2-24.1(a)(1).

For the purposes of *Rooker-Feldman*, Plaintiffs' asserted injuries are

"caused by the state-court judgments," and their instant lawsuit "essentially amounts to nothing more than an attempt to seek review of [the state court's] decision by a lower federal court." *Plyler v. Moore*, 129 F.3d 728, 733 (4th Cir. 1997), *cert. denied*, 524 U.S. 945 (1998); *Stinnie v. Holcomb*, No. 17-1740, 2018 U.S. App. LEXIS 13500 (4th Cir. May 23, 2018) (affirming dismissal of Complaint on the grounds that Plaintiffs' claims were barred by the *Rooker-Feldman* doctrine); *Luciano v. Va. DMV,* No. 7:18cv00328, 2018 U.S. Dist. LEXIS 133250 (W.D. Va. Aug. 7, 2018) (dismissing Complaint on the grounds that the *Rooker-Feldman* doctrine is a jurisdictional bar which prohibits lower federal courts from reviewing state court order suspending driver's licenses for failure to pay court costs for motor vehicle violation.)

A similar situation was addressed by the Northern District of New York in *King v. Creed*, No. 1:14-CV-0165 LEK/TWD, 2015 WL 893573, at *1 (N.D.N.Y. Mar. 2, 2015), *reconsideration denied*, No. 1:14-CV-0165 LEK/TWD, 2016 WL 204492 (N.D.N.Y. Jan. 15, 2016). In *King*, a court found the plaintiff guilty of speeding and assessed a fine. *Id.*, 2015 WL 893573 at *1. After one year, defendant Creed sent a letter to plaintiff "detailing the fine Plaintiff owed" when it remained unpaid. *Id.* Several months later, Creed sent plaintiff another letter advising that "his driver's license was suspended" for failure to pay. *Id.*

In his federal civil rights case, King challenged the defendants' attempt to "enforce" the judgment by "unlawfully suspend[ing] [his] driver's license . . . ." *Id.* at *2. Plaintiff further alleged that the DMV Commissioner "lacked authority to require Plaintiff to pay the assessment in violation of [his] due process and equal protection rights." *Id.*

The district court dismissed the plaintiff's Complaint under *Rooker-Feldman*:

> *Rooker-Feldman* bars a losing party in state court from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." Plaintiff's claims against [clerk] Creed fall squarely within this scenario and thus are not properly before the court.

*Id.* at *3 (*quoting Exxon*, 544 U.S. at 287); *see also id.* at *7.

In his motion for reconsideration, plaintiff King argued that *Rooker-Feldman* did not apply because "his due process claims [were] based on allegations of 'discretionary acts' that were not required by the state court judgment." *King v. Creed*, 2016 WL 204492, at *3. The district court disagreed:

> [A] federal suit does not raise an independent claim where it "alleg[es] that actions taken pursuant to a court order violate [plaintiff's] rights." Because [defendants] acted to enforce the state court order, the Court found that Plaintiff's allegations against them were essentially challenges to the underlying state court judgment. The Court is not persuaded by Plaintiff's argument that [defendants'] actions

> to enforce the state court judgment were "voluntary" or "discretionary" acts.

*Id.* at *3.

Here, Plaintiffs' claims against the Commissioner are identical to those raised in *King, Stinnie,* and *Luciano*. For this reason, Plaintiffs' claims regarding revocation are "inextricably intertwined" with the state court judgments. *Feldman*, 460 U.S. at 482 n.16.

Although Plaintiffs do not allege that they are challenging any state court orders, that is exactly what they are doing by asking this Court to prohibit DMV from complying with license revocation orders issued by North Carolina courts and directing DMV to reinstate all licenses revoked pursuant to state court orders for failure to pay court fines, penalties or costs. This is precisely the type of federal intervention *Rooker-Feldman* was designed to avoid. Consequently, Defendant should be granted judgment on the pleadings and Plaintiffs' complaint should be dismissed for lack of subject matter jurisdiction.

## II. THE ELEVENTH AMENDMENT OF THE CONSTITUTION BARS PLAINTIFFS' 42 U.S.C. §1983 CLAIM.

The Eleventh Amendment generally shields a State from lawsuits brought by individuals against the State without its consent. *See Frew ex rel. v. Hawkins*, 540 U.S. 431, 437 (2004). Eleventh Amendment immunity

protects unwilling states from suit in federal court and "extends to state agencies and other governmental entities that can be viewed as arms of the State." *Md. Stadium Auth. V. Ellerbe Becket, Inc.*, 407 F.3d 255, 260 (4th Cir. 2005) (quotation marks and citation omitted). "State officers acting in their official capacity are also entitled to Eleventh Amendment protection, because 'a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office.'" *Lytle v. Griffith*, 240 F.3d 404, 408 (4th Cir. 2001) (quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989)). "[N]either a State nor its officials acting in their official capacities are "persons' under §1983." *Will*, 491 U.S. at 71.

