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 similarily 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 (CLASS ACTION)

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' SECOND MOTION FOR CLASS CERTIFICATION

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NATURE OF THE MATTER

Plaintiffs are low-income individuals who have been unlawfully punished under a North Carolina statute that automatically and indefinitely revokes their driver's licenses because they cannot afford to pay fines, penalties, and court costs ("fines and costs") for traffic offenses. This revocation process is carried out by the 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 a state where 92% of residents rely on a license to pursue their livelihoods and support their families, this wealth-based revocation scheme unlawfully punishes the State's low-income residents and traps them in a cycle of poverty, in violation of the Fourteenth Amendment to the U.S. Constitution.

Accordingly, pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and (g), Plaintiffs seek to certify two classes. Plaintiffs Mr. Seti Johnson and Ms. Marie Bonhomme-Dicks seek to represent the **Future Revocation Class**, defined as:

> All individuals whose driver's licenses will be revoked in the future by the DMV due to their failure to pay fines, penalties, or court costs assessed by a court for a traffic offense.

Plaintiffs Ms. Sharee Smoot and Ms. Nichelle Yarborough seek to represent the **Revoked Class**, defined as:

> All individuals whose driver's licenses have been revoked by the DMV due to their failure to pay fines, penalties, or court costs assessed by a court for a traffic offense.

As detailed below, both proposed Classes meet the certification requirements of Rule 23.

STATEMENT OF FACTS

Hundreds of thousands of North Carolina licenses are revoked for failure to pay fines and costs at any time.[1] 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. N.C.G.S. § 20-24.1. This revocation scheme disproportionately punishes impoverished residents without due process, taking away crucial means of self-sufficiency and further pushing them into poverty.

A. The DMV Automatically Revokes Driver's Licenses for Failure to Pay Fines and Costs Pursuant to N.C.G.S. Section 20-24.1.

State law requires courts to notify the DMV 40 days after a person fails to pay fines and costs related to a traffic offense. N.C.G.S. § 20-24.2(a)(2). After receiving this notice, 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. *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.*

While the statute contemplates that those unable to pay should not be punished, it fails to constitutionally effectuate this desire. It places the burden entirely on individuals

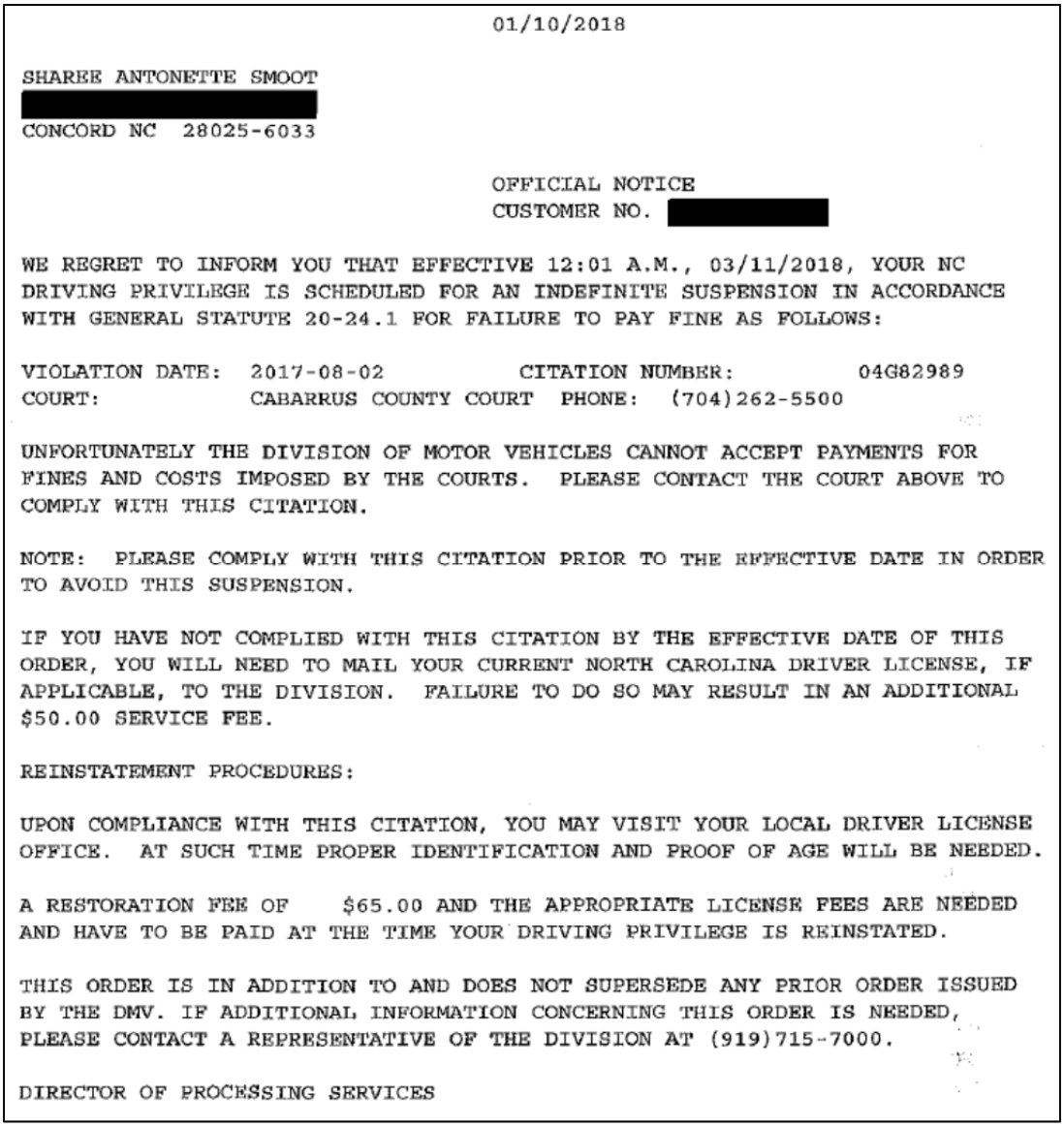
[1] The precise number varies, but over 436,000 licenses were revoked in the fall of 2017. Email from DMV (Sept. 26, 2017), attached as Exhibit I to Declaration of Samuel Brooke ("Brooke Decl."), DE 6.

