IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

NATHAN WRIGHT, CAMESE BEDFORD, ASHLEY GILDEHAUS, and LISA MANCINI, on behalf of themselves and others similarly situated, Plaintiffs, v. FAMILY SUPPORT DIVISION of the Missouri Department of Social Services; MICHAEL PARSON, in his official capacity as Governor of Missouri; JENNIFER TIDBALL, in her official capacity as Acting Director of the Department of Social Services; REGINALD MCELHANNON, in his Official capacity as Interim Director of the Family Support Division; KENNETH ZELLERS, in his official capacity as Acting Director of the Department of Revenue; JOSEPH PLAGGENBERG, in his official capacity as Director of the Motor Vehicle and Driver Licensing Division, Defendants.	Case. No. 4:19-cv-398 RLW CLASS ACTION JURY DEMANDED **PLAINTIFFS' MOTION FOR CLASS CERTIFICATION** Hearing: December 11, 2019 at 2pm

Pursuant to Fed. R. Civ. P. 23, Plaintiffs Nathan Wright, Camese Bedford, Ashley Gildehaus, and Lisa Mancini hereby respectfully move this Court to certify a declaratory and injunctive class defined as:

> All individuals whose Missouri driver's licenses are, or will be, suspended for failure to pay child support and whose reason for nonpayment was, or will be, inability to pay.

In support of this Motion, Plaintiffs rely upon the enclosed Memorandum.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2019, I electronically filed the above document with the Clerk of the Court using the ECF System, which will provide electronic copies to the counsel of record.

/s/ Rebecca Ramaswamy
Attorney for Plaintiffs

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NATHAN WRIGHT, CAMESE BEDFORD, ASHLEY GILDEHAUS, and LISA MANCINI, on behalf of themselves and others similarly situated, Plaintiffs, v. FAMILY SUPPORT DIVISION of the Missouri Department of Social Services; MICHAEL PARSON, in his official capacity as Governor of Missouri; JENNIFER TIDBALL, in her official capacity as Acting Director of the Department of Social Services; REGINALD MCELHANNON, in his Official capacity as Interim Director of the Family Support Division; KENNETH ZELLERS, in his official capacity as Acting Director of the Department of Revenue; JOSEPH PLAGGENBERG, in his official capacity as Director of the Motor Vehicle and Driver Licensing Division, Defendants.	Case. No. 4:19-cv-398 RLW CLASS ACTION JURY DEMANDED **PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION** Hearing: December 11, 2019 at 2pm

I. Introduction

This case is about the Missouri Department of Social Services' Family Support Division and the Missouri Department of Revenue perpetuating a cycle of poverty by unconstitutionally suspending the driver's licenses of tens of thousands of Missouri parents who are unable to pay child support. Under MO Rev. Stat. § 454.1003.1(1), the Family Support Division ("FSD") has the authority to issue an order suspending the driver's license of any person who is not making child support payments and who owes at least three months' worth of payments or at least $2,500,

whichever is less. These suspensions are meant to coerce payment, but for those who cannot pay, the loss of a driver's license decreases the likelihood that a person will be able to pay child support, as it often leads to job loss, reduced employment opportunities, eviction, and greater difficulty carrying out the responsibilities of everyday life.

Moreover, suspending the driver's licenses of non-custodial parents makes it more difficult for them to see their children regularly, pick them up for visitation, or share in caring for them by taking them to doctor's appointments and participating in school activities. Thus, these license suspensions harm the interests of the children who are ostensibly meant to benefit from child support enforcement by making it difficult for non-custodial parents to play a meaningful role in their children's lives and to earn the money that they would gladly use to support their children. Many parents whose licenses are suspended face an impossible choice: comply with the suspensions and lose their jobs, homes, and ability to care for their families, or drive illegally and face the threat of further debt and criminal charges if they are caught.

License suspension as a debt collection method is unconstitutional and irrational when enforced against people who cannot afford to pay: no amount of coercion can force money out of a person who has none. Suspending the licenses of Missouri parents who are unable to pay child support violates their substantive due process, equal protection, and procedural due process rights under the United States Constitution. Because Defendants' suspension scheme affects innumerable parents and families throughout the state of Missouri, class certification is necessary to litigate this dispute properly.

