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

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 similarily situated,

Plaintiffs,

v.

TORRE JESSUP, in his official capacity as Commissioner of the North Carolina Division of Motor Vehicles,

Defendant.

Case No. 1:18-CV-00467-TDS-LPA

(CLASS ACTION)

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

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PRELIMINARY STATEMENT

Plaintiffs are low-income individuals facing unlawful punishment under a statute that indefinitely revokes their drivers' licenses because they cannot afford to pay fines, court costs, and penalties for traffic offenses. This revocation process is carried out by the North Carolina Division of Motor Vehicles ("DMV"), pursuant to N.C.G.S. § 20-24.1, without any meaningful notice, pre-deprivation hearing, or determination of ability to pay, in violation of the Fourteenth Amendment to the United States Constitution.

Defendant Torre Jessup, Commissioner of the DMV, moves this Court for judgment on the pleadings, DE 47 ("Def. Br."), arguing, *inter alia*, that the Court lacks jurisdiction, that Defendant is shielded by sovereign immunity and is not a proper party, and that Plaintiffs otherwise fail to state timely, viable constitutional claims. These arguments, however, misinterpret any jurisdictional hurdles to suit, attempt to evade the DMV's unambiguous responsibility for revoking driver's licenses under Section 20-24.1, and mischaracterize both the harms suffered by Plaintiffs and the relief being sought. For these reasons, and as detailed below, the Court should deny Defendant's motion and permit this case to proceed.

STATEMENT OF THE FACTS

At any time, hundreds of thousands of driver's licenses are revoked for failure to pay fines and costs for traffic offenses under North Carolina law. *See* First Am. Compl. ("FAC") ¶ 5. Section 20-24.1 of the North Carolina General Statutes mandates automatic and indefinite revocation of a driver's license when a person fails to pay fines and costs, without any inquiry into the driver's ability to pay or notice of permissible alternatives to

payment. This revocation scheme disproportionately punishes impoverished residents, taking away crucial means of self-sufficiency and further pushing them into poverty. FAC ¶¶ 3, 20-28.

A. The DMV Indefinitely Revokes Driver's Licenses for Failure to Pay Fines and Costs Pursuant to Section 20-24.1.

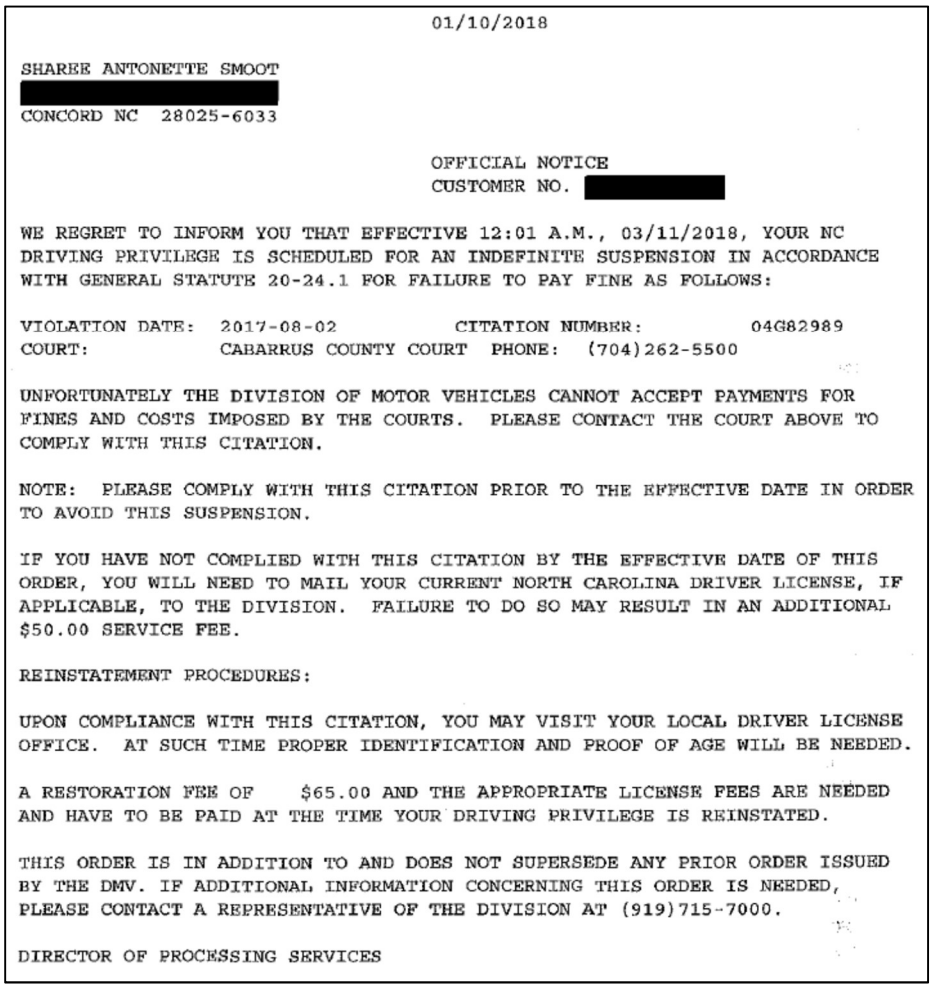
State law requires courts to notify the DMV of a person's failure to pay fines and costs 40 days after the non-payment. N.C.G.S. § 20-24.2(a)(2). After receiving notice from the court, the DMV "must revoke" the individual's driver's license. *Id.* § 20-24.1(a). The DMV does this by entering a revocation order, which becomes effective 60 days after it is mailed or personally delivered to the individual, unless full payment is made before that date. *Id.*

