

**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 similarly 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)

PLAINTIFFS' SECOND MOTION FOR PRELIMINARY INJUNCTION

COME NOW Plaintiffs Seti Johnson, Marie Bonhomme-Dicks, Sharee Smoot, and Nichelle Yarborough, pursuant to Rule 65 of the Federal Rules of Civil Procedure, to move the Court for a preliminary injunction against Defendant Torre Jessup, in his official capacity as Commissioner of the North Carolina Division of Motor Vehicles (the "DMV"), in connection with Plaintiffs' First, Second, and Third Claims for Relief. In support of this Motion, Plaintiffs state as follows:

1. This matter challenges Section 20-24.1 of the North Carolina General Statutes, which mandates the DMV to indefinitely revoke individuals' driver's licenses for non-payment of fines, court costs, and penalties for traffic offenses ("fines and costs"), without any determination of ability to pay, pre-deprivation hearing on

willfulness of non-payment, or meaningful notice—in violation of the Fourteenth Amendment of the U.S. Constitution.

2. Mr. Seti Johnson is facing imminent indefinite revocation of his driver's license because he has been, and remains, unable to pay outstanding fines and costs for a 2017 traffic ticket. Declaration of Seti Johnson ("Johnson Decl.") ¶¶ 13, 14, DE 4. Mr. Johnson's license was to be suspended on or around July 24, 2018, *see id.*, though that suspension has now been delayed until resolution of this motion, *see* DE 24 ¶ 8. Mr. Johnson relies on his driver's license to search for work and when employed, to travel to work; to travel to the grocery store; to take his children to school and daycare; and to attend doctor's appointments. Johnson Decl. ¶¶ 4, 16. Absent injunctive relief, he will indefinitely lose his license and, as a result, will not be able to maintain employment and care for himself and his family. *Id.* ¶¶ 16, 18.

3. Ms. Bonhomme-Dicks is facing imminent indefinite revocation of her driver's license because she has been, and remains, unable to pay outstanding fines and costs for a 2017 traffic ticket. Declaration of Marie Bonhomme-Dicks ("Bonhomme-Dicks Decl.") ¶¶ 7-10, being filed concurrently. Ms. Bonhomme-Dicks relies on her driver's license to go to work; take her child and grandchild to school, and school-related events, church, and daycare; and to travel to the grocery store. *Id.* ¶ 6. Absent injunctive relief, she will indefinitely lose her license and, as a result, will not be able to maintain employment and care for herself and her family. *Id.* ¶ 10.

4. The DMV indefinitely revoked Ms. Smoot's license in 2016 and 2018 for non-payment of fines and costs that she could not afford, and her license remains revoked. Declaration of Sharee Smoot ("Smoot Decl.") ¶¶ 3, 7–14, 17–20, DE 5. Ms. Smoot needs a valid driver's license to support herself and her daughter. She currently works forty-five minutes from her home, but has no one to transport her to and from work. *Id.* ¶ 4. She also needs a license to travel to doctor's appointments and her church and to get food for her daughter. *Id.* ¶ 21. Ms. Smoot, however, still does not have money to pay her traffic tickets due to strained financial circumstances. *Id.* ¶¶ 22–23. Thus, absent injunctive relief, she will continue to experience harm from the indefinite revocation of her license and will not be able to maintain employment and care for herself and her family. *Id.* ¶ 24.

5. Ms. Yarborough's license is currently revoked for non-payment of fines and costs that she could not afford. Declaration of Nichelle Yarborough ("Yarborough Decl.") ¶¶ 3, 7, being filed concurrently. Ms. Yarborough needs a valid driver's license to support herself and her children, including an infant born prematurely and another child with certain disabilities. *Id.* ¶ 2. She is presently unemployed, but is working to get a college education to further her opportunities. *Id.* ¶¶ 5, 11. She needs to drive to continue her education, and to care for her children. *Id.* ¶¶ 2, 11. Because she is unemployed, Ms. Yarborough still does not have money to pay her traffic ticket. *Id.* ¶¶ 5, 11. Thus, absent injunctive relief, she will continue to experience harm from the

indefinite revocation of her license and will not be able to maintain employment and care for herself and her family.

6. None of the Plaintiffs has ever been provided any hearing or assessment of ability to pay. Nor have they received any notice of existing alternatives under state law for those who cannot pay. Johnson Decl. ¶¶ 10, 15; Bonhomme-Dicks Decl. ¶¶ 8-10, 12; Smoot Decl. ¶¶ 6, 8, 16, 18; Yarborough Decl. ¶¶ 8-9.

7. Thus, as detailed in Plaintiffs' accompanying Memorandum of Law, Plaintiffs are likely to prevail on the merits of their First, Second, and Third Claims for Relief that Section 20-24.1 violates the Fourteenth Amendment to U.S. Constitution because it mandates the DMV to revoke licenses for non-payment without any determination of ability to pay, a hearing to determine willfulness of non-payment, or meaningful notice.

8. If a preliminary injunction does not issue, Mr. Johnson and Ms. Bonhomme-Dicks will suffer the immediate irreparable injury of the loss of their driver's licenses, and Ms. Smoot and Ms. Yarborough will continue to suffer irreparable injury from the ongoing revocation of their driver's licenses. Thus, Plaintiffs currently face or will soon face the impossible choice of staying at home and being unable to provide for themselves and their families or of driving illegally to meet basic needs.

9. The threatened injury to Plaintiffs and the putative Classes significantly outweighs any possible injury a preliminary injunction may cause Defendant, and the injunction would serve the public interest.

10. For these reasons and the reasons set forth in the accompanying Memorandum of Law in Support, the declarations of Mr. Johnson (DE 4), Ms. Smoot (DE 5), Mr. Samuel Brooke (DE 6), Ms. Bonhomme-Dicks (being filed concurrently), Ms. Yarborough (being filed concurrently) and the Exhibits appended thereto; and any other matters presented to the Court, Plaintiffs respectfully request the Court grant this Motion and enter a preliminary injunction that: (1) enjoins the DMV's enforcement of Section 20-24.1(a)(2) and (b)(3)-(4) of the North Carolina General Statutes; (2) enjoins the DMV's revocation of drivers' licenses for non-payment under Section 20-24.1(a)(2); and (3) mandates the DMV to lift current license revocations entered pursuant to Section 20-24.1(a)(2), reinstate licenses without charging a reinstatement fee if there are no other bases for the revocation, and provide notice to the license-holders of this change, pending a final determination on the merits of Plaintiffs' claims.

Dated August 7, 2018.

/s/ Kristi L. Graunke

Kristi L. Graunke

/s/ Samuel Brooke

Samuel Brooke

On behalf of Counsel for Plaintiffs

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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 August 7, 2018.

/s/ Samuel Brooke _____
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