to petition to stop the revocation process or to reinstate their licenses by proving to a court that their failure to pay was not willful. *Id.* § 20-24.1(b)(4).[2] As noted below, the State not only fails to inform anyone of this process but affirmatively misleads drivers into believing they must pay in full to be reinstated. Until the motorist satisfies Section 20-24.1(b), the license remains indefinitely revoked. *Id.* § 20-24.1(b), (c).

B. <u>The DMV Sends Deficient and Misleading Notices to Drivers to Induce Payment.</u>

The DMV presents drivers who have unpaid fines and costs with only two options: pay or have their license revoked. The DMV uses a standard form for the revocation order, which it labels as an "Official Notice." A copy of this notice, referred to hereafter as the "Revocation Notice," appears below:

[2] The driver may also have her license reinstated by establishing that she paid her outstanding debt or that she is not the person charged with the offense. N.C.G.S. § 20-24.1(b)(2), (3). The DMV will charge an additional $65 fee if the individual provides the payment or information required under § 20-24.1(b) more than 60 days after the date of the license revocation. *Id.* § 20-24.1(b), (c).



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

DMV, Revocation Notice (Jan. 10, 2018), Attachment B to Declaration of Sharee Smoot ("Smoot Decl."), DE 5, 5-2.

The Revocation 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 effective date. *Id.* It also instructs that the driver must "comply" with the citation to prevent "suspension" by the effective date or to have their revoked license

reinstated. *Id.* There is no explanation of what "comply" or "compliance" means, and no process is outlined for how to comply beyond payment of the underlying citation. Rather, the Notice simply states: "PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION." *Id.*

C. The Revocation of Driver's Licenses Pushes Individuals Further into Poverty.

The impact of Section 20-24.1 on the hundreds of thousands of individuals who have lost their licenses for failure to pay fines and costs is severe—particularly in a state like North Carolina where 1.5 million individuals live in poverty.[3]

Plaintiff Seti Johnson, a father of young children, lives with his mother because he cannot afford to pay his own rent. Declaration of Seti Johnson ("Johnson Decl."), DE 4, ¶ 3. He relies on his driver's license for work, to obtain food for his family, take his children to school and daycare, and take his family to doctor's appointments. *Id.* ¶¶ 4, 16. He fears that losing his license will prevent him from supporting himself and his family and fulfilling their needs. *Id.* ¶¶ 4, 14, 16. Mr. Johnson obtained a new job but lacked stable income and has struggled to maintain work, in part, because his license was revoked at least twice before due to his inability to pay traffic tickets. *Id.* ¶¶ 2, 7, 13, 14, 17.

In April 2018, Mr. Johnson pled guilty to "failure to notify DMV of address change" and was sentenced to pay a $100 fine and $208 in court costs, and an additional

[3] U.S. Census Bureau, *Quick Facts North Carolina*, https://www.census.gov/quickfacts/NC, attached as Exhibit A to Brooke Decl.