Section 20-24.1 does not require—and the DMV does nothing to ensure—that any sort of hearing, inquiry, or determination that the individual willfully refused to pay occurs before the license revocation. *See id.* Rather, the statute places the burden on individuals to petition to stop the revocation or to seek license reinstatement by proving that their failure to pay was not willful. *See id.* § 20-24.1(b)(4). The DMV not only fails to inform anyone of this process, but affirmatively misleads drivers into believing they must pay in full to halt revocation or to achieve reinstatement. FAC ¶ 40. Until the motorist satisfies Section 20-24.1(b), the license remains indefinitely revoked. N.C.G.S. § 20-24.1(b), (c).

B. The DMV Sends Deficient, Misleading Notices to Drivers to Induce Payment.

The DMV presents drivers who have unpaid fines and costs with only two options: pay or have the license revoked. FAC ¶ 4. The DMV uses a standard form for the

revocation order, which it labels as an "Official Notice." FAC ¶ 32. A copy of such a notice appears below:



01/10/2018

SHAREE ANTONETTE SMOOT
[redacted]
CONCORD NC 28025-6033

OFFICIAL NOTICE
CUSTOMER NO. [redacted]

WE REGRET TO INFORM YOU THAT EFFECTIVE 12:01 A.M., 03/11/2018, YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO PAY FINE AS FOLLOWS:

VIOLATION DATE: 2017-08-02 CITATION NUMBER: 04G82989
COURT: CABARRUS COUNTY COURT PHONE: (704)262-5500

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL $50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF $65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

DIRECTOR OF PROCESSING SERVICES

Id.

The notice alerts individuals that their "driving privilege is scheduled for an indefinite suspension in accordance with general statute 20-24.1 for failure to pay [a] fine" by the identified date. FAC ¶¶ 32-33. It also instructs that the driver must "comply" with the citation to prevent "suspension" by the effective date or to have the revoked license reinstated. *Id.* There is no explanation of what "comply" means and no process outlined on how to comply beyond payment of the underlying citation. FAC ¶ 36. Rather, the

notice simply states: "PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION." FAC ¶ 34.

C. <u>The Revocation of Drivers' Licenses Pushes Individuals Further into Poverty.</u>

The impact of Section 20-24.1 on the thousands of individuals who have lost their licenses for failure to pay is severe.

Plaintiff Seti Johnson, a father of young children, lives with his mother because he cannot afford to pay his own rent. FAC ¶ 45. He relies on his driver's license for work, to obtain food, and to take his children to school. FAC ¶ 47. In April 2018, Mr. Johnson pled guilty to "failure to notify DMV of address change" and was sentenced to pay $328 in fines and court costs. FAC ¶ 52. He paid $100 that day and was told the remainder was due "within 40 days" and that his license would be suspended if he did not pay in full. FAC ¶¶ 53-54. Mr. Johnson was unable to pay, and his license was revoked by the DMV, effective July 28, 2018. FAC ¶ 57.

Plaintiff Marie Bonhomme-Dicks is a mother of four who currently provides for a teenage child and two grandchildren. FAC ¶ 59. She relies on her driver's license for work, to obtain food, and to take her child and grandchildren to church, daycare, and school. FAC ¶¶ 60-62. Ms. Bonhomme-Dicks pled guilty to a traffic ticket on July 27, 2018 and was assessed $388 in court costs. FAC ¶ 63. She was given no option other than to pay in full. *Id.* She is unable to pay, and she fears her license will be suspended imminently for non-payment. FAC ¶ 64.

Plaintiff Sharee Smoot's driver's license is currently revoked because she could not pay fines and court costs for traffic tickets in 2016 and 2017. FAC ¶ 74. Ms. Smoot

needs a license to support herself and her daughter, and to get to her job, as well as getting to doctor's appointments, church, and the grocery store. FAC ¶ 91. Ms. Smoot pled guilty to tickets that resulted in fines and costs of over $500; she cannot afford to pay these tickets due to her limited finances. FAC ¶¶ 76-78, 85-87. When she failed to pay, the DMV sent her nearly identical revocation notices instructing her to "comply" with the citation by the designated dates. FAC ¶¶ 79, 88. The DMV indefinitely revoked her license in late 2016 and again in early 2018 because she did not pay. FAC ¶¶ 84, 90.