Class action is the only reasonable recourse that impoverished class members have for remedying this unconstitutional driver's license suspension scheme. The parents harmed by these suspensions are unable to pay their monthly child support obligations; thus, they lack the resources

to hire their own lawyers to bring individual claims. Providing an economical alternative for aggrieved individuals is a primary purpose of the class action device. *See Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338 (1980) (finding the purpose of class action is to motivate individuals "to bring cases that for economic reasons might not be brought otherwise."). Class members "may be without any effective redress unless they may employ the class-action device." *Id.* Even if potential class members could afford to try these cases individually, the courts would be clogged with thousands of suits, redundant discovery, and repeated adjudication of many similar controversies, wasting judicial time and resources. Such waste is unnecessary given that Plaintiffs and class members seek only declaratory and injunctive relief with no need for individualized determinations. Thus, class action is the best mechanism for resolving this dispute and ending this injustice. Plaintiffs respectfully request that this Court grant their Motion for Class Certification by certifying a declaratory and injunctive class defined as: **All individuals whose Missouri driver's licenses are, or will be, suspended for failure to pay child support and whose reason for nonpayment was, or will be, inability to pay**.

II. Discussion

Plaintiffs' motion should be granted because (A) the proposed class satisfies the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a); and (B) the proposed class satisfies the requirements of Rule 23(b)(2).

A. The Proposed Class Satisfies the Requirements of Rule 23(a)

Plaintiffs satisfy the requirements of Rule 23(a) because (i) the class "is so numerous that joinder of all members is impracticable," Fed. R. Civ. P. 23(a)(1); (ii) "there are questions of law or fact common to the class," Fed. R. Civ. P. 23(a)(2); (iii) Plaintiffs' "claims . . . are typical of the claims . . . of the class," Fed. R. Civ. P. 23(a)(3); and (iv) Plaintiffs "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4).

i. Numerosity

Plaintiffs satisfy numerosity because the class "is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). This is a statewide class that includes all parents whose licenses are currently suspended because of their inability to pay child support as well as all parents who will suffer such suspension during the pendency of this lawsuit.

Plaintiffs estimate that tens of thousands of Missouri parents currently have suspended driver's licenses because they cannot afford to make their child support payments. Defendants state that as of June 10, 2019, approximately 41,903 non-custodial parents have their driver's licenses suspended for unpaid child support. Ex.1, Defs.' Resp. to 1st Interrogatories at 10 ("This number represents a snapshot of all driver's licenses suspended for failure to pay past due support at one moment, as recorded in the Missouri Automated Child Support System (MACSS). The total fluctuates, but generally remains around 40,000."). While it is possible that some of the 41,903 parents are willful nonpayers (and thus not class members), it is very likely that most of the 41,903 parents are unable to pay their arrears, and it is virtually certain that a sufficient number to make joinder impracticable are unable to pay.

Most people want to be able to drive legally. People who can afford to pay their child support to terminate a driver's license suspension are likely to do so. *See, e.g.*, Wright Decl., ECF No. 22-1 at ¶ 8 ("I don't have any other means for getting from place to place."); *see also* Gildehaus Decl., ECF No. 22-5 at ¶ 18 ("I have to drive for my work."); Mancini Decl., ECF No. 22-7 at ¶ 24 ("I need to drive. . . . We live in a rural area with no reliable public transportation. The grocery store is four miles away. My children's doctors are about 12 to 15 miles away."). Of the 41,903 parents who currently have suspensions for unpaid child support, 27,372 individuals (65.3%) have had the suspensions for more than three years, and 13,937 individuals (33.3%) have had the suspensions for more than five years. Defs.' Resp. to 2nd Interrogatories, ECF No. 45-9 at 5. It

is difficult to imagine why a person (let alone tens of thousands of people) who could afford to terminate a driver's license suspension would fail to do so for over five years, especially in a state like Missouri where many areas do not have robust public transportation systems.