$20 because he could not pay that day. *Id.* ¶¶ 9–12. He scraped together $100 that day and was told the remainder was due "within 40 days," on May 22, 2018 and his license would be revoked if he did not pay in full. *Id.* ¶¶ 11–13. Mr. Johnson was unable to pay, and his license was automatically revoked by the DMV. *Id.* ¶¶ 13–14. The revocation was to become effective on July 28, 2018.[4] N.C.G.S. § 20-24.1(a).

Plaintiff Marie Bonhomme-Dicks is a mother of four who currently provides for a teenage child and two grandchildren. Declaration of Marie Bonhomme-Dicks ("Bonhomme-Dicks Decl.") ¶ 2. She relies on her driver's license for work, to obtain food, and to take her child and grandchildren to church, daycare, school, and related functions. *Id.* ¶ 6. Ms. Bonhomme-Dicks is employed part-time but does not earn enough to make ends meet, and has tried to work alternative jobs like driving for Uber and Lyft, but had to stop when her license was suspended previously. *Id.* ¶ 3. She donates plasma to try to cover her family's needs. *Id.* ¶ 4. Losing her license will make it impossible for her to continue working and providing for her family. *Id.* ¶ 11.

Ms. Bonhomme-Dicks pled guilty to a traffic ticket on July 27, 2018 and was assessed $388 in court costs. *Id.* ¶ 8. She was given no option other than to pay in full, and when she explained to the court that she could not pay, the Judge told her he used to waive costs, but the legislature now prevented him from doing so. *Id.* She is unable to pay and fears her license will be suspended imminently for non-payment. *Id.* ¶¶ 9, 11.

[4] Defendant Commissioner Jessup has elected to not suspend Mr. Johnson's license pursuant to Section 20-24.1 until this Motion is resolved. *See* DE 24 ¶ 8. If relief is not granted, it will be suspended imminently.

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. Smoot Decl. ¶¶ 3, 14. 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. *Id.* ¶ 4, 21, 24. She struggles mightily to meet her financial needs, including rent, utilities, car note and car insurance, and groceries, and lives with her grandmother to try to save costs. *Id.* ¶¶ 21–23. She has had to choose between paying utilities or buying groceries, gave up on college, and has cycled through poverty when she lost a prior car, and then, her job. *Id.* ¶¶ 10–13, 19. Ms. Smoot continues to face ongoing, imminent harm arising from the revocation of her license, as she cannot provide for herself and her family without risking driving on a suspended license, which exposes her to additional tickets. *Id.* ¶¶ 21, 24.

Ms. Smoot pled guilty to tickets that resulted in fines and costs of more than $500; she cannot afford to pay all of these tickets in full due to her limited finances. *Id.* ¶¶ 5–7, 15–17. When she failed to pay, the DMV sent her nearly identical Revocation Notices, which failed to tell her how to avoid the revocation or reinstate her license after the revocation, except to "comply" with the citation by the designated dates. *Id.* ¶¶ 8, 18 & Attachments A & B to Smoot Decl. ("Notices"). The DMV indefinitely revoked her license in late 2016 and again in early 2018 because she did not pay. *Id.* ¶¶ 14, 20.

Plaintiff Nichelle Yarborough's driver's license is currently revoked from a 2008 ticket. Declaration of Nichelle Yarborough ("Yarborough Decl.") ¶ 3. Ms. Yarborough needs a license to support herself and her four young children, one of whom is an infant

born prematurely, and another of whom has developmental disabilities. *Id.* ¶ 2. She needs to drive to get her children to school and medical appointments, as well as obtain groceries and basic necessities for her family. *Id.* ¶¶ 2, 4. She is unemployed, has filed for bankruptcy, and is enrolled in community college with the hopes that an education will give her better career opportunities. *Id.* ¶¶ 5, 11. Ms. Yarborough continues to face ongoing, imminent harm arising from the revocation of her license, as she cannot provide for herself and her family without risking driving on a suspended license, which exposes her to additional tickets and costs. *Id.* ¶ 4. Ms. Yarborough received a ticket for driving without insurance in 2008, and owes $221 for this ticket. She does not have enough money to pay off this ticket. *Id.* ¶ 11.

Plaintiffs' experiences are typical of the many others who have also lost—or will soon lose—their ability to drive due to poverty. In North Carolina the inability to drive makes it nearly impossible to sustain a livelihood or to provide for one's family. A driver's license is a "very common requirement" to obtain employment, including most jobs that "can actually lift people out of poverty."[5] Nearly 92% of North Carolinians travel to work by car and only 1.1% travel to work by public transit.[6] Reliable, accessible

[5] *See, e.g.*, Alana Semuels, *No Driver's License, No Job*, The Atlantic (June 15, 2016), https://goo.gl/xQjyLj, attached as Exhibit B to Brooke Decl.; Stephen Bingham et al., *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* 26-28 (2016), https://goo.gl/uLhFfL, attached as Exhibit C to Brooke Decl.