The doctrine of *Ex parte Young*, 209 U.S. 123 (1908), provides the only exception to Eleventh Amendment immunity stating "federal courts may exercise jurisdiction over claims against state officials by persons at risk of or suffering from violations by those officials of federal protected rights, if (1) the violation for which relief is sought is an ongoing one, and (2) the relief sought is only prospective." *Republic of Paraguay v. Allen*, 134 F.3d 622, 627 (4th Cir. 1998). The exception "does not permit judgments against state officers declaring that they violated federal law in the past [.]" *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993). The Eleventh Amendment would clearly bar the Plaintiffs' request to certify a class of

individuals who have already had their drivers licenses revoked from bringing this suit and their request for injunctive relief mandating the Division of Motor Vehicles to lift current license revocations entered pursuant to N.C. Gen. Stat. § 20-24.1(a)(2).

Additionally, Defendant would maintain that he is shielded by the Eleventh Amendment from this entire lawsuit since "[i]n making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the state, and thereby attempting to make the state a party." *Ex parte Young*, 209 U.S. at 157. "General authority to enforce the laws of the state is not sufficient to make government officials proper parties to litigation challenging the law" (internal quotations omitted)). Instead, some direct involvement, outside a general duty to uphold the law must exist before an official possesses the requisite connection to a challenged state action. Insofar as the Commissioner of DMV plays any role in the revocation or suspension of driver's licenses pursuant to N.C. Gen. Stat. § 20-24.1, it arises "merely" from the Division's "general authority to enforce the laws of the state." *McBurney v. Cuccinelli*, 616 F.3d 393, 399 (4th Cir. 2010) (alteration and internal quotation marks omitted). The DMV simply complies with revocation orders

issued by state courts by performing the perfunctory duty of noting the revocation of driver's licenses in their database when criminal defendants fail to comply with presumably valid state court orders within the time prescribed by the court.

## III. THE COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED.

Plaintiffs seek injunctive relief to "prohibit DMV from revoking drivers' licenses for non-payment . . ." and "mandate DMV to lift current license revocations . . ." *Amended Complaint* ¶¶ *(e)(ii-iii).* Under N.C. Gen. Stat. § 20-24.1, however, it is the state courts that issue the revocation orders. The courts send notice to DMV that violator of motor vehicle laws has "failed to pay a fine, penalty, or court costs ordered by the court" and direct DMV without any discretion to revoke their license in sixty (60) days unless notified otherwise by the courts. N.C. Gen. Stat. § 20-24.1. Because the state court system, not the Commissioner of DMV, is the decision-maker regarding revocation, the Plaintiffs' requested relief may only be obtained from the state court system.

In North Carolina, someone who violates a motor vehicle law becomes responsible for the criminal penalty, fine, or costs upon entry of judgment. If the debt is not paid within forty days, after judgment, the courts "must report to [DMV] the name of any person who . . . fails to pay . . ." N.C. Gen. Stat. §

20-24.2. Upon receipt of a revocation order for failure to pay, DMV "must revoke" the debtor's driver's license and send him notice that the revocation order will become effective sixty (60) days after the order is mailed or personally delivered to him unless he satisfies the conditions of § 20-24.1(b) before the effective date of the revocation. N.C. Gen. Stat. § 20-24.1(c). A license shall continue to be suspended until the debtor 1) disposes of the charge *in the trial division* in which he failed to appear . . .; 2) demonstrates *to the court* that he is not the person charged . . .; 3) pays the penalty, fine, or costs ordered *by the court*; or 4) demonstrates *to the court* that his failure to pay…was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted. N.C. Gen. Stat. § 20-24.1(a)(b) (emphasis added).

After the courts enters a revocation order, DMV merely administratively enters those directives into the DMV database for processing, making the revocation order available for law enforcement statewide. Consequently, an injunction entered against the Defendant would not redress Plaintiffs' injury because the Commissioner is not empowered to grant the relief that Plaintiffs seek. Defendant has no authority to conduct an ability to-pay hearing after a state court has entered a presumptively valid revocation order, nor does Defendant have the authority to intervene, or even request a court hearing at

the request of the Plaintiffs. To direct DMV, part of the executive branch of government, to review or refuse to enforce a presumptively valid court order would trespass on the separation of powers construct of the state government. *See* N.C. Const. art. I, § 8 ("The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.").