Joinder would be impracticable even if the class only included clients with whom class counsel has worked directly. In 2018 alone, class counsel litigated the cases of 39 parents whose licenses were suspended due to their inability to make their child support payments. Lummus Decl., ECF No. 22-9 at ¶ 2; *see also Arkansas Ed. Ass'n v. Bd. of Ed. of Portland, Ark. Sch. Dist.*, 446 F.2d 763, 765 (8th Cir. 1971) (approving a class of twenty members). Moreover, Class counsel's former St. Louis office receives five to ten requests every month for assistance with this issue, and the office receives many more requests from affected parents throughout the state of Missouri. Lummus Decl., ECF No. 22-9 at ¶ 2. These numbers alone would lead to over 100 plaintiffs within a year, which would be impracticable.

Several other factors also support numerosity. The statewide nature of the class makes joinder impracticable, as it creates a large geographical dispersion of class members. *Sanft v. Winnebago Industries, Inc.*, 214 F.R.D. 514, 523 (N.D. Iowa 2003), *amended in part*, 216 F.R.D. 453 (N.D. Iowa 2003) ("The finding of geographic dispersion generally supports a finding of numerosity because such a finding supports the proposition that joinder is impracticable."). Another factor that makes joinder impracticable is the fact that class members are, by definition, indigent. This Court may "consider the financial resources of the potential class members with regard to their ability to institute individual lawsuits" in determining whether numerosity is satisfied, and indigent class members are likely unable to bring individual lawsuits. *Id.* at 524. Plaintiffs' inclusion of future Class Members in their Class definition also makes joinder impracticable. *J.S.X. Through Next Friend D.S.X. v. Foxhoven*, 417CV00417SMRHCA, 2019 WL

1147144, at *7 (S.D. Iowa Mar. 13, 2019) ("Additionally, because the Proposed Class includes unidentified future class members, joinder of all class members is impracticable."); *see also M.B. by Eggemeyer v. Corsi*, 327 F.R.D. 271, 278 (W.D. Mo. 2018) (finding numerosity where future class members are included because "future members of the putative class are necessarily unidentifiable"); *Jordan v. Los Angeles County*, 669 F.2d 1311, 1320 (9th Cir. 1982), *vacated on other grounds*, *County of Los Angeles v. Jordan*, 459 U.S. 810 (1982) (noting that numerosity is satisfied for any class that contains "unnamed and unknown future [class members]" because "joinder of unknown individuals is inherently impracticable.").

For all these reasons, joinder is impracticable, and numerosity is satisfied.

ii. Commonality

Plaintiffs satisfy commonality because "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Each of Plaintiffs' claims "depend[s] upon a common contention . . . of such a nature that . . . determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Luiken v. Domino's Pizza, LLC*, 705 F.3d 370, 376 (8th Cir. 2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Named Plaintiffs seek declaratory relief concerning whether FSD's suspension scheme violates the rights of class members, and they seek injunctive relief mandating that Defendants end the scheme so that the constitutional rights of class members will be protected in the future. The declaratory and injunctive relief sought is common to all proposed class members; there are no individualized questions related to damages.

Common questions of law and fact exist as to all class members. Among the most important, but not the only, common questions of fact are:

- Whether FSD has a policy and practice of using driver's license suspension to coerce child support payments from non-custodial parents who are unable to pay;

- Whether FSD has a policy and practice of suspending driver's licenses without conducting meaningful inquiries into a person's ability to pay before taking such action; and
- Whether FSD's policy and practice of using driver's license suspension to coerce child support payments from parents who are unable to pay is in fact counterproductive.

Among the most important, but not the only, common questions of law are:

- Whether fundamental principles of due process and equal protection require FSD to take into account a parent's ability to pay before suspending a license for nonpayment of child support;
- Whether suspending a parent's driver's license solely because she or he cannot afford to make child support payments is lawful; and
- Whether a person is entitled to a meaningful inquiry into his or her present ability to pay child support before Defendants suspend his or her license for nonpayment.