[6] U.S. Dep't of Transp., Bureau of Transp. Stats., *NORTH CAROLINA Transportation by the Numbers* 2 (2016), https://goo.gl/eM6NWy, attached as Exhibit D to Brooke Decl.

public transit remains scarce in the state, where the vast majority of counties are rural.[7] Public transit services in urban areas of the State also provide limited access to jobs.[8]

The lack of transportation options remains a common barrier to obtaining and maintaining employment for many North Carolinians.[9] Accordingly, license revocations for failure to pay fines and costs make it even more difficult for North Carolinians to find and keep employment, and they create an unjust and impossible dilemma: drive illegally and risk further punishment, or stay home and forgo the ability to provide for the most basic of daily living needs for one's self and family.

QUESTIONS PRESENTED

A. Whether Plaintiffs have met the class certification requirements under Rule 23(a), (b)(2) and (g) related to the First, Second, and Third Claims for Relief, for which prospective injunctive and declaratory relief is sought, for the proposed **Future Revocation Class**.

B. Whether Plaintiffs have met the class certification requirements under Rule 23(a), (b)(2) and (g) related to the First, Second, and Third Claims for Relief, for which

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[7] *See* Tazra Mitchell, *Connecting Workers to Jobs Through Reliable and Accessible Public Transit*, Policy & Progress, N.C. Justice Ctr. (Nov. 2012), https://goo.gl/qOF0S, attached as Exhibit E to Brooke Decl.; Chandra T. Taylor and J. David Farren et al., *Beyond the Bypass: Addressing Rural North Carolina's Most Important Transportation Needs*, So. Envtl. Law Ctr. 1 (2012), https://goo.gl/xQjyLj, attached as Exhibit F to Brooke Decl.

[8] Mitchell, *supra* note 6, at 1–2.

[9] *Id.*

prospective injunctive and declaratory relief is sought, for the proposed **Revoked Class.**

ARGUMENT

A. Standard of Review.

A certified class must meet the requirements of Rule 23(a) and the standards set forth in Rule 23(b). *EQT Prod. Co. v. Adair*, 764 F.3d 347, 357 (4th Cir. 2014). To satisfy the prerequisites established in Rule 23(a), a plaintiff must show "(1) numerosity of parties; (2) commonality of factual and legal issues; (3) typicality of claims and defenses of class representatives; and (4) adequacy of representation." *Gunnells v. Healthplan Servs. Inc.*, 348 F.3d 417, 423 (4th Cir. 2003) (citing Fed. R. Civ. P. 23(a)). Next, the class action must fall within one of the three categories established in Rule 23(b), including where, as here, "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." Fed. R. Civ. P. 23(b)(2). If these requirements are met, certification as a class action will serve important public purposes, including "promoting judicial economy and efficiency" and "afford[ing] aggrieved persons a remedy [that may not otherwise be] . . . feasible to obtain . . . through the traditional framework of multiple individual . . . actions." *Gunnells*, 348 F.3d at 424 (quoting Moore's Fed. Practice § 23.02 (3d ed. 1999)).

District courts have "broad discretion" in determining whether to certify a class. *Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 6 F.3d 177, 185 (4th Cir. 1993) (citation and

quotation omitted). Courts may look beyond the pleadings, analyzing relevant facts and substantive law, to determine whether class certification is appropriate. *See Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 319 (4th Cir. 2006); *Thompkins v. Key Health Med. Sols., Inc.*, No. 1:12CV613, 2015 WL 5007895, at *3 (M.D.N.C. Aug. 20, 2015). However, "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage." *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 466 (2013). "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Id.* Thus, "[a]n evaluation of the probable outcome on the merits is not properly part of the certification decision." *Id.* (citation omitted).

Applying these as well as the following Rule 23(a) and (b)(2) standards to Plaintiffs' class claims, Plaintiffs' proposed Classes should be certified.