Plaintiffs are asking this Court to enter an injunction compelling DMV to refuse to comply with the revocation orders entered by North Carolina Courts and to reinstate licenses for people who may be indigent, or may simply refuse to pay the fines and costs imposed on them. DMV has no authority or means for determining the ability of individuals whose licenses have been revoked to pay the penalty fine or costs ordered by the court. The practical implications of such an injunction are unworkable.

Plaintiffs are asking this Court to require the Commissioner to be tasked with determining whether each license revocation order was proper, entered, in thirty judicial districts across the state, effectively stripping the statutory revocation authority away from the state courts. An injunction to that effect would undermine North Carolina's constitutionally mandated separation of powers vesting the Commissioner with judicial authority which the General Assembly has granted to the North Carolina court system. Accordingly, this

complaint against Torre Jessup, as Commissioner of DMV should be dismissed for failure to state a claim for which the relief sought can be granted and judgment on the pleadings should be awarded to Defendant.

## IV. N.C. GEN. STAT. § 20-24.1 IS CONSTITUTIONALLY VALID UNDER A RATIONAL BASIS REVIEW.

Throughout their Complaint, Plaintiffs claim that they have a "substantial interest" in their driver's licenses. However, a driver's license is not a fundamental right such as the personal liberty that is lost when one is incarcerated. *See Henry v. Edmisten*, 315 N.C. 474, 496, 340 S.E.2d 720, 735 (1986) (no fundamental right to drive); *Mullins v. Commonwealth of Virginia*, No. 5:06CV00068, 2007 U.S. Dist. LEXIS 1882, 2007 WL 120835, *1 (W.D. Va. Jan. 9, 2007) (finding no constitutional violation based upon defendants' refusal to renew plaintiff's driver's license since the right to drive is not a fundamental right). As other jurisdictions have emphasized, the fact that Plaintiffs' driver's licenses are suspended (or will be suspended in the future) does not prevent them "from traveling interstate by public transportation, by common carrier, or in a motor vehicle driven by someone with a license to drive it."[1] "Burdens on a single mode of transportation do not implicate the right to

[1] *Miller v. Reed*, 176 F.3d 1202, 1205-1206 (9th Cir. 1999); *see also Farley v. Santa Clara County Dep't of Child Support Servs.*, No. C 11-01994-LHK, 2011 U.S. Dist. LEXIS 117151, at *17-18 (N.D. Cal. Oct. 11, 2011) ("The

interstate travel,"[2] for there is no "constitutional right to the most convenient form of travel."[3]

Likewise, Plaintiffs' reference to a case addressing the risk of imprisonment, *Bearden v. Georgia*, 461 US. 660 (1983), confuses the issue being decided. Plaintiffs' citations to cases considering indigent parolees or probationers facing revocation of their parole or probation, indigent criminal defendants' ability to appeal their convictions, and statutory schemes permitting incarceration at a certain monetary rate per day as a means of satisfying debts owed to courts are not controlling, or even instructive, in this case.

In *Bearden*, the Supreme Court considered whether an indigent defendant's probation could be revoked for failure to pay fines and restitution.[4] The Court specifically reasoned that it was not logical to revoke probation for failure to pay fines because the state had already determined that incarceration was not necessary to meet its penal goals. The Fourth Circuit

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Court agrees that because it forecloses only one mode of transportation, the suspension of a driver's license does not infringe the fundamental right to travel." (citations omitted)).

[2] *Miller*, 176 F.3d at 1205-1206; *City of Houston v. FAA*, 679 F.2d 1184, 1198 (5th Cir. 1982)).

[3] *City of Houston*, 679 F.2d at 1198.

[4] *Bearden v. Georgia*, 461 U.S. 660, 671-672 (1983).

has confirmed that an individual should not be incarcerated for inability to pay debts owed to courts, holding that an indigent defendant ordered to repay his attorney's fees as a condition of work-release, parole, or probation could not be imprisoned for failure to pay the debt as long as the default was caused by poverty and not contumacy.[5] Because Plaintiffs' license revocations do not involve fundamental rights, their claims must be considered only under rational-basis review.