These common legal and factual questions arise from one scheme: Defendants' driver's license suspensions based on inability to pay child support. The material requirements of the relevant statutes do not vary from class member to class member, and the resolution of these legal and factual issues will determine whether all class members are entitled to the relief they seek. *Dukes*, 564 U.S. at 350 ("What matters to class certification . . . is not the raising of common 'questions' — even in droves — but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation.") (emphasis in original). Because Plaintiffs' claims mount a facial challenge to the constitutionality of the statutory scheme that authorizes Defendants to suspend parents' driver's licenses for nonpayment of child support without any indigence exception and without guaranteeing — or even permitting — an opportunity for the parents to present inability to pay as a defense, the relief Plaintiffs' seek calls for "common answers" that will resolve the litigation, and commonality is satisfied. *Id.*

iii. Typicality

Plaintiffs satisfy typicality because their "claims . . . are typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). Named Plaintiffs' claims are typical of the other class members' claims, and they have the same interests in this case as all other class members. *DeBoer v. Mellon*

Mortgage Co., 64 F.3d 1171, 1174 (8th Cir.1995) ("The burden of showing typicality is fairly easily met so long as other class members have claims similar to the named plaintiff."). Each class member has had or will have his or her driver's license suspended due to an inability to pay child support.

All four named Plaintiffs are indigent Missouri parents who currently have driver's license suspensions ordered and enforced by Defendants because Plaintiffs fell behind on their child support payments due to their inability to pay. Plaintiff Nathan Wright currently owes over $44,135 in arrears and has not been able to make a payment since April of 2018 due to his indigence. Defs.' Resp. to 3rd Interrogatories, ECF No. 45-2 at 14; Wright Decl., ECF No. 22-1 at ¶ 4, 13–15. Because of his unpaid child support, Defendants suspended Mr. Wright's driver's license on May 24, 2018. Wright Driver Record, ECF No. 22-2. Plaintiff Camese Bedford currently owes over $3,626 in child support arrears. Defs.' Resp. to 3rd Interrogatories, ECF No. 45-2 at 14. He is indigent and cannot afford to pay off his arrears. Bedford Decl., ECF No. 22-3 at ¶ 10. Defendants suspended Mr. Bedford's driver's license on February 25, 2017, because he was unable to pay child support. Bedford Driver Record, ECF No. 22-4. Plaintiff Ashley Gildehaus currently owes over $14,446 in child support arrears, a debt he has no hope of paying off due to his indigence. Defs.' Resp. to 3rd Interrogatories, ECF No. 45-2 at 15; Gildehaus Decl., ECF No. 22-5 at ¶¶ 20–23. Defendants suspended Mr. Gildehaus's driver's license on April 7, 2018, because of past-due child support. Gildehaus Driver Record, ECF No. 22-6. Plaintiff Lisa Mancini currently owes over $11,511 in child support, which she cannot pay due to her indigence. Defs.' Resp. to 3rd Interrogatories, ECF No. 45-2 at 14; Mancini Decl., ECF No. 22-7 at ¶ 3. Defendants suspended Ms. Mancini's driver's license on March 16, 2018, because of her unpaid arrears. Mancini Driver Record, ECF No. 22-8. Thus, all four named Plaintiffs are typical of the

proposed class: All individuals whose Missouri driver's licenses are, or will be, suspended for failure to pay child support and whose reason for nonpayment was, or will be, inability to pay.

The answer to whether Defendants' punitive suspension scheme is unconstitutional will determine the claims of named Plaintiffs and every other class member, and the declaratory and injunctive relief that Plaintiffs seek is identical to the relief sought by the proposed class members. Moreover, none of the four named Plaintiffs "is subject to a unique defense that threatens to play a major role in the litigation." *In re Milk Prods. Antitrust Litig.*, 195 F.3d 430, 437 (8th Cir.1999). Typicality is therefore satisfied.