Plaintiff Nichelle Yarborough's driver's license was revoked in 2017 because she owes over $290 on a traffic ticket. FAC ¶ 70. Ms. Yarborough needs a license to support herself and her four children, one of whom is an infant born prematurely, and another of whom has developmental disabilities. FAC ¶¶ 65, 66. The notice the DMV sent tells her she must "comply" with the citation, which she assumed means she had to pay in full. FAC ¶ 71.

Plaintiffs' experiences are typical of those who have lost—or will soon lose—their ability to drive due to poverty. FAC ¶¶ 3, 103-09. In North Carolina the inability to drive makes it nearly impossible to sustain a livelihood or provide for family. FAC ¶ 22. A driver's license is a "very common requirement" to obtain employment, including most jobs that "can actually lift people out of poverty." FAC ¶ 26. Approximately 91% of North Carolinians travel to work by car and only 1.1% travel to work by public transit. FAC ¶ 23. Reliable, accessible public transit remains scarce in the state. FAC ¶ 24.

Thus, lack of transportation options remains a common barrier to obtaining and maintaining employment for many North Carolinians. FAC ¶ 25. Revocations for failure

to pay make it even more difficult to find and keep employment, and create an unjust and impossible dilemma: drive illegally and risk further punishment, or stay home, lose employment, and forgo the ability to provide for one's basic daily needs. FAC ¶ 28.

LEGAL STANDARD

A motion for judgment on the pleadings under Rule 12(c) is analyzed under the same standard as a motion to dismiss under Rule 12(b)(6). *See Alexander v. City of Greensboro*, 801 F. Supp. 2d 429, 433 (M.D.N.C. 2011) (citation omitted). Factual allegations in the complaint are assumed true and all reasonable factual inferences are drawn in the nonmoving party's favor. *See id.* Such a motion should be granted only if "when viewed in the light most favorable to the [non-movant], [no] genuine issues of material fact remain or . . . the case can be decided as a matter of law." *Id*. (citations omitted).

Federal district courts have subject matter jurisdiction in all cases "where a well-pleaded complaint shows that 'federal law creates the cause of action' or 'where the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law.'" *Jones v. Wake County Hosp. System*, 786 F. Supp. 538, 542 (E.D.N.C. 1991) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983)). A motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) should be granted "only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law." *Blackburn v. Trs. of Guilford Tech. Cmty. College*, 822 F. Supp. 2d 539, 542 (M.D.N.C. 2011) (citation omitted).

Finally, although the plaintiff has the burden to show that personal jurisdiction exists, the burden "is simply to make a prima facie showing of a sufficient jurisdictional basis in order to survive" a Rule 12(b)(1) challenge. *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989). "[T]he district court 'must construe all relevant pleading allegations in the light most favorable to the plaintiff, assume credibility, and draw the most favorable inferences for the existence of jurisdiction.'" *Universal Leather, LLC v. Koro Ar, S.A.*, 773 F.3d 553, 558 (4th Cir. 2014) (quoting *Combs*, 886 F.2d at 676).

ARGUMENT

Defendant raises five arguments for dismissal of this action: (1) that this court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine; (2) that Eleventh Amendment immunity bars Plaintiffs' claims; (3) that Commissioner Jessup is an improper defendant; (4) that North Carolina's wealth-based license revocation regime is constitutionally valid; and (5) that the claims of certain proposed class members are untimely. Each argument fails as addressed below.

A. The *Rooker-Feldman* Doctrine Does Not Bar Plaintiffs' Claims.

Defendant erroneously invokes the *Rooker-Feldman* doctrine as grounds for divesting this Court of jurisdiction. Def. Br. 7-11. This doctrine prohibits "state-court losers" from "inviting district court review and rejection of those judgments." *Exxon Mobile Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 280, 284 (2005). The doctrine "occupie[s]" a "narrow ground," *id.* at 284, as both the Supreme Court and the Fourth Circuit have emphasized: "If [the plaintiff] is not challenging the state-court decision, the *Rooker-Feldman* doctrine does not apply." *Davani v. Va. DOT*, 434 F.3d 712, 718 (4th

Cir. 2006) (recognizing that *Exxon* "undercut[] the broad interpretation of the *Rooker-Feldman* doctrine" previously applied). *Rooker-Feldman* does not apply where the "claim of injury rests not on the state court judgment itself, but rather on the alleged violation of [plaintiff's] constitutional rights by [defendant]." *Washington v. Wilmore*, 407 F.3d 274, 280 (4th Cir. 2005).