Where fundamental rights are not implicated, "courts generally accord the legislation a 'strong presumption of validity' by applying a rational basis standard of review."[6] "Under rational basis review, courts generally uphold governmental decisions that are rationally related to a state interest. This is a deferential standard, placing the burden on [the aggrieved party] 'to negate every conceivable basis which might support' the governmental action."[7] Rational basis requires only "a constitutionally minimal level of rationality; it is not an invitation to scrutinize either the instrumental rationality of the chosen means (i.e., whether the classification is the best one suited to accomplish the desired result), or the normative rationality of the chosen

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[5] *Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984).

[6] *Wilkins v. Gaddy*, 734 F.3d 344, 347 (4th Cir. 2013) (quoting *Heller v. Doe*, 509 U.S. 312, 319 (1993)).

[7] S*ee Giarratano v. Johnson*, 521 F.3d 298, 302-03 (4th Cir. 2008).

governmental purpose (i.e., whether the public policy sought to be achieved is preferable to other possible public ends)."[8] Also, the rational basis test requires no evidentiary showing on the part of the State,[9] because if the Court can posit a rational basis, it must uphold the law.[10]

By imposing a motivation to accomplish what an individual might otherwise be disinclined to do (i.e., pay money to the court), the revocation of driver's licenses for non-payment of court-imposed fees and costs is rationally-related to these legitimate government purposes. Similar purposes have been upheld by other courts under rational-basis review.[11] Plaintiffs do not claim that the state courts do not have an interest in collecting the fines and costs they impose. While the policy may inhibit payment by some individuals, it does not fail rational basis review for that reason. The Supreme Court has

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[8] *Van Der Linde Hous., Inc. v. Rivanna Solid Waste Auth.*, 507 F.3d 290, 295 (4th Cir. 2007).

[9] *See Heller v. Doe*, 509 U.S. 312, 320 (1993) ("A State, moreover, has no obligation to produce evidence to sustain the rationality of a statutory classification.").

[10] *See FCC v. Beach Comm'ns*, 508 U.S. 307, 313 (1993) (holding that legislation that does not burden fundamental rights survives rational basis review if the court concludes that "there is any reasonably conceivable state of facts that could provide a rational basis" for the legislation*); see also, United States v. Carolene Products Co.*, 304 U.S. 144, 153 (1938).

[11] *City of Milwakee v. Kilgore*, 193 Wis. 2d 168 (1995); *In the Interest of M.E.G.*, No. 13-01-117-CV, 2002 Tex. App. LEXIS 1948, at *5 (Tex. Ct. App. Mar. 14, 2002).

acknowledged that, without the threat of incarceration for failure to pay fines and costs, courts must utilize alternative means to compel collection.[12]

## V. POTENTIAL CLASS MEMBER CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

In the context of 42 U.S.C. § 1983 actions, federal courts apply the most closely analogous state statute of limitations. *Wilson v. Garcia*, 471 U.S. 261, 280 (1985). For section 1983 actions brought in NC, a three-year statute of limitations applies. *See* N.C. Gen. Stat. § 1-52; *see also National Advertising Co. v. Raleigh,* 947 F.2d 1158, 1162 (4th Cir. 1991) (three year statute of limitations of N.C. Gen. Stat. § 1-52 applies to 42 U.S.C. § 1983 actions brought in the NC court system), *cert. denied*, 504 U.S. 931 (1992). While state law establishes the statute of limitations for a 1983 action, federal law determines when a cause of action accrues. *Wallace v. Kato*, 549 U.S. 384, 388 (2007). It is the standard rule that accrual occurs "when the plaintiff has a complete and present cause of action" against a defendant -- that is, when the plaintiff knows or has reason to know of his injury. *Id.* Under this rule, federal courts look to "the event that should have alerted the typical lay person to protect his or her rights." *Owens v. Balt. City State's Attys. Office,* 767 F.3d 379, 404 (4th Cir. 2014), *cert. denied*, 2015 U.S. LEXIS 2879.

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[12] *Bearden*, 461 U.S. at 671-672.

Plaintiffs' First Amended Complaint was filed on 7 August 2018, and N.C. Gen. Stat. § 1-52 will bar claims by any potential class members who were suspended more than three years prior to the filing date. *See Jones v. Bock*, 549 U.S. 199, 215 (2007) (holding dismissal under Rule 12(b)(6) is proper when the applicable statute of limitations bars the claims).

## CONCLUSION

For the reasons set forth above and those set forth in Defendant's Response in Opposition to Plaintiffs' Second Motion for Preliminary Injunction, the Defendant respectfully requests that this Court GRANT his Motion for Judgment on the Pleadings.

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 MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS** 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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