B. Rule 23(a)(1): The Proposed Classes Are So Numerous that Joinder of All Members Would Be Impracticable.

The Rule 23(a)(1) requirement is satisfied when the number of potential plaintiffs is "so numerous that joinder of all members" of the class would be "impracticable." Fed. R. Civ. P. 23(a)(1). "No specified number is needed to maintain a class action." *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) (citation and quotation omitted). Even eighteen people can be sufficient. *See Cypress v. Newport News Gen. and Nonsectarian Hosp. Ass'n.*, 375 F.2d 648, 653 (4th Cir. 1967); *see also Rodger v. Elec. Data Sys. Corp.*, 160 F.R.D. 532, 535 (E.D.N.C. 1995) ("[A] class of as few as twenty-five to thirty members raises a presumption that joinder would be impracticable.");

Dameron v. Sinai Hosp. of Baltimore, Inc., 595 F. Supp. 1404, 1407-08 (D. Md. 1984) (same).

Furthermore, the fact that the precise number of class members cannot be determined at the certification stage does not preclude class certification. *See Haywood v. Barnes*, 109 F.R.D. 568, 576-77 (E.D.N.C. 1986). The plaintiffs "need only make a reasonable estimate of the number of class members." *Wiseman v. First Citizens Bank & Trust Co.*, 212 F.R.D. 482, 486 (W.D.N.C. 2003) (citation omitted), *adhered to on reconsideration*, 215 F.R.D. 507 (W.D.N.C. 2003). "In fact, difficulty in immediately identifying all class members makes joinder more impractical and certification more desirable." *Haywood*, 109 F.R.D. at 576 (citation omitted).

Here, the number of class members in both classes makes joinder impracticable. For the **Revoked Class**, data from the DMV establishes that at any particular time, hundreds of thousands of individuals have their licenses indefinitely revoked by the DMV for failure to pay fines and costs assessed for motor vehicle offenses. *See supra* note 1. This volume is far in excess of what would be practicable for joinder. *See Cypress*, 375 F.2d at 653; *Rodger*, 160 F.R.D. at 535; *Dameron*, 595 F. Supp. at 1407-08.

The **Future Revocation Class** consists of all individuals who will in the future face revocation for failure to pay under Section 20-24.1. The precise number of individuals in this class is unknown, but given that hundreds of thousands of individuals are presently revoked for non-payment at any given time, it is reasonable to conclude that the number of persons whose licenses will be revoked in the future for non-payment will

also be voluminous. The **Future Revocation Class** is forward-looking with the potential for new members to join the Classes on an ongoing basis, as the DMV will continue to revoke licenses for non-payment absent relief from this Court. *See Jack v. Am. Linen Supply Co.*, 498 F.2d 122, 124 (5th Cir. 1974) (per curiam); *cf., e.g.*, *Walker v. Styrex Indus.*, No. C-74-197-G, 1976 WL 13224, *1 (M.D.N.C. Jan. 7, 1976) ("Future employees can be proper members of the class in an employment discrimination suit, and, while this makes the exact number of the class unknown, it also contributes to creating so many members as to make joinder impracticable.").

The Court should also take into consideration other relevant characteristics of the class in determining whether joinder is impracticable. Where, as here, class members are subject to a statewide policy and are disbursed throughout the state, joinder will be more difficult. *Pashby v. Cansler*, 279 F.R.D. 347, 353 (E.D.N.C. 2011), *aff'd and remanded sub nom. Pashby v. Delia*, 709 F.3d 307 (4th Cir. 2013). Similarly, where class members lack financial resources or are otherwise disadvantaged, joinder may be more impracticable. *See Rodger*, 160 F.R.D. at 536–37 ("'Relevant considerations include . . . financial resources of class members . . . .'" (quoting *Robidoux v. Celani*, 987 F.2d 931 (2d Cir. 1993))); *Steward v. Janek*, 315 F.R.D. 472, 480 (W.D. Tex. 2016) (citing poverty and disabilities); *Cortigiano v. Oceanview Manor Home for Adults*, 227 F.R.D. 194, 204–05 (E.D.N.Y. 2005) (citing fear of reprisals, mental disabilities, and lack of resources); *Gerardo v. Quong Hop & Co.*, No. C 08-3953 JF (PVT), 2009 WL 1974483, at *2 (N.D. Cal. July 7, 2009) (citing lack of legal sophistication).

Here, putative members face or have experienced the revocation of their licenses precisely because of their failure to pay fines and costs; it is reasonable to assume they will be unable to afford counsel to bring their own separate action against Defendant.

Accordingly, based on a reasonable estimation of the substantial sizes of both Classes and the totality of circumstances of the putative Classes' members, joinder would be impracticable.