Here, Plaintiffs do not complain of injuries caused by state court judgments and are not seeking that this Court review or reject those judgments. Rather, Plaintiffs challenge the constitutionality of North Carolina's driver's license revocation statute and the actions of a state administrative agency, the DMV, in enforcing it. *See* FAC ¶¶ 115-150. The Supreme Court has made clear that such claims are not barred by the *Rooker-Feldman*. *See Exxon*, 544 U.S. at 286;[1] *Thana v. Bd. of License Comm'rs for Charles Cnty., Md.*, 827 F.3d 314, 321 (4th Cir. 2016) ("[Independent federal constitutional challenges to] state administrative and executive actions are not covered by the doctrine") (citations omitted); *see also Davani*, 434 F.3d at 718-19 (same). As a federal district court explained in a similar case:

> Several courts have considered *Rooker–Feldman* in the context of judgment collection mechanisms and have generally held that the doctrine poses no obstacle to federal jurisdiction, as long as the plaintiff raises 'a challenge to the manner of

[1] In *Feldman* itself, the Supreme Court permitted "[c]hallenges to the constitutionality of state bar rules" even though those rules were applied to candidates directly through state court judgments "so long as plaintiffs did not seek review of the Rule's application in a particular case." *Exxon*, 544 U.S. at 286. Here, Plaintiffs challenge the constitutionality of a statute enforced by the DMV—an entirely separate executive entity. Plaintiffs' claims are therefore much further removed from a jurisdictional bar than the type of claims *Feldman* itself found justiciable.

> collecting on the state-court judgment,' rather than a 'claim . . . contingent upon the invalidity of the underlying debt.'

Robinson v. Purkey, No. 3:17-cv-1263, 2018 U.S. Dist. LEXIS 97659, at *77-78 (M.D. Tenn. June 11, 2018) (citation omitted, collecting cases).

Defendant's arguments to the contrary rest upon an erroneous interpretation of Section 20-24.1 and a disregard for the injury Plaintiffs allege.

First, Defendant argues that *Rooker-Feldman* precludes jurisdiction because Plaintiffs are purportedly "asking this Court to prohibit DMV from complying with license revocation orders issued by North Carolina courts[.]" Def. Br. 11; *see also, e.g.*, *id*. at 14 ("[I]t is the state courts that issue the revocation orders."). Defendant is incorrect; state courts do not issue "license revocation orders" in North Carolina. The North Carolina Supreme Court has squarely rejected Defendant's position, ruling that the DMV is the sole entity with the power to revoke driver's licenses—not state courts. *See Harrell v. Scheidt*, 92 S.E.2d 182, 184-85 (N.C. 1956) ("G.S. Ch. 20, Art. 2, Uniform Driver's License Act, vests exclusively in the [DMV] the issuance, suspension and revocation of licenses to operate motor vehicles. . . . [C]ourts have no authority to issue, suspend or revoke a driver's license.").

The language of Section 20-24.1 and Section 20-24.2 confirms that state courts do not issue license revocation orders. Though Section 20-24.1 makes reference to "revocations orders entered under the authority of this section," the *DMV* is the sole entity vested in the section with power to revoke a driver's license for non-payment of fines, penalties, or other costs, *see* § 20-24.1(a) ("The Division must revoke . . ."), and also with

restoring a license once the outstanding payment has been resolved, *see* § 20-24.1(b) ("The Division must restore . . ."). Section 20-24.2, which addresses the courts' role in this revocation scheme, makes no reference to "revocation orders" issued by a court, directing courts instead to *report* a person's nonpayment to the DMV for action to be taken by the agency. The word "revocation" only appears in this section in reference to the *DMV*'s revocation authority set forth in Section 20-24.1. *See* § 20-24.2(b). It is therefore clear under the plain language of the statute and state case precedent that the DMV executes the license revocations challenged in this suit—not state courts.

Second, Defendant implies that even if the DMV is responsible for revoking licenses, Plaintiffs' injury may be "inextricably intertwined" with or "predicated directly upon the underlying state court judgments." Def. Br. 8-9. Here again, Defendant misapprehends the law. As noted above, any "state court judgments" at issue are not license revocation orders but rather convictions for traffic offenses and orders assessing fines, fees, and costs. Importantly, this lawsuit *does not challenge Plaintiffs' convictions or fines assessed* in state court in any respect. Plaintiffs challenge the DMV's separate action in revoking their licenses. These revocations are a different injury.

Binding precedent also forecloses Defendant's suggestion that license revocations are "inextricably intertwined" with state court judgments. The Fourth Circuit has made clear that the "'inextricably intertwined' prong of the [*Rooker-Feldman*] doctrine" simply means that a suit is barred "where success on the federal claim depends upon a determination that the state court wrongly decided the issues before it" or where "the federal plaintiff seeks to 'undo' an unfavorable state court judgment[.]" *Washington*, 407

F.3d at 279 (citations omitted); *see also Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 86 (2d Cir. 2005) (noting that before *Exxon*, "[t]he 'inextricably intertwined' language from *Feldman* led lower federal courts . . . to apply *Rooker–Feldman* too broadly" and that "the phrase 'inextricably intertwined' has no independent content [but] is simply a descriptive label attached to claims that meet [*Exxon*'s] requirements"). Plaintiffs' success on the merits of this lawsuit in no way requires a determination that the state court wrongly convicted them or improperly assessed fines, fees, and costs. If the Court enjoins the suspension of Plaintiffs' licenses, their convictions would remain undisturbed and any orders to pay court costs would stand. *See Washington*, 407 F.3d at 280 (plaintiff's federal suit was not "inextricably intertwined" with state-court decision because it sought redress for defendant's violation of his constitutional rights, not the state-court decision).