iv. Adequacy

Plaintiffs satisfy the adequacy requirement because they "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). As stated above, all four named Plaintiffs are members of the class because all four are indigent Missouri parents who currently have driver's license suspensions ordered and enforced by Defendants because Plaintiffs fell behind on their child support payments due to their inability to pay. *Roby v. St. Louis S.W. Ry. Co.*, 775 F.2d 959, 961 (8th Cir. 1985) ("A fundamental requirement of representatives in a class action is that they must be members of the subclasses they seek to represent."). Moreover, Plaintiffs suffer the same injury as other class members — driver's license suspension for inability to pay child support — and have the same interest as other class members in ending Defendants' unconstitutional suspension scheme and getting their licenses reinstated. *Glen v. Fairway Indep. Mortg. Corp.*, 265 F.R.D. 474, 478 (E.D. Mo. 2010), *order clarified*, 4:08CV730 RWS, 2010 WL 891621 (E.D. Mo. Mar. 8, 2010) ("[T]he class representative must possess the same interest and suffer the same injury as the class members.") (citing *East Texas Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)). Finally, Plaintiffs have no known conflicts with class members. The fact that

Plaintiffs are not seeking damages eliminates a common source of conflict, as Defendants cannot simply settle with Plaintiffs individually to moot their claims.

The counsel representing named Plaintiffs and the proposed class are well-qualified and prepared to vigorously prosecute this matter. Named Plaintiffs are represented by attorneys from Equal Justice Under Law and McGivney, Kluger, and Cook, P.C. Counsel's combined experience includes litigating complex civil rights matters in federal court, representing individuals whose licenses have been suspended due to child support arrearages, and extensive knowledge of the details of Defendants' scheme and the relevant constitutional and statutory law. Ex. 2, Telfeyan Decl. The combined efforts of Class Counsel have so far included extensive investigation into Defendants' suspension scheme, including court room observation; numerous interviews with witnesses, attorneys, and advocates throughout the region; and interviews with national experts in constitutional law, law enforcement, judicial procedures, and criminal law. *Id.* Class Counsel possess a detailed understanding of local laws and practices as they relate to federal constitutional requirements. *Id.* Counsel have devoted enormous time and resources to becoming intimately familiar with Defendants' scheme and with the relevant state and federal laws. *Id.*

Because the interests of the class members will be fairly and adequately protected by named Plaintiffs and their attorneys, the adequacy requirement is satisfied.

B. The Proposed Class Satisfies the Requirements of Rule 23(b)(2)

As Defendants' driver's license suspension scheme directly affects all class members, the proposed class meets the requirements of Rule 23(b)(2), which states that "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." Rule 23(b)(2) is the most appropriate option under Rule 23(b) because Defendants' license suspension policy affects all those within the proposed class: All individuals whose Missouri driver's licenses

are, or will be, suspended for failure to pay child support and whose reason for nonpayment was, or will be, inability to pay. As noted in *Dukes*, "'[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples' of what (b)(2) is meant to capture." 564 U.S. at 361 (quoting *Amchem Prods. v. Windsor*, 521 U.S. 591, 614 (1997)).

All class members seek the same declaratory and injunctive relief, which is in keeping with the standard for Rule 23(b)(3). Per *Dukes*, "[t]he 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.'" *Id.* at 360 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U.L REV. 97, 132 (2009)). The relief sought would apply equally to all class members; all class members seek to have Defendants' suspension scheme — and the statutory provisions that create and permit the scheme — declared unconstitutional and replaced by policies that do not adversely affect individuals based on wealth. Furthermore, as Rule 23(b)(2) does not allow monetary damages, the injunctive and declaratory relief sought by this action is appropriate. *See id.* at 360–61 ("[23(b)(2)] does not authorize class certification when each class member would be entitled to an individualized award of monetary damages.").

Certification of the injunctive class under Rule 23(b)(2) is merited because named Plaintiffs and the rest of the class members are all individuals who, absent the relief that they seek, will continue to be subjected to an unconstitutional set of practices, policies, and procedures.

III. Conclusion

For all the reasons above, Plaintiffs respectfully request that this Court grant their Motion for Class Certification.

Respectfully submitted,

/s/ Phil Telfeyan

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