C. Rule 23(a)(2): Both Proposed Classes Share Common Questions of Law and Fact.

Rule 23(a)(2) requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Class "claims must depend upon a common contention" which "must be of such nature that it is capable of class-wide resolution." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). This "means that determination of [the contention's] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.*

The commonality requirement of Rule 23(a)(2) "does not require that all, or even most issues be common, nor that common issues predominate, but only that common issues exist." *Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 143 F.R.D. 628, 636 (D.S.C. 1992), *aff'd*, 6 F.3d 177 (4th Cir. 1993); *see also Dukes*, 564 U.S. at 369 ("'[E]ven a single [common] question' will do." (citation omitted)). For this reason, factual differences among the claims of putative class members do not defeat certification. Indeed, "Rule 23 does not require precise, mirror-image identity respecting the injuries

caused by a single practice or policy." *Int'l Woodworkers of Am. v. Chesapeake Bay Plywood Corp.*, 659 F.2d 1259, 1269–70 (4th Cir. 1981).

Civil rights cases often easily demonstrate commonality because the defendants' actions are "central to the claims of all class members irrespective of their individual circumstances and the disparate effects of the conduct." *Baby Neal ex. rel. Kanter v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994) (citing 7A Charles A Wright, et al., Fed. Prac. & Proc. § 1763 at 219 (1986)).

Here, members of the prospective **Future Revocation Class** and **Revoked Class**, respectively, face indefinite revocation of their driver's licenses or currently have a driver's license that has been indefinitely revoked by the DMV, pursuant to § 20-24.1. Plaintiffs allege on behalf of themselves and their proposed Classes that Section 20-24.1 and DMV's uniform enforcement practices violate their Fourteenth Amendment rights by automatically imposing the punishment of revocation without any determination the motorist willfully failed to pay; a pre-deprivation opportunity to be heard to determine willful non-payment; and sufficient notice of motorists' legal rights under Section 20-24.1. *See* First Am. Compl. ¶¶ 29–44, 115–150. All members of the proposed Classes also are equally subject to the DMV's revocation of driver's licenses for non-payment. Thus, this case presents the typical example where commonality is satisfied because Plaintiffs are challenging an agency's generally applicable systemic practices. *See Bumgarner v. NCDOC*, 276 F.R.D. 452, 456 (E.D.N.C. 2011) ("[I]in a lawsuit wherein individuals with varying disabilities challenge policies and practices that affect all of the

putative class members, factual differences regarding their disabilities does not defeat commonality." (citing *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001)); *Johnson v. Am. Credit Co. of Ga.*, 581 F.2d 526, 532–33 (5th Cir. 1978) (finding class could have been certified in class-action challenge to Georgia prejudgment attachment statute); *Doe v. Miller*, 216 F.R.D. 462, 465 (S.D. Iowa 2003) (finding commonality satisfied in facial challenge to statute); *Lebron v. Wilkins*, 277 F.R.D. 664, 667–68 (M.D. Fla. 2011) (same).

Accordingly, Plaintiffs raise claims based on questions of law and fact that are common to, and typical of, the putative class members of both Classes they seek to represent. Common questions of fact include:

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.

Common questions of law include:

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.

First Am. Compl. ¶ 104.

A resolution of any of these common issues will serve as the "glue" uniting the respective putative Classes' members' factual and legal claims and will provide "a common answer to the crucial question" of whether the DMV is causing unconstitutional injuries to the Classes' members. *See Dukes*, 564 U.S. at 352. Furthermore, the class-wide relief sought—a declaration that Section 20-24.1 and the DMV's practices of

enforcing the statute, including its manner of providing notice, are unconstitutional and an injunction enjoining the DMV from revoking licenses for non-payment pursuant to § 20-24.1 and mandating the DMV's restoration of previously revoked licenses—is common to members of each proposed Class.

For all of the above reasons, commonality is satisfied.

D. Rule 23(a)(3): The Claims of Plaintiffs are Typical of the Classes They Seek to Represent.

Plaintiffs satisfy "[t]he test for typicality, [which] . . . is not demanding." *See Lightbourn v. Cty. of El Paso*, 118 F.3d 421, 426 (5th Cir. 1997) (citation omitted). The typicality prerequisite requires that the class representatives "be part of the class and possess the same interest and suffer the same injury as the class members." *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001) (quoting *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 156 (1982)). "Nevertheless, the class representatives and the class members need not have identical factual and legal claims in all respects." *Fisher v. Va. Elec. and Power Co.*, 217 F.R.D. 201, 212 (E.D. Va. 2003) (citation omitted); *see also Casey*, 43 F.3d at 58 ("[F]actual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory." (alteration in original) (citation omitted)). "The essence of the typicality requirement is captured by the notion that 'as goes the claim of the named plaintiff, so go the claims of the class.'" *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006) (quotation omitted). Thus, in pursuing

their own case, the representative parties "must simultaneously tend to advance the interests of the absent class members." *Id.*