Defendant relies on readily distinguishable cases to support his *Rooker-Feldman* argument. *See* Def. Br. 9-11. *Stinnie v. Holcomb* and *Luciano v. Va. DMV* are inapposite because they both concern a driver's license revocation scheme that, unlike North Carolina's, requires state courts to issue orders suspending driver's licenses. *See Stinnie*, No. 3:16-cv-00044, 2017 U.S. Dist. LEXIS 35789, at *14-15 (W.D. Va. Mar. 13, 2017) (discussing "Va. Code 46.2-395(B), which reads in critical part . . . *the court shall forthwith suspend the person's privilege to drive* a motor vehicle") (emphasis in original); *Luciano*, No. 7:18-cv-00328, 2018 U.S. Dist. LEXIS 133250, at *3–7 (W.D. Va. Aug. 7, 2018)

(following *Stinnie* and applying *Rooker-Feldman* to plaintiff's challenge to Virginia law).[2] But North Carolina's driver's license revocation scheme is not one where "suspension is unequivocally and unambiguously ordered by the court." *Stinnie*, 2017 U.S. Dist. LEXIS 35789, at *16.[3]

Thus, Defendant's motion to dismiss for lack of jurisdiction should be denied.

B. <u>Eleventh Amendment Immunity Does Not Bar Plaintiffs' Claims.</u>

Defendant contends that he is shielded from suit by the Eleventh Amendment because (i) the individuals whose licenses are already revoked purportedly seek relief from a past violation of federal law in contravention of the *Ex parte Young* exception to the sovereign immunity doctrine; and (ii) as a general matter, Commissioner Jessup is not sufficiently involved with the enforcement of Section 20-24.1 to be a proper defendant. Def. Br. 11-14. As detailed below, each argument fails.

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[2] Defendant's reliance on *King v. Creed* is similarly misplaced because that case also involved a challenge to a "state court order." No. 1:14-CV-0165, 2016 U.S. Dist. LEXIS 5210, at *8 (N.D.N.Y. Jan. 15, 2016). The *pro se* plaintiff in *King* brought suit against the judges that had convicted and fined him for speeding. *Id*. The *Rooker-Feldman* doctrine applied because the "[p]laintiff's allegations against [defendants] were essentially challenges to the underlying state court judgment." *Id*. In any event, *King* is an unpublished disposition of a case brought by a *pro se* plaintiff. The Supreme Court and Fourth Circuit authority cited *supra* controls application of the doctrine in the instant case.

[3] Defendant also claims that the Fourth Circuit "affirm[ed] dismissal" of the *Stinnie* complaint on *Rooker-Feldman* grounds. Def. Br. 9 (citing *Stinnie v. Holcomb*, 2018 U.S. App. LEXIS 13500 (4th Cir. 2018)). This is incorrect. The Fourth Circuit majority remanded the case because it found dismissal pursuant to *Rooker-Feldman* was not final. *Stinnie*, 2018 U.S. App. LEXIS 13500 at *10. By contrast, the dissent rejected the district court's *Rooker-Feldman* analysis. *Id.* at *25-32 (Gregory, J., dissenting).

1. <u>Defendant's suspension of licenses under Section 20-24.1 is an ongoing violation of federal law for which prospective injunctive relief is permitted under *Ex parte Y*oung.</u>

It is settled law under *Ex parte Young*, 209 U.S. 123 (1908) that "officials engaged in ongoing violations of federal law may be sued, in their official capacity, for prospective injunctive relief." *See Action NC v. Strach*, 216 F. Supp. 3d 597, 613 (M.D.N.C. 2016) (quoting *McBurney v. Cuccinelli*, 616 F.3d 393, 399 (4th Cir. 2010)). Thus, as this Court has previously noted, a plaintiff may invoke *Ex parte Young* when a "straightforward inquiry" reveals that the plaintiff has alleged an "ongoing violation" and is seeking relief properly characterized as prospective. *See Mary's House, Inc. v. North Carolina*, 976 F. Supp. 2d 691, 697 (M.D.N.C. 2013); *see also S.C. Wildlife Fed'n v. Limehouse*, 549 F.3d 324, 332 (4th Cir. 2008) ("For purposes of Eleventh Amendment analysis, it is sufficient to determine that [plaintiff] alleges facts that, if proven, would violate federal law and that the requested relief is prospective.").

Here the "straightforward inquiry" makes clear that immunity is inapplicable. Plaintiffs Smoot, Yarborough, and the Revoked Class members have alleged an ongoing violation of federal law, namely the continued suspension of their driver's licenses pursuant to Section 20-24.1. FAC ¶¶ 100, 115-150. This ongoing violation prevents them from legally using a car to secure and maintain employment, take their children to and from school, attend medical appointments, travel to buy groceries needed for daily life, and even pay off the court debt that resulted in revocations in the first place. FAC ¶¶ 3, 65-94, 108. To remedy this ongoing violation, Plaintiffs seek a declaration that the DMV's revocation of licenses for non-payment under Section 20-24.1 is unconstitutional, an injunction

seeking reinstatement of those licenses, and an injunction prohibiting the DMV from charging a fee to reinstate licenses suspended solely because of a failure to pay. *See* FAC § VII (Prayer for Relief).

Nevertheless, Defendant attempts to recast Plaintiffs' claims as an attack limited to past conduct by arguing, without supporting authority, that a request for license reinstatement constitutes retrospective relief. Def. Br. 12-13. The Fourth Circuit rejected this contention for analogous claims seeking reinstatement or restoration of previously deprived rights. For example, in *Coakley v. Welch*, 877 F.2d 304 (4th Cir. 1989), the plaintiff sought reinstatement of employment on the grounds that he was fired without cause and denied adequate pre- and post-termination process in violation of his constitutional rights. The Fourth Circuit rejected the argument that Coakley failed to allege an ongoing violation because "the process that deprived him of due process rights . . . ha[d] ended." *Coakley*, 877 F.2d at 307 n.2. Instead, it held that "by his allegations and his prayer for an injunction . . . Coakley ha[d] alleged [state] conduct that, while no longer giving him daily attention, continue[d] to harm him by preventing him from obtaining the benefits of [his] employment." *Id*. In sum, "a future injunction is not made retrospective merely because it recognizes that an ongoing violation of law is the result of a past wrong." *CSX Transp. v. Bd. of Pub. Works*, 138 F.3d 537, 541 (4th Cir. 1998) (discussing the *Coakley* holding).

Plaintiffs advance precisely this theory, and courts have routinely endorsed it in cases seeking prospective relief from state officials. *See e.g., Limehouse*, 549 F.3d at 330-32 (director of department of transportation was not entitled to sovereign immunity where

"past actions by the [director] did not comply with [federal law]" and plaintiff sought to enjoin further action on a construction project until their "procedural and substantive concerns" had been addressed); *Kimble v. Solomon*, 599 F.2d 599, 605 (4th Cir. 1979) ("permitt[ing] an order requiring prospective restoration of [Medicaid] benefits" where state officials failed to provide adequate notice of a planned across-the-board benefit reduction); *Scott v. Va. Port Auth.*, No. 2:17-cv-176, 2018 U.S. Dist. LEXIS 53098, at *31 (E.D. Va. Feb. 7, 2018), *report & recommendation adopted in relevant part*, 2018 U.S. Dist. LEXIS 51902 (E.D. Va. Mar. 27, 2018) (request to reinstate work credentials "was prospective relief which seeks to remedy present harm"); *see also Mason v. Ariz.*, 260 F. Supp. 2d 807, 818 (D. Ariz. 2003) (reinstatement of a medical license constitutes prospective relief).

Accordingly, because Plaintiffs Smoot, Yarborough, and the Revoked Class members have alleged an ongoing violation and are seeking prospective relief to remedy continuing harm, Defendant is not entitled to sovereign immunity.

2. <u>As chief executive of the sole entity authorized to enforce Section 20-24.1, Defendant is the proper defendant to Plaintiffs' claims.</u>

Defendant contends that he is not a proper party to the suit on the ground that his role in the enforcement of North Carolina's license revocation scheme arises "merely from the [DMV]'s general authority to enforce the laws of the state." Def. Br. 13–14. This argument has no merit.

Where a state law is challenged as unconstitutional, a defendant must have "some connection with the enforcement of the act" in order to be the proper defendant to a claim

under *Ex parte Young*. *Action NC*, 216 F. Supp. 3d at 614 (quoting *Ex parte Young*, 209 U.S. at 157); *see also Limehouse*, 549 F.3d at 333 (permitting suit where the state official has "proximity to and responsibility for the challenged state action"). Though the statute itself need not delineate which entity has the duty of enforcement, if the challenged statute expressly imposes an enforcement obligation, the requisite connection is clear. *See Ex parte Young*, 209 U.S. at 157-58; *see also Ansley v. Warren*, No. 1:16-cv-00054, 2016 U.S. Dist. LEXIS 128081, at *17 (W.D.N.C. Sep. 20, 2016) ("in considering whether a defendant has sufficient enforcement powers to fall under the *Ex parte Young* exception, the Fourth Circuit will look at the duties enumerated by statute").

Here, the clear language of the revocation statute establishes that Commissioner Jessup is the sole and proper defendant for Plaintiffs' claims. The DMV is the statutorily designated recipient of all nonpayment notices issued by state courts in connection with motor vehicle offenses. *See* Section 20-24.2(a). The DMV is the sole entity authorized to revoke and restore driver's license. *See supra* pp. 9-10. Defendant admits in his Answer to the First Amended Complaint ("Answer"), DE 43, ¶ 19, that "[he] has the authority to suspend driver's licenses in some instances" and the DMV has clearly executed on that authority, as evidenced by the thousands of North Carolinians who have had their licenses revoked. *See* FAC ¶ 20; Answer ¶ 5.