Here, Plaintiffs meet the typicality requirement for the same reason that they meet the commonality requirement: the relief sought would benefit all class members in an identical manner. The claims of Mr. Johnson and Ms. Bonhomme-Dicks are typical of the claims of the proposed **Future Revocation Class** as a whole. Plaintiffs and the putative members will suffer the same direct, irreparable injury of a loss of their driver's license unless Section 20-24.1 is declared unconstitutional and the DMV is enjoined from revoking licenses pursuant to that statute. Because Plaintiffs and the proposed class members challenge the same unconstitutional statute, the DMV will likely assert similar defenses against Plaintiffs and proposed members. Moreover, the answer to whether the statute is unconstitutional will determine the success of the claims of Plaintiffs and every other proposed **Future Revocation Class** member. If Plaintiffs succeed in the claim that the statute violates their constitutional rights that ruling will benefit every other member of the proposed class.

Likewise, the claims of Plaintiffs Ms. Smoot and Ms. Yarborough are typical of the claims of the proposed **Revoked Class** as a whole. Plaintiffs and the putative class members have suffered the same direct, irreparable injury of loss of their driver's license pursuant to the same statute (Section 20-24.1) and corresponding enforcement process effectuated by the DMV. Because Plaintiffs and the proposed Class challenge the same unconstitutional statute and DMV practice, the DMV will likely assert similar defenses

against Plaintiffs and proposed **Revoked Class** members. Moreover, the answer to whether the statute and the DMV's corresponding method of revocation are unconstitutional will determine the success of Plaintiffs' claims and every other proposed **Revoked Class** member: if Plaintiffs succeed in the claim that the statute and DMV violate their constitutional rights, that ruling will benefit every other member of the proposed **Revoked Class**.

Both the named Plaintiffs and putative Classes' members seek to redress common legal injuries through the identical legal theories common to the Classes. For these reasons, Plaintiffs meet the typicality requirement of Rule 23(a)(3).

E. Rule 23(a)(4) & (g): Plaintiffs Will Adequately Represent Their Respective Classes and Undersigned Counsel are Qualified to Serve as Class Counsel.

Plaintiffs also satisfy the requirements of adequate representation under Rule 23(a)(4), and counsel for Plaintiffs satisfy the requirements of Rule 23(g). Rule 23(a)(4) states that the class representatives must be fair and adequate representatives of the entire class. This rule has been interpreted to include two separate requirements. One requirement is that the named Plaintiffs must not have any interests antagonistic to the class. *See Barnett v. W.T. Grant Co.*, 518 F.2d 543, 548 (4th Cir. 1975). The other requirement is that the plaintiffs must be represented by adequate counsel. *See* Fed. R. Civ. P. 23(g).

Plaintiffs meet the first requirement of adequacy of representation: Plaintiffs have demonstrated their willingness and ability to "vigorously prosecute the interests of the class through qualified counsel." *See Olvera-Morales v. Int'l Labor Mgmt. Corp.*, 246

F.R.D. 250, 258 (M.D.N.C. 2007). They have agreed to be individually named as Plaintiffs and to be active in the litigation on behalf of their fellow absent members of the proposed Classes. *See* Johnson Decl. ¶ 18; Smoot Decl. ¶ 26; Bonhomme-Dicks Decl. ¶ 13; Yarborough Decl. ¶ 12. Moreover, where, as here, Plaintiffs' claims "rest upon the practices and policies" of the defendant, there is a "common interest[]" in reforming those practices and policies, and no conflict exists. *See J.D. v. Nagin*, 255 F.R.D. 406, 415, 416 (E.D. La. 2009); *see also Marisol A. v. Giuliani*, 126 F.3d 372, 378 (2d Cir. 1997) (relief sought to reform defendants' systemic practices is in all class members' interests).

With respect to the second Rule 23(a)(4) requirement and the considerations under Rule 23(g), Plaintiffs' counsel here are fully qualified and prepared to pursue this action on behalf of the proposed Classes. *See* Declaration of Samuel Brooke ¶¶ 2–23 ("Brooke Decl."), DE 6. The attorneys representing Plaintiffs and the putative Classes are experienced in handling class action and civil rights litigation and have particular knowledge of, and experience in, litigating legal claims concerning unconstitutional governmental policies and practices. *Id.* ¶¶ 11–21. Proposed class counsel have sufficient financial and human resources to litigate this matter. *Id.* ¶ 23. Proposed class counsel have also spent appropriate time investigating Plaintiffs' and each proposed class's claims, by, *inter alia*, observing court practices and speaking with court staff about these practices; reviewing the statutory scheme at issue and the corresponding notices sent by the DMV to drivers upon non-payment, and confirming the revocation and restoration

process by speaking with advocates who handle such matters. *See* Brooke Decl. ¶ 22. Thus, Plaintiffs' attorneys are appropriate counsel for the class-action matter.