Given the duties identified in the statute and the allegations and admissions concerning his enforcement of those duties, Defendant cannot credibly argue that he is an improper party because he lacks proximity to, and responsibility for, the revocation of Plaintiffs' licenses. *See Bostic v. Schaefer*, 760 F.3d 352, 371 n.3 (4th Cir. 2014) (court

clerk had the requisite connection to the enforcement of state marriage laws because he was responsible for granting and denying applications for marriage licenses); *Action NC*, 216 F. Supp. 3d at 62 (DMV had sufficient connection to voter registration law because it was authorized with implementing registration procedures); *cf. Hutto v. S.C. Ret. Sys.*, 773 F.3d 536, 551 (4th Cir. 2014) (state officials were immune from suit because their duties bore no relation to the challenged action).

Therefore, Defendant cannot be shielded from suit by sovereign immunity.

C. Plaintiffs Have Stated a Viable Claim for Relief Against the Only State Official Authorized to Provide the Requested Relief.

Defendant's argument that Plaintiffs claims should be dismissed under Rule 12(b)(6) rehearses erroneous contentions regarding which entity has the authority to remedy North Carolina's license-revocation scheme. Defendants incorrectly contend that the state court system "is the decision-maker regarding revocation," that "state courts . . . issue the revocation orders," and that Defendant is not authorized to grant the relief Plaintiffs seek. Def. Br. 14-17. These arguments fail for two reasons.

First, Defendant's argument is premised on an erroneous reading of the driver's license revocation statute. As explained *supra* pp. 9-10, the DMV, not the court system, is responsible for revoking and reinstating driver's licenses. North Carolina courts do not and cannot enter "license revocation orders."

And second, Defendant's claim that he cannot remedy the asserted constitutional violations again misconstrues Plaintiffs' requested relief. As is clear from the Prayer for

Relief (*see* FAC Section VII), and contrary to Defendant's contention, *see* Def. Br. 15-16, Plaintiffs simply seek to enjoin Defendant's enforcement of the current system.

As there is no merit to this "wrong defendant" argument, it too should be dismissed.

D. Plaintiffs' First Claim for Relief – Arguing that Defendant is Automatically Revoking Driver's Licenses Without a Prior Determination of Ability to Pay – Is Meritorious[4]

Plaintiffs' first claim is grounded in established Supreme Court authority holding that due process and equal protection principles converge to prohibit the punishment of indigent people simply because of their poverty. The Supreme Court has repeatedly articulated this principle, for instance in the seminal case *Bearden v. Georgia*, 461 U.S. 660 (1983), as well as in its precursors *Griffin v. Illinois*, 351 U.S. 12 (1956), *Williams v. Illinois*, 399 U.S. 235 (1970), and *Tate v. Short*, 401 U.S. 395 (1971). *See* FAC ¶¶ 115–25. Rather than addressing this longstanding constitutional protection, Defendant dismisses *Bearden* as "not controlling, or even instructive" because *Bearden* addresses the "risk of imprisonment" whereas the instant case challenges revocation of a driver's license. Def. Br. 18. According to Defendant, this distinction is material because possession of a driver's license "is not a fundamental right," in contrast to physical liberty. Def. Br. 17–18.

Defendants are incorrect, however, because the fundamental principle outlined in *Griffin*, *Williams*, *Tate*, and *Bearden* "has not been confined to cases in which

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[4] Because Defendant has not challenged the merits of Plaintiffs' second and third claims, related to procedural due process, those claims are not addressed herein.

imprisonment is at stake." *M.L.B. v. S.L.J.*, 519 U.S. 102, 111 (1996). Although *Bearden* concerned an individual incarcerated for nonpayment, "the constitutional principle reaffirmed by these cases prohibits the imposition of adverse consequences against indigent defendants solely because of their financial circumstances, regardless of whether those adverse consequences take the form of incarceration, reduced access to court procedures, or some other burden." U.S. Stmt. of Interest 15, in *Stinnie v. Holcomb,* No. 3:16-cv-00044, 2017 U.S. Dist. LEXIS 35789 (W.D. Va. Mar. 13, 2017) (DE 6-8); *see also id.* at 15-16 (collecting cases). This is for good reason, as the relative punitiveness of any given sanction may lie in the eye of the beholder. *See Argersinger v. Hamlin*, 407 U.S. 25, 48 (1972) ("Losing one's driver's license is more serious for some individuals than a brief stay in jail."). If, as Defendant suggests, *Bearden*'s analysis were restricted to cases of imprisonment, then the Supreme Court would not have required "a careful inquiry into such factors [including] 'the nature of the individual interest affected[.]'" 461 U.S. at 666–67.

The touchstone of *Bearden* is that it violates equal protection and due process to subject indigents in the criminal justice system to disparate treatment due to their poverty. *See* 461 U.S. at 665–66. Applying *Bearden* here, "there is no doubt that the State [is treating Plaintiffs] differently from a person who did not fail to pay the imposed fine . . . ." *Id.* at 665. Accordingly, the Supreme Court has demanded that compliance with due process and equal protection be determined through application of a careful balancing test that takes into account the relative weight of the interests at stake alongside other factors. *See id.* at 666 (balancing, *inter alia*, "the nature of the individual interest affected"); *see*

also id. at 666 & 666 n.8 (cautioning against "easy slogans or pigeonhole analysis"). Section 20-24.1 cannot withstand scrutiny under this analysis. There is not a sufficient justification for denying Plaintiffs access to the driver's licenses that are so essential to their ability to provide for themselves and their families. *See Scott v. Williams*, 924 F.2d 56, 59 (4th Cir. 1991) (interest in retaining a driver's license is "a substantial one"); *see also Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 539 (1985) (recognizing the "severity of depriving a person of the means of livelihood"); *Mackey v. Montrym*, 443 U.S. 1, 11 (1979); *Bell v. Burson*, 402 U.S. 535, 539 (1971).[5]

Even if this Court resorted to a traditional equal protection analysis—and further assumed rational basis is the correct standard to apply—Section 20-24.1 still fails. Defendant contends that enforcement of Section 20-24.1 is rationally related to the legitimate government purpose of "imposing a motivation to accomplish what an individual might otherwise be disinclined to do (i.e., pay money to the court)." Def. Br. 20-21. But the plain language and practical application of Section 20-24.1 show that this is not true. "No person can be threatened or coerced into doing the impossible, and no person can be threatened or coerced into paying money that she does not have and cannot get." *Robinson v. Purkey*, No. 3:17-cv-1263, 2017 U.S. Dist. LEXIS 165483, at *25-26 (M.D. Tenn. Oct. 5, 2017); *see also United States v. Rylander*, 460 U.S. 752, 757 (1983)

[5] As demonstrated in Plaintiffs' prior briefing regarding a preliminary injunction, even under this heightened standard, Plaintiffs state a valid claim for relief. *See* DE 39 at 11-15 & DE 49 at 2-6.

(contempt order improper "[w]here compliance is impossible"); *Maggio v. Zeitz*, 333 U.S. 56, 64 (1948) (even wrongful acts by debtor cannot "warrant issuance of an order which creates a duty impossible of performance"). Section 20-24.1 would, in theory, promote compliance with court orders to pay traffic debt, if it ensured that only those people demonstrated to have willfully failed to pay are punished with driver's license suspension. Instead, the statute mandates license suspension upon any case of reported nonpayment, *regardless* of ability to pay. Moreover, because driver's licenses "may become essential in the pursuit of a livelihood," *Bell*, 402 U.S. at 539, license suspension can actually impede—rather than facilitate—people's ability to comply with court orders to pay fines, fees, and penalties. *Purkey*, 201 U.S. Dist. LEXIS 97659, at *128-29 ("[T]he ability to drive is crucial to the debtor's ability to actually establish the economic self-sufficiency that is necessary to be able to pay the relevant debt.").

Plaintiffs' own experiences, and uncontested evidence put forth in support of Plaintiffs' motion for a preliminary injunction, affirm that North Carolina's license-revocation scheme is not even rationally related to furthering payment of court fines, fees, and penalties. *See* Plaintiffs' Declarations, DE 4, 5, 40 & 41. "[O]ne needs only to observe the details of ordinary life to understand that an individual who cannot drive is at an extraordinary disadvantage in both earning and maintaining material resources," and thus, revoking a license is "not merely out of proportion to the underlying purpose of ensuring payment, but affirmatively destructive of that end." *Purkey*, 2017 U.S. Dist. LEXIS 165483, at *27; *see also Argersinger*, 407 U.S. at 48.

Plaintiffs therefore submit that, whether analyzed under *Bearden* or a more lenient standard, Section 20-24.1 cannot withstand scrutiny.

E. The Named Plaintiffs' Claims Are Not Barred by the Statute of Limitations.

Lastly, Defendant contends that the statute of limitations bars the claims of some putative Revoked Class members if their license was suspended over three years prior to the filing of the complaint. Def. Br. 21-22. This argument has no merit in a Rule 12(c) motion, for Defendant does not contend that the named plaintiffs are time-barred, and therefore, there is no basis to dismiss the lawsuit. To the extent the statute of limitations is relevant to the issue of class certification, Plaintiffs have responded to this argument there, and to the extent necessary, incorporate those arguments here. *See* Reply Brief in Support of Plaintiffs' Motion for Class Certification (DE 50 at 7-9).

CONCLUSION

For the foregoing reasons, and for the reasons articulated in Plaintiffs' prior briefing supporting class certification (DE 37 & 50) and a preliminary injunction (DE 39 & 49), Plaintiffs respectfully request that this Court deny Defendant's motion.

Dated September 18, 2018.

Respectfully submitted,

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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.

/s/ Jeffrey Loperfido
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CERTIFICATE OF SERVICE

I certify that arrangements have been made to this day deliver a true and correct copy of the foregoing by this Court's CM/ECF system to the following attorney(s) of record for Defendant:

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Dated this September 18, 2018.

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