F. Rule 23(b)(2): Defendant Jessup Acts Uniformly Toward Members of the Proposed Classes.

In addition to satisfying the prerequisites of Rule 23(a), the proposed Classes may be maintained as classes under Rule 23(b)(2). A court may certify a class under Rule 23(b)(2) if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2); *see also Zimmerman v. Bell*, 800 F.2d 386, 389–90 (4th Cir. 1986) ("[S]ubsection (b)(2) [is] limited to claims where the relief sought [is] primarily injunctive or declaratory."). "The essential consideration is whether the complaint alleges that the plaintiffs have been injured by defendants' conduct which is based on policies and practices applicable to the entire class." *Bumgarner v. NCDOC*, 276 F.R.D. 452, 457–58 (E.D.N.C. 2011) (citation omitted).

Lawsuits brought for injunctive relief alleging civil rights violations are precisely the type of suit for which Rule 23(b)(2) was intended to provide class certification. *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 613–14 (1997) ("Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples [where class certification is proper under Rule 23(b)(2)]."); *Thorn*, 445 F.3d at 330 n.24 ("Rule 23(b)(2) was created to facilitate civil rights class actions."); *see also Gayle v. Warden Monmouth Cnty. Corr. Inst.*, 838 F.3d 297, 311 (3d Cir. 2016) ("The consequences can

be significant for those who would otherwise benefit from the relief afforded by Rule 23(b)(2), a rule 'designed specifically for civil rights cases seeking broad declaratory or injunctive relief for a numerous and often unascertainable or amorphous class of persons.'"); *Casey*, 43 F.3d at 58–59 ("The (b)(2) class serves most frequently as the vehicle for civil rights actions and other institutional reform cases that receive class action treatment."). For this reason, Rule 23(b)(2) has been liberally applied in the area of civil rights. *See, e.g.*, *Bumgarner*, 276 F.R.D. at 457; *cf. Thorn*, 445 F.3d at 330 ("The twin requirements of Rule 23(b)(2)—that the defendant acted on grounds applicable to the class and that the plaintiff seeks predominantly injunctive or declaratory relief—make that Rule particularly suited for class actions alleging racial discrimination and seeking a court order putting an end to that discrimination." (citation omitted)).

"The key to the (b)(2) class is 'the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.'" *Dukes*, 564 U.S. at 360 (citation omitted). In interpreting the requirements of Rule 23(b)(2), the Fourth Circuit has held that certification is appropriate where final injunctive relief is sought and will "settl[e] the legality of the behavior with respect to the class as a whole." *Thorn*, 445 F.3d at 329 (quoting Rule 23(b)(2), Adv. Cmt. Notes (1996)). Plaintiffs satisfy these requirements here.

As discussed above, *supra*, members of the respective proposed classes face the same risk of harm—either the future or the current unconstitutional deprivation of their

driver's licenses. This harm results from the DMV's enforcement of same statutory text—Section 20-24.1—which equally applies to all members simply based on their impending or past inability to pay their court debt. *See M.D. ex rel. Stukenburg v. Perry*, 675 F.3d 832, 847-48 (5th Cir. 2012) (explaining class claims need not be "premised on a 'specific policy . . . uniformly affecting—and injuring each [class member],'" but rather can show defendant "engages in a pattern or practice of agency action or inaction . . . 'with respect to the class,' so long as declaratory or injunctive relief settling the legality of the [defendant's] behavior with respect to the class as a whole is appropriate" (internal citations omitted)). Thus, injunctive relief to enjoin Section 20-24.1 and the DMV's enforcement thereof and to mandate restoration of previously revoked licenses for non-payment under Section 20-24.1, as well as a declaration to declare that Section 20-24.1, and the DMV's revocation practice under the statute, are unconstitutional, is appropriate to remedy the deprivations suffered by all members of the **Revoked** Class and **Future Revocation Class**.

For these reasons, Plaintiffs' requested equitable relief is appropriate for the proposed **Future Revocation Class** as a whole and the proposed **Revoked Class** as a whole.

CONCLUSION

For the above reasons, Plaintiffs respectfully request the Court grant Plaintiffs' Motion for Class Certification and certify the proposed Classes pursuant to Rule 23(a), (b)(2) and (g).

Dated August 7, 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/ Samuel Brooke
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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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